ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM: ARE WE FULFILLING THE PROMISE WE MADE TO THESE COLD WAR VETERANS WHEN WE CREATED THIS PROGRAM? (PART V)

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM: ARE WE FULFILLING THE PROMISE WE MADE TO THESE COLD WAR VETERANS WHEN WE CREATED THIS PROGRAM? (PART V)

TUESDAY, DECEMBER 5, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:15 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Hostettler (Chairman of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

This is the fifth and final hearing in a series of hearings before the Subcommittee in this Congress on the implementation of the Energy Employees Occupational Illness Compensation Program Act. The overarching purpose of these hearings has been to make sure the Government is fulfilling the promises made to these workers who sacrificed so much for their country during the Cold War. This program was created to help them, not as some science experiment to provide unlimited employment for Government contractors and certainly not to set these workers up to be deceived and minimized by the Government yet again.

Because DOE and its contractors often did not properly monitor workers' exposures to radiation and other toxins and, often, records of worker exposures no longer exist, EEOICPA provided that HHS could designate such workers as members of the, "Special Exposure Cohort," or SEC. Under a designated SEC, benefits are paid to workers who received on-the-job radiation exposure for a period of time and who have been diagnosed with one of 22 radiosensitive cancers.

When this law was enacted in 2000, Congress did not know how many new groups of workers might be designated as belonging in a Special Exposure Cohort, but from hearings in this Committee we knew that there was limited radiation monitoring data and nonexistent health physics programs in the earliest years, and this would make it almost impossible to accurately reconstruct dose for many claimants.

Without the ability to add workers to the Special Exposure Cohort, many would face an insurmountable burden of proof when it was the Government who placed them in harm's way, frequently

misled them about the hazards they were facing, and failed to properly monitor their exposures.

It seems prudent to revisit some of the historical evidence of the Government's knowledge of what these workers were being subjected to and the intentional decision to keep that knowledge a secret.

At Mallinckrodt, a 1951 Atomic Energy Commission memo assessed that their potential liability as a result of workers receiving radiation exposure for several years had been considerably more than any group for which data are available. The memo concedes, "the possibility of tumor development among Mallinckrodt employees must be recognized," but the workers were never told.

There are several examples from a formerly secret memo by the Atomic Energy Commission entitled Health Hazards in New York Operations Facilities Producing and Processing Uranium, April 1, 1949, that shed light on the amount of exposure workers received.

At Harshaw Chemical in Cleveland, Ohio, the AEC memo showed 33 of 88 employees were exposed to uranium dust concentrations of 140 to 370 times the so-called preferred level, and many employees had 2 to 4 years of exposure at these levels.

At Electromet in Niagara Falls, New York, the AEC found that most of the process workers were exposed to uranium dust at five times the so-called preferred level, and the bomb loaders were exposed to 600 times the preferred level in 1948.

At the Simonds Saw and Steel Plant in Lockport, New York, AEC wrote that, "In order to satisfy Hanford's urgent need for rolled metal, which is uranium, it was necessary to begin operations before suitable controls could be installed." As a result, employees were exposed to a daily average of 155 times the preferred levels of uranium.

An AEC memo acknowledged that with the exception of one facility, "No effort has been made to explain the nature of the special problems which exist." AEC wrote that employees were, "transferred from department to department and no record made of the fact."

"It will therefore be impossible without relying on the memory of the individual employees and their foreman to reconstruct the dust exposure records of many present employees."

The AEC noted that due to the health hazards to workers, "The decision must therefore be made to provide satisfactory operating conditions despite existing operations pressures. If this is not done, it will be necessary to classify at least some of the operations within these plants as being extra-hazardous in nature. This, of course, means concomitant complications such as difficulties in securing individuals for the job if full recognition is given to the extra-hazardous nature and insurance difficulties."

These are just a few examples of the history that guided the decision to provide relief for the workers through the Special Exposure Cohort petition process.

While progress has been made regarding claims processed at DOD, several-thousand dose reconstructions are not completed at NIOSH more than 6 years after enactment. Advisory board members have been removed and added with no rhyme or reason, leaving the board imbalanced.

The Administration has not acted on repeated requests by this Committee, as well as many Members of Congress to rectify this imbalance. Although OMB has indicated that the OMB passback does not reflect Administration policy, DOL's involvement in selectively culling compensable claims to second-guess NIOSH, constant internal criticism of the Advisory Board and the audit contractor, brainstorming on ways to limit the scope of SECs, and significant involvement in SEC rulemakings raises questions, now being evaluated by the GAO, on whether DOL has exceeded its authority and is involved in issues the law reserves for NIOSH and the Advisory Board.

A number of pressing concerns with Subtitle E of the program, the portion of the program that provides wage replacement and/or impairment benefits to workers for their illness from exposure to toxic substances at DOE facilities, have yet to be scrutinized by the Committee.

DOL testimony at our March 1, 2006, hearing about the DOL's role in the development of the OMB passback included a statement that "Cost containment is not part of any strategy or involvement that the Department of Labor has had in this process." Yet oversight by this Subcommittee has found e-mails and memos discussing controlling approvals of SEC petitions by:

One, having OMB review each petition with DOL input prior to final approval, a role specifically tasked to HHS;

Two, refreshing the members of the Advisory Board to correct what is framed as an excessively claimant-favorable board;

Three, selecting certain claims for cancers deemed compensable by NIOSH and then dissecting the NIOSH radiation dose estimate looking to show NIOSH error and justify an argument to reduce compensable claims;

Four, ways to reduce the number of workers included in SEC classes;

Five, working on NIOSH rulemakings to reduce the list of 22 SEC-covered cancers and finding legalistic interpretations to reduce the number to as few as one type of cancer;

Six, developing contingency plans to seek advice from the Justice Department that would relieve DOL of the obligation to pay benefits to certain Special Exposure Cohorts if DOL disagreed with the rationale for approving that SEC; and

Seven, bringing in other entities to challenge NIOSH recommendations for SECs.

We hope DOL will shed light on the discrepancy between previous testimony to this Committee in March and the document specifically viewed by the Committee that any rational person would perceive to be a benefits containment agenda through March of 2006.

Although DOL has produced about a dozen binders of materials to the Committee, we note that another eight binders could only be reviewed in the DOL's offices and copies could not be made. Although four trips have been made to DOL, this inconvenience has hampered the necessary Committee oversight over the program.

Many documents reflect a DOL attitude that SECs are not soundly based and that HHS and the Advisory Board can't be

counted on to fight off claims regarding shoddy radiation monitoring data.

A February 2005 memo to the Secretary of Labor states, "HHS has acquiesced to claimant, Advisory Board, and political pressure." An August 2005 memo accuses NIOSH of "capitulation," and then states with respect to efforts to cut back the number of cancers under the HHS SEC rule, "NIOSH is taking a tremendous amount of heat on this issue and indications are they are looking for ways to crumble."

A February 2005 statement shows disdain for the Advisory Board, complaining, "Thoughtful deliberation by the board, not something toward which they've shown a tendency anyway, will be extremely limited under these conditions."

While publicly professing no interest in the outcome of SEC recommendations on Mallinckrodt facility to Senator Kit Bond and the Advisory Board, the internal DOL comments state, "The final vote is now projected for the board's next meeting in early July. It may be that at least two current members of the board will be replaced by new appointees by then, which could significantly change the dynamic of the board." Such a change is critical since the board and its contractors seem bent on demanding that NIOSH's processes be far more perfect than is possible, failing which SECs would be demanded everywhere.

When briefing the top officials at DOL, staff suggested inflated cost estimates for new SEC designations. For example, they stated, "The 10-year added cost for the Iowa SEC alone has been projected at $1 billion." The expenditures for the Iowa SEC have been about $49 million as of November 12, 2006. This is 5 percent of the DOL staff cost estimate. This cost is unlikely to grow much more because there has already been intensive claimant outreach, and new claim filings have dropped off significantly.

With respect to Mallinckrodt, DOL staff wrote, "The 10-year added cost for a Mallinckrodt SEC was about $500 million." However, the cost is $17.7 million or about 3.4 percent of the amount projected.

Mr. Hallmark maintains this alarmist tone in memos to the Secretary where he states, "The stability of the current Part B program is at risk."

DOL has dismissed the concerns about their actions as no longer relevant since DOL has ceased and desisted from implementing the passback in May 2006. If this is the case, the Committee will need to review additional documents. The culture of disdain toward claimants and NIOSH appears to be so embedded in DOL that it will be important to take a hard look at what has transpired since the OMB passback first saw the light of day in order to confirm DOL's declaration.

We will need to look at the DOL's internal communications since our February 2006 request. As such, I will be working with the Ranking Member after the close of this hearing to send a letter to both DOL and NIOSH, seeking to update the request previously made to the two agencies and to reiterate the need to produce the documents which have been withheld.

We will hear from DOL, NIOSH and GAO today. We had invited the DOL ombudsman; however, we have been advised that this po-

sition is vacant and has been vacant since the beginning of October. We are disappointed that none of the staff from that office will be made available today because the reports to Congress and the recommendations they can offer are important in formulating reform legislation.

We want these hearings and a detailed record left behind to create a road map for the 110th Congress to follow up on areas that need further inquiry and to enact reforms. To the bean counters, I would remind you that these aren't normal beans that you are counting. These funds are a small acknowledgment of the sacrifice of workers whose lives were put at risk to make this country safe enough for us to sit in our office counting beans. Show some respect and gratitude is my request.

To the workers I say a heartfelt thank you; thank you for your service to our Nation. There are many of us who do appreciate your and your families' contribution to our world and want to do right by you. I would like to think that this Committee's hearings and oversight efforts have contributed to that goal, and I consider it a privilege to have led that effort in this Congress. I only wish more of the problems of the program could have been solved conclusively.

Finally, I want you to know that I have confidence that there are many people in this Government and this country who will continue to fight for you to get the respect and care you deserve for all you have done for us.

At this time, I recognize the gentlelady from Texas, the Ranking Member, for purposes of an opening statement.

Ms. JACKSON LEE. Let me thank the Chairman very much and let me acknowledge the leadership that the Chairman has given to this issue. He certainly has created an important road map for the 110th Congress, but more importantly he has created a superhighway of compassion and concern for those who have been left alongside the roadway that have given of themselves as great patriots representing their different regions across America.

This legislation and this concern is not focused on one region or another; it is really a question of people and the contributions people are willing to give on behalf of their beloved country, America. The Chairman has eloquently acknowledged that our task is to help those individuals.

And, Mr. Chairman, I would like to personally thank you and acknowledge—I believe, unless you call for a series of hearings over the next 48 hours, this may be, in fact, your last hearing as the Chairman of this Subcommittee. As the Ranking Member, I want to particularly place in the record my appreciation for the moments of our agreement, and certainly moments that we have disagreed but we have not been disagreeable. You have led this Committee with distinguished service, and I know that I speak for all of my colleagues who are represented by both sides of the aisle with a heartfelt thank you.

In particular, let me acknowledge that we hope that we will have a bill on the floor that you have been carefully guiding, J1 visas, which may sound like a small minor point, but thousands of rural communities are waiting upon doctors that they do not have that may be provided assistance by the J1 visa. I thank you for working with me and for our working together on that.

As well, we have worked, certainly, on this legislation dealing with occupational illness compensation, and you have been detailed and thorough in the, I think, broken system of Government that has failed to respond to the needs of these individuals.

Let me also say that though immigration has been a challenge, we have worked together on anti-alien smuggling legislation; our concern about securing the border is, I think, the same.

So again might I add for the record a heartfelt appreciation for the service that you have given to the Judiciary Committee, to the Subcommittee on Immigration and other Committees that you have served, and certainly, most importantly, to the Nation. Thank you, Mr. Chairman.

Let me indicate as I have always said at hearings like this that we hope that our work will generate solutions, and I hope the distinguished witnesses who are here today will find a way to either facilitate the solution or take messages back to their various agencies. And let us be different than what we are perceived, and that is bureaucrats, obstructionists sometimes, and uncaring of the needs of those whom we impact.

I believe we can find a solution, as the Chairman has indicated, and it is long overdue. The last hearing, we had the daughter of one of the victims, since passed; and to hear stories of the lack of resources, compensation, and to understand how this could have happened to their loved one really pulls at your heartstrings.

The good news is, this can be fixed, and we should fix it. This is the fifth in a series of hearings on Subtitle B of the Energy Employees Occupational Illness Compensation Act, and Subtitle B covers occupational illness associated with making nuclear weapons. Workers who have contracted one of those illnesses may be eligible for a lump sum payment of $150,000 and prospective medical benefits.

Let me insert into the record, as well, just the occurrence in the past 2 weeks of the loss of the Russian spy. The determination, though not final, is the obvious ingestion of some sort of nuclear product. I only cite that example so that it relates to your concept of how devastating contact with nuclear material can be to a human being. Obviously, it is suggested that this was ingested and this individual was poisoned, but the time of his demise was quick and it was vicious.

And so we might just associate what some of these victims, who have had exposure working for their nation on nuclear weapons, might have been impacted by—the minimal impact that you can imagine of this exposure, to be ill and not have the ability to be compensated.

In processing radiation-related cancer claims the National Institute for Occupational Safety and Health is required to estimate a worker's exposure to radiation. If this is not feasible, but it is clear that the health of workers may have been endangered by radiation exposure, the workers can petition to be designated as members of a Special Exposure Cohort, which establishes an unrebuttable presumption that certain cancers are work-related.

In an internal passback memorandum from the Office of Management and Budget to the Department of Labor, OMB states that the Administration will convene a White House-led interagency work

group to develop options for administrative procedures to contain the growth in the costs of the compensation program. That was the first mistake and the first wrong direction, and it should be corrected and it should be pulled back. It was a passback memorandum; it should have a pullback memorandum. We should begin to formulate how we provide compensation to these victims.

The series of five hearings addresses concerns about the cost containment measures recommended in the passback memorandum because it cites particularly that we are concerned about costs over the lives and health conditions of the victims. That is wrong; we need a pullback memorandum.

Government witnesses have testified that cost containment is not a factor in deciding which claims to pay, and they have said that the recommendations in the passback memorandum have not been implemented. The Administration may not be implementing the specific recommendations in the passback, but that does not mean that no efforts are being made to contain the cost of the program. And the Chairman has detailed the ups and downs this Committee has had in trying to secure information and trying to be responsive and being able to really move this solution forward.

The hesitancy of the agencies, frankly, has inhibited us from getting legislation to the floor, which means that we are now going to have to work into the 110th Congress, which I hope will move quickly on this issue.

At the previous hearing on November 15, 2006, Richard Miller, a senior policy analyst for the Government Accountability Project, testified that DOL is employing cost containment measures in spite of their representations. For instance, DOL has criticized the details in most of the proposed SEC designations in what he believes to be an effort to reduce benefits, and it has changed the regulations governing SEC petitions to make it more difficult to qualify.

Dr. John Mauro, the project manager for S. Cohen & Associates, testified at the same hearing that the Administration recently made it more difficult for SC&A to access data and records when it reviews a recommendation from NIOSH to deny an SEC application. This makes it more difficult to evaluate the records which are the basis for the denial recommendations.

Cost containment is not the only problem that has come to our attention at these hearings. Another witness at the previous hearing, Kathy Bates, described the difficulties her family has had in trying to obtain compensation for the death of her father from cancer caused by work site radiation exposure. The initial claim was rejected on the basis of radiation exposure records that did not pertain to her father.

Ms. Bates brought this to the attention of the office processing the claim and received assurances that the Social Security card number would be corrected. Nevertheless, when a new decision was rendered, it denied the claim again, using the same incorrect Social Security number to identify her father's records.

This is not befitting of America. This is not only an embarrassment, but it really undermines families and certainly continues to disregard the service of these patriots as they worked throughout the years. Ms. Bates concluded that quality control measures are needed for the process of evaluating claims, and I agree.

So this is not a question of cost containment; this really is a question of getting the job right, fixing the process, giving the right Social Security number, and responding to the needs of victims.

I have introduced a bill to address the cost containment issue, the Energy Employees Occupational Illness Compensation Program Improvement Act of 2006, H.R. 5840. Among other things, it would shift the authority from making Advisory Board appointments to the Congress, require the HHS Secretary to abide by the recommendations of the Advisory Board unless there is a clear error. It would establish enforceable conflict-of-interest requirements with respect to NIOSH's dose reconstruction contractors. It also would eliminate unfairness by making benefits available to some subcontractor employees who worked in atomic weapons employer facilities, but presently are not covered by the act.

These workers made a commitment to our country, to their beloved America, when the country needed them most. Now, some very many years later, it is our turn to help them in their time of need, to help their families in their time of need and to make good on what patriotism is all about, a love of one's country; and the country, of course, upholding its duty and commitment to her people.

I yield back.

Mr. HOSTETTLER. I thank the gentlelady. And I thank you for your kind comments and thank you for your work over the last 4 years and look forward to your progress in the upcoming Congress.

I'd now like to introduce members of our panel. Shelby Hallmark has served as the Director for the Office of Workers' Compensation Programs, or OWCP, for the Department of Labor since June 18, 2001. He had previously served as Acting Director and Deputy Director for OWCP. Mr. Hallmark has served in various positions at the Department of Labor since 1980, beginning his career in the Employment Standards Administration.

He holds a B.A. in history and philosophy from the University of Texas at Austin and received an M.A. from that university's Institute for Latin America Studies.

John Howard is the Director of the National Institute for Occupational Safety and Health at the Department of Health and Human Services. Prior to his appointment as Director, Dr. Howard served as Chief of the Division of Occupational Safety and Health in the California Department of Industrial Relations from 1991 to 2002.

Dr. Howard received his Doctor of Medicine from Loyola University of Chicago in 1974, his Master of Public Health from the Harvard School of Public Health in 1982, his Doctor of Law from the University of California at Los Angeles in 1986, and his Master of Law in Administrative Law from the George Washington University in Washington, DC, in 1987.

Daniel Bertoni is Acting Director for worker protection issues in the United States Government Accountability Office's Education, Workforce and Income Security team, or EWIS. Mr. Bertoni began his career with GAO in 1989 as an analyst in the New York region and is currently assigned to GAO's Washington, DC, headquarters. Over the course of his career, Mr. Bertoni has led numerous management, operational and program integrity reviews at the Depart-

ment of Labor, Social Security Administration and the Internal Revenue Service. Mr. Bertoni holds a Master's degree in political science from the Rockefeller School of Public Affairs and Policy in Albany, New York.

Gentleman, if you would please stand and raise your right hand and take the oath.

[Witnesses sworn.]

Mr. HOSTETTLER. Let the record reflect that each witness responded in the affirmative.

Gentlemen, you will see—and you're all, I'm sure, well aware of—the lighting system that we have here. Without objection, your opening statements, written statements, will be made a part of the record; and we ask that you keep as close to the 5 minutes as possible in order for Members to ask questions.

Mr. Hallmark, you will please begin. You're recognized for 5 minutes.

TESTIMONY OF SHELBY HALLMARK, DIRECTOR FOR THE OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR

Mr. HALLMARK. Thank you, Mr. Chairman. I'm pleased to appear today to discuss the Department of Labor's efforts to implements EEOICPA.

The veterans of the Cold War have been waiting for a long time, and we're proud of our ability to get both Part B and the new Part E of this act up and running quickly. DOL staff are dedicated to adjudicating claims and providing benefits in a prompt, fair and consistent way and in accord with the law as enacted by Congress. We have set challenging performance goals and consistently exceeded them, and we're driving hard to finish resolving all the backlogged cases.

The results demonstrate that the promise of the statute is being kept. In 5 years we've issued $2.4 billion to 22,000 beneficiaries. Nearly 75 percent of all cases have received at least one final decision from DOL. Less than 6,000 cases remain in the NIOSH dose reconstruction queue, and that dose reconstruction process has resulted in nearly $550 million in benefits so far.

Under Part E, we've issued an initial decision on 80 percent of the 2,500 cases DOL inherited from the Department of Energy, and nearly $520 million has already been awarded under that part.

These statistics show that the EEOICPA program is working. We haven't yet reached steady state and benefit outlays are still growing as we work through the remaining backlogs. The program as a whole is moving forward, but those who haven't yet received a final decision or who have had difficulties with the program may still be disappointed.

We've adopted numerous strategies to help claimants navigate this complex program. These range from extensive public outreach efforts to one-on-one assistance from our resource centers and our district offices.

Our staff directly gather employment, exposure and medical evidence on virtually every claim, greatly easing the burden on claimants. For Part E, we're building extensive site exposure matrices which we match against medical data sets to link those exposures

to specific medical conditions. These DOL-provided evidentiary tools won't prove eligibility in every case, but they help in a very large majority of them.

Mr. Chairman, previous testimony before this Subcommittee alleged DOL is anticlaimant and has carried out a covert cost containment effort. These charges are simply not true. They arose from options in a now disavowed internal OMB memo. OMB has testified before this Subcommittee that the Administration is not pursuing those options, and we are not pursuing them nor are we attempting to usurp NIOSH's role.

As the lead agency in the administration of the EEOICPA, we're responsible for issuing fair, equitable decisions to claimants. This requires close coordination and scrutiny of the activities of other agencies, including NIOSH. Our goal in reviewing NIOSH inputs is to ensure that the final decisions based on them are accurate and consistent and can be sustained in court if challenged.

We've returned nearly 2,000 dose reconstructions to NIOSH over the past 3 years for rework, but 88 percent of those cases otherwise would have been denied. We were nearly always giving the claimant a second chance, certainly not an anticlaimant status.

Neither have we conducted a covert cost-cutting campaign regarding the Special Exposure Cohort. Starting in 2005, I publicly urged the Advisory Board to ensure that the rationale for each new SEC class it considers comports with the statute, is clearly explained, and is capable of consistent application.

I also noted that SEC class declarations have negative impacts on some claimants whose cancers are not on the list that conveys presumptive eligibility. These concerns are and continue to be about equity, not about cost.

DOL also works with NIOSH to ensure that the definition of each class is clear and can be reasonably interpreted for adjudication purposes to avoid unintended outcomes and expedite the adjudication of these cases. We have a fiduciary responsibility to ensure that payments are lawful, but our chief concern is that the process yields reasonable and defensible outcomes across the entire complex now and for years to come. That has been and remains our focus.

In summary, the record of our administration of the act is positive. Billions of dollars have been awarded, backlogs are rapidly diminishing, approval rates far exceed original projections, and litigation remains remarkably low. There's much to be done. We must eliminate the remaining backlogs and we must strengthen our overall delivery of services, but on balance, the EEOICPA program is unfolding as promised and can be expected to continue to do so.

I'll be glad to answer your questions when the time comes.

Mr. HOSTETTLER. Thank you.

[The prepared statement of Mr. Hallmark follows:]

PREPARED STATEMENT OF SHELBY HALLMARK

Mr. Chairman, and Members of the Committee, my name is Shelby Hallmark. I am the Director of the Office of Workers' Compensation Programs (OWCP), a component of the Employment Standards Administration (ESA), Department of Labor (DOL).

I am pleased to appear before the Subcommittee today to discuss our efforts to fulfill the promise made to veterans of the cold war with the enactment of the En-

ergy Employees Occupational Illness Compensation Program Act (EEOICPA). Since the initial implementation of this program, DOL staff have dedicated themselves to ensuring that we adjudicate claims and provide benefits to eligible workers and their survivors in a manner that is timely, fair, consistent, and according to the Law as enacted by Congress. We believe the results demonstrate that the promise of the statute is being kept.

There have been assertions made in previous hearings before this Subcommittee that the Department of Labor has been working to curtail the promise of the Act. That is not the case, and I will also present evidence that we are, in fact, administering the program in the best interest of the workers and survivors for which it was intended, and as outlined in the law.

PROGRAM ACCOMPLISHMENTS

The EEOICPA has been and continues to be an interdepartmental activity, involving the coordinated efforts of the Department of Energy (DOE), Health and Human Services (HHS), Department of Justice (DOJ), as well as DOL. As the lead agency for EEOICPA, we are proud of the overall progress we've made in implementing both Parts of the Act.

The Department of Labor has administered Part B of the program since its inception in 2001. In October 2004, Congress chose to entrust DOL with a new facet of EEOICPA, Part E, to redress issues with the earlier Part D program. Throughout the brief history of the Act, DOL has worked hard to fairly and effectively administer these complex programs, according to the requirements of the statute. In doing so, we have set challenging performance targets to ensure that workers and their families, who have waited for so long, receive prompt and accurate decisions. Although we have much work still to do, we have consistently exceeded our performance goals and will continue to press ahead as quickly as possible until all backlogged cases are resolved.

The EEOICPA program is still new and evolving, but a great deal has been accomplished. Workers who haven't yet received a final decision, or who are unhappy with a decision, may question our success in fulfilling its promise, but a full and fair analysis of the program indicates that it is moving forward effectively.

Since the inception of the program, claims have been filed for EEOICPA benefits on behalf of more than 58,000 individual workers. Of those, 43,000, or nearly 75%, have received at least one final decision from DOL (individuals can receive multiple decisions under Part B and Part E). More than 22,000 individuals have received in excess of $2.25 billion in lump sum compensation under Part B, Part E or both, as well as $133 million in medical benefits.

PART B ACCOMPLISHMENTS

The EEOICPA was initially enacted on October 30, 2000. It established a federal payment program (Part B) under which DOE contractor employees and certain other employees and their eligible survivors are entitled to receive federal compensation and medical benefits for radiation-induced cancer, beryllium disease or silicosis. Executive Order 13179 of December 7, 2000, assigned primary responsibility for Part B administration to DOL. DOL's delegated responsibility included addressing issues raised in the claims process regarding dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH). DOL moved swiftly to issue Interim Final Regulations in May 2001, and established a fully functioning program on schedule. Secretary of Labor Elaine Chao presented the first EEOICPA check on August 9, 2001.

To date, more than 76% of Part B cases have received a final decision, and payouts are approaching $1.75 billion. Another 11% of Part B cases are at various stages of dose reconstruction with NIOSH. The vast majority of the remaining 7,000 cases were received during the past year and are moving promptly through the various stages of the adjudicatory process. The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has met its timeliness goals for processing Part B cases every year, and although the time to complete Part B actions has increased in 2006 due to the addition of the new Part E program, the average time to issue initial decisions was 175.2 days, less than the program standard of six months. In FY 2006, DEEOIC's Final Adjudication Branch achieved an 88% rate for issuing final Part B decisions within established program standards. Although these complex occupational disease claims take time, we are generally pleased with the speed of adjudication once dose reconstruction is completed.

Some have cited the approval rate for Part B cases, which are subject to the dose reconstruction process, as evidence that the intent of the statute is not being realized. To date, approximately 29% of such cases have received a final decision confer-

ring benefits, and nearly 5,000 claimants have received over $534 million in benefits via this process. To assess these outcomes, one must understand the choices Congress made in establishing the Part B program's approach to adjudication of radiogenic cancer claims.

When Congress was considering the legislation that became Part B of EEOICPA, it was confronted with a difficult choice concerning how the government should determine whether a cancer was sufficiently work-related to justify compensation under the new compensation program. Decades of experience demonstrated that requiring medical evidence that an individual cancer was related to radiation exposure was not a workable solution because of the inability of scientists or doctors to determine the specific cause of any particular cancer. Therefore, Congress chose to use a statistical epidemiological approach requiring a claimant to establish that a worker's cancer was "at least as likely as not" related to workplace exposure when that probability was calculated using a version of statistical tables previously developed by the government. Since there was substantial evidence that recordkeeping at many covered facilities was less than comprehensive, it was understood by the sponsors of the legislation that the process would not be perfect but would be based upon estimation and probability.

In view of previous experience with such statistical tables, the fact that some types of cancer have been found not to be significantly radiogenic, and the fact that the National Cancer Institute estimates that the incidence of cancer in the general population is over 40%, it was clear that many cancers would be found to have less than a 50% probability of work-related causation and would thus not lead to a decision to compensate the claimant. However, Congress did specify in the legislation that a 99 percent confidence interval be used in the calculation. (For each specific dose reconstruction there is a range of possible resulting probabilities of causation. This means that if only one percent of these possible outcomes are 50 percent or more, the claim is awarded benefits.) This provides a very large margin for error in favor of claimants. Nevertheless, the DOE initially estimated, based on their knowledge of exposures in the complex and epidemiological studies of cancer incidence, that less than 5% of nuclear weapons workers who incurred cancer would reach the 50% probability of causation threshold.

In practice, the strenuous efforts of NIOSH to be fair to claimants and resolve ambiguities in their favor have resulted in the current approval rate of 29% for such claims, far in excess of any predictions when the legislation was being considered. Those whose claims are denied often feel strongly that the cancers involved were caused by work-related exposure to radiation, and one cannot help but sympathize with individuals diagnosed with cancer, and with their families. However, DOL must make determinations consistent with the requirements of the statute.

PART E ACCOMPLISHMENTS

In addition to administering Part B of the Program, DOL has responsibility as the lead agency for Part E (which replaced Part D) of the Act. Congress initially included a second program in EEOICPA, Part D, which required DOE to establish a system by which DOE contractor employees and their eligible survivors could seek assistance in obtaining state workers' compensation benefits. In the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. 108–375 (October 28, 2004), Congress abolished Part D of the EEOICPA, created a new Part E in its place, and assigned administration of Part E to DOL. Part E established a new system of federal payments for DOE contractor employees and eligible survivors of such employees. Part E benefits were also extended to uranium miners, millers and ore transporters covered by Section 5 of the Radiation Exposure Compensation Act (RECA). Congress specified that DOL prescribe Interim Final Regulations implementing the amendments to EEOICPA with 210 days of enactment.

When the amendment was passed in October 2004, there were more than 25,000 cases pending with the old Part D program, many for more than four years, thus creating an instant backlog for the new program. Within two months of enactment, DOL began providing compensation under the newly established Part E of the EEOICPA, using preliminary procedural guidance. Interim final regulations were implemented by May 2005, within the deadline established by Congress. Since its inception, the DEEOIC has provided more than 4,000 employees or their families with Part E compensation payments exceeding half a billion dollars. In addition, DOL set specific Part E targets for fiscal year 2005 and fiscal year 2006, to issue payments and make initial decisions on backlogged cases. DOL exceeded these goals in both years, issuing over 1,500 payments in fiscal year 2005, and issuing initial decisions on more than 75% of the backlogged cases by the end of fiscal year 2006.

By the end of 2007, the new program will have eliminated the backlog and will be current in processing all incoming claims.

Aside from the cases inherited from Part D, during FY 2006 DOL was able to reach initial determinations on new Part E claims within program standards 73% of the time, with the average time required being 132 days.

For greater efficiency, simplicity, and speed, DEEOIC now adjudicates all claims for benefits under Parts B and E of the EEOICPA as one EEOICPA claim. Where possible, decisions are issued that address both Parts B and E simultaneously. However, partial decisions may also be issued in cases where benefits under some provisions can be awarded but claims under other provisions require further development. Once the backlog of inherited claims has been fully resolved, we will direct maximum attention on driving down the time to process each step of these claims, while continuing to work to improve the quality of our decisions. We are focused on doing everything we can to speed the processing of claims under this program, and to getting compensation and benefits to all eligible injured workers and their families.

DOL CLAIMANT ASSISTANCE AND OUTREACH

The complexity involved in EEOICPA—the exposures and diseases involved and the science required to relate them to one another, the multiple benefits available and separate eligibility rules under the two Parts, and the multiple agencies engaged in delivering the program—as well as the advanced age of many current and potential claimants, necessitate extraordinary effort to inform and assist the affected community. DOL has utilized a wide range of methods to educate the public and provide specific assistance in completing forms and navigating through the process of submitting evidence and other information.

DOL has undertaken significant outreach activities in an effort to provide detailed information to the employees or survivors who may be eligible for benefits. As a first step, DOL established resource centers (now 11 in number) located throughout the country, in which knowledgeable staffs work one-on-one with claimants to file appropriate forms and submit information to DOL relevant to those claims. Information is provided face-to-face and via toll-free telephone service. Resource center staffs provide all relevant information at the initial stages of claim submission and personally answer any questions that arise. They also participate in numerous community events in their jurisdictions to get the word out to various groups that may include potential claimants.

To attract maximum attention to the program, DOL held well-publicized Town Hall meetings throughout 2001–2005 in various locations throughout the country where there was a significant population of individuals currently or formerly employed at covered facilities. DOE and NIOSH also participated in most of these meetings, providing information and answering questions about their responsibilities under the statute. These meetings were well attended by employees, survivors and special interest group members. DOL continued to conduct these meetings during 2006 as new regulations and procedures were developed.

In addition to educating the public about benefits, DOL has forged key relationships with various entities that have information that may be pertinent in the successful adjudication of claims. DOL understands the difficulties claimants may have in locating employment and exposure records needed to issue fair decisions. As a result, DOL has contracted with the Center to Protect Workers Rights (CPWR) to track down information about construction workers who may have been exposed at DOE sites but whose employment information was not captured in DOE prime contractor datasets. We also work with the DOE Former Workers Program, and with other contractors, to locate appropriate records which are not immediately available through DOE. These valuable relationships help relieve the burden on the claimants to locate these records. In addition, DOL has developed a site exposure matrix, which is a detailed database containing information concerning the types of chemicals that may be found at a given covered facility. This matrix is utilized by claims staff in the district offices to determine toxic exposures. These relationships and tools have been significant in reducing the amount and types of information required to be submitted by claimants.

In an effort to further assist claimants in the processing of claims, DOL has contracted with over 200 physicians throughout the country to provide medical evidence for use in issuing decisions related to causation and impairment issues. These district medical consultants work with DOL to review particularly difficult claims, or where claimants have no access to physicians able to provide the necessary medical evaluations, and to assist DOL staff in issuing accurate and thorough decisions.

Each of the four DEEOIC district offices and its Final Adjudication Branch maintain toll-free telephone lines and receive and promptly respond to thousands of inquiries each year.

These efforts demonstrate DOL's dedication to reaching out to the public, and to alleviating burden on claimants by assisting them in perfecting their claims at all stages of the adjudication process. Those who have experienced difficulties in navigating this complex program may be disappointed that we have not done more, but we are working continuously to further improve that assistance, and we urge claimants and family members who are confused or uncertain about the meaning of program documents or how they should proceed to contact us directly to address those concerns.

DOL COORDINATION WITH OTHER AGENCIES

Given DOL's role as lead agency in the administration of the EEOICPA, significant coordination is required with other federal agencies, including NIOSH, DOE, and DOJ. NIOSH (a component of HHS) supports the program by conducting radiation dose reconstruction and handling requests for expansion of the Special Exposure Cohort (SEC). The DOE and many of its contractors supply employment and exposure information. The DOJ coordinates the coverage of certain uranium workers also covered under the Radiation Exposure Compensation Act (RECA). We've worked from the beginning to coordinate all these agencies' EEOICPA activities so that the program functions as it was intended.

A key element in processing a great number of Part B claims is the NIOSH dose reconstruction process. Although NIOSH is responsible for conducting the research necessary to provide claimants and DOL with a detailed dose reconstruction report estimating work-related radiation exposure, the ultimate responsibility for issuing recommended and final decisions rests with DOL, utilizing the NIOSH dose reconstruction and other evidence in the file. (See the discussion below on cases returned to NIOSH for rework.) NIOSH requests input and claimant signatures on dose reconstruction documents, but the signature only acknowledges receipt of the document and does not constitute concurrence or objection. DOL's Final Adjudication Branch (FAB) is a claimant's only opportunity, prior to issuance of the DOL decision, to contest a dose reconstruction. Consequently, it is imperative that DOL thoroughly review and understand the dose reconstruction reports provided by NIOSH such that we may issue fair and equitable decisions to the claimants.

ALLEGATIONS THAT ATTRIBUTE COST-CUTTING MOTIVES TO DOL

In testimony provided at previous hearings before this Subcommittee, it has been alleged that DOL has attempted to carry out a covert budget cost containment effort. As I testified on March 1, 2006, this is simply not the case. This issue initially arose in the context of an Office of Management and Budget (OMB) 2007 budget passback document which outlined various options related to the NIOSH SEC and dose reconstruction processes. As the Administration has previously testified, it is not pursuing any of these options.

As indicated above, DOL, as lead agency in the administration of the EEOICPA, is ultimately responsible for issuing fair and equitable decisions to claimants. This requires close coordination and analysis of activities undertaken by other agencies involved in the process, including NIOSH. DOL's only goal in reviewing NIOSH dose reconstructions is to ensure that final decisions are accurate, fair and consistent.

Performance at the DOL and NIOSH technical staff level provides significant insight into the workings of both agencies on day-to-day program coordination activities and DOL's effort to ensure fairness and uniformity in program decisions, while further demonstrating that DOL is in no way attempting to administer EEOICPA in a manner that is driven by cost containment. Two areas that are demonstrative of program performance are DOL decisions requesting NIOSH reworks of completed dose reconstructions, and DOL decisions in addressing claimants' technical objections to NIOSH dose reconstructions. The latter is of utmost importance since the only avenue for claimants to object to the NIOSH dose reconstruction procedures is through the DOL claims adjudication process.

REWORKS OF NIOSH DOSE RECONSTRUCTIONS

As part of the DOL claims process, upon receipt of a dose reconstruction report from NIOSH, claims staff reviews the reports for accuracy and consistency prior to issuing recommended or final decisions on cases. Sometimes they recognize anomalies in the reports which require further analysis. For example, a dose reconstruction may have been conducted based on an incorrect diagnosis code, or additional evidence received after the dose reconstruction was completed by NIOSH may reveal

expanded employment, or medical evidence has been submitted revealing that an employee had an additional cancer. In these instances, the claims staff either at the district office level or at the Final Adjudication Branch must determine whether a claim should be returned to NIOSH for a "rework." The DEEOIC Procedures, (EEOICPA Bulletin No. 04–01, issued in 2003) state the following:

> "The DEEOIC Health Physicist serves as the central liaison between NIOSH and DOL on all dose reconstruction related issues. All requests for reworks of dose reconstruction reports must be forwarded to the DEEOIC Health Physicist for review. The DEEOIC Health Physicist will review the request for rework and determine whether a rework is required. The DEEOIC Health Physicist will contact the claims examiner if additional information is needed to make a determination, which may include requesting the case file. If the information would change the outcome of the dose reconstruction or affects the accuracy of the case, the request for rework will be referred to NIOSH. If the information would not change the outcome of the dose reconstruction, the DEEOIC Health Physicist will send an e-mail to the claims examiner and the district office NIOSH liaison explaining the rationale for not continuing the review of the dose reconstruction report. When the claims examiner receives this response, he/she must [proceed with the appropriate calculation for adjudication of the claim]."

Between July 25, 2003 and November 16, 2006, DOL has returned 1,891 cases to NIOSH to have the dose reconstruction redone. The vast majority (1,677 or 88 percent) of these "reworks" have been cases in which the probability of causation (PoC) based on the NIOSH dose reconstruction was below 50 percent and thus would result in a denial of benefits. In these cases, the issues to be addressed by NIOSH would have the potential to increase the dose and thus may result in a PoC greater than 50 percent resulting in eligibility for benefits. There were only 224 cases returned for rework in which the PoC was initially over 50 percent with only 10 of these returned due to technical issues related to NIOSH's application of methodology. These statistics reveal that, if anything, DOL's analysis of dose reconstruction reports leans towards the side of the claimant, generally resulting in the potential for a more favorable decision.

FAB REMANDS

In addition to reworks, DOL also reviews dose reconstruction reports at the final adjudication level if a claimant raises a technical objection to a dose reconstruction, or if the Final Adjudication Branch hearing representative identifies a possible error. Claimants may either raise these objections in a written statement to the hearing representative or through an oral hearing. If a hearing representative receives such an objection or otherwise identifies a dose reconstruction issue, the case is forwarded to a DEEOIC Health Physicist to determine whether the objection merits returning the case to NIOSH for revision of the dose reconstruction.

Statistics regarding the resulting remand orders issued by the Final Adjudication Branch (FAB) also demonstrate the absence of any cost-cutting motive in the DOL process. From the program's inception, FAB has issued 3,149 remands of Part B cases, of which 70 percent (2,198 cases) were cases in which a recommended decision had been issued to deny benefits. Following the remand, the district office reviews the case and issues a new recommended decision. Since denials make up 63% of all recommended decisions on Part B cases, but 70% of all remands involve denied cases, FAB remands a higher ratio of denials than approvals. Only 30 percent (951 cases) of remanded cases had a recommended decision to approve benefits initially, of which only 17 percent were remanded due to issues with a dose reconstruction.

DIRECTOR'S ORDERS TO REOPEN

Finally, a review of Director's Orders issued to reopen claims also reveals a careful attention to, and concern for, claimants' interests. A Director's Order is issued after a final decision by the FAB when a review of the claim or additional evidence reveals that the final decision should be vacated. This can occur based on a claimant's request for a reopening, or based on the Director's review of the claim for any reason. For example, information provided in a subsequent dose reconstruction report for another claimant may indicate that dose was missed for previously decided cases, and the Director has reopened such cases so that NIOSH can determine if the additional exposures also apply to those cases. DOL's performance relative to Director's Orders for reopening claims clearly demonstrates that DOL is committed to paying benefits when claimants are entitled. Since the inception of EEOICPA, 548 Director's Orders have been issued. With a very few exceptions, all Director's

Orders to date have been issued on cases that have been denied by the FAB, vacating the decision and returning the case to the district office for further development or acceptance. The only approved cases that have been reopened have occurred when an employee dies before receipt of benefits. In these cases, a Director's Order is issued to vacate the final decision and offer the opportunity for an eligible survivor to apply for benefits. Additionally, most Director's Orders (269 cases) were issued without the claimant requesting such action, demonstrating the program's commitment of the program to ensure accuracy and deliver all benefits to which claimants are entitled.

SEC CLASS DETERMINATIONS

The creation of new SEC classes requires close coordination between DOL and NIOSH to determine which cases at the site in question have been affected by the new class and which continue to require dose reconstruction. Since NIOSH and the Advisory Board began discussions about the declaration of new classes, DOL has continually worked to ensure that the definitions of the class membership and the rationales presented as the basis for the new classes are clear, consistent, and fair.

Prior testimony before this Subcommittee asserted that DOL opposed SEC classes or sought to narrow them out of a purely "budget driven" agenda. Again, as I testified in March, this is not the case. Although DOL has a fiduciary responsibility with respect to the EEOICPA program, our efforts have been aimed at ensuring consistency and replicability of SEC declarations across the whole DOE complex and over time. Further, we have sought to ensure that SEC class declarations are undertaken with full knowledge of their implications—that is, while a class declaration makes eligibility presumptive for claimants with one of the listed 22 cancers, those who have an unlisted cancer may have their chances for eligibility reduced or expunged depending on the basis for the SEC class. In some cases, even those with a listed cancer may suffer negative impacts from the declaration. Finally, because each new SEC class designation has been unique in its rationale and in its impact on how (or if) dose reconstruction can be done for cancers that are not granted presumptive coverage, DOL and NIOSH have had to work out unique procedures for each class to determine how these cases will be processed. The return of large numbers of SEC cases from NIOSH also creates a large, unanticipated workload in DOL's district offices, and DEEOIC leadership has had to respond to those challenges by shifting caseloads among the four district offices. DOL clearly has an important need to participate in the SEC class declaration process, and our efforts to do so have been, and continue to be motivated by, these program imperatives.

SUMMARY

In summary, we believe the record of DOL's administration of EEOICPA demonstrates that promises made to the cold war veterans with enactment of EEOICPA are indeed being kept. Nearly $2.4 billion in monetary and medical benefits have been distributed to over 22,000 eligible workers and their survivors. Backlogs of cases generated at the inception of Parts B and E have been aggressively addressed and are rapidly diminishing: 76% of Part B cases have been decided by DOL, with another 11% (under 6,000) are awaiting NIOSH dose reconstruction; more than 75% of the old Part D backlog inherited by DOL from DOE has received an initial determination under Part E, and the remainder will be processed to that point in 2007. Approval rates far exceed those originally projected for the Part B program, and litigation remains remarkably low. A review of DOL's administrative handling of cases involving dose reconstruction show that in the great majority of cases remanded or returned to NIOSH for reconsideration of dose reconstructions, DOL was supporting the claimant's opportunity to achieve a better outcome.

This is not to say that there is not much left to be done. DOL will continue to drive towards backlog elimination, strengthen its processes and procedures, improve training for its staff, maintain its ongoing outreach efforts, extend access to information about the program in numerous ways, and continue to provide extensive assistance to claimants in obtaining critical employment, exposure, and medical evidence to support their claims. NIOSH is similarly engaged in clearing out its oldest cases and reaching a steady-state situation, and the Department of Energy has redoubled its commitment to support both NIOSH and DOL information needs. On balance, the EEOICPA program is unfolding as promised, and can be expected to continue to do so.

Mr. HOSTETTLER. Dr. Howard.

TESTIMONY OF JOHN HOWARD, M.D., DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Dr. HOWARD. Thank you, Mr. Chairman.

My name is John Howard, the Director of NIOSH of the Centers for Disease Control and Prevention and the U.S. Department of Health and Human Services. I just wanted to give you an update on the claims that we've completed in our process.

Of the 22,761 that have been sent to us by DOL, we've returned 16,317, or 72 percent of the claims that we've received. Of the first 5,000 claims, which were the ones that were in the queue the longest, we've completed 4,899, or 98 percent of those. We have 4,491 claims remaining, of which 3,110, or 69 percent, are older than 1 year. Our goal is to have, by June of 2007, no claim in our system more than 1 year old.

We've added 10 classes to the SEC. Three more are going to be added as of this Sunday unless Congress takes action otherwise. So that's a total of 13, covering 11 sites and 1,100 claimants.

We have nine petition-requested classes and four NIOSH-generated classes in that group. Three more NIOSH-generated classes are being submitted next week at the board's meeting in Naperville, Illinois, along with two petitioner-requested classes, for a total of five.

We have two new resources that are important to claimants that I wanted to mention to you today. One is an SEC petition counselor. I'm pleased to report that Laurie Ishack of our Compensation Analysis and Support office in Cincinnati is filling this position; and most importantly, we have a petitioner/claimant ombudsman position which will come on board shortly, probably tomorrow. I'm pleased to report that Ms. Denise Brock will serve as petitioner/claimant ombudsman for NIOSH, under contract, reporting to the NIOSH director.

We have a conflict of interest policy that we've been working on most of this year, which we finalized in October; and we have a NIOSH conflict-of-interest officer for NIOSH and its contractors. We're working toward a mid-December implementation date.

Since my last testimony in March of this year, the board has held 29 working group subcommittee or full Board meetings. The point I wanted to mention here is that we have provided verbatim transcriptions and detailed minutes of all Board meetings and the subcommittee meetings of the working groups and make them available to the public through our Web site.

As Ms. Jackson Lee reported at your last hearing in November, a witness raised concerns regarding the data quality of NIOSH dose reconstructions. We have contacted that witness to apologize for the problems created and I apologized to her myself on the record. We've conducted conversations and agreed with her on an approach to expeditiously correcting the deficiencies in her dose reconstruction.

NIOSH has made a lot of progress in carrying out the responsibilities of the Health and Human Services Department under this act, and that is due to the input of all parties, including this Committee and its staff. It is only when science receives the kind of scrutiny in the public forum that is robust that we can trust its conclusions. We look forward to continuing to make progress, with

all parties putting their input on the table in a public forum about our science.

Thank you for the opportunity to testify, and I look forward to answering your questions.

Mr. HOSTETTLER. Thank you.

[The prepared statement of Dr. Howard follows:]

PREPARED STATEMENT OF JOHN HOWARD, M.D.

Mr. Chairman and Members of the Subcommittee, my name is John Howard and I am director of the National Institute for Occupational Safety and Health (NIOSH), part of the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS). I am pleased to appear before you today to provide testimony on the status of HHS activities under the Energy Employees Occupational Illness Compensation Program Act of 2000 ("the Act").

The role of HHS in this program is to focus on the science of doing dose reconstructions, the related issue of considering and deciding petitions from classes of employees wishing to be added to the Special Exposure Cohort (SEC), and provide support for the Advisory Board on Radiation and Worker Health ("the Board"). Other areas of this program, such as processing and payment of claims, are under the purview of the Department of Labor (DOL), which has lead responsibility for administering EEOICPA.

NIOSH is proud of the work we have done to implement EEOICPA. I will update you on the progress NIOSH has made to date, then discuss some of the challenges that we are currently addressing.

As of November 30, 2006, DOL has referred 22,761 claims to NIOSH, and NIOSH has returned 72% (16,317) of these to DOL with a completed dose reconstruction. NIOSH has returned to DOL an additional 4.9% (1,121) for a determination of SEC eligibility; and DOL pulled an additional 2.7% (631 claims) for various reasons. Ten classes of workers have been added to the SEC to date. Three additional classes recently have been approved by the Secretary for addition to the SEC—they were sent to Congress on November 9, 2006, and will become effective on December 9, 2006, unless Congress determines otherwise. At the September meeting of the Board, DOL reported that more than $572 million had been paid to claimants with completed dose reconstructions or to members of an HHS added, non-statutory SEC class.

In October 2005, as part of our commitment to expedite completion of the first 5000 cases NIOSH awarded a contract to Battelle Science and Technology to assist with the reconstruction of exposure conditions at various Atomic Weapons Employer facilities and the completion of individual dose reconstructions. Of the first 5000 claims that NIOSH received from DOL, we have completed dose reconstructions or sent to DOL for adjudication 4899 or 98% of the cases. NIOSH has committed to completion of these first 5,000 claims as a top priority so claimants can have resolution of their cases.

NIOSH also has taken the step of initiating petitions for adding classes to the SEC when NIOSH lacks data to estimate radiation doses with sufficient accuracy. Of the ten SEC classes that have been added to date and the three that will become effective this week, four were NIOSH-initiated: Linde Ceramics Plant in New York, Nevada Test Site, S-50 Thermal Diffusion Plant in Tennessee, and Los Alamos National Laboratory in New Mexico. Three more, Allied Chemical, Harshaw Chemical, and General Atomics, have been initiated and submitted to the Board for consideration at the Board meeting next week.

For petitioner-initiated SECs, we have two new resources to assist petitioners: the SEC Petition Counselor and the NIOSH Petitioner/Claimant Ombudsman. The SEC Petition Counselor will provide guidance to anyone who wishes to submit an SEC petition. She will assist the petitioner(s) in understanding the complex development, submission, qualification, evaluation, and Board deliberation processes that the petition will undergo. NIOSH's goal is to help everyone understand the complete petition process, and the SEC Petition Counselor will work with petitioners to help them overcome frustration or confusion that they may feel when submitting an SEC petition. Petitioners may also turn to the NIOSH Petitioner/Claimant Ombudsman. I am pleased that Ms. Denise Brock, who has testified before your subcommittee about her diligent and successful effort with the SEC petition of Mallinckrodt Chemical Works in Missouri, will be the NIOSH Petitioner/Claimant Ombudsman. She will be an independent, objective resource person to help with NIOSH interactions with claimants and petitioners. Ms. Brock will be a contractor employee with three specific goals: first, to hold individual meetings with claimants and petitioners to

assist them in the claims and SEC processes; second, to facilitate workshops presented to groups of claimants and petitioners; and third, to review and suggest improvements in the communications vehicles NIOSH uses in interacting with claimants and petitioners. Ms. Brock will report her findings directly to the NIOSH Director's Office. Ms. Brock will be a tremendous asset to both the claims and SEC petition processes.

I am pleased also about the completion of another effort that has been months in the making. On October 17, 2006, NIOSH finalized and posted on our website the conflict of interest policy for the EEOICPA program activities. The policy had been presented to the Board in draft form and was revised in response to comments from the Board and the public. All covered entities, including NIOSH and its contactors and subcontractors, will post on their respective websites by December 17, 2006, their procedures for demonstrating compliance with the policy. I have appointed a NIOSH Conflict of Interest Officer, who has held a planning meeting to start implementation by NIOSH of the policy. Since NIOSH is committed to transparency in all aspects of EEOICPA program activities, all conflict of interest disclosure forms will be posted on our website or can be accessed through a weblink on our website.

As I have mentioned, the Board provides guidance and oversight for HHS EEOICPA activities, focusing on scientific detail and peer review of the soundness of NIOSH's scientific work, and provides recommendations to the Secretary on the addition of classes to the SEC. HHS provides administrative services, funds, facilities, staff, and other necessary support services.

I reported to you in my March testimony that the Board had met a total of 46 times in working groups, subcommittee, and as the full Board. Between March and now, the Board has been especially busy, holding 20 working group meetings, 6 Board meetings, and 3 subcommittee meetings. The next Board meeting will be next week, December 11–13, 2006, in Naperville, Illinois. The Naperville site was chosen for the Board meeting so that interested claimants and petitioners from Blockson Chemical Company, one of five SEC petitions to be considered by the Board at the meeting, may more easily attend the meeting and address the Board during the public comment period.

The Board provides guidance to HHS on all aspects of EEOICPA program activities and we greatly appreciate its meticulous efforts. Since NIOSH is dedicated to transparency in all aspects of the program, all Board meetings, including working group meetings, are publicly announced and open to the public. We exceed the requirements of the Federal Advisory Committee Act (P.L. 92–463) by providing verbatim transcriptions and detailed minutes of all Board meetings, including those of working groups, and making them available to the public through our website.

To assist the Board in its work, CDC uses a technical support contractor, Sanford Cohen & Associates (SC&A). SC&A assists to the Board in reviewing NIOSH's dose reconstruction estimates, site profile documents, and SEC petition evaluations.

SUMMARY

In conclusion, NIOSH has made much progress in carrying out the responsibilities of HHS under EEOICPA: we have completed more than 16,000 dose reconstructions, representing 72% of the over 22,000 claims received. Together with those covered by a SEC class, this has resulted in almost $600 million in compensation. But we still have a long way to go. We will continue to value transparency in all activities and strive to ensure that all of our work is of the utmost reliability and integrity. We look forward to continuing to make progress in our work to assist the heroes who have cancer as a result of exposure to unique hazards in building the Nation's nuclear defense.

Thank you again for the opportunity to testify. I am happy to answer any questions you may have.

Mr. HOSTETTLER. Mr. Bertoni.

TESTIMONY OF DANIEL BERTONI, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. BERTONI. Good afternoon, Mr. Chairman, Members of the Subcommittee. I'm pleased to be here to discuss work on the Energy Employees Occupational Illness Compensation Program, which provides benefits to individuals who are exposed to haz-

ardous materials who develop illnesses such as cancer and lung disease. The Department of Labor administers the program with the assistance from HHS, NIOSH and an independent Advisory Board.

To date, Labor has made payments to over 21,000 claims, totaling $1.7 billion. We have issued several reports identifying needed improvements in this program. However, since the issuance of our February 2006 report, a memo from the Office of Budget to Labor has renewed congressional concern about program management, the potential efforts by the Administration to inappropriately contain compensation benefits.

My testimony today will focus on three areas. First, I'll discuss our prior work, documenting problems with claims processing and program design; second, I'll discuss key findings from a report on the work of the Advisory Board; and third, I'll highlight an aspect of our ongoing work that is relevant to the OMB memo.

In summary, GAO has maintained a constant audit presence in regard to this program. In 2004, we reported that a shortage of qualified physicians hinders timely adjudication of Subtitle B claims, and without needed changes, many claimants could wait years to pursue workers' compensation. In the interim, their medical condition could deteriorate or they could die. We concluded that specific actions were needed to expedite claims processing, enhanced communications with claimants, and improved case management data. In the same report, we identified a structural problem that could lead to inconsistent benefit outcomes. Our analysis of cases in nine States showed that over 3,000 lacked a willing payer of benefits and were likely to be contested. We outlined various options for change and the Congress subsequently enacted legislation to dramatically restructure the program.

In 2004, we also reported that in the first 2-1/2 years of implementation, Labor and NIOSH had processed only 9 percent of the more than 21,000 claims referred for dose reconstruction, primarily due to the complexity of this workload. Because site profiles are often critical to processing dose reconstructions, we recommended that specific time frames be established for completing all remaining profiles.

Earlier this year, we reported that the roles of certain officials initially involved in the Advisory Board's review of dose reconstructions may not have been sufficiently independent. Since credibility is essential to the work of the Board, we cautioned that continued diligence was required to avoid actual or perceived conflicts. They also found, in the first 2 years, the Board's contractor had spent almost 90 percent of the $3 million allocated for a 5-year undertaking. We recommend various actions to enhance the Board's oversight role.

Finally, GAO is currently conducting work for this Subcommittee on a range of Subtitle B issues. One aspect of our review is especially relevant to the OMB memo and includes examining whether Labor, in an effort to constrain program costs, is involved in activities primarily tasked to NIOSH, the Advisory Board or the Board's contractor. While it is reasonable for OMB to monitor the cost of Federal programs, concerns have been raised that certain options

in the OMB memo could result in decisions unduly based on budgetary considerations rather than established scientific procedures.

Our work in this area is ongoing. We have not drawn any conclusions. However, I would like to briefly highlight some preliminary observations in areas we plan to focus on going forward. We know that Labor's internal correspondence indicates substantial concern about rising program costs and new SEC petitions. We also know that NIOSH has shared draft versions of key documents such as Special Exposure Cohort petition evaluations with Labor before finalizing and sending them to the Advisory Board for review. NIOSH also recently agreed to allow Labor to review and comment on drafts of various technical documents such as site profiles, technical basis documents, and technical information bulletins, all of which are used for dose reconstructions.

Labor has provided comments on these documents. Officials told us that the basis for their involvement is Labor's designation as the lead agency for administration and that their input is aimed at promoting clarity and consistency in the adjudication of claims.

Labor has also reviewed thousands of dose reconstructions completed by NIOSH and returned many cases for rework. Officials told us that they review all reconstructions, return them if they find factual or methodological errors. We are currently examining extent, nature and outcome of Labor's comments on these various documents. This includes requesting all relevant documentation and related data. As the review proceeds, we plan to obtain more information on key issues such as timing, nature and basis of Labor's activities.

Mr. Chairman, this concludes my statements. I'd be happy to answer any questions that you or other Members of the Subcommittee may have. Thank you.

Mr. HOSTETTLER. Thank you, Mr. Bertoni.

[The prepared statement of Mr. Bertoni follows:]

PREPARED STATEMENT OF DANIEL BERTONI

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

For Release on Delivery
Expected at 4:00 p.m. EST
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ENERGY EMPLOYEES COMPENSATION

GAO's Prior Work Has Identified Needed Improvements in Various Aspects of the Program

Statement of Daniel Bertoni, Director,
Education, Workforce and Income Security Issues

GAO-07-233T

December 5, 2006

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Highlights

Highlights of GAO-07-233T, a testimony before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

ENERGY EMPLOYEES COMPENSATION

GAO's Prior Work Has Identified Needed Improvements in Various Aspects of the Program

Why GAO Did This Study

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was enacted in 2000 to compensate Department of Energy employees and contractors who developed work-related illnesses such as cancer and lung disease. Energy administered Subtitle D of the program. Subtitle B of the program is administered by the Department of Labor, which uses estimates of workers' likely radiation exposure to make compensation decisions. The estimates, known as dose reconstructions, are performed by the National Institute for Occupational Safety and Health (NIOSH) under the Department of Health and Human Services (HHS).

The act specified that the President establish an Advisory Board on Radiation and Worker Health to review the scientific validity of NIOSH's dose reconstructions and recommend whether workers should be part of special exposure cohorts whose claimants can be compensated without dose reconstructions. A recent memorandum from the Office of Management and Budget (OMB) to Labor has raised concern about potential efforts to unduly contain the cost of benefits paid to claimants. This testimony presents GAO's past work on program performance and the work of the advisory board. It also highlights GAO's ongoing work relevant to issues raised by the OMB memorandum. GAO interviewed key officials and reviewed contract and other agency documents.

www.gao.gov/cgi-bin/getrpt?GAO-07-233T.

To view the full product, click on the link above. For more information, contact Daniel Bertoni at (202) 512-7215 or bertonid@gao.gov.

What GAO Found

GAO issued two reports in 2004 that focused on claims processing and program structure. The first report found that Energy got off to a slow start in processing Subtitle D claims and faced a backlog of cases. In addition, limitations in data systems made it difficult to assess Energy's performance. GAO recommended that Energy take actions to expedite claims processing, enhance communication with claimants, and improve case management data. The report also highlighted problems with program structure that could lead to inconsistent benefit outcomes and GAO presented various options for restructuring the program. Congress subsequently incorporated features of some of these options in enacting new legislation that dramatically restructured the program and transferred it from Energy to Labor. Labor has taken action to address the recommendations GAO made to Energy. The second report found that Labor and NIOSH faced a large backlog of claims awaiting dose reconstruction. To enhance program management and transparency, HHS implemented GAO's recommendation to establish time frames for completing profiles of Energy work sites, which are a critical element in efficiently processing claims that require dose reconstruction.

GAO's February 2006 report found that the roles of two key NIOSH officials involved with the work of the advisory board may not have been sufficiently independent because these officials also represented the dose reconstruction program under review. In response, NIOSH replaced them with a senior official not involved in the program. Since credibility is essential to the advisory board's work, GAO concluded that ongoing diligence by HHS is required to avoid actual or perceived conflicts of roles when new candidates are considered for these roles. GAO also found that the board's work presented a steep learning curve, prompting adjustments to the work done by the contractor assisting the board. GAO recommended actions to provide the board with more comprehensive data on contractor spending levels compared to work actually completed, assist the board in reexamining its long-term plan for reviewing NIOSH's work, and better track agency actions taken in response to board and contractor findings. HHS has implemented these recommendations.

One aspect of GAO's ongoing work especially relevant to the OMB memorandum is the extent to which Labor's concerns over potentially escalating benefit costs may have led the agency to be involved in activities tasked to NIOSH, the advisory board, or the contractor assisting the board. NIOSH agreed to provide Labor with draft versions of some of its evaluations of special exposure cohort petitions and other NIOSH technical documents before sending them for board review. Labor has commented on some of these draft documents. Labor officials told us that their reviews focus on changes needed to promote clarity and consistency in the adjudication of claims. As the review proceeds, GAO plans to obtain more information on key issues such as the timing, nature, and basis of Labor's activities in light of the program's design and assignment of responsibilities.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss GAO's completed and ongoing work on the implementation of the Energy Employees Occupational Illness Compensation Program Act[1] (EEOICPA). For the last several decades, the Department of Energy and its predecessor agencies and contractors have employed thousands of individuals in secret and dangerous work in the atomic weapons industry. This legislation was enacted in 2000 to provide compensation to Energy employees and contractors who were exposed to radioactive and hazardous materials and who subsequently developed illnesses such as cancer and lung disease. Subtitle B of the program is administered by the Department of Labor (Labor) and provides for a one-time payment of $150,000 to eligible workers or their survivors and coverage of future medical expenses associated with their illnesses. From the program's effective date in July 2001, through October 2006, Labor received 77,710 Subtitle B claims and has made payments for 21,376 of these claims exceeding $1.7 billion.[2]

The compensation act also called for the President to establish the President's Advisory Board on Radiation and Worker Health—composed of scientists, physicians, and employee representatives—to advise the Secretary of Health and Human Services (HHS) on its activities under the act.[3] The board is tasked with reviewing the scientific validity and quality of the National Institute for Occupational Safety and Health's (NIOSH) "dose reconstructions." These are estimates of the likely radiation levels to which individual workers were exposed that Labor uses to determine whether claimants will receive compensation. The board is also tasked with making recommendations to the HHS Secretary on whether to approve petitions for "special exposure cohort" status. Because certain facilities are known to have exposed employees to radiation while keeping few records of individuals' exposure, their employees have been designated under the law as members of the special exposure cohort and their claims may be paid without individual dose reconstructions. The board is assisted in its oversight work by a contractor.

[1]Title XXXVI of Pub. L. No. 106-398.

[2]Labor publishes program statistics at its Web site: http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/weeklystats.htm.

[3]In December 2000 the President established the Advisory Board through Executive Order 13179.

Subtitle D of EEOICPA established a separate program that was administered by Energy. This program allowed Energy to help its contractors' employees file state workers' compensation claims for illnesses determined by a panel of physicians to be caused by exposure to toxic substances while employed at an Energy facility. In October 2004, Congress amended the act to restructure the program and to transfer responsibility from Energy to Labor under the newly created Subtitle E.[4]

Over the last several years, GAO has issued reports identifying needed improvements in various aspects of the EEOICPA program that can affect compensation provided to claimants. In 2004, we issued two reports that focused on claims processing and program structure.[5] In February 2006, we reported to you on the status of the advisory board's review of the scientific validity and quality of NIOSH's dose reconstructions.[6]

Since the issuance of our February 2006 report, a memorandum from the Office of Management and Budget (OMB) to Labor has generated considerable congressional concern about the potential for inappropriate efforts to contain the cost of benefits paid to claimants. The memorandum notes that Labor has identified the potential for a large expansion of EEOICPA Part B benefits through the designation of special exposure cohorts. The memorandum further states that the Administration planned to convene a White House-led interagency workgroup to develop options to contain growth in the costs of benefits provided by the program. The memorandum specifically identifies five options, including more extensive review of NIOSH's special exposure cohort recommendations and

[4]Subtitle E of Title XXXI of Pub.L. No. 108-375.

[5]*Energy Employees Compensation: Even with Needed Improvements in Case Processing, Program Structure May Result in Inconsistent Benefit Outcomes*, GAO-04-516 (Washington, D.C.: May 28, 2004) and *Energy Employees Compensation: Many Claims Have Been Processed, but Action is Needed to Expedite Processing of Claims Requiring Radiation Exposure Estimates*, GAO-04-958 (Washington, D.C.: Sept. 10, 2004).

[6]*Energy Employees Compensation: Adjustments Made to Contracted Review Process, but Additional Oversight and Planning Would Aid the Advisory Board in Meeting Its Statutory Responsibilities*, GAO-06-177 (Washington, D.C.: Feb. 10, 2006).

addressing any "imbalance" in advisory board membership.[7] While it is reasonable for OMB to have a role in overseeing the costs of federal programs, some have raised concerns that certain options set forth in the memorandum, if implemented, could result in decisions unduly based on budgetary considerations rather than established scientific procedures for compensating workers under this program. This Subcommittee held several hearings in 2006 in response to such concerns.

GAO is currently conducting work requested by this Subcommittee to examine a broad range of issues concerning implementation of Subtitle B. A central focus of our ongoing work is on the reasons for increases in costs for the contractors assisting NIOSH in performing dose reconstructions and how effectively NIOSH has managed these contractors. Our ongoing work also addresses other issues, including the implementation of conflict of interest policies for NIOSH and its contractors, options for further strengthening the independence of the advisory board and the contractor assisting the board, and the extent, if any, to which Labor is involved in Subtitle B activities that have been tasked to NIOSH, the advisory board, or the contractor assisting the board, as specified by statute, regulation, or contract. As agreed with your Committee, we plan to issue a report on our ongoing work by the summer of 2007.

My testimony today will focus on three specific areas. First, I will discuss our 2004 reports on claims processing and program structure. Second, I will provide an overview of key findings from our February 2006 report on the work of the advisory board. Third, I will highlight an area of our ongoing work that is especially relevant to issues raised by the OMB memorandum to Labor. In performing this work, we interviewed key officials, examined pertinent contract-related documents such as monthly progress reports, and reviewed agency procedures and practices. Our work is being conducted in accordance with generally accepted government auditing standards.

[7]The OMB memorandum to Labor specifies the following five cost containment options: (1) require administration clearance of special exposure cohort determination; (2) address any imbalance in membership of the President's Advisory Board on Radiation and Worker Health; (3) require an expedited review by outside experts of special exposure cohort recommendations by NIOSH; (4) require NIOSH to apply conflict of interest rules and constraints to the contractor assisting the Advisory Board; and (5) require that NIOSH demonstrate that its site profiles and other dose reconstruction guidance are balanced.

In summary, our May 2004 report indicated that Energy got off to a slow start in processing Subtitle D claims and faced a backlog of cases awaiting review by a physician panel. We concluded that in the absence of changes to expedite Energy's review, many claimants would likely wait years to receive the determination they needed from Energy to pursue a state workers' compensation claim, and in the interim their medical conditions might worsen or they might even die. We recommended that Energy take actions to expedite claims processing, enhance communications with claimants, and improve case management data. Our report also highlighted problems with the structure of the program that could lead to inconsistent benefit outcomes for claimants. We identified various options for restructuring the program and a framework of factors to consider in evaluating these options that informed congressional deliberations in enacting new legislation to dramatically restructure the program and transfer it from Energy to Labor. Labor told us it has taken actions to address each of the recommendations we made to the Secretary of Energy in our report. For example, Labor has compiled a data base of the toxic substances that may have been present at Energy facilities and linked them to medical conditions to help expedite the processing of claims. In addition, Labor rebuilt its case management system which tracks all Subtitle E claims transferred from Energy and enhanced the system's performance and reliability.

Our September 2004 report focused on the Subtitle B program and found that Labor and NIOSH faced a large backlog of claims awaiting dose reconstruction. NIOSH had learned from its initial implementation experience that completing site profiles—documents which describe the layout, materials used, radiation sources, and other characteristics of work sites—is a critical element for efficiently processing claims requiring dose reconstruction. To enhance program management and promote greater transparency with regard to the timeliness of completing dose reconstructions, we recommended that the Secretary of HHS direct agency officials to establish time frames for completing the remaining site profiles, which HHS has done.

Our February 2006 report found that the roles of certain key federal agency officials initially involved in the advisory board's review of dose reconstructions may not have been sufficiently independent, but that actions were taken to replace these officials. Since credibility is essential to the work of the advisory board, we concluded that continued diligence is required by HHS in avoiding actual or perceived conflicts of roles when new candidates are considered for the roles. We also found that the advisory board's review of site profiles and dose reconstructions

presented a steep learning curve and prompted the board to adjust the contractor's work to better meet the needs of the review. For example, the board revised task orders for the contractor to reduce the number of reviews to be completed or extend completion dates. Nonetheless, we concluded that further improvements could be made to the oversight and planning of the contracted review. We recommended that HHS provide the board with more comprehensive data on contractor spending levels compared to work actually completed, assist the board in reexamining its long-term plan for reviewing NIOSH's work, and improve tracking of agency actions taken in response to board and contractor findings. HHS has implemented these recommendations.

One aspect of our ongoing work on Subtitle B is especially relevant to issues raised by the OMB memorandum to Labor. We are examining whether Labor is involved in activities tasked to NIOSH, the advisory board, or the contractor assisting the board, and if so, whether these activities reflect an effort to constrain the cost of benefits. For example, in some cases NIOSH has shared drafts of its special exposure cohort petition evaluations as well as drafts of other NIOSH technical documents with Labor before sending final versions to the advisory board, which is tasked to review them. Labor has provided comments on some of these draft documents. Labor officials told us that the basis of their involvement is Labor's designation as primary administrator of the program. Labor officials added that their reviews of these documents focus on changes needed to promote clarity and consistency in the adjudication of claims. We are currently examining the extent, nature, and outcome of Labor's comments on various NIOSH documents. As our work proceeds, we plan to obtain additional information on key issues such as the timing, nature, and basis of Labor's activities in light of the program's design and assignment of responsibilities.

Background

Several different federal agencies are involved with the implementation of the Subtitle B program, including Labor, HHS, and Energy. However, Labor has primary responsibility for administering the program. Labor receives the claims, determines whether the claimant meets the eligibility requirements, and adjudicates the claim. When considering the compensability of certain claims, Labor relies on dose reconstructions developed by NIOSH, under HHS. To avoid gathering similar information for each claim associated with a particular facility, NIOSH compiles facility-specific information in "site profiles," which assist NIOSH in completing the dose reconstructions. NIOSH contracted with Oak Ridge Associated Universities and the Battelle Corporation to develop site

profiles and draft dose reconstructions. Energy is responsible for providing Labor and NIOSH with employment verification, estimated radiation dose, and facility-wide monitoring data.

Labor does not refer all claims to NIOSH for dose reconstruction. For example, reconstructions are not needed for workers in the special exposure cohort. For special exposure cohort claimants, Labor verifies the employment and illness, and develops a recommended compensability decision that is issued to the claimant. The act specified that classes of workers from four designated locations would constitute the special exposure cohort[8] and authorized the Secretary of HHS to add additional classes of employees. Classes of workers may petition HHS to be added to the cohort. A class of employees is generally defined by the facility at which they worked, the specific years they worked, and the type of work they did.[9] NIOSH collects and evaluates the petitions and gives the results of its evaluations to the advisory board for review. The board, in turn, submits a recommendation to the Secretary of HHS to accept or deny the petition. To date, 13 classes of workers have been approved at 10 sites, and petitions from 9 additional sites have been qualified for evaluation. A petition from one site has been evaluated and denied.

GAO's Prior Work Identified Problems with Case Processing and Program Structure

Our May 2004 report identified various problems with Energy's processing of Subtitle D cases. Energy got off to a slow start in processing cases but had taken some steps to reduce the backlog of cases waiting for review by a physician panel. For example, Energy took steps to expand the number of physicians who would qualify to serve on the panels and recruit more physicians. Nonetheless, a shortage of qualified physicians continued to constrain the agency's capacity to decide cases more quickly. Further, insufficient strategic planning and systems limitations made it difficult to assess Energy's achievement of goals relative to case processing and program objectives, such as the quality of the assistance provided to claimants in filing for state workers' compensation. We concluded that in

[8]These four locations include three gaseous diffusion plants in Oak Ridge, Tennessee; Paducah, Kentucky; Portsmouth, Ohio; and an underground nuclear test site on Amchitka Island, Alaska.

[9]For example, a member of the Amchitka Island Nuclear Explosion site special exposure cohort is defined in the statute as an employee who was "employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests."

the absence of changes that would expedite Energy's review, many claimants would likely wait years to receive the determination they needed from Energy to pursue a state workers' compensation claim, and in the interim their medical conditions might worsen or they might even die. We made several recommendations to Energy to help improve its effectiveness in assisting Subtitle D claimants in obtaining compensation. Specifically, we recommended that Energy take additional steps to expedite the processing of claims through its physician panels, enhance the quality of its communications with claimants, and develop cost-effective methods for improving the quality of case management data and its capabilities to aggregate these data to address program issues. Energy generally agreed with these recommendations.

Our May 2004 report also identified structural problems that could lead to inconsistent benefit outcomes for claimants whose illness was determined by a physician panel to be caused by exposure to toxic substances while employed at an Energy facility. Our analysis of cases associated with Energy facilities in nine states[10] indicated that a few thousand cases would lack a "willing payer" of workers' compensation benefits; that is, they would lack an insurer that—by order from, or agreement with, Energy—would not contest these claims. As a result, in some instances, these cases may have been less likely to receive compensation than cases for which there was a willing payer. We identified various options for restructuring the program to improve payment outcomes and presented a framework of issues to consider in evaluating these options. Congress subsequently enacted legislation that dramatically restructured the program, transferred it from Energy to Labor, and incorporated features of some of the options we identified. Labor told us it has taken actions to address each of the recommendations we made to the Secretary of Energy in our report. For example, Labor has compiled a data base of the toxic substances that may have been present at Energy facilities and linked them to medical conditions to help expedite the processing of claims. In addition, Labor has rebuilt its case management system which tracks all Subtitle E claims transferred from Energy and enhanced the system's performance and reliability.

Our September 2004 report on the Subtitle B program found that in the first 2½ years of the program, Labor and NIOSH had fully processed only

[10]The total number of cases in the nine states accounted for more than three-quarters of all Subtitle D claims that had been filed.

9 percent of the more than 21,000 claims that were referred to NIOSH for dose reconstruction. NIOSH officials reported that the backlog of dose reconstruction claims arose because of several factors, including the time needed to get the necessary staff and procedures in place for performing dose reconstructions and to develop site profiles. NIOSH learned from its initial implementation experience that completing site profiles is a critical element for efficiently processing claims requiring dose reconstructions. To enhance program management and promote greater transparency with regard to timeliness, we recommended that the Secretary of HHS direct agency officials to establish time frames for completing the remaining site profiles, which HHS has done.

GAO's Prior Work Also Highlighted Issues of Advisory Board Independence and Oversight of the Contractor Supporting the Board

Our February 2006 report discussed the roles of certain federal agency officials involved in the advisory board's review of NIOSH's dose reconstructions and site profiles that raised concerns about the independence of this review. The project officer who was initially assigned responsibility for reviewing the monthly progress reports and monitoring the technical performance of the contractor reviewing NIOSH's dose reconstruction activities for the advisory board was also a manager of the NIOSH dose reconstruction program. In addition, the person assigned to be the designated federal officer for the advisory board, who is responsible for scheduling and attending board meetings, was also the director of the dose reconstruction program being reviewed. In response to concerns about the appearance of conflicting roles, the director of NIOSH replaced both of these officials in December 2004 with a senior NIOSH official not involved in the program. The contractor and members of the board told us that implementation of the contract improved after these officials were replaced. Since credibility is essential to the work of the advisory board and the contractor assisting the board, we concluded that continued diligence by HHS is required to prevent such problems from recurring when new candidates are considered for these roles. With regard to structural independence, we found it appropriate that the contracting officers managing the contract on behalf of the advisory board were officials from the Centers for Disease Control and Prevention, NIOSH's parent agency, who do not have responsibilities for the NIOSH program under review and are not accountable to its managers. In addition, advisory board members helped facilitate the independence of the contractor's work by playing the leading role in developing and approving the initial statement of work for the contractor and the independent government cost estimate for the contract.

Our February 2006 report identified further improvements that could be made to the oversight and planning of the advisory board's contracted

review of NIOSH's dose reconstructions and site profiles. We found that this review presented a steep learning curve for the various parties involved. In the first 2 years, the contractor assisting the board had spent almost 90 percent of the $3 million that had been allocated to the contract for a 5-year undertaking. In addition, the contractor's expenditure levels were not adequately monitored by the agency in the initial months and the contractor's monthly progress reports did not provide sufficient details on the level of work completed compared to funds expended. The advisory board had made mid-course adjustments to the contractor's task orders and review procedures, such as by revising task orders to reduce the number of reviews to be completed or extend completion dates. However, the board had not comprehensively reexamined its long-term plan for the overall project to determine whether the plan needed to be modified in light of knowledge gained over the past few years. Finally, without a system to track the actions taken by NIOSH in response to the findings and recommendations of the advisory board and contractor, there was no assurance that needed improvements were being made.

We made three recommendations to HHS to address these shortcomings. First, we recommended that HHS provide the board with more integrated and comprehensive data on contractor spending levels compared with work actually completed, which HHS has done. Second, we recommended that HHS consider the need for providing HHS staff to collect and analyze pertinent information to help the advisory board comprehensively reexamine its long-term plan for assessing the NIOSH site profiles and dose reconstructions. HHS is considering the need for such action. Third, we recommended that the Director of NIOSH establish a system to track actions taken by the agency in response to the board and contractor's findings and recommendations. NIOSH now tracks agency actions to resolve the board and contractor's comments.

GAO's Ongoing Work Includes Focus on Labor's Involvement in Certain Subtitle B Program Activities

As part of our ongoing work, we are examining to what extent, if any, Labor is involved in certain Subtitle B activities. While the director of Labor's Office of Workers' Compensation Programs stated that Labor has not taken any actions to implement the options outlined in the OMB memorandum, Labor's internal correspondence reflects major concerns about the potential for rapidly expanding costs in Subtitle B benefits resulting from adding new classes of workers to the special exposure cohort. One aspect of our ongoing work is determining whether Labor is involved in activities that have been tasked to NIOSH, the advisory board, or the contractor assisting the board, and if so, whether these activities reflect an effort to constrain the costs of benefits. Our work in this area is

still ongoing and we have not drawn any conclusions. Nonetheless, we would like to briefly highlight the types of issues we will be analyzing as our work proceeds.

NIOSH has, in some cases, shared draft versions of key documents with Labor before finalizing and sending them to the advisory board for review. For example, NIOSH has shared draft special exposure cohort petition evaluations with Labor. Similarly, NIOSH has agreed to allow Labor to review and comment on drafts of various technical documents such as site profiles, technical basis documents, or technical information bulletins,[11] all of which are used to help perform dose reconstructions. Labor has provided comments on some of these draft documents. Labor officials told us that the basis of their involvement is Labor's designation as lead agency with primary responsibility for administering the program. Labor officials added that their reviews of these documents focus on changes needed to promote clarity and consistency in the adjudication of claims. In addition, Labor has reviewed individual dose reconstructions completed by NIOSH. Labor officials told us that they review all NIOSH dose reconstructions and return them for rework if, for example, they find errors in factual information or in the way the dose reconstruction methodology was applied. We are currently examining the extent, nature, and outcome of Labor's comments on these various documents. As our review proceeds, we plan to obtain more information on key issues such as the timing, nature, and basis of Labor's activities in light of the program's design and assignment of responsibilities.

Mr. Chairman, this concludes my prepared remarks. I will be pleased to answer any questions you or other Members of the Subcommittee may have.

[11]Site profiles are documents that describe a specific work site, including physical appearance and layout of the site, the work processes used there, the types of materials used, potential sources of radiation, and other details important at that work site. Site profiles may be used to assist NIOSH in the completion of the dose reconstruction. Technical basis documents are the individual documents that form a site profile. Technical information bulletins contain information on specific technical issues or procedures for estimating radiation exposure for specific or multiple work sites. They are used to add to or supplement site profiles and technical basis documents.

GAO Contact and Staff Acknowledgments

For further information regarding this testimony, please contact me at (202) 512-7215. Key contributors to this testimony were Claudia Becker, Meeta Engle, Robert Sampson, Andrew Sherrill, and Charles Willson.

Related GAO Products

Department of Energy, Office of Worker Advocacy: Deficient Controls Led to Millions of Dollars in Improper and Questionable Payments to Contractors. GAO-06-547. Washington, D.C.: May 31, 2006.

Energy Employees Compensation: Adjustments Made to Contracted Review Process, but Additional Oversight and Planning Would Aid the Advisory Board in Meeting Its Statutory Responsibilities. GAO-06-177. Washington, D.C.: Feb. 10, 2006.

Energy Employees Compensation: Many Claims Have Been Processed, but Action Is Needed to Expedite Processing of Claims Requiring Radiation Exposure Estimates. GAO-04-958. Washington, D.C.: Sept. 10, 2004.

Energy Employees Compensation: Even with Needed Improvements in Case Processing, Program Structure May Result in Inconsistent Benefit Outcomes. GAO-04-516. Washington, D.C.: May 28, 2004.

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Mr. HOSTETTLER. We will now turn to questions.

Mr. Hallmark, your testimony today states that the Department of Labor has a helpful role to play in defining the parameters for who should be treated as part of the Special Exposure Cohort and who should be excluded. You also assert that this has nothing to do with cost containment.

However, in an October 2005 Department of Labor memo, prepared for the OMB, it states, "DOL has also experienced problems in several cases with a description of the class adopted by the National Institute for Occupational Safety and Health, or NIOSH. In view of the effect and costs of an overexpansive definition, we suggest that such determinations also be subject to OMB clearance."

Explain why involvement with setting up the class definition does not also overlap with the Department of Labor's agenda to reduce the costs of benefits.

Mr. HALLMARK. Well, first of all, Mr. Chairman, we don't have an agenda to reduce costs. As I have said before and I will continue to say, our agenda has been and continues to be to focus on accomplishing consistent, fair and legally sufficient outcomes. That has been and will continue to be our approach.

With respect to the issues that you're raising from the October memorandum, those are all issues associated with the OMB memo, passback memo, that has been discussed since the March hearing. OMB testified before you that they are not pursuing those options, the Administration is not pursuing them, the Department of Labor is not pursuing them; they are, in effect, a debate that's over. I believe that that is, in fact, a clear description of the situation.

Mr. HOSTETTLER. Let me just ask you, are you familiar with this memo that states, "In view of the effect and costs of an overexpansive definition, we suggest that such determinations also be subject to OMB clearance?"

Are you familiar with that memo?

Mr. HALLMARK. I'm not sure whether I'm familiar with that particular memorandum or e-mail, but I'm sure those terms are used in a lot of the e-mails that occurred, especially in that time frame.

Our interest is in consistency and fairness and lawful outcomes. The use of the costs comes in when people ask us for estimates of costs, and it's a shorthand way of discussing the significance, the size of a particular kind of issue that's being discussed. But that doesn't change the fact that the real concern there is consistency and fairness.

What we want to do is make sure that everybody is treated fairly in this; and as I said earlier, in establishing a particular class, HHS is granting benefits, presumptive benefits, to some individuals who have one of the 22 listed cancers. By the same decision, they are reducing the possibility of benefits being received by the other 40 percent who don't have one of those listed cancers. So that's one of the issues that we have tried to impress upon the Board, NIOSH and HHS, that ideally the SEC designations should be done very carefully and with an idea toward trying to avoid negative impacts, where it can be done.

Mr. HOSTETTLER. Have you received any communications from OMB, formal communications in memorandum form, ordering the

Department of Labor to cease and desist from implementing the OMB passback memo?

Mr. HALLMARK. I'm not aware of a specific memorandum but there have been many communications that I have been made privy to in terms of both the statements made by OMB before this Committee and letters directly to various Members of Congress. Those are shared with me and with my leadership; and it's very clear what the position of the Administration is, and we are following that position.

Mr. HOSTETTLER. So is there official documentation that can be accessed by the Committee similar to the passback memo?

What we're suggesting is, there's a lot of discussion and rhetoric and it's all very encouraging rhetoric. But is there any official communication between the Office of Management and Budget and the Department of Labor with regard to the passback memo and to negate its impact?

Mr. HALLMARK. I am aware of numerous conversations, e-mails, and as I said, the public documents that I have referenced just a minute ago. There may be other documents that I haven't seen, but I'm not aware of them. In any case, the policy is clear.

Mr. HOSTETTLER. Could you make these public documents available to the Committee? We have not seen these public documents.

Mr. HALLMARK. The documents I was referring to are letters from OMB to Members of Congress.

Mr. HOSTETTLER. But that's actually more rhetoric. My question is a formal indication to the Department of Labor that the passback memo is null and void, and that's not what I'm hearing. Is there such a memo that says the passback memo is void?

I'm hearing a lot about conversations and letters written to Members of Congress, but is there—is there a document similar to the passback memo that has been—communication that has been made in memo form saying that the passback effectively is null and void?

Mr. HALLMARK. Not to my knowledge or recollection.

Mr. HOSTETTLER. Thank you.

Dr. Howard, the Advisory Board on radiation worker health is required to have a balance of scientific medical and worker perspectives. Today, only two bring a worker perspective and only two bring a medical perspective. Do you consider the Board to be in balance with the requirements of EEOICPA? If not, explain the steps that the Administration has taken to rectify the imbalance with the statutory requirements.

Dr. HOWARD. Yes, Mr. Chairman. I'm not sure that right now with vacancies on the Board that anyone can argue we're in balance, because we have vacancies. I think our role in this at NIOSH is to collect opinion from any party, the Board, any public member, others who would like to nominate individuals to serve on the Board; and then to look into their nomination, get a resume together and then forward those recommendations to the White House. This is a Presidential advisory committee, so we ourselves don't make those selections.

Personally, I'd like to see our board filled with all of its statutory members and to have that balance of scientific, medical and worker perspectives, so—when we lose any individual in any of those three groups then we lose that perspective, so it's important that we

have that balanced perspective. I'm hoping that the President's appointment office will work expeditiously to fill those vacancies.

Mr. HOSTETTLER. My time for this first round has concluded, but before I move on, Dr. Howard, I just want to commend you for your naming of the two new resources to assist petitioners, the petition counselor and the petitioner/claimant ombudsman, and especially the naming of Ms. Brock as your petitioner/claimant ombudsman. I appreciate that extraordinary effort to reach out to claimants to create that point of contact in both cases.

The Chair will now recognize the gentlelady from Texas, Ms. Jackson Lee, for questions for 5 minutes.

Ms. JACKSON LEE. Dr. Howard, allow me to echo the remarks of the Chair in terms of those appointees and appointments and the changes that have been made.

Mr. Hallmark, let me—in this season of joy, you have a very interesting name, so I will try to be as joyous as I can; but I believe I made some opening remarks—I indicated that if the appropriate representative of the DOL—and this is not to disregard your position to make changes, at least sufficient changes to give Congress the impression that what you're saying today is all the way up the food chain—and that means the Secretary of Labor from my perspective—but that we will treat this process in the respectful way that it should be treated.

And despite the representations, there's sufficient documentation that speaks to cost containment and sufficient frustration by those covered and petitioning for compensation and those not covered that there seems to be a need, whether OMB needs to make a public statement, a printed document that clarifies that their job and task is not to short change, contain and make more difficult the rights of the petitioners or victims who are seeking compensation.

So let me just cite for you an incident that occurred last week when the Department of Labor apparently told a health care provider of services under this program that it was being terminated. This frightened sick workers who did not have the time or the ability to quickly secure a replacement health care provider eligible for reimbursement by DOL. In one case, we are advised the patient is in end-stage disease and lives in a rural area.

How many claimants were affected by the proposed termination of this health care provider and how many States? Did DOL suspend payment for this vendor's services, and if so, what was the reason? And what can be done to ensure that claimants are not cut off by health care services abruptly when you terminate a provider?

Mr. HALLMARK. Ms. Jackson Lee, first, let me go back to the issue of the OMB memorandum that has been discussed by both yourself and the Chair. I neglected to mention that the OMB document, the original OMB document that started this entire discussion, enunciated a series of options. It was not a directive to the Department of Labor or anyone else; it was a series of ideas for discussion. Those ideas were never implemented. They aren't part of any directive to the Department of Labor or other entities. So that probably explains why there's not an OMB document directing that they not be followed.

Ms. JACKSON LEE. What would be very helpful—and I appreciate the testimony on the record—is a letter to that effect from the De-

partment of Labor and from the Secretary of Labor that this was an advisory document, that to date no such practices have been implemented; and I'd go a step further to say at this juncture no such steps are intended to be implemented.

Of course, every agency, as every Member of Congress, has a right to change as conditions change, but that would be a very helpful document as we try to help fix this issue.

Mr. HALLMARK. I understand.

To return to the second part of your question regarding the health care provider, this is a reference to a company by the name of Professional Case Management. I'll start by answering your second question.

DOL did not propose to terminate services by this health care provider to any of the claimants involved. I believe there are roughly 50 individuals that this provider sent letters to saying that they, the provider, was going to cut off services, but that was not at DOL's instruction. There has, in fact, been an ongoing dispute between this provider and the Department of Labor regarding billing practices. We identified rather serious problems with the billings being provided by this company, and we put their bills under suspension for manual review. The company was issued its letters because the manual review has been slower than we would like, or they would like, and we are taking steps to make sure that review is accelerated.

But under no circumstances did we want those individuals to have their provider services cut off; and we have arranged, as of last Friday, with the company that those services will continue to all of the individuals who received that letter and to any other individuals for whom they're authorized as a provider.

Ms. JACKSON LEE. Thank you.

Let me move quickly. I do want to say, Mr. Hallmark, when is the final rule going to be issued under Subtitle E? It has been more than 18 months since the interim final rule was issued, and a number of important issues need to be resolved in the final rule that have been left in limbo.

Can you explain the delay?

Mr. HALLMARK. The final rule is scheduled for completion before the end of this calendar year, and I'm confident that will be accomplished. The process, as you know with any regulation, takes a substantial amount of time, and there's a large number of entities and individuals who review the document. It is in that review process, and I expect it will be completed——

Ms. JACKSON LEE. You will take input still if there's some concerns that we may have on the final rule?

Mr. HALLMARK. The rule is in the process of review within—following the comment period. So we don't have an opportunity at this point to accept additional comments.

Ms. JACKSON LEE. Let me, Dr. Howard, just mention that Texas has been particularly disadvantaged with this legislative process.

There is no site profile for the Texas City Chemicals Plant. I happen to have been in the area of Texas City and elsewhere where these seniors are located and to hear their passionate plea, "Can you help us?" and "Can you bring Congress down to our community so we can tell our stories?"

Let me try to understand how NIOSH will do dose reconstruction for workers at Texas City Chemicals and just, from your view, your perspective on legislation that might help correct that by adding those areas that have not been included in this previous legislation.

Dr. HOWARD. My understanding is, the statute does not cover contractors for AWE sites, and I believe that is an issue that is in your legislation. It's a class of workers without recourse under this program in terms of eligibility.

Ms. JACKSON LEE. Do you see the value in assessing workers like that? I know Congress is charged to legislatively change it, but you're in the HHS. Can you see the value of trying to correct that problem?

Dr. HOWARD. Definitely. Uranium or any other radioisotope, it doesn't matter what your employment status is, if you're near it, it's going to influence your body.

So from that perspective, from the scientific or medical perspective, I can't myself, as a physician, understand the distinguishing characteristics. However, I can certainly understand from the point of view of policy why those kinds of decisions were probably made in 2000.

But from a medical standpoint, there's no distinguishing characteristic there.

Ms. JACKSON LEE. I'm sorry, I didn't catch your answer as to—I know that these are subcontractors; is there any work NIOSH is doing on that?

Dr. HOWARD. Not under the current law.

Ms. JACKSON LEE. So what we would absolutely need is a change in the law. And therefore there are victims, of course, that are not being responded to because of—I call it "this quirk in the law," frankly, and nothing more, nothing less.

I appreciate your medical opinion, which is, exposure is exposure, and it's up to the policymakers to try to define how we can assist these individuals who have been impacted.

Dr. HOWARD. Yes.

Ms. JACKSON LEE. The Labor-HHS Appropriations Act of 2006 required NIOSH to submit a report on whether there are additional radiosensitive cancers which should be added to the list of 22 cancers. The report was due on June 30th.

What is the status of that report?

Dr. HOWARD. That report is under review, final review, I hope, by the Department.

Ms. JACKSON LEE. And any light at the end of the tunnel?

Dr. HOWARD. I wish I had some light to shed on this. I do know that it's under review by the Department, and I make inquiries of the Department on a regular basis.

We would have liked to have been on time. We're not. We apologize for that, but I'm sure people in the Department whose responsibility it is to review this are working hard on this.

Ms. JACKSON LEE. Mr. Chairman, I know we're writing a lot of letters, but I would appreciate a letter to the Secretary of Health and Human Services to encourage a more expeditious response. This is now December and it is the end of the year. It was due in June and it's an important document—maybe a letter to encourage a speedier response.

Mr. HOSTETTLER. I'll be glad to join the Ranking Member on that.

Ms. JACKSON LEE. I'd appreciate it. Thank you, Mr. Chairman.

Mr. Bertoni, thank you very much for your presence here. You have mentioned internal correspondence at the Labor Department which reflects major concerns about the potential for rapidly expanding costs in Subtitle B benefits. Can you give us some representative examples of internal correspondence that reflect these concerns?

Mr. BERTONI. I believe you're referring to page 9 of our formal statement. That's essentially a roll-up of—we only recently have begun to essentially wade into 4,500 pages of documents that were received by this Subcommittee for both Labor and NIOSH; and as we have begun to do so, we've noticed some memorandums and e-mails that pique our interest in terms of Labor's concern about increasing costs. And essentially we identified five initially, and we look forward to wading even deeper and seeing what else we can find. But it is our initial work.

Really, the five that we identified dealt with the Mallinckrodt and the Iowa SEC petitions. I have the background materials that we used to roll up that one statement, and it refers to, we have five memos. Essentially the first is an April 14, 2005, assessment of Special Exposure Cohort issues that states, "—and it's the director of OWCP—The ultimate impact of these two SECs, Iowa and Mallinckrodt, being granted would be to destabilize the entire rationale for the dose reconstruction process." One logical outcome would be a move, gradual or sweeping, to grant SEC status across the board. We estimate a $7 billion 10-year price tag for that eventuality.

A February 22, 2005, memo from the director states—and it's to the Secretary of Labor, that indicates that the addition of these two new Special Exposure Cohorts could, "threaten the stability of the current Part B program and would cause a $7 billion increase over 10 years if all sites became SECs,"—a very real possibility.

A January 27 memo—it's actually an e-mail from the director, states, indicates that the addition of several classes of employees at the Mallinckrodt and Iowa Army Ammunition Plant facilities to SEC would "lead almost inevitably to SEC petitions being brought and accepted at virtually all DOE sites. That equates to added costs of somewhere between $5 to $10 billion over 10 years." We have others that essentially express the same concerns.

To us, there are some terms in here, some statements that we really want to follow up on with the agency to get their sense of what exactly are they talking about in terms of undermining the program, opening the floodgates per se by allowing these two SEC petitions to go forward.

So we are continuing to pursue this and we have not had the interviews that we will need to follow up with these folks to find out exactly what the rationale was behind some of these statements.

Ms. JACKSON LEE. We thank you for very good and objective work.

Mr. Chairman, I ask for unanimous consent of the list that Mr. Bertoni has just mentioned, that the list of the memos of Mr. Bertoni could be added to the record.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. All right. Let me just say, none of us here are criticizing efficiency—and I'll close on this question—efficiency and concern about the importance of conserving and/or respecting the resources of the American people, but I'm disturbed by the litany or the list of memos that really go to the heart of compensation and decision-making, particularly impacting what Dr. Howard and his team are doing. And so my question to you is that, as we looked at these—or you've seen this list, and it appears that there may be translated from the list of memos an intervention by the Department of Labor to undertake reviews on what NIOSH is doing.

Do you see the appropriate nexus and connection that they should be interfering with what NIOSH is doing in their SEC petition evaluations and technical assessments that they're making?

Mr. BERTONI. Well, initially, under—under Executive Order 13179, Labor is tasked with it being the administrator for this program. So, from a "keep the trains moving" operational standpoint, they should have some role in reviewing some of the key documents that affect the implementation of this program.

What we're interested in is, over time, what has been the nature and extent of these reviews, and exactly, have they crossed over beyond clarity and consistency issues to, perhaps, questioning the science of a particular dose reconstruction site profile or petition. So, initially, we can't say whether that has occurred, and—but over the next coming months and weeks, we will be honing in on exactly those issues. We will be very interested in timelines pre and post memo, trends over the latter several months versus prior to the memo, and should be able to put together a—through data mining and analysis—a good sense of trends and the nature of the reviews and, at some point, make a determination of whether a line has been crossed, but I'm not in a position to make that determination right now, but we will be following up on that.

Ms. JACKSON LEE. My time is up, Mr. Chairman.

I just wanted to say that, Mr. Bertoni, we appreciate the effort to keep the train and the whistles and the bells going, but we don't want the train to be derailed. And I think that's an important question that has to be both asked and answered. I thank you for your testimony.

I yield back, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentlelady.

The Chair has a couple of questions to ask of our witnesses.

First of all, Dr. Howard, the Department of Labor has suggested internally that NIOSH has acquiesced to, "claimant, Advisory Board and political pressure and allowed the Advisory Board to operate essentially as a worker advocacy organization." Much of this criticism seems to be centered around special cohort approvals and related rulemaking.

My first question is: Is the Advisory Board providing peer review or worker advocacy? And two, does Mr. Hallmark's characterization of NIOSH square with the reality as you see it as agency director?

Dr. HOWARD. With regard to the first question, I would say, most definitely, the Board provides peer review vital to the program. As I mentioned in my oral statement, science without that robust criticism from all parties—and the Board provides our formalistic paradigm for that together with its contractor, SC&A. Without that, then we at NIOSH have no assurance that our scientific conclusions merit the respect that we think they deserve, and in that process, the Board performs a vital function for us, so I would say that the Board does that very well. As I said, I'd like to see the Board fully balanced so that we have true worker representatives on our Board, but I think that the Board does a great job, in that regard, of peer review.

Mr. HOSTETTLER. Well, in that, let me just ask one more question. Do you think the Advisory Board is more or less susceptible to, say, political pressure than NIOSH in these determinations?

Dr. HOWARD. Well, I'm not sure more or less. I think—I think the Board is a robust organization as a Presidential Advisory Board. They engage in robust discussion on a regular basis both in their formal meetings as well as in their subcommittee and working group meetings. Each issue is aired until everyone is satisfied. It's an exhaustive review that, I think, in the beginning when this program was being developed, nobody realized the nature and the scope of the review that would be necessary to settle some of these scientific questions. So, in that regard, again, I think the Board is performing a vital function for us at NIOSH.

Mr. HOSTETTLER. Thank you, and then the second question: The Department of Labor's characterization of NIOSH, does that square with reality?

Dr. HOWARD. And the characterization again? I'm sorry.

Mr. HOSTETTLER. With regard to worker advocacy.

Dr. HOWARD. Well, I don't think that paints an accurate picture, myself. I think what we're dealing with here are scientific issues that involve workers, so they are, by definition, worker advocacy-oriented because we're dealing with exposures to workers. We think that our dose reconstructions, our technical basis documents, our SEC petition evaluations are scientifically balanced. We don't pay any attention to whether we're favoring one side or the other. We look at the science, and we want to make sure, through this process where we have a number of parties looking at it, that it is scientifically sound however it turns out.

Mr. HOSTETTLER. Thank you.

Mr. Bertoni, what are the specific conflict roles that the GAO identified with respect to the NIOSH Advisory Board and its audit contractor as it pertains to the NIOSH compensation program officials?

Mr. BERTONI. The prior work I had noted?

Mr. HOSTETTLER. Yes.

Mr. BERTONI. Yes. Essentially, the—I'll give you one example. The project officer who is essentially responsible for overseeing the contract was, in fact, in charge of the—the program under review at one point, so that was clearly, in our view, a conflict of interest that was—that was addressed. Also, I believe the contracting officer was also a member of—or charged with attending Advisory Board meetings—was also an—recording minutes and doing other

functions for the Advisory Board—was also an officer or a manager in one of the programs under review. So that, again, was clearly a conflict that—ultimately, it was resolved, though.

Mr. HOSTETTLER. So personnel changes were made.

Are there any structural changes that you would suggest should be made in order to relieve the notion of conflict of interest?

Mr. BERTONI. To the Board or relative to our current work looking at NIOSH's oversight of the ORAU?

Mr. HOSTETTLER. Well, either.

Mr. BERTONI. I think the adjustments that were made to the board in its organization right now—we're not aware of any specific conflicts. We do have ongoing work that is going to look at what's in place now to at least provide for a reasonable amount of—to insulate the board from conflicts of interest and, beyond that, look at other options that one could take to strengthen the independence of the board and avoid conflicts of interest, and we have prior work where we've looked at in-depth analysis on at least nine other Advisory Boards, and it was at the broader review a couple years ago in 2004. We've actually documented best practices that you could take to strengthen conflict of interest and independence of Federal Advisory Boards, and that's going to be part of our criteria as we move forward and look at the relationship between NIOSH and the contractor ORAU.

Mr. HOSTETTLER. Thank you.

Does the Gentlelady from Texas have any further questions?

Ms. JACKSON LEE. I do.

Mr. HOSTETTLER. The Chair recognizes the gentlelady from Texas for 5 minutes.

Ms. JACKSON LEE. Thank you.

Mr. Bertoni, let me follow up on the line of questions of the Chairman. How important is the transparency in the appointment of the members of the Advisory Board that makes recommendations on the "special exposure cohort" applications?

Mr. BERTONI. As I just noted, we have a body of work that actually looks at the boards and committees, and we've come down on record to say that transparency is important not only in terms of the selection of board members, the identification of candidates, the vetting, the process of determining qualifications, their specific points of view. Transparency in that entire process as well as in their day-to-day operations can only serve to—at least from a public perception standpoint, to increase one's view of the integrity of that particular board. So there are—at the time of our last review where we looked at this, there were 900 similar boards. We drilled down on nine and essentially identified good practices, best practices that various boards do engage in to try to create situations where boards are perceived and actually do function very independently and with little conflicts of interest. So, throughout that—their deliberations and process, there should be transparency still; those looking in from the outside can be assured. You may not agree with the decision, but you at least are confident that—or are assured that the process, the integrity of the process, was there.

Ms. JACKSON LEE. You just said something that may be—that may not be the jurisdiction or the agenda for this particular hearing, but you said there were 900 Advisory Boards about?

Mr. BERTONI. Yes. At the time of our review, there were approximately 950, I think we cited in the report.

Ms. JACKSON LEE. And those boards are not subject to congressional confirmation; is that correct?

Mr. BERTONI. Correct.

Ms. JACKSON LEE. Most of them are not?

What kind of—it's good to say "transparency," and it's good to have the GAO, and you've been very effective, I think, in answering some of these concerns, but what kind of partnership with Congress would be effective? We have offered the suggestion of congressional appointment. There can be congressional reporting of the Advisory Board, names to Congress, but I really do think that we miss checks and balances, and that is an enormous component of Government. That's 900 Advisory Boards making, I believe, very important decisions, and what we've found with some difficulty is, of course, that we may be challenged as it relates to transparency. What kind of partnership do you think, prospectively, this whole contingent of Advisory Boards might be able to have with Congress?

Mr. BERTONI. I'll preface this with the fact that we haven't really looked at 5840 and all the elements of it.

Ms. JACKSON LEE. I understand.

Mr. BERTONI. We are well aware. We have in place as one of the options we are considering as we look at other models for where you might move with strengthening the integrity—or the independence of an Advisory Board or in terms of developing its selections.

Ms. JACKSON LEE. A portion being appointed and a portion coming through the Congress?

Mr. BERTONI. Correct. Yes.

My general reaction to the selection process is I think it should be open. It should be open to several sources of nomination as he noted. There are—there are ways that certain boards get the word out that they are looking for nominees. They're going as far as publishing this in the Federal Register, but I think, right from the start, it should be a public process to announce we are looking for qualified members, opening it up to nominations from various sources, and there should be a public vetting and approval process and even right down to the point of looking at the prospective person's past statements, prior employment to get—to get a good sense of not only technical expertise but also their particular point of view, and I don't see any reason why Congress from its oversight standpoint can't request key information leading up to the selection of the board.

Ms. JACKSON LEE. Sir, I think that's an excellent direction.

Dr. Howard, without giving names, your present Advisory Board is how large?

Dr. HOWARD. Right now, statutorily, I think there are six scientific members, three medical members and three worker reps. I believe that we're down one medical and one worker rep.

Ms. JACKSON LEE. And I think——

Dr. HOWARD. He's nodding that I'm correct.

Ms. JACKSON LEE. And your scientific members are academic or in companies?

Dr. HOWARD. They can be a mixture of both. They usually have academic credentials. They may not be in an academic setting, but they tend to be academically oriented.

Ms. JACKSON LEE. Do you agree with transparency along with the vigorous oversight or input that you've just articulated is clearly important, one, to protect the victims of this particular Advisory Board?

Dr. HOWARD. Definitely. Transparency of the members of the Presidential Advisory Board is very critical because we're making the kind of decisions that the Chairman referred to where people can perceive them as biased, so it's extremely important that we be as transparent as possible.

Ms. JACKSON LEE. So any attempt to help enhance that transparency, whether it's a congressional partnership or oversight, might be constructive?

Dr. HOWARD. Well, I'll leave that to Congress, but certainly, from my perspective, we do everything possible at NIOSH to ensure that our processes of selection recommendation to the President and this Advisory Board is as transparent as possible, so that's certainly something that we have in common.

Ms. JACKSON LEE. Mr. Hallmark, let me just conclude by saying to you, you've presented a case of innocence, and we do appreciate, first of all, your presence here today. You can sense—sense some consternation with the process that we've had to pursue, but I would ask, as you've made your presentation, that you glean from this hearing the importance of this issue and the need to compensate victims fairly. NIOSH needs to be able to work effectively. Frankly, I think that the program is fractured by not including those subcontractors, but most of all, we want to hear that the Department of Labor will view its role in moving the compensation ball forward and not the role of containment—is that my understanding?—cost containment outside the ordinary business responsibilities that all agencies have. This program is a program that was set up to compensate, through the legal procedures that NIOSH has instigated, the victims.

Mr. HALLMARK. Well, I would repeat that many of the documents and e-mails that are being discussed here today date back to a debate that was associated with the OMB memorandum of last fall, a year ago. Those documents, in effect, came to a close with the Administration determination not to proceed with any of the options that had been presented, so I think it's important to look at this from the perspective of time frames.

One of the witnesses in the previous hearing talked about a memorandum that I had written in February, I believe it was, of 2006. That was—and suggested that that indicated that we were continuing to pursue a cost-cutting agenda. In fact, that memorandum was written before OMB issued its decision before this Committee and in other venues about not pursuing those options. So that's, in my view, past history. My testimony today talks about the fact that we are looking at the program to make sure it's fair and to make sure that we're compensating people and as quickly as we can, and as I'd repeat the notion that, in our review, for example, of the dose reconstruction reports that we get from the—from the NIOSH, we want to make sure they're right; 2,000 of

those cases have been sent back for rework for various reasons, and almost 90 percent of those reworks were on cases where the NIOSH outcome was less than 50 percent and the individual was not going to get a benefit. We sent them back to give the individual another chance, and I believe in something like 350 of those cases, the individual ended up receiving the benefit.

That's what we're supposed to do. That's what we are doing on an ongoing and constant basis. We're not trying to stop claims. We're not trying to save money. We know that this program is very important, and we know that the benefits are mandatory benefits. So we decide after the inputs from NIOSH and other—and other sources that the claim is payable, and it will be paid, and that's—that's the best—that's the way this operation is supposed to work, and that is our goal. So we are—we are of like minds in that regard, I believe, and we proceed down the path to make sure the program is, in fact, honoring its promises.

Ms. JACKSON LEE. So the era that we have passed through on this cost-containment memo is behind us at this juncture?

Mr. HALLMARK. The only thing I'm stumbling on is the issue of a cost-containment memo. The OMB memo, which issued options which were at issue for a number of months, is behind us because the Administration/the Department of Labor are not proceeding with that set of options.

Ms. JACKSON LEE. Thank you.

I hope that we will get the solution, Mr. Chairman, for the victims. That is the only reason why the two of us are here and have been here for five hearings consistently, and I hope that you will continue your interest and advocacy, and I would hope that this would be—find its way to the top of the agenda for the 110th Congress. People are really, really in need, and I thank the witnesses, and I yield back.

Mr. HOSTETTLER. I thank the Gentlelady.

I also want to thank the witnesses for your input and your addition to the record. It's been most helpful.

I would advise the Subcommittee that all Members will have 2 legislative days to make additions to the record and that this Subcommittee will be making significant submissions to the public record. The business before the Subcommittee being now completed, we are, without objection, adjourned.

[Whereupon, at 5:35 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE JOHN N. HOSTETTLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

STATEMENT OF THE HONORABLE JOHN N. HOSTETTLER CHAIRMAN OF THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CLAIMS FOR THE DECEMBER 5, 2006 OVERSIGHT HEARING ONTHE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT ARE WE FULFILLING THE PROMISE WE MADE TO THESE VETERANS OF THE COLD WAR WHEN WE CREATED THE PROGRAM?"

This is the fifth and final hearing in a series of hearings before the Subcommittee in this Congress on the implementation of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The overarching purpose of these hearings has been to make sure the Government is fulfilling the promises made to these workers who sacrificed so much for their country during the Cold War. This program was created to help them -- not as some science experiment to provide unlimited employment for the government contractors' community, and certainly not to set these workers up to be deceived and minimized by the Government yet again.

Because DOE and its contractors often did not properly monitor workers' exposures to radiation and other toxins and often records of worker exposures no longer exist, EEOICPA provided that HHS could designate such workers as members of the "Special Exposure Cohort (SEC)." Under a designated SEC, benefits are paid to workers who received on the job radiation exposure for a period of time and who have been diagnosed with 1 of 22 "radiosensitive" cancers.

When this law was enacted in 2000, Congress did not know how many new groups of workers might be designated as belonging in a Special Exposure Cohort, but from hearings in this Committee, we knew that there was limited radiation monitoring data and non-existent health physics programs in the earliest years and this would make it almost impossible to accurately reconstruct dose for many claimants.

Without the ability to add workers to the Special Exposure Cohort, many would face an insurmountable burden of proof, when it was the government who placed them in harms way, frequently misled them about the hazards they were facing, and failed to properly monitor their exposures.

It seems prudent to revisit some of the historical evidence of the Government's knowledge of what these workers were being subjected to and the intentional decision to keep that knowledge a secret.

At Mallinckrodt, a 1951 Atomic Energy Commission memo assessed their "potential liability" as a result of workers receiving "radiation exposure for several years had been considerably in excess of any group for which data are available. The memo concedes "the possibility of tumor development among Mallinckrodt employees must be recognized", but the workers were never told.

There are several examples from a formerly secret memo by the Atomic Energy Commission entitled "Health Hazards in New York Operations Office Facilities Producing and Processing Uranium, April 1, 1949" that shed light on the amount of exposure workers received.

At Harshaw Chemical in Cleveland, Ohio, AEC memos show 33 of 88 employees were exposed to uranium dust concentrations of 140 to 370 times the so called preferred level, and many employees had 2-4 years of exposure at these levels.

At Electromet in Niagara Falls, New York, the AEC found

that most of the process workers were exposed to uranium dust at 5 times the so-called preferred level, and the "bomb loaders" were exposed to 600 times the preferred level in 1948.

At the Simonds Saw and Steel plant in Lockport, New York, the AEC wrote that "In order to satisfy Hanford's urgent need for rolled metal (uranium), it was necessary to begin operations before suitable controls could be installed." As a result, employees were exposed to a daily average of 155 times the preferred levels of uranium.

An AEC memo acknowledged that, with the exception of one facility, "no effort has been made to explain [to workers] the nature of the special problems which exist."

The AEC wrote that employees were "transferred from department to department and no record made of the fact. It will, therefore, be impossible without relying on the memory of the individual employees and their foreman, to reconstruct the dust exposure records of many present employees."

The AEC noted that due to the health hazards to workers, "The decision must therefore be made to provide satisfactory operating conditions despite existing

operations pressures. If this is not done, it will be necessary to classify at least some of the operations within these plants as being extra hazardous in nature. This of course, means concomitant complications, such as difficulties in securing individuals for the job if full recognition is given to its extra-hazardous nature, and insurance difficulties."

These are just a few examples of the history that guided the decision to provide relief for the workers through the Special Exposure Cohort petition process.

While progress has been made regarding claims processed at DOL, several thousand dose reconstructions are not completed at NIOSH more than 6 years after enactment. Advisory Board members have been removed and added with no rhyme or reason leaving the Board unbalanced. The Administration has not acted on repeated requests by this Committee, as well as many members of Congress, to rectify this imbalance. Although OMB has indicated that the OMB passback does not reflect Administration policy, DOL's involvement in selectively culling compensable claims to second guess NIOSH, constant internal criticism of the Advisory Board and the audit contractor, brainstorming on ways to limit the scope of SECs, and significant involvement in SEC rulemakings raises

questions, now being evaluated by the GAO, on whether DOL has exceeded its authority and is involved in issues the law reserves for NIOSH and the Advisory Board.

A number of pressing concerns with Subtitle E of the program, the portion of the program that provides wage replacement and/or impairment benefits to workers for their illnesses from exposure to toxic substances at DOE facilities, have yet to be scrutinized by the Committee.

DOL testimony at our March 1, 2006 hearing about the DOL's role in the development of the OMB Passback included a statement that: "... cost containment is not part of any strategy or involvement that the Department of Labor has had in this process." Yet oversight by this Subcommittee has found emails and memos discussing controlling approvals of SEC petitions by: 1) having OMB review each petition with DOL input prior to final approval , a role specifically tasked to HHS; 2) "refreshing" the members of the Advisory Board, to correct what is framed as an excessively claimant favorable Board; 3) selecting certain claims for cancers deemed compensable by NIOSH and then dissecting the NIOSH radiation dose estimate looking to show NIOSH error and justify an argument to reduce compensable claims; 4) ways to reduce the number of workers included

in SEC classes; 5) working on NIOSH rulemakings to reduce the list of 22 SEC covered cancers, and finding legalistic interpretations to reduce the number to as few as one type of cancer; 6) developing contingency plans to seek advice from the Justice Department that would relieve DOL of the obligation to pay benefits to certain Special Exposure Cohorts, if DOL disagreed with the rationale for approving that SEC; and 7) bringing in other entities to challenge NIOSH recommendations for SECs.

We hope DOL will shed light on the discrepancy between previous testimony to this Committee in March and the documents subsequently viewed by the Committee that any rational person would perceive to be a benefits containment agenda through March of 2006.

Although DOL has produced about a dozen binders of materials to the Committee, we note that another 8 binders could only be reviewed in the DOL's offices and copies could not be made. Although 4 trips have been made to DOL, this inconvenience has hampered the necessary Committee oversight over the program.

Many documents reflect a DOL attitude that SECs are not soundly based and that HHS and the Advisory Board can't be counted on to fight off claims regarding shoddy

radiation monitoring data.

A February 2005 memo to the Secretary of Labor, states: "HHS has acquiesced to claimant, Advisory Board and political pressure." An August 2005 memo accuses NIOSH of "capitulation" and then states, with respect to efforts to cut back the number of cancers compensated under the HHS SEC Rule, "NIOSH is taking a tremendous amount of heat on this issue and indications are that they are looking for ways to crumble."

A February 2005 statement shows disdain for the Advisory Board complaining: "… thoughtful deliberation by the Board, not something toward which they've shown a tendency anyway, will be extremely limited under these conditions."

While publicly professing no interest in the outcome of SEC recommendation on Mallinckrodt facility to Senator Kit Bond and the Advisory Board, internal DOL comments state: "The final vote is now projected for the Board's next meeting in early July. It may be that at least two current members of the Board will be replaced by new appointees by then, which could significantly change the dynamic of the Board. Such a change is critical, since the Board and it's contractor seem bent on demanding that

NIOSH's processes be far more perfect than is possible, failing which, SECs would be demanded everywhere."

When briefing the top officials at DOL, staff suggested inflated cost estimates for new SEC designations. For example, they stated "The ten year added cost for the Iowa SEC alone has been projected at $1 billion. " The expenditures for the Iowa SEC have been about $49 million as of November 12, 2006. This is 5% of the DOL staff cost estimate. This cost is unlikely to grow much more because there has already been intensive claimant outreach and new claims filing have dropped off significantly. With respect to Mallinckrodt, DOL staff wrote: "The ten year added cost for a Mallinckrodt SEC was about $500 million." However, that cost is $17.7 million or about 3.4 of a percent of the amount projected.

Mr. Hallmark maintains this alarmist tone in memos to the Secretary where he states: "The stability of the current Part B program is at risk."

DOL has dismissed the concerns about their actions as no longer relevant since DOL has ceased and desisted from implementing the passback in May 2006.

If this is the case, the Committee will need to review

additional documents. The culture of disdain towards claimants and NIOSH appears so embedded in DOL that it will be important to take a hard look at what has transpired since the OMB passback first saw the light of day in order to confirm DOL's declaration.

We will need to look at the DOL's internal communications since our February 2006 request. As such I will be working with the Ranking Member after the close of this hearing to send a letter to both DOL and NIOSH seeking to update the requests previously made to the two agencies, and to reiterate the need to produce the documents which have been withheld.

We will hear from DOL, NIOSH and GAO today. We had invited the DOL Ombudsman, however, we have been advised that this position is vacant, and has been vacant since the beginning of October. We are disappointed that none of the staff from that Office will be made available, because their reports to Congress and the recommendations they can offer are important in formulating reform legislation.

We want these hearings and the detailed record left behind to create a roadmap for the 110th Congress to follow up on areas that need further inquiry and to enact reforms.

To the bean counters, I would remind you that these aren't normal beans you're counting. These funds are a small acknowledgment of their sacrifice to workers whose lives were put at risk to make this country safe enough for us to sit in our offices counting beans. Show some respect and gratitude is my request.

To the workers, I say a heartfelt thank you. Thank you for your service to our nation. There are many of us who do appreciate you and your families' contribution to our world and want to do right by you. I'd like to think this Committee's hearings and oversight efforts have contributed to that goal and I consider it a privilege to have led that effort this Congress. I only wish more of the problems of the program could have been solved conclusively. Finally, I want you to know I have confidence that there are many people in this Government and this country who will continue to fight for you to get the respect and care you deserve for all you have done for us.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

COMMITTEES:
COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES:
INFRASTRUCTURE AND BORDER SECURITY
CYBERSECURITY, SCIENCE, AND RESEARCH & DEVELOPMENT

JUDICIARY
SUBCOMMITTEES:
CRIME
RANKING MEMBER, IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEE:
SPACE AND AERONAUTICS

MEMBER
DEMOCRATIC CAUCUS POLICY AND STEERING COMMITTEE

1ST VICE CHAIR
CONGRESSIONAL BLACK CAUCUS

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ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

HEIGHTS OFFICE:
420 WEST 19TH STREET
HOUSTON, TX 77008
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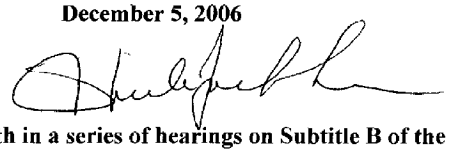
Statement

Congresswoman Sheila Jackson Lee

Oversight hearing on "The Energy Employees Occupational Illness Compensation Program Act – Are We Fulfilling the Promise We Made to these Veterans of the Cold War When We Created the Program?" Part five in a Series.

Subcommittee on Immigration, Border Security, and Claims

December 5, 2006



This is the fifth in a series of hearings on Subtitle B of the Energy Employees Occupational Illness Compensation Act. Subtitle B covers occupational illness associated with making

nuclear weapons. Workers who have contracted one of these illnesses may be eligible for a lump sum payment of $150,000 and prospective medical benefits.

In processing radiation related cancer claims, the National Institute for Occupational Safety and Health (NIOSH) is required to estimate a worker's exposure to radiation. If this is not feasible but it is clear that the health of workers may have been endangered by radiation exposure, the workers can petition to be designated as members of a "Special Exposure Cohort" (SEC), which establishes an unrebuttable presumption that certain cancers are work related.

In an internal passback memorandum from the Office of Management and Budget (OMB) to the Department of Labor (DOL), OMB states that the Administration will convene a White House-led interagency workgroup to develop options for administrative procedures to contain the growth in the costs of the Compensation Program. The series of five hearings addresses

concerns about the cost containment measures recommended in this passback memorandum.

Government witnesses have testified that cost containment is not a factor in deciding which claims to pay, and they have said that the recommendations in the passback memorandum have not been implemented. The Administration may not be implementing the specific recommendations in the passback, but that does not mean that no efforts are being made to contain the cost of the program.

At the previous hearing on November 15, 2006, Richard Miller, a Senior Policy Analyst for the Government Accountability Project, testified that DOL is employing cost containment measures. For instance, DOL has criticized the details in most of the proposed SEC designations in what he believes to be an effort to reduce benefits, and it has changed the regulations governing SEC petitions to make it more difficult to qualify.

Dr. John Mauro, the Project Manager for S. Cohen & Associates (SC&A, Inc.), testified at the same hearing that the

Administration recently made it more difficult for SC&A to access data and records when it reviews a recommendation from NIOSH to deny an SEC application. This makes it more difficult to evaluate the records which are the basis for the denial recommendations.

Cost containment is not the only problem that has come to our attention at these hearings. Another witness at the previous hearing, Kathy Bates, described the difficulties her family has had in trying to obtain compensation for the death of her father from cancer caused by work site radiation exposure. The initial claim was rejected on the basis of radiation exposure records that did not pertain to her father. Ms. Bates brought this to the attention of the office processing the claim and received assurances that the social security card number would be corrected. Nevertheless, when a new decision was rendered, it denied the claim again using the same incorrect social security number to identify her father's records. Ms. Bates concluded that quality control measures are needed for the process of evaluating claims. I agree.

I have introduced a bill to address the cost containment issue, the Energy Employees Occupational Illness Compensation Program Improvement Act of 2006, H.R. 5840. Among other things, it would shift the authority for making Advisory Board appointments to the Congress. It would require the HHS Secretary to abide by the recommendations of the Advisory Board, unless there is a clear error. It would establish enforceable conflict of interest requirements with respect to NIOSH's dose reconstruction contractors. Also, it would eliminate unfairness by making benefits available to some subcontractor employees who worked at atomic weapons employer facilities but presently are not covered by the Act.

These workers made a commitment to our country when the country needed them. Now, it is our turn to help them in their time of need.

SIGNIFICANT DOCUMENTS AND COMMUNICATIONS RELATED TO THE SUBCOMMITTEE'S OVERSIGHT OF THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

The following documents and communications are significant items the Subcommittee has come across during its oversight investigation on EEOICPA. The Subcommitte found that there is a continuous stream of communications too numerous to include in the record dating from 2002-2006 that reflect a general mentality in the DOL hierarchy from the Assistant Secretary level down to the health physicists reviewing cases that --

a. Costs are the primary consideration in DOL policy regarding the program.
b. Any other opinion (executive and legislative) that conflicts with DOL policy and opinions is borne of ignorance, an attempt to defraud the American taxpayer, politics, or some vague personal agenda.
c. Everyone except DOL is in the pocket of the worker advocates or pursuing an agenda for financial gain.
d. Exaggeration of the impact of every action by the Advisory Board and the Secretary of HHS is required when reporting to the Secretary of Labor.

Additionally, the Subcommittee found numerous communications dating from 2002-2006 within the HHS offices involved with EEOICPA as well as between those HHS offices and DOL strategizing on minimizing payouts. The following communications are a small sampling of such communications. Relevant correspondence as well as historical and research documents have also been included.

	CASES	CASES	CASES	CASES	CASES	CASES	CASES	CASES	CASES
TOTAL AT NIOSH REQUIRING REVIEW, at time of SEC effective date	81	68	456	137	55	505	21	49	336
WITHDRAWN FROM NIOSH FOR SEC REVIEW	78	67	376	114	22	499	20	45	322
DECISIONS post NIOSH withdrawal and SEC review	77	53	276	3	20	463	15	24	150
Approved	69	52	230	2	19	340	15	23	144
Denied	8	1	46	1	1	123	0	1	6
TOTAL FINAL DECISIONS post NIOSH withdrawal and SEC review	74	52	162	0	19	432	0	0	1
Approved	67	52	138	0	19	333	0	0	1
Denied	7	0	24		0	99	0	0	0
Total Compensation Paid	$10,050,000	$7,725,000	$19,586,250	$0	$2,850,000	$49,452,500	$0	$0	$0
Number of Payments	67	52	133	0	19	331	0	0	0

Data as of November 12, 2006

[FOR THE RECORD]

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Monday, March 17, 2003 9:13 AM
To: Turcic, Peter - ESA; Tompkins, Elena; Keelan, Elizabeth
Subject: RE: EEOICPA Master List emails

Exactly. We got a pretty good final NPRM out of them – we don't want it to crumble under external pressure.

> -----Original Message-----
> **From:** Turcic, Peter - ESA
> **Sent:** Monday, March 17, 2003 9:02 AM
> **To:** Hallmark, Shelby - ESA; Tompkins, Elena; Keelan, Elizabeth
> **Subject:** RE: EEOICPA Master List emails
>
> OK – based on the Advisory Board teleconference, it appears that the early comments on the rule go to the definition of a facility and the limitation of some SEC's to specific cancers other than the 22. We should keep a close eye on these issues so that NIOSH don't just fold on them.
>
> > -----Original Message-----
> > **From:** Hallmark, Shelby - ESA
> > **Sent:** Monday, March 17, 2003 8:58 AM
> > **To:** Turcic, Peter - ESA; Tompkins, Elena; Keelan, Elizabeth
> > **Subject:** RE: EEOICPA Master List emails
> >
> > I think it would be wise to have someone there to listen, although it's NIOSH's show.
> >
> > > -----Original Message-----
> > > **From:** Turcic, Peter - ESA
> > > **Sent:** Monday, March 17, 2003 7:08 AM
> > > **To:** Tompkins, Elena; Keelan, Elizabeth; Turcic, Peter - ESA; Hallmark, Shelby - ESA
> > > **Subject:** RE: EEOICPA Master List emails
> > > **Importance:** High
> > >
> > > Should we attend?
> > >
> > > > -----Original Message-----
> > > > **From:** Tompkins Elena [mailto:tompkins-elena@dol.gov]
> > > > **Sent:** Friday, March 14, 2003 4:13 PM
> > > > **To:** Keelan Elizabeth; Turcic Peter-ESA; Hallmark Shelby-ESA
> > > > **Subject:** FW: EEOICPA Master List emails
> > > >
> > > > This is information on a NIOSH Congressional briefing on their proposed rule for special exposure cohorts...
> > > > -----Original Message-----
> > > > **From:** Chang, Chia-Chia [mailto:cuc8@cdc.gov]

Sent: Friday, March 14, 2003 3:43 PM
To: 'Lerner, Steve'; 'tompkins-elena@dol.gov'
Subject: RE: EEOICPA Master List emails

Thanks.

FYI, Ted Katz will be doing the briefing on the SEC NPRM on Fri, 3/21, at 11am in Dirksen 430 and 2pm in Rayburn 2175.

-----Original Message-----
From: Lerner, Steve
[mailto:Steve.Lerner@hq.doe.gov]
Sent: Friday, March 14, 2003 3:35 PM
To: 'cuc8@cdc.gov'
Subject: FW: EEOICPA Master List emails

Cha Cha - Hopes this helps! Please let me know the details of the briefing when finalized. Thanks. Steve

Search 4

From: Kotsch, Jeffrey - ESA
Sent: Wednesday, May 07, 2003 2:10 PM
To: Hallmark, Shelby - ESA
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Shelby, some of the Board members acknowledged the scientific basis for this approach early on. However, as the public clamor continued at each meeting, the members withdrew, even the "scientific" types. My personal impression is that the Board reacts to policy type decisions rather than the technical issues (that they're actually mandated to review). I believe it reflects the make-up of the Board (union/worker oriented).

NIOSH staff noted at numerous times that they were only there to provide information (when requested).

My personal thoughts and observations only.

Jeff

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, May 07, 2003 1:58 PM
To: Kotsch, Jeffrey - ESA
Cc: turcic pete; mosier roberta; nesvet jeff
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Did NIOSH not do any selling on this? I know the Millers and worker advocates wailed about it, but there's good scientific reason for limiting the cancers, I was told, and surely some of the Board would have been supportive of that. Allowing the Board to go so strongly against this makes for a steep climb in the final rule.

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Wednesday, May 07, 2003 1:47 PM
To: Hallmark, Shelby - ESA
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Shelby, the vote on the 22 cancers was totally in favor of deleting the language, except for an abstention by Wanda Munn. The Board's comments, along with all of the other public comments received, will be posted on the NIOSH-OCAS website; probably in the next two weeks.

Jeff

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, May 07, 2003 1:41 PM
To: Kotsch, Jeffrey - ESA; Turcic, Peter - ESA; Mosier, Roberta - ESA; Leiton, Rachel - ESA
Cc: Hallmark, Shelby - ESA; Reinhalter, Mark A - ESA; Rose Toufexis
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Jeff, was the Board's vote on the issue of less than 22 cancers recorded – that is, do you know how many and who voted which way? Will we be able to see the actual comment the Board submits?

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Tuesday, May 06, 2003 7:40 AM
To: Pete Turcic; Roberta Mosier; Rachel Leiton
Cc: Shelby Hallmark; Mark Reinhalter; Rose Toufexis
Subject: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Attached are the brief notes from the NIOSH Advisory Board's telephone meeting on May 1, 2003. This was the last of their meetings on their review of the SEC NPRM.

Jeff

(1)

Reinhalter, Mark A - ESA

From: Hallmark, Shelby - ESA
Sent: Wednesday, May 07, 2003 4:11 PM
To: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Cc: Mosier, Roberta - ESA; Reinhalter, Mark A - ESA
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

That could be true if they're holding a public hearing aimed at gathering input, but the deliberations of the Board require some management if they're not to be left with a fait accompli – otherwise Rick Miller is in effect running things without opposition.

> ----Original Message----
> **From:** Turcic, Peter - ESA
> **Sent:** Wednesday, May 07, 2003 3:35 PM
> **To:** Nesvet, Jeffrey L - ESA; Hallmark, Shelby - ESA; Kotsch, Jeffrey - ESA
> **Cc:** Mosier, Roberta - ESA; Reinhalter, Mark A - ESA
> **Subject:** RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003
> **Importance:** High
>
> That was well understood. NIOSH was very low keyed on the whole thing – they didn't defend the position. I think NIOSH feels that they can only listen and cannot appear to defend the policy choice in a proposed rule.
>
> > ----Original Message----
> > **From:** Nesvet, Jeffrey L - ESA
> > **Sent:** Wednesday, May 07, 2003 2:57 PM
> > **To:** Turcic, Peter - ESA; Hallmark, Shelby - ESA; Kotsch, Jeffrey - ESA
> > **Cc:** Mosier, Roberta - ESA; Reinhalter, Mark A - ESA
> > **Subject:** RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003
> >
> > Did anybody from NIOSH explain the somewhat quirky way that this would work, i.e. that they were not (and could not since it is established by the Act) limiting the cancers for which any SEC class member could be compensated, but only providing that you have to have a specific cancer to be included in the class.
> >
> > Since you can only collect one $150k payment that might not be a significant point if you are already in because the one cancer was listed (though it makes medical payments for any other listed cancer simple to pay). The rule does not require that the cancer you are required to have be a listed cancer. You could, however, have a class requiring a non-listed cancer, of course you would have to have a listed cancer as well to get coverage through the SEC.
> >
> > Originally, we commented on their draft language by noting we did not think that a one cancer class was prohibited by the Act, which was what the draft said. They later decided that it made scientific sense since different exposures triggered different cancers. Are they backing off that position?
> >
> > > ----Original Message----
> > > **From:** Turcic, Peter - ESA
> > > **Sent:** Wednesday, May 07, 2003 2:08 PM
> > > **To:** Hallmark, Shelby - ESA; Kotsch, Jeffrey - ESA
> > > **Cc:** Turcic, Peter - ESA; Mosier, Roberta - ESA; Nesvet, Jeffrey L - ESA
> > > **Subject:** RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003
> > > **Importance:** High

What I got from the discussion was that the Board, decided this issue solely on the issue of being equitable. The advocates made the pitch that the intent of Congress was to have a uniform and equitable program and no one countered that the limitation of cancers to only those that could reasonably come from the specific situation, i.e. lung cancer when the risk was limited to inhalation, is in fact the uniform and equitable approach.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, May 07, 2003 1:58 PM
To: Kotsch, Jeffrey - ESA
Cc: turcic pete; mosier roberta; nesvet jeff
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

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Jeff

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, May 07, 2003 1:41 PM
To: Kotsch, Jeffrey - ESA; Turcic, Peter - ESA; Mosier, Roberta - ESA; Lelton, Rachel - ESA
Cc: Hallmark, Shelby - ESA; Reinhalter, Mark A - ESA; Rose Toufexis
Subject: RE: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Jeff, was the Board's vote on the issue of less than 22 cancers recorded – that is, do you know how many and who voted which way? Will we be able to see the actual comment the Board submits?

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Tuesday, May 06, 2003 7:40 AM
To: Pete Turcic; Roberta Mosier; Rachel Lelton
Cc: Shelby Hallmark; Mark Reinhalter; Rose Toufexis
Subject: Notes Form NIOSH Advisory Board Telephone Meeting on May 1, 2003

Attached are the brief notes from the NIOSH Advisory Board's

telephone meeting on May 1, 2003. This was the last of their meetings on their review of the SEC NPRM.

Jeff

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951

http://www.house.gov/judiciary

May 22, 2003

The Honorable David M. Walker
Comptroller General of the United States
U.S. General Accounting Office
441 G St NW
Washington, D.C. 20548

Dear Mr. Walker,

As you know, the Energy Employees Occupational Illness Compensation Program (EEOICP) was enacted into law in October 2000 and began operating on July 31, 2001. The program's goal is to compensate employees (or their survivors) who were employed by the Department of Energy or its contractors and who suffered radiation-related cancer, beryllium-rated disease, or chronic silicosis resulting from work in producing or testing nuclear weapons.

In order for deserving individuals to promptly receive the compensation they are entitled to under law, several federal agencies (i.e., the Departments of Labor, Energy, Health and Human Services, and Justice) must each carry out their respective responsibilities under the law as well as partner with each other effectively. In some cases, these agencies also must work with state workers' compensation agencies. Naturally, as with any new program, there have been implementation issues and unforeseen obstacles that the various agencies have contended with. Now that the program has been in place for over a year, it is important to have an assessment of how well this program is working. Such an assessment is key to determining what aspects of the program may need revision.

Therefore, I request that GAO examine key components of this program, including, (1) the efficiency and timeliness of claim processing and payment procedures, and (2) the adequacy of procedures to share information and coordinate payments among the responsible agencies. I would also be interested in an accounting of claims paid to date, such as the average claim amount, claim amounts by type of injury, and total claims paid.

I am also attaching a copy of a letter recently sent to the Committee from Congressman Zach Wamp. The letter includes additional issues of concern regarding the program. I would ask that these items also be addressed in your evaluation.

I look forward to working with you on this request. Please contact Cindy Blackston of the Subcommittee on Immigration, Border Security and Claims Subcommittee staff, who can be reached on (202) 225-5727 if you have any questions.

Sincerely,

JOHN N. HOSTETTLER
Chairman
Subcommittee on Immigration, Border
Security, and Claims

Enclosure
JNH/cb

Search 2

From: Reinhalter, Mark A - ESA
Sent: Tuesday, October 14, 2003 9:00 AM
To: 'Rose Toufexis'; Toufexis, Rose - ESA
Cc: Nesvet, Jeffrey L - ESA
Subject: FW: Comments to NIOSH on Four Recent Documents for Review and Three Earlier Documents

Hi Rose,

I am forwarding this latest from Jeff on the TBDs although I need to send you another message received late Friday from Naimon and Shelby – the HHS draft revised regulation on adding classes to the SEC are here and need highest priority. I forgot that with the holiday and flexing you would not see it without a forward so look for it after this. We can figure out our timetable sometime today hopefully.
Thanks,
Mark

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Tuesday, October 14, 2003 8:46 AM
To: Turcic, Peter - ESA; Mosler, Roberta - ESA; Lefton, Rachel - ESA; Hallmark, Shelby - ESA; Svenonius, Diane - ESA; Nesvet, Jeffrey L - ESA
Cc: Reinhalter, Mark A - ESA
Subject: Comments to NIOSH on Four Recent Documents for Review and Three Earlier Documents

We recently (10/7 & 8) received four NIOSH documents for review. These documents were:

- Rocky Flats TBD, Part 2
- TIB on Estimating Maximum Plausible Doses to Workers at AWEs
- Portsmouth GDP TBD Part 2
- TIB on Occupational Dose form Elevated Ambient Levels of External Radiation

Under our new review process, comments will be sent via E-mail from Pete to Larry. Comments should be primarily related to legal, policy, or adjudication issues. Any significant technical issues/concerns will also be noted.
After reviewing the four documents above, I have one issue that I would like everyone to consider. My comment concerns the TIB on Estimating Maximum Plausible Doses to Workers at AWEs. On Page 4, Section 3.0, the last sentence of the pargraph under Table 1 notes, "Also, to be claimant-favorable, it was assumed that the worker spent his/her lunch and breaks sitting on an ingot." After reviewing a number of TBDs and now TIBs, NIOSH needs to be sure that the various documents are consistent both technically and policy-wise. I realize that the assumption stated above is very conservative (claimant favorable), but is it plausible or reasonable? I would expect at lunch and breaks, a worker would move out of the work area. I think assuming a distance of one foot from the ingots/billets during these times would be claimant favorable and reasonable. My bottom line is that the assumptions used need to be reasonable, without being absurd (my own view).

Since I'll be at NIOSH the first part of next week, I can only assist with getting the comments out on these four documents until Friday (10/17).

We should also try to return comments to NIOSH on K-25 TBD Parts 4 and 6 and Rocky Flats TBD Part 3 today (to meet process review dates). Mark, Rose, and I have discussed some issues and their comments should be available (hopefully) this morning.

Jeff

Search 3

From: on behalf of Hallmark, Shelby - ESA
Sent: Wednesday, October 22, 2003 8:41 AM
To: Lipnic, Victoria; Iverson, Kristine
Subject: RE: David Michaels testifying

I think he'll be fine. They may ask him about the Bingaman-Strickland bill, and as you note, we can't restrict his free speech, but David isn't a wild advocate, and I've not gotten the sense from him that he believes Bingaman-Strickland would be good policy. From everything he's ever said to me, I think he supports the dose reconstruction process as a good way of bringing scientific evidence to bear on these difficult yes-no compensation decisions, so that to the greatest degree possible, people who were mostly likely made sick on the job get benefits, and those who weren't, don't. He's not an advocate of spreading SEC presumptions around. I'm sure he supports the notion of Part D coming to DOL in one form or another (eg, Grassley's amendment), but this hearing isn't about Part D. He should be fine. I do think he will need to mention his DOL contractual relationship as a matter of full disclosure. Thanks, sh

-----Original Message-----
From: Lipnic, Victoria
Sent: Tuesday, October 21, 2003 8:56 PM
To: Hallmark, Shelby - ESA; Iverson, Kristine
Subject: RE: David Michaels testifying

He is being asked to testisfy as the minority's witness. Don't see how we can stop him. It would be nice if he could refrain from waxing on about how the Strickland bill is great and the program should be expanded to include all sorts of other cohorts -- or at the very least confine his testimony to what the hearing is supposed to be about which is just DOL's performance via the program. The Strickland bill is what this whole hearing has the potential to turn into; but don't see how we can stop him (from testifying)

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Tuesday, October 21, 2003 5:32 PM
To: Lipnic, Victoria; Iverson, Kristine
Subject: FW: David Michaels testifying
Importance: High

David still has a part-time contract with us - we've gradually reduced it, I think it's about ¼ time now. He's working on outreach type issues.

I'm sure his representation noted below is quite correct - David would be a very positive witness, both regarding our implementation of Part B and NIOSH's. He carries weight in the community and understands the issues thoroughly, so his presentation would be helpful. I assume the committee knows he has a contract with us, so in that sense he's not exactly an impartial witness, but as I said, he does have credibility in the community. I don't know if the staff consulted with you on this.

I have been uncomfortable with putting David on the podium in some of our other venues, but if the Committee wants him to testify on this set of issues, this seems ok to me. But given his political background, it's your call. I need to tell him one way or the other tomorrow AM, since he's leaving town. Thanks, sh

-----Original Message-----
From: Mosier, Roberta - ESA
Sent: Tuesday, October 21, 2003 5:23 PM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA
Subject: David Michaels testifying

Search 2

From: Kotsch, Jeffrey - ESA
Sent: Monday, November 03, 2003 1:24 PM
To: Leiton, Rachel - ESA
Subject: Follow-Up on NIOSH Advisory Board 's Request for DOL Outreach Plan

Rachel, the NIOSH Advisory Board asked for info on our outreach plans at the St. Louis meeting (see Shelby's response below). Will BOTA take this on or do I need to continue to track it?

Thanks,

Jeff

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Monday, November 03, 2003 12:48 PM
To: Kotsch, Jeffrey - ESA; Turcic, Peter - ESA; Mosier, Roberta - ESA; Leiton, Rachel - ESA; Nesvet, Jeffrey L - ESA
Cc: Reinhalter, Mark A - ESA; Toufexis, Rose - ESA
Subject: RE: Notes from NIOSH Advisory Board Meeting in St. Louis, October 28 - 29, 2003

Thanks, Jeffrey. I note that the Board asked for info on our outreach plans -- I think we should put something together and send it, and I'd like to see it before it goes out.

Re the issue of union and other interested parties getting to provide "pre-decisional" input on site profiles, I note that the Board voted 8 to 2 or 3 to urge such, although Zeimer indicated that NIOSH isn't bound by that. NIOSH needs to do some work with this Board so that the scientists and contractor reps don't just sit and accede to everything that the worker advocates come up with. Clearly, having NIOSH wait to set up meetings and go around this horn before they issue TBDs will add more time to the process, which is already far too slow by the advocates' own reckoning. Unless one assumes that some of the advocates are actually interesting in making the whole process collapse under its own weight, the demands here are directly contradictory, and NIOSH and the Board's objective members ought to be pointing that out. The TBDs are quite complex enough as it is—and as Larry E noted, NIOSH can accept input and make adjustments as it goes along, as of course it must if individual dose recons turn up information that wasn't contemplated by the TBD.

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Friday, October 31, 2003 11:43 AM
To: Turcic, Peter - ESA; Mosier, Roberta - ESA; Leiton, Rachel - ESA; Nesvet, Jeffrey L - ESA; Hallmark, Shelby - ESA
Cc: Reinhalter, Mark A - ESA; Toufexis, Rose - ESA
Subject: Notes from NIOSH Advisory Board Meeting in St. Louis, October 28 - 29, 2003

In the interest of time (primarily my own), this E-mail contains the highlights of the NIOSH Advisory Board Meeting that was just held in St. Louis, MO, on October 28 - 29, 2003. I left a set of handouts with Pete.

Tuesday presentations/discussions:

- Chris Ellison, NIOSH, presented information on claimant communication (handout in packet).
- Dave Sundin presented a NIOSH Program Status Report (handout in packet).
- I verbally presented information on the DOL Program. The Board asked if we could get them a hard copy summary of the numbers presented. Also, while they noted that DOL does not fall under their purview, the Board asked if DOL could provide information on our outreach plans (this arose from their interest in estimates of future cases). Leon Owens did mention that Pete had attended a meeting of union representatives a few weeks earlier.
- Tom Rollow presented information on the DOE Subpart D program (handout in packet). Tom

noted that they've done about 1,000 cases and are developing about 50 cases/week to be sent to the physicians panels. He further noted that DOE has an initiative to review cases within 12 months. Tom mentioned that DOE needs $43 million to process the 15,000 case back-log within the next year. He projected that their program will receive 120 – 150 cases/week over the next two years.

- Mark Griffon, Board member, presented an update from the Dose Reconstruction Review Working Group. Three items were discussed: Procedure for Reviewing Individual Dose Reconstructions Reviews; the Site Profile Review Task; and Dose Reconstruction Review Tracking (handouts in packet). The tentative plan is to have four panels, of three Board members apiece, review 25 cases every two months. Cases will be available for review once they have a Final Decision and are not being appealed. The contractor selected for technical support of the Board is Sanford Cohen & Associates (located in the Virginia suburbs) and was given a 5-year award of $3 million.
- A discussion ensued (and continued the next morning) about the need for a subcommittee to oversee the dose reconstruction reviews and interface with the contractor. Since the need, function and scope of the subcommittee is uncertain, this topic will be further explored at the next Board meeting.

Public Comments:

- Tom Horgan (sp?), a staffer from Sen. Chris Bond's subcommittee introduced himself.
- Denise Brock mentioned that there were "3,300 employees at Mallinckrodt and only 400 claimants." She expressed an interest in further outreach efforts.
- Clarrisa Eaton stated that missing records at Mallinckrodt are the result of intentional actions and that the facility's time period should include residual contamination.
- Bob Tabor commented on a meeting at Fernald a few weeks ago and the confusion among workers about Subpart B and D programs and the Fernald 2 program.
- Richard Miller, GAP, asked about the status and the schedule for the SEC rule to become public (Larry made no response). Richard cited two possible instances of conflict of interest involving individuals who contributed to site profiles and were also serving as defense experts in litigation cases. He also asked about the availability to the public of the IMBA program (internal dose computer program used in dose reconstructions).
- Dr. Daniel McKeel, pathologist at Washington University in St. Louis, stated that he felt two other epidemiological studies related to Mallinckrodt should be included in the site profile. Also, he asked how many workers were found to have complete records at Mallinckrodt (NIOSH staff did not have an answer). His concern is that if only 10% of the workers had complete dosimetry data and 90% had incomplete or no data then there is significant concern about estimating the dose to individual workers.
- Nancy Adams, daughter of Mallinckrodt worker, questioned the inability to find missing medical and exposure records, but noted that it's not uncommon.
- James Matolsky, son of a living Mallinckrodt employee, reiterated the lack of available medical and monitoring records. He discussed his father's work activities, working conditions in the buildings, and the "many incidents" that occurred. He asked how NIOSH can judge work times and activities without records. He questioned how SEC classes can be established, but not include the facility at Weldon Springs.

Dr. Melius, Board member, asked if the NIOSH staff will meet with union representatives and other interested individuals to discuss the Mallinckrodt site profile. Larry responded that NIOSH staff will hold meetings after site profiles are completed, including examples of dose reconstructions, to solicit comments. He also noted that when the site profiles are placed on the NIOSH website that written comments are encouraged. He mentioned that these are "living documents" and may change somewhat over time.

Wednesday presentations/discussions:

- The Board discussed receiving phone and written correspondence from current and potential claimants. The Chair told the members to refer people to DOL or NIOSH and to forward letters, especially if they contain additional information relevant to the case.
- Jim Neton presented an update on site profiles and specifically discussed the Mallinckrodt site profile (handout in packet). He noted that 50 - 60 health physicists are working on the 15 major DOE site profiles, which cover 77% of the claims, and they hope to complete there site profiles by the end of 2003. He noted that NIOSH has scheduled a public meeting on November 11, 2003, in the Savannah River area to discuss the SRS TBD. **We need to have Larry inform us of the schedule for these meeting so that we can have someone attend from the DO or NO (if**

deemed appropriate).

During the discussion of the Mallinckrodt site profile, Jim noted that for the early period (1942 – 45 for external dose and 1942 – 47 for internal dose) that dosimetry records were missing. He further noted that operations were "dirty," but that the processes were known.

Dr. Melius raised a concern, echoed by other Board members, about having interested parties, e.g., union representatives, site experts, involved earlier in the preparation of the site profiles. The Board discussed this at length and finally passed a motion (8 vs. 2 or 3; voice vote) to request that NIOSH consider worker and expert party participation during the preparation of the site profile as well as after "publication." The Chair noted that the Board does not manage the NIOSH process, but provides oversight, and as such this action may or may not be considered by NIOSH.

- Dr. Melius discussed the activities of the working group investigating options for the interview process. He noted that discussions are continuing and a presentation will be made at the next meeting.
- Russ Henshaw, NIOSH, presented information on research issues (handout in packet).

Public Comments:

- Eight individuals, mostly former employees, spoke about work activities and conditions at Mallinckrodt facilities. They spoke of the lack of monitoring, protective clothing, etc., and questioned how the site profiles could capture the actual workplace exposure to radioactive materials. Some asked that the site be considered for inclusion as a member of the SEC.
- Denise Brock questioned the use of "surrogate" workers in the TBD, especially during the early years when "records did not exist."
- Jim Warner (sp?), offered the assistance of the Missouri Office of Public Resources, if they could be of help to the dose reconstruction process.

The next meeting is scheduled for December 9 – 10, 2003, at the new Westin Hotel in Las Vegas. The Board is considering a tour of the Nevada Test Site on the 11th and extended an invitation to NIOSH and DOL staff. Tentative topics for the meeting include: meeting the new contractor (SC&A) to discuss task orders; recommendations from the working group on the interview process; update/presentation on the IMBA computer program; and the need for a subcommittee to oversee contractor work.

The Board also tentatively selected future dates and locations for the two following meetings.

- February 5 - 6, 2004, in Augusta, GA.
- April 20 -22, 2004 in Hanford, WA (2-day meeting during this period).

Jeff

Search 3

From: Lipnic, Victoria
Sent: Friday, February 06, 2004 7:15 PM
To: Iverson, Kristine
Subject: RE: bond bill on EEOICPA

Tracking: **Recipient** **Read**
Iverson, Kristine Read: 02/06/2004 9:41 PM

There is not a fiscal conservative left anywhere.

-----Original Message-----
From: Keelan, Elizabeth
Sent: Friday, February 06, 2004 3:50 PM
To: Iverson, Kristine; Lipnic, Victoria
Subject: bond bill on EEOICPA

FYI -- Sen. Bond introduced a bill this week to expand the Special Exposure Cohort to include 3 Missouri sites - former Mallinkrodt facilities.

S 2047 IS

108th CONGRESS

2d Session

S. 2047

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to include certain former nuclear weapons program workers in the Special Exposure Cohort under the compensation program established by that Act.

IN THE SENATE OF THE UNITED STATES

February 2, 2004

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to include certain former nuclear weapons program workers in the Special Exposure Cohort under the compensation program established by that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

`(C) The employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt
Incorporated or its successors (including the St. Louis downtown or `Destrahan' facility during any of calendar years 1942 through 1958, the Weldon Springs feed materials plant facility
during any of calendar years 1958 through 1966, and the Hematite facility during any of calendar years 1958 through 1969), and during the employment--

`(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee's body to radiation; or

`(II) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

`(ii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of
enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal
radiation exposures, at a facility.'.

END

Search 2

From: Kotsch, Jeffrey - ESA
Sent: Tuesday, February 10, 2004 9:48 AM
To: Turcic, Peter - ESA
Subject: Eight Previous TBD Reviews to end to Larry
Importance: High

Pete, as always, sorry to bother you. I know you're busy and often out of the office. This is a compilation of three previous sets of comments sent to you on January 21, 27, and 30. The message below covers our comments on the following eight TBDs:

- Paducah GDP Environmental Dose TBD, Part 4;
- INEEL External Dose TBD, Part 6

- Paducah GDP External Dose TBD, Part 6;
- LANL External Dose TBD, Part 6

- LANL Internal Dose TBD, Part 5;
- Mound Facilities TBD, Part 2;
- NTS Site Overview, Part 1; and
- Pantex External Dose TBD, Part 6.

The comments below incorporate feedback from SOL. We have our recurring general comments and a number of specific comments. Here is the text of the draft E-mail from you to Larry.

Jeff

++++++++++

Larry, we have reviewed the following eight TBDs:

- Paducah GDP Environmental Dose TBD, Part 4;
- INEEL External Dose TBD, Part 6

- Paducah GDP External Dose TBD, Part 6;
- LANL External Dose TBD, Part 6

- LANL Internal Dose TBD, Part 5;
- Mound Facilities TBD, Part 2;
- NTS Site Overview, Part 1; and
- Pantex External Dose TBD, Part 6.

We appreciate the opportunity to review these documents. Overall, we found these documents to be clear and well reasoned. Our comments, both general and specific, are below.

++++++++++++

General Comments:

DOL suggests that NIOSH develop some standard language, to be inserted in the document for each site, explaining the decisions made by NIOSH concerning what radiation is being measured and generally setting forth its rationale for such decisions. This should also include some explanatory definitions concerning terms like "facilities" (used in a number of places to describe particular buildings or operations at certain sites). This language would help ensure that key terms in the document are interpreted uniformly in the documents prepared for each site and are interpreted in a uniform manner by staff performing or reviewing dose reconstructions and by any outside reviewers or other interested parties.

As noted previously in connection with other TBDs, it would be helpful for NIOSH to define the term, "occupational." It may be unclear what is really meant by the term, i.e., it refers to something not employment-related in any sense or that it means that NIOSH does not include it in estimating dose regardless of whether it might be related to employment in a traditional workers' compensation analysis.

Specific Comments:

Paducah GDP Environmental Dose TBD, Part 4

Page 10-11, Section 4.3.1

This section recommends that external exposure measured by ambient radiation levels include natural background radiation. The TBDs should deal with these types of issues consistently and note the rationale in the text.

INEEL External Dose TBD, Part 8

Page 29, Section 8.6, Table 8.7

As has been recommended in connection with reviews of other TBDs, the categories listed in the table should be revised to "Likely compensable worker" and "Likely compensable supervisor".

Paducah GDP External Dose TBD, Part 6

We note the OCAS reviewer's comment regarding the TBDs for the gaseous diffusion plants, "the guidance in each is not as similar as one would expect from similar operations. Recognizing that each plant operated its dosimetry program slightly differently, there are still commonalities among them and the TBDs provide differing guidance." As we have commented previously in connection with other issues discussed in the TBDs, the TBDs need to be consistent in their treatment of dose reconstruction issues and should note the rationale in the text.

LANL External Dose TBD, Part 6

Page 7, lines 24-39

The TBD discusses nuclear-related non-weapons projects that took place at LANL including designs for the propulsion of nuclear rockets into deep space, raising the inference that the radiation exposures associated with such work will be counted in dose reconstructions. This should be clarified in the TBD, together with the supporting rationale.

In several places in this TBD, there are detailed references, frequently with quotations, to historical reports documenting the inadequacy of DOE dosimetry monitoring techniques. We are concerned that these references are inflammatory and may undermine confidence in the dose reconstruction process. We suggest that consideration be given to removing the references entirely and/or reworking the discussions to include information that is pertinent to the dose reconstructor in a manner that is less provocative. The following are examples:

Page 13, lines 17-19

"A November 1974 sheet of potential values for the Remarks Code used in dosimetry records (in LANL 1974) has a Code 025 that signified "Used as Blank" and an August 1976 revision has a Code 247 that signified 'Control film inadvertently issued to a visitor - D.P. 4/7/76.' "

Page 13, lines 26-28

"An April 29, 2003 memo from Jeffrey Hoffman to Michael McNaughton (in LANL 2003) discusses two environmental dosimeters that had been labeled 'vault dosimeters' in error."

LANL Internal Dose TBD Part 5

Page 22, Section 5.2.4, lines 25-33 and page 23, lines 1-26
Page 24, Section 5.2.5, lines 9-15
Page 25, Section 5.2.6, lines 5-15

In Section 5.2.4, with regard to uranium bioassay results, the TBD sets forth methods for distinguishing exposures due to natural sources of uranium and limiting the bioassay results to occupational exposures. In addition, in Section 5.2.5, with regard to urine bioassays that test for gross fission products, the TBD states that, "background levels, which were variable, provide a complicating factor." Further, in Section 5.2.6, with regard to polonium urine bioassay results, the TBD discusses accounting for background levels of polonium. As we have commented previously in connection with other TBDs, the TBDs need to be consistent in their determinations of whether natural background radiation should be included or excluded in workers' dose reconstructions and should clearly state the supporting rationale.

Page 23, Section 5.2.5, lines 41-43

We are concerned that the following sentence may unnecessarily undermine confidence in the dose reconstruction process and we suggest that it be reworded: "Interpretation of the fission/activation product urinalysis in a way that is meaningful, as representative of all the possible fission products and activation products that a worker might theoretically have been exposed to, is a challenge."

Page 34-38, Section 5.5.4 and Section 5.5.5

The TBD makes frequent reference to particular estimates of radionuclide intakes as "worst case" intakes or "worst case" assumptions. The use of this terminology in the TBD might be confusing since in the dose reconstruction rule, the term, "worst case" is used in the specific context of NIOSH performing limited dose reconstructions for claims for which it is evident that further research and dose reconstruction will not produce a compensable level of radiation dose, because the use of worst case assumptions does not produce a compensable level of radiation dose. Is the TBD using this terminology in the same manner that it is used in the dose reconstruction rule?

Page 7, line 22;
Page 38, lines 6-9;
Page 39, line 1-2

The TBD cites a reference describing monitoring methods at LANL as "unbelievably primitive by today's standards" and working conditions as "deplorable by present-day standards." These references are inflammatory and inappropriate for inclusion in the TBD which should focus simply upon the monitoring results and other available data, providing guidance to the dose reconstructor on the interpretation of such results.

Mound Facilities TBD, Part 2

Page 5, Section 2.0, lines 1-4

For purposes of clarity and accuracy, we recommend that the language in the first sentence, "is responsible for developing the technical capabilities and guidance used to implement" be replaced with "is responsible for conducting the program of dose reconstruction required by". In the second sentence, we recommend "of dose reconstructions" be inserted after "program".

Page 5, Section 2.2, lines 17-22 and 24-26

In lines 17-22, the TBD states that Mound's secondary missions included "the use of radioactive materials for nonweapons purposes" and further indicates that the TBD contains supporting documentation to assist in the evaluation of worker dose from such operations. In addition, at lines 24-26, the TBD states that one of its

objectives is to evaluate the total Mound occupational dose that "can be associated reasonably with worker radiation exposure covered under EEOICPA legislation." The TBDs need to deal with this issue consistently by incorporating standard language indicating whether NIOSH finds the radiation exposures associated with nuclear non-weapons-related projects to be "covered under EEOICPA legislation" and therefore appropriate to include in workers' dose reconstructions, together with the supporting rationale.

Page 5, Section 2.2, lines 32 - 36

We have noted the same issue in connection with similar language in the K-25, Y-12, and Pantex TBDs, Part 1. The IREP code is a tool for calculating probability of causation, not worker doses; it should not be referenced in the TBDs as a tool for "estimating" or even "evaluating" doses. NIOSH may wish to substitute for the language in this TBD the same language recommended by the OCAS reviewer about the K-25 TBD: "This Site Profile can be a tool when performing dose reconstructions for Pantex workers. The Integrated Modules for Bioassay Analysis (IMBA) computer code is a tool useful for internal dose calculations. Information on measurement uncertainties is an integral component of the NIOSH approach. This document describes how to evaluate uncertainty associated with Pantex exposure and dosimetry records."

NTS Site Overview, Part 1

Page 4, Sections 1.0 and 1.1, first three paragraphs, lines 2-17

In the first paragraph: first sentence, replace "officially" with "explicitly" and after "recognized" insert "in the Findings Section of the Act." In the second sentence, delete "selected types of." In the third sentence, replace "Worker" with "Workers.'" In the fourth sentence, replace the portion of the sentence, "individual worker doses," with "the radiation dose estimates that the Department of Labor will use in adjudicating certain cancer claims under the Act."

In the second paragraph, in the first sentence, insert "performance of duty for" before "nuclear." In the second sentence, replace "Methods for implementing provisions of the Act have been promulgated" with "HHS has promulgated methods for estimating radiation doses."

In the third paragraph. In the first sentence, insert "of dose reconstructions" after "program."

Page 4, Section 1.1, lines 31-34

This paragraph reads, "The doses are evaluated using the NIOSH Interactive RadioEpidemiological Program and the Integrated Modules for Bioassay Analysis computer programs. Information on measurement uncertainties is an integral component of the NIOSH approach. In addition, this document describes the uncertainty evaluation for NTS exposure and dose records." We have noted the same issue in connection with similar language in the K-25 and Y-12 TBDs, Part 1. The IREP code is a tool for calculating probability of causation, not worker doses; it should not be referenced in the TBDs as a tool for "estimating" or even "evaluating" doses. NIOSH may wish to substitute for the language in this TBD the same language recommended by the OCAS reviewer about the K-25 TBD: "This Site Profile can be a tool when performing dose reconstructions for NTS workers. The Integrated Modules for Bioassay Analysis (IMBA) computer code is a tool useful for internal dose calculations. Information on measurement uncertainties is an integral component of the NIOSH approach. This document describes how to evaluate uncertainty associated with NTS exposure and dosimetry records."

Page 6, Section 1.2, lines 1-9

The TBD discusses nuclear-related non-weapons projects that took place at the Nevada Test Site, including a program to develop an operational nuclear rocket for space travel and tests to determine if nuclear detonations can be used as a method for excavation. The discussions raise the inference that the radiation exposures associated with these projects will be counted in workers' dose reconstructions. This should be clarified in the TBD, together with the supporting rationale.

Page 6, Section 1.2, lines 25-29

In order to clarify the authority for recognizing diagnostic medical x-rays required for employment to be sources of occupational exposure, we recommend the following changes. Delete the second sentence of this paragraph. In

the third sentence, the language, "In 42 CFR Part 82, one of the implementing regulations for the EEOICPA," should be substituted for "The passage of EEOICPA recognized" and that "are recognized" be inserted after "employment."

Page 7, Section 1.2. lines 10-33

The TBD discusses methods for estimating potential dose from inhalation of resuspended contaminated soils. As we have noted previously in connection with other TBDs that discuss issues of radiological exposure associated with soil resuspension, the TBDs need to deal with these types of issues consistently and should note the rationale in the text.

Pantex External Dose TBD, Part 6

Page 33, lines 11-15, Table 6-22; and
Page 49, Attachment 6F, lines 13-16, Table 6F-7

As has been recommended in connection with reviews of other TBDs, the categories listed in the two tables above should be revised to "Likely Compensable Worker" and "Likely Compensable Supervisor."

Search 3

m:	on behalf of Hallmark, Shelby - ESA
:	Thursday, February 26, 2004 3:17 PM
o:	Turcic, Peter - ESA; Keelan, Elizabeth; Iverson, Kristine; Lipnic, Victoria
Cc:	Nesvet, Jeffrey L - ESA; Turley, Sheldon G - ESA
Subject:	RE: Udall moves to help Rocky Flats victims - Rocky Mtn News 2/26

If Allard/Udall are going to pursue an SEC for Rocky Flats, whether by NIOSH reg or via legislation, we need to be in the room to hear what's being discussed. I agree with Pete; from what I hear Rocky was probably one of, if not THE, dirtiest site. If there's a justification for an SEC anywhere, common sense suggests that it should be at Rocky. What NIOSH's take on that will be I don't know, but would like to hear.

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Thursday, February 26, 2004 3:00 PM
To: Keelan, Elizabeth; Hallmark, Shelby - ESA; Iverson, Kristine; Lipnic, Victoria
Subject: RE: Udall moves to help Rocky Flats victims - Rocky Mtn News 2/26
Importance: High

Last year, I think it was early spring, Senator Allard had a public meeting in Denver about Rocky Flats and EEOICPA. I presented as well as Bev Cook and Jim Neton. The issues were Part D and the need for Rocky Flats to be an SEC. The rationale for SEC was that there was medical evidence from autopsies that people exposed to plutonium fires, which were not at all uncommon, had considerably more plutonium in their lungs than the bio-assays indicated. This may be the rationale used in the proposal -- if so it is probably a better rationale than for other SEC sites to be added.

-----Original Message-----
From: Keelan, Elizabeth
Sent: Thursday, February 26, 2004 2:41 PM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA; Iverson, Kristine; Lipnic, Victoria
Subject: FW: Udall moves to help Rocky Flats victims - Rocky Mtn News 2/26

This came in from our Regional Rep in Denver...apparently Rep. Udall has introduced a bill (HR 3843), along with Rep. Beauprez, and I am guessing, though I can't determine definitely from the article, and the bill language isn't on Thomas yet, that it expands the SEC to cover Rocky Flats. Interestingly, the Senate Armed Service Cmte staff (of Sen. Allard's Subcommittee on Strategic Forces) called earlier this week for a briefing on SECs by NIOSH. NIOSH has asked us to participate in the briefing as well, though I am not sure if it is to participate in the actual briefing, or just to be there if any questions arise. Either way, I think that we should be there to be aware of what is being said. Please advise if you disagree.

Thanks, Elizabeth

<< File: Doc1.doc >>
Denver Rocky Mtn News
February 26, 2004

Udall moves to help Rocky Flats victims

Bill would speed up compensation to workers with cancer

By Ann Imse, Rocky Mountain News

Colorado Rep. Mark Udall introduced a bill Wednesday to speed up a bogged-down federal compensation program for Rocky Flats workers sickened by cancer.

He wants to waive a rule requiring proof that radiation on the job caused their tumors. He said too many exposure records are missing from the nuclear weapons plant 17 miles northwest of downtown Denver.

"Some Rocky Flats workers, despite having worked with tons of plutonium and having known exposures leading to serious health problems, have been denied compensation under the law because of bureaucratic red tape, missing records and inaccurate methods for linking employment and exposure," Udall said.

"We must make good on promises of a fairer deal for these workers who helped America win the Cold War."

Colorado Rep. Bob Beauprez, a Republican, joined Democrat Udall to co-sponsor the bill.

The *Rocky Mountain News* reported on Saturday that the compensation program has paid only 10 percent of the 40,000 bomb-makers who've applied nationwide since it was approved by Congress in 2000. Nearly all the cancer victims must navigate a lengthy and difficult process.

Their contamination records - some of them decades old - must be collected and plugged into a computer model to determine the probability that the illness was caused by radiation exposure.

The 2000 law waived that requirement at several bomb-making sites where the radiation records were too inaccurate or missing altogether. Udall's bill would extend that exception to Rocky Flats cancer victims.

Udall cited numerous problems with the Rocky Flats records, including:

• Many exposures were not recorded at all.

• The plant had no lung-counter to detect plutonium and americium in the lungs from its opening in 1951 to the late 1960s.

• Exposure to neutron radiation was not measured until the late 1950s.

He cited one bomb-maker from the 1950s with radioactive material inside his body whose contamination was just recently discovered.

He also said the government's computer model has errors in it.

Udall said his bill would prevent "a miscarriage of justice," namely, the denial of benefits to a significant number of Rocky Flats workers whose illnesses were caused by radiation on the job.

Udall's bill does not cover Rocky Flats workers with radiation- caused illnesses that are not cancer, such as plutonium fibrosis. He is a co-sponsor of another bill that would ease problems in paying those workers by having the federal government cover workers compensation claims.

So far, compensation has been paid to only 164 of more than 2,100 ill Rocky Flats workers who have applied.

Search 3

From: on behalf of Hallmark, Shelby - ESA
Sent: Friday, February 27, 2004 10:57 AM
To: Keelan, Elizabeth; Lipnic, Victoria; Iverson, Kristine
Cc: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Schumer request

Thanks, Elizabeth. We fully expected that there would be legislation to broaden the covered employment window based on residual contamination as identified by the NIOSH study. It's unfortunate that NIOSH, contrary to our repeated commentary, chose to establish a very low threshold in determining what is "significant contamination", and as a result, these bills will sweep in lots of employees who worked under very low levels of exposure, and who are therefore likely to have little or no chance of meeting the dose reconstruction numbers needed to get benefits. That would build the fires we've already seen growing for designation of Special Exposure Cohorts in places like Bethlehem Steel – see the busloac of protesters from Buffalo with whom Pete had to grapple earlier this week in front of our Cleveland office. As you know, we already have bills designating SECs for Mallinkrodt in St. Louis (Bond), and Rocky Flats in Denver (Udall). I believe Quinn and/or Slaughter suggested earlier that they intend to submit such a proposal for Beth. Steel. Thanks, sh

-----Original Message-----
From: Keelan, Elizabeth
Sent: Friday, February 27, 2004 10:06 AM
To: Hallmark, Shelby - ESA; Lipnic, Victoria; Iverson, Kristine
Cc: Turcic, Peter - ESA
Subject: RE: Schumer request

FYI, looks like yesterday some of the NY delegation dropped bills in both the House and Senate to expand EEOICPA coverage to individuals who were employed during periods of residual contamination. I think this was something that Sen. Clinton brought up in her Jan. letter to us dealing with the EEOICPA report to Congress. The Clinton bill in the Senate currently doesn't have any cosponsors, and the House bill was introduced by Rep. Slaughter, along with Strickland, Whitfield and Quinn.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Thursday, February 26, 2004 9:51 AM
To: Lipnic, Victoria; Iverson, Kristine; Keelan, Elizabeth
Cc: Turcic, Peter - ESA
Subject: RE: Schumer request

Vicki, Kris, et al. -- Pete tells me that we've done our most extensive traveling resource center schedule out there in Western New York, including one just last November. He's compiling the data regarding that history of TRCs, but I'm pretty sure it will show a substantially diminishing return as we've gone back. While we wouldn't rule out going back at some later date, we don't think in the short run a TRC in Buffalo would do any good, and at this point, I doubt that it would assuage Sen. Shumer either. Pete's going to draft a response that lays these points out, and talks about the fact that we think we've touched the vast majority of the people who live close to the Western NY facilities - it's all those who have drifted away, or worked at the many smaller facilities downstate that we haven't reached. We have some ideas about trying alternative outreach methods - possibly hiring local PR firms to get the message out in a tailored way in various areas (including the NYC area). We'll put that in the draft, and even suggest that we'd appreciate the good Senator's suggestions about how to contact people who haven't heard about the program . But placing a permanent office in a particular spot - especially in Buffalo or thereabouts, where we think we've pretty much mined the claims - makes no sense at all.

One of the misconceptions that folks like Schumer and Tauscher have is that somehow the resource centers are needed to help claimants navigate the system AFTER their claims are filed. This is not the case; once the claim goes to us, the resource center is out of the picture. That will also be made clear in our draft letter. Thanks, sh

-----Original Message-----
From: Lipnic, Victoria
Sent: Wednesday, February 25, 2004 2:44 PM
To: Iverson, Kristine; Keelan, Elizabeth; Hallmark, Shelby - ESA

Subject: RE: Schumer request

Shelby -- see below -- I agree with Kris's assessment -- assuming the numbers support it. Please have Pete check on the numbers and will make a judgment based on the facts -- in the meantime, Elizabeth -- work with Schumer's office to set up the meeting with Pete or Shelby. Shelby, your call on attendees.

-----Original Message-----
From: Iverson, Kristine
Sent: Wednesday, February 25, 2004 1:03 PM
To: Keelan, Elizabeth; Lipnic, Victoria
Subject: RE: Schumer request

I recommend that we treat this no differently than Tauscher's request - I assume the numbers support that.

I suggest we offer Schumer a traveling resource center. If he wants a permanent one, he'll have to spend Approps chits to get it.

Vicki - If you are comfortable with that, please communicate the decision to Shelby. If you have another view, let us know.

-----Original Message-----
From: Keelan, Elizabeth
Sent: Wednesday, February 25, 2004 12:27 PM
To: Iverson, Kristine; Lipnic, Victoria
Subject: Schumer request

I got a call today as well from Sen. Schumer's staff requesting a meeting (he specifically asked for Pete) on EEOICPA outreach in the Western NY area -- how would you like me to handle? He would like to meet next week.

Also - FYI, the FECA proposal is over at OMB for clearance.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Tuesday, February 24, 2004 8:18 AM
To: Heimlich, Judith - EXECSEC
Cc: Knouse, Ruth; Iverson, Kristine; Turcic, Peter - ESA; Keelan Elizabeth; lipnic-vicki@dol.gov
Subject: RE: 378889 Schumer/EEOCIPA

Thanks, Judith. I got a fax copy yesterday, and a call from Shumer's staffer suggesting they want to meet on the issue. We will need a political call on how we should respond - this may be the first of several such attempts, now that Tauscher has gotten a center for California. sh

-----Original Message-----
From: Heimlich, Judith - EXECSEC
Sent: Monday, February 23, 2004 7:23 PM
To: Hallmark, Shelby - ESA
Cc: Knouse, Ruth; Iverson, Kristine; Cooper, Horace - ESA; Turcic, Peter - ESA
Subject: 378889 Schumer/EEOCIPA

Shelby -- This request from Senator Schumer, to Secretaries Chao and Abraham, for a permanent EEOICPA resource center to serve Western New York, is being routed to ESA. Although it has been assigned for Appropriate signature (due 3/9), we would like to clear the response through Exec Sec before it is sent, as noted on the blue border. Thanks. Judith

http://sims.dol.gov/sims/Correspondence.asp?ID=378889

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

MAR 10 2004

MEMORANDUM FOR ROBERT A. SHAPIRO
Associate Solicitor for Legislation and
Legal Counsel

FOR.

FROM: VICTORIA A. LIPNIC
Assistant Secretary

SUBJECT: Department of Energy Draft Bill Amending Part D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA)

The Employment Standards Administration (ESA) has reviewed the Department of Energy (DOE) proposed amendment to Part D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) and has the following comments:

ESA has no objection to the substance of the individual provisions of the proposed bill. However, we do not believe it would be wise at this time to propose minor adjustments to a statute that has fundamental problems (which are not addressed by the proposal), and which is the target of numerous and various Congressional bills, none of which the Administration supports. At best, such a proposal would open the Administration to criticism for advancing an inadequate amendment when major problems have been identified in the structure and performance of the Part D program. At worst, the proposal might actually fuel, or be used as a vehicle for, an aggregation of ill-conceived amendments that might otherwise not advance. ESA recognizes the constriction the current physician pay cap places on DOE's ability to reduce its backlog of Part D cases. However, there are several other means through which DOE could fruitfully address its backlog without proposing legislation which might very well have serious unintended consequences. Those unintended consequences include, among others, the transfer of the Part D program to DOL, inappropriate expansion of the Special Exposure Cohorts, and the broad expansion of coverage for "residual contamination". Accordingly, ESA recommends that DOE not pursue this amendment until such time as the Administration can arrive at a comprehensive and concerted legislative strategy regarding EEOICPA.

Search 3

From:	on behalf of Hallmark, Shelby - ESA
Sent:	Wednesday, March 31, 2004 3:51 PM
To:	Keelan, Elizabeth
Cc:	Lipnic, Victoria; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject:	RE: EEOICPA SEC question

Elizabeth -- Absent further Congressional definition in whatever bill that established an additional SEC or SECs, the additional benefits would come from the same EEOIC fund all Part B benefits are paid out of, and yes, they are mandatory dollars, not discretionary. The Treasury is (properly, I believe, for the administration of an entitlement program) obliged to fill up our cup as fast as needed.

If worded like Bond's Mallinkrodt SEC addition, the effect is to take the NIOSH approval rate (currently 28%) and make it something like a 75% approval rate (some cancers are outside the SEC specified list, and as I understand it, those would still go through the dose recon process under Bond's approach). So the costs are going to be at least trebled, probably more, for any such site. Actually, I expect the NIOSH approval rate to drop a good bit, since they've focused a lot of reconstructions on pretty dirty sites so far (or sites where there was little data to go on, which requires use of a "worst case scenario" approach and amounts to the same outcome). So the cost increment will likely be even greater than 3X -- maybe as high as 8X -- and of course lots of cases will be paid that wouldn't even come close to meeting the 50% probability of causation based on dose recon.

And of course any such legislation will only set off an escalating SEC arms race among members jockeying to demonstrate their ability to bring home "special" benefits to their constituents. And of course it would thereby expand the degree of inequity and opacity of the current program, and lay the groundwork for further dissolution of any conceivable logic or rationale for distinctions between SEC and non-SEC sites. Eventually, this way leads pretty inevitably to SECs for all, and 3 to 8X costs for the whole shooting match. As an aside, can we really say that anyone is special if everyone is special??

orial comment free of extra charge. Please share with friends and neighbors....

-----Original Message-----
From: Keelan, Elizabeth
Sent: Wednesday, March 31, 2004 12:07 PM
To: Hallmark, Shelby - ESA
Subject: EEOICPA SEC question

Shelby -

I have a question from the HELP cmte...

If the Senate passes legislation expanding the Special Exposure Cohort group, do you know if that would mean expenditures of mandatory funding? Where do the funds come from to fill the trust fund coffers for the program. Is it mandatory money or discretionary?

Thanks, Elizabeth

Elizabeth Keelan
Office of Congressional and Intergovernmental Affairs
U.S. Department of Labor
(202) 693-4600

DiMuzio, Martha A.

From: DiMuzio, Martha A.
Sent: Wednesday, April 21, 2004 5:15 PM
To: Elliott, Larry J.
Subject: RE: SCnA

Larry

I've asked Dave Stoudt to review the contract and their conflict of interest plan. SC&A did not let him know that Bob was being added to the contract, but unless he is serving as a Key Person, that wouldn't be necessary.

I reviewed some of the language in the SC&A proposal and in it, they agreed that they would work with the Board to develop their COI plan and that it would be submitted to the Board for final approval. To my knowledge, they haven't done this.

Thanks,

Martha

-----Original Message-----
From: Elliott, Larry J.
Sent: Wednesday, April 21, 2004 1:26 PM
To: DiMuzio, Martha A.
Subject: SCnA

Martha:
Please check with PGO on how and why (what rationale was provided) Bob Alvarez was added to the SCnA contract after award of the contract. The issue is that Alvarez was a senior policy official at DOE and even though they have a COI plan isn't he too conflicted to effectively serve.

Will need whatever paper PGO has in this regard for Naimon and Nesvet to use in determining what should happen next. Thanks, Lje.

Sent from my BlackBerry Wireless Handheld

Elliott, Larry J.

From: Townsend, Ronald [ron.townsend@orau.org]
Sent: Friday, May 07, 2004 11:47 AM
To: Elliott, Larry J.
Subject: Couple of Things

Larry--

I hope you are feeling much better. Sorry to hear that a bug hit you. I did not have anything urgent today, but I did want to share a couple of things with you. We can talk about these sometime at your convenience as they are just a heads up that some issues may surface. I would like to get out ahead of these if we can.

1) I understand that the independent oversight contractor will be starting very soon to look at what we have done in the dose reconstruction arena. It seems that some your staff and mine are a little edgy about this. The issue seems to come back to what you and I, all of us in fact, have struggled with from the very start. That issue is the balance of scientific accuracy and completeness versus production rate. From my perspective we are at a good balance that is defensible. But it may best be defensible in context of what our charge is. And that is to do dose reconstruction from a compensability perspective as opposed to a research perspective. I sense that there is some nervousness about how the oversight contractor is going to approach this. If the oversight contractor comes at this from what I call a research perspective, they will find that is not what we have been doing. So I think anything that can be done upfront to manage expectations would benefit all of us. Just my thoughts there.

2) Related to the pressure of an independent oversight contractor as well as public pressures, I am getting from our staff a sense that there may be some rethinking within the OCAS staff of our current approach. The issue seems to focus on using professional judgment to do dose reconstruction for workers that have no individual monitoring data. In the short term, this is not a big deal. But the decision on how to handle these cases has significant longer term implications. This issue has come to the forefront this week in meetings between your staff and ours. No decisions were made. However, the feedback I got is that your staff may be rethinking some aspects of the approach that has allowed us to accelerate and sustain production while on the way to 200 per week. The redflag that was raised to me is that there are some pending OCAS decisions that have substantial implications. So this is a heads up that I am tracking this and is something I was going to mention this morning in our discussion.

We are hoping that we can stay the course with the approach that we have implemented following the training of our four dose reconstructors. While there is some risk in using professional judgment, I believe it is minimal. And I believe that as the project matures with more cases having been done, we will validate the professional judgment rationale.

Bottomline is that I wanted you to know the two primary things on my mind as we prepare to meet with you week after next. How these two issues unfold will determine in large part where production goes.

Thanks for allowing me to share some thoughts by e-mail. Always enjoy and benefit from talking with you. Again, nothing immediately urgent, but a couple of things that have major

long term implications.

Best regards,
Ron

(3)
Second set

ORAU
OAK RIDGE ASSOCIATED UNIVERSITIES

May 28, 2004

Centers for Disease Control and Prevention
Contracts Management Branch – Pittsburgh
P. O. Box 18070, 626 Cochrans Mill Road, Building 140
Pittsburgh, PA 15236-0070
Attn: Ms. Florence Black

SUBJECT: REQUEST FOR MODIFICATION TO CONTRACT 200-2002-00593, RADIATION DOSE ESTIMATION, DOSE RECONSTRUCTION AND EVALUATION OF SEC PETITIONS UNDER EEOICPA

Dear Ms. Black:

Total expenditures through May 21, 2004, for CDC Contract 200-2002-00593, "Radiation Dose Estimation, Dose Reconstruction and Evaluation of SEC Petitions under EEOICPA", amount to $47,058,867. To date, the CDC has released $69,000,000 in funding to Oak Ridge Associated Universities (ORAU). Given total expenditures through May 21, 2004 and recent monthly expenditure levels, ORAU is approaching the threshold of seventy-five percent ($51,750,000) of the $69,000,000 in current funding. We anticipate that current funding will support the project through October 2004.

Enclosed are ORAU's technical plan and cost estimate for an additional $131,519,706 to cover the remaining period of the contract, November 1, 2004 through September 30, 2007. At this time, we estimate the total cost of the five year contract to be $200,519,706.

The technical plan incorporates critical assumptions and staffing trends for the remaining period of the contract. We derived the cost estimate by evaluating cost to date, and trending future costs in accordance with the technical plan. For project associates and subcontractors that had over $500,000 in costs to date, we have prepared detailed cost estimates. These subcontractors reviewed and concurred with the cost estimates, which were then incorporated into the attached estimate.

ORAU is pleased to support the dose reconstruction project for the National Institute of Occupational Safety and Health, Office of Compensation Analysis and Support. If you desire additional information or detail, please contact John Crockett at (865) 576-3253 or email crocketj@orau.gov.

Sincerely,

Ronald D. Townsend
President and CEO, ORAU

RDT:JTC:cr

P.O. Box 117 • Oak Ridge, Tennessee 37831-0117

Search 4

	on behalf of Hallmark, Shelby - ESA
	Friday, June 18, 2004 10:50 AM
	Wolpers, Stephanie - OCIA; Keelan, Elizabeth; Iverson, Kristine; Lipnic, Victoria; Krishnamoorti, Mala; Sullivan, Adam
Cc:	Wilson, Mark; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject:	RE: Bond/Harkin amdt on EEOICPA SECs

Just in case there was any question, it's my strong belief that we should do everything possible to oppose these SEC amendments. It's quite possible that NIOSH may accept petitions creating SEC status for some time periods at both the Iowa plant and Mallinkrodt, but that process should be allowed to proceed as outlined in the HHS regulations, not be short-circuited (and extensively broadened) by ill-considered legislation which will only inflame other Congressional delegations to join that parade. Although it's complicated, we also think the $61 million being discussed as the 10 year cost of the amendments is far too low. But the real issue is, this would be a terrible precedent. Thanks, sh

-----Original Message-----
From: Wolpers, Stephanie - OCIA
Sent: Friday, June 18, 2004 9:45 AM
To: Keelan, Elizabeth; Iverson, Kristine; Lipnic, Victoria; Krishnamoorti, Mala; Sullivan, Adam; Hallmark, Shelby - ESA
Subject: RE: Bond/Harkin amdt on EEOICPA SECs

No further action was taken on the amendment yesterday. It is still pending.

-----Original Message-----
From: Keelan, Elizabeth
Sent: Thursday, June 17, 2004 11:36 AM
To: Iverson, Kristine; Lipnic, Victoria; Krishnamoorti, Mala; Sullivan, Adam; Hallmark, Shelby - ESA
Cc: Wolpers, Stephanie - OCIA
Subject: Bond/Harkin amdt on EEOICPA SECs

FYI, earlier this AM, Harkin, Bond and Talent were discussing their amdt to expand the list of facilities designated as Special Exposure Cohorts (SECs) to include Mallinkrodt in MO and the IAP facility in Iowa. Initially we did not know if they would be able to work something out with Warner to be allowed to offer the amdt, have talked to HELP cmte, and believe that Bond negotiated this with Warner. They pulled the amdt earlier this AM though because they are fighting over the offset -- approx. $61M, Bond had come up with something that Warner and budget cmte folks were ok with, and then Harkin said that he wanted it to come from the customs user fees. Several Republicans have raised objections - citing that this is too often used as an offset. So, hold up is currently over the offset. If they work this out, likely the amdt will be agreed to by voice vote like yesterday.

We will be meeting with House folks on the Bunning amdt and will raise this as well this afternoon, so I have asked Stephanie to keep an eye on the floor should this come up again.

Thanks, EK

Neton, Jim

From: Neton, Jim
Sent: Tuesday, July 27, 2004 10:28 AM
To: Hinnefeld, Stuart L
Cc: Elliott, Larry J.
Subject: FW: Contract No.: 200-2004-03805 - Task Order 1: Site Profile Review - Access to NIOSH Recovered Document Data Files

Stu,

Please make sure that ORAU is aware that SC&A is turning on the heat to obtain documents for their site profile review effort. Last week I asked Judson to provide electronic copies of the Bethlehem Steel and Hanford documents ASAP to SC&A. This should have been done by now. To my surprise, ORAU does not seem to have all documents that are cited in the TBDs.

We also need to inquire of the status of making the entire document database available to SC&A via VPN. I had Dick check into this and ORAU had no fundamental objections to doing so. We can't afford to go into the next Board meeting being accused of obstructionist behavior.

Thanks,

Jim

-----Original Message-----
From: Judy Eley [mailto:jeley@scainc.com]
Sent: Monday, July 26, 2004 1:47 PM
To: Guess, Larry E.
Cc: John J. Mauro; jfitzgerald@upmc-biosecurity.org; ziemer@purdue.edu; Elliott, Larry J.; Neton, Jim; arjun@jeer.org; Hans Behling; Kathy Behling; spectrumtech@att.net; tbell@belsarassociates.com; kitbob@erols.com; kitbob@starpower.net; scohen@scainc.com
Subject: Contract No.: 200-2004-03805 - Task Order 1: Site Profile Review - Access to NIOSH Recovered Document Data Files

adBoard725.doc
(48 KB)

DOL COMMENTS ON THE SC&A AUDIT OF THE BETHLEHEM STEEL SITE PROFILE

The following are comments by the Department of Labor (DOL), Division of Energy Employees Occupational Illness Compensational Illness Compensation (DEEOIC) on the SC&A draft report Review of NIOSH Site Profile for Bethlehem Steel Plant. Lackawana, NY, September 2004. The NIOSH Technical Basis Document (TBD) for Bethlehem Steel is Basis for Development of an Exposure Matrix for Bethlehem Steel Corporation, Lackawanna, New York; Period of Operation: 1949-1952, June 29, 2004.

1. CLAIMANT-FAVORABILITY

SC&A Comment:
The SC&A report concludes that in several areas the NIOSH Bethlehem Steel Technical Basis Document (TBD) fails to be claimant favorable. Specific citations include a statement in the Conclusions section; Findings 1, 3, 5, and 7; and Procedural Conformance Issue 4.

DOL Comment:
In making worst-case assumptions, NIOSH must strike a balance between its policy of being claimant-favorable and its equally important policy of making determinations on a solid technical and scientific basis. Application of the "worst-case conceivable" is not the intent of the EEOICPA statute or NIOSH's regulations governing the dose reconstruction process.

EEOICPA requires the dose reconstruction program to arrive at "reasonable estimates" of these doses (42 U.S.C. 7384n(d)). Per HHS regulations at 42 C.F.R. § 82.10(k)(2), "Dose is determined using worst-case assumptions related to radiation exposure and intake..." Further, in § 82.4 (r), "Worst-case assumption is a term used to describe a type of assumption used in certain instances for certain dose reconstructions conducted under this rule. It assigns the highest reasonably possible value, based on reliable science, documented experience, and relevant data, to a radiation dose of a covered employee."

The basis of site profiles and TBDs is to document the radiological environment at a site applicable to the majority of employees under routine working conditions and during documented radiological occurrences or incidents, as applicable. In cases where no such data exist, either for a site or for a subset of employees, NIOSH uses maximizing assumptions in assigning doses that likely overestimate the dose actually received. The frame work of TBDs is not intended to capture undocumented, or unusual potential radiation exposures to any one employee, or to generically provide for worst-case situations imaginable which do not affect a majority of workers at a site, or a subset at a facility within.

2. SUFFICIENCY ON BOTH SIDES OF 50% THRESHOLD

SC&A Comment:
The SC&A report notes in Objective 5, Regulatory Compliance (page 14, second paragraph), that the "dose must be a technically defensible maximum, since this estimate is used mainly to deny compensation, in the expectation that the result for probability of causation will be less than 50%. Since some values for the PC are in the 40% to 49% range, it is essential that the maximum dose estimate be both technically defensible in regard to completeness and adequacy of method and demonstrably claimant-favorable."

DOL Comment:
The audit should equally evaluate and comment on NIOSH's assumptions that result in overcompensations, i.e., to what degree is NIOSH potentially too generous? The audit should not focus solely on what is most claimant-favorable, but what is sufficiently accurate on both sides of compensation equation.

DOL disagrees that "...this [dose] estimate is used mainly to deny compensation." For some employees at some sites other than at Bethlehem Steel, NIOSH's dose reconstruction process includes an iterative approach to determine the most accurate (reasonably maximized) dose estimate, as required by EEOICPA. Since all Bethlehem Steel employees, regardless of their duties or work locations are assumed to have been exposed to the same radiation exposure environment, dose maximizing assumptions have been built into the Bethlehem Steel site profile and applied to all employees. Although each Bethlehem Steel employee is assumed to be exposed to the same radiation environment, the dose calculated to any individual will depend on the cancer site and other employee specific information.

3. DISTRIBUTION OF RESPONSIBILITIES BETWEEN DOL AND NIOSH

SC&A Comment:
The SC&A report concludes that considering the absence of records and other documentation it is particularly critical to interview former workers whose first-hand experience and association with Bethlehem Steel enable them to provide original perspectives and information concerning site practices and exposure history. Specific citations include Observations 3, 4, and 5.

DOL Comment:
The SC&A draft audit report on the Bethlehem Steel TBD does not accurately reflect the distinct responsibilities of NIOSH and DOL. NIOSH performs dose reconstructions and DOL verifies EEOICPA eligibility and adjudicates claims. Claimant-specific concerns outside the scope of the TBD and NIOSH's claimant interview are adjudicated by DOL on a case-by-case basis. The audit should be focused on the methodology of how NIOSH obtains information from the sites, not purely employee-specific events. Employee-specific incidences are evaluated and incorporated, as applicable, during the NIOSH interviewing process or during DOL adjudication of the claim.

Many of these employee-specific concerns are not relevant for Bethlehem Steel because the TBD assumes that each worker was exposed to the level of the most reasonably likely

exposed employees. For example, if a Bethlehem Steel employee can provide evidence that the number of hours they worked exceeded those assumed in the TBD, which was raised in Observation 3, NIOSH would factor this in the dose reconstruction or DOL could consider this issue during the adjudication process.

As part of its authority in administering the EEOICPA, DOL is responsible for adjudicating claims (20 C. F. R. 30, Subpart D). DOL requires that claim decisions undergo several levels of review. After a claims examiner develops a recommended decision, a senior claims examiner reviews that recommended decision, and a claims manager, who reviews a sample of such decisions, might review it as well. DOL's Final Adjudication Branch (FAB) then reviews the recommended decision before making a final decision and awarding compensation, if appropriate. If during any of these reviews the reviewer determines that there was not enough information to make a decision, the case is sent back to the claims examiner for further development. As an example, if the review indicates that covered employment was not complete, or if employee-specific issues discussed in the CATI interview were not discussed in the dose reconstruction, DOL has returned cases to NIOSH when the weight of the indicates that additional information needs to be considered further in the dose reconstruction.

Upon receiving a recommended decision for the denial of compensation, the claimant may provide DOL with additional written and oral testimony regarding their claim, including evidence or compelling arguments in support of their individual circumstances that NIOSH did not include, or could not substantiate for inclusion, in the dose reconstruction. DOL adjudicates a claim based on factual information and weighing of the evidence.

SC&A Comment:
The fifth item in the Overview of Opportunities for Improvement section, on page 8, states that NIOSH should "Perform further document retrieval efforts to locate pertinent documents in relation to rollings during 1949 and 1950, and potential rollings post-1952."

DOL Comment:
DOL is responsible for administering the EEOICPA, which includes establishing the time period for which a "covered facility" is deemed to be "covered." DOL deems the time frame used in the TBD to be applicable for Bethlehem Steel.

Neton, Jim

From: Neton, Jim
Sent: Wednesday, September 01, 2004 4:09 PM
To: 'Judson L. Kenoyer'
Subject: RE: NIOSH Doc. Req. — I got it

OK, thanks.

-----Original Message-----
From: Judson L. Kenoyer [mailto:jkenoyer@oraucoc.org]
Sent: Wednesday, September 01, 2004 3:40 PM
To: Neton, Jim
Cc: Edward D. Scalsky
Subject: RE: NIOSH Doc. Req. --- I got it

Jim –

I was able to get the document translated into WORD.

Because Ed Scalsky was the Team Leader for SRS and that is where most if not all of the references came from, I handed the list over to him. He is first checking to make sure that the documents listed are references in the SRS site profile. If they are, we will indeed track them down. Ed and our Records group have been working with the SRS authors to gather all that are still needed.

Thanks.

Please respond using my jkenoyer@oraucoc.org email address. Thanks.

Judson Kenoyer, **CHP, CIH**
ORAU Dose Reconstruction Team
Dade Moeller & Associates, Inc.
2100 Sherman Ave. Suite 250
Cincinnati, OH, 45212

(513) 458-8905
Cell: (509) 430-7206
FAX: (513) 631-3696

-----Original Message-----
From: Neton, Jim [mailto:JFN2@CDC.GOV]
Sent: Wednesday, September 01, 2004 1:32 PM
To: Judson L. Kenoyer
Cc: Toohey, Richard; Elliott, Larry J.; Paul Ziemer (External Audit)
Subject: FW: NIOSH Doc. Req.

Judson,

Could you please forward the requested documents (either electronically or hard copy, whichever is quicker) to John Mauro ASAP? We want to make absolutely certain that we do not delay SC&A's progress in their review of site profiles. Please let me know when the files are sent.

Thanks,

SC&A S. COHEN & ASSOCIATES
AN EMPLOYEE-OWNED COMPANY

September 22, 2004

James Neton, PhD CHP
NIOSH/OCAS
4676 Columbia Parkway
Mail Stop C-45
Cincinnati, OH 45226

Re: Contract 200-2004-03805, Task 1, Document No. SCA-TR-TASK1-0001 — Review of NIOSH Site Profile for Bethlehem Steel Plant, Lackawanna, NY

Dear Dr. Neton:

Enclosed is a copy for NIOSH technical accuracy review of the S. Cohen and Associates (SC&A) draft report *Review of NIOSH Site Profile for Bethlehem Steel Plant, Lackawanna, NY*. For the sake of assuring the timeliness of this review, we request that any technical accuracy issues be brought to our attention by October 4, 2004, so that the draft final report can be submitted to the Advisory Board on Radiation and Worker Health (Advisory Board) at least one week prior to the next Board meeting, which is scheduled for the week of October 18, 2004. Please provide any comments or mark-up directly to me via e-mail or fax with specific reference to corrections needed. We can also discuss any issues you may have by conference call.

The purpose of this initial review is to assure that the SC&A review team has represented its facts in an accurate manner and that NIOSH has the opportunity to review the document before it is publicly submitted to the Advisory Board for its action. The Advisory Board will have ultimate province to accept the report, question its contents and bases, and disposition its issues regarding the Bethlehem Steel site profile with NIOSH.

Technical accuracy in the context of our review of NIOSH site profiles is the accuracy of facts, calculations, references, terminology, and technical representations included in this review. This would not include differences over interpretations of technical data, operational history, and dosimetry; technical reasoning or judgments; or conclusions regarding the application and interpretation of data within the site profile. This distinction is important; the latter would represent issues for which the Advisory Board will look to NIOSH and its contractors for response.

We are also aware of the need to qualify any input received from workers that has not been fully corroborated for the sake of assuring consistency with past adjudications made by the Department of Labor on worker claims. However, it should be recognized that SC&A's role is to highlight questions or issues for which NIOSH further review and confirmation may be requested by the Advisory Board. Therefore, in this context, we intend to raise exposure or operational issues that former workers have surfaced, even if not fully corroborated, as long as they do not compromise a past DOL claim adjudication.

6858 OLD DOMINION DRIVE • SUITE 301 • MCLEAN, VIRGINIA • 22101 • 703.893.6600 • FAX 703.821.8236

To facilitate your initial review, we can be available the week of September 27, 2004 for a conference call regarding any issues.

Sincerely,

John Mauro
Project Manager

cc. K. Behling
J. Fitzgerald
A. Makhijani
T. Bell
R. Alvarez
K. Robertson-DeMers
H. Behling
J. Lipsztein
Project File (ANIOS/001)

-----Original Message-----
From: Nesvet, Jeffrey L - ESA
Sent: Friday, October 01, 2004 12:53 PM
To: Turcic, Peter - ESA; Hallmark, Shelby - ESA
Subject: RE: Advisory Committee

I agree that we all need to be there. This will be the first SEC petition evaluation plan to be discussed at a meeting and the first meeting after we get Part D and quite possibly residual expansion or at least a new NIOSH residual study. If they use our language on what the study should look like we need to start working NIOSH and the committee in the right direction on that issue.

JEFFREY L. NESVET
Associate Solicitor for Federal Employees'
and Energy Workers' Compensation
Office of the Solicitor
United States Department of Labor
200 Constitution Avenue, N.W., Room S-4325
Washington, D.C. 20210
(202) 693-5320 693-5360 (fax)

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Friday, October 01, 2004 12:39 PM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Advisory Committee
Importance: High

I do think it would be a big help.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Friday, October 01, 2004 12:38 PM
To: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Advisory Committee

I think I need to be there, don't you? Re Jeff, it's his call.

Please note new email address:
hallmark.shelby@dol.gov

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Friday, October 01, 2004 12:33 PM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA

Subject: RE: Advisory Committee
Importance: High

Yes, it is the subcommittee that oversees the audit contract. We can sit in the meeting -- even closed meetings. Do you want me to get you and Jeff a room -- going through NIOSH we can get government rates?

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Friday, October 01, 2004 12:02 PM
To: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA
Subject: RE: Advisory Committee

What is the "subcommittee" that meets on Oct. 19 in the AM? Is this the group that oversees the audit contract? Are we allowed to sit in on that meeting, or not? If so, I'd want to be out there the night before. Since DOL is being pushed as an intermediary on that contract, we need to be up to speed -- and possibly there to make the counterargument in person and in detail....

Please note new email address:
hallmark.shelby@dol.gov

-----Original Message-----
From: Nesvet, Jeffrey L - ESA
Sent: Friday, October 01, 2004 11:41 AM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA; Mosier, Roberta - ESA
Cc: Culp, James E - ESA; Turley, Sheldon G - ESA
Subject: Advisory Committee

From the Federal Register:

[Federal Register: October 1, 2004 (Volume 69, Number 190)]
[Notices]
[Page 58915]
From the Federal Register Online via GPO Access
[wais.access.gpo.gov]
[DOCID:fr01oc04-63]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

DiMuzio, Martha A.

From: Elliott, Larry J.
Sent: Tuesday, October 19, 2004 10:45 AM
To: Homoki-Titus, Zeda (Liz) E.
Cc: Sundin, David S.; Neton, Jim; DiMuzio, Martha A.; Homer, Corrine
Subject: RE: Final Report: Review of Bethlehem Steel Site Profile

There will be no word on new appointments until after the first week in November. We do need to develop an appointment package for the next four members (Gibson, Griffon, Melius, and Munn) whose appointments expire in August 2005. However, I would really like to see how the first appointment package is treated before we submit the next - so we wait and see. Meanwhile if anyone has suggestions for primary and alternate recommendations for the next four appointees, please submit them to me and Cori. Otherwise, I anticipate making a call for such in December, we will need to submit the package before winter is over.
Lje.

-----Original Message-----
From: Homoki-Titus, Zeda (Liz) E.
Sent: Tuesday, October 19, 2004 9:23 AM
To: Elliott, Larry J.
Cc: Sundin, David S.; Neton, Jim; DiMuzio, Martha A.; Homer, Corrine
Subject: RE: Final Report: Review of Bethlehem Steel Site Profile

Larry - I spoke with our FACA expert and she said there was no way to stop a Board member from participating in the process, our only recourse would be to get the person removed from the Board (through the White House) or bring a personnel action against them just as the Dept. would do if a regular employee made such a violation. She also recommended that we check with CMO to determine if they had some internal policy regarding bad actions by a Board member, and so Cori would need to speak to someone in her chain to find out if there is another policy in place, then we would need to discuss proof, enforcement and how such enforcement would be viewed considering who is likely to release.

I agree that the statement (or similar) should definitely go on every page and I recommend that it be a stand alone pop-up page at the beginning of a CD or as the 1st page of the document if it is a PDF file not on a CD (similar to what we do with PA statements on DR reports that go to the Board).

Any word on any new appointments by any chance?

Thanks - Liz

Zeda E. (Liz) Homoki-Titus
Acting Team Leader
Radiation Compensation Legal Team
HHS Office of the General Counsel
Public Health Division
CDC/ATSDR Branch
5600 Fishers Lane, Suite 4A-53
Rockville, Maryland 20857
301-443-0115 - PHN
202-315-6336 - Cell
301-594-0041 - FAX
zhomoki@cdc.gov

-----Original Message-----
From: Elliott, Larry J.
Sent: Tuesday, October 19, 2004 9:11 AM
To: Homoki-Titus, Zeda (Liz) E.; Homer, Corrine
Cc: DiMuzio, Martha A.; Neton, Jim; Sundin, David S.
Subject: RE: Final Report: Review of Bethlehem Steel Site Profile

The part about limiting, or eliminating, participation of a member came from me. But I meant it as a policy concept not something to be couched in a "warning statement" on a document. Cori has a great idea and I like Liz' language below as a requirement for all the Board's work documents an pre-decisional products. Let's see what the FACA expert and CMO says. I would like to have resolution of this by the time we talk with Ziemer and before the next SC&A product arrives. Thanks,
Lje.

-----Original Message-----
From: Homoki-Titus, Zeda (Liz) E.
Sent: Monday, October 18, 2004 11:29 AM
To: Homer, Corrine; Elliott, Larry J.
Subject: RE: Final Report: Review of Bethlehem Steel Site Profile

As much as I like this idea, I am not sure what authority we would have to keep someone from participating and voting, even if we could somehow prove they actually released a pre-decisional document. I agree that each page should be marked, "Pre-decisional Document. Not to be released (whole or in part) to any group, organization or person outside the Board." I have a call into our FACA expert to ask her about any other such issues and how they may have been handled in the past. Thanks - Liz

Zeda E. (Liz) Homoki-Titus
Acting Team Leader
Radiation Compensation Legal Team
HHS Office of the General Counsel
Public Health Division
CDC/ATSDR Branch
5600 Fishers Lane, Suite 4A-53
Rockville, Maryland 20857
301-443-0115 - PHN
202-315-6336 - Cell
301-594-0041 - FAX
zhomoki@cdc.gov

-----Original Message-----
From: Homer, Corrine
Sent: Friday, October 15, 2004 1:21 PM
To: Elliott, Larry J.; Homoki-Titus, Zeda (Liz) E.
Subject: RE: Final Report: Review of Bethlehem Steel Site Profile

Larry/Liz - just a suggestion...for documents that are pre-decisional, we could put a statement on the document

DiMuzio, Martha A.

From: Elliott, Larry J.
Sent: Wednesday, October 20, 2004 11:23 AM
To: Howard, John; Homoki-Titus, Zeda (Liz) E.; Brand, Anstice M.
Cc: Sundin, David S.; Neton, Jim; DiMuzio, Martha A.; Staudt, David J.
Subject: FW: October 19, 2004 - Contract No.: 200-2004-03805

Importance: High

LOF_letter_.doc
(61 KB)

FYI, see attached. The Board's contractor is totally out of control. We have spoken with David Staudt the Contract Officer this morning and will have a conference call with Dr. Ziemer, Liz, the contract officer, and OCAS staff at 12:30 this afternoon. We will then schedule a conference call with the SC&A manager (John Maura), and the owner (Sanford Cohen), Dr. Ziemer, the contract officer and OCAS staff in order to have the contract officer and Ziemer give marching orders to SC&A. Lje.

-----Original Message-----
From: Judy Eley [mailto:jeley@scainc.com]
Sent: Tuesday, October 19, 2004 5:23 PM
To: Guess, Larry E.
Cc: ziemer@purdue.edu; Neton, Jim; Elliott, Larry J.; jfitzgerald@upmc-biosecurity.org; John J. Mauro; arjun@ieer.org; Hans Behling
Subject: October 19, 2004 - Contract No.: 200-2004-03805

DiMuzio, Martha A.

From: Elliott, Larry J.
Sent: Monday, November 01, 2004 4:28 PM
To: DiMuzio, Martha A.; Neton, Jim
Cc: Sundin, David S.; Hinnefeld, Stuart L
Subject: FW: Revised SC&A Letter

Importance: High

I have reviewed and provided comments and edits in the attached. I want this to be carefully crafted, it should not give any basis for presuming that OCAS is forcing this, and it should be very clear and comprehensive on all points (which I do not think the attached is) where ScnA are deficient under the contract and task awards.
Lje.

-----Original Message-----
From: Neton, Jim
Sent: Monday, November 01, 2004 3:44 PM
To: DiMuzio, Martha A.
Cc: Elliott, Larry J.; Hinnefeld, Stuart L
Subject: Revised SC&A Letter

Martha,

I have taken Dave Staudt's original letter to SC&A and revised it to include our additional concerns. Please review and let me know what you think. Feel free to add anything else that you think is relevant. I'd like to get this out the door tomorrow – the clock is ticking on our side.

SC&A
er-JWN.doc (70 Ki

Jim

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention
Azzolation and Assistance Field Branch
P.O. Box 18070, 626 Cochrane Mill Road
Pittsburgh, PA 15236-0070

10/29/2004

Sanford Cohen
President
SC&A Inc.
6858 Old Dominion Drive
Suite 301
McLean, VA 22101

Subject: Contract 200-2004-03805
Task Orders 1 - 4

Dear Dr. Cohen:

The National Institute for Occupational Safety and Health's Office of Compensation Analysis and Support (OCAS) has very serious concerns after reviewing Dr. Mauro's Limitation of Funds letter dated October 19, 2004. OCAS, the Advisory Board on Radiation and Worker Health (ABRWH), and the Procurements and Grants Office (PGO), have a number of technical performance and cost concerns covering the spectrum of the work performed and proposed. The Government acknowledges that SC&A in its performance has encountered some obstacles and considers this in its performance evaluation. Of critical importance is SC&A's understanding that no additional funds are available to carry out the overall audit processes. During performance it appears that SC&A does not understand that any change in scope, time, and budget has to be authorized by the ABRWH as well as obtaining the usual procurement approval.

In light of this, the Government sees no way that the Savannah River, Malinckrodt, and Hanford site profiles can be delivered in time for the December Board meeting. The Board will need to review the Bethlehem Steel report and then make a determination of the extent and depth of the audit process that will be needed on future site profile reviews. Likewise, concerning the dose reconstruction reviews conducted under task 4, the Government and the ABRWH will need to review the deliverable provided and determine next steps. Cost performance indicators signal a disturbing possibility that the audit of a dose reconstruction will cost substantially more than the dose reconstruction itself. OCAS is equally concerned about the amount of technical support requested by SC&A in the area of internal dosimetry for those performing Task 4, resulting in considerable government involvement and cost overruns.

So that we may evaluate more fully the cost overruns associated with site profile reviews, we request that SC&A provide a breakdown of the funds expended for each site profile currently under review. We would also like for SC&A to provide a list of the procedures reviewed under task 3, since in your letter it states that SC&A's part of the cost overrun is attributable to the fact that: "the task order requires the review of many more procedures than originally anticipated."

Comment: Why can't this be dealt with: The Government has chosen Office, and the National Institute for Occupational Safety and Health (NIOSH). (?) We (OCAS) do not want to be characterized as leading this change.

Comment: Why not add the award incentive requirement that the (SC&A) must notify PGO when 75% of funds per task award are expended? SC&A needs to be told to use the line on this or we will face the same situation in the future.

Deleted: to

Comment: Should put the Board first in this before the government.

Deleted: ants

Deleted: ing

Comment: Should read NIOSH and PGO are concerned. Need to take OCAS out of the picture.

Deleted: capability

Deleted: of

Comment: This reads as though these are revenue on time while I think you mean "...and excessive budget on NIOSH staff and resources." If you think the cost overruns are SC&A's, then the sentence rationalizes it faulty.

Comment: This should read: "So that PGO can..." Again, do not imply by "We" that OCAS is directing this review.

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NIOSH is unaware of any approval granted to SC&A to extend their review beyond those procedures listed in the original task order. In addition, it has been brought to our attention that SC&A representatives have been requesting documents directly from the Savannah River Site without coordinating these requests with NIOSH, OCAS staff as required in the task order contract. We ask that SC&A abide by the provision of the task order contract and coordinate any interaction with DOE ~~with~~ through the NIOSH, OCAS project officer for this contract.

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The Government is requesting a teleconference to discuss these and other issues as related to the subject contract. David Staudt, contract specialist, will contact you regarding scheduling. If you have any additional questions or concerns, please contact Mr. David Staudt at (412) 386-6459.

Sincerely,

Larry E. Guess
Contracting Officer
Acquisition and Assistance Field Branch

Cc: John Mauro, SC&A
Laurie Loomis, SC&A
Martha DiMuzio, OCAS
Larry Elliott, OCAS
Jim Neton, OCAS
David Staudt - PGO
Paul Ziemer, ABRWH
Letter File
200-2004-03805

PRIVACY ACT INFO

From: Elliott, Larry J.
Sent: Friday, November 05, 2004 3:42 PM
To: Elliott, Larry J.

-----Original Message-----
From: Hallmark, Shelby - ESA [mailto:Hallmark.Shelby@dol.gov]
Sent: Saturday, October 09, 2004 1:31 PM
To: Howard, John
Cc: Elliott, Larry J.; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA; Katz, Ted
Subject: Our new tasks....
Importance: High

John, I confess I'm not entirely clear on all the soon-to-be enacted language on EEOICPA as it applies to NIOSH, but one issue emerges as a giant question mark/problem: the "radiation dose" definition that we tried to get the conferees to add in to avoid dose recon mayhem in the AWE sites, is in the bill (pp. 31-84 and 31-85). Unfortunately, it's application is LIMITED, AS WE READ IT, TO THOSE WORKERS WHO ONLY WORKED DURING RESIDUAL CONTAMINATION PERIODS. (Just in case you don't have the bill language yet, I'm attaching the conference report pdf file. It's pages 934-973 of that file.)

Had the definition applied to ALL AWE employees (and assuming it actually does what it purports to do - limit the dose NIOSH has to estimate to DOE generated radiation), then the policy issue we have both been struggling with would have essentially been resolved in a sensible way. But with the above limitation, NIOSH has a clean way of dealing with the newly added residual rad. workers, but NO HELP AT ALL with regard to those who were already eligible for Part B due to work during the DOE contract periods. That means, unless you guys can find a way to legally support a policy that has the same effect as this newly legislated definition - something that hasn't been forecoming to date -- you are stuck with having to measure/estimate ALL radiation from all sources at the AWE facilities, for any worker who started work during the DOE contract period. That in turn would mean SECs would be declared in those AWE sites where information is inadequate or nonexistent regarding commercial or other non-DOE radioactive material. The residual rad only workers might not be eligible for SEC status, but all the others would be.

As you know, we've been in a state of anxiety about this issue for over a year, and there is no question that the Board will have read the new statute carefully on this point and be ready for bear on this issue whenever the SF meeting is rescheduled. You can rest assured that Richard Miller has figured all of this out - he probably authored the language in the new bill, and he's quite clear on the implications of the issue. With Schumer and the rest of the NY delegation up in arms about moving ahead on AWE dose recons, this issue is ready to blow up.

Despite the fact that both our organizations have a ton of work to do to gear up to react to the new legislation, I think we need to get on the same page on this particular issue in the biggest of hurries. I'll ask Pete to get in touch with Larry on this to set something up. Thanks, sh

DiMuzio, Martha A.

From: Elliott, Larry J.
Sent: Wednesday, November 10, 2004 7:50 AM
To: Sundin, David S.; Neton, Jim; Ellison, Chris (NIOSH); DiMuzio, Martha A.; Hinnefeld, Stuart L.; Calhoun, Grady; McCarthy, Richard
Subject: FW: SCA Contract

FYI, see string below.
Lje.

-----Original Message-----
From: Elliott, Larry J.
Sent: Tuesday, November 09, 2004 7:08 PM
To: 'pl.ziemer@insightbb.com'
Cc: Howard, John; Homoki-Titus, Zeda (Liz) E.
Subject: Re: SCA Contract

Dr. Ziemer, thank you very much for responding. I dislike the spector of impropriety being raised around this issue. I believe you know how hard we have, and are, trying to avoid even the perception that we have influenced or controlled the Board's review.

Have a safe drive tomorrow, looking forward to our meeting. Lje.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Paul Ziemer <pl.ziemer@insightbb.com>
To: 'James Melius' <Melius@nysliuna.org>
CC: mackat116@msn.com <mackat116@msn.com>; ANDERHA@DHFS.STATE.WI.US <ANDERHA@DHFS.STATE.WI.US>; andrade@lanl.gov <andrade@lanl.gov>; c_owens01@comcast.net <c_owens01@comcast.net>; Elliott, Larry J. <LJE1@CDC.GOV>; wimunn@aol.com <wimunn@aol.com>; Melius@NYSLIUNA.org <Melius@NYSLIUNA.org>; roy.dehart@vanderbilt.edu <roy.dehart@vanderbilt.edu>; espoladd@aol.com <espoladd@aol.com>; Mikehgibson@cinci.rr.com <Mikehgibson@cinci.rr.com>; gnrsslr@frontiernet.net <gnrsslr@frontiernet.net>; 'Mark Griffon' <griffonm@attbi.com>
Sent: Tue Nov 09 17:51:54 2004
Subject: RE: SCA Contract

Jim:

John Mauro contacted the CDC Contracting Officer on October 19 indicating that funds for Task Order 1 (Site Profile Reviews) were 90% expended (as of September 30) and were projected to go about $110,000 over budget just to complete the Savannah River, Malinckrodt, and Hanford Reviews.

Also he indicated that funds for Task Order 3, Procedures Review, were 98 % expended (as of September 30) and were projected to go about $23,000 over budget to complete the task.

Since the contractor cannot legally exceed the budget, and since changes can only be made by the Board (and not by NIOSH), John Mauro, has put work on both tasks on hold. When the Contracting Officer made me aware of this situation, I informed John Mauro that any changes in scope, time, or budget have to be authorized by the ADRWH and then go through the procurement approval process. NIOSH can not (and will not) modify the task orders. The

CDC Contracting Officer will also require that any changes be preceded by a formal submission to the Board by the contractor.

It should also be noted that SC&A projected expenditures through November 30 for Task Order 3 will be at about 61% of budget for review of only 20 dose reconstructions. This works out to be over $14,000 per review.

The real dilemma for us is that any additional funds that the Board may authorize for completing the present tasks will eat into the funds available for the rest of the work.

I have been on travel for the past 15 days, and John Mauro and I have had difficulty in linking up to discuss this dilemma further. In any event, the full Board will need to deal with it at the upcoming meeting.

Paul

-----Original Message-----
From: James Melius [mailto:Melius@nysliuna.org]
Sent: Tuesday, November 09, 2004 3:30 PM
To: pl.ziemer@insightbb.com; lje1@cdc.gov
Subject: SCA Contract

In trying to find out the status of the site profile reviews in order to get ready for our work group call regarding the SEC reviews, I discovered that there appears to be major issues regarding the SCA contract. Work on parts of the contract has been stopped, and the task order is being modified (?).

Regardless of the merits of the contract issues, I find it very disturbing that the Advisory Board has not been notified and that significant modifications to the task order or contract are being considered or negotiated without the involvement of the full Board.

The dangers to NIOSH of appearing to be interfering in the Board's review of the does reconstruction process are obvious. No matter how well intentioned and appropriate the NIOSH actions have been, the lack of transparency of these actions can only heighten suspicions about NIOSH's motives and lessen the credibility of the Board's oversight.

If significant changes are being considered, this needs to be an open process.

Jim

Elliott, Larry J.

From: Homoki-Titus, Zeda (Liz) E.
Sent: Friday, November 12, 2004 12:33 PM
To: 'lloomis@scainc.com'
Cc: Elliott, Larry J.; 'Paul Ziemer Ph. D. (ziemer@purdue.edu)'
Subject: watermark or header regarding the Privacy Act and Pre-decisional documents

Ms. Loomis - Thank you so much for following up with me so promptly yesterday. I am sorry that I was out of the office, it was a federal holiday. Per my message to you earlier I have attached below the Privacy Act statement that should be at the beginning of all documents that SC&A provides the Advisory Board on Radiation and Worker Health that contain Privacy Act information, such as the reviews of individual dose reconstructions. Following that is the statement regarding pre-decisional documents that should not be shared outside of the Board and HHS (and of course SC&A since you all prepared them). The pre-decisional statement should be on every document that SC&A prepares for the Board that the Board has not reviewed, commented on, voted on and finalized through a consensus vote. The pre-decisional language should be on every page (I made it as short as possible to save room and either a header or watermark is fine, which ever you prefer) and the Privacy Act notice should be the first page of a document that contains privacy act information, such as the dose reconstruction reviews. Thank you so much for your assistance on this very important matter. Please contact me, Larry Elliott or Dr. Ziemer with any questions.

NOTICE: This information is protected by Privacy Act 5 USC §552a; disclosure to any third party without the written consent of the individual to whom the information pertains is strictly prohibited.

This is a Pre-Decisional Document. It is not to be released (in whole or in part) to any group, organization or person.

Zeda E. (Liz) Homoki-Titus
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Elliott, Larry J.

From: Staudt, David J.
Sent: Monday, November 15, 2004 1:04 PM
To: 'Sandy Cohen'; 'jmauro@scainc.com'; 'Laurie Loomis'
Cc: DiMuzio, Martha A.; Elliott, Larry J.; Neton, Jim
Subject: Request for detailed cost proposals 200-2004-03805

Dear Dr's Cohen and Mauro,

I'll send a formal request letter some time tomorrow... The Advisory Board requires detailed cost-to-complete proposals so that it may consider additional funding in the next week or so. Last week we discussed ball park numbers, please submit detailed cost-to-complete proposals for the following:

Task 1 - Need two proposals. First is to complete the first 4 sites. The second would not only include completing the first 4 but to complete all the sites as detailed in the SOW.

Tasks 3 and 4 - detailed proposals to complete the tasks in accordance with the SOW.

The proposals need to be received this Thursday so that they can be distributed Friday and reviewed for a meeting next week.

*****Please submit electronically in Word and Excel format to myself, Dr. Ziemer, Larry Elliot, Jim Newton, and Martha DiMuzio**. I will likely be out Thursday and Friday and will not have e-mail access.

Please give me a call if you have any questions.

Regards,

David Staudt

David Staudt
Contracting Officer
CDC - Procurement and Grants Office
Acquisition and Assistance Field Branch
M/S P05
P.O. Box 18070, 626 Cochrans Mill Road
Pittsburgh, PA 15236-0070
(412) 386-6459 fax 6429
dstaudt@cdc.gov

David Staudt
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Elliott, Larry J.

From: Hallmark, Shelby - ESA [Hallmark.Shelby@dol.gov]
Sent: Monday, November 15, 2004 1:06 PM
To: Howard, John
Cc: Elliott, Larry J.; Nesvet, Jeffrey L - ESA
Subject: RE: Advisory Board on Radiation and Worker Health Audit Contractor and Perceived or Real Conflicts of Interest With OCAS
Importance: High

John, after our call this morning and on further reflection, I would argue that "conflict of interest" is the wrong rubric under which to discuss the Board's concerns. Certainly no one could argue that OCAS or Larry have an "interest" in curtailing or channeling the Board or its contractor's activities in the sense of a financial interest. There appear to be tensions between what the Board or its contractor want to do and what NIOSH/OCAS as the administrative support entity can support or agree to, but those are inherent in ANY FACA committee situation where the committee has a responsibility to review and potentially criticize the work of the support agency. Policy tensions aren't conflicts of interests, they're just conflicts.

That kind of tension is to be expected, I would argue, not to be "overcome" by bringing in a third party to intermediate between the committee and the agency it is providing public commentary on.

As the DSO or Exec Secretary, Larry has a defined role to play - which may include advising the Board that its budget is limited, or that the rules governing its activities don't allow it to do something it would like to do. That's a role that has to be played with regard to any FACA committee; presumably those rules and relationships were laid out in the FACA precisely to ensure that such bodies don't go off the deep end.

The apparent suggestion going around that the Board's contractor should have an essentially unlimited resources hints at an excursion toward the deep water. But having to tell the Board that the money for their contractor (to whom they appear to have delegated their own fundamental responsibility) is limited is only an enlargement of routine disputes that FACA committees might have about the number of times they should meet and in which locations. The supporting agency has the duty to send those messages.

Rather than agreeing to the conflict of interest premise or giving it currency by substituting someone else in NIOSH/HHS as the DSO/ES, I am inclined to think you may be better off to simply reject this pressure. I don't know the particulars of what the Board - or Richard Miller or other parties - might be asserting regarding Larry's "conflict", but I don't recall Larry railroading the Board or coercing it to accept his judgments about the matters it has a mandate to address. Pulling Larry off to satisfy this conflict claim may be a slippery slope - whoever takes those roles will be a representative of HHS, or heaven forfend, some other Federal agency, and will arguably be susceptible to similar claims of non-objectivity.

I haven't discussed this with Larry, but I suspect he would be thrilled not to have to MC the Board meetings or tussle with it over this audit contract. But even if you want to consider shifting those jobs to someone else, it may be wise to do so later, and with a clearly different rationale. Otherwise the Board/advocates may be encouraged to broaden their demands.

Glad to discuss this further next week, but I wanted you to know my thoughts on this now, in the hope of influencing any decision to announce a change for the December meeting. Thanks, sh

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Sunday, November 14, 2004 2:24 PM
To: Homer, Corrine
Cc: Homoki-Titus, Zeda (Liz) E.; Porter, Diane; Elliott, Larry J.; Katz, Ted; Dacey, Edward W.; Brand,

Anstice M.
Subject: Advisory Board on Radiation and Worker Health Audit Contractor and Perceived or Real Conflicts of Interest With OCAS

Corrie:

As you know, Larry Elliott serves as the **Designated Federal Official** (DFO) and the **Executive Secretary** (ES) of the Presidential Advisory Board on Radiation and Worker Health (ABRWH). As you further know, Larry is also the Director of the Office of Compensation Analysis and Support (OCAS).

Recently, it has come to my attention that there is at least a *perceived* conflict of interest in carrying out the responsibilities of these three roles, chiefly a *perceived* conflict between the two roles which require direct management interactions with the ABRWH (i.e., DFO and ES) and the role of administrator of the dose reconstruction program (OCAS Director).

Specifically, the ABRWH has engaged the services of a contractor (Sanford Cohen & Associates, or SC&A) for the purpose of auditing the performance of the dose reconstruction program administered by OCAS directly and through a contractor (ORAU). Interaction with the ABRWH concerning issues relating to their audit contractor may create perceived or real conflicts of interest. The SC&A auditor contractor may have to be told unpleasant things and, on occasion, contracts may even have to be terminated, for instance.

Clearly, such actions—even though remote—perceived to be taken by, or perceived to be advised by, the audited entity (OCAS) is inappropriate as such actions may be perceived as retaliatory for a negative audit findings. Other, less drastic examples of daily frictions between the audited entity (OCAS and ORAU) by the auditor (ABRWH and SC&A) can lead to real or perceived conflicts of interest by the immediately affected parties, and by others with interests in the Energy Employees Occupational Illness Compensation Act.

I am interested in temporarily (and perhaps permanently at some time hence) removing the OCAS Director from the roles of Designated Federal Official and ABRWH Executive Secretary, and certainly by the time of the next ABRWH Meeting on 13-15 December 2004 in Livermore, California.

I would appreciate your advice on this course of action and what issues need to be discussed to effectuate a temporary replacement of DFO and ES for the ABRWH.

Thank You.

JH

Elliott, Larry J.

From: Howard, John
Sent: Tuesday, November 16, 2004 9:07 AM
To: 'hallmark.shelby@dol.gov'
Subject: Re: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call

Thank you for any guidance you or Vicky can offer. We will send you our response to Cindy.

John Howard
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Hallmark, Shelby - ESA <Hallmark.Shelby@dol.gov>
To: Howard, John <ZKZ1@CDC.GOV>
Sent: Tue Nov 16 09:01:24 2004
Subject: RE: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call

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It's very odd to me that Cindi is hell-bent to see Richard Miller's strategy play out here. My boss is a former Hill person who may have some ideas about how to deal with the irate Ms. Blackston. Will let you know if I learn anything helpful. Thanks for sharing.
sh

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Sent: Tuesday, November 16, 2004 7:58 AM
To: hallmark.shelby@dol.gov
Subject: FW: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call
Importance: High

Shelby: Thanks for your thoughts of yesterday. As you can see, life is becoming quite interesting relative to the management of the Board's contract. Have a good day.

John Howard
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Blackston, Cindy <Cindy.Blackston@mail.house.gov>

To: Howard, John <ZKZ1@CDC.GOV>; 'diane' <porter@cdc.hhs.gov1>; Elliott, Larry J. <LJE1 @CDC.GOV>
CC: Kiko, Phil <Philip.Kiko@mail.house.gov>; Gibson, Joseph <Joseph.Gibson@mail.house.gov>; 'Andrew Sherrill' <SherrillA@gao.gov>; 'nugentm@gao.gov' <nugentm@gao.gov>; 'CrawfordBA@gao.gov' <CrawfordBA@gao.gov>
Sent: Tue Nov 16 02:04:18 2004
Subject: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call

It has come to my attention this evening that the Chairman of the Advisory Board is contacting all board members as well as Mr. Elliott suggesting that the Board convene a CLOSED session to review the scope of the auditor contract. During our conference call I was assured that nothing would happen with regard to the auditors work other than getting them the funds they need to finish the tasks they have currently suspended per the requirements of their contract. At no time did you indicate that there was plan to reduce the breadth and depth of their work - just as egregious an action (for purpose of the appearance of a conflict of interest) as terminating the contract.

The scope of this auditors work was extensively reviewed and comprehensive and detailed audit procedures were approved by the Board and each task carefully spelled out and approved by the Board. Dr. Zeimer has been the only Board member privy to some of the questionable private discussions between the auditor and NIOSH that were brought to the attention of the Committee. That the Chairman of the Board should pick this moment to be concerned about the scope of the audit and be willing to schedule an immediate CLOSED meeting is suspect and without question inappropriate considering the substance of our conference call. It might, in fact, be in violation of the Government in the Sunshine Act.

No meeting should be held without congressional and public scrutiny where reduction or alteration of the scope of the auditor's work is discussed and a representative of NIOSH is present and potentially influencing the discussion. This is especially true while GAO is reviewing the (apparently increasing) conflict of interest issues we discussed. I would assume and expect that Mr. Elliott has expressed that to his friend Dr. Zeimer as well as the rest of the Board since it is my understanding he was one of the individuals who received this communication.
The issue that needs to be taken up immediately, and should have been taken care of 3 months ago when it first came up informally in discussion with Mr. Elliott and Dr. Zeimer, is how much will it take to complete tasks the auditors is currently working on per their contract and getting those funds to them immediately for the tasks as approved (not modified) by the Board. I don't see Dr. Zeimer rushing to take care of that matter. As a matter of fact, he stated in an 11/15 news article that no matters (like publicly releasing the Bethlehem Steel audit) would be taken up prior to the scheduled Dec. 13 meeting. Why is this scope issue worthy of an emergency meeting of the Board?
The contract with the auditor states that the amount needed to complete is "estimated" at $3 million. There is no cap on amounts that NIOSH can spend on administrative costs, the contract with ORAU or the work of the auditor. As we discussed before, this is a direct spending program. The NIOSH contractor doing the site profiles and dose reconstructions can roll right through the $74 million allotted well before the end of their job and have no problem getting millions more. Yet, right after our conference call where this was discussed, the contractor hired to perform the auditing function for the Board of that contractor for an estimated $3 million is subjected to intense scrutiny in their spending. Where is the scrutiny and deep concern on the excessive spending of the $74+ contractor? As far as I can tell there hasn't been any and now one of the most important functions assigned to the Board is being tainted by overzealous policing of the auditors spending when in a direct spending system additional funds provided affect no other functions of the Board or NIOSH.
Perhaps if NIOSH is worried about saving money, the Board should hold more telephone conference meetings to save costs and apply the surplus funds to the auditing function. I have looked at the Board charter, the contract with the auditor and, of course, the law and cannot find any language providing the Board with budget authority. What is going on with this system? Who is really making the decisions about what is important and what costs are too much? If going well over $74 million to create the basis for claims approval is O.K., why is increased spending on a estimated $3 million audit to assure the credibility of the basis for claims a huge problem that must be addressed by revisiting the scope of the auditors work in secrecy? I would appreciate answers to these questions and concerns immediately. Thank you.

Elliott, Larry J.

From: Homer, Corrine
Sent: Tuesday, November 16, 2004 10:33 AM
To: Howard, John
Cc: Homoki-Titus, Zeda (Liz) E.; Porter, Diane; Elliott, Larry J.; Katz, Ted; Dacey, Edward W.; Brand, Anstice M.
Subject: RE: Advisory Board on Radiation and Worker Health Audit Contractor and Perceived or Real Conflicts of Interest With OCAS

Good morning John,

Sorry I could not respond any sooner... the short answer to your question: all you need is an e-mail or memo to Committee Management appointing a new DFO/Executive Secretary. Committee Management considers this a program decision and only wants a record of the change. I would suggest a memo stating that we will be replacing Larry with the (name of his replacement), as of a specific date. There should be a strong administrative record of the action for public record.

Past the administrative specifics of how to do this, I wonder if we could possibly find a different solution. The question of the perceived conflict of the same program managing both the federal advisory committee and the contract and funds has been an issue as long as I have worked in committee management, and probably quite some time before that. To date, a solution has yet to be found that works to the satisfaction of all involved. Even with someone taking Larry's place as Executive Secretary, the new Exec Sec will face the same uproar in one way or another when a funding or contract problem comes up, because the Board cannot control funding. From what I have seen and heard with regard to the contractors, this seems to be more of a contractor problem than a conflict of issue problem.

Would it be possible to have PGO act as this task order contract's Project Officer, with an OCAS person as the Technical Monitor? That might sufficiently remove Larry from the management/oversight of the contract to allow the folks to be more comfortable with conflict of interest perceptions while having appropriate contract management maintained. PGO would have no personal interaction with the contractor outside the management of the contract, so contract management integrity should be clear. One other solution is to move the entire committee to the Department of Labor for their management and oversight, but I'm not sure what the statute has to say regarding that solution.

There will never be an easy time to make changes to the leadership of the ABRWH because of the difficult nature of the Board but there is a lot going on currently, as you know; it might be best to wait on this action until the audit, contractor issues, and SEC finalization are complete and the Board has fully transitioned into the claims review process. This would also give you time to ease another person into the job. Something to else consider is if the Exec Sec is replaced at this time, regardless of how well his replacement performs and no matter the reasons why Larry is replaced, it can appear as though contractors will not be held accountable and that outside influences forced the change allowing the perception that the Board or outside influences manage us, rather than NIOSH managing the Board.

If you feel that replacing Larry is best, so as to remove any perceived conflict of interest is necessary, the qualifications of Larry's replacement are very important. I'm sure I'm singing to the choir, but his replacement would need to be able to stand the political and Board pressure and not capitulate to the outside interests that wish to control the outcome of the Board's and NIOSH's activities. In this position, the Exec Sec can never make all parties happy as strong conflict is part of day-to-day operations with this Board, and there will never be a time that strong conflict does not exist on a wide variety of issues.

Thank you,

Cori

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From: Howard, John
Sent: Sunday, November 14, 2004 2:24 PM
To: Homer, Corrine
Cc: Homoki-Titus, Zeda (Liz) E.; Porter, Diane; Elliott, Larry J.; Katz, Ted; Dacey, Edward W.; Brand, Anstice M.
Subject: Advisory Board on Radiation and Worker Health Audit Contractor and Perceived or Real Conflicts of Interest With OCAS

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I am interested in temporarily (and perhaps permanently at some time hence) removing the OCAS Director from the roles of Designated Federal Official and ABRWH Executive Secretary, and certainly by the time of the next ABRWH Meeting on 13-15 December 2004 in Livermore, California.

I would appreciate your advice on this course of action and what issues need to be discussed to effectuate a temporary replacement of DFO and ES for the ABRWH.

Thank You.

JH

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Tuesday, November 16, 2004 8:23 PM
To: Lipnic, Victoria
Subject: NIOSH pickle

Vicki – I discussed the Advisory Board issue further with Jeff N. and Pete this PM, following up on your question as to whether the audit report on Bethlehem Steel has any validity.

They report that they've reviewed the Board's audit contractor's (SCA) report on the Bethlehem Steel site profile. This is the report that went on for 85 pages about a 14 page site profile, and apparently resulted in the contractor spending all (or more than all) of its allocated funds for site profile reviews on its first one. Jeff and Pete were unanimous in stating that the report was blatantly unbalanced. It ignores NIOSH's methodology that strongly leaned in the claimants' favor, and nitpicked every situation where, despite taking an overall exceedingly claimant friendly posture, NIOSH "failed" to choose the most claimant friendly posture conceivable (as opposed to a "plausible option"). Pete noted that the report accepted at face value certain plant employee statements that had been considered in the course of OWCP case adjudication and found not to be credible. Had DOL found those statements credible, we would have returned the dose reconstructions to NIOSH to reevaluate the additional exposure being alleged. We did not, and it's our position that the Board's contractor has no business, in the course of an audit of the scientific sufficiency of the NIOSH process, trying to "readjudicate" evidentiary matters that are DOL's purview.

Jeff indicated that he asked an audit contractor employee why the report frequently criticized NIOSH for not taking the absolutely most claimant friendly assumption, but never once questioned whether a NIOSH assumption or approach was likely to be overly claimant friendly or result in approvals that would be inappropriate. The SCA employee apparently admitted that they would never make such a comment, and considered it outside of their mandate.

This was pretty clearly a biased report, which set out to undermine a Beth Steel site profile that resulted in a far higher acceptance rate (over 40%) than anyone imagined, or that was likely appropriate in terms of the actual exposures. Just to cite one example, NIOSH assumed that there were 48 uranium rolling events during the four years that Beth did AEC work (one per month), even though there was evidence for only 13 such events.

Apparently NIOSH has developed a set of comments/replies to the SCA report, but to our knowledge, hasn't shared those with the Board yet for reasons we don't know. In addition to the noise about "conflict of interest", there have also been allegations that NIOSH is trying to "hush up" the report and won't let it be published because it reveals the errors in their site profile process (and by extension, in the entire dose reconstruction process). We will try to convince NIOSH to move ahead with a direct response to the SCA report, and let the Board hear everyone's position.

Meanwhile, if you have any brainstorms about Cindy, let me or John Howard know – I'm sure he could use some creative suggestions about now. Thanks, sh

Elliott, Larry J.

From: Howard, John
Sent: Tuesday, November 16, 2004 11:47 PM
To: 'hallmark.shelby@dol.gov'
Subject: Re: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call

Thank you, Shellby, for your counsel. And please thank Vicki for hers too.

I agree that changing DFO for the Board to the Pope probably would not satisfy Cindy or Richard and am putting further thinking on that off until we have had a chance to meet on 23 November. I remain troubled though by the fact that the Project Officer for the audit contract that CDC has entered into with SC and Associates (on the Board's behalf) is a representative of the audited entity--OCAS. I am troubled because the requisite detached neutrality needed in dealing with issues that have arisen already and others that will arise in the future is not present with such an arrangement.

Thus I am zeroing in on the Project Officer position that I think needs to be filled differently than it is currently. I have asked my Senior Science Adviser, Dr. Lew Wade, and my Deputy Director, Ms. Diane Porter, acting in concert as Project Officers, to confer with the CDC PGO Contract Officier, tomorrow morning first thing to evaulate the audit contractor's request for funding to complete their first two task orders and to recommend approval or disapproval of the request in light of the total contract figure of 3 million dollars and to make a recommendation for approval or disapproval. If approval is recommended, then they will notify Dr. Zeimer of the decision which would obviate the need for a bureaucratically protracted meeting of a quorum of the Board.

However, the Board will have to face the issue, together with a new NIOSH Project Officer, and the Contract Officer, of discussing implementation of appropriate procedures for managing audit contract affairs.

I will then send an email to Ms. Blackston on Wednesday in response to the issues raised in her midnight missive of Tuesday.

Finally, I plan (just to put your assertion to a proof test) to petition the Papal Nuncio in Washington for permission to ask the Pope if he would consider the DFO position.

Thank you again for your counsel. It is much appreciated.

Jh

John Howard
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Hallmark, Shelby - ESA <Hallmark.Shelby@dol.gov>
To: Howard, John <ZKZ1@CDC.GOV>
Sent: Tue Nov 16 19:51:39 2004
Subject: RE: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call

I did talk to Vicki, John. She was going to check in with some others on whether we can offer any suggestions on how to rein Cindy in on this a bit - I take it she's had lots of previous experience with Ms. Blackston. But we agreed that trying to placate her with swapping out the NIOSH person who serves as the interface with the Board probably won't help. Her posture seems to be set on the notion of the auditor being given carte blanche, and NIOSH is just going to have to say no to that - changing the person isn't going to make that more palatable. At this point, the interface person could be the Pope and she'd be no less outraged if the auditor isn't funded to the hilt.

We certainly sympathize with you -- this is messy and very tricky territory. If Vicki

comes up with any advice on the Hill side, I'll let you know. But somehow NIOSH has to get back in control of the audit contractor, and by extension, the Board. Let me know if I can help in that regard. sh

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Tuesday, November 16, 2004 9:07 AM
To: hallmark.shelby@dol.gov
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Importance: High

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John Howard
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Blackston, Cindy <Cindy.Blackston@mail.house.gov>
To: Howard, John <ZKZ1@CDC.GOV>; 'diane' <porter@cdc.hhs.gov1>; Elliott, Larry J. <LJE1@CDC.GOV>
CC: Kiko, Phil <Philip.Kiko@mail.house.gov>; Gibson, Joseph <Joseph.Gibson@mail.house.gov>; 'Andrew Sherrill' <SherrillA@gao.gov>; 'nugentm@gao.gov' <nugentm@gao.gov>; 'CrawfordBA@gao.gov' <CrawfordBA@gao.gov>
Sent: Tue Nov 16 02:04:18 2004
Subject: Actions Taken With Regard to Auditor NIOSH work Following Friday Conference Call

It has come to my attention this evening that the Chairman of the Advisory Board is contacting all board members as well as Mr. Elliott suggesting that the Board convene a CLOSED session to review the scope of the auditor contract. During our conference call I was assured that nothing would happen with regard to the auditors work other than getting them the funds they need to finish the tasks they have currently suspended per the requirements of their contract. At no time did you indicate that there was plan to reduce the breadth and depth of their work - just as egregious an action (for purpose of the appearance of a conflict of interest) as terminating the contract.

The scope of this auditors work was extensively reviewed and comprehensive and detailed audit procedures were approved by the Board and each task carefully spelled out and approved by the Board. Dr. Zeimer has been the only Board member privy to some of the questionable private discussions between the auditor and NIOSH that were brought to the attention of the Committee. That the Chairman of the Board should pick this moment to be concerned about the scope of the audit and be willing to schedule an immediate CLOSED meeting is suspect and without question inappropriate considering the substance of our conference call. It might, in fact, be in violation of the Government in the Sunshine Act.

No meeting should be held without congressional and public scrutiny where reduction or alteration of the scope of the auditor's work is discussed and a representative of NIOSH is present and potentially influencing the discussion. This is especially true while GAO is reviewing the (apparently increasing) conflict of interest issues we discussed. I would assume and expect that Mr. Elliott has expressed that to his friend Dr. Zeimer as well as the rest of the Board since it is my understanding he was one of the individuals who received this communication.
The issue that needs to be taken up immediately, and should have been taken care of 3 months ago when it first came up informally in discussion with Mr. Elliott and Dr. Zeimer, is how much will it take to complete tasks the auditors is currently working on per their contract and getting those funds to them immediately for the tasks as approved (not modified) by the Board. I don't see Dr. Zeimer rushing to take care of that matter. As a matter of fact, he stated in an 11/15 news article that no matters (like publicly releasing the Bethlehem Steel audit) would be taken up prior to the scheduled Dec. 13 meeting. Why is this scope issue worthy of an emergency meeting of the Board?
The contract with the auditor states that the amount needed to complete is "estimated" at $3 million. There is no cap on amounts that NIOSH can spend on administrative costs, the contract with ORAU or the work of the auditor. As we discussed before, this is a direct spending program. The NIOSH contractor doing the site profiles and dose reconstructions can roll right through the $74 million allotted well before the end of their job and have no problem getting millions more. Yet, right after our conference call where this was discussed, the contractor hired to perform the auditing function for the Board of that contractor for an estimated $3 million is subjected to intense scrutiny in their spending. Where is the scrutiny and deep concern on the excessive spending of the $74+ contractor? As far as I can tell there hasn't been any and now one of the most important functions assigned to the Board is being tainted by overzealous policing of the auditors spending when in a direct spending system additional funds provided affect no other functions of the Board or NIOSH.
Perhaps if NIOSH is worried about saving money, the Board should hold more telephone conference meetings to save costs and apply the surplus funds to the auditing function. I have looked at the Board charter, the contract with the auditor and, of course, the law and cannot find any language providing the Board with budget authority. What is going on

Neton, Jim

From: Laurie Loomis [lloomis@scainc.com]
Sent: Thursday, November 18, 2004 1:57 PM
To: Staudt, David J.; Sandy Cohen; jmauro@scainc.com
Cc: DiMuzio, Martha A.; Elliott, Larry J.; Neton, Jim; Joef@Saliantsolutions. Com
Subject: RE: Request for detailed cost proposals 200-2004-03805

All:

The attached files contain our proposal in response to David Staudt's e-mail, in Word, Excel, and PDF formats. The Excel spreadsheet will ask you if you wish to update automatic links to another file when you open it. Please say "no." I tried to eliminate all links, but obviously was not successful. I didn't want to delay our response over this, so I am sending it out as is.

Regards,
Laurie Loomis
Contracts Manager, VP
SC&A, Inc.
703-893-6600 x213

-----Original Message-----
From: Staudt, David J. [mailto:AKU1@CDC.GOV]
Sent: Monday, November 15, 2004 1:04 PM
To: Sandy Cohen; jmauro@scainc.com; Laurie Loomis
Cc: DiMuzio, Martha A.; Elliott, Larry J.; Neton, Jim
Subject: Request for detailed cost proposals 200-2004-03805

Dear Dr's Cohen and Mauro,

I'll send a formal request letter some time tomorrow... The Advisory Board requires detailed cost-to-complete proposals so that it may consider additional funding in the next week or so. Last week we discussed ball park numbers, please submit detailed cost-to-complete proposals for the following:

Task 1 - Need two proposals. First is to complete the first 4 sites. The second would not only include completing the first 4 but to complete all the sites as detailed in the SOW.

Tasks 3 and 4 - detailed proposals to complete the tasks in accordance with the SOW.

The proposals need to be received this Thursday so that they can be distributed Friday and reviewed for a meeting next week.

*****Please submit electronically in Word and Excel format to myself, Dr. Ziemer, Larry Elliot, Jim Newton, and Martha DiMuzio.** I will likely be out Thursday and Friday and will not have e-mail access.

Please give me a call if you have any questions.

Regards,

David Staudt

David Staudt

Contracting Officer
CDC - Procurement and Grants Office
Acquisition and Assistance Field Branch
M/S P05
P.O. Box 18070, 626 Cochrans Mill Road
Pittsburgh, PA 15236-0070
(412) 386-6459 fax 6429
dstaudt@cdc.gov

David Staudt
Contracting Officer
CDC - Procurement and Grants Office
Acquisition and Assistance Field Branch
M/S P05
P.O. Box 18070, 626 Cochrans Mill Road
Pittsburgh, PA 15236-0070
(412) 386-6459 fax 6429
dstaudt@cdc.gov

SC&A S. COHEN & ASSOCIATES
AN EMPLOYEE-OWNED COMPANY

November 18, 2004

Centers for Disease Control and Prevention
Acquisition and Assistance Field Branch
Post Office Box 18070
626 Cochrans Mill Road – B-140
Pittsburgh, PA 15236-0295
Attention: David Staudt, Contracting Officer

Re: Contract No.: 200-2004-03805

Dear Mr. Staudt:

In accordance with the Advisory Board's request, as provided in your e-mail dated November 15, 2004, SC&A is pleased to enclose the following:

1. A cost proposal to complete the first 4 site profile reviews in accordance with the SOW for Task Order 1
2. A cost proposal to complete the site profile reviews for the first 4 sites and perform the 8-12 site profile reviews, including a summary aggregate report, in accordance with the SOW for Task Order 1
3. A cost proposal to complete Task Order 3 in accordance with the SOW
4. A cost proposal to complete Task Order 4 in accordance with the SOW

With respect to Task Order 1, we will also require an extension to the period of performance from February 2, 2005 to October 2, 2005. In addition, the budget and schedule for completion is premised on the assumption that NIOSH will provide SC&A with timely access to documents and site experts.

With respect to Task Order 3, which expired on 10/23/04, SC&A will require 1 month from the time we receive authorization to proceed to complete this Task Order, and the period of performance will need to be extended to accommodate this.

With respect to Task Order 4, we request an extension of the period of performance from February 23, 2005 to April 23, 2005. This schedule is based on the premise that the next set of 20 cases for review will be delivered to SC&A by mid-December 2004 and the last set of 20 cases and the two blind cases for review will be delivered to SC&A by mid-February 2005.

As before, we have included our program management costs in the budget for Task Order 4, which will end well before Task Order 1. In discussions with you, you had indicated that it might be both possible and preferable to have a project management task to cover the routine, recurring costs associated with running a project of this scope. Such costs include those associated with the oversight of all Tasks, production of the monthly reports, the preparation and implementation of our QA and COI plans, and ongoing records management. If such a

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task were to be implemented beginning in May, then we would be able to cover these costs under that task. If not, then we would need to revisit our budget for Task Order 1 to cover the months (May through September) that currently have no provision for project management.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

John Mauro, PhD, CHP
Project Manager

Enclosures (as stated)

cc: L. Elliott
M. DiMuzio
J. Neton
S. Cohen
J. Fitzgerald

Elliott, Larry J.

From: Paul Ziemer [pl.ziemer@insightbb.com]
Sent: Monday, November 22, 2004 11:54 AM
To: jmauro@scainc.com
Cc: Elliott, Larry J.; Homer, Corrine
Subject: FW: Presentations, handouts, meeting information
Importance: High

John:

Regarding the Agenda for the San Francisco meeting, the individual dose reconstruction reviews will be done during the closed session of the Board on December 13. During that session we will also need to develop the overall summary report to be reviewed in open session.

The Bethlehem Steel site profile review presentation by Joe Fitzgerald will be scheduled for an open session. Since the Board members have this in advance, a 30 minute presentation by Joe should suffice.

Because our overall schedule for this meeting is very full, and because a status report on the Procedures Review is not a deliverable, I see no need for Hans to on the Agenda.

During our Board work session we will also take final action on the SC&A Quality Assurance Plan and COI Plan. These will require no additional presentations from your staff since they only involve the minor updates that were identified previously.

As you know, the Board will also need to address SC&A cost and scope issues. We will follow FACA, Procurement, and Privacy Act requirements in the conduct of these issues. Accordingly, the general scope issues will be discussed during the Board's open work session. Specific cost issues will be addressed during a closed session and will be so identified in the Agenda.

Let me know if you have additional questions on the Agenda. You should be receiving a recent Agenda update form Cori very soon.

Regards,

Paul

-----Original Message-----
From: Homer, Corrine
Sent: Friday, November 19, 2004 1:45 PM
To: 'John Mauro'
Cc: Elliott, Larry J.; Neton, Jim; Staudt, David J.; Homoki-Titus, Zeda (Liz) E.
Subject: RE: Presentations, handouts, meeting information

Dr. Mauro,

I currently have you on the agenda for a 30-minute presentation - Site Profile Reviews. If you would like more time on the agenda, please speak with Larry Elliott.

Thank you,
Cori

-----Original Message-----
From: John Mauro [mailto:jmauro@scainc.com]
Sent: Friday, November 19, 2004 1:31 PM
To: Joe Fitzgerald; Joe Fitzgerald; Paul Ziemer; Homer, Corrine; Kathy Behling

Cc: Homoki-Titus, Zeda (Liz) E.; Staudt, David J.; Neton, Jim; Elliott, Larry J.
Subject: RE: Presentations, handouts, meeting information

Corie,

On Monday, November 22, NIOSH and the Board will have predecisional draft copies of the results of our review of the first 20 cases. If all goes as planned, we should receive comments back from Board members that week, and then I could prepare a draft presentation for review by NIOSH and the Board by December 3rd. In addition, a Bethlehem Steel site profile review presentation is being prepared for presentation by Joe Fitzgerald. I would also like Hans Behling to give a presentation on the status of SC&A's review of NIOSH/OCAS procedures. Hence, we will be prepared to make three presentations, each about 20 minutes long, addressing the results of our work to date on Task 1 (review of the Bethlehem Steel site profile), Task 3 (the results of our review of OCAS/ORAU procedures) and Task 4 (the results of our review of 20 dose reconstruction reports).

John

-----Original Message-----
From: Homer, Corrine [mailto:CBH4@CDC.GOV]
Sent: Friday, November 19, 2004 9:39 AM
To: John Mauro
Cc: Elliott, Larry J.; Neton, Jim; Staudt, David J.; Homoki-Titus, Zeda (Liz) E.
Subject: FW: Presentations, handouts, meeting information

Good afternoon Dr. Mauro,

I just wanted to let you know that I will need any presentations, handouts, and other meeting documents you will have for the upcoming Advisory Board on Radiation and Worker Health meeting electronically, no later than December 3rd. As usual, please clear all presentations, etc., through OCAS.

See you soon,

Cori

Elliott, Larry J.

From: Howard, John
Sent: Monday, November 22, 2004 8:34 AM
To: Elliott, Larry J.; Brand, Anstice M.; Wade, Lewis
Subject: FW: Independent Audits of NIOSH Site Profiles

Let's chat about this before I respond.
-----Original Message-----
From: Horgan, Tom (HELP Committee) [mailto:Tom_Horgan@Labor.senate.gov]
Sent: Friday, November 19, 2004 7:37 PM
To: Howard, John
Subject: RE: Independent Audits of NIOSH Site Profiles

John:

I am sorry to bother you again, but I have been advised by a member of the advisory board that, as of today, Chairman Ziemer has indicated that the California agenda will include a "closed door session" to deal "contractor cost issues." This does not appear to be consistent with the title of the agenda listed in point # 2 of your e-mail. What does the phrase "contractor cost issues entail"? What does it mean?? If the California meeting is to be open and not involve contractor modifications, then I think you should personally inform Dr. Ziemer and Mr. Elliot that this closed session to discuss cost issues is not the purpose of this meeting. It is my understanding that the cost overrun issue has been the basis for talk of proposals to modify the contract. I would really like clarification on this. I thought I had it earlier today with your e-mail below, but it appears Dr. Ziemer is not on the same page. Dr. Ziemer needs to be made aware of this. Have you thought about attending this meeting or even Chairing it?? If there is indeed going to be an agenda item to deal with "contractor cost issues", then I would like it to be open so that I could fly out and attend. And as I said on the phone, ~~discussing changing the scope of~~ the audits while they are well under way and almost finished would be viewed by many stakeholders as concerning...again I am sorry to bother you, but this is very important matter

On Monday and Tuesday of next week, I can be reached at Sen. Bond's St. Louis Office at 314-725-4484 or by cell at 202-441-9754....I also have a BB which is connected to my e-mail address at Tom_Horgan@labor.senate.gov

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Friday, November 19, 2004 12:59 PM
To: Horgan, Tom (HELP Committee)
Cc: Brand, Anstice M.
Subject: Re: Independent Audits of NIOSH Site Profiles

Tom:

I left a message on your office phone, but wasn't entirely sure it registered as I think I lost the signal while recording the message.

I wanted to be sure and get back to you on the two issues I promised to get back with you on (1) timeline for Mallincrodkt Special Exposure Cohort petition evaluation, and (2) agenda item for Board Meetin in December.

(1) Anstice Brand will be getting you the timeline,

(2) The agends item is entitled contract procedures and requirements and it concerns discussion by the Board about they will be monitoring contractor performance. There is no agenda item regarding modification of the contract.

Lew Wade, Project Officer now, together with David Stout, Contract Officer, will lead that portion of the discussion from the HHS side.

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Monday, November 22, 2004 12:39 PM
To: Hallmark, Shelby - ESA
Subject: RE: Independent Audits of NIOSH Site Profiles

thanks

-----Original Message-----
From: Hallmark, Shelby - ESA [mailto:Hallmark.Shelby@dol.gov]
Sent: Monday, November 22, 2004 12:38 PM
To: Howard, John
Subject: RE: Independent Audits of NIOSH Site Profiles

Agreed. I'll raise with our politicals the degree to which we need to head this off, and stifle the NIOSH head-hunting effort in general - so we can protect the sanity of the overall Part B program. Vicki may have had some thoughts on how to corral this - if not, we need to get busy thinking.... Thanks, sh

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Monday, November 22, 2004 12:35 PM
To: Hallmark, Shelby - ESA
Subject: RE: Independent Audits of NIOSH Site Profiles

Agreed, but I think she is mounting this current campaign to show that OCAS/NIOSH is stifling the audit contractor of oxygen (money) through overzealous contract management (nickel and diming them) and to say I told you so and then voila another bit of the apple.

-----Original Message-----
From: Hallmark, Shelby - ESA [mailto:Hallmark.Shelby@dol.gov]
Sent: Monday, November 22, 2004 12:23 PM
To: Howard, John
Subject: RE: Independent Audits of NIOSH Site Profiles

But her intentions aside, Cindy got slamdunked on this during the Part E negotiations. Is there reason to believe she can make this happen as a separate, follow-on bill, where she couldn't pull it off under the Defense Auth tent? Aside from Cindy and now the Bond guy (who is clearly focused on the SEC petition for Mallinckrodt), are there other members and staff rallying to Cindy's flag?

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Monday, November 22, 2004 12:17 PM

To: Hallmark, Shelby - ESA
Subject: RE: Independent Audits of NIOSH Site Profiles

yes and yes....otherwise all this is just so much playing in the sandbox and she doesn't impressive me as the playful type.

-----Original Message-----
From: Hallmark, Shelby - ESA [mailto:Hallmark.Shelby@dol.gov]
Sent: Monday, November 22, 2004 11:57 AM
To: Howard, John
Subject: RE: Independent Audits of NIOSH Site Profiles

She mentioned her legislative attempt to move DOL into the role of managing the Board's contractor - do you think she's now going to resurrect that effort, and widen it to include management of the Board as a whole??

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Monday, November 22, 2004 10:14 AM
To: Hallmark, Shelby - ESA
Subject: RE: Independent Audits of NIOSH Site Profiles

Thanks for trying to provide a voice of reason. I am not certain that it will help, though. I think that she (and others like Tom Horgan of Senator Bond's office) wants the management of the Board out of HHS and she's determined to get that accomplished.

-----Original Message-----
From: Hallmark, Shelby - ESA [mailto:Hallmark.Shelby@dol.gov]
Sent: Monday, November 22, 2004 10:00 AM
To: Howard, John
Subject: RE: Independent Audits of NIOSH Site Profiles

Just had a call from Cindy Blackston telling me, for reasons I don't quite know, that her committee is going to be auditing HHS's handling of the Board's auditor contract, or NIOSH's handling of the ORAU contract, or the whole dose recon process, whatever. She started rattling on (as Cindy does) about conflicts of interest and I took the

My weekend was fine - hope yours was as well. I suspect Mr. Horgan's upset will be ameliorated once OCAS goes public with an at least partially positive game plan on the Mallinckrodt SEC petition. Are you going to stay away from the December Board meeting in light of all this noise, or will you be joining Larry, Richard Miller, and me with our tumblers to the wall??

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Friday, November 19, 2004 7:18 PM
To: hallmark.shelby@dol.gov
Subject: Re: Independent Audits of NIOSH Site Profiles

The fun just never ends with your program. Mr. Horgan sings the same song as Ms. Blankston but only less shrill.

At the December meeting, Lew Wade, the new project officer, and David Stout, contact officer, will brief the Board. I have asked Larry to transfer DFO duties to Lew during the discussions of the contract both during the public discussion and the private discussion. During the private session that concerns the audit contract, I have asked Larry to leave the room altogether and to join Mr. Miller with inverted water glasses pressed against the hallway wall adjoining the meeting room.

Good weekend to you!

John Howard
Sent from my BlackBerry Wireless Handheld

opportunity to weigh in with my view that the Board's activities are to be supported by NIOSH, and that the Executive Secretary has a legitimate "discipline" role to play in that context. I went so far as to say I don't think this is a conflict of interest at all. Cindy of course agreed to disagree, but I don't think it hurt anything for her to hear another (at least ostensibly objective) voice on this. Doubt ~~that it'll keep her~~ committee from ~~whatever mischief~~ she has in mind - ~~she said they'd already~~ mailed a ~~letter to HHS on this score~~. If I get a copy, I'll share it, although you may already have it. sh

Please note new email address:
hallmark.shelby@dol.gov

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Monday, November 22, 2004 9:21 AM
To: Hallmark, Shelby - ESA
Subject: RE: Independent Audits of NIOSH Site Profiles

Yes, I flew back from LA on Sunday here -- we had a 150 mph tail wind and at one point were flying at 680 mph (ground speed)! ~~I would imagine that~~ Tom nor his ~~boss will be happy with~~ anything ~~less than the entire facility being declared an~~ SEC.

Right now, I am trying to fix the agenda which lists "contractor cost issues" as a closed session item to "contractor procedures and requirements" as an OPEN meeting item. What a mess.

-----Original Message-----
From: Hallmark, Shelby - ESA [mailto:Hallmark.Shelby@dol.gov]
Sent: Monday, November 22, 2004 9:08 AM
To: Howard, John
Subject: RE: Independent Audits of NIOSH Site Profiles

-----Original Message-----
From: Hallmark, Shelby - ESA
<Hallmark.Shelby@dol.gov>
To: Howard, John
<ZKZ1@CDC.GOV>
Sent: Fri Nov 19 17:47:26 2004
Subject: RE: Independent Audits of NIOSH Site Profiles

Oy. But have a good weekend, anyhow!

-----Original Message-----
From: Howard, John
[mailto:ZKZ1@CDC.GOV]
Sent: Thursday, November 18, 2004 7:01 PM
To:
Tom_Horgan@Labor.senate.gov
Subject: Re: Independent Audits of NIOSH Site Profiles

Tom:

Thanks for your email. I'd be pleased to chat with you and/or Senator Bond about any and all issues involving NIOSH's part of the implementation of the EEOICPA of 2000, as amended in 2005, and specifically the three you mentionedin your email.

I called you this afternoon from the West Coast before I realized it was nearly 7 pm EST. I will give you another call tomorrow morning to touch bases.

Thanks for your email.

John Howard

Cell 202 213 7401

John Howard
Sent from my BlackBerry Wireless

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Friday, November 26, 2004 11:54 AM
To: Lipnic, Victoria
Subject: RE: NIOSH pickle

Just to bring you up to speed on this controversy regarding the NIOSH site profile for Bethlehem Steel, the Advisory Board's contractor's 85 page audit report re same, and related issues:

John Howard and a bunch of NIOSH folks met with us on Tuesday. The auditor's report has been shared with the Board, but NIOSH still has not provided its comments on that report to the Board. John indicated they plan to do that in the next week or two. I urged that they move as swiftly as possible, since this issue is clearly getting blown out of proportion by Cindy Blackston and others, based on their understanding of only the auditor's perspective. The Board will discuss this report, and presumably the larger issue as to how the auditor's work is to be overseen, at their Dec. 13-15 meeting. John seemed to have a very legalistic, step by step approach to how the auditor's products would be handled with the Board, but we argued NIOSH needs to be more aggressive, and in the Beth Steel case in fact should have rejected the auditor's report as inadequate before it even went to the Board; having let that happen, they certainly need to issue their strongly countervailing comments (which should include the strong comments that we will give NIOSH on that report) to the Board asap, so that the discussion during the meeting will be at least somewhat balanced. John agreed to an extent with that, but NIOSH is clearly playing catch up here.

Cindy Blackston has continued to raise havoc regarding this audit report, NIOSH's handling of the contractor, and NIOSH's handling of the Advisory Board. She has peppered John Howard with emails objecting to this or that small change in the agenda for the Board's Dec. meeting, demanding to know why one session is being held as a closed meeting (which is required for Privacy Act reasons), etc. And as you know, she got Sensenbrenner to send HHS a letter with dozens of questions/interrogatories that would take many boxes to fully respond to. Although NIOSH is taking all sorts of steps to defuse the so-called "conflict of interest" charges here, John discussed the possibility of somehow going to Sensenbrenner to find out from him just what it is that he has in mind – what's his desire here? Cindy appears to be pursuing these issues at Richard Miller's behest and in furtherance of his agenda – is that really Sensenbrenner's agenda? It's not clear what his jurisdiction is on this whole issue, but John is clearly looking for political help on this. From my corner, it would be better to get this resolved and put to bed now, before the drumbeat for DOL to take over running the auditor and/or the whole Board gathers momentum.

Pete, Jeff and I will all be attending this Board meeting, for several reasons. First, I'm presenting the DOL status on takeover of Part D/E, and our general progress under EEOICPA. Second, we need to know how the Board is going to address itself to the review of dose reconstructions and site profiles, of which this Beth Steel controversy is only one small part. The Board is going to be considering the auditor's review of 20 individual dose reconstructions during the meeting, and we have a very strong interest in seeing to it that those audits don't turn into a method for the auditor and the Board to "readjudicate" the claim. The scope of their audits needs to be clear such that they focus on the accuracy and appropriateness of NIOSH's science and procedures, not judgements about factual matters that are DOL's to decide. Finally, NIOSH will be addressing its status in carrying out its SEC petition process – although the latter

segment will not address their specific findings on whether an SEC will be declared for Mallinckrodt (Missouri) and Iowa Ammunition Plant -- those reports are still under construction.

Sorry to be so voluminous. Let me know if I need to clarify, or if I need to do something different on any of these fronts. sh

-----Original Message-----
From: Lipnic, Victoria
Sent: Tuesday, November 16, 2004 8:21 PM
To: Hallmark, Shelby - ESA
Subject: RE: NIOSH pickle

No brainstorms yet, but NIOSH needs to not hide their views about this report and publicly say so.

From: Hallmark, Shelby - ESA
Sent: Tuesday, November 16, 2004 8:23 PM
To: Lipnic, Victoria
Subject: NIOSH pickle

Vicki -- I discussed the Advisory Board issue further with Jeff N. and Pete this PM, following up on your question as to whether the audit report on Bethlehem Steel has any validity.

They report that they've reviewed the Board's audit contractor's (SCA) report on the Bethlehem Steel site profile. This is the report that went on for 85 pages about a 14 page site profile, and apparently resulted in the contractor spending all (or more than all) of its allocated funds for site profile reviews on its first one. Jeff and Pete were unanimous in stating that the report was blatantly unbalanced. It ignores NIOSH's methodology that strongly leaned in the claimants' favor, and nitpicked every situation where, despite taking an overall exceedingly claimant friendly posture, NIOSH "failed" to choose the most claimant friendly posture conceivable (as opposed to a "plausible option"). Pete noted that the report accepted at face value certain plant employee statements that had been considered in the course of OWCP case adjudication and found not to be credible. Had DOL found those statements credible, we would have returned the dose reconstructions to NIOSH to reevaluate the additional exposure being alleged. We did not, and it's our position that the Board's contractor has no business, in the course of an audit of the scientific sufficiency of the NIOSH process, trying to "readjudicate" evidentiary matters that are DOL's purview.

Jeff indicated that he asked an audit contractor employee why the report frequently criticized NIOSH for not taking the absolutely most claimant friendly assumption, but never once questioned whether a NIOSH assumption or approach was likely to be overly claimant friendly or result in approvals that would be inappropriate. The SCA employee apparently admitted that they would never make such a comment, and considered it outside of their mandate.

-----Original Message-----
From: Mosier, Roberta - ESA
Sent: Wednesday, December 01, 2004 12:22 PM
To: Franklin, Corman - ASP
Subject: FW: Comments and Costs on latest version
Importance: High

Corman – As near as I can figure out, these would have been the last things sent for the HASC to consider. They would have been sent by OCIA. If these are not what you were looking for, please let me know. There were daily revisions to the cost estimates.

Roberta

-----Original Message-----
From: Mosier, Roberta - ESA
Sent: Tuesday, October 05, 2004 10:53 AM
To: Dugas, Peter - OCIA
Cc: Hallmark, Shelby - ESA; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: Comments and Costs on latest version
Importance: High

Peter – Per phone call, attached are our technical assistance comments on the 10/4 version, along with estimated costs. Bill Ostendorff wanted these by 11:00 today.

Roberta

DOL COMMENTS ON 10-4-04 (6:37 PM) DRAFT

DOL appreciates the opportunity to comment on changes made to the previous draft. While DOL views certain of the changes as improvements over the previous draft, we believe that certain provisions in this draft both substantially inflate the cost of this proposal and have the potential to substantially decrease the equity and efficiency of the program.

- **WAGE-LOSS CALCUATION** - DOL opposes the change in this provision from the previous draft
    - The paucity of records available to document relatively small swings in overall earning from a work-force that, at least in part, demonstrates a turbulent work history will result in a substantially more arbitrary payment scheme than if the minimum reduction of earnings to qualify for compensation was set at 50%.
    - Requiring only a 25% reduction to qualify for wage-loss compensation will like likely inflate the cost of this provision.
    - DOL agrees with the concept of having two levels of wage-loss compensation, but suggests, as we have previously, that the two levels of compensation should be triggered by reduction in wage-earnings from the baseline of 75% and 50%, not 50% and 25%.

- **TRANSITION PROVISIONS** - DOL opposes the change in the transition provision from the previous draft
    - DOL supports continuation of determinations by Physician Panels until DOL commences administration of the program.
    - DOL believes that it will delay our ability to develop and adjudicate cases and promptly resolve the backlog if DOE were to continue to administer Part D under existing law.
    - The previous draft allowed DOL to specify what, if any, other activities under Part D, in addition to panel adjudication of cases already pending before the panels, should continue. If DOL were given this authority, it will assert jurisdiction over all of the other pending cases and immediately begin development work on those case using existing DOL staff.
    - Allowing DOE to continue to maintain jurisdiction over Part D cases will prevent DOL from being in a position to issue a substantial number of Recommended Decisions recommending awards of benefits to claimants immediately after new Part E interim regulations take effect.
    - Allowing DOE to continue to administer existing Part D claims using their current system will quite likely result in substantial contractor costs and will not advance the pace at which the claims backlog is resolved, in part because it would simply increase the backlog at the physician panel.

- **Advisory Committee Contract** – DOL continues to assert that it is unwise and unworkable to assign it responsibility over contracts to support the HHS managed Advisory Committee.

- The work product of the contractor advising the Board is an extremely complicated assessment of the scientific merit of the dose reconstruction process and other duties performed by NIOSH, totally outside the DOL area of expertise.
- To the extent that Congress has concerns over the manner in which this contract is being administered sufficient to justify the disruption of transferring responsibility for administration of it during the course of the contract, DOL suggests that it be the responsibility be transferred to another agency with expertise in this area of science rather than DOL.

- **Additions to the Special Exposure Cohort** – While DOL continues to oppose any provisions for automatic inclusion in the Special Exposure Cohort, the provision is this draft appears improved over the previous draft.

- **Dose Reconstruction** – DOL continues to oppose in the strongest possible way automatically including any employee in the Special Exposure Cohort merely based upon delay in NIOSH completion of a dose reconstruction as potentially exorbitantly expensive, unwise and inconsistent with the scientific basis the Act uses in providing compensation.

  - While DOL cannot supply an estimate of what a "reasonable time" to complete a dose reconstruction is (it is likely that there is no such uniform "reasonable time" given variances in information available to NIOSH, number and duration of employments and exposures of workers, and claimant response times) clearly 120 days is far less than a reasonable time even for a relatively less complex dose reconstruction.
  - This provision is likely to be counterproductive by providing an enormous incentive for claimants to delay responding to NIOSH or providing information in hope of taking advantage of this position.
  - In the absence of any DOL expertise in this area or supervision over the process, we do not understand why DOL is given a role in certifying and explaining to Congress why dose reconstructions cannot meet the statutory deadline.

- **Radiation Dose** – DOL supports addition of a definition of a radiation dose to EEOICPA but does not believe the language of the draft will accomplish its intended purpose.

  - The draft appears technically defective by mandating inclusion of weapons-related radiation that would in any event be included but does not exclude non-weapons related radiation. Thus it appears to have no effect.
  - That defect could be remedied by changing p. 3- line 21 and 24 to read "In the case of an atomic weapons employee, the radiation dose received by such employee at such facility, for the purposes of paragraph (3)(B) shall be the following:"

- **RECA Payments** While DOL does not oppose the purpose of this amendment, DOL opposes allowing the Attorney General to direct payments from the EEOICPA Fund as subsection 3167(b) provides. That is likely to be complicated and impractical.
    - DOL suggests that subsection (b) should instead provide that the Department of Justice certify to DOL that a payment should be made under RECA and that DOL pay the entire $150,000 due the claimant from its EEOICPA fund.

Impairment plus 10,000 per year - NO OFFSET - 2 disability rates 10/5/04
(two options on survivor benefits)

Average Disability Rates		Award
Bucket 1	5%	$ 12,500
Bucket 2	18%	$ 45,000
Bucket 3	38%	$ 95,000
Bucket 4	55%	$ 137,500

Buckets were used as a way to distribute disability rates and average awards.

Distribution - employees

		Compensation for impairment
Bucket 1	50%	$ 78,348,750
Bucket 2	25%	$ 141,027,750
Bucket 3	15%	$ 178,635,150
Bucket 4	10%	$ 172,367,250
TOTAL for EMPLOYEE IMPAIRMENT		**$ 570,378,900**

Compensation for loss of wages

	With <50% WEC	With 50-75% WEC
Percentage who lost wages before age 65	15%	30%
Average years of wage loss before age 65	5	5
Total at $15,000 per year	**$ 141,027,750**	
Total at $10,000 per year		**$ 188,037,000**

Part B eligibles	15063	Yearly Medical	$ 12,000
Employees	40%	Ave. Years Med.	5
Survivors	60%		
Part D only	10851		
Employees	60%		
Survivors	40%		

Medical for Part D	$ 390,636,000
Additional Medical for Part B/D	$ 35,625,670
Total Comp and Medical (Employees)	**$ 1,325,705,320**

Survivor Catgories - 50% of deaths are related to covered condition

	Option 1	Option 2		Option 1	Option 2
Cat 1	$ 100,000	$ 125,000	42.50%	$568,573,500	$710,716,875
Cat 2	$ 125,000	$ 150,000	5%	$83,613,750	$100,336,500
Cat 3	$ 175,000	$ 200,000	2.50%	$58,529,625	$66,891,000
TOTAL Survivor Benefits				**$710,716,875**	**$877,944,375**

TOTAL BENEFITS	**$ 2,036,422,195**	**$ 2,203,649,695**
DOL ADMINISTRATIVE COSTS	**$259,258,000**	**$259,258,000**
TOTAL	**$ 2,295,680,195**	**$ 2,462,907,695**

Sent: Wednesday, December 01, 2004 5:32 PM
To: Lipnic, Victoria; Iverson, Kristine; Dugas, Peter - OCIA; Nesvet, Jeffrey L - ESA
Subject: Our EEOICPA briefing

Went extremely well - nobody raised the awkward questions we expected. But Cindy Blackston went off again (after the meeting per se) telling us that Judiciary was going to drag HHS through hell if they so much as touch the "auditor" (the Advisory Board's contractor) or his funding. As I told Peter, John Howard knows what a disaster this whole crusade of Cindy's could be for the dose recon process, but I don't get a sense that he's getting any substantive help from the HHS legis affairs people. NIOSH is prone to collapsing. I really think we need to try to help out with the Committee. sh

Search 3

From: Nesvet, Jeffrey L - ESA
Sent: Thursday, December 02, 2004 10:38 AM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA
Cc: Culp, James - ESA; Turley, Sheldon - ESA
Subject: RE: Our EEOICPA briefing

We will get something to you this afternoon. I think getting this on the radar screen of the HHS political level is a major plus, however we manage it.

What do you think about a pitch from Kris to HHS that there should be a joint DOL-HHS approach to Sensenbrenner on this issue? If they buy that we might be able to weigh in to keep HHS from caving too easily if Sensenbrenner pushes back.

JEFFREY L. NESVET
Associate Solicitor for Federal Employees'
and Energy Workers' Compensation
Office of the Solicitor
United States Department of Labor
200 Constitution Avenue, N.W., Room S-4325
Washington, D.C. 20210
(202) 693-5320 693-5360 (fax)

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Thursday, December 02, 2004 10:33 AM
To: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: FW: Our EEOICPA briefing

I was trying to get Kris to offer to help HHS, not harangue them on how to support NIOSH. But I guess any kind of conversation between Kris and her counterpart could help, so let's give her some broad points about what's at stake in the whole SCA/Board issue, and why it's important not to just keep surrendering point by point to Cindy (and Miller), but instead to take the bull by the horns and try to ease the political pressure. Jeff, can you take a first cut at this? Pete, do you have any sense from Larry E as to whether HHS or CDC congressional folks (other than staffers) have actually weighed in on this issue at all? If not, I'll take some discovery with Howard or larry.

-----Original Message-----
From: Iverson, Kristine
Sent: Wednesday, December 01, 2004 7:28 PM
To: Hallmark, Shelby - ESA; Lipnic, Victoria; Dugas, Peter - OCIA; Nesvet, Jeffrey L - ESA
Subject: RE: Our EEOICPA briefing

Shelby, if you or Pete can get me some talking points, I will call the Assistant Secy for Legislative Affairs at HHS. Specifically, I will need to persuade her that there is more at stake here and that it warrants her attention.

-----Original Message-----
From: Hallmark, Shelby - ESA

Search 3

From: Hallmark, Shelby - ESA
ent: Friday, December 17, 2004 11:46 AM
:o: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA
Subject: RE: DR strategy

Ok. Thanks, sh

-----Original Message-----
From: Nesvet, Jeffrey L - ESA
Sent: Friday, December 17, 2004 11:16 AM
To: Turcic, Peter - ESA; Hallmark, Shelby - ESA
Subject: RE: DR strategy

I will come down at 3 as well.

JEFFREY L. NESVET
Associate Solicitor for Federal Employees'
and Energy Workers' Compensation
Office of the Solicitor
United States Department of Labor
200 Constitution Avenue, N.W., Room S-4325
Washington, D.C. 20210
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-----Original Message-----
From: Turcic, Peter - ESA
Sent: Thursday, December 16, 2004 12:19 PM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: DR strategy

ok

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Thursday, December 16, 2004 11:55 AM
To: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: DR strategy
Importance: High

Let's discuss -- can we get together tomorrow sometime? Maybe the usual 3pm meeting?

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Thursday, December 16, 2004 6:45 AM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: DR strategy

We may have an opportunity with the Board punting. I'm sure we will get a case that merely submits the SCA report as evidence that the Beth Steel DR is inaccurate. I believe that NIOSH is scientifically correct and we could address the SCA issues in response to a case. We can hit the legal issues to over come some of the SCA comments and also nail down the factual issues that are a concern. We could then get some outside, very high evel expertise to review the technical issue raised by SCA such as the selection of the appropriate statistical approach -- from the point of view of sound science as opposed to just selecting the approach that gives the highest exposure. Maybe use NAS or NIST.

As part of a longer term strategy, we need to get other parties that should have an interest in where this is going, such as the commercial nuclear people to play a more active role and interest making comments and weighing in.

----Original Message-----
rom: Hallmark, Shelby - ESA
Sent: Wednesday, December 15, 2004 9:11 PM
To: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: DR strategy

We need to sit down and figure out where we should go in light of the Board's drift. We should start by calling Larry and seeing what they are planning to do. Assuming that won't be sufficient, we'll need some options to lay out for Vicki et al to consider.

Ideas:

- change the Board? Miller warns the advocates -- and congressional backers -- will go crazy, and "credibility" goes south. On the other hand, the other options aren't good.

- push NIOSH to fight back more effectively? Any ideas how?? Are there other science resources that could be tapped?

- push for some compromise? Strike a deal with Melius/Miller that trades more SEC and DR approvals for simplification of process and Board endorsement? I don't know the basis for such a deal, but it's conceivable. EG Beth Steel becomes an SEC on the grounds of inadequate data and we try to draw the line at the big sites. Problem there is why do we think Oak Ridge or Hanford or INEEL won't present the same issues, and who trusts Miller/Melius to stick to any deal?

- give up and accept SEC everywhere? Any way to cap the costs or narrow the # of undeserving awards? But does it make any sense to continue to defend a DR process that will just get more complicated and attenuated? It looks to me like it collapses in a year or so if the Board keeps on the current path. How is NIOSH going to ever finish its site profiles at this rate?

- other ideas?

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Brand, Anstice M.
Sent: Friday, December 17, 2004 5:55 PM
To: Howard, John; Wade, Lewis; Hearl, Frank J.; Chang, Chia-Chia; Elliott, Larry J.; Homoki-Titus, Zeda (Liz) E.
Cc: Porter, Diane
Subject: FW: Copy of the earliest available transcript from Board Meeting this week.

FYI...Cindy continues to be concerned about the scope of the audit and the Board's vote to hold onto the DR reviews. I left her a voice mail as soon as I got this email. I will be in touch.

Anstice
-----Original Message-----
From: Blackston, Cindy [mailto:Cindy.Blackston@mail.house.gov]
Sent: Friday, December 17, 2004 2:42 PM
To: Brand, Anstice M.
Cc: Porter, Diane
Subject: Copy of the earliest available transcript from Board Meeting this week.

I would appreciate getting a copy of the transcript from the Board meeting this week as soon as possible. Dr. Wade has gotten rave reviews, however, the Committee has been hearing somewhat disturbing things about comments being made as to the scope of the audit, the availability of future funds (in this mandatory spending program) to make sure that site profile audits are conducted, and Congress' role in general with regard to this program (and Board). Please provide the earliest possible transcript available -- there are some things that I wish to confirm before taking actions to insert the Committee presence in what has been framed as Board decisions that indicate an attempt to squash the public airing of audit findings. I must go to the Chairman with this in the next few days and I would like to be fair in the discussion with him. If these allegations are exaggerated, I can confirm that with the transcripts.

Please let me know when you can provide this information.

Search 4

From: Lipnic, Victoria
Sent: Monday, December 20, 2004 2:55 PM
To: 'Salmi, Molly'
Subject: FW: Copy of the earliest available transcript from Board Meeting this week.
Importance: High

Molly -- see below, your eyes only. -- Start with the first email from Cindy Blackston. -- She's adopting the Richard Miller viewpoint again -- and while this issue has to do with NIOSH and HHS and what they've done about site profiles and dose reconstruction -- and technically, not a DOL issue -- she is going to bring down the entire site profile process (and NIOSH is running scared of her yelling) -- and that will end up opening up this program to even more people -- who just happened to work in a plant that may have at one time been a DOE facility. -- Help!

We've tried to get the Congressional Affairs folks at HHS to get on this, but I don't know that they understand what they are dealing with with Cindy.

From: Hallmark, Shelby - ESA
Sent: Monday, December 20, 2004 10:26 AM
To: Lipnic, Victoria
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Svenonius, Diane - ESA; Iverson, Kristine; Dugas, Peter - OCIA
Subject: FW: Copy of the earliest available transcript from Board Meeting this week.
Importance: High

Vicki -- FYI. Our friend Ms. Blackston is still on the warpath (see below), in pursuit of Richard Miller's agenda with respect to NIOSH's Advisory Board. I'm sure when she gets the transcript of the Board's sessions she will be entirely displeased with the interventions of the Department of Labor. Pete's working on a piece that we will be submitting regarding our take on the Board's likely trajectory (it's not good at all); that piece will also contain our recommendations as to what DOL might want to do about it. But in the interim, suffice it to say that I felt obliged at several points during the meeting to suggest to the Board that 1) it has an obligation to review and evaluate the products of "its" contractor (SC&A), rather than just dumping them without commentary on the doorstep of HHS, and thereby making them coin of the political realm; and 2) that there is a budget process which constrains DOL and HHS -- notwithstanding Cindy's (and Richard Miller's) constant harping on the "mandatory" status of our budget -- and that both HHS/NIOSH and the Board have a responsibility to use funds wisely in any case. The Board did in fact decide to delay "accepting" the SC&A reports until future meetings, but that basically is just a holding action at this point.

I hope we can get our report on the Board down to you (and ultimately Steven) very shortly. This is a critical issue, and we'll need to take serious action if there's to be any hope of turning this ship in the right direction. Thanks, sh

-----Original Message-----
From: Elliott, Larry J. [mailto:LJE1@CDC.GOV]
Sent: Monday, December 20, 2004 9:38 AM
To: hallmark.shelby@dol.gov; Turcic.Peter@dol.gov
Subject: FW: Copy of the earliest available transcript from Board Meeting this week.

-----Original Message-----
From: Elliott, Larry J.
Sent: Monday, December 20, 2004 8:02 AM
To: Brand, Anstice M.; Howard, John; Wade, Lewis; Hearl, Frank J.; Chang, Chia-Chia; Homoki-Titus, Zeda (Liz) E.
Cc: Porter, Diane; Homer, Corrine
Subject: RE: Copy of the earliest available transcript from Board Meeting this week.

It will be three to four weeks before the transcripts are available.
lje

Search 4

From: Lipnic, Victoria
Sent: Monday, December 20, 2004 6:18 PM
To: Hallmark, Shelby - ESA; Dugas, Peter - OCIA
Subject: RE: Buffalo News story re EEOICPA advisory board and the Beth Steel study

Peter -- do you know if Kris ever touched base with Cong. Affairs at HHS about this?

From: Hallmark, Shelby - ESA
Sent: Monday, December 20, 2004 4:23 PM
To: Lipnic, Victoria; Iverson, Kristine; Krishnamoorti, Mala; Norris, Jane OPA
Cc: Dugas, Peter - OCIA; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: Buffalo News story re EEOICPA advisory board and the Beth Steel study
Importance: High

Folks -- as mentioned, we are working on a summary of the Advisory Board meeting (an abomination), where we think the Board is headed (towards disaster), and what if anything we can do to stop it (that's the hard part). See below regarding the firestorm the Board's activity to date has incurred. The "audit report" is the work of the contractor NIOSH foolishly allowed the Board to demand, and which NIOSH has failed to rein in. The report is, per NIOSH (and we pretty much believe them), a completely slanted document, which in no way invalidates the 500 or so dose reconstructions completed at Bethlehem Steel. Indeed, it's our position that the NIOSH Beth Steel site profile that is pilloried in the "audit report" for being insufficiently claimant friendly, was in fact far too claimant friendly. This report should never have been made public in this form, unless and until NIOSH was able to get the contractor and/or the Board to correct its massive flaws. Unfortunately, NIOSH did not succeed in figuring out a way to do that.

I made a rather strong statement at the Board meeting to the effect that the Board itself must take responsibility for determining whether the contractor that is doing its work for it has got it right, because otherwise the public will take any such "audit report" and run with it, to include demanding that hundreds of dose reconstructions be re-done (while there are 12,000 plus reconstructions still waiting in queue at NIOSH, some for over three years). The Board decided to postpone opining about the "audit report" until a meeting in April, but the article below shows that the damage is pretty much already done.

Our report on the Board and what to do next will be forwarded as soon as Pete, Jeff and I have hashed it out. Thanks, sh

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Monday, December 20, 2004 4:04 PM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA
Cc: Kotsch, Jeffrey - ESA; Mosier, Roberta - ESA; Lelton, Rachel - ESA
Subject:
Importance: High

It didn't take long -- the report is
being misinterpeted!

Schumer, Clinton urge re-evaluation of claims by ex-Bethlehem workers

News Washington Bureau
Chief
12/15/2004

WASHINGTON - New York's two senators called on the Bush administration Tuesday to re-examine its denial of benefits claims involving more than 900 workers at the former Bethlehem Steel plant who may have died or been made ill through exposure to weapons grade nuclear materials.

Sens. Charles E. Schumer and Hillary Rodham Clinton, both Democrats, issued the request in response to the formal release of an audit by an advisory committee to the National Institute for Occupational Safety and Health, which found serious flaws in the agency's system of evaluating claims.

The report, completed two months ago, had been suppressed.

Frank J. Panasuk of Hamburg, a leader in efforts by former workers at the Lackawanna plant to win relief, had filed a freedom of information request for the committee's audit.

Although Congress has provided up to $150,000 in compensation for each Bethlehem worker or survivor, the agency, part of the Labor Department, had approved only 190 of 1,100 claims.

Another $135 million in potential benefits remains at stake.

Schumer said the report "proves what we have been saying all along - that there are gaping holes between the compensation Western New York nuclear workers have received and what they should be entitled to."

Schumer called the workers "Cold War heroes who have waited long enough to get their due compensation."

The Bethlehem Steel audit was conducted by the Advisory Board on Radiation and Worker Health.

In her evaluation of the audit, Clinton said the chief flaws in the original denial of 900 claims include bad data on workers' exposure to contaminated air, use of the wrong statistical methods and other serious scientific miscues.

Clinton said the agency must move quickly to revise its profile for evaluating claims by workers and survivors.

"What is most frustrating," she said, "is that many of the issues raised in the audit have been repeatedly raised by Bethlehem Steel workers and their survivors."

As a result of earlier protests by the senators, as well as Reps. Jack Quinn Jr., R-Hamburg, and Louise M. Slaughter, D-Fairport, the agency will hold a briefing on the report Jan. 12 in Buffalo for workers and their families.

"A lot depends on what happens at that meeting," Quinn said.

Bureau assistant Anna L. Miller contributed to this report.
e-mail: dturner@buffnews.com

Peter M. Turcic
Director, Division of Energy Employees
Occupational Illness Compensation

Search 4

From: Lipnic, Victoria
Sent: Monday, December 20, 2004 6:19 PM
To: 'Salmi, Molly'
Subject: FW: Buffalo News story re EEOICPA advisory board and the Beth Steel study
Importance: High

Molly -- more of the same. see attached press story by Sen.'sClinton and Schumer. ALL Cindy Blackston's doing. I cannot believe that Sensenbrenner -- if anyone in Leadership knew about this -- would be advocating spending MORE money. --

---

From: Hallmark, Shelby - ESA
Sent: Monday, December 20, 2004 4:23 PM
To: Lipnic, Victoria; Iverson, Kristine; Krishnamoorti, Mala; Norris, Jane OPA
Cc: Dugas, Peter - OCIA; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: Buffalo News story re EEOICPA advisory board and the Beth Steel study
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-----Original Message-----
From: Turcic, Peter - ESA
Sent: Monday, December 20, 2004 4:04 PM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA
Cc: Kotsch, Jeffrey - ESA; Mosier, Roberta - ESA; Leiton, Rachel - ESA
Subject:
Importance: High

It didn't take long -- the report is
being misinterpeted!

Schumer, Clinton urge re-
evaluation of claims by ex-

Bethlehem workers
By DOUGLAS TURNER
News Washington Bureau
Chief
12/15/2004

WASHINGTON - New York's two senators called on the Bush administration Tuesday to re-examine its denial of benefits claims involving more than 900 workers at the former Bethlehem Steel plant who may have died or been made ill through exposure to weapons grade nuclear materials.

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"A lot depends on what happens at that meeting," Quinn said.

Bureau assistant Anna L. Miller contributed to this report.
e-mail: dturner@buffnews.com

Peter M. Turcic
Director, Division of Energy Employees
Occupational Illness Compensation

Search 4

'rom: Hallmark, Shelby - ESA
ent: Thursday, December 23, 2004 11:54 AM
To: Turcic, Peter - ESA; Mosier, Roberta - ESA; Leiton, Rachel - ESA; Delo, Jerry - ESA
Subject: FW: EEOICPA Press Rollout

Importance: High

See the list of questions -- way below -- OPA is saying they want to have in hand for the Secretary's event, if there is one, currently speculated as being around 1/10 or 11. we need to go ahead and compile answers. The last five are the tricky ones. Kate is probably the best source for guesses about how many people got State Comp. via Part D (we should be careful not to accept inflated DOE estimates that included state claims that had nothing to do with a Part D panel decision) and how much total has been paid. We need to be careful in estimating how much we expect to pay out before regs, and for FY 2005; I think we have an estimate for the 10 benefit outlay -- roughly $2.5 B, right?

The questions on NIOSH are the trickiest. Good luck there! sh

-----Original Message-----
From: Norris, Jane OPA
Sent: Wednesday, December 22, 2004 5:41 PM
To: Hallmark, Shelby - ESA; Siff, Andrew; Lipnic, Victoria; Sullivan, Adam; Henry, Tina; Lebens, Grant - OSEC; Iverson, Kristine
Cc: Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject: RE: EEOICPA Press Rollout

If we can generate satisfactory answers to the questions, then one event in January should cover all of our progress to 'ate and the 200 recommended decisions. That will generate press.

hanks Shelby

From: Hallmark, Shelby - ESA
Sent: Wednesday, December 22, 2004 5:33 PM
To: Norris, Jane OPA; Siff, Andrew; Lipnic, Victoria; Sullivan, Adam; Henry, Tina; Lebens, Grant - OSEC
Cc: Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject: RE: EEOICPA Press Rollout
Importance: High

Thanks, Jane. I believe we can answer the questions you cite, although one or two are tricky. The numerical issues can be handled, with the sole exception of "how much did DOE pay out under their Part D program". They didn't actually pay, they helped people get State benefits, and it's quite murky to figure out who got what in that process -- less than $2 million, I'm quite sure, in total. We will exceed that amount by an order of magnitude in a month or so, assuming we get the go-ahead to issue decisions on the roughly 200 cases that are ready.

As you note, the riskier issue is the current controversy involving NIOSH and the Advisory Board and "the Advisory Board's contractor". This is a strictly PART B issue, and a strategy might be to say that the Secretary is only going to deal with Part E rollout issues in this event/interview, but that may not be tenable, so careful answers will need to be drafted.

The controversy is acute with respect to the Bethlehem Steel site in Buffalo, NY, because the contractor's hugely negative review of the NIOSH Bethlehem Steel profile was released last week. Hence the NY delegation is the most exercised about this issue right now. But the contractor's attack on the quality and accuracy of the NIOSH dose reconstruction process has implications throughout the complex, and other delegations are likely to weigh in eventually. People knowledgeable about the EEOICPA Part B program -- including advocates and media people based in Tennessee -- may 'all raise questions about why the NIOSH process is so slow, and, according to this recent contract review, so wrong. wever, I would argue that we go ahead as suggested here; we will just have to develop and get agreement on a position o take with regard to the dose reconstruction issue. Thanks, sh

-----Original Message-----

From: Norris, Jane OPA
Sent: Wednesday, December 22, 2004 4:08 PM
To: Siff, Andrew; Lipnic, Victoria; Hallmark, Shelby - ESA; Sullivan, Adam; Henry, Tina; Lebens, Grant - OSEC
Subject: EEOICPA Press Rollout

EEOICPA Press Rollout

Suggested Press Opportunity

There is an opportunity to update interested press on the status of EEOICPA payments under Part E of the program. These are the key sites that will have the most interest.

Los Alamos, NM
Oak Ridge TN
Savannah River, SC
Paducah, KY

Lamar Alexander's office has expressed interest in participating in an event. The suggested date is January 10th or 11th, in Knoxville TN. At that time, we can announce the number of recipients in the key markets that have already received checks, and the fact that there are 200 additional recommended decisions that are today being mailed to potential recipients.

Invited Press

We have identified the press outlets that have a demonstrated interest in the story in the attached file. These newspapers have already written extensively about EEOICPA.

These are some of the potential questions we may be facing:

Total number of claims/cases paid under Part B
Total dollar amount that represents
Number of workers those claims represent
How the claims break down cancer vs. beryllium
Total number of claims in the pipeline under Part E when DOE turned the program over to DOL
How many workers those claims represent
The Dollar amounts that were paid out by Energy
The Dollar amounts that are expected by be paid by DOL
When people can expect to see their claims paid.
The SC&A evaluation of NIOSH's dose reconstruction effort, and how that will affect claimant demands for reopening denied claims.
Is this dispute likely to slow down considerably or bring to a halt your ability to pay claims?

If we have acceptable answers to these questions, then the press conference in Knoxville is a viable way of alerting the press to our progress on EEOICPA.

We can invite all the outlets listed here, and give background interviews with specific market information to interested outlets that can not attend, but want to write about the story. The Paducah Sun, the Knoxville News Sentinel, the Albuquerque Journal and the Augusta Chronicle will want specific information about their local facility, and there may be others that will have questions specific to their area of the country.

To get the story out nationally we can give an interview to Nancy Zuckerbrod of the Associated press. The potential down side of this is that Nancy may bring the NIOSH controversy into the story, as there are willing members of the Senate from the state of NY who would comment at length on this matter.

Our other option is to hold the press conference, give selected Secretarial interviews and background interviews to local newspapers in the target areas by telephone, and issue a press release about the progress of the program.

<< File: Y (EEOICPA).xls >>

[Submission for the Record]

Search 5

From: on behalf of Hallmark, Shelby - ESA
Sent: Thursday, December 23, 2004 2:49 PM
To: Lipnic, Victoria; Iverson, Kristine; Krishnamoorti, Mala
Cc: Norris, Jane OPA; Siff, Andrew; Svenonius, Diane - ESA; Turcic, Peter - ESA; Dugas, Peter - OCIA
Subject: NIOSH issue
Importance: High

John Howard (NIOSH director) called today to indicate that Cindy Blackston continues to make demands on HHS/NIOSH without relent. She is now seeking instant production of word-for-word transcripts of both the public and closed sessions of the Advisory Board meeting of last week, and is pursuing the earlier demands Chairman Sensebrenner made of HHS, for production of a long list of documents, memos, emails, and other interrogatories.

As indicated in my previous messages and briefing piece on the whole NIOSH/Board situation, DOL (basically me) made several interventions during that meeting suggesting that the Board needs to exercise its responsibilities rather than simply pass along the contractors' products, that the Board and NIOSH don't have an unlimited budget to spend on the contractor's activities, that the contractor should be directed to characterize its findings in terms of whether they are material, i.e., would actually impact on the compensability of a claim, etc. I was a bit of a voice crying out in the wilderness. My guess is that Ms. Blackston will not be at all pleased with my contributions, so we may soon be getting a letter from House Judiciary with a long list of interrogatories. This in turn could well generate press about DOL and HHS conspiring to block review of the dose reconstruction process, which might overwhelm the good press we're trying to get for early Part E implementation.

I did not press discussion of the NIOSH/Board issue at our meeting yesterday on the grounds that the check presentation issues were by far the most time-sensitive. But this train is bearing down on us, and we would be very much better off if something could be done to influence the Chairman on this issue before we get into a semi-public slugging match ala HHS. Plus we might actually be able to help HHS/NIOSH out, and they sorely need help. If we can't, I fear the whole dose reconstruction process will soon be teetering on the edge of collapse, and that would be a horrible public policy outcome. Anything we can do to influence this process toward sanity, and as soon as possible, would be wonderful. Thanks, sh

Search 5

From: on behalf of Hallmark, Shelby - ESA
Sent: Monday, January 24, 2005 3:00 PM
To: Howard John
Cc: Lipnic, Victoria
Subject: FW: Newspaper Article Saying Iowa Ordnance Will be SEC
Importance: High

John – we were surprised to see this article on Friday touting Sen. Harkin's "announcement" that Iowa was going to be designated an SEC. Pete checked with Larry and apparently got confirmation that things have changed on this, and specifically the turning point may be the question of "transparency" vis-à-vis classified information.

I called today to chat with you about this but learned you are in Atlanta.

Obviously I don't know all the issues regarding the classified data and how much can and can't be revealed in dose reconstructions, but we assumed OCAS had found some way to navigate that issue. If, as we are told, NIOSH is now going to simply advise the Advisory Board that it can do dose recons but it can't produce "transparent" dose recon reports, we assume the Board will take that as an endorsement of SEC status and run with it.

Before you issue an Iowa SEC petition evaluation, we'd like to have a chance to talk this over with you. If a general "transparency" principle results in SEC status at Iowa, numerous other sites would logically fall in behind it, and possibly lots of sites could be claimed to have less than perfect clarity. Even if SEC dominos only fall in the five or six assembly plants where Iowa-like activity was involved, that would go far to tipping the balance in favor of SECs for everybody.

As a secondary matter, we also continue to be concerned about the method of disclosure of the SC&A documents to the Board – we generally believe they should be handled as pre-decisional until the report has been accepted (by NIOSH, the Board, or some combination?) as meeting the requirements of the contract and being of sufficient quality. I don't know that there's a problem per se with the Mallinckrodt site profile report that SC&A is going to present in St. Louis, but as a procedural matter we'd really like this process to be better defined. As you know, premature disclosure of the Beth Steel SC&A report led immediately to the New York delegation's demand for withdrawal of your site profile and reconsideration of all the claim denials based on it. We both have too much work to do in this program to be whip-sawed in this fashion, especially by reports that are seemingly way off the mark.

If you're available to discuss this by phone, please give me a holler. I will be leaving the office in a few minutes, but will be available tomorrow. Thanks, sh

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Friday, January 21, 2005 8:51 AM
To: Turcic, Peter - ESA
Subject: Newspaper Article Saying Iowa Ordnance Will be SEC
Importance: High

Pete, you may have already seen this newsaper article (attached) about IAAP and Sen. Harkin's statement that IAAP will become a SEC. Here's the link, too.

http://www.thehawkeye.com/daily/stories/ln9_0120.html

I did not think NIOSH was recommending SEC status.

Jeff

09/08/2006

[redacted]

From: Hallmark, Shelby - ESA
Sent: Wednesday, January 26, 2005 12:40 PM
To: Mosier, Roberta - ESA; Kotsch, Jeffrey - ESA
Subject: FW: Draft FRN
Importance: High

I can't get hold of Jeff Nesvet and crew – or Pete, of course – so you two need to start looking at this NIOSH piece on the SEC petitions ASAP! Thanks, sh

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, January 26, 2005 12:18 PM
To: 'Howard, John'
Cc: Wade, Lewis; Elliott, Larry J.; Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA; Lipnic, Victoria
Subject: RE: Draft FRN
Importance: High

Thanks, John. We very much appreciate the opportunity to review this, and will do so just as rapidly as we can. As discussed, I've alerted my deputy secretary about this issue and conveyed the urgency (and gravity) I believe it entails. He's just now gotten back to me via email indicating that his office is having "discussions with counterparts in the Administration to try to arrive at a coordinated response". I don't know any more than that, but will certainly keep you posted if I hear anything. Thank you again for your willingness to include us in this very difficult and conflicted issue. sh

-----Original Message-----
From: Howard, John [mailto:ZKZ1@CDC.GOV]
Sent: Wednesday, January 26, 2005 11:54 AM
To: Hallmark, Shelby - ESA
Cc: Wade, Lewis; Elliott, Larry J.
Subject: Draft FRN

Shelby:

Here's the Notice. Let me know if you need anything else.

JH

<<FRN.SECs.StLouis.2~5.doc>>

Search 5

From: on behalf of Hallmark, Shelby - ESA

Sent: Thursday, January 27, 2005 10:07 AM

To: Law, Steven; Krishnamoorti, Mala; Iverson, Kristine; Lipnic, Victoria

Cc: Wilson, Mark; Nesvet, Jeffrey L - ESA; Radzely, Howard; Turcic, Peter - ESA; Svenonius, Diane - ESA

Subject: our comments on the NIOSH FRN re SEC evaluations for Iowa and Mallinckrodt

Importance: High

Attached is our joint (SOL/FEEWC and OWCP) commentary on the NIOSH evaluation statements. I fully endorse these comments, which you will see pull no punches. We haven't dwelt heavily on the impact here, other than to say these evaluations, once made public, would lead almost inevitably to SEC petitions being brought and accepted at virtually all DOE sites. That equates to added costs of somewhere between $5 and $10 billion over 10 years, and would make a mockery of the notion that benefits flow to qualified workers, and not to those whose disease was not work related. Thanks, sh

1-27-05

Department of Labor Comments on the Mallinckrodt and Iowa Army Ammunition Plant Evaluations

DOL objects to the proposed recommendation to add several additional classes of employees at the Mallinckrodt and Iowa Army Ammunition Plant (IAAP) facilities to the Special Exposure Cohort (SEC).

- We believe that granting SEC status to employees at IAAP and employees who worked at Mallinckrodt between 1949 and 1957, **despite the fact that NIOSH concedes that it can perform dose reconstructions for those employees** is **clearly inconstant with the plain language of EEOICPA** and is likely to establish a precedent that will require the inclusion of the vast majority of employees at the major DOE facilities in the SEC at a cost of $5 to $10 billion over the next ten years.

- If HHS issues a final determination under EEOICPA adding those employees to the SEC despite finding that it can reconstruct the radiation doses received by such class members, it is not clear that DOL could adjudicate such claims, since our interpretation of EEOICPA would be at variance with the HHS SEC determination. DOL might be obliged to stay action on claims under those class designations while it requests a formal opinion from the Office of Legal Counsel of the Department of Justice concerning whether it is required to effectuate a designation of SEC class members that, as NIOSH acknowledges in its Federal Register notice, is inconsistent with the specific terms of EEOICPA.

- DOL also restates its previously-expressed objection to NIOSH presuming that the health of covered employees was endangered in any circumstance where it cannot adequately reconstruct radiation doses of employees

Statutory Requirement

EEOICPA requires that a two-part test be met in order to add a class of employees to the SEC. HHS must find that:

> (1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and
> (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

Mallinckrodt

NIOSH has determined that **"there is sufficient evidence from various monitoring activities, together with information on radiological sources and processes, to**

validate dose estimates" for employees who worked at Mallinckrodt between 1949 and 1957. This conclusively establishes that this class of employees cannot meet the first part of the specific test for inclusion of additional employees in the SEC set forth in § 7384q(b)(1) of EEOICPA.

Despite this finding NIOSH proposes to add this class of employees to the SEC because of **"the lack of credibility accorded by the Mallinckrodt claimant population to the government concerning the employees' radiological exposure."** The issue of credibility to stakeholders is certainly important from a program perspective but **absolutely irrelevant to the statutory test for additional SEC classes**. Furthermore it is clear that credibility issues encompass virtually every DOE facility. Requiring claimants to believe a dose reconstruction in order to deny SEC status **is tantamount to including the entire DOE weapons complex in the SEC.**

DOL has continually objected to a presumption that inability to perform dose reconstructions amounts to an implicit finding of health endangerment. DOL believes that NIOSH should not recommend addition of classes to the SEC in the absence of a positive finding of health endangerment based upon reliable evidence, rather than presuming health endangerment.

DOL is also concerned about the findings concerning employees at Mallinckrodt between 1942 and 1948. It appears, based upon NIOSH's assertion, that dose reconstructions can not be performed for that period, thus those classes do appear meet the first part of the SEC test. However, in regard to this class as well, DOL believes that an explicit finding of health endangerment is necessary rather than simply applying a presumption of endangerment.

Iowa Army Ammunition Plant

NIOSH has determined that **"it is scientifically and technically feasible to estimate doses with sufficient accuracy for employees working on Line 1 AEC operations at the Iowa Army Ammunitions Plant in Burlington, Iowa during the years from March 1949 to 1974."** That finding conclusively establishes that this class of employees cannot meet the first part of the specific test for inclusion of additional employees in the SEC set forth in § 7384q(b)(1) of EEOICPA.

Despite this finding, NIOSH proposes to add this class of employees to the SEC because **"such estimates could not be substantiated by the transparent, publicly available, factual basis required under EEOICPA"** because of the fact that NIOSH would have to utilize classified data to conduct dose reconstruction. The use of classified data has clearly been understood to be necessary at times in this program and has never before been suggested as a reason for determining that dose reconstruction could not be adequately undertaken. Again, NIOSH has added an SEC evaluation criterion totally inconsistent with the plain language of the Act, a criterion that is likely to apply at virtually every DOE facility.

DOL also notes the same lack of a specific finding of health endangerment relevant to the Mallinckrodt recommendation in regard to the IAAP recommendation. Before recommending that employees at IAAP be added to the SEC, NIOSH should do more than presume health endangerment.

[redacted]

From: Hallmark, Shelby - ESA
Sent: Tuesday, February 01, 2005 4:53 PM
To: Wilson, Mark; Krishnamoorti, Mala
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject: RE: Edited NIOSH FR Notice
Importance: High

Attached, per NIOSH, is the doc that is actually on the table at the Federal Register. It seems to be the same as the 11am version (that we hated). I now have time to add my further objection to the critically split infinitive ("to publicly evaluate") in the critical sentence regarding Iowa.

As discussed with Mala, NIOSH advised me that they are modifying the Mallinckrodt evaluation for the period 1949-1957 to remove their recommendation that those years be made an SEC cohort, leaving only the conflicting discussion about on the one hand, we have the info needed to reconstruct, and on the other, we have allegations that the data are not reliable, so we're asking the Board for advice. While that is seemingly a positive step, I don't think the Board will hesitate to resolve the conflict in favor of recommending an SEC class. I wasn't told whether the Iowa evaluation report would be similarly non-evaluative.

I was told that NIOSH will share the actual evaluation reports with us, but only when they are shared with the Board members. The eventual impact of the Mallinckrodt "shroud of secrecy/data corruption" test will now turn on exactly what is said about the NATURE of the data errors/falsifications alleged at Mallinckrodt. So the actual language of the evaluation report takes on enormous importance. If it mirrors either of the two FR Notice documents, it won't provide any kind of organized structure around which NIOSH (and DOL) could construct arguments that might keep other sites from simply following SEC suit based on monitoring errors, badges purposefully defeated, etc., etc. We'll find out in St. Louis how that long and arduous debate will start off, and where it's likely to lead. Thanks, sh

-----Original Message-----
From: Wilson, Mark [mailto:Wilson.Mark@dol.gov]
Sent: Tuesday, February 01, 2005 3:52 PM
To: Hallmark, Shelby - ESA; Krishnamoorti, Mala
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject: RE: Edited NIOSH FR Notice

I figured as much. The only good news is that nobody reads the Federal Register.

D. Mark Wilson
Deputy Assistant Secretary
Employment Standards Administration
U.S. Department of Labor
(202) 693-0200

From: Hallmark, Shelby - ESA
Sent: Tuesday, February 01, 2005 3:47 PM
To: Wilson, Mark; Krishnamoorti, Mala
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject: RE: Edited NIOSH FR Notice
Importance: High

This is ok, but I was just advised that HHS has already sent its notice forward to the Federal Register and

it's been "on public display" since 2:15pm today. Unfortunately. I don't have a copy of the final version – I hear it's changed several times – but am trying to get it now. Thanks, sh

—Original Message—
From: Wilson, Mark [mailto:Wilson.Mark@dol.gov]
Sent: Tuesday, February 01, 2005 3:02 PM
To: Hallmark, Shelby - ESA; Krishnamoorti, Mala
Subject: Edited NIOSH FR Notice
Importance: High

Please take a quick look at my edits on page 3. If you are comfortable with them, I will pass them along to NIOSH.

The language that I added comes directly from the longer summary in the previous FR notice.

Turley, Sheldon G - ESA

From: Nesvet, Jeffrey L - ESA
Sent: Wednesday, February 02, 2005 6:13 PM
To: Culp, James E - ESA; Turley, Sheldon G - ESA
Subject: FW: St. Louis Energy Advisory Board meeting approach
Importance: High

FYI!

JEFFREY L. NESVET
Associate Solicitor for Federal Employees'
and Energy Workers' Compensation
Office of the Solicitor
United States Department of Labor
200 Constitution Avenue, N.W., Room S-4325
Washington, D.C. 20210
(202) 693-5320 693-5360 (fax)

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, February 02, 2005 4:31 PM
To: Krishnamoorti, Mala
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Wilson, Mark; Lipnic, Victoria
Subject: St. Louis Energy Advisory Board meeting approach
Importance: High

Mala, as discussed, here are the major points we would be making in St. Louis next week, insofar as the (rather unorganized) processes of the Board allow it:

NIOSH has basically punted to the Board the decision as to whether dose reconstruction can be done at Mallinckrodt for the years 1949-1957, despite alleged data validity questions, or whether those data allegations should result in approval of the SEC petition. In light of the decisions of this week, we would not make any comments pro or con regarding the Mallinckrodt SEC petition itself, but would urge the Board to (1) consider how any recommendation/advice it gives with regard to the data validity issue will affect any future SEC petitions; (2) enunciate, if it can, clear-cut criteria for making fair and consistent judgments about the circumstances under which data validity questions raised at any site are sufficient to undermine the feasibility of NIOSH dose reconstruction (e.g., types and prevalence of alleged data inadequacy, the efficacy of countervailing NIOSH techniques to overcome or estimate around missing or dubious data, etc.); (3) recognize that, in cases where a broadly worded data credibility criterion is used to support approval of an SEC petition, the claimants in that facility or class who have "non-listed" cancers (about 40% of the total, normally), will have their Part B benefits eligibility extinguished by the declaration of an SEC.

With regard to Iowa, while NIOSH is asking the Board to advise it on its finding that the SEC should be approved because of its "transparency" argument, NIOSH is making a determination that the SEC should in fact be approved due to its inability to explain all aspects of its reconstructions because of classified data. Again, we would not opine about the specific Iowa outcome, but would urge that any advice the Board gives to NIOSH (1) consider the impact of such advice on future petitions; (2) include guidance about what degree of "opacity" should be considered acceptable (that is, should the existence of any remaining classified information at a particular site

disqualify dose reconstructions at that site? If not, how central to a given set of dose reconstructions does the classified data have to be to trigger the "transparency" rule?); (3) address to what extent, how, and when alternative means might be used to assure claimants that NIOSH's use of classified data was appropriate, even though such use can't be clearly specified to them; and (4) similar to item (3) respecting Mallinckrodt, we would advise the Board that a declaration of an SEC based on classified data and transparency would likely extinguish the eligibility of claimants with non-SEC cancers, about 40% of the likely claimant pool at any site.

Thanks, sh

From: Hallmark, Shelby - ESA
Sent: Friday, February 04, 2005 09:33
To: Lipnic, Victoria; Iverson, Kristine
Cc: Dugas, Peter - OCIA; Wilson, Mark
Subject: FW: Agenda 2~5.doc
Importance: High

I'd say thoughtful deliberation by the Board, not something toward which they've shown a tendency anyway, will be extremely limited under these conditions.

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Friday, February 04, 2005 9:27 AM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA; Svenonius, Diane - ESA
Cc: Mosier, Roberta - ESA
Subject: FW: Agenda 2~5.doc
Importance: High

This meeting is really shaping up to be a real party -- Bond coming and our Resource Center reports that Harkin has arranged for bus loads to come in from Iowa. The room holds 500.
-----Original Message-----
From: Homer, Corrine [mailto:CBH4@CDC.GOV]
Sent: Friday, February 04, 2005 9:09 AM
To: mackat116@msn.com; ANDERHA@DHFS.STATE.WI.US; andrade@lanl.gov; c_owens01@comcast.net; Larry J. Elliott (Elliott, Larry J.); wimunn@aol.com; Mellus@NYSLIUNA.org; roy.dehart@vanderbilt.edu; espoladd@aol.com; Mikehgibson@cinci.rr.com; gnrssir@frontiernet.net; pl.ziemer@insightbb.com; Mark Griffon
Cc: Underwood, Lewis A; greeB06@bellsouth.net; Wade, Lewis; Turcic, Peter - ESA; Hallmark, Shelby - ESA; Nichole L. Herbert (Herbert, Nichole L.); Kotsch, Jeffrey - ESA; Porter, Diane; Blosser, Fred; Brand, Anstice M.; Caswell, Gay Mcinnes; Howard, John; Katz, Ted; Kendrick, Charlotte
Subject: Agenda 2~5.doc

Board Members,

We have again, revised the draft agenda to include a Board Welcome from Senator Bond on Monday. Revised agenda is attached.

Thank you,
Cori

<<Agenda 2~5.doc>>

Search 5

m:	on behalf of Krishnamoorti, Mala
t:	Tuesday, February 08, 2005 10:26 PM
To:	Hallmark, Shelby - ESA; Lipnic, Victoria; Iverson, Kristine; Law, Steven
Cc:	Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA
Subject:	Re: EEOICPA Advisory Board meeting

We appreciate your vigilance and update, Shelby. Thanks much.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Hallmark, Shelby - ESA <Hallmark.Shelby@dol.gov>
To: Lipnic, Victoria <Lipnic.victoria@dol.gov>; Krishnamoorti, Mala <Krishnamoorti.Mala@dol.gov>; Iverson, Kristine <Iverson.Kristine@dol.gov>; Law, Steven <Law.Steven@dol.gov>
CC: Nesvet, Jeffrey L - ESA <Nesvet.Jeffrey@dol.gov>; Turcic, Peter - ESA <Turcic.Peter@dol.gov>
Sent: Tue Feb 08 19:56:00 2005
Subject: EEOICPA Advisory Board meeting

FYI -- The meeting today went better than we could have hoped. The Board approved an SEC for the first six years at Mallinckrodt -- which we are fine with. But they postponed consideration of the controversial 1949-1957 period -- which we did not think NIOSH had sensibly justified -- for a couple of months. At this point, the Iowa petition may also be postponed, notwithstanding the busloads of claimants coming down tomorrow.

A political alert: Senator Bond's staffer (I believe name is Tom Horgan) came up to me after the meeting and indicated the Senator would be calling Secretary Chao about the meeting. It wasn't exactly clear whether he was unhappy with my comments to the Board (which followed the script discussed with Mala last week, and which seemed well received by the Board), or if he would just be asking the Secretary to weigh in on the side of approving the 1949-57 period for SECOND status. I explicitly stated in my remarks that DOL did not take a position one way or the other on the Mallinckrodt petitions, so he may want to try to convince the Secretary otherwise. He was clearly unhappy with the Board's deliberative pace, and their failure to decide all the issues before them today. Senator Bond yesterday called for an immediate approval of the full Mallinckrodt SEC petition, so his view of today's outcome would be different from ours.

Let me know if you need more info. I'm checking email via blackberry and cell is 202-345-7002. Thanks, sh
---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
om: Hallmark, Shelby - ESA
ent: Thursday, February 10, 2005 11:31 AM
o: Lipnic, Victoria; Iverson, Kristine; Krishnamoorti, Mala; Norris, Jane OPA
Cc: Turcic, Peter - ESA; Wesvet, Jeffrey L - ESA; Svenonius, Diane - ESA; Wilson, Mark; Dugas, Peter - OCIA; Hallmark, Shelby - ESA; Ralsky, Yvonne; Hatchett, Dolline - OPA
Subject: RE: EEOICPA Advisory Board meeting in St. Louis
Importance: High

FYI: A somewhat lengthy update on the Advisory Board's actions on Wednesday.

Despite our comments, but in line with the NIOSH evaluation report given to the Board last week (to which we took serious exception), the Board APPROVED the Iowa facility as an SEC for the entire duration of its AEC/DOE weapons work -- 1949-74. Along with the partial approval of Mallinckrodt for an SEC covering 1942-48, this will be big news in the DOE complex, so OPA can expect calls to start coming in.

In the Iowa discussion, Pete Turcic pointed out that the Board should consider whether the "transparency" issue that NIOSH used as the basis for recommending SEC status was all or nothing -- that is, must claimants be given ALL information that was used in a dose reconstruction, or could there be situations where some classified data could be explained without full disclosure? He reiterated my presentation on Mallinckrodt regarding the need for the Board to cite specific, clear criteria for its recommendations, so that all future petitions can be handled consistently. He also raised the question as to whether there might be other mechanisms(e.g. review by an outside auditor) to provide claimants with assurance that NIOSH's estimation based on classified data was accurate, fair, and reliable, without a complete disclosure (or declassification) of the data. Finally, he reminded the Board that if they found that dose reconstruction could not be done based on classified data, then the 40% of claimants with non-SEC listed cancers would have their benefit rights extinguished without recourse.

Apparently feeling the pressure of claimants and the Iowa delegation, and sheltered by the NIOSH recommendation for an SEC, the Board voted 10 for, one abstaining, for the full SEC for Iowa. They acknowledged our point regarding the need for a clearly enunciated rationale -- but decided they didn't have time to put such a rationale together and set up a workgroup to write it sometime before their next meeting in April. Although there were some verbal flourishes attempting to suggest that Iowa's classified data issue is different than what will be encountered at the half-dozen other sites which did the same work, it's not at all clear that the eventual language used by the Board and HHS in describing this petition will sustain any such distinction.

What happens next?

1) HHS Secretary Leavitt, under the October amendments, has 30 days to issue his decision on the partial Mallinckrodt SEC (1942-48) and the full Iowa SEC, once the Board's recommendations are "received". (NIOSH may try to define "received" to add a few days to that window, but they don't have much latitude.) John Howard has said he will "package" the Board's recommendations, and could even recommend to Sec. Leavitt that they be modified or overridden -- but I don't credit NIOSH's taking such a step given the public record that was established this week (and given their history). Conceivably NIOSH could recommend some limiting language regarding justification to be used by the HHS Sec.'s decision, but with regard to Iowa, that will likely be without the direct input of the Board. We will try to get involved with -- and get information from -- NIOSH on the Iowa language that might be used, to try to reduce its broad precedential impact. And we will demand that NIOSH give us draft copies of their future evaluation reports before they achieve fait accompli status, as happened this time. But from a claimants' representative perspective, the Iowa SEC opens a door for many SEC petitions and a huge range of cases to be disputed on the grounds that classified data still exist at most DOE sites.

the HHS Secretary's decisions on Mallinckrodt and Iowa, assuming they support all or part of the SEC petitions, would go to Congress for a 30 day lay-over.

3) assuming Congress takes no action, the SEC's would go into effect after the lay-over -- perhaps as early as late April. OWCP would then need to reevaluate cases that we have previously denied based on dose reconstructions at the two sites, and would pull back

from NIOSH the hundreds of cases still pending dose reconstruction, which relate to employment in the SEC approved periods. Payments will be issued very rapidly on cases involving one of the 22 listed cancers. This will dramatically increase Part B outlays -- but since the program's funding is mandatory, that is not a budgetary problem for us. The ten year added cost for the Iowa SEC alone has been projected at about $1 billion, but we will have to look at the data to see what the FY 2005 and 2006 impacts will be. The ten-year added cost for a Mallinckrodt SEC was about $500 million, but only half of the Mallinckrodt claims would be covered by the partial SEC approval the Board has recommended (so far).

4) SEC petitions from the sites analogous to Iowa -- certainly Pantex, Y-12 (a big part of Oak Ridge), Los Alamos, Hanford, Piniellas (Florida), and Rocky Flats (Colorado), and probably several others -- can be expected to be filed immediately on the "classified data" basis. Given the binary approach the Board (and NIOSH) have suggested regarding this "transparency" issue -- either there is relevant classified data that affects the dose reconstruction or there isn't -- this could lead relatively quickly to other SECs being approved. However, the whole process -- claimants' filing the petitions, NIOSH "qualifying" a class of workers, NIOSH developing its evaluation report, the Advisory Board reviewing and recommending action, the HHS Secretary making a determination, and the Congressional layover period -- will take many months. Because there will be many petitions, that process will develop its own backlog, which will generate more, highly vocal political steam. (There will also be petitions that mimic the Mallinckrodt situation, but the rationale there (for the early years) is sufficiently unique to that site that it shouldn't really be that replicable. Action by the Board on the later years at Mallinckrodt -- promised by April -- would be a different story.)

5) NIOSH dose reconstruction efforts will continue to be slower than anyone would like. There are still 12,000 cases pending dose reconstruction -- maybe 11,000 after the approved Mallinckrodt and Iowa SEC cases are removed from the NIOSH queue. If the multiple follow-on petitions don't quickly get through the SEC gauntlet just described, there will be growing pressure for Congressional action to simply cut the knot and declare SECs broadly, either for all DOE facilities, or even for all DOE and AWE facilities. I think NIOSH's strategy is to approve several big SECs to reduce their backlog of dose reconstructions and reduce public antagonism. It remains to be seen whether that strategy will work, or will work in time.

Let me know if clarification, a meeting, or other steps are desired. Thanks, sh

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, February 09, 2005 4:53 PM
To: Lipnic, Victoria; Iverson, Kristine; Krishnamoorti, Mala; Dugas, Peter - OCIA
Cc: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA; Svenonius, Diane - ESA
Subject: Today's Advisory Board meeting

Fyi -- the morning session included the Board finalizing its tentative decision from yesterday to postpone action on the 1949-57 period at Mallinckrodt. Several members argued to go ahead and approve SEC status now, and Bond's rep argued strongly for that. But the Board voted 6-4 to defer the decision til the next meeting. (Two members were absent and the vote will technically be held open, but there's no likelihood the outcome will change.). What the Board will do with the "tainted data" issue at their April meeting is open to question, of course, but the additional time should allow some distance from the localized political heat we were dealing with this week.

The afternoon session was taking up Iowa as I left. Pete and Jeff will make the DOL comments on that similar to the Mallinckrodt. I'm hopeful the Board will also postpone a decision on Iowa, or will at least frame their rationale much more narrowly and site-specifically than NIOSH did in the documents we discussed last week. More later as it comes in. Thanks, sh

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Sent from my BlackBerry Wireless Handheld

Update on Status of EEOICPA Programs (Parts B and E)
February 23, 2005

- Implementation of the New Part E program
  - Roll-out of the new program is on schedule
  - DOE/DOL coordination has been smooth
  - DOL now has full possession of all 25,000 old DOE Part D claims; we are managing the residual Part D physician panel process
  - DOL has taken over full management of RESOURCE CENTERS
  - "Preliminary" Part E case processing is moving ahead:
    - more than 80 cash payments ($125,000 each) made
    - 220 cases initially approved for payment, many more coming
  - Interim Final Rule for Part E well underway – to PPB by early March
  - Publicity campaign working well – check events:
    - Ashland, Kentucky (Sen. Bunning – December 16)
    - Knoxville (Sen. Alexander – January 10)
    - Anchorage, Alaska (Sen. Murkowski – this week?)
  - Town hall meetings:
    - Oak Ridge (January 25);
    - Alaska this week;
    - Rocky Flats (Denver) March 1
    - Three sites the week of March 7
    - Many more scheduled through the summer
  - DOL start-up viewed favorably in media and DOE complex so far
  - Ombudsman office still to be established
- Part E Risks:
  - Delay in getting regs in place (through PPB and OMB) could slow progress, cause upsurge in criticism
  - Must move old cases through the system quickly – DOL's first year will yield about 1200 payments as we ramp up. FY 2006 will be critical.

- Part B Issues
  - DOL continues to perform steadily, but…
  - Growing controversy around HHS/NIOSH "dose reconstruction" process
  - NIOSH and Presidential Advisory Board have initiated approval of two new "Special Exposure Cohorts" – similar to Paducah – for Iowa plant and Mallinckrodt in St. Louis
  - Similar SEC status will be sought throughout weapons complex –
    - stability of current Part B program is at risk
    - $7 billion increase over 10 years if all sites become SECs
  - HHS has acquiesced to claimant, Advisory Board, and political pressure; places DOL in awkward position of defending the logic of dose reconstruction (see Senator Bond issue)
  - Pressure for more SECs will only grow – see Steelworkers' letter re Rocky Flats (Denver) SEC petition

[redacted]

From: Hallmark, Shelby - ESA
Sent: Thursday, February 24, 2005 4:42 PM
To: Iverson, Kristine; Dugas, Peter - OCIA; Krishnamoorti, Mala
Cc: Lipnic, Victoria; Turcic, Peter - ESA
Subject: RE: call from Tom Horgan of Bond's staff

I fear you are exactly right, Kris. But we'll keep trying.....

-----Original Message-----
From: Iverson, Kristine [mailto:Iverson.Kristine@dol.gov]
Sent: Thursday, February 24, 2005 4:37 PM
To: Hallmark, Shelby - ESA; Dugas, Peter - OCIA; Krishnamoorti, Mala
Cc: Lipnic, Victoria; Turcic, Peter - ESA
Subject: RE: call from Tom Horgan of Bond's staff

Thanks, Shelby. I would say that we will take care of Tom, but I don't think anyone can do that.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Thursday, February 24, 2005 4:14 PM
To: Dugas, Peter - OCIA; Iverson, Kristine; Krishnamoorti, Mala
Cc: Lipnic, Victoria; Turcic, Peter - ESA
Subject: call from Tom Horgan of Bond's staff

Peter, FYI, Mr. Horgan, who we met during the St. Louis EEOICPA Advisory Board meeting, called me to complain about not having been invited to the briefing yesterday. He may be contacting you on the same topic. I said we understood that the invitation had been general, but apologized if it didn't get to him. I'm sending him a copy of the powerpoint presentation for his further edification.

Kris/Mala, Mr. Horgan renewed his assertion that Senator Bond "was going to be calling the Secretary" regarding the Mallinckrodt Special Exposure Cohort petition, and presumably regarding my comments to the Board during the St. Louis meeting. I didn't discuss that issue further, nor did he - just a "heads up," per Mr. Horgan. The talking points that we discussed last week are presumably not in need of any change on this score. Mr. Horgan's grasp of these issues appears to be partial.

Thanks, sh

~~March 3, 2005~~

~~MEMORANDUM FOR THE SECRETARY~~

FROM: SHELBY HALLMARK
Director, OWCP

SUBJECT: Update on Status of EEOICPA Programs (Parts B and E)

This is to provide a brief update on progress and issues involved in the implementation of the New Part E program under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), enacted October 28, 2004.

The Department's roll-out of the new program is proceeding according to plan, and is **on schedule**. ESA/OWCP established a task force to lead the implementation, with heavy participation by SOL (the Federal Employees and Energy Workers Compensation Division) and support from OASAM, OCIA, and OPA. An FY 2005 budget of about $48 million has been agreed upon with OMB to support administration of the new Part E.

The first major task was to accomplish a smooth transition of responsibilities between the Department of Energy (for the old Part D program) and DOL (for the new Part E). This has been done successfully, with full cooperation from DOE. A formal MOU is in place, DOL has taken full possession of all 25,000 old DOE Part D claims, and we are managing the residual Part D physician panel process. (The statute called for the old Part D panel process to continue until DOL issues its regulations, but in fact all the cases in that pipeline have now been acted upon by the panels.) We have also taken over full management of the contract RESOURCE CENTERS located in the ten major weapons sites, such as Paducah.

To get the new program off the ground and establish credibility with the thousands of claimants who have been waiting for years, OWCP/SOL devised a "Preliminary" Part E case processing approach, under which we are able to approve and pay straightforward cases even before our regulations are published. Special teams in our district offices were set up to make these early decisions. To date, more than 140 cash payments ($125,000 each) have been made – a total of nearly $18 million – and over 280 cases have been initially approved for payment. Our goal is to make over 1200 payments by the end of the fiscal year.

Work on the Interim Final Rule for Part E is well underway; we hope to get it to the PPB by early March so that we can beat our goal of publishing it by May 25, 2005. The rule will allow us to decide the whole range of cases under Part E.

Our publicity campaign for the new program is working well. A series of check events and public recognitions has been held at Ashland, Kentucky (Sen. Bunning – December 16); Knoxville (Sen. Alexander – January 10); and last week, in Anchorage, Alaska (Sen. Murkowski).

We have also launched a major series of town hall meetings to be held throughout the DOE weapons complex.

- Oak Ridge (January 25);
- Alaska (February 24);
- Rocky Flats (Denver) March 1
- Hanford, Savannah River, and Idaho the week of March 7
- Los Alamos the week of March 21
- Paducah – March 29-30 (Congressman Whitfield to attend on March 29)

Each of these meetings is well publicized in the local media and with the local Congressional delegation in advance, to maximize participation and ensure that stakeholders are able to participate. Many more meetings will be scheduled through the summer.

In summary, the DOL start-up has been viewed favorably in the media and among the served population in the DOE weapons complex -- so far.

Part E Risks

While the program is off to an excellent start, any delay in getting our regulations cleared through PPB and OMB could slow our progress, and will likely cause an upsurge in public and Congressional criticism. It is imperative that we move the backlog of old cases through the system quickly to avert charges that claimants are being made to wait yet again. Our efforts in FY 2005 are likely to yield about 1200 payments as we ramp up, but most of the backlog must be cleared during FY 2006.

Part B Issues

DOL continues to perform steadily and effectively in adjudicating and paying Part B claims. **Our only real vulnerability in Part B is the substantial delay in case processing caused by the HHS/NIOSH dose reconstruction process.** Many claims have been awaiting dose reconstruction at NIOSH for three or more years.

In addition, there is growing controversy around the dose reconstruction process:

NIOSH and the Presidential Advisory Board recently initiated approval of two new "Special Exposure Cohorts" – similar to Paducah – for the Iowa plant and the Mallinckrodt plant in St. Louis.

In reaction to this action, similar SEC status will be sought for other sites throughout weapons complex. This could threaten the stability of the current Part B program, and would cause a $7 billion increase over 10 years if all sites become SECs – a very real possibility.

HHS has in part acquiesced to claimant, Advisory Board, and political pressure in the SEC process, and has allowed the Advisory Board to operate as essentially a worker advocacy organization. The HHS unwillingness to take unpopular stances places DOL in an awkward position – we end up being the only strong defender of the logic of a scientifically based dose reconstruction process, as opposed to a presumptive (SEC) eligibility test. [Note that Senator Bond was said to be calling you or Deputy Secretary regarding what his staff considered to be a negative posture on the part of DOL with respect to the Mallinckrodt (St. Louis) SEC petition.]

Pressure for more SECs will only grow. You received a letter last week from the Denver Steelworkers' local seeking your support for their petition for an SEC for the Rocky Flats (Denver) facility.

We look forward to providing more information on the new program in the Friday briefing.

Cc: Lipnic

1

Turley, Sheldon G - ESA

From: Nesvet, Jeffrey L - ESA
Sent: Tuesday, April 12, 2005 5:32 PM
To: Hukill, Craig - ESA; Turley, Sheldon G - ESA
Subject: FW: Notes from NIOSH Advisory Board Telephone Conference Call - April 11, 2005

FYI!

JEFFREY L. NESVET
Associate Solicitor for Federal Employees'
and Energy Workers' Compensation
Office of the Solicitor
United States Department of Labor
200 Constitution Avenue, N.W., Room S-4325
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(202) 693-5320 693-5360 (fax)

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Tuesday, April 12, 2005 4:03 PM
To: Hallmark, Shelby - ESA
Cc: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Notes from NIOSH Advisory Board Telephone Conference Call - April 11, 2005

Shelby, I spoke with Jim Neton about these issues and interestingly he noted that these issues were discussed with John Howard this morning.

Mallinckrodt TBD – NIOSH says it can support dose reconstructions for 1949 – 1957. Their staff will try and defend the allegations of secrecy and fraudulent activities. Jim says there is a supplement to the Mallinckrodt SEC petition review on the OCAS website that discusses the major issues (e.g., Mort Mason, "tainted" data, and secrecy). Apparently there is also a supplement there for IAAP (e.g., handling bare pits, etc.).

NIOSH has self-identified sites that might classify as SECs. There are four or five of the older sites that also have a significant number of claims (e.g., early years at Y-12, Los Alamos, Hanford, Linde). After this group, most affected sites have less than 10 claims and make defining a SEC difficult.

Jeff

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Tuesday, April 12, 2005 3:28 PM
To: Kotsch, Jeffrey - ESA
Cc: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Notes from NIOSH Advisory Board Telephone Conference Call - April 11, 2005

Thanks, Jeff. Sounds like the Mallinckrodt site profile/SEC petitions are getting the full spin rinse – big bucks for our friends at SC&A, but does this really move the ball one way or another?? Do we know yet whether NIOSH will say YEA or NAY to the SEC for 1949-57?

Regarding NIOSH's preference for individual docs – understood, but couldn't they in effect make some efficiencies by handling a group of them in parallel if the issues are really very similar? After all, there are 10,000 dose recons still sitting out there.....

-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Tuesday, April 12, 2005 1:33 PM
To: Hallmark, Shelby - ESA
Cc: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Notes from NIOSH Advisory Board Telephone Conference Call - April 11, 2005

Shelby, sorry for the delay. I had trouble getting a hold of the NIOSH folks (they were in a meeting with John Howard and Lew Wade this morning).

The SC&A/NIOSH meetings, which you allude to in your first question, are a result of the open debate that raged at the Livermore Board meeting. After that debacle, NIOSH and SC&A instituted a process of iterative reviews and meetings to attempt to resolve most issues prior to the final SC&A report going to the Board. NIOSH will probably address the "tainted" data issue at the meeting. I asked for the SC&A review of Mallinckrodt TBD and attached the files. I have not looked over the issues yet. NIOSH is planning on providing their comments to SC&A on Friday (not Monday). SC&A may(?) try to meet with NIOSH early next week before they finalize their report to the Board.

On the second issue, the Y-12 Plant petition review was not available in time for the upcoming Board meeting, i.e., NIOSH staff was apparently not in total agreement on the petition evaluation and wanted more time. The Cedar Rapids meeting will be plenty busy. NIOSH prefers to address the potential SEC status of an individual basis, i.e., would not recommend across the board "early years" SEC status.

Jeff

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Monday, April 11, 2005 1:32 PM
To: Kotsch, Jeffrey - ESA
Cc: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA
Subject: RE: Notes from NIOSH Advisory Board Telephone Conference Call - April 11, 2005

Thanks, Jeff. Question re Mallinckrodt: the plan is for the Board to opine re 1949-57 at the next meeting, correct? SC&A has reviewed the petition, and NIOSH will comment on Monday, but they are worried SC&A won't have time to comment on the comments/finalize in time for the meeting the following week. What do we think all this scientific back and forth is about? I thought the whole issue with 49-57 was that the data was "tainted" – not that NIOSH couldn't estimate the dose. And I thought SC&A hadn't raised that many serious issues re the Mallinckrodt TBD – at least in comparison to Beth Steel. What is all the back and forth about at this point, or could you tell?

Second issue – they are overbooked, apparently, for this meeting – hence the postponement of the Y-12 SEC petition. Have they, or do they plan to, circulated the NIOSH evaluation report on Y-12 petition? It seems like that would be a good thing to do, even if the meeting is too crowded to take it up this month. That way the community can at least see what NIOSH is proposing (I assume some kind of "early years" approval a la Mallinckrodt. By the same token, is there any indication that NIOSH is trying to do this efficiently – e.g., are they looking at the possibility of declaring an across the board "early years" SEC, for those sites that all have the same lack of viable data? Thanks, sh

-----Original Message-----

From: Kotsch, Jeffrey - ESA
Sent: Monday, April 11, 2005 11:14 AM
To: Turcic, Peter - ESA; Mosier, Roberta - ESA; Nesvet, Jeffrey L - ESA; Hallmark, Shelby - ESA
Cc: Turley, Sheldon G - ESA; Toufexis, Rose - ESA; Case, Diane L - ESA; McCadden, Anita L - ESA
Subject: Notes from NIOSH Advisory Board Telephone Conference Call - April 11, 2005
Importance: High

The NIOSH Advisory Board held a telephone conference call on April 11, 2005 from 8:00 - 11:15 AM.

Review Status of Activities Relative to IAAP and Mallinckrodt SEC Petitions

IAAP – The Board made three motions related to the IAAP SEC petition. First, they approved a motion to withhold the previously passed SEC recommendation to the HHS Secretary pending further review at the next full Board meeting (M. Gibson and J. Melius abstained). Second, the Board approved a motion to have SC&A continue their review of the IAAP TBD and provide input to the Board for the next meeting. Third, Mike Gibson asked that the Board issue a "letter of regret" for the circumstances related to the IAAP petition. He initially asked for a letter of apology, but Wanda Munn felt that the Board did not do anything improper and acted appropriately and in good faith. The motion for the "letter of regret" carried unanimously.

Some Board members will be reviewing classified IAAP documents at DOE Germantown this week.

Mallinckrodt – Denise Brock noted that SEC petition for the first two petition classes arrived on the HHS Secretary's desk on March 15. The next SEC group for 1949 – 1957 will be discussed at the next Board meeting. On April 5th, SC&A delivered a draft report to the Board and NIOSH. NIOSH commented that the staff could provide their review by April 18. Since SC&A would need a day or two to finalize the Mallinckrodt report, the Board was concerned that there may not be sufficient time prior to the next meeting to review the document.

Review of Draft Agenda for Board Meeting in Cedar Rapids, Iowa, April 25 – 27

April 25 - The dose reconstruction subcommittee will meet in the morning. They will finalize the review of the first 20 dose reconstructions and discuss the "score card." Also, they will perform an initial review of the SC&A procedure review document. Senator Harkin and perhaps Senator Grassley will attend and make remarks or have statements read during the morning session. The SC&A review of the next 18 dose reconstructions will not be available until the end of April (after the meeting).

The afternoon session will address the Mallinckrodt site profile followed by a public comment session in the late afternoon (4:15 – 6:15 PM).

April 26 - On Tuesday morning the Board will address the Mallinckrodt SEC petition for 1949 – 1957.

Tuesday afternoon the IAAP TBD will be discussed. A public comment session will be held in the evening.

April 27 - On Wednesday morning the Board will address the IAAP SEC petition.

NOTE: Contract actions with SC&A for the petition review task or other tasks will also be addressed during the meeting.

The presentations on program updates will not be held. The Y-12 SEC petition review will be delayed.

Task for SC&A for SEC Petition Reviews

The Board needs two levels of review. First, a fast response task would be available for rapid reviews (and perhaps available for Board actions from the next meeting). Second, a more methodical (open ended) review task would also be available. Mark Griffon drafted a task order that was discussed. It was assumed that up to eight SEC petition reviews might be needed. Lew Wade noted that a cost estimate would take some time to perform. This topic will be on the agenda for action during the next meeting.

Public Comments

- IAAP not comparable to Pantex.
- Bare handed handling of pits by workers would have resulted in sufficient dose for compensation.
- Transparency of information in IAAP TBD.
- An "old timer" noted that another meeting at the Machinist's Hall would have been useful in allowing workers to provide additional factual information. The IAAP TBD does not contain sufficient "factual information."
- What's the content of the five boxes from Mallinckrodt that were found? Jim Neton noted that the contents were summarized in the supplement to the SEC petition (on the web site).

Jeff

Update on Status of EEOICPA Programs (Parts B and E)
April 13, 2005

- Implementation of the New Part E program

  - Roll-out of the new program is on schedule
  - DOE/DOL coordination has been smooth
  - DOL now has full possession of all old DOE Part D claims (roughly 25,000), has received 2875 new Part E claims, and is managing the residual Part D physician panel process
  - The DOE Physician Panel process is in the final stages of operation
    - Of the nearly 2000 cases at the panels in November, all have been processed through the panel reviews (under DOL management, the panels exceeded the DOE goal of processing 100 plus cases per week – a goal DOE never reached)
    - There remain about 167 cases in final processing for DOE acceptance of the panel determination or awaiting shipment to DOL
    - Previously unprocessed cases are being developed and adjudicated under the DOL Preliminary Procedures
  - "Preliminary" Part E case processing is moving ahead:
    - more than 250 cash payments ($125,000 each) made, totaling $32 million
    - over 450 cases initially approved for payment, many more coming
  - Interim Final Rule for Part E well underway – to OMB shortly
  - Publicity campaign working well:
    Check presentation events:
    - Ashland, Kentucky (Sen. Bunning)
    - Knoxville (Sen. Alexander)
    - Anchorage, Alaska (Sen. Murkowski)

    Town hall meetings conducted: Oak Ridge, Alaska, Rocky Flats, Idaho, Hanford, Savannah River , Nevada Test Site, Los Alamos, Paducah, Western New York, and Western Pennsylvania. More meetings upcoming throughout summer and fall.
  - Ombudsman selected
  - Search for location for the Western New York Resource Center is underway

- Part E Risks:

  - Delay in getting regulations in place (through DOL and OMB) could slow progress, cause upsurge in criticism
  - Must move old cases through the system quickly – DOL's first year will only yield about 1200 payments as we ramp up. FY 2006 will be critical.

- Part B Issues

- Letters were sent to claimants with existing cases who were affected by the residual contamination changes.
- DOL continues to perform effectively, but…
- Growing controversy around HHS/NIOSH "dose reconstruction" process
- NIOSH and Presidential Advisory Board has initiated approval of a new "Special Exposure Cohort" – similar to Paducah – for Mallinckrodt in St. Louis
- Similar SEC status will be sought throughout weapons complex –
  - stability of current Part B program is at risk
  - $7 billion increase over 10 years if all sites become SECs
- HHS has acquiesced to claimant, political pressure; places DOL in awkward position of defending the logic of dose reconstruction

(6)

Assessment of NIOSH/Advisory Board/
Special Exposure Cohort Issues
April 14, 2005

BACKGROUND

- Senators Harkin and Bond sought to add Special Exposure Cohort (SEC) designations for sites in their states as part of the EEOICPA amendments last year; those efforts were defeated by Members who pointed to the NIOSH SEC petition process as the equitable approach.
- Heavy remaining backlogs in NIOSH's dose reconstruction process – still roughly 11,000 cases pending, many for roughly four years – fuel arguments that the process is unworkable and "justice delayed, justice denied".
- The presidentially appointed Advisory Board is responsible for reviewing and critiquing the dose reconstruction process conducted by NIOSH, and for reviewing SEC petitions and recommending additions to the SEC cohorts.
- Although intended to represent various factions within the DOE nuclear community, the Board has in fact been dominated by its worker advocate members.
- The Board obtained the services of an independent contractor (SC&A) to carry out its dose reconstruction review tasks, and that entity has been both extremely aggressive in its critique of NIOSH and tilted very clearly toward a worker advocate perspective. This has left NIOSH extremely defensive, and largely unwilling to take "uncomfortable" positions – i.e., that an SEC petition is not merited.

ST. LOUIS ADVISORY BOARD MEETING, FEB. 2005

- Under Congressional pressure to move quickly on SEC petitions for Iowa and Mallinckrodt (St. Louis), NIOSH recommended to the Board that these two petitions be approved – even though it also indicated that, except for the first seven years at Mallinckrodt, it has the capacity to do dose reconstructions in both sites (the critical criterion for approval of an SEC petition is that NIOSH CANNOT do accurate dose reconstructions).
- NIOSH cited very general, potentially broadly applicable rationale for SECs at these sites:
  - for Mallinckrodt, that there are public allegations that exposure data is corrupted – the "data cloud" argument;
  - for Iowa, that the need to rely on classified information to reconstruct the dose would mean that NIOSH would be unable to explain the dose reconstructions to claimants in a "transparent" way.
- The Board voted to approve an SEC for the first seven years of Mallinckrodt (agreed to by all as reasonable), voted to postpone discussion of the rest of Mallinckrodt to its next meeting, and voted to approve an SEC for all of Iowa.
- HHS Sec. Leavitt has now officially approved the first half Mallinckrodt SEC, but new information arose regarding Iowa and the Board chairman never sent the

Iowa recommendation to HHS. Worker advocates and the two Iowa senators have expressed outrage that the Board's recommendation was not immediately acted upon.

UPCOMING BOARD MEETING IN CEDAR RAPIDS, IOWA (APRIL 25-27)

- NIOSH expects Senators Harkin, Grassley and Bond to all make personal remarks at the meeting in favor of SEC approvals.
- NIOSH advises that they will present their arguments that they are able to reconstruction doses for Mallinckrodt 1949-57 and Iowa, but they will also (again) point to the arguments that have been raised about a "data cloud" with respect to Mallinckrodt and the classified information/"transparency" issue at Iowa. NIOSH will state that dose reconstructions for the first half of Iowa (1949-1962) would require reliance on classified data.
- NIOSH is aware that DOL does not believe the "data cloud" and "transparency" criteria are legally sufficient bases for approval of an SEC, but they remain unlikely to make a strong legal argument to the Board.

    - NOTE: NIOSH recognizes that the statutory criteria for approving an SEC, also the basis of its own regulations, are only two: 1) that dose reconstruction is not feasible, and 2) that sufficient radiation was present to endanger the health of the exposed workers. In asserting the transparency argument they do not contend that criteria 1) and 2) are met, only that NIOSH is elsewhere in the EEOICPA statute exhorted to be as public as possible as to its activities. Although they will apparently not acknowledge this at the upcoming meeting, NIOSH is also aware that claimants can be provided due process rights even when part of the data upon which the determination of their claim is based is classified and hence cannot be shared with them.

- NIOSH forecasts that the Board will probably vote to approve the second half Mallinckrodt SEC, and at least 1949-1962 at Iowa.
- This forecast is based on the current constituency of the Board, which includes 6 strong worker advocate members and 5 others, who represent DOE contractors, health physicist groups, and so on. The 12th member, who was perhaps the most aggressive employer representative, recently died.

IMPLICATIONS OF THE SEC DECISIONS TO BE MADE

- Board approval of broadly justified SECs for Iowa and/or Mallinckrodt will fuel the fire for additional SEC approvals throughout the complex.
- The "data cloud" argument can be applied with at least as much justice as at Mallinckrodt at virtually every DOE facility and AWE site. Board approval of the second half of Mallinckrodt would force HHS to ignore the Board's recommendation, something they have shown no stomach for, as well as risking the ire of Senator Bond.

- The "transparency" issue is in no way a valid basis for an SEC approval, but if this rationale is used at Iowa, it will be directly applicable in at least a half-dozen other sites where parallel work was done, and it will certainly be cited by advocates of every site as a potential rationale. Again, HHS will be hard pressed to override the Board's recommendation, given apparent earlier representations to Senators Harkin and Grassley.
- The ultimate impact of these two SECs being granted would be to destabilize the entire rationale for the dose reconstruction process. One logical outcome would be a move – gradual or sweeping – to grant SEC status across the board. We estimate a $7 billion 10 year price tag for that eventuality. A second outcome could be the proliferation of SECs in virtually random locations, with the accompanying destruction of any sense of fairness of outcomes for similarly situated claimants across the complex.

Search 4

From: on behalf of Krishnamoorti, Mala
Sent: Friday, April 15, 2005 11:31 AM
To: Hallmark, Shelby - ESA; Lipnic, Victoria
Cc: Siff, Andrew
Subject: RE: Panel to meet about worker funds

Thanks, Shelby. Just as an fyi...this mtg has been postponed.

From: Hallmark, Shelby - ESA
Sent: Friday, April 15, 2005 11:29 AM
To: Krishnamoorti, Mala; Lipnic, Victoria
Cc: Siff, Andrew
Subject: RE: Panel to meet about worker funds
Importance: High

Vicki et al. -- in my quick analysis of the impact of declaring SECs for the second half of Mallinckrodt and/or any part of Iowa, I neglected to reiterate that such a declaration, at least based on the criteria currently at play for justifying these SECs, would not only expand the cost of EEOICPA tremendously; it would also expunge the benefit rights of the 40% or so claimants who incur a cancer that is NOT one of the statutorily listed presumptive SEC cancers. Those individuals would have no recourse, as the dose reconstruction process would have been declared invalid by the SEC determination, leaving no basis for any of that 40% of claimants to meet the test of causation. Thus there is an equity issue associated with declaring SEC status in situations where NIOSH would otherwise have sufficient data to conduct dose reconstructions.

Given the likelihood that NIOSH will not present a forceful case for denial of these two petitions, the current make-up of the Board could result in recommendations that are not wise. Such recommendations will be extremely difficult/painful for the HHS Secretary to override.

> -----Original Message-----
> **From:** Hallmark, Shelby - ESA
> **Sent:** Thursday, April 14, 2005 2:28 PM
> **To:** Krishnamoorti, Mala
> **Cc:** Siff, Andrew
> **Subject:** RE: Panel to meet about worker funds
> **Importance:** High
>
> Mala -- I just sent a couple things down to Vicki -- one is a general discussion of the status of our implementation of the October 2004 EEOICPA amendments, and the other covers the imbroglio around NIOSH, dose reconstructions, the Advisory Board, and Special Exposure Cohort petitions. Let me know if you or Andrew have questions. Thanks, sh
>
> -----Original Message-----
> **From:** Krishnamoorti, Mala [mailto:Krishnamoorti.Mala@dol.gov]
> **Sent:** Thursday, April 14, 2005 1:38 PM
> **To:** Hallmark, Shelby - ESA
> **Cc:** Siff, Andrew
> **Subject:** RE: Panel to meet about worker funds
>
> Shelby ~ Can you please send Andrew and me the preparatory materials for tomorrow's EEOICPA mtg.?

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Monday, April 25, 2005 2:55 PM
To: Hallmark, Shelby - ESA; Lipnic, Victoria
Cc: Nesvet, Jeffrey L - ESA; Hatchett, Dolline - OPA
Subject: RE: DOJ ruling on "transparency"
Importance: High

Here's the Grassley Press Release on this issue.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Monday, April 25, 2005 2:47 PM
To: Lipnic, Victoria
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Hatchett, Dolline - OPA
Subject: DOJ ruling on "transparency"

Vicki -- FYI. NIOSh has announced an opinion provided by the Office of Legal Counsel at DOJ stating that 1) classified data and the problem of transparency do not form a basis for approving an SECOND and 2) that due process is not violated by the inability to share all documents relied upon for dose reconstruction with the claimant. This opinion (verbal, apparently) was greeted with fury by Senators Grassley and Harkin and Congressman Leach, all of whom attended the Board meeting today and spoke at some length. Senator Grassley stated he plans to leave no stone unturned in finding out who obtained or instigated this opinion. In that regard he mentioned inquiring with HHS, DOL, and OMB.

I arrived at the meeting just as the Members completed their remarks, and was approached by reporters fom the DeMoines Register about the DoJ opinion. I indicated that I was just learning of it and had no further information on the topic.

The NIOSH report on Mallinckrodt also is much more definitive, indicating that the data is sufficient to reconstruct dose (without pointing strongly to "data credibility" issues.

Not having heard any feedback on my email from Thursday regarding my possible remarks during this meeting, I asked Jeff if he had gotten any info on this. He had not, so at this point I don't feel empowered to make any comments on the SEC controversies. The good news is that NIOSH appears to have taken much more solid and legally based positions than we had previously been advised.

Thanks, sh

Sent from my BlackBerry Wireless Handheld

5

Turley, Sheldon G - ESA

From: Nesvet, Jeffrey L - ESA
Sent: Tuesday, May 03, 2005 8:04 AM
To: Hallmark, Shelby - ESA; Kotsch, Jeffrey - ESA; Turcic, Peter - ESA
Cc: Turley, Sheldon G - ESA; Pannocchia, Orlando J - ESA; Toufexis, Rose - ESA
Subject: RE: Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry ORAUT-TKBS-0028-6 Rev 00-B

What I am going to try to do is to include all the possible category choices, i.e radon from source material like uranium ore, radon from normal buildings, radon from underground structures to give us a basis to object if they do not treat each category uniformly across the board. I think we are basically stuck with the arbitrariness of some Naval nuclear radiation that cannot be segregated out being included in DRs (at least until someone takes us to court and is successful in striking down that exclusion since there is an argument that the exclusion is only in the facility definition and not the performance of duty provisions).

The maximizing approach is pretty close to running out of control. While I think that maximizing should also use a consistent set of inputs across the board either including or excluding radiation on the same basis as if actual data is used, which I doubt is the case now, I think we have a bigger problem in that maximizing seems to be turning into keep adding until you get over the line for almost everyone.

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-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Monday, May 02, 2005 12:57 PM
To: Nesvet, Jeffrey L - ESA; Kotsch, Jeffrey - ESA; Turcic, Peter - ESA
Cc: Turley, Sheldon G - ESA; Pannocchia, Orlando J - ESA; Toufexis, Rose - ESA
Subject: RE: Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry ORAUT-TKBS-0028-6 Rev 00-B

Jeff – that's fine with me – force-feeding, if you will. But what will your table do about radiation categories (eg, naturally occurring radon in the Iowa situation) where it's counted some places/instances, not in others? Likewise, say an AWE has Navy Nuclear radiation in the mix, and some DRs (or some parts of some or all DRs) include monitoring data from which Navy Nuclear radiation cannot reasonably be deleted or discriminated out. Meanwhile, other DRs (or parts of all DRs) are impacted by maximizing estimation techniques which EXCLUDE Navy Nuke data. How does your table handle that?

-----Original Message-----
From: Nesvet, Jeffrey L - ESA
Sent: Monday, May 02, 2005 12:28 PM
To: Hallmark, Shelby - ESA; Kotsch, Jeffrey - ESA; Turcic, Peter - ESA
Cc: Turley, Sheldon G - ESA; Pannocchia, Orlando J - ESA; Toufexis, Rose - ESA

Subject: RE: Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry ORAUT-TKBS-0028-6 Rev 00-B

Fond as I sometimes am of pointed rhetoric, I agree that more of that would serve no purpose here.

I think that we should comprehensively lay out all of the alternate kinds of radiation at any DOE and AWE facility. i.e Naval nuclear, commercial, DOE, etc in a chart with boxes to check included in the dose reconstruction or excluded and ask NIOSH to check the boxes for each category. I will take a shot at drafting the chart and sending it around.

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-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Monday, May 02, 2005 12:16 PM
To: Nesvet, Jeffrey L - ESA; Kotsch, Jeffrey - ESA; Turcic, Peter - ESA
Cc: Turley, Sheldon G - ESA; Pannocchia, Orlando J - ESA; Toufexis, Rose - ESA
Subject: RE: Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry ORAUT-TKBS-0028-6 Rev 00-B

Jeff, Pete – having sent them the shot across the bow, it seems to me we need to have a meeting/conference call to find out whether they mean to do anything about it or not, and if so, what. I agree the frustration level is mounting here, but amping up the rhetoric on these TBD comments doesn't seem like the best way to deal with it. I don't know if we have ever really discovered what the feeling at OCAS is on this – our request isn't that difficult to address, yet they have refused (or neglected) to do so for years now. Maybe they have concerns about issues we aren't aware of.

Respecting this particular document, unless there is something different about the language you cite below from other TBDs, I think we should note clearly, and with "again" incorporated prominently, our reiterated comment regarding the definition of radiation being covered.

In the meeting we need to have, it seems to me we also need to take on the issue of background radiation. At Iowa they are counting naturally occurring radon in the "gravel gerty" buildings, on the grounds – I take it – that putting workers down underground for the purpose of the work in those structures (and I don't know what that was) somehow makes the background radiation in them different in kind from that in the normal above-ground buildings. If that is really what they are doing at Iowa – and presumably in other sites – we need to come to an understanding about this. There needs to be a defensible and consistent policy for determining whether naturally occurring radiation is or isn't counted. Radon that comes from ore or tailings that are stored on a site is one thing; radon that comes out of the ground and happens to be higher in an underground building than an above ground building seems to be another.

Finally, I am waiting for a return call from Larry Elliott in response to my voice mail of Friday, in which I told him I am extremely concerned about the massive overestimation of

dose for some workers (viz. early years at Iowa) via source term based, worse-case scenarios, as a means of 1) taking the heat off NIOSH, and 2) speeding completion of dose recons in sites where there is little real monitoring data. I fear they are marching down a road that will have similar unintended results to those which happened in Cedar Rapids – establishing an untenable bifurcation of dose reconstruction results between different cohorts at the same plant in different years.

-----Original Message-----
From: Nesvet, Jeffrey L - ESA
Sent: Monday, May 02, 2005 11:40 AM
To: Kotsch, Jeffrey - ESA; Hallmark, Shelby - ESA; Turcic, Peter - ESA
Cc: Turley, Sheldon G - ESA; Pannocchia, Orlando J - ESA; Toufexis, Rose - ESA
Subject: RE: Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry ORAUT-TKBS-0028-6 Rev 00-B

It continues to be business as usual in regard to descriptions of what radiation is to be estimated. While I have not read the whole document, I did look at the first parts where they describe the scope and the historical discussion. This is all it says about what they are estimating:

> An objective of this document is to provide supporting technical data to evaluate the external occupational dose that can reasonably be associated with WSP worker radiation exposure as covered under EEOICPA.

While this was probably prepared before Pete's email of last week, do we want to merely send our usual comment on that issue, which has been to no effect so far?

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-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Monday, May 02, 2005 10:42 AM
To: Turcic, Peter - ESA; Mosier, Roberta - ESA; Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA; Turley, Sheldon G - ESA; Chance, Michael A - ESA; Toufexis, Rose - ESA; Case, Diane L - ESA
Subject: Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry ORAUT-TKBS-0028-6 Rev 00-B

Another TBD from NIOSH for review – Weldon Spring Plant TBD, Part 6, Occupational External Dosimetry. We'll shoot to return comments by Tuesday May 10.

Thanks,

Search 3

From: Hallmark, Shelby - ESA
Sent: Tuesday, May 31, 2005 5:31 PM
To: Lipnic, Victoria
Cc: Dugas, Peter - OCIA; Wilson, Mark
Subject: FW: IAAP

Fyi – NIOSH rushed to approve the SEC for the entire time period at the Iowa Army Ammunition Plant (1949-1974); Senators Grassley and Harkin will be pleased. The SEC goes into effect on June 19 assuming Congress takes no action.

NIOSH is also planning for the Advisory Board to meet in St. Louis, again, in early July, to consider the second half of Mallinckrodt (1949-1957) for SEC status; the first half is already in. John Howard assured me he believes the Board can be convinced to vote "no" on Mallinkrodt II, despite the fact that Senator Bond will be addressing the Board yet again, doubtless in no uncertain terms. sh

-----Original Message-----
From: Nesvet, Jeffrey L - ESA
Sent: Tuesday, May 31, 2005 10:17 AM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA
Cc: Pannocchia, Orlando; Turley, Sheldon G - ESA
Subject: IAAP

On May 20, HHS sent a letter to Congress designating the following class:

Employees of the Department of Energy (DOE) or DOE contractors or subcontractors employed by the Iowa Army Ammunition Plant, Line 1, during the period from March 1949 through 1974 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

The NIOSH recommendation to HHS said that at the board meeting "credible evidence" was presented that workers handled pits for more than one hour per shift. It also based its u-turn on the respresentedness of the data issue and radon in the gravel gerties.

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Search 3

From:	Hallmark, Shelby - ESA
Sent:	Friday, June 03, 2005 12:57 PM
To:	Lipnic, Victoria
Cc:	Wilson, Mark
Subject:	FW: Draft letter to NIOSH
Follow Up Flag:	Follow up
Due By:	Friday, June 03, 2005 12:00 AM
Flag Status:	Flagged

Vicki, the attached draft letter directs NIOSH to return all cases covered by the newly designated SEC class at Mallinckrodt to DOL, so that we can proceed to approve and pay those that involve "listed" cancers, and deny those than involve non-listed cancers. I've highlighted the key passage on the last page, wherein we make it clear that NIOSH's determination is responsible for this outcome. NIOSH will no doubt find this phraseology less than satisfactory, since they wanted us to publicly take the heat for this outcome (the denial of all non-listed cancer cases). I've heard some rumors that although NIOSH agreed to this arrangement during our meeting last week, they may be hoping to change our mind. Our sending this letter may flush them out on this score.

You had indicated you wanted to see our letter before it goes out. Please let me know as soon as possible whether you're ok with our issuing it. Thanks, sh

For Immediate Release
April 25th, 2005

GRASSLEY SPEAKS ON BEHALF OF FORMER IOWA ARMY AMMUNITION PLANT WORKERS

Advisory Board Meeting Held in Cedar Rapids

WASHINGTON — In a statement before the National Institute of Occupational Safety and Health (NIOSH) Advisory Board, Sen. Chuck Grassley today said that it's time NIOSH admit that they can't reconstruct dosages with sufficient accuracy, and they should provide compensation on the presumption that the hazardous work performed by the former IAAP workers caused their cancer.

"Four and one-half years have passed since enactment of this compensation program. I'm certain those in Washington could study and evaluate and deliberate on this issue for another four and one-half years. All while deserving workers pass away. It is time to make a decision," Grassley said.

Grassley made the remarks before an advisory board meeting in Cedar Rapids today that is reconsidering the Special Exposure Cohort petition by former workers at IAAP. The board already approved once the class of workers at the Iowa Army Ammunition Plant from 1947 to 1974 be added to the Special Exposure Cohort. But, before the Board transmitted their recommendation to the Secretary of Health and Human Services, new data was released by NIOSH.

Here is a copy of Grassley's prepared statement before the advisory board.

I'd like to extend my appreciation to Chairman Ziemer and the members of the Advisory Board for allowing me to speak today. I also thank Dr. John Howard, Director of the National Institute for Occupational Safety and Health, and Dr. Lew Wade for providing me this opportunity in the agenda.

Most importantly, I'd like to thank my friends and fellow Iowans, the former workers of the Iowa Army Ammunition Plant for their service to our nation.

It's because of you that we are here. Hard-working employees who went to work day in and day out. Workers who did what they were told without questioning what they were handling or exposed to. Without questioning what effect it would have on them and their families. You did this work because you were asked, and you did it because we were at war. And in many cases, these workers made the ultimate sacrifice as a result.

In April, 2000, the Secretary of Energy announced that the Administration intended to seek compensation for individuals with work-related illnesses in our nation's nuclear weapons complex. In October of that year, Congress passed a compensation program to provide fairness and equity to the men and women who produced and tested those weapons.

Today, claimants are being asked to trust compensation decisions by the same government that placed them in harm's way. The same government that failed to protect them or fully inform them of the dangerous nature of their work.

So, have the former workers of the Iowa Army Ammunition Plant been treated fairly or equitable by this compensation program? The answer is clear. No, you have not. Congress surely did not intend

for 4 ½ years to pass without a decision on compensation for many former IAAP workers.

Then, when it appeared action was finally going to be taken in St. Louis on February 9, this process was upended. This board voted to approve a petition on behalf of the workers for inclusion in the Special Exposure Cohort. It's my understanding that this decision was made on both the need for transparency and the limited amount of data.

Just one week after that vote, NIOSH learned that additional information had cleared a classification review, and a month later the board was told they must reconsider that past decision. After 4 ½ years spent deliberating on this program, it is incomprehensible to me how this matter could have been put before the board for a decision, and then be told the basis for that decision was made on incomplete information.

Without a doubt, this action has caused irreparable harm to the credibility of this program. It has caused many of the former IAAP workers to lose confidence in the program and agency officials.

And matters are not improving.

My office was verbally advised at 5 o'clock on this past Friday that there is a legal opinion being developed – which I have not seen – that could have a significant impact on the future of the IAAP petition. This opinion, from the Department of Justice, effectively prohibits the Secretary of Health and Human Services from designating a cohort based on the lack of transparency.

It's my understanding that the Justice Department believes that although the data is classified and unavailable to the claimants, dose reconstructions can still be done. And therefore, a Special Exposure Cohort can not be established. This interpretation raises serious questions about a claimants right to due process.

It's this type of underhanded tactic that leads me to believe that there is an effort by some in Washington to confound and discredit the process that we are engaged in today. I sincerely hope that it isn't an outright effort to prevent deserving workers from receiving compensation. Regardless, I intend to get to the bottom of it.

I will also fully examine the legal basis for this interpretation. I believe as strongly today as I did in early February that the lack of transparency undermines the validity and credibility of the dose reconstruction process.

In addition, I intend to fully examine what brought about this review by the Department of Justice. I plan to follow the paper trail wherever it may lead – including the Department of Health and Human Services, the Department of Labor, and even the President's Office of Management and Budget.

Most importantly, I will seek to uncover the individuals that initiated this review, and their motives. I strongly believe that sunlight is the best disinfectant, and I plan to do some deep cleaning.

Now, I'd like to review some of the key elements of the revised site profile presented by NIOSH. I know there are many others here who are more qualified and can more precisely speak to the weaknesses in the science. But it appears clear to me that these weaknesses make it nearly

impossible to come up with reasonable dose estimates with any certainty.

First, there is very little monitoring data available for the IAAP. In fact, there is no internal radiation dose records for the entire time period of 1949-1974. Only a tiny fraction of the workers exposed to radiation were monitored at all prior to 1968. According to the auditor, only 3% to 7% of the workers were monitored for external radiation.

Such a limited amount of monitoring data is available that NIOSH must rely on data from the Pantex plant in Texas. Strong arguments can be made that NIOSH is in no way comparing apples to apples.

It's also unclear what percentage of records from IAAP have been found and reviewed by NIOSH. Is it 5%? 50%? It's difficult to have confidence in the assumptions made by NIOSH not knowing what fraction of the records that were shipped from Iowa to Texas in 1974 have been found and reviewed.

There are also questions concerning some assumptions in the site profile, and the possibility of inequities between workers employed prior to 1963 with those after 1963. Dose estimates using the NIOSH site profile could result in a significant reduction in exposure to radiation, and the likelihood for compensation, for the later time period. It's my understanding that the risks did not decrease from 1962 to 1963.

If this is the case, it doesn't appear to be uniform or fair.

Given the limited monitoring data and the serious questions about the accuracy and completeness of the data, it seems that NIOSH would have a number of problems attempting to perform individual dose reconstructions.

It is this precise situation that Congress envisioned when the law was created. That doesn't happen very often. But in this case, Congress knew that situations would arise where there was insufficient information to estimate radiation dose with sufficient accuracy. For this, the law provides for inclusion in the Special Exposure Cohort.

I understand there are scientists within our federal government who believe very strongly that there's not a single dose that they cannot reconstruct. Could this possibly be realistic considering there are hundreds of facilities around the country just like the IAAP? Is it really likely that sufficient data exists for every single claimant? It doesn't seem possible.

Yet, of the nearly 8,000 claims NIOSH has reviewed, they have not found a single one that couldn't be done, except for those at the Mallinckrodt facility in Missouri. And NIOSH just made that admission in February.

So, what leads these health physicist's at NIOSH to believe in what they are doing with such certainty? Is it pride? Is it arrogance? Perhaps they just can't admit that something cannot be done? Or, is it driven by private contractors who rely on this process for their work?

Regardless of the reason, I'd ask those scientists to think long and hard about what they're

Search 1

n:	on behalf of Hallmark, Shelby - ESA
.t:	Wednesday, April 27, 2005 6:25 PM
.o:	Iverson, Kristine; Krishnamoorti, Mala; Law, Steven; Lipnic, Victoria; Radzely, Howard
Cc:	Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject:	Re: Update

Kris -- I made no substantive comments. The issues I had expected to need to address were essentially taken off the table by the DOJ opinion as presented by NIOSH. When I was asked by some participants what DOL's position was on the DOJ opinion, I declined comment. I also responded to a question about the provenance of the DOJ opinion with a "I have no knowledge" comment. For once I was quiet. Sh

-----Original Message-----
From: Iverson, Kristine <Iverson.Kristine@dol.gov>
To: Hallmark, Shelby - ESA <Hallmark.Shelby@dol.gov>; Krishnamoorti, Mala <Krishnamoorti.Mala@dol.gov>; Law, Steven <Law.Steven@dol.gov>; Lipnic, Victoria <Lipnic.victoria@dol.gov>; Radzely, Howard <Radzely.Howard@dol.gov>
CC: Nesvet, Jeffrey L - ESA <Nesvet.Jeffrey@dol.gov>; Turcic, Peter - ESA <Turcic.Peter@dol.gov>; Svenonius, Diane - ESA <Svenonius.Diane@dol.gov>
Sent: Wed Apr 27 16:52:32 2005
Subject: RE: Update

Shelby - Did you say anything at this Iowa meeting? I would like to be able to tell the Hill that DOL had no comments, just observed.

--Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, April 27, 2005 4:05 PM
To: Krishnamoorti, Mala; Law, Steven; Lipnic, Victoria; Iverson, Kristine; Radzely, Howard
Cc: Nesvet, Jeffrey L - ESA; Turcic, Peter - ESA; Svenonius, Diane - ESA
Subject: Re: Update
Importance: High

Mala -- here's the latest.

The Board heard some very demanding and angry presentations from Grassley, Harkin, and Cong. Leach on Monday -- much anger directed at the DOJ opinion on "transparency", many demands for SEC status.

On Tuesday the Board voted to recommend an SEC class for essentially all years, all employees, at Iowa. They carefully avoided using the transparency rationale as a basis for their recommendation. The vote was unanimous. I would speculate that HHS will not overturn this recommendation. It is not clear what the precedential impact of this decision will be -- depends in part on the wording of the recommendation and HHS's wording. But it should be less damaging than an SEC based on the transparency argument.

Today the Board voted to again postpone making a decision on the petition for an SEC for the seond half of Mallinckrodt (St. Louis) -- 1949-1957. NIOSH made an unequivocal statement that it CAN do dose reconstructions for these years -- which should nix a cohort -- but the claimant oriented members of the Board were able to delay a final vote when it looked like they might not prevail on a yea-nay vote.

final vote is now projected for the Board's next meeting in early July. It may be that least two current members of the Board will be replaced by new appointees by then, which could significantly change the dynamic of the Board. Such a change is critical, since the Board and "its" contractor seem bent on demanding that NIOSH's processes be far more perfect than is possible -- failing which, SEC's would be demanded everywhere.

The Mallinckrodt delay will continue to tie up very scarce NIOSH resources, and was unnecessary, since it is quite clear that these years do not meet the statutory uirement or NIOSH's regs for declaring a cohort. But at least a very damaging precedent averted -- for now. Thanks, sh

-----Original Message-----
From: Krishnamoorti, Mala <Krishnamoorti.Mala@dol.gov>
To: Hallmark, Shelby - ESA <Hallmark.Shelby@dol.gov>
Sent: Wed Apr 27 14:08:52 2005
Subject: Update

Hey Shelby - Just thought I'd check in since I hadn't heard from you. Any news/updates from the adv board mtg?

Larry J. Elliott
Director, Office of Compensation Analysis and Support
National Institute for Occupational Safety and Health
Centers for Disease Control and Prevention
Mail Stop C-46
4676 Columbia Parkway
Cincinnati, Ohio 45226

Re: Return of All Mallinckrodt Cases for New SEC Class for 1942 - 1948

Dear Larry:

On April 11, 2005, the Secretary of the Department of Health and Human Services (HHS), Michael Leavitt, designated the following class for addition to the SEC in a report to Congress:

> Employees of the Department of Energy (DOE) or DOE contractors or subcontractors employed by the Uranium Division of Mallinckrodt Chemical Works, Destrehan Street Facility, during the period from 1942 through 1948 and who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

This designation became effective on May 12, 2005, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on May 12, 2005, members of this class of employees, defined as reported in this notice, became members of the SEC.

A report attached to Secretary Leavitt's letter, entitled "HHS Designation of Additional Members of the Special Exposure Cohort," provided the supporting rationale for designating a class of employees from the Uranium Division of the Mallinckrodt Chemical Works, Destrehan Street Facility, for the years 1942 through 1948.

Section IV, "Designation Findings," summarized NIOSH's finding that ". . . it lacks access to sufficient information to either estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred

under plausible circumstances by any member of the class, or to estimate such radiation doses of members of the class more precisely than a maximum dose estimate."

The discussion further notes, "For the period from 1942 through 1945, NIOSH found the sum of information available is insufficient to document or estimate the maximum air concentrations of radionuclide dusts and radon gas that were generated and hence could have been inhaled and/or ingested by members of the class employed during this time period, resulting in internal radiation doses."

For the period from 1946 through 1948, NIOSH found the limited workplace and worker monitoring data and the information on radiological sources and processes to be insufficient to support dose reconstructions. The report noted, "This insufficiency of the monitoring data was based on a combination of three factors: (a) documentation showing that some of the data are technically unreliable; (b) documents that raise serious questions concerning the integrity of the recording, management, and reporting of monitoring data at Mallinckrodt; and, (c) the lack of sufficient information or data to reasonably validate dose estimates in light of the established concerns regarding monitoring data integrity."

Based on the above discussion, NIOSH has indicated that it is not feasible to undertake dose reconstructions for the class of employees employed at Mallinckrodt Chemical Works from 1942 through 1948. In view of HHS's explanation of the rationale for designating this class of employees as members of the SEC and discussions between NIOSH and DOL staff, **DOL interprets the HHS designation** as a determination **that NIOSH cannot perform dose reconstructions for any cases, i.e., cases with either specified or non-specified cancers. Thus,** NIOSH should return all cases involved in this SEC class to the DOL Denver District Office for OWCP to complete adjudication as appropriate.

Sincerely,

Peter M. Turcic
Director, Division of Energy Employees
Occupational Illness Compensation

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Deleted: We will send a similar letters as additional SEC classes are added in the future ¶

Search 2

From: Turcic, Peter - ESA
Sent: Wednesday, June 08, 2005 10:47 AM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA
Cc: Kotsch, Jeffrey - ESA
Subject: FW: National Academy of Sciences Review of NIOSH Program
Importance: High

Shelby,
It's interesting that in our meeting in Cinn. with NIOSH, Jeff and I asked about the status of this and Lou Wade said it was still on the schedule but after some other programs. I understand that Mr. Miller wanted this killed and it appears that Diane Porter accomplished their bidding. I understand that the technical staff at OCAS is real disappointed that this is no longer in the works since it is the only way that the potential over compensation issue can be addressed.

Can we ask that this go forward? We really need some defense when some auditor reviews the program and accusses us of over compensating. We have recently gotten some cases that are very disturbing that we are sending back. An example is we got a case that included about 17 years at Washington Power (the commercial plant at Hanford that is not covered). It was non payable but if another cancer entered the mix? We sent it back. I feel that we need to have some independent review that can support Jeff Kotsch and Diane Case when all these cases start going back from the NIOSH new plan to work the backlog.
-----Original Message-----
From: Kotsch, Jeffrey - ESA
Sent: Wednesday, June 08, 2005 7:43 AM
To: Turcic, Peter - ESA; Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA; Mosier, Roberta - ESA
Cc: McCadden, Anita L - ESA
Subject: National Academy of Sciences Review of NIOSH Program
Importance: High

This is probably already known to all of you. I heard from OCAS technical staff that the National Academy of Sciences review of the NIOSH program was terminated (apparently by Diane Porter).

Jeff

Herbert, Nichole L.

From: Henshaw, Russell
Sent: Thursday, June 23, 2005 9:16 AM
To: 'Kotsch, Jeffrey - ESA'; Ulsh, Brant A
Cc: Neton, Jim
Subject: RE: Wing Hanford Article in June 17th Issue of Occupational and Environmental Medicine - additional message
Attachments: AgeExposureHanford_Wing_OEM_2005.pdf

Attached. -Russ

-----Original Message-----
From: Kotsch, Jeffrey - ESA [mailto:Kotsch.Jeffrey@dol.gov]
Sent: Thursday, June 23, 2005 8:54 AM
To: Henshaw, Russell; Ulsh, Brant A
Cc: Neton, Jim
Subject: Wing Hanford Article in June 17th Issue of Occupational and Environmental Medicine

We're interested in taking a look at the article, "Age at exposure to ionising radiation and cancer mortality among Hanford workers: follow up through 1994," by **S Wing and D B Richardson, which was in the** June 17 issue of Occupational and Environmental Medicine. Shelby's concerned about the impact on public opinion/perception. If anyone has a copy, please let me know.

Thanks for your time.

Jeff

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ORIGINAL ARTICLE

Age at exposure to ionising radiation and cancer mortality among Hanford workers: follow up through 1994

S Wing, D B Richardson

Occup Environ Med 2005;62:465–472 doi: 10.1136/oem.2005.019760

Background: Studies of workers at the plutonium production factory in Hanford, WA have led to conflicting conclusions about the role of age at exposure as a modifier of associations between ionising radiation and cancer.

Aims: To evaluate the influence of age at exposure on radiation risk estimates in an updated follow up of Hanford workers.

Methods: A cohort of 26 389 workers hired between 1944 and 1978 was followed through 1994 to ascertain vital status and causes of death. External radiation dose estimates were derived from personal dosimeters. Poisson regression was used to estimate associations between mortality and cumulative external radiation dose at all ages, and in specific age ranges.

Results: A total of 8153 deaths were identified, 2265 of which included cancer as an underlying or contributory cause. Estimates of the excess relative risk per Sievert (ERR/Sv) for cumulative radiation doses at all ages combined were negative for all cause and leukaemia and positive for all cancer and lung cancer. Cumulative doses accrued at ages below 35, 35–44, and 45–54 showed little association with mortality. For cumulative dose accrued at ages 55 and above (10 year lag), the estimated ERR/Sv for all cancers was 3.24 (90% CI: 0.80 to 6.17), primarily due to an association with lung cancer (ERR/Sv: 9.05, 90% CI: 2.96 to 17.92).

Conclusions: Associations between radiation and cancer mortality in this cohort are primarily a function of doses at older ages and deaths from lung cancer. The association of older age radiation exposures and cancer mortality is similar to observations from several other occupational studies.

See end of article for authors' affiliations

Correspondence to: Prof. S Wing, Department of Epidemiology, School of Public Health, CB#7435, University of North Carolina, Chapel Hill, NC 27599-7400, USA; Steve_wing@unc.edu

Accepted 17 March 2005

A number of national and international regulatory and advisory organisations report radiation risk estimates for cancer following exposure to external ionising radiation.[1–7] These risk estimates are primarily based on the results of studies of populations exposed to radiation at high doses and dose rates, particularly studies of Japanese atomic bomb survivors. Because most environmental and occupational exposures to ionising radiation occur at low doses and dose rates, epidemiological studies of protracted low level exposures are of interest because they provide an empirical basis for evaluating the appropriateness of extrapolation of dose-response estimates from high dose studies that are used for radiation risk assessment, protection standards, and compensation decisions.

The Hanford Site was the first US nuclear weapons plant to be the subject of an epidemiological cohort study in which occupational radiation doses were examined in relation to cancer rates. Initial findings were reported in the 1970s.[8–9] Mancuso *et al* reported evidence of positive associations between external exposure to ionising radiation and mortality from "cancers of radiosensitive tissues",[8] and, in later analyses, positive associations with mortality from all cancers combined.[9] In their analyses, associations between ionising radiation and cancer were highly dependent on age at exposure, with evidence for dose-response relations primarily due to the effects of exposures received at the oldest ages.[9] Gilbert *et al* also examined mortality of Hanford workers, finding little or no evidence for relations between cumulative external radiation dose and cancer[10] with the exception of multiple myeloma, which they found to be associated with radiation exposures in earlier,[11] but not later[10] follow up. Gilbert *et al* reported positive associations at older age-at risk, but postulated that this finding was the result of unspecified biases.[10]

Although increased susceptibility to ionising radiation at older adult ages is plausible given age related functional declines in cellular repair processes,[12–13] most studies of atomic bomb survivors suggest decreasing sensitivity to radiation with advancing age. While lung cancer relative risks among atomic bomb survivors increase with age at exposure, this could be due to variation in smoking habits by birth cohort rather than increased radiation sensitivity with age at exposure.[14]

In this paper we use standard epidemiological methods for analysis of time windows[15] to evaluate evidence of age modification of dose-response relations between external ionising radiation and mortality of Hanford workers.

METHODS

Approval for this research was obtained from the University of North Carolina Institutional Review Board for research involving human subjects.

Study cohort: definition and follow up

Records for 33 459 Hanford workers were obtained from the National Institute for Occupational Safety and Health. Cohort members were employed by primary contractors for the Hanford Site (including Boeing, DuPont, General Electric, and Westinghouse) for at least 180 days, had at least one record indicating they were monitored for external radiation, and had been hired between 1944 and 1978.

We excluded two workers with annual external radiation doses above 250 mSv, which is above the standard threshold for studies of low dose and low dose rate exposures, and two workers acutely exposed in radiation accidents. Workers employed at other nuclear weapons sites were excluded because dose records for those employment periods were not available. To limit problems of missing dosimetry data and

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Main messages

- Associations between ionising radiation, chronic lymphocytic leukaemia and other leukaemias in Hanford workers are not explained by healthy worker survival, or by confounding by socioeconomic status, employment status, or plutonium exposure potential.
- Associations between ionising radiation and other causes of death are not explained by healthy worker survival, or by confounding by socioeconomic status, employment status, or plutonium exposure potential.

Policy implications

- Evidence from studies in progress following protracted exposure to low dose ionising radiation, plutonium or other potentially carcinogenic substances should be collected and analysed for compensation programmes.

avoid long periods of worker selection prior to start of follow up, we also excluded employees who were first hired more than two years prior to their first external dose record or achieving 180 days of employment by a prime contractor. Vital status follow up was conducted through 31 December 1994 using records of the National Death Index, Social Security Administration, Health Care Financing Agency, Pension Benefits, and the Washington State Department of Licensing. The National Death Index (NDI) has been shown to provide virtually complete ascertainment of deaths among employed men and women in the United States beginning in 1979,[17] so individuals known to be alive on 1 January 1979 or later were assumed to be alive at the end of the study if there was no indication of death from NDI. Underlying and contributory causes of death, obtained from state departments of vital statistics, were coded to the ninth revision of the International Classification of Diseases (ICD-9). Primary mortality analyses were conducted for total mortality, mortality from all cancers combined (any death with an ICD-9 code of 140–208 as an underlying or contributory cause), lung cancer (any death with an ICD-9 code of 162), and leukaemia except chronic lymphocytic leukaemia (CLL, ICD-9 200–208 except 204.1), a subtype of leukaemia that is often characterised by long latency and low case fatality, and which may differ from other leukaemias in its degree of radiogenicity.[18]

Radiation dose estimates

Estimated doses from external ionising radiation, primarily gamma rays, and tritium, are the major focus of this analysis. Hanford radiation dosimetry programmes have been described in detail previously.[19 20] Computerised annual dosimetry records were obtained for 1944 through 1989.[21] Although annual dose records were available for most production workers in most years, a substantial proportion of missing values occurred in earlier time periods, especially for clerical workers and women.[22] Missing values were estimated by a 15 step algorithm that relied on each worker's dose in neighbouring years, and, if not available, on the mean dose for workers of the same occupation and sex in the same year.[20]

Statistical analysis

An SAS computer program[23] was used to tabulate person-days and deaths in categories defined by the cross-classification of cumulative radiation dose and covariates of interest: age-at-risk, birth cohort, race, sex, socioeconomic status (SES), employment status, in vivo monitoring, and plutonium exposure potential. Age-at-risk was categorised in five year intervals. Birth year was grouped as before 1900, and in decade intervals up to 1940 or later. Race groups were African American, white, and other. Three categories of SES were defined according to the occupational prestige of each worker's longest held job: administrative/professional, clerical/skilled manual, or semi-skilled/unskilled manual. Employment status categories were: actively employed, one to two years post-termination, or more than two years post-termination, classified separately for risk ages less than 45, 45–62, and 62 or greater, a method developed to control bias due to healthy worker survival.[12] Workers were classified as in vivo monitored beginning on the day of their first monitoring result; this was used as an indicator of selection of healthier workers into exposed jobs because it has been shown to be related to higher radiation exposure and lower mortality in past studies of Hanford workers.[24 25] We used industrial process and work history records to create a job-exposure matrix for potential exposure to plutonium.[22] Workers were classified as potentially exposed to plutonium, starting on their first day of employment in a job with routine plutonium exposure potential.

The primary exposure of interest, external ionising radiation, was treated in a time dependent fashion. Doses were recorded on a calendar year basis. Age at exposure was assigned to annual doses based on age at the midpoint of the monitoring year. Cumulative doses were tabulated in four age windows: <35; 35–44; 45–54; and 55+ years. Doses in each age range were accumulated under 5, 10, and 15 year lag assumptions to account for time intervals between exposure and resultant death. Dose groups were defined as 0, <10, <20, <50, <100, <150, <200, <300, and 300+ mSv. The mean cumulative dose for the person-days in each cell of the tables defined by the cross-classification of all covariates was used for calculation of dose-response coefficients.

Table 1 Hanford Site cohort definition and vital status through 31 December 1994

	Men	Women	All
Operations workers hired 1944–78	25874	8145	33459
Exclusions			
First employed as construction	352	29	381
Offsite dose (30 person Sv)	2934	230	3164
Employed at other DOE facility	1112	104	1216
2+ years between first hire and eligibility	1232	1077	2309
Study cohort			
Vital status			
Alive	12279 (62.4)	5532 (82.6)	17811 (69.3)
Dead	7272 (36.9)	881 (13.1)	8153 (30.9)
Unknown	133 (0.7)	292 (4.4)	425 (1.6)
Total	19684 (100.0)	6705 (100.0)	26389 (100.0)

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Table 2 Characteristics of Hanford Site workers

	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Year of hire							
1944–47	5516	20.1	867	8.04	7416	28.1	
1948–59	8816	28.9	2085	13.8	10268	29.4	
1960–89	7485	40.0	3721	28.2	11206	42.5	
Birth cohort							
1873–99	1936	7.1	199	1.4	1535	5.8	
1900–09	2928	11.3	232	1.8	2480	9.4	
1910–19	3910	19.9	788	10.6	4818	17.5	
1920–29	4400	22.8	1293	19.3	5273	21.9	
1930–39	4298	31.2	1375	29.8	4670	32.1	
1940–58	4224	22.0	2981	44.3	7315	27.7	
SES							
Unskilled manual	8199	41.7	1775	28.5	9907	37.8	
Skilled manual	5835	29.7	4445	66.4	10294	39.0	
Tech/managerial	5632	28.7	474	7.1	6118	23.2	
In vivo monitoring							
Never	7154	36.4	4621	68.9	11568	37.7	
Ever	12508	63.4	2083	31.1	14591	46.3	
Plutonium worker							
Never	17013	86.6	6375	95.1	23424	88.4	
Ever	2650	13.4	329	4.9	2945	11.6	

Poisson regression models were estimated using the Epicure software package.[26] We present dose-response findings from excess relative risk regression models considering the relative risk (rate ratio) as a function of $1+\beta$ dose, where β represents the excess relative risk per Sv (ERR/Sv). Exponential relative risk models, in which the death rate is a function of exp (β dose) were also fit (see Appendix). Control for potential confounding by age-at-risk, birth cohort, race, sex, SES, employment status, and in vivo monitoring was obtained by background stratification. Following previous work suggesting the possibility of a larger relative impact of external radiation among workers with internal contamination from alpha emitting radionuclides,[9] the indicator variable for employment in a job with routine potential for plutonium exposure was estimated as a main effect so that its interaction with dose could be examined. For analyses of age-at-exposure, separate β parameters were estimated for each of four time window specific dose terms. The change in deviance on inclusion of a dose term in the regression model, described as a likelihood ratio test (LRT) statistic, can be interpreted using a χ^2 distribution with one degree of freedom. In age specific dose models, LRT values were calculated for each dose term by comparing the deviance of a model without each age specific dose term to the full model including all age specific dose terms. LRT values are reported instead of p values to reduce emphasis on statistical significance, which is inappropriately applied in observational studies.[27] Following convention in the radiation epidemiology literature, we present 90% likelihood based confidence intervals for the excess RR coefficients. We present confidence intervals because they provide more information than p values and, like the LRT tests, encourage interpretation of results along a more continuous scale with emphasis on precision rather statistical "significance" testing.[27]

RESULTS

The study cohort is described in table 1. Men were excluded primarily because of employment at other sites (n = 2934), whereas women were primarily excluded due to extended employment prior to first radiation monitoring (n = 1077). Among the cohort of 26 589 workers, 67.5% were alive at the end of 1994, 1.6% were lost to follow up, and 8153 deaths were identified. Cause of death information was obtained for 98.9% of deaths.

Most men were hired before 1960, while most women were hired after 1960, a difference that is reflected in the younger distribution of women's birth years (table 2). A total of 41.7% of men and 26.5% of women were classified as unskilled manual workers, while 28.7% of men and 7.1% of women were classified as technical or managerial workers. Most workers were never monitored by in vivo gamma spectroscopy. Jobs with routine potential for plutonium exposure were held by 13.6% of men and 5.8% of women.

Age specific radiation exposures were dependent on ages of hire and termination from employment (table 3). More than 70% of workers were hired before age 35 and about a quarter terminated employment after age 55. Workers hired at younger ages also tended to leave at younger ages: 6814 of the 9347 cohort members hired at ages below 25 terminated by age 35, whereas 720 worked past age 55. In contrast, 2162 of the 2919 workers hired at ages 45 and above worked beyond the age of 55.

Mean and median doses for all ages were 27.9 and 4.3 mSv, respectively (table 4). Over 3000 workers had cumulative doses above 50 mSv. Age specific dose distributions in table 4 include workers with at least one recorded or estimated dose in each age range; workers whose age specific doses are zero because they were not employed at those ages were not counted in age specific dose distributions. Mean and median doses tended to be higher at ages 45 and above than at younger ages. Maximum doses in the three younger age groups were between 342 and 352 mSv, while the maximum dose above age 55 was 402.8 mSv.

Table 5 shows that ERR coefficients for doses at all ages are negative for all cause mortality and leukaemia, positive for all cancer and lung cancer, and show little variability with lag. For all cancer and lung cancer, ERR coefficients (90% CI) are 0.28 (−0.10 to 1.00) and 1.31 (0.05 to 3.11), respectively, for a 10 year lag assumption. Largest LRT values, approximately 3, occur for lung cancer under five and ten year lag assumptions. Although maximum likelihood estimates of ERR coefficients for leukaemia were obtained, likelihood based confidence intervals were not found (Appendix).

Numbers of deaths were large enough to estimate age specific coefficients for all causes, all cancers, and lung cancers (table 6). For all cause mortality (n = 8153), most

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Table 3 Distribution of workers according to ages at hire and termination from employment at the Hanford Site, 1944–89

	Age at termination				
Age at hire	15–24	25–34	35–44	45–72	Total (%)
15–24	6814	1277	754	720	9545 (34.0)
25–34	3614	2520	1189	2050	9373 (33.6)
35–44	–	1495	1173	1808	4476 (17.3)
45–72	–	–	757	2162	2919 (11.1)
Total (%)	10428 (39.5)	5292 (20.1)	3873 (14.8)[a]	6820 (25.9)	26309 (100)

coefficients for doses at ages below 55 are negative; age specific estimates have absolute values less than 0.6, and LRT values less than 0.4, except for the coefficient for cumulative doses at ages 35–44 under a five year lag, which is −0.82 (90% CI: −1.81 to 0.24, LRT = 1.65).

All cancer (n = 2265) risk coefficients are positive in the youngest and oldest age groups and negative in the middle age groups under all lag assumptions. In the three younger age groups, LRT values do not exceed 1.1. Larger coefficients and LRT values are observed for doses at ages 55 and above. The improvement in model fit on addition of the age 55+ dose coefficient to models including terms for the three younger age groups is largest under a 10 year lag (LRT = 5.06); under this model the ERR/Sv is 3.24 (0.80 to 6.17).

For lung cancer (n = 666), most risk coefficients in the three youngest age groups are negative and LRT values are close to zero. Cumulative doses above age 55 are positively associated with lung cancer. The largest ERR/Sv, 10.28 (2.42 to 22.52), is observed for a 15 year lag, while the improvement in model fit on addition of the term for doses above age 55+ is largest (LRT = 7.33) under a 10 year lag, for which the ERR/Sv is 9.05 (2.96 to 17.92).

Observed deaths and observed/expected ratios for all cancer and lung cancer according to doses at ages 55+ under a 10 year lag, which provided the largest LRT values for all cancer and lung cancer, are presented in table 7. Observed/expected ratios for all cancer and lung cancer are slightly below unity in the lowest three dose groups. The highest ratios, 1.96 and 2.51 for all cancer and lung cancer, respectively, occur in the 200–300 mSv dose category. There is only one observed cancer death for doses in this age range above 300 mSv, and no observed lung cancers.

We computed all cancer and lung cancer ERR coefficients (10 year lag) for Hanford workers employed in jobs with routine potential for plutonium exposure (n = 3065) to coefficients for other Hanford workers (table 8). Based on analyses in table 6, a single parameter was estimated for cumulative doses below age 55. All cancer ERR estimates for younger and older ages are similar for plutonium workers and other Hanford workers. For lung cancer, younger age estimates are small for both groups. For cumulative doses at ages 55+, the lung cancer ERR/Sv is 24.62 (6.76 to 59.02) for plutonium workers and 7.02 (1.61 to 15.20) for other Hanford workers.

Dose-response coefficients from exponential relative risk models were similar to findings from the ERR models presented above, although LRT values tended to be somewhat smaller (data not shown). For example, the LRT values for cumulative doses at ages 55+ (10 year lag) were 4.44 and 5.98 for all cancer and lung cancer, respectively, compared to 5.06 and 9.05 under the ERR model.

DISCUSSION

Cumulative radiation doses accrued at all ages showed little association with mortality. The largest positive ERRs/Sv, between 1.14 and 1.31, were observed for lung cancer. Coefficients for leukaemia except CLL were negative. Findings of little association between radiation doses across all ages and mortality from all cancers are consistent with previous Hanford studies[9] and an international study that included Hanford workers.[9] The estimated ERR/Sv for all cancer mortality under a 10 year exposure lag assumption (ERR/Sv = 0.28, 90% CI: −0.30 to 1.00) can be compared to the value of −0.1 (90% CI: <0 to 0.8) reported for follow up of Hanford workers through 1986[10] and −0.02 (90% CI: −0.34 to 0.35) reported in a study of nuclear workers in three countries.[10] In contrast, several studies of nuclear workers have found radiation doses accrued at all ages to be positively associated with mortality from all causes, all cancers, lung cancer, and leukaemia, especially under longer exposure lag assumptions.[9 11]

Table 4 Number of Hanford workers according to cumulative age specific radiation doses, 1944–89

Cumulative dose (mSv)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
40	1302	1427	843	477	2354
<10	22158	8963	3079	2788	14833
10–49	11455	13024	4914	2559	4012
50–99	615	544	457	61	1301
100+	428	546	603	332	1883
Total (n)[a]	10973	12593	9896	4748	25379
Mean (mSv)	11.2	15.6	19.7	18.3	27.9
Median (mSv)	2.4	2.9	3.7	3.6	4.3
Max (mSv)	352.3	342.9	340.9	402.85	809.9

[a]Total number of workers with at least one recorded or estimated dose in each age range. Workers whose age specific doses are zero because they were not employed at those ages were still counted in age specific dose distributions.

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Table 5 Excess relative risk per Sv at all ages, 5, 10, and 15 year lag assumptions, follow up of Hanford Site workers through 1994

Cause of death / Lag (years)	ERR/Sv	90% CI	LRT* (df=1)
All causes			
5	−0.04	(−0.32 to 0.27)	0.06
10	−0.10	(−0.40 to 0.24)	0.26
15	−0.18	(−0.52 to 0.20)	0.64
All cancers			
5	0.30	(−0.23 to 0.96)	0.78
10	0.28	(−0.30 to 1.00)	0.55
15	0.16	(−0.49 to 0.98)	0.15
Lung cancers			
5	1.22	(0.08 to 2.83)	3.19
10	1.31	(0.05 to 3.11)	2.98
15	1.19	(−0.22 to 3.10)	1.77
Leukaemia – CLL			
5	−1.16†	(<0, −)	1.35
10	−1.17†	(<0, −)	1.11
15	−1.26†	(<0, −)	0.84

*Adjusted for age, birth cohort, race, gender, SES, employment status, in vivo monitoring, and work in plutonium jobs.
†Likelihood ratio test, one degree of freedom, comparing full models with models that omit the parameter for cumulative dose to all ages.

Estimates of ERR/Sv for cumulative doses accrued at ages 55+ were 3.24 (0.80 to 6.17) and 9.05 (2.96 to 17.92) for all cancer and lung cancer, respectively, under a 10 year lag; LRT values were 5.06 and 7.33, respectively. Coefficients were somewhat larger, and LRT values smaller, under a 15 year lag. A specific association between cancer mortality and radiation doses accrued at older ages has been reported previously in studies of Hanford workers that estimated weighting functions for age specific doses.[6 7] Kneale and Stewart estimated a doubling dose of 43 mSv at ages 58+ with a 14 year lag, and 8 mSv at ages 62+ with a 17 year lag.[7] Our approach, which considers fixed age windows and lags, is not sensitive to risks that might be specific to smaller age ranges. However, the statistical power to evaluate exposure effects in small time windows diminishes rapidly as distributions of cumulative doses shift to lower values within narrower age bands, reducing the range over which a dose-response relation can be estimated. We used time window analyses to ensure that dose-response coefficients are estimated over a substantial range of dose. In our study, age specific cumulative dose distributions (table 4), which depend on age specific employment periods (table 1), were broad enough to estimate dose-response between zero and approximately 300 mSv (table 7).

Variation in radiation risks by age-at-exposure in Oak Ridge National Laboratory (ORNL) workers was examined using two time windows defined by age at exposure, and the boundary between these windows was modified to search for the age that best discriminated between radiation risks for younger and older ages. The size and dose distribution of the Hanford cohort permitted specification of four age windows to evaluate whether there is a gradual increase in radiation risk with advancing age, an observation that would be consistent with biological mechanisms including age related declines in cellular repair and immune function. In contrast to this expectation, all cancer and lung cancer show an abrupt increased ERR ages of exposure above 55. An abrupt increase was also suggested in analyses of the ORNL cohort using age weighting functions rather than age windows; at ORNL the best fitting age boundary was 45 years.[4] An additional similarity of age-window analyses of cancer mortality at ORNL and Hanford is that dose coefficients for younger ages, although they are imprecise and contribute little to model fit, tend to be negative. This pattern was also observed in a recent study of multiple myeloma among workers from four US nuclear weapons sites.[9] Negative or absent radiation risks for doses accrued at younger ages could result from uncontrolled confounding from internal healthy worker selection that is stronger at younger than at older ages, whereas positive risks for doses at older ages could result from uncontrolled confounding by smoking or other exposures if they were positively associated with radiation doses accrued at older but not younger ages.

Table 6 Excess relative risk per Sv at specific ages, 5, 10, and 15 year lag assumptions, follow up of Hanford Site workers through 1994

Cause of death / Lag (years)		[illegible]	[illegible]	[illegible]	[illegible]
All causes					
5	ERR (90% CI)	−0.07 (−1.39 to 2.79)	−0.02 (−2.16 to 0.04)	−0.09 (−0.69 to 1.62)	0.27 (−4.29 to 1.34)
	LRT†	0.01	0.055	0.14	0.30
10	ERR (90% CI)	−0.38 (−1.81 to 1.40)	−0.27 (−1.30 to 0.85)	−0.24 (−1.21 to 0.75)	0.08 (−0.67 to 1.51)
	LRT†	0.04	0.74	0.74	0.33
15	ERR (90% CI)	−0.30 (−1.77 to 1.24)	−0.22 (−1.29 to 0.76)	−0.26 (−1.25 to 0.79)	0.02 (−1.18 to 1.27)
	LRT†	0.03	0.10	0.06	0.00
All cancers					
5	ERR (90% CI)	2.08 (−1.06 to 6.81)	−0.73 (−2.22 to 0.80)	−0.73 (−2.16 to 0.74)	3.27 (0.22 to 4.55)
	LRT†	1.05	0.34	0.34	3.27
10	ERR (90% CI)	1.80 (−1.34 to 6.03)	−0.04 (−1.09 to 2.39)	−0.45 (−1.48 to 0.60)	3.24 (0.80 to 5.17)
	LRT†	0.80	0.08	0.45	5.06
15	ERR (90% CI)	2.21 (−1.10 to 7.40)	−0.43 (−2.27 to 1.74)	−0.34 (−2.02 to 0.83)	3.27 (0.16 to 7.20)
	LRT†	1.09	0.12	0.35	2.74
Lung cancers					
5	ERR (90% CI)	−0.67 (−0 to 4.93)	−0.81 (−0 to 1.28)	−1.82 (−1.98 to 4.98)	4.29 (0.46 to 0.12)
	LRT†	0.94	0.19	0.74	0.45
10	ERR (90% CI)	−0.84 (−0 to 4.93)	−0.03 (−0 to 3.47)	−0.24 (−0 to 3.31)	9.05 (2.19 to 17.92)
	LRT†	0.09	0.00	0.07	2.33
15	ERR (90% CI)	−0.26 (−0 to 4.09)	−0.08 (−0 to 4.70)	0.03 (−1.19 to 4.42)	10.25 (2.42 to 22.22)
	LRT†	0.08	0.00	0.00	5.30

*Adjusted for age-at-risk, birth cohort, race, gender, SES, employment status, in vivo monitoring, work in plutonium jobs, and radiation doses in other age groups.
†Likelihood ratio test, one degree of freedom, comparing models with all four age specific dose terms to models that omit the parameter for the age specific cumulative dose in each column.

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Table 7 Observed and expected deaths from all cancer and lung cancer according to cumulative doses at ages 55 and above; 10 year lag, follow up of Hanford Site workers through 1994

Cause of death	All ages	10 (0.1)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
All cancer											
Observed	1591	419	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
O/E†	0.99	0.99	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Lung cancer											
Observed	458	119	77	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
O/E†	0.98	0.96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

*Average of the cell specific mean [illegible]
†Ratio of observed to expected deaths [illegible]
‡Cumulative external dose at ages less than 55, 55–44, 45–54, [illegible]

We fit several additional models (10 year lag) to consider possible alternative explanations for the observed age pattern of radiation risk coefficients. First we evaluated associations between radiation and non-cancer mortality, which is dominated by diseases related to smoking and other lifestyle factors. The age specific ERR/Sv was −0.96 (−2.60 to 0.99), −0.39 (−1.60 to 0.94), 0.11 (−1.00 to 1.32), and −0.45 (−1.54 to 0.77) for ages below 35, 35–44, 45–54, and 55+, respectively, indicating that doses at ages 55+ are positively associated with cancer, but not non-cancer mortality. Non-lung cancer mortality, has risk coefficients of 3.75 (−0.67 to 9.37), −0.25 (−2.54 to 2.45), −1.90 (<0 to 0.40), and 1.73 (−0.77 to 4.72) for the four age groups, respectively. The lung cancer coefficient for doses at ages 55+ (table 6), is approximately five times larger than the coefficient for other cancers, showing that the relation between older age radiation doses and all cancer mortality is largely due to deaths from lung cancer.

Smoking is an important potential confounder of radiation-lung cancer associations. Observed relations would be spurious if smoking were positively associated with radiation at ages 55+, but not at younger ages, or if quitting smoking were negatively associated with radiation at ages 55+, but not at younger ages. Smoking status was not routinely noted in medical records during the period 1944–70. A survey of Hanford workers in the 1980s found no clear relation between radiation and smoking.[36] however, confounding effects of smoking, especially for older ages of exposure, could be due to smoking patterns in the 1940s–1970s.

Birth cohort differences in radiation risk estimates comprise a potential competing explanation of observed age effects. In contrast to intrinsic biological processes that could be involved in age related increases in radiation sensitivity, cohort effects could occur through several extrinsic mechanisms, including systematic dose misclassification specific to older cohorts employed during historical periods of less sensitive monitoring, dose related exposures to other occupational lung carcinogens specific to older cohorts, or radiation-smoking relations specific to older cohorts. Pierce *et al* suggested that there may be a sub-multiplicative relation between smoking and radiation such that older atomic bomb survivors with lower smoking prevalence show a higher relative risk when analyses use regression models that assume multiplicative relations.[7]

We fit models to explore birth cohort differences in radiation risk estimates for lung cancer among white male Hanford workers (n = 598 lung cancer deaths). Analyses were limited to white men, who received 92.8% of the total radiation dose, because temporal patterns of smoking among white males in the USA during this period differed from other groups. The LRT for addition of four age specific dose terms, as above, was compared with the LRT for inclusion of four interaction terms between cumulative dose (at all ages) and birth cohort, defined as before 1900, 1900–09, 1910–29, and 1930+. The LRT values (4 df) were 14.84 for the four cohort-dose interaction terms compared to 9.28 for the four age specific dose terms. In exponential relative risk models, LRT values were 5.86 for the four cohort-dose interaction terms and 8.00 for the four age specific dose terms. The covariation of exposures by age and cohort, small differences in LRT values between age and cohort models, and model dependence of the direction of the difference, make statistical differentiation of their effects difficult.

Hanford workers with routine potential for plutonium exposure have lower cancer rates than other workers, even after adjusting for SES, employment status, and in vivo monitoring status,[8] suggesting an internal healthy worker effect possibly related to the Hanford occupational medicine programme, which required additional medical screening for workers entering jobs involving special hazards.[37] However, lung cancer ERR/Sv values are 24.62 (6.76 to 59.02) for plutonium workers versus 7.02 (1.61 to 15.20) for other Hanford workers. The larger ERR/Sv for plutonium workers could result from internal exposures to alpha emitting radionuclides or other carcinogens used in the chemical separations process or from synergisms between other carcinogens and external radiation.

Although dose-response estimates for radiation and cancer mortality from the Life Span Study of atomic bomb survivors depend on several factors including sex, age at exposure, and attained age, a reasonable "benchmark" estimate of ERR/Sv for all solid cancers,[9] updated using recent dosimetry,[10] is 0.42 (90% CI 0.33 to 0.51), can be compared to our estimate of 0.28 (−0.30 to 1.00). However, ERRs for all cancer among atomic bomb survivors are lowest for ages-at-exposure above 40, whereas among Hanford workers ERR values for all cancer mortality are highest for ages above 55, primarily due to their association with lung cancer. Differences between results for worker studies and the Life Span Study, which began follow up five years after the bombings, may be due in part to greater dose related selective mortality of radio-sensitive persons among older than younger adult atomic bomb survivors, which would cause more of a downward bias in dose-response at older compared to younger adult ages.[38 39] This effect may be particularly important for lung cancer, which can occur less than five years following exposure to ionising radiation.[40] Dose-response findings for older ages were neither as strong, nor as specific, as previous reports from Hanford, although they are similar to those for ORNL workers, who had evidence of radiation related cancers for doses above age 45[41] and Santa Susana workers, who showed radiation related cancers for doses above age 50.[42] These observations contrast with a large international study of nuclear workers, which found no evidence of age increases in radiation risk for all cancer, but an association of doses at all ages with leukaemia except CLL.[43]

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Table 8 Excess relative risk per Sv at ages below and above 55, all cancer and lung cancer, 10 year lag, for plutonium workers and other workers, Hanford Site workers followed through 1994

All cancer				
Non Pu workers	0.03	(−0.09 to 1.07)	2.03	(−0.45 to 8.96)
Pu workers	−0.01	(−0.06 to 0.37)	2.48	(−0.29 to 4.83)
Lung cancer				
Non Pu workers	0.37	(−0.46 to 2.4)	2.02	(1.41 to 13.20)
Pu workers	0.13	(−0.10 to 0.8)	3.28	(0.76 to 59.02)

Direct evidence of radiation risk at low doses and low dose rates from cohort studies of badge monitored radiation workers will be of increasing value as workers are followed for longer periods and statistical power increases due to additional deaths. Longer follow up will be particularly informative for investigation of time related factors including age and cohort differences in radiation risk.

ACKNOWLEDGEMENTS

The authors thank Susanne Wolf, Gary Mihlan, Wendy McKelvey, and Edwin van Wijngaarden for insights and input in data collection and analysis.

Authors' affiliations

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Competing interests: none declared

APPENDIX

The relation between death rates and radiation dose was quantified via Poisson regression analyses. The model used to estimate rate ratios was the stratified excess relative rate model which is sometimes termed the stratified linear rate-ratio model (Greenland, 1998). Assuming the study data are divided into K strata indexed by $k = 1 \ldots K$, this model takes the form

$$I_k(x) = \exp(\alpha_k)(1+x\beta), \qquad (1)$$

where $I_k(x)$ is the death rate in stratum k at cumulative radiation dose level x. Within each stratum the death rate varies with radiation dose, x; and, only the model intercept, α_k, changes across strata of study covariates. β describes the linear relation between excess relative rate and radiation dose.

Because of the form of equation (1), the possible values of β are limited by the requirement that the corresponding relative rate should not be negative. The minimum value for β is given by $-1/x_{max}$ where x_{max} is the maximum dose value assigned to a cell of the person-time table. If the likelihood being sought for a point or bound estimate requires a β less than this value, then no convergence will be obtained and the estimate is shown as <0. The approach of calculating confidence intervals using the standard error for β (that is, the Wald method) is known to perform poorly for the linear rate ratio model since the log likelihood is asymmetric (Lustbader and Moolgavkar, 1987; Prentice and Mason, 1986). We therefore report likelihood based confidence intervals for parameters when the linear rate-ratio model was used.

Exponential relative rate models (Greenland, 1998) were also fit as part of our analysis of these data. The exponential relative rate model takes the form

$$I_k(x) = \exp(\alpha_k + x\beta), \qquad (2)$$

where $\exp(\alpha_k)$ is the stratum specific rate when $x = 0$ and β represents the change in the log rate that would result from a one unit change in x.

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Answers to questions on *Regression modelling and other methods to control confounding* by R McNamee, on pages 500–506

Search 4

From: Turcic, Peter - ESA

Sent: Tuesday, June 28, 2005 11:29 AM

To: Elliott, Larry J.; Sundin, David S.; Neton, Jim; Hinnefeld, Stuart L; Homoki-Titus, Zeda (Liz) E.; Wade, Lewis

Cc: Hallmark, Shelby - ESA; Mosier, Roberta - ESA; Leiton, Rachel - ESA; Vance, John - ESA; Kotsch, Jeffrey - ESA; Nesvet, Jeffrey L - ESA; Turley, Sheldon G - ESA; Kressley, Luann - ESA; zzESA-OWCP-DEEOIC-DDS-ALL

Subject: Talking points for Mallinckrodt

Importance: High

Attached are the talking points for the Mallinckrodt 1942 - 1948 SEC non-specified cancer procedures.

Peter M. Turcic
Director, Division of Energy Employees
Occupational Illness Compensation

6-23-05

MALLINCKRODT SEC – NON-SPECIFIED CANCERS

- EEOICPA authorizes addition of a class of employees to the Special Exposure Cohort (SEC) if the Secretary of HHS finds:

  (1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and
  (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

- The Secretary of HHS designated as members of the SEC all employees who worked in the Uranium Division at the Mallinckrodt Destrehan Street facility between 1942-1948 based upon his finding that it was not feasible to estimate the radiation dose that the class received because of three factors:

  - Documentation showing that some of the data is technically unreliable;
  - Documents that raise serious question concerning the integrity of the recording, management and reporting of monitoring data at Mallinckrodt; and
  - The lack of sufficient information or data to reasonably validate dose estimates in light of the established concerns regarding monitoring data integrity.

- An employee who meets the employment criteria for inclusion in the SEC and has sustained one of the 22 cancers specified in EEOICPA is conclusively presumed to have sustained that cancer as a result of employment covered by EEOICPA.

- An employee who meets the employment criteria for inclusion in the SEC and has not sustained one of the 22 cancers specified in EEOICPA (or an eligible survivor) can receive benefits on account of a non-specified cancer "if, an only if" a dose reconstruction completed by NIOSH leads to a determination by DOL that the employee's probability of causation is at least 50%.

- Since NIOSH has determined that it is not feasible to estimate the radiation dose received by workers at Mallinckrodt during the period from 1942 through 1948 because of insufficiency or unreliability of data, it is not possible for a claimant to establish a probability of causation of at least 50% (the only way under EEOICPA that DOL is authorized to

award benefits for non-specified cancers **caused solely by radiation**) thus DOL is required to deny those claims.

- DOL will evaluate these claims for potential coverage under Part E to determine if the individual's cancer was at least at likely as not related to exposure to a toxic substance **based upon exposure to a toxic substance other than radiation or exposure to a combination of radiation and one or more other toxic substances**.

[Submission For the Record]

Search 1

From: on behalf of Hallmark, Shelby - ESA
Sent: Tuesday, June 28, 2005 5:25 PM
To: Dugas, Peter - OCIA; Turcic, Peter - ESA
Cc: Krishnamoorti, Mala; Lipnic, Victoria; Sullivan, Adam - OCIA
Subject: RE: Missouri SEC Meeting

Peter – I doubt that Larry Elliott made the statement Tom Horgan attributes to him, and as far as I know DOL had nothing to do with the request for a DOJ Office of Legal Counsel opinion on classified data. Mr. Horgan is not so much sensitive as hysterical, but I suppose it takes all kinds. At this point neither Jeff, Peter nor I are planning to attend the Advisory Board meeting next week, so we'll have a low profile by definition.

FYI, NIOSH tells us they will submit a negative evaluation of the SEC petition for the second half of Mallinckrodt to the Board, and they think the Board will agree with denying an SEC for those years. No doubt Mr. Horgan will be unhappy if that occurs.

The arena in which DOL may come under fire at that meeting is the handling of non-listed cancers where an SEC HAS been declared. NIOSH tells us that issue will be discussed as an agenda item. Richard Miller called Pete to push for NIOSH doing dose reconstructions for these cases (even though they've said they can't do dose reconstructions in declaring the SEC in the first place), so this will clearly come up as a point of contention. With respect to Mallinckrodt, as our letter to NIOSH on this topic made clear, those cases will have to all be denied. No doubt Mr. Horgan will get excited when he hears that as well. sh

-----Original Message-----
From: Dugas, Peter - OCIA
Sent: Tuesday, June 28, 2005 3:34 PM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA
Cc: Krishnamoorti, Mala; Lipnic, Victoria; Sullivan, Adam - OCIA
Subject: Missouri SEC Meeting

Pete and Shelby,
I spoke to Tom Horgan today from Senator Bond's staff, and he reiterated the point that they expect the Department to stay out of the SEC designation decision process for NIOSH and HHS. I assured him that we would continue to remain out of the process. Tom feels that we are becoming involved because of a statement made by Larry Elliott at the last meeting stating that NIOSH and DOL were soliciting opinions from DOJ on the handling of classified materials for dose reconstruction. With all that being said, if you or Pete goes to the NIOSH meeting in St. Louis, MO, we would advise for a low profile to your presence. I know the history here, but feel you should know that Sen. Bond and Sen. Grassley's staff are a little hyper sensitive to anything we do.

Thanks,
Peter

Peter Dugas
Office of Congressional and Intergovernmental Affairs
U.S. Department of Labor
202-693-4600 Phone
202-693-4641 Fax

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Friday, July 01, 2005 5:31 PM
To: Lipnic, Victoria; Iverson, Kristine - OCIA; Dugas, Peter - OCIA; Radzely, Howard - SOL
Cc: Wilson, Mark - ESA; Nesvet, Jeffrey L - ESA
Subject: FW: Letter from Chairman Sensenbrenner and Senator Bond Regarding Office of Legal Counsel Verbal Opinion on SEC Matter
Importance: High

Richard Miller is the fairly obvious author of this letter, co-signed by Sensebrenner and Bond. I'm sure DOJ will be impressed with the legal scholarship.

-----Original Message-----
From: Howard, John [mailto:zkz1@cdc.gov]
Sent: Friday, July 01, 2005 3:03 PM
To: Hallmark, Shelby - ESA; Turcic, Peter - ESA
Subject: Letter from Chairman Sensenbrenner and Senator Bond Regarding Office of Legal Counsel Verbal Opinion on SEC Matter
Importance: High

FYI

-----Original Message-----
From: Blackston, Cindy [mailto:Cindy.Blackston@mail.house.gov]
Sent: Friday, July 01, 2005 2:16 PM
To: Wade, Lewis; anderha@dhfs.state.wi.us; espoladd@aol.com; Mikehgibson@cinci.rr.com; gnrsslr@frontiernet.net; Melius@NYSLIUNA.org; leon.owens@swiftstaley.com; pl.ziemer@insightbb.com; mackat116@msn.com; roy.dehart@mcmail.vanderbilt.edu; wimunn@aol.com; griffonm@comcast.net; Howard, John; c_owens01@comcast.net; Brand, Anstice M.
Cc: Kiko, Phil; Layman, Christine; SherrillA@gao.gov; Nugentm@gao.go; SampsonB@gao.gov
Subject: FW: Letter from Chairman Sensenbrenner and Senator Bond Regarding Office of Legal Counsel Verbal Opinion on SEC Matter
Importance: High

I wanted to make sure everyone received this letter regarding the verbal opinion of the Office of Legal Counsel at the Department of Justice regarding classified information and its applicability to designation of a SEC. <<54FD1A00.PDF>>

F. JAMES SENSENBRENNER, JR., Wisconsin
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ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

June 9, 2005

The Honorable Alberto Gonzales
Attorney General of the United States
United States Department of Justice
Room 4400
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to recommend that the Office of Legal Counsel (OLC) withhold issuance of any written legal opinions regarding the feasibility of estimating radiation dose under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) where it involves classified information, until the full ramifications of such an opinion are explored. We understand that OLC has instructed the Secretary of Health and Human Services (HHS) to refrain from determining that, in the context of a Special Exposure Cohort (SEC) petition, it is not feasible to estimate dose with sufficient accuracy because information is classified.

Due process and transparency are matters of significant sensitivity. It is well documented that defense nuclear workers were often put in harm's way without their knowledge or consent. The government used the guise of state secrets on nuclear weapons production activities to withhold information needed by workers to secure workers' compensation claims, to thwart demands for hazard duty pay and to avoid adverse publicity and embarrassment.

For example, a 1947 memo from the AEC Director of Oak Ridge operations to the AEC General Manager stated:

> *Papers referring to levels of soil and water contamination surrounding Atomic Energy Commission installations, idle speculation on future genetic effects of radiation and papers dealing with potential process hazards to employees are definitely prejudicial to the best interests of the government. Every such release is reflected in an increase in insurance claims, increased difficulty in labor relations and adverse public sentiment.*

In October 1947 Oak Ridge recommended to AEC Headquarters that the AEC Insurance Branch routinely review declassification decisions for liability concerns:

> *Following consultation with the Atomic Energy Commission Insurance Branch, the following declassification criteria appears desirable. If specific locations or activities of the Atomic Energy Commission and/or its contractors are closely associated with statements and information which would invite or tend to encourage claims against the Atomic Energy Commission or its contractors such portions of articles to be published should be reworded or deleted. The effective establishment of this policy necessitates review by the Insurance Branch as well as the Medical Division prior to declassification.*

In 1948, the AEC Declassification Branch recommended declassification of a study of the effect of gamma radiation on Los Alamos workers' blood because it fell within the field of "open research." The AEC Insurance Branch called for "very careful study" before making the report public:

> *We can see the possibility of a shattering effect on the morale of the employees if they become aware that there was substantial reasons to question the standards of safety under which they are working. In the hands of labor unions the results of this study would add substance to demands for extra hazardous pay knowledge of the results of this study might increase the number of claims of occupational injury due to radiation and place a powerful weapon in the hands of a plaintiff's attorney.*

A March 11, 1960, memo by AEC biomedical officials stated "possibly 300 people at Paducah should be checked out" for neptunium-237 contamination, but noted that there was hesitation to "proceed to intensive studies because of the union's use of this as an excuse for hazard pay." This policy persisted through the Cold War. At the time EEOICPA was enacted, the Secretary of Energy admitted that claims for occupational illness were routinely challenged by Energy and its contractors–without regard to merit.

Because official secrecy was used to withhold the truth about the dangers to workers' well being at government atomic facilities, transparency and due process for claimants is a necessary component of any adjudication under this program. Congress created an Advisory Board which operates in the sunshine to oversee the work of government scientists who are conducting radiation dose reconstruction for compensation decisions, as a way to facilitate transparency. Congress created a non adversarial adjudication process to ensure that information would be shared more freely than in a traditional adversarial proceeding.

At the April 26, 2005, meeting of the Advisory Board on Radiation and Worker Health (Advisory Board) in Cedar Rapids, Iowa, NIOSH presented the OLC's position in "power point" slides. One slide explained that classified information could not be used to justify that "it is not feasible to estimate radiation dose with sufficient accuracy" as part of a Special Exposure Cohort evaluation. The presentation maintained that claimant's due process rights could be preserved in a limited form, where classified information is involved. It suggested that in an appeals hearing, classified information could be reviewed with government officials in an *ex parte* communication with the judge *in camera*. The negative effect is that claimants would be in the dark about the scientific basis for a radiation dose estimate, and unable to challenge the technical basis. Their approach could place claimants in a situation where they must depend on the government's word without a public vetting. It also requires them to have faith that the government scientists, who are the defendants, will present information to a judge in a way which fully represents the interests of the claimant.

This is not to say that the withholding of classified information necessitates the frustration of due process, or that the only remedy is a SEC. In many cases, claims involving classified production or process information can still be reconstructed, since individual dosimetry records are generally not classified. Moreover, classified information will not always be central to reaching a credible compensation decision.

However, in older facilities where inadequate radiation dosimetry records are the rule, classified records may be the only data source. For example, NIOSH scientists recently asserted in their "SEC Evaluation Report" that it was feasible to estimate dose with sufficient accuracy at the Iowa Army Ammunition Plant (IAAP) using classified information. As such they recommended that the petition be denied. However, an independent probe of the classified information by Q cleared Board members and consultants found the government scientists were in error and that they could <u>not</u> estimate dose with sufficient accuracy. The Board received a non-classified presentation from this investigation, and voted unanimously to reverse the NIOSH scientists recommendation.

Claimants in Iowa were fortunate to have a rigorous review undertaken on their behalf, because they lack Q clearances, and classification had barred their ability to credibly challenge contentions by government scientists. We think it is most unlikely that this petitioning group would have seen the same result if these same government scientists were in control of the presentation of their case to a judge *ex parte* and *in camera* without any claimant rebuttal. Even this procedure does not guarantee due process for claimants who wish to appeal an adverse decision involving classified information.

OLC should take note that the concept of "feasibility" extends beyond the technical ability to reconstruct a radiation dose. In an October 12, 2000, floor statement involving the enactment of EEOICPA, Senator Jeff Bingaman stated that "infeasibility" could entail lack of relevant

radiation dose records, that records are missing altogether, that it would be prohibitively expensive to reconstruct dose, or it might take so long that the workers would have died by the time the job was completed. Congress did not limit "feasibility" to only technical issues, and OLC should not officially sanction a definition of feasibility contrary to that which Congress prescribed and which conflicts with legislated objectives.

Tenet v. Doe is not applicable in relation to EEOICPA, nor does it serve as a reasoned basis for limiting due process under EEOICPA. In Tenet v. Doe, both the plaintiff and defendant parties had knowledge of the state secrets at issue in a contractual dispute over compensation for espionage services. The Court found, citing *Totten*, that there is no due process right attached to contracts with the President of the United States involving clandestine employment relationships. By contrast, EEOICPA claimants are left unable to contest what they are not allowed to know. EEOICPA did not diminish due process rights when classified information is involved. The law provides a relief mechanism when the feasibility of a transparent dose reconstruction is simply not possible: a Special Exposure Cohort. Moreover, individuals with claims under EEOICPA did not enter into a special employment relationship with the Government in any way similar to the type addressed by the *Totten* court.

In the face of OLC's recent verbal opinion to HHS, NIOSH recently declared at the Cedar Rapids meeting that transparency is no longer a "necessary" part of their program. It is merely a program"value". We strongly urge that any written opinion rendered by OLC comply with the legislative and policy objectives of EEOICPA. Otherwise, there is a risk that the OLC's opinion will further conflict with the purposes and intents of the program.

Please feel free to contact me or Phil Kiko on my staff at 225-5727 if you have any questions.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

CHRISTOPHER S. BOND
United States Senator

From: Hallmark, Shelby - ESA
Sent: Wednesday, August 17, 2005 09:26
To: Turcic, Peter - ESA; Nesvet, Jeffrey L - ESA; Mosier, Roberta - ESA
Subject: RE: ABRWH Upcoming Meeting - Draft Agenda

Seems like the "SC&A on the Hill" issue is internal to HHS – I wonder why they're even bringing it up to the Board unless John plans to pull the plug on that nonsense. Doesn't sound like he does from what Larry heard back. I don't see, though, what influence we can exert on that – other than to go and stare at Lew Wade as if he's an alien from another planet.

The SEC petition generation process discussion might be interesting – especially if the Board starts to inquire as to why the particular sites that are being singled out are being singled out. But again, I don't know if DOL has any purchase on that issue.

Production rate is probably NOT going to be discussed in St. Louis, since the Board and SC&A are partially responsible for slowing it down.

I'm open to other views, but I don't see us needing to send more than Diane or Jeffrey. Mr. Nesvet – your view?

> -----Original Message-----
> **From:** Turcic, Peter - ESA
> **Sent:** Wednesday, August 17, 2005 7:51 AM
> **To:** Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA; Mosier, Roberta - ESA
> **Subject:** FW: ABRWH Upcoming Meeting - Draft Agenda
> **Importance:** High
>
> Here's the scoop from Larry Elliot:
>
> - OCAS found out that SC&A were going to the hill and briefing staff on what NIOSH was doing and how they were performing in dose reconstruction. He (Larry) raised this as a big concern -- a NIOSH contractor telling Congress how and what NIOSH was doing. Larry knows of briefings for Clinton staff and Cindy Blackstone. Larry raised the issue with John's office and he got "mumbles" back that there's a need to be transparent -- when he pushed saying that this should be vetted with the GC -- Larry was basically told that it really was none of his business and needed to stay out of this. Lew carried the message but Larry is not sure how much of the message was from John himself. He was unaware that this issue was put on the agenda for the Board meeting until that draft came out. He notes that Lew set the discussion late Friday afternoon -- most members will probably bale out except those who have a particular interest in this topic.
> - The presentation on the head's up on the cases where NIOSH tells a claimant that they cannot do a dose reconstruction is just a heads up that NIOSH is beginning to process these. The first letter will out this week -- to the claimant and to us -- we deny the claim and then NIOSH assist in developing a SEC petition for the class. I was in error -- the first one is Linde 42 through 47; another will be Harshaw and then the early years at Los Alamos, not Nevada as I thought.
> - As for the production rate -- he said he is raising lots of noise with ORAU and Dade about the production drop. He gets that its a drop associated with dose reconstructors taking a breather after the push for the first 5000 and taking vacations etc. NIOSH is about to award a contract to

From: Hallmark, Shelby - ESA
Sent: Wednesday, August 17, 2005 11:52
To: Turcic, Peter - ESA
Subject: RE: ABRWH Upcoming Meeting - Draft Agenda

Turns out John is on vacation until 8/29. I don't see any point in talking to Lew Wade. unless you think I could accomplish something there. I figure Lew is going to do whatever he and Diane Porter dreamed up, regardless of what I say.

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Wednesday, August 17, 2005 9:49 AM
To: Hallmark, Shelby - ESA
Subject: RE: ABRWH Upcoming Meeting - Draft Agenda
Importance: High

I think its a good idea Shelby. If this continues, the fallout is on us. We're going to have to spend lots of time responding to Congressionals based on issues raised by SC&A that really don't amount to anything.

-----Original Message-----
From: Hallmark, Shelby - ESA
Sent: Wednesday, August 17, 2005 9:46 AM
To: Turcic, Peter - ESA
Subject: RE: ABRWH Upcoming Meeting - Draft Agenda

Pete – I'm thinking of calling John about the SCA thing. I haven't talked with him lately. What do you think? I can do it without implicating Larry, since it's on the Board agenda.

-----Original Message-----
From: Turcic, Peter - ESA
Sent: Wednesday, August 17, 2005 7:51 AM
To: Hallmark, Shelby - ESA; Nesvet, Jeffrey L - ESA; Mosler, Roberta - ESA
Subject: FW: ABRWH Upcoming Meeting - Draft Agenda
Importance: High

Here's the scoop from Larry Elliot:

- OCAS found out that SC&A were going to the hill and briefing staff on what NIOSH was doing and how they were performing in dose reconstruction. He (Larry) raised this as a big concern -- a NIOSH contractor telling Congress how and what NIOSH was doing. Larry knows of briefings for Clinton staff and Cindy Blackstone. Larry raised the issue with John's office and he got "mumbles" back that there's a need to be transparent -- when he pushed saying that this should be vetted with the GC -- Larry was basically told that it really was none of his business and needed to stay out of this. Lew carried the message but Larry is not sure how much of the message was from John himself. He was unaware that this issue was put on the agenda for the Board meeting until that

draft came out. He notes that Lew set the discussion late Friday afternoon -- most members will probably bale out except those who have a particular interest in this topic.

- The presentation on the head's up on the cases where NIOSH tells a claimant that they cannot do a dose reconstruction is just a heads up that NIOSH is beginning to process these. The first letter will out this week -- to the claimant and to us -- we deny the claim and then NIOSH assist in developing a SEC petition for the class. I was in error -- the first one is Linde 42 through 47; another will be Harshaw and then the early years at Los Alamos, not Nevada as I thought.
- As for the production rate -- he said he is raising lots of noise with ORAU and Dade about the production drop. He gets that its a drop associated with dose reconstructors taking a breather after the push for the first 5000 and taking vacations, etc. NIOSH is about to award a contract to another contractor to do the AWE dose reconstructions -- not going over well with ORAU and Dade as you can expect. Lots of money lost for them.

Any thoughts on our attendance at the Board meeting?

-----Original Message-----
From: Case, Diane L - ESA
Sent: Tuesday, August 16, 2005 1:10 PM
To: Turcic, Peter - ESA; Vance, John - ESA; Kotsch, Jeffrey - ESA
Subject: FW: ABRWH Upcoming Meeting - Draft Agenda

ABRWH meeting agenda attached. I will be attending.

Diane

-----Original Message-----
From: Shields, LaShawn [mailto:lhs1@cdc.gov]
Sent: Tuesday, August 16, 2005 11:44 AM
To: Bob Presley; Genevieve Roessler; Henry Anderson; James Melius; Leon Owens; Mark A. Griffon; Michael H. Gibson; Paul Ziemer; Richard Lee Espinosa; Roy DeHart; Wade, Lewis; Wanda I Munn
Cc: wheezin2@aol.com; robert.bistline@rf.doe.gov; yu7@ornl.gov; kathleen.bleile@srs.gov; eb8@ornl.gov; Sbustos@mail.mcg.edu; cre@INEL.gov; keith.dinger@verizon.net; jeff.eagan@eh.doe.gov; Jellenberger@compuserve.com; Joe.falco@doe.gov; jf@salientstrategies.com; jack.fix@pnl.gov; Fromeel@ornl.gov; loc@icx.net; hammondk@uclind4.berkeley.edu; james02.hightower@srs.gov; ph8@ornl.gov; HOEL@MUSC.edu; sensor@senes.com; hornunrw@ucmail.uc.edu; gh68@columbia.edu; jjohnson@pantex.doe.gov; skieding18@aol.com; w.jeffrey.klemm@saic.com; bkojola@afcio.org; steven_j_maki@RL.gov; MARTINMJ@USIT.NET; 71056.774@compuserve.com;

Cc: wheezin2@aol.com; robert.bistline@rf.doe.gov; yu7@ornl.gov; kathleen.bleile@srs.gov; eb8@ornl.gov; Sbustos@mail.mcg.edu; cre@INEL.gov; keith.dinger@verizon.net; jeff.eagan@eh.doe.gov; Jellenberger@compuserve.com; Joe.falco@doe.gov; jf@salientstrategies.com; jack.fix@pnl.gov; Fromeel@ornl.gov; loc@icx.net; hammondk@uclind4.berkeley.edu; james02.hightower@srs.gov; ph8@ornl.gov; HOEL@MUSC.edu; sensor@senes.com; hornunrw@ucmail.uc.edu; gh68@columbia.edu; jjohnson@pantex.doe.gov; skieding18@aol.com; w.jeffrey.klemm@saic.com; bkojola@afcio.org; steven_j_maki@RL.gov; MARTINMJ@USIT.NET; 71056.774@compuserve.com; mcadamt1@westat.com; eohdmm@gwum.edu; RickuDana@aol.com; lindarae@interaccess.com; DEOHS@NJC.org; robnicholas@lanl.gov; david.Nichols@srs.gov; dozonoff@bu.edu; perrywn@oro.doe.gov; susan.pinney@uc.edu; alerdilr@uc.edu; knutringen@msn.com; rosenman@msu.edu; rothrockal@oro.doe.gov; jim.ruttenber@ushsc.edu; Schneider, Scott - Laborers' Health and Safety Fund of North America; Doug_S_Shoop@rl.gov; josh.silverman@eh.doe.gov; lakshmi.singh@srs.gov; stachowiakcg@oro.doe.gov; gary_stegner@fernald.gov; stewardjw@bechteljacobs.rog; tankersb@orau.gov; ACT@nr.gov; Robert.Ullrich@ColoState.edu; gwilkinson@epidemiology.com; Steve_wing@unc.edu; rzerm@panetx.com; Rjmsaf@aol.com; as16@columbia.edu; ieer@ieer.org; frankmorales@yahoo.com; MORANF1@Westat.com; lpepper@bu.edu; glyncaldwell@dcr.net; Shupe, Victoria; Dr. Al-Nabulsi; Case, Diane; Brand, Anstice M.; Broehm, Jason E.; Chang, Chia-Chia; Elliott, Larry J.; Ellison, Chris [NIOSH]; Harrison, Cynthia (Cindy); Herbert, Nichole L.; Homoki-Titus, Zeda (Liz) E.; Howard, John; Howell, Emily C; Katz, Ted; Kendrick, Charlotte; Porter, Diane; Underwood, Lewis A
Subject: ABRWH Upcoming Meeting - Draft Agenda

To all interested parties:

Attached is a draft agenda for the upcoming meeting of the Advisory Board on Radiation and Worker Health has been scheduled for August 25-26, 2005, as well as a meeting of the Subcommittee for Dose Reconstruction and Site Profile Reviews, scheduled for August 24, 2005. The meetings will be held at the following location:

Westin St. Louis
811 Spruce Street
St. Louis, Missouri 63102
314-621-2000
314-552-5700 (FAX)

Additional meeting documents and compensation program documents are available on the National Institute for Occupational Safety and Health website (www.cdc.gov/niosh/ocas).

If you have any questions, please call me at (513) 533-6825. Please note that this e-mail serves as notification of the meeting only.

Search 5

From: Case, Diane L - ESA
Sent: Monday, August 29, 2005 9:41 AM
To: Turcic, Peter - ESA; Mosier, Roberta - ESA
Cc: Kotsch, Jeffrey - ESA; Vance, John - ESA
Subject: Notes on ABRWH August 24-26, 2005
Importance: High

ABRWH Meeting, August 24-26, 2005 Summary Notes:

Please note that this is a quick summary of pertinent issues (trying to send out as quickly as possible). If there is any issue for which you would like clarification, or would like to check the accuracy of anything presented below, please let me know.

I have a copy of the meeting handouts that I will share with Jeff, and will provide Pete with his own copy.

Thanks,
Diane August 29, 2005

Next ABRWH meeting: October 17-19, 2005 Oak Ridge
Following meeting (tentative): January 24-26, 2006 in Colorado

NIOSH attendees: Stu Hinnefeld, Jim Neton, Diane Porter (L. Elliott ill)
ABRWH attendees – Ray DeHart not in attendance.

Mallinckrodt SEC 1949-1957 – Approved by Board, including skin doses. (4 to 6 – Munn, Presley, Roesseler, and Paul Ziemer negative votes).

NIOSH and SC&A responded to the 6 issues requested from the Board. NIOSH Provided Board with examples of (1) Residue worker using urine and radon breath; (2) residue worker using urine and radon coworker; (3) residue worker using urine and air sample data (4) Plant 7 ionium worker with bioassay data.

Apparently, NIOSH getting away from using bioassay data. Workers rotated through jobs. Uranium intake not indicative of raffinate workers.

Process dependent raffinate ratios developed:
- Based on ratios developed for radium bearing residues (K-65) and for thorium residues (AM-7)
- Reconstruction will use highest source term.

Radium residues based on radon breath measurements.
(Actual data if available, coworker distribution if not.

Thorium residues based on air concentration data (95th percentile for residue workers, 50th percentile for all other - with conclusive evidence that employees are not residue workers).
- Uranium intakes calculated independently of raffinate source terms
- Radon breath data is reliable.

NIOSH would use the higher of radon or air samples. For unmonitored workers, NIOSH would assign the full distribution of the monitored worker exposure as if worked in Plant 6. Unmonitored plant 1 and 2 decommissioning workers and SLAPS workers assigned the 95th percentile of the monitored workers exposure.

A major issue (for Mark Griffon) was that during work-group meetings, NIOSH said they could define raffinate employees, and use radium breath to bioassay ratios. Subsequently, NIOSH determined that employee's worked all over, and not possible to distinguish raffinate workers. NIOSH's subsequent proposal was to use raffinate