

Subject: FW: Dow co-petitioner input for 2/23/11 Board meeting
Attachments: McKeelTalk_DowSEC-00079.pd+.zip

From: DanMcKeel2@aol.com [mailto:DanMcKeel2@aol.com]
Sent: Friday, February 11, 2011 10:36 PM
To: melius@nysliuna.org; Katz, Ted (CDC/NIOSH/OD); Kinman, Joshua L. (CDC/NIOSH/DCAS); NIOSH Docket Office (CDC)
Cc: danmckeel2@aol.com
Subject: Dow co-petitioner input for 2/23/11 Board meeting

Dear Dr. Melius, Ted Katz, Josh Kinman and Dow Docket #113 officer,

I would appreciate your reading the following letter into the record during the Dow SEC 1-2PM time slot under "petitioner" during the 2/23/11 Augusta ABRWH meeting. I regret that I cannot guarantee I will be available to call in and address the Board in person at that time. I would also appreciate your (a) distributing the two attached PDF files to all Board members as soon as possible before the Augusta Board meeting, and (b) to ensure the two attached 5/4/07 files are posted to NIOSH DOCKET 113 for Dow Madison prior to February 23. I am NOT requesting the two attached PDF files be read into the public record. I provide them to honor the request of several Board members on Nov. 16, 2010 (ABRWH Santa Fe meeting), to become familiar with my co-petitioner documents. Thank you,

Sincerely,

-- Dan McKeel 2/23/2011

Attached files:
<McKeelTalk_DowSEC-00079.pdf>
<ABRWH_DowSEC_Tr5.4.07.pdf>

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=====LETTER TO BE READ INTO THE RECORD=====

2/11/11
Dear Dr. Melius and members of the ABRWH,

I have asked Ted Katz or Josh Kinman to read this letter into the record on 2/23/11 during the 1-2 PM DOW SEC Petition session at the Augusta Board meeting to be my contribution as the Dow Madison SEC-00079 co-petitioner. Personal considerations dictate that I cannot be certain I will be available by phone at the allotted time slot for the Dow SEC presentation on Feb. 23rd.

I ask again that the Board carefully consider this and my preceding five formal (5) presentations to the Board why they should approve extending Dow Madison 83.14 SEC-79 to cover the residual contamination period from 1961 to October 2007. I ask especially that the Board consider carefully my testimony in the transcripts of the Nov. 12, 2010, SEC Issues work group (McKeel pages 26 to 69 of 83 devoted to Dow SEC-00079) and the November 16, 2010, ABRWH Santa Fe meeting transcript (McKeel pages 226 to 243, Dow SEC Petition pages 184-243 and 280 through 290. *Note the transcript Index ipagination is incorrect*). I have been assured that unredacted transcripts of all of my remarks have been made available to all Board members as some of them requested at the November 2010 ABRWH meeting. I note the name and identifying information of Southern Illinois Professor _____, who presented her findings on Dow to the Board twice, was redacted (improperly in my view). That's why the Board needs access to my unredacted documents.

I have also attached my complete 23 page May 4, 2007, Board presentation as a PDF file. The filename is: McKeelTalk_DowSEC-00079.pdf. The file includes a Powerpoint portion and text remarks, and was (for the record) requested by me on 5/4/07 to be posted to the Dow Madison Docket #113. This was not done, even though the Board chair indicated on the record it would be.

I have also included a copy of pages of the Dow SEC-relevant May 4, 2007, ABRWH meeting verbatim transcript that includes the discussions on Dow SEC-00079. Understanding the content of this material is crucial to making an fully informed recommendation on NIOSH's recommendation to deny extending SEC-00079 to cover the residual contamination period. This transcript makes abundantly clear both the scientific arguments proffered by the primary petitioner and co-petitioner. The transcript also documents the powerful case made by four members of the Illinois Congressional delegation and the Board reaction to approve the SEC-00079 extension to the residual period that day. The transcript also illuminates the legal issue arguments that were part of the deliberations. It is important to note that on May 4, 2007, both DFO Dr. Lewis Wade (page 80, lines 1-2) and Chairman Dr. Paul Ziemer (page 106, lines 16-18) stated on the record that they found my arguments and evidence that day to be "very compelling."

As a very brief summary, the petitioners maintain that an SEC should be approved for Dow Madison to cover the uranium and thorium residual periods for the following major reasons:

1. We strongly disagree with SC&A that the Board surrogate data criteria have been fulfilled by NIOSH with respect to accepting a minute, brief time and job delimited set of film badge (FB) readings to gauge external exposures. We contend the Bay City, MI, highly selected and non-representative FB data set is so small and limited it has no statistical power to define or

bound external doses during the residual period at Dow Madison. *The use of these data by NIOSH and SC&A's endorsement thereof is, in the petitioner's view, scientifically indefensible.*

2. TIB-70 that is being discussed at the Feb. 23-25, 2011 Board meeting, is itself surrogate data that is not sufficient to assign residual period doses at Dow Madison. It cannot bound doses during removal of the tons of magnesium-thorium sludge or during multiple Madison site owner-instigated cleanups during the residual period. There were a number of cleanups of magnesium alloys and Mg-thorium sludge for which NIOSH has not calculated internal and external exposures during the residual period.

3. SC&A and Bill Thurber have identified building numbers at Dow Madison in IL that do not and never did exist at that site. His data is obviously surrogate and refers to another site. The co-petitioner and Dow site experts and workers have repeatedly challenged the authenticity of much of the monitoring data, a small fraction of the whole, that NIOSH and SC&A claim was obtained at the IL Dow Madison site. SC&A acknowledges that a large majority of Dow data is surrogate. (see item 6)

4. NIOSH (via DOL) refused on several occasions to use Section 7384w EEOICPA subpoena power to inspect the 10,000 Dow Madison records the SEC-00079 co-petitioner and Robert Stephan were told existed at Dow Midland, MI headquarters.

5. The Dow petitioners criticize NIOSH for preferentially accepting testimony from Rocky Flats personnel who deny that records exist that substantiate the sworn affidavit testimony of many eye witness Dow IL workers that (a) the Madison site shipped truckloads of HK-31 mg-thorium alloy plates, the specific alloy used in nuclear weapons, by truck to Rocky Flats DOE facility where Dow Chemical was prime contractor from 1951-1975, and that (b) in turn, RF workers came to the IL Madison site and operated the extrusion presses to process metal the press operators believe was a form of thorium and/or uranium. The details of these short runs were deliberately kept secret from Dow Madison workers.

6. Dow Madison lacks any site film badge or urine bioassay data for uranium or thorium for any portion of the covered or the residual contamination periods. No one disputes this fact.

7. The co-petitioner's FOIA for all correspondence between NIOSH and DOL leading up to the issuance of 83.14 SEC-00079 was delayed for more than a year and was so heavily redacted the petitioners believe this amounted to unwarranted censorship of contextual material about the Dow residual period that the co-petitioner had a right to have turned over to him in a less heavily redacted form of the responsive documents. The level of redaction was extreme and destroyed the informational content, of the redacted e-mail messages especially, to understand why the SEC-00079 class only covered 1957 to 1960 and not the residual period as well.

Respectfully submitted,

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Enclosures:

- (1) McKeel May 4, 2007, presentation on Dow SEC-00079 (23 pages)
- (2) Dow SEC Petition pages from 5/4/07 ABRWH meeting transcript (annotated) including co-petitioner McKeel's portions of the transcript