Special Exposure Cohort Petition
under the Energy Employees Occupational Illness Compensation Act

01-23-06P01:17 RCVD

U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

Special Exposure Cohort Petition — Form B

OMB Number: 0920-0639 Expires: 05/31/2007

Appendix — Petitioner 2

Use this Appendix for Petitioner 2.

This appendix form is to be used as needed. Petitioner 2, or his or her representative, should complete the parts applicable to him or her.

Refer to the General Instructions on completing petitioner information for Parts A, B, or C.

If you need more space to provide additional information, use the continuation page provided at the end of the form and attach the completed continuation page(s) to Form B.

Except for signatures, please **PRINT** all information clearly and neatly on the form.

If you are:	☐ An Energy Employee (current or former),	Start at C
	☐ A Survivor (of a former Energy Employee),	Start at B
	☒ A Representative (of a current or former Energy Employee),	Start at A

A *Representative Information* — Complete Section A if you are authorized by an Employee or Survivor(s) to petition on behalf of a class.

A.1 **Are you a contact person for an organization?** ☐ Yes (Go to A.2) ☐ No (Go to A.3)

A.2 **Organization Information:**

Name of Organization

Position of Contact Person

A.3 **Name of Petition Representative:**

Mr./Mrs./Ms. First Name Middle Initial Last Name

A.4 **Address:**

Street Apt # P.O. Box

City State Zip Code

A.5 **Telephone Number:**

A.6 **Email Address:**

A.7 ☐ Check the box at left to indicate you have attached to the back of this form written authorization to petition by the survivor(s) or employee(s) indicated in Parts B or C of this form. An authorization form for this purpose is provided.

If you are representing a Survivor, go to Part B. If you are representing an Employee, go to Part C.

Name or Social Security Number of First Petitioner:

Special Exposure Cohort Petition
under the Energy Employees Occupational Illness Compensation Act

U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

OMB Number: 0920-0639 Expires: 05/31/2007

Petitioner Authorization Form

Use of this form is voluntary. Failure to use this form will not result in the denial of any right, benefit, or

Instructions:

If you wish to petition HHS to consider adding a class of employees to the Special Exposure Cohort and you are NOT either a member of that class, a survivor of a member of that class, or a labor organization representing or having represented members of that class, then 42 CFR Part 83, Section 83.7(c) requires that you obtain written authorization. You can obtain such authorization from either an employee who is a member of the class or a survivor of such an employee. You may use this form to obtain such authorization and submit the completed form to NIOSH with the related petition. **Please print legibly.**

For Further Information: If you have questions about these instructions, please call the following NIOSH toll-free phone number and request to speak to someone in **the Office of Compensation Analysis and Support** about an SEC petition: **1-800-356-4674.**

Authorization for Individual or Entity to Petition HHS on Behalf of a Class of Employees for Addition to the Special Exposure Cohort

I, _____

Name of Class Member or Survivor

_____ _____

Street Address of Class Member or Survivor Apt. # P.O. Box

_____

City, State, Zip Code of Class Member or Survivor

do hereby authorize:

_____

Name of Petitioner

_____

Address of Petitioner Apt. # P.O. Box

_____

City, State and Zip Code of Petitioner

to petition the Department of Health and Human Services on behalf of a class of employees that includes:

All employees of LANL working in all Tech Areas from 1943-1975

Name of Class Member (employee, not the employee's survivor)

for the addition of the class to the Special Exposure Cohort, under the Energy Employee's Occupational Illness Compensation Program Act (42 U.S.C. §§ 7384-7385).

In providing this authorization, I recognize that the petitioner named above will have all the rights of a petitioner as provided for under 42 CFR Part 83.

_____ 12-19-05

Signature of Class Member or Survivor Date

Name or Social Security Number of First Petitioner: _____

General Instructions on Completing this Form *(complete instructions are available in a separate packet)*:

Except for signatures, please **PRINT** all information clearly and neatly on the form.

Please read each of Parts A — G in this form and complete the parts appropriate to you. If there is more than one petitioner, then each petitioner should complete those sections of parts A – C of the form that apply to them. Additional copies of the first two pages of this form are provided at the end of the form for this purpose. A maximum of three petitioners is allowed.

If you need more space to provide additional information, use the continuation page provided at the end of the form and attach the completed continuation page(s) to Form B.

If you have questions about the use of this form, please call the following NIOSH toll-free phone number and request to speak to someone in the Office of Compensation Analysis and Support about an SEC petition: **1-800-356-4674.**

If you are:	☐ A Labor Organization,	Start at D	on Page 3
	☐ An Energy Employee (current or former),	Start at C	on Page 2
	☐ A Survivor (of a former Energy Employee),	Start at B	on Page 2
	☒ A Representative (of a current or former Energy Employee),	Start at A	on Page 1

A Representative Information — Complete Section A if you are authorized by an Employee or Survivor(s) to petition on behalf of a class.

A.1 **Are you a contact person for an organization?** ☐ Yes (Go to A.2) ☐ No (Go to A.3)

A.2 **Organization Information:**

Name of Organization

Position of Contact Person

A.3 **Name of Petition Representative:**

Mr./Mrs./Ms. First Name Middle Initial Last Name

A.4 **Address:**

Street Apt # P.O. Box

City State Zip Code

A.5 **Telephone Number:**

A.6 **Email Address:**

A.7 ☐ Check the box at left to indicate you have attached to the back of this form written authorization to petition by the survivor(s) or employee(s) indicated in Parts B or C of this form. An authorization

Name or Social Security Number of First Petitioner:

Special Exposure Cohort Petition
under the Energy Employees Occupational Illness Compensation Act

U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

OMB Number: 0920-0639 Expires: 05/31/2007

Petitioner Authorization Form

Use of this form is voluntary. Failure to use this form will not result in denial of any petition.

Instructions:

If you wish to petition HHS to consider adding a class of employees to the Special Exposure Cohort and you are NOT either a member of that class, a survivor of a member of that class, or a labor organization representing or having represented members of that class, then 42 CFR Part 83, Section 83.7(c) requires that you obtain written authorization. You can obtain such authorization from either an employee who is a member of the class or a survivor of such an employee. You may use this form to obtain such authorization and submit the completed form to NIOSH with the related petition. **Please print legibly.**

For Further Information: If you have questions about these instructions, please call the following NIOSH toll-free phone number and request to speak to someone in **the Office of Compensation Analysis and Support** about an SEC petition: **1-800-356-4674.**

Authorization for Individual or Entity to Petition HHS on Behalf of a Class of Employees for Addition to the Special Exposure Cohort

I

Name of Class Member or Survivor

Street Address of Class Member or Survivor Apt. # P.O. Box

City, State, Zip Code of Class Member or Survivor

do hereby authorize:

Name of Petitioner

Address of Petitioner Apt. # P.O. Box

City, State and Zip Code of Petitioner

to petition the Department of Health and Human Services on behalf of a class of employees that includes:

All workers of LANL working in all Tech Areas from 1943-1975

Name of Class Member (employee, not the employee's survivor)

for the addition of the class to the Special Exposure Cohort, under the Energy Employee's Occupational Illness Compensation Program Act (42 U.S.C. §§ 7384-7385).

In providing this authorization, I recognize that the petitioner named above will have all the rights of a petitioner as provided for under 42 CFR Part 83.

Signature of Class Member or Survivor 12-19-05 Date

Name or Social Security Number of First Petitioner:

Special Exposure Cohort Petition
under the Energy Employees Occupational Illness Compensation Act

U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

OMB Number: 0920-0639 Expires: 05/31/2007

Special Exposure Cohort Petition — Form B

Appendix — Petitioner 3

B Survivor Information — Complete Section B if you are a Survivor or representing a Survivor.

B.1 **Name of Survivor:**

Mr./Mrs./Ms. First Name | Middle Initial | Last Name

B.2 **Social Security Number of Survivor:** _____

B.3 **Address of Survivor:**

Street | Apt # | P.O. Box

City | State | Zip Code

B.4 **Telephone Number of Survivor:** (___) _____

B.5 **Email Address of Survivor:** _____

B.6 **Relationship to Employee:** ☐ Spouse ☐ Son/Daughter ☐ Parent ☐ Grandparent ☐ Grandchild

C Employee Information — Complete Section C.

C.1 **Name of Employee:**

Mr./Mrs./Ms. First Name | Middle Initial | Last Name

C.2 ***Former Name of Employee*** *(e.g., maiden name/legal name change/other)*:

Mr./Mrs./Ms. First Name | Middle Initial | Last Name

C.3 **Social Security Number of Employee:** _____

C.4 **Address of Employee** (if living):

Street | Apt # | P.O. Box

City | State | Zip Code

C.5 **Telephone Number of Employee:** _____

C.6 **Email Address of Employee:** _____

C.7 **Employment Information Related to Petition:**

C.7a Employee Number (if known): _____

C.7b Dates of Employment: Start 1959 End 1986

C.7c Employer Name: ZIA Co.

C.7d Work Site Location: T.A. 3 And Different Classified Areas

C.7e Supervisor's Name: _____

Name or Social Security Number of First Petitioner: _____

E Proposed Definition of Employee Class Covered by Petition — Complete Section E.

E.1 **Name of DOE or AWE Facility:** Los Alamos National Laboratory (LANL)

E.2 **Locations at the Facility relevant to this petition:**

All Tech Areas of the LANL from 1943-1975

E.3 **List job titles and/or job duties of employees included in the class. In addition, you can list by name any individuals other than petitioners identified on this form who you believe should be included in this class:**

All DOE employees, contractors, and subcontractors employed by the LANL; including all predecessor agencies.

E.4 **Employment Dates relevant to this petition:**

Start 01/01/1943 End 12/31/1975

Start _____ End _____

Start _____ End _____

E.5 **Is the petition based on one or more unmonitored, unrecorded, or inadequately monitored or recorded exposure incidents?:** ☑ Yes ☐ No

If yes, provide the date(s) of the incident(s) and a complete description (attach additional pages as necessary):

In many cases from 1943-1975 personal exposures in some job categories with significant radiation exposures were unrecorded. These exposures may have endangered the members of this class of employees who worked at LANL.

Accurate data required for NIOSH to conduct precise dose reconstructions of members of the specified class does not exist for some employees. Exhibit 1 is a clear example that necessary precautions were not always taken by supervisors and/or employees of LANL.

AEC

Exhibit 2

UNITED STATES
ATOMIC ENERGY COMMISSION
Washington 25, D. C.

No. B-30
Tel. HAzelwood 7-7831
Ext. 3446

FOR IMMEDIATE RELEASE
(Monday, March 2, 1959)

AEC ANNOUNCES COMPLETION OF INVESTIGATION AND REVIEW OF DECEMBER 30 RADIATION ACCIDENT AT LOS ALAMOS SCIENTIFIC LABORATORY

General Manager A. R. Luedecke of the Atomic Energy Commission announced today that the Los Alamos Scientific Laboratory had completed its investigation of the circumstances surrounding the radiation accident at the Los Alamos Laboratory on December 30, 1958, which resulted in the fatal injury of one employee. A Technical Report describing in detail the circumstances of the accident has been prepared by the Los Alamos Scientific Laboratory and is available (50¢ per copy) at the Office of Technical Services, Department of Commerce, Washington 25, D. C. This report describes the events leading to the accident, the situation at the time of the critical burst, the removal and analysis of the solution that caused the burst, and the steps being taken to prevent a recurrence. Medical and pathological data resulting from studies now being carried on by the Laboratory's Health Division will probably be ready for publication by midsummer.

An Investigation Review Committee, appointed by Mr. Luedecke to review the circumstances and the field investigation of the accident, has found that the accident was directly attributable to errors on the part of the deceased operator during a series of transfers of plutonium and organic solutions between containers in a chemical plutonium recovery process. The Committee also found that the procedures for this process were such that safety of operation depended substantially on the ability and judgment of individual operators but that the incident might have been

(more)

prevented had the organizational arrangement required closer supervision to insure that normal procedures were followed. The Committee commended the Los Alamos Scientific Laboratory on the thorough evaluation it made of the accident and on the planning of measures to be taken to prevent a recurrence. The Committee recommended that the details of the accident and of the measures being taken to prevent recurrence be given wide distribution among the Commission, the Commission's contractors and licensees engaged in similar pursuits.

The General Manager has endorsed the findings of the Review Committee and has directed that its recommendations be carried out.

- 30 -

(NOTE TO EDITORS AND CORRESPONDENTS: This information is being released simultaneously in Albuquerque and Los Alamos, New Mexico, by the Albuquerque Operations Office. The Technical Report is available to news media representatives at Commission offices at 1717 H St., Washington, D. C., Los Alamos and Albuquerque, New Mexico.)

F.3 ☐ I/We have attached a report from a health physicist or other individual with expertise in radiation dose reconstruction documenting the limitations of existing DOE or AWE records on radiation exposures at the facility, as relevant to the petition. The report specifies the basis for believing these documented limitations might prevent the completion of dose reconstructions for members of the class under 42 CFR Part 82 and related NIOSH technical implementation guidelines.

(Attach report to the back of the petition form.)

F.4 ☐ I/We have attached a scientific or technical report, issued by a government agency of the Executive Branch of Government or the General Accounting Office, the Nuclear Regulatory Commission, or the Defense Nuclear Facilities Safety Board, or published in a peer-reviewed journal, that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by the petition.

(Attach report to the back of the petition form.)

G Signature of Person(s) Submitting this Petition — Complete Section G.

All Petitioners should sign and date the petition. A maximum of three persons may sign the petition.

Signature _____ 12-19-05 Date

Signature _____ 12-19-05 Date

Signature _____ 1/12/06 Date

Notice: Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. I affirm that the information provided on this form is accurate and true.

Send this form to:

SEC Petition
Office of Compensation Analysis and Support
NIOSH
4676 Columbia Parkway, MS-C-47
Cincinnati, OH 45226

Name or Social Security Number of First Petitioner: _____

Special Exposure Cohort Petition for Los Alamos National Laboratory (LANL)

The petitioners are requesting Special Exposure Cohort status be granted to the employees working in all Tech Areas of the Los Alamos National Laboratory (LANL) from 1943 to 1975.

A Brief History of the Los Alamos National Laboratory (LANL)

The U.S. government built the Los Alamos National Laboratory (LANL) as a key research and development center for the secret effort during World War II, to create the first atomic bomb as part of the Manhattan Project. This complex site conducted applied research, which involved many sources of radioactive materials that were present at some time at each Tech Area.

As a result the population in Los Alamos grew extremely rapidly and included individuals from all areas of the globe. In January 1943 the population was 1,500. By the end of 1944 Los Alamos nearly quadrupled to 5,675 and by 1945 over 8,000 people lived on the hill, many of them working for the LANL.

In the early years of the Lab, the rapid growth often made for unsafe working conditions. Policies addressing health endangerment involved in the development of sophisticated nuclear physics were not developed and implemented as quickly as needed. The site profile of the LANL does not include many incidents and/or accidents that occurred during the early years.

The Petition

This petition is made in accordance with 42 C.F.R § 83.13 (c)(3) because current statistics show that National Institute of Occupational Safety and Health (NIOSH) is not able to estimate with sufficient accuracy radiation doses for members of the identified class, it is also determined that there is a reasonable likelihood that such radiation doses may have endangered the health of members of the class. The lack of bioassay data raises the issue of possible chronic exposure to external sources of radiation.

With respect to these employees it has been determined that there is insufficient information to estimate either the maximum radiation dose incurred by any member of the class being evaluated. The information available from the site profile and additional resources is insufficient to document or estimate the maximum internal and external potential exposure to members of the class during the period of radiological operations at LANL; 1943-1975. Plus NIOSH has stated that such data does not exist for the early years of the Los Alamos National Laboratory.

The LANL has been a research and development center for nuclear weapons design, high-energy physics research and other scientific endeavors. **There are many incidents and accidents documenting the history of occurrences at the LANL which are not included or made available in the dose reconstruction process.** The men and women endangered by the lack of health and safety protocols, and the lack of consistent oversight of workers involved in radiological operation is evident throughout history of the Lab, but especially so in the early years.

Section 5.6 of the Site Profile begins explaining the working conditions at the LANL in the early years.

> *In 1944, shoe covers worn by secretaries and others working throughout the buildings had significant count rates of 2,500 to 7,500 cpm (LASL 1944a). In June and July 1945, over 50% of the laboratories had areas that routinely exceeded the maximum removable contamination level.* ***The potential for unmonitored intakes was significant in the early years (1944-1946) for any site worker.***
>
> *"However, because of the urgency of the times, work with plutonium had to proceed, and improvised methods of monitoring and decontamination were unbelievably primitive by today's standards" (Hempeimann, Richmond, and Voelz 1973).*

Occupational Environment

The site profile identifies that there was a significant potential for unmonitored intakes of plutonium and uranium, either depleted or enriched, although natural uranium was used extensively in conventional weapons testing from 1943-1946. (Site Profile 5.6.2) **Workers with potential exposures to fission or activation products prior to 1955 (possibly 1958) were not monitored. (Site Profile 5.6.2)**

> *In the early history of the Lab, it was not uncommon for a person to work outside of their normally assigned work area and be asked to participate as a substitute in a task involving radiation or radioactive materials. These persons were not likely to have regularly, or possibly ever participated in the bioassay program. (Site Profile 5.1.2)*

Travel throughout areas of LANL to perform work assignments was often necessary for some classes. For example, a technician may have traveled to TA 55, TA 3, & TA 21 all in one day as part of his or her regular work duties. Even though this individual traveled to these areas, he or she was not required to participate in the bioassay program. Many of the exposure histories and work records are not specific to the assigned work areas of individuals.

Bioassay programs were not set up for all employees. Perhaps because of the size and its rapid growth it was difficult for monitors to track individuals and ensure that they were

enrolled and participating in the bioassay program. Whatever the circumstance, protocols were not adhered to consistently or conscientiously, which gravely endangered employees.

Even today members of the protective force tell about the lack of personal protective equipment in potentially hazardous areas. Members of the force must stand guard even in situations that have been identified as harmful by other LANL employees. Often times areas are evacuated by staff members, but members of the protective force are required to stand guard without respirators or minimal protective equipment. These stories hold true throughout the history of the Lab.

Although it has taken years for the U. S. Department of Energy's facilities to recognize the significant impact that radioactive materials can have on a human life. During the years of production of the atomic bomb, the risk to employee's health may have been affected more so than at other DOE facilities.

Environmental Dose

The LANL is the site where most nuclear weapon tests within the Continental U.S. were conducted. These detonations disperse materials, of various types, to the atmosphere and could have caused exposure to LANL employees. The waste matter can affect workers present in nearby TAs and can result in internal and external exposures by inhalation of airborne radionuclides, re-suspension of radionuclides in soil, and by submersion in an effluent. However, the environmental monitoring efforts of LANL are lacking, to say the least. In Section 4.3.1 of the Site Profile, it mentions:

> *Many Tech Areas have unreported results and data are missing for some radionuclides an some years, or there have not been data to report due to changing conditions at LANL. Unless it is provided in the claimant files, locations to the air monitoring stations in relation to the specific worker's location(s) in a Tech Area are not well known.*

The work environment at LANL, in the early years, is one that has lacked occupational radiation protection. Since workers could have inhaled, ingested or absorbed particles that emit alpha radiation, it is crucial to have excellent health practices and detection devices in place. When important safety procedures are violated or ignored, such as individuals not required to turn-in their personnel dosimeter at each exchange period (Tiger Team Report 4-780), all employees are at risk.

The men and women involved in the day to day production at LANL were well aware that we are living in a radioactive world. **However, valid radiological readings necessary for individuals to be found eligible or ineligible for benefits through the Energy Employees Occupational Illness Compensation Program (EEOICP) do not exist for this class, and thus justify acceptance as a Special Exposure Cohort.**

It is imperative that these facts are addressed and that the men and women who worked at LANL, in the early years, who were exposed to radiological substances be given the attention they so greatly deserve. The consistent disregard for occupational safety and health at LANL is unacceptable. There is a lack of internal dose (bioassay data) data and occupational environment dose (air sample test results) data for the stated class of employees.

The Site Profile clearly states that no definitive historical information exists. As sited, in reports as current as the ORAU TEAM Dose Reconstruction Project Report for NIOSH, dated August 16, 2005, no environmental exposure data exists prior to 1965. Also, there are references made in the U. S. Department of Energy Environment, Safety and Health, Tiger Team Assessment, November 1991, to the lack of documentation and administrative requirements for evaluating personnel exposures from unusual internal exposures to radioactive materials. Since NIOSH has established that a lack of access to sufficient information needed to estimate a complete radiation dose exists we find it imperative that Special Exposure Cohort status be given to the class mentioned.

Closing Remarks

We request that claims made by current and former workers, or their survivors, be reviewed in a timely manner. Many claimants have been waiting four years or more to receive a determination from NIOSH. We are requesting that these claims be given priority in order that the claimants are provided closure.

Statistical information provided by the Department of Labor shows that claims for sites with similar work activities as LANL are paid more aggressively and are reviewed in a timely manner. For example, as of 12/15/2005, the total number of part B claims paid out for Hanford totals $43,575,000. The total number of claims paid for LANL is $10,550,000. 71.4% of all Hanford cases are referred to NIOSH compared to 38.7% of LANL cases. Hanford - of the 2,381 cases that were referred to NIOSH 1,366 have been processed for a 57.7% review rate. LANL – of the 777 cases that were referred to NIOSH and only 262 have been processed for a 33.7% review rate.

When the current Governor of New Mexico, Bill Richardson was Energy Secretary he said the biggest change in policy is that the government will not contest many of the claims and workers would receive the benefit of the doubt when plant medical records are missing or flawed. (Article 2)

"The burden of proof is on the government and not on the worker," he said. "We're not going to make workers find past records because in many cases the workers weren't told the truth."

The petitioners recognize the interest that NIOSH and the U.S. Department of Labor have paid to the claimants of the Los Alamos National Laboratory. **However, the identified class requires special attention and consideration as data is not available to legitimately construct a valid dose reconstruction on their cases.**

"Isn't it a shame that I' m dying because I was making a living for my family."

Former LANL employee

U.S. TO PAY WORKERS FOR RADIATION EXPOSURE

Wednesday, April 12, 2000

WASHINGTON (Reuters) - The U.S. government reversed decades of denial on Wednesday and proposed paying at least $400 million to thousands of ailing workers who were exposed to radiation while building the nation's nuclear arsenal.

Energy Secretary Bill Richardson called the people who worked at the nuclear plants "courageous" and essential to winning World War II and the Cold War.

But he said they often were not told what they were working with and, in part because of the secrecy surrounding their jobs, they were denied compensation when they got cancer or other radiation-caused diseases.

"Justice for our nuclear workers is finally happening," Richardson said at a news conference announcing the program. "The government for a change is on their side and not against them."

Under the compensation plan, which would have to be approved by Congress, nuclear workers who got sick would receive payments for past medical bills and lost pay. Those with certain cancers would be eligible for compensation beginning at $100,000.

Richardson said the biggest change in policy is that the government will not contest many of the claims and workers would receive the benefit of the doubt when plant medical records are missing or flawed.

"The burden of proof is on the government and not on the worker," he said. "We're not going to make workers find past records because in many cases the workers weren't told the truth."

He said after some start-up costs in fiscal 2001 his department would seek $120 million a year for three years and then another $70 million after that.

The cost is expected to decline as cases are

settled.

The production of 70,000 nuclear weapons over 50 years employed more than 600,000 people at 16 major sites and dozens of smaller ones.

Workers testified in a series of recent hearings that they were frequently exposed to high levels of radiation as well as hazardous chemicals.

The U.S. government in January confirmed for the first time that nuclear weapons workers exposed to radiation and chemicals experienced higher-than-expected cancer rates, reversing years in which the government minimized the dangers of exposure to radiation.

Under the plan the Energy Department would set up a workers' advocacy office, effective in May, to help current and former employees who believe they suffer from job-related illnesses.

The new Occupational Illness Compensation Office would expedite claims, using independent physicians to determine if illnesses are work-related. Once a link was clear, the Department of Energy would accept responsibility for the illness.

At his news conference, Richardson was joined by many members of Congress who represented the areas that were sites for the largest nuclear facilities or nuclear testing grounds.

Richardson said the department will try to organize broad-based support in Congress because action was needed this year before more victims suffered or died.

home screenings articles credits contact family album

03-31-06P03:40 RCVD SEC 51

In response to your request for additional information and corrections to the application:

1. These deficiencies were corrected and a copy of the correction is attached.

2. On both areas where NIOSH Affidavit Requirements are required, additional time is being requested in order to obtain signatures from individuals.

   The basis for the submission is that many constituents have reported that in their attempt to gain access to medical records from the Los Alamos National Laboratory (LANL) they've received no response from the Lab. In many instances they're told verbally that no records exist.

   In some cases where medical records do exist there is no evidence of bioassay testing and often times the records are illegible or incomplete. Dosimetry and/or exposure records from other sites are not incorporated in to the LANL file. Employees who were employed by subcontractors were often times not monitored or the same situation exists in that the data is not incorporated into the file.

3. *Radiation monitoring records for members of the proposed class have been lost, falsified or destroyed; or that there is no information regarding monitoring, source, source term, or process from the site where the employees worked.*

   Information is being submitted to support this section. However, how can the current/former workers of LANL submit information that does not exist? A large part of this petition is to support the fact that records do not exist. Monitoring programs were not active and in place at LANL.

   In a letter dated April 20, 1987 to Mr. Milan Makale (Exhibit 1) it very clearly states that medical data is not in existence and the information that does exist is flawed. That is relevant because often times this is the case, accurate data is unobtainable or is does not exist in an employee's medical file. See attached copies. (Exhibit 2)

   Often times the records that do exist are illegible. How can NIOSH use this data to obtain a recorded dose of radiation for an individual? (Exhibit 2)

   Recent events in Los Alamos prove that these claims are true. Important medical records that are housed in a warehouse in Los Alamos, paid for by the Los Alamos Medical Center have never been incorporated into employee files. These files should've been part of the employee's medical records because the records are the property of the Department of Energy who has failed to take possession of the information.

State of New Mexico
House of Representatives
Santa Fé

COMMITTEES

INTERIM COMMITTEES:

03-31-06P03:40 RCVD

March 29,2006

Office of Compensation Analysis and Support
NIOSH MS-C-47
4676 Columbia Parkway
Cincinnati, OH 45226
SEC 00051

To whom it may concern:

I would like to comment on why this response is past the deadline that was imposed on we as petitioners for the SPECIAL COHORT STATUS, all three petitioners are State Legislators, and when the first Fed Ex letter was left on my door, I was in session, did not receive it promptly was not home, I was staying in Santa Fe, second letter left on door dated February 7, 2006, still in session did not retrieve until February 17,2006 after session ended, so that gave us 30 days from 2/7/06 to respond when in fact we were cheated out of ten days because of where we were at the time the second letter came.

I would like to further comment that you have placed an enormous burden of proof on the petitioners, when in fact the burden should be on the DOE or the DOL, to not grant the SPECIAL COHORT STATUS to the injured workers is truly a GRAVE INJUSTICE, especially when the records are not available, or not kept to specifications, I have enclosed a few documents to speak to that fact.

To close, there is not enough time to respond, we are only lay people and it is very difficult to gather information, and the back up documents needed to support our request in the time frame you impose. I do hope you take all of these things into consideration when reviewing the GRAVE MATTER before you, people are dying leaving families with tremendous medical bills, then the survivor dies and the kids stop trying to get some compensation for the pain and anguish that the injured worker went through. My husband said a week before he passed. "Isn't it a shame that I'm dying because I was making a living for my family." I am sure all affected families feel the same.

Respectfully:

F Basis for Proposing that Records and Information are Inadequate for Individual Dose — Complete Section F.

Complete at least one of the following entries in this section by checking the appropriate box and providing the required information related to the selection. You are not required to complete more than one entry.

F.1 ☐ I/We have attached either documents or statements provided by affidavit that indicate that radiation exposures and radiation doses potentially incurred by members of the proposed class, that relate to this petition, were not monitored, either through personal monitoring or through area monitoring.

(Attach documents and/or affidavits to the back of the petition form.)

Describe as completely as possible, to the extent it might be unclear, how the attached documentation and/or affidavit(s) indicate that potential radiation exposures were not monitored.

F.2 ☑ I/ We have attached either documents or statements provided by affidavit that indicate that radiation monitoring records for members of the proposed class have been lost, falsified, or destroyed; or that there is no information regarding monitoring, source, source term, or process from the site where the employees worked.

(Attach documents and/or affidavits to the back of the petition form.)

Describe as completely as possible, to the extent it might be unclear, how the attached documentation and/or affidavit(s) indicate that radiation monitoring records for members of the proposed class have been lost, altered illegally, or destroyed.

See released highlighted areas

Name or Social Security Number of First Petitioner: _____

March 17, 2006

Larry 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, OH 45226

Dear Mr. Elliott:

The purpose of this letter is to request assistance from the National Institute for Occupational Safety and Health, Center for Disease Control and Prevention in addressing a problem associated with medical records slated for destruction in Los Alamos, NM. I am requesting immediate assistance from your office on behalf of the many current and former employees of Los Alamos National Laboratory (LANL) located in my congressional district.

By way of background, I had the opportunity to visit several records repositories at Los Alamos National Laboratory, its subcontractors and the Los Alamos Medical Center on March 6, 2006. The purpose of my site visit was to learn more about the process in which personnel, exposure, and medical records are stored at Los Alamos, particularly the records pertaining to my constituents who have filed a claim under the Energy Employees Occupational Illness Program Act. During my visit, I learned that there are thousands of old medical records being stored in the basement of the Los Alamos Medical Center, and at a nearby warehouse owned by Los Alamos County. These medical records are currently in disarray, deteriorating and slated for destruction.

I should emphasize that the Los Alamos Medical Center has been extremely open and cooperative in discussing the status of these medical records with me and my staff. Hospital officials have explained that their intention to destroy these records is based on the rationale that the current owner of LAMC, Life Point Hospitals, inherited this sizable medical record archive from its predecessor, Province Health Care. Since acquiring the facility, I understand that LAMC requested the Department of Energy take custodianship of these records, but the DOE never followed up on their request.

Further, LAMC asserts that private hospitals in New Mexico are required by law to only retain adult medical records for a period of 10 years after the last date of service. They argue that due to a lack of DOE intervention, they have gone beyond the call of duty and have held onto these records well beyond what has been required by law. Most importantly, LAMC has explained they can no longer afford to pay monthly rental fees for storage of these records, nor do they have the necessary resources to assess, catalogue and preserve them in such a manner that the records may be useful. They explained that even if they could find the resources to pay their file clerks to accomplish this daunting task, the current condition of the files may pose a health risk to their workers as the warehouse files are covered in dust, mold and potentially hantavirus-infected mouse droppings.

(over)

Because LAMC and its physicians have historically served the entire community of Los Alamos, the medical records in question include patient files for LANL employees, their families and other local residents. I have been told that some of these records date back several decades to the hospital's early years of operation. The LAMC has always had a unique relationship with LANL since the era of the Manhattan Project and its inception as a government hospital in the 1950's. The Atomic Energy Commission sold the facility to Lutheran Hospitals of America in 1964 and its ownership has since changed several times. It is my understanding that some of the information housed in the these medical files may be of value to present and future EEOICPA claimants in terms of documenting compensable conditions (e.g., cases involving pre-1993 beryllium disease in which x-rays taken at the LAMC are described in the medical record; e.g., diagnosed cancer pre-1970 which was not the ultimate cause of death). Further, the records might find application if health studies of the community surrounding the lab were to be undertaken.

I understand that NIOSH may be able to provide resources to assess the value of the epidemiologically relevant records in question and preserve these records if they are found to be useful. Please be aware that I am also submitting a similar request to the DOE Office of Environment, Safety and Health.

I respectfully request that your office make arrangements to fully evaluate and assess these records to determine if they have epidemiological value and/or may be useful in EEOICPA claims. I also request that these records be considered worthy of protection under the 1990 Moratorium issued by then-Secretary of Energy James Watkins (and renewed in 2000) due to the unique historical relationship between LAMC, LANL, the Atomic Energy Commission and DOE.

I am submitting this request on behalf of the many sick, cold-war workers who are my constituents and are dying while awaiting a determination on their claims. I am quite concerned that if these medical records are destroyed without a comprehensive and objective assessment, it may further erode what little public confidence is left in the EEOICPA program as it relates to LANL claimants.

Thank you for your thoughtful consideration and prompt attention to my requests. I look forward to working with you to ensure justice for these workers and their families. Please feel free to contact my District Director, Michele Jacquez-Ortiz at (505) 984-8950 or Legislative Director, Mike Collins at (202) 225-6190 if you have any questions.

Very Truly Yours,

U

Tom Udall
Member of Congress

Cc: Russell Shearer, Office of Environment, Safety and Health, DOE
Steven V. Carey, Deputy Assistant Secretary for Health, DOE

March 17, 2006

Acting Assistant Secretary C. Russell Shearer
Office of Environment, Safety and Health
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Assistant Secretary Shearer:

The purpose of this letter is to request assistance from the Department of Energy, Office of Environment, Safety and Health in addressing a problem associated with medical records slated for destruction in Los Alamos, NM. I am requesting immediate assistance from your office on behalf of the many current and former employees of Los Alamos National Laboratory (LANL) located in my congressional district.

By way of background, I had the opportunity to visit several records repositories at Los Alamos National Laboratory, its subcontractors and the Los Alamos Medical Center on March 6, 2006. The purpose of my site visit was to learn more about the process in which personnel, exposure, and medical records are stored at Los Alamos, particularly the records pertaining to my constituents who have filed a claim under the Energy Employees Occupational Illness Program Act. During my visit, I learned that there are thousands of old medical records being stored in the basement of the Los Alamos Medical Center, and at a nearby warehouse owned by Los Alamos County. These medical records are currently in disarray, deteriorating and slated for destruction.

I should emphasize that the Los Alamos Medical Center has been extremely open and cooperative in discussing the status of these medical records with me and my staff. Hospital officials have explained that their intention to destroy these records is based on the rationale that the current owner of LAMC, Life Point Hospitals, inherited this sizable medical record archive from its predecessor, Province Health Care. Since acquiring the facility, I understand that LAMC requested the Department of Energy take custodianship of these records, but the DOE never followed up on their request.

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(over)

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I understand the DOE Office of Environment, Safety and Health can provide resources to assess the value of the epidemiologically relevant records in question and preserve these records if they are found to be useful. Please be aware that I am also submitting a similar request to NIOSH due to their detailed knowledge of EEOICPA requirements.

I respectfully request that your office make arrangements to fully evaluate and assess these records to determine if they have epidemiological value and/or may be useful in EEOICPA claims. I also request that these records be considered worthy of protection under the 1990 Moratorium issued by then-Secretary of Energy James Watkins (and renewed in 2000) due to the unique historical relationship between LAMC, LANL, the Atomic Energy Commission and DOE.

I am submitting this request on behalf of the many sick, cold-war workers who are my constituents and are dying while awaiting a determination on their claims. I am quite concerned that if these medical records are destroyed without a comprehensive and objective assessment, it may further erode what little public confidence is left in the EEOICPA program as it relates to LANL claimants.

Thank you for your thoughtful consideration and prompt attention to my requests. I look forward to working with you to ensure justice for these workers and their families. Please feel free to contact my District Director, Michele Jacquez-Ortiz at (505) 984-8950 or Legislative Director, Mike Collins at (202) 225-6190 if you have any questions.

Very Truly Yours,

U

Tom Udall
Member of Congress

Cc: Steven V. Carey, Deputy Assistant Secretary for Health, DOE
Larry Elliott, Director, Office of Compensation, Analysis and Support, NIOSH

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institute for Occupational Safety and Health
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226-1998
Phone: 513-533-6800
Fax: 513-533-6817

SEC Tracking Number 00051

(1)

January 26, 2006

Dear ,

This letter is to inform you that the National Institute for Occupational Safety and Health's (NIOSH) Office of Compensation Analysis and Support (OCAS) has received your submission requesting that the class of employees defined in your submission be added to the Special Exposure Cohort (SEC).

We have assigned your submission a NIOSH SEC Tracking Number to help us address any questions you may have about your submission. The NIOSH SEC Tracking Number for your submission is:

SEC00051

We are responsible for assessing the feasibility of estimating (or reconstructing) the occupational radiation dose received by members of the class defined in your submission as described in the document entitled "Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort" (42 C.F.R. pt. 83). The procedures and level of effort involved in assessing the feasibility of dose reconstruction depends, in part, on: (1) the quantity and quality of available dose information, (2) the conditions under which radiation exposures took place, (3) the forms of radiation to which the class was potentially exposed, and (4) other information as necessary. This effort may require a considerable amount of data collection and analysis.

We will begin by examining the information you have supplied. This involves documenting the eligibility status of the individual(s) who made the submissions. We will then review the class definition and basis to determine if all the required parameters are specified and consult with you in order to obtain any additional information needed to qualify your submission for evaluation.

After determining whether or not your submission qualifies for evaluation as a petition, we will begin the evaluation process for qualified submissions by notifying you and the Advisory Board on Radiation and Worker Health (the Board) that your submission has qualified for evaluation and by providing a summary of the SEC Evaluation process. We will also post a summary of your submission on the OCAS web site (http://www.cdc.gov/niosh/ocas). Please note that once your submission has been qualified for evaluation, it will be considered a petition under the SEC Rule. We will then determine the feasibility of dose reconstruction, if possible, through evaluation of existing records and documents currently in NIOSH possession. In some cases, we will also request data from the Department of Energy, an Atomic Weapons Employer, or

(2)

from other sources, balancing our need for information against the need for a timely consideration and evaluation of the qualified submission. We will also determine whether or not there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

When we have completed the dose reconstruction feasibility process and health endangerment determination, we will provide you with a copy of the evaluation report, which will be considered by the Board during its review. After the Board makes a recommendation, the Director of NIOSH will propose a decision on whether or not to add your class to the SEC, and the Secretary of Health and Human Services will make a final determination. If the Secretary's final decision is to add a class, then the designation that is provided to Congress shall, unless Congress otherwise provides, take effect after 30 days.

During this process, if you have any questions regarding your submission, please contact OCAS toll-free at 1-800-35-NIOSH (1-800-356-4674), directly at 513-533-6800, or by email at ocas@cdc.gov. You can also contact our contractor toll-free at 1-800-322-0111. Additional information about OCAS and the SEC procedure can be found on the OCAS web site at http://www.cdc.gov/niosh/ocas.

Sincerely,

for/ Larry J. Elliott, MSPH, CIH
Director
Office of Compensation Analysis and Support

File: (7) Receipt Letter

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institute for Occupational Safety and Health
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226-1998
Phone: 513-533-6825
Fax: 513-533-6826

SEC Tracking Number 00051

(3)

February 7, 2006

Dear

On January 26, 2006, we sent you a letter acknowledging the receipt of your Special Exposure Cohort (SEC) submission. As we stated in that letter, the NIOSH SEC Tracking Number for your submission is SEC00051.

Pursuant to the SEC Rule (*see* 42 C.F.R. §§ 83.7 through 83.9), a submission must satisfy certain requirements in order to qualify for evaluation. After examining your submission, we have determined that it does not satisfy all of the requirements of the Rule. As a result, we cannot proceed with the qualification of your submission.

In particular, the supporting documentation provided does not support the basis of an unmonitored, unrecorded, or inadequately monitored exposure incident and did not specify other bases.

The attached document lists the requirements that are not met by your submission. The requirements needed to qualify a submission for evaluation are fully documented in 42 C.F.R. §§ 83.7 through 83.9 of the SEC Rule and outlined in the "Instructions for Completing Special Exposure Cohort Submission – Form B." Both of these documents can be found on the OCAS web site noted below. For your convenience, we are enclosing a copy of the "Instructions for Completing Special Exposure Cohort Submission – Form B" and one set of the forms for submission.

As discussed above, we cannot proceed with the qualification of your submission because it does not meet the requirements of the Rule. If you wish to send further correspondence regarding your submission, please send it to the address listed below. Be sure to include your NIOSH SEC Tracking Number.

SEC00051
Office of Compensation Analysis and Support
NIOSH MS-C-47
4676 Columbia Parkway
Cincinnati, OH 45226

Please be aware that you have 30 calendar days from the date of notification to revise your submission so that it satisfies all of the requirements of the Rule. If you do not

(4)

correct the deficiencies within this 30-day period, NIOSH will send you notification of its proposed finding that your submission fails to meet the specified requirements of the Rule, and the basis for its finding. Once you receive NIOSH's proposed finding, you will have an additional 7 calendar days to request a review of the proposed finding. If you do not request a review of the proposed finding, then the proposed finding will become a final decision 8 calendar days after notification of the proposed finding.

If you have any questions regarding your submission, please contact OCAS toll-free at 1-800-35-NIOSH (1-800-356-4674), directly at 513-533-6800, or by email at ocas@cdc.gov . You may also contact our contractor toll-free at 1-800-322-0111. Additional information about OCAS, the SEC regulation and the SEC procedures can be found on the OCAS web site at http://www.cdc.gov/niosh/ocas.

Sincerely,

Larry J. Elliott, MSPH, CIH
Director
Office of Compensation Analysis and Support

(52/40) Insufficient Information Package

(5)

SEC00051 – Insufficient Submission Information Deficiencies Attachment

1. **Deficiency.** In Form B, Section A, Item A.1 on both page 1 of 7 and Appendix – Petitioner 2, neither has been marked specifying whether or not the representative is a contact person for an organization.

2. **Deficiency.** In Form B, Section E, Item E.5, you have identified an incident as part of the basis for your submission. Exhibit 1 of the submission indicates that procedural deficiencies contributed to the incident described but does not provide evidence of an unmonitored, unrecorded, or inadequately monitored or recorded exposure incident.

   Please provide a Section F basis for the incident that you have described in Item E.5. Please note the affidavit requirements listed at the end of this letter in the event that you choose to provide an affidavit as supporting documentation for this basis.

3. **Deficiency.** No basis was listed for your submission. Note that the submission package did not include Form B, Section F, Page 5 of 7 which provides Bases F.1 and F.2. You must include at least one (of the following) as the basis for your submission, and provide the necessary supporting documentation/affidavits as required:

   1) *Radiation doses potentially incurred by members of the proposed class that relate to this submission, were not monitored, either through personal monitoring or through are monitoring. You must provide documentation and/or affidavits that support this basis: Additionally, you must provide a written response that describes as completely as possible, to the extent it might be unclear, how this documentation and/or affidavit(s) indicate the potential radiation exposures were not monitored.*

   2) *Radiation monitoring records for members of the proposed class have been lost, falsified or destroyed; or that there is no information regarding monitoring, source, source term, or process from the sit where the employees worked. You must provide documentation and/or affidavits that support this basis. Additionally, you must provide a written response that describes as completely as possible, to the extent it might be unclear, how this documentation and/or affidavit(s) indicate the potential radiation exposures were not monitored.*

   3) *You have a report from a health physicist or other individual with expertise in radiation dose reconstruction documenting the limitations of existing DOE or AWE records in radiation exposures at the facility, as relevant to this submission. The report must specify the basis for believing these documented limitations might prevent the completion*

(6)

dose reconstructions for members of the class under 42 CFR Part 82 and related NIOSH technical implementation guidelines. You must provide the applicable documentation that supports this basis.

4) *You have a scientific or technical report, issued by a government agency of the Executive Branch of Government of the General Accounting Office, the Nuclear Regulatory Commission, or the Defense Nuclear Facilities Safety Board, or published in a peer reviewed journal, that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by this submission. You must provide the applicable documentation that supports this basis.*

4. **Deficiency.** In the Attachment: *Special Exposure Cohort Petition for Los Alamos National Laboratory (LANL)*, you have included information regarding general site history, the occupational environment, environmental dose, closing remarks, and excerpts from the Project's Site Profiles. The statements provided within the attachment have not been provided as a signed affidavit nor is there supporting documentation from which the statements may be qualified. Additionally, as discussed in Deficiency 3, it is unclear as to which Section F basis the attachment is intended to support.

If you have information or documentation that supports one of the bases identified in Section F, please check the appropriate box and provide the necessary supporting documentation. You may provide the information written in this section as supporting documentation, if it is presented in the form of an affidavit. Furthermore, statements and/or documentation should clearly support the selected basis. Many of the statements provided in the attachment only confirm the presence of contamination, environmental releases, and potential scenarios for personnel exposures. Please note the affidavit requirements listed at the end of this letter in the event that you choose to provide an affidavit as supporting documentation.

Affidavit Requirements

Any affidavit submitted to support the existence of an incident (which may be supplied on NIOSH request [see 42 C.F.R. § 83.9(c)(3)]) must be based on the experience of employees who are potential members of the class covered by the submission, or who witnessed the incident. Note that in the case of an incident where there are no living witnesses, or where poor health or impairment prevents such an affidavit, we may accept the affidavit of a worker whose knowledge was directly obtained from a worker who was a direct witness/participant. These affidavits must be signed in the presence of an authorized witness, such as a notary public. Any affidavit (or other supporting document) will be subject to review by NIOSH to consider the adequacy and credibility of any evidence provided.

(7)

An affidavit submitted to support a submission basis, other than an incident, must be based on the experience/knowledge of the petitioner, at a minimum. These affidavits must be signed in the presence of an authorized witness, such as a notary public. Any affidavit (or other supporting document) will be subject to review by NIOSH to consider the adequacy and credibility of any evidence provided.

ORAU TEAM
Dose Reconstruction
Project for NIOSH

Development of the

Site Profile

for the

Los Alamos National Laboratory

National Institute for Occupational Safety and Health (NIOSH)
Los Alamos National Laboratory Site Profile Meeting

August 16, 2005

Oak Ridge Associated Universities | Dade Moeller & Associates | MJW Corporation
4850 Smith Road Suite 200 Cincinnati, Ohio 45212
(513) 924-1000 1-800-322-0111

Occupational Environmental Dose
(for workers who were not monitored)

Workers who are not monitored can still be exposed to radiation on site from:

- Radioactive materials in the air.
- Radiation sources in buildings.
- Radioactive materials in the work environment.

Environmental External Dose

- The external radiation dose results from radiation sources inside buildings, radioactive wastes, storage, etc.
- Available site-wide monitoring data are used to calculate external dose for unmonitored workers.
- The average annual ambient dose ranged from 32 to 56 mrem from 1971-2002.
- From 1965-1970, it ranged from 31-100 mrem.
- No data prior to 1965.

No data prior to 1965
how can we not qualify for the Cohort Status?

Environmental Internal Dose

The annual intake of radioactive material is calculated from the average annual air concentration.

Estimated site-wide, maximum intakes are given for ^{3}H, ^{131}I, ^{232}Th, ^{234}U, ^{239}Pu, ^{241}Am, mixed fission products, and particulate/ vapor activation products from 1971-2003.

Data for many years are missing.

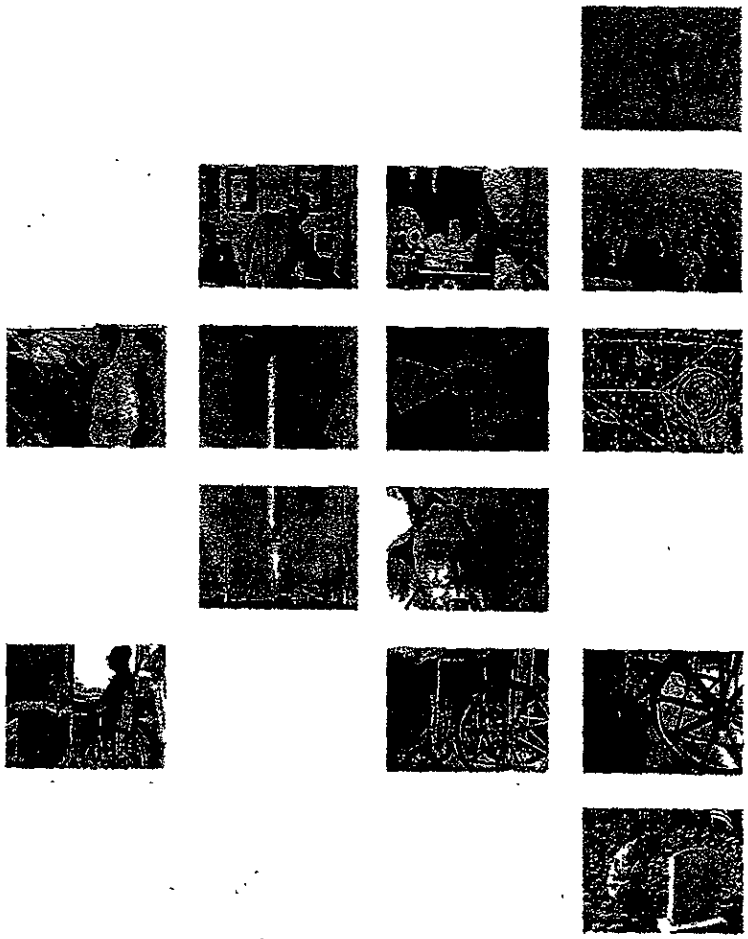
how can you justify not giving the Special Cohort status

this is from your own Power points!

check Page A 407

Compensating for COLD WAR CANCERS

Oak Ridge National Laboratory Photolibrary



U.S. National Archives, Oak Ridge National Laboratory, Lawrence Berkeley National Laboratory, Corbis, PhotoDisc

When the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) became law on 30 October 2000, it was widely regarded as a landmark piece of legislation. After years of fighting workers' claims of occupational illness in court, the government had decided to acknowledge its responsibility for decades of unsafe working conditions in Cold War nuclear weapons factories. The law promised a lump sum payment of $150,000 plus medical benefits in compensation to individual workers or families of workers who had developed job-related illnesses.

However, another challenge lay ahead: how to equitably award the payments to the deserving workers. To do so, government administrators have developed a mathematical model using information about cancer risks from radiation exposure to determine which claims are likely to be job-related. However, the precise numerical results

belie numerous assumptions and uncertainties, and the details of the plan have generated substantial debate.

The Equity Dilemma

Over a 50-year period from the late 1940s to the 1990s, the U.S. Department of Energy (DOE) and its contractors employed over 600,000 men and women at various sites in the production of nuclear weapons. These workers were exposed to a variety of radiation sources, including radon and X rays. The government had long denied that the working conditions could lead to disease, but that position finally changed in early 2000. Bill Richardson, energy secretary at the time, in announcing an early version of the compensation plan for workers, said that "the government is done fighting workers, and now we're going to help them."

Responsibility for administering the EEOICPA's compensation program was assigned by President Clinton to the U.S. Department of Labor (DOL). Normally such duties would have been under the purview of the U.S. Department of Justice (DOJ), which oversees several other major compensation schemes including, for example, the September 11 Victim Compensation Fund, the National Vaccine Injury Compensation Program, and the Radiation Exposure Compensation Act, which compensates residents of Utah and Nevada exposed to radioactive fallout from nuclear testing. But worker advocates argued that in this case the agency had a conflict of interest because of its role in defending the government against worker claims.

Funds are appropriated for the program each year. For fiscal year 2002 the program received $597 million for benefits and $136 million for administration. But the legislation is written so that payments cannot be denied because of lack of funds in the DOL budget.

The EEOICPA provides compensation for illnesses related to three hazardous occupational exposures: radiation, beryllium, and silica. The victims of beryllium and silica exposure are relatively easy to identify, because they develop diseases specific to exposure to those agents. Beryllium is a light, highly rigid metal that withstands heat well and is used in nuclear weapons components. Some workers who were exposed to beryllium developed chronic beryllium disease, a disease of the lungs. Workers who mined tunnels in Nevada and Alaska for underground nuclear tests were exposed to silica dust, which causes chronic silicosis (nonmalignant lung disease).

But identifying the radiation victims is not so easy. The EEOICPA limits claims to victims who have developed cancer. This includes all types of cancer except chronic lymphocytic leukemia, which is not believed to be caused by radiation. But cancer is a common disease, even among those who have never gone near a nuclear weapons plant, and it is likely that many of the nuclear workers will develop cancers that are not job-related. Compensation administrators are left with a daunting challenge—how to decide who deserves to be compensated.

There is no foolproof test to determine whether a worker's lung cancer was caused by radiation or by, say, cigarette smoke. In occupational injury disputes involving cancer, administrators and courts are forced to rely on probabilities. Nicholas Ashford, a professor of technology and policy at the Massachusetts Institute of Technology, explains that, in such cases, decisions are made "not from the individual injury which is sustained, but from epidemiological evidence, which is largely statistical evidence." In other words, a doctor cannot identify the cause of a cancer by examining the patient, but information from epidemiologic studies and the patient's radiation exposure can determine whether it is likely that the cancer was caused by radiation.

The EEOICPA requires that compensation for cancer be granted only if the disease is "at least as likely as not related to employment." This translates into a probability of 50% or greater, a cutoff that has been used in other compensation systems and in tort law. The principle here is that some individuals' cancers are more likely to be job-related than others, depending on how much radiation exposure they received, their age, and other factors. While the DOL will oversee the compensation program, the National Institute for Occupational Safety and Health (NIOSH) was charged with developing a scientifically based model to assign to each claimant a probability that his or her disease is job-related.

Models and Assumptions

The centerpiece of the NIOSH final rule on the probability of causation in radiation workers, which was promulgated on 2 May 2002, is a computer program known as the Interactive Radio-Epidemiological Program (IREP). The IREP was originally developed by the National Cancer Institute (NCI) to aid the Department of Veterans Affairs in adjudicating claims of atomic veterans (U.S. veterans exposed to radiation from a nuclear blast in World War II or during nuclear bomb tests during the Cold War), but NIOSH made some modifications in adapting it for the nuclear workers.

While the NIOSH–IREP model contains some highly technical bells and whistles, the basic calculation relies on one crucial piece of data: for any given radiation dose, how much does it increase a worker's risk of developing a particular type of cancer? The program contains a large database of cancer risk estimates for different types of cancer based on type of radiation, dose, sex, history of smoking, age at exposure, and age at which the cancer was diagnosed. However, these estimates of low-level radiation risk have been the subject of ongoing scientific controversy.

The NCI group that developed the original IREP model, led by radiation statistician Charles Land, primarily relied upon studies of 82,000 Japanese atomic bomb survivors, the richest data source available, to generate the risk model. However, some scientists have questioned the application of the Japanese survivor studies to American nuclear workers. While the Japanese at Hiroshima and Nagasaki were exposed to a single intense blast of radiation, the nuclear workers were exposed to smaller doses, sometimes over a period of decades, which, some experts say, could result in different biologic effects. Says epidemiologist David Richardson of the School of Public Health at the University of North Carolina at Chapel Hill (UNC), "The question is whether [the cancer risk values] are valid, and the validity is partly a question of extrapolating from a bomb blast to chronic exposures. That's probably the main source of uncertainty."

Richardson argues that the risk model should also incorporate findings from studies in U.S. nuclear workers. In a study published in the August 1999 issue of *EHP*, Richardson and UNC colleague Steve Wing studied 14,000 Cold War workers at Oak Ridge National Laboratory and found substantially higher cancer risks at low-level exposures than would have been predicted based on data from the atomic bomb survivors study. (Wing published an earlier paper on this same topic with similar results in the 20 March 1991 issue of the *Journal of the American Medical Association*.)

But results from other worker studies have been inconsistent. Other scientists maintain that because most workers are exposed to very low levels of radiation, it is difficult to distinguish between a small adverse effect and no effect at all. "The worker studies have a lot less information than the survivor studies," says statistician Daniel Stram of the University of Southern California.

Most radiation scientists do agree, however, that the same radiation dose has a different effect when it is given over a longer time interval. Says John Boice, scientific

director of the International Epidemiology Institute and a member of the International Commission on Radiological Protection, "There's a wealth of animal and cellular and biological data that indicate that if you spread the dose over time, the effect is less." This is because human DNA is able to repair small amounts of damage.

In predicting risks for long-term exposures, major radiation protection organizations such as the National Council on Radiation Protection and Measurements, a nongovernmental group of radiation and health experts, recommend using a correction factor called a dose rate effectiveness factor (DREF). This factor represents how much the effectiveness of a dose of radiation decreases when it is given over a long time period (as a slower dose rate). A higher DREF number means that exposure over a longer time will be much less effective than the same exposure over a short time. The council (as well as other radiation protection authorities) suggests that the correct number to be used here is somewhere between 2 and 10, but they settled on 2 as the most prudent choice because it assumes the highest risk. Yet the appropriate value of this correction factor is uncertain. William Beckner, executive director of the council, says, "That number is based on a scientific judgment; it's not based on scientific data that it is a number of two."

NIOSH has adopted the recommended correction factor in their risk valuation model, though the agency has received criticism from both sides of the debate for doing so. Richardson and Wing maintain that their worker studies contradict the theory that a dose given over a longer time is less effective, and suggest that no correction is necessary. At the other extreme, Harvard physics professor and radiation expert Richard Wilson advocates for an even stronger correction factor. "Whoever chose the dose rate [effectiveness] factors was an extreme pessimist," he says.

Nevertheless, there is broad agreement on one point—the uncertainties in the NIOSH–IREP model are numerous and substantial. The model actually provides a range of possible values to reflect this uncertainty, and the EEOICPA requires that administrators use the value most favorable to the worker. Says Larry Elliott, director of the NIOSH Office of Compensation Analysis and Support, "We give the benefit of the doubt to the claimant, using science to the fullest extent possible in doing so."

Oak Ridge National Laboratory, the Thomas Library

The Politics of Compensation

Land insists that the model works exactly as intended. "If you are not compensated," he says, "it must be just about impossible not to have had a probability of causation less than fifty percent. It's an extremely generous standard of proof."

But worker advocates maintain that inequities persist. For instance, the NIOSH–IREP model treats smokers differently than nonsmokers when considering claims for lung cancer, imposing more stringent requirements for compensation. Knut Ringen is a consultant who provided public comment to NIOSH on the proposed compensation rule on behalf of the Center to Protect Workers' Rights, part of the AFL-CIO based in Silver Spring, Maryland. He is concerned that because 80% of the workers were smokers, very few will be eligible for compensation for lung cancer. "On one level this makes sense, but it leads to a totally absurd result," he says. "A smoker has to have up to thirty times the exposure in order to get the same compensation as a nonsmoker. We think that's just plain wrong."

Ultimately, some critics would like to see the burden of proof rest on the government, not on the worker. For example, physicist Marvin Resnikoff of Waste Management Associates, a New York City consulting company that provides dose estimates and other technical information on behalf of workers in litigation, opposes the requirement for exposure estimation. "They shift the burden on the workers to determine what these levels are," he says. "The presumption should be that there was stuff in the air and that the workers were exposed."

Indeed, the greatest uncertainty in adjudicating claims comes not from the scientific debate about radiation risks but from the lack of adequate records of worker exposures. Record-keeping practices for radiation safety were woefully deficient at many sites, particularly for intermittent and temporary workers such as those doing construction and maintenance work. NIOSH will do the work of dose reconstruction itself, based on DOE records and interviews with workers, according to a second final rule released at the same time. Exposures will have to be estimated based on job descriptions and measurements from comparable work settings. However, in some cases, the records may be so poor as to prevent any realistic estimation.

James Melius, a member of the Advisory Board on Radiation and Worker Health, which provides oversight of NIOSH's rule making under the EEOICPA, maintains that missing records pose a major challenge. Administrators will be forced to strike a balance between scientific accuracy and expedience, he says: "How far do you go in trying to find dose information or to reconstruct? I think that is a key issue. It may cost more just to do that than to award compensation."

The EEOICPA does provide for exceptions when exposure records are especially poor. The law singles out workers at a few notorious sites, including the gaseous diffusion plants at Paducah (Kentucky), Portsmouth (Ohio), and Oak Ridge (Tennessee) as "special exposure cohorts." Workers in this group simply have to show that they worked in an exposed job for at least 250 days. Under the EEOICPA, additions to the special exposure cohorts can be created for groups of workers where the radiation dose cannot be determined "with sufficient accuracy." NIOSH is still working on developing guidelines by which it will make these determinations.

The Advisory Board on Radiation and Worker Health will be a key player in all of this. The board provides independent advice to NIOSH with members reflecting "a balance of scientific, medical, and worker perspectives." Currently, though, the 12-member advisory board includes only one worker as well as one labor union physician. In February, advisory board chairman Paul Ziemer wrote to Department of Health and Human Services secretary Tommy Thompson asking that this imbalance be rectified, but so far no other workers have been added. The next advisory board meeting, to be held in Denver on 1–2 July 2002, will be the first held outside Washington, D.C., and board members hope that this will allow more input from former workers.

So far about $200 million has been paid out, mostly to uranium miners and members of the special exposure cohorts. About 4,000 cancer claims are currently awaiting assessment by the NIOSH–IREP model, after which they will forwarded to the DOL for a final decision. While the NIOSH rule prescribing the compensation model is now final, it allows for revisions to the NIOSH–IREP model under the oversight of the advisory board. Thus, disputes over the modeling assumptions are likely to continue.

However, Stram is quick to point out that, despite scientific differences, a lot is known about how to calculate radiation risks. "We probably know more about radiation than we do about any other exposure," he says. "Despite all of the uncertainties, we know that there is a bound on the risks." That may be small compensation to workers who fail the probability test and are left with the legacy of cancer.

Mark J. Parascandola

Bingaman Says Budgets

WASHINGTON — Sen. Jeff Bingaman says the new White House education and health care budgets are a raw deal for Hispanics who stand to see major cuts in several programs, including some worth millions in New Mexico.

Last week, Bingaman joined Sen. Bob Menendez, D-N.J., and representatives of major Hispanic advocacy groups to urge Congress to spare programs he said are on the budgetary chopping block.

According to Bingaman's office, the Bush budget would reduce federal education spending by $2.1 billion, and completely eliminate 42 federal education programs that help Latino students succeed.

Similar cuts have been proposed in recent years, but Bingaman and others have succeeded in having the money reinstated.

"It's going to be a little more difficult this year because the budget constraints are even more severe," Bingaman told me Friday.

Some of the groups sharing Bingaman's concern at a Capitol Hill news conference last week were the National Council of La Raza, the Hispanic Federation, the Hispanic Association of Colleges and Universities, the National Hispanic Medical Association and NALEO.

Bingaman said the following programs are slated to receive no money this year. The amount New Mexico received last year under each of the programs is in parentheses.

- Even Start ($775,000)
- Education Technology State Grants ($2.3 million from '06)
- Safe and Drug Free Schools ($2.6 million from '06)
- Vocational Education and Tech-Prep Grants ($19 million)
- Byrd Honors Scholarships ($275,000)

MICHAEL COLEMAN

Journal Washington Bureau

- Supported Employment Grants ($300,000)
- Grants for Homeless and Youth ($89,000)

* * *

Rep. Tom Udall, D-N.M., is another Democrat worried about the White House budget plan.

Last week, Udall called for a House hearing into the president's budget cuts to benefits provided under the Energy Employees Occupational Illness Compensation Program Act.

continued next page

Unfair to Hispanics

During the Cold War, many Los Alamos National Laboratory employees were exposed to beryllium, radiation and other hazards, and some died. Many of these employees or their families could see their benefits limited or cut under the president's budget plan, Udall said.

He has asked the House Committee on the Judiciary's Subcommittee on Immigration, Border Security and Claims, to look into the issue. Udall wants the hearings to include testimony on behalf of LANL employees who were exposed to beryllium, radiation and other hazards.

"It would be a great injustice to cut the benefits of individuals who continue to suffer, and in some cases have died, from exposure to hazardous materials while at LANL," Udall said in a news release. "Many of my constituents have paid the ultimate price for being exposed to these materials and the U.S. government should owe them full compensation."

■ ■ ■

President Bush met last week at the White House with a slew of senators — including New Mexico's — to talk energy policy.

Sen. Pete Domenici, Republican chairman of the Energy and Natural Resources Committee, and Bingaman, its top Democrat, chatted with Bush about energy issues, with no agenda except to find areas where bipartisan agreement might be possible.

In particular, the president wanted to draw attention to the advanced energy initiatives highlighted in his State of the Union speech, and to build Congressional support for those proposals, according to the Senate energy committee staff.

■ ■ ■

The Senate's inquiry into the National Security Agency's domestic wiretapping program seemed to lose steam last week, but Rep. Heather Wilson says the House probe is full speed ahead.

Wilson, who garnered national headlines by calling for more extensive congressional briefings on the program earlier this month, said she and other members of the House Intelligence Committee spent last week trying to determine exactly what information to seek from Bush.

"We're moving forward with oversight of the president's program," Wilson said.

She said the panel is seeking to "understand better what the program is but also what the parameters of the law are." Wilson also wants to review and update the 1978 Foreign Intelligence Surveillance Act.

nomic indicators fail to measure the financial gains of Americans selling items on eBay.

"He said people are selling a lot of stuff on eBay. When we count the bake sales and lemonade stands, we'll have a roaring economy," Edwards told a union hall rally.

Last week in Cincinnati, Cheney told voters that indicators miss the hundreds of thousands who make money selling on eBay. "That's a source that didn't even exist 10 years ago," the vice president said. "Four hundred thousand people make some money trading on eBay."

Since Bush took office in January 2001, Ohio has suffered economically, with 229,600 jobs lost and an unemployment rate of 5.9 percent, slightly above the national average. The battleground state, which went for George W. Bush in 2000, is being fiercely contested by the Republican and Sen. John Kerry. At stake are 20 electoral votes.

Edwards used his appearance in the swing state to criticize the Republicans, praise Kerry and pledge his support for a federal program aimed at helping workers from the government's nuclear facilities.

Responding to the GOP criti-

DEMOCRATIC VICE PRESIDENTIAL CANDIDATE JOHN EDWARDS

cism that Kerry would be soft on terrorism, Edwards said, "John will actually do the hard work of leading alliances around the world. We'll do what must be done to keep the American people safe, and we're going to restore the image of America we all know and love."

The government's compensation program for sick weapons workers has paid out only $700,000 of the $95 million it has received since Congress created it. As of the end of July, the Energy Department, which runs the program, has paid only 31 claims of about 25,000 filed.

The program was started to help workers who were exposed to toxic substances such as radiation, heavy metals and asbestos at sites including the Portsmouth Gaseous Diffusion Plant in Piketon and nuclear weapons facilities in Oak Ridge and Clarksville, Tenn.

The Piketon plant's owner, USEC Inc., halted uranium production there in 2001.

• back to story page

URL: http://www.abqjournal.com/north/140667north_news02-04-04.htm

Wednesday, February 4, 2004

Budget Could Accelerate Lab Worker Claims

By Adam Rankin

Journal Staff Writer

The head of the Energy Department announced on Monday plans for a budget increase in 2005 that could help accelerate state worker compensation claims for about 2,000 New Mexicans.

Most of the workers and families of workers who stand to benefit worked or still work at Los Alamos National Laboratory.

If the funding is approved by Congress, DOE Secretary Spencer Abraham said President Bush's budget request of $43 million to help process claims submitted by DOE workers through the Energy Employees Occupational Illness Compensation Program Act will eliminate a backlog of claims by 2006.

As of the end of January, more than 22,200 claims have been filed with DOE, but fewer than 1,600 cases have been completed, according to the DOE. DOE also reports nearly 11,500 cases have yet to be touched, and about 6,500 are being researched.

In 2000, Congress established the compensation act, putting DOE in charge of helping to document workers' exposures to toxic and radioactive substances while building nuclear weapons.

The act requires DOE to help workers file claims under state compensation programs and direct its contractors to not fight claims.

"This is a matter of doing what is right and taking care of those whose labors helped secure our safety," Abraham said during Monday's news conference in Washington.

DOE has been under pressure to improve its handling of the portion of the act it oversees in conjunction with the Department of Labor, the Department of Justice and the National Institutes of Occupational Safety and Health.

Some lawmakers, including Sen. Jeff Bingaman and Rep. Tom Udall, both New Mexico Democrats, pushed to take away DOE's oversight and move it under the Department of Labor, which they argue is better at handling worker compensation.

During congressional hearings in November, Sen. Lamar Alexander, R-Tenn., called DOE's handling of the program "a complete disaster."

At that time, a little more than 20,000 workers had filed claims, but DOE had completed processing fewer than 200 of them, leaving thousands in limbo.

In New Mexico, about 1,800 workers have filed claims through DOE's portion of the program. About 1,400 of them are from LANL.

DOE spokesman Joe Davis said in November that DOE's share of the program hasn't been funded sufficiently since its inception. He said DOE has only received $74 million to run the program through last year.

DOE requested an additional $33 million on top of $16 million allocated to run the program in 2004, he said.

In comparison, the Department of Labor has received at least $346 million to run its part of the program, Davis said. It has fully processed more than half of the 50,000 claims filed with it and has paid about $740 million in compensation claims to nearly 10,000 workers nationwide.

Udall spokesman Glen Loveland praised DOE's pledge to increase the program's funding, but noted "there has been no indication thus far that DOE is capable of processing those claims."

"We want proof that they can actually accomplish the task at hand, and they haven't shown us that yet," he said.

Back to story page

DOL Rule for Atomic Workers' Compensation is "Born Broken"; Rule Defies Congressional Direction and Intent

Washington, DC. - The Department of Labor's (DOL) interim final regulations to implement Subtitle E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) deviates from explicit direction provided by Congress in recent reform amendments enacted on October 28, 2005, according to a preliminary analysis by the Government Accountability Project (GAP), a non-profit watchdog group.

EEOICPA Subtitle E provides up to $250,000 for physical impairments and wage losses to workers that suffered occupational illnesses from exposure to toxic substances at Department of Energy (DOE) nuclear facilities, and up to $175,000 to qualifying surviving family members. Although the rule was issued within 210 days, as required by law, its provisions are at odds with key aspects of the law and Conference Report for the FY 2005 Defense Authorization Act (P.L. 108-375). These discrepancies include:

1) **For radiation-related cancers, the DOL rule improperly raised the bar for determining eligibility.** Subtitle E's standard of causation is whether exposure to a toxic substance was "a significant factor which aggravated, contributed to or caused the illness." DOL jettisoned this standard for radiation related cancers and requires that "it is at least as likely as not that exposure to radiation caused the illness." This raises the bar for establishing proof of causation from approximately 20-50 percent to greater than 50 percent. Raising the bar will eliminate compensation for thousands of workers and their survivors, and violates the plain language of the law.

2) **DOL rule excludes impairment benefits for many workers despite Congressional directives to cover all illnesses.** Congress directed DOL to pay workers $2,500 for each percentage point of impairment caused by their occupational illnesses, as determined by the *American Medical Association Guides to the Evaluation of Permanent Impairment* (up to $250,000). DOL's rule denies impairment benefits for illnesses which are not listed in the *AMA Guides*. However, the Conference Report for the FY 05 Defense Authorization Act states otherwise: *"In some cases, particularly in cases involving illnesses to long exposure to toxic substances, there may be an illness for which the AMA Guides do not provide an impairment rating. As a result, each individual employee should be evaluated individually and the determination of impairment and work disability should be through a combination of the Guides and by physicians suitably trained and qualified."*

   Who falls through this loophole? DOL says workers with mental impairments for which there is not a documented physical dysfunction of the nervous system. This means that workers with neurotoxic effects from exposure to heavy metals such as mercury, lead or solvents will receive no impairment benefits.

3) **DOL rule requires claimant to wait until "maximum medical recovery" to establish an impairment rating.** Many occupational illnesses are progressive by their nature and there is no point of maximum medical improvement (example: asbestosis, silicosis, or chronic beryllium disease). The rule's only exception is for terminal stage disease, which means that claimants with progressive illnesses may have difficulty establishing impairment.

4) **DOL rule has no provision for independent physician panel reviews where there are**

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Environment, Safety, and Health

Tiger Team Assessment
of the
Los Alamos National Laboratory
Washington, DC 20585

November 1991

TA-55

.1.14 Radiological Protection

4.5.1.14.1 Overview

All 12 performance objectives in the Radiological Protection technical area were addressed in this appraisal. There were no concerns in RP.1 Organization and Administration or RP.2 Internal Audits and Investigations. The areas of RP.3 Radiation Protection Procedures and Posting and RP.11 ALARA Program are addressed at the LANL level. The remaining 10 performance objectives were evaluated only in the plutonium and depleted uranium areas. These areas included the plutonium facility at TA-55 (Bldg. PF-4), the Sigma Complex at TA-3, the waste treatment and disposal facilities at TA-50 and TA-54, and the firing sites at TA-15, TA-36, and TA-39. The majority of plutonium handling at LANL occurs at TA-55, and the operational health physics management is located there. The appraisal included review of documentation, including records of audits and assessments and radiation measurements at the above facilities. The appraisal also included tours of facilities, discussions with operational as well as radiation protection personnel, and observations of operational tasks in radiation areas.

Health physics at TA-55 is a function of the Health Physics Operations Group, Health and Safety Division. There has been a recent reorganization of the Health and Safety Division to change the radiation protection organization from a geographical basis to a functional basis with a Health Physics Measurements Group, and Health Physics Policy and Programs Group. The reorganization is an improvement, but the level of radiation protection performance appears to be an inverse function of the distance of the facilities being supported from the Health Physics Operations Group managers. The radiation protection program, although conducted by highly-dedicated and competent personnel, has just begun sitewide reorganization and implementation of DOE 5480.11, "Radiation Protection for Occupational Workers." Formal, written delineation of authorities and responsibilities for radiation protection exists, but uniform implementation throughout the plutonium and depleted uranium areas has not been achieved. There are no formal written programs describing LANL requirements for such major areas as ALARA. The radiation protection program and procedures have not been updated to reflect the recent reorganization and radiation protection policy.

The format used for reporting internal audits at TA-55 is not consistent. Posting and the requirements for posting throughout the depleted uranium and plutonium areas are either not uniformly established, or procedures are not consistently implemented. Radiation surveys throughout the plutonium and depleted uranium areas do not conform to LANL policy and documented schedules. Positive control is not exercised in controlling doses to minors.

The use of whole body and extremity dosimeters throughout the plutonium and depleted uranium areas does not ensure that personnel doses are measured accurately. Commingling is allowed. Eating, drinking, and using tobacco products while wearing protective clothing is permitted in some break rooms. The method by which workers are chosen for inclusion in the bioassay program is inconsistently applied.

Calibration and response checking of fixed instruments and tritium monitors does not reflect the same level of attention and commitment given to portable instrumentation. Placement of air monitoring instruments at the depleted

uranium sites is not based on studies of flow patterns, and similar studies are incomplete at TA-55. The contamination control programs at the sites do not ensure complete control of the spread of contamination.

LANL has not established an ALARA program at the Laboratory level. ALARA is [redacted]t addressed at the depleted uranium sites. Records related to radiation exposure are not readily available, especially at the depleted uranium firing sites.

The LANL self-assessment for the plutonium and depleted uranium areas was a thorough effort. Of the 15 concerns identified in this appraisal, 10 were at least partially identified in the LANL self-assessment.

4.5.1.14.2 Findings and Concerns

RP.3 RADIOLOGICAL PROTECTION PROCEDURES AND POSTING

PERFORMANCE OBJECTIVE: Radiation protection procedures for the control and use of radioactive materials and radiation generating devices should provide for safe operations and for clearly identified areas of potential consequences.

FINDINGS:

- Director's Policy (DP No. 107, "Radiological Protection," dated September 1991) and the ES&H Manual do not require the review and approval of procedures involving radiological work. Safe operating procedures are prepared, reviewed, and approved by the operating divisions. When the division deems it appropriate, the procedures are sent to the Health Physics Operational Group for review. All procedures are sent to the Health Physics Policy and Programs Group for review/retention. Those that involve radiological work are returned to the Health Physics Operations Group for review/comments.

- A new process for the fabrication of sources is being developed and implemented in the Robotic Isotope Detector Fabrication glovebox. The operator reported that the glovebox had previously been operated under a safe operating procedure and a "cold" special work permit. He stated that he had submitted a special work permit for signature for operating while he is revising the safe operating procedure. Radioactive material had been introduced into the glovebox even though the special work permit had not been approved.

- The Bldg. PF-4 vault procedure has a short paragraph devoted to radiation protection, no Health and Safety Division review is indicated on the cover page. Revision of this portion of the procedure has been initiated.

- No safe operating procedure or special work permit is in place for changing the HEPA filter on a portable vacuum cleaner at the Sigma Complex in TA-3 even though this procedure has been performed.

- See Sections 4.5.1.15.2, PP.2, and 4.5.4.13.2, RP.3.

The review of radiation protection standards and practices by line management is informal and inconsistent and is not in compliance with Chapter XVI of DOE 5480.19. (See Section 4.5.4.13.2, RP.1.)

- The following concern was partially identified in the LANL self-assessment.

CONCERN: (TSA-1) (RP.3-1) (H2/C1)

At the Los Alamos National Laboratory, the implementation of procedures involving radiological work without line management approval is not in compliance with DOE 5480.19 and without the review and approval of the Health Physics Operations Group does not provide the control and worker safety required for compliance with DOE 5480.11.

FINDINGS:

- There are several "Late" annotations on the monthly dosimetry reports for TA-55 and TA-21. An employee replaces the dosimeters in the rack at the end of each dosimetry period. If a dosimeter is not in the rack, the new dosimeter is placed in the slot. The employee continues to check the rack until the old dosimeter appears. If the dosimeter does not appear by a prescribed date, the Health Physics Operations Group writes a memorandum to the worker. Similar procedures are used in TA-21 and TA-55 but do not include line management in the exchange process.

- See Concern TSA-1, OA.3-2.

CONCERN: **See Concern TSA-4, RP.5-2.**

FINDINGS:

- Until recently the different facilities at LANL have functioned independently with regard to radiation protection support. This results in different procedures being used for the same radiation protection function. An example of this is the three different forms for special work permits for radiological work used at LANL, TA-53, and TA-55.

- LANL AR 3, "Ionizing Radiation/Radioactive Materials" (numerous dates), has not been updated to reflect the LANL "Director's Policy on Radiation Protection" dated September 1991 or the recent reorganization of the Health and Safety Division.

- The procedures and processes used to implement radiation protection programs at accelerator facilities are not adequate to ensure that the requirements of DOE 5480.11, mandatory ANSI standards, and the LANL ES&H Manual are met. (See Section 4.5.3.13.2, RP.3.)

- LANL is not in compliance with its approved, Rev. 2, DOE 5480.11 implementation plan or with its latest revision, Rev. 4, scheduled completion dates. Examples include: line organization ALARA coordinators were scheduled to have been identified by May, 1991, but a Laboratory-level coordinator has not been identified, and completion of posting and labeling for existing facilities and operations was scheduled for September 1991 and has not been completed.

- Consistent procedures have not been prepared by LANL divisions to implement the currently approved DOE 5480.11 implementation plan. (See Section 4.5.4.13.2, RP.1.)

- The following concern was identified in the LANL self-assessment.

CONCERN: (TSA-1) (RP.3-2) (H2/C1)

At the Los Alamos National Laboratory, procedures approved by site/facility management to implement the radiological protection program are not updated as necessary for compliance with DOE 5480.11.

FINDINGS:

- Signs and labels throughout the plutonium and uranium facilities are not uniform and some either do not indicate the radiological conditions, are not accurate, or have other problems that could lead to unsafe practices. Examples include:

  - Two waste storage areas in the basement of Bldg. PF-4 have radiological conditions posted as "NA" mrem/hr;

  - Most of the waste storage areas in the basement of Bldg. PF-4 are not roped off and some do not have radiation posting at their perimeter;

  - There are drums in a storage area posted as "Empty Drums" without empty labels and with radiation signs indicating material quantities as high as 66 microcuries of plutonium; and

  - A storage area is posted as "Chemical Waste Only" with some of the containers having radiation labels requiring alpha monitoring.

- The radiation area signs posted on the individual doors in the Bldg. PF-4 vault do not have radiological conditions posted on them. The chief technician and the vault manager did not know the radiation levels in the rooms and stated that they would have to go to the survey map at the entrance of the vault to determine the radiation levels. Personnel working in the vault receive the highest radiation exposures in TA-55. (See Concern TSA-1, RP.11-2.)

- See Concern TSA-1, QV.5-2.

- Localized contaminated areas, or radiological hot spots, are not labeled with radiation-type markings (i.e., yellow and magenta coloring.) The area is usually marked with indelible ink. However, the count rate at contact with the hot spot is included on the marked area. Radiation tape is generally not used because the hot spots frequently occur in high-traffic areas and the tape markings would not last.