

Dragon, Karen E. (CDC/NIOSH/EID)

From: Daniel McKeel
Sent: Friday, March 27, 2015 11:23 PM
To: melius@nysliuna.org; melius@nysliuna.org; NIOSH Docket Office (CDC); Katz, Ted (CDC/NIOSH/OD)
Cc: Kinman, Josh (CDC/NIOSH/DCAS); Hinnefeld, Stuart L. (CDC/NIOSH/DCAS); leiton.rachel@dol.gov; Rutherford, LaVon B. (CDC/NIOSH/DCAS); Pat.Worthington@hq.doe.gov; Vance.John@dol.gov; Neton, Jim (CDC/NIOSH/DCAS); Sundin, David S. (CDC/NIOSH/DCAS); danmckeel@...; kotsch.jeffrey@dol.gov; Wade, Lewis (CDC/NIOSH/OD) (CTR); long.christy@dol.gov; Gregory.Lewis@hq.doe.gov
Subject: ABRWH 104: Dow CA and SEC 105 class size issues
Attachments: McKeel_LTR_ToMelius_3.27.15.pdf

James Melius, Chairman, ABRWH
Members of the ABRWH
Ted Katz, Board DFO
NIOSH Public Docket Office

Dear Dr. Melius,

The attached 25 page PDF file is a summary of research I have recently carried out on the Dow California matter. Problem delineation: A major discrepancy exists between the number of NIOSH NOCTIS database claims (n=1) versus the DOL Statistics by State claims database that shows n=107 for the sole "DOW California" site (issue 1).

I submit evidence that the 107 claims in Dow CA cannot possibly relate to the DOW Madison IL site that has far more claims as listed on the DOL and NIOSH Attachments I have included in this 25 page information summary.

The big Issue 1 question is: should the 107 claims DOL reports for Dow California be included in the SEC 216 class recommended by NIOSH and the Board at meeting 104 (3/25/-26/15) in Richlands, WA?

Issue 2 covered in my letter relates to NIOSH not providing the Board or me with the SEC 105 class size (number of covered claimants) for the 1952-1966 AEC operational period and the 1966-1993 residual periods at General Steel Industries. That information should be easy to generate now, and should have been provided before the Board voted on SEC-105 on 12/11/12. I believe the SEC-105 petitioners have a right to know this information. I would hope the Board and the HHS Secretary would want to know the SEC-105 class size as well since an administrative review for the GSI SEC has been underway since 4/17/13.

Action Requests:

- [1] I am asking Ted Katz to please distribute this cover letter and PDF file to all current Board members.
- [2] I also am asking the NIOSH Docket Office to please consider posting this cover letter and PDF file on the DCAS website as part of GSI Docket 140 (where SEC-105 files are posted) and as part of Dow California Docket 060 (where SEC 216 records are posted).
- [3] I would appreciate receiving confirmation from you that this research material has been received by you and the Board.

Thank you.

Sincerely,

-- Dan McKeel 3/27/15

Daniel W. McKeel, Jr., MD
GSI and DOW (IL) and Texas City

Chemicals SEC co-petitioner
SINEW cofounder

Letter to Dr. James Melius, Chair, ABRWH - March 27, 2015

Dear Dr. Melius,

The more I reflect on the SEC 216 matter, and another SEC-105 issue that has arisen, neither of which were resolved during ABRWH meeting #104, I offer the following summary issue-related information to you as Board chair. I am also copying the same data to Rachel Leiton of DOL and to Stuart Hinnefeld of NIOSH and to Pat Worthington of DOE as those who are primarily responsible for resolving the apparent discrepancy between the relevant NIOSH and DOL and DOE web-based public databases related to the Dow California site(s), "Pittsburg" and "Walnut Creek" sites (**ISSUE 1**).

The other issue (**ISSUE 2**) that came to a head is that NIOSH (Lavon Rutherford) claims it is "impossible" to provide a class size estimate for GSI SEC-00105 (see **ATTACHMENTS E** and **F**). I challenge that refusal, and believe the SEC class sizes for 1952-66 and 1966 to 1993 can and should be provided to me as authorized SEC-00105 co-petitioner and to Patricia Jeske as the primary SEC-00105 petitioner without further delay.

ISSUE #1 - DISCREPANT NIOSH, DOL & DOE WEBSITE DATA FOR DOW CALIFORNIA (Walnut Creek and Pittsburg)

1. **DOL's EEOICPA Statistics by State and Worksite website** (URL: <http://www.dol.gov/owcp/energy/regs/compliance/statistics/Statistics.htm>) as of yesterday lists 107 claims submitted for a California site they refer to as "Dow California." That data does NOT refer to the Dow Madison IL site which I track every couple of days as the authorized SEC-00079 co-petitioner. (**ATTACHMENTS A (Dow CA) and B (Dow IL)**).

2. **DOE list:** No (zero) California "Dow" facilities are listed as DOE or DOE for a "period of environmental remediation" on a list signed by Gary A. Steinberg, Acting Director, OWCP (Federal Register/Vol. 80, No. 12/Tuesday, January 20, 2015/Notices). Govt. Printing Office. URL: <http://www.gpo.gov/fdsys/pkg/FR-2015-01-20/pdf/2015-00784.pdf>.
• A DOL link to this document with explanatory text is available: URL: <https://www.federalregister.gov/articles/2015/01/20/2015-00784/energy->

[employees-occupational-illness-compensation-program-act-of-2000-as-amended](#)

3. The current DOE facility list database:
(URL: <http://ehss.energy.gov/Facility/findfacility.aspx>) also lists but one "Dow" covered EEOICPA site in California, as follows (Note: the DOL database link to an older version of this DOE database before the EHSS changes did not work 3/26/15 and needs to be updated):

1 - Dow Chemical Company

Also Known As: Pittsburg, CA
State: California **Location:** Pittsburg
Time Period: 1947-1957
Facility Type: Atomic Weapons Employer

Facility Description: The Dow operation involved process studies and experimental investigations on different uranium ores and thorium-bearing ores, including pilot-scale solvent extraction of uranium from phosphoric acid.

[page URL: <https://ehss.energy.gov/Search/Facility/ViewByName.aspx>]

=====

The same EHSS DOE database listing for the Dow Madison site in Illinois follows on the next page. These are completely different corporate facilities under the very broad DOW Chemical umbrella.

Note there is no DOL, NIOSH and DOE database facility listing by State that includes more than One "DOW" or "DOW Chemical" site in the State of California. That is, there is no listing that shows two (2) DOW in California AWE or DOE EEOICPA 2000 covered facilities.

Thus, there is no support for two separate AEC contracts being awarded for a Walnut Creek California site and a Pittsburg California site. The DOE facility database (EHSS version) currently lists only a Dow, Pittsburg CA AWE site.

NIOSH and Lavon Rutherford need to clarify where the idea that the California

DOW plants at Pittsburg and Walnut Creek were one and the same was derived. I can only find this conjunction once, in the Class definition provided by the SEC 216 petitioner(s).

Dow Madison IL site from the DOE EHSS database (3/27/15)

8 - Dow Chemical Corporation (Madison Site)

Also Known As: Madison Site (Spectrulite) ; Spectrulite Consortium, Inc. ; Consolidated Aluminum ;

State: Illinois **Location:** Madison

Time Period: AWE 1957-1960; Residual Radiation 1961-2007

Facility Type: Atomic Weapons Employer

Facility Description: The Dow facility in Madison, Illinois, supplied the AEC with Magnesium-thorium sheets and plates, non radioactive equipment, metal products and other services. Dow received a purchase order from Mallinckrodt in March 1960, for research and development on the extrusion of uranium metal and rod. The Department of Energy also has invoices from 1957 and 1958 indicating that the Mallinckrodt Chemical Company Uranium division purchased magnesium-thorium plates and sheets from the Dow Chemical Company in Madison Illinois.

Dow sold this facility in 1969 to Consolidated Aluminum, which continued to operate the facility from 1969 through 1986. However, during the period of 1969-1986, the operations were of a purely commercial nature and did not involve AEC or Department of Energy contracts. Spectrulite subsequently purchased the plant from Consolidated Aluminum.

Although this site was designated as part of the Formerly Utilized Site Remediation Action Program (FUSRAP) in 1992, no remediation work ever took place under the DOE FUSRAP program prior to that program being transferred to the Army Corps of Engineers in 1997.

During the period of residual contamination, as designated by the National Institute for Occupational Safety and Health and as noted in the dates above, employees of subsequent owners and operators of this facility are also covered under the Energy Employees Occupational Illness Compensation Program Act.

Page URL: <https://ehss.energy.gov/Search/Facility/ViewByState.aspx>
Accessed 3/27/15 by Daniel W. McKeel, Jr., MD

4. The current NIOSH individual claims database arranged by State shows the following entries for Dow in California and Dow in Illinois:

(a) Dow California (URL: www2a.cdc.gov/ocas/jccu.asp)
See **ATTACHMENT C**. "Completed final dose reconstruction report 1"

(b) Dow in Illinois (URL: www2a.cdc.gov/ocas/jccu.asp)
See **ATTACHMENT D**. "Completed final dose reconstruction report 151"

5. The NIOSH ER for SEC-216 for the Dow California "Pittsburg California site" lists the following Class definitions requested by the (a) SEC petitioner and (b) as assigned by NIOSH to be as follows:

(a) Petitioner SEC 216 class definition: (ER page 4 of 48):
"Petition SEC-00216 was received on June 12, 2014, and qualified on August 5, 2014. The petitioner requested that NIOSH consider the following class: *All employees in all areas who worked for Dow Chemical Co. in Pittsburg, CA (aka Walnut Creek, CA), from 1947-1957.*"

McKeel comment: It is this class description alone that refers to Dow Chemical Co. in Pittsburg and Walnut Creek (*aka* Walnut Creek, CA)

(b) NIOSH SEC 216 class definition (agreed to and passed by the ABRWH unanimously on March 26, 2015): (ER page 4 of 48):
"Based on its preliminary research, NIOSH accepted the petitioner-requested class. NIOSH evaluated the following class: *All employees who worked in any area of the Dow Chemical Company facility in Pittsburg, California, from January 1, 1947 through December 31, 1957.*"

McKeel comment: NIOSH dropped the reference to *aka* Walnut Creek, CA, but unfortunately did not describe why this was done in the Evaluation report. NIOSH actually changed the petitioner defined class slightly but significantly. The status of the "*aka* Walnut Creek" was thus left in limbo.

6. The Dow California SEC 216 NOCTIS-based NIOSH slide 3/26/15 showed but a single (n=1) dose reconstruction ever being done at the SEC facility. The following slide was presented to the full Board by Lavon Rutherford at its 104th regular meeting in Richlands, Washington.

Dose Reconstructions

NIOSH Claims Tracking System

(March 3, 2014)

▪ Submitted to NIOSH	1
▪ Within the SEC period (1947–1957)	1
▪ Dose reconstructions completed outside SEC period	0
▪ Containing internal dosimetry	0
▪ External dosimetry	0

In my view, these facts collectively raise the possibility that 107 EEOICPA part B claimants in a Dow in California) covered facility, as noted yesterday in the DOL EEOICPA Statistics by State public online database, may be excluded from SEC-216 recommended for approval by NIOSH and ABRWH yesterday at the 104th regular meeting of the Board in Richlands, WA. Thus, *potentially*, $107 \times \$150,000 = \$16,050,000$ in part B compensation may be at stake or in jeopardy.

With that in mind, the DOL and NIOSH website numbers discrepancy for Dow California, however trivial the basis may be, nevertheless needs to be resolved with absolute 100% certainty among the three primary implementing agencies of EEOICPA, part B. The Board has oversight responsibility for NIOSH part B activities, including SECs, and therefore must be involved in this discrepancy resolution process.

I trust this matter will be resolved with certainty prior to the Board's Dow in California SEC-216 recommendation letter being sent to the HHS Secretary for further action.

As a footnote to Dow SEC-216, I would note that NIOSH once again has apparently overlooked NRC as a major resource for providing AEC licensing information. Dan McKeel obtained 1,016 unredacted pages of

GSI By-Products materials licensing information that was widely used by NIOSH and SC&A and the Board in deciding the fate of SEC-00105. The following NIOSH slide from Lavon Rutherford's 3/26/15 ABRWH 104 presentation supports my point: **NRC is missing from the list**. This oversight should be remedied.

Sources of Available Information

- **NIOSH Site Research Data Base: 166 documents**
- **Claim file**
- **DOW headquarters**
- **Landauer**
- **Department of Energy Office Scientific Technical Information**
- **Former worker interviews (3)**
- **Other standard data searches conducted**

ISSUE 2: THE CLASS SIZE (OPERATIONAL AND RESIDUAL PERIODS) FOR GSI SEC-00105

General Steel Industries (GSI) SEC-00105 is currently under administrative review (AR submitted 4/17/13) by HHS. The possibility thus exists the HHS Secretary could reverse the denial of SEC-00105 and approve it. As authorized NIOSH SEC-105 co-petitioner, speaking for myself and primary petitioner Patricia (Coggins) Jeske, I have requested multiple times for NIOSH, DCAS Division, to supply us with the number of claims at GSI that would be included in the SEC-105 class, should the HHS Secretary approve the SEC based on the HHS AR recommendation and other factors. Lavon Rutherford, speaking for DCAS, replied to my third request one day before the 104th ABRWH meeting, as follows:

[RUTHERFORD RESPONSE HERE: **ATTACHMENT E** entire e-mail)]

Dr. McKeel,

If the Secretary decides to revise her determination regarding the GSI SEC petition, she could designate a class that includes any part of the operational period and/or residual contamination period at the site. It is impossible to predict the possible parameters of such a hypothetical revision of the Secretary's previous determination. Further, DOL, not NIOSH, determines whether a claim is eligible for compensation as a member of the SEC pursuant to the Secretary's designation of a class. Some of the cancers associated with the SEC include additional qualifications specified by statute. Therefore, when DOL personnel review a claim to determine eligibility under the SEC, they must make findings, based on their procedures and policies, that are different than those made when a case is referred to NIOSH for dose reconstruction. NIOSH is therefore not in a position to undertake the kind of review of GSI cases that would be required to answer your question.

LaVon

LaVon B. Rutherford, CHP

SEC Health Physics Team Leader

Division of Compensation Analysis and Support (DCAS)

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I replied the same day as follows (**ATTACHMENT F is the complete e-mail thread**):

[MCKEEL RESPONSE HERE]

Dear Lavon and Ted Katz,

Ted Katz: Please distribute this e-mail thread to all current ABRWH members. Thank you.

This is a simple question that you are avoiding answering. You can, and many times have in your SEC reports to the Board, indicated how

many claimants at particular sites are in an SEC class. That is all I am asking for the General Steel Industries SEC-00105. I am asking you to break down the claims in the NIOSH defined Class that fall under the GSI operational (Oct. 1, 1952 through June 30, 1966) and residual periods (July 1, 1966 through December 31, 1993). Thank you.

-- **Dan McKeel** 3/23/15

Daniel W. McKeel , Jr., MD
GSI and DOW (IL) and TCC
SEC co-petitioner
SINEW cofounder

-----end of e-mail exchange-----

The GSI petitioners are seeking SEC-105 class size for the AEC operational period (October 1, 1952 through June 30, 1966) and for the residual period (July 1, 1966 through December 31, 1993). The ABRWH should also be interested in these SEC Class size numbers.

I have stated that (a) NIOSH should be able to provide them now, and (b) NIOSH/DCAS should have provided them as routine information for the Board to consider prior to the final 9 to 8 vote to deny SEC-105 in Knoxville, TN on December 11, 2012.

Sincerely and respectfully submitted,

-- *Dan McKeel* March 27, 2015

Daniel W. McKeel, Jr., MD
GSI and Dow (IL) and Texas City
Chemical (TX) SEC co-petitioner
SINEW co-founder

United States Department of Labor

Office of Workers' Compensation Programs

Office of Workers' Compensation Programs (OWCP)

EEOICP Program Statistics

Last year, the DEEOIC deployed a new case management system for use by our claims staff. The new system is constructed differently than the previous system, and we determined that it was appropriate to re-examine our statistics and how they are displayed on the web site. For the past several months, we have been working on reconstructing the site and the statistics. Therefore, viewers may notice some differences in the web statistics.

The separate category for the non-covered applications has been removed and those counts are now included in the Final Decision counts. Although the number of posted denials appears to increase, there is not an increase in total numbers. Denials are being shown under a single category instead of being split into two separate counts.

In the past, on our state-by-state pages, medical bill payments were attributed to each state in which any claimant (including multiple survivors) on the case resided, resulting in an overstatement of the amount of medical bill payments in a given state. Medical bill payments are now being attributed to the state in which the employee resides. Although the National page total was not affected by this change, the current state medical totals will show a reduction from previously-reported amounts.

A list of definitions for the terms used on the EEOICP Program Statistics web pages is available [here](#).

Highlights

- [View Part B Statistics](#)
- [View Part B NIOSH and SEC Statistics](#)

DOW CHEMICAL CO - CALIFORNIA

Data as of 03/22/2015

Statistical data updated weekly on Mondays

Part B

	CLAIMS	CASES
Applications Filed	107	91
Final Decisions		
Approved	24	20
Denied	<u>77</u>	<u>69</u>
Total	101	89
Compensation Paid		
Payments	23	19
Total Dollars	\$2,850,000	
Medical Bills Paid		
Total Dollars		\$453,621
Total Compensation + Medical Bills Paid		\$3,303,621

Part B Cases - NIOSH Statistics

Part B - Status and Location of NIOSH Referrals

Cases Referred to NIOSH for Dose Reconstruction (DR)	30
Cases Returned by NIOSH	
With Dose Reconstruction (DR)	28
Without Dose Reconstruction (DR) **1	<u>2</u>
Total	30
Cases Currently at NIOSH	0

**1 Most cases without a DR are cases withdrawn from NIOSH for DOL review and approval based on a new SEC designation. Other reasons for withdrawal include administrative closure, death of claimant.

Part B - Cases with Dose Reconstruction (DR) and Final Decision

Final Decision to Accept and Probability of Causation (POC)	
50% or Greater	12
Cases Paid	12
Individual Claims Paid	16
Amount Paid	\$1,800,000
Final Decision to Deny and POC Less Than 50%	<u>15</u>
Total	27

United States Department of Labor

Office of Workers' Compensation Programs

Office of Workers' Compensation Programs (OWCP)

EEOICP Program Statistics

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A list of definitions for the terms used on the EEOICP Program Statistics web pages is available [here](#).

Highlights

- [View Part B Statistics](#)
- [View Part B NIOSH and SEC Statistics](#)

DOW CHEMICAL CORPORATION (MADISON SITE) - ILLINOIS

Data as of 03/22/2015

Statistical data updated weekly on Mondays

Part B

	CLAIMS	CASES
Applications Filed	500	382
Final Decisions		
Approved	188	128
Denied	280	244
Total	468	372
Compensation Paid		
Payments	187	128
Total Dollars	\$19,200,000	
Medical Bills Paid		
Total Dollars	\$3,011,508	
Total Compensation + Medical Bills Paid		\$22,211,508

Part B Cases - NIOSH Statistics

Part B - Status and Location of NIOSH Referrals

Cases Referred to NIOSH for Dose Reconstruction (DR)	189
Cases Returned by NIOSH	
With Dose Reconstruction (DR)	128
Without Dose Reconstruction (DR) *1	<u>57</u>
Total	185
Cases Currently at NIOSH	4

*1 Most cases without a DR are cases withdrawn from NIOSH for DOL review and approval based on a new SEC designation. Other reasons for withdrawal include administrative closure, death of claimant.

Part B - Cases with Dose Reconstruction (DR) and Final Decision

Final Decision to Accept and Probability of Causation (POC) 50% or Greater	45
Cases Paid	45
Individual Claims Paid	61
Amount Paid	\$6,750,000
Final Decision to Deny and POC Less Than 50%	<u>78</u>
Total	123



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Case Statistics

Part B - NIOSH Dose Reconstruction Referrals from the Department of Labor

The table below provides the general status for all cases the Department of Labor sent to NIOSH for dose reconstruction. The table displays the status for all states and work sites. You can use the filter to get the status for a specific state and/or work site.

Filter Overall Program Statistics By State and Work Site

State:

Site:

Cases Referred to NIOSH by DOL	Cases
Total Referred to NIOSH by DOL	1
Cases Currently Returned to DOL (100%)	
Completed final dose reconstruction report	1
Withdrawn from NIOSH and dose reconstruction by DOL ¹	0
Withdrawn from NIOSH and dose reconstruction for SEC ²	0
Total Returned to DOL	1
Cases Currently Administratively Closed by NIOSH (0%)³	
Total Currently Administratively Closed by NIOSH	0
Cases Currently at NIOSH (0%)	
Assigned to Health Physicists for dose reconstruction	0
Completed draft dose reconstruction; awaiting OCAS-1	0
Not yet assigned to Health Physicists for dose reconstruction	0
Total Currently at NIOSH	0 ⁴

Last Modified: 3/27/2015

¹ DOL pulled (withdrew) case from NIOSH and dose reconstruction due to claimant request, claimant death without a known survivor, or insufficient employment or medical information.

² NIOSH pulled case from dose reconstruction and returned it to DOL for Special Exposure Cohort (SEC) consideration.

3 Draft dose reconstruction report completed. Administratively closed due to claimant refusal to sign OCAS-1 form.

4 Of the total active claims at NIOSH, 0 out of 0 (0%), represent dose reconstructions returned to NIOSH by DOL for rework due to additional employment, an additional cancer needs to be dose reconstructed, or the affect of a technical change based on a Program Evaluation Report is being examined.

Page last reviewed: September 26, 2014

Page last updated: September 26, 2014

Content source: [National Institute for Occupational Safety and Health](#) Division of Compensation Analysis and Support

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Case Statistics

Part B - NIOSH Dose Reconstruction Referrals from the Department of Labor

The table below provides the general status for all cases the Department of Labor sent to NIOSH for dose reconstruction. The table displays the status for all states and work sites. You can use the filter to get the status for a specific state and/or work site.

Filter Overall Program Statistics By State and Work Site

State:

Site:

Cases Referred to NIOSH by DOL	Cases
Total Referred to NIOSH by DOL	212
Cases Currently Returned to DOL (99%)	
Completed final dose reconstruction report	151
Withdrawn from NIOSH and dose reconstruction by DOL ¹	7
Withdrawn from NIOSH and dose reconstruction for SEC ²	50
Total Returned to DOL	208
Cases Currently Administratively Closed by NIOSH (0%)³	
Total Currently Administratively Closed by NIOSH	1
Cases Currently at NIOSH (1%)	
Assigned to Health Physicists for dose reconstruction	1
Completed draft dose reconstruction; awaiting OCAS-1	0
Not yet assigned to Health Physicists for dose reconstruction	2
Total Currently at NIOSH	3 ⁴

Last Modified: 3/27/2015

¹ DOL pulled (withdrew) case from NIOSH and dose reconstruction due to claimant request, claimant death without a known survivor, or insufficient employment or medical information.

² NIOSH pulled case from dose reconstruction and returned it to DOL for Special Exposure Cohort (SEC) consideration.

3 Draft dose reconstruction report completed. Administratively closed due to claimant refusal to sign OCAS-1 form.

4 Of the total active claims at NIOSH, 1 out of 3 (33%), represent dose reconstructions returned to NIOSH by DOL for rework due to additional employment, an additional cancer needs to be dose reconstructed, or the affect of a technical change based on a Program Evaluation Report is being examined.

Page last reviewed: September 26, 2014

Page last updated: September 26, 2014

Content source: National Institute for Occupational Safety and Health Division of Compensation Analysis and Support

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USA

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From: Rutherford, LaVon B. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <lr5@cdc.gov>

To: Daniel McKeel <danmckeel@cdc.gov>; Allen, David (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <dka6@cdc.gov>; Neton, Jim (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <jfn2@cdc.gov>; Hinnefeld, Stuart L. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <hls8@cdc.gov>; Sundin, David S. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <dss2@cdc.gov>; Kinman, Josh (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <eky1@cdc.gov>

Cc: Melius, James M. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <jmm0@cdc.gov>; Ziemer, Paul (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <paz7@cdc.gov>; Katz, Ted (CDC/NIOSH/OD) (CDC/NIOSH/OD) <tmk1@cdc.gov>; Wade, Lewis (CDC/NIOSH/OD) (CTR) (CDC/NIOSH/OD) (CTR) <low0@cdc.gov>

Subject: RE: GSI SEC-105 Class size (3rd REQUEST)

Date: Mon, Mar 23, 2015 11:31 am

Dr. McKeel,

If the Secretary decides to revise her determination regarding the GSI SEC petition, she could designate a class that includes any part of the operational period and/or residual contamination period at the site. It is impossible to predict the possible parameters of such a hypothetical revision of the Secretary's previous determination. Further, DOL, not NIOSH, determines whether a claim is eligible for compensation as a member of the SEC pursuant to the Secretary's designation of a class. Some of the cancers associated with the SEC include additional qualifications specified by statute. Therefore, when DOL personnel review a claim to determine eligibility under the SEC, they must make findings, based on their procedures and policies, that are different than those made when a case is referred to NIOSH for dose reconstruction. NIOSH is therefore not in a position to undertake the kind of review of GSI cases that would be required to answer your question.

LaVon

LaVon B. Rutherford, CHP

SEC Health Physics Team Leader

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From: Daniel McKeel

Sent: Thursday, March 19, 2015 6:53 PM

To: Rutherford, LaVon B. (CDC/NIOSH/DCAS); Allen, David (CDC/NIOSH/DCAS); Neton, Jim (CDC/NIOSH/DCAS); Hinnefeld, Stuart L. (CDC/NIOSH/DCAS); Sundin, David S. (CDC/NIOSH/DCAS); Kinman, Josh (CDC/NIOSH/DCAS)

Cc: Melius, James M. (CDC/NIOSH/DCAS); Ziemer, Paul (CDC/NIOSH/DCAS); danmckeel@cdc.gov; Katz, Ted (CDC/NIOSH/OD); Wade, Lewis (CDC/NIOSH/OD) (CTR)

Subject: Re: GSI SEC-105 Class size (3rd REQUEST)

Hello Lavon and all other DCAS NIOSH recipients, NIOSH Ombudsman Brock and SEC Counselor Kinman,

Would you please respond to my third straightforward request to be informed, in light of GSI PER-057 being issued 3/11/15, and assuming all 100 reworks with PER POCs greater than 50% are compensated, **how many GSI Part B claimants would be included in the SEC-00105 Class** if HHS Secretary Burwell reverses her decision to deny the special exposure cohort. The reversal could be the result of the 4/17/13 still pending HHS Administrative Review (AR) filed by the GSI petitioners on April 17, 2013, almost two years ago. The full Board voted 12/11/12 in Knoxville, TN to deny SEC-00105 by a close 9 to 8 vote.

I would like to know this information before I make my Public Comment to the Board at its upcoming March 25-26 meeting in Richlands, WA. Thank you.

-- Dan McKeel 3/19/15

Daniel W. McKeel, Jr., MD
GSI, DOW (IL) and TCC SEC co-petitioner
SINEW cofounder

-----Original Message-----

From: Daniel McKeel <DanMcKeel@cdc.gov>
To: Lrr5 <Lrr5@cdc.gov>
Cc: Jmm0 <Jmm0@cdc.gov>; paz7 <paz7@cdc.gov>;
danmckeel2

Sent: Tue, Mar 17, 2015 7:13 pm
Subject: Re: GSI SEC-105 Class size (2nd REQUEST)

Hello Lavon,

I know you are busy preparing for the upcoming Board meeting. I am preparing a letter to HHS Secretary Burwell about the status of the GSI SEC-00105 administrative review (AR). This AR was filed 4/17/13. I would like to provide her with current statistics on the number of General Steel Industries workers who would currently be in the SEC-105 class? I want to compare this number to the 196 persons from GSI who were included in PER-057 posted to the DCAS website today. It would be ideal to be able to tell Secretary Burwell how many SEC-105 class members there are assuming (a big assumption) that all 100 GSI "re-works" being returned to NIOSH under PER-057 are compensated. That would leave a residual number of denied GSI claimants who *might be* included in the SEC class. I will really appreciate your assistance on this matter. I need the number of SEC105 class members if the SEC were reversed and approved this month (March 2015), another best case (optimal claimant favorable) assumption. Thank you very much.

-- Dan McKeel 3/17/15

Daniel W. McKeel, Jr., MD
GSI, Dow (IL) and TCC SEC co-petitioner
SINEW cofounder

-----Original Message-----

From: Daniel McKeel

To: Lrr5 <Lrr5@cdc.gov>
Cc: Jmm0 <Jmm0@cdc.gov>; paz7 <paz7@cdc.gov>;
>; danmckeel2

Sent: Sat, Mar 14, 2015 8:09 am
Subject: GSI SEC-105 Class size

Lavon Rutherford CHP
SEC Team Leader
DCAS (NIOSH)
Cincinnati, OH 45226 **FACA (Public Law 92-463 1972) REQUEST**

March 14, 2015

Dear Mr. Rutherford (Lavon),

Would you please tell me the number of General Steel Industries ("GSI") claimants who are potential SEC-00105 class members? The ABRWH voted 9 to 8 to deny this SEC on 12/11/12. I don't believe the number of SEC-105 potential class members was placed into the record prior to that vote. HHS Secretary Sebelius denied SEC-00105 in March of the following year.

As you know, Mrs. Patricia (Coggins) Jeske and I, acting in our roles as the authorized SEC-105 petitioners for the GSI site located at 1417 State Street in Granite City, IL AWE site, filed an Administrative Review ("AR") request with the U.S. Department of HHS on April 17, 2013. That GSI SEC-105 AR is still in process. It is possible, therefore, that HHS Secretary Sylvia Burwell could reverse the decision to deny SEC-105 in the near future.

It is deemed necessary for the petitioners to establish how many GSI individual Part B EEOICPA claimants might be included in the SEC-105 Class ahead of that decision which could come anytime. We are not privy to an AR decision date. The full ABRWH membership should also be interested in this SEC-105 class size. Accordingly, I have copied this e-mail to Drs. Melius as Board chair and Dr. Ziemer as chair of the TBD-6000 (GSI) work group.

Thank you for your attention to this matter.

Sincerely,

-- **Dan McKeel**

Daniel W. McKeel, Jr., MD
GSI, Dow and Texas City Chemicals SEC co-petitioner
Cofounder SINEW

From: Daniel McKeel

To: lrr5 <lrr5@cdc.gov>; dka6 <dka6@cdc.gov>; jfn2 <jfn2@cdc.gov>; hls8 <hls8@cdc.gov>; dss2 <dss2@cdc.gov>; tmk1 <tmk1@cdc.gov>

Cc: jmm0 <jmm0@cdc.gov>; paz7 <paz7@cdc.gov>; low0 <low0@cdc.gov>; danmckeel2 <leiton.rachel@dol.gov>; eky1 <eky1@cdc.gov>

leiton.rachel

Subject: Re: GSI SEC-105 Class size (3rd REQUEST), reply

Date: Mon, Mar 23, 2015 12:27 pm

Dear Lavon and Ted Katz,

Ted Katz: Please distribute this e-mail thread to all current ABRWH members. Thank you.

This is a simple question that you are avoiding answering. You can, and many times have in your SEC reports to the Board, indicated how many claimants at particular sites are in an SEC class. That is all I am asking for the General Steel Industries SEC-00105. I am asking you to break down the claims in the NIOSH defined Class that fall under the GSI operational (Oct. 1, 1952 through June 30, 1966) and residual periods (July 1, 1966 through December 31, 1993). Thank you.

-- Dan McKeel 3/23/15

Daniel W. McKeel, Jr., MD
GSI and DOW (IL) and TCC
SEC co-petitioner
SINEW cofounder

-----Original Message-----

From: Rutherford, LaVon B. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <lrr5@cdc.gov>
To: Daniel McKeel - Allen, David (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <dka6@cdc.gov>; Neton, Jim (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <jfn2@cdc.gov>; Hinnefeld, Stuart L. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <hls8@cdc.gov>; Sundin, David S. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <dss2@cdc.gov>; Kinman, Josh (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <eky1@cdc.gov>
Cc: Melius, James M. (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <jmm0@cdc.gov>; Ziemer, Paul (CDC/NIOSH/DCAS) (CDC/NIOSH/DCAS) <paz7@cdc.gov>; < >; Katz, Ted (CDC/NIOSH/OD) (CDC/NIOSH/OD) <tmk1@cdc.gov>; Wade, Lewis (CDC/NIOSH/OD) (CTR) (CDC/NIOSH/OD) (CTR) <low0@cdc.gov>
Sent: Mon, Mar 23, 2015 11:31 am
Subject: RE: GSI SEC-105 Class size (3rd REQUEST)

Dr. McKeel,

If the Secretary decides to revise her determination regarding the GSI SEC petition, she could designate a class that includes any part of the operational period and/or residual contamination period at the site. It is impossible to predict the possible parameters of such a hypothetical revision of the Secretary's previous determination. Further, DOL, not NIOSH, determines whether a claim is eligible for compensation as a member of the SEC pursuant to the Secretary's designation of a class. Some of the cancers associated with the SEC include additional qualifications specified by statute. Therefore, when DOL personnel review a claim to determine eligibility under the SEC, they must make findings, based on their procedures and policies, that are different than those made when a case is

referred to NIOSH for dose reconstruction. NIOSH is therefore not in a position to undertake the kind of review of GSI cases that would be required to answer your question.

LaVon

LaVon B. Rutherford, CHP
SEC Health Physics Team Leader
Division of Compensation Analysis and Support (DCAS)
(513) 533-6806 Telework Fridays (513) 807-0952

From: Daniel McKeel
Sent: Thursday, March 19, 2015 6:53 PM
To: Rutherford, LaVon B. (CDC/NIOSH/DCAS); Allen, David (CDC/NIOSH/DCAS); Neton, Jim (CDC/NIOSH/DCAS); Hinnefeld, Stuart L. (CDC/NIOSH/DCAS); Sundin, David S. (CDC/NIOSH/DCAS); Kinman, Josh (CDC/NIOSH/DCAS)
Cc: Melius, James M. (CDC/NIOSH/DCAS); Ziemer, Paul (CDC/NIOSH/DCAS); ; [danmckeel2](#); Katz, Ted (CDC/NIOSH/OD); Wade, Lewis (CDC/NIOSH/OD) (CTR)
Subject: Re: GSI SEC-105 Class size (3rd REQUEST)

Hello Lavon and all other DCAS NIOSH recipients, NIOSH Ombudsman Brock and SEC Counselor Kinman,

Would you please respond to my third straightforward request to be informed, in light of GSI PER-057 being issued 3/11/15, and assuming all 100 reworks with PER POCs greater than 50% are compensated, **how many GSI Part B claimants would be included in the SEC-00105 Class** if HHS Secretary Burwell reverses her decision to deny the special exposure cohort. The reversal could be the result of the 4/17/13 still pending HHS Administrative Review (AR) filed by the GSI petitioners on April 17, 2013, almost two years ago. The full Board voted 12/11/12 in Knoxville, TN to deny SEC-00105 by a close 9 to 8 vote.

I would like to know this information before I make my Public Comment to the Board at its upcoming March 25-26 meeting in Richlands, WA. Thank you.

-- Dan McKeel 3/19/15

Daniel W. McKeel, Jr., MD
GSI, DOW (IL) and TCC SEC co-petitioner
SINEW cofounder

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To: Lrr5 <Lrr5@cdc.gov>
Cc: Jmm0 <Jmm0@cdc.gov>; paz7 <paz7@cdc.gov>;
<[danmckeel2](#)>; danmckeel2
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