



Los Alamos P.O.W.S.

Project on Worker Safety

Prisoners of the Cold War

P.O. Box 2791 Espanola, NM 87532

"If you don't have your health, you're not free."

April 30, 2003

NIOSH Docket Office
Robert A. Taft Laboratories, MS-C34
4676 Columbia Parkway
Cincinnati, OH 45226

RE: Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the EEOCIP Act of 2000

Dear Sir/Madam:

The Los Alamos Project on Workers Safety (POWS) advocates for implementation and reform of the Energy Employees Occupational Illness Compensation Program Act on behalf of former and current Los Alamos National Laboratory employees and their families. We are a project of labor organizations, a grassroots environmental justice organization, and numerous individuals in northern New Mexico who have never enjoyed the benefits of union representation. Our members have testified at several NIOSH public meetings and on telephone conference calls.

Our key concerns with the proposed rule are as follows:

1. **Petitioner Status**

NIOSH has used prudent criteria in determining who can file a petition. We urge the agency to disregard the request by a major national union to restrict this right to certified unions. Many LANL employees never had the opportunity to become union members. Few current employees are unionized, with several craft unions involved. We envision many situations in which all of the potential members of an SEC are distributed among the unorganized, as well as several different craft unions.

Los Alamos POWS advocates for the interests of all LANL employees and their families. We deserve and demand the right to file formal petitions for establishing SEC classes. We surmise there are similarly situated and

Rec'd
5/7/03

Los Alamos POWS advocates for the interests of all LANL employees and their families. We deserve and demand the right to file formal petitions for establishing SEC classes. We surmise there are similarly situated and qualified organizations, with long histories of constructive contributions to these issues, at other DOE facilities.

2. Section 83.13 Represents a Violation of Congressional Intent

NIOSH must not authorize itself to reduce the number of cancers covered by the SECs from 22 to a lesser number. This should be obvious from Senator Jeff Bingaman's (D-NM) remarks in the Congressional Record of October 12, 2000. Senator Bingaman, the lead Senate sponsor, was describing Congressional intent behind the legislation that had recently been signed by President Clinton:

"We allow groups of workers to petition to be considered by the advisory committee for inclusion in this group [SEC]. Once a group of workers was placed in the category, it would be eligible for compensation for a *fixed list* of radiation related cancers."
(*emphasis added*)

Los Alamos POWS has worked closely with Senator Bingaman and his staff since early 2000, while the legislation was still being drafted.

Section 83.13, as currently written, would thwart Congress's clear intent. Moreover, it is illogical. First, the EEOCIP Act specifies Special *Exposure* Cohorts -- not special *disease* cohorts. Second, a condition for an SEC is NIOSH's inability to estimate a worst case dose. Once that condition has been met, we find it hard to believe that NIOSH will be able to estimate dose for certain organs but not others.

3. Section 83.9 Should Be Changed to Allow Information from a Variety of Sources

As currently written, Section 83.9 would require petitioners to submit supporting information from "scientific" agencies of the government. Use of the word "scientific" would effectively bar the use of Congressional committee hearings, GAO reports, DOE public meeting transcripts, oral histories collected by university projects, and other potentially important sources of documentation of deficiencies in radiation dosimetry.

4. An Internal HHS Review and Appeals Process Should be Created

The rule should provide an independent administrative appeals process within HHS for petitioners after NIOSH makes a determination under Section 83.11(b) that the petition has failed to meet the requirements for evaluation. Without such an administrative review process, we may have no choice but to seek judicial review in federal court. The resources for such a review may not be readily available.

In the interest of a "claimant friendly" system, we request that Section 83.11 be amended to provide an independent review within HHS. The rule should specify with whom the request for an appeal must be filed, the address, the procedural requirements, and the regulations that will govern these appeals proceedings.

5. Timelines for Initial Decision by the Secretary of HHS

The rule should stipulate that the Secretary shall review recommended decisions from NIOSH and the Advisory Board and issue a final written determination in not more than 21 days after receipt of such materials from NIOSH and the Advisory Board.

Claimants have already waited too long for compensation. They have also been buffeted by prevailing political winds. Stipulating a deadline for the Secretary's review is essential if the system is to truly become "claimant friendly."

6. Technical Assistance

Los Alamos POWS urges NIOSH to provide small technical assistance grants to assist in the development of SEC petitions. Grants would be used to hire health physicists or other qualified professionals to assist in the development of a technically sound petition. NIOSH should also hold several training workshops to address the information requirements of a petition.

Sincerely,

Ally Silver
Peter Malmgren
Ben & Erny

Jonathan McBovier SR.
Phillip Schofield
Erin McGee