

HHS Determination Concerning a Petition to Add Members to the
Special Exposure Cohort
under the
Energy Employees Occupational Illness Compensation Program Act of 2000

Determination Concerning a Petition for Employees from

Linde Ceramics Plant
Tonawanda, New York



I. Determination

I, Kathleen Sebelius, Secretary of Health and Human Services (Secretary), have determined that the employees defined in Section II of this report do not meet the statutory criteria for addition to the Special Exposure Cohort (SEC), as authorized under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. § 7384q.

April 21, 2011

Date

[Signature on file]

Kathleen Sebelius

II. Employee Class Definition

All Department of Energy employees and Atomic Weapons Employees who worked at the Linde Ceramics Plant in Tonawanda, New York, during the period from January 1, 1954 through July 31, 2006.

III. Decision Criteria and Recommendations

Pursuant to 42 U.S.C. § 7384q, to designate a class for addition to the SEC, the Secretary must determine, upon recommendation of the Advisory Board on Radiation and Worker Health (Board), that

- (1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and
- (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

The SEC final rule states in 42 C.F.R. § 83.13(c)(1) that it is feasible in two situations to estimate the radiation dose that the class received with sufficient accuracy. First, the rule states that radiation doses may be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the class. Alternatively, radiation doses may be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the radiation doses of members of the class more precisely than a maximum dose estimate.

In a letter received by the Secretary on March 22, 2011, the Board, pursuant to 42 U.S.C. § 7384q, agreed with the following NIOSH findings, effectively advising the Secretary that radiation dose can be reconstructed with sufficient accuracy for certain Linde Ceramics Plant employees in accordance with provisions of EEOICPA and the SEC final rule.

IV. Determination Findings

Feasibility of Estimating Radiation Doses with Sufficient Accuracy

The Secretary established the feasibility determination for the class of employees covered by this report based upon the findings summarized below.

- NIOSH determined that workers during the residual period may have received internal and external exposure to residual uranium contamination generated by uranium processing (Buildings 14, 30, 31, 37, and 38).
- NIOSH has obtained source term information for onsite uranium and uranium progeny during the operational period, survey data, including air monitoring data, for both the decontamination activities at Linde and several distinct, major investigations during the residual radiation period. The residual period surveys include soil characterizations, building surveys, and air sampling results.
- Although NIOSH and the Board identified issues impacting its ability to bound internal exposure doses during the renovation period from January 1, 1954 through December 31, 1969, NIOSH determined that based on the available survey data, sufficient information and data exist to support bounding internal exposures for uranium, uranium progeny, and radon for the class of employees covered by this report (January 1, 1970 through July 31, 2006).
- NIOSH located limited personnel external dosimetry data for Linde workers during the residual period. Area monitoring data and contamination surveys performed as part of the FUSRAP and remediation surveys are available and provide information regarding potential external exposures to workers who worked at the site during the residual contamination period.
- NIOSH determined that sufficient information and data exist to support bounding external exposure doses for the class of employees covered by this report (January 1, 1970 to July 31, 2006).
- X-rays are not considered for the residual contamination period. Because the site was not considered a radiological worksite by the employer during the residual contamination period, no medical exams would be conducted for purposes of screening radiological workers.
- NIOSH determined that it has access to sufficient Linde Ceramics Plant information to either (1) estimate the maximum external and internal radiation dose for every type of cancer for which radiation doses are reconstructed that could have been incurred under plausible circumstances by any member of the evaluated class; or (2) estimate the external and internal radiation doses to members of the evaluated class more precisely than a maximum dose estimate.
- The Board concurred with the NIOSH findings.

Health Endangerment

Because the Secretary established that it is feasible to estimate with sufficient accuracy the radiation doses encountered by Linde Ceramics Plant employees as specified in this class, a determination of health endangerment is not required.

V. Effect of the Determination

Members of the class of employees covered by this determination and their survivors continue to be eligible to submit claims for compensation under EEOICPA. As required for cancer claims covering other DOE and Atomic Weapons Employer employees (or Atomic Weapons Employees) not included in the SEC, qualified cancer claims under Part B of EEOICPA for members of this class will be adjudicated by the Department of Labor, in part on the basis of radiation dose reconstructions which will be conducted by NIOSH.

VI. Administrative Review of Determination

The determination provided in this report may be subject to an administrative review within HHS, pursuant to 42 C.F.R. § 83.18(a). On the basis of such a review, if the Secretary decides to designate the class of employees covered by this determination, in part or in whole, as an addition to the SEC, the Secretary would transmit a new report to Congress providing the designation and the criteria and findings on which the decision was based.