

National Institute for Occupational Safety and Health (NIOSH) Worker Outreach Meeting for the Kansas City Plant

Meeting Date: Thursday, August 13, 2009

Meeting with: International Association of Machinists and Aerospace Workers (IAMAW)
Local Lodge 778, Kansas City, Missouri

NIOSH Worker Outreach Team:

Laurie Breyer, National Institute for Occupational Safety and Health (NIOSH), Office of Compensation Analysis and Support (OCAS), Special Exposure Cohort (SEC) Counselor

Mark Lewis, Advanced Technologies and Laboratories International, Inc. (ATL), Senior Outreach Specialist

Mary Elliott, ATL, Technical Writer/Editor

Proceedings:

Mark Lewis opened the meeting at approximately 1:00 p.m. He stated that he works for ATL International, Inc., the support contractor for Worker Outreach for the National Institute for Occupational Safety and Health (NIOSH) Office of Compensation Analysis and Support (OCAS). He introduced Mary Elliott, also of ATL, and requested permission for the Worker Outreach Team to record the meeting for the purpose of preparing meeting minutes.

Mr. Lewis circulated a sign-in sheet and asked Ms. Elliott to explain how the Privacy Act protects the information on the recording and the sign-in sheet. She stated that the information is used only by the NIOSH Team and other program officials who are trained in Privacy Act compliance. Ms. Elliott explained that she uses the recording only for the purpose of preparing an accurate account of the meeting that will be posted on the NIOSH Web site. The recording is destroyed after the minutes go through a review process.

Mr. Lewis expressed his appreciation for the attendees' involvement in their union's training programs. He explained the importance of passing on information about the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to the workers. He stated that the purpose of the meeting was to talk about the site profile for the Kansas City Plant and to get information from the workers that may help to make the document a more accurate, complete tool for dose reconstruction. Mr. Lewis explained that the site profile is a "living document" that NIOSH updates as new information becomes available.

Mr. Lewis turned the meeting over to Laurie Breyer, who is the Special Exposure Cohort (SEC) Petition Counselor for NIOSH. She encouraged the attendees to participate in an informal discussion of the handout materials since the group was small.

Ms. Breyer explained that Congress passed EEOICPA, or "the Act," in 2000 to compensate individuals who worked at a U. S. Department of Energy (DOE) or Atomic Weapons Employer (AWE) facility and developed illnesses as the result of their work.

Ms. Breyer briefly outlined the responsibilities of the government agencies that are involved in the compensation program. The U. S. Department of Labor (DOL) oversees the program, with

both DOE and NIOSH providing information that will be used to compensate the claims. She explained that the claims process can be complicated not only by the involvement of so many agencies, but also due to the fact that the records may be difficult to find for earlier periods at many sites, especially the AWE facilities.

Ms. Breyer stated that the EEOICPA has two parts: Part B to compensate workers with cancer, beryllium disease, or silicosis; and Part E to compensate for illnesses resulting from toxic chemical exposures. She explained that the EEOICPA claims process begins when the atomic weapons worker or the survivor(s) file a claim for Part B and/or Part E with the DOL. After the DOL verifies the worker's employment at a covered facility and the medical diagnosis, a Part B cancer claim is sent to NIOSH for radiation dose reconstruction. DOL handles the Part B claims for beryllium disease and silicosis, as well as the Part E claims for all other illnesses. NIOSH does not do dose reconstructions for these claims.

Question:

Does NIOSH handle only the cancer claims?

Ms. Breyer:

Yes.

Question:

Does NIOSH have a database with radiation information about the different facilities?

Ms. Breyer:

NIOSH uses the Site Research Database (SRDB) to manage documents and information found during the data capture efforts at the sites and federal records repositories. These documents are used during the development and revision of the site profiles for various sites. It is sometimes difficult to find information on some of the AWE sites that had contracts to perform specific operations in the early days of the atomic weapons program – for example, rolling uranium rods. There are documents in the SRDB for most of the major DOE sites.

Question:

Will everyone who applies for this compensation get it?

Ms. Breyer:

It is my understanding that Part B compensation for beryllium disease is pretty straight-forward. If you worked at a beryllium facility and you have beryllium disease, you will be compensated. The same goes for silicosis. Part E compensation for chemical exposures is more difficult, since you can file for almost any illness. DOL has a Site Exposure Matrix (SEM) for each site that lists every known chemical used at the site. DOL updates the list when other materials are brought to their attention. The compensation is based on whether the worker's disease may be a health effect of the chemical exposure in the workplace.

The nationwide compensation rate for the Part B cancer claims that have dose reconstructions at NIOSH is about 36%. The compensation rate is higher when the SEC claims are included. We'll talk about that as I get into the presentation.

The compensation rate for Part B cancer claims for workers from the Kansas City Plant is fairly low in comparison – approximately 5%, so it is much lower than the national average. Based on the radiation monitoring information in the site profile, the Kansas City Plant is a low-dose facility. The facility's primary mission is manufacturing non-nuclear parts for nuclear weapons,

as well as inspecting existing weapons, so most of the radiation exposures come from sealed sources.

Question:

Is there a statute of limitations on exposure? You're saying that there is limited exposure now, but that wasn't the case 30 years ago.

Ms. Breyer:

No, there is no limitation on the exposure. There was depleted uranium here until the 1970s.

Response:

They used to machine that.

Ms. Breyer:

Yes. Information on the depleted uranium work is in the site profile. We passed one out to each of you before the meeting. It is a technical document based on the information that NIOSH has about the Kansas City Plant. We would appreciate it if you would look through it and see if the information is accurate based on the information you have. As Mr. Lewis said before, we call these "living documents" because they can be revised when substantive information comes to our attention. The most important reason we have worker outreach is to get information from the workers at the sites.

The information I have says that most of the external radiation exposures at the site are from X rays, as well as beta, photon, and neutron sources used for calibration, non-destructive testing, and radiation-generating devices for the entire covered period. NIOSH has external monitoring data from 1950 to the present time. The internal monitoring data is limited to the period from 1958 through 1971, when the depleted uranium work took place. After 1997, depleted uranium was also processed using a method that did not present an internal exposure hazard. There was an incident that involved a leaking promethium source that caused air contamination for four workers who tested positive for internal promethium exposure. The workers were tested again and two separate labs determined that the results were false positives (based on fecal testing). NIOSH found bioassay results from 1959 to 1971 and air sampling data from 1958 to 1970, as well as dosimetry records for individual workers for external doses and some internal dose data. The site profile discusses the monitoring and data in more detail. NIOSH has information that shows that there was a higher possibility of internal exposure during the depleted uranium work.

Comment:

We have had issues in that past with low-dose tritium.

Ms. Breyer:

The site profile contains information about low-level contamination from deuterium and tritium accelerators or other potential tritium components that were sent to the Kansas City Plant from other sites.

Response:

All of our exit signs contain tritium and are luminous so they can be seen during power outages.

Ms. Breyer:

If you have information that NIOSH may not have on any incidents in which workers were highly exposed, please send us the information.

Another NIOSH source of worker information is the claimant telephone interview (CATI, or

Computer Assisted Telephone Interview). Before dose reconstruction begins, NIOSH gives every claimant the opportunity to provide any information that might help support the claim. Claimants are sent a questionnaire before the interview so they can be prepared to answer questions such as “Were you monitored?”; “Where did you work?”; “Do you know what radioactive materials you worked with?”; “Were you involved in any incidents that resulted in radiation contamination?” Participation in the interview is voluntary.

Again, NIOSH handles only Part B claims for cancer. DOL handles all Part B claims for beryllium disease and silicosis, as well as Part E claims for diseases related to chemical exposures.

Question:

Does DOL also handle mesothelioma claims?

Ms. Breyer:

I believe that claimants can file for mesothelioma under Part B as a cancer, although it is handled differently than a lung cancer. Mesothelioma can also be claimed under Part E as a disease. Under Part E, claims can be filed for any illness that may have been the result of chemical exposure. For example, workers may be compensated for COPD, asthma, or other pulmonary problems that they may have incurred from breathing fumes from toxic chemicals or contaminated dust. Some of the chemicals have well-known health effects, while others are not quite as clear. DOL has to look at the information in the claim and make the decision. The worker has to show that they were exposed to a chemical on the SEM for that site. You can file a claim for any illness.

I will be the first to tell you that the claims process can be frustrating. It is not an easy process. When the law was passed, Congress gave responsibilities to DOL, DOE, and the U. S. Department of Health and Human Services (HHS). NIOSH is part of HHS. These agencies work together in the process, which can be lengthy. Some claimants have both Part B and Part E claims and those are handled differently. In some cases, survivors can file claims on behalf of deceased workers from the earlier periods. It can be a real challenge for the survivors to locate the deceased workers’ records, especially if they worked for subcontractors who are no longer in business or if the deceased has been gone a long time.

Comment:

We have also been working with the Building and Construction Trades Former Worker Medical Screening Program. Their members have worked on contracts at the plant for more than 40 years. Our retired members can go through their screening program for medical exams. NIOSH doesn’t work directly with that, do they? I think DOL works with them, too.

Ms. Breyer:

Everybody should definitely have those screenings. The agencies have recently formed the Joint Task Force on Outreach to try to make the process less frustrating for the claimants. They are coordinating joint meetings so that claimants can deal with all of the agencies at once, rather than attending separate meetings for each agency.

Question:

NIOSH makes recommendations for compensation for Part B. Who makes the decisions for the Part E chemical claims?

Ms. Breyer:

All claims are filed with the DOL. But if the claim is for an illness caused by chemical exposures in the workplace under Part E, there is a greater burden on the claimant to show the impairment. The medical records must show a link between the energy employee's illness and the chemical exposures in the workplace. The DOL uses the SEM to decide if the claim is compensable. The DOL claims examiners review the files to make compensation decisions. The more complicated cases are sent to a District Medical Consultant. Part E also compensates for wage loss associated with the claimants' illnesses and their impairments. It is set up similar to Workers' Compensation, with \$2,500 awarded to the energy employee for every 1% of impairment. Surviving spouses who file a claim may be compensated up to \$175,000, depending on the length of time their spouses' lost wages due to their illnesses. The process involves several steps, as well as an appeals process.

Part B pays a one-time \$150,000 lump sum payment for beryllium disease, silicosis, or cancer. A claimant cannot be compensated for more than one illness under Part B. Energy employees can also get medical benefits beginning on the date the claim is filed. NIOSH performs the dose reconstructions that are required for Part B cancer claims to determine if the workers' radiation exposure in the work place was "at least as likely as not" to have caused the cancer.

Question:

Is NIOSH only using the worker's radiation dose that is in the records?

Ms. Breyer:

That is only part of the information that NIOSH uses in a dose reconstruction. I'll get to that in a minute.

NIOSH has other responsibilities under EEIOCPA. The agency evaluates Special Exposure Cohort (SEC) petitions to determine if it is possible to reconstruct radiation doses using the information that is available. NIOSH also developed the probability of causation (POC) guidelines required in the Act. By law, the compensation is based on a scientific determination that the probability that the cause of cancer is the workplace exposure, so a dose reconstruction is done to determine whether the cancer is "at least as likely as not" to have been caused by the worker's occupational radiation exposure, which has been interpreted to mean a 50% or greater chance. This scientific requirement was included because cancer is the second leading cause of death in the United States, and the highest leading cause in some groups of the population.

Ms. Breyer explained the dose reconstruction process:

- After NIOSH receives the Part B cancer claim from DOL, they request the worker's records from DOE for internal dosimetry monitoring, external dosimetry monitoring, X rays, and information on radiological incidents in which the worker may have been involved.
- While waiting for the DOE records, NIOSH conducts a telephone interview with the claimant(s). A claimant may be the worker or his/her survivor. OCAS uses the interview transcript in conjunction with the worker's records from DOE and the site profile to reconstruct the worker's radiation dose.
- When the dose reconstruction is completed, OCAS sends the draft report to the claimant and schedules another interview to talk with the claimant about how the dose

reconstruction was done.

- The claimant is asked to sign the OCAS-1 Form stating that he or she has no additional information that is relevant to the claim. The compensation process cannot go any further until the form is signed.
- Once the signed OCAS-1 Form is returned, the final dose reconstruction is sent to the claimant and to DOL.
- DOL uses information from the dose reconstruction report to make Part B compensation decisions.

Ms. Breyer briefly reviewed the resource materials that had been passed out before the meeting, explaining that the attendees could find information in the materials that might help them better understand the topics in her presentation.

Ms. Breyer explained that risk models that NIOSH uses in dose reconstruction take many factors into consideration, including the type of cancer, the latency period, the length of time an employee worked in radioactive areas, and the employee's age at first exposure. Some cancers are more radiogenic than others. The latency period is important because some cancers take longer to develop than others. NIOSH also considers whether the worker had one acute exposure incident or chronic exposure over a long period of time.

NIOSH relies on many sources of information to perform dose reconstructions: the medical and employment records from the claimant, the individual dosimetry and bioassay data provided by DOE, the information from the telephone interview with the claimant, the site profile data, and other information from the SRDB. NIOSH also reaches out to worker groups to make sure the site profile data is as complete and accurate as possible.

Ms. Breyer stated that in addition to using the individual dose information and the site profile information, NIOSH evaluates all doses of record for data quality shortcomings. The agency also looks at the potential for undetected or unmonitored dose and uses monitoring data from area dosimeters, air sampling, and radiation surveys if individual monitoring data is not available. NIOSH also considers the limitations of the dosimetry badges and adds a "missed dose" component when a "0" dose is reported. NIOSH may also calculate radiation exposures by using source term data for the types of radiological materials that were used in areas where there was no monitoring.

Ms. Breyer noted that she had previously discussed the telephone interview and asked if anyone had questions on that subject. An unidentified attendee commented that 4 hours time in the handout didn't seem like enough time to gather information from someone who may have worked for 30 years. Ms. Breyer replied that the interview lasts as long as the interviewee needs to respond to the questions. Interviews with survivor claimants may not last more than a few minutes because they don't usually have much information about the energy employee's work locations and job duties. Interviews with energy employees may last considerably longer because they may have much more information to offer. She added that NIOSH makes provisions for secure interviews if a worker wants to discuss classified information.

Question:

What can we do to help our union members and their families get the information they need for their interviews? What kind of records do they need? What do they need to know?

Ms. Breyer:

Looking at the site profile with them may be a big help. Keep in mind that every incident is not going to be in the site profile. For example, if Bob spilled something that needed to be cleaned up, it may not be in the site profile. But if you know about larger scale incidents or radiological materials that are not in the site profile, those are the kinds of things that NIOSH needs to know.

As far as surviving family members, it may help to get coworkers together. That may be difficult if the employment period was in the late 1940s or early 1950s.

Mr. Lewis:

You can also be present during the telephone interview to help family members.

Ms. Breyer:

The interview script is sent out before the actual interview so the claimant has time to get information together. The interview is scheduled when it is convenient for the claimant. Helping someone get together with someone else who has the information they need for their interview is probably one of the best “hands on” ways you can help.

Question:

What is the average amount of time to be compensated for a claim – from the time it is filed until the claimants are paid? I know someone who is ready to give up because she is getting frustrated that it is taking so long.

Ms. Breyer:

Encourage her not to do that. It can be frustrating to wait a long time. I can't speak for the DOL process. Sometimes it takes a while to get employment records or to find medical records, especially if the energy worker was employed in the earlier periods. After the records come to NIOSH, the dose reconstruction can be done in as little as six months or as long as five years if the information isn't readily available.

When the EEOICPA program began, NIOSH was the logical choice to do dose reconstructions because the agency has been around since the 1970s to study ways to make the workplace environment safer for workers. The mission of the agency has always been to protect workers, so NIOSH had collected a lot of data about the work hazards at the nuclear weapons facilities. After DOL sent NIOSH the first claim for dose reconstruction, it took some time to get the information together for the site profiles and to develop the methodology for dose reconstruction. That is why some of the claims got backlogged. NIOSH is trying to get cases out the door within one year from the time they are received from DOL. Of course, it takes some time for DOL to make the decision once they get the case back.

Response:

You don't have to wait until the claim is approved to get treatment, do you? Illnesses affect people differently, so they shouldn't have to wait to get the treatment until the claim is approved. For example, if I go to Jewish Hospital and get diagnosed with beryllium disease, I can start getting reimbursed for my medicine. Is that right?

Ms. Breyer:

No, you should go ahead and get your treatment and keep track of out-of-pocket expenses, but the medical expenses won't be reimbursed until the claim is approved. You have to go through the whole process before you start getting money for the illness.

There have been movements to get this law changed by both advocacy groups and legislators. Nothing has been changed to date, but it can't hurt to involve them. Compensation programs work differently in other countries, too. Great Britain has a program that is much smaller scale and they do dose reconstructions, but their compensation is based on the percentage. It is not a lump sum payment like EEOICPA Part B if the POC is 50% or greater.

A brief discussion ensued regarding the survivorship eligibility differences between Parts B and E. Surviving spouses, children, grandchildren, parents, and grandparents may file claims on behalf of a deceased energy worker on Part B claims. Only surviving spouses or surviving children who were dependent at the time of the worker's death may file Part E claims unless the adult children are incapable of employment.

Question:

Will the program compensate surviving spouses who may have become ill from the energy worker bringing contamination into the home?

Ms. Breyer:

No. The program only makes compensation based on the energy worker's illness, not illnesses of family members. The law would have to change for that type of compensation to be included.

Ms. Breyer explained the parts of the dose reconstruction report. She stated that there is always someone at NIOSH who can answer questions should someone come to a union member asking for help understanding the report. She encouraged the attendees to call or email the NIOSH office with questions. She emphasized the importance of going through the information in the report to make sure it is accurate. She added that it is also important for the claimant to contact DOL if there have been any changes to their claim such as the diagnosis of an additional cancer. Each additional cancer may increase the POC, but the claimant will only be paid the lump sum of \$150,000 one time regardless of the number of cancers.

Question:

The dose reconstruction is only as accurate as the information that is available. How often does NIOSH get updates from the sites? Do you have to go looking for the site information every time there is a dose reconstruction?

Ms. Breyer:

NIOSH has an ongoing data capture process. Teams are sent to the DOE sites as well as to the federal records repositories. The documents that are acquired during data capture trips are put into the SRDB and remain available for all dose reconstructions. Individual records specific to a claim are requested when NIOSH gets the claim from DOL. Sometimes group dosimetry records from a site include information for as many as 50 workers, so there may already be some information for a specific claim in the SRDB. I'm not sure of the protocol for the DOE sites providing updated information to NIOSH.

Question:

Are any claims ever denied?

Ms. Breyer:

Yes. The nationwide rate of compensation for claims having dose reconstruction is about 36% right now. Originally, the government estimated that 5% of the claims would be compensated. If you include the SEC claims, the overall compensation rate for Part B claims is somewhat higher,

probably in the 40% range. That is just for the radiation part of the program. The DOL Web site has the statistics for all of the claims.

Question:

The new medical forms they have us fill out here ask for detailed family medical history. Does family medical history have anything to do with the compensation?

Ms. Breyer:

NIOSH does not look at family medical history. Other than occupational exposure, the only personal information that factors into the dose reconstruction is the ethnicity of the worker for skin cancers and the smoking history for lung cancers. Also, X rays that are not required as a condition of employment are not included – for example, if you had an X ray as a child because you broke your leg. The occupational X rays are included in the Medical Dose portion of the dose reconstruction.

Ms. Breyer explained that some cancers are not compensated as frequently as others. Prostate and colon cancers are not often compensated because they are not considered to be very radiogenic, but the latency period can also be a factor. Prostate cancer is very common in older men, and the POC decreases with age. Lung cancers are compensated more often, especially when the employee was in a work situation where there was a high chance of internal exposure. Skin cancers are not likely to be paid either, unless the worker received a lot of external exposure. Multiple skin cancers increase the POC, especially with basal cell carcinomas.

Question:

What is the compensation rate for leukemia? Is it higher?

Ms. Breyer:

We have a breakdown of the rates of compensation on our Web site. I'm not certain what it is, but I can find out for you.

Question:

What if you have developed leukemia and work around a chemical that is a carcinogen known to be linked with that?

Ms. Breyer:

You should definitely file both Part B and Part E claims.

Question:

Is it more difficult for contractor employees to file claims? We have a lot of workers who come into the plant to do jobs and then they move on to other DOE facilities.

Ms. Breyer:

NIOSH has addressed that issue for workers who go from one area to another within a facility such as firefighters or security personnel, or for construction workers who often go to the different facilities within the DOE complex. Often these workers are not badged, so NIOSH applies the highest dose of record that is known for production workers who are assigned to that area.

If NIOSH does not have individual monitoring data for a worker, they use efficiency methods to complete the dose reconstruction. For example, if there is evidence that an unmonitored worker may have been exposed to plutonium, NIOSH will apply the highest plutonium dose known in that area. If the POC is over 50%, then the case is recommended for compensation. If the POC is

well under 50%, NIOSH recommends that the claim be denied.

A discussion ensued regarding the criteria for filing claims and compensation for workers who may have worked around beryllium in a DOE facility for a time, but were later employed at beryllium facilities that are not covered under the EEOICPA. Ms. Breyer explained that only exposures at the DOE facilities are covered. On the other hand, if an employee worked at several DOE facilities and files a claim, their exposures at all eligible facilities will factor into the dose reconstruction.

Question:

You mentioned that the DOL Web site has information about the number of claims and the amounts paid out. I'm curious about something else. Does anyone keep track of the data on the numbers of claims at the same facility and use the information to do something about making the facility safer, or to limit exposure, or that sort of thing? Is DOL doing something with that information besides writing checks?

Ms. Breyer:

I don't know if that has happened or what the procedures would be. NIOSH keeps all the information they have collected in the SRDB, and the individual claims information is kept in the files. I don't know if DOL has a procedure in place to do that.

Mr. Lewis:

NIOSH's responsibilities under the Act do not include enforcement.

Ms. Breyer turned the discussion to the Special Exposure Cohort (SEC) that was legislated into the EEOICPA when the law was enacted. Originally, the cohort included classes of employees at the three gaseous diffusion plants and Amchitka Island in Alaska. The Act also established a petitioning process for other classes to be added to the SEC if there is not sufficient data to perform dose reconstructions for a class of employees at a covered facility.

Ms. Breyer explained that the NIOSH SEC Fact Sheet contained the basic information about the Special Exposure Cohort. She added that the back of the Fact Sheet shows the list of the 22 cancers that are currently eligible.

Ms. Breyer stated that when an SEC petition is filed, NIOSH must review the petition and evaluate whether dose reconstruction can be done for the class of employees. If NIOSH determines that some part of the dose reconstruction is not feasible, the petition will likely be approved and the claims for employees who have worked 250 days at the facility during the covered period and who have one of 22 specific qualifying cancers are compensated automatically without having to undergo dose reconstructions. Approximately 60% of the claims of eligible class members will be compensated, but the 40% whose cancers are not covered (mostly prostate and skin cancers) will still have their claims come to NIOSH for dose reconstructions. However, because the SEC petition states that some part of the dose reconstruction cannot be done – for example, the petition might state that internal doses cannot be reconstructed accurately because there is no thorium data, the claims that still have to go to NIOSH will not include the calculation for the internal dose. So, while the SEC allows for a larger number of claims to be compensated, at the same time the claims undergoing the partial dose reconstructions are compensated at a lower rate.

Question:

Can we file an SEC petition for workers with beryllium disease?

Ms. Breyer:

No. The cohort is only for Part B cancer cases, not for beryllium disease or silicosis.

Ms. Breyer stated that SEC classes can be very narrowly or very broadly defined. Some classes may include fewer than ten workers, while some cover hundreds or even thousands of workers. For example, the petition for a class of workers at Ames Laboratory covers only a small group of unmonitored workers who replaced the ductwork in the lab. The petition was filed because there were no monitoring records and they did a unique job. NIOSH evaluated the petition and decided that they did not have enough data to do the dose reconstructions, so the recommendation was to add the class to the SEC. The SEC class for Los Alamos National Laboratory is an example of a broadly defined class, covering hundreds of workers in many areas of the lab from the 1940s through the 1970s.

Ms. Breyer explained the petitioning process: A petition can be filed by an individual (worker or survivor), a labor organization representing workers or former workers at a site, or an authorized representative of a worker or survivor. NIOSH reviews the petition to see if it meets the criteria for qualification. In order to qualify for evaluation, the petition must include one of four valid bases: (1) a lack of monitoring at the facility; (2) lost, falsified, or destroyed records; (3) a technical report or (4) a scientific report documenting the inadequacy of the monitoring program at the facility. Ms. Breyer noted that the first two bases are the most commonly cited. Workers' affidavits can be used to document the basis of the petition.

Ms. Breyer stated that an SEC petition had been filed by a former employee of the Kansas City Plant. The petitioner provided an affidavit in which he stated that his records had been falsified when his badge had been overexposed and a reading had been given for that badge. NIOSH looked at the dosimetry protocol for the facility and determined that the badges that were being used at the time had two detectors in each badge. The second detector in the worker's badge had not been overexposed and had been developed for the reading. NIOSH determined that the records had not been falsified because the normal procedure had been followed. The petition did not qualify for evaluation.

Ms. Breyer explained that, even though there are large amounts of monitoring data at some of the larger facilities, petitions have qualified based on the absence of monitoring for certain radionuclides, such as thorium.

If the petition qualifies for evaluation, NIOSH prepares a Petition Evaluation Report. While preparing the report, NIOSH examines the monitoring data and other information to determine: (1) whether dose reconstructions can be done with sufficient accuracy for the class of workers, and (2) whether there is health endangerment. NIOSH has always determined that there is health endangerment, so the main question is whether the dose reconstructions can be done.

After NIOSH prepares the Petition Evaluation Report based on its findings, they present the report to the Advisory Board on Radiation and Worker Health (ABRWH) at a public meeting, along with its recommendation as to whether dose reconstruction is feasible or not feasible.

Ms. Breyer explained that the Advisory Board is an independent board that was chartered to oversee NIOSH's role in the EEOICPA program. The Board is comprised of members from the health physics field, workers from DOE facilities, medical doctors, and labor representatives. Besides the responsibility of making recommendations on the SEC petitions, the Board also reviews NIOSH procedures, documents, and dose reconstruction methods.

Comment:

We have all kinds of monitoring going on in the plant. What we would need to look at is the radiation monitoring. Correct?

Ms. Breyer:

Yes. It is important for NIOSH to know if there was not monitoring for a specific type of radiation or that certain groups of workers who should have been monitored were not monitored. I gave the example earlier of firefighters who go into facilities all over the plant, but are not monitored. Another thing to look at could be whether workers in the earlier years were not monitored. SEC classes may be limited by work areas, job classifications, and time frames. The petition does not have to be for the entire operating period. The only thing is that the period must be at least 250 days, unless there is an incident involved.

Mr. Lewis:

Ms. Breyer's main role with NIOSH is as the SEC Petition Counselor. She is available to help people who have questions about the SEC petitioning process.

Question:

Does NIOSH do dose reconstruction for chemicals?

Ms. Breyer:

No. The DOL uses the SEM to make decisions on Part E claims related to chemical exposures.

Question:

How much information is the company required to provide to NIOSH for the radiation dose reconstructions?

Ms. Breyer:

They are required to give us everything we ask for with regard to a worker's individual data. We also do facility searches for records.

Response:

I'm sure we have a number of members who probably have been exposed and aren't even aware that they were exposed.

Ms. Breyer:

You can do a FOIA (Freedom of Information Act) request to DOE for your records. You can also ask for copies of surveys or clean-up records that were done after specific incidents. All government records are "FOIAable" unless there is a classification issue.

Response:

The plant tends to use "classification" as a deterrent to keep us from getting information sometimes.

Ms. Breyer:

They have to give you your own records. Claimants make FOIA requests to NIOSH for records all the time. The process may involve a redaction process to remove personal identifying information for other people from the records. I have never seen a classified personnel record.

A conversation ensued regarding the handling of Exit signs that contain tritium as a sealed source of illumination. A worker stated that she is responsible to ship the signs out of the plant once they have been removed. She stated her concern that she no longer wears a badge due to a

change in procedure, so she would never know if there was a leak. Ms. Breyer asked whether the signs are checked with a wand before they are handled. The worker replied that the signs are not checked until after they are removed and packaged for shipment. Another worker described how the signs come into the plant, are tagged for reference, and then are installed by another classification of workers, all without any sort of monitoring. He said that there have been several incidents in which workers were monitored for tritium exposure after a sign was broken, but nobody ever hears about the monitoring results. Ms. Breyer stated that incidents like this may not be mentioned in the site profile, but would be something a claimant could talk about during the telephone interview. The first worker stated that she had been told that the cleanup would cost \$250,000 if one of the signs was broken. Ms. Breyer explained that NIOSH gets survey reports when they ask for records from the facility.

Ms. Breyer stated that the ABRWH votes to either accept the recommendation or to request that Sanford Cohen and Associates (SC&A), the Board's support contractor, review the petition in greater detail. When the Board is satisfied that the report is adequate, it makes its own recommendation to the Secretary of HHS. Based on the Board's recommendation, the Secretary makes a recommendation to Congress. Congress has 30 days to approve the recommendation. If it does not act on the recommendation, the class is added to the SEC.

Ms. Breyer gave a brief report on statistics for EEOICPA cases for which NIOSH has performed dose reconstructions. As of June 2009:

- DOL has referred 29,781 cases to NIOSH for dose reconstruction, 83% of which have been completed and returned to DOL;
- NIOSH has sent more than 21,000 dose reconstruction reports out to claimants;
- DOL has pulled 931 claims for various reasons;
- DOL has pulled another 2,274 claims that were paid as eligible members of newly added SEC classes;
- NIOSH still has 4,610 cases that are either currently having or awaiting dose reconstructions; and
- Another 548 cases have been administratively closed for various reasons.

Ms. Breyer also gave statistics for the Kansas City Plant:

- DOL has sent 265 cases to NIOSH for dose reconstruction;
- NIOSH has returned 244 cases to DOL, 237 with complete dose reconstructions;
- DOL has approved 13 cases for compensation and denied 224 cases; and
- NIOSH still has 21 in the process of or awaiting dose reconstruction.

Ms. Breyer concluded the presentation by providing contact information for NIOSH. She noted that all of the Fact Sheets contain the same information.

Mr. Lewis encouraged the attendees to have other union members review the site profile for accuracy and completeness.

Ms. Breyer stated that NIOSH maintains a Web site with a great deal of helpful information about the EEOICPA program. She explained the various links that provide useful information about the Kansas City site. She acknowledged that EEOICPA is a very complex program, but

added that she would be happy to help anyone who has questions. She also encouraged the attendees to direct people who may be eligible to file both Part B and E claims to DOL, and noted that the information packet included the DOL Resource Center contact information.

Ms. Breyer explained that Denise Brock, the NIOSH Ombudsman for EEOICPA Part B, may also be able to help people who have problems getting paid under Part B. Ms. Brock was instrumental in filing the petition for the first non-legislated SEC class for Mallinckrodt Chemical Company in St. Louis.

Mr. Lewis thanked the attendees for their time and closed the meeting at approximately 2:45 p.m.