

National Institute for Occupational Safety and Health (NIOSH)

Worker Outreach Meeting for Sandia National Laboratories

Meeting Date: Thursday, February 19, 2009, 11:00 a.m.

Meeting With: Representatives of Office and Professional Employees International Union (OPEIU) Local 251; Albuquerque Metal Trades Council (MTC), AFL-CIO; Sandia Security Police Association; and New Mexico Building and Construction Trades Council, AFL-CIO

Location: Training Center of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (UA), Albuquerque, New Mexico

NIOSH Worker Outreach Team:

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

Sam Glover, PhD, National Institute for Occupational Safety and Health (NIOSH) Office of Compensation Analysis and Support (OCAS), Health Physicist

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

Wilfrid "Buck" Cameron, ATL, Senior Outreach Specialist

Mary Elliott, ATL, Technical Writer/Editor

Also present:

Kathy Robertson-DeMers, Sanford Cohen and Associates (SC&A)

Loretta Valerio, Director, New Mexico Office of Nuclear Workers' Advocacy

Gina Beavers, Española Department of Labor (DOL) Resource Center

Michele Jacquez-Ortiz, Office of U.S. Senator Tom Udall

Proceedings:

Laurie Breyer, the Special Exposure Cohort (SEC) Counselor for the National Institute for Occupational Safety and Health (NIOSH), opened the meeting at 11:00 a.m. She thanked the representatives of labor organizations representing workers at Sandia National Laboratory (Sandia, the Lab, or SNL) for meeting with NIOSH.

A representative of the Metal Trades Council commented that far fewer claims have been filed for Sandia workers or their survivors under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or "the Act") than for workers or survivors at the Los Alamos National Laboratory (LANL). Ms. Breyer gave current statistics for both facilities for EEOICPA Part B cases sent to NIOSH for dose reconstructions and passed around a copy of the statistics.

Ms. Breyer introduced Mark Lewis, the Senior Outreach Specialist on the NIOSH Worker Outreach Program. Mr. Lewis greeted the attendees and thanked them for their time. He briefly explained how his outreach activities with the United Steelworkers of America (USW) local

union at the Portsmouth Gaseous Diffusion Plant led to his involvement with the USW International Union, which led to his position with the contractor for NIOSH Worker Outreach. He explained that he had arranged the meeting to coincide with the February meeting of the Advisory Board on Radiation and Worker Health (ABRWH or “the Board”) to give the Sandia labor organizations the opportunity to ask questions about the EEOICPA and the SEC process. He noted that there was not a formal meeting agenda.

Mr. Lewis introduced Kathy Robertson-DeMers of Sanford Cohen and Associates (SC&A), the Advisory Board’s technical support contractor. Ms. Robertson-DeMers explained that her job duties include retrieving records and conducting worker interviews that are used in the SC&A reviews of NIOSH documents and procedures as well as being assigned to the ABRWH Working Group on Worker Outreach. She added that she was at the meeting to ensure that NIOSH was following procedure.

Sam Glover interjected that the meeting had not been set up as a formal worker outreach meeting, but rather as an informal session for the unions to come together at one meeting to ask questions about the EEOICPA and the SEC.

Representatives of the Albuquerque Metal Trades Council, the Office and Professional Employees International Union (OPEIU) Local 251, the Sandia Security Police Association, and the New Mexico Building and Construction Trades Council (BCTC) introduced themselves and gave their affiliations.

A representative of a BCTC affiliate stated that the Part B cancer claim he had filed more than five years ago is still awaiting dose reconstruction. He explained that he and a fellow worker were being encouraged to file an SEC petition but were finding that the process can be difficult and time consuming. He stated that he had attended a meeting in which the author of the most recent LANL SEC petition had described the lengthy information gathering process for his petition. Ms. Breyer responded that she hoped that the discussion would help simplify the process for him. He added that he has no idea where to begin looking for information. Ms. Breyer stated that one petition containing only one sentence as the basis had qualified for evaluation, while others have been submitted with hundreds of pages of supporting documents. She explained that her role as the SEC Counselor for NIOSH is to help people get through the process. She added that Dr. Glover could answer any questions about the site profile and dose reconstruction.

A representative of the Sandia Security Police Association stated that he had attended a NIOSH Workshop on dose reconstruction. He remarked that there had been a recent increase in illnesses among his fellow workers. His union is interested in learning more about EEOICPA and the SEC process because they want to be able to help their fellow workers.

Another representative of the Security Police Association commented that he had also heard the LANL petitioner’s presentation at the meeting. Since security officers at Sandia are not always aware of the radiation or chemicals that they are exposed to on the job, he is concerned that preparing a petition for Sandia workers would be “a daunting task.” Ms. Breyer responded that SEC petitions can only be filed under EEOICPA Part B, which deals with radiation exposures. EEOICPA claims for illnesses caused by chemical exposures are filed under Part E.

Loretta Valerio stated that New Mexico Governor Bill Richardson appointed her as the Director of the New Mexico Office of Nuclear Workers’ Advocacy in 2007 to assist EEOICPA claimants with the appeals process when their claims have been denied. Ms. Valerio previously worked at the DOL Resource Center in Española where she helped people file EEOICPA Part B and Part E

claims. She stated that she would be available after the meeting to answer any questions the attendees may have for her.

Ms. Breyer described her role as the SEC Petition Counselor. She explained that she works with individuals one-on-one and in larger groups to help them understand and work through the SEC petitioning process.

Dr. Glover stated that he is the lead health physicist at NIOSH for the Sandia National Laboratory, as well as Lawrence Livermore National Laboratory, Hanford, LANL, and other facilities. He has attended five NIOSH worker outreach meetings with Sandia labor organizations.

Ms. Breyer explained that NIOSH conducts several types of outreach meetings to educate people about the EEOICPA and the SEC, from large town hall-type meetings to smaller, more informal meetings with labor organizations and other stakeholder groups.

Ms. Breyer spoke briefly about the roles of the different government agencies that work together to administer the EEOICPA. The DOL administers both Parts B for cancer, silicosis, and beryllium disease, and Part E for illnesses caused by exposure to toxic chemicals. NIOSH only deals with Part B cancer cases, performing dose reconstructions for individual cases and evaluating SEC petitions to determine whether dose reconstructions can be performed for proposed classes of individuals. The ABRWH provides oversight to NIOSH.

Ms. Breyer explained that there are two ways for individuals to be compensated under EEOICPA: NIOSH either (1) performs dose reconstructions for individual Part B cancer claims to determine whether the worker's exposure to radiation may have contributed to the illness; or (2) the individual can be compensated automatically if he or she is an eligible member of an SEC class at a nuclear weapons site. A worker is an eligible member of an SEC class if he or she worked for 250 days in a qualifying job classification during the time period of the petition and have one of 22 specified cancers. Dr. Glover added that approximately forty percent (40%) of workers who meet the class qualifications will still have to have dose reconstructions because they have prostate or skin cancers, which are not among the 22 eligible cancers. Ms. Breyer stated that the 250-day requirement may be met by adding an eligible worker's employment time in a SEC class at another facility. Extended hours are also factored in to meet the 250-day requirement.

Ms. Breyer explained that there are two different types of SEC petitions. The first type of petition may be submitted by an individual, a labor organization representing workers at a site, or an authorized representative of a worker or survivor(s) of a worker. Another type of petition may be initiated by NIOSH when there is not sufficient data to perform accurate dose reconstructions for a class of workers at a site.

Ms. Breyer emphasized that it is not always necessary to compile large volumes of information for a SEC petition. A short, well-stated petition backed by worker affidavits has the same chance of qualifying for evaluation as a long statement with hundreds of pages of documentation. To qualify for evaluation, the petition must cite one of four criteria as the basis: (1) No external or bioassay monitoring at the site; (2) Monitoring records have been lost, destroyed, or falsified; (3) Scientific or technical report(s) describing faulty monitoring practices; or (4) Other report(s) that document significant new information that shows why dose reconstruction cannot be done for the proposed class. Worker affidavits may be used to support the first two bases.

A representative of the Albuquerque Metal Trades Council commented that Sandia Lab is involved more in the research and development of military systems rather than the extensive

nuclear programs at sites like LANL and Hanford. He stated that among his coworkers, he sees more chemically-related cancers than radiogenic ones. He asked if a SEC petition could be filed for chemical exposures. Ms. Breyer responded that the SEC is under Part B and only has to do with radiation. The Metal Trades representative asked whether corrupt monitoring data collected by CEP (a former Sandia contractor) could be an obstacle to accurate dose reconstruction. Ms. Breyer responded that quantity of radioactive material is not an SEC issue, but the lack of adequate monitoring is an acceptable basis to file a petition. Dr. Glover emphasized that the SEC petition must meet one of the four criteria to qualify for evaluation. NIOSH must evaluate all available information to report to the Board regarding whether or not the radiation can be bounded for the class of workers.

Dr. Glover confirmed that the Sandia site profile states on page 73 that the CEP data should be considered invalid for dose reconstructions. He added that the site profile was not completed until 2007 because the site profile team had difficulty getting the monitoring data; some of the early claims had to be held until the data was available for dose reconstruction.

Ms. Breyer described the phases of the SEC petitioning process:

- The petition is 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 (see above).
- After the petition is qualified for evaluation, NIOSH and its contractors search for monitoring data.
- NIOSH evaluates the data (if it exists) and determines if the radiation dose can be bounded for the proposed class.
- NIOSH prepares a Petition Evaluation Report on its findings and presents it to the ABRWH at a public meeting along with its recommendation whether dose reconstruction is either feasible or not feasible.
- The ABRWH votes to either accept the recommendation or to review the information in detail. The Board makes its own recommendation to the Secretary of Health and Human Services (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 urged the attendees to take the time to review the information in the Sandia Site Profile for accuracy and completeness, particularly the Site Description, the Internal Dose, and External Dose sections, as well as the SC&A review of the site profile. She explained that both documents can be found on the NIOSH Web site and explained how to find the page for Sandia.

A representative of the Security Police Association stated that he had attended the LANL petitioner's presentation at the ABRWH meeting. The petitioner had mentioned that some of the LANL monitoring data was "skewed." The Security Police Association representative asked if a petition could be filed for Sandia for the same reason. Dr. Glover responded that NIOSH can apply corrections during dose reconstruction for "skewed" data in a particular area for a short period, so it would most likely be a site profile issue rather than a SEC issue. He explained that

broadening the class definition in the petition basis may qualify it for evaluation. For example: “There was no monitoring for neutron exposure for all workers in the reactor area from 1953 to 1968.”

[Name redacted] explained the challenges that she faced when she filed the first LANL SEC petition since she was a surviving spouse who had never worked at the site. She told the attendees that the petition had not qualified the first two times that she had submitted it. She finally had to hire a lawyer to help write the petition the third time so it would qualify. She thanked Ms. Breyer for helping others through the SEC petitioning process, noting that Ms. Breyer had been hired after her petition qualified for evaluation. She added that broadening the class definition to include all workers from 1943 through 1975 had finally qualified the LANL petition.

Ms. Breyer explained that NIOSH personnel with Q clearances can conduct secure interviews with individuals who need to discuss classified information.

[Name redacted] suggested that affidavits from people who can tell about their work experiences during the period given in the petition can also help qualify the petition.

Ms. Breyer explained that she and Denise Brock, the NIOSH EEOICPA Ombudsman, conduct SEC Outreach to help groups understand how to file a SEC petition. These town hall-style meetings include formal presentations on the SEC process and an opportunity to answer questions from the group. After the meetings, both Ms. Breyer and Ms. Brock may work directly with the petitioner(s) during all phases of the SEC process.

A discussion ensued regarding the voluntary computer-assisted telephone interview (CATI) that is part of the dose reconstruction process. Dr. Glover explained that NIOSH uses a scripted interview with the claimant(s) to learn more about the energy employee’s work experience. Ms. Breyer added that NIOSH contacts DOE for the worker’s records at about the same time the CATI is arranged. Dose reconstructors use the CATI information during the worker’s dose reconstruction to supplement the worker’s monitoring records and the technical site information.

An attendee asked whether the DOL sends primarily Part B radiation claims to NIOSH as well as claims for illnesses caused by exposure to toxic chemicals. Ms. Breyer responded that, although NIOSH only gets the Part B radiation claims from the DOL, the claimant can file claims for both Parts B and E at the same time. If the dose reconstruction for the Part B claim yields a probability of causation of 50% or better, DOE may also use information from the dose reconstruction to show that radiation caused a toxic exposure that could qualify the cancer as a compensable illness under Part E as well. Ms. Valerio commented that a Part E case is never considered closed because the worker is allowed to come back for a whole body count every two years.

Ms. Valerio stated that sometimes dose reconstructions take a long time because the claim is held up while NIOSH continues to gather data so the results can be as accurate as possible. She explained that, from an advocacy point of view, one of the most important issues in filing a SEC petition is that once it is approved, the period between filing a Part B claim and compensation is much shorter. She added that having a class in the SEC is very beneficial for older or very ill workers who are nearing the end of their lives and may not be around long enough for their dose reconstructions to be completed. She stated that she could provide copies of the Sandia site profile upon request.

Gina Beavers of the DOL Resource Center in Espanola, New Mexico, joined the meeting. She

stated that she would be available after the meeting to answer questions about EEOICPA claims.

Dr. Glover answered questions about some of the acronyms and other terms appearing on the NIOSH statistics Web page for Sandia. He explained that a “POC” (probability of causation) of greater than 50% makes a Part B claim compensable. He also explained that a case could be pulled by the DOL for several reasons, including a claimant’s employment time at another site that qualifies the claimant as a member of a SEC class. If the claim has a covered cancer, DOL may compensate under the SEC class and NIOSH will not have to perform a dose reconstruction. An attendee stated that once the SEC petition is approved and the class is added, all claims that qualify for compensation are pulled, including claims that were previously denied. Ms. Breyer added that a claim may also be pulled if the claimant passes away and there are no survivors who can file the claim again.

Ms. Breyer discussed the list of 22 primary cancers that qualify under the SEC. She explained that prostate cancer is not on the list and cannot be compensated as a primary cancer, but may qualify if there is a secondary cancer of the bone, lung, or kidney.

An attendee revisited the topic of multiple workplaces. He asked if construction workers and other service workers who roam between DOE sites during their career are also affected when claims are pulled for the SEC. Ms. Breyer and Dr. Glover explained that the DOL looks at the worker’s records from all of the sites that have been verified at the beginning of the claims process. If a SEC petition is filed at any of the sites, the claim will be pulled and sent to DOL to forward to the SEC site. The attendee also noted that at large sites, security, service and trades personnel go between many buildings and areas according to their assignments. Dr. Glover responded that NIOSH recognizes that those classes of workers do not always work in the areas of their primary assignments. NIOSH relies on information from DOL to determine the work locations. Another attendee stated that the recent LANL petition had been so thorough that NIOSH had added classes of workers and additional technical areas.

Dr. Glover agreed with an attendee who commented that reviewing the Sandia site profile might provide workers with the basis for a petition if they find that there is missing information – for example, if there is a radiation area where unmonitored workers may have been exposed to a radiation source such as uranium. He recommended that talking to workers might provide information that is not in the site profile. Health physicists may also be able to provide information (for example, there was no bioassay for exotic radionuclides in a certain area). Dr. Glover cautioned that it is important not to confuse site profile issues with SEC issues.

An attendee asked for an explanation of the term “claimant-favorable dose rate.” He stated that his dose reconstruction report stated that NIOSH had used this term to explain that they were able to reconstruct his dose even though his monitoring records were not available. Dr. Glover explained that NIOSH sometimes does dose reconstructions using co-worker data sets for monitored workers for unmonitored workers or to fill in doses that were recorded as “0.” Using this claimant-favorable approach usually results in a higher POC for the unmonitored worker.

An attendee asked Dr. Glover why NIOSH does not send scientist to the sites to identify monitoring deficiencies and other problems at the site. He commented that doing so might simplify the dose reconstruction and SEC processes. Dr. Glover responded that NIOSH has a process in place to identify sites where there are insufficient records to allow accurate dose reconstructions. In such cases, NIOSH initiates the SEC process and finds a petitioner to file for the site. Ms. Breyer noted that SC&A evaluates the SEC Petition Evaluation Reports and other

NIOSH documents for deficiencies and recommendations to resolve them. She added that the SC&A review of Sandia profile is on the NIOSH Web site.

A representative of the Security Police Association commented that a DOL point of contact had talked about Material Safety Data Sheets (MSDS) at a public meeting. Ms. Beavers explained that the DOL is building a Site Exposure Matrix (SEM) database to list all of the toxic chemicals used at each site. She stated that the DOL asked workers for help in compiling this information so there is a comprehensive list for each site. This makes it easier to evaluate the Part E claims for illness related to chemical exposures. Ms. Beavers stated that workers have also provided information that has helped the DOL understand that chemical exposures sometimes happened when safety practices varied between technical areas at LANL. (For example: Workers pointed out that they did not use a fume hood while handling a chemical in one technical area, but workers in another area used hoods when they used the chemical.) Another representative of the Security Police Association commented that security personnel are not always aware of the MSDS sheets because they are not assigned to a specific area. At other times, there may be a chemical release and they are not made aware of what has been released until after they have responded to the area. An unidentified attendee commented that paper copies of the MSDS books have been taken down and workers are told that they can find the information on the company Web site. Ms. Beavers and several attendees discussed the varying availability of MSDS information. She stated that a claimant had been able to produce sheets from a building that he had worked in 20 years ago and had since been torn down. A representative of the Metal Trades Council recalled that a former supervisor had been able to produce a master inventory of the MSDS sheets that he had worked with in the Machine Shops.

Ms. Beavers explained that she had been approached by a surviving claimant who stated that her husband had worked at Sandia, but had traveled to LANL and Sandia Livermore National Laboratory to transport nuclear materials. The survivor had forgotten to include the additional work history in the claim and the CATI and the claim had been denied because the POC was very low. Ms. Beavers stated that she is going to help the claimant prepare a narrative to submit to the DOL that includes the additional information, to appeal the case. Dr. Glover responded that the DOL will likely return the case to NIOSH for another dose reconstruction after the additional work information is verified.

Ms. Valerio asked if NIOSH gets dose records from additional sites if the employee had short-term special assignments at other facilities. Dr. Glover responded that NIOSH gets those records from the other facilities if the DOL has verified the work time at those facilities. He noted that if an employee's records indicate significant exposures at another facility, the information from that facility will be used for that portion of the dose reconstruction. Ms. Breyer stated that the CATI sometimes provides additional information, which must then be verified by the DOL. She added that NIOSH does not evaluate claims for the SEC. NIOSH pulls the claims and returns them to the DOL to make the decision to add the employee to the class. Ms. Beavers emphasized that it is important that the DOL caseworkers get all of an employee's history when they take the claim.

Ms. Breyer stated that additional primary cancers may also change the outcome of a dose reconstruction. Claimants whose cases have been denied should inform the DOL when they have additional cancers so that the cases can be sent back to NIOSH for an additional dose reconstruction. Dr. Glover explained that the claimant must provide medical records to the DOL to verify the diagnosis of the additional primary cancer. Ms. Valerio added that she has seen a

few rare cases for which the DOL had provided incorrect medical codes to NIOSH with the case information. Dr. Glover responded that NIOSH must use the information provided by the DOL.

A Metal Trades Council representative stated that the Council is encouraging their workers to get copies of their medical records before they retire. Another attendee commented that having to collect medical records from numerous doctors can be a very involved process as well as expensive. Ms. Beavers stated that the DOL will reimburse \$100 for medical records after the claim is accepted. Ms. Valerio stated that the Espanola Resource Center can request information from the New Mexico Cancer Registry when there are no medical records available for a deceased worker. Ms. Beavers added that Death Certificates have also been used to provide of a worker's illness.

Ms. Valerio asked whether a worker should include small contamination events during the CATI – for example, cleaning up many small spills over a long period of time. Ms. Breyer responded that any information the worker can provide about the work history may be helpful to the dose reconstructors. She added that it is better to err on the side of too much information, rather than leave out something that may be helpful. Dr. Glover commented that NIOSH has revised site profiles because an interview provided important information during the CATI. All of the claims that were affected by the information were pulled and recalculated.

Ms. Breyer and Dr. Glover addressed several additional comments about the CATI. [Name redacted] explained that her husband had difficulty with the questions because he was undergoing chemotherapy at the time of the interview. She added that it is also difficult for survivors to answer the questions if they did not work at the facility. Mr. Lewis related how he had helped many claimants with their interviews when he worked as a union advocate at his site. Ms. Beavers explained that because many of the elderly workers or their survivors speak only Spanish, the Resource Center has assisted them with their interviews. She added that she also advises people to prepare an outline to help them get through the interview. Ms. Breyer stated that NIOSH sends a summary of the interview to the claimant to review and gives an opportunity for the claimant to provide additional information. A representative of the Security Police Association stated that he had helped with an interview and found the worker reluctant to provide co-worker names.

Mr. Lewis introduced Michele Jacquez-Ortiz from the office of Senator Tom Udall. [Name redacted] explained that the offices of Senators Udall and Jeff Bingaman had played an instrumental role in the petitioning process for the class of LANL workers that was added to the SEC in 2007. Mr. Lewis also introduced [name redacted], the author of the current LANL SEC petition for workers from 1976 through 2005.

Mr. Lewis thanked the attendees for their time and concluded the meeting at approximately 12:45 p.m.