

National Institute for Occupational Safety and Health (NIOSH)

Town Hall Meeting for Texas City Chemicals, Inc. (Smith-Douglass)

Meeting Date: Thursday, November 15, 2007, 7:00 p.m. , Nessler Center, Texas City, Texas

Meeting with: Former workers from Texas City Chemicals, Inc. (Smith-Douglass) and other interested parties

NIOSH Worker Outreach Team:

James Neton, PhD, CHP, National Institute for Occupational Safety and Health (NIOSH) Office of Compensation Analysis and Support (OCAS), Associate Director for Science

Laurie Breyer, JD, NIOSH OCAS, Special Exposure Cohort Petition Counselor

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Proceedings:

Dr. James Neton began the meeting at 7:00 p.m. by welcoming the assembly of more than 100 attendees. He stated that the purpose of the meeting was to discuss the Energy Employees Occupational Illness Compensation Program Act (EEOICPA, or the Act). Individual claims could not be discussed in this meeting. Dr. Neton described the roles of the U.S. Department of Labor (DOL), the U.S. Department of Energy (DOE), and the U.S. Department of Health and Human Services (HHS) in this program. NIOSH is a part of HHS.

Dr. Neton introduced Victoria Shupe and Janelle Forner from the DOL Energy Employees Occupational Illness Compensation Program (EEOICP) Policy Office and stated that they were present to answer any questions about responsibilities of their agency in the program. He also introduced other members of the NIOSH team: Tom Tomes, the health physicist responsible for the Texas City Chemicals site profile; April Jenkins, the Public Health Advisor assigned to the site; and Laurie Breyer, the Special Exposure Cohort (SEC) Petition Council. He stated that Ms. Jenkins would be available outside the meeting room to discuss individual claims.

Dr. Neton explained that under the Act, NIOSH is responsible for reconstructing workers' radiation doses, evaluating SEC petitions, and developing probability of causation (POC) guidelines. All EEOICPA claims for Parts B and E are filed through DOL, which verifies the worker's employment and documentation of the worker's medical diagnosis. After the worker's information is verified, DOL assigns a tracking number. DOL sends only Part B cases that require radiation dose reconstruction to NIOSH.

The dose reconstruction process begins when NIOSH receives the case from DOL. NIOSH requests the worker's exposure records from DOE. The case is assigned to a dose reconstructor who reviews the data in the DOE records. The claimant is interviewed using a computer assisted

telephone interview (CATI) and is sent a report for verification of the information. The dose reconstructor uses the DOE records, the CATI information, and the site profile to conduct the dose reconstruction, then sends a draft dose reconstruction report to the claimant to review. A closeout telephone interview with the claimant ensures that no information has been overlooked. If the claimant agrees that the dose reconstruction includes all relevant information provided by them and they have no additional information to offer, he or she signs the OCAS-1 form. After receiving the signed form, the NIOSH team prepares the analysis record and sends the case back to DOL with the compensation recommendation. DOL then makes the final decision on compensability.

NIOSH uses all available worker and workplace information to support dose reconstruction. The sources of data include cancer and employment information from the claimant's application, individual dosimetry and bioassay records from DOE, the dose reconstruction interview, and site profile data. The dose reconstructor must also evaluate the worker's dose records for data quality and the potential for undetected and unmonitored radiation dose. If individual monitoring data is unavailable or insufficient, the dose reconstructor uses data from area dosimeters, radiation surveys, and air sampling. If there is no monitoring data, the dose reconstructor uses data from the site's source term. In all cases, guidelines published by national and international organizations that are expert in radiation protection and dosimetry are used in the reconstruction.

Since there is no available individual monitoring data for workers at Texas City Chemicals and NIOSH could not locate any environmental monitoring data, NIOSH uses data from other similar phosphate operations to estimate the workers' probable radiation exposure. Texas City Chemicals is included in EEOICPA because the plant extracted uranium for DOE in the early 1950s, so NIOSH uses the available source term data to determine the level of radiation from the uranium and the likely airborne concentrations of uranium in the work environment.

NIOSH uses a standard set of questions for the CATI to give the worker an opportunity to talk about events during his or her work experience that may help the dose reconstructor understand the worker's possible exposure scenarios. The average time for an interview is approximately one hour, but it can range from 20 minutes to more than 4 hours.

The dose reconstruction report consists of a cover page, an introduction, a dose reconstruction overview, information used, personal background information, dose estimate, summary, and references. The IREP (Interactive RadioEpidemiological Program) input is included as an attachment. DOL uses the IREP to determine the probability that the worker's exposure to radiation in the workplace is "at least as likely as not" to have caused the cancer.

NIOSH is currently evaluating a petition for a class of workers from Texas City Chemicals to become part of the Special Exposure Cohort. The Special Exposure Cohort (SEC) was established when Congress enacted EEOICPA in 2000. The SEC originally included only certain employees of the three gaseous diffusion plants in Oak Ridge, Tennessee, Paducah, Kentucky, and Portsmouth, Ohio, as well as the Amchitka Island nuclear test site in Alaska. A member of an SEC class can be awarded compensation without dose reconstruction if he or she has one or more of 22 specified cancers and meets other eligibility requirements. DOL does not have to determine whether the cancer was likely to have been caused by radiation for members of an SEC class. Congress recognized that other groups of nuclear weapons employees might

need to be added to the SEC because there is not sufficient information to reconstruct their doses; so the Act specifies the procedures to allow the President to add classes of employees to the Cohort. Since the President assigned those responsibilities to the Secretary of HHS, a class of employees can be added if NIOSH cannot estimate the radiation doses of the class of employees with sufficient accuracy and if it is reasonably likely that the radiation doses endangered the health of the employees.

Dr. Neton concluded his presentation by giving contact information for NIOSH. Before opening the floor to questions and comments, he stated that additional information on EEOICPA and the SEC process can be found on the NIOSH OCAS website.

Question from an attendee:

I worked at the plant for about six years. Why has it taken so long to get this started? This didn't just happen, they've known about this. A lot of us have died and more of us are dying. We are all trying to understand why it has taken so long to finally get this started.

Dr. Neton:

When the program first started and people began filing claims, NIOSH did not have the regulations in place or the resources to begin processing claims. There was a delay of about 10 months before NIOSH could even get started. On top of that, there have been 24,000 cases from more than 300 covered facilities. It has taken a great deal of time to get all of the necessary information to do dose reconstructions for such a large volume of cases. Congress gave NIOSH a very complex task. NIOSH has worked at it as hard and as fast as we can, given the resources that we have.

Question from an unidentified attendee:

Years ago when this program started, I began going to libraries and researching. I found information about how deadly that uranium was at Texas City Chemicals. My husband got cancer and dwindled away. I learned from my research what type of cancer radiation causes, and that is exactly what my husband had. I went through city directories looking for other people that I knew he had worked with and found that a lot of them had died from cancer. I checked to see if these people had families. I found that many of the wives of Texas City Chemicals employees had died from cancer of the reproductive organs and a number of children had been born with disabilities. It has put an ache on everybody that won't go away. There was a tiny article in the Texas City Library pertaining to how dangerous radiation and uranium were at Texas City Chemicals. It said that not only did the owners of the plant know how deadly it was at the time, but so did the city officials. I got all of that together and sent it in. Why has it taken so long to find out why so many people have died from it? It is in the archives in Austin. Every time a person dies in this area, the information goes straight to Austin. They know exactly who died from what. It's there.

Dr. Neton:

This program is not tasked with doing an epidemiological study, which is what you're talking about – looking at the number of people who have died of cancer to see if activities at Texas City Chemicals is responsible for a general increase in cancer in the population. That is not what this Act covers. It covers an individual evaluation for each worker with cancer who files a claim to determine if that cancer was “at least as likely as not” to have been caused by the radiation exposure. We have specific models that are based on people who were exposed to various types of radiation. In a general sense, we compare the levels that we estimate for the workers at Texas

City Chemicals to other people who were exposed to radiation and the number of cancers that they developed to make that determination. It is a different program than what you are thinking of, which is going in and trying to demonstrate that Texas City Chemicals exposures to uranium caused these cancers. We are tasked with looking at individual cancers, one by one, to see if any of those were caused.

We need to remember that Texas City Chemicals processed uranium for a very short period of time. There were a lot of other activities that went on there that are not related to the uranium exposures.

Comment from an attendee:

My name is [Name Redacted] and I represent [Name Redacted]. I represent a group of 45 to 50 men. Our initial number was over 60. I am grateful for this town hall meeting for the Texas City Chemicals plant. We are grateful to NIOSH, the city officials, the state officials, and the national officials. Thanks also to April Jenkins of NIOSH, who is outside that door. It seems like we're getting a continuation of people directing us to do paperwork and file with these different entities that might help some of the sick people in this group. I think what [Name Redacted] was trying to convey is that these people are literally dying. This lady was saying that these people are just dropping dead. It is obvious that something took place in Texas City due to the high death rate – the exposure. We have had tremendous testimony. We have witnesses back to 1954. We realize that the claim period initially was supposed to be from 1952 to 1956 when the uranium was being extracted. We have documents that prove that the uranium is still there in 2007 as we speak. The place is totally contaminated. Basically, everybody that worked there, whether it was a contractor or a company man, has someone in their family with some form of cancer. We have witnesses here – everybody in the front row. We have one contractor who hauled the soil away as late as 1980 to the Rio Plant in the Friendswood area. Friendswood residents were compensated because the soil that was hauled over there from Texas City contaminated their soil.

These people walked and worked in the stuff and you are still trying to determine if it was toxic. It was terribly toxic. It is poor representation to ask people with third grade educations to keep filling out paperwork. They are having to labor within their families to get this information turned in. We have people who have been evaluated by doctors. We have people who have sent in death certificates with all forms of cancer. We fill out the papers with DOL. Then they say, "You need to file with the Denver office," or "You need to file with the New Mexico office," or "You need to file with Washington, D.C." Then when you get on the telephone and ask for your initial contact, they tell you, "They don't work here any more. They are in a different department." It is a merry-go-round.

I think that the word is out from all the local news coverage. This community has met continuously for approximately four and a half years. We have met all of the protocol that was asked of us. We have filmed, documented, and brought death certificates – from the security guard who opened and closed the plant to the maintenance workers who have tongue cancer, lung cancer, and birth defects in their families. Four members of one family who worked there are dead. They didn't know that they were being exposed to anything out there. People filled out the initial paperwork and were told that their claims were denied. That is the key word: "Denied."

Dr. Neton:

There are actually only 13 claims from Texas City Chemicals that are being processed for dose

reconstruction in our claims database. Are you talking about trying to establish that a person actually worked at Texas City Chemicals and has a covered cancer? If you are saying that they were denied because they were not eligible to be in the program, then that is something different. I understand that the situation at Texas City Chemicals is that they had a lot of contractors working on the project. The way the law is written, only employees of Texas City Chemicals are covered under this program – not contractors. I think that a lot of the issues that you are talking about stem from that situation. Unfortunately, I cannot do anything about the way the law is written, and I think that DOL will probably tell you the same thing.

Response from the attendee:

There are people here who can verify that we were told in the beginning that contractors would be included. I find it very difficult – an area of more than 30 acres can be contaminated with all kinds of radioactive materials – that the program can choose whether you work for the company or a contractor.

Dr. Neton:

Ms. Shupe, can you verify who is eligible?

Victoria Shupe, U. S. Department of Labor (DOL):

Yes, you are correct. Only the employees of Texas City Chemicals are eligible under the program. That is the way the statute is written.

Dr. Neton to the attendee:

I sympathize with your situation. Unfortunately, there is nothing that we can do about it here at this meeting other than tell you to make your concerns known to those who control the program outside of NIOSH and CDC

During the course of the meeting, this topic was revisited by at least six different attendees, most of whom related personal or family experiences of contractor employees whose cases have been denied by the Department of Labor. Each attendee who spoke on the topic was answered by Dr. Neton, Ms. Shupe, or Ms. Breyer regarding the ineligibility of contractor employees as prescribed by the EEOICPA statute.

Question from an unidentified attendee:

Why has it taken five years if there are just 13 claims? I could have walked around the world seven times.

Dr. Neton:

Many claims were filed before all the regulations were in place. There are 24,000 cases from more than 300 different sites. It takes time to research the facilities. We want to make sure that we get it right.

Ms. Shupe (DOL):

The 13 claims that went to NIOSH for dose reconstruction are the claims for which employment was verified and the cancer has been diagnosed. If you meet those two requirements, the case goes to NIOSH for dose reconstruction. Right now, we only have 13 claims that meet those requirements.

Dr. Neton:

It is not that it is just 13 claims. We needed to get the background information for the dose reconstructions. This happened a long time ago, so we wanted to make sure that we know how

much uranium was produced. There was not a whole lot of uranium produced, as far as we can tell.

Mr. Tomes stated that the contract period with the Atomic Energy Commission (AEC) for the uranium extraction facility was from 1952 to 1956. Texas City Chemicals built the fertilizer plant at the same time as the uranium extraction facility. After the uranium plant started operating in late 1953, Texas City Chemicals produced and delivered 303 pounds of uranium to the government. During 1954 and 1955, the AEC did not receive any uranium from the company. NIOSH has information that they were doing research or working on the plant to perfect the process during that time. In 1956, Texas City Chemicals went bankrupt and the plant was bought by Smith-Douglass soon afterwards. Smith-Douglass did not perform any uranium extraction work, so the timeframe for uranium exposure is from 1953 to 1956. There would have been some exposure to workers after that from the uranium that was left.

An attendee asked if those workers are eligible to file claims. Ms. Shupe replied that those people can file claims because the residual contamination period is from 1956 through 1977. When Congress enacted EEOICPA, the law covered only employees of the facility during the original contract period. Congress later amended the law to cover the employees who worked during the residual contamination period.

An attendee stated that a claim filed on behalf of her deceased father had been denied and asked about her recourse. Dr. Neton reiterated that individual claims could not be discussed in the open meeting and recommended that she take up the issue with DOL.

When asked how much longer it would be before those who have not been denied eligibility would be compensated, Dr. Neton replied that dose reconstructions were underway for the Texas City Chemicals cases, but that he could not give an exact timeframe for compensation.

When asked about the criteria for a claim to be eligible for dose reconstruction, Dr. Neton responded that two conditions must be met: (1) The employee must have worked during the covered period, and (2) the employee must have a cancer diagnosis. He emphasized that eligibility does not mean that the claim will be paid. For a claim to be paid, NIOSH has to do a dose reconstruction that shows that the cancer that developed was “as least as likely as not” caused by the radiation exposure at the plant. The attendee asked how NIOSH can justify whether the cancer was caused by the uranium if the claimant presented a medical diagnosis of a cancer. Dr. Neton replied that about 40% of the population of the United States contracts cancer and they are not all working with radiation. He stated that the Act states that there must be a scientific method in place to determine whether the worker’s cancer was caused by radiation from the job. The attendee asked how much radiation dose a person had to get to be compensated. Dr. Neton replied that the probability that the cancer is caused by radiation is directly related to the amount of dose that is received, and depends on the type of cancer, the age that it developed, and other factors that must be taken into consideration. Different organs respond differently to radiation; cancer risk models are developed to determine whether the cancer was likely to have been caused by radiation exposure.

An attendee stated that she had filed a claim because DOL had encouraged people to file at a town hall meeting in 2002. Her husband had worked construction in the 1950s, when workers did not wear any protection and were not informed that they were working around hazardous material. She was told that her case was not eligible. She asked how NIOSH could do dose

reconstructions for workers who were not monitored. Dr. Neton replied that the way that the law was written, contractors were not eligible to be in the program. He stated that NIOSH can do dose reconstructions because they know that Texas City Chemicals processed uranium. He explained that uranium was processed around the country for decades and there is very good data on happens when uranium is made – what the radiation exposure is from a barrel of uranium, how much uranium goes into the air from certain processes, and the maximum exposures that could have occurred when someone was working with uranium. Dr. Neton stated that this data is what NIOSH proposes to use for the basis of the dose reconstructions.

Another attendee expressed frustration that so many meetings have been held in the community and nobody in the community has received compensation. She said that it is difficult to understand why the government continues to hold meetings that do not adequately address the questions and issues that have been presented by the community. She stated that the community wants to see resolution of the issues so that people can be compensated before many more citizens die while waiting for it to happen.

Ms. Breyer stated that Part B of the Act provides for compensation to survivors of eligible deceased workers who had cancer, but that spouses and children of workers cannot file for their own illnesses. Employees of Texas City Chemicals and their survivors are not eligible to file EEOICPA Part E claims for other diseases caused by exposure to toxic chemicals.

Dr. Neton addressed another attendee who asked how two people could work side by side in the facility and both not develop the same cancer. He answered that many factors must be considered when performing a dose reconstruction including the organ affected by the cancer, the age of the person when exposed to radiation, the age of the person when diagnosed with the cancer, the amount of radiation the person received. When asked what type of cancer a worker had to have to be compensated, Dr. Neton explained that all cancers are covered except for chronic lymphocytic leukemia, but the amount of radiation to the organ with the cancer determines the probability that the cancer was the result of radiation exposure.

Another attendee described her frustration with all of the community meetings with the various government entities since 2002. She said that the program has changed so many times that everyone is confused. Ms. Shupe stated that anyone who needs assistance with the claims process or a specific claim can call the DOL Resource Center. The attendee said that it is unfair to exclude contractor employees; and that it does not seem that anyone is being compensated regardless of the employer.

Dr. Neton explained that an SEC petition filed on behalf of Texas City Chemicals employees has been qualified and an evaluation report is in process. When the report is completed, it will be sent to the Advisory Board on Radiation and Worker Health (ABRWH) for review. If the petition is approved and the class is added to the SEC, Texas City Chemicals employees with one or more of 22 specified cancers and 250 days of employment will be eligible for compensation. Contractor employees still will not be eligible.

When asked about the nationwide rate for compensation, Dr. Neton stated that the average rate for Part B is approximately 30% across the country.

Another attendee stated that he had spent 50 years working for contractors at different chemical plants in the Texas City area, including the Texas City Chemicals facility after it was purchased by Smith-Douglass. He said that all of the chemical companies had hired contractors so they

didn't have to offer everyone the same benefits. He worked alongside employees of Texas City Chemicals, but when he filed a claim he was told that he was not eligible because he did not work for the company between 1952 and 1957. He asked if he would have to take the question to Washington, D.C., to resolve the contractor employee eligibility issue. Dr. Neton indicated that he would have to ask that question in Washington because NIOSH could not speak to that issue.

An attendee asked if any agency has been to the Texas City Chemicals site to investigate the level of radioactive contamination. He stated that the land was declared unusable when Amoco purchased the land after the plant closed. He questioned how a dose reconstruction could be done when the contaminated soil was brought home on workers' clothing and hauled all over the community. Dr. Neton responded that the radiation contamination from the uranium production is separate from the contamination associated with the chemical production; the dusty environment did not mean that all of the contamination would come from the uranium. Only a small amount of uranium was produced at Texas City Chemicals in a short time.

Dr. Neton adjourned the meeting at approximately 8:45 p.m.