

October 19, 2001

VIA CERTIFIED U.S. MAIL

NIOSH Docket Office
Robert A. Taft Laboratories
M/S C34, 4676 Columbia Parkway
Cincinnati, OH 45226

and

Anne O'Connor
CDC Assistant Reports Clearance Officer
1600 Clifton Road
MS-D24
Atlanta, GA 30333

RE:

- **Comments on Notice of Proposed Rulemaking: 42 CFR Part 81, Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000;**
- **Comments on Interim Final Rule: 42 CFR Part 82, Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000;**
- **Comments on the collection of information requirements**

Dear Sir/Madam:

Both of my parents were scientists on the Manhattan Project. My mother became ill with cancer while I was in elementary school and died in 1970. Although my siblings and I suspected that her death was work-related, we never pursued it until the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was enacted last year.

Under the law, the U. S. Department of Labor (DOL) is responsible for processing and adjudicating claims. This summer, I attended a Town Hall meeting in Oak Ridge, Tennessee, hosted by DOL. The purpose of the meeting was to explain the EEOICPA and to answer claimants' questions. At that meeting, DOL and U. S. Department of Energy (DOE) representatives, plus other panelists, promised a fair and reasonable claims process. They acknowledged that some information may be missing or impossible to obtain; that data may be incomplete; that spills may not have been documented. They said that DOE would release individual's health/medical information that had previously been withheld. They indicated they wanted to help claimants. In fact, one representative stated "We're from the government. We're here to help you." (My assertions can be validated by viewing the videotape of the meeting: June 26, 2001, 7 p.m.)

The U. S. Department of Health and Human Services (HHS) is responsible for establishing methods to estimate radiation doses, to develop estimates for those who have applied for compensation, and to establish guidelines in determining whether such radiation exposure caused a worker's cancer. It is on HHS's proposed guidelines and methods (42 CFR Part 81; 42 CFR Part 82) that I offer the following comments:

- Throughout both documents, the information concerning radiation exposure is to be acquired from DOE. While the proposed dose reconstruction methods may be valid in theory, I believe they have little use in reality. I doubt that DOE can produce the records that will be required for the proposed calculations. In fact, I doubt that much of the data was ever collected during the 1940s and 1950s.

My skepticism has basis. I have yet to receive some of the information I requested over 4 months ago from the DOE in Oak Ridge, TN. I have been told that some of the information I requested is available

rec'd
10/23/01
AMM

but is being reviewed by the "classification department." I did receive my mother's personnel records. DOE states that she terminated work in 1960, yet the latest piece of information in her file is dated 1951. Per telephone conversations with DOE staff, this is all the personnel information they have.

- According to §82.12, when information is inadequate to complete a radiation dose reconstruction, DOL must deny the claim. I believe evidence to conduct the dose reconstructions will be unavailable because the claimant, who is ultimately responsible for providing it, never had it. §82.14 lists >30 pieces of information that could be used in dose reconstructions. Of these, I could reasonably be expected to provide 3 (gender, date of birth, and some employment history.) If the other data ever existed, only DOE could have it. I do not believe my claim should be denied because DOE won't or can't provide their information. That is the "fox watching the hen house" theory, and it is entirely contrary to the spirit of the EEOICPA. Additionally, it is contrary to what we were told at the DOL Town Hall meeting. As I interpret the EEOICPA, the standard to be used in determining whether the cancer was developed in the performance of duty is "at least as likely as not related to the employment at the DOE facility." If DOE fails to provide the information that only DOE could have had, then I believe one could argue that the standard has been met.

The proposed dose calculations are a scientist's dream, intricate, costing "several thousand dollars per claim, on average." To be sure, the EEOICPA requires HHS to promulgate regulations, but not to this level of detail, specificity, and bureaucracy. In fact, the EEOICPA specifically states that one of the purposes of the compensation program is to provide for "timely" compensation; thus, the reason that the standard "at least as likely as not" was adopted. Yet, the interim final rules themselves characterize HHS's proposed methods as a "lengthy process of dose reconstructions for individual claimants."

From inception, the intent of the law was to finally compensate workers at the Department of Energy (and its subcontractors) who were harmed as a result of loyal service to their country. Town Hall meetings, as well as correspondence from the DOE and DOL, indicated that this program would be "up and running" by July 31. We now find that adjudication of claims (other than Special Exposure Cohort) must wait until causation guidelines are published as final rules, in approximately six months. Claimants were told that the program would be administered effectively, fairly, and efficiently. Nothing could be further from the truth. The proposed regulations, by their very design, will result in valid claims being denied.

Sincerely,



Linda Love Yeiser

cc: U. S. Secretary of Labor Elaine Chao
U. S. Secretary of Energy Spencer Abraham
U. S. Secretary of Health and Human Services Tommy Thompson
Senator Phil Gramm
Senator Kay Bailey Hutchison
Senator Fred Thompson
Senator Bill Frist