

**ENERGY EMPLOYEES OCCUPATIONAL ILLNESS
COMPENSATION PROGRAM: ARE WE FULFILL-
ING THE PROMISE WE MADE TO THESE COLD
WAR VETERANS WHEN WE CREATED THIS
PROGRAM? (PART II)**

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

MAY 4, 2006

Serial No. 109-151

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

27-335 PDF

WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
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NESS COMPENSATION PROGRAM: ARE WE
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THESE COLD WAR VETERANS WHEN WE
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THURSDAY, MAY 4, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:35 a.m., in Room 2141, Rayburn House Office Building, the Honorable John N. Hostettler (Chairman of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Today's hearing is the second in a series of oversight hearings the Subcommittee will be holding on the Energy Employees Occupational Illness Compensation Program Act, or EEOICPA.

When we announced the Subcommittee was holding the first EEOICPA hearing, several Members of Congress who have facilities covered under that act, contacted the Subcommittee to inquire whether there would be an opportunity for Member testimony about the program.

There are facilities covered under this nuclear worker compensation program in 37 States and U.S. territories.

This hearing was scheduled to give those Members that contacted the Subcommittee that opportunity to testify on behalf of their constituents who are subject to the processes of the program.

The Members of Congress appearing today represent facilities across the country: Tennessee, New Mexico, Colorado and Washington State. All four represent facilities where a petition has been filed for workers to become members of the Special Exposure Cohort, SEC. If designated a SEC member, individuals do not have to go through dose reconstruction and will receive a \$150,000 lump sum payment plus medical benefits if diagnosed with 1 of 22 radio-sensitive cancers.

At our last oversight hearing on this matter, an OMB "passback" document was discussed that laid out five options for consideration with regard to the SEC petition process and review mechanisms. The purpose of those five options was to contain costs associated with the granting of new SEC petitions.

It is anticipated that the Members of Congress testifying today may weigh in on the impact they believe implementation of those

options would have on the claimant community in their districts, as well as across the country. As I indicated at our last hearing, hopefully, we will all be better educated about this program by the end of the hearing, as well as more clearly see the priority issues that need to be addressed in subsequent hearings.

I am sure we will hear today about the problems consistently faced by claimants when filing a claim or petition under this program and assist the Congress in targeting the issues with the highest priority for reform.

At this time, the Chair recognizes the Ranking Member from Texas, Ms. Jackson Lee, for 5 minutes for purposes of an opening statement.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I am very delighted that we were able to work together on what I think is a very important hearing.

It is important because Members are here because potential changes are directly impacting constituents that they represent. That is the basis of this process, to have the opportunity to listen to legislators in order to make the correct and appropriate decisions. This Committee has a responsibility, as the Subcommittee on Immigration and Claims.

Let me thank Mr. Wamp of Tennessee, Mr. Udall of New Mexico, Mr. Hastings of Washington, and Mr. Udall of Colorado, for your interest, and of course, your insight on effectively helping to secure safety and responsible response by this Government to those who have been injured by this particular occupational illness.

From the World War II Manhattan Project to the present, thousands of nuclear weapons workers have been employed to develop, build and test nuclear weapons. Many of them exposed to radiation day after day for years, and the vast majority of these workers were employed at facilities that were owned and operated under the direct regulatory control of the United States Government. The Energy Employees Occupational Illness Compensation Act of 2000 established a Federal remedy for these workers. If they have contracted radiation-related cancers, beryllium disease, or silicosis, they may be eligible for a lump sum payment of 150,000 in addition to prospective medical benefits.

For radiation-related cancer claims the Department of Health and Human Services, through the National Institute of Occupational Safety and Health, is required to estimate a worker's radiation dose. It is not always possible, however, to estimate a worker's radiation dose. And during the earlier years of the nuclear weapons programs, especially between the 1940's and 1970's, some workers were not monitored, and the monitoring that was done sometimes was inadequate. Also, some records have been lost or destroyed.

So this act is an act that provides wholeness. It provides, if you will, a safety net, provides a remedy for cases where it is not feasible to estimate radiation doses, and it is clear from job types that the worker's health may have been in danger by radiation exposure.

Workers may petition to be administratively designated as a Special Exposures Cohort, which establishes an un rebuttable presumption that certain cancers are work related. Many of the Special Ex-

posure Cohort are eligible for benefits if they have one of 22 specified radiosensitive cancers, and in general if they have worked at a covered facility for at least 1 year in a job that exposed them to radiation. Special Exposure Cohort petition goes through an initial evaluation, and its recommendation is then reviewed by the Advisory Board before it goes to HHS Secretary for a decision. I think it is important to note, Mr. Chairman, that there are overlapping checks and balances. The Secretary makes a Special Exposure Cohort designation.

The Administration recently declared its intention to reduce the number of Special Exposure Cohorts in a memorandum referred to as an "Office of Management and Budget passback." The passback recommends establishing a White House-led interagency work group to develop options for administrative procedures that will contain the growth in the cost and benefits provided by the program.

At a previous hearing before this Subcommittee on March 1st, 2006, Shelby Hallmark, the Director of Department Labor's compensation program, stated that cost containment is not a factor in deciding which claims to pay. But OMB has recommended the development of cost containment procedures.

Mr. Chairman, I think when you do have this difference of opinion between executive representatives, it's important for the Congress to intercede and make a balanced judgment on what is best for the American people.

I would point out also that specific options are mentioned in the passback, and these options reflect concern that the present system is biased in favor of granting Special Exposure Cohort Status. OMB recommends requiring Administration clearance of Special Exposure Cohort determination; addressing any imbalance in membership of President's Advisory Board on Radiation and Worker Health; requiring an expedited review by outside experts of SEC recommendations, requiring the agency to apply conflict of interest rules and constraints to the Advisory Board's contractor, and requiring that the agency demonstrate that its site profiles and other dose reconstruction guidance are balanced.

If these problems are existing within the system for granting Special Exposure Cohort status, the problems should be identified and corrected under the present umbrella, under the present structure. The objective of the passback recommendations, however, is to implement cost containment methods, not to identify and correct problems. The Department of Labor has said there are no cost containment problems.

I will close by pointing out that bias in favor of compensation is not a flaw in the system for granting benefits. The act intends for the workers to have the benefit of the doubt when their claims are being adjudicated because of the difficult process of ascertaining their present situation.

I will just simply say to you, Mr. Chairman, that there are family members who also would like to testify. We hope to submit their testimony into the record, but I can say to you that there are devastating cases that we need to respond to.

And I yield back.

Mr. HOSTETTLER. I thank the gentlelady, and without objection, the comments from family members, as well as others, can be entered into the record, and the record should also reflect that in the future hearings we will have claimants as well as family members testify before the Subcommittee.

[The information referred to was not available at the time this hearing was printed.]

Mr. HOSTETTLER. Let me now turn to introductions of our panel of witnesses, a very distinguished panel of witnesses, I will say at the outset. As I was looking at my notes for the introduction, I did have to do some rearranging of my notes, in that my notes had Congressman Tom Udall and Congressman Mark Udall sitting next to each other, but I guess some action was taken on the part of the Subcommittee staff to separate the two. And I don't know what's behind that. [Laughter.]

But I guess Congressman Doc Hastings will know more about that by the end of this hearing.

Ms. JACKSON LEE. He's the referee.

Mr. HOSTETTLER. That's right.

Congressman Zach Wamp is currently serving his sixth term representing Tennessee's 3rd District. Before coming to Congress, the Congressman spent 12 years as a small business man and commercial real estate broker. He is a Chattanooga native, and he and his family still make Chattanooga their home.

Congressman Wamp has three facilities in his district, the Y-12 National Security Complex, the Oak Ridge National Labs, and the now closed Oak Ridge K-25 Gaseous Diffusion Plant.

An SEC petition and recommendation for a partial Special Cohort for some Y-12 workers is being evaluated by the Advisory Board on radiation and worker health, and several others are being evaluated by NIOSH. K-25 facility workers were designated SEC members when the law was enacted in 2000. Mr. Wamp was a co-sponsor of EEOICPA and testified before the Subcommittee on the legislation in 2000. Congressman Wamp's district is also home to Oak Ridge Associated Universities, the primary contractor performing radiation dose reconstruction and evaluating Special Cohort petitions.

Congressman Tom Udall is currently serving his fourth term in Congress, representing the 3rd District of New Mexico. Mr. Udall graduated from Prescott College, began his education in law at Cambridge University in England, and ultimately graduated with a juris doctor from the University of New Mexico School of Law. He then was the law clerk of Chief Justice Oliver Seth of the U.S. Tenth Circuit Court of Appeals, served as Assistant Attorney General in the Criminal Division, and was Chief Counsel to the Department of Health and Environment. Tom Udall served as New Mexico's Attorney General. He comes from the Udall family, who is famous for their public service. His father, Stewart Udall, was elected four times to Congress, and then was Secretary of the Interior for Presidents Kennedy and Johnson.

Congressman Tom Udall represents Los Alamos National Laboratory, one of the Nation's two nuclear weapons laboratories. An SEC petition is pending at Los Alamos. Tom Udall was a cospon-

sor—and my notes got separate here—and testified before the Subcommittee in 2000.

Congressman Doc Hastings represents the 4th District of Washington State. This is his sixth term in the U.S. House of Representatives. Before coming to Washington, Congressman Hastings, a native and current resident of Pasco, Washington, spent 8 years in the Washington State Legislature.

Prior to his political career, he studied business administration at Columbia Basin College and at Central Washington University, and then ran his family's business, Columbia Basin Paper and Supply in Pasco.

The Hanford facility is located in Congressman Hastings' district. An SEC petition is pending before NIOSH for individuals who worked at Hanford in the 1940's. The Hanford Reservation is also home to Pacific Northwest Laboratories.

Congressman Mark Udall is serving his fourth representing Colorado's 2nd Congressional District. A graduate of Williams College, he began his professional career with the Colorado Outward Bound School as a course director and educator, and then as executive director.

Mark Udall entered politics in 1997 as a representative in the Colorado State House. He then followed in his father's, "Mo" Udall's footsteps, a Member of Congress for 30 years, by running for Congress.

Congressman Mark Udall represents the individuals who worked at the Rocky Flats Plant facility. It was closed and cleanup finished in 2005. An SEC petition and a NIOSH recommendation on that petition are currently being evaluated by the Advisory Board on Radiation and Worker Health. Mr. Udall was a cosponsor of EEOICPA in 2000, and testified before the Subcommittee in 2000.

Once again, gentlemen, thank you for your presence here. At this time we will turn to your testimony. As you all are painfully familiar with the 5-minute rule, if you can summarize your remarks within that 5 minutes, and without objection, your written testimony will be made a part of the record.

The Chair recognizes Congressman Wamp from Tennessee.

**TESTIMONY OF ZACH WAMP, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE**

Mr. WAMP. Mr. Chairman, beyond the traditional gratitude to the Subcommittee, the Chairman and Ranking Member and all the Members, for the ability to appear here today, I just want to say to you, Mr. Chairman, rarely do you see a Subcommittee Chairman, particularly from a State who is not directly affected by a program like this, take such a personal interest, and I'm grateful that you have dug into the details here, and with the person to your immediate right, really learned a lot about this program that sometimes Members of Congress would not take the time to learn.

Our Nation's nuclear workers and their families deserve fair and timely compensation for work-related illnesses. Having met with many of these workers over the years, my heart goes out to all those who have sacrificed their health for the defense of our country. I've worked hard with a bipartisan group in Congress to compensate workers who were harmed by their work at Oak Ridge and

other DOE facilities. Our efforts paid off with the creation of EEOICPA.

EEOICPA has been a tremendous success in many ways. According to the Department of Labor, more than \$330 million in compensation has been paid to some 2,000 Tennessee workers or their families. Since the beginning of this program the Federal Government has also made more than \$25 million in medical payments to sick workers in our State. We celebrate the successes in helping these families who sacrificed so much.

But it is clear that not everyone Congress intended to be compensated by this program has been helped. Since passage of EEOICPA, my office has worked with hundreds of East Tennesseans to guide them through this new and complex payment system. The compensation program took the Department of Energy and the Department of Labor much too long to set up.

Many former workers say the entire process still takes too long. My offices report that difficult cases often take several years to complete. Some claimants feel they can't get adequate updates from NIOSH, the National Institute for Occupational Safety and Health. Many of my constituents want to see changes made in the law.

I have the highest regard for the work of the Oak Ridge Associated Universities, which is playing a key role in the compensation process. ORAU was awarded the contract to provide radiation dose reconstruction in support of the EEOICPA program. This organization has an exceptional track record of quality performance in its work.

ORAU has completed almost 14,000 dose reconstructions to date, and approximately one in four of the dose reconstruction claims have qualified for compensation. To perform this work, ORAU has gathered nearly 2 million pages of records and developed more than 150 detailed documents about DOE facilities.

While there have been some major challenges in performing this complex work, ORAU tells me that when there is a question about an exposure, the benefit of the doubt goes to the worker. When assumptions or estimates are necessary, they made to favor the claimant.

ORAU's goal is to use the very best science currently available to produce dose reconstructions with sufficient accuracy to fairly determine compensation under the EEOICPA program.

While parts of EEOICPA have been slow to evolve, it is my personal hope that the program will become an accurate and efficient tool to compensate workers for their illnesses. This was the intent of our original legislation.

As your Subcommittee continues to investigate this process, I hope to work with you, Mr. Chairman, and the Members of this Subcommittee, and your staff, to provide you with good information from my constituents about their experiences to help you make changes to improve the program, so that no justified workers are left without proper compensation for their essential services to our Nation.

I thank you again for bringing attention to this important issue, and for allowing me to testify here today, and I yield back.

[The prepared statement of Mr. Wamp follows:]

PREPARED STATEMENT OF THE HONORABLE ZACH WAMP, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE

I would like to thank Chairman Hostetler, Ranking Member Jackson Lee and members of the subcommittee for inviting me to testify here today on this very important issue of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Our nation's nuclear workers and their families deserve fair and timely compensation for work-related illnesses. Having met with many of these workers over the years, my heart goes out to all those who have sacrificed their health for the defense of this country. I have worked hard with a bipartisan group in Congress to compensate workers who were harmed by their work at Oak Ridge and other DOE facilities. Our efforts paid off with the creation of EEOICPA.

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Many former workers say the entire process still takes too long. My offices report that difficult cases often take several years to complete. And some claimants feel they can't get adequate updates from NIOSH, the National Institute for Occupational Safety and Health. Many of my constituents want to see changes made in the law.

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As your subcommittee continues to investigate this process, I would hope to work with you, Mr. Chairman, the members of your subcommittee and your staff to provide you with good information from my constituents about their experiences to help you make changes to improve the program, so that no justified workers are left without proper compensation for their essential services to our nation.

I thank you again for bringing attention to this important issue and for allowing me to testify here today.

Mr. HOSTETTLER. Thank you, Congressman Wamp.

The Chair now recognizes Congressman Tom Udall for 5 minutes.

**TESTIMONY OF TOM UDALL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW MEXICO**

Mr. TOM UDALL. Thank you, Mr. Chairman. We appreciate you holding this hearing, and very much appreciate being here today. I'd also like to thank you for your work on this issue, and appreciate Sheila Jackson Lee's interest in this issue also.

My constituents and I know we have friends on this Committee. Mr. Chairman, I have submitted longer remarks for the record, but will highlight some of my points in the time allotted.

I represent constituents who are sick and dying as a result of being exposed to harmful doses of radiation by working at Los Alamos National Laboratory. These men and women are, and have been, awaiting compensation. The creation of the Energy Employees Occupational Illness Program came with promises to provide timely, uniform and adequate compensation to these Cold War veterans.

Unfortunately, Mr. Chairman, we are finding that these promises are not being met. In fact, at LANL, in the last 5½ years since enactment of the EEOICPA, only 326 out of 800 dose reconstruction cases have been completed. In many LANL cases, delays in receiving compensation stem from missing or misreported dosimetry measurements.

As an example, I have with me an internal dose chart for one of my constituents that I would like to submit for the record. This constituent began working at LANL in 1948, and his file shows many exposures to plutonium, americium and other toxic substances. In this particular case, the information submitted by LANL to NIOSH for dose reconstruction, omits measurements for the year 1950. Looking at other documents in his file, however, shows that he experienced numerous exposures to radiation in 1950. This same internal dosimetry chart contains measurement estimates for the claimant through the year 1999. Sadly, the claimant died in 1982.

It's my understanding that NIOSH may currently be using additional data, but this information has not been shared with any of my constituent claimants.

Due to the unreliable nature of radiation dose records such as this example in these early years of LANL operations, a petition has been submitted to NIOSH for a Special Exposure Cohort. The SEC would cover all Los Alamos workers from 1944 to 1971. I introduced legislation during the 108th Congress, and am planning to introduce again, calling for SEC status for LANL claimants.

My bill is only one of several SEC measures proposed by many in Congress. Unfortunately, as we know, legislation and SEC petitions face an uphill battle. The uphill battle was apparent even before the OMB passback memo recently surfaced, discussing efforts to quote—and I quote from the memo—“contain the growth and the cost of benefits provided by the program.”

This is clearly contrary to the intention of the program and must be fought. By itself, the cost containment mentioned in the passback memo is alarming. Coupled with the recent actions in the President's Advisory Board on Radiation and Worker Health, it is downright disturbing.

Recently, one of my constituents, Richard Espinoza, was removed from the Advisory Board without any apparent cause. I'm concerned that his removal, and one other Board member, has shifted the prospectus of the Board from one that was evenly balanced to one that is hostile to claimants.

One other point I would like to touch on, Mr. Chairman, is the NIOSH contract with ORAU. Any Federal contract that balloons

from 70 million to 200 million should be closely examined, and we commend the Committee for looking into this. Huge administrative costs for troubling results are inexcusable.

Also, of the 19-member ORAU team responsible for the LANL site profile, 7 are current, and 3 are retired employees of LANL's radiation safety programs. 8 of these 10 employees do not have conflict of interest disclosure statements posted on the ORAU website. This is in contravention of ORAU's contract with NIOSH. The failure to police conflict of interest, and recycling those who defended these claims for the Government, is unacceptable.

I'm eager to work with my colleagues to address these and other glaring deficiencies in the implementation of the EEOICPA. We must address them so that these courageous Cold War veterans can finally receive the relief and compensation they so rightly deserve.

Thank you again for allowing me to testify, and I welcome any questions the Committee may have.

[The prepared statement of Mr. Tom Udall follows:]

PREPARED STATEMENT OF THE HONORABLE TOM UDALL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW MEXICO

Mr. Chairman, thank you for inviting me to testify today on behalf of my constituents in New Mexico who are sick and dying while awaiting compensation as a result of their work at our nation's nuclear weapons facilities.

My congressional district contains many DOE contractor facilities, the largest of which is the Los Alamos National Laboratory which has been in operation since 1942. Scientists at LANL developed the atomic bomb and today the lab serves as one of two major weapons design laboratories. I, along with my New Mexico colleague Senator Jeff Bingaman, hosted the first public hearings in New Mexico on this issue and worked to ensure that our constituents would be covered as part of the Energy Employees Occupational Illness Program Act of 2000. I supported passage of this legislation with the understanding that EEOICPA would provide "timely, uniform, and adequate" compensation to these Cold War veterans.

Unfortunately, the agencies implementing this program have not fulfilled the promise of a "timely, uniform and adequate" program that was made to the cold war veterans of the national labs in New Mexico when the law was enacted. Progress has been slow for Subtitle E claims for those made ill by exposure to toxic substances at DOE facilities. In the 5½ years since enactment, only 326 out of 800 dose reconstruction cases have been completed at LANL.

At the time of EEOICPA's passage, DOE contractor employees and their families expected that the involvement of NIOSH, an agency of the Department of Health and Human Services, would carry out radiation dose reconstructions used for compensation decisions in a manner independent of the Department of Energy and its contractors. To maintain public confidence, Congress allowed only a minor role for DOE—mainly records recovery. The DOE's historically flawed radiation protection programs gave rise to the problem, and secrecy policies kept information concealed for decades.

Under EEOICPA, DOE is explicitly excluded from the development of methods for dose reconstruction. DOE is supposed to be confined to the retrieval of information. However, NIOSH contracted with Oak Ridge Associated Universities (ORAU) and Battelle, two large DOE contractors to carry out dose reconstruction work, and evaluate SEC petitions. The ORAU Team is dominated by consultants and sub-contractors entwined with DOE and site contractors. In some cases, these consultants have pre-EEOICPA records of working as expert witnesses against state workers' compensation claimants at the very sites where they now perform dose reconstructions. Nowhere in the legislative history of EEOICPA did we envision turning this program back to the DOE site technicians who were part of the programs which necessitated passage of EEOICPA in the first place.

My constituents have raised concerns about the integrity of data which is being provided to NIOSH. For example, at Los Alamos, data on internal doses of plutonium and americium which NIOSH uses in dose reconstruction comes from a data base that was assembled by the site contractor several years before enactment of EEOICPA. NIOSH has not systematically compared these numbers to primary his-

torical documentation of contamination episodes, a process called verification and validation (or “V and V”), despite the fact that the primary historical documentation is available at Los Alamos. Some of my constituents’ dose reconstructions entailed little more than NIOSH “plugging and chugging” the numbers provided by the site contractor. Other reports consist of a series of default assumptions made in the absence of recorded badge readings. Public confidence is eroded every time NIOSH reports a radiation dose that is simply cut and pasted from the site contractor’s records.

My offices in New Mexico stay busy assisting these EEOICPA claimants. In an effort to determine why so many of my constituents’ claims are being denied, it appears that in many cases, dosimetry measurements are missing for entire years of employment and in other cases those measurements are misreported. I have with me an internal dose chart for one of my constituents who began his work at LANL in 1948 and whose file contains many exposures to plutonium, americium and other toxic substances. I would like to submit this chart for the record if I may. In this particular case, the information submitted by LANL to NIOSH for dose reconstruction omits measurements for the year 1950, although elsewhere in his file, there are documents indicating that he experienced numerous exposures to radiation in 1950. This same internal dosimetry chart contains measurements for the claimant through the year 1999. Unfortunately, the claimant died in 1982.

This problem is further illustrated in another example from my congressional district. A New Mexico legislator, the late Ray Ruiz, grew up in Los Alamos and worked at the Lab as an ironworker in his younger days. His wife, Harriet Ruiz, who now serves in the state legislature, remembers a period of time in about 1964 when Ray accidentally received an internal dose of radiation at work. Some of the standard procedures for a worker who was “hot” in those days were followed—removal from radioactive work areas, periodic monitoring. At home, Harriet remembers how they were trying to get pregnant for a third time. Ray’s sperm count, in turned out, was so low for him to be considered “sterile,” according to one of the doctors they visited. They gave birth to a healthy baby in 1966.

Decades later, following Ray’s passing due to asbestos-related cancer, Harriet obtained his medical file from the Lab. Curiously, the radiation dosimetry report shows “all zeroes” for that period of time in the mid-1960’s. The file contains no documentation of the internal contamination episode.

State Representative Ruiz is now spearheading a petition to NIOSH for a special exposure cohort to cover all Los Alamos workers from 1944 to about 1971, due to the unreliable nature of radiation dose records in these early years of LANL operations.

In addition, during the last Congress I introduced, and am planning to introduce again, legislation calling for an SEC status for LANL claimants, but my bill is one of several SEC measures proposed by members of Congress. My bill and the SEC filed by Harriett Ruiz are both headed for an uphill battle. I believe that any attempts by the White House to influence SEC designations by “tilting” the membership of the President’s Advisory Board on Radiation and Worker Health or introducing additional bureaucratic layers in the approval process, would be devastating to future SEC petitions.

I am very concerned about the current composition of the Advisory Board. 42 USC 7384(o)(a)(2) requires “a balance of scientific, medical and worker perspectives.” Recently, one of my constituents, Richard Espinosa, was removed from the Advisory Board without any apparent cause. The OMB Passback for the Department of Labor indicates a desire to contain the cost of benefits under EEOICPA. One of the mechanisms identified was to “address any imbalance in the membership for the Advisory Board on Radiation and Worker Health.” I do not know if this explains his removal, but we are troubled that of the eleven members currently on the board, only two are workers. A fair reading of the law would require 4 workers out of 12 members.

A similar bias seems to exist on the 19-member ORAU team responsible for the LANL site profile. This team has a majority membership of seven current and three retired employees of LANL’s radiation safety programs. Eight of these ten employees do not even have conflict of interest disclosure statements posted on the ORAU website, in contravention of ORAU’s contract with NIOSH.

In addition, the NIOSH contract with ORAU is of grave concern. Any federal contract that mushrooms from \$70 million to \$200 million should be closely examined, and we commend the Committee for looking into this. The draft site profile document for Los Alamos prepared by ORAU for NIOSH is riddled with omissions and erroneous assumptions. For example, the site profile lacks credibility on the simple issue of collective (“population”) doses incurred by the workforce in years past. For selected years during the 1970’s and early 1990’s, the collective doses in the site pro-

file are 10% to 50% lower than those reported at the time by DOE in a widely available series of reports.

In sum, huge administrative costs for troubling results are inexcusable. The failure to police conflicts of interest and recycling those who defended these claims for the government is unacceptable.

To remedy these glaring deficiencies in the implementation of EEOICPA, I am eager to work with my fellow members of Congress to:

1. Restore balance to the Advisory Board on Radiation and Worker Health by amending the Act to give Congress a role in appointing members of the Board.
2. Ensure that the Advisory Board and its audit contractor have the funds they need to do the job. DOL has proposed cutting these funds in its FY 07 budget request.
3. Impose and enforce stringent conflict of interest criteria on ORAU and its staff, and install leadership in NIOSH that will restore the necessary expertise and independence to make timely and credible decisions.
4. Adopt authorizing legislation to establish a technical assistance program for citizens, workers and families seeking to file petitions for Special Exposure Cohort status. Ordinary citizens are at a serious disadvantage when it comes to retaining technical expertise, and are ill equipped to command the necessary expertise in health physics. Several universities would be well-qualified to provide this technical assistance.

I want to thank the Chairman and Ranking Member for holding this hearing today and for your efforts in conducting oversight on the Energy Employees Occupational Illness Compensation Program Act.

I look forward to working with you and my fellow members of Congress as we explore ways to remedy these glaring deficiencies so that these courageous Cold War veterans can finally receive the relief and compensation they so rightly deserve.

Mr. HOSTETTLER. Thank you. Without objection, your paper will be submitted for the record.

The Chair now recognizes Congressman Hastings for 5 minutes.

**TESTIMONY OF DOC HASTINGS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON**

Mr. HASTINGS. Thank you very much. Chairman Hostettler and Ranking Member Jackson Lee and Members of the Committee, I appreciate your holding this hearing and your interest in making certain that this compensation program is working for those who had suffered illness due to their work at Federal nuclear site, including Hanford in my district.

Let's not forget that the nuclear production work performed at these sites and at Hanford helped with World War II and the Cold War. We owe a huge debt of gratitude to those workers for their contributions to our Nation's security. As we do with our veterans, the Federal Government has a moral responsibility to aid in the care of those who have been made ill as a direct result of their work in service to our Nation.

With my support, Congress enacted legislation in October of 2000 to establish a compensation program for these workers, and I was pleased to stand with Energy Secretary Bill Richardson at the unveiling of the new Energy Employees Occupational Illness Compensation Program.

However, nearly 5 years since this program began accepting claims in July of 2001, it has not lived up to the expectations of Congress and it has left thousands of workers and their families waiting and wondering. While a great deal of taxpayer money has been spent administering this program, results have been achieved for only a small percentage of the workers.

A 2004 GAO report noted that during the first 30 months of the program, the Department of Energy had completely processed only 6 percent of the cases that had been filed under that part of the program. That means 94 percent of those who had filed a claim were left with no decision after 2½ years.

The record was completely unacceptable, and as a result, Congress responded. With my support, the Department of Energy's portion of the program was transferred to the Department of Labor. Given the Labor Department's extensive experience with compensation claims, we felt this change would result in a quicker processing of workers' claims. Unfortunately, the progress is still slow, and thousands still wait.

Today, nearly 6 years after the program was created, only 10.5 percent of the claims filed nationally under this transferred portion of the program have been processed. And at Hanford, less than 10 percent of the cases have been processed.

We all recognize that this is a complex program. It often involves going back in time some 60 years to try to assess radiation exposure with little records to guide decisions. Yet, this is no excuse.

But to give a little perspective, consider this: In 1943, during the height of World War II, in the middle of a remote desert in central Washington State, and under the secrecy of the Manhattan Project, 51,000 workers labored to build the Hanford site infrastructure and the B Reactor, the world's first full-scale plutonium production reactor. It took 13 months to construct the B Reactor, which produced the nuclear material for the first ever nuclear explosion, the Trinity test in New Mexico, and for the bomb that dropped on Nagasaki that helped win the Second World War.

Mr. Chairman, if workers can build the world's first nuclear reactor in 13 months starting from scratch, surely the Federal Government should be capable of getting these claims processed after 5 years. Unfortunately, this has not been the case.

The slow pace of claims processing is not the only concern. Mr. Chairman, as you have addressed in your previous hearings on this issue, the Office of Management and Budget has exchanged documents with the Department of Labor that are focused upon controlling cost. There is nothing wrong with controlling cost. But unfortunately, the focus is not on the cost associated with the Department's administration of the program or making the bureaucracy function more efficiently, where the emphasis ought to be, in my view, but rather on the payment of compensation to workers for their illness. This amounts to injecting a political, budgetary element into independent science and fact-based decisions on the payment of workers' claims.

As thousands of workers still wait for answers on their claims, the Government should be looking for ways to make this program work better, not ways to cut corners and deny workers their due.

These workers played a vital role in our Nation's defense for many years. They deserve a timely decision on their claim. They deserve a fair decision based on scientific facts. And if it is found that their illness has been caused by their work, then they deserve just compensation.

Congress reacted to create this program. Congress acted when DOE failed in its implementation of this program. Our intent is

clear and the law is clear: it is time for these claims to be reviewed and resolved in a timely manner without political interference and with a deep respect for the workers who made these contributions to our Nation at a very real cost to their health.

Again, I want to thank the Committee for their interest, and holding this hearing and a series of later hearings on this issue, and I look forward to working with you on a resolution to some of the problems that we face.

Thank you very much.

[The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF THE HONORABLE DOC HASTINGS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON

DOC HASTINGS
6th District, Washington

CHAIRMAN,
COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT

COMMITTEE ON RULES
CHAIRMAN, SUBCOMMITTEE ON RULES
AND ORGANIZATION OF THE HOUSE



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Congress of the United States
House of Representatives

Statement of
Congressman Doc Hastings
before the
Subcommittee on Immigration, Border Security and Claims
Oversight Hearing on the Energy Employees Occupational Illness
Compensation Program Act (EEOICPA)
U.S. House of Representatives
May 4, 2006

Chairman Hostettler, Ranking Member Jackson Lee, and members of the Committee, I appreciate your holding this hearing and your interest in making certain that this compensation program is working for those who have suffered illness due to their work at federal nuclear sites, including Hanford in my district.

Let's not forget that the nuclear production work performed at these sites and at Hanford helped win World War II and the Cold War. We owe a huge debt of gratitude to these workers for their contributions to our nation's security. As we do with our veterans, the federal government has a moral responsibility to aid in the care of those who have been made ill as a direct result of their work in service to our nation.

With my support, Congress enacted legislation in October of 2000 to establish a compensation program for these workers, and I was pleased to stand with Energy Secretary Bill Richardson at the unveiling of the new Energy Employees Occupational Illness Compensation Program.

However, nearly five years since this program began accepting claims in July of 2001, it has not lived up to the expectations of Congress, and it has left thousands of workers and their families waiting and wondering. While a great deal of taxpayer money has been spent administering the program, results have been achieved for only a very small percentage of workers.

A 2004 GAO report noted that during the first thirty months of the program, the Department of Energy had completely processed only six percent of the cases that had been filed under their part of the program. This means ninety-four percent of those who had filed a claim were left with no decision after two and a half years.

That record was completely unacceptable and as a result Congress responded. With my support, the Department of Energy's portion of the program was transferred to

the Department of Labor. Given the Labor Department's extensive experience with compensation claims we felt this change would result in quicker processing of workers' claims. Unfortunately, progress is still slow and thousands still wait.

Today – nearly six years after the program was created only ten and a half percent of claims filed nationally under this transferred portion of the program have been processed. And at Hanford, less than ten percent of the cases have been processed.

We all recognize this is a complex program. It often involves going back in time some sixty years to try to assess radiation exposure with little records to guide decisions. Yet this is no excuse.

But, to give a little perspective, consider this:

In 1943, during the height of World War II, in the middle of the remote desert of Central Washington state, and under the secrecy of the Manhattan Project, 51,000 workers labored to build the Hanford site infrastructure and the B Reactor – the world's first full-scale plutonium production reactor.

It took thirteen months to construct the B Reactor – which produced the nuclear material for the first-ever nuclear explosion – the Trinity test in New Mexico – and for the bomb dropped on Nagasaki that helped win World War II.

Mr. Chairman, if workers could build the world's first nuclear reactor in thirteen months starting from scratch – surely the federal government should be capable of getting these claims processed after five years. Unfortunately, this has not been the case.

The slow pace of claims processing is not the only concern.

Mr. Chairman, as you have addressed in your previous hearings on this issue, the Office of Management and Budget has exchanged documents with the Department of Labor that are focused upon controlling costs. But unfortunately not the costs associated with the Department's administration of the program, or making the bureaucracy function more efficiently, where the emphasis ought to be, but rather on the payment of compensation to workers for their illness. This amounts to injecting a political budgetary element into independent science and fact-based decisions on the payment of workers' claims.

As thousands of workers still wait for answers on their claims, the government should be looking for ways to make this program work better – not ways to cut corners and deny workers their due.

These workers played a vital role in our nation's defense for many years. They deserve a timely decision on their claim. They deserve a fair decision based on the scientific facts. And, if it is found that their illness has been caused by their work, then they deserve just compensation.

Congress acted to create this program. Congress acted when DOE failed in its implementation of the program. Our intent is clear and the law is clear. It's time for these claims to be reviewed and resolved in a timely manner, without political interference, and with a deep respect for the workers who made these contributions to our nation at a very real cost to their health.

Again, I thank the Committee for holding this hearing and for the opportunity to share my views.

Mr. HOSTETTLER. Thank you, Congressman Hastings. Congressman Mark Udall, you are recognized

**TESTIMONY OF MARK UDALL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO**

Mr. MARK UDALL. Thank you, Mr. Chairman. I too want to associate myself with my colleagues here on the panel, thanking you and Ranking Member Jackson Lee for your leadership on this very important issue.

If I might, I'd turn my attention and the Subcommittee's attention to the situation at Rocky Flats and provide you with a little bit of background there.

Many of the Coloradans who worked there, like those who worked at other nuclear weapons plants, were exposed to beryllium, radiation and other hazards, and as a result, many of them died and others are suffering. Along with this team here, I've worked, since I came to Congress, to bring a measure of justice to these Cold War veterans.

And that is the purpose, as you heard, of the Energy Employees Occupational Illness Compensation Program. And with other Members on both sides of the aisle, I was an original sponsor of that legislation, and I'm very concerned about how it's being implemented.

I have a particular concern about the deficiencies of the exposure records and other information regarding Rocky Flats workers who have filed claims for compensation.

To address that problem, I've introduced legislation to include Rocky Flats workers under the act's Special Exposure Cohort. And with other members of the Colorado delegation, I've been seeking assurances from the Administration that their consideration will be given to a pending petition to include Rocky Flats workers in the cohort.

So I was concerned when the President's latest budget said that the Administration expects a reduction of about \$686 million in compensation payments in fiscal year 2007, and my concern became alarm, again, along with all my fellow panelists, when I saw the OMB passback document, indicating the Administration plans to take administrative action to change the procedures for handling SEC petitions.

Mr. Chairman, I think you put it well in a previous hearing when you said the OMB documents "sets out a plan to base SEC status approvals on budget concerns rather than the scientific basis mandated by law." In my opinion, that hits the nail right on the head.

The OMB document outlines an outrageous attempt to subvert congressional intent at the expense of Cold War veterans, who as you noted, "had the least knowledge of how hazardous their work conditions really were because of the lack of exposure information in their cases."

On March 16th, Senator Ken Salazar wrote to Secretaries Chao and Leavitt and to Joshua Bolten, who was then the OMB Director. In the letter we said that we agreed with your assessment of the OMB document, Mr. Chairman, and asked for prompt answers to several specific questions about it.

Number one, we want to know whether the working group mentioned in the OMB document had been established and whether some or all of the options mentioned in the document had been adopted. And two, we asked what steps the Administration would take to assure Congress and the public that it would fully comply with the letter and spirit of the compensation law. So far we have not received an answer from the Labor Department, from the Department of Health and Human Services, or from OMB.

I think you know, and the Members of the Subcommittee know, Mr. Chairman, this is not just about money. It is about the Government's honor and the honor of our country. These nuclear weapons workers served America well, and honor demands that they be well served in return. If there are those who doubt it, I invite them to come to Colorado and meet with people like Charlie Wolf, who's one of those who worked out at Rocky Flats.

When he heard about your hearings, Mr. Wolf sent me a letter that I've attached to this testimony. He's suffering from a brain tumor so serious that the average life expectancy of someone with that condition is 54 to 66 weeks. In his letter he says: "I'm lucky that I'm a 3½-year survivor. There are many others that have cancer that are hoping for help from the Energy Compensation Act of 2000."

Mr. Wolf goes on to say: "Instead of the Cold War heroes getting support, they now want to cut it even further. The workers did their job, and again, they're on the losing team."

Mr. Chairman and Members of the Subcommittee, I would like to be able to tell Mr. Wolf that he's wrong. I would like to be able to tell him that Congress meant what it said, and that we will insist that the law be implemented in the way we intended.

I think and hope that all of you share that goal. If so, you can count on me to help in any way possible.

Mr. Chairman, in conclusion, I have to tell you, as I saw this slow-walk process, my heart was really heavy, but when I heard that you were on the case, along with Ranking Member Jackson Lee, that load lifted off my heart. But we have a lot more work to do. There's no time to waste, as the rest of the panel has mentioned. So thank you so much for the leadership you are providing.

[The prepared statement of Mr. Mark Udall follows:]

PREPARED STATEMENT OF THE HONORABLE MARK UDALL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO

Committee on the Judiciary
Subcommittee on Immigration, Border Security, and Claims

Statement of
REPRESENTATIVE MARK UDALL

for
Oversight Hearing on Energy Employees Occupational Illness Compensation Program Act
May 4, 2006

Chairman Hostettler, Ranking Member Jackson-Lee, and Members of the Subcommittee:

I commend you for holding hearings on this very important subject and appreciate having the chance to testify.

Many Coloradans who worked at Rocky Flats – like those who worked at other nuclear-weapons plants -- were exposed to beryllium, radiation, and other hazards. As a result, many of them have died and others are suffering.

Since coming to Congress, I have worked to bring a measure of justice to these Cold War veterans.

That is the purpose of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). With other Members on both sides of the aisle, I was an original sponsor of that legislation, and I am very interested in how it is implemented.

I have a particular concern about the deficiencies of the exposure records and other information regarding Rocky Flats workers who have filed claims for compensation.

To address that problem, I have introduced legislation to include Rocky Flats workers under the Act's "Special Exposure Cohort."

And, with other members of the Colorado delegation, I have been seeking assurance from the Administration that fair consideration will be given to a pending petition to include Rocky Flats workers in the cohort.

So I was concerned that the President's latest budget says the Administration expects a reduction of about \$686 million in compensation payments in fiscal year 2007.

And my concern became alarm when I saw the OMB "pass back" document indicating the Administration plans to take administrative action to change the procedures for handling SEC petitions.

I think you put it well at an earlier hearing, Mr. Chairman, when you said that this OMB document "sets out a plan to ... base SEC status approvals on budget concerns rather than the scientific basis mandated by law."

In my opinion, that hits the nail right on the head.

The OMB document outlines an outrageous attempt to subvert Congressional intent, at the expense of Cold War veterans who, as you noted "had the least knowledge of how hazardous their work conditions really were because of the lack of exposure information in their cases."

On March 16th, Senator Ken Salazar and I wrote to Secretaries Chao and Leavitt and to Joshua Bolten, who was then the OMB Director. I have attached a copy of our letter to my statement, and ask that it be included in the hearing record.

In the letter, we said that we agreed with your assessment of the OMB document, Mr. Chairman, and asked for prompt answers to several specific questions about it.

We wanted to know whether the "working group" mentioned in the OMB document had been established and whether some or all of the "options" mentioned in the document had been adopted.

And we asked what steps the Administration would take to assure Congress and the public that it would fully comply with the letter and spirit of the compensation law and that the law's purpose would not be subordinated to a desire to stint on paying the required compensation.

So far, we have not received an answer from the Labor Department, from the Department of Health and Human Services, or from OMB.

Members of the Subcommittee, this is not just about money.

This is about the government's honor and the honor of our country. The nuclear-weapons workers served America well, and honor demands that they be well served in return.

If there are those who doubt that, I invite them to come to Colorado and meet with the people like Charlie Wolf, one of those who worked at Rocky Flats.

When he heard about your hearings, Mr. Wolf sent me a letter that I have attached to this testimony.

Mr. Wolfe is suffering from a brain tumor so serious that the average life-expectancy of someone with that condition is 54 to 65 weeks.

In his letter, he says "I am lucky that I am a three and one-half year survivor. There are many others that have cancer that are hoping for help from the Energy Compensation Act of 2000."

And Mr. Wolf goes on to say "Instead of the Cold War Heroes getting support, they now want to cut it even further. The workers did their job and again they are on the losing team."

Mr. Chairman and Members of the Subcommittee, I would like to be able to tell Mr. Wolf he is wrong.

I would like to be able to tell him that Congress meant what it said and that we will insist that the law be implemented in the way we intended.

I don't know what it will take to be able for us say that while we look Mr. Wolf and the American people in the eye.

But I know that we have no time to waste. And I know I will do everything I can to make it possible.

I think and hope that all of you share that goal. If so, you can count on me to help in any way possible.

Thank you for your attention to this important subject. I am attaching the full text of Mr. Wolf's letter as well as the letter Senator Salazar and I sent to the Secretaries Chao and Leavitt and OMB Director Bolten.

March 6, 2006

To: Sen. Ken Salazar
Sen. Wayne Allard
Rep. Mark Udall

From: Harry Charles Wolf

I read the Bush's administration is taking steps to limit costs associated with a benefits program for Cold War-era nuclear workers. I can understand that, but I think the cuts are aimed in the wrong direction. I also read an article in the Rocky Mountain News that read "\$350 million award/Rocky Flats neighbor's win lawsuit..." But the Rocky Flat Cold War veterans are dying or suffering for doing their jobs to protect the United States. As the article stated, "Do the homeowners win and we lose?" I do not understand why the Cold War heroes suffer and everyone else profits.

I have a glioblastoma multiforme (Grade IV) brain tumor. The average life expectancy with glioblastoma is 54 to 65 weeks. I am lucky that I am a three and one-half year survivor. There are many others that have cancer that are hoping for help from the Energy Compensation Act of 2000. Instead of the Cold War Heroes getting support, they now want to cut it even further. The workers did their job and again they are on the losing team.

Based on the information in the Rocky Mountain News \$31.2 million has been actually distributed to dying and sick Cold War veterans, where as the Department of Energy spent more than \$93 million administrating the program for 4 years, the Department of Labor has spent \$166 million, and \$40 million for the National Institute for Occupational Safety and Health. Therefore, they spent almost \$300 million to the workers \$31 million. The program created by Congress 5 years ago was intended to give workers \$150,000 plus medical benefits. My math states that if you add another \$50,000 for medical expenses and bring the total to \$200,000 each. For \$300 million at \$200,000 each, one thousand five hundred Cold War veterans could have received assistance from the Congressional Act. Using the same math, I would say as low as 150 Cold War veterans were helped. If the President wanted to cut funds, cut them from the Departments that are wasting the money, not the War veterans that need it.

I have gone through the process that is so difficult to complete that most people, who are mostly sick and suffering, give up. I have a BS in Chemical Engineering and an MBA and with the help of my wife, who also has a BS in Chemical Engineer and a BS in Biology, and both of us could not figure out what they meant. I have been denied compensation by the Department of Labor. The problem with the process is that even though the Department of Labor agreed with my argument, they are bound to use specific IREP models listed by the specific rulemaking. I have books of information that they ignore, require you to complete, and then never look at it. I am sorry that there was not enough funds to send me to testify before Congress as this letter does not really cover the issue.

So, again, the funding should remain for the Cold War veterans and not for unnecessary and overwhelming paperwork.

Charlie Wolf

H. Charles Wolf
3207 Greensborough Drive
Highlands Ranch, CO 80129
Phone: (303) 683-4517 Cell: (303) 921-5500
web site: www.aliveandfighting.com

March 16, 2006

The Honorable Elaine Chao
Secretary of Labor
Frances Perkins Building
Third Street and Constitution Ave. NW
Washington, D.C. 20210

The Honorable Michael Leavitt
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Ave. SW
Washington, D.C. 20201

The Honorable Joshua Bolten
Director, Office of Management and Budget
Eisenhower Executive Office Building
725 Seventeenth Street NW
Washington, D.C. 20503

Dear Secretary Chao, Secretary Leavitt, and Director Bolten:

On February 13, we wrote to express our concern about the reduction in benefit payments under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) projected in the President's budget request for fiscal year 2007.

Our letter noted that those concerns were heightened by reports the Administration might be considering steps to reduce future EEOICPA payments, possibly by changing the procedures for handling special exposure cohort (SEC) petitions. These reported changes included steps that could result in decisions about petitions being based primarily on budgetary considerations, not the scientific criteria and processes for evaluation rooted in the purposes of the Act.

And since we sent that letter – which remains unanswered – we have seen hard evidence proving our concerns were well founded.

That evidence is the OMB document commending the Labor Department for “identifying the potential for a large expansion” of benefits and stating that “The Administration will convene a White House-led interagency work group . . . to develop options for administrative procedures to contain growth in the costs of benefits provided by the program.”

As you know, that document was the subject of a March 1st oversight hearing by a subcommittee of the Judiciary Committee of the House of Representatives.

We think the subcommittee's chairman, Representative John Hostettler, put it well when he said the document “sets out a plan to . . . base SEC status approvals on budget concerns rather than the scientific basis mandated by law” – in other words, a “plan to override science to meet OMB's budget priorities.”

Like him, we think this is “at odds with Congressional intent,” and not only “does a disservice to these Cold War veterans” but threatens to “undermine Government credibility with claimants and the public.”

And we think it is particularly outrageous that this attempt to subvert Congressional intent would be done at the expense of those whom Chairman Hostettler accurately described as the Cold War veterans who “had the least knowledge of how hazardous their work conditions really were because of the lack of exposure information in their cases.”

We therefore request prompt, written answers to these questions:

- 1) Has the “interagency working group” mentioned in the OMB document been established, and if so, with what membership?
- 2) If the working group exists, has it met or is it scheduled to meet in the future?
- 3) Have some or all of the “options” identified in the OMB document been adopted?
- 4) If not, what is the likelihood that any of those options (or other options not mentioned in the OMB document) will be adopted in the future?
- 5) What steps will the Administration take to assure Congress and the public that all its actions related to implementation of EEOICPA – and particularly with regard to consideration of SEC petitions – will fully comply with the letter, spirit, and intent of the Act and that the Act’s purpose of providing a measure of justice to injured Cold War veterans will not be subordinated to a desire to stint on paying the compensation required by law?

We look forward to a prompt and complete response to these important questions.

To be clear, we believe it would be contrary to law, contrary to the promises made to the Cold War veterans who served their nation, and contrary to any sense of decency and morality to secretly attempt to balance the budget on the backs of these cancer-stricken workers. The Administration should abandon any thought of implementing such a shameful plan.

Sincerely,

/s
Mark Udall
Member of Congress

/s
Ken Salazar
United States Senator

Mr. HOSTETTLER. Thank you, Congressman Udall, and you can assure Mr. Wolf that one way or another, it will get done.

We'll turn now to questions to the panel. Congressman Wamp, with regard to the problems that have been brought to you by your constituents that you've mentioned, have you seen positive efforts made by the Government to resolve those problems? Can you give the Subcommittee some examples of any improvements where there doesn't appear to be adequate effort made to address your constituents' concerns on the other hand?

Mr. WAMP. Well, even though I may have been one of the later people to come to this, really when Department of Labor took over the part of this program that they actually administer, I do think things sped up. So I think that while all along this was going to be a very problematic process, clearly, that has helped dramatically. I think, frankly, in East Tennessee, while there are really a few bad cases that we have to stay on top of, the overall story is pretty positive.

And that's why I wanted to come today, to say that this GAO report, I think—or the audit that is pending, I encourage it. As a matter of fact, I hope it doesn't slow the process down. Some of these GAO reports take years, and we need to get this one done in weeks, and move quickly so that we can get to the bottom of this, and because these people's health and lives are hanging in the balance, but overall, in East Tennessee we got a pretty good story, Mr. Chairman.

Mr. HOSTETTLER. Thank you.

Congressman Tom Udall, individuals who ran the dosimetry programs and/or were expert witnesses for DOE and its contractors in litigation, are now working for NIOSH providing input on key decisions and deciding the merits of SEC, Special Exposure Cohort, petitions, based on their certification of the validity of the data created under their watch. Should individuals from a site be restricted from working on claims or SEC petitions for that site? Does this issue warrant moving legislation to bar their substantive participation in any decisionmaking or involvement in the creation of the base information used in the decisionmaking process at their former site?

Mr. TOM UDALL. Mr. Chairman, I think that that is a very, very good question, and it goes right to the heart of what the problem is. In many cases you may have a situation where there are problems with the dosimetry, with the doses, with the reconstruction, and in order to be independent and in order to be fair, I think the thing that should be done is to have people part of the NIOSH process that are looking at this independently. I mean, that's the way to go, and I think it makes good sense to lay that out in terms of legislation.

As I said in my testimony, there are people that are working on these that haven't even filed conflict of interest forms that are required by NIOSH, and so we don't even know if there are any conflicts there. So I would like to see as much independence as we could get in this process in terms of dealing with claims, and I'd be happy to work with the Chairman or the Ranking Member on legislation that would clarify the kinds of independence that we need.

Mr. HOSTETTLER. Thank you.

Congressman Hastings, HHS asserts that if classified information must be used to adjudicate a claim, the information can be used to deny either a claim or a petition for SEC status, even though the claimant or petitioner's due process rights to an appeal are limited to the Government representing them in a closed hearing with the judge. The Government is also, in that closed hearing, defending their claim's denial, so they're on both sides of the issue.

Do you think that this is a fair arrangement, and if not—not only the arrangement about the Government pleading both sides of the case in a sense—but also in the use of classified information that the claimant would not have access to? Do you think that this is a fair arrangement, and if not, do you have any suggestions about a better way to address the problem?

Mr. HASTINGS. In short, in the case of a denial, I think that there has to be a way to somehow bridge that gap. If somebody is denied a claim simply because it's classified material and we can't see what the classified material is, that's obviously not fair to that individual, so there has to be some way to bridge that gap.

But just to go back—and I am one that believes that classified information is important—I mean, the whole Hanford site, for example, was built in 1943. I mentioned in my testimony there were 51,000 people out there. They didn't know what they were building. They didn't know what the end result was. It was all classified. In fact, the day that the bomb was dropped on Nagasaki, the headlines in at that time the only weekly paper around was that it was a bomb.

But with the decisions that were made—and I might add also that during that time period, you know, the waste that was created was not taken care of properly either because we didn't know where we were. But now, looking back in retrospect, if people are hurt because of those actions, just because it's classified, should not be, in my view, a sole reason for denial. There has to be a way to bridge that and yet to keep in mind the purpose of classified material.

Mr. HOSTETTLER. Thank you.

Congressman Mark Udall, the law sets forth 180 days for NIOSH to evaluate Special Cohort petitions, but NIOSH took about 425 days from the date they received the Rocky Flats petition. NIOSH recommended a denial, and the Board is reviewing the matter. Because the plant has closed and computer systems have been shut down, claimants are having an extreme difficulty in accessing their records. Do you have any suggestions on what can be done to ease the burden on SEC petitioners when Government delays have stalled the process for so long that access to records is severely diminished?

Mr. MARK UDALL. Thank you, Mr. Chairman, for giving me a chance to comment on that particular situation. Regarding the Rocky Flats petition, I'm more, at this point, worried about a belated rush to judgment resulting in an unwarranted denial of the petition. That's why I joined Senator Salazar in asking the Board to delay its decision until the audit contractor can finish its work. That request has been granted, I'm glad to say. I think you're aware of that.

But the problem you described is a real one for the Rocky Flats petitioners, and it's my intent to work with the rest of the delegation from Colorado, and others, including Members of your Subcommittee, to see what can be done to improve the access to records and avoid the chance of a miscarriage of justice.

And, Mr. Chairman, if I could add one other comment, perhaps two other comments. I think what's really important about this—and I know I'm in agreement with all my co-panelists here—is that there's a moral and an honor component to this program, but there's also a practical application, and that is that we're continuing to do this remarkable job of cleanup across the country. Rocky Flats is closed. I would love for you to see what these workers did. It's unbelievable. But we've asked workers across the country in these other sites to literally work themselves out of a job in order to make their local communities safer and to make our country safer.

And if we don't keep these commitments to the Rocky Flats workers, then that sends a real message to workers in other spots around the country that the Federal Government may not keep those commitments, and therefore, how can we ask them to put themselves on the line day-in and day-out, because this work is dangerous. And in the end, as I mentioned, they work themselves out of a job, and then they're literally on the street.

And the second comment I want to make, that's what's worse about Rocky Flats, is we've done the job, so it's easy to go to a place which is out of sight, out of mind, and to forget about these people. That's why I'm so passionate about seeing that justice is done here.

Thank you.

Mr. HOSTETTLER. Thank you.

The Chair now recognizes the Ranking Member for questions.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I want to refer to a comment that I made earlier to sort of lay out the parameters of our problem, and that is that these are both World War II workers and those who were in the Cold War, and it is clear—and I think the Administration accepts this as a fact—that during those years, during the early years of the nuclear weapons programs, especially between the 1940's and the 1970's, some workers were not monitored, and the monitoring that was done sometimes was inadequate.

So what we face here are people who factually were working, can prove that they were exposed, but because of our technology of the time, may not have the kind of documentation that would make them in the best position. So this legislation really is to make them whole in as fair a manner as possible, fair for the worker and fair for the Governmental process.

Mr. Wamp, I would be interested in your response to language by the OMB that seems to focus on the passback being a method of cost containment. The language specifically says, "to develop options for administrative procedures that will contain the growth and the cost of benefits provided by the program." Do you agree that we need to have—to contain the growth in this instance, in the Federal Energy Employee Occupational Illness Compensation Program Act, and what would be your suggestions in working with OMB?

Mr. WAMP. This may get me in trouble, but let me just say that when the program was created, there was a lot of discussion—and I remember Senator Thompson and I had direct negotiations with the leadership of the Senate and the House at the time to try to make way for this program. At that time we were coming on the heels of the budget surplus, and there was a lot of talk about how we might, as a country, invest the surplus that we had on paper at that time. Probably wasn't a real honest assessment of the surplus, but if you trust the Government that there was a surplus, we were trying to figure out what to do with it. And this program was advocated by us as the right way to invest any surplus.

But there were discussions then that there was not going to be money in the future based on budget estimates at that time to actually pay for all those benefits. So there were actually honest conversations that this money to pay these benefits was just going to have to go against the national debt.

Why would we go forward with something like that? Because it's the only right thing to do. You had to do it. You owe compensation to the people that the Government harmed. It's like a court order. It's like a judgment, effectively.

My view with OMB is they can talk about cost containment all they want to, but what this Committee needs to do, and what this Chairman, I believe, intends to do, is make sure that the compensation is based on science, who was affected, who deserves it based on the statute, and get those benefits to them without concern of the financing of it, or how it impacts OMB's other considerations. I think that's at the heart of all this, is if they're entitled to it based on good solid science, make sure the Administration is limited and effective and accountable to the program, but make sure the benefits get to the people without regard to what it does to OMB.

I mean, in all due respect, OMB is not charged with carrying out certain law. OMB is a function of the executive branch and budgeting. But we are, and we made the choice to do the right to these workers, and the costs, frankly, are secondary consideration. Equity is primary.

Ms. JACKSON LEE. Mr. Wamp, I think the two terms that you use can be an effective tool for this Committee, judgment, court order, and relief directly to the victims. And one of the issues that I think the Chairman and myself will look at is whether the cost is more in administering the program than getting the benefits directly to the victims. And I think we all can work collectively on that.

I would just follow up with Congressman Mark Udall to tell me that the present process of the independent peer review, and sort of a tiered process under the Health and Human Services, has been—and then the Advisory Board—is this something that you're comfortable with? And a follow-up, because you mentioned, as I know all of the Members have, your constituents, do we need restrictions on the designation of the SEC? But in terms of the peer review process, are you comfortable with that? And then are you comfortable with the suggestion of putting restrictions on the SEC, which is being suggested by OMB?

Mr. MARK UDALL. Congresswoman Jackson Lee, I'm not comfortable with the restrictions, as I understand them, that are being

put on the Special Exposure Cohort. I would associate myself with the remarks of Congressman Wamp, and I'm more than willing to get in trouble with him, if that's helpful. But I do believe that this is about, as Mr. Wamp suggested, it's about the science, it's not about budget control. And my suggestion would be that the OMB abandon its plan, say this short and sweet and simple. I think it would be appropriate for our former colleague, Congressman Portman, still the U.S. Trade Rep, to announce that the plan is being abandoned, and OMB will go back to the drawing board and work with the Congress, which after all, let its will be known in 2000 as to how we wanted these veterans, these Cold War warriors, these American heroes, to be treated.

Ms. JACKSON LEE. Mr. Hastings, and then I will ask Mr. Udall of New Mexico. There is a suggestion by the OMB to have an expedited review—and I mentioned earlier that we are faced against the lack of technology that we had or lack of being able to assess these particular injuries or exposure to radiation—but an expedited review of Special Exposure Cohort applications. And they have recommended this, which I perceive to be duplicating the work of the Advisory Board that is structured under HHS. Do you have any insight on that process that they're trying to suggest? And maybe why they're trying to do so?

Mr. HASTINGS. It seems like one of the responses that we always make in Congress is another review of some sort. I mean I think there's enough data out there. It's how you collect that data and put it into place.

Now, admittedly—and you referenced this twice in your opening remarks and in the start of the questioning—in the early part of the whole process of building nuclear weapons, the emphasis clearly wasn't on recordkeeping. I mean we were—especially during the '40's. We didn't know if we were behind or not Nazi Germany, and we had to catch up. And so the recordkeeping wasn't all that good.

But I made the point in my remarks that for goodness sakes, if we can build a nuclear reactor in 13 months, certainly we can find a way in 5 years to come up with some program that's going to take care of those—and my emphasis, by the way, in my testimony is on Part E more than Part B. Part B has been fairly good, at least percentage wise in my area, but it's been very, very slow in Part E.

So maybe a review is in order, but I would just simple say, after 5 years, I think we really ought to get on with this thing. There may be data out there. Maybe the fact that you are holding hearings will prompt that.

We've spent hundreds of millions dollars on administrating this program, and yet, I think all of us, when we signed on in support of the original legislation, the expectation, as Congressman Wamp said, if there was any surpluses, that would not go to the administration, it would go to the victims. And so I'm not saying we shouldn't look at data, but I can't say—I think there's probably enough out there. Let's get on with trying to break through this and make sure the victims get compensated.

Ms. JACKSON LEE. We need to get to results. Is that what you're saying?

Mr. HASTINGS. Thank you for putting words in my mouth. I'll accept that. [Laughter.]

Ms. JACKSON LEE. In this room of harmony, we will do in the right spirit.

Congressman Udall, as your work in the Attorney General's arena and your representation of Los Alamos, one of the more well-known entities, are you concerned where we are with respect to victims, and do you have some assessment of how slow this has been going even under the present system, and that any interference by OMB at this point would do nothing more but to further delay, and to, I think, cast doubt on these brave Americans as to whether or not their country cares for them?

I think one of the suggestions was to question the objectivity of the Advisory Board. Is that where we need to be now, or do we need to be functioning on trying to render compensation to the victims?

Mr. TOM UDALL. I very much appreciate your questions and the concern of the Chairman. I think the thrust here—and my fellow panelists I think drove this home very powerfully—is the thrust should be fairness and equity, and as you said, results. That is what the law intended. If you go back and you look at the legislative history, you sense the urgency from all of the claimants. We've got to move this forward and we've got to get it done. The numbers that I gave you in my testimony show that we're not moving forward, that there's injustice out there, and that people are dying.

And the one other point that I would like to make is, you know, we talk about making people whole—and I think we tried to do as good a job as we could in the statute, but let's not forget if people were litigating these claims out in the private sector, and you take somebody away that's making a significant amount of money, and take them away from the workforce for 10 or 15 years because of an early death, you're probably talking about an award in terms of millions of dollars to the family, if it's only the family that's left, or to the claimant. And so here we've tried to approximate—and we've taken \$150,000, and we've taken medical benefits, and I think all of the claimants felt very good about that. But the old saying that justice delayed is justice denied is what applies here.

What we really need to do is try to look at what people are entitled to under the law, and see that they get this in an orderly way. And that's not happening in Los Alamos. Part of the reason is because these claims are so old, and we're talking about the '40's, as Doc said. We're talking about the failure to really understand what they were dealing with, the failure to keep records, and so we need to move forward aggressively with these Special Exposure Cohorts, and establish the dosimetry and then move along with the claims.

And we very much appreciate your interest in this issue, and look forward to working with you on it.

Ms. JACKSON LEE. Thank you very much.

Thank you very much, Mr. Chairman.

Mr. HOSTETTLER. The Chair now recognizes the gentlelady from California for 5 minutes for questioning, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman, and to our Ranking Member for holding this hearing today. I have lots of questions, and some of them have been answered with the dialogue

that I just heard between Congresswoman Jackson Lee and you, Mr. Chairman. However, I do have a few questions.

One of them is about DOE. DOE has conceded that they fought claims for workers' compensation, particularly radiation-related claims, without regards to merit. Some of the same individuals who served as expert witnesses for DOE and its contractors are now employed by the NIOSH Compensation Program, providing advice on key decisions and assessing the merits of SEC petitions. Should someone who was an expert witness opposing workers' claims at a given site be restricted from working on EEOICPA's claims or Special Cohort petitions? Who would like to answer that?

Mr. WAMP. Well, I'll say, since the contractor that was chosen happens to be from my district, that that's why the GAO report needs to be done and done quickly, is to get to the bottom of all of this, because I think that improvements can be made and efficiencies can be created, but the facts will speak for themselves. And if there is a conflict, that needs to be identified. But I do think that they're working in good faith to try to find people that understand the history and understand the program, and try to get the benefits out as quick as possible.

And I think dose reconstruction and the job that ORAU and Oak Ridge is tasked with doing, is coming along quite nicely, but I think there should be a review. Anytime, as the Committee said—I think the Chairman in his introduction—that a program is this large and benefits are this great, and management of a program is this extensive, there should be a review, there should be a GAO review. That's why we have them. And so that's what we need to do, and have it done quickly, and they will identify areas that need to be improved in efficiency and accountability, but I'm not going to make any allegations myself because I don't know. But I do know that they need oversight, and that's the arm that we have for oversight.

Thank you.

Ms. WATERS. Does anyone know whether or not it's true that these same expert witnesses are now working for DOE? I mean, is that a fact? Is that true? Anyone have that information? Mr. Udall, do you know?

[Pause.]

Mr. MARK UDALL. I'm informed, Congresswoman, that there's a gentleman, Mr. Falk, who has testified in the past in regards to the Rocky Flats Special Cohort. It's my sense that it's always better to avoid a perception of bias, and if there are ways to, of course, find the expertise, because this is a very specialized area, with people who didn't argue on the other side of this set of issues when they were involved with DOE, we would be better served. But I take into account what Congressman Wamp also suggested about the good faith intentions of the company that he mentioned.

Ms. WATERS. Thank you very much.

Mr. Chairman, that's all. I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Chairman, may I just indicate I have an amendment on the floor for port security. And there will be a second round. I may try to come back.

Thank you, gentlemen, very much for very provocative testimony. Thank you.

Mr. HOSTETTLER. Thank the gentlelady.

We'll now turn to a second rounds of questions, just have a few questions for the Chair. And that is, first of all, Congressman Udall from New Mexico, I have a question with regard to the use of data in the creation of SEC, in the support or denial of SEC petitions. When Congress enacted provisions for SECs, for Special Exposure Cohorts, did you expect that NIOSH would deny SECs for workers when there was no data or inadequate data of that individual or group of individuals' dose? And then secondly, did you expect that SECs would be denied based on dose reconstructions as a result of data from other facilities, other nuclear facilities?

Mr. TOM UDALL. Mr. Chairman, I didn't expect either one of those things. I thought that the whole creation in the law of an SEC was to get to the heart of the problem, which was in many of the older facilities where you didn't have records, to reconstruct and to get quickly to what kind of exposures we had. And I think it surprised a lot of us in looking at the way this has been approached, that there have been denials in those circumstances that you just talked about.

Mr. HOSTETTLER. And site specific information was important, as opposed to generalizing from site to site.

Mr. TOM UDALL. To use another site's information to deny—for example, to use one of Zach's Oak Ridge, or someplace, information there to deny a Los Alamos SEC, to me makes no sense. I mean, I'm not—I'm just using that as a hypothetical, but you need the information to be site specific, and that's what you've emphasized in your question. We need to move forward with these SECs, rather than have the attitude be of blocking and stopping and trying to prevent us to get to the heart of are these people entitled to this compensation, and what were their doses they received, and are they likely to be covered under the statute?

Mr. HOSTETTLER. Thank you. I have one final question dealing with the issue of equity that Mr. Wamp and others have talked about here, which is really at the heart of the purpose for these hearings and the program. And from all four of you, if you could give me perspectives from your specific locations and your specific experience. Do you think that the quality of the assistance that's being provided to claimants under the program acknowledges the importance or the contribution that the workers at your perspective plants made to our national defense? If you could just give us your own impression of that.

Mr. WAMP. Yes is the short answer. But I think that like any other major Federal Government program, the appearance is that the inefficiency and the bureaucracy is not as sympathetic to the people in the stories as they should be, and that's what we get every single day, including a letter this morning faxed to me from a friend whose family, friends, are directly affected, lost the claimant to death, waiting still to hear. Just another reminder.

But in the bureaucracy, claims were slow, process was delayed. It looks like we don't care. The truth is this program never would have been created if we didn't care, and if we're not honoring their sacrifice and their incredible patriotism.

But overall, yes, I do think so, but the Federal Government is the Federal Government. Unfortunately, it's very bureaucratic and burdensome.

Mr. HASTINGS. I would say my criticism, as I mentioned in my prepared remarks and in response to a question, is not so much with Part B but with Part E. Percentage wise of those that at least are being looked at on Part B I find okay. My criticism of this—and it's complicated. We haven't touched on the complications of it. I've learned, because I represent Hanford, that there is a strong migration of workers that work at Hanford, Oak Ridge, Savannah River, Rocky Flats, sometimes two or three times around. And at all of those sites at sometime during the time that they were in production, workers could have been exposed. And it's not just the workers that worked right in the plant. It's the workers that took care of the waste.

So it's a complicated issue. But my criticism only is, is that after 5 years, we don't seem to be making any headway on those—at least the Part E part of this program, and that concerns me. I wish I had a magic wand to tell you exactly, and to tell the Department, exactly how to do it, but the fact is, is we've spent, as I mentioned, hundreds of millions of dollars on the administration of this. Gosh, after 5 years you think you could come up with at least some sort of a template in order to look at this, and judge things accordingly. And it appears to me, at least in Part E, that that hasn't happened, notwithstanding the fact that we have transferred that part to Department of Labor from the Department of Energy.

So I'm frustrated with that part, but from my perspective on Part B, again, percentage wise of those workers that are served by that, that seems to be responding.

Mr. TOM UDALL. Mr. Chairman, if I might, I think part of your question goes to the difficulty of establishing a Special Exposure Cohort. And if you look at all of the information that needs to be compiled, you look at the health physics and all of that being a part of it, I think these average citizens are at an extreme disadvantage when it comes to be advocating for a Special Cohort. And I would just—I think it's my testimony, but I would repeat it, that we should have authorizing legislation to establish a technical assistance program for citizens, workers and families seeking to file petitions for a Special Exposure Cohort.

To me that makes a lot of sense, because you have to pull together such a significant amount of information, and you need special expertise. Many of these people are not capable of doing that, and we should give them some assistance.

And so if you look at—when you asked a question—Cold War heroes on the one hand, and all of us acted in this law, and the Congress passed it, and Secretary Richardson and President Clinton, we talked about how they were Cold War heroes, but we haven't responded like they were Cold War heroes, and I think that's my complaint here today, is that we need to try—where there are roadblocks and obstacles in this statute, to try to figure ways to move this along and bring these cases to justice.

Thank you.

Mr. MARK UDALL. I'm reluctant to try and improve on what Congressman Udall just had to say when he summarized the situation we're in, Mr. Chairman, but I'll give it my best.

And I want to just start by talking about Rocky Flats specifically. If I had known how deficient the records were going to be, and in fact were, I would have worked to have included the Rocky Flats work team in the Special Cohort group initially in the legislation that we brought forward. That's why in a follow-on effort I've introduced legislation that would create the Rocky Flats Special Cohort.

More generally to your question, there's been some spotty success. Let's be clear, here have been some improvements, particularly after this was moved to Labor. That's why all of us here at the panel and a number of others joined together to push to move this under the auspices of the Department of Labor. And of course, you can find people in my State who feel like they've been made whole, but I think on balance it's many more people who feel frustrated at best, and let down at worst.

I would just conclude with this comment. I remember traveling down to the Department of Energy, and it was, I think, in the year 2000. I might be correct here, but it was certainly during the Clinton administration, where Secretary Richardson took the very significant step of basically saying the Federal Government needs to remedy a wrong here, the Federal Government has been traveling the wrong road. And I think we were all there. There were a number of Members of the other body. It was that important to the Senate, they were there. And Secretary Richardson conducted a teleconference all over the country with workers present, both in real time, physically here in Washington, but all over the country, announcing that we were going to, as the United States, make them whole. We were acknowledging they had been harmed. We were acknowledging they were heroes.

I still remember that day like it was yesterday, and that's, I think what Congressman Udall was alluding to when we said we were going to treat them as heroes, and yet we haven't.

Again, I want to just thank you for your attention to this matter, because it's a very, very serious and important matter for all of the reasons that have been discussed here today. Thank you.

Mr. HOSTETTLER. Thank you, gentlemen. Thank you for your experience and your insight into this important issue. You made very valuable contributions to the record in this, the second of what will be a series of hearings.

I would just, for the record, advise the Subcommittee that Members will have 5 legislative days to make additions, contributions to the record.

The business before the Subcommittee being completed, without objection, we are adjourned.

[Whereupon, at 12:43 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE MAXINE WATERS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Statement
by
Congresswoman Maxine Waters
Committee on the Judiciary
Subcommittee on Immigration, Border Security, and Claims
Oversight Hearing on: The Energy Employees Occupational Illness
Compensation Program Act (Pt 3)

May 4, 2006

I commend you, Mr. Chairman and Madame Ranking Member, for holding today's hearing to continue our analysis of the Energy Employees Occupational Illness Compensation Program (EEOICPA). As I stated in prior hearings on this matter, it is of extreme importance that we – as an arm of the federal government responsible for exercising oversight – ensure that the claims and compensation processes for past and present employees of atomic weapons facilities who have been exposed to beryllium, silica, and radiation is fair, efficient, expedient, and comprehensive.

The proper operation of the EEOICPA program concerns me, not only because many claimants have died in the course of pursuing more efficient government action, but there are 20 facilities that are covered under the EEOICPA, and one of these facilities, the Laboratory of Biomedical and Environmental Sciences, was located in Los Angeles, California, which is part of my Congressional District.

The theory behind the creation and operation of the "OMB passback" – or the set of guidelines created in order to contain costs associated with the granting of new Special Exposure Cohorts (SECs), speaks to government efficiency. However, evidence such as the unexplained disappearance (or lack) of important exposure records at the Department of Energy (DOE), delays in the evaluation of SEC Petitions that fall outside the time limitation set forth in the law, and evidence that the DOE has opposed worker's compensation claims without regard to their merits give us reason to monitor and study this program more carefully. Furthermore, the fact that the latency period for certain kinds of cancers or exposure-related illnesses can end at various times only worsens the claimant's ability to receive fair and timely review of his/her claims.

The bottom line is that these people have provided a service that contributed to the safety of our nation during the Cold War and beyond. We owe them the attention and care that are expected from government in response to their needs – which are in many cases a matter of life or death.

Mr. Chairman, Madame Ranking Member, again thank you for having held this hearing. I yield back.

SAMPLE REPORT SENT TO CLAIMANTS REGARDING THEIR DOSE RECONSTRUCTION, SUBMITTED BY THE HONORABLE TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO



Submission for the Record

(Privacy Notification is on the reverse side.)
 Date: 02/21/02
 In Reply Refer to: ESH-12
 Mail Stop: E546
 Telephone: (505)667-5296
 Fax: (505)663-2052

PERSONAL INFORMATION

Los Alamos occupational radiation dosimetry information you requested is listed below:

Name	Social Security Number	Z-Number
Constituent name omitted to protect confidentiality		

EXTERNAL DOSE MEASUREMENT PERIOD	SKIN	WHOLE BODY			LENS OF EYE	EXTREMITIES
		DEEP	NEUTRON	TRITIUM		
1948	0.00	0.00	---	---	---	---
1949	0.00	0.00	---	---	---	---
1951	0.00	0.00	---	0.00	---	---
1954	0.01	---	---	0.01	---	---
1955	0.00	0.00	---	---	---	---
TOTAL (rem)	See Page 3					

INTERNAL DOSE EQUIVALENT MEASUREMENT PERIOD	CRITICAL ORGAN	NUCLIDE INVOLVED	ESTIMATE OF DOSE (rem)	METHOD OF DOSE ASSESSMENT
See Page 3				
Authorized Signature <i>David W. Lee</i>	David W. Lee ESH-12			Date 28 Feb 2002

Please address all inquiries to:

Dose Assessment
 ESH-12 Radiation Protection Services Group
 MS-E546
 Los Alamos National Laboratory
 Los Alamos, New Mexico 87545

Dosimetry information missing for: 1950, 1952, 1953

cc: File, ESH-12, MS E546
 Rev. 6-29-98 ym

Page 1 of 3

PERSONAL INFORMATION

PERSONAL INFORMATION

Name	Social Security Number	Z-Number
Name: omitted to protect confidentiality		

MEASUREMENT PERIOD	WHOLE BODY				LENS OF EYE	EXTREMITIES
	EXTERNAL DOSE	SKIN	DEEP	NEUTRON		
1956	1.34	1.21	---	---	---	---
1957	0.00	0.00	0.00	0.00	0.00	---
1958	2.03	1.75	0.00	---	---	---
1959	1.72	1.32	0.04	---	---	---
1960	0.00	0.00	0.00	---	---	---
1961	0.00	0.00	0.00	---	---	---
1962	0.00	0.00	0.00	---	---	---
1963	0.02	0.01	0.00	---	---	---
1964	0.01	0.00	0.00	---	---	---
1965	1.27	0.13	0.00	---	---	---
1966	0.00	0.00	---	---	---	---
1967	0.00	0.00	---	---	---	---
1968	0.00	0.00	0.00	---	---	---
1969	0.03	0.01	0.00	---	---	---
1970	0.00	0.00	0.00	---	---	---
1971	0.00	0.00	0.00	0.00	---	---
1972	0.00	0.00	0.00	0.00	---	---
1973	0.11	0.04	0.00	---	---	---
1974	0.00	0.00	0.00	---	---	---
1975	0.00	0.00	0.00	---	---	---
TOTAL (rem)	See Page 3					

INTERNAL DOSE EQUIVALENT

MEASUREMENT PERIOD	CRITICAL ORGAN	NUCLIDE INVOLVED	ESTIMATE OF DOSE (rem)	METHOD OF DOSE ASSESSMENT
See Page 3				

PERSONAL INFORMATION

Los Alamos PU/AM INTERNAL DOSE REPORT

FOR: name omitted Ssn Birthdate
 ZNO Pid Group Sex

INTERNAL DOSE: TOTAL CEDE (rem) 4.395
 TOTAL ANNUAL (rem/yr) 0.023 for Year ending 12/31/01

CUMULATIVE INTERNAL DOSE (IF BLANK NONE)

Cumulative dose through:	Effective whole body (rem)	Bone surfaces (rem)	Lungs (rem)	Liver (rem)	Gonads (rem)
12/31/57	0.38	0.54	2.90	0.15	0.01
12/31/58	0.66	1.22	4.86	0.33	0.01
12/31/59	0.87	2.03	6.23	0.55	0.02
12/31/60	1.05	2.95	7.26	0.79	0.03
12/31/61	1.19	3.96	8.01	1.05	0.05
12/31/62	1.32	5.03	8.58	1.32	0.06
12/31/63	1.44	6.16	9.03	1.60	0.07
12/31/64	1.55	7.33	9.38	1.89	0.09
12/31/65	1.65	8.53	9.66	2.18	0.10
12/31/66	1.75	9.74	9.90	2.47	0.12
12/31/67	1.84	10.96	10.10	2.75	0.13
12/31/68	1.94	12.19	10.27	3.04	0.15
12/31/69	2.02	13.42	10.42	3.32	0.16
12/31/70	2.11	14.64	10.56	3.59	0.18
12/31/71	2.19	15.85	10.68	3.85	0.19
12/31/72	2.27	17.06	10.80	4.11	0.21
12/31/73	2.35	18.26	10.90	4.37	0.22
12/31/74	2.43	19.45	11.00	4.61	0.24
12/31/75	2.51	20.62	11.10	4.85	0.26
12/31/76	2.58	21.78	11.20	5.08	0.27
12/31/77	2.66	22.93	11.29	5.30	0.29
12/31/78	2.73	24.06	11.38	5.52	0.30
12/31/79	2.80	25.18	11.47	5.72	0.32
12/31/80	2.87	26.28	11.56	5.93	0.34
12/31/81	2.94	27.37	11.65	6.12	0.35
12/31/82	3.01	28.44	11.75	6.31	0.37
12/31/83	3.08	29.51	11.82	6.49	0.38
12/31/84	3.14	30.56	11.91	6.67	0.40
12/31/85	3.21	31.59	11.99	6.84	0.42
12/31/86	3.27	32.61	12.06	7.00	0.43
12/31/87	3.33	33.61	12.16	7.16	0.45
12/31/88	3.40	34.60	12.25	7.31	0.46
12/31/89	3.46	35.57	12.33	7.46	0.48
12/31/90	3.52	36.53	12.41	7.60	0.50
12/31/91	3.58	37.49	12.50	7.74	0.51
12/31/92	3.64	38.42	12.58	7.88	0.53
12/31/93	3.70	39.35	12.67	8.01	0.54
12/31/94	3.76	40.26	12.75	8.13	0.56
12/31/95	3.81	41.16	12.83	8.25	0.58
12/31/96	3.87	42.05	12.92	8.37	0.59
12/31/97	3.93	42.92	13.00	8.48	0.61
12/31/98	3.98	43.78	13.09	8.59	0.62
12/31/99	4.03	44.63	13.17	8.69	0.64

Wednesday, February 20, 2002

PERSONAL INFORMATION

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IT/ : Pd 62:11 96-03-06 11:29

REP TOM UDALL

fax sent by : 15859865842

Los Alamos PU/AM INTERNAL DOSE REPORT

FOR: *name omitted* Sex Birthdate

	ZNO	Pid	Group	Sex
12/31/00	4.09	45.47	13.25	8.80
12/31/01	4.14	46.30	13.34	8.89

NUCLIDE PU-238 TOTAL CEDE (rem) 4.395 ANNUAL (rem/yr): 0.053

NUCLIDE SUMMARY INTAKE INFORMATION (IF BLANK NO INTAKES)

Intake year	Intake amount	Intake unit (Bq)	CEDE (rem)	Organ (rem)	Organ
1957	26.88	37	4.39	50.24000	bone surfaces

NUCLIDE DETAILED INTAKE INFORMATION (IF BLANK NO INTAKES) FOR all years

Intake number	Intake Date	Incident?	Intake Type	Intake Prob	Amount	CEDE (rem)	orgCEDE (rem)	Ndate	Chicq/N
1	1/1/37		ijt	1.00	26.9	4.390	50.240	51	0.54

NUCLIDE CALCULATION INFORMATION

BegDate: 84 valid urine samples from 10/19/48 to 10/15/81
 1 number of intakes Method UF3.5 ICRP30 CalcDate: 1/13/02

NUCLIDE PU-238 TOTAL CEDE (rem) 0.000 ANNUAL (rem/yr): 0.000

NUCLIDE SUMMARY INTAKE INFORMATION (IF BLANK NO INTAKES)

NUCLIDE DETAILED INTAKE INFORMATION (IF BLANK NO INTAKES) FOR all years

NUCLIDE CALCULATION INFORMATION

BegDate: 7 valid urine samples from 9/24/75 to 10/15/81
 0 No intakes Method UF3.5 ICRP30 CalcDate: 1/13/02

PERSONAL INFORMATION

Wednesday, February 20, 2002

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11/9 Pg: 08 08-03-06 11:38

REP TOM UHALL

Fax sent by: 1505965047

OFFICIAL USE ONLY

Date 3/1/50

~~CONFIDENTIAL~~

The following employee of the CMR Division is now engaging in Contaminated Operations:

Name ^{Claimant} Constituent _{Last First Middle} None & Z number _{ADW} omitted to protect confidentiality _{Initials}

Room No. All Building D.P. West Date of Entry 2/19/50

Group Tinners Group Leader Edwin McGarty (Person)

Probable exposure to: by

Probable amounts: Moderate, Exposure Eln Timmer
Day or duration

Job:

Remarks:

OFFICIAL USE ONLY

For information of the Health Physics Commission
By Am. SEC-34 1.754
by Fabrice A. Fitchell 5-3-50
(Date of review or approval)

cc: Medical Group

Form 48-100
Revised 12/21/49
DD-2-44

~~CONFIDENTIAL~~

Claimant/
Constituent Name omitted
to protect confidentiality

32
2
39 Union Avenue

Date	Period of Collection	\$/hr per 24 hr. data. From 6/1/50 to 6/30/52
10-19-48	24 hrs.	0.5
1-17-49	"	0.5
4-14-49	"	0.4
8-14-49	"	0.4
10-17-49	"	0.4
1-16-50	"	0.0
5-25-50	"	.19
7-5-50	"	.07
12-5-50	"	.16
3-13-51	"	.20
6-12-51	"	.04
9-12-51	"	.01
2-1-52	"	.07 (New Cal.)
7-3-52	"	2.0
7-28-52	"	0.3 (Recheck)

RECORD OF VISITS

CODE: RED- INDUSTRIAL VISIT BLUE - NON-INDUSTRIAL VISIT * - DICTATED NOTE

PLEASE STATE REASON FOR VISIT: HOW, WHEN AND WHERE ACCIDENT OCCURRED, DISPOSITION.

Jan. 10, 1966 8:15 AM	COMPLAINT: Cold. TREATMENT: Coricidin-D tablets. Non-Ind. M. Anderson, R.N. DP Dispensary
March 1, 1967 3:00 PM	COMPLAINT: Cold. TREATMENT: Requested and dispensed Neo-synephrine ta Non-Ind. E. Bottom, R.N. CNR Dispensary
May 15, 1967 4:25 PM	COMPLAINT: States he has a cold. TREATMENT: Neo-synephrine tabs. and Neo-synephrine spray. Non-Ind. E. Bottom, R.N. CNR Dispensary
Dec. 14, 1967 8:45 AM	Cold and sore throat. Coricidin tablets. Cepacol lozenges. Also visine eye drops for irritated eyes. Non-Ind. M. Anderson, R.N. DP Dispensary
Dec. 19, 1967 8:25 AM	Cold continues. Coricidin tablets. Neo-synephrine spray. Non-Ind. M. Anderson, R.N. DP Dispensary
Dec. 28, 1967 9:00 AM	Cold and irritated eyes. Given Coricidin and Visine eye drops. Non-Ind. H. J. Trujillo, R.N. DP Dispensary
Jan. 12, 1968 4:10 PM	Cold. Requested and given cough medicine. Non-Ind. E. Bottom, R.N. CNR Dispensary

Pg: 11/11


05-83-06 11:31

REP TOM UDALL

Fax sent by : 15059685847

“WEB SITE DISCLOSURE STATEMENT (BIOSKETCH)” OF ROGER B. FALK, EMPLOYEE OF OAK RIDGE ASSOCIATED UNIVERSITIES, SUBMITTED BY THE HONORABLE MARK UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

[Submission For
THE RECORD]

	WEB SITE DISCLOSURE STATEMENT (BIOSKETCH)	ORAU TEAM Dose Reconstruction Project for NIOSH
---	--	--

DATE COMPLETED:
4/24/06

ORAU TEAM EMPLOYEE'S NAME:
Falk, Roger B.

EMPLOYER:
Oak Ridge Associated Universities

JOB TITLE:
Dose Reconstructor - Level 00

KEY PROJECT FUNCTION:
Dose Reconstruction

WORK EXPERIENCE:
ORAU: Current position, 1998 to present.
Other:
• Dosimetrist, Health Effects Program, Rocky Flats Environmental Technology Site, Golden, Colorado, 1993-1998
• Dosimetrist, Radiological Health, Rocky Flats Plant, Golden, Colorado, 1989-1992.
• Radiation Dosimetry Manager, Rocky Flats Plant, Golden, Colorado, 1986-1989.
• Dosimetrist/Program Administrator, External and Internal Dosimetry, Rocky Flats Plant, Golden, Colorado, 1966-1986

EDUCATION AND PROFESSIONAL CERTIFICATIONS:
MS, Radiological Sciences, University of Washington, 1966
BA, Physics, Vanderbilt University, 1964

EXPERT WITNESS EXPERIENCE:
Workman's Compensation Case (J.A. Schamper), 1990, Deposition
Workman's Compensation Case (G.W. Barrie), 1998, Testimony
Expert witness depositions and testimony pertaining to radiation dosimetry records for several workman compensation cases involving Rocky Flats workers

DOE/AWE SITES WHERE A CONFLICT OF INTEREST EXISTS:
Oak Ridge Hospital
Oak Ridge Institute for Science and Education (ORISE)
Rocky Flats Plant