



January 13, 2021

Dr. Steven Markowitz, Chair
Advisory Board on Toxic Substances and
Worker Health
Queens College, Remsen Hall
65-30 Kissena Boulevard
Flushing, NY 11367

Dear Dr. Markowitz:

I am writing this letter in response to the recommendations that the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board) adopted from its public meetings on November 5-6, 2020. You attached both recommendations to your letter to Secretary Scalia, and the Department of Labor's (Department) responses to each recommendation are addressed below.

The Board adopted the following recommendation on November 5, 2020.

The Board recommends that the Department [of Labor] develop and implement exposure presumptions indicating that job categories at [Department of Energy] sites whose workers likely worked throughout their individual sites had potential exposure to all listed toxic substances at those facilities.

As the Department communicated to the Board by letter dated June 2, 2020, the assignment of toxic substance exposures to positions, such as firefighters, security guards, health physics technicians, and safety personnel, is dependent on site-specific data. The Department has provided to the Board the site profile information it requested to further assess this topic. It is the Department's position that it is inappropriate to assign such a broad classification of exposure to specific labor categories in the absence of any underlying documentary support. Accordingly, the Department does not agree with the Board's recommendation. The Department remains willing to dialog further with the Board about specific toxic substance exposures that the Department could assign to highly mobile workers at particular facilities.

The Board adopted the following recommendation on November 6, 2020.

The Board recommends that the Department develop an ongoing independent third party-based system of reasonably frequent periodic evaluation of the objectivity, quality, and consistency of both the individual claim reports and the aggregate audits of program industrial hygienists and physicians. The Board also recommends that the Department implement a periodic audit of the industrial hygiene reports and the industrial hygiene review process. The results of these evaluations and analyses should be reported to the Board in a timely and systematic fashion.

The Department agrees to implement changes to its quality control methodologies to enhance independent evaluation of the objectivity, quality, and consistency of industrial hygienist and physician reporting. Currently, the Department conducts annual accountability reviews and ongoing quality control auditing of our claim adjudication process. Moreover, the Department designed its case adjudication process around the allowance of a claimant to object to a recommended decision before the Final Adjudication Branch independently assesses the claim to finalize the recommendation. However, the Department will design additional methods of objective audit review that focus on the outputs of the industrial hygienists and contract medical consultants. For the industrial hygiene evaluations, the Department will develop an audit process, separate from the entities engaged in case adjudication, to ensure the outcomes conform to procedural, qualitative, and consistency standards. Additionally, the Department will redesign the Contract Medical Consultant review process to supplement the current reviews conducted quarterly by the Office of Workers' Compensation Program's Medical Director, once an additional Medical position is filled within that Office. This change will allow for an additional review of these reports from another medical physician and provide a higher degree of objectivity in the application of qualitative measures. The Department plans to implement these changes within the next few months, or as soon as possible after the additional physician is hired.

On behalf of the Department, the Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation, and the communities we serve, I look forward to the continued efforts of the Advisory Board.

Sincerely,

Julia K. Hearthway
Director, Office of Workers' Compensation Programs