



August 24, 2022

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:

Thank you for your letters dated June 30 and July 11, 2022, transmitting recommendations adopted by the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board) during its meeting on June 29, 2022. On behalf of Secretary of Labor Martin J. Walsh, to whom you addressed your letters, the Office of Workers' Compensation Programs (OWCP) responds to each recommendation herein.

The Board adopted the following recommendation regarding Borderline Beryllium Lymphocyte Proliferation Test (BeLPT).

The Board recommends that the Department of Labor [DOL] communicate to Congress the need for a technical amendment in the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) that will recognize that covered individuals as defined in The Act and who have three borderline beryllium lymphocyte proliferation test results, have beryllium sensitivity.

DOL Response: Since June of 2022, OWCP has been discussing this topic with staff members of the U.S. Senate Committee on Health, Education, Labor, and Pension (HELP). The Senate HELP Committee has provided OWCP the same amendatory language suggested in your recommendation, and OWCP has advised them that it would not have difficulty implementing the recommended amendment to § 7384l(8)(A) of EEOICPA if it is enacted. DOL's understanding is that no bill has been introduced yet. Should a bill be introduced, the Administration will take the Board's recommendation into account in determining its position, if any, on the bill.

The Board adopted the following recommendation on Industrial Hygiene Report Language.

The Board recommends that the Energy Employees Occupational Illness Compensation Program advise its staff and industrial hygiene contractor that claim-related industrial hygiene reports and opinions restrict comparisons of claimants' exposures to toxic substances at Department of

Energy facilities to regulatory workplace exposure standards only to cases where sufficient industrial hygiene data exist that are relevant to the claim and that support the comparisons. Comparisons of exposures to regulatory standards must describe the available industrial hygiene data and the specific regulatory limit referenced, with preference for the most current standards. In the absence of specific industrial hygiene evidence, comparisons of claimants' workplace exposures to regulatory standards lacks objective support and may be prejudicial to an appropriate resolution of the claim.

DOL Response: DOL agrees to modify how Industrial Hygienist (IH) staff characterize toxic substance exposure to eliminate reference to exposures that occurred within regulatory standards. For all cases referred to DOL IHs, they will assign a characterization of exposure that must align to the levels that exist currently within program procedure. Toxic substance characterization will continue to be informed by the professional judgment of the IH including consideration of available employee-specific employment data. DOL will prepare a written policy directive relating to this change by the end of fiscal year 2022.

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

Sincerely,

Christopher Godfrey by Nancy J Griswold (Deputy Director)
OWCP Director