

**Advisory Board on Toxic Substances and Worker Health
Recommendations – Adopted at October 17-19, 2016 Meeting**

Recommendation #1

We recommend that DEEOICP Circular 15-06, *Post-1995 Occupational Toxic Exposure Guidance*, issued on December 17, 2014, be rescinded.

Rationale

We reviewed this Circular, its subsequent EEOICPA Program Memorandum, and associated Note of Explanation. We recognize that working conditions that impact safety and health in the workplace likely improved in many Department of Energy facilities over time. We recognize that the Department of Energy took concrete steps over the past few decades through investigations, changes in working conditions and practices, and issuance of orders and guidance documents.

However, a policy that uses a single time period, 1995, to demarcate a moment after which DOE employees would be assumed that a) they would be unlikely to be significantly exposed to toxic materials, and b) potential exposures would be within regulatory standards, is faulty in several respects. First, an empirical basis for this policy is not provided. It is furthermore highly unlikely that an empirical support could be provided. It is doubtful that sufficient industrial hygiene monitoring was performed throughout the DOE complex from 1995 to the present to substantiate a broad claim that all exposures were routinely kept below existing standards. Even if such monitoring was performed periodically, it would be unlikely to accurately capture intermittent and variable work processes, including accidental exposures.

We note, as well, there are no OSHA or DOE regulations for many workplace exposures, and existing workplace standards unfortunately do not entirely protect against illness and injury. Most OSHA standards, for example, have not been updated since the 1970's. Prominent OSHA standards that have been updated, such as the asbestos standard and the recently promulgated silica standard, are explicit in declaring that working at the designated permissible exposure levels will reduce but not eliminate consequential diseases. This consensus finding would appear to be acknowledged in the last paragraph of the DEEOICP Circular, which states that "even minimal exposure" to some toxins may lead to illness. If so, then this opinion of the Circular mitigates and even contradicts its own principal conclusion, i.e., that post-1995 exposures are to be considered, as a rule, insignificant.

Recommendation #2

We recommend that the Division of Energy Employees Occupational Illness Compensation ensure that the disease exposure links identified by the sources listed in Table 3-1 of the Institute of Medicine (IOM) report, *Review of the Department of Labor's Site Exposure Matrix Database* (2013), are included in the Site Exposure Matrix database (SEM).

Rationale

The IOM provided a detailed rationale for using other information sources beyond Haz-Map for exposure-disease links and for updating the SEM with publicly available data sources developed by consensus processes that are both transparent and comprehensive. This rationale includes, but is not limited to:

- Haz-Map is developed and updated by a single expert without peer review or transparency.
- Haz-Map was developed to provide ready access for primary care physicians to exposure-disease links, and not to support a compensation system.

Consensus reports by scientific agencies that have undergone peer review represent readily available and reliable information that can be used to ensure that the exposure-disease links in SEM represent generally accepted knowledge. The sources listed by the IOM in Table 3-1 do not require DEEOIC to conduct an independent peer review of the literature.

Recommendation #3

We recommend that former workers from Department of Energy (DOE) facilities be hired to administer the Occupational Health Questionnaire.

Rationale

Important information in an occupational history originates in a description of tasks within a specific job, facility or industry. The worker may not know or recall all the hazards to which he was exposed in his/her career, but other data sources may identify, or experts will know, which exposures are associated with certain tasks. Therefore, a detailed list of tasks performed by an individual can be invaluable. In addition, an interviewer can ask about a full range of exposures, important exposure incidents, changes in exposure or protection over time, and buildings where the individual worked.

Given the complexity of the DOE sites, workers with long experience at these facilities are best positioned to help workers adequately report their tasks. Better capture and description of tasks, exposure, incidents, and buildings will allow a more complete assessment of claimant exposures.

Recommendation #4

We recommend that the Division of Energy Employees Occupational Illness Compensation (DEEOIC) establish a process whereby the industrial hygienist may interview the claimant directly.

Rationale

The Institute of Medicine recommended that the DEEOIC add the nature and extent of exposure to the Site Exposure Matrix (SEM) database. In response, DEEOIC has set up a process to attain customized employee-specific evaluations of the route and level of exposure through their new contract with Banda International group, in lieu of adding the nature and extent of exposure within the SEM. The Advisory Board agrees with establishing a process for an individualized assessment. However, as the contract with Banda is conceived, the industrial hygienists do not speak directly with the claimant but rather rely on the information in the file. For exposure, information in the file generally consists of SEM and the occupational history questionnaire, neither of which assesses intensity, frequency or duration of exposure. To complement the occupational health questionnaire and SEM, direct interview of the claimant by an industrial hygienist will in many circumstances facilitate a better understanding of exposure details.

Recommendation #5

We recommend DOL review policy teleconference notes, redact confidential information, and post the information in a publicly available database searchable by topic area.

Rationale

The policy teleconferences generate extremely useful information about case determinations and practical guidance in the form of written notes. This information would help claimants and authorized claimant representatives understand how the DEEOICP applies its policies.

While it is important to maintain the free exchange of information this internal mechanism allows, a thoughtful redaction to exclude identifiable information of claimants as well as material not broadly applicable would allow the program to post useful guidance and improve transparency.

Recommendation #6

We recommend that the Department of Labor explore the feasibility of prospectively having new case files made accessible to the claimant through a password-protected electronic portal.

Rationale

Claimants already have the right to access their records by written request, although the current system may be limited in timeliness.

Access to case files in real time would promote transparency and may offer the opportunity to decrease misunderstandings and allow claimants to offer additional information at an earlier stage in the claims process, when needed. This would assist in timely resolution of claims.

Recommendation #7

We recommend that the Department of Labor re-organize its occupational physicians into an office comparable in organizational structure to the Office of the Solicitor of the Department of Labor, with physicians organized in groups to support OSHA, MSHA, OWCP, and other units, as well as to provide overall support to the Department of Labor.

Rationale

The Board has identified the need for more substantive and consistent medical input into the development of DEEOICP procedures, policies, and practices.

The gap between the current DEEOICP and the medical community reflects serious communication issues that require in-house expertise. However, physicians and other health care professionals, similar to attorneys, face challenges when working in isolation. The Office of Occupational Medicine in OSHA is an example of how professionalism, consistency, and quality can be achieved. We believe, however, that it would be more efficient for the Department of Labor to develop an office of occupational medicine that reports directly to the Secretary and that can offer the same quality service across the Department of Labor, including for smaller units. Such an arrangement would allow cross-coverage and avoid the gaps that have been problematic with the EEOICP. Such an organizational structure would also assist with physician recruitment and retention.

Recommendation #8

We recommend that the entire case file should be made available to both the industrial hygienists and the contract medical consultants when a referral is made to either and not be restricted to the information that the claims examiner believes is relevant. The claims examiner should map the file to indicate where relevant information is believed to be.

Rationale

Claims examiners typically do not have a medical, occupational health, or industrial hygiene background. They play a key role in decision-making about many aspects of claims development and resolution, including the selection of information that is reviewed by industrial and medical experts, when referral is indicated. Claims examiners may inadvertently omit important medical and/or exposure details from the material selected for industrial and medical review and thus fail to facilitate a comprehensive and pertinent evaluation of the claim. For some claims, a more complete view of available medical and exposure information may lead to improved decision-making.

Access to complete medical and exposure information by the industrial hygiene and medical experts may serve as a second-level check on the accuracy and completeness of the Statement of Accepted Facts and the “questions to be answered.” When corrections to the Statement of Accepted Facts are made as a result of medical and industrial hygiene review, the exercise will also serve as useful feedback for the claim examiners.

Mapping the case will assist the industrial hygienist and the consulting physician find information more readily and increase the timeliness and efficiency of the claims process.