



Alliance of Nuclear Worker Advocacy Groups

June 3, 2016

Steven Markowitz, MD. Dr.Ph.
Advisory Board on Toxic Substances and Worker Health
U.S. Department of Labor, Office of Workers' Compensation Programs
Room S-3522
200 Constitution Ave. NW.
Washington, DC 20210

Subject: Department of Labor's definition of proprietary interest

Dear Dr. Markowitz:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) commends the Advisory Board on Toxic Substances and Worker Health's (ABTSWH) strong commitment to advising the Secretary of the Department of Labor (DOL) on various aspects of the implementation of the Energy Employees Occupational Illness Compensation Program (EEOICPA).

ANWAG is impressed with ABTSWH's understanding of this complex program and is confident that the board will provide the guidance needed to insure that EEOICPA is administered as Congress intended. The members of ABTSWH are highly qualified to recommend any changes to the program and that the recommendations will be based on accepted scientific principle and historical knowledge of the operations at the Department of Energy's (DOE) nuclear weapons facilities.

We understand that the charter, as it currently stands, somewhat limits ABTSWH's review of the entire program. With that in mind, we respectfully suggest that the board request DOL's legal interpretation of the term "proprietary interest".

Section 7384(l) (12) of the statute states,

12) The term "Department of Energy facility" means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or

operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had—

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services. (Emphasis added)

ANWAG has concerns that a number of facilities should be considered DOE facilities but presently are not. We are concerned that there may be claimants who have been incorrectly denied compensation simply because there is no clear, precise definition of what constitutes DOE's proprietary interest in a facility.

ANWAG and the Division of Energy Employees Occupational Illness Compensation (DEEOIC) exchanged a few letters in 2013 concerning DEEOIC's definition of a covered DOE facility. None of DEEOIC's responses clearly explained the definition of "proprietary interest". It is also interesting to note that neither the current regulations nor the proposed changes to the rules clearly define this term. ANWAG also filed a Freedom of Information Act (FOIA) request on March 18, 2016 for a memo that may provide additional details of DOL's interpretation of proprietary interest. That FOIA request has not yet been fulfilled.

ABTSWH is responsible for advising the Secretary on the Site Exposure Matrix (SEM). Deficiencies with this database have been identified by the advocates and have been brought to the board's attention. It is ANWAG's opinion that sites that currently are excluded from the program, and therefore from SEM, fall within ABTSWH's responsibilities. It is our opinion that the board should determine whether sites which should be listed in SEM are listed in SEM. And the best way for ABTSWH to determine if SEM encompasses all of the claimants from DOE facilities is to know and understand DEEOIC's definition of proprietary interest.

ANWAG applauds ABTSWH for its commitment. If you require additional information about this issue, please do not hesitate to contact the undersigned ANWAG member.

Sincerely,



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