

Request that the Advisory Board be aware of the statutory and regulatory requirements of the EEOICP Act.

1. SIGNIFICANT FACTOR.....OWCP determined that significant factor means any factor and that was determined back in 2006. “Because it is impossible to determine the extent to which any individual factor contributed to the development of cancer, OWCP has concluded that the only way to comply with the **statutory mandate in Part E is, in effect, to interpret “a significant factor” as including any factor.**”
(Federal Register /Vol. 71, No. 250/Friday, December 29, 2006/Rules and Regulations pg78523)

- a. Why are the Case Examiners sending the files to the His for “significant levels” when the Act does not require level at all?
- b. The regulations state that proof of exposure is that they employee came int contact with the toxic substance while performing work duties and that OWCP will consider the nature, frequency, and duration. Is this equivalent to level?

2. Site Exposure Matrices.....

42 USC §7384w–1. Completion of site profiles

(a) In general To the extent that the **Secretary of Labor** determines it useful and practicable, the Secretary of Labor shall direct the Director of the National Institute for Occupational Safety and Health to prepare site profiles for a Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

(b) Information The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the **production of such site profiles**, including records from the Department of Energy former worker medical screening program.

(c) Definition In this section, **the term “site profile” means an exposure assessment of a facility that identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.**

(d) Time frames The Secretary of Health and Human Services shall establish time frames for completing site profiles for those Department of Energy facilities for which a site profile has not been completed. **Not later than March 1, 2005, the Secretary of Health and Human Services shall submit to Congress a report setting forth those time frames.**

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3633], as added Pub. L. 108–375, div. C, title XXXI, §3166(c), Oct. 28, 2004, 118 Stat. 2189.)

20 CFR 231

(b) Proof of exposure to a toxic substance may be established by the submission of any appropriate document or information that is evidence that such substance was present at the facility in which the employee was employed and that the employee came into contact with

such substance. **OWCP site exposure matrices may be used to provide probative factual evidence that a particular substance was present at either a DOE facility or a RECA section 5 facility.**

The Site Exposure Matrices will be used as probative evidence in the adjudication process, unless contrary evidence is provided in the file.

- a. **Can the claimant use the Tiger team reports and environmental reports to confirm the toxic substances exposure while performing work duties?**
- b. **Since Haz-Map is no longer part of the National Institute of Health but Environmental Health Perspective is, can the claimant use the Collaborative on Health Data Base to establish a known link of a toxic substance to a health effect?**
- c. **Can a claimant submit programmatic evidence such as NIOSH chemical guide or Pub Med articles, etc. to supplement a known link of toxic substance to a health effect?**
- d. **Should the Case Examiner also look at the work process, work area, work duties, and not just the labor categories?**

3. **Specified Cancers.....(dd) Specified cancer (as defined in section 4(b) of the Radiation Exposure Compensation Act Amendments of 2000 (42 U.S.C. 2210 note) and the Act) means:**

(6) The specified diseases designated in paragraphs (dd) (2), (3), and (4) of this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

a. Rachel Pond has determined that they will not go to the National Cancer Institute to determine if other cancers should be included based on the physiological condition or conditions, names or nomenclature. **Should the claimant go to the National Cancer Institute and should the information be then accepted by EEOICP Act, if it is recognized by the National Cancer Institute?** Ex. CLL is now recognized as a leukemia; spinal cord ependymoma is a CNS cancer same as brain cancer.

4. Under Part E, the criteria or standard is
“at least as likely as not” (more than a suspicion but less than the preponderance of the evidence, <50%)”that exposure to a toxic substance”(came into contact with any material that has the **POTENTIAL** to cause illness or death because of its radioactive, chemical, or biological nature.) “at a DOE facility or a RECA section 5 facility **was a significant factor**” (any factor) “in aggravating, contributing to, or causing the illness;” (proximate causation, preexisting conditions, etc.) “AND that it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility or at a RECA section 5 facility was **related to employment** at a Department of Energy facility or at a RECA section 5 facility.”
 - a. Since the toxic substance only has to have the potential and not be definitive, is this passed on to the treating physicians and/or the Contract Medical Consultants?

- b. Does the Case Examiner still send the Statement of Accepted facts to the Contract Medical Consultants? And to the treating physicians? And to the IH?

5. In making the determination under Part E, OWCP will consider:

- (i) The nature, frequency and duration of exposure of the covered employee to the substance alleged to be toxic;
 - (ii) Evidence of the carcinogenic or pathogenic properties of the alleged toxic substance to which the employee was exposed;
 - (iii) An opinion of a qualified physician with expertise in treating, diagnosing or researching the illness claimed to be caused or aggravated by the alleged exposure; and
 - (iv) Any other evidence that OWCP determines to have demonstrated relevance to the relation between a particular toxic substance and the claimed illness.
- a. When a claimant provides documents with relevant relationship between a particular toxic substance and a claimed illness should that be then placed in the SEM or if not why it is not placed in the SEM?
 - b. What are the pathogenic properties of toxic substances? Please give examples
 - c. Is an opinion from Pub Med expert considered a qualified opinion? and should the DEEOICP consider that opinion in adjudicating the claim? Ex. Camp Lejune's toxic exposure to diluted TCE and illnesses.

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