



April 5, 2024

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 a February 7, 2024, request for information the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board) submitted to the Division of Energy Employees Illness Compensation (DEEOIC) requesting that the Program facilitate a conversation between the Board and a representative group of DEEOIC Industrial Hygienists (IHS) to seek information regarding certain aspects of their work which may be affected by Board recommendations. In addition, the Board submitted the following questions for response:

1. How they use available data and their own experience to apply the procedure manual-required exposure designations.

Response: DEEOIC IH staff use the totality of evidence available about a claim to inform judgments about the extent to which an employee had occupational exposure to toxic substances. This includes information communicated in case file documentation such as the Occupational History Questionnaire, EE-3 Employment History form, Site Exposure Matrix (SEM) search outputs, physician submissions, occupational exposure information contained in employee work records, and claimant testimonials. The IH staff then form a judgment about the nature, extent, and frequency of exposure, oftentimes without the assistance of any objective exposure monitoring data. The IH applies their own professional subject matter expertise in the best, most reasonable manner, to arrive at an estimate of toxic substance exposure. Through professional collaboration, and years of work experience handling claims, DEEOIC IH's communicate exposure information in a manner that is as accurate, consistent, and as informative as practicable given the obvious shortcomings that result from the lack of objective exposure data and the complexity of estimating exposure for employees with diverse work histories.

2. How the Board-proposed modifications to their reporting would affect their workload and decision-making. (These recommended modifications include use of a templated table to provide more details about frequency, severity and duration of specific exposures, and a requirement to specify in their reports what exposure information was found in each of the data sources cited as “reviewed”.)

Response: The addition of the Board-proposed modification about the templated table has not had a significant impact on workload, aside from the necessary screening for accuracy that occurs when reviewing IH contractor staff work products. The addition of narrative content about the “reviewed” data sources has required additional effort on the part of the individual IH’s preparing reports but it has not hindered the timely completion of reports.

3. How they make the determination that an exposure was incidental, or it was more than incidental but less than significant.

Response: A determination of the level of likely exposure is an interpretive judgment made by the assigned IH, based on the examination of the totality of the evidence available and application of their professional expert judgment. Several factors are considered when determining the extent of incidental vs. significant exposure, including the following:

- Involvement of a toxic substance associated with the specific work process or task performed by the employee
- Availability of objective industrial hygiene or occupational safety and health monitoring data
- Understanding of the likely use of materials and the type of exposure that could result from such usage
- Proximity to a substance, or its presence within a certain location
- Contextual information provided by the claimant about their potential contact with certain materials and the consistency of that information with other claim evidence
- Temporal information about changes in industrial application of toxic substances, or the evolution of work settings or practices
- Likelihood of protective measures, occupational safety protocols, or other health hazard avoidance measures
- Information about the employee’s training or certification to work with particular material
- Physical or chemical properties of the material under review, including potential routes of exposure (inhalation, ingesting, external)
- Evidence of unique or unusual circumstances of exposure, including involvement with incidents involving certain toxic substances

4. How they apply the exposure determinations to substances where the harm is not based on a dose/response toxicant model but rather allergy or sensitization.

Response: DEEOIC IH's characterization of toxic substance exposure is informed by the features of the case evidence regarding the employee's occupational contact with a particular substance and the IH's professional judgment about the extent of that exposure. The illness claimed, or any dose/response relationship that may exist, is not a factor that influences the characterization of exposure. Whether evidence supports the satisfaction of the Part E causation standard is a question reserved for a qualified physician to address.

5. Given the differences between how IH professionals and medical professionals may understand the word "significant" as applied to an exposure in an IH report, what are their thoughts about improving the IH report format so that there is not an inadvertent interpretation of the word as applied to causation possibility.

Response: While the DEEOIC IH's use specific terminology in characterizing exposure, it is within the discretion of the evaluating physician to decide if the evidence is sufficient to link the estimated level of exposure to a claimed illness. Effort is taken in IH reports to explain certain concepts and definitions, including the meaning of "significance." Whether a physician applies such guidance accurately in forming a judgment of causation is difficult to ascertain; however, it is unlikely that additional explanatory or definitional language within an IH report would result in improved physician understanding of significant exposure.

Regarding the request for the program to facilitate a conversation between the Board and a representative group of DEEOIC IHs to seek information regarding certain aspects of their work which may be affected by Board recommendations, DEEOIC would be willing to consider such a request if a clear framework for such a discussion could be agreed upon beforehand. Such a framework should include an agreement to discuss pre-submitted questions or lines of inquiry about claim situations involving exposure characterization.

On behalf of the Department and the communities we serve, I look forward to the continued efforts of the Board.

Sincerely,

John Vance  
Branch Chief,  
Branch of Policy, Regulations, and Procedures  
DEEOIC