

Faye Vlieger

May 10, 2022

Worker Advocate, Former Hanford Worker & Former Member of the ABTSWH

Public Comments for ABTSWH Meeting held on May 10, 2022

ABTSWH Chairmen Dr. Markowitz

Members of the Board

Director Pond

Policy Branch Chief John Vance

I appreciate the opportunity to present my comments today.

First of all I want to thank the Chairman and all of the Board members for their diligence and continued service to the current and former nuclear weapons workers. As a former board member I am well aware of the time and effort these positions require. If you have submitted a request to continue in your position I salute your dedication.

I want to focus my comments and suggestions today on the continued false statements, and assumptions regarding toxic exposures at DOE sites, and the EEOICP “Post mid-1990s” toxic exposure policy guidance.

Since the issuance of EEOICP Circular 15-06 on December 17, 2014, a fallacy of safety and absence of toxic exposures has pervaded the EEOICP leadership and claims processing guidance. A memorandum in support of the circular was created and signed by John Vance on February 20, 2015. The supporting documents for this memorandum were not released to the public.

DOL rescinded Circular 15-06 on February 2, 2017, but the language of Circular 15-06 appeared in the Procedure Manual, referral documents to Contract Medical Consultants, Industrial Hygienists, and used in claims decision documents.

The recent revision of the “Post mid-1990s” exposure language in claims decisions perpetuates the fallacy of safety at DOE sites. Terrie Barrie of ANWAG received a response to a FOIA regarding the language change in which John Vance, Chief of the Policy Branch, wrote in an email dated February 18, 2022:

*“It is additional information that a physician may consider when weighing information about how the IH’s characterize exposures after the mid-1990s that did not exceed regulatory standards.”*

Mr. Vance refers any questions to Jeffery Kotsch.

I have included the FOIA response below:

**Novack, Joshua - OWCP**

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**From:** Vance, John - OWCP  
**Sent:** Friday, February 18, 2022 1:16 PM  
**To:** Long, Christy A - OWCP; Prindle, Annette M - OWCP; Williams, Cara C - OWCP; O'Hare, Gerard - OWCP  
**Cc:** Pond, Rachel - OWCP; Pennington, Douglas - OWCP; Kotsch, Jeffrey - OWCP; Levitt, David - OWCP; Hood, George E - OWCP  
**Subject:** New Language for Within Existing Regulatory Standards for IH Reviews

Just to alert you to something, there is new language that is now being added to IH exposure profiles that provides more information on the meaning of "within regulatory standards." This new language now appears in the Conclusion section of the IH reports. See below (highlighted) for the new content. It is additional information that a physician may consider when weighing information about how the IH's characterize exposures after the mid-1990s that did not exceed regularly standards. CEs & HRs can expect to see this language in relevant IH referral reports moving forward. If you have any questions about this, please reach out to Jeff Kotsch. Thanks.

NOTE: The first paragraph below would be inserted into the paragraphs for after mid-1990 exposure assessments. The footnote would provide additional details.

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There is no evidence in the case file indicating that existing regulatory standards were exceeded. The following information, which was included with the IH referral, was reviewed: (Here we'll list specific documents, e.g., OHQ, EE-3, physician's letter, IH Reports (from SRS or RFP), SEM runs, IH monitoring data, etc.). "Within existing regulatory standards" is understood to mean that nearly all workers may be repeatedly exposed, day after day, for a working lifetime without adverse effects<sup>1</sup>.

Footnote:

<sup>1</sup>Regarding workplace regulatory standards, DOE historically has not adhered to the OSHA Permissible Exposure Limits or PELs, but rather has followed the more restrictive (in almost all cases) American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value-Time Weighted Average levels (TLV-TWA). The 2021 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices document, defines a TLV-TWA as: "The TWA concentration for a conventional 8-hour workday and a 40-hour workweek, to which it is believed that nearly all workers may be repeatedly exposed, day after day, for a working lifetime without adverse effects."

It is apparent that EEIOCP leadership is still clinging to the erroneous idea that workers have been safe at DOE sites after September 30, 1995 just because DOE said so.

There are a number of items that factor into the fallacy of safety at DOE sites, and that have been propagated by EEOICP:

1. DOE did in fact post Order 440.1, Worker Protection Management for DOE Federal and Contractor Employees on September 30, 1995, but a robust DOE Headquarters inspection program for compliance has not been demonstrated, or documented in EEOICP's references. While an order may have been released it does mean it was adopted, effective or enforced.

<https://www.directives.doe.gov/directives-documents/400-series/0440.1-BOrder/@@images/file>

2. DOE released an "Implementation Guide" to DOE G 440.1-3, for Order 440.1 on March 30, 1998. There is always a period of time to implement any order and then inspect to ensure compliance. The release date of this guide shows that DOE Order 440.1 was not fully in force.

[https://digital.library.unt.edu/ark:/67531/metadc699304/m2/1/high\\_res\\_d/587960.pdf](https://digital.library.unt.edu/ark:/67531/metadc699304/m2/1/high_res_d/587960.pdf)

3. The insistence by EEOICP that workers produce exposure evidence, such as monitoring records, when they disagree with the SEM, and IH and CMC opinions of insufficient toxic exposure.

If any individual worker monitoring was done the records are not available to the workers through the DOL Document Acquisition Request (DAR) because they are not in their individual records. Unless an accident was publically documented off of a DOE site, or to DOE Headquarters, the exposure records were historically filed by the contractor under files obscure to the worker and are very expensive to acquire through a FOIA.

I want to point out that EEOICP does not request any of these contractor based files in the DAR. It is unclear if the IH or CMC have access to these records. To date, in my experience, they have never been cited by any IH, CMC or claims examiner.

4. The use of TWA/TLV as the basis from ACGIH to place a sense of worker safety from excessive toxic exposures needs to be dissected. In researching the base documents for TWA and TLV documents the ACGIH history webpage states:

*"Undoubtedly the best known of ACGIH's activities, the Threshold Limit Values for Chemical Substances (TLV-CS) Committee was established in 1941. This group was charged with investigating, recommending, and annually reviewing exposure limits for chemical substances. It became a standing committee in 1944. Two years later, the organization adopted its first list of 148 exposure limits, then referred to as Maximum Allowable Concentrations. The term "Threshold Limit Values (TLVs)" was introduced in 1956. The first edition of Documentation of the Threshold Limit Values was published in 1962 and is now in its seventh edition. Today's list of TLVs includes over 700 chemical substances and physical agents, and more than 50 Biological Exposure Indices (BEIs) for selected chemicals."* <https://www.acgih.org/about/about-us/history/>

There is a no evidence to support that the TLV provides adequate safe exposure levels for toxic exposure to the thousands of unstudied chemicals. There is scant to no evidence that prolonged or constant low level exposure to any chemical is safe.

There is no evidence, provided by DOE, to show which chemicals were adequately monitored across all of the DOE complexes by date, concentration, or duration. The ACGIH site noted above only currently has only 700 chemical substances and physical agents with TLVs.

The footnote shown above, from the new language inserted by EEOICP, cites a 2021 dated ACGIH document, and not the historical basis for a “Post mid-1990s” criteria.

5. EEOICP needs to be clear that monitoring and exposure criteria have changed over time. Historically if no danger was perceived then monitoring was not performed. Therefore if a toxic substance was considered to be present at harmful levels after a workers employment term the current standards cited by EEOICP as protective are moot.
6. As a former Hanford worker I can attest to the fact that I was trained between 2001 and 2003 to NIOSH/OSHA standards. I am not saying we were actually monitored to these standards, only that we were trained to them. I was surprised to find that DOE workers were not covered by NIOSH/OSHA protective standards and rules after my chemical exposure accident on June 13, 2002. Nevertheless the training did not change.

For a statement to be correct it must be based in facts. To date EEOICP has not provided the basis documents which informed their opinion concerning “Post mid-1990s” exposure criteria.

As I have explained in my comments merely citing a document as protective to the workers does mean that it was practiced, nor does it show the anecdotal evidence to support it.

In order to correct the lack of evidence to support the “Post mid-1990s” exposure criteria EEOICP needs to initiate the collection of data from DOE and other sites that demonstrate adequate monitoring of workers for all harmful chemicals at DOE sites, and inspection reports that show compliance. I realize this is an enormous task which may ultimately prove impossible.

There is a DOE program that collects accident and incident records across DOE sites called CAIRS that could be queried.

<https://www.energy.gov/ehss/computerized-accident-incident-reporting-system>

Accident and Incident records as well as industrial injury claims, by state, against DOE sites with worker PPI removed are also available and could be requested.

ABTSWH Board members are aware of toxic exposures happening at DOE sites. They can help identify useful records.

The expertise of the ABTSWH should not be ignored or dismissed simply because it may not match what EEOICP policy states. Use the opinions of the Board members to form methods to find necessary scientific and exposure records.

The ABTSWH has requested a contractor to help sift through large amounts of data. If that request is approved this problem could be settled.

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In lieu of these data collection proposals EEOICP should remove the “Post mid-1990s” language and create a toxic exposure presumption that states “Records of adequate toxic exposure monitoring are unavailable for EEOICP workers.”

Thank you for the time to present my comments today.

Faye Vlieger  
Worker Advocate