



March 26, 2020

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 in response to your January 27, 2020, letter to the Department of Labor regarding the recommendation made by the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board) at its November 20-21, 2019 public meeting. The Department appreciates the dedication and expertise the Advisory Board provides to the Energy Employees Occupational Illness Compensation Program and its stakeholders.

The Advisory Board has recommended that the Department, as part of the Site Exposure Matrices (SEM), identify job categories at Department of Energy (DOE) sites that likely have worked throughout the applicable sites and would have had potential exposure to many or all listed toxic substances at those facilities. The rationale the Advisory Board provides is that “a limited number of job titles at Department of Energy sites have been associated with duties that likely require on a routine basis that they visit and work in many, if not most, buildings and locations within a DOE site.” The Advisory Board provides examples of such positions and recommends that the Department “modify the SEM to identify a full list of site-wide job titles and link them to many, if not all, of the toxic chemicals to which they may have been exposed, or were used, at the DOE site where they worked.” No additional references or scientific rationale were included with this recommendation.

The SEM database is compiled based on documents and information obtained from various sources, including specific records from DOE. Each toxic substance and job category that is identified in the SEM is based on specific data establishing that a particular job category was at a given DOE site, and that specific toxic substances related to those job categories were at the site. As such, the Department does not make broad determinations across DOE facilities about toxic substances or job categories. The Department relies on objective data that supports each and every piece of information that is entered into the SEM database, and we are not aware of any specific, objective data that would support linking a set of job categories to any or all toxic substances across all sites.

In addition, when a claimant indicates that the employee worked in one of the categories that the Board references (*e.g.*, a guard or a firefighter), the Department develops the case on an individual basis to determine, factually, the exact duties the employee was involved with at the claimed DOE facility. Once all information is gathered (from the Occupational History Questionnaire, DOE records, etc.), the Department may refer the case to an industrial hygienist to determine the potential individual exposures based on a proper evidentiary foundation.

Therefore, in the absence of any data or objective evidence provided in support of the Advisory Board's recommendation, the Department must reject this recommendation. If the Advisory Board wishes to provide such evidence and rationale (per instructions in the Deputy Secretary's letter of December 30, 2019), they may submit it along with a new recommendation.

On behalf of the Department, the Office of Workers' Compensation Programs, the Energy program, and the communities we service, I look forward to the continued efforts of the Advisory Board.

Sincerely,

Julia K. Hearthway
Director
Office of Workers' Compensation Programs