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ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

March 27, 2002

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DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable Spencer Abraham
Secretary
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Secretary Abraham:


We are writing to you with respect to the Department of Energy's ("DOE") implementation of Subtitle D of the Energy Employees Occupational Illness Compensation Program (EEOICP), created by Title XXXVI of the National Defense Authorization Act for Fiscal Year 2001 (P.L. 106-398).

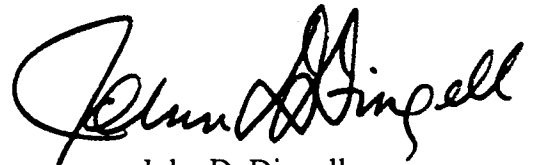
As you know, Subtitle D of EEOICP authorizes DOE to provide assistance to DOE contractor employees filing state worker compensation claims through the use of a physicians' panel appointed by the Secretary of Health and Human Services. Section 3661(e)(3) provides that after a determination by the physicians' panel that an applicant's disease arose out of and in the course of employment at a DOE facility, DOE shall assist the applicant in filing for compensation with the appropriate state workers' compensation system. Additionally, DOE is prohibited from contesting the employee's claim, and is required to direct its contractors not to contest the claim. Further, DOE is prohibited from reimbursing a contractor's legal cost of contesting a claim previously approved by the physicians' panel.

Unfortunately, some 17 months after the passage of Subtitle D program, DOE has not issued a final rule implementing this program. Claimants are understandably impatient, particularly those claimants who have suffered years of adverse health affects due to workplace exposures. In order to obtain a better understanding of these matters, we are requesting that, pursuant to Rules X and XI of the U.S. House of Representatives, you provide responses to the attached list of questions regarding the status of the Subtitle D program, the disposition of the final rule implementing the program, and the status of any applications filed requesting assistance.

If you have any questions regarding this matter, please have a member of your staff contact Mr. Dwight Cates, of the Committee staff, at (202) 226-2424. Thank you for your cooperation in this matter.

Sincerely,


W.J. "Billy" Tauzin
Chairman



John D. Dingell
Ranking Member


Ed Whitfield


Ted Strickland


Charlie Norwood


Bart Gordon


Heather Wilson


Dianna DeGette


Ed Bryant

Attachment

- 1) What is the status of the DOE program for assistance with state claims? How many claims for assistance has DOE received? What has DOE done with the claims it has received? Has it verified employment, obtained exposure records, and what have claimants been told who have submitted requests for assistance. Please provide the Committee with copies of the assistance form and a sample response letter.
- 2) Which provisions of Subtitle D have been effectuated, and what is the reason for the extended delay in implementing this program?
- 3) What is the status of the physicians' panel? Has National Institute of Occupational Safety and Health ("NIOSH") submitted the recommended candidates for the physicians' panel to DOE? When was this accomplished? Are there provisions to prevent DOE from selecting physicians for the panel if they have an actual or appearance of a conflict of interest?
- 4) What is the status of DOE's physicians' panel regulations? DOE received strong opposition to its September 2001 draft rule. What was the character of the objections, who raised them, and why? How is DOE implementing the guidance provided in Section 3151 to the Conference Report for the FY 2002 Defense Authorization Act? When will the rule be issued? Has it been sent to OMB for review?
- 5) Can Subtitle D be implemented without DOE amending its contracts with its prime contractors and subcontractors? If changes are going to have to be made, please provide a copy of the proposed standardized contract language, if it has been developed?
- 6) Does the success of this "assistance" program depend on contractors and subcontractors being self-insured for workers' compensation? Are all DOE prime contractors and subcontractors self-insured for workers' compensation? Please provide a list of all contractors and subcontractors that would be covered under subtitle D, and whether they are self-insured or procure private contracts for insurance.
- 7) Can Subtitle D be implemented where contractors have purchased contracts with private insurers? The DOE's Worker Advocacy Advisory Committee recommended that DOE direct its prime contractors to pay claims on behalf of insurers and hold the insurers harmless. Is this a workable option? If not, why not? Is there a better approach and does this have the cooperation of the insurers?
- 8) Has DOE contacted the insurance industry to arrange for the establishment of a payer where sites are closed and there is no longer any employer present? What approach will DOE follow in those cases (i.e., Iowa Army Ammunition Facility) where there is no DOE contractor remaining?

- 9) What are the estimated five-year budget estimates if DOE implements Subtitle D by directing contractors to waive all objections and employer defenses when the physicians' panel finds causation? Is the magnitude of these costs significant enough to compete with clean-up program costs or defense program costs? Has DOE developed a strategy for funding these worker compensation claims?
- 10) Has DOE entered into a Memorandum of Understanding with National Institutes of Occupational Safety and Health (NIOSH) to provide information that will be needed to reconstruct or estimate radiation dose? What information is DOE willing to turn over? What information is DOE reluctant or unwilling to provide which NIOSH has asked for? How will the information search and retrieval costs be covered? If the MOU is not complete, how soon will this be concluded?
- 11) How effective has DOE been in carrying out employment verification for those compensation claims filed with the Department of Labor ("DOL")? Is DOE providing the employment verification within the agreed upon 60 day window in all cases? On average how long is DOE taking to verify employment, and what percentage of the claims are verified in the 60 day time window? What percentage are verified in 90 days, and what percentage are verified after 90 days? Are certain DOE locations completing employment verifications within 60 days and others taking far longer than 60 days (i.e., how long does Hanford take versus Rocky Flats versus Los Alamos)?
- 12) Has DOE hired a permanent director for the Office of Worker Advocacy? Describe the staffing and funding of the Office of Worker Advocacy. Is the staffing and funding of this office sufficient to carry out Subtitle D and its other responsibilities?
- 13) Please itemize how the FY 2001 appropriations of \$15 million for the Office of Worker Advocacy was expended (i.e., staff, contracting for specific services, resource centers, advisory committee) has DOE expended appropriations for the Office of Worker Advocacy for FY2001? Is there any carryover for FY 2002? Are there sufficient funds for this Office to carry out its mission in FY 2002? Please explain the reason for the \$1 million increase in the FY 2003 budget request to \$16 million? Is this sufficient to cover the costs of operating the physicians' panel?
- 14) What is the status of the Worker Advocacy Advisory Committee at DOE? What formal recommendations were made by the Worker Advocacy Advisory Committee to DOE with respect to its program? Has the DOE responded to their specific recommendations? How have these been incorporated or otherwise addressed?
- 15) Have the Memoranda of Agreements (MOA) authorized under EEOICPA been developed with States? Can the Subtitle D program function effectively without a State agreement? Please provide copies of MOAs with states that have been drafted so far, if any.

- 16) What steps is DOE taking to ensure that the MOAs with the States do not require adherence to restrictive administrative requirements that will act as a bar to award of an otherwise meritorious claim (i.e., a claim for which the physicians' panel has determined that exposure to toxic substances at a DOE facility caused or contributed to the claimant's illness)?
- 17) Will all states that will be involved in this program honor worker compensation claims if contractors or subcontractors waive their objections to all aspects of a worker comp claim at the direction of the DOE? Have any states indicated that they will not accept and pay claims if a waiver of objections has been granted by the contractor or subcontractor?
- 18) Have certain DOE contractors or states requested to be exempted from the Subtitle D program. If so, will DOE allow certain contractors (both not-for-profit and for-profit contractors) to be exempted from Subtitle D?
- 19) Are there aspects of certain state workers' compensation systems which make the implementation of Title D difficult or unworkable, and if so, what aspects and in which states?
- 20) What steps, if any, is DOE taking to ensure that claimants who receive an affirmative physicians' panel determination are not denied benefits due to procedural defenses such as a state's statutes of limitations or maximum latency periods for occupational diseases?
- 21) In the case of the privatization of USEC, what steps is DOE taking to ensure that USEC employees who worked at the DOE's uranium enrichment plants are going to be covered under Subtitle D? What arrangement has DOE made, or is planning to make, with USEC to assure that USEC will supply information needed to process claims for current and former employees who worked at the DOE sites in Portsmouth, Ohio and Paducah, Kentucky? What agreements, if any, has DOE obtained from USEC for their commitment not contest those claims which are found to be meritorious by the Physicians' Panel? Does DOE have the capacity--through its various contracts with USEC--to assure that USEC will abide by the physicians' panel determinations? Have cost reimbursement arrangements been made yet?
- 22) In light of the fact that four agencies have responsibilities under the EEOICPA, would claimants be better served if there were a program-wide ombudsman or claimant advocate?