ALLIANCE OF NUCLEAR WORKER ADVOCACY GROUPS

March 9, 2010

NIOSH Docket Office
Mailstop C-34
Robert A. Taft Lab
4676 Columbia Parkway
Cincinnati, OH 45226

Re: Docket Number NIOSH-194.

To Whom It May Concern:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) is thankful for the opportunity to provide comments to assist the National Institute for Occupational Safety and Health's (NIOSH) ten-year review of the dose reconstruction/special exposure cohort program required under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA) administered by the Office of Compensation and Analysis Support (OCAS). This letter will summarize the problems ANWAG has encountered with the overall program, with limited examples cited. Individual advocates will supply site specific examples under separate letters, if they choose.

Conflicts of Interest

ANWAG repeatedly informed NIOSH and the Board regarding conflicts of interest within the program. NIOSH employed former managers of some facilities' dosimetry programs as site experts and sometimes as authors of the technical basis documents used to reconstruct dose. This was done for the Rocky Flats, the Pantex Plant, and the Paducah facilities, and, even more recently with the Santa Susana Field Laboratory. When the advocates pointed out the blatant conflicts, our concerns fell on deaf ears. In contrast, worker testimony and oral history were often discounted or ignored by NIOSH and referred to as "hearsay," even when sworn affidavits were produced. Many times workers who had never met each other or worked together told the same stories.

On August 21, 2008, ANWAG sent the enclosed letter to then-Director of the Center for Disease Control, Julie Louise Gerberding, strenuously objecting to the appointment of Mr. Ted Katz as the Designated Federal Official (DFO) for the Advisory Board on Radiation and Worker Health. Mr. Katz was responsible for propagating the final rules to determine the Probability of Causation and implementing the Special Exposure Cohort petition process. This concern, too, has been ignored by NIOSH, as Mr. Katz remains the DFO.

ANWAG also submitted the enclosed letter on February 23, 2009, to the Department of Health and Human Services' Acting General Counsel and Inspector General relaying our concerns of the conflicts of interest within the Board itself. To date, neither office has yet to respond to these concerns.

Missed Information

NIOSH contractor, the Oak Ridge Associated Universities (ORAU), is responsible for searching the Department of Energy's documents necessary to write the technical bulletins used in dose reconstruction. ANWAG feels that ORAU has a substandard performance for this contract requirement. ANWAG understands that some important facts can be missed or overlooked. However, it is the number of issues missed by ORAU, as found by the Board's contractor, Sanford Cohen and Associates (SC & A), that concerns us. We have attached a sampling of issues SC & A found lacking in NIOSH's site profiles for a few of the facilities.

The Department of Energy during the 1990's sent out "Tiger Teams" to the facilities to audit their safety and dosimetry protocols and production practices. The Tiger Teams found areas of deficiencies present at every facility. However, the Tiger Team reports, by and large, have been ignored by NIOSH. One example is the Santa Susana Field Lab; another example is the Pantex Plant. The SEC petitioner submitted a document from the Tiger Team report, Section 4-125, which stated that Santa Susana Field Lab had no internal dosimetry program in place. Many Pantex workers have cited the 1990 Tiger Team Report on Pantex in which many inadequacies were found in the radiation safety program that was virtually non-existent at that time. NIOSH has either ignored this information or discounted it. In a meeting in Amarillo, TX, Mark Rohlfes went so far as to say that he/they were not required to do research and that they were not medical experts. All that is required by NIOSH is to "crunch the numbers."

It is unfathomable for NIOSH to ignore the Tiger Team findings when attempting to develop dose reconstruction procedures. Most of the SEC petitions were filed to cover workers employed prior to the Tiger Team investigations. Consideration of any SEC petition without including a thorough review of the DOE Tiger Team reports from the related time periods is unconscionable. *Every* valid record should be considered in the evaluation of the SEC petitions. *Every* oral history presented by the workers, whether it is submitted during the public comments at Board meetings or during the dose reconstruction interviews, must be given the same credence as those given to the site experts chose to interview.

Daniel W. McKeel, Jr., MD., states, in the enclosed comments from Southern IL Nuclear Workers (SINEW), states, "Identifying site profiles as 'living' documents is often an excuse for this erratic method of capturing key data. Large chunks of site information are often not gathered until an SEC petition is filed. Thus the site profiles used for many DR differ significantly in content from the site profile considered for assessing NIOSH SEC recommendations." The ANWAG members concur with Dr. McKeel's assessment of the problems associated with NIOSH's program.

Independence of the Board and its contractor

It has become evident that NIOSH considers that SC&A is their contractor – someone hired to do NIOSH's bidding. We are sure that you are aware that SC&A is the Board's contractor. The Board, by statute, is an independent body of advisors. Therefore, its contractor must also be independent if there is to be honest, fair, and unbiased investigations by SC&A, at the direction of the Board. NIOSH's role with the Board and SC&A is strictly one of administration of the contract. The independence of SC&A

must be recognized and understood by NIOSH and its representatives. SC&A must be able to approach and talk with workers with the assurance that the information they gather is protected.

Surrogate Data

ANWAG continues to oppose the use of surrogate data to reconstruct dose. This usage is in direct conflict of the intent of the legislation. We agree with Board member, Dr. Lemen's statement that the use of surrogate data in a compensation program is "absurd."

In conclusion we ask that the review of the program will:

- Immediately assign a new DFO who is knowledgeable about the program but in no way is or has been associated with it.
- Review all technical documents that were authored or contributed to by a person who was responsible for the dosimetry department at a site. Any site profile that was a **conflict of interest** with the contributors shall be deemed null and void and SEC awarded to these sites.
- Review all public comments to determine if workers or worker advocates provided NIOSH with oral history or documents that were not reflected in NIOSH's technical documents.
- Instruct NIOSH that the only role they have with the Board and SC & A's contract is to administer it, not to place unwarranted restrictions that will undermine the independent oversight of NIOSH's work. Caution NIOSH that personal vendetta against SC&A employees and/or petitioners will not be tolerated. This behavior is quite evident in the Pantex petition.

ANWAG asks for fair treatment and fair evaluation of all SEC petitions, past and present, and to include consideration of all available information and records. In addition to this, we ask for fair treatment of workers and acceptance of the information they have shared or will share in the future. In most instances, the only real way to evaluate earlier periods of time is through worker histories. Historical records often were not kept or have been destroyed.

We offer you our assistance in correcting the many problems that are now associated with the EEOICPA claims program and the SEC petition process. We want to be a part of the solution.

Sincerely,

Sarah D Ray

Sarah D. Ray
For ANWAG members
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ALLIANCE OF NUCLEAR WORKER ADVOCACY GROUPS

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Dr. Maureen Merritt 505-455-0550
Southern Illinois Nuclear Workers
Dr. Dan McKeel 573-323-8897

February 23, 2009

The Honorable David Cade
Acting General Counsel
US Department of Health and Human Services
Office of the General Counsel
Services
200 Independence Avenue, S.W.

Room 713-F
Washington, D.C. 20201

The Honorable Daniel R. Levinson
Office of the Inspector General
Office of Public Affairs
Department of Health and Human

Room 5541, Cohen Building

330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Cade and Mr. Levinson:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) has monitored the implementation of the Energy Employees Occupational Illness Compensation Act, as amended (EEOICPA) since its inception. The National Institute of Occupational Safety and Health (NIOSH) Office of Compensation and Analysis Support (OCAS) is responsible for developing technical documents necessary to reconstruct radiation dose and evaluate petitions submitted for facilities to be included in the Special Exposure Cohort. NIOSH is also responsible for submitting recommendations to the President for people to serve on the Advisory Board on Radiation and Worker Health (the Board). The Board is required, by law, to advise the President on "...the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program..."

For many years, ANWAG members have had concerns with the make-up of the Board. Sheldon Samuels, Special Exposure Cohort (SEC) petitioner for the Pantex workers stated in his letter, dated August 20, 2008 to Mr. Larry Elliott, Director of OCAS,

"Conflicts of interest do not necessarily imply personal dishonesty - conflicts of interest reduce objectivity and justify public distrust!"

ANWAG respectfully requests that you investigate the Board members' conflict of interest statements and determine if they are in compliance with the duties required of the Board. Specifically, ANWAG members have serious concerns with the following Board members:

Dr. John Poston. According to the Las Vegas Review Journal article, "Compensation Board's credibility questioned", dated February 26, 2007, (http://www.reviewjournal.com/lvrj_home/2007/Feb-26-Mon-2007/news/12784130.html), a waiver allows Dr. Poston to serve on the Board. However the Conflict of Interest statement posted on NIOSH's website reveals that his son, John W. Poston, Jr., conducts dose reconstruction for NIOSH, and that his daughter, Martha Poston-Brown, once worked as a dose reconstructor in the program. Therefore, we feel that Dr. Poston's conflict of interest disqualifies him from not only participating in the Board's Dose Reconstruction Working Group, but should prevent him serving as a Board member. The purpose of an Independent Board is to advise the President on the scientific validity of the dose reconstruction process.

Dr. James Lockey. Dr. Lockey's Conflict of Interest Statement states there is a potential conflict with the Portsmouth and Fernald Sites. However, the waiver fails to state that Dr. Lockey was a paid Department of Energy (DOE) expert witness who defended DOE in a lawsuit brought by the Fernald residents. It appears to us that Dr. Lockey has significant potential to be biased towards DOE's management of the facilities. This potential bias should disqualify him as a member of the Board.

In addition, ANWAG requests that you determine the conflict of interest with NIOSH's contract with the Oak Ridge Associated Universities (ORAU) to perform dose reconstruction, develop technical documents used in dose reconstruction and evaluate SEC petitions. It is common knowledge among the claimants, advocates and SEC petitioners that ORAU's primary purpose is to perform duties as directed by the Department of Energy (DOE). Prior to the enactment of EEOICPA, ORAU was responsible for "design of exposure monitoring systems, program evaluation, and epidemiological analysis of the records generated," (Sheldon Samuels, August 20, 2008). The conflict ANWAG perceives is the "fox guarding the henhouse" syndrome. ORAU, as an agent of DOE, is responsible for determining dose from the monitoring systems they set up. This is hardly the independent review the claimants and advocates expect and Congress intended.

Lastly, while this falls under a broader concern of appropriate implementation of the law, ANWAG wishes to raise the problem with the qualifications of some of the Board

members. EEOICPA was enacted because DOE failed to adequately protect their workers. In fact DOE reimbursed their contractors to fight workers compensation claims. DOE is "on trial" under the dose reconstruction and SEC petition processes. DOE has the continual recourse to comment, justify and explain a legacy of corrupt policies and deceptive practices for which they are directly responsible, and for the for burdens of environmental risk which were factors resulting in the truncated lives of thousands of workers.

The legislation requires that the Board reflect a balance of scientific, medical, and worker perspectives, not the employers (DOE) perspective. The Board was intended to function independently, which it demonstrably has not. Specifically, the intent of Congress was that the Board was to be divorced from connections with and separate from DOE, precisely because the Department is the direct or indirect responsible agent/employer against which claims are being made for records and other information that may be prejudicial to the judgments about the stewardship of the Department. In fact, the Board is chaired by a distinguished and personally-respected scientist, who unfortunately in his career was responsible for much of the key evidence in dose reconstruction: medical and environmental records. These records have been at issue from the first day of enactment. He was also responsible as a supervisor for the quality of the medical and environmental monitoring of workers and ambient environmental quality of conditions in the sector of the nuclear industry supervised by DOE. Each and every decision of the board is at least in part a judgment about his work. There is not any argument that can be made for defending not only his, but anyone else's objectivity under these conditions. Nor is there any acceptable rationalization for his appointment. He could serve well in an advisory capacity when his valuable knowledge of the past is needed.

Ms. Wanda Munn, while highly respected by her peers due to her great accomplishments, also brings the perspective of the DOE contractor to the Board in her deliberations and public comments.

The Department of Energy was removed by the Congress from decision-making in the claims process for good reason. A superficial reading of the legislative history of the act will attest. But in the face of its legislative mandate, NIOSH nominated not only an inappropriate chair, but three easily replaceable DOE contracted defenders of those policies and practices of the DOE directly responsible for the burdens of risk now in question: Dr. Poston, Dr. Lockey, and Ms. Munn. We do not judge their work as scientists or their professional reputations. We concede that they are respected professionals. However, we challenge the need to ignore obvious conflicts of interest that may generate more than an appearance of conflict, but a loss of the possibility of objectivity on any issue before the board, a loss which cannot be repaired by recusal procedures.

We respectfully submit that all four of these Board members be removed without delay. We also request that your offices review the remaining Board members' suitability to serve on this Board as well as the inherent conflict of interest with ORAU.
We thank you in advance for looking into these issues and look forward to your findings.

Sincerely,

Harry Williams
For ANWAG members
12410 Buttermilk Road
Knoxville, TN 37932
harry.williams2@comcast.net

Cc: Members of Congress
Office of Management and Budget

DWM_10yrReview_comment.doc

Dan McKeel's Comments for the NIOSH Ten Year Review

Site Profiles

1. NIOSH has been arbitrary and capricious in developing site profiles of equal quality among AWE sites. This in particular applies to AWE sites where the main technical document is either TBD-6000 or TBD-6001 for sites that process uranium metal and refine uranium ore, respectively. Neither of the Battelle TBDs have been fully reviewed and put through the complete dispute resolution process between NIOSH and SC&A years after the documents were created and after years applying these incompletely assessed master documents to DRs and SEC decisions. This is grossly unfair to those whose DR and SEC evaluations are based on the original REV 0 versions.
   It is further unfair why some AWE sites have site-specific Appendices, while most have none. For example, Section 7.2 marked "Thorium" of TBD-6000 is blank (marked "Reserved"), but all AWE sites that processed both uranium and thorium do not yet have site-specific Appendices.
   It should be noted that Appendix BB, the original version, was used for all GSI DRs completed to date except the four earliest ones. NIOSH has steadfastly *refused* to update Appendix BB with volumes of new data offered by GSI workers, radiographers, site experts and SEC-00105 petitioners. No adequate explanation for this refusal to update Appendix BB has been forthcoming from NIOSH.

2. The period elapsed before SC&A reviewed site profiles has varied widely due to budgetary limitations that could have been addressed by allocating more dollars for this purpose. For example, the review by SC&A of the Weldon Spring site profile took from 2005 until 2009, and the SC&A report was initially released as a 61 page report that lacked the 30 page Comment Summary that due to a snafu was only released seven months later.

3. The degree of scholarship used differs widely among site profiles. One reason is that data capture by ORAU is often/usually piece-meal spread out over many years. Identifying site profiles as "living" documents is often an excuse for this erratic method of capturing key data. Large chunks of site information are often not gathered until an SEC petition is filed. Thus the site profiles used for many DR differ significantly in content from the site profile considered for assessing NIOSH SEC recommendations.

4. There should be more stringent quality control of the extent of scientific literature used to document site profiles. The format used for reference citations in NIOSH technical documents should be standardized. For example, SRDB (OCAS/DCAS Site Research Database) numbers should always be given where they exist.

5. NIOSH and ORAU should make better use of claimant information from the CATI interviews and outreach meetings in creating and revising their technical documents. For example, site expert John Ramspott in 2005 provided the Board, SC&A and NIOSH with a 400 page workbook he and his wife assembled on General Steel Industries, Inc. ("GSI"), a covered AWE uranium

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site. This formidable piece of research contained many pieces of information about Betatrons and other GSI information that NIOSH and SC&A "discovered" months and years later, and presented as their own findings. Many important findings in the Ramspott GSI workbook were ignored and have not been acknowledged to this day. To my knowledge, this valuable research document has not been acknowledged by NIOSH is any technical report or white paper. This is scientifically *misleading and inexcusable* in the GSI SEC-00105 co-petitioners view. It is also rude and insulting because this research represented thousands of dollars spent by the Ramspotts or donated, and thousands of dollars spared being spent by US taxpayers. Besides that, it represented research that NIOSH, DOE and ORAU should have done in the first place.

Dose Reconstruction (DR)

1. NIOSH has been very arbitrary in the extent of DR activity they engage in among AWE and DOE sites that also have SEC petitions under consideration. To illustrate, NIOSH decided to proceed with DR at General Steel Industries (GSI) even though (a) Appendix BB and TBD-6000 were known to be scientifically incomplete and to contain outdated information, and (b) the workers and claimants and SEC-00105 petitioners strenuously objected. Yet at Texas City Chemicals (TCC, SEC-00088) NIOSH stopped doing DRs for over two years while the SEC was being considered. The rationale NIOSH offered for this hold on TCC DRs to allow for a new Blockson source term model and a radon model to be applied to TCC, and for the SEC-00088 TCC evaluation report to be withdrawn and rewritten pending a Board decision on the Blockson models, is *arbitrary, capricious and claimant adverse*. It is also scientifically indefensible since (a) the next full Board meeting will not be until next May, and (b) the Board is presently deadlocked and the SEC vote and radon model validation are tabled.

2. NIOSH has improperly used surrogate data (SD) in DR at many sites including GSI, Dow Madison, TCC, Bethlehem Steel, and Blockson Chemical, to name but a few.

3. NIOSH DR reports that represent second attempts (i.e., are DR "reworks") do not generally spell out exactly what parameters or assumptions were changed, or whether the method used was a overestimate, an underestimate, or a "best estimate," the most exact and accurate DR method.

4. NIOSH has been capricious and arbitrary in their use of back-extrapolating DRs from a later period to an earlier period when work practices were quite different.

83.14 and 83.13 Special Exposure Cohorts (SECs)

1. An 83.14 SEC should be recommended for a site IF no monitoring data exists (as is the case for TCC and many DOE sites in the early years [1940s]).

2. NIOSH should be restricted to a 180 period to prepare their SEC evaluation report, as is required by EEOICPA 2000, as amended, and the SEC final rule.

3. NIOSH should be prohibited from withdrawing and rewriting SEC evaluation reports under any

conditions. An example would be Blockson Chemical and Texas City Chemicals. EEOICPA does not allow for NIOSH being permitted to rewrite technically flawed SEC evaluation reports.

4. NIOSH should be prohibited from being allotted any additional time after SEC 83.13 petitions are submitted and qualified to develop new dose reconstruction methods that could then be used to recommend denying the SEC. (as happened repeatedly at Rocky Flats over a two-plus year period, for example. RF petitioner Jennifer Thompson specifically objected to this NIOSH practice during her SEC defense when the Board made its final vote on the RF SEC-00030).

Surrogate Data

1. Dan McKeel and SINEW support the position on use of SD of Richard Miller and the bipartisan, bicameral Congressional working group that was expressed to the ABRWH at their regular meeting on February 11, 2010. That is, that language in Section 7384n subsections (c) and (d) of EEOICPA make the use of SD for facilities that have no (zero) monitoring data to be illegal. HHS, NIOSH and the Board should suspend all such use of SD until the legal situation is clarified as to which opinion—HHS OGC or that of the Congressional working group—should prevail. The need to do this is urgent.

2. The legal opinion of HHS OGC that allows NIOSH to use SD for facilities that lack monitoring data, that attorney Emily Howell told the ABRWH on 2/11/10 does exist in writing, should be released for public scrutiny and be reviewed by an independent legal authority such as the Dept. of Justice. [Note: *Dan McKeel has been told that GAO attorneys have asked to be recused from rendering any such second ()backup) legal opinion on the NIOSH ruling because doing so would exceed their statutory authority*. Richard Miller suggested to the Board on 2/11/10 that Congress might follow this pathway.]

3. The Surrogate Data work group has not finalized their draft SD criteria and presented them to the full ABRWH for ratification. This process has been dragging on for more than a year. SC&A has reviewed NIOSH technical guidance OCAS-IG-004, the NIOSH SD criteria. However, both sets of criteria have not been subjected to formal dispute resolution. The fifth proposed SD criteria—plausibility—has not been defined with any degree of exactitude. The key question that needs to be answered definitively is: *What use/s of SD are within and outside of the bounds of scientific plausibility?*

4. NIOSH has been lax in not more often requesting DOL to use the subpoena power in Section 7384w, when it has become obvious that key documents are being withheld. An example would be documentation of affidavit testimony from 11 former Dow Madison workers that the facility shipped truckloads of magnesium-thorium alloy plate to Rocky Flats in the 1950s and 1960s. SEC-00079 co-petitioner Dan McKeel has repeatedly requested that 7384w subpoena powers be exercised by DOL (DEEOIC) and requested by NIOSH, always being told that all parties are "acting in good faith." Yet we have clear evidence that Dow HQ, for example, did not release information later supplied by DOE that Dow Mg-thorium alloys were used in nuclear weapons

(**Reference**: January 8, 2008, letter from Pat Worthington, DOE/HSS to Peter Turcic, DOL/DEEOIC) to the effect that Dow Madison was an AWE based on AEC thorium work)

Freedom of Information (FOIA) and Privacy (PA) Acts

1. CDC/ATSDR is extremely slow (up to 17 months) in supplying documents under FOIA.

2. FOIA redactions are often improper. One appeal by Dan McKeel of an improper redaction was upheld. NRC FOIA 2010-0012 obtained by GSI SEC-00105 co-petitioner McKeel produced more than 1,000 pages of unredacted GSI sealed source license documents and an unredacted index of the 37 component documents. NRC posted this index and the 37 documents on their website unredacted. NIOSH took the same NRC index and heavily redacted it on the version posted to the www.cdc.gov/niosh/ocas/ website. This may be because NIOSH had earlier and unsuccessfully tried to obtain the same material. Perhaps the whole episode might prove embarrassing to OCAS.

Freedom of Information (FOIA) and Privacy (PA) Acts (continued...)

3. CDC/ATSDR FOIA office and HHS/OGC routinely redact identifying information on known deceased persons who are excluded by statute under PA 1974. This policy is applied arbitrarily.

4. OCAS (CDC/NIOSH) names, job titles, and e-mail addresses are not routinely posted on the Internet as is the same type of information on many other US Government agencies. This practice markedly impedes communication between OCAS employees and the public (including SEC petitioners). Contact information for the CDC/ATSDR FOIA office is posted. However, one would not be able to learn that David Sundin is the OCAS FOIA officer and how to contact him.

Respectfully submitted,

Daniel W. McKeel, Jr., MD

Daniel W. McKeel, Jr., MD **March 5, 2010**
SEC 79, 88, 105 co-petitioner
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ALLIANCE OF NUCLEAR WORKER ADVOCACY GROUPS

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New Mexico Alliance of Nuclear Worker Advocates
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August 21, 2008

Dr. Julie Louise Gerberding
Director
Center for Disease Control
1600 Clifford Road, N.E.
Atlanta, GA 30333

Dear Dr. Gerberding:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) is a coalition of advocates from across the country that monitors the implementation of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA). The advocates include physicians, attorneys, union representatives and claimants from Department of Energy facilities and its predecessor agencies.

Recently, ANWAG learned that Mr. Ted Katz has been named as the Acting Designated Federal Official (DFO) for the Advisory Board on Radiation and Worker Health (the Board). ANWAG strenuously objects to this appointment. Under the EEOICPA, Mr. Katz has been responsible for propagating the final rules to determine the Probability of Causation, defining the methodology utilized in reconstructing radiation dose and implementing the Special Exposure Cohort petition process.

Mr. Katz's appointment to this position is a direct conflict of interest, similar to the conflict that Mr. Larry Elliott presented when he was the DFO for the Board. Mr. Katz will be responsible for guiding the Board in its deliberations and ensuring that reports are made available to the Board and members of the public in a timely manner.

ANWAG and its members have serious doubts that Mr. Katz can perform his duties without being biased due to his past work history with NIOSH. As advocates for the EEOICPA claimants, we cannot sit by quietly and allow the "fox guarding the henhouse" scenario to repeat itself time and time again.

ANWAG urges you to designate a person who is knowledgeable of this program, yet truly non-conflicted when it comes to filling the position of Acting Designated Federal Official for the Board. Your prompt reply to this important issue would be greatly appreciated.

Sincerely,

Terrie Barrie
For ANWAG members
175 Lewis Lane
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tbarrie@yahoo.com

cc: Members of Congress
Secretary Leavitt, Health and Human Services
Larry Elliott, Director of Office of Compensation Analysis and Support
Dr. Paul Ziemer, Chair, Advisory Board on Radiation and Worker Health

Alliance of Nuclear Worker Advocacy Groups

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FAX TRANSMITTAL FORM

To: NIOSH Docket Office	From: Terrie Barrie
	Date Sent: March 9, 2010
Fax: 513-533-8285	Number of Pages: 4

Message:

Docket Number NIOSH 194

The attached document was omitted from the public comment letter the Alliance of Nuclear Worker Advocacy Groups faxed this morning. Please include this document as part of our comments.

Sincerely,

Terrie Barrie

Terrie Barrie
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970-824-2260

ALLIANCE OF NUCLEAR WORKER ADVOCACY GROUPS

March 9, 2010

Below are excerpts from Fernald report submitted by Sanford Cohen & Associates (SC & A), the Board's auditing contractor, on the deficiencies they found on the Fernald site profile.

□ Feed Materials (Fernald) – Report issued November 10, 2006

Finding 1: The list of facilities in which thorium-232 was processed, the time periods of thorium processing, and the thorium production data shown in the TBD have significant gaps. **Entire periods of processing and plants in which the work was done have been missed.**

Finding 2: Air concentration data for thorium in the TBD are sparse and incomplete, though considerably more data are available on the NIOSH Site Research database. **The TBD contains no thorium-232 bioassay or in-vivo data.**

Finding 3: Thorium intakes due to fugitive emissions and resuspension in production areas may have been
significant for some locations and periods. The TBD does not address the issue of fugitive emissions in production areas. Furthermore, the TBD does not provide a method to estimate resuspension intakes in the pre-1986 period and for those workers without lapel air sampling in the post-1986 period.

Finding 4: The guidance in the TBD regarding exposures from redrumming thorium is not well founded and is not claimant favorable.

Finding 5: The TBD has not evaluated exposures due to thorium fires. The TBD has also not evaluated other thorium incidents or failures of industrial hygiene.

Finding 6: The approach suggested for estimating thorium intakes does not reflect the history of production or the available thorium air concentration data. It is likely to result in significant **underestimates of internal dose from thorium.**

Finding 7: The TBD does not specify a method for estimating doses in the raffinate streams, which are uranium-poor, from ore processing in Plant 2/3. These doses may be very difficult to calculate, especially for high-grade ores, notably pitchblende ore from Congo.

Finding 8: Workers who may have worked with raffinates may be missed by the protocol specified in Vol. 5 of the TBD. **The guidelines for determining which workers were exposed to raffinate dusts are too restrictive and place far too great a reliance on completeness of records for job assignments, or in the alternative, place the burden of proof on the claimant.** They have not been adequately justified by measurements and are not claimant favorable.

Finding 9: The data on trace contaminants in RU in the Fernald TBD are incomplete and appear to be incorrect. Different official documents have very different values for various aspects of RU data, including production and contamination. The contradictions have not been sorted out in the TBD.

Finding 10: The radionuclide list for RU in the TBD is incomplete. Furthermore, the concentrations of trace radionuclides in the raffinates, which are much higher than those in the feed material, are not adequately discussed.

Finding 11: The suggested approach for RU dose estimation in the TBD is claimant favorable for many RU workers, but not claimant favorable for others and for some periods; it is not based on an evaluation of the available data.

Finding 12: The TBD notes that uranium batches with enrichment greater than 2% were processed at Fernald. NIOSH's assumption of 2% enriched uranium is claimant favorable most of the time, but not for periods and batches when uranium of higher enrichments was processed.

Finding 13: Female employees were not monitored for long periods at Fernald, even though at least some of them were at some risk of internal intakes of radionuclides.

Finding 14: The TBD does not address the extremely high uranium dust concentrations, which were present at Fernald under a variety of circumstances, and their effect on dose reconstruction. Particle size and solubility assumptions for workers who experienced chip fires should be examined.

Finding 15: Ingestion doses are not considered in the TBD.

Finding 16: Protocols for reconstructing shallow external dose during the operations at FEMP need to be further developed.

Finding 17: Extremity doses appear to be underestimated.

Finding 18: Beta dose to the rest of the body would also be underestimated, based on the TBD guidance.

Finding 19: The TBD does not analyze the special problems associated with geometry of the source relative to the exposed organ and dosimeter in thorium handling and production.

Finding 20: Correction factors used during an initial period of use of thermoluminescent dosimeters (TLDs) at Fernald are not scientifically appropriate.

Finding 21: The method for estimating external dose to unmonitored female employees is incomplete and its claimant favorability has not been appropriately demonstrated.

Finding 22: The source term for atmospheric uranium emissions from Fernald is significantly underestimated.

Finding 23: The TBD has not adequately considered various aspects of internal environmental dose, including the applicability of the Gaussian model, episodic releases, and particle size.

Finding 24: Diffuse emissions of uranium and thorium may have produced significant internal exposures for some personnel

Finding 25: NIOSH's modeling of radon dose is not claimant favorable and does not take actual working conditions into account.

Finding 26: NIOSH has not considered a major source of radon dose—the storage source of pitchblende ore onsite near Plant 1.

Finding 27: The TBD does not consider outdoor diffuse emissions in production areas as a source of external environmental dose.

Finding 28: External environmental dose for workers near the K-65 silos needs to be better evaluated.

Finding 29: Occupational internal exposure to radon is estimated based on just two radon data points from 1953. This is an inadequate basis to reconstruct occupational radon dose.

Finding 30: The possible use of photofluorography (PFG) at Fernald in the early years was ruled out in the TBD without adequate documentation. This is contrary to NIOSH general guidance and is not claimant favorable.

Finding 31: The assumption that there was a 15% retake rate for x-rays is not adequately documented or analyzed.
Finding 32: The assumption that there was collimation is not technically justifiable based on the evidence provided in the TBD and is not claimant favorable.

Finding 33: NIOSH has prematurely concluded that lumbar spine x-rays for laborers and construction workers were not conditions of employment. Based on the evidence provided, this assumption is not sufficiently documented and is not claimant favorable.

This is just one example of the types of deficiencies SC & A finds when auditing NIOSH/ORAU's work. The full reports on Fernald and other sites audited by SC & A may be accessed at http://www.cdc.gov/NIOSH/OCAS/ocasadv.html#support.

We understand that ORAU might miss an item. But, with so many omissions, we question whether ORAU is investigating every nook and cranny of these facilities to develop and honest historical recreation of the sites. The taxpayers are paying two separate entities to complete site profiles and SEC evaluations. ORAU is also compensated to amend their faulty documents.