



December 6, 2007

The Honorable Wayne Allard  
United States Senate  
Washington, D.C. 20510

Dear Senator Allard:

Thank you for your recent letter concerning the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and the recently designated Special Exposure Cohort (SEC) classes at the Rocky Flats nuclear weapons plant. Although the designation of new SEC classes is solely the responsibility of the Department of Health and Human Services (HHS), the Department of Labor (DOL) is responsible for adjudicating claims in accordance with the designation.

The SEC classes, which became effective on September 5, 2007, include workers who were monitored or should have been monitored for neutron exposures while working at the Rocky Flats Plant between April 1, 1952, and December 31, 1966, for at least 250 workdays. Within HHS, the National Institute for Occupational Safety and Health (NIOSH) is responsible for determining what radiation exposure occurred at nuclear weapons facilities and has the expertise necessary to determine where neutron exposure would be present. After consultation with NIOSH, DOL established the following three criteria for determining whether a worker should be considered a member of the SEC classes:

1. The worker's name is included in a list of 5,308 workers who participated in the Rocky Flats Neutron Dosimetry Reconstruction Project (NDRP);
2. The worker has received a completed NIOSH dose reconstruction which attributes neutron exposure to the worker or mentions plutonium; or
3. The worker was employed in an identified plutonium building or buildings for at least 250 workdays.

To qualify for inclusion, the worker need only meet any one of the three criteria above. Claims examiners will apply the criteria sequentially; if a case does not meet the first criterion, the second and third will be pursued in turn. If a case does not meet any of these three criteria, DOL claims staff will look for further evidence of possible neutron or plutonium exposure. The vast majority of cases that are included in the SEC have been identified by the first or second criteria.

This includes workers from Building 881 at Rocky Flats. The third criterion is a "safety net" for the few workers who do not meet the first two criteria.

DOL issued its operational criteria on October 15, 2007, in EEOICPA Bulletin 08-01. This bulletin also lists those buildings that had been identified by NIOSH as being plutonium buildings during the covered SEC period. Building 881 was not originally included in the list of covered buildings because it was known to be primarily a uranium (not plutonium) processing location. However, as a result of reviewing NIOSH's completed individual dose reconstruction reports (per the second criterion), DOL staff identified workers who had neutron exposure where their work was confined to Building 881, but who were not on the NDRP list. Thus, on October 31, 2007, DOL directed its claims staff to treat Building 881 as a third criterion-identified plutonium site, similar to the other buildings listed in Bulletin 08-01. Additionally, on November 6, 2007, DOL formally amended Bulletin 08-01 to include Building 881.

Regarding the possible SEC eligibility of workers from other Rocky Flats buildings, DOL will apply the same standard to those workers as was applied to Building 881 workers. Consistent with the scientific analysis given to us by NIOSH, the Department will include other facilities in the SEC when there is evidence of neutron exposure.

However, rather than depend solely on reviews of individual dose reconstruction reports to identify other buildings that should be on the SEC list, we have also requested that NIOSH further review the available science and dose records to determine if any other buildings within the Rocky Flats complex should be added. If this is feasible, this would substantially expedite the processing of claims.

Additionally, DOL has made significant progress in processing cases involved in the Rocky Flats SEC classes. As of November 28, 2007, we have screened over 860 cases (75 percent of the pending or previously-denied Rocky Flats cases), identified 129 cases as being in the SEC classes, and issued recommended decisions approving benefits in 117 of those cases. We are in the process of issuing decisions in the remaining cases identified as being in the SEC. Only eight cases have been identified with employment during the covered SEC period that occurred outside the buildings currently listed in our Bulletin. These cases could still qualify for SEC status, and as is indicated in the bulletin, DOL staff will continue to review available evidence to determine whether these cases may in fact fall within the SEC. The remaining cases have been or are being returned to NIOSH for new dose reconstructions due to changes made by NIOSH in its guidance for dose reconstruction affecting Rocky Flats cases.

DOL continues to strengthen its processes and procedures, maintain its outreach efforts, and improve its service to claimants. We continually reevaluate the program's performance goals and strategies, and we welcome input into that process. DOL shares your concern for our nation's Cold War nuclear weapons workers and appreciates this opportunity to reiterate our commitment to providing benefits for this vulnerable population. If you have additional questions or concerns, please contact Andrew Setterberg at (202) 693-4600.

Sincerely,

A handwritten signature in blue ink that reads "Victoria A. Lipnic". The signature is written in a cursive style with a large initial "V".

Victoria A. Lipnic