

**WORKER ADVOCACY ADVISORY COMMITTEE**

**U.S. DEPARTMENT OF ENERGY**

**PUBLIC MEETING MINUTES**

**DoubleTree Hotel**

**Westminster, Colorado**

**August 28 & 29, 2001**

## MEETING PARTICIPANTS

### **Committee Members Present:**

Emily Spieler, Chair, West Virginia University  
Ricky Blea, Labor Union  
Leslie I. Boden, Boston University  
John F. Burton, Jr., Rutgers University  
Jeanne Cisco, Portsmouth Uranium Enrichment Plant  
Donald Elisburg, Esq., Attorney  
James Ellenberger, PACE  
Steven Markowitz, Queens College  
Kathryn Mueller, State of Colorado  
Iris J. Post, State of Iowa  
Glenn Shor, State of California  
Gregory Wagner, National Institute for Occupational Safety and Health

### **Department of Energy Participants:**

Carol Barker, Energy Employees Compensation Resource Center, Westminster, CO  
Robert W. Bistline, DOE Rocky Flats  
Steven Cary, Office of Environment, Safety and Health  
Jeff Eagan, Office of Worker Advocacy  
Patrick J. Etchert, DOE Rocky Flats  
Joe Falco, Office of Worker Advocacy  
James Jeffries, DOE Rocky Flats  
Judy Keating, Office of Worker Advocacy  
Gary Lietz, DOE Rocky Flats  
Beverly Lutz, Energy Employees Compensation Resource Center, Westminster, CO  
Karen Lutz, Rocky Flats Public Affairs  
Ray Malito, Energy Employees Compensation Resource Center, Westminster, CO  
Kate Kimpan, Office of Worker Advocacy  
Phil Saber, Energy Employees Compensation Resource Center, Westminster, CO  
Loretta Young, Office of Environment, Safety and Health

### **Other Participants:**

John W. Barton, Vice President, United Steel Workers Union Local 8031  
Stan Beitscher, Rocky Flats Retiree  
Carolyn Boller, Denver District Office of Representative Mark Udall  
Nancy Caldwell, daughter of Lori Sanderson, Rocky Flats Retiree  
Claudia Gangi, Department of Justice (via telephone)  
Larry Elliott, National Institute of Occupational Safety and Health  
Wallace Gulden, Rocky Flats Retiree

Charles Johnson, Rocky Flats Retiree  
Roman Kohler, Rocky Flats Homesteaders  
Carol E. Lyons, City of Arvada, CO  
James Masingale, United Steel Workers Union  
Vern McDougal, Advanced Technologies and Laboratories, International, Inc.  
David Michaels, Department of Labor (via telephone)  
Amy Oberstadt, National Jewish Medical Center  
Mark Olsen, Bechtel BWXT Idaho, LLC  
Sam Ray, PACE Local Labor Union 5-689  
Allan C. Scarpella, United Steel Workers Union Local 8031  
Sally Shupach, surviving daughter of worker from Spencer Chemical, Galena, Kansas  
Peter Turcic, Department of Labor (via telephone)

### MEETING MINUTES

The Worker Advocacy Advisory Committee meeting on August 28, 2001, was called to order at 5:05 p.m. by Emily A. Spieler, Chair, and a roll call was conducted. Committee members in attendance included Spieler, Wagner, Cisco, Markowitz, Blea, Mueller, Burton, Shor, Post, Elisburg, Ellenberger, Hatfield, and Boden. Staff from the Department of Energy (DOE) and other federal agencies present included, among others, Cary, Kimpan, Falco, Eagan, Young, Keating, Elliott, as well as (via telephone) Turcic and Michaels.

The Chair announced that the Committee decided to hold this public meeting in order to give members of the community an opportunity to express their views on implementation of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

After Committee members introduced themselves, 15 individuals presented statements:

- David C. Stanifer and Jerry Tudor, retired from Oak Ridge, Tennessee (via teleconference);
- Sam Ray of the PACE Local Labor Union 5-689;
- Charles Johnson, Allen Scarpella; Wallace Gulden, and Stan Beitscher, Rocky Flats retirees;
- Sylvia Kieding, PACE Worker Health Protection Program;
- Carol Barker, Phil Saber and Beverly Lutz of the Energy Employees Compensation Resource Center in Westminster, Colorado;
- John Barton, Vice President of the Steel Workers Union at Rocky Flats Plant;
- Amy Oberstadt of National Jewish Medical Center;
- Nancy Caldwell and Sally Shupach, relatives of workers from Rocky Flats and Spencer Chemical (Galena, Kansas).

Mr. Stanifer and Mr. Tudor commented on the impact that Social Security Disability, Medicare, and early retirement have on the amount of money received through long term disability and workers' compensation. They also stated that workers affected by toxic exposures should also be covered under the EEOICPA federal benefit program.

Mr Ray commented that the DOL program is working well, but that many of those who want to file State workers compensation claims don't have the necessary documentation, and that dose reconstruction should be done to provide a basis for claims that lack other documentation.

Mr. Johnson stated that the requirement to provide medical records can be burdensome for those who have extensive medical histories. He also commented on the need for extensive work histories.

Mr. Scarpella commented on the skepticism among workers about whether they will be successful in obtaining benefits from the Colorado State Workers' Compensation program.

Mr. Gulden stated that the Resource Center staff were helpful to him in filing his claim, but that he has not received confirmation that his papers were received. In response to questions from the Committee, Mr. Gulden stated that a detailed work history was not included in his application, and that the records submitted did not include his radiation exposure levels.

Ms. Kieding stated that an exposure profile should accompany State workers' compensation claims, particularly for those involving chemical exposures. She recommended that the University of Colorado provide such profiles. She also stated PACE concern about the delay in implementing DOE's program.

Mr. Barton requested that the workers' compensation program be expedited and that those who are undiagnosed be able to file claims in the future if they should develop covered illnesses.

Ms. Oberstadt stated that many workers' exposure records do not accurately reflect their actual exposures. In addition, she questioned the Department of Labor's 30-day limit for submission of medical records.

Mr. Saber stated that workers expressed concern about conflicting information about their exposures, and that the Resource Center has had difficulty implementing the program because of frequent changes in forms and procedures.

Mr. Beitscher stated that toxic illnesses should be covered under the federal compensation benefits program, and that toxic exposures cannot be documented. He expressed skepticism about the program generally and asked that the retirees' insurance be continued regardless of whether the program provides additional benefits.

Mrs. Caldwell commented on the helpfulness of the Resource Center staff in filling out her daughter's claim forms.

Mrs. Lutz described the claims filing procedures the Resource Center staff follow, and pointed out the need for additional guidance, particularly with respect to the State Workers' Compensation Program.

Ms. Shupach described her information gathering efforts to document her claim and questioned the government's guidance to claimants not to request their records directly.

The August 28 meeting was adjourned by Emily Spieler at 6:55 p.m.

The meeting was reconvened at 8:11 a.m. on August 29, 2001, by Emily A. Spieler, Chair of the Worker Advocacy Advisory Committee. After the Committee Members introduced themselves, the Chair announced that two members, Dr. Laura Welch and Len Martinez were unable to attend the meeting and that there have been two resignations from the Committee: Dr. Linda Rudolph and Andrea Taylor.

Steven Cary, Acting Director of the Office of Worker Advocacy, gave a status report on DOE implementation of Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000. Ten Resource Centers have been established to take claims, and they are receiving 700-900 claims per week. The Department of Labor and Department of Energy are conducting traveling resource centers to assist claimants who do not live near the Resource Centers. The proposed Physician Panel Rule will likely be published next week. The Memoranda of Understanding with the state workers' compensation agencies is on hold pending issuance of the Physician Panel Rule.

There was discussion of the proposed Physician Panel Rule, and it was pointed out that the Committee strongly objects to the provision that physician panels would have to follow state law in making a determination of causality. Mr. Cary pointed out that the DOE General Counsel has stated that a new Federal law would be required to supercede state law.

Mr. Ellenberger raised question as to who would bear the cost of State claims. Mr. Cary responded that the cost estimates for the program assume payment by the

contractors. The DOE estimate for the cost of the program is \$150 million over ten years for the whole DOE complex. It was pointed out that contractors would have to take these costs out of their pockets, and Mr Cary responded that they would. Regarding workers employed by previous contractors, he stated that the costs for those claims would be paid by DOE through a line item in the budget.

There was discussion about the resource centers and the need for coordination of policies and procedures among them, particularly with respect to providing information to claimants on the state workers compensation program.

Claudia Gangi reported on the status of the Department of Justice (DOJ) Radiation Exposure Compensation Act (RECA) program. She stated that the Department of Labor District in Denver, Colorado (which handles all RECA claims) had sent DOJ 557 requests for verification of approval under the RECA program, and that 450 of those requests had been processed. She reported that the program is running smoothly.

Larry Elliott of the National Institute for Occupational Safety and Health (NIOSH) reported that their draft rules on dose reconstruction and probability of causation had been shared with DOE, DOL and DOJ, as well as the Office of Management and Budget. The rules were revised in accordance with comments received, and the rules were then pending in the Office of the Secretary of Health and Human Services. Mr. Elliott said he could not give a date as to when the rules would be published. Regarding the HHS Advisory Committee, he reported that the White House and Office of Management and Budget were reviewing the nominations. Regarding the Physicians Panel appointments, Mr. Elliott reviewed the nomination process and selection criteria. NIOSH submitted to DOE 46 names, of which 30 will be appointed, and DOE will assign them to their proposed 10 panels. Finally, Mr. Elliott stated that the dose reconstruction process will be interactive with the claimant, including telephone interviews, to obtain as much information as possible. He stated that in the first year, NIOSH estimated that they would perform 6,000 dose reconstructions.

Dr. Markowitz gave a report from the Physician Panel Subcommittee. A motion was made as follows: "That the physician panel rule should reflect the physician's role of determining medical causality rather than having physician panels express opinions concerning compensability, and therefore, all physician panels will use a single uniform standard of causation that consists of more likely than not that the health condition was caused, contributed, exacerbated, or accelerated by the toxic exposures incurred under DOE employment." The motion was passed unanimously. There was discussion about the process for re-considering the determinations of the physician panels, but that issue was held for future subcommittee consideration.

There was a motion that the Office of Worker Advocacy develop a mechanism for quality assurance and review of the performance of the medical panels, and that the members, particularly of the subcommittee on physician panels of this committee, be invited to be involved in the development of that quality assurance process. The motion was passed unanimously.

The Chair stated that the Committee would urge the Office of Worker Advocacy to devise a plan that would prevent wholesale turnover on physician panels, simultaneous wholesale turnover on physician panels at the end of terms.

There was a motion that cases where physician panel review is requested be referred for physician panel review if there is evidence of DOE employment and assertion of a related illness, and that, in particular, all doubts with regard to this be resolved in favor of physician panel review. And further, that specific components of individual State law not be used as a measure for appropriateness for review by physician panels. The motion was seconded and passed unanimously.

Mr. Elisburg reported for the Claims Processing Subcommittee. There was a motion that (1) the Office of Worker Advocacy assist claimants in obtaining criteria needed to establish the toxic exposure relevant to their claims. The motion was passed unanimously. There was a motion that the Former Worker medical surveillance programs, where available, should do the additional work that would establish the job or building exposure information that can be linked with the occupational histories for claimants to give a more complete exposure history. The motion was unanimously passed by those members who had no conflict of interest on this issue with respect to the Former Worker Program.

The Committee discussed the importance of information flow and data sharing in support of the claims process. The Committee urged the Office of Worker Advocacy to communicate and coordinate on resources and technology with the other agencies to on providing electronic access to relevant records. The Committee also discussed and urged that the questions asked of claimants be coordinated among the agencies. The Committee requested the Office of Worker Advocacy to communicate to the Department of Labor the Committee's concern about the correspondence to claimants, giving them a 30-day deadline for the provision of records.

There was a recommendation that both the Department of Labor and the Department of Energy acknowledge receipt of claimants' forms and provide a point of contact and telephone number.

Iris Post reported for the State Agency Relations Subcommittee. There was a motion that the Memoranda of Understanding with the State Workers Compensation agencies

be developed consistent with the language of the statute that says that the memoranda are to provide assistance to DOE contractor employees and that, in particular, provisions of these memoranda of understanding not be utilized to create barriers that, based upon State law or State compensability requirements, would stand in the way of having claims reviewed by the physician panels. The motion was seconded and passed unanimously.

Dr. Burton reported for the Contractor-Insurer Cooperation Subcommittee. There was a motion that the Department of Energy convene a hearing as soon as possible to invite employers, current and former, insurers, to convey their recommendations and concerns about this program. The motion was seconded and passed unanimously.

The Chair expressed the concern of the Committee that there be no penalties at all for contractors in their compliance with DOE Notice 350.6.

Dr. Boden reported for the Performance Evaluation Subcommittee. He stated that the Subcommittee would work with the Office of Worker Advocacy to share ideas on the development of a tracking system that would include providing data for performance evaluation of the program, both for the program as a whole and for the physician panel quality assurance program.

The Committee discussed procedural issues regarding a draft letter to the Secretary communicating the Committee's recommendations. The Committee discussed sending a separate letter to the Acting Assistant Secretary, requesting that he communicate the Committee's concerns to the Department of Labor.

During the Public Comment Period, Roman Kohler from Westminster, Colorado, represented the Homesteaders, a Rocky Flats retiree organization. He encouraged the Committee to recommend or encourage DOE and the Department of Labor to expedite the Chronic Beryllium Disease claims. He also stated his agreement with claimants' need for feedback on their claims status. He asked that the Committee encourage DOE to maintain contractors' present health benefits.

The Chair requested that Dr. Markowitz as Chairman of the Physician Panel Subcommittee, to take the lead on drafting comments to be presented at a DOE public hearing on the Physician Panel Rule.

The meeting was adjourned by Emily Spieler at 2:12 p.m. on August 29, 2001.