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June 27, 2002

Honorable Spencer Abraham  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue S.W.  
Washington, D.C. 20585

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Re: Workers' Advocacy Advisory Committee and Energy Employees Occupational Illness  
Compensation Program Act of 2000

Dear Secretary Abraham:

I am writing to you again on behalf of the Worker Advocacy Advisory Committee (WAAC). We were delighted that Assistant Secretary Cook was able to join us for our meeting on June 17-18, 2002. We are very interested in providing assistance to you and to her in the implementation of EEOICPA and on any other workers' compensation matters confronting the Department, and Ms. Cook has assured us that she welcomes our assistance.

We do however continue to have a number of serious concerns regarding implementation of Subtitle D of EEOICPA that we would like to call to your attention. Please note that all members of this Federal Advisory Committee share these concerns.

First, the delays in implementation of Subtitle D are extremely troubling. As I am sure you are aware, the Physician Panel rule has not yet been issued and Memoranda of Agreements with the states have been on hold. Although we were assured that these MOAs are essentially ready to go, specific questions regarding discussions with the states revealed that these discussions are actually not proceeding until the Physician Panel rule is issued. We believe that this will result in further delay. In addition, the position of the Director of the Office of Worker Advocacy was not posted until June 13, 2002. Although OWA has established a claims unit and necessary information for claims is being identified, it is our understanding that this information is not being collected. The failure to develop promptly the information necessary to process claims will inevitably result in longer delays for claimants once the Physician Panel rule is promulgated. We have urged the Department to establish an ombudsman office to assist claimants, but this has not been done. We also discovered at our recent meeting that there is essentially no plan in place for assisting a claimant with a claim after receipt of a positive finding from a physician panel. We have established a subcommittee of our Committee to assist the Department in thinking about this problem.

Second, there appears to be no clear plan in place for the handling of claims by contractors where there is an identifiable current contractor with responsibility for paying the claims. We have suggested to Assistant Secretary Cook that this be done centrally through a non-risk bearing third party administrator, rather than through claims handling by each contractor. Again, beyond the issuance of a notice to contractors to pay valid claims, the Department does not appear to have a plan in place to take care of this. As we said in our letter to you of August 31, 2001, it is also critical that appropriate procurement mechanisms be developed so that current contractors will not be penalized for paying these claims if payment adversely impacts their ability to meet other contractual obligations.

Third, no mechanism has been identified to arrange for payment of claims where there is no current contractor with responsibility for paying the claims. This is particularly troubling,

because it will result in gross inequity to workers. WAAC members thought that there was no legal impediment to payment of these claims by DOE. But we also think that if DOE is unwilling or unable to pay these claims, it is absolutely essential for DOE to seek additional appropriations or support alternative legislative solutions that will result in the payment of these claims *without throwing them into the state workers' compensation systems to be litigated*. If the latter occurs, insurers and state funds will not be required to waive any technical or other defenses to these claims, and it is highly likely (after considerable administrative expense) that few, if any, of these claims will be paid. These claims should be handled in the same manner as the claims of current contractors, through a central non-risk bearing third party administrator, with a source of payment designated by the Department.

Fourth, we are extremely concerned about the failure of DOL and DOE to work cooperatively on the EEOICPA programs. Since our initial meeting in January 2001, we have recommended a "one stop shopping" approach to claims handling, so that workers and survivors with claims under various subparts of the legislation would not be forced to file multiple claims, develop identical information for different agencies, etc. From the reports we received during our recent meeting, it appears that implementation has failed completely to achieve this goal. This creates not only greater cost and inefficiency for the implementing agencies, but also is confusing and unfair for claimants. A likely consequence is that many meritorious claims will not be filed under Subpart D.

Finally, it is critical that quality assurance and performance measures be developed and utilized from the outset. This has not yet been done. I am glad that Assistant Secretary Cook and the OWA staff have indicated a willingness to work with the WAAC subcommittee on this issue and to share with this subcommittee data as they become available.

We have elaborated on these and other points in our letter of August 31, 2001, and the attachments to that letter; copies of this prior correspondence are enclosed. Again, the Workers' Advocacy Advisory Committee is prepared to provide any assistance we can to help in the implementation of EEOICPA. As we wrote last August, we are alerting you to our concerns in order to avoid a situation in which the disappointment of the claimants overwhelms the good will that was generated by the government's willingness to acknowledge the harm caused to American workers made ill by nuclear weapons production.

Sincerely yours,

Emily A. Spieler  
Chairman, Worker Advocacy Advisory Committee

cc: - Assistant Secretary Beverly Cook  
Steven Cary, Acting Director, OWA  
Members of WAAC  
Judy Keating, OWA