

Exhibit #52

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FLUOR

November 7, 2001

Fernald Environmental Management Project
Letter No. C: OOTP(LA):2001-0055

VIA FEDERAL EXPRESS MAIL

Ms. Loretta Young
Office of Advocacy, EH-8
U. S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20585

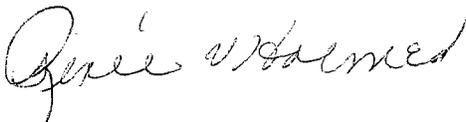
Attn: Physicians Panel Rule

Dear Ms. Young:

**RE: Submittal of Written Comments on Proposed Rule for Physicians Panel
(66 FR 46742, September 7, 2001)**

Enclosed are three (3) copies of Fluor Fernald, Inc.'s written comments on the captioned proposed rule. We appreciate having an opportunity to comment on this rule.

Very truly yours,



Renee V. Holmes
Deputy General Counsel

RVH:mcc

enclosures

c: file

FLUOR FERNALD, INC.
Comments on the
Proposed Physician Panel Rule
(66 FR 46742, September 7, 2001)

1. Section II K (P. 46743) of the proposed rule states, in part, that each state will identify the criteria to apply regarding the validity of workers' compensation claims. The proposed rule could result in disparate treatment of employees with claims of similar or same exposures. A uniform national Federal program would resolve this potential issue.
2. Subsection II K (P. 46743) states that the DOE will be relying on the state workers' compensation standards. The rule should clarify how DOE will respond to cases where the state has already considered and denied a claim for the same or a related disease.
3. The proposed rule refers to the agreements between the DOE and the states, although the DOE has not finalized any of the Memoranda at the time of this proposed rule. There should also be an opportunity for public comment on the proposed Memoranda. DOE should also clarify whether its position is that these Memoranda will serve to delegate to DOE authority for certain workers' compensation determinations that otherwise falls within the exclusive jurisdiction of the various states.
4. It appears that Congress intended to create a system that would assist the covered workers in seeking and obtaining benefits for illnesses/diseases that result from exposures at DOE facilities. The proposed rule may result in a different compensation standard in each state, and this does not seem consistent with the legislative intent to create a fair compensation scheme for all covered workers.
5. Subsection II N (P. 46744) states in part that the employee will provide a signed medical release to the Program Office. A signed release (or copy) should also be given to DOE and non-DOE sources that may be required to provide relevant records.
6. Subsection II N (P. 46744) states in part that the Program Office will determine if the employee meets the state worker compensation requirements. The Program Office will require expert legal and technical advice on the varying requirements of the different states in order to perform this task. The rule should address what mechanism will be implemented to insure that each Program Office will have the necessary access to this expertise.
7. DOE specifically requests comments regarding using the state timeliness criteria (P. 46744). The state timeliness criteria should be excluded from any screening criteria that are developed. Unless uniform national criteria are established, it seems likely that the compensation program enacted by Congress will not be fairly and consistently applied.
8. DOE requests comments regarding the development of an alternative screening mechanism. DOE should develop uniform national screening criteria in order to assure the fair and consistent implementation of the compensation program enacted by Congress.

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9. Potential criterion No. 5, the level of medical probability, requires knowledge about the specific work locations within each facility. The potential criterion should clearly acknowledge that each evaluation would be a factual determination that may vary depending on the particular circumstances at each site.
10. Potential criterion No. 6, use of the state workers compensation officials to make the threshold determination, does not address those instances where the same state agency has already denied workers' compensation benefits to the applicant for the same alleged disease.
11. Subsection II O (P. 46745) states in part that the physician panel will make a finding whether there is a factual basis for a prima facie case of employee exposure to toxic substances at the DOE facility. In order to meet this test, the physician panel will need radiation dose and medical information for the employee. The proposed rule does not address resources that will be needed to provide this information. Current and or former employers will have to provide staff to research the facility records. Dose reconstruction information will be needed for Health and Human Services (HHS). There may also be additional medical information from outside physicians if the employee had previously filed an application for workers compensation benefits for this injury or disease. DOE should seek input from its contractors regarding resource allocations (staff and financial) that will be necessary. Procedures should be implemented to insure that the relevant records are preserved while this process is being implemented.
12. Subsection II P (P. 46745) of the proposed rule refers to a "history of exposures". This term is ambiguous and should be clearly defined. Relevant information would include, at a minimum, the period of employment, the location of the employment, and the type of work performed during each period. If available records indicate that statement of the applicant about any of these elements is inaccurate, this information should be made available and considered.
13. Subsection II T (p. 46746) states that the physician panels will make their determination within thirty (30) days of receiving the applicant's materials. The rule should define the "applicant's material" and describe the physician panel's obligation if the "applicant's material" is deemed incomplete or otherwise inadequate for consideration.
14. The proposed rule asserts, "[u]ltimately DOE bears the [contractors'] cost of the additional workers' compensation claims, as DOE contractors pass on these costs." This is not accurate in all cases. Initially, there must be an active contractual vehicle through which such costs could be reimbursed. In many cases, this will not be true. Furthermore, if the contractor has a fixed price contracts or subcontract, costs can be shifted to the Government only if an equitable adjustment to the contract vehicle is deemed appropriate. There is no guarantee that each affected contracting officer will agree that an equitable adjustment is due. Furthermore, contractors with cost reimbursement contracts including incentive fee provisions could be adversely affected

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because of the impact on fee caused by cost growth. As costs increase fees may decrease due to risks of this program not taken into account when incentive structures were negotiated. Whether the contractor is "made whole" will depend on whether an equitable adjustment is permitted.

15. In Subsection II AA (P. 46747), the DOE acknowledges that this program will result in increased workers compensation premiums to its contractors. Even if a mechanism is put into place to assure that the cost of increased premiums is reimbursed, the rule does not take into account other adverse impacts that may result. Normally, a state imposes an experience rating on each employer as a result of its workers compensation experience. The additional claims that will result from this program will also result in higher experience ratings for impacted contractors. This may have an adverse effect on their ability to obtain new work since many "owners" use the workers compensation experience rating as a measure of past safety performance. This would not be fair in that contractors are strongly discouraged from challenging the validity of the types of claims involved under this proposed rule. In addition, unless additional funding is provided, payments resulting from implementation of this program will adversely affect a contractor's ability to complete scheduled work due to the diversion of resources.
16. DOE has estimated the benefit costs and the financial burden for the next ten (10) years. The proposed rule does not provide information on how DOE arrived at its estimates. Without more detailed information on the basis for this estimate, it is impossible to determine whether this estimate accurately evaluates the financial burdens that will occur.
17. In this proposed rule, the DOE states that its contractors are discouraged from objecting to the claims and will not be reimbursed for expenses associated with objections. The rule should distinguish situations where the contractor is simply disagreeing with the sufficiency of the applicant's claim from those where objective evidence exists demonstrating that the application is invalid (such as evidence that the applicant never worked in the location where the alleged exposure occurred). Also, the states' worker compensation files could have this type of relevant documentation that could be provided for consideration by the physician panels. A contractor should not be punished financially for raising such valid issues.
18. When a contractor fails to raise an objection to an applicant's claim under this program because of the statutory and regulatory direction, there may also be an impact on non-EEOICPA workers compensation claims not considered by the proposed rule. The failure to object may be construed as a contractor admission of existing site conditions (such as radiation exposure) asserted in the applicant's claim, and the contractor may not be permitted to challenge similar assertions in other claims. As a result, there could be further increases to workers' compensation premiums.