

Exhibit #21

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Sent by facsimile

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

Re: Physician's Rule Comments

Dear Ms. Young:

Thank you for the opportunity to comment on the proposed procedures to implement Subtitle D of the Energy Employees Occupational Illness Compensation Act of 2000, under which the Department of Energy ("DOE") is to assist an injured employee or the employee's estate in filing a claim with the appropriate State workers' compensation system. Colorado is among the states that have a DOE facility covered by this Act. As the federal government has noted repeatedly in its presentations and press releases accompanying the Act, this legislation was designed to provide just compensation to American workers who have been made ill by their work in the U.S. nuclear weapons complex.

As Director of the Colorado Division of Workers' Compensation, I am concerned that the proposed physician panel regulations fail to implement the intent of the federal act, impermissibly intrude on state rights, and harm the very individuals who were to be assisted by subtitle D. Workers' compensation laws differ by state. The criteria for eligibility for compensation, the method for determining compensation and the levels of compensation all vary by state. The state-based requirements for compensation ("applicable criteria" in the proposed regulations under consideration) are often difficult to apply in specific cases, especially complex cases such as those likely to be presented

under the federal Act, and commonly result in a highly litigious process. However, even though state laws differ, it is routine for the application of state criteria to occur after the issue of medical causation has been initially resolved.

As I read the proposals, the Department of Energy envisions that any claim will first be reviewed to determine if the state-based applicable criteria are met. If so, then the question of medical causation may be addressed by a physician panel. But as noted, even though the state-based criteria and the points and methods of determining eligibility differ by state, in each instance an individual experienced in the intricacies of that state's laws makes the determination. The DOE proposals appear to switch this review to a non-state employee, unfamiliar with the relevant state's laws, perhaps unfamiliar with the workers' compensation laws in general. Once the DOE decides that a claim meets a state's eligibility standard, the claim is referred to an independent expert panel of physicians for determination of whether the injury or illness is due to occupational exposures.

DOE has proposed two options: 1) a limited set of state-based applicable criteria be applied to these claims by DOE reviewers; and, 2) state workers' compensation offices apply limited criteria on a pre-screening basis, prior to submission of the claim for medical causation. Both of these options erect obstacles contrary to the intent of the legislation – to assist injured workers with occupational illness associated with work at DOE facilities to receive benefits without delay. In addition, there are potential equal protection violations. Equal protection violation arguments can be made under at least two scenarios. First, all claims under the federal Act would not be subject to the same initial screening criteria at the federal level. The initial screening criteria would vary by the state "presumed" to be the relevant state. (Injuries may arise under the laws of multiple states.) Second, on the state level, many of these types of injuries may also have been incurred in other facilities, not designated as DOE facilities, yet similarly injured workers would be subjected to different state-based eligibility standards depending on whether the claim was reviewed under the limited version of the state-based criteria or the actual state-based criteria.

As I understand the proposed regulations, the DOE determination of the state-based criteria and the physician panel evaluation of medical causation would be binding on the relevant state. However, if the DOE facility's insurance company decides to challenge the claim neither determination would be binding on the insurance company. I am doubtful whether the federal government can intrude to such an extent in each state's interests. Even, if a state did delegate performance of these functions to DOE, it is unclear whether it would be a valid delegation. And, finally if I am correct in my interpretation, I question why the determinations should be binding on the state and the injured worker but not on an insurance company for the facility.

I urge the Department of Energy to reconsider these proposals. They are confusing, will lead to litigation on the issues of federal intrusion on states' rights, and most importantly, delay benefits to the injured workers.

Please consider redrafting the proposals to provide for review by a physician panel to determine if it is more likely than not that a workers' illness is caused by caused by toxic exposures at a DOE facility. After a report from the physician panel that this review criteria is met, the Office of Worker Advocacy could most effectively assist these workers in filing state claims by helping the workers obtain copies of necessary employment and medical records to file with the relevant state. Colorado would like to work closely with the various offices of the Worker Advocacy program to facilitate the filings of these claims.

Sincerely,



Mary Ann Whiteside
Director