



December 17, 2020

John Howard, M.D., MPH
Director
National Institute for Occupational Safety and Health
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Robert P. Charrow
General Counsel
U.S. Department of Health and Human Services
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Room 713-F
Washington, DC 20201

Subject: Conduct of Department of Health and Human Services personnel during the December 9, 2020 meeting of the Advisory Board on Radiation and Worker Health

Dear Dr. Howard and Mr. Charrow:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) writes to you today concerning the conduct of Dr. Tim Taulbee of the National Institute for Occupational Safety and Health's (NIOSH) Division of Compensation and Analysis Support (DCAS) as well as that of Ms. Jenny Naylor of the Center for Disease Control's Office of General Counsel (OGC) during the December 9, 2020 virtual meeting of the Advisory Board on Radiation and Worker Health.

The actions of these individuals directly prevented the Board voting on the Special Exposure Cohort (SEC) petition 103 for the construction trade workers at the Savannah River Site (SRS). It appeared to the advocates who listened to this meeting as well as to the Board's Work Group meeting in November that there was an intentional and unfortunately a successful attempt by NIOSH and the OGC to delay the Board from voting on whether this class of workers from SRS should be included in the SEC.

This petition is at least thirteen years old. The age of the petition is not the issue here, although that must be considered. The real issue is that the Board's Work Group (WG), chaired by Mr. Brad Clawson, decided they had reviewed enough of NIOSH's methodology to develop a co-exposure model to reconstruct dose and reviewed the Board's technical contractor, Sanford Cohen and Associates (SC&A)

analysis of that methodology. The WG voted unanimously to recommend to the full Board that this class be added to the SEC.

During the November 20, 2020 WG meeting, Mr. Clawson instructed both NIOSH and SC&A to keep their presentations brief – to about 20 slides and about 20 minutes for the oral presentation. Mr. Clawson's reasoning was that he wanted ample time for the full board to ask questions and discuss the issues.

NIOSH ignored that directive and provided seventy-one slides and took up seventy-five minutes of the three and a half hour time allotted on the agenda. This needlessly reduced the amount of time had to debate the issues by almost an hour. Additionally, NIOSH did not submit the revised presentation until the morning of the December 9, 2021 meeting. Mr. Grady Calhoun, Director of the Division for Compensation and Analysis Support, is also culpable as it is his responsibility to oversee the work of the DCAS' health physicists.

SC&A needed to hurry through their presentation so that there would be time for the Board to discuss and vote. Their presentation was clear and concise. Mr. Fitzgerald also felt the strong need to publicly object that NIOSH took some of SC&A's statements out of context and incorrectly used them in NIOSH's presentation.

Despite all of this, there appeared to be enough time for the Board to discuss and vote on the SRS SEC petition. That was until Ms. Naylor inappropriately inserted herself into the meeting. Mr. Clawson asked for a vote. There was a procedural question on whether there was a motion before the Board and if it had a second. This deficit was quickly remedied.

However, Ms. Naylor informed Mr. Clawson that the Board cannot vote on motion because,

- He needed to consult with the Department of Labor (DOL) to determine whether that agency can administer the class.
- He did not draft the letter from the Board to the Secretary of Health and Human Services (HHS) because there was no Chair for the Board.

As far as we can determine neither of the above statements are true.

Ms. Naylor is incorrect that it is the duty of the Chair of the WG to draft the letter. While it is true a Chair has not been appointed by this Administration after the death of Dr. Melius, it is our understanding that the Designated Federal Official (DFO), Dr. Rashaun Roberts, is charged with the duties and responsibilities of the Chair until such time one is appointed. Ms. Naylor could have and should have consulted with Dr. Roberts if DOL truly needed to be approached about the class and if the letter to the HHS Secretary must be prepared before the vote. However, if ANWAG is in error that the Chair of the WG is responsible for these actions then Ms. Naylor should have advised him of this role well before the December 9, 2020 meeting.

Several advocates listened to this virtual meeting. All agree that the behavior by Dr. Taulbee and Ms. Naylor was uncalled for. ANWAG cannot help but see this as a blatant, and unfortunately, successful attempt to prevent the Board from voting on whether this class of workers from the Savannah River Site should be included as a member of the SEC.

We also agree with Mr. Clawson's many statements he made during this and previous meetings – that this is a compensation program and not a science project and that the endless research must end.

Putting a stop to digging into the archived records is not unprecedented. ANWAG remembers when DCAS, itself, informed the Board that they will no longer investigate the assertion offered by multiple Dow Madison workers through sworn affidavits that magnesium/thorium alloy plates were shipped to Rocky Flats.

It is time to stop this open-ended research project. People's lives are at stake. Congress intended that this compensation be fair and timely.

(b) PURPOSE OF PROGRAM—The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.

The SRS SEC petition is anything but.

The actions by the HHS employees under your departments should not be allowed to go without consequences. These individuals interfered with the Board's proceedings and must be held accountable. We ask that you take any and all steps legally allowable and reprimand these individuals for their obvious tactics to interfere with the Board's statutory responsibilities.

In addition, we ask that they make a public apology to the Board members, the SRS SEC petitioner and the claimants who could possibly be compensated under this program.

Sincerely,



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SEC petitioner for Y-12 petition number 250

Cc: Members of the Advisory Board on Radiation and Worker Health

Denise Brock, NIOSH Ombudsman

DOL EEOICPA Ombudsman

Members of Congress