Dragon, Karen E. (CDC/NIOSH/EID)

From: DanMcKeel2@aol.com
Sent: Friday, June 04, 2010 3:57 PM
To: NIOSH Docket Office (CDC)
Cc: danmckeel2@aol.com; Wade, Lewis (CDC/NIOSH/OD) (CTR)
Subject: DOCKET 194 Daniel McKeel comment
Attachments: McKeel_Docket 194_6.4.10.pdf

NIOSH DOCKET 194,

Please accept this comment (PDF file: McKeel_Docket 194_6.4.10.pdf) that addresses the 5 interest areas of the NIOSH Ten Year program review as well as an ADDENDUM (item 6) that addresses dose reconstruction and SEC related issues that are not explicitly addressed in the five main focus areas. A copy of this is also being submitted by Fax.

Thank you for allowing this public comment.

Sincerely,

-- Dan McKeel June 4, 2010

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Daniel W. McKeel, Jr., MD: PUBLIC DOCKET 194
Comments on the NIOSH Ten Year EEOICPA Program Review
(June 4, 2010)

• I submit the following comments in my current capacity as co-petitioner on three currently active SECs: Dow Chemical, IL SEC-00079, Texas City Chemicals (TCC) SEC-00088, and General Steel Industries (GSI) SEC-00105. I have augmented the written record on EEOICPA and the NIOSH implementation of dose reconstruction and SEC petitions under part B of that program through the following activities (partial listing) spanning 2003 to the present:

1. Comments on 42 CFR 83, the SEC rule in 2003
2. Making in person and public comments at ABRWH meetings in Missouri, Iowa, Nevada, Washington State, Washington DC, and Florida, and other site phoned in comments from 2005 to the present
3. Participated in a face meeting on June 14, 2006, and correspondence with former OCAS Director Larry Elliott and his staff beginning in 2005
4. Participated in a 2006 NIOSH-sponsored workshop on Dose Reconstruction held in Cincinnati
5. Participated in teleconference meetings of the SEC Issues, Surrogate Data, TBD-6000, and Worker Outreach work group meetings
6. Presentations to the Board on NIOSH evaluation reports of three above SECs. Made comments on Mallinckrodt Chemical Works (MCW Destrehan Street) SEC-00012-1&2
7. Gave an expert interview with SC&A on the revised 2009 Weldon Spring site profile
8. Provided the Board and NIOSH with GSI film badge data for the first time any was known about in January 2007, a full 15 months prior to NIOSH obtaining their GSI film badge dataset from Landauer. NIOSH had no GSI film badge data in 2005 through 2007.
9. Provided SC&A and the TBD-6000 work group and NIOSH in November 2009 with definite proof of a second film badge program at GSI that was active in 1963 and was administered by Nuclear Consultants Corporation (NCC) and Dr. William Konneker.
10. Provided the Board and NIOSH with 1,016 pages of GSI material as NRC FOIA 2010-0012 on isotope By-Product Materials source licenses that SC&A and NIOSH had been unable to obtain through their own efforts
11. Provided critiques to the appropriate Dockets on GSI Appendix BB and Dow Appendix C to Battelle TBD-6000 detailing the full range of GSI radiation sources not all of which had been utilized or mentioned in Appendix BB
12. Provided critiques to the NIOSH SEC evaluation reports and white papers citing multiple SEC petitioner concerns not identified as SC&A Findings.
13. Coordinated and acted as moderator at GSI, Dow and Blockson Chemical worker outreach meetings, by facilitating workers submitting affidavits, by supplying at no cost court reporter transcripts and video-DVDs courtesy of Pohlman, Inc., that resulted from conducting these outreach meetings to NIOSH and the Board in 2006 and 2007
14. Traveled to Texas City in 2006 and met with TCC SEC class members. On the same trip gave an interview about the TCC SEC with KHOU-TV in Houston, Texas
15. Met with US Congressman and wrote letters and numerous FOIA requests and appeals on behalf of GSI, Dow and TCC former workers and claimants (DRs, SECs)
16. Advised on multiple GSI and Dow claimant individual NIOSH dose reconstructions

McKeel Responses to 5 Interest Areas of the 10 Year Review as Defined by NIOSH

Specifically, in the program review, NIOSH states it will address the following aspects of the Radiation Dose Reconstruction Program:

1. The quality of science practiced in the program at the current time as well as throughout the evolution of the program. *For example, when reconstructing employee radiation exposures where records may be incomplete or missing, has NIOSH relied on the type of data that provides the most accurate estimate of a worker's exposure? Where no monitoring data exist for given employees, has NIOSH relied on scientifically valid surrogate data (such as dose measurements for other workers who were employed in the same work location or in similar work processes) to calculate exposure estimates? Has NIOSH appropriately accounted for the possibility that instruments used to measure employee exposures in given instances may not have been sufficiently sensitive to detect low levels of radiation?*

MCKEEL answer to question #1. NO, NIOSH has repeatedly resorted to invalid models and inappropriate coworker and surrogate data usage. Surrogate data criteria in OCAS-IG-004 were established only recently and have not been adhered to. NIOSH has underutilized Section 7384w subpoena power to gain vital site data. In particular, AWE site source and monitoring data have not been aggressively sought during the formulation of TBD-6000/6001 when the data was needed for Appendices. ORAU and Battelle surveys of potential SEC sites based on lack of data were not accepted or acted upon by NIOSH although many SEC petitioners believe this approach would have been the optimal, most efficient approach to identifying SEC 83.14 sites. The work should have been done in the first two years of the program.

MCKEEL answer to question #2. NO, NIOSH has been decidedly uncritical in use of surrogate data. Sites have not been fully justified as being comparable. Data from later eras has been or not been extrapolated back to earlier periods in an inconsistent manner. Values from models have not been validated by comparison with real data as called for by the rest of the scientific community. SC&A found such severe shortcomings in DR methods used by NIOSH at GSI as to make a Finding for SEC-00105 that all GSI dose reconstructions done to date were scientifically unacceptable. NIOSH has not successfully resolved this dramatic Finding.

MCKEEL answer to question #3. NIOSH claims that neutron doses are easily calculated by using MCNP models or photon-to-neutron ratios. The actual RBE of neutrons is often not measured as it can be using modern instruments. NIOSH rarely deals with dosimetry instrument sensitivity because it rarely takes the time to document what instruments were in use at sites at various times. Many times the issue is that NIOSH has no measured data at all, so instrument sensitivity misses the point and is almost never known and commented upon at AWE sites. For example, the Allen-NIOSH May 2010 white paper on GSI portable sources is based on NRC FOIA 2010-0012, which is replete with new GSI dosimetry instrument data. The implication of the use of these specific instruments is not addressed in the NIOSH May 2010 white paper.

In summary, I would judge NIOSH DR methodology to be poor science as a general rule with wild, often unstated or indefensible and implausible assumptions and huge not quantified degrees of uncertainty to hide inability to calculate truly sufficiently accurate doses. An example would be a purported high precision POC of 49.14% from a recent denied GSI claim. This degree of precision is absurd when the uncertainties must approach or exceed 100% and the limited film badge and SC&A and NIOSH external photon modeling data using two different computer codes differ from each other by factors as high as 12-fold.

2. The timing of the accomplishment of NIOSH's program tasks. *For example, have dose reconstructions been completed in as timely a manner as possible? Have completed dose reconstructions been timely reported to the U.S. Department of Labor?*

MCKEEL answer to question #1. Completion times for DRs at various sites I am aware of have been strikingly different. A pattern is not discernible. The scientific rationale and scheduling to complete DRs at various sites is hard to discern or fathom.

At GSI I began giving NIOSH detailed source information in mid-2005 and dose reconstructions were not started until mid-2007. Only 4 DR had been completed up until that time, and 3 of the 4 turned out to be at another ineligible site in Granite City, IL (see PER-24). GSI workers, site experts and the petitioners strongly objected to use of Appendix BB when it first appeared and urged NIOSH to either revise Appendix BB to correct glaring errors, or as recommended by then Senator Obama, recommend an 83.14 SEC for GSI. NIOSH instead went ahead and completed DRs and now faces reopening many or all denied GSI claims as Appendix BB has never been revised since 2007. By now 250 (94.3%) of 265 GSI DRs have been completed.

DRs at Dow Madison were not started until well after the 83.14 SEC had been recommended for 1957-60 in 2006-7. It took months to do any partial DRs for the SEC Class who didn't have one of the 22 specified cancers. Other DRs were not done until 2008 through now, at which time 115 (65.3%) of 176 Dow DRs have been completed.

DRs at Texas City Chemicals. Only 2 of 17 DRs had been completed when I first began interacting with the TCC site in 2006 and the same situation exists today. I have written to DCAS twice recently asking why TCC DRs are not being completed in light of the NIOSH recommendation to deny SEC-00088 and their claim it is feasible to reconstruct DRs with sufficient accuracy. Why then are the remaining small number of 15 DRs not finished? To date only 2/17 (11.8%) of TCC DRs have been completed out of 17 cases referred to NIOSH.

MCKEEL answer to question #2. Completed DR have been reported to DOL in a timely manner as far as I am aware.

3. The appropriateness and the consistency of decisions regarding petitions to add groups of claimants to the Special Exposure Cohort (SEC) established under the statute. *Claimants who are in the SEC are not required by law to go through the process of individual dose reconstruction to receive compensation. Has NIOSH uniformly evaluated SEC petitions to determine whether they meet the qualifications described in the statute and regulations? Have the bases for decisions on petitions been consistent and uniform?*

MCKEEL answer to question #1. NIOSH has failed to maintain a consistent pattern of qualifying SEC petitions. The "SEC That Did Not Qualify" ABRWH work group concluded that NIOSH actions in disqualifying SEC petitions were scientifically defensible and closed out their work three years ago. The reason why the work of this work group was concluded in 2007 is unclear to me. NIOSH has recently initiated a review of how SEC Classes were selected by the agency, and I would think that SEC qualification issues would be central to this recent issue.

> ***Review of SEC Petitions that Did Not Qualify for Evaluation Work Group***__*(Task completed on May 2, 2007)*__*The charge of this Work Group was to review disqualified special exposure cohort petitions and the process followed by NIOSH and the rationale for petition disqualification. The conclusions of the Work Group were that the final rule as reflected in the legislation was followed, and NIOSH's review of the petition was claimant friendly. The Work Group provided a number of recommendations with regard to making the process of submitting a Special Exposure Cohort more user friendly. James E. Lockey, M.D., M.S., Chair, Bradley P. Clawson, James Malcolm Melius, M.D., Dr. P.H., Wanda I. Munn, Genevieve S. Roessler, Ph.D.* **-- OCAS website**

SECs have been denied qualification and contested by petitioners since then (e.g., Linde Ceramics). NIOSH provided no public records to document the general SEC disqualification criteria they used, so the record here is opaque from NIOSH. I am therefore unable to make an informed comment on this question because the necessary raw data is not available to me.

MCKEEL answer to question #2. The way that NIOSH has decided to deny or to recommend various SEC petitions appears grossly unfair and inconsistent. Times to qualify and issue evaluation reports has varied dramatically. Many recent 83.14 SECs were qualified and the ER was issued in weeks, and the complete Board voted to approve in a month or two. In contrast, the extension of Dow SEC-00079 to cover the residual period has been ongoing since May 2007. Many sites such as GSI and TCC had no known dosimetry data and incomplete source term characterization when NIOSH issued a recommendation to deny their SEC's. Many other sites with far more dosimetry data were recommended for 83.14 SECs. The degree of unfairness, scientific bias demonstrated, and lack of consistency with how various SEC have been handled by NIOSH is both striking and deeply disturbing to this multiple SEC co-petitioner.

I perceive that NIOSH and ORAU spend far more resources attempting to capture site data for large DOE sites compared to AWE sites that have been identified as "smaller sites with fewer claims." NIOSH admits that early DR efforts were directed at large sites with the most claims in the early years of the program. The Act indicates that all claimants and all sites should be treated equitably and fairly regardless of the number of site claimants, with respect to completing DRs, processing SEC petitions, and initiating 83.14 SEC petitions.

4. The appropriateness and the consistency of decisions on individual dose reconstructions. *For example, has NIOSH uniformly used scientific techniques available at the time that account for whether exposures may have been under-estimated or over-estimated? Has NIOSH been consistent in its assumptions for developing "best-estimate" dose reconstructions where data for making estimates were incomplete or missing? When NIOSH revisits completed dose reconstructions (as it does for the benefit of claimants, when new information becomes available in cases where the completed dose reconstruction suggested low probability that a cancer was work-related), does it do so in a consistent fashion?*

MCKEEL answers to all three questions are forceful "NOs."

Answer to question #1. NIOSH must already realize that here is no way for outsiders to know enough to answer this question as there is no means for us to see the aggregated data on how many DRs from their sites were under- or over-estimated or were best estimates. The results of the DR subcommittee reviews on individual DR reports are opaque to outsiders. NIOSH provides no site-specific public data on the number and percentages of completed DRs that were under- and overestimates and best estimates. Publishing such statistics would be immensely useful in two regards: (a) The data would inform claimants and SEC petitioners, (b) this would provide a useful metric for assessing consistency across AWE and DOE sites on the mix of methods that NIOSH actually used in its dose reconstruction program.

Answer to question #2. There is no way for outsiders to know enough to answer this question as there is no means for us to see the aggregated data on how many DRs from their sites were best estimates. My perception is best-estimates are underutilized by NIOSH and ORAU dose reconstructors. Publication of aggregate data by site would inform the public about the mix of DR methods NIOSH has employed to date.

Answer to question #3. NIOSH often refuses to use new evidence, often declines to accept valuable new evidence as such, and obscures the process and criteria whereby new evidence can be accepted. I have been told that DOL and NIOSH bases decisions on "weight of evidence," and my experience is that hard copy reports usually are given undue weight. Worker

eyewitness affidavits are often either not accepted or are not acted upon. Many times the new evidence would require as an appropriate response revising a key technical document that NIOSH does not want to do for reasons that are not apparent to me, whereas some other technical documents are frequently revised. There is no consistent pattern to how NIOSH uses new evidence at particular sites, whether or not CATI information is routinely used to revise TBDs and TIBs and individual DRs, and whether new evidence presented by workers, site experts, and SEC petitioners is even read or used at all. This is profoundly disturbing and discouraging when one has spent enormous time and evidence assembling this new site information. My perception is that at some sites NIOSH stakes its scientific reputation on the fact that it can reconstruct dose. I and many advocates believe SEC evaluation reports should be based only on currently available methods. They liberally use surrogate and coworker data. I would cite the Rocky Flats, Blockson, GSI and TCC SECs as excellent examples of NIOSH using key methods developed long after NIOSH submitted its evaluation report to the Board.

5. The quality and timing of service provided to claimants and petitioners, and their representatives. *For example, does NIOSH respond to the questions of claimants, petitioners, and their representatives in as timely a manner as possible? Does NIOSH provide information about its technical processes and products in terms easily understood by claimants and petitioners?*

MCKEEL answers to both questions are a resounding "NO." Not only is the information provided too slowly, often it is not provided at all.

NIOSH too often provides self-serving answers about its technical processes and products. For example, when I challenged a NIOSH statement about GSI that a "photon-to-neutron study was in place" (*see page 30 of SEC-00105 evaluation report and the TBD-6000 work group transcripts where this issue was put on the record*), NIOSH avoided giving a direct answer. SC&A concluded in its review of the same document that NIOSH had no such p-to-n data.

NIOSH has often declined to answer questions about SRDB information (full document titles, a complete site index of SRDB documents) or to provide SRDB documents except through the FOIA process. The extent of this practice is unreasonable and causes unnecessary delays in the NIOSH dose reconstruction and SEC administration programs.

NIOSH phone communications with claimants are unrecorded calls that the claimants often find to be bewildering. For instance, the answer to the frequently asked question "Was such and such new information included in my second DR?" is obfuscated or not answered at all. One GSI claimant shared the answers NIOSH provided to him when his claim was remanded back to NIOSH with instructions to either (a) do a second dose reconstruction, or (b) to provide written answers to the questions that led to the remand order. The answers were either misleading or did not address the questions asked. For example, NIOSH used film badge data to support its position that dose estimates were very claimant favorable, despite other indications that NIOSH has not used film badge data because it was not available to them in 2007 when the key technical guidance was released. There has been no updating of this site-specific guidance since mid-2007.

The NIOSH annual DR workshops do allow time for Q&A and direct, nearly one on one, interactions with DCAS staff. I did attend one such work shop in 2006 and found it to be informative. However, access to these sessions is by invitation and is weighted towards union representatives at large DOE sites. DOE sites get better service from NIOSH than AWE sites.

APPENDIX: Other McKeel Comments on the NIOSH 10 Year Review

6. Many crucial aspects of NIOSH's performance in administering EEOICPA part B dose reconstructions and processing 83.13 and 83.14 SECs are not covered in the NIOSH 10 Year Program Review Focus Issues 1-5 above. The following comments address some of those issues.

6.1) My experiences with the CDC FOIA office have been very unfavorable. In my opinion, they have practice censorship, caused delays, not found all responsive documents, have not always cited FOIA allowed exemptions, and have made inappropriate redactions (reversed on appeal at Dow FOIA CDC 08-00862). The names of long-deceased persons not covered by the Privacy Act of 1974 have often been redacted,

6.2) NIOSH has failed to update Appendix BB Rev 0 (2007) to Battelle TBD-6000 in 2.5 years since Rev 0 was released.

6.3) Inappropriate use of surrogate data after SEC evaluation report presented to Board.

6.4) NIOSH often admits it lacks key site data. There is unwarranted excessive resistance to my suggestion that NIOSH ask DOL to use Section 7384w subpoena power to obtain crucial site related records related to GSI (SEC-105), Dow Madison (SEC-79), and Texas City Chemicals (SEC-88).

6.5) Data capture efforts often continue for a particular site continue for *years* after SEC evaluation reports are released and presented to the Board. There is inadequate feedback to SEC petitioners on what site information was captured, apart from number of boxes and very general descriptions such as number of documents. A recent example is a delay caused by the unexpected finding of 45 or more boxes of partly classified documents using "a new finding aid," at a NARA facility in Maryland that should have been thoroughly researched and captured years ago. Apparently these data affect many covered facilities.

6.6) In general, NIOSH appears to endorse a low weighting to eyewitness worker outreach and interview testimony and affidavits. Interview information is used selectively without adequate justification in technical reports. Compelling testimony that challenges NIOSH positions and recommendations is often ignored. An example is the May 2010 NIOSH white paper on GSI portable sources that did not mention a GSI 80 Curie cobalt-60 source. NRC FOIA 2010-0012 documents the GSI SEC-105 co-petitioner obtained showed a 80 Curie Co-60 was licensed, purchased and first used at GSI in 1968, two years *after* the AEC uranium contract with MCW ended. Yet multiple GSI radiographers have testified this 80 Curie source was in use during 1963-65.

6.7) Failure to perform complete dose reconstructions at Texas City Chemicals minority AWE site for over three years despite NIOSH recommendation to deny SEC-00088 at a site that totally lacks individual or air monitoring data.

6.8) Proceeding with dose reconstructions at GSI in spite of vigorous objections based on technical flaws in Appendix BB by workers, site experts and SEC petitioners.

6.9) the Dow SEC-79 evaluation report inappropriately cited surrogate monitoring data from the Dow Bay City, MI, plant. NIOSH incorrectly claimed initially that the data emanated from the Dow Madison, IL, plant. Not until recently has SC&A issued a white paper showing that virtually all monitoring data used for Dow SEC-00079 and Appendix C was

actually surrogate data. Final ABRWH and OCAS-IG-004 surrogate data criteria have not been applied to Dow SEC-79, Texas City Chemicals SEC-88 and GSI SEC-105.

6.10) Up-to-date SC&A/NIOSH PA cleared issues matrices have not been routinely provided to McKeel for the SEC Issues (Dow Madison SEC), Surrogate Data (Texas City Chemical) and TBD-6000/Appendix BB (GSI SEC) work groups to allow full SEC co-petitioner participation in work group meetings. The issues matrices I have seen have never included any entries under "Board Action" to indicate current status of Findings.

6.11) NIOSH has recommended denying SECs for Dow Madison residual contamination period (1961-2007) [SEC-00079], Texas City Chemicals (TCC) 1953-56 [SEC-00088], and for General Steel Industries (GS) 1953-66 [SEC-00105] despite the fact that, for the date the NIOSH SEC evaluation reports were being prepared, released to the public, and presented to the ABRWH, NIOSH admitted that all three sites had no known individual or area monitoring data, internal or external, film badges or bioassays or other type.

a) In the ensuing two to three years, NIOSH with SC&A's and McKeel's help securing partial GSI FB data from RS Landauer 15 months before NIOSH did, has inappropriately applied NIOSH/ORAU TBDs and TIBs as unjustified surrogate data to construct models and has applied them to the three sites to justify their ability to perform sufficiently accurate dose reconstructions for all members of the proposed SEC classes.

b) The Blockson Chemical radon model that NIOSH currently plans to use at TCC was rejected May 20, 2010, by the full Board by a vote of 9 to 7 members.

c) SC&A has stated in a review of the TCC evaluation report, using TCC as a test case for the draft Board surrogate data criteria, that NIOSH failed to fully justify two of the four surrogate data criteria (before Plausibility had been added as a fifth criteria).

d) Co-petitioner McKeel has contended that NIOSH still has no valid actual monitoring data at Dow Madison or TCC and for 10 of 13 AEC contract years at GSI.

e) For GSI, NIOSH has only partial film badge data and no actual bioassay or air sampling (area or breathing zone, intake or ingestion, or MCW-AEC uranium purchase order) data for 3 of 13 years (1964-66) of the AEC uranium production period. No P.Os or monitoring data is available for 10 years 1952/3 to 1963. NIOSH has film badge data for only at most 108 male workers out of 3,000 GSI workers, a tiny non-representative fraction of workers that represent a single job class, Radiographer. And a third of Radiographers, the Magnaflux operators, were never badged 1953-66. The FB results are partial for individual Radiographers, who wore film badges only in the Betatron facilities and perhaps in the Bldg 6 roofless Radiography facility where C0-60 and Ra-226 and perhaps Iridium-192 sources were used.

6.12) NIOSH has never answered any of Dan McKeel's Public Comment ABRWH meeting questions.

6.13) Some McKeel SEC co-petitioner Docket submissions were not posted to the NIOSH appropriate Dockets on the OCAS/DCAS website as he requested be done.

6.14) Former OCAS Director Elliott rejected several requests for DOCKET postings of PDF versions of McKeel Powerpoint SEC rebuttal presentations saying that NIOSH did not post Powerpoint presentations. When McKeel later pointed out to DFO Ted Katz that, in fact, a Powerpoint presentation of Mr. Elliott's was already posted to the OCAS website, the DFO then confirmed the Docket office would post PDF files of McKeel's SEC Powerpoint presentations to the Board, with included graphics and photographs, on the OCAS website PUBLIC DOCKET. Yet McKeel's May 4, 2007, Board presentation on Dow Madison, IL SEC-00079 was never so posted despite several requests to do so. Co-petitioner McKeel considers this example to be unwarranted censorship.

6.15) NIOSH, through the CDC/ATSDR FOIA office in Atlanta, has made many inappropriate redactions of documents McKeel has submitted to be posted on OCAS website or has received as responsive documents to FOIA requests at all three sites (DOW, TCC, GSI). Two examples follow:

a) NRC sent to McKeel 1,016 pages of NRC FOIA 2010-0012 material in 37 packets "in their entirety," that is with zero/no redactions of any kind. One document was an index with many letters and third party "To: and From:" names of living and deceased persons. McKeel posted a Comment about these NRC materials on the OCAS website that was heavily redacted by HHS OGC and the CDC/ATSDR FOIA office. NRC then posted the entire set of documents and index, again minus any redactions, on its own website. This is an example where HHS/CDC and NIOSH made draconian redactions where another federal agency with a long history of safeguarding Atomic Energy Act secret material, decided that no redactions were necessary,

b) McKeel has repeatedly pointed out to HHS OGC and CDC/ATSDR FOIA Atlanta office staff that the Privacy Act of 1974 does not apply to deceased persons. Nevertheless, the two HHS entities continue to redact most names of persons known to be deceased such as many of the GSI personnel alluded to in item 6.15 subsection (a).

6.16) NIOSH and OGC have steadily refused to release their legal opinions on policy issues to the Board and public. Examples would be (a) the "Board's Redaction Policy" (a misnomer since the policy was created by HHS/OGC not ABRWH members), and (b) the legal opinion that Richard Miller and the Congressional bipartisan caucus recently asked NIOSH to produce at an official Board meeting. This concerned the caucus' contention the word "such" was intended by the Congressional framers of EEOICPA to disallow the use of coworker and surrogate data in dose reconstructions and in SEC evaluation recommendations.

6.17) NIOSH through the CDC-based DFO in the past year has attempted to limit the activities of both the Board and SC&A, on the open record, in at least two instances.

(1) A NIOSH challenge to the appropriateness of the Outreach work group reviewing NIOSH "educational" activities was diffused at the last moment by the new ABRWH chairman. McKeel perceived this was an attempt by NIOSH to avoid criticism by the work group of its own performance in educating the EEOICPA community.

(2) At the May 2010 ABRWH meeting, the DFO admonished SC&A that it was "slightly wrong" in another matter McKeel believed was appropriate for SC&A, another example of more subtle attempted challenge to Board independence that crossed the line from the DFO's mission.

6.18) NIOSH at many DOE and AWE sites has ignored its own OCAS-IG-003 guidance that it *must* utilize in DRs, and bound for SECs, *all radiation sources* during the AEC contract period. This is especially so for radiographic sources used in nondestructive testing (NDT) such as accelerators, industrial x-ray machines, Co-60, Ir-192 and Ra-226 sources that were used at almost all steel mills that milled uranium and at many DOE facilities as well (see LAMS-2064). Southern Illinois Nuclear Workers (SINEW) members have provided the Board, SC&A and NIOSH with volumes of new material about NDT radiography activities at GSI, Los Alamos, Oak Ridge, and Rocky Flats and has repeatedly urged NIOSH to adhere to OCAS-IG-003 by including these sources in site profiles and TBDs as the EEOICPA law and NIOSH guidelines require to be done. These urgings have been almost completely ignored except at GSI, where the NIOSH response has been sluggish and incomplete even today. NIOSH has also failed to deal with the many different forms of uranium as alloys and as one-step MCW patented dingots distinct from "classic" two-step ingots produced from remelted derbys that have different physical characteristics and require different handling to remove the outer crust and oxide layers. Only now is NIOSH engaged in *working on* revising AWE-wide TBD-6000 and

6001 technical guidance for dose reconstructors even though thousands of DRs have been completed and denied based on the REV 0 versions from Battelle.

6.19) Many McKeel documents sent to OCAS/DCAS staff and to NIOSH have not been acknowledged as to being received, and have not been addressed.
• **Example #1** is a very detailed explanation of "NIOSH Issues" that Dan McKeel sent to former OCAS Director Elliott just before Mr. Elliott left office.
• **Example #2** is a recent request McKeel submitted to NIOSH asking them to immediately revise GSI Appendix BB to include the consensus fact that the average GSI work week should have been 65 hours rather than 46 hours as Rev 0 of Appendix BB states. The consensus figure was derived from an October 2007 worker meeting held by SC&A with NIOSH in attendance, and has been accepted by NIOSH and included in a David Allen GSI white paper dated May 2010 that was discussed 5/12/10 by the TBD-6000 work group. This request has not been acknowledged or acted upon.

6.20) Too many e-mails with questions to NIOSH and OCAS/DCAS staff have been unanswered or have incomplete answers. A NIOSH policy that states when site related e-mails, Faxes and letters will be answered from workers, site experts, claimants and SEC petitioners would be very helpful to limit the number of separate communications.

6.21) E-mails to the NIOSH SEC counselor have been answered incompletely and follow up questions and rebuttals have not been acted upon. There should be a dispute resolution process between NIOSH and SEC petitioners akin to that used routinely to resolve NIOSH and SC&A issues.

6.22) OCAS staff refused to provide McKeel with the SRDB titles of Texas City Chemicals, and said they had only three such documents. He got a database listing of only three documents that were numbered and thus were uninformative as to content. There were dozens of references in the NIOSH SEC-00088 evaluation report, however. Not having those document titles when they were first asked for placed the SEC-88 co-petitioner at a distinct disadvantage in rebutting NIOSH efforts to deny SEC-88 that are ongoing today.

6.23) McKeel believes that NIOSH should not be allowed to state in an SEC evaluation report that dose reconstruction is feasible based on methods and information they expect to develop, or may develop in the future. This happened notably at GSI, Dow Madison, Texas City Chemicals, Rocky Flats, and at many other AWE and DOE sites. NIOSH recommends 83.14 SECs at many similar sites in a seemingly haphazard way. There is no consistent pattern with how NIOSH handles SEC petitions from sites with similar lack of adequate real dosimetry or source term characterization. TCC, for example, with zero real data and no adequate radon model, and only 2 of 17 dose reconstructions completed, should have been recommended for 83.14 SEC status years ago.

6.24) Workers continue to express disappointment and anger that their NIOSH DRs do not adequately reflect new evidence presented on their behalf or by them. Claimants undergoing repeat NIOSH DRs cannot learn what, if any, IREP input data and assumptions were altered in their second DR, or what were the technical documents their repeat DRs were based upon and whether and how these second DR IREP assumptions and input data differed from their initial DR. Claimants often perceive no differences in their initial and repeat DRs. This is because the differences in parameters and assumptions used in both DRs are not stated clearly in the second DR report. Changing this policy would be immensely helpful to claimants. A table comparing DR1 and DR2 parameters and assumptions would greatly alleviate this problem.

6.25) NIOSH redacts SEC Petitioner names on the OCAS website and refuses to allow SEC petitioners to sign Privacy Act waivers to permit their names and identifying information to be posted on OCAS. NIOSH claims waivers are not permitted because they are too burdened with work to issue "universal waivers," a meaningless nonsensical term. Many SEC Class members and potential SEC petitioners need to know who is representing the Class, as NIOSH often chooses to merge SEC petitions for the same site. Co-petitioner McKeel at GSI, Dow and TCC believes this censorship of SEC petitioner names diminishes transparency and the quality of SEC applications. A waiver section could and should be easily added to the SEC petition application form.

6.26) The past two CDC-employed ABRWH DFOs have increasingly lobbied for NIOSH positions that are adverse to claimants and SEC petitioners. They are obviously very biased. This is inappropriate behavior for the role of DFO in the view of this commenter. The DFO has obvious conflicts of interest. Dr. Branche, for example, became acting director of NIOSH after relinquishing the DFO position to Mr. Katz. ANWAG has previously objected to in writing about conflicts of interest they perceive Mr. Katz to have with his DFO duties.

6.27) NIOSH states they have revised the Texas City SEC-00088 evaluation report based on "new information" they received on the covered period as a result of a document exchange between DOE and DOL dated January 8, 2009. This report is allegedly being withheld pending outcome of the Blockson SEC-58 petition. The Board voted to overturn NIOSH's recommendation to deny SEC-58 by a 9 to 7 vote on May 20, 2010. DOL has not changed the TCC covered period, and the Blockson radon model has been rejected. Thus, any efforts to revise the TCC SEC-00088 evaluation report to include the January 2009 covered period data DOE sent to DOL and NIOSH *29 months* after the SEC-88 NIOSH evaluation report was released on 1/18/2008 would be highly inappropriate.

6.28) Another NIOSH shortcoming is that no TBD-6000 site-specific Appendix has yet been released for TCC. Many AWE sites have no Appendices for TBD-6000 and 6001.

6.29) NIOSH and SC&A do not keep the SEC and TBD site profile issues matrices PA cleared versions up to date and distributed appropriately. There is continued confusion tracking the latest and last updated versions at work group meetings involving NIOSH discussants that impedes progress. Valuable work time on crowded agenda items is wasted because of this factor.

6.30) NIOSH letters written to obtain site-specific dosimetry and source data must be obtained by SEC petitioners by the time consuming FOIA process. These letters are intimately involved with the outcome of Data Capture activities and therefore become crucial at times in determining whether particular data was or was not sought by NIOSH. How questions are posed often determines whether truly or most responsive documents are obtained. The data seeking letters should be published on the "Data Captures" portions of the DCAS website and the query letters need to be unredacted for them to be useful to SEC petitioners.

6.31) This petitioner has stopped writing to the CDC and NIOSH Directors because he is unaware of a single instance where these offices have overruled DCAS decisions. Ergo, there is no point in writing because a response in favor of NIOSH is predetermined.

6.32) I have previously made the suggestion to the Obama administration website on changes in federal databases, that NIOSH should make publicly available a portion of the Site Research Database (SRDB) that has been purged of Privacy Act protected and Classified site documents documents.

McKeel General Comments on the NIOSH 10 Year Review

Self review of any governmental program is heavily biased to cast previous agency actions in a positive framework. The internal review should have be complemented by a truly independent review by persons that have no agency ties.

Respectfully submitted,

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