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August 26, 2011

SEC Petition
Division of Compensation Analysis and Support
National Institute for Occupational Safety and Health
4676 Columbia Parkway, MS-C-47
Cincinnati, OH 45226

Attached please find the corrected version of the SEC petition for the Rocky Flats facility. This corrects the word "tritium" on page 2 to "thorium". The millirem on page two is corrected to "0.2 rems/hour".

Sincerely,

August 19, 2011

SEC Petition
Division of Compensation Analysis and Support
National Institute for Occupational Safety and Health
4676 Columbia Parkway, MS-C-47
Cincinnati, OH 45226

SPECIAL EXPOSURE COHORT PETITION
under the
Energy Employees Occupational Illness Compensation Act

_____ former worker at the Rocky Flats, hereby petition the National Institute for Occupational Safety and Health (NIOSH) to designate the following workers from the Rocky Flats facility in Golden Colorado as members of the Special Exposure Cohort (SEC).

All workers employed at Rocky Flats from April 1, 1952 to December 31, 2006.

I was employed by Rockwell International, EG&G and Kaiser-Hill while employed at Rocky Flats. I was a machinist and my employee number was 510458. I was employed from _____ 78 until _____ 93.

I have named _____ also known as _____ as the authorized representative for this petition.

PREMISE FOR SEC PETITION

The premise of this SEC petition is threefold. First, NIOSH has failed to reconcile outstanding site profile issues as noted in the February 2007 report to the Advisory Board on Radiation and Worker Health's (Board) contractor, Sanford Cohen and Associates (SC&A). Second, there is a lack of consistency in considering sworn affidavits from former production workers versus NIOSH's reliance on unsworn statements made by former Rocky Flats dosimetry personnel. Lastly, the Board was unaware of some possible exposures before they voted on the SEC petition in June of 2007.

Section 83.1 of the Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), states the purpose of the procedures are "... to ensure that the process is timely and consistent with the requirements specified in EEOCPA." Part of the SEC petition process is to determine which issues reach the level of and SEC issue and which are merely related to the site profile. This petition will show that the SEC process, including resolving site profile issues after the Board voted on the original Rocky Flats SEC petition, is neither timely nor consistent.

OUTSTANDING SITE PROFILE ISSUES

THORIUM USE AT ROCKY FLATS

NIOSH accepted an unsworn statement from the supervisor for the thorium strikes as the basis for their methodology for reconstructing dose for thorium exposure. This unsworn statement contradicts document RFP 5331, which states that thorium was present in Buildings 559, 771, 774, 777, 777A, 779A and 883. This document was reviewed by NIOSH and rejected. Additionally, a representative from SC&A uncovered two NIOSH interviews with this individual which is also contradictory about where thorium strikes were performed at Rocky Flats.

SC&A's report to the Board, dated February 15, 2007, page 3, states that they did not review classified documents for thorium use at Rocky Flats

<http://www.cdc.gov/niosh/ocas/pdfs/abrwh/scarpts/rfsecrev/sca-rfspotherad.pdf>.

This is unfortunate. They did review the unclassified 1976 report titled, "Thorium Use at Rocky Flats". This report, in part, identifies that the major use of thorium and thorium alloy was to fabricate parts. While NIOSH assumed that only light machining was done, and therefore thorium exposure was low, that assumption has not been verified by the Board. Thorium parts were/are used not only in nuclear weapons but also aircraft. Rockwell International had a contract to fabricate parts for the B 1 B bomber, but it appears that the details of the thorium/thorium alloy parts are still classified information.

NIOSH stated that they interviewed five (5) Rocky Flats personnel that would seem to be familiar with the machining operations at Rocky Flats and therefore knowledgeable as to the presence of thorium at Rocky Flats <http://www.cdc.gov/niosh/ocas/pdfs/sec/rocky/ncom2bdrfsec.pdf>. This is a very small sampling of interviews. There were hundreds of machinists at Rocky Flats at any one time and literally thousands of people who would have some knowledge of the machining operations for the site. To rely

upon such a small number of people to develop a scientific methodology flies in the face of sound science.

Recently, NIOSH reversed its evaluation report for Savannah River SEC petition after they and SC&A reviewed classified documentation. Because the Rocky Flats SEC petition was the first large facility to be reviewed and because the SEC petition process was in its infancy, classified documentation was not reviewed for Rocky Flats by the Board's technical contractor. The Rocky Flats claimants are denied the consistent investigation afforded to subsequent SEC petitioners.

NIOSH Ignored Sworn Testimony in SEC Petition 00030

Many sworn affidavits were submitted by the Rocky Flats SEC Petitioner attesting to the common practices at the site. These sworn affidavits were largely dismissed by NIOSH because they were not backed up by documentation. Yet, as noted above, NIOSH readily accepted, in at least one instance, an unsworn testimony over a document.

Some of the sworn statements seem to be backed up by SC&A's investigation. As an example, many of the sworn affidavits attested to the fact that despite being in high radiation areas, the workers' dosimetry badges came back as "zero" readings. SC&A confirmed, in their report, Completeness of Records 1969-1970, dated February 6, 2007, <http://www.cdc.gov/niosh/ocas/pdfs/abrwh/scarpts/rfsecrev/sca-rfspgap6970.pdf>, that many years had a high percentage of badges had "zero" readings. In fact, the highest level during the production years was in 1982 where 63.2% of badges had zero readings. During the cleanup period, in 2004 a full 79.7% of badges had zeros.

NIOSH Class Definition for the approved Rocky Flats SEC is inconsistent with other SECs and difficult for the Department of Labor (DOL) to administer

Recently, NIOSH has determined that they could not determine whether a worker had access to a particular building for General Electric facility in Evendale, OH and the Ames Laboratory in Ames, IA. Therefore, all workers during the SEC time period for those sites, whether or not that worker was actually present in the buildings where the radioactive materials were present, are or can be eligible for compensation if they have one of the specified cancers.

Additionally, DOL has stated in the attached letter to the Director of the Division of Compensation Analysis Support dated May 3, 2010, concerning the Mound Plant:

Because we sometimes have difficulty placing workers in specific buildings, (emphasis added) we consulted the Department of Energy (DOE) to determine whether records were available that would enable us to place workers *in* the Rand SW Buildings. DOE checked with their staff and have confirmed that they do not have the ability to validate work locations in support of a building-specific SEC class. In light of these evidentiary challenges, NIOSH may want to reconsider the SEC class definition.

A similar situation exists for the SEC class definition for the Rocky Flats plant. NIOSH's class definition for the current Rocky Flats SEC class is building specific. However, it is known that workers, such as electricians, painters, etc., who were assigned to other buildings, were often detailed to the buildings

covered under the SEC. The Rocky Flats claimants have waited four years or more for the resolution by DOL in applying the Rutenber database to the SEC class definition. It is obvious that DOL is "having difficulty in placing workers inside" the buildings NIOSH has designated as a member of the Rocky Flats SEC class.

There are other site profile issues, according the SC&A matrix that remain unresolved for four years. This could possibly result in the underestimation of dose for Rocky Flats workers.

INFORMATION THE BOARD DID NOT HAVE WHEN DECIDING THE ROCKY FLATS SEC PETITION

Presence of Plutonium in Building 460

Originally, the DOL Site Exposure Matrix showed that plutonium was present in Building 460. NIOSH was advised of this in the attached email dated December 8, 2009. According to the statement submitted with that email, a former radiation control technician related that waste drums from the 700 complex were stored in Building 460 in 1988 when the governor of Idaho refused to allow shipments of radioactive waste from Rocky Flats into the state. Building 460 was a "cold" building and workers were not monitored for exposure to radiation

Contaminated Equipment Present in Building 440, 444 and 447

According to the attached Radiation Monitor Report dated 2-8-84, an Empire lift-a-loft was shipped from Building 371 to Buildings 440, 444 and 447. These buildings were also considered "cold" buildings and workers were not monitored for radiation exposure. This report was forwarded to NIOSH on 9/26/10 and yet NIOSH has yet to resolve this issue.

Co-worker models are inaccurate for some buildings

NIOSH Site Profile does not include the 1980 fire in Building 771's incinerator – NIOSH was notified of the existence of this incident on 4/11/11, as noted in the attached email. RFP-4969 summarizes an incident where a fire occurred on July 2, 1980 in Building 771's incinerator. This incident is not mentioned in the Rocky Flats site profile. NIOSH does not assign ambient dose because either the worker was monitored or NIOSH uses coworker data to fill in the gaps. However, SC&A found that in 1980 53% of the badges had a zero for radiation reading. If there was a release from the fire (which may be possible looking at the attached pictures of melted HEPA filters), then the coworker badge readings may not be accurate and reflect this incident.

NIOSH Site Profile does not include the plutonium recovery system in Building 440 post 1996

<http://faculty.gvsu.edu/thompsoa/Portfolio/htmlpages/RFNWP3.html>,

<http://rockyflats.apps.em.doe.gov/references/126-Chemical%20Decon%20of%20Gloveboxes.pdf> –

NIOSH was formally notified of this deficiency, also on 9/26/10, in the attached email from Terrie Barrie to Mark Griffon. NIOSH has failed to resolve this issue. This failure to investigate and reise the co-

worker model for claimants who worked in Building 440 may result in the underestimation of radiation dose to the claimants who worked in that building during that time period.

NIOSH Site Profile does not consider high exposures at the stacker retriever -The attached email dated 8/1/06, states that a person who emptied the americium birdcages in the Stack-Retriever would have been exposed to radiation levels as much as "couple of hundred" millirem per hour. If a "couple of hundred" millirem means 200 millirems, this translates to 0.2 rems/hour. I was responsible to repair the Stacker-Retriever every time it jammed up. Criticality engineers had to come over to make sure that the materials were not too close to going critical before I could start the re-hanging of the bird cages. Yet, it appears that NIOSH did not consider this relevant information in my dose reconstruction. Therefore, it is quite likely that NIOSH is not considering this value for other Rocky Flats personnel who worked on or near the stacker retriever.

The highest number of zero readings occurred during the D & D period – As noted in SC& A's report, the year with the highest level of zero readings was 2004 which had 79.7% of badges reporting zero readings.

In conclusion, the claimants from the Rocky Flats site should be added as a member of the Special Exposure Cohort without delay.

Signature sheet for the petitioners can be found on the following page.

C-47

SEC Petition
Division of Compensation & Pensions Support
N105H
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Cincinnati, OH 45226

