



Tri-Valley CAREs

Sick Worker Newsletter

for former employees of
LLNL, SNL-CA, and LBNL
made ill by on the job exposure

Fall 2013

Important Legislation Introduced in Congress for a Part E Advisory Board

By: Terrie Barrie, *edited by Scott Yundt*

A bill has been introduced in both the U.S. House, HR 2905, and the Senate, S 1423, to create much needed oversight of the Department of Labor's implementation of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Part E.



Part B of the EEOICPA, which covers radiation exposure, requires by law an Advisory Board to make sure that proper scientific evidence is used in determining Part B claims.

Part E, which covers exposure to toxic chemicals, has no such oversight requirement. However, reports by three independent entities, Econometrica in 2005, Government Accountability Office (GAO) in 2010 and the Institute of Medicine (IOM) in 2013 have all strongly recommended that there be similar independent oversight of Part E claims.

Currently, Part E has NO oversight of any kind, as all decisions are handled in-house by Department of Labor's Division of Energy Employees Occupational Illness Compensation (DEEOIC). DEEOIC controls the rulemaking process, all claim decisions processes, how each claim is administered, and the release of all information about EEOICPA. Moreover, unlike National Institute of Occupational Safety and Health (NIOSH) involvement in Part B claims, DEEOIC has no "Conflict-of-Interest" policy. While most worker compensation programs have decisions made by Administrative Law Judges, DEEOIC's final decisions are all made in-house by DEEOIC employees. Since DEEOIC Final Adjudication Board (FAB) staff are not required to be attorneys this may lead to illegal decisions being made with no recourse to the claimant other than filing a complicated and costly lawsuit in federal court. DEEOIC has said in the past that the claimants have access to due process because they have the ability to take a claim to federal court. However, this is much more than many ill, disabled, and elderly claimants are capable of doing.

Independent watchdog organizations, like Tri-Valley CAREs and the Alliance for Nuclear Worker Advocacy Groups have tried to oversee DEEOIC's implementation of EEOICPA but these organizations do not have the ability to compel DEEOIC to produce information. DEEOIC has a long history of shutting these watchdog organizations down by denying them access

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LLNL Sick Worker Support Group Meeting Coming Up!

The next Sick Worker Support Group Meeting is

**Tuesday, October 15th
1 -2pm**

**Livermore Public Library,
Community Room A, 1188 So.
Livermore Ave.**

Current and former workers and their family are invited to join us. Please call (925) 443-7148, or email Scott Yundt at scott@trivalleycares.org for more.

National Day of Remembrance for Nuclear Weapons Workers October 30, 2013

The United States Senate recently passed the resolution designating October 30, 2013 as the fifth National Day of Remembrance. Sincere thanks to Cold War Patriots (www.coldwar patriots.org) for their continued support of the nuclear weapons workers and their hard work in making the National Day of Remembrance a reality. As far as we know, there is no observance of this day in the Livermore area for local workers. Thus, we will read and circulate the resolution and have a moment of silence for those who gave their lives at our October 15th Sick Worker Support Group Meeting. (See above)

to information. An independent advisory board would force DEEOIC to share the information needed to properly evaluate how DEEOIC is administering the program. DEEOIC has consistently maintained that there is no need for any oversight into their administration of the program, a claim that experience with the program has shown is plainly wrong.

What Would an Independent Advisory Board Do?

1. Advise the President on the review and approval of the Site Exposure Matrix

All three independent reports, Econometrica, Government Accountability Office, and the Institute of Medicine, have also reviewed the Site Exposure Matrix (SEM), which is the main resource used by DEEOIC to evaluate exposures at covered facilities under Part E, and found it inadequate. The standard that governs EEOICPA is that an illness must have been caused, aggravated, or contributed to by toxic exposures at a US nuclear weapons facility. Haz-Map's data base, upon which the SEM is based and which is used to populate toxic exposures to illnesses, uses causation only to link the diseases to the exposures; aggravation and contribution are not considered. The proposed Board could advise on the ways to include information in the SEM that would account for how toxic chemicals aggravate and contribute to already listed diseases. The proposed Board could also expand the list of diseases that should be added to the SEM, and that are currently missing because exposure has only been found to aggravate or contribute to them (but not be a cause).

2. Conduct periodic peer-reviews & approve medical guidance for Part E Claims Examiners

According to the IOM report, the only database that claims examiners (CE) are permitted to use to decide claims is the SEM. As noted above the Haz-Map database is inadequate to adjudicate the variety of diseases considered under Part E. The proposed Board would have the responsibility of providing the medical guidance necessary to adjudicate the claims. For instance, it is possible that the Board could suggest that the CEs also research databases such as the Collaborative on Health's Toxicant and Disease Database, National Institute of Health's Tox-Net, Center for Disease Control's ATSDR Tox-FAQs or peer-reviewed papers published on National Institute of Health's PubMed. As HazMap has no peer review, this could greatly improve the quality and consistency of EEOICPA claims decisions.

3. Conduct periodic review of evidentiary requirement for lung conditions

The Board will be responsible for ensuring that the evidentiary requirements as stated in the law are consistently followed. In addition, these bills, if passed, will allow the Advisory Board to review all lung conditions for Part E claims. This section also grants the Advisory Board the same powers as the NIOSH Board. Most importantly, this includes the broad power to advise the president on "such other matters related to radiation and worker health in Department of Energy facilities."

4. Provide oversight of reports by DEEOIC staff, Industrial Hygienists & Contract Medical Consultants

Claims are often referred to DEEOIC employee industrial hygienists (IH), toxicologists, or contracted medical consultants (CMC) for opinions on whether exposure to a toxic substance could result in a claimed disease. These reports are vital as claim decisions are usually based on their recommendations. Cases have come to light where Claims Examiners have withheld evidence from these specialists and where these experts relied on outdated scientific reports to render opinions. This has led to improper denial of valid claims. The proposed Board would ensure that only the best and most current scientific research is used by these experts and will ensure that the experts are using all available information before rendering an opinion.

This proposed Board will go a long way to improve the claims process for claimants and has the potential to improve it for DEEOIC staff who will benefit from the clarifications, guidelines and program additions created by the new Advisory Board. The SEM will be populated with more current science linking the toxic substances with their health effects. The CEs and DEEOIC experts will benefit from the new and improved SEM and will feel confident that the information contained in the database is the most accurate available. The claimants will benefit because they know their claim was decided on the law, based on sound science and in a consistent manner. Even the cost of the Advisory Board should eventually even out because, with more accurate information available, not as many claims will need to be referred to expensive DEEOIC consultant physicians.

Tri-Valley CAREs will be urging Congressman Swalwell, the Congressional Representative for Livermore, to co-sponsor this legislation and we will be discussing it further at the upcoming Sick Worker Support Group Meeting, on October 15th at 1pm at the Livermore Library.