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Fax Cover Sheet

To: U.S. Department of Labor/ Mr. Gary Steinberg	***From:*** David M. Manuta, Ph.D., FAIC
Fax: 1.202.693.1378	***Pages:*** 5 (Including Cover Sheet)
Phone: 1.202.693.0031	***Date:*** 09/06/11
Re: Response to Your Letter of August 8, 2011	***CC:***

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• ***Comments:***

Dear Mr. Steinberg,

Enclosed please find a 4-page letter from the Alliance of Nuclear Worker Advocacy Groups (ANWAG) in response to your letter of August 8, 2011. Our initial contact was in regard to the shameful public statements made by Ms. Rachel Leiton, the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) during the Presidential Advisory Board on Radiation and Worker Health Board Meeting held on May 25, 2011.

The courtesy of a response to this letter from your Office is expected. ANWAG's position on this matter is explained in detail in the enclosed letter. If you have any questions, please let me know.

Thank you for your consideration in this matter.

Sincerely,

David M. Manuta, Ph.D., FAIC
President, Manuta Chemical Consulting, Inc.

Enclosure (1): As Stated

ANWAG

Alliance of Nuclear Worker Advocacy Groups

September 6, 2011

Gary Steinberg
Acting Director
Office of Workers Compensation Programs
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Steinberg:

Thank you for your August 8, 2011 response to the Alliance of Nuclear Worker Advocacy Groups' (ANWAG) letter of May 31, 2011 to Secretary Hilda Solis concerning the remarks made by Rachel Leiton, Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC). ANWAG understands that, as Acting Director for the Office of Workers Compensation Programs, it is important for you to support the officials in your program.

Unfortunately, ANWAG feels that your support for Ms. Leiton is misplaced. We unequivocally assert this with the utmost respect to your office. ANWAG members, and many of the claimants we represent, did not misunderstand Ms. Leiton's remarks to the Advisory Board on Radiation and Worker Health (Board) on May 25, 2011. We have reviewed the transcripts of this meeting and stand by our complaint.

The discussion between Ms. Leiton and Dr. Paul Ziemer of the Board begins on page 241, http://www.cdc.gov/niosh/ocas/pdfs/abrwh/2011/wgtr052511.pdf. It is unfortunate that the tone of voice when Ms. Leiton uttered these words is not captured in the dry transciption of the discussion.

However, even without hearing the tone of voice, the words speak for themselves.

> MS. LEITON: Okay, let me just summarize and make sure I'm understanding. This is assuming that you made the Class limited to certain buildings. Then when DOL went to verify employment, you're suggesting that we rely solely on what the employee says as placing them in the Class or not, assuming that those who weren't in the buildings are going to tell us they're not. Is that, am I getting that right?
>
> MEMBER ZIEMER: Yes, and in the worst case, everybody lies to you and you're no worse off than you would be if you assumed everybody is in the cohort.
> I'm saying, I would bet you there's a good fraction of honest people who worked for GE, who aren't going to make claims if they knew they weren't in that area.
>
> MS. LEITON: In our experience, that's really just not the case. Unfortunately, I mean, I know that there's some honest people out there, but when the $150,000 is on the line -- you know, we've got a certain adjudication process which includes affidavits.
> But when we just have one affidavit from a person whose self-interest is to say that they're in a building and that's it, without any verification that they were there -- it's just, it's not administrable.

Unfortunately no one asked Ms. Leiton to explain why this would not be administrable. But the real reason for the reluctance to ask claimants if they knew if they worked in certain buildings at the GE Plant seems to be explained on page 244 where Ms. Leiton states:

> "It would cross all of our sites. People would just -- they would say, well, I said I was in the building at Rocky Flats, and I said I was in this building, why don't you just take my statement as well?"

ANWAG still finds Ms. Leiton's statements and attitude about the veracity of the workers to be extremely inappropriate and insulting.

However, ANWAG does understand your position to defend your employees. Perhaps it is now appropriate for us to relay a few additional examples of DEEOIC's history of disrespect toward the claimants under this program.

Recently, an ANWAG member received a copy of the claims examiners' training manual which she requested under the Freedom of Information Act. The manual includes examples of ficticious medical reports from personal physicians and an example of a recommended decision. ANWAG is disturbed by the use of fictious names such as Freddie Kruger (Chapter 18, page 27) as the name of a worker and Dr. Hannibal Lechter (Chapter 17, page 12) as the name of a pathologist. While we understand the use of comic relief may be necessary during a training session, to use the names of mass murderers as names for physicians and workers is

demeaning. By allowing the use of these names in the training manual, Ms. Leiton once again has shown her lack of respect for the workers, the claimants and the program. This manual also stresses in two chapters the need for an accurate decision. However, the reason stated for accuracy is not only because that is what the claimants deserve, but because DEEOIC could possibly receive bad press or the attention of some Congressional Offices (Chapter 17, page 24 and Chapter 18, page 34).

Your letter mentions the achievement of DEEOIC's posting of the Site Exposure Matrix (SEM) to their website so that the public and claimants would have access to the same database as the claims examiners do when they adjudicated claims. ANWAG battled DEEOIC for two years to allow this access to the claimants, advocates or authorized representatives. It wasn't until the Department of Energy (DOE) facilitated meeting in January 2010, that the advocates were advised that DOE would work to ensure the information in the data base would be cleared for release.

You should note that no representative from DEEOIC, while invited, attended this meeting. However, Glenn Podonsky, DOE Chief Health, Safety and Security Officer, Dr. Patricia Worthington, DOE Director of Office of Health and Safety, Dr. John Howard, Director of the National Institute for Occuptational Safety and Health, Dr. Paul Ziemer, then Chairman of the Board, Stuart Hinnefeld, then Acting Director of Division of Compensation Analysis and Support, and others thought this interaction with the advocates was important enough to not only schedule the meeting but also participate in it.

Further evidence of Ms. Leiton's ineffectiveness as the Director of DEEOIC can be found in Final Circular 10-04 and the issue with the Ruttenber database. We have serious doubts that she fully understands the technical aspects of the program.

Final Circular 10-04 identifies which non-cancerous diseases have a causal relationship to ionizing radiation. This circular names only three diseases in which the claims examiner can consider radiation as a factor. The decision to issue this circular was to better align the SEM with the Haz-Map database. The Haz-Map database only shows which subtances cause a disease. The law, however, is more generous in that it allows a toxic substance to be a *significant factor* in not only causing the disease but contributing to or aggravating the development of the disase. There is ample scientific and medical literature that suggests exposure to radiation, whether it is chronic or acute, can be responsible for the occurance of a disease. Additionally, this circular claims that incidents that would result in one of the three diseases would be " ...well-documented in the Department of Energy (DOE) records. " It is common knowledge that DOE's records are incomplete, missing, destroyed and on occasion

falsified. If DOE kept such accurate records there would be no need for the Board to deliberate whether there exists sufficient exposure records to reconstruct dose under Part B.

The Special Exposure Cohort claims for the Rocky Flats facility have been waiting for over 3 years for a decision on how DEEOIC will use the information on the Ruttenber database. Ms. Leiton has promised the Rocky Flats advocates and the Board for almost a year that a decision on its use would be forthcoming. At the last Board meeting, Ms. Leiton advised the Board, again, that a Final Bulletin would be issued. As of September 6, 2011, this important bulletin has yet to be released. How many claims have been wrongly denied or delayed because of the failure to complete the investigation of this database in a timely manner?

ANWAG is disappointed in your decision. We have often wondered if an official from the Veterans Administration uttered a similar public comment, if that person would be transferred to another position.

The claimants under EEOICPA deserve more from a director of this program. They deserve the utmost respect from the person who is charged to administer this program for their dedication in working to keep America safe during the Cold War. They also deserve an administrator who has an appreciation of the technical complexities posed by exposures to ionizing radiation and the toxic effects of the plethora of chemical mixtures these workers were subjected to on a daily basis.

Ms. Leiton neither has expertise in the technical, legal, epidemiologic or administrative areas required to direct the program nor the compassion and sensitivity to serve the interests of the claimants or those of the government. ANWAG calls for the Obama administration to place an individual who meets these criteria in the position to administer this program as soon as possible.

Sincerely,

David M. Manuta

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