

Fax Cover Sheet

To: JAMES B. BEAULT

From: Gary S. Vander Boegh

Fax: 202-693-6111

Date: 9-15-11

Phone:

Pages: 16 Pages including the Cover Sheet

Re: John Burton

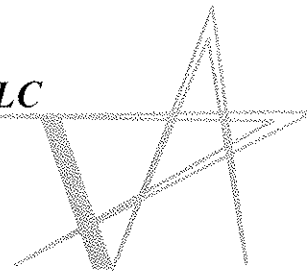
Attention Jim Bibeault

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

COMMONWEALTH ENVIRONMENTAL SERVICES, LLC

"A Native American - Woman Owned Company"



Gary Vander Boegh, Vice President
Commonwealth Environmental Services, LLC
4645 Village Square Drive, St. F
Paducah, Kentucky 42001
Telephone: (270) 450-0850
Facsimile: (270) 450-0858

September 15, 2011

U. S. Department of Labor,
Frances Perkins Building, 200 Constitution Ave., NW
Room S-2018
Washington, DC 20210
Facsimile (904) 357-4704
Attention: Jim Bibeault

Employee: John C. Burton
Claimant: Mary Jane Burton
File Number: XXX-XX -2474

Dear Mr. Bibeault

As "Authorized Representative" (AR) for claimant Mary Jane Burton, I hereby submit the following for Chronic Beryllium Disease (CBD) based on statutory requirements 42 USC § 7384l (13) (B) as follows:

- (B) For diagnoses before January 1, 1993, the presence of—
- (i) **occupational or environmental history**, or epidemiologic evidence of beryllium exposure; and
 - (iii) **any three of the following criteria:**
 - (I) **Characteristic chest radiographic (or computed tomography (CT)) abnormalities.**
 - (II) **Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.**
 - (III) Lung pathology consistent with chronic beryllium disease.
 - (IV) **Clinical course consistent with a chronic respiratory disorder.**
 - (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

The Department of Labor has further stated, "For beryllium disease prior to January 1, 1993, a specific diagnosis of CBD IS NOT REQUIRED (emphasis added.)"....

Per Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual, "To determine whether to use the Pre or Post 1993 CBD criteria, the medical evidence must demonstrate that the employee was either treated for, tested or diagnosed with a chronic respiratory disorder. If the earliest dated document is prior to January 1, 1993, the pre-1993 CBD criteria may be used. Once it is established that the employee had a chronic respiratory disorder prior to 1993, the CE is not limited to use of medical reports prior to 1993 to meet the three of five criteria."

The Paducah Gaseous Diffusion Plant was a DOE facility from 1952 to July 28, 1998 and July 29, 1998 to present (remediation) where radioactive and beryllium materials were present, according to the Department of Energy Office of Worker Advocacy Facility List (<http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/findfacility.cfm>).

(Excerpt)

DOCKET NUMBER: 57973-2005

Decision Date: January 7, 2005

NOTICE OF FINAL DECISION

This is the decision of the Final Adjudication Branch concerning your claim for compensation under Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.* (EEOICPA or the Act). This decision affirms the recommended acceptance issued on November 30, 2004.

STATEMENT OF THE CASE

On May 28, 2004, you filed a claim for survivor benefits, as the widow of [Employee], Form EE-2, under Part B of the EEOICPA. You identified "breathing problems" and chronic beryllium disease (CBD) as the claimed conditions. You also filed a Form EE-3 indicating that your husband was employed by F.H. McGraw at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky from 1951 to "I don't remember."

The Department of Energy (DOE) was unable to verify employment; however, they did confirm that F.H. McGraw held a number of contracts, during this time, at the Paducah Site. You submitted Social Security records indicating that your husband was employed by F.H. McGraw from the fourth quarter of 1951 to the third quarter of 1954. Social Security reported maximum reportable earnings (\$3600.00) for 1952, 1953 and 1954. The DOE also submitted a "Personnel Clearance Master Card" from F.H. McGraw and Company that indicated [Employee] was terminated on December 17, 1954 due to a reduction in force; this notice also indicated that a Q Clearance was granted on February 14, 1952.[1]

Based upon the DOE response that F.H. McGraw held a number of contracts from 1951 to 1954 and the security Q clearance notification, the district concluded that the DOE had a business or contractual arrangement with F.H. McGraw. The district office further concluded that your husband worked with F.H. McGraw at the Paducah Gaseous Diffusion Plant for at least one day on December 17, 1954 based upon the reduction in force notice.[2]

The death certificate submitted showed that [Employee] died on October 12, 1999, and the immediate cause of death as congestive heart disease. The death certificate indicated that the surviving spouse was [Claimant]. You submitted a marriage certificate showing that [Employee] and [Claimant] were married on March 23, 1940.

You submitted a medical report dated February 23, 1991, from Lowell F. Roberts, M.D., which indicates a history of chronic obstructive pulmonary disease (COPD), shortness of breath, and dyspnea. A February 23, 1991 X-ray report, from D.R. Hatfield, M.D., indicates a diagnosis of COPD. A February 25, 1991 CT-scan, from Barry F. Riggs, M.D., indicates abnormal nodular densities of the right lower lobe and a diagnosis of COPD. A February 26, 1991 medical report from M.Y. Jarfar, M.D. indicated that pulmonary function tests showed mild obstructive defects and mild diffusing lung capacity defects. You also submitted an X-ray report dated September 6, 1994, from Robert A. Garneau, M.D., that indicated diagnoses of COPD and Interstitial Fibrosis. A November 27, 1994 medical report from David Saxon, M.D., indicated findings of rales and wheezing. A December 2, 1994 medical report from Dr. Saxon, indicates hypoxemia to the left lower lung. A December 2, 1994 medical report from Lowell F. Roberts, M.D., indicated diagnoses of shortness of breath, congestive heart failure, dyspnea and cough, and rales in the lung base. An August 13, 1995 X-ray report from Charles Bea, M.D., indicates a diagnoses of bibasilar infiltrates. A December 30, 1996 X-ray report from Sharron Butler, M.D., indicates an increase of lung markings since the September 14, 1992 study. In the March 1, 1998 X-ray report from Dr. Butler diagnoses of “advanced chronic lung changes, mild interstitial prominence diffusely, and patch density of the posterior right lung” are indicated. An August 19, 1998 CT-scan from James D. Van Hoose, indicates diagnoses of pleural thickening and pulmonary calcifications. An August 6, 1999 pulmonary function test from William Culberson, M.D. indicates a diagnosis of moderately severe restrictive disease. An October 12, 1999 discharge summary from Eric B. Scowden, M.D. indicates diagnoses of progressive shortness of breath, congestive heart disease, COPD, and history of right-sided empyema complicating pneumonia necessitating prolonged chest tube drainage with a continued open sinus tract.” Based upon these reports the district office concluded that you had CBD prior to January 1, 1993.[3]

On November 30, 2004, the district office issued a recommended decision concluding that your husband was a covered beryllium employee, that he was exposed to beryllium, and that he had symptoms and a clinical history similar to CBD prior to January 1, 1993. They further concluded that you are entitled to compensation in the amount of \$150,000 pursuant to § 7384s of the EEOICPA.

Section 30.316(a) of the EEOICPA implementing regulations provides that, “if the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in 20 C.F.R. § 30.310, or if the claimant waives any objection to all or part of the recommended decision, the Final Adjudication Branch (FAB) will issue a decision accepting the recommendation of the district office, either whole or in part.” 20 C.F.R. § 30.316(a). On December 1, 2004, the FAB received your signed waiver of any and all objections to the recommended decision. After considering the evidence of record, your waiver of objection, and the NIOSH report, the FAB hereby makes the following:

FINDINGS OF FACT

1. You filed a claim for benefits under Part B of the EEOICPA on May 28, 2004.
2. Your husband was employed at the Paducah Gaseous Diffusion Plant for at least one day on December 17, 1954.
3. Medical evidence has been submitted establishing a diagnosis of chronic beryllium disease before January 1, 1993.

4. You were married to the employee from March 23, 1940, until his death on October 12, 1999.

Based on these facts, the undersigned makes the following:

CONCLUSIONS OF LAW

Section 7384s of the Act provides for the payment of benefits to a covered employee, or his survivor, with an "occupational illness," which is defined in § 7384l(15) of the EEOICPA as "a covered beryllium illness, cancer. . .or chronic silicosis, as the case may be." 42 U.S.C. §§ 7384l(15) and 7384s. 42 U.S.C. § 7384l.

Pursuant to § 7384l(13)(B) of the EEOICPA, to establish a diagnosis of CBD before January 1, 1993, the employee must have had "an occupational or environmental history, or epidemiologic evidence of beryllium exposure; and (iii) any three of the following criteria: (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities. (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect. (III) Lung pathology consistent with chronic beryllium disease. (IV) Clinical course consistent with a chronic respiratory disorder. (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred)." 42 U.S.C. § 7384l(13)(B).

The evidence of record establishes that the employee was a covered beryllium employee who had at least three of the five necessary medical criteria to establish pre-1993 CBD under the EEOICPA. Therefore, you have provided sufficient evidence to establish that your husband was diagnosed with pre-1993 CBD, pursuant to § 7384l(13)(B) of the EEOICPA.

The undersigned has reviewed the facts and the district office's November 30, 2004 recommended decision and finds that you are entitled to \$150,000 in compensation.

The decision on the claim that you filed under Part E of the EEOICPA is being deferred until issuance of the Interim Final Regulations.

Washington, DC

Tom Daugherty
Hearing Representative
Final Adjudication Branch

[1] The Paducah Gaseous Diffusion Plant was a DOE facility from 1952 to July 28, 1998 and July 29, 1998 to present (remediation) where radioactive and beryllium material were present, according to the Department of Energy Office of Worker Advocacy Facility List (<http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/findfacility.cfm>).

[2] Per Chapter 2-100.3h (January 2002) of the Federal (EEOICPA) Procedure Manual, "The OWCP may receive evidence from other sources such as other state and federal agencies" to support a claim under the EEOICPA.

[3] Per Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual, "To determine whether to use the Pre or Post 1993 CBD criteria, the medical evidence must demonstrate that the employee was either treated for, tested or diagnosed with a chronic respiratory disorder. If the earliest dated document is prior to January 1, 1993, the pre-1993 CBD criteria may be used. Once it is established that the employee had a chronic respiratory disorder prior to 1993, the CE is not limited to use of medical reports prior to 1993 to meet the three of five criteria."

Evidence of John C. Burton's X-Ray Records and Misc. Medical Reports For Lung Abnormalities Lungs Nodules, Chronic Bronchitis and Fibrotic Process Diagnosed in 1984 Before January 1, 1993

Mary Jane Burton provides Claimant Attachment (CA) – 001 that consists of his medical records, x-ray reports, and his clinical treatment for his lung abnormalities associated with chronic bronchitis and chronic obstructive pulmonary disease (COPD) prior to January 1, 1993.

1/ CA -001, pg 1 of 9 X-ray report dated November 2, 1984, Massac Memorial Hospital, Allied Chemical Routine ...” **Small calcified granulomas are again noted in both apical regions showing no interval change...**”

Compliance with criteria (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

2/ CA-001, pg 2 of 9, X-ray report dated January 31, 1986, Massac Memorial Hospital, Allied Chemical Routine... **“Fibrocalcific densities in the right apical region probably represent previous granulomatous infection and they show no interval change....”**

Compliance with criteria (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

3/ CA-001, pg 3 of 9, X-ray report dated September July 23, 1987, Massac Memorial Hospital, Allied Chemical Routine ...**“Linear densities in the right apical region representing scarring show no interval change ...”**

4/ CA-001, pg 4 of 9, X-ray report dated October 10, 2004, Massac Memorial Hospital Department of Radiology ...”The lung parenchyma reveals mild emphysematous changes within the lung apices with scattered bulla. There is a small 5 millimeter non – calcified nodule within the right middle lobe”

5/ CA-002, pg 5 of 9, X-ray report dated April 05, 2005, Massac Memorial Hospital Radiology Department **“Impression from CT Thorax. 1. Mild emphysematous lung changes. 2. Stable old granulomatous disease. 3. Previously noted 5 millimeter non-calcified nodule within the right middle lobe, not as clearly demonstrated on todays exam secondary to the acquisition. This again is most likely related to OLD granulomatous disease but follow up imagine is recommended in nine months to one year to assure continued stability....”**

6/ CA-002, pg 6 of 9, X-ray report dated July 13, 2005, Massac Memorial Hospital Radiology Department...”**Two views of the chest revealed mild hyperinflation suggesting element of chronic change. Old granulomatous disease is redemonstrated. Some mild scarring is again noted bilaterally. Impression: Mild chronic lung disease. ...”**

7/ CA-003, pg 1 of 1, Medical Report dated March 16, 2009, Lourdes Hospital, Per Dr. Randy E. Oliver, MD. Assessment Mr. Burton has COPD.

8/ CA-004, pg 1 of 1, X-ray report dated July 06, 2009, Massac Memorial Hospital Radiology Department. ...”Shortness of breath. Granulomas are present.”

9/ CA-005, pg 1 of 1, X-ray report dated July 28, 2009, Lourdes Hospital Radiology Department. ...”The lungs show chronic obstructive pulmonary disease. There are chronic changes in the lung bases and apices. Impression, COPD with chronic basilar change”.....

10/ CA-006, pg 5 of 6, Discharge summary dated July 08, 2009, Massac Memorial Hospital, Dr. Randy E. Oliver, MD. ...”Prednisone was prescribed”...

Compliance with (IV) Clinical course consistent with a chronic respiratory disorder.

11/ CA-007, pg 1 of 2, Autopsy Report dated July 12, 2011, Western Baptist Hospital, Dr. Robert M. Haugh, MD. ...”Final Diagnosis, Chronic obstructive pulmonary disease. 1. Bullous centrilobular emphysema, severe. 2. Chronic bronchitis. 3. Bilateral pleural fibrous adhesions. 3. Pulmonary asbestosis with moderate numbers of asbestos bodies. 4. Patchy bronchopneumonia, both lungs with right side fibrinous and fibrous pleuritis. 5. Status post chest tube placement for tension “PNEUMOTHORAX”, (emphasis added).

Compliance with Criteria (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

Allied Chemical Corp. Plant Considered DOE Facility in Addition to AWE

Allied Chemical Corp. Plant

1 - Allied Chemical Corp. Plant

Also Known As: General Chemical Division
State: Illinois **Location:** Metropolis
Time Period: AWE 1959-1976; Residual Radiation 1977-October 2009
Facility Type: Atomic Weapons Employer

Facility Description: After World War II, many companies working for the United States Government produced UF₆ feed for uranium enrichment and diffusion plants. The Allied Plant in Metropolis, IL was completed and initial deliveries began sometime in 1959. In 1962, several feed plants were shut down and the privately-owned Allied Chemical Company Plant in Metropolis, IL, took over the conversion of U₃O₈ to UF₆. This plant produced approximately five thousand tons of uranium hexafluoride feed for the Paducah Gaseous Diffusion Plant per year. It was shut down in 1964. Though it later reopened, it is not clear that any material after this date was used in the Atomic Weapons Production Process.

During the period of residual contamination, as designated by the National Institute for Occupational Safety and Health and as noted in the dates above, employees of subsequent owners and operators of this facility are also covered under the Energy Employees Occupational Illness Compensation Program Act

FEDERAL REGULATIONS

<http://www.dol.gov/owcp/energy/regs/compliance/law/FinalRuleInRegister.pdf>

78520 Federal Register / Vol. 71, No. 250 / Friday, December 29, 2006 / Rules and Regulations

20 CFR Parts 1 and 30

EXHIBIT 5

DOCKET NUMBER: 10043931-2006

DECISION DATE: March 10, 2008

...”In his letter dated June 26, 2006, the employee modified his objection to the recommended decision by stating that the MIT Metallurgical Project (MMP), not the entire MIT Cambridge campus, should be classified as a DOE facility. In support of that objection, he argued that “if the MMP was reclassified to meet the requirements of ‘Department of Energy’ Facility,” then he would satisfy the statutory requirements of a “Department of Energy contractor employee.” Based on the totality of the evidence in the case file, the FAB concludes that the evidence does not provide sufficient support for this argument. Even if the MMP were to be classified as a DOE facility during the employee’s period of civilian employment there, he would still have to submit factual evidence sufficient to establish that he was employed by “(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or (ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility.” 42 U.S.C. § 7384l(11)(B). The evidence does not support a

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conclusion that he was so employed, because it does not establish that his employer, MIT, contracted with DOE (or any of its predecessor agencies) “to provide management and operating, management and integration, [] environmental remediation, [or] services, including construction and maintenance, at the facility.”

The employee also argued that the MMP meets the first part of the two-part statutory definition of a “DOE facility.” In support of this argument, he asserted that the evidence in the file proves that the MMP is a building, structure or premise “in which operations are, or have been, conducted by, or on behalf of, the Department of Energy.” pursuant to 42 U.S.C. § 7384l(12)(A). The FAB agrees that the evidence supports this conclusion. During the development of the employee’s Part E claim, his file was referred to the SOL, and on March 14, 2007, that office issued a memorandum in which it found that the evidence supports a conclusion that the employee’s “work on the Metallurgical Project was performed pursuant to Contract No. W-7405-eng-175 between MIT and the MED, thus meeting the test of § 7384l(12)(A).” The FAB agrees with that conclusion.

12. For purposes of EEOICPA, MIT’s Cambridge campus is classified as an AWE facility for the time period 1942 through 1946, and as a beryllium vendor facility for the time period 1943 through 1946. While MIT’s Cambridge campus is not classified as a DOE facility, the Hood Building, which was located adjacent to MIT’s Cambridge campus prior to its demolition, is classified as a DOE facility for the time period 1946 through 1963.

Based on the above findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

... "In order to be afforded coverage under Part E of EEOICPA, a claimant must establish that, among other things, he is a "covered DOE contractor employee." 42 U.S.C. §§ 7385s(1), 7385s-1, 7385s-8. To prove that he is a "covered DOE contractor employee" for purposes of Part E eligibility, the employee must establish: (1) that he was a "DOE contractor employee" and (2) that he "contracted a covered illness through exposure at a Department of Energy facility." 42 U.S.C. § 7385s(1). As a result of this statutory scheme, only DOE contractor employees are eligible for benefits under Part E, whereas employees of an AWE or a beryllium vendor are excluded from such coverage. [12] "Although they are not covered under Part E of EEOICPA, atomic weapons employees and beryllium vendor employees are covered under Part B of EEOICPA. Additionally, Congress has stated that EEOICPA was established to compensate "civilian" men and women who performed duties uniquely related to nuclear weapons production and testing. See 42 U.S.C. § 7384(a)(8). Consequently, members of the military are not covered by EEOICPA. See EEOICPA Fin. Dec. No. 57276-2004 (Dep't of Labor, October 26, 2004)...."

... "The Act defines the term "Department of Energy contractor employee," in pertinent part, as follows: "An individual who is or was employed at a Department of Energy facility by—(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or (ii) a contractor or subcontractor that provided services, including construction and maintenance at the facility." 42 U.S.C. § 7384f(1)(B) (emphasis added). Thus, in order to be considered a "Department of Energy contractor employee," a claimant must have been employed at a DOE facility. The statutory definition of a "Department of Energy facility" is:

"[A]ny building, structure, or premise, including the grounds upon which such building, structure, or premise is located—
(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy; . . . and
(B) with regard to which the Department of Energy has or had —
(i) a proprietary interest, or
(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

42 U.S.C. § 7384f(12). Therefore, in order to be eligible for benefits under Part E, a claimant must prove that he is or was employed as a civilian employee of a DOE contractor or subcontractor at a facility that meets the requirements of both subsection (A) and subsection (B) of § 7384f(12). . . ."

... "The FAB finds that the evidence supports the employee's statement that the work on the MMP project was paid for by and directly benefited the MED. Both the SOL memorandum and the DOE Facilities List support a finding that the MMP work was performed pursuant to Contract No. W-7405-eng-178 between MIF and the MED, and FAB will assume that the MED met its payment obligations to MIF under the contract. However, payment for work performed under the contract and receipt of benefits from the performance of the contract do not establish that the MED had a proprietary interest in the *buildings* in which the contract's work was performed. The structure of the statutory definition of a "Department of Energy facility" supports this conclusion.

The Act defines the term "Department of Energy facility" as:

[A]ny building, structure, or premise, including the grounds upon which such building, structure, or premise is located—
(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy; . . . and
(B) with regard to which the Department of Energy has or had —
(i) a proprietary interest, or
(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

... "The FAB concludes that the employee has established that he was a civilian employee of MIT from January 26, 1945 to October 22, 1945, and that he worked in various laboratories in Buildings 4, 8 and 16 on the MIT campus in Cambridge, Massachusetts, during that time period. The evidence further establishes that the employee's work for the MMP during that period was performed pursuant to a contract that MIT entered into with the MED to perform research and development on beryllium and other metals and compounds in support of the Manhattan Project. **Based on the totality of the evidence, FAB concludes that MIT's Cambridge campus satisfies subsection (A) of the statutory definition of a "Department of Energy facility." 42 U.S.C. § 7384(12)(A)....**"

Washington, DC

Thomas R. Daugherty
Hearing Representative
Final Adjudication Branch

Attention: Mark Langowski,

Employee/ Claimant: Mark E. Hayden

File Number: xxx-xx-7589

Subject: OSTI Covered Doe Facility

FAB Hearing Background

Mark E. Hayden is an employee of the Allied Chemical Corporation Plant aka General Chemical Division aka Honeywell Specialty Chemicals, Metropolis Illinois. The District Office concluded that the medical evidence is sufficient to establish that Mr. Hayden was diagnosed with liver cancer on February 22, 2010. Testimony was presented at the FAB hearing by Ms. Donna Hand (worker advocate), Bill Klinghammer (former USW President), and Gary S. Vander Boegh, (nuclear worker advocate), that supported Mr. Hayden's claim for liver cancer under Part E of the EEOICPA. Donna Hand presented testimony at the FAB hearing that is captured in supplemental attached evidence "Post Brief Exhibit (PBE) I. "

Since the Department of Labor (DOL) only recognizes the Honeywell plant as a "Atomic Weapons Employer" facility, and not as a Department of Energy (DOE) facility, the DOL should re-designated the Allied Chemical/ Honeywell facility as a DOE facility in keeping with the statute as defined by DEEOICP when it defined that the Oak Ridge

Office of Scientific and Technical Information as "a covered DOE facility per the attached DOI Circular dated May 08, 2008 (PBE-II).

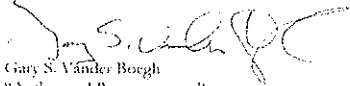
As part of adjudicating a claim, the issue was raised as to whether the Office of Scientific and Technical Information (OSTI) in Oak Ridge, TN was a covered DOE facility for the period 1957-present under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). After researching the issue and reviewing related documentation, it was determined that OSTI "is a covered DOE facility."

Again as defined by DEEOICP, the Metropolis facility is a contractor with DOE to provide services/ produced material by the way of enriched uranium needed and required by the Paducah facility per EEOICPA Bulletin No. 03-27 (PBE-III).

Part E Benefits

The DOI is therefore required by the EEOICPA to provide Mark E. Hayden Part E medical benefits resulting from his exposure to toxic chemicals such as radioactive beryllium, cadmium, arsenic, lead etc. Due to Mr. Hayden's total failure of his liver and subsequent transplantation, he is entitled to the maximum compensation in the amount of \$250,000 (after achieving maximum medical improvement prior to liver transplantation) per the "AMA Impairment Guide, Fifth Edition..

Sincerely,



Gary S. Vander Borgh
"Authorized Representative"
Vice President - Commonwealth Environmental Services, LLC.

Attachments: Post Brief Exhibit - I
Post Brief Exhibit - II
Post Brief Exhibit - III

ALLIED CHEMICAL Corp Plant aka General Chemical Division Metropolis III

This facility should be redesignated as a DOE facility in keeping with the statute as defined by DEEOICPA when it defined that the Oak Ridge Office of Scientific and Technical Information as a covered DOE facility, Circular 08-05 May 2008.

EEOICPA CIRCULAR NO 08-05 May 2, 2008

SUBJECT OSTI as a covered DOE facility

As part of adjudicating a claim, the issue was raised as to whether the Office of Scientific and Technical Information (OSTI) in Oak Ridge, TN was a covered DOE facility for the period 1957-present under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). After researching the issue and reviewing related documentation, it was been determined that OSTI is a covered DOE facility.

Prior to publication of this circular, OSTI was not recognized as a covered facility under the EEOICPA. The purpose of this circular is to alert all Division of Energy Employees Occupational Illness Compensation (DEEOIC) staff that OSTI is now a covered DOE facility. Accordingly, OSTI federal employees are now covered under Part B and any OSTI contractor and/or subcontractor employees are additionally eligible for Part E.

OSTI's current street address is 1 Science.gov Way in Oak Ridge, Tennessee. Prior to November 7, 2003, the street address for OSTI, at this exact same location, was 175 Oak Ridge Turnpike, Oak Ridge, TN.

The determination that OSTI is a DOE facility is based upon the Act. The relevant statutory section is:

42 U.S.C. § 7384(i)(2) The term "Department of Energy facility" means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had:
i. a proprietary interest; or
ii. entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services. (emphasis added) 42 U.S.C. § 7384(i)(2)

OSTI has served as a repository for all technical reports pertaining to the Department of Energy and its predecessor agencies since 1943. Its basic functions are the collection, preservation and dissemination of energy-related scientific and technical information. Additionally, it was previously concluded that the term "operations" in § 7384(i)(2) has a broad meaning and there is no requirement that the work performed in a DOE building have a "nuclear weapons nexus" in order for that building to properly be considered a

"Department of Energy facility" under EEOICPA. Therefore, the library-type work performed at OSTI constitutes "operations" on behalf of the DOE.

With regard to fulfilling the second part of the definition, the building in which OSTI is now housed was built by the AEC as a warehouse sometime after the final drawings were approved on January 6, 1948, and was in use by 1950. Architectural schematics indicate that in 1957, Building 1916 T-1 was significantly expanded and interior walls were added for the purpose of housing the relocated OSTI (then TISE) offices. The schematics refer to the "United States Atomic Energy Commission" as the owner of the property in 1957 and current real estate assessment data available through the State of Tennessee indicate that DOE continues to own the property today. This therefore shows that DOE has a proprietary interest in the "buildings, structure and land" which house OSTI and the EEOICPA statutory definition of a DOE facility is therefore met, effective January 1, 1957.

PETER M. TURCIC
Director, Division of Energy Employees
Occupational Illness Compensation

Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, District Office Mail & File Section

Allied Chemical Corporation Plant aka General Chemical Division aka Honeywell Specialty Chemicals, Metropolis Illinois, is also a DOE facility under the EEOICPA Act. Since 1958, this facility has had contracts with the AEC and AEC facilities to deliver uranium hexafluoride feed material for the Paducah Gaseous Diffusion Plant, Portsmouth Gas Diffusion Plant, and Oak Ridge Gas Diffusion Plant. Allied Metropolis plant has also received nuclear material from the various AEC plants.

The records show that this facility was shut down in 1964, but later resumed the conversion of U 308 to UF6, after the rehabilitation of the plant itself.

The Nuclear Regulatory Commission, a predecessor of DOE, has complete regulatory and licensing of the Allied Metropolis facility. This license is under the agreement it will be required to be renewed every 10 years; it authorizes possession of 150M lbs of natural uranium; and does not license this facility to possess enriched uranium. Since this facility is only one of 2 in the United States that is a conversion facility, it can only sell its "product" to DOE facilities or nuclear power plants. Once it is "converted" to UF6, the product goes to Paducah Gaseous Diffusion Plant by way of the federal Corporation known as the US Enrichment Corporation.

The Honeywell International Inc/Metropolis Works Uranium Conversion Facility is the present owner of the plant and has a license from the Nuclear Regulatory Commission that is still active today, 2011. In fact, according to the Illinois Nuclear Regulation records, the NRC has jurisdiction over the facility including the waste "byproduct material" since 1987. DOE has also confirmed that the NRC shall have jurisdiction over this facility for national security reasons.

Historically AEC and since 1974 NRC have been responsible for licensing and regulating commercial uranium conversion and fuel fabrication facilities. Conversion facilities must have a source material license to operate. see 10 CFR40. Fuel fabrication plants are licensed by NRC to

process compounds that contain special nuclear materials DOE owned and contractor operated facilities are regulated by DOE since 1978. Such facilities are not formally licensed, but are operated under contract by a private corporation.

According to the EEOICPA Act's definition of a DOE facility, ...

aa Department of Energy facility means any building, structure, or premises, including the grounds upon which such building, structure, or premises is located.

(1) in which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

The operations at the Metropolis facility are still being conducted on behalf of DOE since the enriched uranium is only for the DOE facilities, and the Metropolis facility cannot possess the enriched uranium.

(b) Work performed on behalf of the DOE means or had

(i) A proprietary interest, or

The DOE had a licensed, agreement, and contract interest with the Metropolis facility, as per proprietary interest is defined in the Black's Law Dictionary:

(ii) Entered into a contract with an entity to provide management and operation management and integration, environmental remediation services, construction or maintenance services.

The Metropolis facility has a contract with USIC to furnish the enriched uranium to Paducah Gaseous Diffusion Plant from 1958 to present.

Again as defined by EEOICPA, the Metropolis facility is a contractor with DOE to provide services/produced material by the way of enriched uranium needed and requested by the Paducah facility.

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For the purposes of this program, the following definitions will apply:

Contractor - An entity engaged in a contractual business arrangement with the Government of Energy to provide services, produce materials or manage operations at a beryllium vendor or Department of Energy facility.

Subcontractor - An entity engaged in a contractual business arrangement with a beryllium vendor, contractor or a contractor of the Department of Energy to provide a service at a beryllium vendor or Department of Energy facility.

Service – In order for an individual working for a subcontractor to be determined to have performed a "service" at a covered facility, the individual must have performed work or labor for the benefit of another within the boundaries of a DOE or beryllium vendor facility. Example of workers providing such services would be janitors, construction and maintenance workers.

Contract – An agreement to perform a service in exchange for compensation, usually memorialized by a memorandum of understanding, a cooperative agreement, an actual written contract, or any form of written or implied agreement, is considered a contract for the purpose of determining whether an entity is a "DOE contractor."

Reference: 42 U.S.C. § 7384(7), 42 U.S.C. § 7384(11)

Chapter 0-0500 Definitions

y Department of Energy (DOE) includes the predecessor agencies of the DOE, such as the Atomic Energy Commission and the Manhattan Engineering District

The Nuclear Regulatory Commission was established in 1974, DOE was established in 1978, therefore NRC is a predecessor agency of DOE.

Following is the text of a DOE Federal Register notice published January 17, 2001, pp. 4003-4009. Note: this list was updated by a Federal Register notice published on June 11, 2001, pp. 31218-24]

6450-01-p

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Act of 2000; List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of Listing of Covered Facilities

SUMMARY: The Energy Employees Occupational Illness Compensation Act of 2000 (**Act**), Public Law 106-398, establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and certain other federally-owned facilities in which radioactive materials were used. On December 7, 2000, the President issued Executive Order 13179 (**Order**) directing the Department of Energy (**Department** or **DOE**) to list covered facilities in the Federal Register. This notice responds to both the Act and the Order.

Introduction to the Covered Facility List

The list that follows represents the three categories of employers defined by the Act: atomic weapons employers (**AWE**), Department of Energy facilities (**DOE**), and beryllium vendors (**BE**). Some facilities fall into more than one category. For example, if a private contractor facility handled both radioactive materials and beryllium, it will have **AWE** and **BE** in the **facility type** field. For another example, a facility will have both **DOE** and **AWE** codes if ownership changed between

the DOE and private entity. The Department intends to provide facility-specific expansions of the applicability of these categories of rough-line diseases mentioned above.

Each of the categories is defined below.

1. Atomic Weapons Employers

Section 5621 (a) of the Act defines an atomic weapons employer as "an entity that--

(A) processes or produces, for the use by the United States, nuclear instruments, devices, and accessories in the production of atomic weapons, excluding uranium mining and milling; and

(B) is designated as an atomic weapons employer for purposes of this title by the Secretary of Energy."

Most facilities listed as AWE conducted nuclear weapons-related work for a limited period of time or in certain select areas of the plant. For example, some sites worked with radioactive materials to evaluate processing machinery that was being considered for use in atomic weapons production. Radioactive materials may not have been used as a routine part of the facility's operations. The Act covers those workers who became sick as a consequence of their work in support of nuclear weapons production activities, and was not intended to cover all workers at each site named.

The lines between research, atomic weapons production, and non-weapon production are often difficult to draw. For the purposes of this statute, and as specified by the Act, only those facilities that were used in the production of atomic weapons are included in the AWE category. Additionally, workers at many of these facilities were employed for a short period, and the Department is reviewing comments of additional interested parties to determine that those facilities included in the atomic weapons production that are referred to in this list, as well as information that defines the work done at facilities named below.

2. Department of Energy Facilities

Section 5621 (12) of the Act defines a Department of Energy facility as "any building, structure, or premise, including the grounds with which such building, structure, or premise is located--

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order 12844, pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had--

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services."

Consistent with this definition, the Department has been a passive owner of many operations that are managed by DOE or its contractor agencies. The following list includes any facility having radioactive materials or byproduct in which the Department had management and

operations, management, and integration, environmental remediation, or construction and maintenance contracts. This broad definition includes many facilities which are not generally thought of as Departmental facilities, as well as facilities which are not necessarily involved with weapons-related work. For example, some universities and private companies are included because the Department contracted for environmental remediation services at those sites, even though the Department did not own the facility. Also, some DOE-owned laboratories are included because they do work involving radioactive materials, even though the work is not related to weapons production. The term of Department of Energy facilities is only intended for the context of implementing this Act and does not create or imply any new Departmental obligations or ownership at any of the facilities named on this list.

Since the DFEHCOP has designated that the Oak Ridge OSTI is a DOE facility, that the requirement of handling radioactive materials that is a concern as it was when the DOE designated the facility. Oak Ridge OSTI was not handling radioactive material that was connected to the weapons chain. The Allied Metals Facility did handle radioactive material that was connected with the weapons chain.

The Allied-Chemical Corp had a license issued by the NRC. DOE agreed that because of National security that the NRC would remain control over the Allied facility and not the State of Illinois in their agreement state contracts.

Order To Protect the Common Defense and Security

Allied-Chemical Corporation, Metropolis, Illinois, (the licensee) is the holder of License No. SUB-C66 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to use source material in a UP conversion plant in Metropolis, Illinois. The license was first issued on May 20, 1965 and will expire on June 1, 1980 (Docet No. 6400-3382).

In a letter dated November 17, 1965, the Department of Energy, ("DOE") commenting to NRC on the matter of the proposed inclusion of the NRC License to Allied Chemical among the category of source material licenses to be transferred to Illinois under a Section 274b Agreement, stated that the combination of the commercially operated uranium conversion facilities in the U.S. and the DOE operated enrichment facilities represent a complex that is an important national asset essential to maintaining the common defense and security of the United States. DOE further expressed the view that, "it would be prudent for NRC to retain its existing regulatory authority over uranium conversion facilities consistent with its charter to regulate facilities whose operation is in the national interest."

Since even the commercially operated uranium conversion facilities and the enrichment facilities have a complex and unique agreement, the Allied-Chemical Facility should be a DOE facility under the DFEHCOP Act. The workers are contractor workers and should receive the same benefits under Part B and Part E of the Act that the Oak Ridge OSTI workers are receiving. For these workers not to be designated as DOE contractor employees, would mean that the Oak Ridge OSTI workers need to be sequestered or that DFEHCOP is not be consistent or fair in the administration of the DFEHCOP Act.

Request for Approval of Part B and Part E Compensation for Chronic Beryllium Disease (CBD)

Based on the above medical evidence, Mary Jane Burton met her burden of proof for EEOICPA Part B Compensation in the amount of \$150,000 and EEOICPA Part E compensation based on the maximum whole body impairment of 100% in the amount of \$125,000, per the statutory requirements USC § 73841 (13) (B) and Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual established for all sick nuclear workers per the Act.

Please feel free to contact me at 270-559-1752 or 270-450-0850.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary S. Vander Boegh". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Gary S. Vander Boegh
"Authorized Representative"

Vice President- Commonwealth Environmental Services, LLC.

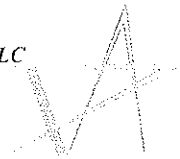
*** FAX TX REPORT ***

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COMMONWEALTH ENVIRONMENTAL SERVICES, LLC

1000 North Washington Street, Suite 200, Washington, DC 20004



Fax Cover Sheet

To: *JAMES B. BURTON*

From: Gary S. Vander Boegh

Fax: 202-693-6111

Date: 9-15-11

Phone:

Pages: 16 Pages including the Cover Sheet

Re: John Burton

Attention Jim Bibeault

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