

111TH CONGRESS  
1ST SESSION

# H. R. 1828

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to expand the category of individuals eligible for compensation, to improve the procedures for providing compensation, and to improve transparency, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2009

Mr. POLIS of Colorado (for himself, Mr. PERLMUTTER, Ms. DEGETTE, Mr. SALAZAR, and Mr. COFFMAN of Colorado) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to expand the category of individuals eligible for compensation, to improve the procedures for providing compensation, and to improve transparency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Charlie Wolf Nuclear Workers Compensation Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.
- Sec. 3. Specified disease.
- Sec. 4. Definitions for program administration.
- Sec. 5. Change in presumption for finding of cancer.
- Sec. 6. Distribution of information to claimants and potential claimants.
- Sec. 7. Enhancement of site profiles of Department of Energy facilities.
- Sec. 8. Clarification of covered illnesses.
- Sec. 9. Payment of compensation to survivors and estates of contractor employees.
- Sec. 10. Wage loss resulting from exposure.
- Sec. 11. Expansion of toxic substance exposure for covered illnesses.
- Sec. 12. Extension of statute of limitations for judicial review of contractor employee claims.
- Sec. 13. Expansion of authority of Ombudsman of Energy Employees Occupational Illness Compensation Program.
- Sec. 14. Payment for transportation and personal care services.
- Sec. 15. Enhancement of transparency in claims process.
- Sec. 16. Extension of time for claimants to respond to requests for information.

3 **SEC. 2. FINDINGS; PURPOSE.**

4 (a) FINDINGS.—Congress finds that—

5 (1) the Energy Employees Occupational Illness  
 6 Compensation Program Act of 2000 (42 U.S.C.  
 7 7384 et seq.) (referred to in this subsection as the  
 8 “Act”) was enacted to ensure fairness and equity for  
 9 the civilian men and women who, for more than 50  
 10 years, have performed duties uniquely related to the  
 11 nuclear weapons production and testing programs of  
 12 the Department of Energy (including predecessor  
 13 agencies of the Department of Energy) by estab-  
 14 lishing a program to provide efficient, uniform, and  
 15 adequate compensation for—

1           (A) beryllium-related health conditions;  
2           and

3           (B) heavy metal-, toxic chemical-, and ra-  
4           diation-related health conditions;

5           (2) the Act (42 U.S.C. 7384 et seq.) provides  
6           a process for the consideration of claims for com-  
7           pensation by individuals who were employed at rel-  
8           evant times and at various locations, which includes  
9           provisions to designate employees at certain other lo-  
10          cations as members of a special exposure cohort the  
11          claims of whom are subject to a less-detailed admin-  
12          istrative process;

13          (3) the Act (42 U.S.C. 7384 et seq.) authorizes  
14          the President, upon a recommendation by the Advi-  
15          sory Board on Radiation and Worker Health estab-  
16          lished under section 3624(a)(1) of the Act (42  
17          U.S.C. 7384o(a)(1)), to designate additional classes  
18          of employees at facilities under the jurisdiction of  
19          the Department of Energy as members of a special  
20          exposure cohort if the President determines that—

21                 (A) it is not feasible to estimate with suffi-  
22                 cient accuracy the magnitude of the radiation  
23                 dose that the cohort received; and

1 (B) there is a reasonable likelihood that  
2 the radiation dose may have endangered the  
3 health of members of the cohort;

4 (4) it is not feasible to estimate with sufficient  
5 accuracy the magnitude of radiation doses received  
6 by employees at facilities under the jurisdiction of  
7 the Department of Energy because—

8 (A) many radiation exposures by employees  
9 were unmonitored or were not monitored ade-  
10 quately over the lifetime of each facility, as  
11 demonstrated in 2004, when an individual em-  
12 ployed during the 1950s agreed to be scanned  
13 under the former radiation worker program of  
14 the Department of Energy and was found to  
15 have a significant internal deposition of radi-  
16 ation that had been undetected and unrecorded  
17 for longer than 50 years;

18 (B) lung counters used for the detection  
19 and measurement of plutonium and americium  
20 in the lungs of the employees were not available  
21 at some facilities until the late 1960s, thus—

22 (i) preventing the very insoluble oxide  
23 forms of plutonium from being detected;  
24 and

1                   (ii) leading to a result in which a  
2                   large number of employees experienced in-  
3                   halation exposures that went undetected  
4                   and unmeasured;

5                   (C) exposure to neutron radiation was not  
6                   monitored at some facilities until the late  
7                   1950s, and most of the measurements taken at  
8                   the facilities from the period beginning in the  
9                   late 1950s and ending in 1970 have been found  
10                  to be in error;

11                  (D) in some areas of the facilities, neutron  
12                  doses were 2 to 10 times as great as the  
13                  gamma doses received by employees, although  
14                  only gamma doses were recorded;

15                  (E) the radiation exposures of many em-  
16                  ployees at certain facilities were not measured,  
17                  and in some cases estimated doses were as-  
18                  signed, while some records for doses have been  
19                  destroyed or lost;

20                  (F) as a result of the practices described  
21                  in subparagraph (E), the available exposure his-  
22                  tories and other data are not adequate to prop-  
23                  erly determine whether employees qualify for  
24                  compensation under the Act (42 U.S.C. 7384 et  
25                  seq.); and

1 (G) the model that has been used for dose  
2 reconstruction by the National Institute for Oc-  
3 cupational Safety and Health in determining  
4 whether certain workers qualify for compensa-  
5 tion under the Act (42 U.S.C. 7384 et seq.)  
6 contains errors because—

7 (i) the default values used for particle  
8 size and solubility of internally deposited  
9 plutonium in employees are in error; and

10 (ii) the use of those erroneous default  
11 values to calculate internal doses for claim-  
12 ants can result in dose calculations that  
13 may be 3 to 10 times below the calcula-  
14 tions as indicated by the example of the  
15 records and autopsy data of the Rocky  
16 Flats Environmental Technology Site of  
17 the Department of Energy;

18 (5) the administrative costs arising from claims  
19 have been disproportionately high relative to the  
20 number of claims that have been approved;

21 (6) many employees, despite working with tons  
22 of plutonium and having known exposures that have  
23 lead to serious health effects, have been denied com-  
24 pensation under the Act (42 U.S.C. 7384 et seq.) as  
25 a result of—

1 (A) potentially flawed calculations based  
2 on records that are incomplete or in error; and

3 (B) the use of incorrect models;

4 (7) the purposes of the Act (42 U.S.C. 7384 et  
5 seq.) are more likely to be achieved if claims by the  
6 employees described in this subsection are subject to  
7 administrative procedures applicable to members of  
8 the special exposure cohort;

9 (8) Charlie Wolf, an employee at the nuclear  
10 weapons facilities of the Savannah River Site, the  
11 Fernald Site, and the Rocky Flats Environmental  
12 Technology Site of the Department of Energy, died  
13 in 2009 from complications due to glioblastoma mul-  
14 tiform brain tumors;

15 (9) the difficulties of Mr. Wolf in securing com-  
16 pensation for the illness that he likely incurred from  
17 exposures to toxic and radioactive materials at the  
18 nuclear weapons facilities described in paragraph (8)  
19 reinforce the need to ensure that the Act (42 U.S.C.  
20 7384 et seq.) will be carried out more efficiently and  
21 humanely for employees similar to Mr. Wolf;

22 (10) Mr. Wolf's first tumor was discovered  
23 after he had worked for several years at the Rocky  
24 Flats Environmental Technology Site of the Depart-  
25 ment of Energy, during which he served as the di-

1 rector of buildings numbered 771 (which was once  
2 considered the most dangerous nuclear facility in the  
3 United States), 774, and 779, 3 facilities at which  
4 toxic and radioactive materials were present and  
5 handled by employees;

6 (11) prior to working at the Rocky Flats Envi-  
7 ronmental Technology Site of the Department of  
8 Energy, Mr. Wolf ran plutonium metal production  
9 lines at the Savannah River Site of the Department  
10 of Energy;

11 (12) Mr. Wolf and his family spent almost 7  
12 years of their lives seeking compensation under the  
13 Act (42 U.S.C. 7384 et seq.) although, due to the  
14 requirements of the Act (42 U.S.C. 7384 et seq.)  
15 and the manner by which the regulations and proce-  
16 dures were carried out, the claims of Mr. Wolf were  
17 subjected to lengthy and repeated delays and com-  
18 plications that resulted from the difficulties associ-  
19 ated with establishing the reconstruction of radiation  
20 doses;

21 (13) as a result of the experiences of Mr. Wolf,  
22 and many others like him, there is a need to reform  
23 the Act (42 U.S.C. 7384 et seq.), and the program  
24 carried out in accordance with the Act (42 U.S.C.

1 7384 et seq.), to improve the processing of claims;  
2 and

3 (14) the reforms established through the  
4 amendments made by this Act broaden the list of  
5 specified cancers, broaden the membership of the  
6 special exposure cohort, and change the presumption  
7 of cancer due to work-related exposures to help  
8 streamline the claims process and help workers like  
9 Mr. Wolf and their survivors.

10 (b) PURPOSE.—The purpose of this Act is to amend  
11 the Energy Employees Occupational Illness Compensation  
12 Program Act of 2000 (42 U.S.C. 7384 et seq.) to improve  
13 the processing of claims for work-related illnesses at facili-  
14 ties under the jurisdiction of the Department of Energy.

15 **SEC. 3. SPECIFIED DISEASE.**

16 Section 4(b)(2) of the Radiation Exposure Com-  
17 pensation Act (42 U.S.C. 2210 note; Public Law 101–  
18 426) is amended—

19 (1) by striking “(other than chronic  
20 lymphocytic leukemia)” and inserting “(including  
21 chronic lymphocytic leukemia)”;

22 (2) by inserting “posterior subcapsular cata-  
23 racts, nonmalignant thyroid nodular disease, para-  
24 thyroid adenoma, malignant tumors of the brain and  
25 central nervous system, bronchio-alveolar carcinoma,

1 benign neoplasms of the brain and central nervous  
2 system,” after “disease),”; and

3 (3) by striking “or lung” and inserting “lung,  
4 skin, kidney, salivary gland, rectum, pharynx, or  
5 prostate”.

6 **SEC. 4. DEFINITIONS FOR PROGRAM ADMINISTRATION.**

7 (a) **ATOMIC WEAPONS EMPLOYEE.**—Section  
8 3621(3)(A) of the Energy Employees Occupational Com-  
9 pensation Program Act of 2000 (42 U.S.C. 7384l(3)(A))  
10 is amended by inserting “, or an individual employed by  
11 a contractor or subcontractor of an atomic weapons em-  
12 ployer,” after “atomic weapons employer”.

13 (b) **ESTABLISHED CHRONIC BERYLLIUM DISEASE.**—  
14 Section 3621 of the Energy Employees Occupational Com-  
15 pensation Program Act of 2000 (42 U.S.C. 7384l) is  
16 amended by striking paragraph (13) and inserting the fol-  
17 lowing:

18 “(13) **ESTABLISHED CHRONIC BERYLLIUM DIS-**  
19 **EASE.**—The term ‘established chronic beryllium dis-20 ease’ means chronic beryllium disease, as established  
21 by—

22 “(A) an occupational or environmental his-  
23 tory, or epidemiological evidence of beryllium  
24 exposure; and

25 “(B) any 3 of the following criteria:

1           “(i) Characteristic chest radiographic  
2           (or computed tomography) abnormalities.

3           “(ii) Restrictive or obstructive lung  
4           physiology testing or a diffusing lung ca-  
5           pacity defect.

6           “(iii) Lung pathology consistent with  
7           chronic beryllium disease.

8           “(iv) A clinical course consistent with  
9           a chronic respiratory disorder.

10           “(v) An immunologic test dem-  
11           onstrating beryllium sensitivity (with pref-  
12           erence given to a skin patch test or a be-  
13           ryllium blood test).”.

14           (c) MEMBER OF SPECIAL EXPOSURE COHORT.—

15           (1) IN GENERAL.—Section 3621(14) of the En-  
16           ergy Employees Occupational Illness Compensation  
17           Program Act of 2000 (42 U.S.C. 7384l(14)) is  
18           amended by adding at the end the following:

19           “(D) The employee—

20           “(i) is not covered under subpara-  
21           graph (A), (B), or (C); and

22           “(ii) was employed by the Department  
23           of Energy, or a contractor or subcontractor  
24           of the Department of Energy, before Janu-  
25           ary 1, 2006.”.

1           (2) REAPPLICATION.—A claim for which an in-  
2           dividual qualifies, by reason of paragraph (14)(D) of  
3           section 3621 of the Energy Employees Occupational  
4           Illness Compensation Program Act of 2000 (42  
5           U.S.C. 7384l) (as added by paragraph (1)), for com-  
6           pensation or benefits under that Act (42 U.S.C.  
7           7384 et seq.) shall be considered for compensation  
8           or benefits notwithstanding any denial of any other  
9           claim for compensation with respect to the indi-  
10          vidual.

11          (d) SPECIFIED CANCERS.—

12           (1) IN GENERAL.—Section 3621(17) of the En-  
13          ergy Employees Occupational Compensation Pro-  
14          gram Act of 2000 (42 U.S.C. 7384l(17)) is amend-  
15          ed—

16           (A) in subparagraph (D), by striking  
17           “(other than chronic lymphocytic leukemia)”;  
18           and

19           (B) by adding at the end the following:

20           “(E) Basal cell carcinoma.

21           “(F) Skin cancer.”.

22          (2) REAPPLICATION.—A claim for which an in-  
23          dividual qualifies, by reason of subparagraph (E) or  
24          (F) of paragraph (17) of section 3621 of the Energy  
25          Employees Occupational Illness Compensation Pro-



1           (2) by redesignating subparagraph (B) as sub-  
2           paragraph (C); and

3           (3) by inserting after subparagraph (A) the fol-  
4           lowing:

5                   “(B) lists that contain descriptions of phy-  
6           sicians who are—

7                           “(i) qualified to perform medical and  
8                           impairment screenings on matters relating  
9                           to the compensation program; and

10                           “(ii) identified for purposes of this  
11                           subparagraph by 1 or more independent  
12                           medical associations, institutions of higher  
13                           education, or both that are selected by the  
14                           President for purposes of this subpara-  
15                           graph; and”.

16           (b) NOTICE OF AVAILABLE BENEFITS.—Section  
17           3631 of the Energy Employees Occupational Illness Com-  
18           pensation Program Act of 2000 (42 U.S.C. 7384v) (as  
19           amended by subsection (a)) is amended by adding at the  
20           end the following:

21                   “(d) NOTICE TO CLAIMANTS REGARDING AVAILABLE  
22           BENEFITS.—The President shall provide to an individual  
23           who files a claim for compensation under this subtitle or  
24           subtitle E a written notice that contains a description of

1 the benefits for which the individual may be eligible under  
2 this Act.”.

3 **SEC. 7. ENHANCEMENT OF SITE PROFILES OF DEPART-**  
4 **MENT OF ENERGY FACILITIES.**

5 (a) INCLUSION OF TRADE NAMES OF CHEMICALS IN  
6 SITE PROFILES.—Section 3633 of the Energy Employees  
7 Occupational Illness Compensation Program Act of 2000  
8 (42 U.S.C. 7384w–1) is amended by striking subsection  
9 (c) and inserting the following:

10 “(c) DEFINITION OF SITE PROFILE.—In this section,  
11 the term ‘site profile’ means an exposure assessment of  
12 a facility that—

13 “(1) identifies the toxic substances or processes  
14 that were commonly used in each building or process  
15 of the facility, and the time frame during which the  
16 potential for exposure to toxic substances existed;  
17 and

18 “(2) includes the trade name (if any) of any  
19 substance described in paragraph (1).”.

20 (b) PUBLIC ACCESS TO SITE PROFILES AND RE-  
21 LATED INFORMATION.—Section 3633 of the Energy Em-  
22 ployees Occupational Illness Compensation Program Act  
23 of 2000 (42 U.S.C. 7384w–1) (as amended by subsection  
24 (a)) is amended by adding at the end the following:

1       “(e) PUBLIC ACCESS TO SITE PROFILES AND RE-  
2 LATED INFORMATION.—The Secretary of Labor shall  
3 make available to the public—

4               “(1) each site profile prepared under subsection  
5 (a);

6               “(2) any other database used by the Secretary  
7 of Energy to evaluate claims for compensation under  
8 this Act; and

9               “(3) statistical data regarding the number of  
10 claims filed, the illnesses claimed, the number of  
11 claims filed for each illness, the number of claimants  
12 receiving compensation, and the length of time re-  
13 quired to process each claim, as measured from the  
14 date on which the claim is filed to the final disposi-  
15 tion of the claim.”.

16 **SEC. 8. CLARIFICATION OF COVERED ILLNESSES.**

17       (a) DEFINITION OF COVERED ILLNESS.—Section  
18 3671 of the Energy Employees Occupational Compensa-  
19 tion Program Act of 2000 (42 U.S.C. 7385s) is amended  
20 by striking paragraph (2) and inserting the following:

21               “(2) COVERED ILLNESS.—The term ‘covered ill-  
22 ness’ means an illness or death resulting from expo-  
23 sure to a toxic substance, including—

24                       “(A) all forms of cancer;

25                       “(B) silicosis;



1 “(1) CONTRACTOR EMPLOYEES.—

2 “(A) IN GENERAL.—In accordance with  
3 section 3673, a covered contractor employee of  
4 the Department of Energy shall receive con-  
5 tractor employee compensation under this sub-  
6 title.

7 “(B) COMPENSATION AFTER DEATH OF  
8 CONTRACTOR EMPLOYEE.—Except as provided  
9 in paragraph (2)(B), if the death of a con-  
10 tractor employee described in subparagraph (A)  
11 occurs after the date on which the contractor  
12 employee applies for compensation under this  
13 subtitle, but before the date on which such com-  
14 pensation is paid, the amount of compensation  
15 that the contractor employee would have re-  
16 ceived under this paragraph shall be paid to—

17 “(i) a survivor of the contractor em-  
18 ployee in accordance with section 3674; or

19 “(ii) if, as of the date of the death of  
20 the contractor employee, no survivor of the  
21 contractor employee exists, the estate of  
22 the contractor employee.

23 “(2) SURVIVORS.—

24 “(A) IN GENERAL.—Except as provided in  
25 subparagraph (B), a survivor of a covered con-

1 tractor employee of the Department of Energy  
2 shall receive contractor employee compensation  
3 under this subtitle in accordance with section  
4 3674.

5 “(B) ELECTION OF CONTRACTOR EM-  
6 PLOYEE COMPENSATION OR SURVIVOR COM-  
7 PENSATION.—A survivor of a contractor em-  
8 ployee described in subparagraph (A) who is  
9 otherwise eligible to receive compensation pur-  
10 suant to subparagraph (A) and paragraph  
11 (1)(B) shall—

12 “(i) receive compensation pursuant to  
13 subparagraph (A) or paragraph (1)(B), as  
14 elected by the survivor of the contractor  
15 employee; and

16 “(ii) not receive compensation pursu-  
17 ant to both subparagraph (A) and para-  
18 graph (1)(B).

19 “(b) APPLICABILITY.—Subsection (a) is subject to  
20 each other provision of this subtitle.”.

21 **SEC. 10. WAGE LOSS RESULTING FROM EXPOSURE.**

22 Section 3673(a)(2)(A)(i) of the Energy Employees  
23 Occupational Compensation Program Act of 2000 (42  
24 U.S.C. 7385s–2(a)(2)(A)(i)) is amended by inserting

1 “that contributed to the wage loss of the employee” after  
2 “that employee”.

3 **SEC. 11. EXPANSION OF TOXIC SUBSTANCE EXPOSURE FOR**  
4 **COVERED ILLNESSES.**

5 Section 3675(c)(1) of the Energy Employees Occupa-  
6 tional Compensation Program Act of 2000 (42 U.S.C.  
7 7385s-4(c)(1)) is amended—

8 (1) in subparagraph (A), by inserting “(includ-  
9 ing radiation or a combination of a toxic substance,  
10 including heavy metals, and radiation)” after “toxic  
11 substance”; and

12 (2) in subparagraph (B), by inserting “(includ-  
13 ing radiation or a combination of a toxic substance  
14 and radiation)” after “toxic substance”.

15 **SEC. 12. EXTENSION OF STATUTE OF LIMITATIONS FOR JU-**  
16 **DICIAL REVIEW OF CONTRACTOR EMPLOYEE**  
17 **CLAIMS.**

18 Section 3677(a) of the Energy Employees Occupa-  
19 tional Illness Compensation Program Act of 2000 (42  
20 U.S.C. 7385s-6(a)) is amended, in the first sentence, by  
21 striking “within 60 days” and inserting “not later than  
22 1 year”.

1 **SEC. 13. EXPANSION OF AUTHORITY OF OMBUDSMAN OF**  
2 **ENERGY EMPLOYEES OCCUPATIONAL ILL-**  
3 **NESS COMPENSATION PROGRAM.**

4 Section 3686 of the Energy Employees Occupational  
5 Illness Compensation Program Act of 2000 (42 U.S.C.  
6 7385s-15) is amended—

7 (1) by striking subsection (c) and inserting the  
8 following:

9 “(c) DUTIES.—The Office shall—

10 “(1) assist individuals in making claims under  
11 this subtitle and subtitle B;

12 “(2) provide information regarding—

13 “(A) the benefits available under this sub-  
14 title and subtitle B; and

15 “(B) the requirements and procedures ap-  
16 plicable to the provision of the benefits de-  
17 scribed in subparagraph (A);

18 “(3) function as an advocate on behalf of indi-  
19 viduals seeking benefits under this subtitle and sub-  
20 title B;

21 “(4) make recommendations to the Secretary  
22 regarding the location of centers (to be known as  
23 ‘resource centers’) for the acceptance and develop-  
24 ment of claims for benefits under this subtitle and  
25 subtitle B; and





1 guage that is clear, concise, and easily understand-  
2 able; and

3 (2) any notification described in paragraph (1)  
4 contains—

5 (A) an explanation of each reason for the  
6 denial of the claim described in that paragraph;  
7 and

8 (B) a description of the information, if  
9 any, that the individual could have submitted  
10 that could have resulted in approval of the  
11 claim.

12 (b) DOCUMENT RETENTION.—Not later than 90 days  
13 after the date of enactment of this Act, the Secretary of  
14 Labor and the Secretary of Energy shall jointly promul-  
15 gate regulations to ensure that the Department of Labor  
16 and the Department of Energy—

17 (1) retain each original document in the posses-  
18 sion of the Department of Labor or the Department  
19 of Energy relating to a facility under the jurisdiction  
20 of the Department of Energy if—

21 (A) any employee of the facility might rea-  
22 sonably be expected to file a claim for com-  
23 pensation under the Energy Employees Occupa-  
24 tional Illness Compensation Program Act of  
25 2000 (42 U.S.C. 7384 et seq.); and

1 (B) the document might reasonably be ex-  
2 pected to be used by any employee described in  
3 subparagraph (A) in making a claim for com-  
4 pensation under the Energy Employees Occupa-  
5 tional Illness Compensation Program Act of  
6 2000 (42 U.S.C. 7384 et seq.); and

7 (2) provide each employee described in para-  
8 graph (1)(A) with access to each document described  
9 in that paragraph.

10 **SEC. 16. EXTENSION OF TIME FOR CLAIMANTS TO RE-**  
11 **SPOND TO REQUESTS FOR INFORMATION.**

12 If the Secretary of Labor submits to an individual  
13 who has filed a claim for compensation under the Energy  
14 Employees Occupational Illness Compensation Program  
15 Act of 2000 (42 U.S.C. 7384 et seq.) a request for infor-  
16 mation that relates to the claim for compensation, the in-  
17 dividual shall be required to respond to the request by not  
18 earlier than 120 days after the date on which the indi-  
19 vidual receives the request.

○