

Congress of the United States
Washington, DC 20515

October 28, 2010

The Honorable Kathleen Sebelius, Secretary
U.S. Department of Health and Human Services
200 Independence Ave., N.W.
Washington, DC 20210

Dear Secretary Sebelius:

As you know, just days before your predecessor left office, he denied the Rocky Flats Special Exposure Cohort (SEC) petition for workers at the former U.S. Department of Energy Rocky Flats facility in Colorado. We were disappointed by that decision and, through this letter, are respectfully requesting that the Department of Health and Human Service (HHS) reconsider this previous denial and consider expanding the class of workers covered under the Rocky Flats SEC. Notwithstanding the previous denial, we believe that HHS has the authority to reconsider a previous final decision in this matter under its relevant regulations.

We ask for this expansion because we do not believe the Advisory Board on Radiation and Worker Health (the Board), nor your predecessor, Secretary Leavitt, were provided all the evidence by the National Institute for Occupational Safety and Health's Division of Compensation and Analysis Support (NIOSH) that was necessary to make an informed decision on the Rocky Flats SEC.

The final decision to cover only a small group of claimants at the Rocky Flats facility was affirmed by Secretary Leavitt on January 16, 2009, when he denied the petitioners' appeal. However, new evidence has come to light since that we feel merits expanding the class to cover the entire workforce and years mentioned in the original Rocky Flats SEC petition. They are as follows:

- The issue with the Rutenber database has yet to be resolved. As you may know, there have been several Denver newspaper stories regarding this missing data over the past couple years. Nevertheless, NIOSH has stood by its assumption that the information on its database is included in the Rutenber database. However, the Department of Labor (DOL) disagrees and plans to issue a Final Bulletin on how that agency will use the Rutenber database when adjudicating Rocky Flats SEC claims. Sadly, after almost two years, the Rocky Flats claimants are still awaiting a decision on how the Rutenber database will be utilized to adjudicate claims.

- On August 12, 2009, Mr. Larry Elliott, then-Director of the Office of Compensation Analysis and Support (DCAS), was sent a copy of DOL's Site Exposure Matrix for plutonium. This document showed that plutonium was present in the "cold" buildings 440 and 460. NIOSH's site profile shows that these two buildings did not have any radioactive materials present. Mr. Elliott promised to investigate. This same issue was raised again on July 15, 2010, to Mr. Stuart Hinnefeld, the current Director of DCAS. He responded that he would look into the presence of plutonium in building 440. Most recently, a former Rocky Flats radiation control monitor found an original monitoring report. This report found that a piece of equipment contaminated with plutonium was present in not only building 440, but also two other non-plutonium buildings. The reading for this equipment

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was not high enough to create a shutdown of the buildings, but did present the potential for plutonium to be inhaled by workers. There are serious ramifications to the presence of plutonium in the "cold" areas. Workers were not monitored for radiation exposure if they were assigned to the "cold" areas; no urinalysis, no nasal smears or fecal samples were obtained to check for internal contamination. Therefore, as noted by Mrs. Terrie Barrie with the Alliance of Nuclear Worker Advocacy Groups, NIOSH would not be able to "consider any external or internal radiation monitoring results for any worker in Building 460, in a dose reconstruction, should any be present in the claimant's dosimetry file." To repeat, there were not monitoring records for workers in building 460. However, we now realize there should have been.

Lastly, during the Rocky Flats SEC petition debate, numerous deficiencies were found in NIOSH's scientific methodologies that were agreed to be site profile issues as opposed to SEC issues. However, few, if any, of these deficiencies have been corrected.

We believe that the three issues mentioned above are resulting in unfairly denied claims. We are concerned that it is possible that NIOSH may be underestimating dose for all workers if it failed to uncover these documents during the investigation of the Rocky Flats SEC.

It is our understanding that it has been over five years since the Rocky Flats SEC petition was accepted by NIOSH. We believe that NIOSH has had ample time to fully investigate the radiation exposures. That it has failed to do so gives us serious concern and underscores our request that HHS reevaluate this Rocky Flats SEC. The claimants should not be made to suffer any further. We believe that granting this Rocky Flats SEC will help avoid spending more money on administrative costs, including searching for DOE documents. We also think this will help avoid having NIOSH correct the site profile deficiencies, which would then need to go to the Board and their contractor for review and acceptance, adding more administrative costs.

We appreciate your consideration of this request and hope you would grant it so that we can expeditiously expand the class of workers to include all workers employed between 1952 through 2005 at the Rocky Flats facility.

Sincerely,



Mark Udall
United States Senator



Michael F. Bennet
United States Senator

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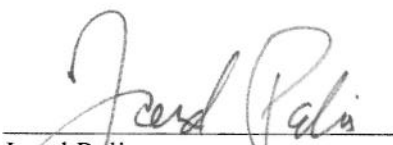
Diana DeGette
United States Representative



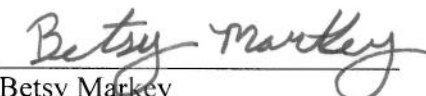
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