

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 15, 2008, a proposed consent decree was lodged in *United States v. MidAmerican Energy Co. and Iowa-Illinois Manor, LLC*, Civil Action No. 08-416, in the United States District Court for the Southern District of Iowa.

The United States sought, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 & 9607, to recover costs incurred in response to releases of hazardous substances at the Iowa City Former Manufactured Gas Plant Superfund Site in Iowa City, Iowa ("the Site"), and to require the defendants, MidAmerican and Iowa-Illinois Manor, to perform EPA's selected remedy at the Site.

Under the terms of the proposed consent decree, MidAmerican and Iowa-Illinois Manor will perform the remedy for the Site as required in the proposed consent decree and pay \$429,300.64 to the Superfund in payment of the United States' unreimbursed response costs. In return, the United States will grant MidAmerican and Iowa-Illinois Manor a covenant not to sue under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to the proposed consent decree with defendants MidAmerican and the Iowa Manor in *United States v. MidAmerican Energy Company and Iowa-Illinois Manor, LLC*, D.J. Ref. 90-11-3-09180. Public comments may be submitted by e-mail to the following e-mail address: [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov).

The proposed consent decree may be examined at the Office of the United States Attorney, 110 East Court Avenue, Des Moines, IA 50309. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy may be obtained upon request from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044-7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$20.75 (25 cents per page reproduction costs), payable to the U.S. Treasury.

**Robert E. Maher, Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF JUSTICE

[CIV Docket No. 109]

### Civil Division; Radiation Exposure Compensation Act: Allowance for Costs and Expenses; Combination of Work Histories

**AGENCY:** Civil Division, Department of Justice.

**ACTION:** Notice.

**SUMMARY:** The Department of Justice ("the Department") is publishing this Notice to inform the public of two matters related to the adjudication of claims filed under the Radiation Exposure Compensation Act ("RECA" or "the Act"). First, in light of the Tenth Circuit Court decision in *Hackwell v. United States*, 491 F.3d 1229 (10th Cir. 2007), the Department will no longer enforce its regulation concerning attorney's fees whereby attorneys are prohibited from receiving reimbursement for expenses and costs above the statutory fee limits specified in the Act. The Notice further explains that the Department will not limit attorneys from receiving reimbursement for such expenses and costs from their clients, even when a claim is unsuccessful. Finally, the Department intends to initiate a rulemaking to strike the existing regulation at § 79.74(b) and revise the language, consistent with the Court's decision and this policy statement.

Second, the Department has an ongoing policy of combining uranium industry work histories, consistent with the plain language of the Act. By statute, to be eligible for compensation as a result of exposure to radiation due to employment in the uranium production industry, a claimant must demonstrate that he or she was, for at least one year, employed in a uranium mine, employed in a uranium mill, or employed in the transportation of uranium ore or vanadium-uranium ore. This Notice articulates the Department's policy that,

assuming all other eligibility criteria are satisfied, claimants may satisfy this one-year statutory requirement by combining different periods of employment in uranium mining, uranium milling, and ore transporting.

**DATES:** This notice is effective on October 23, 2008.

### FOR FURTHER INFORMATION CONTACT:

Gerard W. Fischer (Assistant Director), 202-616-4090 or Dianne S. Spellberg (Senior Counsel), 202-616-4129, Constitutional and Specialized Tort Litigation Section, Torts Branch, Civil Division.

### SUPPLEMENTARY INFORMATION:

#### Background

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act. *See also* Claims Under the Radiation Exposure Compensation Act, 28 CFR 79 (2006). The Act offers an apology and monetary compensation to individuals (or their survivors) who have contracted certain cancers and other serious diseases following exposure to radiation released during above-ground atmospheric nuclear weapons tests or following their employment in the uranium production industry during specified periods. On July 10, 2000, the RECA Amendments of 2000 were enacted, providing expanded coverage to individuals who developed one of the compensable diseases in the Act, adding two new claimant categories (uranium millers and ore transporters), and lowering the amount of attorney's fees from 10% of the lump sum compensation award to 2% of the award in connection with the filing of an initial claim.

This unique program was designed as an alternative to litigation in that the statutory criteria do not require claimants to establish causation. Rather, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or residing in a designated location for a specific period of time, he or she qualifies for compensation. Congress charged the Attorney General with responsibility for adjudicating claims under the Act. The Attorney General delegated this function to the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice.

#### I. Attorney's Fees and Costs

On July 10, 2000, Congress amended RECA by lowering the permissible fee limitation for attorneys from 10% to 2% of the compensation award, in