

108TH CONGRESS
2D SESSION

H. R. 4388

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to include certain nuclear weapons program workers in the Special Exposure Cohort under the compensation program established by that Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2004

Mr. UDALL of New Mexico introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, 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 include certain nuclear weapons program workers in the Special Exposure Cohort under the compensation program established by that Act.

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.**

4 This Act may be cited as “Special Exposure Cohort
5 Fairness Act of 2004”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Since World War II, hundreds of thousands
4 of men and women have served in building the Na-
5 tion's nuclear defense and, in the course of this
6 work, have been exposed to beryllium, ionizing radi-
7 ation, and other hazards unique to nuclear weapons
8 production and testing, including tens of thousands
9 of workers in New Mexico. The purpose of the En-
10 ergy Employees Occupational Illness Compensation
11 Program Act of 2000 (in this section referred to as
12 the "Act"), which was enacted on October 30, 2000,
13 is to provide for timely, uniform, and adequate com-
14 pensation of covered employees and, where applica-
15 ble, survivors of such employees, suffering from ill-
16 nesses incurred by such employees in the perform-
17 ance of duty for the Department of Energy and cer-
18 tain of its contractors and subcontractors.

19 (2) Executive Order No. 13179 required the
20 Secretary of Health and Human Services to carry
21 out the Act's statutory requirement to issue and im-
22 plement procedures for conducting radiation dose re-
23 construction, to establish the scientific basis for
24 compensation, and to issue regulations under which
25 classes of workers could petition to become members
26 of a Special Exposure Cohort and under which such

1 petitions could be evaluated. Pursuant to the Act,
2 workers may petition to be members of a Special
3 Exposure Cohort when it is not feasible to estimate
4 dose with sufficient accuracy and there is a reason-
5 able likelihood that exposures to radiation may have
6 endangered the health of the class of workers. Spe-
7 cial Exposure Cohort status provides an automatic
8 presumption of causation for 22 radiation-related
9 cancers without the need for attempting to estimate
10 radiation dose, and is intended to remove an other-
11 wise insurmountable burden of proof. Such Special
12 Exposure Cohorts have been designated by Congress
13 at Paducah, Kentucky, Portsmouth, Ohio, the K-25
14 facility at Oak Ridge, Tennessee, and the Amchitka
15 Island Test site in Alaska.

16 (3) The National Institute for Occupational
17 Safety and Health was tasked with conducting radi-
18 ation dose reconstructions under the Act. As of April
19 16, 2004, the Institute has completed 15 out of 571
20 radiation dose reconstructions for covered workers at
21 Los Alamos, New Mexico. The Institute has com-
22 pleted only 18 out of 765 dose reconstructions in
23 New Mexico. Sick workers are dying while awaiting
24 a determination on their claims, and in many cases
25 the delays have caused them to lose hope.

1 (4) Congressional intent undergirding the statu-
2 tory requirement to allow additional Special Expo-
3 sure Cohorts was explained by Senator Jeff Binga-
4 man, an original cosponsor, as part of the floor de-
5 bate on the enactment of the Act on October 12,
6 2000. He stated that this provision was added “for
7 a significant minority who were exposed to radiation
8 but for whom it would be infeasible to reconstruct
9 their dose. There are several reasons why . . . this
10 infeasibility might exist. First relevant dose records
11 might be missing or might not exist altogether. Sec-
12 ond there might be a way to reconstruct the dose,
13 but it would be prohibitively expensive to do so. Fi-
14 nally it might take so long to reconstruct a dose for
15 a group of workers that they will all be dead before
16 we have an answer that can be used to determine
17 their eligibility.”.

18 (5) Dose reconstruction is being interminably
19 delayed for claimants at Los Alamos National Lab-
20 oratory. A May 5, 2004, report to Congress by the
21 Centers for Disease Control regarding obstacles to
22 records recovery needed for radiation dose recon-
23 struction states that: “Los Alamos National Labora-
24 tory has not submitted individual bioassay data, nor
25 detailed external dosimetry data. The submittals

1 consist of derived dose quantities, which cannot
2 readily be used in dose reconstructions because they
3 use a different methodology than NIOSH uses for
4 dose reconstructions”.

5 (6) Hearings and investigations reveal that
6 there was not appropriate worker monitoring for
7 mixed neutron and gamma radiation for certain time
8 periods, doubtful reliability of radiation dosimetry
9 reports provided to claimants for certain time peri-
10 ods, and for some claimants, access has been denied
11 to particular monitoring records. One of the workers
12 who testified at a Department of Energy hearing in
13 Espanola, New Mexico, in 2000 described how he
14 could fall through the cracks of a system that oper-
15 ated solely on dose histories. He was a supervisor at
16 what was called the “hot dump” at Los Alamos. En-
17 vironmental restoration reports indicate that more
18 than 80 different radionuclides were taken there to
19 be disposed of, making it very difficult to
20 reconstruct dose amounts for each worker.

21 (7) Over the course of the atomic weapons pro-
22 gram at Los Alamos, health-related documents were
23 withheld from the workers and public in order to
24 shield the Government and its contractors from pub-

1 lic criticism, concerns about union demands for haz-
2 ardous duty pay, and real or perceived liability.

3 (8) Memoranda indicate that air concentrations
4 of radionuclides at Area G of Los Alamos were sys-
5 tematically underreported in environmental surveil-
6 lance reports issued to the public in the late 1980's
7 and early 1990's, according to the Pueblo Office of
8 Environmental Protection in 1992.

9 (9) During the 2003 and 2004 regular sessions,
10 the New Mexico legislature, through the leadership
11 of State Representative Ray Ruiz, enacted Joint Me-
12 morials calling upon the United States Congress to
13 enact comprehensive reforms to subtitle B and sub-
14 title D of the Act to remedy the injustices to work-
15 ers made sick from employment by contractors and
16 subcontractors at Los Alamos. House Joint Memo-
17 rial 16 (2003) and House Joint Memorial 20 (2004)
18 state in relevant part: "those employees who are un-
19 able to obtain records establishing past exposures
20 and employees whose claims of radiation exposure
21 are in jeopardy of being denied due to scientific un-
22 certainty in causation determinations should receive
23 the benefit of the doubt and be compensated under
24 the federal act".

1 (10) The memorial also urges that, in enacting
2 Federal reform legislation with respect to the Act:
3 “special exposure cohorts be established for employ-
4 ees in area G and the linear accelerator at Los Ala-
5 mos national laboratory, and for security guards and
6 all construction workers, due to the impossibility of
7 accurately reconstructing past radiation doses.”.

8 (11) The predicates for a Special Exposure Co-
9 hort for Los Alamos workers have been met. For
10 some, dose records are missing or are incomplete;
11 for others, it is requiring a costly research effort, the
12 reliability of the Institute’s dose estimates may be
13 open to question, and for virtually all Los Alamos
14 claimants, the Institute is taking so long to estimate
15 dose that claimants are dying off before they ever
16 receive a determination. Justice has been denied
17 through interminable delays. New Mexico’s large
18 population of potentially eligible claimants at De-
19 partment of Energy facilities should not have to wait
20 another generation or more to be compensated for
21 their occupational illnesses.

1 **SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE**
2 **COHORT TO INCLUDE WORKERS AT LOS ALA-**
3 **MOS NATIONAL LABORATORY, LOS ALAMOS,**
4 **NEW MEXICO.**

5 (a) IN GENERAL.—Section 3621(14) of the Energy
6 Employees Occupational Illness Compensation Program
7 Act of 2000 (42 U.S.C. 7384l(14)) is amended—

8 (1) by redesignating subparagraph (C) as sub-
9 paragraph (D); and

10 (2) by inserting after subparagraph (B) the fol-
11 lowing:

12 “(C) The employee was so employed for a
13 number of work days aggregating at least 250
14 work days during the period 1945 through
15 2000 at Los Alamos National Laboratory, Los
16 Alamos, New Mexico, as a cohort-eligible Los
17 Alamos worker (as defined in paragraph (18))
18 for work carried out under contract to the De-
19 partment of Energy, and, during such employ-
20 ment—

21 “(i) was monitored through the use
22 of—

23 “(I) dosimetry badges for expo-
24 sure at the plant of the external parts
25 of employee’s body to radiation; or

1 “(II) bioassays, in vivo moni-
2 toring, or breath samples for exposure
3 at the plant to internal radiation; or

4 “(ii) worked in a job that had expo-
5 sures comparable to a job that is mon-
6 itored, or should have been monitored,
7 under standards of the Department of En-
8 ergy in effect on the date of the enactment
9 of this subparagraph through the use of
10 dosimetry badges for monitoring external
11 radiation exposures, or bioassays or in vivo
12 monitoring for internal radiation expo-
13 sures.”.

14 (b) COHORT-ELIGIBLE LOS ALAMOS WORKERS.—
15 Section 3621 of such Act is further amended by adding
16 at the end the following new paragraph:

17 “(18) The term ‘cohort-eligible Los Alamos
18 worker’ applies to employment—

19 “(A) in Area G or at the linear accelerator;

20 “(B) as a security guard or construction
21 worker; or

22 “(C) in any area of Los Alamos National
23 Laboratory and in any capacity, if all records
24 necessary for radiation dose reconstruction
25 under this Act with respect to that employee

1 have not been received by the National Institute
2 for Occupational Safety and Health from the
3 Department of Energy or its contractors within
4 200 days after receipt of the claim under this
5 Act with respect to that employee.”.

○