

109TH CONGRESS
1ST SESSION

H. R. 428

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2005

Mr. UDALL of Colorado (for himself and Mr. BEAUPREZ) 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 better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

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 the “Rocky Flats Special
5 Exposure Cohort Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) The Energy Employees Occupational Illness
2 Compensation Program Act of 2000 (42 U.S.C.
3 7384 et seq.) (hereinafter in this section referred to
4 as the “Act”) was enacted to ensure fairness and eq-
5 uity for the civilian men and women who, during the
6 past 50 years, performed duties uniquely related to
7 the nuclear weapons production and testing pro-
8 grams of the Department of Energy and its prede-
9 cessor agencies by establishing a program that would
10 provide efficient, uniform, and adequate compensa-
11 tion for beryllium-related health conditions and radi-
12 ation-related health conditions.

13 (2) The Act provides a process for consideration
14 of claims for compensation by individuals who were
15 employed at relevant times at various locations, but
16 also included provisions designating employees at
17 certain other locations as members of a special expo-
18 sure cohort whose claims are subject to a less-de-
19 tailed administrative process.

20 (3) The Act also authorizes the President, upon
21 recommendation of the Advisory Board on Radiation
22 and Worker Health, to designate additional classes
23 of employees at Department of Energy facilities as
24 members of the special exposure cohort if the Presi-
25 dent determines that—

1 (A) it is not feasible to estimate with suffi-
2 cient accuracy the radiation dose that the class
3 received; and

4 (B) there is a reasonable likelihood that
5 the radiation dose may have endangered the
6 health of members of the class.

7 (4) It has become evident that it is not feasible
8 to estimate with sufficient accuracy the radiation
9 dose received by employees at the Department of
10 Energy facility in Colorado known as the Rocky
11 Flats site for the following reasons:

12 (A) Many worker exposures were
13 unmonitored over the lifetime of the plant at
14 the Rocky Flats site. Even in 2004, a former
15 worker from the 1950s was monitored under
16 the former radiation worker program of the De-
17 partment of Energy and found to have a signifi-
18 cant internal deposition that had been unde-
19 tected and unrecorded for more than 50 years.

20 (B) No lung counter for detecting and
21 measuring plutonium and americium in the
22 lungs existed at Rocky Flats until the late
23 1960s. Without this equipment, the very insol-
24 uble oxide forms of plutonium cannot be de-
25 tected, and a large number of workers had in-

1 halation exposures that went undetected and
2 unmeasured.

3 (C) Exposure to neutron radiation was not
4 monitored until the late 1950s, and most of
5 those measurements through 1970 have been
6 found to be in error. In some areas of the plant
7 the neutron doses were as much as 2 to 10
8 times as great as the gamma doses received by
9 workers, but only gamma doses were recorded.
10 The old neutron films are being re-read, but
11 those doses have not yet been added to the
12 workers' records or been used in the dose recon-
13 structions for Rocky Flats workers carried out
14 by the National Institute for Occupational Safe-
15 ty and Health.

16 (D) Radiation exposures for many workers
17 were not measured or were missing and, as a
18 result, the records are incomplete or estimated
19 doses were assigned. There are many inaccura-
20 cies in the exposure records that the Institute
21 is using to determine whether Rocky Flats
22 workers qualify for compensation under the
23 Act.

24 (E) The model that has been used for dose
25 reconstruction by the Institute in determining

1 whether Rocky Flats workers qualify for com-
2 pensation under the Act is in error. The default
3 values used for particle size and solubility of
4 the internally deposited plutonium in workers
5 are in error. Use of these erroneous values re-
6 duces the actual internal doses for claimants by
7 as much as 3 to 10 times less than the Rocky
8 Flats records and autopsy data indicate.

9 (5) Administrative costs related to Rocky Flats
10 claims have been substantial, but only a few Rocky
11 Flats cases have been processed.

12 (6) Some Rocky Flats workers, despite having
13 worked with tons of plutonium and having known
14 exposures leading to serious health effects, have
15 been denied compensation under the Act as a result
16 of potentially flawed calculations based on records
17 that are incomplete or in error as well as the use of
18 incorrect models.

19 (7) Achieving the purposes of the Act with re-
20 spect to workers at Rocky Flats is more likely to be
21 achieved if claims by those workers are subject to
22 the administrative procedures applicable to members
23 of the special exposure cohort.

24 (b) PURPOSE.—The purpose of this Act is to revise
25 the Energy Employees Occupational Illness Compensation

1 Program Act so as to include certain past and present
2 Rocky Flats workers as members of the special exposure
3 cohort.

4 **SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE**
5 **COHORT.**

6 (a) IN GENERAL.—Section 3621(14) of the Energy
7 Employees Occupational Illness Compensation Program
8 Act of 2000 (42 U.S.C. 7384l(14)) is amended by adding
9 at the end of paragraph (14) the following:

10 “(D) The employee was so employed as a
11 Department of Energy employee or a Depart-
12 ment of Energy contractor employee for a num-
13 ber of work days aggregating at least 250 work
14 days before January 1, 2006, at the Rocky
15 Flats site in Colorado.”.

16 (b) REAPPLICATION.—A claim that an individual
17 qualifies, by reason of subparagraph (D) of section
18 3621(14) of that Act (as added by subsection (a)), for
19 compensation or benefits under that Act shall be consid-
20 ered for compensation or benefits (notwithstanding any
21 denial of any other claim for compensation with respect
22 to that individual).

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