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January 8, 2021

Ms. Terrie Barrie  
Alliance of Nuclear Worker Advocacy Groups  
175 Lewis Lane  
Craig, CO 81625

Dear Ms. Barrie:

Thank you for your letter of December 17, 2020 regarding the December 8 and 9, 2020 Teleconference Meeting of the Advisory Board on Radiation and Worker Health (“Board”).

In your letter, you raised concerns about the actions of Timothy Taulbee, PhD, CHP, Associate Director for Science in the Division of Compensation Analysis and Support (DCAS) at the Centers for Disease Control and Prevention’s National Institute for Occupational Safety and Health (NIOSH) in the U.S. Department of Health and Human Services (HHS), and Jenny Naylor, MS, JD, Senior Attorney in the HHS Office of the General Counsel (OGC), at the December 9, 2020 portion of the Board’s December 2020 meetings.

You raised specific concerns about two aspects of Dr. Taulbee’s actions: (1) the lateness of the power point slide set submission of Dr. Taulbee’s presentation to the Board (“NIOSH did not submit the revised presentation until the morning of the December 9, 2020 meeting”) and (2) the overall length of his presentation (“...NIOSH...provided seventy-one slides and took up seventy-five minutes of the three and one-half hour time allotted on the agenda”).

You also raised a concern about Ms. Naylor’s participation in the meeting, specifically during the discussion of a proposed motion in front of the Board (“Ms. Naylor informed Mr. Clawson that the Board cannot vote on the motion...”).<sup>1</sup>

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<sup>1</sup> Specifically, you stated in your December 17, 2020 letter that: “Ms. Naylor informed Mr. Clawson that the Board cannot vote on the motion because he needed to consult with the Department of Labor (DOL) to

You stated that “the actions of these individuals directly prevented the Board from voting on the Special Exposure Cohort (SEC) Petition 103 for the construction trade workers at the Savannah River Site (SRS).”

### **Advisory Board on Radiation and Worker Health**

The Board was established pursuant to Section 3624 of Public Law 106-398, and Section 4 of Executive Order 13179, “*Providing Compensation to America’s Nuclear Weapons Workers*,” dated December 7, 2000. The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92-463, as amended (5 U.S.C. App. 2). The statutory authority for the Board is codified at 42 U.S.C. §73840.

The Board operates under the authority provided in Executive Order 13889, dated September 27, 2019, and under its FACA Charter, which was filed on March 22, 2020.<sup>2</sup>

The Board provides advice to the Secretary of the U.S. Department of Health and Human Services (“the Secretary”) on the matters specified under section 4(b) of Executive Order 13179. Section 4(b) of Executive Order 13179 establishes that the Board shall provide advice to the Secretary of HHS on:

- (1) the development of guidelines to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a Department of Energy (DOE) or an Atomic Weapons Employer (AWE) facility, and methods for arriving at and providing reasonable estimates of the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure;
- (2) the scientific validity and quality of dose reconstruction efforts performed for purposes of the compensation program; and
- (3) upon request by the Secretary whether there is a class of employees at any DOE or AWE facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation dose may have endangered the health of members of the class.

### **Petition SEC-00103**

At the December 9, 2020 portion of the Board’s December 2020 Teleconference Meeting, SEC Petition 103 was under consideration. Petition 103 was received on November 19, 2007

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determine whether that agency can administer the class. He did not draft the letter from the Board to the Secretary of Health and Human Services (HHS) because there was no Chair for the Board.”

<sup>2</sup> Charter, Advisory Board on Radiation and Worker Health. March 22, 2020. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/charter/abrwhcharter2020-508.pdf>.

and qualified for evaluation on March 4, 2008. As originally filed, Petition 103 requested that a class of “construction workers and all others” from January 1, 1950 to the date Petition 103 was lodged, i.e., November 19, 2007, be added to the SEC.<sup>3</sup>

Even though the original Petition 103 has been the subject of consideration for nearly 13 years by Work Groups of the Board, as well as the full Board itself, it is important to note that during the evaluation of Petition 103, a class of employees from the Savannah River Site (SRS) was added to the SEC in February of 2012. This class included:

*“All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Savannah River Site from January 1, 1953 through September 30, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.”<sup>4</sup>*

Petition 103 remains under active consideration for various employees of the Department of Energy (DOE) at the SRS during various other periods of time ranging from 1972 onward. The full Board has two Work Groups that are actively considering adding more classes to the SEC from the SRS.

### ***Special Exposure Cohort Issues Work Group***

The first Board Work Group is the SEC Issues (including the 250-day issue) Work Group. This Work Group has two primary responsibilities: (1) to serve as a review body for SEC petitions that result from DCAS/NIOSH determining that it is unable to reconstruct dose for one or more individuals at a given site (42 C.F.R. § 83.14 SEC petition process); (2) to consider potential conditions under which significant personnel exposures might occur (in addition to criticality accidents) in short periods of time (less than 250 days) resulting in health effects.

In the case of specific 42 C.F.R. § 83.14 petitions, the SEC Issues Work Group may make a recommendation to the Board to support the NIOSH recommendation to add a class to the SEC, or in opposition to such addition. In the case of the 250-day issue, the SEC Issues Work Group strives to develop a position paper that can be adopted by the Board. In addition, the SEC Issues Work Group is also responsible for reviewing the Dow-Madison SEC petition and related documents, and developing a recommendation for the Board.<sup>5</sup>

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<sup>3</sup> Special Exposure Cohort Petition. See <https://www.cdc.gov/niosh/ocas/pdfs/sec/srs/srspet.pdf>.

<sup>4</sup> Letter dated February 2, 2012 from HHS Secretary Kathleen Sebelius to the President of the Senate. See <https://www.cdc.gov/niosh/ocas/pdfs/sec/srs/srs2cong-103.pdf>. See also 77 Fed. Reg. 9250 (February 16, 2012) at <https://www.cdc.gov/niosh/ocas/pdfs/sec/srs/fro21612srs.pdf>.

<sup>5</sup> Special Exposure Cohort (SEC) Issues (including the 250-day issue) Work Group. See <https://www.cdc.gov/niosh/ocas/pubmtgs.html>.

The SEC Issues Work Group is chaired by Henry A. Anderson, M.D. and has the following other members: Josie Beach; Genevieve S. Roessler, Ph.D.; and Paul L. Ziemer, Ph.D.

### ***Savannah River Site Work Group***

The second Board Work Group is the SRS Work Group. The SRS Work Group is responsible for the following: (1) reviewing the SRS Site Profile; (2) reviewing the SEC petition from SRS petitioners; (3) reviewing the DCAS/NIOSH Evaluation Report of Petition 103; (4) reviewing the SC&A (the Board's contractor) review of the SRS Site Profile; (5) considering issues raised by SC&A concerning the Site Profile and the petition DCAS/NIOSH Evaluation Report; and (6) assisting NIOSH and SC&A in the resolution of such issues.<sup>6</sup> The SRS Work Group is chaired by Bradley P. Clawson, and has the following other members: James E. Lockey, M.D., David B. Richardson, Ph.D., and Phillip Schofield.

I reviewed the transcripts of the Joint Meeting of the SRS and SEC Issues Work Groups' meeting on November 17<sup>7</sup> and November 20, 2020,<sup>8</sup> as well as the transcript of the full Board meeting on December 9, 2020,<sup>9</sup> to understand the concerns raised in your December 17, 2020 letter about Petition 103, and the actions of Dr. Taulbee and Ms. Naylor at the December 9, 2020 meeting.

### **Joint Meeting of the SRS and SEC Issues Work Groups**

At meetings of the Joint Meeting of the SRS and SEC Issues Work Groups on November 17 and 20, 2020, the members of the Work Groups discussed several technically complex scientific issues. The members of the SRS Work Group that participated in the November 17 and 20, 2020 meetings arrived at a "consensus" to recommend to the full Board at their December 2020 meeting to add a new class to the SEC based on Petition 103.<sup>10</sup>

After discussion by DCAS and SC&A of scientific issues about whether dose reconstruction relating to Petition 103 could be performed or not, the Work Groups' discussion turned to the Board meeting agenda on December 9, 2020. The participants' discussion was focused on the amount of time that would be needed for the full Board to consider a motion to add a class to the SEC relating to Petition 103 given the complex

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<sup>6</sup> Savannah River Site Work Group. See <https://www.cdc.gov/niosh/ocas/bdgroups.html#s>.

<sup>7</sup> Joint Meeting of the Savannah River Site (SRS) And Special Exposure Cohort (SEC) Issues Work Groups. November 17, 2020. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtr11720-508.pdf>.

<sup>8</sup> Joint Meeting of the Savannah River Site (SRS) And Special Exposure Cohort (SEC) Issues Work Groups. November 20, 2020. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtr112020-508.pdf>.

<sup>9</sup> Transcript of the 137<sup>th</sup> Meeting of the Advisory Board on Radiation and Worker Health, December 9, 2020. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/tr120920-508.pdf>.

<sup>10</sup> I use the word "consensus" because a formal roll call vote of the members of the SRS Work Group appeared not to occur. Of note, David B. Richardson, Ph.D., did not participate in the November 17 and 20, 2020 Joint Meetings of the SRS and SEC Issues SRS Work Groups.

scientific issues associated with the proposed class. The members of the Work Groups were cognizant that only a limited amount of time would be available on the December 9, 2020 Board meeting agenda to consider adding a proposed class to the SEC based on Petition 103. The participants at the November 20, 2020 meeting of the Work Groups agreed that presentations about Petition 103 should be economical of time given the limited amount of time to be allocated to a discussion of Petition 103 (i.e., limited to three and one-half hours).

The Chair of the SRS Work Group, Mr. Clawson, made clear his expectation that presentations at the full Board meeting would be focused. The transcript of November 20, 2020 quotes Mr. Clawson saying:

“So, I figure that there’d be about a 30-minute presentation from each side [NIOSH and SC&A] explaining where we’re at, what we’re doing, and why we’ve come to this point. And so, that’s kind of what I’m expecting from both sides.”<sup>11</sup>

After Mr. Clawson’s comment, the transcript quotes Dr. James Lockey saying:

“I agree with you [Mr. Clawson], but I don’t think 30 minutes is going to be an adequate amount of time.”<sup>12</sup>

After some more discussion among members about times, the transcript quotes Dr. Taulbee saying:

I can certainly wrap up our presentation. Thirty minutes is pushing it, but I can certainly do it 30 to 45 minutes, not a problem. I don’t need longer than 45 minutes. Just thinking of my past presentations.”<sup>13</sup>

## **Issues Pertaining to December 9, 2020 Board Meeting Raised in the December 17, 2020 Letter**

### ***Timeliness of the Submission of Dr. Taulbee’s Presentation to the Board***

At the December 9, 2020 Board meeting, Dr. Taulbee made a presentation to the full Board on the scientific issues encompassing several years of scientific evaluation concerning SEC Petition 103 and the feasibility of conducting individual dose reconstruction. Dr. Taulbee’s estimate of 45 minutes for his presentation,

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<sup>11</sup> Joint Meeting Transcript for November 20, 2020, page 168. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtrn2020-508.pdf>.

<sup>12</sup> Id.

<sup>13</sup> Joint Meeting Transcript for November 20, 2020, page 171. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtrn2020-508.pdf>.

given the scope of the science involved, may have been, in retrospect, overly optimistic.

After Dr. Taulbee completed preparation of his presentation, and after steps needed for the presentation to conform to certain requirements were completed,<sup>14</sup> the Designated Federal Official for the Board, Dr. Rashaun Roberts distributed Dr. Taulbee's presentation to the Board via email at 4:13 pm EST on December 7, 2020 (in an email message entitled "December 2020 ABRWH Meeting Installment #4"). Dr. Taulbee's presentation was posted to the DCAS website at approximately 7:00 pm EST on December 7, 2020.

I agree that submission of Dr. Taulbee's presentation late in the afternoon of the day before the Board was scheduled to meet provided inadequate time for review. I have asked Mr. Grady Calhoun, DCAS Director, to ensure that materials presented by DCAS scientists are provided to the Board and to the public in a timely manner, or explain to the Board the reasons why timely submission could not have been provided.

If possible, Work Groups should consider scheduling more time between a Work Group meeting and a full Board meeting. Allowing more time between Work Group and full Board meetings may help to prevent late submissions to the Board members. In this particular case, the time needed to prepare as substantive a presentation as that which Dr. Taulbee ultimately provided, together with the time needed for internal DCAS scientific review, as well as the Privacy Act and Section 508 compliance review, with the occurrence of an intervening national holiday, may have contributed to a late submission. This resulted in providing inadequate time for Board members to review the critical presentation materials prior to their meeting on December 9, 2020.

### ***Length of Dr. Taulbee's Presentation***

The length and time allotted to Dr. Taulbee's presentation is another matter. I have learned over the past 20 years that the scientific issues concerning radiation dose reconstruction and the issues raised in an SEC petition are exceedingly complex and often defy attempts at brevity, however such a goal is keenly desired. Again, as in this case as in others, time was of the essence in that only three and one-half hours had been allotted to consider Petition 103. Dr. Taulbee had created

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<sup>14</sup> Among the requirements are conformance with Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), which requires federal agencies to develop, procure, maintain and use information and communications technology (ICT) that is accessible to people with disabilities regardless of whether or not they work for the federal government. The US Access Board established the Section 508 standards that implement the law and provides the requirements for accessibility.

the expectation among members of the SEC Issues and SRS Work Groups that his presentation would be confined to 45 minutes.

It is clear from the November 20, 2020 meeting of the Work Groups, Mr. Clawson expected that the Dr. Taulbee's presentation at the Board's December 9, 2020 meeting on the issues involved with Petition 103 would be a focused presentation and as brief as it could reasonably be. As the transcript of the November 20, 2020 meeting of Joint Work Groups makes clear, Dr. Taulbee himself indicated that an allotment of 45 minutes for his presentation would be enough.<sup>15</sup>

I was informed by Neal R. Gross & Company, Court Reporter and Transcribers, who transcribes Work Group and Board meetings, that Dr. Taulbee's presentation began at 2:19 pm EST and ended at 3:18 pm—a total of 59 minutes, or 31% longer than Dr. Taulbee's forecast estimate of 45 minutes. Following Dr. Taulbee's presentation, Neal R. Gross Company reports that there was a 10 minute break, followed by 23 minutes of questions and answers (3:30 pm to 3:53 pm), 57 minutes of SC&A presentations (3:53 pm to 4:50 pm), followed by 45 minutes of questions with answers and discussion ending at 5:35 pm when the meeting adjourned.<sup>16</sup>

While I cannot independently judge the appropriateness and value of the content of Dr. Taulbee's presentation to the Board, given the complex scientific issues involved for which I am not an expert, Dr. Taulbee's presentation did exceed his forecast time for the presentation by 31%.

The length of Dr. Taulbee's presentation, together with SC&A presentations, and the associated question/answer discussion periods, and discussion by Board members relating to both presentations, undoubtedly contributed to an insufficient amount of time from the total of 3 hours and 30 minutes made available on the meeting agenda for the Board to complete a full consideration of, including taking a vote on, a proposal to add a class to the SEC based on Petition 103.

### ***Comments at the December 9, 2020 Board Meeting by Ms. Naylor***

Ms. Naylor has an important role as regards the Board's activities. The Board provides advice to the Secretary, and, as the Secretary's legal advisor, Ms. Naylor's role is to ensure that any recommendations made to the Secretary by the Board follow the requisite statutory and regulatory requirements. In fact, the Board and the DCAS/NIOSH Radiation Dose Reconstruction Program rely on advice from

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<sup>15</sup> See Footnote 13.

<sup>16</sup> Electronic message dated December 18, 2020 from Rick Russell, Chief Operating Officer, Neal R. Gross & Company, to Nancy Adams, NIOSH Contractor. See also Transcript of the 137<sup>th</sup> Meeting of the Advisory Board on Radiation and Worker Health, December 9, 2020.

<https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/tr120920-508.pdf>.

OGC to ensure the legal and administrative sufficiency of all its activities, decisions and recommendations.

At the November 17<sup>17</sup> and 20,<sup>18</sup> 2020 Joint SEC Issues and SRS Work Groups meetings, Ms. Naylor advised the work group members on issues related to developing a proposed SEC class definition and the technical content that are needed to support a recommendation to the Secretary.

Also, at the November 17, 2020 Joint Work Groups meeting, Mr. Calhoun advised the SRS Work Group on the issue of consulting with DOL whether or not DOL can administer the proposed class.<sup>19</sup>

At the December 9, 2020 Board meeting, Ms. Naylor again provided the Board legal advice concerning the Board's impending action on a proposed class to be added to the SEC based on Petition 103. The issues raised by Ms. Naylor are within her responsibilities as an HHS OGC attorney in advising the Secretary, the Board and the DCAS/NIOSH Radiation Dose Reconstruction Program.

As the allotted time on the meeting agenda for Petition 103 consideration ended, a motion to add the proposed class was made, seconded, but subsequently tabled because time allotted for the December 9, 2020 meeting had run out. The December 9, 2020 meeting adjourned without the Board acting on Petition 103, understandably disappointing the petitioners for Petition 103, affected worker advocates, and interested members of the public.

## **Conclusion**

I agree that submission of Dr. Taulbee's presentation to the Board earlier than the afternoon before the day that the full Board was scheduled to meet provided inadequate time for review. I also think that in this case the scheduling of SEC Issues and SRS Work Groups' meetings fairly proximate to a full Board meeting may have contributed to the lateness in preparing, reviewing, submitting, and the web-posting of Dr. Taulbee's presentation.

I also agree that Dr. Taulbee misjudged the amount of time it would take for him to make his presentation related to Petition 103 at the December 9, 2020 meeting; he exceeded his estimated time by 14 minutes. I do not believe, though, that Dr. Taulbee intentionally designed his presentation to prevent the Board from voting on Petition 103, nor do I

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<sup>17</sup> Joint Meeting Transcript for November 17, 2020, pages 146-147. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtr11720-508.pdf>.

<sup>18</sup> Joint Meeting Transcript for November 20, 2020, pages 26, 48, 50 and 145. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtr112020-508.pdf>.

<sup>19</sup> Joint Meeting Transcript for November 17, 2020, page 145. See <https://www.cdc.gov/niosh/ocas/pdfs/abrwh/2020/wgtr11720-508.pdf>.



believe that Ms. Naylor's advice regarding the Board's proposed actions related to adding a class to the SEC was designed to prevent the Board from voting on Petition 103. There just was not enough time on the Board's December 9, 2020 meeting agenda to achieve the expectation of the SRS Work Group.

I do, however, share your concern about the length of time that Petition 103, aside from the addition of an initial class to the SEC in 2012, has been undergoing evaluation by DCAS/NIOSH, SC&A, and the Board's Work Groups. I have asked Dr. Roberts to convey to the Board, and to its SEC Issues and SRS Work Groups, my appreciation for their exhaustive evaluation of Petition 103, and to express my hope that DCAS/NIOSH, and the Board and its Work Groups can conclude their consideration of Petition 103 in 2021.

Thank you for your letter of December 17, 2020, and thank you for your service on behalf of America's atomic weapons workers.

Sincerely,

A handwritten signature in black ink, appearing to read "John Howard", with a long horizontal flourish extending to the right.

John Howard  
Director