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AN OVERVIEW OF THE RADIATION EXPOSURE COMPENSATION PROGRAM

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
DeWine, Hon. Mike, a U.S. Senator from the State of Ohio, prepared statement	45
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	1
prepared statement and attachments	49

WITNESSES

Bucholtz, Jeffrey S., Deputy Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C.; accompanied by Dianne Spellberg, Acting Director, Radiation Exposure compensation Program, Department of Justice, Washington, D.C.	3
Houghton, Helen Bandley, San Antonio, Texas	16
Thompson, Jeffrey, Jacksonville, Arkansas	14
Torres, Rita, Surprise, Arizona	12

QUESTIONS AND ANSWERS

Responses of Jeffrey S. Bucholtz to questions submitted by Senator Hatch	22

SUBMISSIONS FOR THE RECORD

Bordallo, Hon. Madeleine A., a Delegate in Congress from the Territory of Guam, prepared statement	28
Bucholtz, Jeffrey S., Deputy Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C.; accompanied by Dianne Spellberg, Acting Director, Radiation Exposure Compensation Program, Department of Justice, Washington, D.C., prepared statement	29
Daschle, Hon. Tom, a U.S. Senator from the State of South Dakota, prepared statement and attachments	36
Houghton, Helen Bandley, San Antonio, Texas, prepared statement	72
Thompson, Jeffrey, Jacksonville, Arkansas, prepared statement	75
Torres, Rita, Surprise, Arizona, prepared statement and attachments	78

AN OVERVIEW OF THE RADIATION EXPOSURE COMPENSATION PROGRAM

WEDNESDAY, JULY 21, 2004

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:52 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch and Craig.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. Well, I want to welcome you all to the Committee today. Today, the Committee will hear testimony on one of my top priorities as Utah's senior Senator, the Radiation Exposure Compensation Program, better known as RECA. There are few issues in Washington, D.C., as important to my fellow Utahns as the viability of RECA.

The Radiation Exposure Compensation Act, which I authored, was signed into law in 1990 and has compensated thousands of individuals, government workers and civilians alike, who were exposed to harmful radiation as a result of nuclear testing in the mid-1950's and 1960's. Some of these individuals worked in uranium mines. Many drove the trucks which transported uranium ore, and many simply happened to live downwind from a nuclear test site.

The original RECA Act of 1990 established a fund to provide compensation to these individuals who were never informed about the health hazards associated with radiation and who became ill due to their exposure. Many of these individuals live in the western United States, but as evidenced by today's second panel, RECA claimants come from across the country.

In 2000, Congress approved and the President signed into law the Radiation Exposure Compensation Amendments of 2000, S. 1525. This law made important changes to the original 1990 Act by updating the list of compensable illnesses, primarily to include cancers, as well as increasing the scope of individuals and States eligible for compensation based on the latest scientific and medical information.

In 2002, additional expansions were approved for the RECA program, many of them based on technical comments which were provided to the Committee through the Department of Justice. Unfortunately, in 2001 a funding shortfall in the RECA program resulted

in hundreds of individuals not receiving their compensation, even though their claims had been approved by the RECA office and the Department of Justice.

Senator Pete Domenici offered an amendment which I strongly supported to address this funding shortfall by providing capped permanent appropriations through the Department of Defense for a 10-year period beginning in fiscal year 2002 and totaling $655 million.

Despite this effort, funding shortfalls persisted. A report released by the General Accounting Office in April 2003 estimated that the funding levels appropriated to the RECA trust fund would be insufficient to meet the projected claims. Both the Congressional Budget Office and the Department of Justice have confirmed that the RECA trust fund is running out of money.

I am pleased to report that the administration took our concerns seriously and the President's 2005 budget recommended that the RECA trust fund be provided $72 million in discretionary money to cover shortfalls in fiscal years 2003, 2004 and the projected shortfall in 2005. The Senate budget resolution also included this money. More recently, the House of Representatives passed H.R. 4754, the Commerce, State, Justice appropriations bill for fiscal year 2005, and that legislation contains $72 million to cover the shortfalls in the RECA trust fund for fiscal years 2003, 2004, and the projected shortfall for 2005. However, this money would still not resolve the funding issues associated with the RECA trust fund.

According to the April 2003 GAO report, the fund would require a total of $107 million through fiscal year 2011. So while I am pleased that the administration and my colleagues in Congress have recognized our obligation to these folks who are owned compensation under RECA, we yet have more work to do.

We do not want to again experience the problems of 2001, when claimants were told that they were eligible for compensation, but then had to wait several months to receive their monies. I do not want to put RECA claimants through that again and I will fight tooth and nail for the funding to make RECA whole once again.

Before I close my opening remarks, I want to raise another troubling inequity that I hope the Department of Justice will comment on in detail—the difference in compensation among energy workers, on-site participants and downwinders. Energy workers are compensated $150,000 and have all of their medical bills paid. On-site workers are compensated $75,000, but do not have medical benefits, and downwinders who were innocent bystanders to atomic testing are only compensated $50,000 and do not have any medical bills paid. I personally do not understand this inequity and will not rest until it is addressed.

There is positive news regarding RECA. In the omnibus appropriations bill for fiscal year 2002, I included funding for a grant program for education, prevention and early detection of radiogenic cancer and illnesses, to be administered through the Health Resources and Services Administration. Currently, four States—Utah, Colorado, New Mexico and Arizona—have grantees.

In addition, my amendment provided funding so that the Department of Health and Human Services could contract with the Na-

tional Research Council to review the most recent scientific information related to radiation exposure and associated cancers and other diseases. The study also would make recommendations as to whether to expand RECA to cover additional illnesses, as well as claimants from other geographical areas or classes of workers. These recommendations would be released in June of 2005 by HHS.

Further, the National Research Council's Committee reviewing this program for HHS will conduct a public meeting next week in Salt Lake City, Utah, on July 29. I strongly urge anyone who believes he or she is eligible for compensation under RECA to attend this meeting.

Finally, I want members of the Committee to know how cooperative I have found the RECA staff to be. This staff has come to my State at least three times in the last 3 years, and each time they have patiently listened to the concerns of my constituents who have been exposed to radiation. I am deeply grateful to the entire staff, especially Jerry Fischer, who is currently serving our country in Iraq, and Dianne Spellberg, the acting director of the RECA program. We are grateful for the work that has been done in Utah and I am personally looking forward to that hearing. I may not be able to attend because of other commitments, but we have made arrangements for the Committee to be there.

On our first panel, we will have Jeffrey Bucholtz, who is the Deputy Assistant Attorney General of the Civil Division of the Department of Justice. Mr. Bucholtz is here to discuss the Radiation Exposure Compensation Program.

We want to welcome you to the Committee and we appreciate you being here today. We recognize you were recently married, and we congratulate you for that and wish you the best as you appear before the Committee.

STATEMENT OF JEFFREY S. BUCHOLTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.; ACCOMPANIED BY DIANNE SPELLBERG, ACTING DIRECTOR, RADIATION EXPOSURE COMPENSATION PROGRAM, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. BUCHOLTZ. Thank you very much, Mr. Chairman. Mr. Chairman and members of the Committee, I am pleased to appear before the Committee today to discuss the Radiation Exposure Compensation Act on behalf of the Department of Justice.

This is the first Congressional hearing on RECA since passage of the amendments of 2000 and enactment of the Appropriations Authorization Act in 2002. Both enactments changed the original RECA statute in many significant respects, markedly expanding the scope of the Radiation Exposure Compensation Program. I welcome the opportunity to discuss the administration of the program by the Department of Justice, its many successes and anticipated challenges. I will begin by providing some background for the Committee.

From 1945 through 1962, the United States conducted extensive atmospheric nuclear weapons testing as part of our Nation's Cold War security strategy. Critical to this endeavor was the processing

of uranium conducted by individuals employed in the uranium industry. Many of those individuals subsequently contracted serious illnesses, including various types of cancer, due to their exposure to radiation.

In order to make partial restitution to those individuals for their sacrifices, Congress passed the Radiation Exposure Compensation Act on October 5, 1990. RECA provides for compassionate compensation to individuals who contracted certain specified diseases as a possible result of their exposure to radiation or to their surviving beneficiaries.

Eligible claimants included on-site participants who were involved in above-ground nuclear weapons tests, downwinders who lived or worked in specific geographical locations downwind of the Nevada test site, and uranium miners who were exposed to radiation in underground uranium mines.

On July 10, 2000, Congress passed the Radiation Exposure Compensation Act Amendments of 2000 which made important revisions to the Act. First, two new claimant categories were added—uranium millers involved in the uranium extraction process and ore transporters who typically trucked the uranium ore from the mine or mill. The 2000 amendments also provided additional specified compensable diseases, lowered the radiation exposure threshold to make it easier for uranium miners to qualify, modified medical documentation requirements, removed certain lifestyle restrictions, and expanded the downwinder geographic area. Further expansion followed with enactment of the Appropriations Authorization Act in November 2002.

Since its inception, the program has received over 20,000 claims. Of these, nearly 12,000 have been approved, totaling over $771 million in compensation paid. Of this amount, approximately $200 million has been awarded to Arizona residents, $187 million to Utah residents, $122 million to Colorado residents, and $98 million to New Mexico residents. The program is not limited to residents of those States, however, and, in fact, has awarded compensation to individuals from every State in the Union.

Since the 2000 amendments were enacted, the overall approval rate has risen to 75 percent. In the first fiscal year following enactment of the amendments, the program processed almost 2,000 claims, representing $94 million in awards, an increase of $68 million from the previous year.

The program is sensitive to the difficulties faced by Native American claimants. Although Native American traditions often do not provide for creation of certain identification documents such as birth certificates and the like, several tribes have offices that maintain this type of information. Because the Act requires verification of a claimant's identity and marital status, the program works closely with those offices to assist Native American claimants in satisfying the eligibility criteria of the statute.

Extensive time and effort have been devoted to public outreach and educational activities. The program initiated an aggressive outreach campaign in spring 2001, participating in workshops, training sessions and public meetings. At the request of Senators Hatch, Domenici and Daschle, program staff have traveled to Utah, New

Mexico and South Dakota to participate in town hall meetings to answer questions about the program.

An essential component of the program's outreach is to establish a strong working relationship with the affected Native American communities. Program staff have traveled to the Navajo Nation to meet with tribal representatives and members, and have participated in several Navajo chapter meetings. Staff have also held training sessions for Navajo case workers to enable them better to assist RECA claimants. This summer, the program is sponsoring a case worker from the Office of Navajo Uranium Workers as a RECA intern, and we are hopeful that this experience will further reinforce what is already a productive relationship.

Despite the success of the program, the 2000 amendments and the Appropriations Authorization Act have presented some significant challenges. Foremost among those is the fact that the legislative expansion created a need for additional trust fund resources. The Act's expansion resulted in a nearly five-fold increase in claims received. Since the 2000 amendments became law, almost 12,500 new claims have been filed and funding requirements have grown dramatically.

Before fiscal year 2001, the RECA trust fund was subject to annual discretionary appropriations. Unfortunately, the funding provided in the appropriations bills during fiscal years 2000 and 2001 could not cover the onslaught of new claims being filed and the funds were quickly depleted.

In an attempt to resolve this problem, the National Defense Authorization Act for fiscal year 2002 made the RECA trust fund a mandatory appropriation and established annual spending caps for fiscal years 2002 through 2011 totaling $655 million. The cap set by this Act assumed a sharp drop in the number of claims filed and approved each year, and thus a correspondingly sharp drop in the amount of funding necessary to cover awards.

However, the rate of decline has been slower than anticipated. The immediate shortfall problem is reflected in the President's fiscal year 2005 budget, which seeks a discretionary appropriation of $72 million to supplement the existing fiscal year 2005 spending cap of $65 million. This amount would fund the shortfalls experienced in fiscal years 2003 and 2004 and projected shortfalls in fiscal year 2005. This amount was approved in the House appropriations bill for the Departments of Commerce, Justice, State and the Judiciary. Funding will not be assured, however, unless the Senate and the conference agreement also approve this request.

Despite these challenges, the Department remains dedicated to fulfilling the program's mission to provide compensation as efficiently as possible to claimants who meet the statutory eligibility criteria. The Department is confident that the continued cooperative efforts of Congress and the Department will position the program for sustained success into the future.

Mr. Chairman, thank you for holding this hearing today and for the personal interest you have consistently demonstrated in the program over the years. The Department is committed to Congress's goal of administering a program that provides humanitarian compensation to Americans who jeopardized their lives and health in service to the Nation's security during the Cold War. I

appreciate this opportunity to discuss the RECA program with the Committee and would be pleased to answer any questions at this time.

Chairman HATCH. Well, we appreciate you being here. Is it pronounced Bucholtz or Bucholtz?

Mr. BUCHOLTZ. It is Bucholtz, Mr. Chairman. Thank you.

Chairman HATCH. I had better get that right. I think this is the first time I have met you, but we are honored to have you here and we appreciate the testimony that you have given here today. Let me just ask a few questions.

Should RECA beneficiaries be concerned that they are going to start receiving IOUs somewhere in the near future if funding is not approved by the RECA trust fund? If the money is not appropriated, when would RECA claimants start receiving the IOUs?

Mr. BUCHOLTZ. Well, Mr. Chairman, the administration is very concerned about the possibility that the trust fund would be exhausted. As I mentioned and as you mentioned, Mr. Chairman, the administration's 2005 budget seeks the $72 million in additional appropriations to make sure that that won't happen during fiscal year 2005.

If that $72 million is not enacted, in addition to the existing $65 million cap, then, as we have said, the trust fund would be exhausted, based on our projections, during fiscal year 2005. That is precisely why we have made it a priority to seek that $72 million in extra funding for 2005.

Chairman HATCH. How much money does the Department of Justice believe is needed to make the RECA trust fund solvent through 2011? For instance, an April of 2003 GAO report estimates that number to be $107 million through 2011. Does the Department of Justice agree with that number, and if not, would you please explain any reasons why you do not agree with it?

Mr. BUCHOLTZ. We do agree, Mr. Chairman, with the GAO that a substantial shortfall is likely after fiscal year 2005 through fiscal year 2011. The most immediate and most precise shortfall that we can estimate statistically is for the current fiscal year and fiscal year 2005, which we have estimated to be $72 million.

The farther into the future we attempt to estimate shortfalls, the less precision, the less certainty that we have. The GAO number, as you said, Mr. Chairman, is $107 million, total, which would be 35 in addition to the 72 that we have requested for the coming year.

The Department of Justice is constantly updating our projections, in light of claims receipts and claims paid, to try to come up with the most accurate projections that we can into the future. Our most current projections suggest that the GAO estimate will be on the low side and that total shortfalls through 2011 will be somewhat higher than the GAO estimated.

The GAO's estimate was done over a year ago, and just as the caps that are in existing law were based on a projection that claims received and claims paid would drop sharply over the years, that hasn't happened to the extent predicted. The GAO report estimated the outyear shortfall based on their own projections of how claims receipts would decrease over the years.

Even in the year and a couple of months since the GAO report, we have observed that claims coming in have not decreased as quickly as GAO had predicted. So as of now, we would expect the GAO estimate to be on the low side and the shortfall through fiscal year 2011 to be somewhat higher than GAO had predicted.

I would like to emphasize, though, as I said, that the farther into the future we attempt to estimate shortfalls, the less precision and the less accuracy we have. That is the same phenomenon that has occurred before in this program. So we hesitate to try to put any specific number on it into the future, but we do think the GAO's estimate will prove to be too low.

Chairman HATCH. Could you give us kind of a rough number?

Mr. BUCHOLTZ. Well, the GAO estimate again is $35 million more than the $72 million appropriation that we have currently requested. We don't think that that estimate is wildly off. We think that it is likely to be higher than that. Whether it is a total of $60 million in addition to the 35 or a total of 70 or a total of 80, it is very hard to say. But we don't think it is going to be wildly more than the GAO estimate.

Chairman HATCH. Tell us a little bit about the outreach programs that you have and the education programs that the RECA office intends to conduct, and tell us how many RECA claimants have an opportunity to interact with the RECA office.

Mr. BUCHOLTZ. Thank you, Mr. Chairman. I would be pleased to discuss the outreach that the program has engaged in. In particular, the program has engaged in significant outreach, as you mentioned, at the request of you, Mr. Chairman, and with your office.

I would like to introduce, next to me, Dianne Spellberg, who is the current acting assistant director for the RECA program in Jerry Fischer's absence while he is on active duty in Iraq, as you mentioned. Dianne Spellberg is doing a great job of running the program in Jerry's absence. We are, of course, all anxiously awaiting Jerry's safe return.

But as far as outreach and education efforts, on numerous occasions program staff have gone to meet with constituents in the affected communities in Utah and in other States, and we think it is important to do that. We want everyone who is eligible for this program to know about it, to know how to apply and to be able to apply. So we have made it a priority to engage in those kinds of outreach efforts.

I would like to let Dianne, who is personally engaged in many of those outreach efforts, and who has worked very closely with your staff over the years to do so, provide more details about our past and our future plans for outreach, if I may.

Chairman HATCH. That would be great, and we appreciate the help you have given to our staff and to me personally and to the people who have suffered from this.

Ms. SPELLBERG. Thank you very much, Mr. Chairman, and thank you for the opportunity to come here today and discuss the radiation program. As Mr. Bucholtz stated, our outreach efforts are incredibly important to the RECA program. This is how we get the word out concerning the availability of compensation to

downwinders and the uranium worker and on-site participant claimants.

Beginning in spring 2001, the program initiated an aggressive outreach campaign. We traveled twice to Utah. On our first trip—it was right around the time of the Olympics that were going on in your State and it was an exciting time—we met individual potential claimants in Richfield, in St. George and in Salt Lake City. They were incredibly well-attended, and with the help of Patty Deloche, they were very positive and very successful. At each of those three events, there were anywhere from 50 to 200 individuals that came. Some had questions about their claim, some were there to learn about this program.

Our second trip out to Utah was focused, as well, on the downwinder claimants, but also we were able to travel to Montezuma Creek, to the Navajo Indian reservation, and met with numerous claimants there, uranium miner, uranium miller and ore transporter claimants. Again, attendance was very high. The trips were very well-organized. We participated in these town hall meetings.

Similarly, we have traveled to a former uranium milling and mining town out in the Edgemont mining district in South Dakota, and we have also traveled out to the Navajo Indian reservation on several occasions in Shiprock, New Mexico, in Kayenta, Arizona and Tuba City, Arizona. And we have worked with the Office of Navajo Uranium Workers to meet with claimants and participate in chapter meetings.

As you had stated in your opening statement, there is a radiation exposure screening and education clinic on the Indian reservation that covers the Shiprock, New Mexico, area. We have been working with those individuals to help process the RECA claims.

In addition, we have future outreach plans scheduled. As you stated in your statement, we will be attending the Salt Lake City meeting next week that the National Research Council is having to hold a public hearing on RECA. We also intend to travel to the San Carlos Apache Indian Reservation in September. That is out near Globe, Arizona, and we have plans to go back to the Navajo Indian reservation near Shiprock.

Our office has sent on numerous occasions our case workers out to train the case workers that the Navajo office has that help the Navajo RECA claimants process their claims. These training sessions have been able to really make claims processing for these individuals much more efficient.

Chairman HATCH. That sounds good. I have taken enough time.

Senator Craig, let's turn to you.

Senator CRAIG. Well, thank you, Mr. Chairman. I am here to listen and to better understand the issue. We have some claimants in Idaho, very few, but it is an important issue and I want to support you in your effort.

Chairman HATCH. Well, thank you. I appreciate that.

If I could just ask a few more questions, Mr. Bucholtz, I really want you to get me a rough estimate for the record so we at least have a better understanding. You don't have to do it right now, but I am saying within the next week or so I would like you to come up with the best estimate you can as to how needs to be raised be-

cause we need to know that in advance. If you would do that for us, I would appreciate it.

Mr. BUCHOLTZ. Of course, Mr. Chairman.

Chairman HATCH. Now, in my statement I mentioned the discrepancies between the compensation received by energy workers, downwinders and on-site participants. Can you explain the differences and whether we should do something about the differences?

Mr. BUCHOLTZ. Well, the differences, Mr. Chairman, are as you mentioned. The energy workers program, called EEOICA or the Energy Employees Occupational Illness Compensation Act, provides $150,000 in a flat payment, plus medical expenses incurred after the filing of a claim. The RECA statute provides for varying amounts of payment, depending on the type of claim.

But it is hard to compare the two programs, in a sense, because they were enacted at different times, in different statutes, with different purposes, and they are administered by different agencies. The energy program is administered by the Department of Labor's Office of Workers' Compensation, and the RECA program, of course, is administered by the Department of Justice.

The energy employees program was based on a workers' compensation model and is administered by the Workers' Compensation Office of the Labor Department. My understanding of how the $150,000 plus medical expenses payment amount was decided for the energy program was that that was designed to approximate the workers' compensation awards that those claimants should have been able to recover.

My understanding is that there were difficulties that those claimants encountered in obtaining workers' compensation awards that they should have been entitled to, and that the program was designed to enable them to get what they should have gotten through workers' comp through this program.

RECA was designed to, as the statute said, provide partial restitution to people who suffered radiation exposure because of our Nation's Cold War efforts. Of course, people who suffered radiation exposure and contracted the diseases that are compensable under RECA—no amount of money can provide anything like full compensation to RECA claimants. What Congress attempted to do is to provide partial restitution, as the Act says. At the time the Act and amendments were passed, the compensation amounts were chosen with that purpose in mind.

An additional difference that is important to understand is that the energy program is—it is more complicated and more difficult for a claimant to obtain compensation under the energy program because under the energy program most claimants have to go through what is called dose reconstruction. They have to prove how much radiation they were exposed to and then they have to prove causation. They have to prove that that dose that they have been able to reconstruct is scientifically at least as likely as not to have caused their disease.

Under RECA, no one has to prove causation. People only have to prove that they were present in a covered downwind area or that they were a miner for the required length of time or the like. So the RECA program is entirely no-fault. There is no need to prove

causation. It is in that sense easier for claimants to file claims and to recover than it is in the energy program.

Chairman HATCH. We know that last year's appropriations bill contained $1 million for administrative functions for the RECA office. Is that amount sufficient as we go into the future here? If it isn't, what are the office's future needs with regard to funding?

Of course, Ms. Spellberg, you could answer that, too, if you would like, but either one of you, or both.

Mr. BUCHOLTZ. Thank you, Mr. Chairman, for the opportunity to address the administrative funding situation. First of all, let me say that we are very grateful for the additional $1 million in administrative funding for the current fiscal year that you mentioned. We have been trying to put that to the best use possible in large part into two projects designed to accomplish capital improvements where the costs are incurred in this year and the benefits will be enjoyed long into the future.

We are essentially trying to accomplish two infrastructure projects. One is called the Closings Project. The RECA statute requires claimants to submit identification and other documentation to establish their eligibility, and it requires original documents or certified copies. Understandably, claimants want to get their documentation back as soon as they can because many of them submit original documents.

The Closings Project is designed to expedite the closing of claims files upon payment and to get claimants' original documents back to them just as soon as we can, and also just to improve the efficiency of the office by closing files promptly.

The second capital improvement project that we are trying to do with the extra $1 million for the current year is to create a paperless filing system. Again, the idea is to incur costs this year while we have the extra $1 million in administrative funding in order to enjoy efficiencies into the future.

We would expect that once we are able to implement a paperless filing system, that will increase the efficiency in claims processing. Among other things, it will enable us to get claims approved sooner, get claimants their money sooner, and get claimants their documents back sooner because once we scan them into our paperless filing system, we won't need to retain the original documents.

Chairman HATCH. I understand that RECA limits attorneys' fees to 2 percent for any claims that are filed after July 10, 2000. Has this provision limited access to attorneys, in your opinion, for people who have genuinely needed legal assistance? Have there been any violations of the 2-percent provision, and if so, have there been any fines levied?

Mr. BUCHOLTZ. I don't believe, Mr. Chairman, that the 2-percent change in the 2000 amendments has limited claimants' access to attorneys. I think that the vast majority of claimants don't really need attorneys. It is a no-fault program, it is a nonadversarial program, and the RECA staff works very hard to assist claimants, whether they have an attorney or not, in obtaining documentation, often in brainstorming on ways to obtain documentation to substitute for documentation that may no longer be available.

Because of the nonadversarial nature of the program, we think that most claimants don't need attorneys and we think that it is

appropriate for as much of the award as possible to end up with the claimant rather than going to pay attorneys' fees. So in our experience, we do not believe that the 2-percent attorneys' fees limitation has caused a problem for claimants.

Less than a third of claims are filed by claimants represented by an attorney. Over two-thirds of claims are filed by claimants on their own, and the approval percentages are just about identical after the 2000 amendments for claimants with an attorney and without an attorney. So we don't think that the 2-percent limitation is unduly limiting access to needed legal services.

In response to the second part of your question, Mr. Chairman, I am not aware as I sit here now of an example where we have imposed the fine provided for by the statute on an attorney who has attempted to collect more than the 2 percent amount.

Let me add one clarification, which is that after the 2000 amendments the 2-percent limitation applies to new claims, but the old attorneys' fees limitation of 10 percent still applies to resubmitted claims. So when a claim is denied and then the claimant resubmits it—and those, we think, would tend to be the more difficult or more complicated claims—those claimants are able to pay 10 percent of the claim amount to attorneys on resubmitted claims. So we think that that does allow some claimants who need attorneys to be able to find attorney services more easily.

Chairman HATCH. Well, you have been very helpful to us. This has been very interesting to me because, of course, we have taken a tremendous interest in this. It took a long time to get this through and the science we developed through the hearings that I held on the Labor and Human Resources Committee has become the science that has been adopted worldwide. So we feel like we have come a long way, but we also feel like there are some things that need to be corrected and we would appreciate any suggestions that either of you or others in your Department or in RECA would care to give us. So any suggestions you have, we would love to get them in the future. Just put them in writing and get them to us, okay?

Mr. BUCHOLTZ. Yes.

Chairman HATCH. Well, thank you for being here.

Mr. BUCHOLTZ. Thank you very much, Mr. Chairman. It was my pleasure and my honor, and I would like to thank you personally on behalf of the RECA program for the leadership that you have shown on this program and on these issues over the years. I and the entire staff very much look forward to continuing to work with you and your staff to provide suggestions and help in whatever way we can.

Chairman HATCH. Well, I appreciate that. For a newly married man, you have not been nearly as discombobulated as I would have been. We are very happy to have you here.

Mr. BUCHOLTZ. I have had two weeks to recover.

Chairman HATCH. You had better not say that around your wife.

Well, thank you both for being here. We appreciate having you here.

Mr. BUCHOLTZ. Thank you, Mr. Chairman.

Chairman HATCH. We look forward to working with you.

Ms. SPELLBERG. Thank you, Mr. Chairman.

[The prepared statement of Mr. Bucholtz appears as a submission for the record.]

Chairman HATCH. I would like to take the opportunity now to invite our second panel to the table. First, we will have Ms. Rita Torres, of Surprise, Arizona. Ms. Torres is from Monticello, Utah, and her father, Jose Torres, was a uranium miner. After Ms. Torres' father's RECA claim was approved, he was given an IOU and, sadly, he never saw his RECA compensation. Ms. Torres will talk about the hardships this caused her father and other members of her family.

Next, we will have Mr. Jeffrey Thompson, of Jacksonville, Arkansas. Mr. Thompson currently has a claim pending with the RECA office and he will testify about the difficulties he has encountered with the RECA office in having his claim processed in a timely manner.

Finally, we have Ms. Helen Houghton, of San Antonio, Texas. She is a downwind claimant who has been paid the $50,000. She will testify about how she feels short-changed in comparison to the energy employees and on-site workers who receive substantial more money than downwinders and how the $50,000 does not begin to adequately compensate victims like her.

I would like to add that all three of these panelists have Utah roots, and so we are particularly happy to have you all here.

Ms. Torres, we will take your testimony first.

STATEMENT OF RITA TORRES, SURPRISE, ARIZONA

Ms. TORRES. Thank you, Mr. Chairman, Committee members. My name is Rita Torres. I am a resident of Surprise, Arizona. This testimony comes from me, since it cannot come from the person who bore the brunt of his excruciating experience, my father, Joe Torres. If I could, I would like to read my father's own words from a letter that he sent to the President of the United States in March of 2001, just before he passed away on March 21, 2001 from the cancer that he suffered as a result of his many years as a uranium miner.

Dear President Bush, I don't mean to complain, but on the other hand I do kind of have a bone to pick with the Federal Government. You see, the Federal Government made a promise to lots of folks in our part of the country. There was a problem and they were trying to fix it. They passed a bill called the Radiation Exposure Compensation Act. This sounds great, as we have some serious health problems down here where we call home.

With all the politicians gathered, you might have thought that they would have figured this part out. They did not attach any funding to the program. Can you believe that? I couldn't either, Mr. President. You see, they gave everyone an IOU. I wonder to myself how forgiving and patient the IRS would be if we all sent them IOUs come April 15th. And I don't know the experience you have with cancer, but it is not very patient. It eats away at your body, metastasizes into other places that cause pain and all kinds of problems. It doesn't seem to want to wait while I write my Congressman to see if he can work out the pesky little funding details in subcommittees.

We believe in simple things, including if a man says he is going to help you, you can bet he will. You won't have to go chase him down and remind him. He will be there early and he will stay late until he knows his services are no longer needed. So I feel a little sheepish reminding you, Mr. President, that approving a program and then not funding it is sort of like offering help and then leaving town. It just isn't right. My time here on Earth is now very short. I am very tired now and would like to know that maybe some of what I do now might make it so other folks will not have to wait and be forgotten like I was.

It is hard to fight cancer and fight the Government. I received an approval from the Department of Justice stating I would receive compensation under the RECA program, because I spent many years mining uranium when our country needed it. When I received my approval, it was a happy day. It brought me great relief just to know that I would be receiving help and knowing that the Government hadn't forgotten about me. I was also relieved to know that my wife of 55 years, Vicenta Torres, might have some assistance to live on until she could join me.

Once, I was a strong man, glad to work hard all day. But I am not match for the pain; it has brought me to tears. It has brought my wife to tears as she struggles to make me comfortable. It has brought my children to tears to see their parents suffer so. I have exhausted all my means and I have been waiting for some relief from my Government since the approval letter arrived 7 months ago. To near the end with no relief from my Government has saddened me very much.

I have spent a great deal of time lately filling out forms. I wonder if doing paperwork is the last thing that I will remember before I die. I am trying to understand why I received approval 7 months ago, but have not seen a penny yet. Everyday, another resident of Monticello, Utah, is informed they have cancer. Have you had a son or a daughter die from cancer at a young age? It will make you hope for heaven because you are living through hell.

I chuckle to myself to think I am writing to the President of the United States. I have nothing for you. I have no access to money. I have no influential friends, but I grow weary. I cannot continue with this letter, but please look into this matter. There are people here, Americans that are as real as those that we send money to in foreign countries whenever a disaster hits there. I know you are busy, but everyone does not have the luxury of too many tomorrows to know that maybe they made a difference.

Thank you, Mr. President. Joe Torres.

Eight months after my father's death, my younger brother, Gary Torres, was diagnosed with stomach cancer. This has affected three generations of the Torres family. Please do not allow the program to go unfunded. Many are awaiting your decisions. We must move forward. IOUs would continue the injustice already done to these victims of radiation exposure. Many have stepped forward to serve our Government, and now I ask you to support your people by not continuing with IOUs and funding the RECA program.

Mr. Chairman, I would like to ask that my father's letter to President Bush and the award letter sent to him approving his

claim and informing him that the program was not funded be included as part of my testimony.

Thank you.

[The prepared statement of Ms. Torres appears as a submission for the record.]

Chairman HATCH. Well, it certainly will be, and I appreciate your testimony.

Now, we have a vote on the Senate floor. We could try to do our testimony, but I don't think that would be fair to you for me to try and do it in the next seven or eight minutes. So I think what I will do is recess, go over and vote, and then come right back so that I can then have some time to ask questions of you.

Your testimony, Ms. Torres, was very touching to me. As somebody who has really had to work very, very hard to get the RECA program up and running and to get that legislation, I remember how difficult it was to get it done even though almost everybody admitted that it was the right thing to do. I first started on this in 1980 and we didn't get the bill passed until 1990.

I had to establish the science that now is adopted all over the world with regard to radiation exposure cases, and I can't even begin to tell you the difficulty it was to get that bill passed. But I really empathize with you and your family for what you have been through and for your father and what he went through, and your brother.

I think it would be better for me to go vote so that I give you adequate time. So if you will just take it easy until I can get back, I will try and hustle over and hustle back. It will probably take about 15 minutes or so.

So with that, we will recess until I can get back.

[The Committee stood in recess from 11:37 a.m. to 12:17 p.m.]

Chairman HATCH. I apologize for taking so long, but I was caught by a Washington Post reporter and it took longer to answer his questions than I thought it would take. We walked over and walked back, too, so I thought that might be enough time, but it wasn't. I always have stopped and tried to answer reporters' questions, if I can.

Let's turn to you, Mr. Thompson. I am sorry you had to wait, and you also, Ms. Houghton.

We will turn to you.

STATEMENT OF JEFFREY THOMPSON, JACKSONVILLE, ARKANSAS

Mr. THOMPSON. Mr. Chairman, my name is Jeff Thompson. I am a resident of Jacksonville, Arkansas, which is located 15 miles northeast of Little Rock. My father was a downwind radiation exposure victim. My father, Ward Thompson, was born in 1918 in Beaver, Utah, and was employed as an engineer on the railroad for over 45 years. He lived in Melford when the Radiation Exposure Compensation Act first became law in 1990. My father would not have been able to receive compensation because the type of cancer he had was not one for which compensation could be paid.

My brother Kenneth, my sister Sue Ann and I are grateful for the Radiation Exposure Compensation Act Amendments which became law in the summer of 2000. These amendments added colon

cancer, which is what my father eventually died from in October of 2003.

In February of this year, my brother Kenneth, my sister Sue Ann and I filed a claim for compensation under the Radiation Exposure Compensation Act. Several weeks after filing the claim, we received a short letter from the Radiation Exposure Compensation Program which told us that they had received the claim and that they would begin processing it. The letter also explained that under the law, the Radiation Exposure Compensation Program had 1 year to make the decision if our claim met the requirements necessary to quality for compensation.

Several months after receiving the first letter from the Radiation Exposure Compensation Program, my sister received a second letter which told her that she needed to provide a copy of the marriage license which showed her marriage to Cliff Pace, who had passed away in 1990. My sister Sue Ann told the claims examiner that she had the marriage license showing her marriage to Cliff Pace, and she asked the claims examiner if she needed to send a copy of her marriage showing her marriage to Mr. Evan Skeem in 1965, which had ended in 1981.

My sister was concerned that the marriage license would be hard to get, since the marriage had occurred almost 40 years before and had happened in another State. She expressed these concerns to the claims examiner. The claims examiner responded that my sister should send the marriage license that she had in her possession, but the examiner gave no indication that my sister would have to send the certificate of the first marriage.

On approximately June 15, my sister received a letter from a different claims examiner which indicated that the Radiation Exposure Compensation Program needed a copy of the marriage license from my sister's first marriage to Evan Skeem in 1965. My sister is in the process of getting that marriage license from Nevada. We are concerned about the delay that may arise in processing our claim due to the six weeks that passed between my sister receiving the letter that asked for the marriage license for her second, more recent marriage and the letter that asked for the copy of the marriage license from the first marriage.

We also have another problem with another aspect of the claims process. I am not the biological child of Ward Thompson. I lived with him for several years before I was legally adopted by him in 1974 at the age of 10. I lived with him the rest of my childhood years before I reached the age of adulthood. I always considered him my father and he always held me out as his son. The adoption papers were sealed by the county in which the adoption had been finalized.

After my brother, my sister and I had filed a claim for compensation, I received a letter from the Radiation Exposure Compensation Program which told me that I needed to obtain copies of the adoption papers in order to prove my adoption by Ward Thompson. To my brother, my sister and myself, this was difficult. We retained an attorney in Beaver, Utah, who filed the proper action and was able to have the adoption papers unsealed so that we could provide them to the Radiation Exposure Compensation Program.

We have not yet received approval of our claim, but hope to have it approved soon. It would mean a great deal to us. The financial compensation would be very helpful and having the Government acknowledge that it had a hand in causing the cancer that required him to suffer. It would also be a comfort to my brother and my sister and myself.

We have heard of other claims that have not been paid because people could not find 50-year-old copies of electric bills, rent receipts, or other documents proving the details of their claims. We would ask you to make the Radiation Exposure Compensation Act as easy as you can for the people who file these claims.

Thank you.

[The prepared statement of Mr. Thompson appears as a submission for the record.]

Chairman HATCH. Thank you. We appreciate your testimony.

Ms. Houghton, we will takes your now.

STATEMENT OF HELEN BANDLEY HOUGHTON, SAN ANTONIO, TEXAS

Ms. HOUGHTON. Thank you, Mr. Chairman. My name is Helen Bandley Houghton and I am a downwinder. I grew up in south central Utah, in the community of Richfield, in Seveir County. I lived in Richfield from 1946 to 1970, leaving the valley to attend college and obtain my teaching degree.

While growing up in the 1950's and 1960's, we lived a life that would be described as rural. There was one, maybe two fast-food establishments in the community and families did not eat out on a nightly basis. As a child, I worked in the garden, ate fresh vegetables, drank milk fresh from the cow, and spent hours in the city swimming pools. We would sit on the porch and watch the clouds from the testing site in Nevada as they dissipated over our mountains and streams. Living on Highway 89, Big Rock Candy Mountain, Zion Canyon and Bryce Canyon were the destinations for family rides on a Sunday afternoon. We did not know of the damage that was being done to our bodies at this time.

For 3 months each year in high school, I would spend mornings in the city pool teaching the children how to swim. Needless to say, the other girl who spent those summers with me also had cancer. Hers was breast cancer. I had colon cancer. This was identified when I was 35 years old, and my doctor did nothing except remove the tumors because I was just too young to have colon cancer and I did not fit the profile.

Needless to say, this disease returned 5 years and 17 days later. I was lucky enough to have changed school districts and obtain cancer insurance. My life as I knew it was now over. I could not continue with my Ph.D. in education because I was unable to sit in class. I could not mow the lawn, attend aerobic classes, or remember a great deal of information.

Being in education, this was a problem. I had to leave the job that I had because I could no longer be under the stress, nor could I count on not having problems with my colostomy. It can take up to 5 years to get one working properly. I moved back to second grade and have gradually worked back into curriculum and staff developed. I lost 18 years of my dream because of this disease that

I did nothing to deserve, except be in the wrong place at the wrong time.

I was now unable to change school districts because of the health insurance issues. No one would cover me because of preexisting conditions. I could not get insurance on my home because I was considered a high risk. I could no longer care for my two daughters without a great deal of help from my family, who had to come to Texas to help. I was unable to go to Utah to live and had to stay close to doctors, who for the next 10 years were my best friends.

I cannot comprehend that the Government that I cherish had decided to put an unequal value on my medical problems. The trucker, the miner, the ground worker at the blast site knew what they were doing and the risks they were taking when they went into this project. The citizens of southern Utah were told there would be no risk.

My mother died a very painful death from cancer. Hers was pancreatic cancer. I have had 18 years of waiting for the other shoe to drop and to be told that my cancer has returned. I have been unable to retire from teaching after 37 years because I must have insurance and I cannot get Medicare or Medicaid until I am 65 or 67 years old. It was not unusual for my medical bills to be $400 a month, in addition to my co-pay. There are times when I have had to argue with my insurance company for the tests that the specialists need to do if they are more than once a year. This has happened often.

My 54-year-old brother is now in a hospice home in Orem, Utah, waiting to die. They have lost their home, their credit and their future. His medical bills have been over $10,000 a month because his insurance would not pay for the shots that he needed to continue the chemotherapy. Richard has been off work for 8 months. He has been bedridden for the past 6 months. They have lost everything they had. His soon-to-be widow must now find a job at the age of 54 that will provide insurance and a living wage, and she has been out of the job market for several years. He also had colon cancer.

Mr. Chairman, my medical bills and expenses are just as great as those who drove the trucks of ore through our community. My cancer is just as real as theirs. I cannot understand why the Government would decide that some people would get $150,000, plus lifetime medical benefits, and others would not only lose two or three members in a family, but their homes, and leave their families with medical bills that seem insurmountable.

I am asking you to please equalize these benefits so our legacies will not be ones of despair and poverty. Cancer is an expensive illness. You never get better. You go into remission for a period of time or you die. Once you have the disease, you are simply waiting for the tests to come back positive. I would like to know that my mother and my brother will not have died in vain. The information that was gained from these tests is critical to our world as we know it today. People need to be treated fairly and equally when it comes to this illness. The cost of this disease has tripled over the past few years for us. Please provide the same money for the people of southern Utah as you have for the workers.

Thank you.

[The prepared statement of Ms. Houghton appears as a submission for the record.]

Chairman HATCH. Well, thank you. I appreciate the testimony of all three of you and have great empathy for what you are saying here. Let me just ask a few questions.

Ms. Torres, I will start with you. In your testimony, you talk about your father's RECA claim being approved and the fact that he had to wait months for it to be paid. Did your father ever receive any reports during that time from RECA, from the office, regarding the status of his claim?

Ms. TORRES. No, he did not. My father and mother worked with an attorney because they didn't understand the paperwork process. When I went home, because my father's illness was at a point that they needed help, I got involved and tried to make phone calls, do paperwork, to inquire as to the status of the IOU. Nobody knew what else to do, and this was when I started the paperwork process—writing to the President, Justice Department, Appropriation Committee members, Senator Hatch and Attorney General Ashcroft.

Chairman HATCH. So I guess your recommendation would be this process has to be improved and we need to find a way of helping people.

Ms. TORRES. Very much so, because most of the people are in a position that the illness has taken over emotionally and financially, and somebody has to basically figure out what to do. The attorneys couldn't help anymore, we really didn't know what to do. We made phone calls and we got transferred around to a lot of different people/departments, but we never really received anything other than you were approved and received the IOU and that was it. No follow up letter.

Chairman HATCH. Ms. Houghton, in your testimony you talk about the death of your mother and how she suffered tremendously from the cancer that she contracted. You also mentioned your brother, who is in a hospice facility in Orem, Utah. I am assuming that both of them could be classified as downwinders.

How many of your total family have wound up being diagnosed with—

Ms. HOUGHTON. There are three of us, Mr. Chairman. I was a downwinder, my brother was a downwinder, and my mother was a downwinder.

Chairman HATCH. I see. Now, do you believe it is important for downwinders to be compensated for their medical services? You want to have the same benefits for medical services as the miners have?

Ms. HOUGHTON. I feel like it should be, especially after—Richard had excellent medical insurance. He worked for Kentucky Fried Chicken in Utah, and they are self-funded and they have paid everything that the insurance company has wanted them to pay. But it is the $10,000 that he has needed each month for the past 8 months for the vomiting and nausea shots that were $3,000 apiece.

Chairman HATCH. Mr. Thompson, let me ask you this. What will a downwinder's award mean to you personally?

Mr. THOMPSON. I didn't even know about the downwind until my brother explained what it was to me. I mean, I was pretty young

then, you know, when it all happened. My dad—they diagnosed him with colon cancer. He had stomach cancer and prostate cancer, too. That is in the medical report where he passed away. You know, just let the Government know that they had a hand in causing a lot of people—one of my sisters passed away from brain cancer and she was a downwinder. Her children got compensated for it, too.

I have got a sister that is older than the one that passed away and I have got a brother that is younger than the sister that passed away. They haven't been diagnosed yet, but they were in that area when it happened, so it is very possible that they are downwinders, too.

Chairman HATCH. Ms. Torres and Ms. Houghton, what other problems did you have in the process of filing and having your claims processed? Do you feel like the staff of RECA responded to your inquiries in a timely manner? Did they answer the phone calls and written letters?

Ms. HOUGHTON. We have gone through the process three times. When we began with my mother, it was very difficult because her cancer was pancreatic cancer and the evaluator, the adjustor kept saying that she must be a coffee drinker; it was because of her health or her way of life. And it took statements from members of the church and doctors to explain that this little old woman of 83 didn't drink 75 cups of coffee a day and didn't smoke. When we finally got through with that, we have learned some of the ways to get through.

My colon cancer was put in in 2000, when they changed the list, and it sat for about 12 months because the gentlemen that was supposed to be in charge was on active duty. He had been called up and apparently nobody took anything off of his desk. And they did not communicate with us, but once we got it going, they couldn't have been nicer. They answered our phone calls, they answered our questions. They were constantly on top of us, but they couldn't do anything.

And then when Richard's went through, he got his in probably six to eight weeks. We couldn't believe it. It had come so fast. So we had been through the whole gamut, and I never got an IOU. They just said, you know—they didn't send me the notice. They just said, you know, just wait. But my problem was the young man was on active duty. He had been called up and his desk must have been a sacred shrine or something.

Chairman HATCH. They didn't get right after it.

Ms. Torres?

Ms. TORRES. I think what happened for us was that we would send letters and make phone calls and there was no response. It took a long time before we got any information, and most of the letters came from your office, Senator Hatch, responding to the letters. Otherwise, the Justice Department did not respond nor did the Appropriations Committee Members or the President's office.

Chairman HATCH. Well, we know that you had some difficulty with requests for documents, and so forth, and we are going to try and do what we can to get the office to do a better job.

Ms. TORRES. We also tried through the VA, and that just started another process of paperwork.

Chairman HATCH. As I understand it, the awards that your families have received—have they even come close in covering the medical expenses, Ms. Houghton?

Ms. HOUGHTON. No. My hospital stay alone just for my initial surgery—and I have had eight operations since then because of everything that needed to be done. My first bill was $135,000 because I had to stay in the hospital for 18 days when the surgery was done the first time in Texas.

The reason I was so aware of the 5 years and 17 days is because the cancer insurance company did not want to cover me when I moved to the new district in Texas. But because I had been 5 years, they would cover me, and it was right after that that found that it had come back. I am a single parent. It was just absolutely astronomical. It still is. I still have side effects. Because of all the time and the length of the surgery, I had a lot of problems with the anesthesia.

And I would screw up my checking account and the bank would call. It finally got to the point where—it was a neighborhood bank in San Antonio and they would call to see if I was sick again, because I was having trouble with subtraction and that seems to be one of the areas that I don't do well anymore. Our whole quality of life—I miss my daughters' lives. You know, you have got to come home from the hospital because somebody is going to the prom, and just everything. They really didn't do a whole lot because mom couldn't do it. I would go to school and come home and be really happy that I hadn't had to come home from school because of problems with my colostomy, which did happen. You know, it is pretty embarrassing when you are dealing with that kind of stuff.

Chairman HATCH. I feel real badly about what you have gone through.

Ms. Torres, do you have any comments about that?

Ms. TORRES. Yes. A lot of the burden is financial, and with the cancer there is a lot of pain involved. There were thousands of dollars that went out especially in the last several months to try to make Dad comfortable, and that is probably one of the areas that most of the compensation would go towards. Obviously, my father didn't have that to start with, and he had a larger support system. There were nine of us and we all helped with the medication, the bills, and other expenses. I quit my job and came home to stay with my parents, so I was unemployed for over a year. I exhausted my funds.

The family did what they could to help me out and to help my parents. The financial burden isn't just the illness, it does take an entire family's support and involvement. We looked to the Government for some that support and there wasn't any.

Chairman HATCH. Well, we appreciate your testimony. It has been very important here today, and we will see what we can do about some of these things. I want to thank all of you for testifying and bringing your experiences to bear here.

I think it is vital for both the Committee members and the Department of Justice to realize how important it is to guarantee the financial solvency of the RECA trust fund so that all individuals exposed to radiation will be compensated in a timely manner rather than go through what some of you have gone through.

I never want any RECA claimants to receive IOUs once their claims have been approved. That is ridiculous as far as I am concerned. There just cannot be a repeat of what happened a few years ago when claims were approved and instead of money, claimants were given IOUs. Those people had to wait for weeks, sometimes months, for their compensation, and that just isn't right. So I will do everything in my power to provide additional funding for the RECA trust fund.

In addition, I am going to continue my quest to provide equity and benefits for downwinders, energy workers and on-site participants. There is no reason why downwinders should not have their medical benefits covered. That is easy to say, but getting the monies to pay for that is going to be a very difficult thing. I think there is no reason why downwinders are only compensated $50,000. Of course, that is a lot more than before, but it is still not adequate, and I know that.

I do know that the RECA office is making improvements everyday and doing the best they can on processing claims, public outreach and education. I have seen greater efforts in the recent number of months and I sincerely appreciate everyone's efforts. However, after listening to you folks on this second panel, I believe that it would be wise for the RECA staff to consider the suggestions of you panelists and how you believe claims processes should be handled and claims should be paid.

Finally, let me just say that the record will be kept open for additional statements and questions of anybody on the Committee for one week. I want to thank the three of you, in particular, and all the witnesses who have testified here today because I know that it takes time from busy schedules to come and do this. But you are doing a service for a lot of people out there who need to be treated better, and let's hope that we can help bring that about. I just want to thank each of you for being here and thank you for taking the time to be with us and help others to benefit from what your experiences have been. I know they haven't been good experiences, so let's see what we can do to help change that.

With that, we will recess until further notice.

[Whereupon, at 12:43 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 3, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter responds to your letter of August 16, 2004, posing questions arising from the appearance of Deputy Assistant Attorney General Jeffrey Bucholtz before the Committee on July 21, 2004, concerning the Radiation Exposure Compensation Program. We have enclosed responses to those questions.

Thank you for the opportunity to express our views. Please do not hesitate to contact this office if we may be of further assistance to you.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Enclosure

RESPONSES TO QUESTIONS FOR RECORD
SENATE JUDICIARY COMMITTEE HEARING
JULY 21, 2004

The RECA program requires the AG to *ensure that an approved claim is paid not later than six weeks after the date on which such claim is approved.* Since the enactment of this provision, what percentage of claims has been paid in this timely manner? This is a complaint that my office hears often – that it has been 12, 13, 14 weeks and the claimant still has not been paid.

The Radiation Program makes every effort to ensure compliance with the Act's six-week payment requirement. Once a claim is approved, the Program immediately notifies the claimant and requests that an "Acceptance of Payment" form be completed and returned to the Program. Claimants must acknowledge their acceptance of the award and choose a method of payment. In the event a claimant elects to receive an electronic transfer of funds, rather than payment by check, bank account and routing information must be provided. Typically, the Program receives the completed Acceptance of Payment form back from the claimant within three weeks. The Program then immediately begins the process of verifying the banking information provided by the claimant. Each designated financial institution is contacted and requested to provide written confirmation of the relevant account information as well as the bank's routing number. In cases where there are multiple beneficiaries, all documentation and bank verification must be processed for each beneficiary before the Justice Department may authorize payment by the Treasury Department, which disburses all electronic payments and payments by check.

Obtaining the necessary verifications from financial institutions has often proved difficult and time-consuming, especially in multiple beneficiary cases. The average time from the date on which the Program receives the Acceptance of Payment form from the beneficiaries until the Program informs the Civil Division's Budget Office that the banking verification has been completed is 24 days.

Once the Budget Office receives the required banking verification information, it must confirm the payment obligation and forward the paperwork to the Department's Justice Management Division, which must certify that the award satisfies Treasury Department requirements for the obligation of funds. A pay date is then scheduled and disbursement is made by Treasury. The average processing time for payment of all approved claims since enactment of the 2000 Amendments is 52 days, approximately 7 ½ weeks, and nearly 90% are paid within 12 weeks.

A recent appropriation of $1 million for the administration of RECA was enacted (the "Consolidated Appropriations Act for Fiscal Year 2004"), permitting the Program to focus on the efficient resolution of pending claims and develop a strategy to significantly reduce the payment processing time. On August 1, 2004, the Program implemented procedures to expedite the handling and verification of payment information through an electronic "paperless" file system.

The Program anticipates that the new system will eliminate much of the time previously required to transfer payment documentation within the Department. Additionally, the Program has engaged contractors to work full-time with Program staff to expedite the bank verification process. Quarterly audits have been instituted to evaluate efficiency and recommend changes in order to ensure the process is working effectively.

Presently, nearly half of all approved claims are paid within the six-week time frame. The Program expects the efficiency improvements just discussed to drastically increase that percentage until all payments are made within six weeks. The Program will closely monitor the new system and make whatever adjustments are necessary.

The RECA limits attorney fees to 2% for any claim filed after July 10, 2000. Has this provision limited access to attorneys by claimants that genuinely need legal assistance? Have there been documented violations of the 2% provision and if so, have there been fines levied?

Prior to enactment of the 2000 Amendments, less than 33 percent of all RECA claimants were represented by an attorney. Historically, in cases where there is no attorney representation, approximately 64 percent of claims are approved, and in cases with attorney representation, approximately 75 percent of claims are approved. This moderate differential reflects the non-adversarial nature of the RECA Program. Program staff routinely assist claimants in gathering documentation to satisfy the Act's medical and exposure requirements. They contact Federal and State agencies in an effort to identify and locate additional records on the claimant's behalf. This type of assistance is offered to all pro se claimants and, in some circumstances, has proven helpful to attorneys as well.

Since passage of the Amendments of 2000, which lowered the fee limitation for attorneys representing RECA claimants from 10 percent to 2 percent, claims filed by attorneys have decreased by less than 3 percent. This is too small a change to infer a reduction in legal services for claimants needing such assistance. Moreover, the rate of approved claims since enactment of the Amendments of 2000 has increased from approximately 43 percent to more than 75 percent, reflecting the elimination of many hurdles to compensation that existed prior to the Amendments of 2000.

The Radiation Program is not aware of any documented instances where attorneys have charged in excess of the statutory fee cap. The Program has implemented procedures to ensure compliance with this statutory provision. Specifically, on each claim form, attorneys must acknowledge the Act's fee limitation by identifying whether they are charging 2 percent for the filing of an initial claim, or 10 percent for the re-submission of a denied claim. Section 9(b). Additionally, the Department's regulations require all attorneys to demonstrate their qualification to file a RECA claim. The regulation requires attorneys to submit a signed representation agreement, retainer agreement, fee agreement, or contract, documenting the attorney's

authorization to represent the claimant or beneficiary and acknowledging that the Act's fee limitation has been satisfied. 28 C.F.R. § 79.74(c)(2).

The RECA program, after the 2000 amendments, requires that *all reasonable doubt with regard to whether a claim meets the requirements of this Act shall be resolved in favor of the claimant.* How has this provision affected the adjudication of claims that revolve around downwinder claims filed using July of 1962 as the time period of exposure? I believe this provision in the 2000 amendments is not being followed as well as it should. I have a case where a woman provided the following proofs:

> **1) Report cards from school showing presence in affected area in May of 1962 and in September of 1962.**
>
> **2) Union Pacific Railroad crossing permit contract so that her family could cross over the railroad from their homestead. The permit was issued in 1959 and renewed in 1963 and was used continuously until 1972 (why would someone renew a crossing permit that they didn't use?)**
>
> **3) Homestead Desert Entry Right to Occupy granted in 1960 and perfected in 1966. One of the homestead perfection requirements was that they live there continuously for five years. The Land Claims people certified that they lived there continuously for the requisite five years in order to perfect their claim. The DOJ denied the claim on three occasions stating that this did not prove presence.**

There are substantial other proofs submitted by the claimant including documents talking about grazing their cattle during the summer of 1962, filings for water rights done in the summer of 1962, etc.

With the Amendments of 2000, Congress provided that "[a]ll reasonable doubt with regard to whether a claim meets the requirements of the Act shall be resolved in favor of the claimant." Section 6(b)(1). The term "reasonable doubt" is not defined in the Act. However, the Department has looked to various sources, including case law and regulations from the Department of Veterans Affairs (VA), which employ the reasonable doubt standard in adjudicating claims based on exposure to ionizing radiation when resolving "any issue material to consideration of a claim." 38 C.F.R. § 3.311(f). The VA regulations state that when a reasonable doubt arises regarding a factual issue, "such doubt will be resolved in favor of the claimant." Id. at § 3.102. Those regulations clarify that reasonable doubt exists when there is "an approximate balance of positive and negative evidence" that neither proves or disproves a claim. Id. The Federal Circuit, in discussing the VA regulation, found that the reasonable doubt standard comes into play when a factual determination is "too close to call" or when positive and negative determinations are nearly equal. Ortiz v. Principi, 274 F.3d 1361, 1365 (Fed. Cir. 2001).

Consistent with congressional intent, case law, and similar regulatory schemes, the Department has adjudicated claims more liberally, crediting any reasonable inference raised by the evidence in favor of the claimant. As a result, more claims are being approved in every claimant category than were approved prior to the Amendments of 2000. However, the reasonable doubt provision does not mean that any documentation that is in any way relevant to the Act's requirements will always suffice. When evidence is submitted justifying a reasonable inference in favor of the claimant, that inference is drawn pursuant to the reasonable doubt provision, even if other inferences also could reasonably be drawn. However, the reasonable doubt provision does not permit the Department to ignore evidence demonstrating that the inference sought by the claimant is not reasonable. The statute as well as the Department's implementing regulations require claimants to provide written documentation to establish each eligibility requirement. The reasonable doubt provision has no application if the evidence submitted, viewed as a whole, simply does not permit a reasonable inference to be drawn in favor of the claimant on each of the required elements.

Your question addresses application of the reasonable doubt standard to downwinder claims seeking to establish eligibility for compensation under the Act's 1962 presence requirement. To be eligible for compensation under the relevant provision, a claimant must establish presence in an affected area for the entire, continuous period beginning June 30, 1962, and ending July 31, 1962. Section 4(a)(2)(B); 28 C.F.R. § 79.22(a)(2). It is understandably difficult for many individuals to obtain documentation directly or conclusively establishing presence in an affected area for a substantial part of every day of this specific period. In keeping with the reasonable doubt provision, however, the Department's regulations do not require direct evidence of presence during each day. Instead, the Department's regulations provide that presence in an affected area for every day of this specific period is presumed if an individual can show residence or full-time employment within the affected area on at least one day during the exposure period, one day during the six months prior to June 30, 1962, and one day during the six months following July 31, 1962. Alternatively, a presumption of presence for every day of this specific exposure period is successfully raised if an individual establishes presence within an affected area on two dates at least 14 days apart during the exposure period. 28 C.F.R. § 79.22(e). In applying these regulations, the Department endeavors to draw all reasonable inferences in favor of the claimant.

When considering a claim, the Program evaluates all documentation submitted in connection with the claim. In many instances, some evidence is presented that, viewed in isolation, may support a reasonable inference of presence at the required times, but there is other evidence that makes clear that the claimant in fact was not present in the affected area at the required times. In such cases, the evidence as a whole does not permit a reasonable inference that the claimant was present in the affected area at the required times. Accordingly, without the benefit of the complete claim file containing all evidence bearing on the presence issue, it would be difficult to determine whether the presence requirement was satisfied based on the evidence described in your question. It should be emphasized in that regard that the Program, consistent with the reasonable doubt provision, has approved many downwinder claims where the only

evidence bearing on presence at the required times were report cards documenting a student's school attendance within an affected area during the 1961-1962 and 1962-1963 academic years. The Program recognizes that school attendance in a given area in the years immediately before and immediately after the exposure period raises a reasonable inference that the claimant was present in that area during the summer between those school years as well and therefore was present there during the exposure period. While that inference may be reasonable where there is no evidence more directly showing the claimant's location during the exposure period, it would not be reasonable if, for example, other evidence showed that the claimant in fact spent the summer elsewhere. With respect to the remaining evidence presented in your question (railroad crossing, grazing, and homestead permits), it is difficult to ascertain whether it meets the Act's criteria without further information. Such evidence may be consistent with prudent land management, which may be accomplished remotely, and may not necessarily establish the continuous physical presence required by the Act. Again, this evidence would have to be considered in light of and in conjunction with all other evidence available to determine whether the claimant satisfied the Act's presence requirement.

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Statement of Congresswoman Madeleine Z. Bordallo
Hearing before Senate Judiciary Committee on an Overview of the
Radiation Exposure Compensation Program
July 21, 2004

As the Senate Judiciary Committee reviews funding considerations for the Radiation Exposure and Compensation Act (RECA), it should remain cognizant of the possible need to expand the scope of coverage of this legislation. Currently, the National Research Council's Board on Radiation Effects Research is investigating whether other classes of individuals or additional geographic areas should be covered under the Radiation Exposure and Compensation Act (RECA). Given new evidence that Guam may have been exposed to harmful levels of radiation resulting from U.S. nuclear testing in the Pacific, this is an issue that is of particular concern to my constituents.

I have testified before the BRER Committee to Assess the Scientific Information for the Radiation Exposure Screening and Education Program and met with officials from the Department of Justice's Radiation Exposure Compensation Program (RECP) concerning the decontamination of vessels in Guam waters, the dangers posed to Guam by downwind fallout, and the current eligibility under RECP of persons who were exposed to radiation in Guam. While many questions have been answered, many still remain and new questions have arisen.

Now that it has been established that Navy vessels were decontaminated in Guam, there are concerns over what affect these decontamination efforts have had on our waters and population. Also, while the radiation fallout from U.S. nuclear testing is Nevada is well documented, the extent of radiation fallout in the Pacific is less well known. It is important that the health consequences of radiation exposure in Guam be better understood. It with this in mind that I am supporting the BRER Committee's efforts and have co-sponsored H.R. 3921, which provides for the study of health effects of radiation exposure, related illnesses, and radioactive isotopes that are linked to adverse health effects. I look forward to the BRER Committee's report next year and will fully stand behind its recommendations to Congress.

Congress has recognized that questions remain about the current coverage of RECA. I believe that the challenge before us is to ensure parity for all U.S. citizens in any revised criteria put forth by Congress. That can only be achieved if questions regarding radiation exposure from Pacific nuclear testing and the use of locations such as Guam to decontaminate vessels present at the test site are finally resolved.

Department of Justice

STATEMENT

OF

JEFFREY S. BUCHOLTZ
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

THE RADIATION EXPOSURE COMPENSATION ACT

PRESENTED ON

JULY 21, 2004

STATEMENT OF JEFFREY S. BUCHOLTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committee today to discuss the Radiation Exposure Compensation Act (RECA) Program on behalf of the Department of Justice. This is the first congressional hearing on RECA since passage of the Radiation Exposure Compensation Act Amendments of 2000 on July 10, 2000, and enactment of the Department of Justice Appropriations Authorization Act on November 2, 2002. Both enactments changed the original RECA statute in many significant respects and markedly expanded the scope of the Radiation Exposure Compensation Program. I welcome the opportunity to discuss the administration of the Program, its many successes over its 14-year history, and the challenges anticipated for the future.

I would like to begin my comments by providing some background for the Committee. From 1945 through 1962, the United States conducted extensive atmospheric nuclear weapons testing as it developed and built the effective arsenal that became the cornerstone of the nation's Cold War security strategy. The atmospheric testing was conducted at the Nevada Test Site, the Pacific Test Sites, and the Trinity Test Site in New Mexico. Critical to the implementation of our nuclear weapons was the processing of uranium conducted by the tens of thousands of individuals employed in the uranium production industry. Many individuals exposed to radiation resulting from the nuclear weapons development and testing subsequently contracted serious illnesses, including various types of cancer.

In order to make partial restitution to those individuals who risked their lives and health during a critical period of our nation's history, Congress passed the Radiation Exposure Compensation Act, 42 U.S.C. § 2210 note, on October 5, 1990. RECA provides for compassionate compensation to individuals, or their surviving beneficiaries, who contracted certain specified cancers or other specified serious diseases as a possible result of their exposure to radiation. Eligible claimants include "onsite participants" who were involved in above-ground nuclear weapons tests at the various test site locations, "downwinders" who lived or worked in specified geographical locations downwind of the Nevada Test Site; and "miners" who were exposed to radiation during employment in underground uranium mines.

The Act created a unique compensation scheme whereby eligible individuals would receive monetary payments without the necessity of litigation or establishing causation or fault. It provides for compensation payments of $75,000 for onsite participants, $50,000 for downwinders, and $100,000 for uranium miners. RECA charged the Attorney General with responsibility for adjudicating claims under the Act. The Department of Justice established the Radiation Exposure Compensation Program within the Civil Division and operations commenced in April 1992. The Department adopted regulations pursuant to the Act designed to utilize existing records so that claims could be resolved in a reliable, objective, and non-

adversarial manner, quickly and with little administrative cost to the United States or to individuals filing claims.

On July 10, 2000, Congress passed the Radiation Exposure Compensation Act Amendments of 2000, which revised the original Act in several important respects. First, two new claimant categories were added -- uranium "millers" involved in the crushing, grinding, and leaching of the ore during the uranium extraction process, and ore "transporters" who typically trucked the uranium ore from the mine or mill. In addition, the definition of "uranium miner" was expanded to include above-ground miners. The Amendments of 2000 also provided additional specified compensable diseases for all claimant categories, lowered the radiation exposure threshold for uranium miners, modified medical documentation requirements, removed certain lifestyle restrictions that had limited eligibility, and expanded the geographic area under the downwinder claimant category.

Further expansion of the Program followed with enactment of the Department of Justice Appropriations Authorization Act, P.L. 107-273, signed into law on November 2, 2002. This legislation included both technical and substantive changes to RECA. In particular, this Act provided uranium miners with an additional method of establishing exposure to radiation based solely on their duration of employment in a uranium mine.

These legislative changes substantially altered the landscape of the Program, and the Department refocused its efforts accordingly. Over the course of the four years since passage of the 2000 Amendments, the Program has succeeded in its commitment to provide compensation to a broader base of claimants in a fair and efficient manner, fulfilling the mission set by the Congress with compassion and dedication.

Since its inception, the Program has received almost 20,000 claims. Of these, 11,700 have been approved, totaling over $771 million in compensation. The Department has denied approximately 5,600 claims, and about 2,500 claims are currently pending. Although the vast majority of claims are filed by people living in Utah ($187 million approved), Arizona ($199 million approved), New Mexico ($98 million approved), and Colorado ($122 million approved), the Program has awarded compensation to individuals from every state as well as from several foreign countries. Of the denied claims, only eight claimants have sought judicial relief. These numbers reflect the commitment the Program staff has dedicated to the claims adjudication process since operations began in April 1992.

Since the Amendments of 2000 were enacted, the overall approval rate has risen to 75 percent from a prior approval rate of 43 percent. The financial impact of the Amendments was immediate. During the year just prior to passage of the 2000 Amendments, the Program approved $26 million in awards. In the first fiscal year following enactment of the Amendments, the Program processed almost 2,000 claims, representing $94 million in awards. This record

number of payments in FY 2001 was made possible by an emergency supplemental appropriation enacted by the Congress.

To achieve these impressive results, the Program staff have consistently devoted time and effort to ensure that all claimants are provided assistance in locating and gathering the necessary materials to support their claims and are treated fairly and with courtesy. Upon receipt of each claim, the Program provides the claimant with the name of the claims examiner handling the claim and the toll-free telephone number to reach the Program. This has proven an effective means of working with claimants and helping them through the claims process. There have been many occasions where claims examiners have received phone calls or personal notes after a claim was processed expressing gratitude for the assistance and guidance provided. Furthermore, the Consolidated Appropriations Act for Fiscal Year 2004 appropriated an additional $1 million for the administration of RECA. This funding has provided much needed resources to allow claims examiners to focus on the efficient resolution of pending claims.

Program staff are especially sensitive to the difficulties faced by Native American claimants. Although Native American custom and tradition often preclude creation of certain documentation important to establishing a RECA claim, such as birth certificates, marriage licenses, and death certificates, several Tribes, including the Shoshone and Navajo, have designated offices to maintain this type of information. Because the Act requires verification of a claimant's or beneficiary's identity and marriage status, the Program works closely with those offices to assist Native American claimants in satisfying the statute's eligibility criteria.

The Program also has devoted extensive time and effort to public outreach and educational activities. An aggressive outreach campaign was commenced by the Program in spring of 2001. Over the past few years, the Program has forged positive working relationships with local interest groups that have begun to develop among the affected communities. Notice to the public of scheduled events is accomplished by means of press releases and media coverage. The Program has participated in workshops, training sessions, and public meetings - all met with significant positive responses from claimants, interest groups, and members from several Congressional offices. At the requests of Senators Hatch, Domenici, and Daschle, Program staff have traveled to Utah, New Mexico, and South Dakota to participate in town hall meetings to discuss RECA and answer questions about the Program. In addition, Program staff have participated in several monthly meetings sponsored by the Colorado Uranium Workers Council, an organization comprised of former uranium miners, millers, and ore transporters located in Grand Junction, Colorado.

Program staff regularly engage in efforts to educate claimants regarding RECA's relationship with a related compensation program administered by the Department of Labor. The Energy Employees Occupational Illness Compensation Program provides benefits to Department of Energy employees and contractors. Compensation under the Energy program is also available to uranium miners, millers, and ore transporters who have been approved for an award under RECA. In order to inform claimants of these potential benefits, RECA staff were invited to join

the Department of Labor in workshops in New Mexico, Texas, Colorado, and Nevada. The event locations included many of the affected communities covered under RECA. The workshops were extremely effective and provided the Program with an opportunity to disseminate widely information regarding both compensation programs.

An essential component of the Program's outreach is to establish a strong working relationship with the Native American communities. In order to accomplish this task, the Program focuses efforts on visiting and communicating regularly with the Native American populations who make up a large part of the uranium production workforce as well as those individuals residing on the reservation in covered downwind areas. Program staff have traveled to Utah, Arizona, New Mexico and Colorado to meet with representatives and members of the Navajo Nation. Program staff have participated in several Navajo Chapter Meetings in Shiprock, New Mexico and Tecs Nos Pos and Kayenta, Arizona. The meetings have been sponsored by the Office of Navajo Uranium Workers (ONUW), an organization chartered by the Navajo Tribe to provide information regarding RECA compensation and assist Navajo claimants in completing the claim form and gathering the necessary exposure information and medical documentation to support their claims. On at least three occasions, Program staff have held training sessions for ONUW caseworkers to enable them better to assist RECA claimants. The Program also maintains daily communication with the ONUW in order to provide immediate service. This summer, the Program is sponsoring a caseworker from the ONUW's office in Tuba City, Arizona, as a RECA intern, and we are hopeful that this experience will further reinforce an already productive relationship.

The Program maintains a strong interest in the recent scientific developments regarding radiogenic diseases. Program staff have assisted in an ongoing research study, funded by Congress in 2002, conducted by the National Research Council. The study is directed to assess the recent biologic, epidemiologic, and related scientific evidence associating radiation exposure with cancers or other health effects. On the basis of that information, recommendations will be made regarding whether other classes of individuals or additional geographic areas should be covered under RECA. The Program provides information on a regular basis to the study group and participates in each open study session. Program staff have attended field sessions in St. George, Utah, Window Rock, Arizona, and plan to attend a session later this month in Salt Lake City, Utah.

Despite the impressive success of the Program, passage of the Amendments of 2000 and the Appropriations Authorization Act have presented some significant challenges. Foremost among those is the fact that the legislative expansion created a need for additional Trust Fund resources. The new claimant categories and expanded list of diseases and geographic areas covered by the Act resulted in a nearly five-fold increase in claims received. Since the Amendments of 2000 became law, almost 12,500 new claims have been filed with the Program and funding requirements have grown dramatically.

Prior to FY 2001, the RECA Trust Fund was subject to annual discretionary appropriations. Unfortunately, the funding provided in the appropriations bills during FY 2000 and FY 2001 could not cover the onslaught of new claims being filed and the resources were quickly depleted, forcing the Department to notify eligible claimants that payments would have to await the necessary funding. As previously mentioned, in FY 2001, Congress passed an emergency supplemental appropriations bill that allowed the backlogged claims to be paid. However, that appropriation did not resolve the funding situation for the future. The following year, an effort was made to address the long-term need for adequate funding. The National Defense Authorization Act for Fiscal Year 2002 made the RECA Trust Fund a mandatory appropriation and established annual spending caps for FY 2002 through FY 2011 totaling $655 million.

The caps set by the National Defense Authorization Act assumed a sharp decline in the number of claims approved each year and thus a decline in the amount of funding necessary to cover awards. However, the rate of decline has been slower than anticipated. From FY 2003 to FY 2004, the cap decreased by 25 percent - from $143 million to $107 million - whereas awards are now expected to decrease by just 10 percent over that period. The funding shortfall was cited in an April 2003 report issued by the General Accounting Office (GAO), entitled "Radiation Exposure Compensation - Funding to Pay Claims May Be Inadequate to Meet Projected Needs." The projections performed by the Department's Civil Division Budget Office are continually monitored and refined, and are consistent with GAO's findings. The immediate shortfall problem is reflected in the President's FY 2005 budget, which seeks a discretionary appropriation of $72 million to supplement the spending cap of $65 million for FY 2005 in order to fund shortfalls experienced in FY 2003 and FY 2004 and projected shortfalls in FY 2005. This amount was approved in the House appropriations bill for the Departments of Commerce, Justice, State and the Judiciary (H.R. 4754, H. Rpt. 108-576). Funding will not be assured, however, unless the Senate and the Conference Agreement also approve this request.

Despite these challenges, the Department remains dedicated to fulfilling the Program's mission to adjudicate claims and provide compensation as fairly and expeditiously as possible. The Department is confident that the continued cooperative efforts of the Congress and the Department will position the Program for sustained success into the future.

Mr. Chairman, thank you for holding this hearing today and for the personal interest you have consistently demonstrated in the operation of the Program over the years. The Department is committed to Congress's goal of administering a program that provides humanitarian compensation for those Americans who jeopardized their life and health in service to the Nation's security during the Cold War. I appreciate this opportunity to discuss RECA and its administration with the Committee, and would be pleased to answer any questions at this time.

JULY 20, 2004 (11:27AM)

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Testimony of Senator Tom Daschle before the
Senate Committee on the Judiciary
"An Overview of the Radiation Exposure Compensation Program"
Wednesday, July 21, 2004

Mr. Chairman, thank you for holding this hearing on the Radiation Exposure Compensation Program. I was proud to join you and Senators Bingaman, Campbell, Domenici, Johnson, and Wellstone in introducing the Radiation Exposure Compensation Act Amendments of 2000, and subsequent efforts to fund and refine the act in 2001 and 2002. I enjoyed working with you to enact this important legislation, and deeply appreciate your cooperation in making sure the law addressed the needs of uranium workers in South Dakota. I look forward to hearing from Mr. Jeffrey S. Bucholtz with the Justice Department about both the successes and challenges the Department faces in carrying out this program.

Since the original law was enacted in 1990, and amended in 2000, this program has benefitted thousands of victims of radioactive exposure from across the country, including hundreds of South Dakotans who worked in my state's uranium mines and mills. These individuals developed cancer and other life-threatening diseases as a result of the federal government's failure to warn or take adequate steps to protect them. These individuals were victims of radioactive fallout from weapons testing or underground uranium miners who breathed harmful levels of radon as they worked to supply our nuclear weapons program. The 1990 law was a long-overdue step in finally rectifying some of these atrocities.

Unfortunately, it became clear that the law did not fully meet our obligation to victims of our nuclear program. The original law limited compensation to workers in only five states, despite the fact that uranium workers in other states faced identical circumstances. The 1990 Act denied other groups of workers, and their surviving families, compensation for serious health problems, including deaths. For example, those who worked in uranium mills developed serious respiratory problems as a result of exposure to uranium dust and silica, but were deemed ineligible under the original program. Edgemont, South Dakota was home to such a mill; in 1998, I heard from South Dakotans who worked at the mill about the serious health problems they were experiencing as a direct result of their jobs. Above-ground miners and uranium transportation workers faced similar problems. I would ask that my statement from the February 4, 1999, issue of the Congressional Record regarding the Radiation Exposure Compensation Act and the history of uranium mining in South Dakota be included in the hearing record. I also ask that a recent letter I received from Judy Finch, whose husband Gary worked at the mill, be included in the record.

The 2000 amendments to the Radiation Exposure Compensation Act were critical to correcting this oversight; they increased the availability of compensation by expanding the list of compensable diseases to take into account the latest science. The amendments also extended compensation to groups of workers excluded from the original law. Based on the concerns raised by South Dakota uranium workers, I pushed to include uranium millers in the list of eligible workers and expanded the list of eligible states to include South Dakota. Again, Mr. Chairman, I appreciate your help in making that possible.

During consideration of the 2000 amendments, however, a flaw was discovered that set different standards of eligibility for uranium millers and uranium miners. While uranium millers had to demonstrate that they worked in a mill for a year, uranium miners were subject to a tougher standard that required an exposure of 40 or more working-level months of radiation. Such documentation was hard to come by, since many records had been lost or inaccurately kept. This made it extremely difficult for uranium miners to meet the standard under the law. Because the underlying bill was too important to delay, we agreed to revisit this issue through later amendments. I am pleased that, in 2002, as part of the Department of Justice Authorization bill, the law was changed to give uranium miners the option of simply demonstrating that they worked in a mine for one year in order to qualify for the program. This small but important change improved the project and ensured that those who deserved compensation received it.

Again, Mr. Chairman, thank you for your leadership on this issue and for convening today's hearing. I look forward to continuing to work with you to ensure that the government never forgets its responsibility to those Americans who worked in, or were adversely affected by, our nation's nuclear weapons program.

been filed as of the date of the receipt of that claim by the Attorney General.

"(3) ADMINISTRATIVE REVIEW.—If the Attorney General denies a claim referred to in paragraph (1), the claimant shall be permitted a reasonable period of time in which to seek administrative review of the denial by the Attorney General.

"(4) FINAL DETERMINATION.—The Attorney General shall make a final determination with respect to any administrative review conducted under paragraph (3) not later than 90 days after the receipt of the claimant's request for that review.

"(5) EFFECT OF FAILURE TO RENDER A DETERMINATION.—If the Attorney General fails to render a determination during the 12-month period under paragraph (1), the claim shall be deemed awarded as a matter of law and paid.".

(4) in subsection (e), by striking "in a uranium mine" and inserting "uranium mining, milling, or transport";

(5) in subsection (k), by adding at the end the following: "With respect to any amendment made to this Act after the date of enactment of this Act, the Attorney General shall issue revised regulations, guidelines, and procedures to carry out that amendment not later than 180 days after the date of enactment of that amendment."; and

(6) in subsection (l)—

(A) by striking "(1) JUDICIAL REVIEW.—An individual" and inserting the following:

"(1) JUDICIAL REVIEW.—

"(1) IN GENERAL.—An individual"; and

(B) by adding at the end the following:

"(2) ATTORNEY'S FEES.—If the court that conducts a review under paragraph (1) sets aside a denial of a claim under this Act as unlawful, the court shall award claimant reasonable attorney's fees and costs incurred with respect to the court's review.

"(3) INTEREST.—If, after a claimant is denied a claim under this Act, the claimant subsequently prevails upon remand of that claim, the claimant shall be awarded interest on the claim at a rate equal to 8 percent, calculated from the date of the initial denial of the claim.

"(4) TREATMENT OF ATTORNEY'S FEES, COSTS, AND INTEREST.—Any attorney's fees, costs, and interest awarded under this section shall—

"(A) be considered to be costs incurred by the Attorney General; and

"(B) not be paid from the Fund, or set off against, or otherwise deducted from, any payment to a claimant under this section.".

(b) FURTHERANCE OF SPECIAL TRUST RESPONSIBILITY TO AFFECTED INDIAN TRIBES; SELF-DETERMINATION PROGRAM ELECTION.—In furtherance of, and consistent with, the trust responsibility of the United States to Native American uranium workers recognized by Congress in enacting the Radiation Exposure Compensation Act (42 U.S.C. 2210 note), section 6 of that Act, as amended by subsection (a) of this section, is amended—

(1) in subsection (a), by adding at the end the following: "In establishing any such procedure, the Attorney General shall take into consideration and incorporate, to the fullest extent feasible, Native American law, tradition, and custom with respect to the submission and processing of claims by Native Americans.";

(2) in subsection (b), by inserting after paragraph (3) the following:

"(4) PULMONARY FUNCTION STANDARDS.—In determining the pulmonary impairment of a claimant, the Attorney General shall evaluate the degree of impairment based on ethnic-specific pulmonary function standards.";

(3) in subsection (b)(5)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting ", and"; and

(C) by inserting after subparagraph (C) the following:

"(D) in consultation with any affected Indian tribe, establish guidelines for the determination of claims filed by Native American uranium miners, millers, and transport workers pursuant to section 5.";

(4) in subsection (b), by adding after paragraph (5) the following:

"(6) SELF-DETERMINATION PROGRAM ELECTION.—

"(A) IN GENERAL.—The Attorney General on the request of any affected Indian tribe by tribal resolution, may enter into 1 or more self-determination contracts with a tribal organization of that Indian tribe pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to plan, conduct, and administer the disposition and award of claims under this Act to the extent that members of the affected Indian tribe are concerned.

"(B) APPROVAL.—(i) On the request of an affected Indian tribe to enter into a self-determination contract referred to in subparagraph (A), the Attorney General shall approve or reject the request in a manner consistent with section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f).

"(ii) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall apply to the approval and subsequent implementation of a self-determination contract entered into under clause (i) or any rejection of such a contract, if that contract is rejected.

"(C) USE OF FUNDS.—Notwithstanding any other provision of law, funds authorized for use by the Attorney General to carry out the functions of the Attorney General under subsection (i) may be used for the planning, training, implementation, and administration of any self-determination contract that the Attorney General enters into with an affected Indian tribe under this section."; and

(5) in subsection (c)(4), by adding at the end the following:

"(D) APPLICATION OF NATIVE AMERICAN LAW.—In determining the eligibility of individuals to receive compensation under this Act by reason of marriage, relationship, or survivorship, the Attorney General shall take into consideration and give effect to established law, tradition, and custom of affected Indian tribes.".

SEC. 6. CHOICE OF REMEDIES

Section 7(b) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended to read as follows:

"(b) CHOICE OF REMEDIES.—

"(1) IN GENERAL.—Except as provided in paragraph (1), the payment of an award under any provision of this Act does not preclude the payment of an award under any other provision of this Act.

"(2) LIMITATION.—No individual may receive more than 1 award payment for any compensable cancer or other compensable disease.".

SEC. 7. LIMITATION ON CLAIMS; RETROACTIVE APPLICATION OF AMENDMENTS

Section 8 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended to read as follows:

"SEC. 8. LIMITATION ON CLAIMS.

"(a) BAR.—After the date that is 20 years after the date of enactment of the Radiation Exposure Compensation Improvement Act no claim may be filed under this Act.

"(b) APPLICABILITY OF AMENDMENTS.—The amendments made to this Act by the Radiation Exposure Compensation Improvement Act shall apply to any claim under this Act that is pending or commenced on or after October 5, 1990 without regard to whether payment for that claim could have been awarded before the date of enactment of the Radiation Exposure Compensation Improvement Act as the result of previous filing and prior payment under this Act.'

SEC. 8. REPORT

Section 12 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 12. REPORTS.";

and

(2) by adding at the end the following:

"(c) URANIUM MILL AND MINE REPORT.—Not later than January 1, 2001, the Secretary of Health and Human Services in consultation with the Secretary of Energy shall prepare and submit to Congress a report that—

"(1) summarizes medical knowledge concerning adverse health effects sustained by residents of communities who reside adjacent to—

"(A) uranium mills or mill tailings;

"(B) aboveground uranium mines; or

"(C) open pit uranium mines; and

"(2) summarizes available information concerning the availability and accessibility of medical care that incorporates the best available standards of practice for individuals with malignancies and other compensable diseases relating to exposure to uranium as a result of uranium mining and milling activities;

"(3) summarizes the reclamation efforts with respect to uranium mines, mills, and mill tailings in Colorado, New Mexico, Arizona, Wyoming, and Utah; and

"(4) makes recommendations for further actions to ensure health and safety relating to the efforts referred to in paragraph (3).".

• Mr. DASCHLE. Mr. President, 9 years ago Congress took the landmark step of extending benefits through the Radiation Exposure Compensation Act of 1990 (RECA) to thousands of American victims of the Cold War who were unknowingly and wrongly exposed to life-threatening levels of radiation and other harmful materials as part of our nation's nuclear weapons program.

This law was long overdue, and was an important step by Congress to acknowledge the federal government's responsibility for its failure to warn or take adequate steps to protect victims of radioactive fallout from weapons testing and underground uranium miners who breathed harmful levels of radon as they worked to supply our nuclear weapons program. The law makes individuals who have developed cancer or other health problems as a result of their exposure to radiation eligible for up to $100,000 in compensation from the government.

In the 9 years since the passage of that bill, we have had time to reflect upon its strengths and its shortcomings. During that time, it has become overwhelmingly clear that we have not fully met our obligation to victims of our nuclear program. Most seriously, we have arbitrarily and unfairly limited compensation for underground miners to those in only 5 states, despite the fact that underground miners in other states such as South Dakota faced exactly the same risk to their health. This fact alone requires us to amend RECA so that we can right this wrong.

However, we have also excluded other groups of workers, and their surviving families, from compensation for serious health problems and, in some cases, deaths, that have resulted from their work to help defend our nation. Many of those who worked in uranium mills, for example, have developed serious respiratory problems as a result of exposure to uranium dusts and silica. Concerns have been raised about aboveground miners and uranium transportation workers as well.

It is the obligation of the 106th Congress to continue the work of the 101st. Not only is it incumbent upon us to extend the law to compensate underground miners unfairly left out of the original legislation, we need to extend the law to cover new groups of workers who face similar risks to their health. It is for that reason that I am joining with Senator BINGAMAN today to sponsor the Radiation Exposure Compensation Improvement Act of 1999. This legislation will expand RECA to cover underground miners in all states, as well as surface miners, transportation workers and uranium mill workers who have had health problems as a result of their work with uranium. I hope my colleagues will join us to pass this legislation quickly.

I also feel an obligation to correct the historical record. During my review of the scientific literature on the uranium industry and of testimony before Congress, I was concerned to see that South Dakota's former uranium industry has gone virtually unnoticed by the rest of the nation despite the fact that South Dakotans who worked in the industry appear to be suffering exactly the same long-term health consequences as residents of other states. For that reason, I would like to take a moment to outline the history of uranium mining and processing in my state.

Uranium was first discovered in South Dakota in the summer of 1951, along the fringe of the Black Hills where grasslands uplift into pine forest. As you know, 1951 was a difficult time in American history. The Cold War with the Soviet Union was deepening, and the United States was rapidly expanding its arsenal of nuclear weapons. To supply this new weapons program, the United States adopted a program of government price supports to create a domestic uranium industry under the jurisdiction of the Atomic Energy Commission (AEC).

Almost immediately, South Dakota became one of the AEC's suppliers. After uranium was discovered in South Dakota, the AEC established an office in Hot Springs to conduct airborne radiometric surveys, and small-scale prospecting began. South Dakota's first uranium ore was shipped by rail to Colorado for processing, until an ore-buying station was established by the AEC in the town of Edgemont in December of 1952. A uranium mill was constructed in Edgemont shortly afterwards.

Uranium mining and milling continued for nearly two decades in my state. According to the South Dakota School of Mines and Technology, there were over 100 uranium mines in the vicinity of Edgemont, of which at least 22 were underground. In their 20 years of operation between 1953 and 1973, these mines produced nearly 1 million short tons of ore and just over 3 million pounds of processed uranium.

Ore from South Dakota's mines was processed at the mill in Edgemont. According to a document provided to me by the Tennessee Valley Authority, which later acquired the mill and the responsibility for its cleanup, "From 1956 through 1972 (when the uranium circuit was shut down and the mill stopped producing uranium concentrates), approximately 2,500,000 tons of mill tailings were produced onsite. Of this total, approximately 2,050,000 tons—82 percent—were produced under contract with the AEC for defense purposes. In fact, all of the uranium concentrates produced through December 31, 1966, and a portion of those produced until 1968 were sold to the AEC. The remaining 450,000 tons of mill tailings—18 percent—were produced under contracts for commercial sales."

Mr. President, much of this information was difficult to come by, and to ensure that all those who need it in the future have full access to it.

As these records make clear, for over 20 years South Dakota played a significant role in supplying uranium for our nation's nuclear weapons program. Yet rarely will you find South Dakota mentioned in any of the debate over the long-term consequences of that program. I am determined to change that fact, and to ensure that all South Dakotans, and other individuals across the country, who are suffering from poor health, or who are surviving relatives of uranium workers who have died as a result of their work, are fairly compensated by the federal government for their losses.

As my colleagues know, in RECA Congress officially recognized that "the lives and health of uranium miners and of individuals who were exposed to radiation were subjected to increased risk of injury and disease to serve the national security interests of the United States." However, the law only makes this determination for fallout victims and for underground uranium miners in 5 states. I believe it must be broadened to include underground uranium miners in all states. This is a matter of simple fairness. I can find no reasonable explanation for the failure of the law to include South Dakota and other states that had underground uranium mines whose workers would have been exposed to unsafe levels of radon. In addition, the law should be broadened to include uranium mill workers, surface miners and transportation workers to ensure that all those who may be suffering from health problems as a result of exposure to uranium dust or other harmful materials are compensated fairly. While there are strong grounds on which to expand the act to include all of these groups of workers, it is helpful to examine closely the evidence supporting the inclusion of one of these groups—mill workers—to better understand our reasons for seeking this change.

The grounds for expanding the act to include mill workers are largely the same as those which led Congress to pass RECA 9 years ago. The United States government, which created the domestic uranium industry through price supports in order to supply its nuclear weapons program, failed to adequately warn mill workers of potential risks to their health, to take reasonable measures to create a safe working environment, or to act on initial warnings and conduct long-term studies of mill workers to determine whether their health was being affected by their work.

The federal government recognized the potential risks of uranium production from the onset of our nuclear program, and in 1949 the Public Health Service (PHS) initiated a study of both underground miners and millers to determine whether they were suffering from any adverse health effects. Troublingly, a decision was also made by the federal government not to inform workers that their health could be at risk. As Senior District Judge Copple noted in his decision in Begay v. United States, "In order to proceed with the epidemiological study, it was necessary to obtain the consent and voluntary cooperation of all mine operators. To do this, it was decided by PHS under the Surgeon General that the individual miners would not be told of possible potential hazards from radiation in the mines for fear that many miners would quit and others would be difficult to secure because of fear of cancer. This would seriously interrupt badly needed production of uranium." While the court's decision does not make clear whether that same decision applied to uranium millers, subsequent research has shown that over 80 percent of former mill workers felt they were not informed about the hazards of radiation during their employment.

The early results of this study, as described in a May 1952 report entitled, "An Interim Report of a Health Study of the Uranium Mines and Mills," are disturbing. It notes that, "In 1950, 13.8 percent of the white miners and 26.5 percent of the white millers showed more than the usual pulmonary fibrosis, as compared to 7.5 percent in a control group. In the same year, 20 percent of the Indian millers and 13.2 percent of the Indian miners showed more than the usual pulmonary fibrosis, as against none in the controls. Such a finding would indicate a tendency on the part of these individuals to develop silicosis from their exposure." Given these and other findings, the study notes the "need for repeating the medical studies at frequent intervals."

It is inexplicable to me that these critical follow-up studies which were so

strongly recommended by the Public Health Service took place only for underground uranium miners. No long-term, follow-up studies of uranium millers were conducted. This decision was made despite the fact that it was well established that uranium millers were being exposed to uranium dusts and silica, which increase the risk of non-malignant lung disease.

One of the reasons the health problems of mill workers appear to have been so neglected is that most officials assumed that risks could be controlled by adopting standards to prevent workers from breathing or swallowing dust produced by yellowcake or uranium ore. As the 1952 PHS study states, "In general, it may be said that there are no health hazards in the mills which cannot be controlled by accepted industrial hygiene methods." Noting poor dust control in the mills, the PHS study concluded, "Until adequate dust control has been established at this operation, the workers should be required to wear approved dust respirators. Daily baths and frequent changes of clothing by the workers in this area are also indicated."

These recommendations appear to have been largely ignored. Recent studies of former uranium mill workers by Gary Madsen, Susan Dawson and Bryan Spykerman of the University of Utah paint a devastating picture of workplace conditions in uranium mills prior to the enforcement of stringent safety standards in the 1970's. Eighty percent of former mill workers interviewed by the researchers for one study said they were never informed about possible effects of radiation. Of workers who reported working in dusty conditions, 35 percent did not wear respirators, and 20 percent wore them infrequently or said they were not always available. Sixty-eight percent reported moderate to heavy amounts of dust on their clothing at work, and virtually all workers reported bringing their dust-covered clothes home to be washed. One respondent noted, "We washed the clothes once a week. It was messy. We were expecting our first child. I had to shake my clothes outside. There was yellow sand left at the bottom of the washer. All of the clothes were washed together. Nobody told us the uranium was dangerous—a problem. My wife would get yellowcake on her. I would remove my coveralls in the kitchen. Put them in with the rest of the [family's] laundry." Others reported regularly seeing workers outside the mills with yellowcake under their fingernails or in their ears.

Mr. President, the dangerous conditions revealed by these studies show an inexcusable failure on the part of the federal government to ensure safe working conditions in an industry it created and controlled. And despite failing to enforce these standards or to even inform workers of the risk to their health, the government nonetheless decided to end long-term studies monitoring the health of mill workers. As a result, only a few studies have been conducted of the health impacts that uranium milling has had on workers. Dr. Larry Fine, Director of the Division of Surveillance, Hazard Evaluations and Field Studies of the National Institute for Occupational Safety and Health, summarized the results of these studies in recent testimony before Congress.

"Health concerns for uranium millers center on their exposures to uranium dusts and silica. Exposure to silica and relatively insoluble uranium compounds may increase the millers' risk of non-malignant respiratory disease, while exposure to relatively soluble forms of uranium may increase their risk of kidney disease. The two mortality studies of uranium millers have not had adequate population size or adequate time since exposure to detect even a moderate risk of lung cancer if present; neither study reported an elevated risk of lung cancer. One of the two completed mortality studies of millers found an increased risk for cancer of the lymphatic and hematopoietic organs (excluding leukemia), and the other found an increased risk for non-malignant respiratory disease and accidents. A non-significant excess in deaths from chronic kidney disease was also observed in the second study. There have been two medical studies of uranium millers, one of which found evidence for pulmonary fibrosis (possibly due to previous mining) and the other of which found evidence for kidney damage."

I am deeply concerned by our failure to study uranium mill workers more thoroughly and by the indications given by the evidence we do have that these workers are suffering long-term health consequences as a result of their work on behalf of our country. Unfortunately, it may now be too late to gather more conclusive evidence. These workers are growing older and some are now dying. Their numbers have grown so small that it may no longer be possible to conduct the type of conclusive study that should have been done years ago. We owe these mill workers the benefit of the doubt and should make them or their surviving families eligible for the same compensation that underground miners receive.

Indeed, I have heard from many South Dakotans who have waited long enough for compensation. They tell me of former miners and mill workers who have died of cancer or who suffer from respiratory disease they believe is directly related to their exposure to harmful materials in their workplace.

One of the most tragic stories I have heard was written to me in a letter from Sharon Kane, a widow in Sturgis, South Dakota. After working for 11 years in Edgemont's uranium mill, her husband, Joe, developed severe respiratory problems and was forced to leave his work at the mill. Unfortunately, his health problems continued. Joe died of bone cancer in 1987.

It is difficult for me to understand why or how our country let this happen. However, it is now up to us to ensure that all those who have suffered as a result of our nation's actions are fairly compensated. We must expand RECA to include uranium mill workers and other groups of workers who are suffering as a result of their exposure to uranium dust or other materials. We also must ensure the law is expanded to include underground uranium miners in all states. By doing so we can make good on our debt to workers who have sacrificed their health—and sometimes their lives—during the height of the Cold War in order to protect their country.

I hope my colleagues will join me in the effort to meet these goals.

Mr. President, I ask unanimous consent that a document entitled, "Brief History of Uranium Mining in South Dakota, 1951-1973," produced by the Mine Safety and Health Administration and a letter from Sharon Kane be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

BRIEF HISTORY OF URANIUM MINING IN SOUTH DAKOTA, 1951-1973

Carnotite deposits were discovered in 1951 near Edgemont, South Dakota, in the Lakota member of the Dakota sandstone formation. Under the Atomic Energy Commission Raw Materials Program all phases of exploration, development, metallurgy, and research were extended on an accelerated basis in 1952. Airborne and ground exploration disclosed several new uranium ore deposits east and west of the original Craven Canyon discovery in South Dakota. In addition, Northwest of Edgemont in the Powder River Basin of Wyoming, the Geological Survey located several small but high-grade deposits. Intensive exploration efforts were also conducted by private interests, including Homestead Mining Company in the Black Hills and adjacent area in Wyoming.

In 1953 administration contracts for defense minerals exploration were awarded to Mining Research Corp., C. G. Ortmayer, and Oxide Metals Corp. in Fall River County. Contracts were also given to Vroua Company and C. E. Weir for exploring in Custer County.

Homestake Mining Company began mining uranium ore near Carlile, Crook County, Wyoming in January 1953. This mining product was trucked to Edgemont, South Dakota, where the Atomic Energy Commission had a buying station.

During 1955 the Office of Defense Mobilization issued a Certificate of Necessity for an uranium-ore processing plant project to Mines Development Company, Inc. This plant was in Edgemont, South Dakota. Although appreciable quantities of uranium were recognized in South Dakota lignites, only a small amount was mined. This was due to the lack of acceptable uranium-recovery processes for uranium extraction from coal bearing materials.

Uranium Research and Development Company was granted a contract in 1956 in Fall River County by the Defense Minerals Exploration Administration.

Mines Development, Inc. had their uranium mill in operation by 1956. The initial capacity was rated as 300 tons of ore per day.

Two groups, Anderson, Wesley, and Others in Harding County and McAlester Fuel Co. in

Fall River County were given contracts involving uranium in 1957 South Dakota produced 69,632 tons of ore, valued at $804,946. The average grade percent in terms of U_3O_8 was 0 17 which was the lowest of any uranium producing state. The average grade percent increased to 0.20 in 1958. The rating of the Edgemont Plant was increased to 400 tons of ore per day

Uranium-ore production in the United States reached a new high in 1959 with South Dakota being the ninth producing state and in 1960 became eighth state producer. The Atomic Energy Commission negotiated for new mills for the South Dakota lignite area but interested firms couldn't reach an agreement.

In 1960, the Atomic Energy Commission revised its regulations for the protection of employees in atomic energy industries and the general public against hazards arising from the possession or use of AEC-licensed radioactive materials. The revisions are embodied in amendments to Title 10, Chapter 1, Part 20, of the Code of Federal Regulations entitled "Standards for Protection Against Radiation" The amendments became effective on January 1, 1961.

The highest year for production of uranium ore for the United States was in 1961 but the total production dropped by 1962. Based on the amount of ore shipped, South Dakota became the seventh state producer. The state maintained this rating in 1963 but was the sixth state producer for 1964 and 1965

Around 1967, mining of uraniferous lignite in Harding County, South Dakota, ceased as the operation was no longer profitable. Mining of sandstone ores also declined, and Mines Development, Inc, a subsidiary of Susquehanna Corp, conducted extensive exploration in the Dakotas and Wyoming in an effort to find additional ore for their mill

The uranium mine and mill production for South Dakota in 1968 and 1969 placed the state as the seventh largest producing state The year 1971 was the first full year that the U_3O_8 market was entirely private. The Atomic Energy Commission (AEC) terminated its U_3O_8 purchasing program at year end 1970 after acquiring U_3O_8 valued at nearly $3 billion since the program's inception in 1948, including a large stock pile.

By 1973, the mining of uranium in South Dakota ceased to be profitable and production stopped

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SEPTEMBER 8, 1998

Senator TOM DASCHLE,
Rapid City, SD

DEAR SIR This letter is to urge you to vote in favor of the "Radiation Workers Justice Act of 1998", HR 3539.

My story is very likely similar to many others recited in order to initiate this bill and R E.C.A. of 1990, however, to me the issues are deeply personal and intimate.

My late husband Kasper Jerome Kane (known to friends and family as Joe), was employed at the uranium milling operation at Edgemont, S.D. from 1959 to 1970. After several years in the mill, Joe began experiencing upper respiratory problems, especially while on duty at the mill. A detailed medical examination revealed pulmonary changes and enlargement of the heart due to the stress of the pulmonary condition. Our physician advised Joe to find a new line of work and to leave the mill as soon as possible, which he did When Joe left his job, he cited his health as the reason. Administration of the mill at that time did not receive this information favorably (of course) and denied any accountability

Joe chose to work at the mill out of his sense of responsibility to provide for a wife and two children in the best manner he could His tenacity for life alone allowed him to leave the mill and begin his own business Joe was active in his community and well loved by his neighbors and friends

Even though his quality of life may have been compromised by his respiratory problems, Joe remained active in the lives of his teenage children and his community at large, until he was diagnosed with multiple myeloma (cancer of the bone marrow) in 1987 There is no way to prepare a family for the heart wrenching events about to face my children, their father and me

Over the next three years, we lost our business, our home, ranch, and finally my best friend, my husband. Economic loss can be measured and sometimes compensated

When Joe finally succumbed to cancer in 1990 at age 53, after rituals of chemotherapy and radiation, his valiant battle was over

I have moved on with life, but there is not a day that I do not miss him and each time I hug a grandchild, I know what they have missed Joe Kane was a fighter and a family man Dependable and lived the values he preached

I hope the bill presented will offer solace to those affected by radiogenic conditions and hope to those yet to need it

Thank you for listening to my story

Sincerely,

SHARON D KANE,
Sturgis, SD •

By Mr. CLELAND

S 369. A bill to provide States with the authority to permit certain employers of domestic workers to make annual wage reports; to the Committee on Finance

TAX LEGISLATION

• Mr CLELAND Mr President, today I am proud to introduce legislation to remove a tax reporting burden currently imposed on employers of domestic workers. This bill authorizes states to permit certain employers of domestic workers to make annual wage reports I am pleased to report that this provision is also included as Section 405 of S. 331, the Work Incentives Improvement Act of 1999

In 1994, Congress approved important legislation reforming the imposition of Social Security and Medicare taxes on domestic employees (the so-called "nanny tax"). These new rules introduced more rationality into the tax system, and reduced the reporting requirements of domestic employers. Unfortunately, the legislation did not go as far as many had intended. To this end, I am asking you to co-sponsor my legislation which will help relieve households of certain filing requirements.

The Social Security Domestic Employment Reform Act of 1994 (P L 103-387) aimed to ease reporting requirements. Under the Act, domestic employers no longer need to file quarterly returns regarding Social Security and Medicare taxes nor the annual federal unemployment tax (FUTA) return Rather, all federal reporting is now consolidated on an annual Schedule H filed at the same time as the employer's personal income tax return

Nevertheless, the goal of the 1994 Act—to substantially reduce reporting requirements for domestic employers—has not been fully accomplished for employers who endeavor to comply with all aspects of the law Under federal law, a state labor commissioner still may not authorize annual rather than quarterly filing of state employment taxes The Deficit Reduction Act of 1984 compels employers to report wages quarterly to the state This Act requires quarterly reporting in order to make information more accessible to state agencies that investigate unemployment claims However, the burden of this provision far outweighs its benefit The number of household employer tax filings is relatively minuscule Representatives from the Georgia Department of Labor and their counterparts in several other states are confident that the investigation of unemployment claims will not be hindered by annual rather than quarterly reporting requirements

Under FUTA, employers make quarterly reports and payments to state unemployment agencies, then pay an additional sum of federal tax (now once a year, as part of Schedule H) While the liability of employers for domestic employees was changed for Social Security and Medicare purposes, to exclude workers under the age of 18 and workers earning less than $1,000 per year, the employers' responsibility under FUTA was not changed More importantly, the 1994 Act did not eliminate the requirement that employers must report employee wages quarterly to the states.

Congress was not unmindful of the relationship of FUTA to Social Security taxes at the time it passed the 1994 Act. Besides eliminating the FUTA return for domestic employers, the Act also contained language, which authorizes the Secretary of the Treasury to enter agreements with the states to permit the federal government to collect unemployment taxes on behalf of the states, along with all other domestic employee taxes, once a year That statute, if used, would eliminate the need for domestic employers to report to state unemployment agencies To date, no state has entered such an agreement. This is because the Social Security Act did not alter the quarterly reporting requirement

In short, the federal requirement of quarterly state employment tax reports for purely domestic employers should be eliminated. To ease the reporting burden on domestic employers, my legislation proposes that states be allowed to provide for annual filing of household employment taxes Please join me in the effort to finish the job of rationalizing the taxpayer obligations for domestic employment taxes I ask unanimous consent that a copy of the bill be printed in the RECORD

There being no objection, the bill was ordered to be printed in the RECORD, as follows

S 369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FALL RIVER HEALTH SERVICES
Fall River Hospital – Castle Manor – Hilltop Assisted Living
209 North 16th Street
Hot Springs, SD 57747
Phone: 605-745-3159 Fax: 605-745-3957

FACSIMILE COVER SHEET

DATE: 7-20-04

TO: Chris Vande Venter

COMPANY: Sen. Daschle Office.

FAX #: 202-224 6603

FROM: Judy Finch

RE: Sen. Hatch Hearing 7-21-04

OF PAGES: 3

MESSAGE: Let me know if this is not what you need or if there is something more -
Judy

IF YOU EXPERIENCE ANY PROBLEMS IN RECEIVING ANY OF THESE PAGES, PLEASE CALL THE PERSON ABOVE AS SOON AS POSSIBLE. THANK YOU.

THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND AMY CONTAIN ATTORNEY PRIVILEGES INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR COMPANY NAMED. If the reader is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please immediately notify us by telephone, so that we may arrange for the return of the original message to us. Thank you.

TO: Senator Daschle
FROM: Judy Finch
RE: Overview of the Radiation Exposure Compensation Program
DATE: July 20, 2004

Unfortunately, I will not be able to attend the Committee hearing. The following is a summary of what I have experienced as a recipient of the Program.

If we had not known differently, we would have thought the program was written around Gary's health record. The mortality study that was established as a part of the research during the drafting of this Compensation was Gary's situation in detail. He worked directly with the milling process, was removed from that source and was diagnosed with Hodgkin's disease located in the thymus gland two years later. Gary did not smoke, abuse alcohol and was generally a healthy person.

While the general process for filing for this compensation was not difficult, I had problems because of the criteria stipulations. I found it frustrating that someone whose medical history detailed that of the mortality study did not fit the criteria. Those who were cigarette smokers and had lung cancer history had no problem getting the compensation. I was forced to engage a legal team to help me with getting all documentation in line for the compensation, when in fact, Gary, should have been an easy candidate for the program. His medical history was without flaw, yet did not meet the "exact" terminology for the program. For me, it was frustrating to see those with smoking backgrounds receive their compensation while we struggled to document what the committee wanted for our compensation. Gary died not knowing that he qualified. He was certain that he could not meet the criteria, as it was too definitive.

There is one other area that I do not understand about this program. It is my understanding that other like programs for New Mexico, Colorado and Nevada have defined compensation of $200,000 or more. The Compensation Act that covers South Dakota is a total of $150,000 from the Justice and the Labor Departments. I don't understand why there are two different compensations depending on the state where you reside. Why is the compensation for our situations different than those of prior states that have been compensated for the same situations?

In our particular case, medical bills will claim much of the compensation. Gary was one of the few that I know in our area that became uninsurable while he was still working for the uranium company. Thus, insurance after the local mill closed was prohibitive until he was finally deemed disabled and received Medicare. His illnesses began with the Hodgkin's in 1978, removal of 2/3 of his stomach, quadruple bypass surgery in 1996 and ultimately his death in 2001 at the age of 52. These were only the major medical happenings. If you read his medical history, you will note that a lot of our married life was spent dealing with his medical situations, which I now truly believe were based from the work he did at the uranium mill.

My suggestion to the committee would be to open the medical review to those truly able to establish a need based on their history not limited to a generalized area, ie: cancer, respiratory diseases and renal diseases need to be inclusive of those whose medical history can substantiate their illnesses not be excluded because of terminology.

I understand that there is no way to differentiate from those who have other outside forces that may cause these diseases, such as the smoker. But, I do not feel that it should be as difficult as it was to establish our right to the compensation when those who had a given "lung cancer" received the compensation almost without question.

I have heard that some have had trouble physically receiving their checks. They have been lost in the mail, received damaged or not deposited appropriately. I did not have that problem. I felt the time it took to receive the compensation after being approved was good.

In conclusion, I am very grateful to the work that your office did in backing Senator Hatch's Bill that allowed us to get the compensation. Needless to say, without it I would have had to file bankruptcy and probably lost all we had for assets. There are just a few inadequacies that I don't understand (the amounts of compensation) and would hope that when compensation is determined it could be judged on true need and history and not on definitive terminology (lung cancer).

If there is further information I can provide for you please contact me.

Sincerely

Judy Finch

OPENING STATEMENT
ANTITRUST SUBCOMMITTEE HEARING
"Hospital Group Purchasing:
How to Maintain Innovation and Cost Savings"
U.S. SENATOR MIKE DEWINE
SEPTEMBER 14, 2004

Good afternoon and welcome to the Antitrust Subcommittee hearing on hospital group purchasing organizations. Senator Kohl and I have devoted substantial energy and time to exploring allegations of questionable ethics and business practices in this industry. We have commissioned two General Accounting Office studies on this issue, and this is our third hearing on the hospital group purchasing organizations, often referred to as "G-P-Os".

The purpose of this hearing is to look toward the future. Since our first hearing in April of 2002, I am pleased to say that many of the questionable practices in the industry have been voluntarily eradicated by the GPOs, themselves. In particular, business practices, such as GPOs owning stakes in their vendors or GPOs accepting an ownership interest in a vendor in place of an administrative fee, appear to have ended.

The GPOs took these steps in response to the Subcommittee requests for them to implement voluntary codes of conduct, and they deserve our applause for so doing.

GPOs also have taken important voluntary steps to address certain controversial contracting practices that are of concern to both Senator Kohl and to me. For example, GPO practices, like the bundling of clinical preference products with commodity products, extremely high commitment levels, or sole source contracting are often the focal point of debate within the medical community. Small manufacturers complain that these practices prevent fair market access to new, potentially innovative products, and as a result, prevent improved patient care. Larger incumbent manufacturers and GPOs often argue in response that these practices generate significant cost savings for high quality products without harming patient care at all. One GPO, for example, recently has pointed to an instance where it entered into a long-term sole-source contract for surgical sutures and was able to save $55 million for its hospitals.

My sense is that both sides make good points -- in fact, these are business practices with the potential to save significant money in certain circumstances but, unfortunately, they sometimes make it harder for legitimately innovative products to reach the market. Under these circumstances, it seems that the best result is one that maintains maximum flexibility in the market, and in some ways, we may already have achieved that; all of the major GPOs have adopted codes that address these issues, but they vary in their details and how they are applied. As a result, it appears that we are seeing fewer long-term contracts, less bundling of clinical preference items, and less sole-sourcing, but that those contracting practices are still available in certain circumstances.

Unfortunately, however, the Subcommittee still hears complaints -- principally from small medical device manufacturers with arguably cutting edge products -- that they are unable to negotiate a contract with GPOs. I'll be honest: It is often difficult to assess the credibility of certain complaints from medical device manufacturers and the GPOs' responses to such complaints.

On one hand, I certainly don't believe that every small medical device manufacturer that fails to win a contract with a GPO has a legitimate complaint. We all know that competition for contracts produces winners and losers and sore losers ought not hamper free competition. On the other hand, these complaints have been continuous and steady and appear to have at least a degree of credibility. This makes me wonder if the GPOs, indeed, are all living up to their pledge to decrease or stop some of these controversial business practices.

So, that brings us here today -- to explore where we should go from here. I know Senator Kohl and I share a concern that if the Antitrust Subcommittee turns its "oversight spotlight" away from the GPO industry, there is a risk that there may be backsliding. That means we need to decide if we can trust that the current reforms are sufficient or, if not, what pathway we can take to ensure that the current reforms are actively implemented and long-lasting.

I think it is fair to say that we are at the crossroads and sitting here today, I see at least three paths we could choose. I have made no decision which path is best, nor do I think we are necessarily limited to these three paths. But, sitting here today, I think these three paths are evident.

One path is to do no more, at least for now. We have studied the issue, held numerous meetings within the industry, commissioned studies, and held three hearings. The GPOs, hospitals, and manufacturers know all of our concerns and have acted on them, to one degree or another. Some would argue that we have done our job and, perhaps more importantly, the GPOs have done their job, by adopting the voluntary codes. Under that view, no more action is needed.

Another path is to formally transfer our oversight of the industry somewhere else. The primary example thus far of this approach is embodied in the staff Discussion Draft that has been circulated within the industry and provided to today's witnesses.

It would move the oversight role to the Department of Health and Human Services, which as an executive agency, is arguably better equipped to oversee the activities in the GPO industry. The Department of Health and Human Services already has a degree of expertise in this area, and it currently oversees the "anti-kickback" exemption upon which the entire GPO industry is built.

Another path is for the GPO industry to build upon their work of setting up individual codes of conduct to create what I call a "voluntary plus" approach. Currently, existing voluntary codes are enforced by each company on its own, an approach which has both strengths and weaknesses. On the one hand, because it is voluntary and self-enforced, it provides maximum flexibility and does not hamstring the industry. On the other hand, for those very same reasons, there is no assurance that it will continue to be implemented in the future or that it always will be implemented actively. Most troubling is the fact that there is really no mechanism to discipline GPOs that don't follow their own code.

I welcome any proposals from the GPOs that would create this sort of "voluntary plus" approach -- proposals that build upon the current voluntary codes, but add some "teeth" so that the

Subcommittee can be assured that the reforms are made permanent and that if a GPO chooses to disregard its own code of conduct, that it is disciplined in a way that has real consequences.

I have set out these three paths as what I see now, but I am not wedded to just these three paths. If there is a fourth pathway or a fifth out there that are products of this hearing, I look forward to considering them too. We hope today to hear our witnesses comment not only on the strengths and weaknesses of the discussion draft, but on all of these ideas and any others that may arise.

Before I turn to our ranking member, Senator Kohl, I would like to add that throughout our oversight of the GPO industry, I have tried to stay in close contact with the hospitals in Ohio to find out how they view GPOs. Of course, GPOs work as purchasing agents on behalf of these hospitals, so it is really the hospitals that get the benefits of GPO activities.
I think it is fair to say that nearly all the hospitals I have spoken to are confident that their GPOs are saving them significant amounts of money. In this age of escalating health care costs, that is a very important outcome, and one that we must maintain. So, I certainly believe that GPOs can provide significant benefits for hospitals. Ensuring that in the future GPOs both save money and allow for new technology and vigorous competition in healthcare products is the goal of this hearing today.

One final point -- the Subcommittee first started investigating this issue in the fall of 2001, under the Chairmanship of Senator Kohl. He has continued to work tirelessly on this important issue. I think it is fair to say that without his work, the Subcommittee would not be holding this hearing today and the industry would not have progressed to where we are now without his efforts, so I thank him for that.

RECA Statement of Sen. Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Hearing on

AN OVERVIEW OF THE RADIATION EXPOSURE COMPENSATION PROGRAM

Today, the Committee will hear testimony on one of my top priorities as Utah's senior Senator: the Radiation Exposure Compensation Program, better known as RECA. There are few issues in Washington D.C. as important to my fellow Utahns as the viability of RECA.

The Radiation Exposure Compensation Act, which I authored, was signed into law in 1990 and has compensated thousands of individuals, government workers and civilians alike, who were exposed to harmful radiation as a result of nuclear testing in the 1950s and 1960s. Some of these individuals worked in uranium mines, many drove the trucks which transported uranium ore, and many more simply happened to live downwind from a nuclear test site.

The original RECA Act of 1990 established a fund to provide compensation to these individuals, who were never informed about the health hazards associated with radiation and who became ill due to their exposure. Many of these individuals live in the Western United States; but as evidenced by today's second panel, RECA claimants come from across the country.

In 2000, Congress approved and the President signed into law the Radiation Exposure Compensation Amendments of 2000, S. 1525. This law made important changes to the original 1990 Act by updating the list of compensable illnesses – primarily to include cancers – as well as increasing the scope of individuals and states eligible for compensation based on the latest scientific and medical information.

In 2002, additional expansions were approved for the RECA program, many of them based on technical comments which were provided to the Committee through the Department of Justice.

Unfortunately, in 2001 a funding shortfall in the RECA program resulted in hundreds of individuals not receiving their compensation, even though their claims had been approved by the RECA office at the Department of Justice.

Senator Pete Domenici offered an amendment, which I strongly supported, to address this funding shortfall by providing capped, permanent appropriations through the Department of Defense for a 10 year period beginning in Fiscal Year 2002 and totaling $655 million. Despite this effort, funding shortfalls persisted. A report released by the General Accounting Office in April 2003 estimated that the funding levels appropriated to the RECA trust fund would be insufficient to meet the projected claims. Both the

Congressional Budget Office and the Department of Justice have confirmed that the RECA trust fund is running out of money.

I am pleased to report that the Administration took our concerns seriously and the President's 2005 budget recommended that the RECA trust fund be provided $72 million in discretionary money to make it whole in Fiscal Years 2004 and 2005. The Senate Budget resolution also included this money. More recently, the House of Representatives passed H.R. 4754, the Commerce-State-Justice Appropriations bill for Fiscal Year 2005 and that legislation contained $72 million to cover the shortfalls in the RECA trust fund for FY2003, 2004, and the projected shortfall for 2005.

However, this money would still not resolve the funding issues associated with the RECA trust fund. According to the April 2003 GAO report, the fund would require a further $107 million through Fiscal Year 2011.

So, while I am pleased that the administration and my colleagues in Congress have recognized our obligation to those owed compensation under RECA, we have yet more work to do.

We do not want to again experience the problems of go back to 2001, when claimantswhere individuals were being told they were eligible for compensation,their claims but then had to waitit took several months to receive theirthis money. I do not want to put our RECA claimants through that again, and I willam planning fight tooth and nail for the funding to make RECA whole once again.

Before I close, I want to raise another troubling inequity that I hope the Department of Justice will comment on in detail – the difference in compensation among energy workers, on-site participants, and downwinders. Energy workers are compensated $150,000 and have all of their medical bills paid. On-site workers are compensated $75,000 but do not have medical benefits. And downwinders, who were innocent bystanders to atomic testing, are only compensated $50,000 and do not have any medical bills paid. I do not understand thisthe inequity and will not rest until it is addressed.

There is positive news regarding RECA. In the omnibus appropriations bill for Fiscal Year 2002, I included funding for a grant program for education, prevention, and early detection of radiogenic cancer and illnesses, to be administered through the Health Resources and Services Administration. Currently, four states, Utah, Colorado, New Mexico, and Arizona, have grantees.

In addition, my amendment provided funding so that the Department of Health and Human Services could contract with the National Research Council to review the most recent scientific information related to radiation exposure and associated cancers and other diseases. The study also would make recommendations as to whether or not to expand RECA to cover additional illnesses as well as claimants from other geographic areas or worker groups. as well. These recommendations will be released in June 2005 by HHS. Further, the committee reviewing this program for HHS will conduct a public

meeting next week in Salt Lake City, Utah on July 29, and I strongly urge anyoneany individual who believes he or she should be eligible for compensation under RECA to attend this meeting.

Finally, I want members of the Committee to know how cooperative I have found the RECA staff to be.. This staff has come to my state at least three times in the last three years, and each time, they have patiently listened to the concerns of my constituents who have been exposed to radiation. I am deeply grateful to the entire staff, especially Gerry Fischer, who is currently serving our country in Iraq, and Diane Spellburg, the acting Director of the RECA program.

Radiation Exposure Compensation Act (RECA) Program Summary

Background

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act ("RECA" or "the Act"), 42 U.S.C. § 2210 note, providing for compassionate payments to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during above-ground nuclear weapons tests or as a result of their exposure to radiation during employment in underground uranium mines. The 1990 Act provided fixed payments in the following amounts: $50,000 to individuals residing or working "downwind" of The Nevada Test Site; $75,000 for workers participating in above-ground nuclear weapons tests; and $100,000 for uranium miners.

Implementing regulations were issued by the Department of Justice and published in the Federal Register on April 10, 1992, establishing procedures to resolve claims in a reliable, objective, and non-adversarial manner, with little administrative cost to the United States or to the person filing the claim. Revisions to the regulations, published in the Federal Register on March 22, 1999, served to greater assist claimants in establishing entitlement to an award.

On July 10, 2000, Pub. L. 106-245, the Radiation Exposure Compensation Act Amendments of 2000 ("the 2000 Amendments") was passed. Introduced by Senator Hatch on August 5, 1999, the Amendments were one of many bills introduced in the 106th Congress with the intent to amend the existing law. Most significantly, the 2000 Amendments added two new claimant categories (uranium mill workers and ore transporters), provided additional compensable illnesses, lowered the radiation exposure threshold for uranium miners, included above-ground miners within the definition of "uranium miner," modified medical documentation requirements, and removed certain lifestyle restrictions. It also added additional geographic areas to the downwinder claimant category.

As a result of the 2000 Amendments, the RECA Program experienced a wave of new claim filings. During FY 2002, the first full year of claim adjudications following the 2000 Amendments, the Program resolved a record 3,566 claims; more than four times the annual average number of claims adjudicated during the previous ten years. In addition, there was increased legislative activity relating to the Program, expanded media attention, an increase in the number of inquiries and correspondence received, and increased activity on the Program's website.

On November 2, 2002, the President signed the "21st Century Department of Justice Appropriation Authorization Act" (P.L. 107-273). Contained in the law were several provisions relating to RECA. While most of these amendments are "technical" in nature, some affect eligibility criteria and revise claims adjudication procedures. The following points describe the major impact of the "technical amendments":

- the "technical amendments" reinserted a previously covered geographical area for downwinder claimants that had erroneously been removed by the 2000 Amendments;

- clarifies requirement that lung cancer must be "primary" for all claimant categories;

- uranium miners provided the option of establishing exposure to 40 working level months of radiation or establishing employment in a mine for one year;

- all uranium workers diagnosed with lung cancer no longer required to submit evidence of a non-malignant respiratory disease; (Seemingly a draftsmanship error in the 2000 Amendments, the "technical amendments" eliminated the requirement that in cases where the claimant is living, a claimant with lung cancer must submit the medical documentation required for proof of a "non-malignant respiratory disease." This requirement had the unintended effect of precluding most lung cancer claimants -- who may not suffer from a non-malignant respiratory disease -- from establishing eligibility for compensation.)

Agency Regulations

Pursuant to the 2000 Amendments, the Department was directed to issue implementing regulations. The Department published two related rulemakings in the Federal Register to implement the legislation. The first, a final rule published on August 7, 2002, implemented conforming changes to the Act made by the 2000 Amendments. The second, also published on August 7, 2002, was a proposed rule presenting revisions contained in the 2000 Amendments that required public notice and comment. Since publication of those two rulemakings, Congress enacted the Appropriation Authorization Act, Pub. L. No. 107-273 (2002). That legislation required modification to both the final and proposed rules. Therefore, the Department issued a "final" rulemaking to accomplish two essential tasks. The final rule (1) discusses comments received regarding the "proposed" rule and reflects relevant changes made by the Department in connection with those comments; and (2) incorporates technical revisions to the rule in order to implement the Appropriation Authorization Act. The final rule was published in the Federal Register on March 23, 2004, and went into effect on April 22, 2004.

RECA Claimant Categories

Uranium Miners. A payment of $100,000 is available to eligible individuals employed in aboveground or underground uranium mines located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas at any time during the period beginning on January 1, 1942, and ending on December 31, 1971. Additional mining states may be included for compensation upon application.

A. Exposure. The claimant must have been exposed to 40 or more working level months (WLMs) of radiation while employed in a uranium mine or worked for at least one year in a uranium mine during the relevant time period.

B. Disease. Compensable diseases include primary lung cancer and certain nonmalignant respiratory diseases.

Uranium Mill Workers. A payment of $100,000 is available to eligible individuals employed in uranium mills located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas at any time during the period beginning on January 1, 1942, and ending on December 31, 1971.

A. Exposure. The claimant must have worked in a uranium mill for at least one year during the relevant time period.

B. Disease. Compensable diseases include primary lung cancer, certain nonmalignant respiratory diseases, renal cancer, and other chronic renal disease including nephritis and kidney tubal tissue injury.

Ore Transporters. A payment of $100,000 is available to eligible individuals employed in the transport of uranium ore or vanadium-uranium ore from mines or mills located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas at any time during the period beginning on January 1, 1942, and ending on December 31, 1971.

A. Exposure. The claimant must have transported ore for at least one year during the relevant time period.

B. Disease. Compensable diseases include primary lung cancer, certain nonmalignant respiratory diseases, renal cancer, and other chronic renal disease including nephritis and kidney tubal tissue injury.

Downwinders. A payment of $50,000 is available to an eligible individual who was physically present in one of the affected areas downwind of the Nevada Test Site during a period of atmospheric nuclear testing, and later contracted a specified compensable disease.

A. Exposure. The claimant must have lived or worked downwind of atmospheric nuclear tests in certain counties in Utah, Nevada and Arizona for a period of at least two years during the period beginning on January 21, 1951, and ending on October 31, 1958, or, for the period beginning on June 30, 1962, and ending on July 31, 1962. The designated affected areas are: in the State of Utah, the counties of Beaver, Garfield, Iron, Kane, Millard, Piute, San Juan, Sevier, Washington, and Wayne; in the State of Nevada, the counties of Eureka, Lander, Lincoln, Nye, White Pine, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71; and in the State of Arizona, the counties of Apache, Coconino, Gila, Navajo, Yavapai, and that part of Arizona that is north of the Grand Canyon.

B. Disease. After such period of physical presence, the claimant contracted one of the following specified diseases: leukemia (other than chronic lymphocytic leukemia), multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (except if cirrhosis or hepatitis B is indicated), or lung.

Onsite Participants. A payment of $75,000 is available to eligible individuals who participated onsite in a test involving the atmospheric detonation of a nuclear device, and later developed a specified compensable disease.

A. Exposure. The claimant must have been present "onsite" above or within the official boundaries of the Nevada, Pacific, Trinity, or South Atlantic Test Sites at any time during a period of atmospheric nuclear testing and must have "participated" during that time in the atmospheric detonation of a nuclear device.

B. Disease. After the onsite participation, the claimant contracted one of the following specified diseases: leukemia (other than chronic lymphocytic leukemia), lung cancer, multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (except if cirrhosis or hepatitis B is indicated), or lung.

Claim Filing Procedures

The claimant or eligible surviving beneficiary, either acting on his or her own behalf or represented by counsel, submits a completed claim form to the RECA Program (RECP). The claim is then logged in and assigned a database identification number.

The verification process begins immediately thereafter. The claims examiner assigned to the claim assembles documentation to establish the claimant's eligibility. Because the Program is non-adversarial in nature, the Program staff acts in a supporting role. For example, the Program staff may obtain verifying medical information directly from a state tumor registry, contact the Department of Energy to obtain employment information regarding Atomic Energy Commission contractors to establish an individual's onsite participation, or submit a request to the Social Security Administration to provide employment history for a former uranium miner, miller, or ore transporter. Each claimant must sign a release that is provided with the claim form allowing the RECP to obtain such information. Additional sources that RECP staff use to assist claimants in obtaining verifying information include: the Defense Threat Reduction Agency, Miners' Colfax Medical Center, and the Church of Jesus Christ of Latter-Day Saints. Also, the RECP has access to radiation-related information contained on databases maintained by the Public Health Service, the National Institute for Occupational Safety and Health, the University of New Mexico

School of Medicine Study of Uranium Miners, and St. Mary's Hospital Study of Uranium Miners.

The identity criteria contained in the regulations implementing the Act require the claimant or eligible surviving beneficiary to submit routinely created identification records such as a birth certificate, death certificate and marriage certificate. Many of the claimants, however, are members of a Native American tribe and, other than death certificates, such records are not routinely created in the Native American culture. Accordingly, the regulations establish a procedure to assist Native American claimants whereby the RECP contacts the tribal records custodian for verification of a claimant's birth, marriage, and death.

Review and Resolution of Claims

Approved Claims. When the eligibility criteria are satisfied, the claim is recommended for approval. A staff attorney then reviews the claim file, and where appropriate, drafts the written claim decision which is then reviewed and signed by the Assistant Director. Thereafter, a letter is sent notifying the person of the approval and enclosing an "acceptance of payment" form for the claimant to return to the RECP. Upon receipt of a signed acceptance of payment form, the payment is authorized by the Deputy Director, Constitutional and Specialized Torts, and the RECP's Assistant Director. The Treasury Department then issues the funds to the claimant, which generally takes four weeks or less.

Denied Claims. If a claim does not satisfy the eligibility criteria, the claimant is notified of the deficiency in writing and allowed 60 days (or more if requested) in which to provide documentation correcting the deficiency. At the expiration of the 60 day period, if the claim remains deficient, a final denial decision is issued by the Assistant Director. The written decision fully explains the reasons for the denial and a copy is sent to the claimant.

Administrative Appeal. The Assistant Director's decision denying the claim may be appealed to the Appeals Officer. The Appeals Officer may affirm or reverse the decision, or remand the decision to the Assistant Director for further consideration.

Judicial Review. The Act provides that an individual whose claim is denied may seek judicial review in a U.S. District Court. To date, only eight RECA claims have been filed in District Court.

Refiling a Claim. If additional documentation correcting the deficiency is subsequently obtained, the claimant may refile the claim up to two more times.

RECA Program Staff

The RECA Program is presently staffed by an Assistant Director, one Senior Counsel (currently Acting Assistant Director), and three trial attorneys. In addition, there are twelve claims examiners, and one office assistant. An Appeals Officer (Acting Deputy Director, Torts Branch) and one of the trial attorneys handle all appeals.

RECA Claims Analysis

As of July 19, 2004, over 19,900 claims have been filed. Approximately 11,750 claims have been approved; 5,660 denied; and 2,560 are pending. Since Program operations commenced in 1992, over $773 million has been approved for compensation to eligible claimants and their beneficiaries.

RADIATION EXPOSURE COMPENSATION ACT (RECA)
FREQUENTLY ASKED QUESTIONS

What is the RECA Program?

The Radiation Exposure Compensation Act Program (RECA Program), administered by the Department of Justice, provides compassionate payments to eligible individuals whose health and lives were affected as a result of exposure to radiation as a result of participation in the uranium processing industry and from nuclear weapons testing.

What are the 5 categories of eligible claimants under RECA?

Uranium Miners

Exposure: exposed to at least 40 Working Level Months or worked for at least 1 year in aboveground or underground uranium mines

Location: Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and/or Texas

Time period: any time **between January 1, 1942, and December 31, 1971**

Diseases: primary lung cancer, and certain nonmalignant respiratory diseases

Compensation: $100,000

Uranium Millers

Exposure: employed for at least one year in an uranium mill

Location: Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and/or Texas

Time period: any time **between January 1, 1942, and December 31, 1971**

Diseases: primary lung cancer, certain nonmalignant respiratory diseases, renal cancer, and chronic renal disease

Compensation: $100,000

Ore Transporters

Exposure: employed for one year in the transport of uranium ore or vanadium-uranium ore from mines or mills.

Location: Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and/or Texas

Time period: any time **between January 1, 1942, and December 31, 1971**

Diseases: primary lung cancer, certain nonmalignant respiratory diseases, renal cancer, and chronic renal disease

Compensation: $100,000

Downwinders include those individuals physically present in one of the designated affected areas downwind of the Nevada Test Site (certain counties in Utah, Nevada or Arizona) during a period of atmospheric nuclear testing, and then later contracted a specified compensable disease

Compensation: $50,000

Diseases: leukemia (other than chronic lymphocytic leukemia), multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver, or lung.

Onsite Participants are those individuals who participated onsite in a test involving the atmospheric detonation of a nuclear device, and then later developed a specified compensable disease.

Compensation: $75,000

Diseases: Same as Downwinders

Types of records used to establish mining, milling and ore transporting employment:

All Records Must Be Original or Certified:

- Mine, mill and trucking employer records;
- Records from the Social Security Administration;
- Federal or state income tax records;
- Records of state regulatory agencies;
- Records of benefits (such as records from state workers compensation board);
- Medical records created between 1942 and 1971 indicating or identifying the claimant's employer and occupation;
- Records of an academic or scholarly study;
- Other contemporaneous records identifying a claimant's occupation or employer.

Who may receive payment if the claimant is deceased?

- The claimant's spouse, if the spouse is living at the time of payment;
- If no surviving spouse, the children of the claimant in equal shares;
- If no surviving spouse or surviving children, the parents of the claimant in equal shares;
- If no surviving spouse, children or parents, all of the grandchildren in equal shares;
- If no surviving spouse, children, parents or grandchildren, the grandparents in equal shares.

Applying for compensation under RECA:

The claimant or beneficiary must submit a completed claim form and any supporting documentation to the RECA Program at the following address:

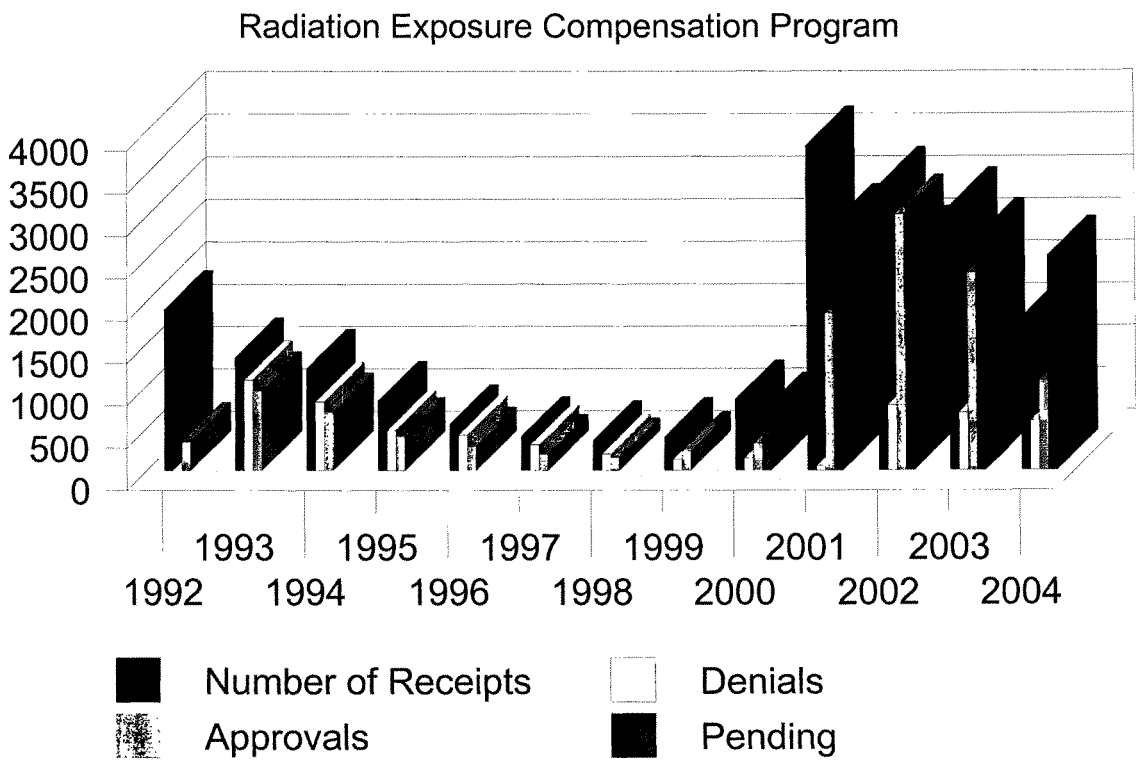
P.O. Box 146
Ben Franklin Station
Washington, DC 20044-0146

Claim forms may be requested directly from the RECA Program at 1-800-729-7327 or obtained from the RECA Program website at: http://www.usdoj.gov/civil/torts/const/reca

Top Five RECA States

State	Total Claims	Claims Approved	Claims Denied	Claims Pending	Amount Approved
Arizona	5,535	3,617	915	1,003	**$199,877,016.00**
Utah	5,048	3,270	1,439	339	**$186,994,850.00**
New Mexico	2,388	1,036	977	375	**$98,402,798.90**
Colorado	1,922	1,273	469	180	**$122,450,000.00**
Nevada	1,471	870	463	138	**$48,773,125.00**

July 12, 2004


Radiation Exposure Compensation Program
4000
3500
3000
2500
2000
1500
1000
500
0
1993
1995
1997
1999
2001
2003
1992
1994
1996
1998
2000
2002
2004
Number of Receipts
Approvals
Denials
Pending

July 1, 2004

Claims to Date Summary

Claim Type	Claims Approved	% Approved	Claims Denied	Claims Pending	Amount Approved
Uranium Miller ($100,000)	374	77.0	112	103	**$37,400,000**
Ore Transporter ($100,000)	86	76.1	27	32	**$8,600,000**
Uranium Miner ($100,000)	2,938	58.9	2,049	631	**$293,191,500**
Downwinder ($50,000)	7, 630	76.1	2,390	1,503	**$381,470,000**
Onsite Participant ($75,000)	721	40.4	1,062	258	**$52,043,249**
Total	**11,749**	**67.6**	**5,640**	**2,527**	**$772,704,749**

July 12, 2004

Department of Justice
Civil Division
User ID: rhewitt

RECA Claims by State/Country
as of 07/19/2004

07/19/2004
09:32AM

State/Country	# of Claims	# of Pending Claims	# of Denied Claims	# of Awarded Claims	Awarded Amount
Alabama	46	5	22	19	$1,242,958.00
Alaska	43	5	15	23	$1,600,000.00
American Samoa	1	0	1	0	$0.00
Arizona	5,558	1,018	923	3,617	$199,927,016.00
Arkansas	68	5	25	38	$2,745,490.00
California	791	115	280	396	$24,174,356.00
Colorado	1,926	182	470	1,274	$122,550,000.00
Connecticut	13	3	5	5	$350,000.00
Delaware	7	1	2	4	$275,000.00
District of Columbia	5	0	2	3	$175,000.00
Florida	185	23	91	71	$4,987,853.15
Georgia	53	8	22	23	$1,515,710.00
Hawaii	43	1	18	24	$1,648,334.00
Idaho	193	32	57	104	$6,670,000.00
Illinois	68	9	30	29	$2,154,132.36
Indiana	34	5	11	18	$1,525,000.00
Iowa	22	2	8	12	$872,503.00
Kansas	54	7	21	26	$1,700,000.00
Kentucky	26	3	14	9	$645,319.00
Louisiana	28	4	13	11	$724,169.53
Maine	6	2	1	3	$202,342.00
Maryland	51	4	14	33	$2,120,180.00
Massachusetts	22	2	12	8	$575,000.00
Michigan	55	8	32	15	$975,000.00
Minnesota	37	6	11	20	$1,325,000.00
Mississippi	16	2	11	3	$275,000.00
Missouri	93	21	33	39	$2,875,000.00
Montana	75	10	29	36	$2,459,872.00
Nebraska	39	6	14	19	$1,575,000.00
Nevada	1,473	137	465	871	$48,873,125.00
New Hampshire	8	0	5	3	$225,000.00
New Jersey	26	6	15	5	$325,000.00
New Mexico	2,402	387	977	1,038	$98,602,798.90
New York	51	7	21	23	$1,512,608.00
North Carolina	50	6	23	21	$1,551,308.00
North Dakota	7	0	5	2	$150,000.00

Department of Justice
Civil Division
User ID: rhewitt

RECA Claims by State/Country
as of 07/19/2004

07/19/2004
09:32AM

State/Country	# of Claims	# of Pending Claims	# of Denied Claims	# of Awarded Claims	Awarded Amount
Ohio	52	11	25	16	$1,225,000.00
Oklahoma	139	24	56	59	$4,784,500.00
Oregon	173	29	49	95	$6,472,234.00
Pennsylvania	62	7	32	23	$1,497,054.00
Puerto Rico	3	0	3	0	$0.00
Rhode Island	2	0	0	2	$150,000.00
South Carolina	27	0	18	9	$578,520.49
South Dakota	42	4	14	24	$2,235,174.00
Tennessee	37	6	13	18	$1,102,479.00
Texas	243	42	98	103	$6,864,221.86
Utah	5,056	340	1,446	3,270	$186,994,850.00
Vermont	5	0	3	2	$175,000.00
Virginia	57	7	17	33	$2,106,302.27
Washington	205	26	68	111	$7,703,076.71
West Virginia	81	11	35	35	$3,425,000.00
Wisconsin	38	4	21	13	$911,262.00
Wyoming	153	14	57	82	$6,625,000.00
Australia	1	0	1	0	$0.00
Canada	7	2	2	3	$225,000.00
N/A	1	0	1	0	$0.00
Philippines	2	0	2	0	$0.00
United States	12	2	1	9	$900,000.00
West Germany	1	0	1	0	$0.00
State/Country Grand Total:	**19,974**	**2,561**	**5,661**	**11,752**	**$773,079,749.27**

S.1438

SEC. 1066. RADIATION EXPOSURE COMPENSATION ACT MANDATORY APPROPRIATIONS.

Section 3(e) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended to read as follows:

`(e) APPROPRIATION-

`(1) IN GENERAL- Subject to the limits in paragraph (2), there are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year 2002, and each fiscal year thereafter through 2011, such sums as may be necessary to the Fund for the purpose of making payments to eligible beneficiaries under this Act.

`(2) LIMITATION- Amounts appropriated pursuant to paragraph (1) may not exceed--

`(A) in fiscal year 2002, $172,000,000;

`(B) in fiscal year 2003, $143,000,000;

`(C) in fiscal year 2004, $107,000,000;

`(D) in fiscal year 2005, $65,000,000;

`(E) in fiscal year 2006, $47,000,000;

`(F) in fiscal year 2007, $29,000,000;

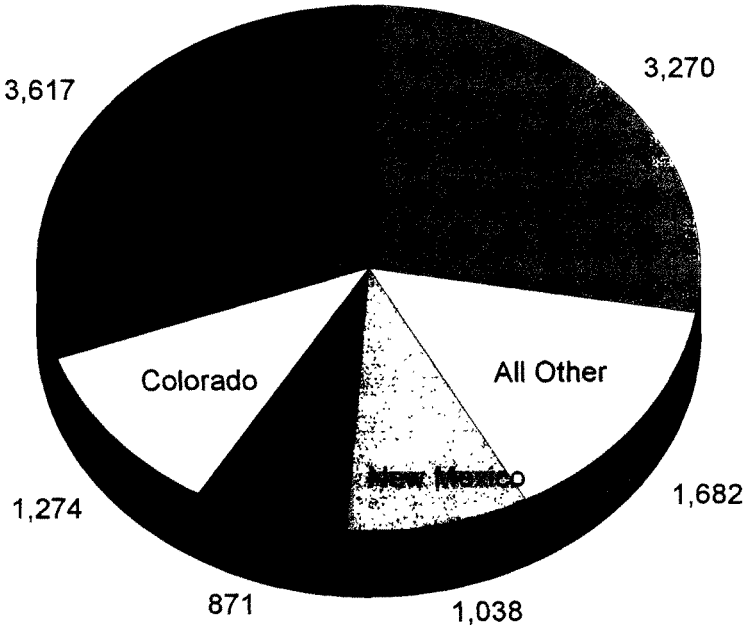
`(G) in fiscal year 2008, $29,000,000;

`(H) in fiscal year 2009, $23,000,000;

`(I) in fiscal year 2010, $23,000,000; and

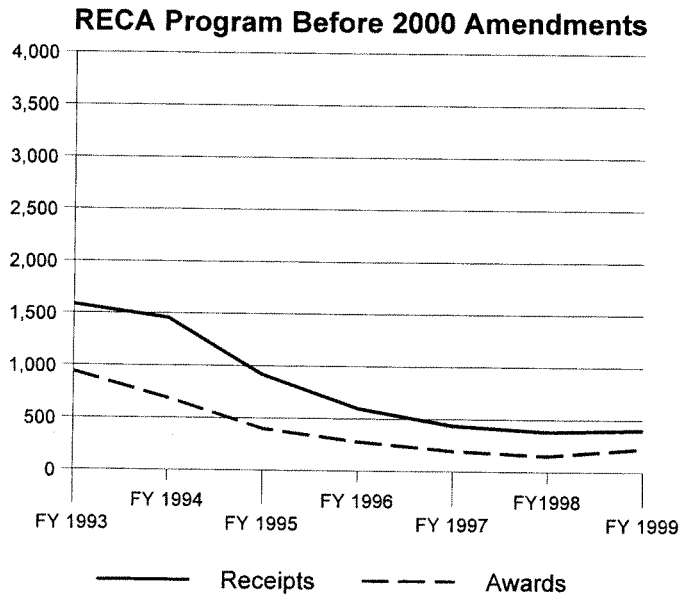
`(J) in fiscal year 2011, $17,000,000.'.

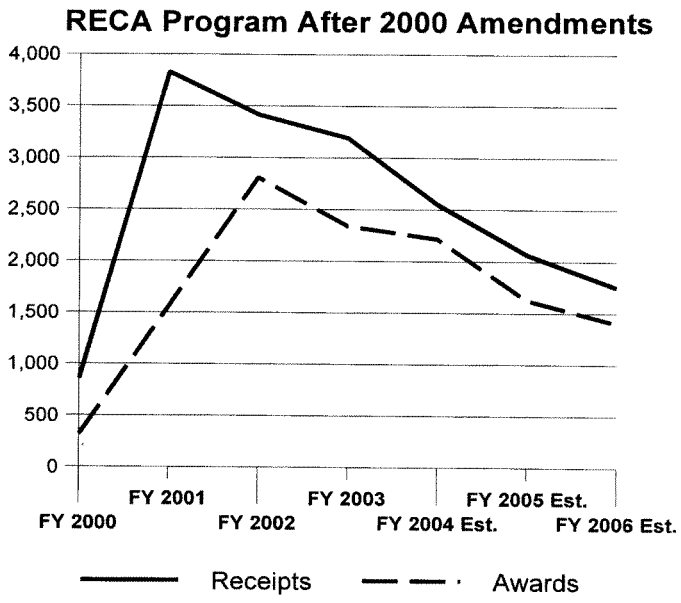
RECA Awards By Claimant Residence



Number of Claims Received and Percent Approved and Denied Since the 2000 Amendments

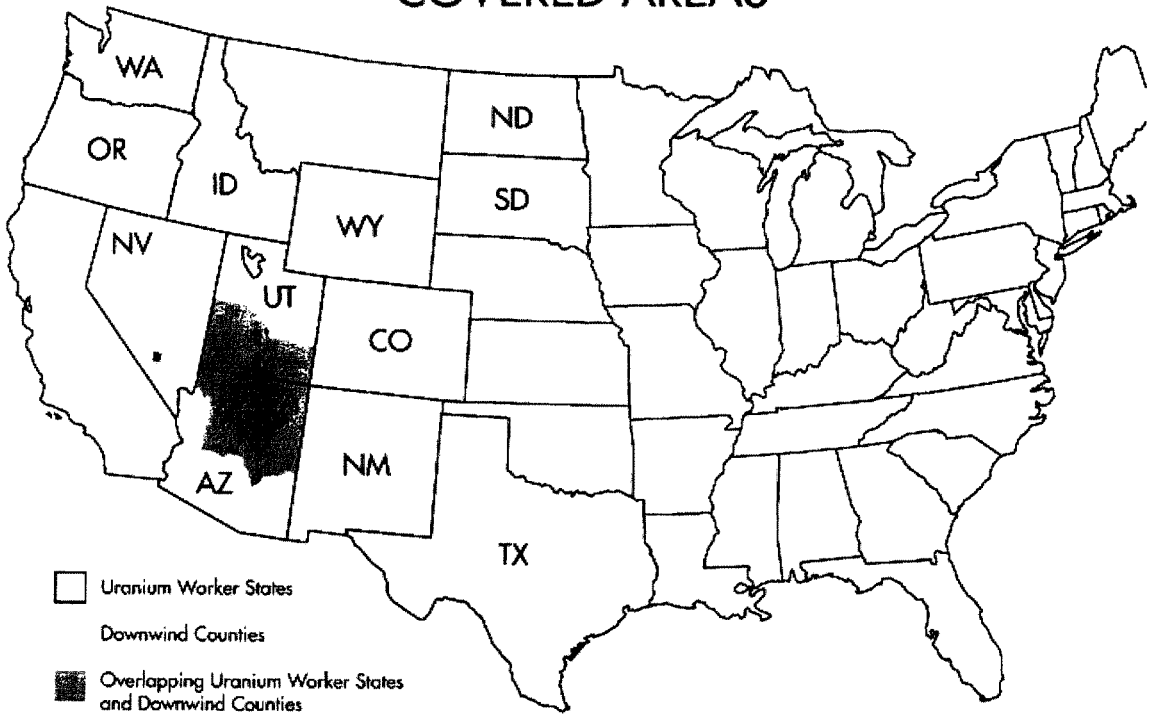
Number of claims received since July 10, 2000	12,573
Percent of claims approved since July 10, 2000	79.8%
Percent of claims denied since July 10, 2000	20.2%


RECA Program Before 2000 Amendments
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
FY 1993
FY 1994
FY 1995
FY 1996
FY 1997
FY1998
FY 1999
Receipts
Awards

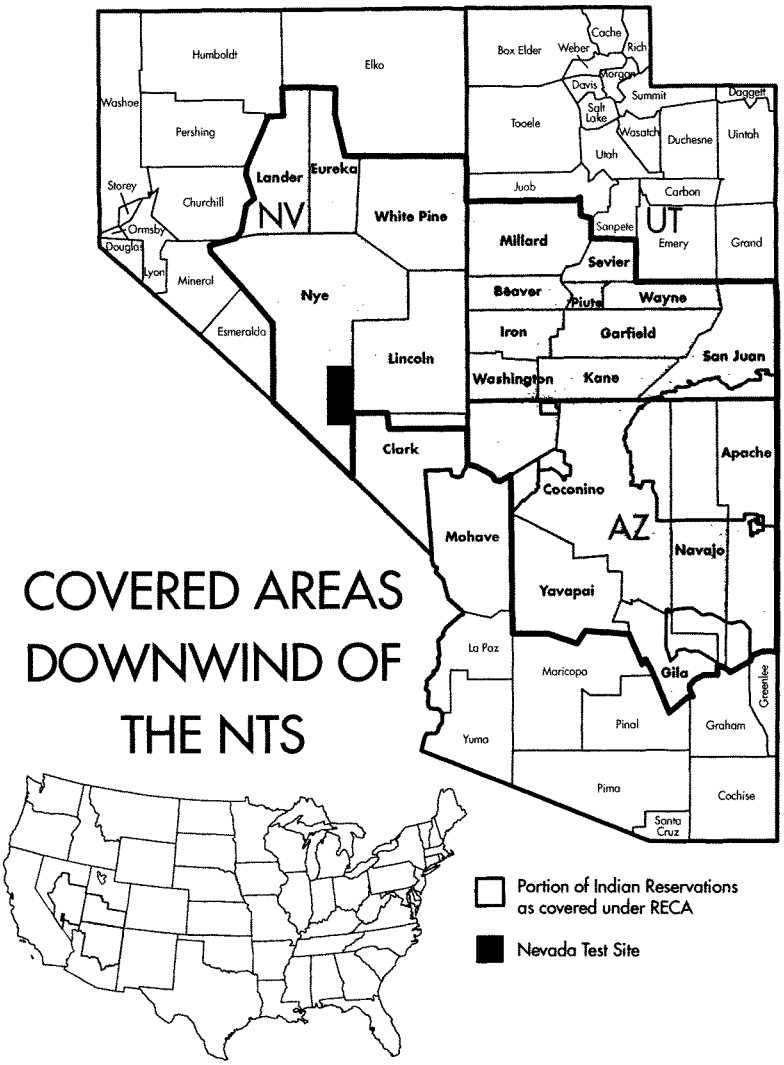

RECA Program After 2000 Amendments
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
FY 2000
FY 2001
FY 2002
FY 2003
FY 2004 Est.
FY 2005 Est.
FY 2006 Est.
Receipts
Awards

MAP OF RADIATION EXPOSURE COMPENSATION AC

COVERED AREAS



MAP OF
URANIUM WORKER
STATES



COVERED AREAS DOWNWIND OF THE NTS

Testimony of Helen Bandley Houghton

Mr. Chairman, members of the Judiciary Committee. My name is Helen Bandley Houghton, and I am a Downwinder! I grew up in South-Central Utah in the community of Richfield, in Seveir County. I lived in Richfield from 1946 to 1970, leaving the valley to attend college and to obtain my teaching degree. While growing up in the 50's and 60's we lived a life that would be described as rural. There was one, maybe two fast-food establishments in the community, and families did not eat out on a nightly basis.

As a child, I worked in the garden, ate fresh vegetables, drank milk fresh from the cow, and spent hours in the city swimming pool. We would sit on the porch and watch the clouds from the testing site in Nevada as they dissipated over our mountains and streams. Living on Highway 89, the Big Rock Candy Mountain, Zion Canyon, and Bryce Canyon were the destinations for family rides on Sunday afternoon. We did not know of the damage that was being done to our bodies at this time.

For 3 months each year of high school, I would spend mornings at the city pool, teaching the children how to swim. Needless to say, the other girl that spent those summers with me, has also had cancer. (She had Breast Cancer) I had Colon Cancer. This was identified when I was 35 years old, and my Doctor did nothing except remove the tumors, because I was just too young to have colon cancer, and I did not fit the profile. Needless to say this disease returned 5 years and 17 days later, and I was lucky enough to have changed school districts and obtain Cancer Insurance. My life as I knew it was now over.

I could not continue on with my PhD in Education, because I was unable to sit in class. I could not mow the lawn, attend aerobics classes, and remember a great deal of information.

Being in education this was a problem. I had to leave the job that I had because I could no longer be under stress, nor could I count on not having problems with my colostomy. (It can take up to 5 years to get it working on a reasonable basis.) I moved back to 2nd grade, and have had to gradually work back in to curriculum and staff development. I lost 18 years of my dream because of this disease that I did nothing to deserve, except be in the wrong place at the wrong time. I was now unable to change school districts, because of the health insurance issues; no one would cover me because of pre-existing conditions. I could not get insurance on my house, because I was considered a high risk, and I could no longer care for my two daughters without a great deal of help from family, who had come to Texas to help. I was unable to go to Utah to live, and I had to stay close to doctors who for the next 10 years were my best friends.

I cannot comprehend that the government that I cherish has decided to put an unequal value on my medical problems. The trucker, the miner, the ground worker at the blast site knew what they were doing, and the risks that they were taking when they went to this project. The citizens of Southern Utah were told that there would be no risk.

My mother died a very painful death from cancer; I have had 18 years of waiting for the other shoe to drop, and to be told that my cancer had returned. I have been unable to retire from teaching after 37 years, because I must have insurance, and I cannot get Medicare or Medicaid until I am now 65 or 67 years old. It was not unusual for my medical bills to be $400.00 a month in addition to my co-pay. There are times when I have to argue with my insurance company for the tests that the specialists need to do if they are more than once a year, and this has happened several times. My 54 year old brother is now in a Hospice Home in Orem, Utah, waiting to die. They have lost their home, their credit, their future. His medical bills have been over $10,000.00 a month, because his insurance would not pay for the shots that he needed to continue the chemo

treatment. Richard has been off work for 8 months, and he has been bed-ridden for the past 6 months. They have lost everything they had. His widow must now find a job at the age of 54 that will provide insurance and a living wage. She has been out of the job market for several years. Senators, my medical bills and expenses are just as great as those who drove the trucks of ore through our communities. My cancer is just as real as theirs. I cannot understand why the government would decide that some people would get $175,000 plus life time medical benefits, and the others would not only lose 2 and 3 members in a family, but their homes, and leave their families with medical bills that seem insurmountable. I am asking you to please equalize these benefits so our legacy will not be one of despair and poverty.

Cancer is an expensive illness. You never get better, you go into remission for a period of time, or you die. Once you have disease, you are simply waiting for the tests to come back positive.

I would like to know that my mother and brother have not died in vain. The information that was gained from these tests is critical to our world as we now know it. The people need to be treated fairly and equally when it comes to this illness. The cost of this disease has tripled over the past few years. Please provide us the same monies for the people of Southern Utah as you have the workers.

Testimony of Jeffrey Thompson

Mr. Chairman, members of the Committee. My name is Jeffrey Thompson, I am a resident of Jacksonville, Arkansas which is located 15 miles Northeast of Little Rock. My father was a downwind radiation exposure victim.

My father, Ward Paul Thompson, was born in 1918 in Beaver, Utah and was employed as an engineer on the railroad for over 45 years. He lived in Beaver and in Minersville. When the Radiation Exposure Compensation Act first became law, in 1990, my father would not have been able to receive compensation because the type of cancer he had was not one for which compensation could be paid. My brother Kenneth, my sister Sue Ann, and I are grateful for the Radiation Exposure Compensation Act Amendments which became law in the summer of 2000. These amendments added Colon Cancer which is what my father eventually died from in October of 2003.

In February of this year, my brother Kenneth Paul Thompson, my sister Sue Ann Pace, both of Milford, Utah and me filed a claim for compensation under the Radiation Exposure Compensation Act. Several weeks after filing the claim we received a short letter from the Radiation Exposure Compensation Program which told us that they had received our claim and that it they would begin processing it. The letter also explained that under the law, the Radiation Exposure Compensation Program had one year to make their decision if our claim met all the requirements necessary to qualify for compensation.

Several months after receiving the first letter from the Radiation Exposure Compensation

Program, my sister received a second letter which told her that she needed to provide a copy of the marriage license which showed her marriage to Mr. Cliff Pace who had passed away in 1990. My sister, Sue Ann, told the claims examiner that she had the marriage license showing her marriage to Cliff Pace and she asked the claims examiner if she needed to send a copy of her marriage license showing her marriage to Mr. Evan Skeem in 1965 which had ended in 1981. My sister was concerned that this marriage license would be hard to get since the marriage had occurred almost forty years before and had happened in another state. She expressed these concerns to the claims examiner. The claims examiner responded that my sister should send the marriage license that she had in her possession but the examiner gave no indication that my sister would have to send the certificate of the first marriage. Approximately June 15th my sister received a letter from a different claims examiner which indicated that the Radiation Exposure Compensation Program needed the copy of the marriage license for my sister's first marriage to Evan Skeem in 1965. My sister is in the process of getting that marriage license from Nevada. We are concerned about the delay that may arise in processing our claim due to the six weeks that passed between my sister receiving the letter that asked for the marriage license for her second, more recent marriage, and the letter that asked for the copy of the marriage license from the first marriage.

We also had another problem with another aspect of the claims process. I am not the biological son of Ward Paul Thompson. I lived with him for several years before I was legally adopted by him in 1974 at the age of 10. I live with him the rest of my childhood years before I reached the age of adulthood. I always considered him my father and he always held me out as his son. The adoption papers were sealed by the court in which the adoption had been finalized.

After my brother, my sister, and I had filed our claim for compensation, I received a letter from the Radiation Exposure Compensation Program which told me that I needed to obtain copies of the adoption papers in order to prove my adoption by Ward Thompson. To my brother, my sister and to myself, this was difficult. We retained an attorney in Beaver, Utah who filed the proper action and was able to have the adoption papers unsealed so that we could provide them to the Radiation Exposure Compensation Program.

We have not yet received approval of our claim but hope to have it approved soon. It would mean a great deal to us. The financial compensation would be very helpful and having the government acknowledge that it had a hand in causing the cancer that required him to suffer would also be of comfort to my brother, my sister, and myself.

We have also heard of other claims that have not been paid because people could not find fifty year old copies of electric bills, rent receipts, or other documents that would prove the details of their claims. We would ask you to try to make the Radiation Exposure Compensation Act as easy as you can to the people who file claims. Thank you.

Testimony of Rita Torres

Mr. Chairman, Committee members. My name is Rita Torres and I am a resident of Surprise, Arizona. This testimony must come from me since it cannot come from the person who bore the brunt of this excruciating experience, my father, Joe Torres. If I could I would like to read my father's own words from a letter that he sent to the President of the United States in March of 2001 just before he passed away on March 21, 2001 from cancer that he suffered from as a result of his many years as a uranium miner.

Dear President Bush:

...I don't mean to complain, but on the other hand I do kind of have a bone to pick with the Federal Government. You see, the Federal Government made a promise to lots of folks in our part of the country. There was a problem and they were trying to fix it. "We passed a bill called the Radiation Exposure Compensation Act." This sounds great, as we have some serious health problems down here where we call home. With all the politicians gathered, you might have thought they would have figured this part out...they did not attach any funding to the program. Can you believe that? I couldn't either. You see they gave everyone an IOU. I wondered to myself how forgiving and patient the IRS would be if we all sent them IOUs come April 15th. And I don't know what experience you have with cancer, but it is not very patient. It eats away at your body and metastasises into other places that causes pain and all kinds of problems. It doesn't seem to want to wait while I write my congressman to see if he can work out the pesky little funding details in subcommittee. We believe in simple things, including if a man says he is going to help you, you can bet he will. You won't have to go chase him down and remind him; he will be there early and stay late until he knows that his services are no longer needed. So I

feel a little sheepish reminding you, Mr. President, that approving a program then not funding it is sort of like offering help and leaving town. It just isn't right. My time here on earth is now very short. I am tired and would like to know that maybe some of what I do now might make it so other folks will not have to wait and be forgotten like I have been. It is hard to fight cancer and fight the government. I received an approval from the Department of Justice stating I would receive compensation under the RECA program because I spent many years mining uranium when our country needed it. When I received my approval it was a happy day. It brought me great relief just to know I would be receiving help and knowing that the government hadn't forgotten about me. I was also relieved to know that my wife of 55 years might have some assistance to live on until she can join me. Once I was a strong man, glad to work hard all day long. But I am no match for the pain, it has brought me to tears, it has brought my wife to tears as she struggles to make me comfortable, it has brought my children to tears to see their parents suffer so. I have exhausted all my means and have been waiting for some relief from my government since the approval letter arrived seven months ago. To be near the end, with no relief from my government has saddened me very much. I have spent a great deal of time lately filling out forms. I wonder if doing paper work is the last thing that I will remember doing before I die. I am trying to understand why I received approval seven months ago, but have not seen a penny...yet. Every day another resident [of Monticello] is informed they have cancer. Have you had a son or a daughter die from cancer at a young age? It will make you hope for heaven because you are living through hell. I chuckle to myself to think I am writing to the President of the United States. I have nothing for you. I have no access to money. I have no influential friends. I grow weary, I cannot continue with this letter but please look into this matter. There are people here, Americans that are as real as those we send money to in foreign

countries whenever a disaster hits there. I know you are busy, but not everyone has the luxury of many tomorrows to know that maybe they made a difference. Thank you Mr. President, Jose Torres.

Eight months after my father's death my younger brother was diagnosed with stomach cancer. This has affected three generations of the Torres family.

Please do not allow the program to go unfunded. Many are awaiting your decisions. We must move forward. IOUs would continue the injustice already done to these victims of radiation exposure.

Many have stepped forward to serve our government and now I ask you to serve your people by not continuing with IOUs and by funding RECA.

Mr. Chairman, I would ask that my father's letter to President Bush and the award letter sent to him approving his claim and informing him that the program was not funded be included as part of my testimony.

Thank you.

U.S. Department of Justice

Washington, D.C. 20530

August 24, 2000

Stephanie Flores
Flores & Flores Law Offices
P.O. Box 51213
Lafayette, LA. 70505

RE: RECA Claim No. 201-18-8721
Claimant: Jose O. Torres

Dear Mrs. Flores:

I am pleased to inform you that the above-referenced claim for compensation under the Radiation Exposure Compensation Act has been approved. Regretfully, because the money available to pay claims has been exhausted, we are unable to send a compensation payment to you at this time. When Congress provides additional funds, we will contact you to commence the payment process.

Thank you for your understanding.

Sincerely,

GERARD W. FISCHER
Assistant Director
Torts Branch, Civil Division

JUL 19 '04 18:49 FR 00 8013745005 TO 12022280029 P.03

RECA - CLAIM # 201-16-6721

San Juan Record
March 7 & 14, 2001

Joe Torres waits for reimbursement payments promised by the U.S. Federal Government even while cancer ravages his body. This photo was part of a front page story in the Rocky Mountain News on the underfunded federal program.
Essdras M Suarez / Rocky Mountain News Staff Photographer

Funding sought for Radiation Exposure Compensation victims

From the weekly column
"My View, My Cave" by Gary Torres

Dear readers. What follows is a letter from my dad to President Bush. The words are his; the writing mine.

Dear President Bush:

Okay, I don't mean to complain, but, on the other hand I do kind of have a bone to pick with the Federal Government. I know that you and I aren't all that well acquainted but really, I feel like I know you. I mean, being President does have some disadvantages; like having your entire life discussed on the news... several times a day.

Besides, when you are dying of cancer, you spend most of your time sitting on a bed while tethered to an oxygen machine and so I can watch a great deal of TV. Of course, I am not always at my best since sometimes I am puking because of the medications and toxins in my body, or the pain can't be subdued by the morphine patches and I wince as spasms of pain shoot through my body, or I have drifted off to

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asleep again because I ran a fever all through the night. But enough about me, let's stick to the issues as they say on the talk shows. Here is the problem and it is rather serious and complicated, but I am sure you can get one of your aides to explain and brief you on it.

You see the Federal Government made a promise to lots of folks in our part of the country. There was a problem and they were trying to fix it. All well and good, right? Wrong! The politicians can now stand up and tell everyone that they feel our pain and have heard our voices and did something about the problem. But they didn't.

Sure they say, "We passed a bill called the Radiation Exposure Compensation Act." This sounds great, as we have some serious health problems down here where we call home. With all them fancy-uppity-politicians gathered, you might have thought they would have figured this part out... they did NOT attach any funding to the program. Can you believe that? I couldn't either. I thought that was about as stupid as some of the other shenanigans going on at the White House in the recent past.

> "You see, they gave everyone an IOU. I wondered to myself how forgiving and patient the IRS would be if we all sent them IOUs come April 15."

You see, they gave everyone an IOU. I wondered to myself how forgiving and patient the IRS would be if we all sent them IOUs come April 15. I would assume they might take it personal and start making nasty threats. And I don't know what experience you have with cancer, but it is not very patient either. It eats away at your body and metastasizes into other places that causes pain and all kinds of problems. It doesn't seem to want to wait while I write to my congressman to see if he can work out the pesky little funding details in subcommittee.

In my 73 years, I have learned that not everyone that wears a cowboy hat is a cowboy. I have also learned that us westerners don't like trickery like that. Although, this kind of trickery was not completely new to us. You say you'll help... but you don't. You probably think that we are all simple, and perhaps we are. We believe in simple things, including if a man says he is going to help you, you can bet he will. You won't have to go chase him down and remind him; he will be there early and stay late until he knows that his services are no longer needed. I have seen this happen many times, with flat tires, cars that broke down, fields that needed plowing, and people moving in and out of houses. Yes, that is just the way we are; simple and honest.

So I feel a little sheepish reminding you, Mr. President, that approving a program then not funding it is sort of like offering to help and leaving town. It just ain't right! So I am writing to you and I have asked my family and others to write to you and to the members of the Senate Appropriation Committee.

My time here on earth is now very short. I am tired and would like to know that maybe some of what I do now might make it so other folks will not have to wait and be forgotten like I have been. It is hard to fight cancer and fight the government.

I received an approval from the Justice Department stating I would receive compensation under the RECA program because I spent many years mining Uranium when our country needed it. When I received my approval it was a happy day. It brought me great relief just to know I would be receiving help and knowing that they hadn't forgotten about me. I was also relieved to know that my wife of 55 years might have some assistance to live on until she can join me.

I was diagnosed with lung cancer two years ago. The cancer does not wait. Since then it has metastasized to my liver. My expenses for pain medication are very high. Do you know how painful it gets near the end when your liver has quit removing toxins? I have to use oxygen all the time now because they removed part of one lung and what is left does not work well.

Once I was a strong man, glad to work hard all day long. But I am no match for the pain, it has brought me to tears, it has brought my wife to tears as she struggles to make me comfortable, it has brought my children to tears to see their parents suffer so.

I have exhausted all my means and have been waiting for some relief from my government since the approval letter arrived seven months ago. To be near the end, with no relief from the government, has saddened me very much. I am not a sophisticated man. I am a simple person who has understood that when you gave your word, it meant something. But all the promises to the people have been forgotten. I chuckle to myself to think that I am writing to the President of the United States. I have nothing for you. I have no access to money. I have no influential friends. I cannot afford the preference of a Presidential Pardon. My son, he calls himself the CaveGuy... (probably something I didn't do when he was growing up) he said he would help me write a

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letter to you. But really, I thought you might think I was crazy if I let some CaveGuy write you a letter. So I am trying this mostly on my own.

I live on a meager monthly stipend from Social Security. It is sufficient for my simple lifestyle. But I can not afford the expensive medications that keep me alive. These are not experimental drugs used by a patient in denial. These are basic drugs that allow me to breathe and to dull the pain to some degree. I am trying to make things bearable in my last remaining days. It is hard to see the anguish on my wife's face when she looks at me and wonders how much pain I am going to be called upon to endure. I try to hide it. I try to stay brave and not complain more for her than for me. I don't want her to worry, as she has a bad heart and does not need to worry about me.

> "Have you had a son or daughter die from cancer at a young age? It will make you hope for a heaven because you are living through hell."

You know, I was once our country's future. When I was younger I went to serve my country and left the Armed Services with an Honorable Discharge. Recently, I approached the Veterans Administration for help on the expensive medications that will keep me alive a little longer. I talked to a not-so-helpful person on the other end of the line, she sent me a 15 page form; 7 pages of directions, 8 pages of blanks. And wanted me to fill them out. She said that once completed it should take 60-90 days for approval to get a card that will help pay for the expensive medications. I am not sure that I will be here for that long. I certainly won't if I have to fill out any more forms.

I have spent a great deal of time lately filling out forms. I wonder if doing paper work is the last thing that I will remember doing before I die. I am trying to understand why I received approval seven months ago, but have never seen a penny of assistance yet. The cancer does not wait, it spreads daily to new places in my body. Places are sore now that didn't used to be. My bones ache. But I must wait, I must be patient. It is a race that I am losing.

I got so mad that I called people in Washington and they connected me with many different people, passing me from one to another, until I grew weary and hung up. I do not have the strength I used to and can only put up with rudeness and coldness so long. They tell me they can't do anything about it, that they don't have a budget, that it is not their fault. They spend most of their time telling me it isn't their fault.

I have decided that if you can't do anything about it, then no one can. So I am writing to you, Mr. President, to help me and to help the others who are not receiving things that were promised them, the assistance they desperately need.

You might ask how this all came about. I cannot tell you the entire story, but many years ago the government built a mill to process uranium and allowed the community of Monticello, Utah to be exposed to unhealthy levels of radiation. Today, everyone in our little community has been touched by cancer. Cancer does not just kill one, it kills the family.

There was no disaster here. No TV coverage showing howling winds or earthquakes. It started many years ago but the effects were not visible at the time. The disaster came in very silently, as we quietly slept, as the children played outside, as we worked. There was no warning. It didn't make noise, it had no odor, it had no signs. It snuck into our homes, permeating the very air that we breathed and the clothes that we wore. There wasn't a lot of fuss made, we didn't even make the news because our wounds were not visible, our homes did not fall, our power systems did not shut down... daily life continued in Monticello. We didn't know what was to come.

Every day another resident is informed they have cancer. Our neighbor died. He was older and he had lived a good life. He had a family, he had many blessings for which he was grateful and his funeral was not sad. Now, his wife is diagnosed, and still everyone tried to not be sad as she too had lived a long and good life. But several years ago there was a day that the entire family cried out in anger and anguish, it was the day they received word that their teenage son had leukemia. Have you had a son or daughter die from cancer at a young age? It will make you hope for a heaven because you are living through hell.

I grow weary, I cannot continue with this letter, but please look into this matter. There are people here, Americans, that are as real as those we send money to in foreign countries whenever a disaster hits there. I know you are busy, but not everyone has the luxury of many tomorrows to know that maybe they made a difference. Thank you, Mr. President.

Jose Torres