

# HARBERT AND SHAW NOMINATIONS

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HEARING  
BEFORE THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

TO

CONSIDER THE NOMINATIONS OF KAREN ALDERMAN HARBERT TO BE ASSISTANT SECRETARY FOR THE OFFICE OF POLICY AND INTERNATIONAL AFFAIRS AND JOHN SPITALERI SHAW TO BE ASSISTANT SECRETARY FOR THE OFFICE OF ENVIRONMENT, SAFETY AND HEALTH

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SEPTEMBER 21, 2004



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## HARBERT AND SHAW NOMINATIONS

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TUESDAY, SEPTEMBER 21, 2004

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

### OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. The hearing will please come to order.

Senator Bingaman, I understand that there is just an awful lot of simultaneous hearings this morning, and that probably accounts for the fact that there are not so many Senators here.

So we are going to start with a chairman's remark.

Anybody on the committee that has questions will submit them in writing and then you all will answer those. What is a reasonable time for the submission of questions? 5 days?

Senator BINGAMAN. The end of the week.

The CHAIRMAN. End of the week, all right. By the end of the week, staff, would you inform your Senators that if they have questions, they should get them in?

Let me welcome both of you: Karen Harbert and John Shaw. Ms. Harbert will be Assistant Secretary for International Affairs and Domestic Policy. We wish you the best.

Ms. HARBERT. Thank you.

The CHAIRMAN. John Shaw will be Assistant Secretary of Energy for the Environment, Safety and Health. Both of them are important jobs. As I said, we hope that you have the very best.

Mr. SHAW. Thank you.

The CHAIRMAN. Now, before we begin the statements, I would ask each of you three questions. You have to stand up and raise your right hands.

Do you solemnly swear that the testimony you are about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole truth, and nothing but the truth?

Mr. SHAW. I do.

Ms. HARBERT. I do.

The CHAIRMAN. Thank you. Sit down.

Before you begin your statements, I will ask each of you three questions addressed to each of you. I will begin with Ms. Harbert. Will you be available to appear before this committee and other

congressional committees to represent the Department's position and to respond to issues of concern to the Congress?

Ms. HARBERT. I will.

The CHAIRMAN. Mr. Shaw?

Mr. SHAW. I will, sir.

The CHAIRMAN. Are you aware of any personal holdings, investments, or interests that could constitute a conflict or create the appearance of such a conflict, should you be confirmed and assume the office to which you have been nominated by the President?

Ms. Harbert?

Ms. HARBERT. Mr. Chairman, my investments, personal holdings, and other interests have been reviewed both by myself and the appropriate ethics officials and counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Thank you.

Mr. Shaw.

Mr. SHAW. Mr. Chairman, my investments, personal holdings, and other interests have been reviewed by both myself and the appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge, sir.

The CHAIRMAN. Are you involved or do you have any assets held in blind trust?

Ms. HARBERT. No, Mr. Chairman.

The CHAIRMAN. Mr. Shaw?

Mr. SHAW. No, Mr. Chairman.

The CHAIRMAN. Thank you.

Now, we are going to move on. If the Senators have some brief opening statements, if you would like to give them, we will do that. Senator Bingaman.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR  
FROM NEW MEXICO**

Senator BINGAMAN. Mr. Chairman, thank you very much for recognizing me. Let me just say that I intend to support both of the nominees based on what I am advised. These are both very important positions and they have particular relevance to our State, as you know, in several regards.

I do have some statements that I will submit in writing. I have another hearing going on in the Finance Committee that I am required to attend as well. So I do appreciate them being here and I wish them both well.

Mr. SHAW. Thank you, Senator.

Ms. HARBERT. Thank you.

The CHAIRMAN. Before I yield to Senator Bunning, I understand that each of you has some relatives here. That seems to me to be important because it means that you consider it important, important enough to have your family here. Ms. Harbert, would you have your family stand up and quickly introduce them?

Ms. HARBERT. Yes, thank you, Mr. Chairman. I am pleased to introduce my mother, Josephine Hailey, who hails from the great

State of Tennessee and who raised me to put integrity first. My husband, Michael Mitchell, and my mother-in-law and father-in-law, Helen and Jerry Mitchell, all three of them from the great State of Pennsylvania. Thank you.

The CHAIRMAN. Mr. Shaw.

Mr. SHAW. Yes, Mr. Chairman. Thank you very much for this opportunity. Today I am joined by my wife, Hilary Shaw. My daughters, Isabelle and Charlotte, are here with me today. My mother is here as well, Patricia Spitaleri, and I am joined by my father-in-law, Jim Holman. My mother-in-law and father could not make it here today. They are traveling on business. Thank you, Mr. Chairman.

The CHAIRMAN. That little one over there is one of them?

Mr. SHAW. Yes, sir, the little redhead is mine.

[Laughter.]

The CHAIRMAN. You have her close to the door so if something happens, they can run out.

[Laughter.]

The CHAIRMAN. Senator Bunning.

**STATEMENT OF HON. JIM BUNNING, U.S. SENATOR  
FROM KENTUCKY**

Senator BUNNING. Thank you, Mr. Chairman. Obviously, we have two nominees: Karen Harbert, the nominee to be Assistant Secretary of Energy for International Affairs and Domestic Policy; and Mr. John Shaw, nominated to be Assistant Secretary of Energy for Environment, Safety and Health.

The nomination of Mr. Shaw is especially important, given the problems we have had that have plagued the DOE operation in its energy employees compensation program. Many of the workers at the Paducah gaseous diffusion plant have already received compensation for their illnesses due to the radiation and beryllium under subtitle B, the portion of the program run by the Department of Labor. DOL has processed more than 90 percent of the nearly 60,000 claims under the energy employment program.

In contrast, however, more than 3,200 Kentuckians have requested help from DOE under subtitle D. These are Paducah workers exposed to toxic substances. These workers are still waiting to have their cases heard. None—that is zero—Kentucky workers have received compensation for their illnesses under DOE's portion of this program. As the Assistant Secretary for Environment, Safety and Health, it will be Mr. Shaw's job to oversee DOE's responsibilities under the energy program.

As you are no doubt aware, I, along with bipartisan supporters of more than 20 Senators, drafted the Bunning-Bingaman amendment to the defense authorization bill. The amendment moves the majority of the DOE operation to DOL for prompt claim processing and assures payment of benefits to deserving workers. The DOE has opposed these important reforms. I have worked hard and long with many of my Senate colleagues on this amendment and am hopeful it will stay in the conference.

This is a big job and I expect Mr. Shaw will be receptive to suggestion and comments by Members of Congress. I hope that if the Senate confirms Mr. Shaw, he will work hard to make sure that

DOE effectively manages the part of the energy employees program that they retain, such as record retrieval from the DOE facilities. I also hope he can assure a smooth transfer of operations if the program is moved to DOL.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Now, as you can tell, things are getting rather slim up here. So what we are going to do is ask that you make your statements, and they are both made a part of the record right now. So they are part of this transcript. I would ask each of you to summarize them as briefly as you can. I understand they are brief, but maybe make the statements even briefer. Let us start with you, ma'am.

**TESTIMONY OF KAREN ALDERMAN HARBERT, NOMINEE TO BE ASSISTANT SECRETARY FOR THE OFFICE OF POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF ENERGY**

Ms. HARBERT. Yes, thank you, Mr. Chairman and members of the committee.

I am honored to appear today before you as President Bush's nominee for Assistant Secretary for International Affairs and Domestic Policy, and I am grateful for the opportunity to serve President Bush and Secretary Abraham to build upon the excellent relations that DOE currently enjoys with the members of this committee.

The Assistant Secretary is DOE's principal liaison to the Federal Government, other agencies, and other nations to ensure a unified policy voice on our energy sector. We live in a time when national security issues such as energy are no longer either domestic or international in nature. Fortunately, I have excellent road maps to guide my efforts, President Bush's National Energy Policy and National Security Strategy. The experience and knowledge I have gained throughout my career and by serving in senior positions in the Federal Government and the private sector will be a strong foundation to lead the Department's efforts to keep energy issues at the forefront of our national agenda here and abroad.

Currently, as you may know, I serve at the United States Agency for International Development in charge of overseeing our foreign assistance programs in South America and the Caribbean. With an increasing appreciation for development assistance as an invaluable tool in achieving our national security objectives, I have established relationships across the foreign affairs agencies of the executive branch that will afford a ready-made interagency network, should I be confirmed.

In my current position, I viewed USAID's relationships with Congress as a high priority and have expended significant effort to keep members and staff apprised of our programs, our budget needs, our successes, and our shortcomings. If confirmed, I can assure you that I will also endeavor to continue the development of a good working relationship with this committee and be proactive in keeping you abreast of DOE initiatives.

I have lived and worked abroad all of my professional life with an emphasis on Latin America and the Caribbean. My job now is to improve people's lives and improve U.S. relationships with countries in the hemisphere. During my tenure at a private energy

firm, it was my job to liaison with host governments and demonstrate to them the necessity of making their energy sector a priority for improvement. As Assistant Secretary, my job would be to find that common ground where we can improve our energy relationships around the world, make the energy sector a priority, and do it in a way that improves people's lives, protects our national assets, and protects the environment for generations to come.

My experience with countries in this hemisphere is both broad and deep. As both the chairman and the ranking member know, our energy relationships within this hemisphere are growing in importance. In the private sector, I have also worked on energy issues in Asia, the Middle East, and Africa, and I have been a part of pioneering privatization programs around the world, opening up other sectors to private sector investment. I look forward to returning to these parts of the world, if confirmed as Assistant Secretary.

I have witnessed firsthand the value that DOE offers in commercializing environmentally friendly technologies to help us and other committed countries address global climate change. Should I be confirmed, I want to assure you that our work on global climate change will continue and be an expanding part of our international dialog.

Our government has some of the most experienced professionals in their specific career areas around the world. I currently oversee about 1,000 employees, extremely capable and committed individuals, at USAID. And at DOE I have met the International and Domestic Policy staff, and I would be very privileged to lead that great team. Sound management practice is an important part of an Assistant Secretary's mandate, and you have my assurance that, if confirmed, I will attend to the management needs of the office to allow the talents and contributions of the office to be fully realized.

In conclusion, as you know, we face many great challenges in further expanding our national energy mix. Internationally, we see countries such as China and India vastly increasing their energy demands, and at home we must protect and modernize our energy infrastructure and promote the use of technology to ensure a constant, fairly priced supply of environmentally friendly energy.

Mr. Chairman, it is a rare occurrence when an opportunity presents itself that allows you to bring forth all of your experience and knowledge for one job. I thank the President and the Secretary for this opportunity and I thank the members of this committee for considering my nomination.

This concludes my statement and I would be happy to address any questions the committee may have. Thank you.

[The prepared statement of Ms. Harbert follows:]

PREPARED STATEMENT OF KAREN ALDERMAN HARBERT, NOMINEE TO BE ASSISTANT SECRETARY FOR THE OFFICE OF POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF ENERGY

Chairman Domenici, Senator Bingaman and members of the Committee, I am honored to appear before you today as President Bush's nominee for Assistant Secretary for International Affairs and Domestic Policy. I am grateful for the opportunity to serve President Bush and Secretary Abraham and to build upon the excellent relations that the Department of Energy (DOE) enjoys with the members of this Committee.

First, Mr. Chairman, please allow me to introduce two important people here with me today. My mother Josephine Hailey here from Senator Alexander's home state

who raised me to put integrity first, and my husband Michael Mitchell, my most valued and cherished partner in life.

The Assistant Secretary for International Affairs and Domestic Policy is DOE's principal liaison to other nations and to other Federal agencies to ensure a unified voice for our energy policy. We live in a time when national security issues such as energy are no longer either domestic or international in nature. On both the domestic and international components of the office's portfolio, I have excellent road maps to guide my efforts, President Bush's National Energy Policy and the National Security Strategy. The experience and knowledge I have gained throughout my career and by serving in senior positions in the Federal government and in the private sector will be a strong foundation to lead the Department's efforts to keep energy issues at the forefront of our national agenda here and abroad.

Currently, I serve at the U.S. Agency for International Development, charged with overseeing our foreign assistance programs in South American and the Caribbean. With increasing appreciation for development assistance as an invaluable tool in achieving our national security objectives, I have established relationships across the foreign affairs agencies of the executive branch that will afford a ready made interagency network should I be confirmed. In my current position, I viewed USAID's relationships with Congress as a high priority and have expended significant effort to keep members and staff apprised of our programs, our budget needs, our successes and our shortcomings. If confirmed, I can assure you that I will also endeavor to continue the development of a good working relationship with this Committee and be proactive in keeping you abreast of DOE initiatives.

I have lived and worked in the international arena all of my professional life, with a particular emphasis on Latin American and the Caribbean. I was born in Argentina to American parents during a time when the U.S. and Argentina did not see eye-to-eye on many issues, which ultimately didn't serve either's interests well. My job now is to improve people's lives and improve U.S. relationships with the countries in this Hemisphere. During my tenure at a private energy firm, it was my job to liaison with host governments and demonstrate to them the necessity of making their energy sector a priority for improvement. As Assistant Secretary my job would be to find that common ground where we can improve our energy relationships around the world, make the energy sector a priority and do it in a way that improves people's lives and protects the environment for generations to come.

My experience with countries in this Hemisphere is both broad and deep and as both the Chairman and Ranking Member know our energy relationships with our hemispheric partners are growing in importance. In the private sector I also worked on energy issues in Asia, the Middle East and Africa. I have been part of pioneering energy privatization programs working with governments to open up to private investment. I look forward to returning to these parts of the world to solidify and expand U.S. interests.

In the private sector, I witnessed first hand the value DOE labs offer in commercializing environmentally friendly technology to help us and other committed countries address global climate change. Should I be confirmed, our work on Global Climate Change will continue and be an expanding part of our international dialogue.

Our government has some of the most experienced professionals in their specific career areas in the world. I currently oversee almost 1,000 extremely capable and committed individuals at USAID. DOE is no exception. I have met the International and Domestic Policy Staff and would be privileged to lead that great team. Sound management practice is an important part of the Assistant Secretary's mandate. You have my assurance that if confirmed, I will attend to the management needs of the office to allow the talents and contributions of the office to be fully realized.

We face many great challenges in further expanding our national energy mix. Internationally, we see countries such as China and India vastly increasing their energy demands. At home, we must protect and modernize our energy infrastructure and promote the use of technology to ensure a constant, fairly-priced supply of energy.

Mr. Chairman, it is a rare occurrence when an opportunity presents itself that allows you to bring forth all of your experience and knowledge for one job. I thank the President and the Secretary for this opportunity and I thank the members of the Committee for considering my nomination. This concludes my statement and I would be happy to address any questions the Committee may have. Thank you.

The CHAIRMAN. Thank you.  
Mr. Shaw.

**TESTIMONY OF JOHN SPITALERI SHAW, NOMINEE TO BE ASSISTANT SECRETARY FOR THE OFFICE OF ENVIRONMENT, SAFETY AND HEALTH, DEPARTMENT OF ENERGY**

Mr. SHAW. Mr. Chairman and members of the committee, it is my honor and privilege to appear before you today as President Bush's nominee to serve as the Assistant Secretary for Environment, Safety and Health.

Mr. Chairman, I can think of no other position in government that offers the challenges and potential rewards as that of Assistant Secretary for Environment, Safety and Health. Should I be confirmed, I will seek to provide leadership and help the men and women in EH continue to meet their goal of assuring the health and safety of DOE employees and the protection of the environment in communities near DOE facilities.

I appreciate your consideration of my nomination and I very much look forward to working with you and members of the committee. Thank you for the opportunity to appear before you today, and I look forward to answering your questions. Thank you, Mr. Chairman.

[The prepared statement of Mr. Shaw follows:]

**PREPARED STATEMENT OF JOHN SPITALERI SHAW, NOMINEE TO BE ASSISTANT SECRETARY FOR THE OFFICE OF ENVIRONMENT, SAFETY AND HEALTH, DEPARTMENT OF ENERGY**

Chairman Domenici, Senator Bingaman, and members of the Committee, it is my honor and privilege to appear before you today as President Bush's nominee to serve as the Assistant Secretary of Energy for Environment, Safety and Health (EH). As you know, on July 22, 2004, I was also appointed Acting Assistant Secretary for Environment, Safety and Health in order to fill a position that had been vacant for several months.

Before being appointed Acting Assistant Secretary, I held two senior positions at the Department of Energy (DOE)—first as Principal Deputy Assistant Secretary for Environment, Safety and Health, and then as the Deputy Chief of Staff and White House Liaison. Prior to joining DOE, I practiced law in the private sector here in Washington, D.C. and also served as Majority Counsel for former Senator Fred Thompson on the Senate Committee on Government Affairs during the committee's 1997 special investigation into alleged illegal and improper campaign finance activity.

As Principal Deputy Assistant Secretary for Environment, Safety and Health, I became familiar with the wide range of critical functions played by the Office. As the Department's Deputy Chief of Staff, where it was my responsibility to coordinate Secretarial initiatives with the various program offices, I again saw firsthand how EH serves the DOE program offices throughout the Department. In short, it became clear that it is the Office of Environment, Safety and Health that the DOE community comes to for the help they need not only to do their jobs safely, but to do them well.

Secretary Abraham has made a personal commitment that the safety of our workers, respect for the environment, and the protection of the public health are paramount in all that we do. The Secretary looks to EH to help provide the leadership and tools needed to keep this commitment. The Department today has an excellent safety record—for example, over the past six years the numbers of workdays lost because of safety concerns has been cut in half and is now less than half that of private industry.

While that is a record to be proud of, our data tells us we need to do better. Our data tells us that we have to improve our performance in two areas in particular—electrical safety and the safety performance of subcontractors who come on to our sites for brief periods. As Assistant Secretary, one of my top priorities would be to improve the Department's performance in these areas.

In the short time that I have served as the Acting Assistant Secretary, I have become familiar with the wide range of responsibilities this office entails—from the Office of Facility Safety to Office of Health, the Office of Corporate Performance Assessment, the Office of Price Anderson Enforcement, and the Office of Environment.

I know that many of the activities of these offices are of great importance to the members of the Committee and I pledge to work closely with this Committee and other Members of Congress on each of these areas of interest.

An example of the breadth of EH activities is the Office of Environment. The Office conducts independent reviews of Environmental Impact Statements prepared by DOE Program offices to ensure they are technically adequate, legally sufficient, and compliant with all requirements; they ensure radiation protection of the public and environment through policies and guidance; and they promote the adoption of sound pollution prevention practices through the use of environmental management systems. They are providing DOE-wide leadership in helping meet the goals of Executive Order 13148, "Greening the Government through Leadership in Environmental Management" by having environmental management systems in place at all DOE sites by December 31, 2005.

I know that one of the issues of particular concern to this Committee is implementation of Subtitle D of the Energy Employees Occupations Illness Compensation Program Act and the Worker Safety and Health rule and I look forward to discussing these issues with the Committee members.

Mr. Chairman, I can think of no other position in government that offers the challenges and potential rewards as that of Assistant Secretary for Environment, Safety and Health. Should I be confirmed, I will seek to provide leadership to help the men and women in EH continue to meet their goal of assuring the health and safety of DOE employees, and the protection of the environment and communities near DOE facilities.

I appreciate your consideration of my nomination, and I very much look forward to working with you and members of the Committee. Thank you for the opportunity to appear before you today, and I look forward to answering your questions.

The CHAIRMAN. Thank you very much, Mr. Shaw.

Senator Bunning, do you have any questions?

Senator BUNNING. I have got lots of questions, but I do not know if I should submit them all. I am going to ask some of Mr. Shaw because it is very important.

The CHAIRMAN. Please do. You are in charge now, Senator Bunning.

Senator BUNNING. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. We will call a meeting to confirm you as soon as possible.

Mr. SHAW. Thank you, Mr. Chairman.

Ms. HERBERT. Thank you, Mr. Chairman.

The CHAIRMAN. You are welcome.

Senator BUNNING [presiding]. Mr. Shaw, as you know, the Department of Energy has many issues with Paducah from cleanup to workers' compensation. I helped set up a Kentucky DOE office so that headquarters could more efficiently deal with that in Lexington, Kentucky.

Given the complexities at the Paducah plant—have you ever been to Paducah?

Mr. SHAW. Not yet, Senator. I look forward to coming down there shortly.

Senator BUNNING. The sooner, the better.

Mr. SHAW. Yes, sir.

Senator BUNNING. Mr. Shaw, DOE continues to fight against the bipartisan workers' compensation amendment. DOE has squandered the past 4 years and \$90 million of taxpayers' money on this program. The result is still zero Kentucky workers and only 31 claimants from other States have been paid. What are you going to do to assure that ill workers are taken care of not only in Paducah but around the country?

Mr. SHAW. Thank you, Senator. I know that you and other members of the committee have worked very hard on this issue and that

you care very deeply about DOE workers. I know that you have been very frustrated with the Department's performance in this area. I also know that you know Secretary Abraham and his staff and myself are working very hard to improve this performance, and his commitment to this program and former DOE workers is without question.

Having said that—and I know this is your amendment, sir—Congress will soon make a decision on whether to move the overall responsibility for this program over to the Department of Labor, a change a number of members of this committee, including yourself, support. Regardless of what that decision is—and I know you know the administration's position is that it should stay with DOE—it will be critical during this time that DOE maintain a robust and healthy records retrieval capability.

That has been my focus since assuming responsibility as acting Assistant Secretary. Based on your statement earlier, I want to pledge to you that should the program move to the Department of Labor, you will have not only my personal but my entire office's full cooperation. The bottom line is my office needs to work harder and we need to work together to get the workers paid the compensation that they deserve, sir.

Senator BUNNING. Mr. Shaw, DOE has still not identified a payor for as many as half of all the claimants who may be ill from their DOE work. It is now letting a new contract for all of the claims processing activities, and after 4 years, only 6 percent of the 25,000 claims have made it through the physician panels. Given these facts, how will DOE be able to finish processing all 25,000 claims within its projected 2-year timeframe?

Mr. SHAW. Well, Senator, to answer your question in two parts. First, the current contract that exists is under review by procurement because my understanding is that there is an awards process going on right now and no final decision has been made regarding a contractor to carry out this important part of the mission.

As far as the Department of Energy's ability to continue to ramp up production and continue to try to process claims through the physicians' panels, I do not want to sit here and give you an exact date because I think you have heard exact dates from my office before. What I would like to be able to do is go back and look at the numbers that we have and give those to your office and staff so I have a chance to review them more thoroughly in order to give you a better answer.

Senator BUNNING. At the last meeting we had on this specific issue, Mr. Card gave us a 2-year. That is why I brought it back.

Mr. SHAW. I understand, sir. I think that it is my responsibility, as the acting Assistant Secretary and the nominee for this post, to make sure that I review these numbers thoroughly and give them to you and assess what I believe they are.

[The information follows:]

DOE is currently processing approximately 150 cases per week through the physician panels. If that rate were to continue, we could assume that about 2,500 cases would complete physician panel review in approximately a 17 week period.

Senator BUNNING. Mr. Shaw, prior to your being nominated, the Department of Energy indicated that the early lung screening program that I fought to establish at the gaseous diffusion plant was

a bad idea and should be stopped. Do you share this opinion about this valuable program? If not, what are your plans for the future of the program?

Mr. SHAW. You are referring to the CT scan, Senator?

Senator BUNNING. Yes.

Mr. SHAW. I met with Dr. Markowitz recently and he brought to my attention this program that he works with at several locations. Quite frankly, Dr. Markowitz and I had a very good conversation. We discussed some of the science and technology behind this, what I consider an important avenue for workers to have available to them, should they choose to look into obtaining these scans. I look forward to working with you and your office to see if this is something that should be provided in a more efficient fashion to workers. At this point in time, I know it is not widely available, but we are looking at ways to proceed and see whether or not it is the right thing to continue to do.

Senator BUNNING. In other words, you have not made an opinion on this program at all?

Mr. SHAW. No, sir.

Senator BUNNING. It has been in effect for quite a while.

Mr. SHAW. Yes. I know it has been in effect for quite a while, and right now my understanding is that my predecessor adopted an opinion that was against this. I certainly am willing to meet with all the parties involved and see if this is appropriate.

Senator BUNNING. The Department of Energy has asserted that its path forward will provide a payor for every claimant. Yet, its proposal only indicates the Department will look for a payor but does not guarantee a payor for every claimant. What steps has the Department taken to ensure that all claims approved by the Department of Energy's physician panels for illnesses suffered at the Paducah plant will be paid, including those who also have employment with USEC and those that could affect the Kentucky special compensation fund?

Mr. SHAW. My immediate answer to you, Senator, is that the Department of Energy will continue to work hard to seek willing payors. We are not in a position, unfortunately, to order these people to pay. We do our best to seek out willing payors and have them pay the claims that these people deserve.

In regards to USEC and the special cadre of workers that you mention, I would like to be able to provide those answers for you in writing. I am aware of it, but I would prefer, sir, if it is OK, to submit those to your staff.

[The information follows:]

In Kentucky, specifically at the Paducah Site, DOE has identified Bechtel Jacobs as the "willing payer" for Paducah Plant employees of Union Carbide, Martin Marietta Energy Systems or Lockheed Martin Energy Systems who had exposures to toxic substances prior to July 1998. Based on the applications to date, we estimate that many of these workers will have a willing payer for occupational exposures for which DOE will issue "do not contest" orders, although in some instances this will require additional coordination with other state agencies. DOE continues to work with the current commissioner to identify means for allowing the Kentucky State fund to waive their defenses. DOE also continues to investigate mechanisms to pay claims without "willing payers."

Senator BUNNING. Okay, you can do that.

Mr. SHAW. Yes, sir.

Senator BUNNING. This will be the last question. The DOE just sent a request for proposal, RFP, out for a new contractor to replace SEA, the current contractor that the Government Accountability Office, GAO, the General Services Administration, GSA, Inspector General, and others have found significant problems with. How long will it take DOE to transition from its current contractor to a new one? How can we be sure that the DOE will select a qualified contractor? Have any claimant experts, workers comp experts, or State workers comp agencies endorsed the DOE's path forward, the DOE's request for proposal, RFP, or the small list of companies to whom it was sent?

Mr. SHAW. First, Senator, you raise and the GSA Inspector General and the GAO have raised some very serious issues. Please be assured that the Secretary takes this matter very seriously, and at this time we are responding accordingly. The Secretary appointed an internal review group to research the history of DOE's relationship with several of the contractors that are applying for this, and right now we are going to have responses to provide to the GSA by September 24, in a few days.

One of the things I would also like to do, Senator, is take again your question and provide you more thorough answers on paper, sir.

[The information follows:]

During our market research, DOE did not hear from or learn of companies that were interested in participating in this procurement that would not be able to participate in a GSA schedule procurement, nor had DOE received inquiries from any such companies.

Because of uncertainties concerning the Subtitle D program, the Department terminated the procurement in question and initiated a short term bridge contract with SEA. DOE is working closely with the Department of Labor to best meet the programs's needs should the program be transferred to the Department of Labor.

Senator BUNNING. OK. You realize that the chairman of the Finance Committee is also doing a very intensive study about this same program?

Mr. SHAW. Yes, sir. I am aware of Senator Grassley's concerns.

Senator BUNNING. That is all the questions I have. I want to thank you both for being here to testify.

This meeting is adjourned.

[Whereupon, at 10:24 a.m., the hearing was adjourned.]



APPENDIX  
RESPONSES TO ADDITIONAL QUESTIONS

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DEPARTMENT OF ENERGY,  
CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS,  
*Washington, DC, October 8, 2004.*

Hon. PETE V. DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: On September 21, 2004, John Spitaleri Shaw, Acting Assistant Secretary for the Office of Environment, Safety and Health, testified as President Bush's nominee to serve as the Assistant Secretary for the Office of Environment, Safety and Health.

Enclosed are the answers to questions that were submitted by Members of the Committee for the hearing record.

If we can be of further assistance, please have our staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

RICK A. DEARBORN,  
*Assistant Secretary.*

[Enclosures.]

QUESTION FROM SENATOR DOMENICI

*Question 1.* Please outline the Office of Environment Safety and Health's historical, current, and future plans for the Marshall Islands Program.

*Answer. Medical Program.* On March 1, 1954, 253 people on Rongelap and Utrik Atolls were exposed to radiation resulting from fallout during the U.S. nuclear test Castle Bravo. Medical care was immediately assumed by the Atomic Energy Commission and has continued under successor agencies—the Energy Research and Development Agency and DOE. DOE is required to pay for a program of "adequate medical care and treatment for any person who has a continuing need for the care and treatment of any radiation illness or illness directly related to Castle Bravo." Public Law 108-188, The Compact of Free Association Amendments Act of 2003, continues this commitment into the future.

The original medical program provided annual medical screening examinations, with an emphasis on detection and treatment of radiation related illness. Treatment for other diseases and conditions found upon examination was and currently is provided by the National Health Care System in the Marshall Islands. During the program's early years, services were delivered aboard ship. In 1997, the program was changed to a land based program with doctors available to see enrolled persons in Majuro City and those living on Ebeye Island near Kwajalein Island. Quarterly visits to several remote islands filled out the land based program.

During Fiscal Year 2005 execution, DOE will make funds available to provide medical screening examinations and treatment for the affected population.

*Environmental Program.* The DOE environmental monitoring program was mandated in Public Laws 96-205 and 99-239 (Section 177). As originally authorized, it was to include periodic environmental characterization of Bikini, Enewetak, Rongelap, and Utrik Atolls to support decisions about resettlement. After more than 20 years of characterization activities, the program now answers specific scientific questions related to resettlement decision making. The implementing agreement for Section 177 included whole body counting and access to DOE scientists for consultation and special studies. The historical agricultural and environmental studies performed on Bikini Island will be completed in FY 2005.

The current program supports environmental monitoring technical support for resettling and settled populations on three of the four Atolls. Most activity is directed

to Enewetak Island and Rongelap Island. This year the environmental contractor, Lawrence Livermore National Laboratory, was directed to complete the backlog of studies and technical summaries. DOE has exceeded the requirements of the Section 177 implementing agreement by building and training local technicians to operate three whole body counters in the Marshall Islands. These devices are the standard for determining a person's actual intake of radioactive materials from locally grown foods. Any Marshallese citizen with a concern can arrange to have the procedure. Results to date show insignificant exposures.

During Fiscal Year 2005 execution, DOE will make funds available to support a core program of whole body counting and reporting of results to the public, active resettlement environmental monitoring for Rongelap, and special studies of new food crops.

#### QUESTIONS FROM SENATOR BINGAMAN

##### SANDIA NEW MEXICO MEDICAL SCREENING

*Question 1a.* The former worker medical screening program at Los Alamos has been conducted by occupational physicians from Johns Hopkins and University of New Mexico, and is scheduled to be closed down this year. DOE has not initiated a former worker medical screening program at Sandia Labs in New Mexico.

Has the DOE's model used over the past 7 years been effective in serving the needs of the former workers across the DOE complex?

Answer. It is my understanding that these pilot projects, which have served former workers from 11 DOE sites, have been very effective in identifying possible exposures, identifying the appropriate medical screening tests for workers with these exposures, conducting outreach, and in offering medical screening in convenient locations.

*Question 1b.* Has this model been effective in serving the needs of former workers at Los Alamos?

Answer. Yes, it is my understanding that this model has been very effective in serving the needs of former workers at Los Alamos.

*Question 1c.* Would you support initiating a stand-alone medical screening project at Sandia Labs, similar to the model used at Los Alamos over the past five years?

Answer. I am committed to the availability of appropriate medical screening for former DOE employees at all sites, including Sandia. Before we make a decision on how to best proceed with any change in the existing program, I believe we need to undertake a thorough review of the Former Worker Medical Screening Program in order to evaluate the effectiveness of the program, the results achieved and the operational costs associated with the program. One of my first actions as Acting Assistant Secretary was to direct that plans to award a contract for a national screening program be put on immediate hold, until a thorough analysis of existing projects and the needs of DOE sites currently without screening programs can be concluded. If confirmed, I would look forward to working with you and your staff on this important matter.

##### NIOSH-DOE MEMORANDUM OF AGREEMENT ON HEALTH STUDIES

*Question 2a.* DOE's Memorandum of Agreement with HHS with respect to Health Studies expires at the end of September 2004. This MOA covers health studies performed by ATSDR, CEH and NIOSH.

A key area of concern is the impact of a new MOA on health studies on atomic workers by NIOSH's Health Energy Related Branch (HERB). HERB performs epidemiological studies with funds transferred under this MOA. Congress had contemplated assigning this research function to HHS as part of the legislation in the late 1980s and early 1990s, but a compromise was struck with the Secretary, Admiral James Watkins, to have HHS perform this research through an interagency Memorandum of Agreement. For NIOSH to credibly and effectively perform health related research, it must have independence from DOE's involvement in the selection of research areas, the types of studies, the methods of peer review, the establishment of committees, and the types of research proposals (extra mural and intramural). We are concerned that NIOSH's independence could be eroded by DOE efforts to micromanage NIOSH and its energy related research agenda.

What is your schedule for renegotiating this MOA?

Answer. The MOU has been renegotiated by the staffs of HHS and DOE and is expected to be signed shortly by the Secretary of Energy and the Secretary of HHS.

*Question 2b.* As a party to the MOA, will you work to assure that NIOSH retains the independence which it deems necessary to credibly and effectively carry out its research, including the selection of research topics, the methods of peer review, the

establishment of review committees, and the use of both intramural and extramural researchers.

Answer. Yes, NIOSH independence is one of the factors important to the success of this program. The MOU was intended to provide independent scientific support as a means of restoring congressional and public trust in the results of worker health studies and public health activities at DOE facilities and in host communities. HHS and DOE agree that the program has been successful. The new MOU, as drafted, will continue NIOSH's independence in the conduct of the studies, while responsibility for selecting and prioritizing the studies will be shared by the two agencies.

*Question 2c.* What is the DOE's FY 05 budget for worker health studies by NIOSH? For ATSDR studies? For CEH studies?

Answer. The FY 2005 budget request for these activities is \$13.5 million, which assumes \$5.0 million for NIOSH, \$5.0 million for ATSDR, and \$3.5 million for NCEH.

*Question 2d.* Are any new studies of DOE sites by ATSDR required by CERCLA or otherwise necessary at this point in time?

Answer. It is my understanding that no new studies of DOE sites by ATSDR are required by CERCLA at this time.

#### LOS ALAMOS HISTORICAL DOCUMENT RETRIEVAL AND ASSESSMENT, LAHDRA, PROJECT

*Question 3a.* Under the DOE-CDC Memorandum of Understanding referenced in question 2, the Department of Energy funds the CDC to review historical documents at the Los Alamos National Laboratory to assess the radiation dosage that may have been released to the surrounding public since the laboratory began operations. This project is a continuation of other successful projects carried out at Hanford and Oak Ridge's Y-12 facility. There have been some concerns regarding the ability of the CDC to access the LANL documents due to security classification and funding from the DOE to the CDC to carry forth this project.

Does the Department support this project?

Answer. Yes, this project is a very high priority for both DOE and HHS.

*Question 3b.* What is the status of this project?

Answer. I understand that NCEH will award the contract in the near future.

*Question 3c.* Has the issue of document access by the CDC and its contractors been resolved?

Answer. Yes, an effective special security procedure to deal with access issues has been developed with NNSA support.

*Question 3d.* What is the funding for this project in FY2005?

Answer. FY 2004 funding is \$1.0 million and FY 2005 funding is expected to be \$1.8 million.

#### RADIATION EFFECTS RESEARCH FOUNDATION

*Question 4a.* The Department has historically funded the Radiation Effects Research Foundation to study the long-term effects of atomic bomb survivors in Japan. What is the FY2004 funding level?

Answer. The FY 2004 funding level is \$13.5 million.

*Question 4b.* What is the FY2005 funding level, and if it has been reduced from FY2004 why?

Answer. The DOE FY 2005 budget request for all Health programs, which includes the RERF program, is \$45 million. During Fiscal Year 2005 execution, DOE will make funds available to support RERF activities.

#### MARSHALL ISLANDS PROGRAM

*Question 5a.* The Office of Environment, Safety and Health is responsible for providing mandated medical care for the residents of Rongelap and Utrik who were exposed to acute radiation from the "Bravo" thermonuclear test in 1954, and for monitoring radiological conditions in all of the Northern Marshall Islands in support of cleanup and resettlement activities. DOE's budget for these activities for FY 2002, FY 2003, and FY 2004 was \$6.3 million, but there is no longer a line item in FY 2005.

What is DOE's FY 2005 budget request for the Marshall Islands Program?

Answer. The DOE FY 2005 budget request for all Health programs, which includes the Marshall Islands program, was \$45 million.

*Question 5b.* Please explain the new approach and assure the Committee that DOE will continue to help meet our nation's unique responsibility to those individuals and communities that were so deeply affected by our weapons testing program.

Answer. DOE will provide appropriate medical screening examinations and treatment of cancer for the remaining 109 people who were present on Rongelap and Utrik Atolls during the 1954 Castle Bravo test. In addition to this group, medical examinations and care are provided to about 90 others. The current program supports environmental monitoring technical support for resettling and settled populations on three of the four Atolls. Most activity is directed to Enewetak Island and Rongelap Island. This year the environmental contractor, Lawrence Livermore National Laboratory, was directed to complete the backlog of studies and technical summaries. DOE has exceeded the requirements of the Section 177 implementing agreement by building and training local technicians to operate three whole body counters in the Marshall Islands. These devices are the standard for determining a person's actual intake of radioactive materials from locally grown foods. Any citizen of the Marshall Islands with a concern can arrange to have the procedure. Results to date show insignificant exposures.

QUESTION FROM SENATOR CRAIG

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

*Question 1.* Mr. Shaw, I am certain that the members of this Committee will explore with you their views and concerns regarding the Energy Employees Occupational Illness Compensation Program Act. I have met with a number of Idahoans—retired workers from the INEEL and Argonne West—who have filed claims under this program.

I believe the DOE has made many efforts under the leadership of Secretary Abraham and Deputy Secretary McSarrow to get this claims processing system on track somehow. I understand that some Senators feel that the Labor Department will do a better job. It is their right to hold that view.

But when I have met with my constituents, the thing they want most of all is just to get access to the information they need, in a timely fashion, and to keep the claims process moving. Although I do worry that by “switching horses mid stream” from Energy to Labor—we might slow the system down—I support any solution that will move these people through this program with expediency and fairness.

Whatever ends up happening with the transfer of this program, do you commit to working with all of our offices when we have individuals workers that cannot get access to their exposure records—or the history of what they were exposed to? If workers from Idaho feel they are being stonewalled by DOE, or denied access to information about their work history, will you work with me to resolve it?

Answer. I want to assure you and the Members of Congress, along with DOE workers and their families, that no matter how the issue of overall management of the program is resolved, DOE will aim to maintain a healthy and robust program to obtain the worker health and exposure records needed to address EEOICPA applications. Should Congress transfer responsibility for administering certain EEOICPA responsibilities to the Department of Labor, we will work closely with them for a seamless transition and effective working relationship. If any worker feels stonewalled or denied access to information about their work history, my office will work with you to resolve their concerns.

QUESTION FROM SENATOR KENNEDY

*Question 1.* The Office of Environment, Safety and Health has been funding beryllium screening for former employees of DOE's beryllium vendors in Massachusetts through the former worker medical screening program. Boston University was assigned the responsibility to carry out this medical screening program for former employees of Wyman Gordon and Norton (now St. Gobain) by DOE with a \$250,000 cooperative agreement. The program has been very effective and additional beryllium-exposed workers have been identified in eastern Massachusetts.

Will you ensure that additional funding is provided to complete this beryllium screening program?

Answer. It is my understanding that this program has been very effective in identifying beryllium disease in former employees of beryllium vendors. Should I be confirmed we will complete medical screening of former Norton employees and initiate medical screening for beryllium-exposed workers in eastern Massachusetts consistent with funding availability.

QUESTIONS FROM SENATOR CANTWELL

*Question 1.* Mr. Shaw, I know you are aware of the screening program for former Hanford workers exposed to on-the-job hazards, and I appreciate your willingness

to meet with my office on this subject. While the larger DOE Energy Employees Compensation Program has been mired in controversy and mismanagement, at least the Hanford screening program has been successful. It has led to the early detection of cancers, provided ongoing screening for long-latency illnesses and resulted in more than 360 successful compensation claims through the State of Washington. Frankly, it is one of the few success stories in our effort to take care of those workers the federal government inadvertently put in harms way.

That is why I'm troubled by the notion that DOE now wants to reinvent the wheel and dismantle programs that are actually working, in favor of a centralized program that could very well offer fewer services and less care. Essentially, that's what DOE proposed earlier this year before you arrived—with existing programs originally scheduled to end on October 1, or in two weeks. While that deadline in some cases was extended until next spring, workers are still being left with nowhere to go. Since June, the program administered by the University of Washington has had to turn away more than 500 former Hanford workers who want to be examined. These programs—and the workers they serve—have been left in limbo.

Mr. Shaw, will you commit to extending the Hanford former worker program as soon as possible, so these workers on waiting lists can get the medical screening, follow-up care and assistance they so richly deserve?

Answer. Recognizing the concerns expressed by you and other Members of the House and Senate, one of my first actions as Acting Assistant Secretary was to direct that plans to award a cooperative agreement for a national screening program be put on immediate hold until a thorough analysis of existing projects and the needs of DOE sites currently without screening programs could be conducted. If I am confirmed as Assistant Secretary, I commit to working with Hanford stakeholders in conducting that analysis. I further directed that all existing programs, including the former worker medical screening program at Hanford, continue offering full services through next Spring. At that time, we will have the results from our analysis and a better understanding of the financial resources required and availability of funds for these important programs.

*Question 2.* I am aware that the extension through March of next year was issued last month. But even if DOE were to approve a change in "scope of work," to make it possible for more workers to get exams in the next few months, it is my understanding that there would not be enough time to provide the follow-up care and assistance for those workers. And even if the program were able to ramp up from a stand-still to granting the maximum number of exams per month, that would still leave in limbo more than half of the more than 500 workers now on the medical exam waiting list. And that's to say nothing of the more than 3,000 who are at an earlier stage in the process, who have been identified and have an interest in taking advantage of the screening.

We believe that, to get through this backlog, the program needs to remain in place for three years—and that's even before another 30,000 workers have been located. But in the very least, can you commit to extending this program through all of fiscal year 2005? I see that as the only way that this program can continue to function in a way that will not result in workers getting the rug pulled out from underneath them.

Answer. As I mentioned previously, I have directed a complete and thorough analysis of the Former Worker medical screening program. When we have the results from that analysis, with a better understanding of financial resources required to best meet the needs of former workers at Hanford and all DOE sites, we will be able to make such a determination.

*Question 3.* Mr. Shaw, I know that you are also aware of the concerns that are being raised about the health and safety of current workers at the Hanford tank farms. Earlier this summer, the National Institute for Occupational Safety and Health (NIOSH) published a Health Hazard Evaluation for the tank farms, and "determined a potential for significant occupational exposures and health effects from vapors released from the hazardous waste storage tanks" at Hanford.

Obviously, this is of grave concern to all of us concerned about Hanford. One of the NIOSH recommendations, in particular, grabbed our attention. Specifically, NIOSH recommended medical monitoring for current tank farm workers who want it. Already, current worker monitoring programs exist at sites in Kentucky, Tennessee and Ohio. And in reviewing the legislation that created the existing monitoring program, it seems that DOE already has the statutory authority to put one in place at Hanford. A few questions on this topic:

- Do you agree with NIOSH that establishing an independent medical monitoring program for current Hanford tank farm workers would be beneficial?

- Do you believe this could be accomplished by expanding DOE's existing cooperative agreement with the University of Washington, which has run the screening program for former production workers at Hanford?
- Would you commit to working with us to put this program in place?

Answer. I know that this is an important issue your office has been following closely over the past several months. I have reviewed the NIOSH report and concur with their recommendation that tank farm workers "concerned about possible work-related health problems should be fully evaluated by a physician, preferably one familiar with occupational conditions . . . and that individuals with definite or possible occupational health problems should be protected from exposures that are presumed to cause or worsen disease."

I understand that AdvanceMed Hanford, the current health care provider at Hanford, with input from tank farm workers, has developed a comprehensive medical surveillance program for tank farm workers, especially those workers with potential exposures to the head space gases (waste intrusive workers). A second medical screening program is available for workers potentially exposed to mercury. There is also a separate program designed for workers in the tank farm area (such as maintenance and custodial workers) but who are not identified as hazardous waste workers.

If confirmed as Assistant Secretary, I will work closely with the program management at DOE headquarters and the Office of River Protection to evaluate the effectiveness of these programs and determine if they are adequate to protect the tank farm workers. My office will work with you and the Members of Congress, Environmental Management, site management, and the affected workers to ensure that the occupational medical needs of the tank farm workers are met.

*Question 4.* I want to return to DOE's proposal, issued earlier this year, to consolidate its existing medical screening programs into a single national vendor. The DOE proposal would consolidate sites that have not had screening programs (but certainly need them), with those—such as Hanford—that have had 5 years of program activities.

I am concerned that this one-size-fits-all screening program, as described on the DOE's web site, appears to eliminate some of the most desirable elements contained in the existing medical screening programs—substantial local presence, independent physicians, active involvement of workers in education and outreach, and a credible way to tailor medical examinations to the specific hazards at a given site. It appears that DOE's national vendor proposal was developed without an external review, and without the input of affected stakeholders.

I have already asked that you take action to ensure that the successful Hanford program be continued this year. However, I also recognize the fact that DOE may want to extend screening programs to other sites that have not yet benefited from them.

In charting a "path forward" for this program, would you agree to set up a consultative process to solicit the views of the affected workers, occupational medical professionals, the existing screening programs and NIOSH?

Answer. Absolutely. As I mentioned earlier, one of my first directives as Acting Assistant Secretary was to postpone plans to award a contract to establish a national program until such an analysis can be conducted. If confirmed as Assistant Secretary, I will certainly consult with affected workers, occupational medical professionals, the existing screening programs and NIOSH in conducting that analysis.

*Question 5.* Mr. Shaw, as I know you are aware/as I've previously mentioned, there has been growing concern about the safety of today's Hanford cleanup workers. I have already mentioned the report issued this July by NIOSH, which found that "vapor constituents may be present at sufficiently high concentrations to pose a health risk to workers." Partially as a result of that NIOSH report, more concerns have been raised about potential hazards posed to tank farm workers, resulting from the presence of a dangerous form of mercury recently discovered at Savannah River. And meanwhile, the Chairman of the Defense Nuclear Facility Safety Board earlier this month weighed in, questioning the effectiveness of DOE's Integrated Safety Management System for Hanford. As I understand it, the office you would head has oversight of these Integrated Safety Management Systems.

Mr. Shaw, these are a few of the reasons I've felt like the DOE Environment, Health and Safety Office has been missing in action over the past few years. If confirmed, what are you going to do differently in your approach to safety of Hanford cleanup?

Answer. I understand your frustrations. As you know, it is the mission of the Office of Environment, Safety and Health to provide the corporate leadership, performance goals, assistance, policies, programs and feedback to enable DOE to excel in

mission performance while achieving excellence in safety and environmental stewardship. As you stated, ISM is an integral part of achieving our goals. A major concept of ISM is the integration of safety awareness and good practices into all aspects of work so that work is conducted in such a manner that protects workers. Safety must be embedded in every element of each job—not a stand-alone program or a program that is imposed after the fact.

Under the concept of ISM, safety is the responsibility of line management and managers must be accountable. Oversight of ISM is provided by the Office of Security and Safety Performance Assurance, an independent office that reports directly to the Secretary. If confirmed as Assistant Secretary, it will be my responsibility to provide corporate leadership for ISM. I will take an aggressive approach to assuring full and effective implementation at all DOE sites, including Hanford, by being a leader, a hands-on manager, and a motivator. It will be my intent to work with the Office of Environmental Management and River Protection to augment their technical expertise in the development of a comprehensive worker safety and health program appropriate to the hazards present at the Hanford Tank Farms. We will also bring in any additional technical expertise needed to assure that Line Management and the contractor embrace any such program and implement it in an efficient and cost effective manner.

As Acting Assistant Secretary, my philosophy is to work very closely with line management at headquarters and the field on the implementation of ISM and Quality Assurance programs at DOE sites. EH understands the issues facing the entire complex and brings the unique ability to bridge program lines and share best practices to correct deficiencies. I have worked with line managers and the Deputy Secretary to issue a DOE Policy on environment, safety and health goals that establishes a goal of zero injuries and accidents and will require goals and metrics for improving safety performance. ISM implementation is essential to accomplishing these goals and I am responsible for reporting on our progress to the Secretary and Deputy Secretary. Should I be confirmed I look forward to reporting our progress to Congress as well and being accountable for the overall safety and health program for DOE.

*Question 6a.* In that same report from this July, NIOSH references a previous study it completed in 2000. NIOSH noted in its report this summer that DOE has not yet implemented its recommendations from four years ago. In it, NIOSH found that, even today:

- Complete rosters of current and former DOE cleanup workers do not exist;
- Accurate and complete chemical exposure, work history and medical records data are not available;
- Individual workers cannot consistently be linked to their exposure and medical data, as DOE has failed to standardize data collection; and that
- At the present time, the necessary information is not available to conduct exposure assessments and hazard studies of cleanup workers.

Over the past few months, we have debated how to compensate former energy employees we inadvertently made sick during the Cold War and World War II—and how difficult that is, because of the poor records we kept at the time. I would like to think DOE has learned some lessons since then about worker health and safety, and how to track occupational hazards. Unfortunately, that doesn't seem to be the case.

Have you reviewed the 2000 NIOSH study, which recommends the creation of “rule-based, enforceable, complex-wide monitoring and data collection standards” for workers at DOE cleanup sites?

Answer. I have reviewed the 2000 NIOSH study recommending “rule-based, enforceable, complex-wide monitoring and data collection standards.” If confirmed as Assistant Secretary, I plan a review of activities related to worker safety and health at the Hanford Tank Farms. Working with the Congress and other stakeholders, we will create a meaningful path forward to address this issue.

*Question 6b.* If confirmed, would you commit to developing standards, consistent with NIOSH's recommendations?

Answer. Yes, I believe it is important that appropriate worker safety and health standards are developed and enforced. In the course of developing our Worker Safety and Health rule (10 CFR 851) we will work with OSHA, NIOSH and stakeholders to be sure that the appropriate standards are in place to protect workers from these types of chemical exposures.

## QUESTIONS FROM SENATOR LANDRIEU

*Question 1.* I understand that as part of the reprogramming request to Congress, there was a plan proposed to get the program moving aggressively. I believe that included a ramping-up of claims processed by the contractor and sent to the physician panel at a rate of 200-300 per week, or clearing the backlog of claims by the end of next year. Is the contractor that processes claims currently meeting that 200-300 per week promise and on track to meeting that goal?

Answer. Upon receipt of appropriations transfer funds in June 2004 in the amount of \$23.3 million, DOE authorized the Navy to authorize the claims processing contractor to ramp up its operations to process. Currently, the contractor is processing more than cases per week. If there is continuity of funding into FY2005, we should be able to meet out goal.

*Question 2.* One of the problems raised over the past year is the requirement that there be a "willing payer" in each state. In other words, someone to cut the check. Can you tell me if the DOE contractor that processes claims has anything to do with that problem?

Answer. The responsibility for paying claims or for identifying "willing payers" for claims does not involve the DOE claims processing contractor.

*Question 3.* Another issue that has been raised is the piling up of processed claims now needing a final decision by a physician panel. Can you tell me if the DOE contractor that processes claims has anything to do with that problem?

Answer. Physician Panel activities are not the responsibility of the DOE claims processing contractor.

*Question 4.* Let me close by then asking you what I asked Mr. Card in March. I would be interest in your perspective. Do you believe the contractor that processes EEOICPA claims for DOE has performed its duties as tasked and directed by the Department?

Answer. Yes.

## QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* Has DOE found a willing payer for Alaskan claimants?

- If yes, please identify the willing payer(s) DOE has found. What percentage of Alaskan claims will each willing payer be responsible for?
- If no, has DOE completed its search for willing payers for Alaskan claimants?
- If DOE has not completed its search for a willing payer for Alaskan claimants, please state when DOE believes it will complete its search.
- Please list all entities (including all levels of subcontractors) that DOE has determined are not available as willing payers for Alaskan claimants.

Answer. DOE has identified contractual relationships with the following contractors in the respective time frames that will allow DOE to issue a "do not contest" order. DOE can only issue such an order if the particular worker was employed by the contractor at the time frame specified for the contractor in the chart, and the worker's illness was caused by exposures to toxic substances at DOE facilities during that timeframe. To date, no such cases have arisen. If such cases do arise, DOE will issue appropriate "do not contest orders."

1965-72, 1995 .....	REEC Co .....	Bechtel Nevada (BN)
1965-72, 1995 .....	EG&G Measurements, Inc. ..	Bechtel Nevada (BN)
1995 .....	Raytheon Services Nevada ...	Bechtel Nevada (BN)
1965-72 .....	Holmes & Narver .....	Bechtel Nevada (BN)
1965-72 .....	Fenix & Scisson of Nevada ...	Bechtel Nevada (BN)
1965-72 .....	Wackenhut Services, Inc. ....	Wackenhut Services, Inc.

DOE has not found a legal way to order contractors other than those above to "not contest" workers' compensation claims. Although DOE's search for "willing payers" continues, DOE, at this time, does not expect additional "willing payers" to be identified for Alaska. The following are contractor employers identified on applications for which DOE has *not* identified a legal way to order the companies to "not contest" State workers compensation claims:

*Contractors for whom "do not contest" order can not be issued:*

Beck CRK  
 Universal Services  
 Kiewit Centennial  
 Grasle Electric

S.S. Mullins  
 Chris Berg  
 Piquini Management Corp.  
 Taywood, Berg, Riedel  
 Walsch Co  
 Western Marine  
 Parco  
 AP&H  
 J B International Construction  
 Alaska Plumbing and Heating  
 Alaska State Trooper  
 TVA Muscle Shoals  
 USI  
 Evergreen Helicopters  
 City Electric  
 Scofield Electric  
 ERA Helicopters

*Question 2.* A number of Alaskans have had claims pending with the DOE for an unacceptably long time. Please explain what DOE is doing to expedite the processing of claims for Alaskans.

Answer. DOE has increased the pace of its EEIOCPA Subtitle D case processing operations. As of September 27, 2004, DOE has received 101 cases that involve employment at an Alaska facility. Of these,

- 29 have been completed.
- an additional 28 have been prepared for physician panel review, and are either under panel review or pending assignment to a physician panel.
- 38 are under development.
- 7 are awaiting development.

*Question 3.* Several Alaskans with positive Physician Panel determinations have not received any meaningful assistance from DOE in pursuing their positive determinations with the Alaska Workers Compensation Board. Please provide a narrative explanation of what DOE believes are its responsibilities to assist claimants who have received positive Physician Panel determinations.

Answer. EEOICPA authorizes DOE to assist workers in seeking State workers' compensation for illnesses caused by exposure to toxic substances at DOE facilities. That assistance includes helping applicants retrieve records from DOE sites and providing those records to a panel of physicians appointed by NIOSH. The panels provide determinations as to causation and applicants who receive a positive determination also may be entitled to have a "do not contest" order issued to their DOE contractor employers in the State workers' compensation proceeding. DOE also assists applicants receiving positive physician panel rulings with the State workers' compensation application process. DOE cannot, however, provide legal advice or represent applicants in State proceedings. In addition, the Alaska resource center provides assistance to Subtitle D applicants who have received a positive physician panel determination by providing information on the Alaska workers' compensation system and processes; the workers' compensation forms; and assistance with gathering required medical information.

#### QUESTIONS FROM SENATOR BUNNING

*Question 1.* According to your DOE web site, 'cases at panel' is the number of cases that are currently being reviewed by a Physicians Panel. 2,504 cases are currently 'at panel'. On the same site, DOE says there are 190 physicians reviewing cases. That means that there are more than 13 cases with each and every doctor. At DOE's claimed rate of review—20 working days, or one month per case per doctor—there is more than a year's backlog currently at panels. It has taken 4 years to get the first 1,500 cases through panels, now another 2,500 are languishing at panels. How long will these reviews really take?

Answer. DOE is currently processing approximately 150 cases per week through the physician panels. If that rate were to continue, about 2500 cases would complete physician panel review in approximately a 17 week period.

*Question 2.* According to DOE's web site, as of July, 107 claims had been filed in state workers' compensation. What is DOE doing for the other 424 claimants with positive panel findings? Has DOE contacted these claimants or 'assisted them in filing with the state'? What is DOE doing for claimants without 'willing payers'—in states like Kentucky?

Answer. DOE is contacting applicants with positive determinations who have not yet filed for State workers' compensation. Resource Center staff assists applicants in filing compensation applications, particularly in the States where applicants must initiate the process. DOE contractors are expediting their filings, reviews, and payments of these cases.

In Kentucky, specifically at the Paducah Site, DOE has identified Bechtel Jacobs as the "willing payer" for Paducah Plant employees of Union Carbide, Martin Marietta Energy Systems or Lockheed Martin Energy Systems who had exposures to toxic substances prior to July 1998. Based on the applications to date, we believe many of these workers will have a willing payer for occupational exposures for which DOE will issue "do not contest" orders. DOE continues to work with Kentucky State officials to identify means for allowing the Kentucky State fund to waive its defenses. DOE also continues to investigate mechanisms to pay claims without existing "willing payers."

*Question 3.* The DOE's proposed regulations for worker health and safety at DOE sites did not follow Congressional intent of DOE having similar safety rules as OSHA has. After many Congressional offices, including mine, told the DOE this, it agreed to rewrite the regulations. Do you know when the DOE plans to issue new proposed regulations for worker health and safety at DOE?

Answer. Recognizing the concerns expressed by you and other Members of Congress, as well as the Defense Nuclear Facilities Safety Board and other stakeholders, the Secretary directed that the draft rule be pulled back and rewritten to better reflect these concerns. I believe the revised proposed rule will be issued shortly for public comment. I look forward to hearing your views on this revised version once it is issued.