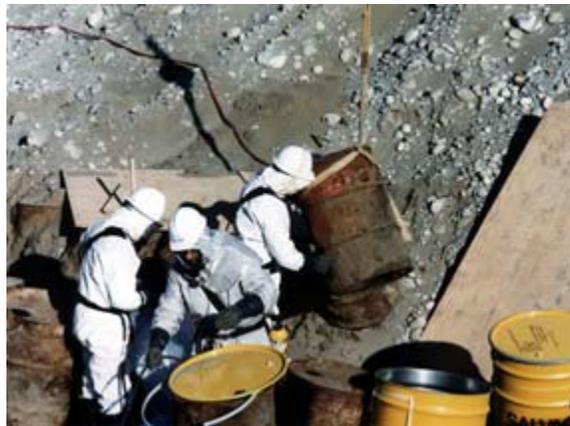


Systemic Injustice: Hanford's Workers' Compensation Program

Review of Conditions and Prescription for Remedies



August 2006

“I’ve seen people sick and lied to. You say public safety? Do you think the public trusts in you guys? Your workers don’t even trust you.”

Hanford worker’s testimony from the Department of Energy’s June 2005 State of the Site meeting.

This report was inspired by the workers who have taken grave risks to help clean up the most contaminated worksite in America: the 586 square mile Hanford Nuclear Site bordering the Columbia River in southeastern Washington. The report seeks to raise and remedy systemic problems that prevent workers from having access to the medical assessments and health care that they need and deserve from Hanford’s workers’ compensation program.

For years, Hanford workers have been told that the problems they face with their workers’ compensation claims are mainly due to failed communications and misunderstandings. This report tells another story.

Many thanks to the workers, medical professionals, lawyers, government employees, and others who shared information about the problems they have encountered and who helped develop recommendations to fix Hanford’s workers’ compensation program.

This report was prepared by Lea Mitchell of the Government Accountability Project’s (GAP) Nuclear Oversight Program with assistance from Nuclear Oversight Program Director Tom Carpenter, GAP policy analyst Richard Miller, Program Assistant Amalia Anderson, and GAP legal interns Jessica Levin and Joel Hansen.

The Government Accountability Project is the nation’s leading whistleblower protection organization. Through litigating whistleblower cases, publicizing concerns and developing legal reforms, GAP’s mission is to protect the public interest by promoting government and corporate accountability. Founded in 1977, GAP is a non-profit, non-partisan advocacy organization with offices in Washington, D.C. and Seattle, Washington. GAP’s Nuclear Oversight Program has represented dozens of Hanford workers in various lawsuits since 1998, provided consultations to many others, and advanced federal regulations to improve worker health and safety, security, and effective clean-up at Department of Energy’s nuclear sites.

**Government Accountability Project
Nuclear Oversight Program**
www.whistleblower.org

TABLE OF CONTENTS

I.	Executive Summary.....	1
II.	Introduction.....	4
	A. Origins of Review	
	B. Workplace Hazards	
	C. Compensation and Medical Screening Programs	
	D. Claims Filed under Hanford’s Workers’ Compensation Program	
III.	Scope and Methodology.....	11
IV.	Origins of Hanford’s Workers’ Compensation Program.....	12
	A. Hanford’s Workers’ Compensation Program was Founded in Secrecy	
	B. Hanford’s Program was Self-insured with Limited Review	
	C. Special Agreements Shield DOE from Oversight and Transparency	
V.	Contracts Do Not Fairly Serve Workers.....	16
	A. Administering Workers’ Compensation Claims	
	1. Contractual Requirements	
	2. Lack of Transparent Benchmarks and Definition of Contractor’s Role	
	B. Onsite Medical Services	
VI.	Inadequate Oversight of Hanford’s Workers’ Compensation Program.....	20
	A. DOE Has Failed to Adequately Oversee its Contractor CCSI	
	1. DOE Renewed CCSI’s Contract with Minimal Evaluation	
	2. DOE Has Allowed CCSI to Violate Contractual Requirements	
	3. DOE Shields Itself with Limited Program Reviews	
	B. L&I Provides Minimal Oversight of Hanford’s Workers’ Compensation Program	
	1. Agreements Have Been Renewed with Minimal Evaluation	
	2. L&I Has Audited Hanford’s Program Once Since 2001	
	3. Inadequate Oversight of DOE’s Use of Independent Medical Exams	
	4. DOE Uses Independent Medical Exams to Deny or Minimize Claims	
	5. The IME Complaint Process is Not Used by CCSI or DOE	
	C. Lack of Clear Guidance for Adjudicating Chemically Related Claims	
	1. Legislative Mandates are Being Compromised	
	2. Hanford Claims Have a Higher Denial Rate than Other Self-Insured Employers	
VII.	Interference with Claims Management and Worksite Data.....	33
	A. Incomplete Reporting of Work Related Conditions and Safety Trends	
	1. Illness and Injury Reporting Requirements Have Been Violated	
	2. DOE Contracts Have Incentives to Under Report Illnesses and Injuries	
	3. Worker’s Self Reporting of Accidents is Screened and Not Fully Tracked	
	4. Workplace Trends are Not Tracked in a Routine and Transparent Manner	
	5. Workers Face Pressure to Agree That Their Condition is Not Work Related	
	B. Aggressive Legal Tactics Are Used to Fight Workers’ Claims	
	1. Public Funds are Used to Fight Workers’ Claims	
	2. Hanford Workers File a High Rate of Appeals	
	3. DOE’s Legal Tactics Interfere with Due Process	

C.	Claims Management Has Delayed Medical Care and Obscured Claim Files	
D.	Liability Concerns May Cloud Objective Claims Review	
VIII.	Employee Concerns Program.....	47
IX.	Conclusions and Suggested Remedies.....	49
X.	Appendices	
A.	Acronyms.....	52
B.	Federal Compensation and Medical Screening Programs.....	53
C.	Timeline of Key Events Related to Hanford’s Workers’ Compensation Program....	54
D.	Summary of 2004 and 2005 Diagnoses Made by AdvancedMed	56
E.	Washington State Law Authorizing Special Agreements.....	58
F.	Hanford Employee Concerns Filed 2002-2005.....	59
XI.	List of Tables	
Table 1.	Hanford Contractors and Associated Workers’ Compensation Programs	
Table 2.	Hanford Workers' Compensation Claims Filed Year 2004	
Table 3.	Comparison of Practices – State Fund vs. DOE’s Self-insured Program	
Table 4.	Claim Denials at Hanford Compared to Other Self-Insured Employers	
Table 5.	L&I Decisions on Claim Denials Requested by DOE	
Table 6.	Public Funds Used to Fight Hanford Workers’ Compensation Claims	
Table 7.	Appeals Filed – Hanford vs. the Self-insured Program as a Whole	

I. Executive Summary

In 1943, the federal government brought 50,000 people to Hanford to manufacture plutonium for the world's first atomic bombs.¹ Forty seven years later, in 1990, Hanford's mission shifted from nuclear materials production to environmental clean-up. Located in southeastern Washington, the Hanford Nuclear Site is the most contaminated worksite in the western world.² It is estimated that cleaning up Hanford will take at least another thirty years.³ This means that for at least another three decades, Hanford workers will continue to be exposed to hazardous conditions.

When Hanford workers become ill or injured on the job, most of them rely on Hanford's workers' compensation program to get medical care. However, instead of getting the care and treatment they deserve, many workers have to battle their way through a worker's compensation program that fails them.

This report documents the Department of Energy's (DOE) demonstrated pattern of interference with Hanford workers' claims, its inability to effectively oversee Contract Claims Services Incorporated (CCSI),⁴ and its ongoing failure to resolve concerns that workers have raised since 2000 when the compensation program became self-insured and DOE became responsible for reviewing workers' claims.

We believe that instead of tweaking the margins of the existing program (which DOE has done for the past five years) Hanford workers' compensation claims must be brought back under the management of the Washington State Department of Labor and Industries (L&I) and administrative remedies must be implemented to improve the services available to Hanford workers. These conclusions stem from GAP's interviews with Hanford workers, medical professionals, and government staff; reviews of workers' claim files; and an analysis of public records and past reviews of DOE's workers' compensation program.

It is ironic, and lamentable, that even though Hanford is a highly contaminated and dangerous worksite, neither the federal Occupational Safety and Health Administration, nor the Nuclear Regulatory Commission have jurisdiction to inspect worksite conditions and enforce safety regulations. Instead, DOE is allowed to regulate itself.



¹ The plutonium was used for the Trinity test at Alamogordo, New Mexico and for the bomb dropped on Nagasaki, Japan, 1945.

² Department of Energy, *Performance Management Plan for the Accelerated Cleanup of the Hanford Site*, DOE/RL-2002-47, Rev. D, August 2002.

³ Under the accelerated cleanup approach, the target date for completion of the Hanford cleanup shifted from 2070 to 2035 as discussed in About Us, Message from DOE-RL Manager at www.hanford.gov.

⁴ CCSI acts as DOE's third party administrator for DOE's workers compensation program. They manage workers' claim files and recommend which claims should be accepted or denied.

A. Findings

Hanford is the most contaminated worksite site in the western world and DOE has not performed its safety mission well. Yet, when workers seek medical care and compensation for their workplace illnesses and injuries, DOE often challenges and obstructs their claims and fails to provide them access to objective assessment and medical treatment.

- **A recent state review of Hanford’s workers’ compensation program found that on a scale of excellent to poor, twenty seven percent of the claim files were managed in a “fair” manner and twelve percent were “poorly” managed. Furthermore, claims examiners did not always actively pursue medical reports.** ⁵ An earlier state review found that 53 percent of the claims examined were not paid within the regulatory timeframe. ⁶
- **Hanford workers’ claims are denied at double the rate of other self-insured employers (20 percent). Chemical exposure claims are denied at triple the rate (34 percent).** DOE has failed to ensure that workers’ claim files are complete and accurate and has used the lack of accurate worksite data as a reason to question the validity of Hanford workers’ claims.
- **Workers are forced to go to Independent Medical Exams that violate state standards.** Workers have experienced Independent Medical Exams where Examiners: did not have workers’ complete medical records; did not perform additional relevant testing; changed their assessment after being contacted by DOE’s lawyers; and made determinations based on incomplete medical data.
- **Hanford workers who contest the denial of their claims are met with aggressive DOE legal tactics that interfere with objective claims management and create an uneven playing field.** DOE’s program has pledged to fight claims in order to prevent setting negative precedents. DOE has used an Employee Concerns investigation to assess how to fight a worker’s claim.⁷ DOE has even blocked Washington State L&I’s request to re-examine a worker’s claim before continuing denial proceedings at the Board of Industrial Appeals.
- **Hanford’s workers’ compensation program is fraught with opportunities for DOE interference.** Under the existing program, DOE is responsible for claims management. DOE and CCSI create and manage workers’ claim files. DOE and CCSI require workers to be referred to Hanford’s on site medical provider, they decide when to refer workers to Independent Medical Examiners, and they work together to defend DOE from workers’ appeals of their compensation claims. Workers’ claims are subject to five layers of influence – DOE, CCSI, the Medical Examiners contracted by CCSI, Hanford’s onsite medical provider, and the workers’ compensation coordinators at DOE’s primary contractors who must now work through CCSI instead of working directly with L&I.

⁵Miller & Miller, P.S., Washington State Department of Labor and Industries Review of the Workers’ Compensation Program at the Hanford Site, www.lni.wa.gov, March 31, 2006, pp 17 and 22.

⁶ Washington State Labor and Industries, Program Compliance Audit, U.S. Department of Energy, 706.178-00, October 2001.

⁷ DOE’s Employee Concerns program is intended to provide employee’s a confidential way to raise and resolve workplace concerns. When employee’s file concerns, they do so with the understanding that the subsequent investigation will be used to help evaluate and remedy the concern.

- **Through public meetings and briefings, members of Hanford’s employee unions, Hanford’s Beryllium Awareness Group, and current and former Hanford workers have demanded that claims management be returned to L&I.** As documented by this report, GAP has reached the same conclusion.
- **Current state law allows DOE to opt out of Washington’s industrial insurance laws and associated workers’ compensation regulations if L&I “finds that the application of the plan will effectively aid the national interest...”**⁸ Placing the national interest above compliance with workers’ compensation regulations is a holdover from World War II when Hanford was part of a secret weapons development program. Hanford is now a cleanup site.
- **Hanford’s workers’ compensation program lacks adequate oversight.** In the five years since Hanford’s program has been self-insured there has been minimal oversight of the program and workers’ concerns have not been addressed. For example, at the same time that workers were complaining about the program and calling for changes, DOE gave CCSI a stellar evaluation concluding that its service was “*Excellent*” and that “*There are no quality issues and the Contractor has substantially exceeded the contract performance requirement without commensurate additional costs to the Government.*”⁹

B. Core Recommendations

Effective Hanford cleanup must include not only treating and restoring the environment, but also helping to treat and restore the health of Hanford workers who become ill or injured on the job.

- **DOE and L&I must phase out DOE’s self-insurance program by 2007, terminate the contract with CCSI, and return claims management to L&I.**
- **Close the loopholes under Washington State law that allow DOE to deviate from Washington’s workers compensation regulations if doing aids the national interest.**¹⁰
- **Provide certain discrete classes of Hanford workers with a prima facie presumption that certain types of chemical exposures are occupational diseases under RCW 51.08.140.**
- **Implement administrative remedies that include improved tracking of health and safety trends at Hanford, minimizing Independent Medical Exams, clarifying the role of the on-site medical provider, providing more assistance to workers trying to file and resolve claims, and enforcing DOE’s new safety rule.**¹¹

⁸ RCW 51.04.130. See Appendix D of this report.

⁹ US Department of Energy, *Richland Operations Office Contractor Performance Report*, DE-AC06-99RL13989, for the reporting period from October 1, 1999 to September 30, 2004.

¹⁰ See Appendix E. for a copy of RCW 51.04.130.

¹¹ At the direction of Congress, DOE codified their safety orders and made them enforceable (10CFR 851).

II. Introduction

A. Origins of This Review

Along with being an employer for thousands of people, DOE's Hanford Site has also been a community. No worker imagined being abandoned by the system after becoming ill or injured on the job, being accused of raising false safety concerns, being repeatedly told that their injury was pre-existing and not work related, or being forced to hire a lawyer to secure their rightful compensation claims. They deserve better.

Consider the case of one Hanford worker who sought medical assessment and treatment for nosebleeds, headaches, nausea, and other health problems he suffered after being exposed to toxic vapors at Hanford's tank farms. When Jack¹² went to Hanford's onsite medical provider for an evaluation, he understood that the forms he filled out there would initiate his workers compensation claim. They didn't. As a result, his claim was initially determined to be "untimely" and was denied. The worker was able to demonstrate that he had limited help and had thought he was following the correct procedures. As a result, DOE eventually agreed not to contest the timeliness of his claim. However, his troubles weren't over. Although he had noted the most recent date he was exposed to vapors, he had intended to file a claim for multiple exposures. Instead, his claim was treated as a claim for a single incident.

According to the worker and associated claims data, two doctors determined that his condition was work related and associated with vapor exposure. However, after being contacted by DOE's lawyer and presented with monitoring data showing low ammonia readings, they changed their conclusion. Instead of concluding that the worker's condition was work related, they called it not work related. The doctors did not receive up-to-date information about other toxic substances in the tanks, general worksite conditions, or the timing or location of the low ammonia readings. According to the worker, he had to provide this information to CCSI. He later discovered that CCSI did not include it in the information they gave to L&I when L&I was trying to decide whether or not to deny the claim. The worker could not afford an attorney and was representing himself in an effort to overturn the denial of his claim. He requested copies of the medical reports done by two Independent Medical Examiners that DOE required him to be examined by. He got the reports four months after his appointment with the Examiners and only after L&I intervened and required CCSI to send him the reports. When the worker pleaded with DOE to help correct the data in his claim file, he was told that wasn't possible because once CCSI had the claim, DOE did not get involved.¹³ As his claim was heading for denial, Washington State L&I asked DOE to agree to halt proceedings before the Board of Industrial Appeals so that L&I could have more time to review his claim and potentially reconsider their decision to deny it. DOE refused. Based on what he believes was incomplete and incorrect information from DOE, L&I ultimately affirmed the order to reject his claim.

Exhausted by the process, Jack dropped his appeal in September 2004. As a result, he never received additional assessments or treatment from Hanford's workers' compensation program.

¹² Jack is a pseudonym used here in place of the worker's real name.

¹³ As required by their contract, CCSI meets regularly with DOE and DOE's contractors to discuss the status of workers' claims.

Due to the latency period of chemical exposures, it is possible that he could experience more health problems in the future. If so, he will have to file a new claim and battle the system again.

There are many other workers like Jack who have taken risks to help clean up Hanford, gotten ill or injured on the job, and had their claims denied. GAP first became aware of problems with the system in 2003 when we released a report documenting that Hanford workers were knowingly being exposed to vapors at the Hanford Tank Farms, suffering health impacts, and hitting roadblocks when they tried to get their compensation claims covered.¹⁴

In response to these and other concerns raised by Hanford workers and medical professionals, GAP initiated a review of DOE's workers' compensation program in June 2005. This report is the result. It examines the origins of Hanford's workers' compensation program, the adequacy of oversight, the experiences of workers who have filed claims, and defines remedies to ensure that Hanford workers have access to timely, objective, and sufficient healthcare assessment and treatment. Many of the case examples presented in this report relate to compensation claims associated with workers' exposure to vapors from the Hanford Tank Farms. GAP recognizes that because DOE and contractors have taken steps to reduce vapor exposures, vapor claims may be reduced in the future. However, hazards associated with the Hanford cleanup will remain.

This report recognizes, and is informed by, L&I's April 2006 review of Hanford's workers' compensation program. Its review grew out of the June, 2005 State of the Site meeting where worker after worker testified about their struggles to get their medical claims covered, the delays in their medical care, and the ultimate insult they felt for putting their health on the line to help clean up Hanford only to face denial of their requests for medical treatment. In response to workers' concerns, DOE committed to doing an "independent" review of their workers' compensation program and they financed L&I to do it.¹⁵ The L&I review¹⁶ was released April 6, 2006 at a meeting attended by an overflow crowd of Hanford workers and family members. Dozens of workers took the opportunity to speak about the need for program reforms.

Prior to concluding this report, GAP met with Hanford's site manager, Keith Klein, and lead staff responsible for their workers' compensation program.¹⁷ GAP appreciates DOE's interest in co-hosting a forum on the workers' compensation program and its commitment to consider the results of this review and work collaboratively with workers, unions, and public interest groups to develop an effective workers' compensation program.

B. Workplace Hazards

Hanford workers are cleaning up the most contaminated nuclear site in the western hemisphere and working for a federal agency, DOE, with no independent federal safety oversight. The workforce includes electricians, laboratory technicians, maintenance staff, industrial hygienists, engineers, managers, construction workers, office professionals, safety trainers, laborers, and other specialists.

¹⁴ Clare Gilbert and Tom Carpenter, *Knowing Endangerment: Worker Exposure to Toxic Vapors at the Hanford Tank Farms*, Government Accountability Project, September 2003.

¹⁵ Keith Klein, Manager, DOE Richland Operations Office, Roy Schepens, Manager, DOE Office of River Protection, Jean Vanek, Program Manager, Washington State Department of Labor and Industries, Announcement 05-0165 issued to all Hanford Site Employees, August 9, 2005.

¹⁶ Miller & Miller, P.S., Washington State Department of Labor and Industries Review of the Workers' Compensation Program at the Hanford Site, www.lni.wa.gov, March 31, 2006.

¹⁷ DOE Richland Office, May 11, 2006.



The Hanford cleanup requires people to work with:¹⁸

- Over 2,710 different waste disposal sites and burial grounds;
- 500 contaminated facilities that have been, or are being, demolished or remediated;
- 55 million gallons of high-level radioactive and chemical waste in underground storage tanks, some of which

are leaking;

- At least 2,300 tons of spent nuclear fuel;
- 12 tons of plutonium in various forms;
- 25 million cubic feet of chemically and radiologically polluted solid waste;
- 270 billion gallons of groundwater contaminated by chemicals and radioactive isotopes.¹⁹

People working at Hanford dig up, package, and transport highly radioactive debris. They demolish old buildings where they are potentially exposed to asbestos, lead, beryllium, radioactive materials, and other carcinogens. They store and monitor over 50 million gallons of high-level radioactive wastes and toxic chemical by-products. They monitor worksite conditions and try to ensure that the monitoring is adequate and is used to keep workers safe.

The cleanup projects are complicated, costly, and hazardous. For example, it is estimated that the River Corridor project, managed by Washington Closure, will cost \$1.9 billion and take another six years to complete.²⁰ The River Corridor project requires workers to clean up Hanford's 100 Area where nine plutonium production reactors operated; the 300 Area where uranium was fabricated and buildings are contaminated with lead, beryllium, asbestos and other hazardous substances; and the 600 Area, home to two highly radioactive burial grounds (618-10 and 618-11). This is one of many projects that require Hanford workers to face hazardous conditions.

Along with known hazards, the Hanford cleanup exposes people to unknown hazards and ongoing uncertainties. In some cases, wastes and associated hazards have not been fully characterized (e.g., the 55 million gallons tank wastes and associated sludge residues). In other cases, wastes may be mobilized (e.g., projects that require demolishing buildings that are contaminated with lead and beryllium or projects to remove sludge from the tanks). Finally, hazards may be present but unknown because they are the result of past practices and accidents that were not fully documented.

¹⁸ U.S Department of Energy, Hanford Site Waste Management Units Report, DOE/RL-80-30, Rev. 12, January 2003.

¹⁹ Department of Energy, *Hanford Site Overview*, <http://www.hanford.gov>, March 31, 2006.

²⁰ Washington Closure, Hanford. Contractor description as posted at <http://www.hanford.gov/?page=170&parent=85> and viewed June 20, 2006.

These uncertainties create enormous difficulties for workers who become ill or injured on the job. Workers cannot always document the exact place and time that they became ill or injured and this can be used against them when they file workers' compensation claims. Additional difficulties are posed by various work tasks that require using new and unproven technologies, cleaning up areas where it is not always possible to fully characterize wastes, to plan for the hazards, or to anticipate and adapt to weather conditions that impact the effectiveness of safety plans.

C. Hanford's Workers' Compensation Program

Hanford workers who suffer from workplace illness or injuries have several options they can pursue in order to get compensation and medical screening. This report focuses on one of them – Hanford's workers' compensation program. The program is a self-insured program where DOE is responsible for managing the claims and does so via its third party administrator CCSI. The program is overseen by L&I under Washington's regulations for self-insured employers. L&I only reviews those claim denials that are recommended by DOE. L&I can agree with the denial, disagree, or request additional information (e.g., medical tests, worksite conditions) to help decide whether or not to affirm denial of the claim.

Currently, DOE's program covers Hanford employees at eight major Hanford contractors (Table 1). Workers employed by Bechtel National (the contractor building the Waste Treatment Plant) are not covered by Hanford's workers' compensation program. Instead, their claims are managed and adjudicated by L&I.

Two other federal programs, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and the Former Hanford Worker Medical Monitoring Program²¹ also provide recourse for Hanford workers who become ill or injured on the job. Although both programs are federally mandated, they have been repeatedly put under scrutiny by the administration.²² For example, a DOE sponsored report has identified the Medical Monitoring program as a "concern" due to its potential to increase the number of claims filed by former Hanford workers.²³ With regard to EEOICPA, the federal Office of Management and Budget proposed installing administrative methods into the program that would cut benefits for sick workers. Congress has vigorously opposed this. Although not the subject of this review, these programs are a necessary part of relief for workers (See Appendix B. for a brief summary of these programs). Finally, DOE's proposed dismantling of their Office of Environment, Safety, and Health could mean reduced contractor accountability for safety and health under DOE's system of self regulation. The dismantling has been opposed by worker unions and current and former government officials including Washington State's Governor Christine Gregoire.²⁴

**“We need honest tests and treatment
and our own choice of doctors to recover our health.”²⁵**

²¹ The medical monitoring program was federally mandated by the 1993 Defense Authorization Act.

²² See www.whistleblower.org and scroll to nuclear oversight, EEOICPA.

²³ PWC Consulting, A business of Pricewaterhouse Coopers LLP, *Workers' Compensation Costs in the DOE/EM Program, Final Report*, March 18, 2002.

²⁴ Governor Christine Gregoire (D-WA), Former DOE Secretary and current Governor Bill Richardson (D-N.M.) and three former DOE Assistant Secretaries for Environment, Safety, and Health, the United Steelworkers, the building and Construction Trade Department, and the American Society of Engineers have all signed letters to DOE urging them not to dissolve the ESH.

²⁵ Hanford workers' testimony. Department of Energy State of the Site meeting. Richland, Washington. June 17, 2005. Quotes are taken from a videotape of the meeting.

Table 1. Hanford Contractors Covered by Hanford’s Self-Insurance Program ²⁶

Contractor and Associated Subcontractors	Core Focus of Hanford Work
1. Advanced Med	Provide on-site medical services
1a. HPMC	Occupational health services
2. Advanced Tech. & Labs International, Inc.	Workers perform 25,000 inorganic, organic and radionuclide analyses/year on radioactive and hazardous wastes and handle hazardous materials regularly.
3. Battelle Memorial Institute PNNL	Conduct research and development to support environmental clean-up.
4. CH2M Hill Hanford Group, Inc.	Workers store, monitor, and retrieve 53 million gallons of highly radioactive and hazardous waste at Hanford’s Tank Farms.
4. Eberline Services Hanford, Inc	Health physics and industrial hygiene technicians monitor worksites.
5. Fluor Hanford, Inc (FHI)	Workers clean up radioactive and hazardous debris in the River Corridor and the Central Plateau.
5a. Duratek	Workers conduct waste management and sludge retrieval.
5b. Numatec	Assists with process engineering, and associated project management (Fluor and CH2M).
6. Integrated Logistics Services	Workers help manage and dispose of property for Washington Closure activities.
7. Fluor Government Group	Workers move and store spent nuclear fuel, stabilize plutonium bearing materials, manage sludge, and other associated clean-up actions.
8. Washington Closure Hanford LLC	Workers cleaning up highly contaminated buildings and debris.

²⁶ DOE, DOE Richland Operations Office, *Self-insured Site Covered Contractors and Subcontractors*. Contractor list and status provided by DOE Richland staff Karen Lutz, June, 2006. List is subject to change. Information regarding work focus is from postings at www.Hanford.Gov, viewed June 20, 2006.

D. Claims Filed Under Hanford's Workers' Compensation Program

Hanford's workers' compensation program manages approximately 500 workers' compensation claims/year²⁷ and pays out approximately \$7-8 million/year to cover the claims.²⁸ Actual figures vary from year to year and depend on the size of Hanford's workforce, the kind of work they are doing, the quality of safety programs and enforcement of safety standards, the types of claims filed, how long ill or injured workers are away from work, vocational rehabilitation costs, and other factors.

DOE's Annual Report of Self-Insured Business (SIF7 form) indicates that since 2000 there has been a steady decrease in the number of claims filed and total claim payments made. In 2005, DOE received 268 workers' compensation claims – forty percent fewer claims than 2001 when 406 claims were filed.²⁹

Sprains, hearing loss, asbestosis, and poison or chemical exposure were the most prevalent types of claims noted in 2004, the most recent year for which complete information is available (Table 2). There is a potential disparity between the number of diagnoses made and the number of claims filed. For example, in 2004, there were 150 claims filed for sprains and strains and yet there were four times the number of diagnoses made (612). There were 31 claims filed for poison/chemical exposure and yet five times the number of diagnoses of this condition were made. This disparity could be explained, in part, if workers made repeat visits to the clinic for the same illness or injury. However, as presented in the Annual Medical Director's Report the data is defined as the type of injury arranged by the number of cases, from most to least common.³⁰ Given data and time constraints, it was not possible to fully assess whether or not there is a disparity and if so, what is causing it. (See Appendix D. for a full listing of the diagnoses made by Hanford's onsite medical provider).

“It sort of reminds me of sending those soldiers over to the Gulf War and those soldiers came back with chemical exposures, and the federal government doesn't want to do anything ...”³¹

²⁷ Miller and Miller, op cit, p. 14, 2004. Data indicates that 560 claims were filed. At this writing data on the total claims/year is not available. L&I considers the employer's data proprietary and DOE has not yet released this or associated data regarding claim costs.

²⁸ PWC Consulting, A business of Pricewaterhouse Coopers LLP, op cit, Exhibit ES-1. Current costs vary as estimates provided are for year 1999.

²⁹ 2005- Annual Report of Self-Insured Business (SIF7), submitted to Washington State Department of Labor and Industries. UBI 601,319,923. Account ID 706,178,00-1, submitted February 27, 2005.

³⁰ Loren Lewis, MD, MPH, Site Occupational Medical Director, *Annual Medical Director's Report, Hanford Site, FY 2005*, DE-AC06-04RL14383Loren Lewis, MD, MPH, Site Occupational Medical Director, p. 89.

³¹ Hanford workers' testimony. Department of Energy State of the Site meeting. June 17, 2005.

Table 2. Hanford Workers' Compensation Claims Filed Year 2004

Type of Claim	Diagnoses ³²	Claims ³³	Percent of Claims
Sprains, strain	612	150	26.79%
Hearing loss		119	21.25%
Asbestosis		48	8.57%
Poison, chemical	157	31	5.54%
Inflammation		26	4.64%
Strain		20	3.57%
Beryllium	46	17	3.04%
Carpal tunnel	109	17	3.04%
Systemic effect		16	2.86%
Cut/laceration	177	9	1.61%
Sprain		9	1.61%
Cancer		8	1.43%
Contusion		7	1.25%
Fracture		7	1.25%
Irritation		7	1.25%
Abrasion		5	0.89%
Bite/sting		5	0.89%
No phys.injury		5	0.89%
Contusion/crushing		4	0.71%
Respiratory		4	0.71%
Burn		3	0.54%
Malignant		3	0.54%
Scratches		3	0.54%
Foreign body		2	0.36%
Hernia		2	0.36%
Multilple injury		2	0.36%
Otherpneumocon		2	0.36%
Radiation		2	0.36%
Rupture		2	0.36%
Unknown		2	0.36%
Allergicderm ³⁴	Angina	Burns	Concussion
Crushing	Dermatitis	Dislocation	Shock
Hernia	Illness	Inflammation	Inguinal
Laceration	Mental	Skin	Other toxic
Radiation	disorder	condition	Poisoning
	Tendonitis	Trauma	Upper resp.
TOTAL CLAIMS		560	

³² Loren Lewis, MD, MPH, Site Occupational Medical Director, op cit, Appendix B, Reporting Period 1 October 2004 through 30 September 2005. The figures were derived by adding up the diagnoses that likely encompass the claim category (as defined by CCSI) listed above. Areas with no diagnoses figures do not mean a diagnoses was not made, just that it was not possible to clearly correlate it to the CCSI categories listed. Appendix C of this report provides a complete listing of AdvancedMed's 2004 diagnoses.

³³ Miller & Miller, op cit, p. 14. The claims categories and associated data are from a database query prepared for Miller & Miller by CCSI for year 2004.

III. Scope and Methodology

This review examines the Department of Energy's self-insured workers' compensation program as administered by Contract Claims Services Incorporated (CCSI), for DOE and regulated by Washington State Labor and Industries (L&I) under Washington's Industrial Insurance Laws.

The review's scope was shaped by Hanford workers who had recent experiences with the workers' compensation program, physicians who had treated or assessed Hanford workers, lawyers who had represented workers, and family members who tried to help them.

The following questions guided the scope of this review:

- What are the core concerns of Hanford workers who have filed compensation claims?
- What are the origins of Hanford's workers' compensation program and how do they influence current conditions?
- To what extent do existing contracts and agreements advance or hinder transparency, accountability, and workers' right to an effective compensation program?
- What are the levels and associated quality of program oversight?
- Does the existing programmatic structure foster full, fair, and objective resolution of workers' compensation claims? If not, what remedies are needed?

The primary data sources for this review include:

- Public records from the Department of Energy, Washington State Department of Labor and Industries, Washington State Archives, and the Secretary of the State of Texas;
- Interviews with 35 self-selected current and former Hanford workers who had filed claims with CCSI between 2000 and the present;
- Interviews and discussions with physicians, lawyers, and government employees;
- Reviews of medical records provided by Hanford workers; and
- Past audits and reviews, academic research, and peer reviewed articles regarding workers' compensation and industrial health programs at DOE nuclear sites.

The following limitations shaped the process and outcomes of this review.

- Due to privacy laws GAP did not have access to a statistically random data sample of claims files.
- GAP interviewed 35 workers and profiled 15 of their experiences in the case studies presented in Section VII. These are workers who had time, courage, and documentation to share with GAP.
- In most cases, data regarding the operation of the program had to be acquired by requesting public records from state and federal agencies. In some cases, there were significant delays or incomplete responses from the federal government. As a result,

³⁴ For this claim and the 22 following, one claim was filed, each representing 0.18% of total claims.

there was insufficient time to address new questions generated by records received late in the process or records that were not received at all.

- DOE discouraged federal contractors associated with AdvancedMed and workers' compensation staff at DOE Hanford contractors from talking with GAP. Thus, their experiences and insights are not fully reflected in this review.

IV. Origins of DOE's Workers' Compensation Program

A. Hanford's Workers' Compensation Program was Founded in Secrecy



In 1943, Washington State entered into a contract with the U.S. Army Corps of Engineers and E.I. Dupont De Nemours and Company to administer a workers' compensation program at Hanford. The contract was stamped "**SECRET.**"³⁵ It required the federal government to set up a fund the state could withdraw from to pay the compensation claims of Hanford workers and administrative costs.

Initial contracts between the state and federal government contained provisions to advance secrecy, reduce oversight of the federal government's actions, and allow the federal government to influence claims management.

These contractual provisions included the following:³⁶

- Claims were filed with federal government contractors who could block the claims and ensure that they never made it to L&I for review;
- Accident reports and other data used by Hanford contractors, physicians, or hospitals to review the claims were routed through the Atomic Energy Commission before going to L&I ;
- L&I agreed to accept descriptions from the federal government, or its contractors, even if the descriptions were incomplete;
- The contract asserted that the state employees tasked with assessing Hanford workers' claims were subject to being reviewed and approved by the federal government.



³⁵ Contract W-7412-eng-25, SECRET, Copy 6 of 10 series, Modification #1 to agreement dated March 1st, 1943.

³⁶ Contract No. AT (45-1)-562, signed by David F. Shaw, Atomic Energy Commission, Washington State Department of Labor and Industries, and the Office of the Attorney General, State of Washington, Clause 10, December 17, 1952.

The work was classified as “top-secret” and federal and state safety inspectors were not allowed on-site to assess workplace conditions. Secrecy and the desire to maintain control over classified and related worksite information led the federal government to step in and provide industrial insurance for their workers instead of asking its contractors to do so.

Generally referred to as indemnification, this arrangement persists today. Although the mission at Hanford has shifted from producing nuclear weapons to cleaning up the wastes that were left behind, contractors whose employees are covered under the Department of Energy’s workers’ compensation program do not incur the financial burdens associated with workers’ compensation claims-the public does. This arrangement has been preserved regardless of recommendations from engineering, safety, and union professionals to “stop providing disincentives to safe engineering by absorbing workers’ compensation and associated medical costs due to unsafe technology.”³⁷

The initial proclamations authorizing the special workers’ compensation agreements stipulated that the agreements between DOE and L&I could remain in place:

- during the continued emergency declared by the President in May 1941;³⁸
- during the continued existence of the emergency declared by the President in 1950³⁹ or;
- as long as certain provisions of the War Powers Act of 1941 remained in effect.⁴⁰

Special agreements in the name of national security were not unique to Hanford. They existed at most Department of Energy sites involved in the production of nuclear weapons. However, they were not always legal. For example, in 1984 the United States Court of Appeals ruled that the special agreement between the Department of Energy and the State of Nevada was illegal because it failed to meet the requirements of Nevada’s Industrial Insurance Act and the Nevada Occupational Disease Act and deprived the worker of his right to due process.⁴¹

After the Cold War ended, Washington State was also on shaky ground with its agreements with DOE. The justification for the agreements no longer existed. There was no longer a state of continued emergency and key provisions of the War Powers Act of 1941 were no longer in effect.

Instead of eliminating the allowance for special agreements, Washington state and DOE modified and sanctioned them. In 1997 the state passed legislation to allow L&I and DOE to negotiate

³⁷ International Union of Operating Engineers, *Assessing the Full Costs of New Remediation Technologies: Guidelines for Identifying Occupational Safety and Health Costs for Environmental Remediation Technologies*, April 30, 2001. Research supported by the U.S. Department of Energy’s National Energy Technology Laboratory under cooperative agreement DE-FC21-95MC32260. The recommendations were developed by health and safety professionals, scientists, economists, managers, and engineering representatives from unions, academia, federal agencies, and the private sector.

³⁸ Proclamation 2487, May 27, 1941.

³⁹ Proclamation 2914, December 16, 1950.

⁴⁰ Washington State Legislature, *War Projects on Defense Projects Insurance Rating Plans*, Session Laws 1951, Chapter 144, March 15, 1951.

⁴¹ Keith L. Prescott v. United States of America. United States Court of Appeals, Ninth Circuit. 731 F.2d 1388. In 1979 Keith Prescott, a former engineer at the Nevada Test Site, got bone marrow cancer. When he filed a workers’ compensation claim with DOE his claim was denied. Prescott filed a tort claim. The contractor (Reynolds Electrical and Engineering Company) and DOE tried to dismiss it and failed. When the employee prevailed in the District Court.

special agreements for Hanford’s workers’ compensation program.⁴² The legislation authorized special workers’ compensation agreements between L&I and DOE, and as under prior law provided that, “*these agreements need not conform with the requirements of the state’s industrial insurance law of this state if the department finds that the application of the plan will effectively aid the national interest...*”⁴³

Which national interests are to be aided by the workers’ compensation program? All subsequent agreements and contracts are mute on this question.

B. Hanford’s Program was Self-Insured With Limited Review

From 1943 until January 2000 workers’ compensation claims from Hanford workers were reviewed and processed by L&I under a special insuring agreement between DOE and L&I. Under the agreement, L&I administered and adjudicated Hanford workers’ claims. DOE reimbursed L&I for benefit payments made to Hanford workers covered by the program and paid L&I for the costs of reviewing and adjudicating the claims.

In January 2000⁴⁴, DOE was certified to be a self-insured program and manage its own claims with oversight from L&I.

Unlike other entities that apply to become self-insured⁴⁵:

- DOE never filled out an application for self-insurance; and
- DOE never had a review of its safety program at Hanford.

DOE’s escape from Washington’s standard procedures for reviewing and regulating a self-insured program was sanctioned by RCW 51.04.130. This arrangement was formalized in a Memorandum of Understanding (MOU) between DOE and L&I which states “*L& I and DOE agree that DOE shall not be required to file an application for self-insurance inasmuch as this MOU shall serve as certification for the purpose of self-insurance.*”⁴⁶ When asked about the types of reviews that did take place, one Washington State employee recalled that there really was not any review and staff were told to ‘*butt out and just accept the program*’.⁴⁷

Once accepted as a self-insured program, claims from DOE’s program were no longer reviewed and processed by the state. Instead, DOE performed this function. L&I claims administrators only review a Hanford claim if DOE denies it or if there is a special request from an employee, or the employer, to assist with claims review.

⁴² HB 2020, C 109 L 97. Incorporated into statute as RCW 51.04.130.

⁴³ RCW 51.04.130. See Appendix D of this report.

⁴⁴ Joyce Walker, Program Manager, Self-insurance, *Subject: Self-insurance Certification*, Letter to US Department of Energy, January 25, 2000.

⁴⁵ RCW 51.14.030.

⁴⁶ Amendment 1 of the Memorandum of Understanding between the US Department of Energy, Richland Operations Office and the State of Washington Department of Labor and Industries, Article V, p. 2, December, 2002. “L& I and DOE agree that DOE shall not be required to file an application for self-insurance inasmuch as this MOU shall sever as certification for the purpose of self-insurance.”

⁴⁷ Personnel communication to Lea Mitchell, Government Accountability Project. July, 2005.

DOE's acceptance into the state's self-insured program coupled with the lack of federal or state safety oversight at Hanford creates conditions that reduce transparency, reduce oversight, and harm workers' access to objective medical evaluation and treatment (Table 3).

Table 3. Comparison of Practices -- State Fund vs. DOE's Self-insured Program

State Fund Workers' Compensation Program	Hanford's Workers' Compensation
Independent Oversight of Worksite	No Independent Oversight of Worksite
L&I has authority to conduct un-announced inspections and can issue citations and penalties to address safety problems. Workers can file complaints to compel an L&I safety inspection. ⁴⁸	There is no independent safety oversight from state L&I or federal OSHA. Workers cannot compel a state or federal safety inspection.
L&I's Chemically Related Illness (CRI) unit tracks clusters of claims for chemical exposures and can recommend follow-up inspections to address safety issues.	There is no independent system to assess trends. CCSI's contract requires them to report safety trends evidenced by the claims but no records were located of any such reports. ⁴⁹
Workers and the State Have More Control	Workers and the State Have Less Control
A claim is established when a worker is injured on the job, gets treatment, and signs related documents or submits an application for benefits. ⁵⁰ <u>If the worker agrees</u> , the self insurer <u>may</u> provide onsite medical treatment by qualified staff. Employers are to make sure the worker immediately gets medical care <u>from the doctor/hospital of their choice</u> . ⁵¹	DOE requires CCSI to refer workers to Hanford's on-site medical provider for medical evaluation. ⁵² Many workers interviewed by GAP were not aware, or informed, that they could request to be treated by their own doctor and initiate a claim with their own doctor.
L&I claims administrators assess the claim and create the claim file. L&I has prompt access to the file and is responsible for managing it.	L&I must request the claim file from CCSI. Unless workers complain or also review the file, L&I often cannot tell if the file is complete.
L&I has more direct ability to enforce industrial insurance regulations and associated policies and guidance.	L&I's enforcement authorities are exercised through infrequent audits or penalties and these are limited to certain elements of the program.
Physician's Role in Fostering Worker Safety	Physician's Role in Fostering Worker Safety
L&I guidance <u>requires</u> attending physicians to report unsafe working conditions to L&I that are identified while treating patients injured on the job. ⁵³	DOE's on-site medical provider has no contractual obligation to report unsafe working conditions to L&I. Instead, they report them to DOE.

⁴⁸ Washington State regulations, WAC 296-350-450.

⁴⁹ Dorothy Riehle, Freedom of Information Act Officer, Department of Energy, Richland Operations Office, January 18, 2006. In response to GAP's request for a copy of CCSI's legal management plan and records of safety trends that CCSI has provided to DOE, as required by their contract, DOE stated that no such documents were located.

⁵⁰ Joyce Walker, Program Manager, Self-insurance, Department of Labor and Industries memo to all Self Insurers and Service Organizations, *Subject: Claim Establishment*, March 1999. Provided to GAP in response to public records request for guidance associated with self insurers and claims processing.

⁵¹ Washington State Department of Labor and Industries, *Employer Response to a Workplace Injury or Illness*, www.lni.wa.gov/ClaimsInsurance/ClaimsAppeals/EmpWhat/default.asp.

⁵² Department of Energy, DE-AC06-05RL14661, p. H-10. T, Issued April 9, 2004, Awarded August 23, 2004.

⁵³ Washington State Department of Labor and Industries, *Attending Doctor's Handbook for Doctors and Office Staff*, p.3, Revised March, 2005.

C. Special Agreements Shield DOE from Oversight and Transparency

The current Memorandum of Understanding (MOU) between DOE and L&I contains provisions that deviate from state regulations and give DOE control over release of information relating to the program. For example, the MOU⁵⁴:

- asserts that DOE shall perform all functions required by self-insurers in the State of Washington “unless otherwise agreed to by the parties;”
- exempts DOE from the requirement to file an application for self-insurance and asserts that the MOU serves as the certification for self-insurance;
- requires that subject to the federal Freedom of Information Act, decisions on disclosure of information to the public regarding work under the MOU shall be made by DOE after consulting with L&I;
- requires that *“To the extent permitted by the law governing each party, including the Freedom of Information Act, the parties agree not to disclose or disseminate to others exchanged information when requested not to do so by the providing party;”*
- requires 365 days written notice to other party prior to terminating the MOU. This notice requirement is not consistent with Washington State’s industrial insurance regulations for other self-insured employers. Pursuant to RCW 51.14.080 and 51.14.090, the state is not required to provide 365 days notice to the self-insured employer before decertifying them or imposing corrective actions.

V. Contracts Do Not Fairly Serve Hanford Workers

A. Administering Workers’ Compensation Claims

1. Contractual Requirements

Unlike claims managed by L&I’s state fund and guided directly by state industrial insurance regulations, Hanford’s program is guided by a federal government contract with a private corporation working to serve the interests of the federal government and its contractors. Although the current agreement requires DOE to comply with Washington’s Industrial Insurance laws, current Washington State law does not. (Appendix E).

Along with the uncertainties imposed by current regulations, the existing programmatic structure requires workers’ claims to survive five layers of influence: 1) DOE; 2) CCSI; 3) the Independent Medical Examiners hired by CCSI and DOE; 4) Hanford’s contractors; and 5) L&I. Under management by L&I, there would be no DOE claims adjudication program or contract with CCSI.

⁵⁴ Amendment 1 of the Memorandum of Understanding between the US Department of Energy, Richland Operations Office, and the State of Washington Department of Labor and Industries, Article IV. A, December, 2002.

Since 2000, CCSI has acted as what is commonly referred to as a third party administrator. CCSI administers workers' compensation claims for the employer, in this case DOE. CCSI was the sole bidder on the current and second contract with DOE.⁵⁵ CCSI's existing contract ends September 30, 2006 with the option of extending it until 2009. CCSI is one of three privately held corporations organized as CCS Holdings, L.P. based in Irving Texas.⁵⁶ They process workers' compensation claims for many federal agencies including the Department of Commerce, the U.S. Marine Corps, and the U.S. Navy.

DOE's contract with CCSI is a fixed-unit price services contract wherein CCSI is paid on a monthly basis to administer Hanford's workers' compensation program. The total estimated funds to be obligated under the contract are \$1.1 million for two years of service.⁵⁷ The funds come from a special account DOE creates based on estimated projections of the type and cost of workers' compensation claims that they will need to cover. CCSI receives a flat rate for each claim it manages. CCSI gets 75% of its fee when it opens a claim and the remaining 25% when it closes it.

Per contract terms, CCSI is required to process claims in accordance with:⁵⁸

- RCW 51- Washington State's Industrial Insurance regulations;
- WA. State L&I Self-insurance Section Claims Administration Policy Manual;
- WA. State L&I Workers' Compensation Manual;
- Washington State Administrative Code 296;
- All applicable federal, state, and local requirements and, where requirements differ; comply with the more stringent one;
- Where requirements do not exist, they are to provide workers' compensation services using current best practices in workers' compensation claims management and administration.

Core duties defined by the contract include requirements to:

- review active claims every 30 days, at a minimum, by a claims adjuster;
- establish a claim file within one working day of being notified of a claim;
- authorize payment for medical services from a special bank account managed by DOE;
- provide accurate and factual communication to and coordination among the claimant, the attending physician, the responsible contractor, AdvancedMed, and any other entity involved in the management of a claim;
- provide legal counsel to DOE staff as necessary;
- provide registered nurse case manager review of medical data associated with the claims;
- request approval from DOE for ordering workers to go to IMEs;
- conduct monthly meetings with the covered site contractors to discuss open claims;
- conduct periodic meetings, as requested by DOE;
- manage workers' claims that have been accepted by the federal government's Energy Employees Occupational Illness Compensation Program Act;⁵⁹

⁵⁵ Stacie L Sedgwick, Contracting Officer, DOE, Memorandum for Record, *Subject: Determination of Price Fair and Reasonable*, August 19, 2004.

⁵⁶ In July, 2005, the State of Texas cancelled the registration for CCSI, L.P because they had failed to file periodic reports required by the Office of the Secretary of State and did not respond to two warning notices from the Secretary of State. The Secretary of State mailed a notice of cancellation to CCSI, L.P. on July 27, 2005 stating that pursuant to Article 6132a, Section 13.08 of the Texas Limited Partnership Act, the certificate of registrations was cancelled without judicial ascertainment. According to the Secretary of State's Office, this means that CCSI LP is prohibited from doing business in Texas.

⁵⁷ U.S Department of Energy, Richland Operations Office, DE-AC06-05RL14661.

⁵⁸ U.S Department of Energy, Richland Operations Office, DE-AC06-05RL14661, Item C-2.

- notify DOE of any safety trends or weaknesses identified via claims review;
- submit a legal management plan to DOE within 60 days after contract award;⁶⁰
- refer the injured or ill employee to the on-site occupational medical services provider for medical evaluation after a claim has been filed with the state of Washington;⁶¹
- recognize that the occupational medical services provided for the Hanford site may assist with case management, nursing, rehabilitations, return to work determinations, and may serve as the medical liaison between the Contractor, employee, employee’s personal physician, and the employer.

2. Lack of Transparent Benchmarks and Definition of Contractor’s Role

As defined by the contract, CCSI is to provide for appropriate medical care, pay benefits in a timely manner, minimize disability, and return injured and/or ill employees to the job, other suitable employment within the Hanford Site, or other gainful employment. They are also required to administer the workers’ compensation program to “preserve the assets of the government and its covered site contractors.”⁶² GAP was not able to locate any benchmarks or guidance defining how these two conflicting obligations are measured or balanced to ensure that DOE’s economic interests are not compromising workers’ compensation claims. The contract is silent on this matter.

The contract is also silent on the role of workers’ compensation coordinators who work for DOE’s major contractors. At the December 8, 2005 meeting of Hanford Advisory Board’s Health, Safety, and Environmental Protection Committee, a participant asked, “*Is it normal for CCSI and the contractor to review worker claims?*”⁶³ DOE’s representative responded that CCSI and the contractor only review a claim together if the employee requests a meeting.⁶⁴ In fact, CCSI’s contract requires CCSI to meet regularly with contractor’s to review workers’ claims.

On the one hand, workers are told that the workers’ compensation coordinators are there to help them. On the other hand, DOE has not always welcomed claims coordinators who assist the worker. One worker interviewed by GAP said that the compensation coordinator for his company was willing to help update his claim file to correct inaccurate information but DOE would not allow it. Prior to 2000, when claims were reviewed by L&I, the workers’ compensation coordinators worked more directly with L&I with less interference from DOE.

“It was a very passive process...and I said, I mean, these are real people...And I said, can’t we have a more active role? But every time I brought that up I would get a nasty gram from the contracting officer at DOE saying that’s not your job, that is CCSI’s job, stop interfering with the claim.”⁶⁵

⁵⁹ Ibid, p.C.2, Description of Services.

⁶⁰ Ibid, p. F-3.

⁶¹ Ibid, p. H-8.

⁶² U.S Department of Energy, Richland Operations Office, DE-AC06-05RL14661.

⁶³ Hanford Advisory Board, Health, Safety, and Environmental Protection Committee Meeting, Draft Meeting Summary (v.1), December 8, 2005.

⁶⁴ Ibid.

⁶⁵ Sworn testimony from a former workers’ compensation coordinator for one of DOE’s primary contractors as recorded by Richman & Kent Court Reporters, p. 35-38, March 1, 2005.

B. Onsite Medical Services

DOE's Hanford operations also contract for onsite medical services. The current contractor is AdvancedMed Hanford. Similar to conflicting provisions in CCSI's contract, AdvancedMed is required to balance competing provisions. On the one hand it must act like the workers' attending physician and aim to maximize the worker's health. At the same time, it must act in the role of the employer aiming to minimize costs and liabilities and get people back to work as soon as possible. These conflicting roles have the potential to reduce the quality of the medical services that workers receive.

The contract's outcomes focus on ensuring that the workers are productive and that the onsite medical program is responsive to the needs of DOE and its contractors – the identified “customers.” These economic outcomes are at odds with other elements of the contract that direct the onsite medical provider to diagnose and treat injuries or diseases and act as the workers' physician for work related injuries and illnesses.⁶⁶

Washington's Industrial Insurance regulations do not distinguish between first aid and any other type of medical treatment. Instead, they mandate that the doctors who first see a patient must file a workers' compensation claim – even for minor injuries.⁶⁷ This mandate is potentially compromised by DOE contract requirements to minimize liability and ensure that services are responsive to the needs of DOE and Hanford site contractors. Although GAP was not able to do a comprehensive analysis between the diagnoses made by Hanford's onsite medical provider and the workers' compensation claims that were filed, data presented in Table 2. indicates a potential discrepancy. This potential discrepancy was raised by a medical professional who has treated Hanford workers and worked with Hanford's onsite medical provider.

Hanford's claims manager, CCSI, is required to refer ill or injured workers to Hanford's on-site medical provider for medical evaluation after a claim has been filed with L&I.⁶⁸ This is a critical juncture for workers because their initial evaluation often sets the stage for the overall approach to their claim and associated illness or injury. A “Future Target” for Hanford's onsite medical provider stipulates that they *will continue, in coordination with site contractors, to evaluate and revise worker's record of visits to provide “right” information for decision making.*⁶⁹

What does “right” mean? In the experience of some Hanford workers interviewed by GAP, the “right” information has led to cases where workers went back to work with inadequate work restrictions or had to combat health records that were generated to suggest that the workers' health problems were not work related.⁷⁰ Under a program where workers' claims were managed by L&I instead of DOE's self-insured program, there may still be a need for an onsite medical provider at Hanford but the opportunity for the onsite medical provider to work in tandem with DOE's claims managers would be eliminated. The claims managers would be working for L&I, not DOE or its contractor.

⁶⁶ Department of Energy, DE-AC06-04RL1483, p C-4. 2004.

⁶⁷ RCW 51.28.010 and *Attending Doctor's Handbook*, Washington State Labor and Industries, p. 7, revised March 2005.

⁶⁸ Department of Energy, DE-AC06-05RL14661, op cit, clause H-10, p. H-8.

⁶⁹ AdvancedMed Hanford Occupational Health Services, Strategic Plan 2006, p. 10.

⁷⁰ Clare Gilbert and Tom Carpenter, op cit.

VI. Inadequate Oversight of Hanford's Workers' Compensation Program

Unlike claims managed directly by L&I, self-insured programs run by employers require additional oversight and checks and balances including: 1) adequate oversight of the third party administrator managing the claims (CCSI); 2) adequate oversight of the self-insured employer (DOE); and 3) adequate oversight of and resources for the state agency tasked with overseeing the self-insured employer (L&I). Under current conditions, all three elements are lacking.

A. DOE Has Failed to Adequately Oversee its Contractor CCSI

1. DOE Renewed CCSI's Contract with Minimal Evaluation

In response to GAP's request for copies of any and all evaluations that DOE had done of CCSI's contract performance, GAP was provided with one document – an evaluation completed by the Richland Operations Office for CCSI's performance from 1999-2004 on its \$3.6 million contract. DOE evaluated the Quality of Service, Cost Control, Timeliness of Performance, and Business Relations of CCSI. They gave CCSI an "Excellent" or "Outstanding" rating for all categories except Cost Control which was determined to not be applicable because it was a fixed price contract. Regarding their "Quality of Service or Product," DOE gave the contractor a rating of "Excellent" and stated that, "*There are no quality issues and the Contractor has substantially exceeded the contract performance requirement without commensurate additional costs to the Government.*" Regarding timeliness of Performance, they also received a rating of "Excellent".⁷¹ In an effort to better understand the basis for their ratings of "excellent", GAP asked DOE's Workers' Compensation Administrator at Hanford about the criteria used in the assessment and the types of data analyzed. GAP was told that there was 'really no data behind the evaluation' and it 'was really based on the experience of working with them.'⁷²

2. DOE Has Allowed CCSI to Violate Contractual Requirements

Along with claims management deficiencies described in Section VII of this report, there are contractual obligations that CCSI is compromising or failing to meet.

The following core deficiencies were defined by L&I's recent review of the program:⁷³

- 40% of claim files were rated as being managed fairly (27%) or poorly (12.5%);
- the majority of claim files examined were not reviewed every 30 days, or there was no documentation of the review as required by CCSI's with DOE;
- many claim files reviewed lacked adequate medical control because medical reports were not requested early in the claim process and there was a pattern of claims administrators' not consistently requesting necessary medical information in a timely manner;
- lack of effective communication between CCSI and workers who have filed claims;

Additional deficiencies defined by GAP's review indicate that:

- there is no record of a legal management plan as required by CCSI's contract;⁷⁴
- there is no record that CCSI has identified safety trends as required by its contract.⁷⁵

⁷¹ US Department of Energy, *Richland Operations Office Contractor Performance Report*, DE-AC06-99RL 13989, for the reporting period from October 1, 1999 to September 30, 2004.

⁷² Personal communication from Julie Yamaguchi to Lea Mitchell, November 22, 2005.

⁷³ Miller & Miller, op cit, p. 17.

⁷⁴ Dorothy Riehle, op cit. Footnote 43.

⁷⁵ Ibid.

3. DOE Shields Itself with Limited Program Reviews

a. Federal Occupational Health's March 2004 Review

In 2003, DOE worked with Federal Occupational Health (FOH) to review Hanford's workers' compensation program. FOH is a unit within the federal Department of Health and Human Services that works with federal agencies to improve the health and safety of the federal government's workforce.

The scope of work required FOH to validate that CCSI's claims process was compliant with Washington State regulations and to determine whether or not Hanford employees covered by the program were receiving optimum claim management.⁷⁶ Nine workers were randomly selected to be interviewed and the interview results formed the basis of FOH's conclusions. Several of the workers who were interviewed by FOH told GAP that the data presented in the final report did not match the data they had provided to the interviewer and there was no opportunity to correct it.

In its transmittal letter to CCSI regarding the result of the review, DOE stated that:

- Federal Occupational Health did not report any findings;
- observations and opportunities for improvement were noted, and;
- no corrective action plan was required.⁷⁷

"Observations" and "opportunities" for improvement included reducing the caseload of CCSI's claims administrators and improving communications between CCSI and Hanford workers. Many of these same observations emerged again three years later in L&I's 2006 review of the program, discussed below.

b. Washington State Labor and Industries 2006 Review

In response to workers' concerns about Hanford's workers' compensation program,⁷⁸ DOE asked L&I to do an independent review of the program. L&I hired the consulting firm of Miller and Miller to complete the review and it was released in April, 2006.⁷⁹

Along with many significant findings and valuable recommendations regarding the need to improve communications, the review has significant limitations that suggest it is not comprehensive enough to serve as the platform for identifying actions needed to remedy the program.

- Many findings of the review did not result in recommendations. For example:
 - 1) Data from the review indicates that 34% of chemically related claims are denied – more than triple the average rate for self-insurance programs in Washington State. The review did not put forth any recommendations to examine this high rate of denials;

⁷⁶ Ellen Arnott, RN, MA,CCM,COHN and Bonnie McCafferty MD, MSPH, *Federal Occupational Health: Independent Review of the Workers' Compensations Process for the Department of Energy*, Richland, Washington, February 5, 2004.

⁷⁷ Stacie L. Sedgwick, Memorandum to Ms. Lisa McManus, President, Contract Claims Services, Inc, 04-PRO-0258, March 22, 2004.

⁷⁸ Keith Klein, Manager, DOE Richland Operations Office, Roy Schepens, Manager, DOE Office of River Protection, Jean Vanek, Program Manager, Washington State Department of Labor and Industries, op cit.

⁷⁹ Miller & Miller, op cit, p. 8.

2) 41% of the claim files review were rated as fair to poor⁸⁰ and yet there are limited recommendations to improve claim file management; and
3) The review found that in many cases the claims examiner did not actively pursue medical reports crucial to assessing the claim and there was a pattern of failing to consistently request or anticipate relevant medical information in a timely manner.⁸¹ Regardless of this finding, there are no recommendations that specifically address this problem.

- The scope of work did not examine:
 - 1) whether or not there are alternative program structures that should be considered;
 - 2) whether or not there are any trends that suggest worksite safety issues;
 - 3) the adequacy of the process to review asbestos, beryllium, and chemical claims;
 - 4) the impact of DOE's legal program and efforts to fight workers' appeals; or
 - 5) why some of the same problems (e.g., poor communication and excessive caseloads) were found three years after the FOH review recommended that they be fixed.
- In some arenas, the methodology limited the findings. Based on the assumption that many improvements may have occurred since DOE first became insured in 2000, the review only looked at claims from 2004. Thus, it excluded – and apparently excused – actions that may still be impacting Hanford workers such as 2003 claims decisions.

Of the 36 randomly selected workers that were interviewed, an attempt was made to review and rate each of their claim files. However, none of the claim files of the 25 self selected workers were reviewed or rated. Instead, their experiences were described as “impressions”.⁸² Regarding the types of claim files randomly selected for review, none were claim files relating to chemical exposure⁸³ even though chemical exposure claims are a significant area of concern and workers filed more exposure claims than claims for insect stings and other types of claims that were reviewed.

Along with the 2004 FOH review and L&I's 2006 program review summarized above, DOE has conducted several “informal” reviews of their workers' compensation program since 2000. Each time they have not found any significant problems. For example, in 2005 DOE completed a review in response to concerns expressed by HAMTC⁸⁴ and CH2M Hill regarding workers' frustrations with the workers' compensation program. DOE did not validate their concerns and concluded that “communications or miscommunications contributed to the perception of the concerns.”⁸⁵

⁸⁰ Miller & Miller, op cit, p 17. The 41% is not displayed on the graph but is derived by adding the number of files that were rated fair (13 or 27.5% of the total) to the number that were rated poor (6 or 12.5% of total) for a total of 19 files or 40% of the claim files that were reviewed (46 max.).

⁸¹ Miller & Miller, op cit, p. 22.

⁸² Miller & Miller, op cit, p. 26.

⁸³ Miller & Miller, op cit, p. 14.

⁸⁴ HAMTC (Hanford Atomic Metal Trades Council) is the bargaining unit at Hanford. They represent 15 unions and associated members who work at Hanford.

⁸⁵ Shirley Olinger, ORP Deputy Manager, for Schepens, Roy J, Manager, Letter to Mr. E.S. Aromi, President and General Manager, CH2M Hill Hanford Group, 0500547, 05-ESQ-022, May 6, 2005.

B. L&I Provides Minimal Oversight of Hanford’s Workers’ Compensation Program

1. Agreements Have Been Renewed with Minimal Evaluation

Most of the amendments to the initial agreement between Washington State Labor and Industries and DOE called for evaluations prior to renewing the special agreement. The standard language stated that “The DOE and the Department mutually agree to complete their evaluation of the continuing necessity for and the effectiveness of the Special Insuring Agreement prior to the new expiration date of December 31, 1999.”⁸⁶ There is no record that these and other evaluations were done before the agreements were renewed.⁸⁷

2. L&I Has Audited Hanford’s Program Once Since 2001

Due to budget and staffing constraints, L&I audits self-insured employers only every 5-6 years and has limited resources to follow-up on audit findings. In October 4, 2001, L&I completed its audit of CCSI’s claims processing for the period November, 1999 – March, 2001. The audit examined 30 time-loss, 1 re-opening, 25 medical only, and 6 rejected claims.

The audit resulted in 17 directives to correct errors associated with delayed payments, incorrect calculations regarding hours employees worked, and administrative reporting requirements. Key findings include the following;⁸⁸

- 53% of the compensable claims examined (16 of 30) violated regulatory requirements regarding the first time-loss compensation payments;
- 33% of the reports on occupational injury or disease (SIF-5s) were not filed with the deadline required by state regulations (WAC 296-15-420).
- 100% of the applicable examined claims violated WAC 296-15-510, requiring the self insurers to notify L&I within 90 days of continuous time-loss whether or not vocational rehabilitation was needed and likely to enable the injured worked to become employable in gainful employment.

CCSI’s audit response letter to L&I stated that, “CCSI is making every effort to ensure all initial and ongoing benefits are paid timely. We have increased our staff size to reduce case loads and improve efficiency.”⁸⁹ The letter did not provide any information regarding the extent to which caseloads would be reduced.

Five years have passed since the 2001 audit was completed yet some of the problems persist. L&I’s April 2006 review found problems with files not being regularly reviewed, delays in claims closure, and claims administrator’s are still having to manage excessive caseloads.⁹⁰

⁸⁶ Supplemental Agreement Number 4 to Special Insuring Agreement Between U.S. Department of Energy, Richland, Washington (DOE) and State of Washington Department of Labor and Industries, 91001-4K.doc, December 28, 1998.

⁸⁷ Deanna Jackson, Records Management Supervisor, Washington State Department of Labor and Industries, Memorandum to Lea Mitchell, GAP Nuclear Oversight Program, January 25, 2006.

⁸⁸ Washington State Labor and Industries, U.S. Department of Energy, *Program Compliance Audit*, 706.178-00, October 2001.

⁸⁹ Terri Sellers, Adjuster in Charge, CCSI, L.P., Letter to Janet Blume, Program Compliance Supervisor, Department of Labor and Industries, November 15, 2001.

⁹⁰ Miller & Miller, op cit, p. 24.

3. Inadequate State Oversight of DOE's Use of Independent Medical Exams

a. The Role of Independent Medical Exams

Ideally, Independent Medical Exams (IMEs) are used by claims administrators to get additional medical data about a workers' condition so that decisions can be made about a worker's claim. At their worst, IMEs are used to generate selective data used to deny a claim or minimize impairment ratings. Workers are legally required to go to an IME if their claims administrator asks them to.⁹¹

A study of the IME process in New York found that the IMEs made fewer diagnoses, deemed fewer illnesses work-related, made fewer treatment recommendations, and assessed lower levels of disability than examiners from the Central New York Occupational Health Clinical Center.

In all but one of the cases reviewed, researchers found that the impact of the IME was to limit workers' compensation benefits.⁹² The researchers concluded that the difference in conclusions between occupational health professionals and Independent Medical Examiners (Examiners) was not due to skill level, but perspective in terms of the types and sources of data collected to assess the ill or injured worker. Researchers found that most occupational health professionals view a patient's history, observations, and associated data as critical to assessing the situation and that most Examiners do not. They also found that IMEs are not totally independent for the obvious reason that the Examiners are hired by the employers.

Similar conclusions were reached by a study conducted by Oregon's Department of Consumer and Business Services under the guidance of Oregon's Workers' Compensation Management-Labor Advisory Committee. Their survey of injured workers', attorneys, and physicians concluded that IMEs were biased against workers. Over 50% of the Examiners surveyed by the state of Oregon stated that in their experience, IMEs were biased in favor of the insurers.⁹³

b. L&I Does Minimal Review of the IMEs ordered for Hanford Workers

Although Washington's Industrial Insurance Laws require L&I to monitor the quality and objectivity of IMEs⁹⁴ there are limited resources to do so and the resources available have generally been aimed at state fund managed claims. DOE's self-insured program was audited in 2001 but the audit did not examine DOE's use of the IME process. A partial review of DOE's use of IMEs was done as part of L&I's April 2006 review of Hanford's workers' compensation program. The findings presented were based on the results of 46 randomly selected claims files of Hanford workers covered by DOE's program. The review concluded that IMEs were used sparingly but appropriately.⁹⁵

⁹¹ Washington State Law, RCW 51.32.110.

⁹² Michael B. Lax, MD, MPH, Federica A. Manetti, MD, MS, and Rosemary A. Keline, MS., *Medical Evaluation for Work-related Illness: Evaluations by a Treating Occupational Medicine Specialist and by Independent Medical Examiners Compared*, Journal of Occupational Health Policy, Volume 14, Number 3, p. 219-251, 2004.

⁹³ Oregon's Department of Consumer and Business Services, *Workers' Compensation Insurer Medical Examination Study*, http://injuredworker.org/IME_Study/IME_Study_Report.pdf, December 2, 2004

⁹⁴ RCW 51.31.114 defines L&I's responsibilities to monitor the quality and objectivity of persons conducting special examination for the department and self-insured claimants.

⁹⁵ Miller & Miller, op cit, p. 20.

It is questionable whether or not these findings can be applied to Hanford's workers' compensation program as whole because:

- Of the 48 claim files randomly selected for review, none were from claims for chemical exposure, respiratory, or systemic effects.⁹⁶ These types of claims tend to be more difficult to assess than, for example, strains and sprains, and may entail a broader use of the IME process.
- The claim file review did not include a review of the claim files of the 25 self selected Hanford workers who requested to be interviewed.
- The review did not assess the completeness of medical data used by the IMEs, the quality of their reports, or whether or not the IME exam, report, and associated actions met Washington State regulations.⁹⁷

c. L&I's Review of Medical Examiners Finds Numerous Flaws

A more thorough review of the IME process was completed by L&I in 2001. The review was specific to examining how state fund claims administrators use IMEs and did not examine self-insured employer's use of IMEs. Key findings from the state's 2001 evaluation of the IME process include the following:⁹⁸

- L&I used IMEs much more frequently than other comparison jurisdictions;
- Brokers or vendors handled many of the clinical and administrative tasks in the IME process and provided about 95% of the IMEs for L&I. This situation is not common in other states or with other claims payers;
- Several of the greatest deficiencies in the IME reports reviewed were the dearth of reference to scientific evidence or guidelines and clear explanations of logic for a variety of conclusions. The weakest areas of the IME reports, as a group, were the history of the case and analyses of causation, previous care and disability management, and the overall course of the case;
- Several factors in Washington combine to create powerful incentives for physician examiners to do as many IMEs with minimally acceptable quality as possible. Factors identified included: lack of any systematic performance tracking capability by L&I; absence of explicit performance standards and enforcement by L&I; low net payments to examining physicians relative to the work required by state regulations regarding IMEs;
- Because IMEs are regarded as a claims management tool rather than as part of the medical care process, they have not been subjected to healthcare quality management research and improvement efforts.

⁹⁶ Miller & Miller, op cit, p. 14, table. The claim descriptions used by Miller for the table are based on an Excel download taken from CCSI's database of the claims opened in 2004.

⁹⁷ Standards for IMEs are defined by RCW 51.32.112 and RCW 51.36.070. Associated guidance is defined in the *Medical Examiner's Handbook* by the Washington State Department of Labor and Industries. F252-001-000, May 2005.

⁹⁸ Med Fx, LLC, For State of Washington Department of Labor and Industries, *Project to Improve the Quality of Independent Medical Examinations*, Summary Report, Chapter 1, December 2001.

Several of these findings ring true for DOE's self-insured program. In particular, L&I lacks any systematic evaluation or performance tracking of DOE's use of IMEs and IMEs are generally regarded a claims management tool rather than part of the medical care process. This lack of oversight places L&I at risk of violating its legal mandate to "monitor the quality and objectivity of examination and reports for the department and self-insured claimants."⁹⁹ Section VIII. of this report presents several case examples regarding worker's experiences with IMEs and the extent to which they comply with Washington's Industrial Insurance Laws and associated claims management standards.

4. DOE Uses Independent Medical Exams to Deny or Minimize Claims

In 1988, the Washington State Supreme Court upheld a lower court's actions in a workers' compensation case and affirmed that special consideration should be given to the opinion of a worker's attending physician.¹⁰⁰ L&I's Attending Doctor's Handbook states that, "according to case law, the opinion of the attending doctor is entitled to special consideration in department decisions."¹⁰¹ It is unclear how DOE's program honors this.

Independent Medical Exams (IME) ordered by CCSI must be approved by DOE. As part of the approval process, DOE's contractors are often consulted as well.¹⁰² Along with, or instead of IMEs, additional diagnostic tests can be done by the worker's attending physician. Due to lack of data tracking, it was not possible to assess how frequently DOE orders IMEs instead of ordering additional diagnostic testing by the attending physician or a qualified professional. In some cases, requests for additional testing and diagnosis have been denied and this caused some workers to forge ahead and pay for the testing themselves.

Most of the workers that GAP interviewed said that when they went to IMEs, it was their experience that the Examiner did not have their complete claim file and associated data, did not readily share their findings with them or their attending physician, or did limited testing and diagnostics specific to the worker's condition. These practices and case examples, as summarized below, illustrate breaches of Washington State's industrial insurance procedures and associated guidance defined by L&I's Medical Examiners Handbook.¹⁰³

- **Independent Medical Examiner has limited knowledge of worker's duties and incomplete medical records.** Upon going to a scheduled IME, the physician was under the assumption that the worker was office personnel and had no dealings with radiation or chemicals. The physician did not have the worker's relevant medical records and associated reports such as the worker's dose records that showed the worker did indeed enter the tank farms without respiratory protection equipment, or event reports indicating that the worker had tank waste on the clothing, hair, and face for over an hour. Finally, the Independent Medical Examiner did not have the worker's job description or

⁹⁹ RCW 51.32.114

¹⁰⁰ Supreme Court of Washington, En Banc, Larry R. Hamilton, Petitioner v. Department of Labor and Industries of the State of Washington, 111 Wash. 2d 569,761, p. 2d618, September 22, 1988.

¹⁰¹ Washington State Department of Labor and Industries, *Attending Doctor's Handbook*, p. 46, Revised March 2005.

¹⁰² Review of public records provided to GAP in response to FOIA 2005-0088.

¹⁰³ Washington State Department of Labor and Industries, *Medical Examiners Handbook, Impairment Ratings and Independent Medical Examinations in Washington State Workers' Compensation for IME Examiners, Attending Doctors, and Consultants*, Publication F252-001-000, May, 2005.

associated information about the worksite. This worker did not get a copy of the IME results until a month after the IME and after CCSI and DOE's lawyer received a copy of the results.

- **IME relies on limited data and assumes worker is fit to return to work.** This worker was recovering from a back injury sustained while carrying heavy equipment on a ladder. As part of evaluating his request for time-loss, CCSI ordered him to go to an IME panel where he was evaluated by two medical examiners. According to the worker, they spent a total of approximately 15 minutes with him. The injured worker asked the Examiners if they had reviewed his past MRIs, therapy results, or data from his primary physician. He was told that no, they had not seen that data. They ultimately denied his request for time-loss and asserted that he was fit to return to work.
- **Independent Medical Examiner makes determinations based on incomplete data.** This worker was subjected to an IME wherein the examiner did not have the worker's complete medical records but nevertheless made a determination that current conditions were the result of past gastric surgery and not thyroid removal – which was a covered condition from a prior claim. Although the worker went to the IME in August 2004, it was not until six months later that CCSI sent approximately the worker's relevant medical records to the IME. According to the worker, this was done only because L&I stepped in and made CCSI send the medical records to the IME. CCSI is requiring the worker to undergo three more IMEs even though the worker has been diagnosed with a permanent disability by the worker's physician. After reading the complete record, an administrative law judge ruled that this worker has a permanent disability caused by working at Hanford. The judge determined that that claimant's records clearly showed evidence of a permanent disability and stated that the basis of his decision was a review of the claimant's medical history, the opinion of the examining (non-treating) source, and credible information provided by the claimant. The judge further stated that L&I's opinions --which relied on the data that CCSI had provided them-- were no longer fully supported in light of the entire record.¹⁰⁴
- **Worker is required to go to IMEs that rely on selective information, is denied additional diagnostic testing, and is forced to finance his medical care.** This injured worker was told that his claim could not be validated unless he went to an IME. It took months before an IME was available. In the meantime, the worker's need for immediate evaluation and medical care was not addressed. In the worker's experience, the opportunity to see the more acute effects and treat them was missed. The IMEs were ordered based on a questionable diagnosis he received from the onsite medical provider on two different occasions. The first occurred an hour and a half after his injury when the worker went to the onsite medical provider for a medical evaluation and was told that he likely had allergies. The second occurred several months later when the worker returned complaining of headaches, vocal chord and airway problems, respiratory congestion, nose bleeds, and other respiratory symptoms. He was told he had a respiratory infection. CCSI ordered an IME based on the site medical provider's suggestion of allergies.¹⁰⁵ This worker's medical records from DOE's on-site medical provider do not include any records of additional testing, an examination of worksite conditions, or data to substantiate their assumption that his condition was the result of allergies and not work

¹⁰⁴ James A. Burke, Administrative Law Judge, Social Security Administration, Office of Hearings and Appeals, December 5, 2005.

¹⁰⁵ Mandeew Hewett, email message to Theresa Sellers, June 24, 2002.

related. According to the worker, one of the Examiners refused to examine or consider the tank profile data the worker provided though it listed the contaminants and their estimated levels. Nor did the Examiner ask him about the event, worksite conditions, worksite data or his symptoms. One of the Examiners concluded that there were no findings upon which to base a diagnosis of occupational disease or injury. The other concluded that there was facial rash related to exposure, documented leaks of ammonia from the tanks, and that the injured worker should undergo an ENT evaluation. According to the worker and associated records, despite this recommendation, CCSI did not agree to an ENT evaluation. On his own accord, the worker went to see an occupational medicine specialist who determined that he likely had a chemical injury to his upper airway as a result of his workplace vapor exposure. In addition, this worker paid out of pocket for a second ENT evaluation which also concluded that he had a work related injury and recommended no further work without changes in the work environment. CCSI refused to pursue additional testing and evaluation, treatment, or reimbursement, and instead recommended that the claim be denied.

- **IME relies on selective information, DOE refuses to help correct the record, and CCSI provides incomplete records to L&I.** When two doctors concluded that the worker's symptoms were "more likely than not" the result of his vapor exposure at the tank farms, CCSI wrote to the physicians and questioned their conclusions based on what they felt were the more accurate figures from the industrial hygienist (IH) monitoring results.¹⁰⁶ However, CCSI did not provide the physicians with data regarding the location and method of the monitoring or information regarding toxic wastes known to be in the tank but not part of the monitoring regime at the time of the exposure event.

DOE's attorney contacted several of the worker's doctors directly. After their conversations with the attorney, both of the Examiners withdrew their prior conclusion that the worker's injury was work related. The change occurred largely due to Direct Instrument Reading data that DOE's lawyer presented to them from the IH tech that was on-site monitoring the night the exposure occurred. According to the worker, neither CCSI nor DOE questioned the accuracy or completeness of the data or the possibility that the worker could have suffered an injury despite the apparently low ammonia readings. The worker provided CCSI additional information about the chemicals in the tank but CCSI did not forward it to L&I for consideration.¹⁰⁷ When the worker spoke with the Hanford's Workers' Compensation Administrator in an attempt to ask DOE to correct part of the record he believed was incorrect, the worker was told that was not possible because once CCSI got a claim, DOE had no control over it and could not get involved. In particular, the worker wanted DOE to correct the exposure investigation report¹⁰⁸ because it failed to incorporate data regarding the presence of other substances in the tanks beyond ammonia and it did not clarify whether or not the low ammonia readings were taken in the worker's breathing zone as was implied by the event report. According to the worker, DOE's contractor offered to make the correction but DOE refused.

¹⁰⁶ Letter from CCSI to Joyce Edwards, Department of Labor and Industries, sent September 4, 2002, received September 09, 2002.

¹⁰⁷ Email sent from worker to Goeckner et. al., June 13, 2003.

¹⁰⁸ Memo from CH2MHill, Safety and Health to C.K. Kirk, *Subject: A-101 Exposure Investigation*, August 20, 2002.

5. The IME Complaint Process is Not Used by CCSI or DOE

Despite substantial worker concern about the IME process, there is minimal use or awareness of a complaint mechanism to inform L&I of problem IMEs. According to L&I policy, if a self-insurance section adjudicator, self insurer, or service company receives a complaint from a worker or his/her representative about the IME the self insurer (in this case DOE or its contractor CCSI) is supposed to forward the complaint to the Office of the Medical Director at L&I. Written complaints are to be forwarded directly. In the case of verbal complaints, CCSI or DOE are supposed to advise the worker to put the complaint in writing. Upon receipt of a written complaint, L&I is supposed to conduct an investigation. The medical director has the authority to suspend referrals to providers not meeting department standards for special examinations.¹⁰⁹

Despite the fact that Hanford workers have complained about the IME process for years, GAP was not able to identify any evidence that DOE or CCSI have forwarded a single IME complaint to L&I in the past six years¹¹⁰ or that workers are fully informed of the complaint process or can use it without suffering retaliation.

C. Lack of Clear Guidance for Adjudicating Chemically Related Claims

1. Legislative Mandates are Being Compromised

In 1994, the Washington State legislature passed legislation requiring the Washington State Labor and Industries to adopt criteria and procedures to ensure that claims involving chemically related illness were adjudicated fairly and consistently. The legislation further required that the criteria apply to both state fund and self-insured claims.¹¹¹

Legislative guidance came on the heels of L&I's stated commitment to:

- reimburse claimants for medically necessary diagnostic evaluations related to chemically related illness problems;
- compensate ill workers for testing for all generally accepted medical tests;
- compensate for certain tests which may not be generally accepted but which L&I determines (on a case by case basis) to be useful as part of formal research programs;
- have a system in place to ensure that they would "accept claims with a coherent and convincing combination of medical exposure history without confirming test results."¹¹²

Thirteen years have passed since these declarations were made to the Washington State legislature and yet L&I still does not appear to have clear policies in place to implement and enforce this guidance at Hanford or other sites where workers are exposed to chemical hazards.

Several medical practitioners interviewed by GAP noted the disparity between the scientific methods used to diagnose an illness or injury and the more subjective methods used by claims

¹⁰⁹ Washington State Department of Labor and Industries, *Injured Workers' Complaints about Special Examinations*, Policy S13.12.

¹¹⁰ GAP asked L&I's Office of the Medical Director if there were any recent IME complaints from the Hanford site and was told that they were not aware of any. Phone conversation. January, 2006.

¹¹¹ RCW 51.32.350, c 265 1, 1994.

¹¹² Silverstein, M.D., M.P.H, Associated Medical Director for Occupational Safety and Health, Department of Labor and Industries, *Chemically Related Illnesses, Testimony presented to the Washington State House Commerce and Labor Committee, House Health Care Committee, Senate Health and Human Services Committee, and Senate Labor Committee*, p. 6-7, September, 1993.

representatives to decide whether to accept a claim or deny it. In order to assess this, GAP filed a public records request for all existing guidance used by claims representatives to evaluate claims relating to asbestos, beryllium, chemicals, and other claims classified as a “chemically related illness” (CRI). We received a collection of articles, power point presentations, fact sheets, staff notes, reports from MDs to L&I, and very few formal policies. The formal policy for adjudicating occupational disease claims relating to workplace exposures was last updated in 1997.¹¹³ The guidance defines when the adjudicator should refer the claims to L&I’s chemically related illness unit (CRI) but does not define the criteria that the unit should use to evaluate the claim.

GAP’s records review and discussions with medical practitioners raises concerns regarding the nature of CRI guidance and associated claims tracking. Our review indicates that there is:

- no guidance to address the unique nature of the conditions, chemical hazards and workforce at Hanford. These include possible long term exposure to multiple chemicals (known and unknown), inadequate worksite monitoring and exposure data, and a site that is not subject to state (WISHA) or federal (OSHA) safety regulations;
- no clear process for independent medical review of the CRI guidance;
- no clear process for updating CRI guidance as medical knowledge evolves. For example, medical practitioners and toxicologists recognize that there is often a long period between when workers are exposed to toxics and when their bodies show signs of exposure. By the time the worker is diagnosed, they have missed the deadline for filing a claim;
- with the exception of beryllium claims, a lack of flow charts or standardized forms to help assess whether or not an objective medical diagnosis had been made or to define the appropriate next steps in the face of uncertainties regarding the diagnosis;
- no transparent guidance on when to order additional testing instead of denying the claim;
- no guidance on the definition of a “claim file” and criteria a claims reviewer should use to ensure that the data in the file is complete and accurate (this is true for all types of claims, not just chemically related);
- informal guidance directing staff to allow pesticide exposure claims (even if there are no objective medical findings) as long as several other conditions are met including reason to believe an exposure occurred, the employer does not dispute an exposure occurred, the physician indicates a condition resulted from the exposure, and no further treatments is indicated.¹¹⁴ This guidance recognizes that in certain types of cases the lack of an objective medical diagnosis is not sufficient reason to deny a chemically related claim.

The challenges imposed by the current process are illustrated by the case of a worker who has worked at Hanford since 1979 at the animal laboratory, C-farm, 202A and the tank farms where part of the worker’s job was to open up the stack cabinets – a documented vapor source. He has faced the repeated denial of his claims and lack of treatment and compensation. For example, in 2001, this worker filed a claim for exposure to unknown vapors. Two years later, on June 5, 2003, the claim was denied based on the assumption that, “ medical opinion finds that on a more probable than not basis there are no objective medical findings to support that you have sustained

¹¹³ Washington State Department of Labor and Industries, *Insurance Services Policy Manual*, Claims Administration, Task 3.02-A, Claims Adjudicator, p. 4, Effective March 1, 1997.

¹¹⁴ Joseph Nilsson, Washington State Department of Labor and Industries, *Subject: Clarifications on Single Claim Exposures for Pesticide Claims with Evidence of Exposure, No Employer Protects, and Lack of Objective Findings*, Email communication issued to staff October 2003, 2002.

an occupational disease or injury due to your alleged exposure.¹¹⁵ Although the worker's attending physician and Harborview determined that some of the worker's symptoms were associated with vapor exposure, CCSI found the determinations to be insufficient and several IMES were ordered. Medical records reviewed indicate some confusion over whether the IMES were to evaluate vapor exposure, asbestos exposure, or both because the claim numbers on the IME orders listed several claims numbers. Although the claim was filed for exposure to unknown vapors, CCSI repeatedly referred to it as an asbestos claim. A review of associated claim records indicates that CCSI changed the date of injury at least five times in their correspondence and associated claim forms.

As part of reviewing the claim, CCSI ordered this worker to go to several IMEs. One of the IMEs was understood by the worker to be a toxicological evaluation to help assess the extent and impact of his vapor exposures. Instead, the worker was subjected to a 5 hour psychological evaluation. Although no toxicological tests were done, the IME concluded that there was no relationship between the worker's neuropsychological symptoms and his work at Hanford. According to the worker, the IME had no credentials posted and the worker's wife had to ask the IME for some identification.

The second IME the worker visited noted that the worker had made at least 12 visits to DOE's on-site medical provider complaining of various symptoms including sore throat, numbness and tremors, weakness, and tingling. The IME also noted Harborview's diagnosis that there had undoubtedly been some environmental contamination and he may have been exposed to significant levels.¹¹⁶ The IME also noted that another doctor had documented that the worker had an unspecified relatively significant disability from his most recent incident. Despite these findings and other information in the record, the IME concluded that the medical data did not indicate significant workplace exposure, the worker's symptoms were probably related to depression, and that work restrictions regarding using a respirator were not appropriate.¹¹⁷ During the same time period, the worker was ordered to go to a third IME -- a pulmonologist in Spokane. A CCSI claims administrator asked the IME to perform a methacholine challenge test (MCN). The IME refused to perform this test because he determined it was contraindicated, had some potential risk, and that a CCSI claims representative had ordered the test, not a doctor. The IME concluded that the worker had a neurologic syndrome related to vapor exposure and also stated that he agreed with the diagnosis of the worker's attending physician which concluded the worker's symptoms were the result of chemical exposure.¹¹⁸ Regardless, the workers' claim was denied.

In February 2005, this worker filed a second claim -- this time for ongoing exposure to unknown vapors. Six months later the claim was denied. The denial stated that "It is recognized that you may have been exposed while working. However, the medical information provided indicates that you do not have a diagnosed medical condition as relates to chronic chemical and vapor exposure at this time."¹¹⁹ There is no indication that any effort was made to order additional tests to help clarify the diagnosis. The denial appears to have been issued based, in part, on CCSI's determination that the conditions reported were related to Beryllium exposure and being covered

¹¹⁵ Washington State Department of Labor and Industries, Self Insured Employer's Notice of Denial of Claims (SIF-4), June 5, 2003.

¹¹⁶ Dr. Brent Burton, M.D., M.P.H, IME report prepared for CCSI. February 4, 2003.

¹¹⁷ Ibid.

¹¹⁸ Dr. Alan Whitehouse, MD. IME report to CCSI. February 26, 2003.

¹¹⁹ Department of Labor and Industries, Division of Industrial Insurance. Letter issued August 5, 2005. Claim SA 19575.

via a separate Beryllium claim.¹²⁰ The worker ultimately gave up on Hanford’s workers’ compensation process, filed a claim with EEOICPA, and is awaiting a response.

This worker also filed a claim for beryllium exposure. Approximately one year later it was denied based on the recommendation of a physician that CCSI required the worker to go to. In addition, the decision was made without notifying or consulting the worker’s attending physician. Throughout review of this claim, CCSI repeatedly referred to it as an asbestos claim even though the worker had never completed the Self Insurer Accident Report and associated forms to file an Asbestos claim. The worker was subjected to several IMES and at each of the IMEs the worker’s wife hand delivered to the IME a copy of a diagnosis from the worker’s attending physician. According to the worker, none of the IMES had been provided this information. In their letter to L&I recommending denial of the claim, CCSI cited the findings of a practitioner at Harborview who determined that there were no objective findings to support a diagnosis of beryllium sensitivity. They did not cite or mention the findings of another practitioner who concluded that the worker had several conditions including borderline beryllium sensitization. None of the denial letters sent to the worker included a cc to the primary physician he had indicated on his claim form. In February 2005, five years after the initial claim was filed, the worker filed a new claim for beryllium exposure. He was diagnosed with beryllium sensitization based on a positive beryllium patch test. In August, 2005 – six months after the second claim was filed, the worker received an order notifying him that the claim had been closed and that no payment would be made for medical treatment received after the date of the notice. Once again, the notice listed the wrong attending physician.

2. Hanford Claims Have a Higher Denial Rate than Other Self-Insured Employers

Claims filed by Hanford workers are denied at a significantly higher rate than claims from other self-insured employers. For example, in 2004, the percent of denials for Hanford’s workers’ compensation was double the average of Washington’s self-insured programs as a whole. The rate of denial for chemically related illnesses was triple the average for self-insured programs as a whole. This pattern is also apparent in claims filed for former Hanford workers by the Former Worker Program. Since 1998, an average of 32% of the claims have been denied (Table 4).

Table 4. Claim Denials at Hanford Compared to Other Self-insured Employers¹²¹

Sector or Type of Claim	Percent Denied
Washington’s self-insured programs	10%
Hanford’s self-insured program	20%
Hanford’s chemically related illness claims	34%
Hanford claims submitted by Former Hanford Worker Program ¹²²	34% - asbestos 32% - beryllium sensitivity 31% - hearing

¹²⁰ Mande Hewett, Sr. Adjuster, CCSI. Letter to Diana Austin, CRI Adjudicator, Washington State Labor and Industries. July 7, 2005.

¹²¹ Miller & Miller, op cit, p. 24. Percentage denials are for claims filed in 2004. The average of 34% denials is not presented in their report but was calculated from figures on page 24 of their report.

¹²² Data is from Hanford’s Former Worker Medical Monitoring Program for years 1996-2004 as provided by Katie Omri, Program Operations Manager, University of Washington Former Hanford Worker Project. Additional claims filed by former workers' personal physicians may not be included in the above figures.

As discussed earlier, CCSI makes recommendations on whether or not to deny or accept a claim. L&I then reviews CCSI's denials and can agree to deny the claim, direct CCSI to accept it, or require CCSI to seek additional information before making a decision.

Over the past three years, L&I approved 80% of the claim denials requested by DOE (Table 5). The fact that L&I accepts a high percentage of the denials requested by DOE could be due to a combination of factors including: overworked state L&I employees who do not have sufficient time to thoroughly review the claim files; pressure to close claims and avoid additional diagnostic testing and associated costs; incomplete or inaccurate records being provided to L&I by DOE and used to steer claims toward denial; or DOE's correct identification of invalid claims that should be denied. Due to lack of claims tracking, it was not possible to determine the amount of time that L&I spent reviewing the claim denials, the extent of medical review, or how frequently additional tests were ordered prior to accepting DOE's request to deny the claim.

Table 5. L&I Decisions on Claim Denials Requested by DOE¹²³

Claim Denial Circumstances	2004¹²⁴	2005	2006 Jan-May	Total
Claims DOE requested L&I to deny	68	121	28	217
Claims that L&I agreed to deny	54	100	20	174
Claims that L&I allowed	13	21	4	38
Denial requests whose outcome is not yet determined	1	0	4	5
Percent of requested denials approved by L&I	79%	83%	71%	80%
Percent of requested denials not approved by L&I	19%	17%	14.5%	18%
Percent of request denials – status not yet determined	2%	0%	14.5%	2%

VII. Interference in Claims Management and Worksite Data

Prior sections of this review documented how inadequate oversight and DOE contracts contribute to a flawed workers' compensation program. This section examines two other key elements: 1) the quality of the illness, injury, and trends data that DOE collects and 2) the experiences of workers who have filed claims with Hanford's workers' compensation program.

Data presented in this section and the conclusions drawn are based on public records from DOE and L&I and 35 interviews with current and former Hanford workers, physicians, program administrators, workers' compensation lawyers, and state and federal government employees. The case examples presented here are based on interviews and associated claims information from 15 self selected Hanford workers.

The conditions assessed in this section relate to circumstances that subject self-insured employers to decertification or corrective actions mandated by L&I.¹²⁵ The provisions are defined by Washington's Industrial Insurance laws and DOE has agreed to comply with them as defined in

The outcome of 83 pending or undecided claims will increase or decrease the denial rate shown on the table.

¹²³ Gail Griswold, Washington State Department of Labor and Industries, data table, DOE Denials 6-24-06.xls, May, 2006. The data reflects claim status when data was compiled in May, 2006. It is possible that since then, claim status has changed due to appeals and other actions.

¹²⁴ Data for 2004 is not complete because data tracking capabilities were not in place for the entire year.

¹²⁵ RCW 51.14.080, Withdrawal of certification – Grounds.

their current agreement with L&I. The provisions provide a useful structure to examine elements of DOE's workers' compensation program relating to illness and injury reporting, litigation practices, and claims management.

A. Incomplete Reporting of Work Related Conditions and Safety Trends

1. Illness and Injury Reporting Requirements Have Been Violated

Recording and reporting workplace illnesses and injuries is a cornerstone of both state and federal safety programs. Washington State's Industrial Insurance regulations require it. Failure to accurately document workplace illness and injuries subjects self-insured employers to decertification or enforcement actions. At the federal level, OSHA defines mandatory requirements.¹²⁶ Although neither OSHA nor L&I¹²⁷ have jurisdiction to inspect or fine DOE contractors for non-compliance, DOE's contractors are required to ensure that their Industrial Hygienists and other health and safety personnel are trained in OSHA recordkeeping regulations (OSHA 300 log and 301 incident report) and accurately record workplace illnesses and injuries.

Accurate illness and injury reporting:

- allows employers to know when employees are being injured or made ill by their workplace and provides information on hazards that need to be addressed;
- helps ensure that employees are aware of workplace hazards;¹²⁸
- helps DOE track contractors' performance and respond by targeting enforcement and compliance assistance.

Federal audits, Employee Concerns, and workers' experiences at Hanford indicate that worksite injuries or illnesses have been underreported and misrepresented. As a result, the associated safety problems and trends may not get fully addressed by DOE or its contractors. In addition, workers' compensation claims can be hampered by flawed reports.

Core findings from DOE reviews include contractor's failure to do self assessments, inconsistent record keeping, and misreporting of illnesses and injuries. Although it is possible that more recent audits exist, none were provided as part of GAP's information request to DOE.

Several contractors failed to do self-assessments of illness and injury reporting^{129 130}

- Although self assessment is the cornerstone of DOE's compliance program, a recent surveillance report found that of the three Hanford contractors reviewed, none of them

¹²⁶ Federal law 29 CFR 1904.29.

¹²⁷ Washington State Labor and Industries (L&I) has federally delegated authority to implement OSHA. However, because DOE is not subject to OSHA, L&I cannot enforce OSHA at Hanford. In addition, DOE is not subject to Washington State's safety regulations.

¹²⁸ US Department of Labor, Occupational Safety and Health Administration, 29 CFR Parts 1904 and 1952, Docket No. R-02, RIN 1218-AB24, Final Rule, January 19, 2001.

¹²⁹ The data presented here is limited to the data that DOE provided to GAP in response to our FOIA regarding DOE's oversight of illness and injury reporting. If other more recent reports exist, we are not aware of them because they were not provided to us in response to our FOIA.

¹³⁰ Department of Energy Richland Operations Office Surveillance Report, Safety and Engineering Division, S-05-SED-FHI-004, Completed October 15, 2004, Transmitted to Fluor January 5, 2005 via memorandum from Keith Kline, Manager, DOE to R.G. Gallagher, President, Fluor Hanford, Inc.

had completed the annual self assessment required by DOE per DOE Manual 231.1-1A.¹³¹

Overall quality of illness and injury records is inconsistent and not always adequate¹³²

- About 15 percent of the OSHA recordable decisions made by Hanford contractors were questionable or inaccurate.¹³³
- Data on OSHA recordables and in the Computerized Accident/Injury Recording System (CAIRS) database is not as reliable as it should be.

Fluor Hanford's misreporting of workplace illness and injuries

- 32% of selected sample of cases were found to have problems;
- 36 case files lacked enough documentation to justify classification decisions;
- The number of days away or restricted days reported to CAIRS was not consistent with Occupational Illness and Injury (OII) case files;
- 35 first-aid cases should have been classified as OSHA or Days Away from Work Job Restriction, or Job Transfer (DART) Recordable and were not;
- The contractor didn't properly evaluate and report previous injury or illness aggravations as required by OSHA and DOE Manual 231.1-1A;
- The contractor did not report and record cases of chronic beryllium disease;
- Three workers indicated that they had reported safety concerns at their work sites with no corrective actions taken until they had sustained recordable injuries; and
- The contractor's self assessment was inadequate: they had not done a self assessment of their OII program since taking over the Hanford site contract, the results of past assessments had not been formalized, and corrective actions had not been defined.¹³⁴

Differences between data reported in OSHA logs and reported to CAIRS

- Data discrepancies of greater than ten percent at nine of ten contractors reviewed nationwide, including three Hanford contractors. This means that occupational injury and illness (OII) reporting logs did not agree with what was reported to DOE's CAIRS more than ten percent of the time;¹³⁵
- In all but three instances, contractors reported fewer days away from work or restricted to DOE through CAIRS than to the OII logs.¹³⁶

2. DOE Contracts Have Incentives to Under Report Illnesses and Injuries

Although DOE's contracts and associated contractor policies recognize and support workers' rights to raise safety concerns and report workplace accidents and injuries, doing so can threaten safety awards, contract bonuses, and other financial rewards. This dynamic can result in

¹³¹ Attachment to letter from Keith Klein, Manager to Paul M. Golan, *Review of FY '04 Occupational Injury and Illness Recordkeeping and Computerized Accident/Injury Reporting Systems Database Accuracy*, October 15, 2004. DOE Manual 231.1-1 addresses required environmental, safety, and health reporting and is a supplement to DOE O 231.1-1A. Both are posted at www.directives.doe.gov.

¹³² Office of Independent Oversight and Performance Assurance, Office of Security and Safety Performance Assurance, U.S. Department of Energy, *Investigation of Worker Vapor Exposure and Occupational Medicine Program Allegations at the Hanford Site*, p. 12, April 2004.

¹³³ *Ibid*, p. 87.

¹³⁴ Department of Energy Richland Operations Office Surveillance Report, Safety and Engineering Division, S-05-SED-FHI-004, October 15, 2004.

¹³⁵ U.S. Department of Energy Office of Inspector General, Office of Audit Services, *Audit Report: The Department's Reporting of Occupational Injuries and Illnesses*, DOE/IG-0648, May 2004.

¹³⁶ *Ibid*.

inaccurate reporting of workplace illness and injuries. As documented by a recent survey of 30 health and safety professionals at ten U.S. DOE sites, including Hanford, some of the health and safety professionals feel that the effectiveness of DOE's occupational health and safety services is compromised by policies that conflict with accurate worksite reporting and serve to discourage the reporting of workplace injuries.¹³⁷



DOE's contracts contain language that can serve as an incentive for contractors to misreport occupational injuries or illness that occur at DOE facilities. In some of the DOE contracts, if lost work days exceed a certain threshold, DOE can reduce the contractor's performance, conditional payment of fee, or other associated award fees. For example, DOE's River Corridor Contract allows DOE to reduce the contractor's fee on a scale depending on the level of severity: first degree failure can reduce fees 26-100%, second

degree 11-25%, and third degree up to 10%.

Another incentive to mask illness and injury rates is the push to meet schedule demands and associated performance goals. Aggressive accident prevention, employee trainings, an effective Employee Concerns Program, stop work orders, and other related elements of worksite safety all have the potential to delay work and jeopardize performance schedules. Conditional payment of fee (CPOF)¹³⁸ can serve as an incentive to under or misreport injuries and illnesses. If lost days from work due to work-related injury and illness exceed a certain rate, DOE can reduce the contractor's performance bonus or fee. In addition, high achievement on accident avoidance can off-set failure to achieve other goals and milestones in the contract during the annual performance appraisal. For example, Fluor's contract contains provisions for reducing earnings for "safety failures." They can lose up to 30% of the fee available for failing to satisfactorily meet worker, public, and environmental safety and health expectations.¹³⁹

The U.S. Department of Labor, Bureau of Labor Statistics reports that the average number of lost workdays for private industry was 1.4 per 100 full time workers in 2004. The construction industry and manufacturing averages were 2.4 and 1.7 respectively¹⁴⁰ Fluor's corporate website reports a nationwide rate of 0.05 lost work day incidents per 100 workers.¹⁴¹ This is less than 1/50 of the national average.

¹³⁷ Mary K. Salazar, Ed D, RN, COHN-S, Timothy K. Takaro, MD, MPH, Michael Gochfeld, MD, PhD, and Scott Barnhart, MD, MPH, *Occupational Health Services at Ten U.S. Department of Energy Weapons Sites*, American Journal of Industrial Medicine, 43-418-428, p. 425, 2003.

¹³⁸ The clause regarding CPOF appears in DEAR 970-5215-3, RCC paragraphs (a) and (b), and in the rulemaking appears in PHMC¹³⁸ section I-20.

¹³⁹ Rob Hastings, Director, Operations Oversight Division, Department of Energy, Presentation, "Conditional Payment of Fee Clause"

¹⁴⁰ U.S. Department of Labor, Bureau of Labor Statistics, *Incident rates of nonfatal occupational injuries and illnesses by selected industries and case types*, <http://www.bls.gov/iif/oshwc/osh/os/osnr0023.pdf>, 2004.

¹⁴¹ Fluor, *Fluor's 2004 Global Safety Performance: 0.05*, <http://www.fluor.com/hse>.

In 2005, Fluor reported that the K Basin Closure, the Plutonium Finishing Plant Closure, and the Waste Storage and Disposal projects each had 2 million hours “safe hours” without a single lost workday due to workplace accidents.¹⁴²

3. Worker’s Self Reporting of Accidents is Screened and Not Fully Tracked

DOE has created a Single Point of Contact (SPC) notification system to help define workplace risks by creating a way for workers to self report and record workplace accidents, exposures, or other events that require them to get medical treatment from Hanford’s on site medical provider, AdvancedMed. Each DOE contractor has a designated staff person who is responsible for notifying AdvancedMed’s staff of events that workers report.¹⁴³

However, AdvancedMed has identified several problems with this system:¹⁴⁴

- Time and length of chemical exposures are generally not recorded in the SPC reports;
- It is difficult to analyze exposures and health effects because of the large proportion of “unknown” chemicals (45%) reported in tank farm exposures;
- The SPC reports are almost always passed from worker, to the contractor’s point of contact, to the SPC at AdvancedMed and relevant facts about the event are lost.
- SPC notifications and data should be tracked and analyzed and currently are not.

4. Workplace Trends are Not Tracked in a Routine and Transparent Manner

In September 2003, GAP documented that Hanford workers were being exposed to toxic vapors at the tank farms and were not being provided adequate protection, information about the risks they were facing, or compensation for the illnesses they suffered as a result of breathing toxic vapors.¹⁴⁵ Through research and interviews, GAP reported that between 1991 and 2003 there had been 45 known and reported incidents where tank farm workers were exposed to chemical vapors and required medical attention.¹⁴⁶

CCSI’s contract requires them to “notify DOE of any safety trends or weaknesses identified,” through the performance of their workers’ compensation contract with DOE.¹⁴⁷ This contractual requirement is either unfulfilled or sheltered from the scrutiny of the public and other government agencies, such as L&I. In response to GAP’s Freedom of Information Act Request to DOE, we were told that no such records regarding CCSI’s notification of safety trends or weakness could be located.¹⁴⁸

¹⁴² Fluor HSE 2005 Annual Report. Pages 10-11. As posted at www.fluor.com.

¹⁴³ Loren Lewis, MD, MPH, Site Occupational Medical Director, Annual Medical Director’s Report, Hanford Site, FY 2005, DE-AC06-04RL14383, Reporting Period 1 October 2004 through 30 September 2005, Appendix B. p. 118.

¹⁴⁴ Ibid.

¹⁴⁵ Clare Gilbert and Tom Carpenter, op cit.

¹⁴⁶ Ibid, Appendix A and B, p. 40-42.

¹⁴⁷ Department of Energy, DE-AC06-05RL1466, op cit, p. C-3.

¹⁴⁸ Dorothy Riehle, Freedom of Information Act Officer, Department of Energy, Richland Operations Office, January 18, 2006. In response to GAP’s request for a copy of CCSI’s legal management plan and records of safety trends that CCSI has provided to DOE, as required by their contract, DOE stated that no such documents were located.

As Hanford's onsite medical provider, AdvancedMed's duty to track and report worker health and safety trends is much broader than CCSI's. AdvancedMed's contracts require them to:¹⁴⁹

- Routinely and systemically analyze medical data gathered while doing monitoring qualification examinations and use the data to identify and target patterns of findings, sentinel events, or changes in worker health that may be indicative of trends or weaknesses in worker protection features and programs;
- On a regular basis, review and analyze data for trends involving individuals as well as groups of employees, by location and by function, and include these reviews in quarterly summary reports to DOE; and
- Notify the Contracting Officer or designees of all adverse trends as they are identified and include all trending results in the Site Medical Director's Annual Report.

AdvancedMed has recognized that there are currently no mechanisms in place to analyze and track exposures and claim to be developing methods to do so.¹⁵⁰

GAP filed records requests in an attempt to get trends data, quarterly reports, and associated trends that have recently been identified. The data provided by DOE was limited to a copy of the annual report from AdvancedMed's medical director and a copy of its 2006 strategic plan. Each of these documents had very limited data regarding trends and associated weaknesses in worker health and safety programs.

Along with medical monitoring and diagnoses, AdvancedMed has created an Integrated Trend Analysis/Worksite Visit program to assess population based medical information of similar groups of workers – referred to as “Similarly Exposed Groups”¹⁵¹. Referred to as SEGs, these are workers that have been determined to have similar exposures and work activities. By analyzing their medical data and combining it with worksite visits, AdvancedMed attempts to define health trends and associated worksite safety issues.

Although the Trend Analysis/Worksite Visit program was created in 2004, only five worksites were visited through November 2005.¹⁵²

Instead of a mandatory program and unannounced site visits, DOE's Hanford contractors can choose to request a visit and schedule it accordingly. In 2005, both Fluor Hanford and Washington Closure, two of the largest contractors on site, cancelled their appointments.¹⁵³

5. Workers Face Pressure to Agree That Their Condition is Not Work Related

Hanford workers have been pressured to agree that their illnesses or injuries are not work related and have written employee concerns about this practice (Appendix F). Several of the workers GAP interviewed described efforts by DOE, CCSI, and/or Hanford's onsite medical provider to classify their conditions as not work related. The following case examples illustrate this practice.

¹⁴⁹ Department of Energy, DE-AC06-04RL1483. Performance Objective, C.b.1, 2004.

¹⁵⁰ Loren Lewis, MD, MPH, op cit, p. 17.

¹⁵¹ Loren Lewis, MD, MPH, op cit, p. 4.

¹⁵² Loren Lewis, MD, MPH, op cit, p. 5. The five visits were completed at the EMSL building 235, Plutonium Finishing Plant, PNNL's Antibody Lab, Patrol Academy, and the Patrol Fitness Test.

¹⁵³ Ibid.

- Employer’s on-site medical provider and claims representative created the presumption that worker’s injuries were not work related.** This injured worker went to the on-site medical provider on the day of his exposure to vapors and returned several months later complaining of continued symptoms including headaches, vocal chord and airway congestion, nose bleeds, and respiratory problems. On both occasions, the worker was told that he had allergies or an upper respiratory infection and his exam was reported as “normal.” This worker was told by a CCSI claims representative that he could not open a claim until he went to a doctor. According to this worker, many employees are led to believe that seeing an on site medical attendant is equivalent to seeing a doctor and establishes a medical contact for opening a claim. This employee was encouraged to go to Hanford’s onsite medical provider without being informed of his right to first go to his private physician. In addition, he was led to believe he was having a medical evaluation and establishing a workers’ compensation claim at that time. Several months after the exposure, this injured worker returned to the on-site medical provider complaining of symptoms and it directed him to get a referral to an allergy specialist. The progress note from the employer’s on-site medical provider states, “He understands that he should investigate this possibility first.” According to the worker, he has no history of allergies and he openly disagreed with the referral to an allergy specialist and the on-site medical provider’s attempts to direct his medical care and steer the diagnostic tests toward allergies and away from chemical exposure. Several months later this worker was still having problems breathing and he made a third visit to the employer’s on-site medical provider. Once again, the visit resulted in a diagnosis of “normal exam” and no treatment was given. However, he was put on a work restriction to avoid work at the tank farms until a medical evaluation was completed.¹⁵⁴ The worker scheduled the medical evaluation at the University of Washington on his own accord and faced CCSI’s repeated efforts to discourage this course of action and warn him that it would not pay for the evaluation before he completed an IME. This was in spite of the fact that a severe respiratory airway phenomenon was occurring on a regular basis accompanied by nosebleeds and the worker’s expressed urgent need to get medical care. According to the worker, medical doors for this employee closed when he mentioned a work related injury involving exposure to vapors from Hanford’s tank farms.
- Worker’s health care was delayed for eight years due to DOE’s failure to recognize his condition as work related.**¹⁵⁵ Although the worker’s medical records from 1993 indicated a diagnosis of sarcoid, no mention was ever made that there was the possibility of exposure to beryllium, even though the medical form used listed beryllium as a possible hazard. Four years later in 1997, DOE began talking about beryllium exposure in some of its facilities and said that any worker who had been diagnosed with sarcoid was allowed, but not required, to take a BeLPT test to check for beryllium sensitivity. Since the worker had used steroids to treat his disease, and steroid use most always prevents the reaction that shows beryllium sensitivity, a blood test for beryllium sensitivity at this point was not a viable method of detecting beryllium sensitivity. The worker continued to have health problems. In February 2003, his physician diagnosed him with chronic beryllium disease (CBD), which was later verified by a positive beryllium skin patch test. It took five months for DOE’s workers’ compensation program to accept the claim. No work restrictions were put into place until 2001. As a result of

¹⁵⁴ Robert G Gates, HEHF Record of Visit, June 6, 2002.

these actions, DOE's workers' compensation program effectively delayed medical care for over eight years.

- **Worker's compensation delayed due to presumption that the condition was pre-existing and not work related.** In 2004, this worker was having chest pains. Although the chest pains were determined by the worker's attending physician to be associated with the worker's chronic beryllium disease (a covered claim), representatives of DOE's workers' compensation program attempted to argue that they were related to chest pains noted in his record from 21 years ago and not work related. Although the claim was eventually covered, CCSI required the worker to undergo a heart stress test.
- **Worker forced to pay nine months of medical expenses while CCSI worked to deny his claim and assert that it was a non-work related condition.** A former worker filed a workers' compensation claim for multiple chemical exposures. DOE's workers' compensation program denied the claim in July 2003. Nine months and one appeal later, the Department of Labor and Industries upheld the claim. As a result of the denial and associated delays, the worker had to pay over nine months of medical costs upfront. Throughout the process, DOE's claims administrators kept insisting that his symptoms were not work related but instead were related to childhood asthma. According to the worker, these assumptions were made even though his primary physician provided an objective medical diagnosis that the worker's illness was work related.
- **Worker's health care delayed for over nine months and worker forced to return to work prematurely to earn some income.** During a safety assessment, this worker identified coverings over electrical cords that were a safety hazard that needed to be corrected. The hazard was not removed and several months later he tripped over the cords and injured his back. The worker's medical care and treatment was delayed for over 9 months because DOE's workers' compensation program repeatedly asserted that his injury was pre-existing and not work related and it denied medical treatment. According to the worker, at one point CCSI cut off his time-loss payments and he was forced to return to work to earn some income, even though he still had extreme back pain. Several months later he felt extreme pain at work, was taken to first-aid at AdvancedMed, and then ordered to return to a meeting at work. Facing prolonged delays and problems with his claim, the worker became frustrated. This worker resorted to legal proceedings on two fronts: 1) to fight DOE and CCSI's treatment of his workers' compensation claim; and 2) to address his wrongful termination that was fueled, in part, by the fact that he used the word "BS" while talking with a workers' compensation staff at his company. He eventually prevailed on both fronts, receiving compensation and treatment for his workplace injury and a \$365,000 settlement for wrongful termination.
- **Worker has an exposure but is sent back to work with no restrictions.** In July 2004, this worker suffered an exposure adjacent to an area where tank wastes were being transferred. The worker went to DOE's onsite health care provider and it sent the worker back to work with no work restrictions – implying that the worker's condition was not work related. According to the worker, the company workmen's compensation representative felt the worker was experiencing chemical sensitivity. Seven months after the initial exposure, the worker's duties were moved to 272AW, closer to the tank farms. Months after the initial exposure, the worker finally received a work restriction to minimize future exposures. These actions occurred during the same time that DOE issued

their 2004 program review ¹⁵⁶ concluding that there were no significant problems with their workers' compensation program.

B. Aggressive Legal Tactics are used to Fight Workers' Claims

1. Public Funds are Used to Fight Workers' Claims

Unlike contractors, whose legal costs are paid for by DOE, workers who file a workers' compensation claim must finance their own attorneys even if they prevail and their claims are found to be valid. For many workers it is not worth it to pay the legal fees to fight a workers' compensation claim. They can either give up or pretend that the claim is not work related and try to get their private insurance to cover the claim. For workers who hire lawyers and prevail, 20-30% of their compensation often goes towards paying attorney fees.

Since 2002, DOE has spent over a half a million dollars to fight Hanford workers' claims (Table 6). DOE's practice of using public funds to finance its contractors' legal battles is not unique to Hanford or to workers' compensation claims. A recent GAO report concluded that DOE reimbursed contractors \$330.5 million in litigation costs from 1998 – 2003. Of the 1,895 cases analyzed, workers' compensation litigation accounted for 43% of the cases (814). ¹⁵⁷

Table 6. Public Funds Used to Fight Hanford Workers' Compensation Claims ¹⁵⁸

Company	2002 ¹⁵⁹	2003	2004	2005	Total
Fluor Hanford	16,750	135,386	145,443	121,490	419,069
CH2M	516	20,634	27,954	33,552	82,656
BHI	105	8,973	13,229	13,353	35,659
PNNL	102	35,447	75,831	24,626	136,006
Total	17,473	200,440	262,456	193,021	673,390

2. Hanford Workers File a High Rate of Appeals

Hanford's Workers' Compensation Program appears to have a much higher rate of worker appeals than employer appeals. Based on the most recent data available (2003), workers covered by Hanford's workers' compensation program filed 83% of the appeals. For other self-insured programs, workers filed only 62% of the appeals.

Conversely, the employer, DOE filed very few appeals ---only 3% of them. For other self-insured programs, the average percent of appeals filed by employers was 25%. ¹⁶⁰

¹⁵⁶ The review referred to was done by Federal Occupational Health as previously discussed in Section VI. of this report.

¹⁵⁷ General Accounting Office, *DOE Reimbursement of Contractor Litigation Costs*, Briefing for Representative Edward J. Markey, GAO-04-148R, Contractor Litigation Costs, Appendix 1: Number and Types of Cases, October 16, 2003.

¹⁵⁸ Department of Energy, Legal Management Tracking System, Invoice Detail Report, Richland Operations Office for Fiscal Years 2002-2005.

¹⁵⁹ It was not possible to determine why reported 2002 costs were so low.

¹⁶⁰ Email from George Pickett, LNI to Paul Trause, *Subject: DOE information*, January 31, 2004. Data is from 2003 and does not include the entire time period that DOE has been self-insured.

Table 7. Appeals Filed by Hanford Workers vs. the Self-insured Program as a Whole

Action	DOE Program Totals	Percent of Total	Self-insured Program Totals	Percent of Total
Appeals				
Worker	49	83%	1746	62%
Employer	2	3%	721	25%
Provider	1	2%	22	10%
Unknown	7	12%	318	11%

3. DOE's Legal Tactics Interfere with Due Process

According to workers interviewed by GAP, DOE's legal tactics have attempted to discredit workers, misrepresent facts, and dismiss compensation claims later found to be valid. There is one known instance of DOE refusing the state's request to postpone legal proceedings to deny a claim and instead, allow more time to review the record. Coupled with these conditions, workers have been forced to hire lawyers to challenge and overturn questionable determinations made by DOE and CCSI. These and other case examples are presented below.

Although these conditions would not be entirely cured by placing claims administration under L&I, they would be tempered. L&I – and not DOE – would create and manage the claims file and establish the record. In addition, workers could go directly to L&I to resolve claim disputes and potentially avoid the need for legal proceedings.

- **DOE's lawyer attempted to discredit worker's concerns.** During questioning before the Board of Industrial appeals, DOE's lawyer raised a series of questions about what happened on the day of the worker's vapor exposure and then baited –and attempted to discredit the worker - by stating, "So, it's this big grand conspiracy against you, or the workers in general, out there?"¹⁶¹ When the worker replied no, he did not want to speculate about how the situation came to be, DOE's lawyer ended the questioning.¹⁶² According to the worker, his ability to feel safe and maintain employment was negatively impacted because he felt he could no longer discuss safety concerns without facing disrespect or accusations that he was part of a conspiracy.
- **DOE's lawyer clouded the facts while questioning a Hanford worker before the Board of Industrial appeals.** During his questioning of the injured worker, DOE's lawyer stated that, "In that NIOSH report"¹⁶³, there was no definitive statement that the

¹⁶¹ Deposition before the Board of Industrial Insurance Appeals. State of Washington. Docket No. 04-17829. p. 85. November 29, 2004.

¹⁶² Ibid.

¹⁶³ The National Institute for Occupational Safety and Health (NIOSH) evaluated personal protection and health risks for employees exposed to vapors from tank waste. (HETA #2004 -0145-2941, July 2004). The report concluded that exposure data for workers was limited and not kept in an accessible database, that monitoring was often done hours after an exposure, and that recommendations from a prior NIOSH report had not been implemented. Contrary to DOE lawyer's dismissal of the NIOSH report, the report served as the basis for many of the safety improvements made at the tank farms as a result of the vapor exposures that workers had experienced.

workers, in fact, have developed any sort of health condition. Rather, the indication was, it is possible that they could develop health conditions.”¹⁶⁴ In fact, the NIOSH report states that workers reported health conditions and it notes that the OSHA 300 injury logs listed 6 entries for “tank vapors/emissions including five that resulted in recordable or lost time injuries.” In addition, several workers showed NIOSH their medical records including one with a physician’s diagnosis that the history of nose bleeds could be related vapor exposures.¹⁶⁵ Regardless of these facts, DOE’s lawyer implied that there was no data to show there were other chemicals in the tank – even though there was and it is discussed in the NIOSH report along with profile data available for the tank in question. Although it is the employer’s responsibility to monitor worksite conditions and at the time monitoring focused on ammonia, DOE’s lawyer attacked the worker for not having additional data stating, “*You don’t have a single scrap of data showing that any organic vapor, including ammonia, was emitted on February 23, 2001...*” and repeatedly introduced the concept that the worker’s symptoms were the result of allergies, a condition that is not work related and not compensable.¹⁶⁶

- **DOE interfered with L&I’s request to re-examine a claim prior to a hearing before the Board of Industrial Appeals.** After the worker’s claim was denied, he filed several appeals in an attempt to get medical care. The initial reason for denial – lack of a timely filing – was found to be invalid because he had attempted to file within the deadline. However, the question of whether or not his medical condition was related to a workplace exposure was never resolved. According to the worker, DOE made no attempt to help him ensure that the record used to assess his medical claim was, in fact, correct. Although it initially denied the claim, L&I staff later questioned the denial and asked DOE for an opportunity to re-assess the claim. DOE’s lawyer denied L&I’s request to reexamine the claim. L&I staff stated that, “*The one really troubling claim is that of Mr. A.*”¹⁶⁷ *Although it is a judgment call, it appears that this claim should not have been denied based on the medical in the file.*”¹⁶⁸ When they approached DOE’s lawyer about the need to re-examine the claim, the state documented that they were told that although DOE “*might have some PR reasons for sending the claim back to the Department, Mr. A. would be the LAST person they would consider doing so for because he’s had a number of claims and in general has been very difficult.*”¹⁶⁹ As a result of DOE’s refusal to let the state re-assess the claim, the worker was forced to continue with legal proceedings before the Board of Industrial Appeals where he was representing himself. Due to lack of funds and mounting frustration, he ultimately dropped the case in 2005.

According to the worker, Hanford’s workers’ compensation program targeted the worker’s claim for denial even though the worker had an objective medical diagnosis that the condition was work related. Communications between DOE’s workers’ compensation administrators and CCSI discussed concerns about this claim

¹⁶⁴ James L Gress, Attorney at Law, Testimony Provided Before the Board of Industrial Insurance Appeals, State of Washington, Docket No. 03-18811, p. 26, August 3, 2004.

¹⁶⁵ NIOSH Health Hazard Evaluation Report: HETA #2004-1045-2941, CH2M Hill Hanford Group, Inc. and United States Department of Energy, Office of River Protection, Richland, Washington, p. 8-10, July 2004.

¹⁶⁶ James L. Gress, op cit, p. 89, 98.

¹⁶⁷ Throughout the case examples presented in this review, worker’s names are withheld and instead the terms “worker”, “Mr. A”, or “workers” is used.

¹⁶⁸ Michael Wood, Washington State Department of Labor and Industries. Follow-up on Complaints/Inquiries Related to Hanford Claims. May 12, 2004.

¹⁶⁹ Ibid.

setting a precedent and asserting that, “ Mande’s outline clearly explains her concerns on these claims and the potential long term exposure to DOE with these cases and several others. I agree that defense counsel assistance would be helpful in defending against acceptance of these claims. If we are successful with these cases, it may minimize the current solicitation of claims regardless of validity.” ¹⁷⁰

In requesting the need for legal counsel to contest the claim, CCSI’s claims adjuster stated that “as we discussed today I would like to seek the assistance of outside legal in these multiple claims ... You will recall that (the worker)¹⁷¹ presented in Carter’s office requesting several SIE’—2’s¹⁷² for other workers that were too intimidated to present themselves to file claims. The issue I am having with the tank farm claims, these two in particular is an inability to obtain clear medical opinion on how the conditions alleged are proximately related to the alleged exposures ... The domino effect of the claims could be catastrophic and because of the vast number of claims similar to the couples, this has the making of a class action law suit...” ¹⁷³ In response to these emails and associated requests to legal counsel, both DOE’s Industrial Relations Specialist and the company’s Safety and Health Program Medical/OSHA Case Manager replied via email that they concurred with the recommendation to oppose the claims and refer them to legal counsel. The worker ultimately resorted to legal proceedings in order to obtain benefits due. In other aspects of the claim, DOE’s workers’ compensation program denied benefits, such as time-loss. L&I overturned CCSI’s denial and approved the time-loss award. The delays caused by the claim denials forced the worker to pay out of pocket expenses for medical care and live for 8 months with no time-loss payments from DOE’s workers’ compensation program.



¹⁷⁰ Teri Sellers, Manager, CCSI, L.P, Email communication to Rita Carroll, CCSI Attorney, June 16, 2004.

¹⁷¹ Name of employee has been replaced by “ the worker.”

¹⁷² Refers to forms that are used to initiate a workers’ compensation claim.

¹⁷³ Mande Hewett, Adjuster, CCSI, LP, Email to Teri Sellers, Manager, CCSI LP, June 15, 2004.

- **Apparent misrepresentation of facts forces Hanford worker to hire a lawyer.** This worker was injured at the worksite and his claim was approved with limited difficulty or delay. According to the worker, soon after his injury he was repeatedly called at home by physicians from DOE's on-site medical provider inquiring about the status of his recovery and the possibility of lifting the restrictions. He experienced this as pressure to get the work restrictions lifted regardless of his condition. According to the worker, two years after his injury, he was informed by a CCSI claims representative that CCSI would no longer be paying for his physical therapy and when he asked why, he was told that his doctor had sent a letter to CCSI stating that he no longer needed physical therapy. He went to his doctor, asked about this, and requested a copy of the letter. His doctor's office informed him that it had never sent such a letter or recommended that the therapy be discontinued. The worker then hired a lawyer to contest CCSI's decision to stop his physical therapy.



- **DOE's workers' compensation program representative suggested to the worker that it might be quicker to get coverage via their private insurance.** When the injured worker chose to file a claim, CCSI required him to get an IME to assess carpal tunnel syndrome and appropriate treatment. The Examiner recommended that the worker should work with his doctor, monitor the condition, and wait a year before getting treatment. As a result of these actions, medical care was delayed and the worker's condition worsened. The worker protested CCSI's decision and ultimately received a settlement for loss of grip strength in both hands – a condition he feels could have been prevented.
- **DOE helped set a precedent that will have negative consequences for workers.** In general, injured workers' benefits are calculated from the date that their illness or injury manifested. In 2003, the state determined that the date of manifestation of this injured worker's illness was July 1993. Although the employer did not argue that time loss and disability benefits due to the worker should be calculated from 1993 forward, it refused to cover a prescription for medication the injured worker had to buy in 2001 because he had not submitted the bill within a year of getting the prescription. While it is true that state regulations (WAC 296-20-170) require workers to submit a reimbursement request within one year of the date of service such as a prescription or doctors visit, it is also true that in some cases more than a year will elapse before the injured worker has an accepted claim for occupational disease under the Industrial Insurance Act. In an attempt to get the prescription paid for, the injured worker filed an appeal with the State and got two favorable rulings whereby the state ordered the prescription to be paid. DOE's representatives appealed the ruling to the Board of Industrial Insurance and ultimately helped establish a precedent that will make it harder for some workers to get coverage for the medications they need for covered claims.
- **Worker prevails due to legal intervention.** This worker had a physical injury at work and filed a claim to get coverage for an operation that his attending physician said was needed. The claim was denied. After hiring a lawyer to contest the denial, the claim was approved. As a result of the initial denial, the worker's medical care –in this case an operation to fix the injury -- was delayed by six weeks. According to the worker

everything was fine for several years after the operation and then the injured area flared up again. He went to his doctor who concluded that it needed to be operated on again. When the worker filed a claim for this, CCSI initially concluded that the injury was pre-existing. At this point the worker informed CCSI that he would get a lawyer again as he had done in the past. The worker was sent to several IMEs and they concluded that the injury did need to be operated on again and that it was related to the initial claim. CCSI ultimately paid for the second operation and the worker felt that he received reimbursements and service in a timely manner. In interviews with GAP, this worker expressed concern about other ill or injured Hanford workers that were having trouble with their claims but did not have the resources or energy to hire a lawyer.

C. Claims Management Has Delayed Medical Care and Obscured Claim Files

Hanford's Workers' Compensation program has, at times, failed to follow proper industrial claims procedures associated with the filing of claims, provision of records, accuracy of data used to adjudicate claims, payment of claims, and associated practices defined by Washington's Industrial Insurance regulations and DOE's contract with CCSI.

Many of these problems have been identified by members of Hanford's Beryllium Awareness Group – a group of Hanford workers who have been affected by beryllium and are working to increase DOE's efforts to protect workers from beryllium exposure and better assist workers who do get exposed.

Problems identified by Hanford's Beryllium Awareness Group include:

- CCSI not paying doctors invoices or time-loss requests within regulatory timeframes;
- DOE letting financial considerations dictate case management;
- failing to consistently apply claims management requirements; and
- other actions that have caused stress, delays, and the need for Hanford workers to hire attorneys in order to get their claims resolved.

As a result of these findings, Hanford's Beryllium Awareness Group has recommended that review of Hanford workers' claims be returned to L&I and the self-insurance program discontinued.¹⁷⁴

Through claim file reviews and interviews with Hanford workers, GAP documented additional problems with Hanford's workers' compensation program. These include:

- attempts to direct medical care by Hanford's on-site medical provider even though he/she may not be the worker's attending physician;
- claim openings being delayed;
- incomplete claim files being provided to L&I;
- violations of statutory deadlines regarding providing claim files to claimants;
- medical tests and medical care delayed due to CCSI's delayed payments;
- unclear and prolonged questioning of workers' attending physicians;
- confusing communications from CCSI and/or L&I that likely prevent some future claims from ever getting filed. Workers are informed that their claim is "accepted and closed." In this context, "accepted and closed" means that there is not a current need for treatment. However, workers are still entitled to medical surveillance. According to medical

¹⁷⁴ Beryllium Awareness Group. Key Issues, Concerns, and Problems, Powerpoint, April 17, 2006.

professionals interviewed by GAP, some workers think the term means “denied” and so they stop getting additional medical surveillance. This can mean that although a worker’s condition worsens, it is never documented and so a claim is never filed. Data from the University of Washington’s Former Worker Medical Monitoring Program indicates that of 510 Hanford workers that participated in re-screening exams, 22.5 % had clinical abnormalities not previously documented and 37 new workers’ compensation claims were recommended to be filed as a result of additional medical surveillance.¹⁷⁵

Taken together, the findings of L&I’s April 2006 review, Hanford’s Beryllium Awareness Group, and GAP, describe ongoing systemic problems with the management of Hanford workers’ claims under the self-insured program. The majority of these problems would not occur if claims management and adjudication resided with L&I instead of DOE and their contractor, CCSI. For example, the need for transmitting files would be significantly reduced and workers could bring their concerns directly to L&I –or their state legislators- instead of having to battle through DOE, CCSI, DOE’s Hanford Contractors, and Hanford’s onsite medical provider.

D. Liability Concerns May Cloud Objective Claims Review

Liability concerns may also influence whether or not DOE recommends claims be denied. In an effort to assess the major cost drivers in DOE’s workers’ compensation programs, DOE’s consultant has warned that there are likely to be significant workers’ compensation costs generated by former Hanford workers through EEOICPA and the Former Worker Health Screening Program. Hanford was one of four sites where the potential for new claims from former workers was a significant concern and concerns about future workers’ compensation costs was rated “High”.¹⁷⁶

In response to these findings, consultants recommended that DOE more carefully monitor workers’ compensation costs at Hanford and other sites and ensure that DOE’s sites share best practices for cost containment.¹⁷⁷

VIII. Employee Concerns Program

The Department of Energy’s Employee Concerns program is intended to provide a way for employees at DOE sites to be able to: 1) confidentially raise certain types of work related concerns without fear of reprisal or retaliation; and 2) ensure that the concerns will be promptly and objectively investigated.¹⁷⁸

In 2004, employees filed 59 Employee Concerns related to workers’ compensation and associated safety issues (Appendix F). These 59 concerns were filed in the same year that DOE proclaimed there were no major problems with its workers’ compensation program.¹⁷⁹

Based on the year-end reports from DOE, it was not possible to assess the scope and methods for the investigations or how the concern was resolved. However, GAP did research several case

¹⁷⁵ [Http://depts.washington.edu/fmrwrkr/formerworker.htm#overview](http://depts.washington.edu/fmrwrkr/formerworker.htm#overview). Data is from the quarterly reports posted here regarding the Former Worker Medical Monitoring Program.

¹⁷⁶ PWC Consulting, op cit, p. 2-3.

¹⁷⁷ Ibid, p. 4.

¹⁷⁸ DOE Order 442.1A, U.S. Department of Energy, *Subject: Employee Concerns Program*.

¹⁷⁹ Arnott et al., op cit.

examples as summarized below. In these cases, Hanford's Employee Concerns program failed the employees. These findings suggest the need for a more thorough review of Hanford's Employee Concerns program.

- **DOE has failed to address concerns about misclassified workplace injuries.** For example, in 2001, a Hanford employee submitted an Employee Concern stating that the on-site medical providers (HEHF) and CCSI discredit legitimate on the job injuries.¹⁸⁰ Four months later DOE's Office of Special Concerns issued a one page finding stating that it conducted an "informal inquiry" and the employee's concern was not substantiated.¹⁸¹ The letter provided no documentation to substantiate this conclusion. Two years later, in 2003, GAP documented HEHF's actions to avoid classifying on the job injuries as work related.¹⁸² Five years after this employee's concern was filed, current Hanford workers continue to express concerns that work related injuries are misclassified (See Appendix F).
- **DOE's lawyer, via its contractor CCSI, improperly used an Employee Concerns Investigation to assess how to fight a workers' compensation claim.** A Hanford worker filed a concern about the inability to get data that was relevant to worksite conditions on the day that the worker's injury occurred. The investigation of the worker's Employee Concern contained monitoring data and associated information potentially relevant to the worker's compensation claim. In February 2003, CCSI staff provided a copy of the Employee Concern Investigation to attorney Jon D. Floyd.¹⁸³ Several weeks later the lawyer responded with an analysis of the Employee Concerns report and how it could be used, or would need to be refuted, in order to fight the worker's claim.¹⁸⁴ In his analysis, Floyd assessed how the worker might use the findings of the Concerns Report, and stated, "*I only bring up these issues because it is important that we anticipate what arguments will be raised by the claimant.*" After summarizing possible reasons to settle the claim (e.g., minimal financial exposure, claim was unlikely to be reopened in the future), Floyd further stated, "*Notwithstanding all of that, I am also aware that even though a claim has minimal exposure to the employer, there are other factors present that necessitate an aggressive defense of the claim. This may well be one of those cases.*" In closing, Floyd concluded that there may be limited additional data that could be provided to L&I but that, "*I certainly do not want to provide the Employee Concern report to the Department*"(L&I).¹⁸⁵
- **DOE has provided delayed, confusing, and incomplete responses.** In 2005 a worker filed an employee concern relating to the process and the quality of data being used to evaluate his workers' compensation claim. As summarized by DOE in its response letter related to the employee, the employee was concerned about incomplete information being used to assess his claim, lack of DOE direction to CCSI to ensure that CCSI was using

¹⁸⁰ Julie Goeckner, Program Manager, Office of Special Concerns, memo regarding Employee Concern #20010068, August 6, 2001.

¹⁸¹ Julie Goeckner, Program Manager, Office of Special Concerns, memo regarding Employee Concern #20010068, December 3, 2001.

¹⁸² Clare Gilbert and Tom Carpenter, op cit.

¹⁸³ Mande Hewett, Adjuster, CCSI, LP, Letter to Jon D. Floyd, Attorney, Evans, Craven, & Lackie, P.S., February 5, 2003.

¹⁸⁴ Jon D Floyd, Attorney, Evans, Craven, & Lackie, P.S., Letter to Mande Hewett, Adjuster, CCSI, Inc., February 18, 2003.

¹⁸⁵ Ibid.

accurate data, CCSI's action to combine two very different claims, and incomplete statements in an exposure investigation report.¹⁸⁶ Seven months later he received a response that dismissed most of his concerns. In addition, key elements of his concern were referred to one of DOE's contractors to reply to – the very contractor that he felt was contributing to problems with his claim.

In response to the worker's concern that DOE failed to ensure that CCSI was using accurate and complete information to evaluate his claim, DOE concluded that, "...the DOE contract with CCSI does allow DOE to provide specific direction on an individual case basis (and DOE could legally direct CCSI to accept a claim). Such direction would require a change to the contract and a compelling reason to effect a contract change, such as substantial evidence that the contractor is not complying with Washington state law or some other contract requirement. DOE stated that they would not direct CCSI to accept a claim without substantial evidence that the contractor is not complying with Washington state law or some other contract requirement. This part of the concern is therefore considered closed by ORP ECP."¹⁸⁷

This response construed the employee's central concern which was that DOE failed to help ensure that accurate and complete data was used to assess his claim. DOE's response states that DOE can provide specific direction on individual claims but would rarely just direct CCSI to accept a claim. This is not what the employee was asking for. The employee was asking for DOE to intervene and ensure that accurate information was being used to assess his claim. It refused to do so. In addition, DOE relied on its contractor's response and closed the employee's concern based on data from their contractor – the very entity that was contributing to the employee's concern.¹⁸⁸

IX. Conclusions and Suggested Remedies

DOE has a demonstrated pattern of interference with Hanford workers' claims, an inability to effectively oversee its workers' compensation contractor, and an ongoing failure to fully resolve the concerns that workers have raised about Hanford's workers' compensation program since it became self-insured in 2000. These conditions cannot be fixed within the existing programmatic structure. Instead of tweaking the margins of the existing system management and adjudication of Hanford workers' compensation claims should be returned to the management of Washington State L&I. In addition, DOE and L&I should implement administrative remedies to improve the transparency, accountability, and objectivity of Hanford's workers' compensation program.

1. Washington State Legislative Actions

- Amend RCW 51.04.130 to eliminate loopholes that allow DOE to deviate from Washington State workers compensation if doing so aids the "national interest." Maintain existing provisions allowing for Hanford workers' compensation claims to be administered by L&I and ensure that the state fund is insulated from Hanford liability.
- Provide certain discrete classes of Hanford workers with a prima facie presumption that certain types of chemical exposures are occupational diseases under RCW 51.08.140.

¹⁸⁶ Patrick Carier, Manager, Employee Concerns, Office of River Protection, DOE, 06-ECP-ORP-0007, January 19, 2006.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

2. Contract Changes --Phase Out Self-insurance and Terminate CCSI Contract

- DOE and L&I need to phase out DOE's self-insurance program by 2007, terminate the contract with CCSI, and return claims management to L&I.

3. Interim Compensatory Measures and Administrative Reforms

a. Department of Energy

- Enforce the provisions of the existing contract with CCSI.
- Implement the recommendations from L&I's 2006 review of Hanford's workers' compensation program and develop recommendations for the review's significant findings that did not result in recommendations.¹⁸⁹
- As part of their contracts with DOE, require all prime contractors to provide workers' compensation specialists to work directly with L&I and Hanford workers to file and resolve compensation claims. Consider pooling the contributions and creating a workers' compensation assistance office where Hanford workers could go for claims assistance.
- Reduce reliance on IMEs as means to invalidate or reduce workers' claims and the diagnosis of their attending physician. Better inform workers of their right to request additional diagnostic testing through their attending physician.
- Ensure that meritorious workers' compensation claims are not appealed, discontinue the policy of paying the legal fees for DOE contractors who appeal workers' claims that are later determined to be valid, and award attorney's fees to workers who file appeals and prevail.
- Implement DOE's new safety rule (10 CFR 851) and provide for two full time worker health and safety representatives to enforce the rule at Hanford.
- Increase oversight of illness and injury reporting and impose strict penalties against contractors who under or misreport occupational illnesses and injuries.
- Modify the contract for Hanford's on-site medical provider to incorporate performance requirements to : 1) better inform workers about the claims process, the on-site medical providers role, and the former worker screening program; 2) inform workers that they have a right to see their own personal physicians instead of Hanford's onsite medical provider; 3) create a process so that workers can clearly decide whether or not they want the onsite medical provider to act as their attending physician and if so, extend all associated privacy and ethics rules to them; 4) review workers' compensation claims and identify worker health and safety trends at Hanford that DOE should address; 5) authorize the medical director to report directly to DOE's Richland operations manager.

¹⁸⁹ Significant findings of the L&I review that did not result in recommendations include claims manager's failure to actively pursue medical data and the program's 34% denial rate for chemical claims.

- Create transparent, measurable benchmarks for Hanford’s workers’ compensation program with input and guidance from current and former workers, Hanford unions, public interest groups, independent medical professionals, and Washington State Labor and Industries.
- Improve worker’s knowledge of – and access to -- the various databases at Hanford that contain information regarding medical monitoring, IH monitoring, worksite events, medical trends, and other associated data relating to worker health and safety.
- Clarify and protect the confidentiality of Employee Concerns. Ensure that associated investigations are not used to fight workers’ compensation claims or for any other reason other than to resolve the employee’s concern.
- Post all current DOE contracts, associated required reports, and evaluations in an accessible, visible place on Hanford’s website.

b. Washington State Labor and Industries

- As a condition of having Hanford’s workers’ compensation claims adjudicated by L&I, require DOE to finance a minimum of two staff to help implement and enforce DOE’s new safety rule, 10 CFR 851.
- Create a visible, retaliation free mechanism to compel L&I investigations of complaints received from Hanford workers regarding the workers’ compensation program at Hanford.
- With input from the medical community, labor unions, and public interest groups, create clear, transparent, and enforceable guidance regarding:
 - the definition of a claim file and claims administrators’ responsibility to generate, manage, and transmit files and enforce claim file management provisions; and
 - methods and policies to guide the review and adjudication of Hanford claims related to exposure to chemicals, asbestos, beryllium, and other toxic substances.
- Identify and investigate potential disparities between the number of diagnoses made by Hanford’s on site medical provider, the number of associated workers’ compensation claims that are filed, and potential violations of RCW 51.28.010 regarding duty to file claims.

APPENDIX A. Acronyms

AMA	American Medical Association	HASP	Health and Safety Plan
AMH	Advanced Med, Hanford	IHT	Industrial Hygiene Technician
BNI	Bechtel National, Inc.	IME	Independent Medical Exam
BHI	Bechtel Hanford, Inc.	JHA	Job Hazard Analysis
CAIRS	Computerized Accident/Injury Recording System	L&I	Washington State Department of Labor and Industries
CBD	Chronic Beryllium Disease	MOU	Memorandum of Understanding
CCSI	Contract Claims Services Incorporated	MSDS	Material Safety Data Sheet
CHG	CH2M Hill, Hanford Group	NIOSH	The National Institute for Occupational Safety and Health
CH2M	CH2M Hill	OIG	Office of Inspector General
CPOF	Conditional Payment of Fee	OII	Occupational Illness and Injury
CRI	Chemically Related Illness	OSHA	Occupational Safety and Health Administration, federal safety regulators
DART	Days Away from Work, Job Restriction, or Job Transfer	PBT	Personal Time Bank
DOE	United States Department of Energy	PEL	Permissible Exposure Limit
DOE	Department of Energy, Richland Operations Office	PNNL	Pacific Northwest National Laboratory -operated by Battelle
DOL	Department of Labor	RCW	Revised Code of Washington
DRI	Direct Reading Instrument	RW	Regular Work
EEOICPA	Energy and Employees Occupational and Illness Compensation Program	SCBA	Self Contained Breathing Apparatus, or supplied air
ENT	Ears, Nose and Throat Doctor	SIF	Selective Identification Feature
FHI	Fluor Hanford Incorporated	TWINS	Tank Waste Information Network System
FOIA	Freedom of Information Act	WAC	Washington Administrative Code
FOH	Federal Occupational Health Office	WISHA	Washington Industrial Safety and Health Act
GAO	Government Accountability Office	WHC	Westinghouse Hanford Corporation
GAP	Government Accountability Project		
HAMTC	Hanford Atomic Metal Trades Commission		

APPENDIX B. Federal Compensation and Medical Screening Programs

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA)¹⁹⁰ is a federally mandated program that compensates persons who have become ill as a result of work at atomic weapon facilities. Workers can file under state workers' compensation and EEOICPA. Individuals (or their eligible survivors) who worked as a DOE employee, or a DOE contractor, or subcontractor at a DOE facility such as Hanford may be eligible for benefits under EEOICPA. **Part B provides compensation to workers with beryllium disease, radiation induced cancer, and silicosis (at underground test sites).** Employees, or their survivors, whose claims are approved receive a lump-sum payment of \$150,000 and prospective medical benefits for the covered illness. Uranium workers who received compensation under Section 5 of the Radiation Exposure Compensation Act (RECA) are eligible for an additional \$50,000 in compensation plus medical benefits. **Part E provides compensation and medical benefits up to \$250,000 for DOE contractor and subcontractor employees whose illnesses caused loss of income or permanent impairment and were aggravated, contributed to or caused by exposure to any toxic substance while working at a DOE facility.** Under Subtitle B and E, claimants may collect up to a maximum of \$400,000. Subtitle E differs from state workers' compensation because Subtitle E provides benefits for permanent impairment (loss of use of bodily function to perform activities of daily living) whereas workers' compensation covers wage replacement for disabilities (the temporary or permanent inability to perform work). Workers' compensation provides a percentage of the average weekly wage up to a ceiling, whereas Subtitle E pays a wage loss of \$15,000 per year (assuming the covered illness caused a 50% loss of income), plus \$2500 for each 1% of permanent impairment up to a maximum of \$250,000. Subtitle E is not a substitute for workers' compensation because the worker's cumulative wage losses could exceed Subtitle E's cap of \$250,000. The lump sum under Subtitle B will not be reduced by the amount of any state workers' compensation recovery or private disability insurance, whereas Subtitle E benefits will be reduced by the amount recovered under state workers' compensation. However, neither Subtitle B or E benefits are reduced by the amount of recovery under Social Security or Social Security Disability. **In cases where radiation exposure monitoring is limited and doses cannot be estimated with "sufficient accuracy," Congress created Special Exposure Cohort status for workers at several DOE sites and defined a process where workers from other sites can petition the Secretary of Health and Human Services to get special cohort status.** Workers who are part of a Special Exposure Cohort, or their survivors, receive \$150,000 lump sum plus prospective medical benefits for 22 listed cancers.

The Former Hanford Worker Medical Monitoring Program was congressionally mandated as part of the 1993 Defense Authorization Act. It identifies and evaluates DOE employees subjected to significant health risks due to exposure to hazardous or radioactive substances while working at a DOE site. There are two Former Worker Programs for Hanford workers: 1) the Hanford Building Trades Program and 2) the University of Washington (UW). The Hanford Building Trades Program screens former construction workers and is managed by the Center to Protect Workers Rights and Zenith. The program managed by UW screens former production and non-construction workers for conditions related to asbestos, beryllium, and noise. Current tank farm workers have access to testing and screening programs as well. To date UW's program has identified 54,000 former Hanford workers, provided 2,500 former workers with at least one exam, and helped file 707 compensation claims for former Hanford workers.¹⁹¹

¹⁹⁰ For additional information see the Department of Labor's website at www.dol.gov/esa.

¹⁹¹ Information on Hanford's Former Worker Medical Monitoring Program is posted at: <http://depts.washington.edu/fmrwrkr/formerworker.htm#overview>.

APPENDIX C. Events Regarding Hanford’s Workers’ Compensation Program

- January 1943 Washington State adopts a war projects insurance rating plan for Hanford workers that does not require compliance with state workers’ compensation laws as long as the plan would “effectively aid the prosecution of war.”¹⁹²
- January 1951 State regulations are modified to cover insurance requested of the state by the U.S Secretary of Defense or the chair of the Atomic Energy Commission.
- April 1984 Federal court rules that the agreement between the Atomic Energy Commission and the Nevada Industrial Commission is illegal.¹⁹³
- Sept. 1988 The Supreme Court of Washington upholds lower court’s ruling that special consideration should be given to the opinion of a worker’s attending physician.¹⁹⁴
- Sept. 1991 GAO completes a review of workers’ compensation rights at Hanford and concludes that the rights of Hanford workers to filed workers’ compensation claims are being adequately protected under DOE’s contract with L&I.¹⁹⁵
- March 1997 The Washington State legislature passes legislation authorizing L&I to enter into a special agreement with U.S. DOE regarding workers’ compensation claims at Hanford.¹⁹⁶
- April 1999 A beryllium sensitivity cluster at Hanford is noted on the WISHA database at L&I. This is the last record of a Hanford “cluster” on the database.¹⁹⁷
- January 2000 Hanford’s workers’ compensation program is certified by L&I as a self-insured program and DOE takes over management of claims instead of L&I.
- March 2002 DOE’s consultant issues a report assessing key workers’ compensation cost factors and containment strategies. The report warns that claims from former workers are likely to create substantial liability for the government.¹⁹⁸
- April 2002 Washington State amends RCW 51.32.185 to provide certain classes of firefighters with presumptive coverage for certain types of infectious disease, respiratory disease, cancer, and heart problems.¹⁹⁹

¹⁹² House Bill No. 545, Notes prepared by John W. Thomas, Office of Assistant Attorney General, U.S. Atomic Energy Commission.

¹⁹³ Keith L. Prescott v. United States of America, United States Court of Appeals, Ninth Circuit, 731 F.2d 1388.

¹⁹⁴ Supreme Court of Washington, En Banc, Larry R. Hamilton, Petitioner v. Department of Labor and Industries of the State of Washington, 111 Wash.2d 569,761 P.2d618, September 22, 1988.

¹⁹⁵ Government Accountability Office, GAO/RCED-91-203, op cit, p. 8.

¹⁹⁶ Final Bill Report, HB 2020, C 109 L 97. Codified as RCW 51.04.130 (see Appendix D).

¹⁹⁷ Bill Frost, Washington State Department of Labor and Industries. “Clusters” generally result from multiple employees at the same site filing similar claims for similar exposures to chemicals or other hazards. L&I’s efforts to identify and remedy clusters do not extend to the Hanford site or other self-insured employers.

¹⁹⁸ PWC Consulting, op cit.

¹⁹⁹ Robert Malooly, Assistant Director, Insurance Services, Washington State Department of Labor and Industries, Memo to Self-Insured Employers and Claims Adjudicators, May 30, 2003.

APPENDIX C. continued

- March 2004 DOE issues a review of Hanford’s Workers’ Compensation program and concludes that CCSI complies with state regulations. DOE concludes that most problems are due to poor communication and case management would benefit from increased use of medical professionals to assist CCSI’s claims examiners.²⁰⁰
- May 2004 Governor Gary Locke and Washington State Attorney General Christine Gregoire send a letter to the Secretary of DOE requesting, among other things, that DOE ensure that workers’ claims for Hanford workers are fairly, expeditiously, and properly handled by the U.S. DOE.²⁰¹
- Feb. 2005 CH2M Hill’s president sends a letter to Roy Schepens, DOE, advising him that the company has been experiencing a higher than normal number of employee concerns and frustrations with the workers’ compensation claims process.²⁰²
- May 2005 In response to concerns expressed by HAMTC and CH2M Hill, DOE completes a review of their workers’ compensation program at Hanford and concludes that “miscommunication contributed to the perception of the concerns.”²⁰³
- June 2005 Public testimony at the State of the Site meeting in Richland is dominated by workers and family members calling on DOE to fix their workers’ compensation program. In response, DOE announces it will conduct an independent review of the program and work with L&I to complete the review.²⁰⁴
- April 2006 L&I releases the result of their review and the associated conclusion that although there are areas that need to be improved, Hanford’s workers’ compensation program is complying with the standards and expectations of a self-insured program.²⁰⁵
- Sept. 2006 CCSI’s contract with DOE expires unless DOE exercises its option to extend the contract until 2009.

²⁰⁰ FOH, op cit, p. I-2.

²⁰¹ Governor Gary Locke and Washington State Attorney General Christine Gregoire, Letter to Spencer Abraham, U.S. Secretary of Energy, May 17, 2004.

²⁰² Edward S Aromi, President and General Manager, CH2M Hill Hanford Group Inc., Letter to Roy Schepens, CH2M-0500618, February 18, 2005.

²⁰³ Shirley Olinger, ORP Deputy Manager, for Schepens, Roy J, Manager, Letter to Mr. E.S. Aromi, President and General Manager, CH2M Hill Hanford Group, 0500547, 05-ESQ-022, May 6, 2005.

²⁰⁴ Keith Klein, Manager, DOE Richland Operations Office, Roy Schepens, Manager, DOE Office of River Protection, Jean Vanek, Program Manager, Washington State Department of Labor and Industries, Announcement 05-0165 issued to all Hanford Site Employees, August 9, 2005.

²⁰⁵ Annette Cary, *Hanford comp program gets state OK*, TRICITYHEARLD.COM, Friday, April 7, 2006.

APPENDIX D.

Ranked List of the Number and Type of Diagnoses for years 2004 and 2005 as Determined by AdvancedMed's Clinical Exams, Services and Procedures, and Mode of Injury²⁰⁶

ICD 9(Diagnosis) Summary Report			
NCI Code	ICDX Description	FY2005	FY 2004
401.9	1. Hypertension NOS ²⁰⁷	490	656
724.2	2.Lumbago	243	300
729.5	3. Pain in Limb	210	220
796.2	4.Elevated Blood Pressure Reading w/o Htn	183	291
724.5	5.Backache NOS	170	142
883	6. Open Wound of Fingers	149	131
465.9	7. Acute Upper Resp Infection Site NOS	145	83
719.46	8. Pain in Joint Lower Leg	141	126
987.9	9. Toxic Effect of Gas/Fume/Vapor NOS	140	126
719.41	10. Pain in Joint Shoulder Region	118	165
840.9	11. Sprain/Strain Shoulder/Upper Arm Site NOS	110	136
368.13	12. Visual Discomfort	108	83
786.5	13. Chest Pain NOS	107	77
847.2	14. Sprain/Strain Lumbar Region of Back	106	95
784	15. Headache	97	92
354	16.Carpal Tunnel Syndrome	93	109
844.9	17. Sprain/Strain of Knee/Leg Site NOS	88	75
719.43	18. Pain in Joint Forearm	84	107
845	19. Sprain/Strain Ankle Site NOS	82	72
847	20. Sprain/Strain of Neck	81	66
780.4	21. Dizziness/Giddiness	77	68
924.11	22. Contusion of Knee	76	39
490	23. Bronchitis Acute/Chronic NOS	73	57
723.1	24. Cervicalgia	67	100
916	25. Abrasion/Friction Burn Hip/Leg w/o Infection	67	21
462	26. Acute Pharyngitis	58	57
308.9	27. Acute Reaction to Stress NOS	53	84
840.4	28. Sprain/Strain Rotator Cuff Capsule	53	83
478.1	29. Disease of Nasal Cavity/Turbinates NEC ²⁰⁸	51	34
719.42	30. Pain in Joint Upper Arm	51	77
719.47	31. Pain in Joint Ankle/Foot	50	47
989.5	32. Toxic Effect of Venom	50	41
913	33. Abrasion/Friction Burn Forearm w/o Infection	48	47

²⁰⁶ Loren Lewis, MD, MPH, Site Occupational Medical Director, Annual Medical Director's Report, Hanford Site, FY 2005, DE-AC06-04RL14383, Reporting Period October 1, 2004 through September 30, 2005, Appendix B, p. 89-90. Note that these listings are diagnoses. They are not a listing of claims filed. At this writing such a listing was not available from DOE or L&I.

²⁰⁷ NOS refers to "not otherwise specified."

²⁰⁸ NEC refers to "not elsewhere classified" and indicates that there is no ICD9 medical diagnostic code for the condition.

APPENDIX D. continued

ICD 9(Diagnosis) Summary Report			
NCI Code	ICDX Description	FY2005	FY 2004
493.9	34. Asthma, Unspecified	47	47
722.1	35. Lumbar Disc Displacement w/o Myelopathy	47	40
250	36. Diabetes Uncomp. Type II Controlled	45	33
782	37. Disturbance of Skin Sensation	45	34
847.9	38. Sprain/Strain of Back Site NOS	45	38
985.3	39. Toxic Effect of Beryllium/Beryllium Compound	45	46
486	40. Pneumonia Organism NOS	44	25
473.9	41. Chronic Sinusitis NOS	40	44
726.32	42. Lateral Epicondylitis	40	56
842	43. Sprain/Strain Wrist Site NOS	40	28
882	44. Open Wound Hand Except Fingers	40	46
987.8	45. Toxic Effect of Gas/Fume/Vapor NEC	40	16
300	46. Anxiety State NOS	38	37
786.59	47. Chest Pain NEC	38	27
782.1	48. Rash/Nonspecific Skin Eruption NOS	37	33
786.2	49. Cough	37	25
692.9	50. Dermatitis Due to Cause NOS	36	21
847.1	51. Sprain/Strain Thoracic Region of Back	36	19
923.2	52. Contusion of Hand	36	33
717.5	53. Derangement of Meniscus NEC	35	60
724.8	54. Symptoms Referable to Back NEC	32	10
923.3	55. Contusion of Finger	31	39
913.4	56. Nonvenomous Insect Bite Forearm w/o Infection	30	34
989.89	57. Toxic Effect of Nonmedical Substance NEC	30	11
709.9	58. Disorder of Skin NOS	29	31
915	59. Abrasion/Friction Burn Finger w/o Infection	28	34
916.4	60. Nonvenomous Insect Bite Hip/Leg w/o Infection	18	22
650	61. Delivery in a Completely Normal Case	17	36
910.4	62. Nonvenomous Insect Bite Head w/o Infection	14	24
985	63. Toxic Effect of Mercury/Mercury Compound	8	15

APPENDIX E. RCW 51.04.130

Industrial insurance coverage for Hanford workers – Special agreements

The Department of Labor and Industries upon the request of the secretary of defense of the United States or the secretary of the United States department of energy, may in its discretion approve special insuring agreements providing industrial insurance coverage for workers engaged in the performance of work, either directly or indirectly, for the United States, regarding projects and contracts at the Hanford Nuclear Reservation. The agreements need not conform to the requirements specified in the industrial insurance law of this state if the department finds that the application of the plan will effectively aid the national interest. The department may also approve or direct changes or modifications of the agreements as it deems necessary.

An agreement entered into under this section remains in full force and effect for as long as the department deems it necessary to accomplish the purposes of this section.

[1997 c 109 § 1; 1951 c 144 § 1.]

Notes:

Severability -- 1997 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 109 § 4.]

APPENDIX F. Hanford Employee Concerns Regarding Safety, Workers' Compensation and Illness/Injury Recording

Description of Employee's Concern ²⁰⁹	Case Number	Date Received	Date Closed	Company Or Agency ²¹⁰
A Flour Hanford manager is putting production over safety.	20020001	1/3/02	5/17/02	FHI
Asbestos and Beryllium concerns.	20020002	1/7/02	10/1/02	PNNL
Work packages are not adequately documented if hazards are present. Beryllium-assigned workers are not being provided training and counseling as required by federal law 10 CFR 850.	20020005	1/25/02	4/17/02	PNNL
Poor working conditions due to asbestos in old buildings (277W and 272W).	20020006	1/28/02	2/11/02	FHI
Bechtel is compromising safety in the way they run the Waste Treatment Project.	20020007	2/6/02	2/12/02	BNI
Lack of respiratory and skin protection may be causing vapor exposures in the tank farms.	20020008	2/11/02	7/9/03	CHG
A crane and rigging incident at the H-Reactor went unreported.	20020011	2/22/02	4/19/02	BHI
Disparate treatment based on race. Coercion to falsify Environmental Assessments and Audits.	20020013	2/13/02	3/13/02	DOE-ORP
Craft Employee Handbook is not enforced. Employees are being laid off after having a work related injury.	20020005	3/7/02	3/8/02	PNNL
Fluor's effort to remove requirements to inspect all quality 3 materials is in violation of 830.120QA rule.	20020016	3/12/02	12/9/02	FHI
Early release as a result of blowing dust in 200 area came too late for employees to drive home safely.	20020017	3/11/02	3/13/02	FHI
Employee's recent layoff was the result of his/her assessment findings and raising concerns. Management is not seriously considering assessment findings and recommendations, which could be detrimental to the SNF project.	20020018	3/12/02	3/14/02	FHI
A site wide program documenting cancer occurrences in employees needs to be developed to determine if there are increased cancers at Hanford.	20020024	4/1/02	4/19/02	Other
Unreported/unpaid long working hours are increasing the chances of work related and commuting accidents at the Waste Treatment Plant.	20020027	4/18/02	8/6/03	BNI
Retaliation for engaging in legal, protected activity.	20020028	4/18/02	7/1/02	DOE-ORP

²⁰⁹ Dorothy Riehle, Freedom of Information Act Officer, Department of Energy, Richland Operations Office, Freedom of Information Act Request (2006-0023), Letter to Tom Carpenter, GAP, February 06, 2006. Descriptions are taken from DOE Employee Concerns Year End reports and include only concerns formerly reported to DOE's Employee Concerns Program. Based on the data provided, it was not possible to determine the method or outcome of the investigation of the concern. In 2005, DOE's Office of River Protection (ORP) established its own Employee Concerns Program to handle concerns from employees working for the Tank Farm and Waste Treatment Plant contractors. All other concerns are handled by DOE's Richland Operations Employee Concerns Program. Numbers in parenthesis indicate the number of concerns associated with and filed under the identified concern number.

²¹⁰ Refers to the company or agency associated with the concern. See Appendix A for a listing of acronyms.

APPENDIX F. Continued				
Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Supervisors are putting production over safety.	20020031	4/24/02	5/29/02	FHI
Manager is putting production over safety, creating a hostile work environment and chilling effect for workers at Fluor.	20020033	5/2/02	8/8/02	FHI
CCSI is inappropriately delaying and may deny an employee's state workers' compensation claim for not attending an independent medical exam.	20020035	5/14/02	7/3/02	Other
The CCSI process for beryllium-affected workers is too difficult.	20020036	5/17/02	7/10/02	Other
Employees are possibly being exposed to unknown gases. Reprisal for engaging in protected activity.	20020041	6/18/02	6/28/02	FHI
Employee cannot get a list of MSDSs of possible chemicals that may have led to exposure.	20020044	7/1/02	1/13/03	CHG
Possible radiological contamination around HEPA filters and improper ventilation at BLD 327, Fluor.	20020045	7/2/02	2/4/04	FHI
Circuit breaker practices are creating a safety and fire hazard.	20020047	7/11/02	1/25/02	FHI
The CCSI process for workers' compensation is too cumbersome.	20020046	7/10/02	7/11/02	Other
Employee contamination from the salt water lance at Tank Farms needs more evaluation, Fluor.	20020053	7/29/02	5/4/04	FHI
DOE contract and project mismanagement and Contractor safety mismanagement at the Waste Treatment Plant. (8)	20020054	8/2/02	9/15/02-8/13/03.	BNI
Fluor is pushing production over safety	20020063	8/23/02	10/8/02	FHI
Unsafe working conditions at K Basins. (4)	20020065	9/24/02	4/16/03	FHI
Worker concerned that they are being laid off because of their knee injury.	20020071	9/26/02	10/08/02	FHI-FFS
Harassed and retaliated for bringing up beryllium issues and there is a chilling effect.	20020070	10/7/02	5/1/03	FHI
New warning signs posted on the Hanford Site are not accurate.	20020079	10/31/02	4/1/03	
Elimination of 24 hour Electrical Dispatch coverage resulting in safety concerns.	20020086	11/25/02	3/24/02	FHI
Toxic fumes from welding in pits at CSB and CI, believes stop work authority was ignored.	20020088	11/26/02	12/23/02	FHI
His/her job is being terminated after returning from approved medical leave.	20020089	12/4/02	12/23/02	PNNL
Retaliation for raising concerns	20020091	12/16/02	4/8/03	FHI-DYN
Sheet metal workers being discriminated and retaliated against for raising safety issues.	20020092	12/23/02	4/8/03	
Concerned individual claims retaliation as a result of having reported improper governmental activities. (2)	20030000	1/6/03	3/13/03	FHI
Multiple concerns at K-basins. (8)	20030003	1/29/03	3/26/03-4/30/03	FHI
Possibly exposed employee did not receive appropriate follow up actions.	20030006	1/3/03	2/11/03	BHI
Multiple Tank Farm related concerns. (5)	20030007	2/3/03	2/24/03	CHG
Ammonia Vapors much higher than IDLH.	20030011	2/3/03	2/24/03	CHG

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Concerned Individual feels harassed and job threatened for expressing opinions related to safety and quality of PHMS document dealing with Hold Point Application.	20030010	2/4/03	2/4/03	FHI
Non-electricians reportedly performing electrical work without appropriate training at "190 KE" basins.	20030012	2/5/03	2/5/03	FHI
Elimination of Enhanced Work Planning from work planning procedures will remove the opportunity for ISMS feedback, and adequate work planning which compromises safety.	20030013	2/13/03	9/11/03	CHG
Ergonomic issue not addressed in a timely and appropriate manner.	20030015	2/28/03	6/3/03	FHI
PNNL has compromised radiological safety. Unqualified workers are performing surveys. ALARA was not practiced resulting in unnecessary occupational exposure. (3)	20030017	3/18/03	7/30/03-4/5/04	PNNL
Employees have been harassed and intimidated according to a Recovery Plan, but FHI ECP has not been notified or involved, and appropriate actions have not been taken to address HIRD issues. (7)	20030018	3/25/03	5/22/03-6/8/04	FHI
CHG subcontractors lack appropriate oversight on their jobs. HPT input is unwanted by CHG project management involving radiological, safety, and environmental compliance with work involving subcontractors, particularly WGI.	20030019	3/26/03	7/9/03	CHG
Proper training requirements are not flowing down to subcontractor and there is a lack of verification that training requirements are being met.	20030024	4/7/03	6/26/03	FHI
FHI Employee Concern Program is not effective or fair to employees; and that FHI has dissolved the Hanford Joint Council which provided assistance to unresolved issues.	20030028	4/23/03	4/23/03	FHI
BHI is using improper procedure for detecting radiation and contaminates at the Hanford site.	20030035	4/23/03	10/8/03-10/10/03	BHI
Chilling effect in the work place by FHI management due to concerns being raised. (13)	20030029	4/29/03	6/13/03-5/19/04	FHI
Denial of medical benefits.	20030061	5/29/03	6/27/03	FHI
Due to recent reductions in personnel, ability to respond to WESF Plant or capsule emergencies questions.	20030057	6/2/03	6/18/03	FHI
Hostile work environment.	20030064	6/19/03	6/23/03	FHI
Lessons Learned are not being shared across the Hanford site.	20030067	6/19/03	8/20/03	FHI
Impact of two cranes at the Waste Treatment Plant and managers attempts to cover it up.	20030069	6/27/03	9/30/04	BNI
Annex cranes at 100KW and 100KE determined unsafe; FHI is not taking appropriate action to correct unsafe condition. (4)	20030075	7/14/03	8/20/03-11/6/03	FHI

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Employees are subjected to a hostile work environment and their concerns have gone unaddressed. (7)	20030077	7/16/03	7/18/03-11/4/03	CHG
A concerned individual has questions related to Beryllium contaminated work environments.	20030079	7/17/03	7/21/03	CHG
Potential for removal of a signature that would result in a work packaging being issued without the proper controls such as in the case of PER-2002-2770.	20030083	7/29/03	12/16/03	CHG
The BHI operation at the 105H Reactor Fuel Basin employs a method for removing waste that allows birds and insects access to mud and water that contain high levels of radiological contamination.	20030084	7/29/03	9/24/03	BHI
Possible hostile work environment and chilling effect. (2)	20030085	7/29/03	8/12/03	FHI
Employees have been threatened by co-worker for years and appropriate action has not been taken to remedy the situation.	20030088	7/30/03	8/5/03	CHG
Several maintenance personnel were potentially exposed to asbestos while repairing a roll-up door brake system in the 100K area.	20030087	8/4/03	3/31/04	FHI
Retaliation for raising security concerns.	20030090	8/4/03	9/26/03	FHI
Training requirements to haul hazardous material are not clearly defined in the FHI contract and FHI is not ensuring training requirements are met and maintained.	20030073	8/14/03	9/11/03	FHI
Some of the historical documents and sensitive data on beryllium cases may have been destroyed.	20030095	9/8/03	10/17/03	CHG
SCO received an anonymous concern that CH2M Hill is not in compliance with the Chemical Management Program.	20030096	9/10/03	7/27/04	CHG
Recent layoff is retaliation for raising waste fraud and abuse concerns to IG and for initiating PERs.	20030097	9/15/03	10/10/03	CHG
A concerned individual stated that HEHF has knowingly violated one of its own company policies and has failed to correct it.	20030107	9/22/03	10/14/03	HEHF
Medical restrictions are often developed in collaboration with companies on site and then applied uniformly to all patients – disregarding individual differences.	20030108	9/25/03	7/26/04	HEHF
Employee alleges that he/she has been laid off in retaliation for raising safety concerns and discriminated against due to age/race/gender. (5)	20030112	9/29/03	10/17/03-12/22/03	CHG
Employee believes that he/she is being targeted for layoff and is being retaliated against for raising concerns and is being harassed on a daily basis by his/her supervisor. (3)	20030110	9/30/03	10/14/03	BNI

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Employee is being harassed and feels that he/she may be targeted for layoff in retaliation for raising concerns. (3)	20030111	10/1/03	10/17/03	BNI
Disposal workers need to know the nature of contaminated items to decide how to dispose of Beryllium contaminated items.	20030113	10/15/03	12/22/03	FHI
New manager created a hostile work environment. (4)	20030114	10/20/03	11/7/03-3/19/04	HEHF
"Stop Work authority" exercised by staff was ignored in the field on 2 occasions when imminent danger safety concerns were noted. The concerned individual also alleged that direction to the staff was ignored with regards to work coverage. (2)	20030115	11/5/03	1/28/04	CHG-FFS
Waste Treatment Plant structural analysis has unacceptable thermal stresses, thus creating a potential safety issue.	20030116	11/14/03	1/27/04	BNI
Concerned about the safety of vehicle traffic on the Hanford site due to oversize loads being moved without regard to DOT regulations or WAC codes.	20030118	11/17/03	12/17/03	BHI
Several serious incidents have occurred due to insufficient medical staff. The staff is assigned work that is not within their area of expertise and not trained as to how to handle it.	20030119	11/18/03	12/17/03	HEHF
Concerned Individual alleges that he/she was retaliated against because he/she was terminated for raising a safety concern in July 2002.	20030120	11/18/03	4/14/04	PNNL
CH2M employee was exposed to Tank vapors at 241-BY.	20030121	11/18/03	7/29/04	CHG
Concerned about working in a confined space with a potential oxygen deficient area and that safety equipment is not available to retrieve personnel who may be trapped in the space.	20030126	12/8/03	10/5/04	BNI
Several safety issues have occurred recently at K basins involving oxygen monitors for potential IDLH atmosphere.	20030128	12/17/03	4/14/04	FHI
Employee was hired to work as a certified safety professional in the position of corporate safety director for FD Thomas, a subcontractor for BNI. When he/she was brought in to work the first day, he/she was verbally abused and harassed.	20040001	1/9/04	1/12/04-5/4/04	BNI
The owner of Learning Landscape is not following Washington Sate codes and procedures.	20040005	1/15/04	1/21/04	FHI
Concerned that he/she will be retaliated against for being ill and using too much PTB.	20040006	1/27/04	1/27/04	FHI
Attempted to use his/her Stop Work Authority due to the lack of appropriate training for workers who would be moving hazardous waste drums and was told that the job would not be stopped.	20040007	1/28/04	2/3/04	FHI-FFS

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Wants to know why personnel at K basins are being supplied with custom hearing protection when, after the 200W shop requested similar equipment, they were refused.	20040008	1/28/04	1/29/04	FHI
Employee stated that he/she was injured on the job several years ago and until recently was told to enter "RW" (regular work) on their time card when going to physical therapy and now is being told to use personal time bank.	20040017	2/24/04	2/24/04	FHI
Employee was injured on the job and claims that the HEHF doctor interfered with his/her diagnosis and in his/her subsequent work, management has not allowed worker to return to work.	20040019	2/25/04	3/9/04	CHG
DOE has failed to provide the oversight assuring implementation and maintenance of health and safety programs at Battelle Northwest Laboratories.	20040025	3/2/04	3/29/04	PNNL
A hostile work environment exists at the Waste Treatment Plant.	20040037	3/22/04	3/22/04	
Retaliated against for raising previous safety concerns and feels that he/she should be reimbursed for taking PTB due to stress it is causing him/her.	20040030	3/24/04	5/4/04	FHI
Kept from performing job since L&I case. CH2M Hill says he/she cannot wear respirator since 20% reduction in lung.	20040032	4/5/04	4/6/04	CHG
Been harassed and threatened that he/she would be fired if he/he reported a work related injury.	20040034	4/13/04	2/4//05	BNI
Employee not allowed to go to physical therapy to correct back injury because it would affect Fluor Hanford's safety record.	20040036	4/19/04	4/27/04	FHI
He/she and his/her spouse were subjected to reprisal and a hostile work environment while employed with CH2M Hill. Concerned individual also claimed to have information related to Waste, Fraud, and Abuse of government funds.	20040043	4/27/04	5/18/04	CHG
Employee felt they were wrongfully fired for taking time off work due to a back injury.	20040045	4/30/04	5/4/04	Other
Retaliated against and laid off because of discussions with a FHI supervisor during a safety meeting.	20040049	5/12/04	5/16/04	FHI-FFS
Outsourcing of fabrication shop work and extension past the 30-day grace period for annual respirator training. (2)	20040053	5/19/04	8/30/04	FHI
Concerned that workers will perceive that raising the threshold at which respiratory protection is required as management lowering safety standards in order to increase production.	20040055	5/24/04	9/23/04	BNI
Filed for long term disability on January 2, 2003 and questions why Fluor is withholding her/his disability.	20040057	5/27/04	6/3/04	FHI

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Concerned individual believes that he/she has been harassed and retaliated against for raising previous concerns.	20040060	6/1/04	8/31/04	CHG
Concerned about FHI inaction to a mixed hazardous accidental spill that happened on June 13, 2002 at PFP.	20040062	6/7/04	7/23/04	FHI
Being retaliated against and subjected to a hostile work environment.	20040061	6/9/04	6/10/04	FHI
A polar tanker had a spill when filling up with contaminated water. A critique was convened after that area was put in safe condition. However, the radiological control personnel involved were not asked to attend the critique.	20040063	6/16/04	8/5/04	FHI
Concerned that cost is driving the decisions of management for not approving air upgrade requests (airlines or SCBA) from welders at the Fab shop.	20040064	6/23/04	6/28/04	FHI
Concerned about rigging equipment being used by another company supporting FHI that they had been shut down for using. Blue Star Enterprises had been told by FHI that it was unsafe.	20040065	6/24/04	8/3/04	FHI
Sustained injuries directly related to his/her job due to requires exercises, e.g., man handling, shooting practices, which caused shoulder disability. Concerned individual claims employer did not want to approve long term disability benefits.	20040066	7/8/04	7/23/04	FHI
Employee had work injuries, claims employer did not want to approve disability benefits.	20040066	7/08/04	7/23/04	FHI
Injured when he/she fell into a ditch backwards and landed on a reinforced steel cage. Concerned individual claims he/she was let go from work because he/she had work restrictions.	20040068	7/14/04	2/17/05	BNI
Subjected to discrimination and harassing behavior from PFP Radcon Management including unwarranted verbal criticism, physical intimidation, interference in performing assigned job, and insinuated threats for speaking up.	20040069	7/14/04	7/20/04	FHI
Concerned about the security building personnel being moved into more of a maintenance and customer support services position, leaving nobody with assigned duties of security for the laboratory.	20040074	7/23/04	8/3/04	PNNL
Concerned about the protective skins falling off of the main pipeline north of the powerhouse, exposing asbestos.	20040078	7/29/04	9/14/04	FHI
Concerned individual feels he/she is being targeted to be fired, due to being off work with a heart condition.	20040079	7/29/04	8/2/04	PNNL
Employee at Advanced Med felt threatened by a patient demanding records on the spot.	20040081	8/05/04	9/15/04	CHG
Concerned that the concrete workers have to freshen the pour of concrete during lightening. (4)	20040082	8/6/04	9/20/04-10/14/04	BNI

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
His/her spouse has not been able to get on Long Term Disability due to an issue with CIGNA and doesn't feel that FH is supportive in helping with the process.	20040085	8/17/04	8/17/04	FHI
In an allegation sent to the OIG that a PFP manager was discovered in a contamination area without the proper anti-contamination clothing on and that FHI took no action regarding the issue.	20040087	8/17/04	9/20/04	FHI
DOE is not making its contractor fully accountable for the long term health care of their employees.	20040090	8/23/04	2/14/05	FHI
Concerned about the transportation of compressed air cylinders (SCBA) from Bldg 2704 HV to the Fire Station at 200 West for refilling.	20040089	8/24/04	10/6/04	CHG
Concerned individuals stated that he/she feels that the work restriction rules are inconsistently applied for allowing workers to return to work with various degrees of work injuries.	20040093	9/8/04	9/9/04	BNI
Concerned individual is unwilling to remove transit panels within two feet of overhead crane rails in 109 DR until results of a Beryllium survey are received. Survey was done yesterday and work is scheduled tomorrow morning.	20040094	9/16/04	11/1/04	BHI
Employee was hurt on the job – states that the first aid department purposely made a misdiagnosis of arthritis.	20040096	9/17/04	9/17/04	BNI
Concerned about Duratek Federal Services safety practices and how he is being treated as an employee. (2)	20040098	9/21/04	1/27/05	BHI
Concerned individual believes that BHI managements are not following radiological control procedures at the 100-H area.	20040101	9/21/04	12/7/04	BHI
Believes that he/she is being harassed and retaliated against for raising security issues.	20040099	9/22/04	9/22/04	FHI
Employee sent home by AdancedMed as “not fit for duty” has been unable to get the right paperwork to the right people to get paid for short term disability.	20040100	9/28/04	9/28/04	FHI
Sunbelt Rentals, a subcontractor to BHI, is performing work in the 100N area not conforming to OSHA regulations.	20040103	9/29/04	1/5/05	BHI
Concerned individual believes he/she is being retaliated for raising safety concerns. (4)	20040104	10/5/04	10/13/04-1/24/04	BHI
Hostile work environment exists at (100 SM&T) 107-N and 1330 Project.	20040105	10/5/04	10/13/04-2/14/05	BHI
When he was on his way to Advanced Med for medical attention, his supervisor that was taking him was called back for a meeting.	20040115	11/18/04	11/29/04	FHI
Employee feels he/she was laid off and retaliated against for medical conditions that would not affect work.	20040117	11/22/04	11/29/04	BNI

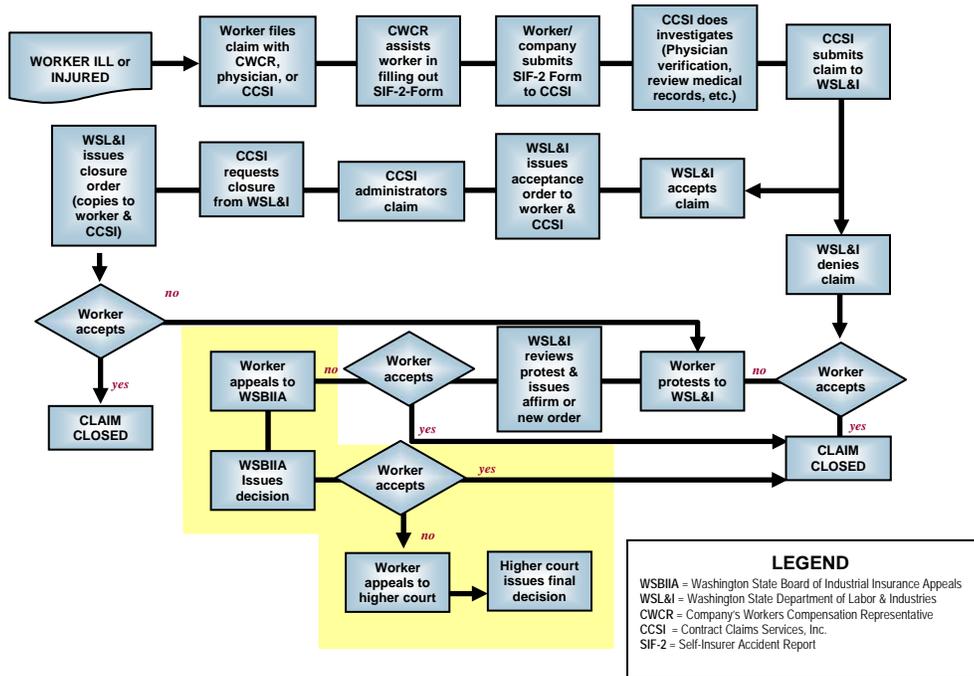
APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
He/she feels that he/she was retaliated against and laid off due to a temporary medical condition and due to a previous relationship with his/her supervisor.	20040118	11/23/04	11/29/04	BNI
He/she is being harassed by various managers; for previously raising safety and security concerns at PFP.	20040119	11/24/04	1/5/04	FHI
He/she is being harassed from FHI HR department because of drawing disability benefits.	20040124	11/27/04	12/1/04	FHI
Employee suffered a work related injury, went back to work on light duty and irritated the injury. Now having difficulty getting injury taken care of and getting paid.	20040122	11/30/04	11/30/04	FHI
Employee believes he/she may be retaliated against for filing an L&I claim.	20040123	11/30/04	12/06/04	BNI
Being retaliated against for safety concerns "squeaky wheel gets hammered".	20040125	12/3/04	2/4/05	BNI
Concerned he/she will be retaliated against for raising concerns at the Waste Treatment Plant about the GF. Concerned individual believes he/she is subject to a HWE at the Waste Treatment Plant. (2)	20040126	12/3/04	12/7/04	BNI
Concerned individual stated that BNI is harassing him/her by not allowing him/her to follow his/her doctor's orders to take low grade pain medicine while on restricted duty work due to an on the job injury for which the L&I claim was denied.	20040127	12/8/04	12/8/04	BNI
Believes he/she has been retaliated against for bringing up safety and health concerns to his/her supervisor. (2)	20040131	12/20/04	2/4/05	BNI
There is sandblasting at night on the swing shift with materials (Silica) going over workers. Safety team says material is not hazardous but IH samples show that sand can get into lungs.	20050002	1/5/05	5/17/05	BNI
Laid off after he/she broke his/her elbow. The concerned employee states he/she did not have the correct tools to do the job and voiced concern to supervisor. The concerned individual feels he/she has been discriminated against for complaining.	20050000	1/7/05	3/24/05	
Raised concerns about the methodology used at the Waste Treatment Plant to evaluate large and small bore pipe stress analysis and that individuals in Pretreatment facility stress analysis group are mismanaged.	20050003	1/10/05	8/24/05	BNI
Employee believes he was harassed by DOE's lawyer during L&I hearing and that false accusations to discredit his compensation claim.	20050004	1/10/05	3/10/05	CHG
Hostile work environment, theft, unsafe work practices and time sheet abuse. Concerned individual fears retaliation. (3)	20050001	1/11/05	1/20/05-4/20/05	BNI

APPENDIX F. - continued

Description of Employee's Concern	Case Number	Date Received	Date Closed	Company Or Agency
Believes he was laid off work for going to the safety organization and reporting an event he/she witnessed/was involved in, was given five days off without pay and would then be eligible for rehire.	20050005	1/12/05	1/20/05	BNI
Believes that a hostile work environment exists at the Waste Treatment Plant and fears reprisal.	20050014	2/4/05	2/4/05	BNI
Employees who question what is going on are in many cases punished by lack of promotion, little or no salary actions, lay off, or removal from the annual bonus plan.	20050021	2/17/05	2/23/05	BNI
Employee stated that BNI is modifying OSHA illness/injury records at the WTP --at least 15 were modified as non-recordable cases.	20050023	2/22/05	2/24/05	BNI
Concerned about an employee not having access to L&I benefits and management having the injured employee come to work to protect company's record of lost days.	20050024	3/3/05	5/5/05	CHG
Provided a list of software applications currently being used by BNI. The CI alleges that the applications do meet DOE required documentation.	20050026	3/23/05	4/27/05	BNI
Employee was exposed to tank vapors and was told it was ammonia. Since that time, knowledge of vapors has increased but information has not been updated or provided to doctors reviewing the claim.	20050033	6/20/05	7/18/05	CHG
Being asked to inspect welds on work performed by IM without approved design drawings. This is a violation of the subcontract between BNI and IM.	20050035	7/8/05	9/29/05	Other
Mismanagement of the Bulk Vitrification Project. Concerned that the subcontractor AMEC is not technically competent and as a result the project is over budget.	20050037	8/29/05	8/29/05	CHG
He was not allowed to have a break and there was no water available on the job before 10:30 am or 11:00 am. Workers expected to run during work which is a safety hazard.	20050038	9/12/05	11/12/05	CHG
A stop work was issued in the Tank Farms 3-4 weeks ago due to a crane operator being splashed/sprayed with iodine. Worker is concerned about the cleaning process.	20050041	10/4/05	Pending	CHG
BNI retaliated against the concerned individual by terminating his/her employment under the cover of a layoff for making protected disclosures in accordance with 10 CFR 708.5.	20050044	10/20/05	Pending	BNI
Six Hanford patrolmen raised environmental, safety and health concerns, issued a stop work to FHI.	20050054	10/31/05	12/14/05	FHI
Retaliated against, being denied promotions, for raising safety concerns. (2)	20050045	11/19/05	Pending	?
Several continuous air monitors (CAMs) have not been calibrated for the past two years.	20050046	12/8/05	Pending	CHG

Hanford Workers' Compensation Flow



We get treated like we're liars after we've never turned down dangerous jobs. Hanford worker's testimony from the Department of Energy's June 2005 State of the Site meeting.

GOVERNMENT ACCOUNTABILITY PROJECT

www.whistleblower.org

West Coast Office

1511 Third Avenue, Suite 321
Seattle, Washington 98101
Phone: (206) 292-2850
Fax: (206) 292-0610

National Office

1612 K. Street NW, Suite 1100
Washington, D.C. 20006
Phone: (202) 408-0034
Fax: (202) 408-9855
