

Testimony of
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Mr. Chairman and Members of the Committee:

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

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

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

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

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

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

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

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

Since the Amendments of 2000 were enacted, the overall approval rate has risen to 75 percent from a prior approval rate of 43 percent. The financial impact of the Amendments was

immediate. During the year just prior to passage of the 2000 Amendments, the Program approved \$26 million in awards. In the first fiscal year following enactment of the Amendments, the Program processed almost 2,000 claims, representing \$94 million in awards. This record number of payments in FY 2001 was made possible by an emergency supplemental appropriation enacted by the Congress.

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

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

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

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

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

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

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

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

Prior to FY 2001, the RECA Trust Fund was subject to annual discretionary appropriations. Unfortunately, the funding provided in the appropriations bills during FY 2000 and FY 2001 could not cover the onslaught of new claims being filed and the resources were quickly depleted, forcing the Department to notify eligible claimants that payments would have to await the

necessary funding. As previously mentioned, in FY 2001, Congress passed an emergency supplemental appropriations bill that allowed the backlogged claims to be paid. However, that appropriation did not resolve the funding situation for the future. The following year, an effort was made to address the long-term need for adequate funding. The National Defense Authorization Act for Fiscal Year 2002 made the RECA Trust Fund a mandatory appropriation and established annual spending caps for FY 2002 through FY 2011 totaling \$655 million.

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

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

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