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3rd DRAFT
BWWachholz/bh
12/22/81

TO: Sandy Schneider

SUBJ: Interior Proposed Draft Bill, "To amend section 106 of the Act of October 15, 1977, as amended, concerning health care in the Marshall Islands, and for other pruposes."

Because of the need for clarification regarding ambiguities in the language of Public Law 96-205, we concur with the Department of the Interior that amendments to P.L. 96-205 are needed. We also agree with the Department of the Interior that the primary uncertainty is the identification of populations who are to be the beneficiaries of the health, radiological monitoring and education/information programs mandated by the statute.

However, we are of the opinion that many, if not all, of the uncertainties and ambiguities associated with P.L. 96-205 could be resolved via administrative decisions by the implementing agency. If resolved by this mechanism, many of the comments which follow could be eliminated from consideration as amendments to P.L. 96-205 (e.g., geographical coverage, time period of benefits). Incorporation of these decisions into the "program plan" which must be submitted to the Congress would allow an opportunity for the Congress to evaluate whether or not the plan would be consistent with the intent of Congress. A copy of the Department of Energy legal position on these matters, provided to the Department of the Interior on October 17, 1980, is provided as Attachment A.

The Department of the Interior's proposed amendments are acceptable in several respects, but there are a number of issues, additions, changes and comments which we feel would strengthen and further clarify the statute.

We agree that:

1. There should be a geographical definition of the beneficiaries of the statute. The language of the statute, and the Department of the Interior letter, strongly imply that the basis for entitlement is exposure to radiation. It does not differentiate between but includes both those who were directly exposed to significant levels of radiation (the March 1, 1954, residents of Rongelap and Utirik who already are covered under P.L. 95-134) and those who received no significant radiation exposure.

   If the beneficiaries are to be those populations who suffered injury and/or hardship directly as a result of the U.S. nuclear weapons testing program, we submit that the populations to be covered by the statute should include those

   a. Experienced significant radiation exposures due to direct fallout (i.e., the 174 residents of Rongelap and Utirik on March 1, 1954, and those in utero at that time.)

   b. Were removed from their home atolls prior to and/or as a consequence of the testing program (i.e. the Rongelap, Utirik, Bikini and Enewetak people), some of whom continue to be denied residential use of their home atoll (i.e., the Bikini people). (We have no objection to defining this to be the people living on Kili Island as stated by the Department of the Interior. Similarly, the people of Ujelang might also be included, as also proposed by the Department of the Interior.)

   c. Are included by Congressional determination and required by practical and ethical considerations (i.e., the entire population living on the atolls and islands identified in 1.b. above).

2. The residents of Rongelap and Utirik on March 1, 1954, should receive medical care for life.

   The residents of Rongelap and Utirik, both those alive and those in utero on March 1, 1954, should be regarded as a singular obligation of the U.S., and medical care of whatever nature should be provided to them for their entire life. They are a clearly defined population who already receive benefits under the provisions of Public Law 95-134 with respect to radiation-related injuries.

3. There should be a time limit to the benefits provided under the statute for reasons other than those identified in 1.a. and 2. above.

   We believe that present radiation exposures at currently used residential islands and atolls are at levels where it is extremely unlikely that any health effect will result from such exposures. Certainly it would not be possible to clearly relate any specific potential health effect to those levels of radiation exposure. Because of this and because of the fact that the radiation levels are continuously decreasing as the radionuclides decay, it does not seem reasonable or necessary to provide indefinitely for U.S. sponsored health care. Accordingly, any mandated health care program for persons other than those identified in 1.a. and 2. above is regarded as compassionate compensation rather than because of the potential for radiation caused health effects. Therefore, we would agree that a time limit should be imposed, although we would suggest 25 years rather than 20 years.

4. The beneficiaries as defined in 1. above should receive complete medical care.

5. The health program should be integrated to the maximum extent feasible with health care programs provided by the Marshall Islands Government.

We believe that it is incumbent upon the administering agency not only to integrate any health care program with the health care plan of the Marshall Island Government, but to assure that well before the termination date of the U.S. program, U.S. participation in the program will begin gradually to decrease with a concommitant increase in participation by Marshallese medical personnel so that at the time of program termination the Marshallese are prepared to assume program responsibility should they desire to do so.

In order to preclude possible migration of peoples from other atolls and islands to those identified in 1. above for the purpose of obtaining benefits under P.L. 96-205, a method of identification of the beneficiaries will need to be determined by the implementing agency. Furthermore, we suggest that consideration be given to the inclusion under P.L. 96-205 of the Bikinians living on Ejit Island at Majuro Atoll, although it is recognized that this entitlement may entail certain practical difficulties inherent in the existence of different health care systems within the same atoll.

The "other atolls" clause of the statute is at the core of much of the controversy surrounding interpretation of the statute. Whereas the Department of the Interior states that "it is the intention of the Executive Branch" to investigate claims regarding other atolls, we are not aware of any agreed upon interagency position on this matter, nor have guidelines for making such decisions been devised. Therefore, we would suggest that the wording be changed to emphasize that such action will be made at the discretion of the administering agency.

We must emphasize our continued belief that proper administrative accountability procedures require that program responsibilities and fiscal responsibility should be combined within the same management structure. This would eliminate potential operational and budgetary confusion, delays and misunderstandings. If funding responsibilities are not combined into the administering agency, it should be clearly stated that the funding agency serves merely as a financial conduit for the administering agency. If, alternatively, oversight and accountability responsibility is intended to be exercised by the funding agency, such responsibilities also should clearly be stated.

The Department of the Interior letter makes no reference to the radiological monitoring and dose assessments, and the education/information program called for in the statute. We would propose that these activities also be terminated after a specified interval if appropriate. If radiological surveys and dose assessments are continued over a reasonable period of time following residence on an island or from the present time, whichever is longer, and the surveys and dose assessments are consistent with previous survey data and dose assessments, then continuation of the radiological surveys and dose assessments would not be justified.

The following are specific comments on the draft letter from the Department of the Interior to the Speaker of the House:

Page 1, Paragraph 3: The number of nuclear weapons tests at Enewetak Atoll was 43; the number at Bikini Atoll was 23.

Page 1, first "bullet": The "bullet" would be more accurate if rephrased as follows, "The Bikini people, who were moved off their atoll in 1946, have not yet returned because of residual radiation levels on the atoll.

Page 1, second "bullet": The sentence as it stands does not follow as a "consequence" of the nuclear testing program. Suggest the sentence read, "The Enewetak people, who were moved off their atoll in 1947 and remained away until 1980, continue to be deprived of the use of some of the islands in the atoll, and must contend with a temporary loss of crop productivity."

Page 1, third "bullet": The last part of the sentence should read, "... are receiving medical care pursuant to statute for radiation related injuries, though incidental to this broader medical care is provided.

Page 1, last paragraph, second line: P.L. 96-205 speaks to "the people of such atolls," not "...for such people of the Marshalls."

Page 2, paragraph 1: We believe that the position that the benefits of P.L. 96-205 should be extended to all of the peoples of the Marshall Islands is wholly unsupportable. Also, the last sentence of this paragraph would be more accurate if "radiation exposure" replaced "fallout."

Page 2, paragraph 4: Several possible misinterpretations in this paragraph should be clarified.

1. The impression is given that if enough resources are expended, scientific analyses and standards can define "affected" atolls. However complex and extensive any monitoring effort might be, any subsequent decision still will be based upon subjective judgement.
2. Scientific knowledge can provide a basis for rational decisions regarding land use restrictions.
3. A radiological monitoring program, regardless of its extent, will not lead to the establishment of a relationship between radiation exposure and health effects. Studies of this nature require also extensive medical and personnel exposure records on very large populations (hundreds of thousands of exposed and unexposed persons) and/or higher levels of radiation exposure. To the extent possible, the National Academy of Sciences - National Research Council have analyzed such relationships with available relevant data. When applied to the residence islands atolls of concern, except for Bikini Island, the health risks are projected to be very small. These relationships would, therefore, not serve as a basis for determining "other atolls."
4. Another "standard" could be the U.S. radiation exposure limits for the public. This criterion, while applicable to U.S. activities, may not be acceptable to non-U.S. interests. Furthermore, it is not derived from the health effect-radiation exposure relationship.
5. In conclusion, science can identify what radiation is present, but it cannot define "affected;" that remains a subjective decision.

Page 3, paragraph 1, part (c): The 174 should be 180 in order to account for those in utero at the time.

Page 3, paragraph 2: As indicated above, we believe that the program period should be for a period of 25 years, with a U.S. phase out supplemented by a Marshallese "phase-in."

Page 3, paragraph 3: Attorneys for some of the interested groups have made this claim; other attorneys representing some of the people of the named atolls argue that the statute should be implemented where the majority of their clients now reside.

Page 3, paragraph 3, last sentence: The word "substantially" is misleading, in that the implication is that the subject people were not substantially affected by radiation from the testing program. In that context, the word "substantially" should be eliminated.

Page 4, paragraph 3: We believe that with this paragraph it would be appropriate to state the interest of the U.S. to phase out of this program by a certain date, but that inasmuch as the health care programs are "integrated," the Marshall Islands Government will be in a position to assume responsibilities of this program should they choose to do so.

Page 4, paragraph 4: Inasmuch as the statute provides for peoples who have not been exposed to significant levels of radiation exposure, and for peoples already covered by P.L. 95-134 for radiation related injuries, it is clear that the criteria for inclusion within the provision of the statute are based upon something other than or in addition to significant radiation exposures, even for the four named atolls.

Page 5, paragraph 1: As indicated above, if this is the Department of the Interior position, it should be stated as such, and that it is within their discretion to make such decisions.

Page 5, paragraph 1, last sentance: As an example of the aforementioned problems pertaining to divided management and accountability, should the Secretary of the Interior make such a decision prior to enactment of amendments, would the Department of Energy be expected to provide funding for such decisions?

Page 5, paragraph 3: We continue to oppose the division of program responsibilities and funding responsibilities between agencies.

Page 5, paragraph 3, penultimate sentence: The U.S. nuclear weapons testing program was carried out under the direction of the President of the United States and funded by the Congress of the United States. The Department of Defense and the Atomic Energy Commission were the instruments by means of which this policy was conducted. (In the 1946 tests there was no Atomic Energy Commission.) Consequently, any legacies from this national program specifically approved by the highest levels of the U.S. Government are a U.S. responsibility and should not be attributed to a single agency carrying out the U.S. policy.

The Bill: as presently stated the proposed Bill provides for environmental research and monitoring on Ujelang and Kili as well as on Bikini, Enewetak, Rongelap, and Utirik. There is no basis for inclusion of Ujelang and Kili in this aspect of the statute. A suggested revision of the bill is included as Attachment B.

We believe that because of the complex nature of P.L. 96-205, the various interpretations which have been advocated by various interested parties, and the potential policy and legal ramifications of P.L. 96-205, it is essential that the Executive Branch reach agreement on the need for and content of amendments. Furthermore, we believe that administrative decisions in the planning and implementation of P.L. 96-205 should reflect a broad consensus within the U.S. Government. We urge that these issues be the subject of further interagency meetings in order to clarify the Executive Branch position, and we are prepared to actively participate in such meetings.

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