

Secretary Elaine L. Chao
Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

January 17, 2005

Dear Secretary Chao:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) in connection with the story in today's *Chicago Tribune* (copy enclosed) concerning the first results of beryllium blood tests for Occupational Health & Safety Administration inspectors. The disturbing finding that some inspectors had become sensitized to beryllium at some time in the past, and may therefore have already begun the progression to chronic beryllium disease, we believe, merits your personal attention.

As you may know, OSHA only reluctantly began a limited testing program several years after initially refusing to do so, under pressure from disclosures made by one of its top administrators, Dr. Adam Finkel. Not only did OSHA resist offering the medical testing at every juncture, but it told the national media and every one of its employees in October 2003 that the program was "already underway" when in fact it didn't begin until after the *Tribune* investigated the matter six months later.

OSHA's recalcitrant track record on this issue demands your personal intervention to ensure the following:

1. It is critical that OSHA immediately ascertain—from its own data that it has had in hand for years—what amounts of beryllium this first wave of sensitized inspectors had been exposed to. If these unfortunate individuals were among the highest exposed, then other inspectors may be at lower risk but should still be encouraged to undergo testing. If, as is more likely the case, all of the sensitized inspectors were not also the most highly exposed, then anyone exposed to larger concentrations has an even greater probability of undiagnosed sensitization and/or disease.
2. OSHA must immediately inform those inspectors that were involved in at least 25 inspections where beryllium was found at more than five times its 50-year-old exposure limit and strongly encourage them to undergo testing.
3. OSHA should immediately inform all retired OSHA inspectors and all state-plan inspectors who were exposed to comparable amounts of beryllium, and offer the blood test to any such employee. The cost of testing (under \$150 per employee) is trivial compared to the benefits of early diagnosis or reassurance that one is not

yet sensitized—OSHA must respond to these preliminary findings by reversing its decision to leave these groups out of the program entirely.

4. OSHA must provide to the U.S. Environmental Protection Agency, who can then forward the information to state environmental agencies as needed, a list of all facilities where beryllium was found at more than 0.2 ug/m³ – environmental inspectors who inspected these plants deserve the opportunity to be tested, given that we now know that a significant minority of OSHA inspectors have become sensitized from these inspections
5. OSHA must issue within 12 months a proposal to reduce the 50-year-old permissible exposure limit for beryllium. To our knowledge, no other occupational or environmental standard in the developed world is associated with documented cases of grave illness after only the equivalent of one day's exposure at a legally allowable concentration.

OSHA inspectors, who epitomize the best of public service, deserve better than the treatment they have received. The 100 million workers OSHA is supposed to protect need your assurance that they will be treated better than the Department's own employees. Your agency must respond to this ominous finding by showing that at long last, it "gets it."

In addition to the above steps, PEER requests that you open an investigation into the four-year delay before testing commenced and the campaign of deception that accompanied it. Although Assistant Secretary Henshaw and Deputy Assistant Secretary Layne have recently resigned (after, as we understand it, learning that their delay has harmed at least 1.5% of their own employees who were finally offered testing), many others who acquiesced in the decisions to delay and limit testing to only active inspectors and in the efforts to cover them up remain in senior management roles at OSHA.

Your failure to address these issues will leave every worker who may contemplate reporting health and safety problems at her workplace in doubt because of the manner in which OSHA treated its own employees.

Moreover, PEER would also suggest that you review the way that your agency responded to Dr. Finkel. It is now clear that Dr. Finkel's concerns were well founded. Rather than act upon his recommendations, your agency took an unfortunate "kill-the-messenger approach." An agency that tries so hard to punish a reluctant whistleblower within its own executive ranks cannot inspire confidence in its ability to objectively rule on claims of retaliation in the private sector.

Thank you for your attention to this matter. PEER looks forward to a response outlining what actions you intend to take. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Jeff Ruch
Executive Director

Cc. Sen. Enzi, Chair, Senate Committee on Health, Education, Labor & Pensions
Sen. Kennedy, Ranking Member, Senate Committee on Health, Education, Labor & Pensions

Rep. John Boehner, Chair, House Committee on Education and the Workforce
Rep. George Miller, Ranking Member, House Committee on Education and the Workforce