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PUBLIC HEALTH SERVICE  
CENTERS FOR DISEASE CONTROL AND PREVENTION  
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

THIRTY-EIGHTH MEETING

ADVISORY BOARD ON  
RADIATION AND WORKER HEALTH

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DAY ONE

ABRWH BOARD MEETING

The verbatim transcript of the  
Meeting of the Advisory Board on Radiation and  
Worker Health held at the Marriott Metro Center,  
Washington, D.C., on June 14, 2006.

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June 14, 2006

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-- "\*" denotes a spelling based on phonetics, without reference available.

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## P R O C E E D I N G S

(1:05 p.m.)

WELCOME AND OPENING COMMENTSDR. PAUL ZIEMER, CHAIR

1 DR. ZIEMER: Good afternoon, ladies and gentlemen.

2 I'm going to call the meeting to order. This  
3 is the 38th meeting of the Advisory Board on  
4 Radiation and Worker Health, meeting here in  
5 Washington, D.C. We're always pleased to be  
6 back in this location, always an exciting  
7 place, and we're certainly pleased to have a  
8 number of visitors from this area be able to be  
9 with us today.

10 Our usual reminders are necessary. First of  
11 all, a reminder to register your attendance  
12 with us, if you've not already done so. The  
13 registration book is on the table in the foyer.  
14 If you are interested in providing public  
15 comment during our public comment session, we  
16 ask that you sign the separate book for public  
17 comment that's there, simply for planning  
18 purposes so we have some idea of how many  
19 people wish to participate.

20 There are various documents on the back table,

1 including the agenda for today's meeting and  
2 various documents relating to agenda items, and  
3 related materials as well. So please help  
4 yourself to those as you find appropriate and  
5 necessary.

6 I'd like to introduce our Designated Federal  
7 Official, Dr. Lewis Wade. And Lew Wade has a  
8 few opening comments as well.

9 **DR. WADE:** Only to welcome you, and again to  
10 thank the Board for its service. Being in  
11 Washington, it's possible that some people from  
12 the Hill will visit us, and if that happens  
13 we'll accommodate them and really break our  
14 proceedings and let them speak to us. We do  
15 think possibly Senator Clinton will join us,  
16 and also possibly the chairman of the sub-- the  
17 subcommittee of the House Judiciary Committee  
18 who's been holding hearings on the program,  
19 Chairman Hostettler, I think will visit us  
20 tomorrow. And we -- we welcome those visits  
21 and others as they take place.

22 I have one small administrative change in the  
23 agenda, and let me walk you through it. If you  
24 take note of the Thursday, June 15th item  
25 scheduled for 2:00 p.m., that's SC&A report on

1           SEC review procedures, we're going to change --  
2           swap that out with the Friday, 10:45 item that  
3           says SC&A initial presentation on 4th round of  
4           dose reconstructions. We're making that switch  
5           to accommodate some people's schedules. And  
6           rather than to put out another draft of the  
7           agenda, I just decided to make note of that for  
8           you today.

9           So that's the only change in the agenda that I  
10          know about. We have a packed agenda, as  
11          always, and I look forward to the Board making  
12          significant progress in its -- its most  
13          important missions.

14         **DR. ZIEMER:** Thank you for those comments. Now  
15         Board members, you should have at your place at  
16         the table three sets of minutes. First of all,  
17         October 17th, minutes of the Subcommittee for  
18         Dose Reconstruction and Site Profile Reviews;  
19         the January 24th minutes of the Subcommittee  
20         for Dose Reconstruction and Site Profile  
21         Reviews; and thirdly, the summary minutes of  
22         the March 14th meeting of this Board. Since  
23         these minutes have just been provided to you  
24         this morning, then I'm going to recommend that  
25         we defer action on these minutes, so without --

1           without objection, we will defer these till the  
2           work session on Friday.

**NIOSH PROGRAM STATUS REPORT**

3           **MR. LARRY ELLIOTT, NIOSH**

4           Now we're going to begin our session this  
5           afternoon with a status report on the NIOSH  
6           program. We're pleased that Larry Elliott is  
7           going to make that presentation. Larry,  
8           welcome back to the podium. We look forward to  
9           hearing the latest statistics from NIOSH.

10          **MR. ELLIOTT:** Thank you, Dr. Ziemer, ladies and  
11          gentlemen of the Board, and interested members  
12          of the public and my colleagues in federal  
13          service -- public service, we certainly  
14          appreciate this opportunity to provide a status  
15          report on the dose reconstruction program that  
16          NIOSH administers for claimants who have  
17          acquired cancer in their work activities in the  
18          development of the nuclear weapons arsenal.  
19          We sincerely appreciate this opportunity  
20          because I think everyone would agree that this  
21          was a daunting, huge challenge that was  
22          presented to NIOSH in the passage of this law.  
23          And in a -- what I would consider, and I'm sure  
24          the claimants do not consider, a short amount  
25          of time we have, I hope, made considerable

1 progress. We have considerable progress yet to  
2 go, but I believe and I hope that at the end of  
3 this presentation you will find some  
4 information to your benefit that will show how  
5 much progress and how much contribution NIOSH  
6 has made to the program.

7 Overall there have been 21,754 cases that have  
8 been sent to NIOSH from the Department of Labor  
9 for dose reconstruction. Of those, 15,026, or  
10 about 69 percent of the cases, have been  
11 returned to Department of Labor for a decision  
12 on their compensability. And you see in this  
13 breakdown that we have submitted to DOL 13,325.  
14 By the way, all these numbers that I'll be  
15 reporting in this report are as of May 31st,  
16 2006. If you go on our web site you'll see  
17 that we've actually surpassed 14,000 returned  
18 to DOL as of today.

19 The Department of Labor pulled from us when --  
20 from dose reconstruction 632 cases. And why  
21 would they pull those. Well, they were cases  
22 that were inadvertently sent to us. They were  
23 cases that may have had a chronic lymphocytic  
24 leukemia, a case that's not covered currently  
25 under this dose reconstruction program, or they

1           were a -- what at the time was a Subtitle D  
2           case that should have been retained in that  
3           part of the program and should not have been  
4           sent to us. So they were pulled away from us.  
5           There's also been 928 cases that have been  
6           returned to Department of Labor for a Special  
7           Exposure Cohort class decision. And currently  
8           we have 141 cases that have been  
9           administratively closed. I'll talk a little  
10          bit more about those on another slide.  
11          This leaves about 31 percent of the total load  
12          still with us, 6,728 cases that remain in dose  
13          reconstruction at some point in the progress of  
14          that.  
15          I think it's important for you to understand  
16          that -- and recognize that there are 324  
17          covered facilities in the program. And I  
18          passed out to the Board, and it's on the back  
19          table, some statistics that -- that you won't  
20          see in this slide that I'm referring to at this  
21          point in time; 188 of those facilities, whether  
22          they're DOE or AWE, Atomic Weapons Employer  
23          facilities, represent our case load at NIOSH.  
24          In other words, we have at least one or more  
25          claims for 188 of those facilities. Out of

1           those 188, we have 144 DOE or AWE facilities  
2           for which we have 40 claims or less. I think  
3           that's important to note. That presents a  
4           problem to us where we have a small number of  
5           claims, but yet we -- our whole dose  
6           reconstruction mechanism is geared toward use  
7           of site profiles, use of exposure models, use  
8           of some type of technical document that will  
9           allow a dose reconstruction approach on a mass  
10          basis. So that presents us some additional  
11          challenge.

12          There are 21 of these 188 facilities where we  
13          have completed all the dose reconstructions,  
14          100 percent of the dose reconstructions have  
15          been completed. And there are 34 of these  
16          DOE/AWE facilities for which 80 percent or more  
17          of the compensation -- or the dose  
18          reconstruction claims have been completed for  
19          compensation decision.

20          Of the 13,325 dose reconstructions that have  
21          been returned to Department of Labor for  
22          adjudication, there's been about 27 percent, or  
23          3,637, that had a POC, based upon the dose  
24          reconstruction, greater than 50 percent where  
25          they were found to be compensable. And about

1           73 percent of those cases were less than the 50  
2           percent compensability decision.

3           Approximately a half a billion dollars, or \$472  
4           million, has been awarded for dose  
5           reconstructed cases.

6           In this graphic we try to give you a sense of  
7           where we stand with our dose -- completed dose  
8           reconstructions for all of the cases. As you -  
9           - as you know, we assign a tracking number to  
10          the cases and those tracking numbers are broken  
11          out into increments of 1,000 on this axis, and  
12          then we show -- within that 1,000 -- how many  
13          we have completed. The blue indicates a  
14          completed case. The red indicates those cases  
15          that have been pulled by the Department of  
16          Labor for the reasons I stated earlier. And  
17          the green shows the cases that we have pended  
18          for some reason. They're -- they're in a  
19          status in the dose reconstruction process where  
20          we cannot perform any further work until some  
21          issue is resolved. And that may be a technical  
22          issue, it may be an SEC issue, it may be an  
23          issue of claim demographics that DOL has asked  
24          us to pend the claim until they further develop  
25          the case history for the claim.

1 Of the more than 6,700 cases remaining at NIOSH  
2 for dose reconstruction, we show you here that  
3 916 are assigned currently to a health  
4 physicist for dose reconstruction. Another --  
5 we have a number of health physicists who have  
6 a large caseload and they are working on more  
7 than one at a time, and so 916 are actually on  
8 the desk of some health physicist performing a  
9 dose reconstruction for that claim.

10 We also have 607 draft dose reconstructions in  
11 the hands of the claimant as of May 31st.  
12 Those claimants are reviewing those and they  
13 have an opportunity to provide us additional  
14 information, and we ask them -- if they do not  
15 have any additional information -- to sign what  
16 we call an OCAS-1 form which so indicates that.  
17 And then with that form in hand, we can move  
18 the case back to the Department of Labor for  
19 the decision.

20 As I've spoken to the Board in past Board  
21 meetings, we have a concerted effort to get our  
22 oldest cases done, and we look at those in a  
23 block of the first 5,000 cases. And here we  
24 show where those cases stand: 4,681 out of that  
25 first 5,000 have had a final dose

1 reconstruction report sent to Department of  
2 Labor, so those folks have had a decision. We  
3 have 319 out of the first 5,000 that are still  
4 active, and we break those down in this way.  
5 We're looking at 22 claims where there's a --  
6 that the dose reconstruction draft is held by  
7 the claimant, being reviewed, and 244 claims  
8 that are active, undergoing dose  
9 reconstruction. And some of these may be held  
10 -- are being pended for technical resolution of  
11 some sort.

12 We've also taken a step to augment the  
13 technical support on dose reconstruction by  
14 adding a contractor, and we have awarded a  
15 contract -- a one-year task order contract to  
16 Battelle, and they are performing dose  
17 reconstructions on a specific type of claim,  
18 those being some typically AWE, Atomic Weapons  
19 Employer, claims where uranium was processed,  
20 and some DOE sites. They're going about this  
21 by providing to us a technical basis document  
22 that will address similar types of process  
23 across those kinds of sites, and then they're  
24 going to treat those claims under those  
25 particular technical basis documents. To date

1 we have seen three drafts of a technical basis  
2 document, two drafts are fairly close to being  
3 approved for use. We have seen about I believe  
4 30, I'm told, dose reconstructions that have  
5 been drafted under the use of those documents,  
6 and so we're evaluating and internally  
7 reviewing those.

8 This contract is set up and designed so that  
9 the first part of the contract work is to  
10 develop these technical basis documents. And  
11 then once those are standing as approved  
12 documents, they will be used in -- to treat the  
13 cases that they so address.

14 I've shown this graphic I believe at every  
15 program status report, but I'm going to give  
16 you some more details about it because I think  
17 it shows a lot that I haven't spoke about  
18 before in my presentations to you. As you  
19 know, the -- the law prescribed that claims  
20 could be accepted on July 31st of 2001. It was  
21 passed in 2000, of course, but claims  
22 processing and the submittal of claims and a  
23 full DOL treatment and development of claims  
24 started on July 31st, 2001.

25 We received our first set of claims October --

1 mid-October of 2001. And as you can see under  
2 this part of the curve, that totals up to about  
3 5,800 claims that were received in these first  
4 few months, about seven months. We published  
5 our first dose reconstruction in late May of  
6 '02, I believe -- about in here. This was our  
7 backlog. So the blue line shows you the cases  
8 we received from the Department of Labor, this  
9 being our backlog when we really started and --  
10 putting out these dose reconstruction reports,  
11 and you see we're pretty flat-lined all the way  
12 up through April of '03.

13 I remind you that our rules for dose  
14 reconstruction weren't finalized until I  
15 believe back in May of '02. It took us a while  
16 to get everything -- get the machinery all put  
17 together and developed so that we could really  
18 start producing quality dose reconstruction  
19 reports.

20 The green line indicates those reports that  
21 were sent to the claimants for their review,  
22 and the red line are the reports that we've  
23 provided to Department of Labor. And so  
24 there's a little bit of lag behind those two  
25 lines.

1 I mentioned administratively closed reports  
2 earlier. Here you have those reports that have  
3 been administratively closed. Why do we do  
4 that. We do that -- when a claimant receives  
5 our draft dose reconstruction report they have  
6 60 days to evaluate it, seek any consultation  
7 or assistance in their -- in the review from  
8 either us or from an expert that they might  
9 want to engage. And then they are asked to  
10 provide a signed OCAS-1 so that we can move the  
11 claim over. We've had 133 individual claims  
12 that have not seen or produced OCAS-1, have not  
13 indicated that we could move the dose  
14 reconstruction on to the Department of Labor,  
15 so we have administratively closed that claim.  
16 We can reopen that at any point in time if the  
17 claimant so desires to have it reopened and  
18 wishes to provide us with an OCAS-1, or provide  
19 us with additional information that might  
20 inform the dose reconstruction for that claim.  
21 So this represents about one percent of our  
22 claims, and you can see whatever trend you  
23 might want to ascribe to that over time.  
24 Oop -- now I'm in trouble. I went too quick.

25

(Pause)

1           This graphic presents the number of reworks  
2           that we have developed. This is a second or a  
3           different process stream that we have in the  
4           dose reconstruction program. Those cases that  
5           have gone over to the Department of Labor and  
6           the Department of Labor has returned them to us  
7           for some type of rework to be done on the dose  
8           reconstruction. This represents about 11  
9           percent of the claims that we have completed.  
10          Nine percent of this 11 percent -- nine percent  
11          of these that you see in this graph were  
12          returned to us because the claimant or the  
13          claim itself had additional information  
14          developed by DOL that caused us to have to  
15          rework the claim. That is, they may have had  
16          an additional cancer from the time they  
17          submitted the claim to the time we have  
18          provided them a report. They may have  
19          additional employment that was identified and  
20          we'll have to reconstruct that, or that other  
21          parameters or criteria within the claim status  
22          caused the rework to happen.  
23          Two percent of this 11 percent has been  
24          returned to us for technical modification,  
25          something that we didn't attend to properly in

1           our dose reconstruction effort. I think that  
2           speaks fairly loudly and clearly about our  
3           intentions to provide a quality product.  
4           We want to talk a little bit about the support  
5           we receive from the Department of Energy. We  
6           submit a request to the DOE facility points of  
7           contact where the claimant worked. We ask for  
8           specific types of exposure monitoring  
9           information. Our preference is to get the  
10          original data, not cumulative dose data. We're  
11          seeking actual badge readouts, bioassay  
12          readouts, urinalysis readouts, whole body count  
13          data. That's what we go for.  
14          To date -- well, as of May 31st, we have 412  
15          outstanding requests, and 87 of those are  
16          beyond the 60-day mark. Now we follow up on  
17          these specifically in each case, and we're  
18          documenting where things stand at this point in  
19          time with those cases where we've got a request  
20          to DOE that's gone beyond 90 days. We provide  
21          a report to DOE headquarters and to each DOE  
22          point of contact at the facilities on a 30-day  
23          sequence on each case and where things stand,  
24          and we are now asking them to provide us a  
25          clear and concise status report on what they're

1           doing to try to find this information and  
2           whether or not they feel that it is  
3           retrievable. And then we'll make a decision on  
4           what has to happen at that point if it's deemed  
5           that there is no information or it's not going  
6           to be retrievable. I can -- I have the  
7           statistics on individual sites and the  
8           particular delays in those responses if -- if  
9           the Board wants to hear more about those after  
10          I get through my presentation.

11          The Special Exposure Cohort process has been  
12          fully implemented, as you know. Six classes of  
13          workers have been added to the Special Exposure  
14          Cohort, and they are listed here -- two from  
15          the Mallinckrodt Chemical Company, Destrehan  
16          Street in St. Louis for those years specified  
17          in the slide; the Army -- Iowa Army Ammunition  
18          Plant, also two classes there, and those are  
19          the dates; Y-12, the early years at Y-12, '43  
20          through '47, a class has been added. And one  
21          petition was recommended to add a class, but at  
22          the time of the designation -- the Board's  
23          deliberation and the designation by the  
24          Secretary -- it was deemed that the National  
25          Bureau of Standards was not a covered facility.

1 Three petitions have been evaluated and  
2 provided for Board review and are under  
3 deliberation within the Board's process and  
4 procedures: Ames, Iowa -- Ames University  
5 Laboratory; Rocky Flats and Y-12, and they are  
6 on this meeting's agenda.

7 Five petition evaluation reports are under  
8 current development. Actually this should --  
9 this slide should read six. I would add  
10 Harshaw Chemical to this slide now for you, if  
11 you'd write that in. That happened just -- I  
12 signed it yesterday as it went out, so I didn't  
13 have time to change this slide, but add Harshaw  
14 Chemical and make this six. Harshaw Chemical  
15 is another facility where we're suggesting and  
16 recommending to add a class under our 83.14  
17 process where we identified that we cannot do  
18 dose reconstructions. That will be the fifth  
19 class so designated.

20 There are 11 current requests to add a class  
21 that have been submitted to us, and they are --  
22 those are in the qualification process. They  
23 include Bethlehem Steel, Blockson Chemical, two  
24 for Hanford, the Los Alamos National  
25 Laboratory, Nuclear Metals, NUMEC, multiple

1 facilities covered in one request -- one  
2 submittal, Sandia National Laboratory at  
3 Livermore, and two petition submittals for Y-  
4 12.

5 There have been 28 requests or submittals to us  
6 to add a class that have been administratively  
7 closed. And SEC petition submissions are  
8 administratively closed for these three  
9 categorical reasons: The submissions do not  
10 meet the criteria as specified in 42 CFR 83  
11 Section 83.9, or the facility in the submission  
12 is already a member of the -- of an SEC class,  
13 or the petitioner voluntarily withdrew the  
14 petition.

15 928 claims are currently with -- with the  
16 Department of Labor for class status and  
17 determination of eligibility for that class.  
18 You see them listed here. Mallinckrodt in the  
19 early years, '42 to '48, we sent over 94. The  
20 Iowa Army Ammunition Plant, 341 cases; Y-12 the  
21 early years, 388; the Iowa Radiographers, we  
22 had one case that was returned to DOL;  
23 Mallinckrodt 1949 to 1957 class period, 58  
24 cases; Linde Ceramics from October '42 through  
25 October of '47, 46 cases.

1 We have taken some action upon our realization  
2 and recognition that our -- people are having  
3 trouble understanding what it -- what criteria  
4 they need to meet in order to submit a  
5 petition. I've asked Laurie Ishak -- Laurie,  
6 if you'd stand. I'd like to introduce Laurie  
7 Ishak, who's on my staff. She will serve as  
8 the Special Exposure Cohort petition counselor.  
9 You'll see her introduced on our web site, and  
10 her -- her task, her role, is to assist  
11 potential petitioners in -- in their  
12 maneuvering through this process, their  
13 understanding of what it takes to provide a  
14 valid petition. Our intent here is to decrease  
15 the number of administratively closed  
16 petitions, to fully assist the petitioners in  
17 the development of their petition. She's going  
18 to stand at the ready to answer questions in  
19 that regard, as well as questions about how a  
20 petition is processed through the Board  
21 recommendation and to a Secretarial  
22 designation. She's going to assist the  
23 petitioners as they so request, as they so  
24 desire, in their preparation for a Board  
25 presentation and their preparation for making

1           sure that their petition is fully supported, as  
2           best we can.

3           So I think that's the end of the slides, but I  
4           had a couple more -- I believe I'll stop there  
5           and see -- see if we have some questions.

6           **DR. ZIEMER:** Very good. Thank you, Larry, for  
7           that update. I'll open the floor first with  
8           Gen Roessler.

9           **DR. ROESSLER:** Larry, on page 3 you talked  
10          about the contract awarded to Battelle. What  
11          special capabilities or background do the  
12          people in this group have that led you to  
13          choose the group to award this special  
14          contract?

15          **MR. ELLIOTT:** They had health physicists  
16          available to them on staff that could be  
17          brought to bear, knowledgeable experts. They  
18          were -- they also -- Battelle, as a contractor  
19          to NIOSH, had an existing task order contract  
20          and we could make available use of that rather  
21          than taking an additional amount of time to  
22          compete, and we really had an interest in  
23          serving a -- a population here. These -- those  
24          1,200 claims -- 1,200 some-odd claims represent  
25          I think around 74 sites, so you can imagine

1           they're very small-numbered claims per given  
2           site, and so we were interested in providing  
3           special emphasis treatment in that -- in that  
4           regard.

5           **DR. ZIEMER:** Other questions? Mark Griffon.

6           **MR. GRIFFON:** Larry, can you tell -- you said  
7           28 were administratively closed, SEC petitions.  
8           Do you know a breakdown on the reasons why --  
9           you gave the regulatory reasons of why they  
10          would be administratively closed, but do you  
11          know a breakdown or approximate breakdown of  
12          why...

13          **MR. ELLIOTT:** I don't off -- I don't have that  
14          at my disposal right now. Those are the three  
15          categorical reasons that they fall into. One,  
16          they -- they didn't meet the -- they could--  
17          didn't -- evidently could not meet the criteria  
18          specified in the rule, or they withdrew or they  
19          -- they made an error in submitting because  
20          there was already an existing class. Those are  
21          the three primary reasons.

22          **MR. GRIFFON:** If -- if -- I'm just trying to  
23          understand the closeout process. If a -- if a  
24          petition comes in and -- and your process is to  
25          administratively close it out, do you contact

1 the petitioners ahead of time if there's  
2 something that's --

3 **MR. ELLIOTT:** Oh, yes, thank you --

4 **MR. GRIFFON:** -- a minor issue or something  
5 that --

6 **MR. ELLIOTT:** Yeah, no, thank you, very good  
7 question --

8 **MR. GRIFFON:** Yeah.

9 **MR. ELLIOTT:** -- to talk about the process  
10 here. We -- we receive a submission, and the  
11 first order of business is -- it's put on a  
12 parallel track. We have folks in our ORAU  
13 support team who make contact with the  
14 petitioner. We have a group of folks who  
15 review the contents of the submission, they  
16 coordinate their efforts, they talk to the  
17 petitioner about what they see there, what are  
18 the deficiencies, what -- what can we do to  
19 help the petitioner provide a good petition,  
20 meet the basis of the rule. There's a number  
21 of telephone conversations that go on. We  
22 document all of that. It's -- it's -- there's  
23 a quite a document trail here where the  
24 exchange between ourselves and the petitioner  
25 is carefully documented. The petitioner's

1 given a 30-day period to respond to  
2 deficiencies. We -- we follow up on that. We  
3 extend it quite often. So it's not just we get  
4 it in the door and we say no, it doesn't meet  
5 it. There -- there's a lot of intense effort  
6 to work with the -- with the petitioners trying  
7 to achieve a valid petition.

8 **MR. GRIFFON:** Okay.

9 **MR. ELLIOTT:** Thank you.

10 **DR. ZIEMER:** Larry, do you recall the original  
11 predicted number of claimants -- or if you  
12 don't recall, I wonder if Pete Turcic might. I  
13 notice that the number from Department of  
14 Labor, the number of claims coming over seems  
15 to be at kind of a steady state, and --

16 **MR. ELLIOTT:** It has been steady state for a  
17 good --

18 **DR. ZIEMER:** For a while.

19 **MR. ELLIOTT:** -- period of time, around 200 or  
20 a little less.

21 **DR. ZIEMER:** I'm trying to recall. At the  
22 front end of the program there were some early  
23 predictions on sort of what was out there in  
24 terms of potential claimants, and I'm -- I'm --

25 **MR. ELLIOTT:** Well, that question's --

1           **DR. ZIEMER:** Do recall that number --

2           **MR. ELLIOTT:** -- best posed to somebody other  
3 than me. I'm just dealing with the reality of  
4 our situation --

5           **DR. ZIEMER:** I understand.

6           **MR. ELLIOTT:** -- on that. I'm not...

7           **DR. ZIEMER:** Pete, is that a number that you  
8 would have at your fingertips at all? What --  
9 originally when the program was first put in  
10 place, early predictions of the numbers of  
11 claimants, and this would be something like the  
12 number of employees and something along the  
13 lines of expected cancer rates. We're talking  
14 about Department of Labor has sent over 20-  
15 some-thousand cases, but is this a large  
16 fraction of what you early on predicted, or  
17 not? I'm just trying to get --

18           **MR. TURCIC:** (Off microphone) (Unintelligible)  
19 we didn't get -- (on microphone) I don't have  
20 the exact number with me --

21           **DR. ZIEMER:** No, I understand that.

22           **MR. TURCIC:** -- but initially we didn't get  
23 quite as many as we thought, but then the  
24 ongoing, you know, exceeded considerably what -  
25 - what we originally predicted. We could

1                   probably dig some of that up and get that for  
2                   you.

3                   **DR. ZIEMER:** I was just trying to get a feel  
4                   for -- based on the steady-state numbers, does  
5                   it look like you're getting close to the end of  
6                   the numbers of claims, or are we far from that?

7                   **MR. TURCIC:** I think we're far from it.

8                   **DR. ZIEMER:** Okay. Thank you. Yes, Mike.

9                   **MR. GIBSON:** Larry, on these SEC petitions, the  
10                  administratively closed, if one of the reasons  
11                  is that the petition cannot get their hands on  
12                  additional information within 30 days, if they  
13                  do so later on, 60 days, 90 days, can they --

14                  **MR. ELLIOTT:** Yes.

15                  **MR. GIBSON:** -- reapply?

16                  **MR. ELLIOTT:** Yes, they -- they -- we work with  
17                  them on that, and we explain to them we -- we  
18                  have a time schedule we're trying to meet and  
19                  we want to get these qualified if we can. If  
20                  they find some information after that 30-day  
21                  time period, all they have to do is come back  
22                  to us and say can we reopen this, and we do.  
23                  They understand that as we work with them.  
24                  It's documented in our letters to them.

25                  **DR. ZIEMER:** Lew Wade.

1           **DR. WADE:** A comment and then a question,  
2           Larry. In order to paint the complete picture  
3           here, you've neglected to talk about the Nevada  
4           Test Site and Pacific Proving Grounds. Those  
5           are two petitions that the Board has acted upon  
6           and the Secretary is preparing to act upon, so  
7           we don't need those numbers, but just so people  
8           realize that those two are moving their way  
9           through the system. And I would expect quite  
10          soon the Secretary would act consistent with  
11          the Board's recommendation, although I don't  
12          want to limit the Secretary's prerogatives.  
13          But my second question, and it follows up Dr.  
14          Ziemer's probing. As this Board starts to  
15          imagine its activities over the next years,  
16          year or so, it needs to start to get a sense of  
17          dose reconstructions and the through-put that  
18          will be realized in their desire to audit two  
19          and a half percent of the cases. And could you  
20          talk to us a little bit about what you see the  
21          future, and then maybe the Board could start to  
22          imagine its roles and responsibilities relative  
23          to that future?

24          **MR. ELLIOTT:** Surely. Surely. And I  
25          appreciate your comments on Nevada Test Site

1           and PPG. I had a note here. That was what I  
2           was looking for earlier and I couldn't find it,  
3           but -- and we anticipate those designations  
4           coming very soon.

5           We are managing the dose reconstruction program  
6           right now with an intent to achieve what we  
7           con-- what we consider to be a steady state,  
8           where we have reduced the backlog and we are  
9           producing dose reconstructions at a rate more  
10          than -- we're already doing this -- at a rate  
11          higher than those that are being referred to us  
12          where we don't have a backlog at all. So if we  
13          can get down to where we're doing 4,000 dose  
14          reconstructions a year and only 3,600 are  
15          coming in, we think we will be at that point,  
16          we hope, by September of next year.

17          The ORAU contract concludes on September 11th  
18          of 2007, and we are managing the completion of  
19          that contract and the -- we certainly want to  
20          recognize and show our appreciation about the  
21          quality of technical support ORAU has given us.  
22          But we anticipate that at the conclusion of  
23          that contract award we are going to need still  
24          some technical assistance in certain areas and  
25          we will complete those task-related areas.

1 Unless -- unless there's some unique event that  
2 shows -- that -- that develops where claims  
3 increase in their -- in their filing and in the  
4 development of those claims and DOL starts  
5 sending us more, I anticipate that by next  
6 September we're going to be -- we'll be at a  
7 steady state.

8 **DR. WADE:** And if I do the arithmetic, at that  
9 point that you realize a steady state, we're  
10 talking about a population of about 25,000  
11 claims.

12 **MR. ELLIOTT:** That's right.

13 **DR. WADE:** So the Board can start to understand  
14 its audit responsibilities relative to that  
15 population when you reach steady state.  
16 Now in terms of site profile generation, is  
17 that process now also slowing?

18 **MR. ELLIOTT:** We are working through the  
19 development of the final site profiles that we  
20 feel we need. This Battelle effort is -- is  
21 dedicated in support of that. The ORAU team is  
22 dedicated in support of that. It's our hope  
23 that, you know, at the conclusion of the ORAU  
24 contract we'll have very few, if any, site  
25 profiles that need to be developed. We'll at

1           that point be, you know, enhancing or providing  
2           additional quality in the existing site  
3           profiles. So that -- that's our goal and  
4           that's what we're trying to manage this program  
5           against.

6           **DR. WADE:** And none of us have the crystal ball  
7           to predict the -- the flow rate of SEC  
8           petitions, but we assume that that will become  
9           a -- a significant part of the program as we  
10          look forward.

11          **MR. ELLIOTT:** We're assuming that. We're also  
12          -- in that assumption, we are looking very hard  
13          at situations where we cannot reconstruct dose.  
14          As I mentioned earlier, we've got five of those  
15          situations identified now and -- and we're  
16          looking at -- through this Battelle mechanism  
17          and through the ORAU screening of cases, we're  
18          looking very hard for those situations where we  
19          can't reconstruct dose. And we certainly are  
20          going to entertain and work hard with the  
21          petitioners who feel that they have an eligible  
22          petition for a class.

23          **DR. WADE:** And for the Board's consideration  
24          then, when you reach steady state, the  
25          population that the Board should be prepared to



1 reconstruction.

2 Now under the new Part E that was enacted in  
3 October of 2004 and became effective in June of  
4 2005, we have -- now have some 52,000 claims  
5 under Part E on nearly 40,000 cases -- 25,512  
6 cases -- of those cases were transferred --  
7 they were under the Part D program for -- the  
8 Department of Energy administered.

9 Now to shed some light on the question Dr.  
10 Ziemer asked, I just looked up some of the  
11 numbers. So far this year, Paul, we have --  
12 we've gotten in about 5,500 new Part B claims,  
13 and we have referred about 2,800 cases to NIOSH  
14 for dose reconstruction. And the one thing we  
15 need to point out, since -- since we now  
16 administer both Part B and E, the Part B cases  
17 are truly only -- we just take a -- a case now  
18 and then evaluate it for whether it's benefits  
19 under B or E or both. So the 5,500, you know,  
20 that's -- those are more than likely all cancer  
21 cases and not the other conditions.

22 In administering the program we have set goals  
23 under the Government Performance and Results  
24 Act, under the GPRA goals, and basically, in  
25 addition to the GPRA goals, we then have a lot

1 of operational plan goals, you know, that add  
2 up to -- to meeting the GPRA goals. Our GPRA  
3 goals are based on timely initial decisions,  
4 and the way we set that was we looked at it  
5 from a timely decision, initial decision would  
6 be either a referral, do the development work,  
7 make a determination of covered employment,  
8 covered illness, make the referral to NIOSH or  
9 issue a recommended decision. And the  
10 breakdown of that was for cases that came from  
11 a DOE facility or a RECA case, we had a  
12 standard of 120 days, and 180 days for cases  
13 that came from AWE or a subcontractor.  
14 Now the reason we had that split, it's the  
15 employment verification involved a lot more on  
16 AWEs and subcontractors, so, you know, that--  
17 those cases tended to take up a little bit more  
18 time. And our percentage, under GPRA, it  
19 ranged from 75 -- we started out at 75 percent  
20 of the decisions made would be -- meet those  
21 timely goals, and then that slowly ratcheted up  
22 to 80 percent, you know, as performance  
23 improved and -- as the goal.  
24 Then we also had a timely decision for final  
25 decisions, and that's based on the type --

1           whether, you know, the -- whether objections  
2           were waived, or if -- if there's a waiver of  
3           objection-- of objections, then the final  
4           decision, the goal -- the timeliness standard  
5           is 30 days after we receive the waiver. And if  
6           it's going to be a review of the written  
7           record, then it would be 75 days after the  
8           recommended decision. And then if it goes to  
9           hearing, then it goes to 180 days after the  
10          request for the hearing, and that's because you  
11          have to give the claimant 30 days ahead of  
12          time, you know, notice of when the hearing is  
13          and so forth. And again, in -- for our final  
14          decisions we started out at 75 percent timely  
15          and in-- increased it over time.

16          For Part E, in the first year, in FY 2005, we  
17          set a goal of making 1,200 payments by the end  
18          of that fiscal year. And then for this year we  
19          -- our timeliness goal for initial decision for  
20          both Part B and Part E is the timeliness -- the  
21          180 days on initial decision, and we are going  
22          to focus -- because of the huge backlog that we  
23          had, we are focusing and trying to put, you  
24          know, more emphasis on the backlog that we got  
25          from DOE, so we lowered our timeliness goal to

1           50 percent for -- for this year. And then we  
2           also have a goal of making decisions in 75  
3           percent of the cases that we can work on that  
4           we got from DOE, the Part D program.  
5           And the results over time -- you can see the  
6           first year, that in FY 2005 (sic) we had a goal  
7           of 75 percent timely initial decisions and our  
8           -- we only achieved 48 percent in that first  
9           year. But then in the second year, in FY -- in  
10          2003, we exceeded our 75 percent goal and 79.1  
11          percent of the initial decisions were timely.  
12          2004 we went up to 92 percent of them were  
13          timely. 2005, once -- when we got the Part E,  
14          then in 2005 our results were 81.5. But see,  
15          our standard in 2004 went up to 77 percent and  
16          then 80 percent in 2005, and so we met all of  
17          those timely goals. And so far this year, in  
18          2006, we're at 56.4 percent of the initial  
19          decisions meet those timeliness standards.  
20          Same -- same thing for our final decisions, and  
21          again, it ranged from -- started out at 75  
22          percent and ratcheted up to 80. And the  
23          results -- in 2002, 76 percent were timely,  
24          exceeded the goal, and we've exceeded the goal  
25          in each of the years in meeting the timeliness

1 standard for our final decisions.  
2 The 2006 -- this is for Part E. The 2005, we --  
3 - we had set a goal, as I said, of making 1,200  
4 payments. And what we did was we found -- our  
5 regulations were out in June, but we did find a  
6 number of certain types of cases that we could  
7 make decisions on prior to having the  
8 regulations, and so we started earlier than  
9 that. We got a jump on that. And then our  
10 goal of 1,200 payments, we actually made in  
11 2005 1,535 payments under Part E.  
12 And where -- here's where we're at with, you  
13 know, 2006, working on the 75 percent of the  
14 backlog, and it's -- I hate to say we're on  
15 track, but we're working to be on track there  
16 to exceed that goal, also.  
17 And -- but just to give you some idea of the --  
18 the change, just in Part E, for example, in  
19 2006 just in Part E we've now made recommended  
20 decision -- because many of those cases may  
21 have multiple recommended decisions. You know,  
22 you could have a recommended decision on  
23 causation and on impairment or wage loss. We  
24 made 19,712 recommended decisions in Part E,  
25 and 11,014 final decisions in Part E.

1 Now what that translates into is, the total  
2 compensation, EEOICPA compensation, is -- and  
3 again, this data is as -- as of May 31st, \$1.98  
4 billion. And as of last Thursday, we crossed -  
5 - and over \$2 billion has now been paid in  
6 EEOICPA compensation. The breakdown of that,  
7 \$1.52 billion is Part B. So about 77 percent  
8 of it is Part B compensation. Now of that,  
9 \$1.1 billion is for cancer. Now that would be  
10 a sum of the compensation that was awarded  
11 based on dose reconstruction plus any  
12 compensation for cancers at SECs. And of that  
13 total amount, that \$1.2 billion, \$200 million  
14 is -- were RECA benefits.  
15 Part E, \$358 million has been paid in Part E,  
16 and \$101 million in Medical benefits.  
17 Now looking at the payees, total EEOICPA payees  
18 is now approaching 22,000. 19,000 -- over  
19 19,000 are Part B payees, with 7,440 are cancer  
20 cases, payees based on cancer cases. 3,778  
21 were NIOSH case payees, so the case was at  
22 NIOSH, ended up in payment. Some of that would  
23 include the newly-added SECs. The total of  
24 cases that ever went to NIOSH for a dose  
25 reconstruction and now have been compensation,

1           3,778 payees, and 6,439 RECA payees, and 2,886  
2           were payees under Part E.  
3           Now to focus, you know, more on just the cancer  
4           cases, of the cancer cases, the 33,720 cases,  
5           51,000 claims, 21,000 -- over 21,000 or 63  
6           percent have final decisions. There's another  
7           2,751 that have -- they're in the process.  
8           They have a recommended decision and they are  
9           between a recommended decision and a final  
10          decision. 7,118 are at NIOSH. Now that number  
11          is slightly different than what Larry showed,  
12          and a couple of reasons for that. If -- if we  
13          send a case back for a rework, our data is sort  
14          of a snapshot in time. That case then is  
15          counted back at NIOSH. And then there's also -  
16          - what wouldn't be in there would be any cases  
17          that -- when they're coming from NIOSH, until  
18          the claims examiner looks at it, you know, with  
19          a dose reconstruction and then codes it, so  
20          there's some delay time and there's always a  
21          couple of hundred, you know, cases difference  
22          there. And 2,740 are pending DOL action.  
23          Now looking at the final decisions, again,  
24          there was 7,674 approved, 13,437 denials on  
25          cancer cases. And here's the breakdown of what

1           those denials and why they were denied. 2,541  
2           were denied because it was non-covered  
3           employment, and that could range from -- you  
4           know, we've gotten claims from facilities that  
5           just aren't facilities. It could be, you know,  
6           that they were at AWEs outside of the covered  
7           time period. It could be a number of reason,  
8           but they were -- strictly employment was the  
9           reason of the denial. 7,372 were cases where  
10          the probability of causation was less than 50  
11          percent. 2,083 was insufficient medical  
12          evidence; 361, ineligible survivors; and then  
13          1,100 were, you know, all other denial reasons.  
14          (Whereupon, Dr. Melius joined the other members  
15          at the table.)  
16          Now looking at the NIOSH referral status, of  
17          the 27,700, 14,794 have been returned, while  
18          1,059 were withdrawn. And that could either be  
19          withdrawn because now that site, you know, was  
20          involved in an SE-- an added SEC class; could  
21          be withdrawn because, you know, a claimant died  
22          and there are no survivors -- a number of  
23          reason, but 1,059 have been withdrawn. 13,735  
24          with dose reconstructions, with -- there's 855  
25          where reworks were needed, and then we're

1 showing about 6,926 of the initial referrals at  
2 NIOSH. And a percentage breakdown, about 63  
3 percent with dose reconstructions and about 5  
4 percent of those that came back were without  
5 dose reconstructions, and that would be the  
6 withdrawn number.

7 And the case status of those, of the dose  
8 reconstruction cases that we got back, there's  
9 a total of 12,880 with a dose reconstruction.  
10 Of those, 10,262 have final decisions. So we -  
11 - our -- the standard that we apply to our  
12 district offices, once we get a dose  
13 reconstruction back, is to have a recommended  
14 decision issued within 45 days, but on the  
15 average of 21 days. So -- and that's showing  
16 you 79 percent of all the cases that we've  
17 gotten back from NIOSH have final decisions.  
18 Another 1,902 have a recommended decision but  
19 no final, so it's in that in-between, and 716  
20 are pending a recommended decision.

21 Now the results -- of that 10,262 with final  
22 decisions, we have 2,813 have been approved for  
23 benefits, and now a breakdown I thought you  
24 might be interested in, this breakdown is --  
25 shows -- the yellow are cases with dose

1 reconstruction that have at least one specified  
2 cancer being claimed. And then the 922 are  
3 cases where only non-specified cancers -- dose  
4 reconstruction came back, was approved, but  
5 only non-specified cancers, you know, were  
6 involved. And then the same thing on the  
7 denial, 7,449 denials with the breakdown 4,336  
8 were specified cancers and 3,113 only non-  
9 specified cancers were claimed and considered.  
10 The cases from the newly-added SECs, 846 have  
11 been withdrawn for SEC review, and of those 526  
12 of those have final decisions, with 478  
13 approvals and 37 denials. And the final  
14 decisions, 62 percent of all of the newly-added  
15 SECs, the cases that came back, 62 percent of  
16 them have gone all the way through and had  
17 final decision already. Another 269 have  
18 recommended but no final, and there's only 51  
19 cases that are pending of all the newly-added  
20 SECs, all the cases that were involved that  
21 came back, they've all -- all but 51 -- you  
22 know, some of them we may have to send back  
23 because they don't have the 250 days or things  
24 like that, but only 51 remain without some kind  
25 of decision.

1           And looking at the compensation based on what  
2           I'm referring to here as NIOSH case related  
3           compensation, the total is \$472 million in  
4           compensation, with 4,645 payees in 3,154 cases.  
5           Now that would be total compensation of cases  
6           for which a referral was made to NIOSH. Now it  
7           has a final decision to approve benefits and  
8           compensation paid. So that would include cases  
9           that were at NIOSH for dose reconstruction,  
10          then a class may have been added. Those cases  
11          came back, you know, as part of an SEC class.  
12          Of that \$472 million, \$402 million are based --  
13          was paid out strictly on cases with a dose  
14          reconstruction, with 3,878 (sic) payees in  
15          2,686 cases. And then the other \$70 million  
16          were on the new -- newly-added SEC classes, and  
17          there's 867 payees in those 468 cases.  
18          In looking at the agenda, just to give you some  
19          idea of some of the sites that are going to --  
20          going to be discussed, I just put together some  
21          overall statistics and, you know, if you have  
22          questions, we can get into, you know, more --  
23          more details, but looking at the ones that were  
24          listed in the agenda as discussing the SEC  
25          petition sites, Ames -- we had 114 cases with

1           155 claims. We're showing four dose  
2           reconstructions returned, 40 final decisions  
3           under Part B, 15 approvals under Part B and  
4           eight approvals under Part E, compensation to  
5           date at Ames is \$2.3 million.  
6           Rocky Flats, 2,896 claims in 2,412 cases, with  
7           723 dose reconstructions, final decisions in  
8           1,715 Part B cases, 543 approvals under Part B,  
9           416 approvals under Part E, with total  
10          compensation of \$65.2 million.  
11          Y-12, 7,222 claims in 4,855 cases, we've gotten  
12          back 1,396 dose reconstructions from Y-12,  
13          3,184 final decisions, with 1,673 approvals  
14          under Part B, 668 approvals under Part E, and  
15          total compensation at Y-12 \$242.8 million.  
16          Some of the other sites -- Savannah River,  
17          again, 5,474 claims on 4,135 cases, with 2,029  
18          dose reconstructions, over 3,000 final  
19          decisions in Part B, 627 approvals -- Part B  
20          approvals, 212 Part E, \$110 million in  
21          benefits.  
22          Hanford, again, the number of cases, 1,692 dose  
23          reconstructions returned, 2,321 final  
24          decisions, 531 approvals -- Part B approvals,  
25          365 Part E, \$77.7 million in compensation at

1 Hanford.

2 Nevada Test Site, again, 3,381 claims, 617 dose  
3 reconstructions, 236 approvals, 121 approvals  
4 under Part B and \$33.8 million in compensation.  
5 And Bethlehem Steel, 2,074 claims, 1,300 cases,  
6 577 dose reconstructions, final decisions in  
7 1,124 cases, with 1,673 approvals under Part B  
8 and -- I'll have to check on that number, it's  
9 -- and the total compensation at Bethlehem  
10 Steel is \$38.6 million.

11 And now I'll just open it for questions.

12 **DR. ZIEMER:** Okay. Thank you, Pete. Any  
13 questions or comments? Dr. Melius is reaching  
14 for his sign. You barely got into the room,  
15 Jim.

16 **DR. MELIUS:** I know.

17 **DR. ZIEMER:** Thank you. Go ahead.

18 **DR. MELIUS:** I like your new colored slides,  
19 Pete.

20 **MR. TURCIC:** Thank you.

21 **DR. MELIUS:** You know, get inside the Beltway  
22 here and everything gets clearer. Well, I have  
23 about three -- three questions, so the first is  
24 on your payment totals. The medical numbers I  
25 believe were quite small.

1           **MR. TURCIC:** Yeah.

2           **DR. MELIUS:** And is that simply 'cause there's  
3           so many -- or the program really only works --  
4           you only get compensated for medical if you've  
5           already -- from the point that you file the  
6           claim. Right?

7           **MR. TURCIC:** Yeah, that's -- yeah, medical  
8           would be paid from the point --

9           **DR. MELIUS:** So it's because there's so many  
10          survivors, or is there still difficulties  
11          getting people to submit information on -- you  
12          know, the needed medical information?

13          **MR. TURCIC:** It's a little bit of both. The  
14          big reason there's this split between survivors  
15          and, you know, employees is -- you know, you're  
16          talking about maybe -- about 50 percent, so  
17          that's -- that's a large part of the reason,  
18          and another part of the reason is that -- you  
19          know, depends on the specific illness and, you  
20          know, what the status is.

21          **DR. MELIUS:** Second question is you presented  
22          some data on specified and non-specified  
23          cancers. And would you know off-hand, among  
24          the non-specified cancers, what are the major  
25          types of cancers? It's skin cancer that's --

1 covers most of those or would you --

2 **MR. TURCIC:** Yeah, skin cancer is -- is a large  
3 one.

4 **DR. MELIUS:** Okay.

5 **MR. TURCIC:** We could get you the --

6 **DR. MELIUS:** Yeah, I --

7 **MR. TURCIC:** I could get you the total  
8 breakdown, John (sic).

9 **DR. MELIUS:** That would be --

10 **MR. TURCIC:** Okay.

11 **DR. MELIUS:** I would be curious to see that and  
12 so forth.

13 **MR. TURCIC:** Okay.

14 **DR. MELIUS:** I mean there is the -- among the  
15 specified --

16 **MR. TURCIC:** Yeah.

17 **DR. MELIUS:** -- the rate of compensation is  
18 higher, as one might expect.

19 **MR. TURCIC:** Yeah.

20 **DR. MELIUS:** Among the others, it's a little  
21 hard to sort out because of the skin cancer  
22 issue, which affects that.

23 And finally -- final question, among the Part E  
24 claims that you've handled so far for cancer, I  
25 assume most of them are Part B claims that are

1 simply transferred over --

2 **MR. TURCIC:** Most of the cancer would be,  
3 although there is quite a number of like  
4 asbestosis --

5 **DR. MELIUS:** Okay.

6 **MR. TURCIC:** -- you know, things like that that  
7 -- where lung cancer was involved.

8 **DR. MELIUS:** Okay. I was going to -- I guess  
9 my question is are you seeing cases now where  
10 there are sort of mixed chemical and --

11 **MR. TURCIC:** Yeah.

12 **DR. MELIUS:** -- radiation expo-- 'cause one --  
13 one of the concerns I think we've heard at many  
14 of the sites are people concerned that these  
15 other exposures aren't taken into account, and  
16 Part E provides a basis for doing that so --

17 **MR. TURCIC:** Yeah.

18 **DR. MELIUS:** -- so those are start -- come --

19 **MR. TURCIC:** Yeah, uh-huh.

20 **DR. MELIUS:** Good. Okay. Thank you.

21 **DR. ZIEMER:** Lew Wade?

22 **DR. WADE:** Not a technical question, Pete, but  
23 thank you for coming, and you were very  
24 important to the Board's deliberations last  
25 time when it talked about certain SEC

1 activities. And tomorrow -- I believe it's at  
2 3:00 -- the Board is going to take up its  
3 discussion of the Y-12 petition.

4 **MR. TURCIC:** Okay.

5 **DR. WADE:** 3:30, and I think it would be  
6 terribly important if you could join --

7 **MR. TURCIC:** Yeah, I'll be -- I'll be here the  
8 whole time, so --

9 **DR. WADE:** Thank you very much.

10 **MR. TURCIC:** Okay.

11 **DR. MELIUS:** You'll be -- you'll be welcome at  
12 8:30 tomorrow for Ames, also.

13 **MR. TURCIC:** Fine, I'll be here.

14 **DR. ZIEMER:** Okay, other comments or questions?

15 (No responses)

16 Apparently not. Thank you, Pete.

17 (Pause)

**CONFLICT OF INTEREST DISCUSSION**  
**DR. LEWIS WADE, EXECUTIVE SECRETARY**

18 We're a little ahead of schedule, but that's  
19 fine, we'll -- we'll proceed with the conflict  
20 of interest discussion. And to kick it off,  
21 Dr. Wade will give us some introductory  
22 remarks.

23 **DR. WADE:** Thank you very much, Paul. If you  
24 recall, at the last Board meeting we presented

1           -- I presented, almost ad nauseam, policy to  
2           you that has been updated and is in your tab  
3           "Conflict of Interest" and there are copies of  
4           it in the back. Based upon comments we've  
5           heard from people, we've modified that policy  
6           and it exists as it's presented here.  
7           What I was going to do today is just walk  
8           through some of the highlighted changes that  
9           we've made and, you know, use that to -- to  
10          stimulate some discussion. We would very much  
11          like to hear from any and all involved on this  
12          policy as we continue to evolve it. We'd very  
13          much like to hear from the Board as a whole.  
14          That could happen either today, it could happen  
15          during the Board's working time for the Board  
16          to take an action and speak to us. There's a  
17          Board call scheduled for early August. If the  
18          Board feels it appropriate, we can put on that  
19          call the need to discuss this policy, as well.  
20          We'd always be willing to hear from individual  
21          Board members, and would look forward to  
22          comments from individual Board members.  
23          We have a public comment period following the  
24          Board's discussion today. We can hear from  
25          anyone at that point on any topic, but we

1           certainly would like to hear from those who  
2           have advice to us as we move forward on the  
3           conflict of interest policy.

4           The intent of NIOSH is to take all that it  
5           hears during this session and subsequent  
6           interactions and try and continue to evolve the  
7           policy. NIOSH would like -- in oh, six weeks  
8           from this meeting -- to -- to be close to  
9           finalizing that policy. Again, it depends upon  
10          what we hear and the depth of comments we hear.  
11          But let's set as a goal six weeks from today we  
12          would like to present to the world the final  
13          policy. We'll bring that to the Board when the  
14          Board next gets together, and we're always  
15          prepared to hear from the Board on those  
16          issues.

17          This is a terribly important issue for the  
18          agency. It receives a great deal of public  
19          scrutiny on this issue. And again, our  
20          approach has been to put together this holistic  
21          policy that can be the fountainhead that all  
22          other policies would flow from.

23          Let me walk you through, briefly, some of the  
24          changes that we've made since the last time we  
25          were together. Again, I can point out and go

1 through the entire policy again if you would  
2 like, but we walked through that fairly  
3 completely when the Board was last together.  
4 So if you have the policy in front of you, the  
5 first major change would come on page 3, and  
6 that would be in Section 3.11. This is where  
7 we were trying to deal with issues that related  
8 to financial or supervisory types of conflicts.  
9 And I'll point to you two footnotes that we've  
10 added to 3.11, based upon comments that we've  
11 heard. The first is a familial definition, and  
12 there we talk about would encompass a current  
13 spouse, child, parent, sibling or grandparent  
14 that worked, as defined in our definition of  
15 work in this document, at or for the site, or  
16 any survivors of same that are eligible to file  
17 claims under the program.

18 It's come to our attention that we need to --  
19 to deal with issues of -- of family and -- and  
20 family involvement, and this is our attempt to  
21 do that. I point that out to you as a  
22 significant addition since last we talked.

23 Footnote 9 tries to deal with the definition of  
24 "financial," and it's really an exclusion. The  
25 term "financial" does not include work, as

1 defined above, for DOE of less than four  
2 months' continuous duration as a student  
3 intern, graduate fellow, or in another  
4 primarily educational capacity. It also does  
5 not include having received a financial stipend  
6 from DOE for graduate study, or a fellowship in  
7 the context of an established DOE fellowship  
8 program intended to support graduate-level  
9 work.

10 A change based upon comments we have heard and,  
11 again, I raise it for your attention to  
12 stimulate discussion on that change.

13 On page 4, an entire new section was added at  
14 4.0, "Corporate Disclosure and Exclusion". In  
15 our document the last time, we were remiss in  
16 not dealing with corporate issues. We were,  
17 again, trying to collect a thought-piece that  
18 defined conflict of interest. It was pointed  
19 out to us that we needed to deal with corporate  
20 disclosure and exclusion, and we've added that  
21 section for consideration of those who would be  
22 reviewing the document.

23 I take you on then to page 8 where we talk  
24 about the definition of a site expert.

25 Remember now, a site expert is someone who has

1 knowledge and is conflicted at a particular  
2 site. It was pointed out to us that possibly  
3 we weren't as clear in our statements of what  
4 site experts can't do than we needed to be, and  
5 in fact people pointed to previous policies  
6 where there was more specificity, and the  
7 second paragraph was added.

8 I'll quote from the second session -- second  
9 sentence, "Site experts are not permitted to  
10 serve as document owners or authors, or to make  
11 public presentations on key program documents.  
12 They may serve as a source..." and you can read  
13 on yourself. Again remember, this program is  
14 trying to strike a balance -- this policy --  
15 trying to strike a balance between the need for  
16 information and the need not to have people who  
17 are conflicted in control of important  
18 documents. And again, "site expert" becomes a  
19 vehicle for living very close to that line, and  
20 we felt it important to add those restrictions  
21 verbatim into this document.

22 On page 9 we've added to the section on  
23 verification, and really tried to be more clear  
24 on the section of penalties. One of the  
25 additions we made to the verification section

1 is, again, in the third sentence, "Any errors  
2 discovered in forms filed at or after the time  
3 this policy statement takes effect shall be  
4 created (sic) immediately at the filing  
5 employer's or contractor's expense.

6 **DR. ZIEMER:** Corrected immediately.

7 **DR. WADE:** I'm sorry?

8 **DR. ZIEMER:** Corrected immediately.

9 **DR. WADE:** Corrected immediately at the filing  
10 employer's or contractor's expense. Again,  
11 we've tried to be more specific in that regard.  
12 And then on page 10, the last section on 7.5,  
13 "Compliance Information Contacts", we've added  
14 that section based upon comments that had been  
15 made.

16 The document's been modified in other areas  
17 based upon comments, but those were the  
18 principal comments that I thought worth  
19 pointing out. Again, we're hoping for a full  
20 airing and a discussion of this document in the  
21 deliberations today. We've allowed a  
22 significant amount of time. We would also like  
23 to hear from you about our strategy that one  
24 document would serve as the fountainhead for  
25 all policies that would flow from it.

1           There can be arguments made that the Board  
2           possibly should be held to a different  
3           standard. There are arguments that the Board's  
4           contractor should be held to a different  
5           standard. All of those are fair game for  
6           discussion, and we would certainly like to hear  
7           comments that people have to make on those  
8           issues, as well as any that occur to you.  
9           What I'd like to do now is just stop talking  
10          and let the discussion proceed with the Board's  
11          deliberation, and then move into a public  
12          comment period where we could collect comments  
13          from all who have interest in this topic. And  
14          the only thing I can promise you is that the  
15          drafters of this document will take those  
16          comments to heart and issue a final version of  
17          the document based upon what we hear here today  
18          and hear from others who would like to  
19          communicate with us over the next weeks.

20          **DR. ZIEMER:** Okay. Thank you, Lew, for  
21          introducing the document to us. This document  
22          actually was distributed I think to the Board  
23          earlier by e-mail. At least I -- I think we  
24          all saw copies of it before today, so we've had  
25          a little chance to digest it. So let's open it

1 up for -- first of all we have general  
2 comments, or we can focus on specific sections,  
3 or you may have questions as to what things  
4 mean. Wanda?

5 **MS. MUNN:** My concern from the first has been  
6 the wording of the new 3.11. Broadly  
7 interpreted, that would encompass almost anyone  
8 who has ever worked at or been professionally  
9 associated with any DOE contractor or their  
10 site for a long period of time. For example,  
11 (reading) Based on your knowledge at this time,  
12 do you, or did you -- did you, we're going back  
13 into the past here, essentially -- ever have  
14 any familial -- even if you marked that out --  
15 financial -- mark that out -- supervisory or  
16 subordinate relationship with DOE, the  
17 operator, any former DOE operator or employees,  
18 employee survivor, or attorney representing  
19 anyone on these matters.

20 It's hard to imagine having worked on a DOE  
21 site and not having had some supervisory or  
22 subordinate relationship with someone who has a  
23 claim here. I just don't know how that's  
24 possible. So I'm not questioning the  
25 reasonability of the familial, or even

1 financial. But the realistic nature of this  
2 "supervisory or subordinate" clause covering  
3 all time for anyone who knows or has worked in  
4 any of these areas is essentially going to  
5 exclude everyone that I know from working on  
6 these matters. And my personal feeling is  
7 that's much too broad. If you're going to be  
8 specific about it, then you have to recognize  
9 the difference between the reality of a  
10 conflict and an imagined conflict, because  
11 those of us who sit on this Board know people  
12 who are involved in these -- in these specific  
13 areas, and who have worked for them or have had  
14 them work for us.

15 **DR. ZIEMER:** Thank you. Also as some of these  
16 questions are raised, if -- if there is anyone  
17 here, including counsel, who can answer in  
18 part, that would be helpful as well, or explain  
19 in part. If I might superimpose a little bit  
20 on what Wanda talked about, it's not completely  
21 clear to me how this plays out in terms of the  
22 time frames.

23 For example, suppose you had all of those  
24 issues, but they occurred, for example, after  
25 the period for which say an SEC is being

1           considered. Does that still count as a  
2           conflict? There's something in here that  
3           suggests that the time period does come into  
4           play, and there are certain words in here that  
5           currently suggest to me that I have a conflict  
6           on every site. But the time frame becomes very  
7           important because that conflict is -- is not in  
8           play during at least most of the SEC petition  
9           periods. So that -- that time issue -- at some  
10          point I'd like to be educated about that a  
11          little more.

12         **MS. MUNN:** But our COI is not limited only to  
13         SECs.

14         **DR. ZIEMER:** Well, yes, right.

15         **MS. MUNN:** That's -- that's -- therein lies the  
16         real problem.

17         **DR. ZIEMER:** Right. Jim.

18         **DR. MELIUS:** Yeah, just along those lines, I  
19         also think it's clear in that section as to  
20         which sites it refers to, so in terms of, you  
21         know, the relationships and -- and so forth,  
22         it's such a broad area that it -- like in your  
23         instance, Dr. Ziemer, one thing -- does it mean  
24         working with other people you've worked with  
25         and now work at another site or something? It

1           certainly implies it -- it's quite broad. I  
2           think some of those areas need to be covered.  
3           I just think there's some more specificity in  
4           terms of time and place --

5           **DR. ZIEMER:** You're saying if the person I  
6           worked with -- let's say at Oak Ridge -- is now  
7           working at Hanford, do I now have a conflict at  
8           Hanford? Is that --

9           **DR. MELIUS:** Yeah, that's what --

10          **DR. ZIEMER:** Yes.

11          **DR. MELIUS:** -- well, one reading of it would  
12          be that. I mean that -- do that. I don't  
13          think in the case of someone who's worked at  
14          one site it's as much of a problem 'cause  
15          normally you're conflicted at that site. But  
16          it's -- the question is -- is --

17          **DR. ZIEMER:** How does it carry --

18          **DR. MELIUS:** -- over a time frame, how does  
19          that carry over in terms of a time frame and  
20          how does it carry over from site to site. Or  
21          in your case where you have broader  
22          responsibility, how -- how do you figure --  
23          figure that? It's very confusing. Potentially  
24          in terms of how do you make it operational.

25          **DR. WADE:** I'm just a --

1           **DR. MELIUS:** I have another point. Lew or  
2 someone-- could someone clarify Section -- the  
3 new Section 4.0, Corporate Disclosure and  
4 Exclusion? Because as I read -- read it, it is  
5 all disclosure and no exclusion.

6           **DR. WADE:** Yeah, I mean that -- that issue has  
7 been raised to us. I think 4.0 needs to have  
8 sentences added that deal with an exclusion. I  
9 would refer you to page 1, Purpose, the second  
10 paragraph where the policy tries to deal with  
11 that issue generically. It says it is NIOSH's  
12 policy to require each employee of each entity  
13 covered by this statement of policy, as well as  
14 the entity itself, who performs any program  
15 function as described below in 5.0 and 6.0 to  
16 undertake the following two actions: One, to  
17 disclose; two, to be excluded. So we're trying  
18 to establish the fact that a conflict would  
19 result in an exclusion at the -- the integrated  
20 level, but that -- those words need to appear  
21 in 4.0 and we were remiss in not including  
22 them.

23           **DR. ZIEMER:** Other questions -- or concerns,  
24 comments?

25           **DR. MELIUS:** I have another.

1           **DR. ZIEMER:** Jim.

2           **DR. MELIUS:** Yeah. This policy, though it's in  
3           some ways better than the previous draft in  
4           this regard, puts a lot of onus on the document  
5           owner to police conflict and to certainly weigh  
6           evidence that would come in from site experts  
7           and other people who are conflicted who would  
8           be contributing information to -- let's call it  
9           a site profile. And you know, frankly, we  
10          haven't seen evidence of that. In the sites  
11          where we've raised concerns about conflict  
12          among the people providing most of the input  
13          into the documents, we've not seen any strong  
14          evidence of -- that their work is being  
15          reviewed, and we've raised questions about  
16          that. And I really think that if you're going  
17          to follow that path, then really need to see a  
18          much stronger implementation of that, as well  
19          as questions of how are you going to go back  
20          and deal with past problems with conflict of  
21          interest on many of the documents that have  
22          already been -- are currently in use, so to  
23          speak. And -- but we really -- I don't know  
24          whether this needs to be some better structural  
25          program for how that would -- person would be

1           appointed and what their -- their role would  
2           be. But -- but certainly -- I mean I have  
3           concerns simply because -- in general it's --  
4           it is something that might be workable, but we  
5           certainly have no experience of seeing strong  
6           document owners, certainly in the face of a  
7           strong site expert, in terms of dealing with  
8           their issues.

9           **DR. ZIEMER:** Jim, let me make sure I understand  
10          your comment. I think I do. So you have a  
11          document owner, and they're gathering  
12          information. And in one sense, every site  
13          expert they use is conflicted, 'cause they're a  
14          site expert.

15          **DR. MELIUS:** Correct.

16          **DR. ZIEMER:** So the issue then becomes how do  
17          you weigh the credibility of that information  
18          from the various site experts. You're -- you  
19          may be even getting conflicting information  
20          from them. Is that what you're --

21          **DR. MELIUS:** Well, they -- to show that this is  
22          an active program, that it is being weighed. I  
23          think what my perception has been, at least on  
24          sites where I've had concerns about the  
25          information from the site expert, is that I've

1           seen no one really overseeing or questioning or  
2           -- or having an active role in the document,  
3           other than that site expert. So all questions  
4           are referred to that site expert when --  
5           **DR. ZIEMER:** Rather than the document owner.  
6           **DR. MELIUS:** -- the document owner seems to be  
7           playing a very passive role. It's more than  
8           just editing a document, so forth. I think  
9           that conceptually what's laid out here, you  
10          know, would be workable or could be workable.  
11          But however, it -- we -- I don't see evidence  
12          that it's been put into practice to date. And  
13          in fact, we've seen the opposite, where the  
14          site expert has dominated on a particular --  
15          particular site. And again, it's not  
16          necessarily questioning their work, but  
17          certainly the perception would be that -- that  
18          that person does -- you know, perceived to have  
19          a conflict and there needs to be a stronger  
20          oversight and review function -- really needs  
21          to be someone that does own it and plays a very  
22          active role in that ownership, which frankly  
23          takes a lot of investment in terms of time and  
24          effort. It would be -- to have someone who  
25          puts in the time to learn about the site and to

1           -- do that.

2           I mean the second part of that is to have a  
3           meaningful program where -- that does seek  
4           input from people other than one -- a single  
5           site expert or one or two site experts. In the  
6           past where we've seen this, particularly the  
7           early site profile documents have relied on one  
8           or two site experts -- again, many people have  
9           had a long history of working the site and are  
10          very knowledgeable, but without any meaningful  
11          way for others to have input into that site.  
12          And unfortunately, the outcome of that is that  
13          often questions aren't raised until we're  
14          dealing with a -- either a site profile review  
15          or more commonly with an SEC evaluation, at  
16          which point another -- you know, our contractor  
17          -- the Board's working group then raises a  
18          whole number of questions that -- that probably  
19          should have been dealt with and explored at the  
20          time the site profile was developed, because --  
21          but simply it's relied on one person, and I  
22          think -- or one or two people, and I think  
23          important questions have not been asked.

24          **DR. ZIEMER:** Okay.

25          **DR. MELIUS:** And if this is the route that

1 NIOSH wants to go, then I think they need to  
2 show some evidence that they really will  
3 implement a strong program for review and  
4 document ownership, so to speak.

5 **DR. ZIEMER:** Okay. Thank you. Wanda?

6 **DR. WADE:** Could I react to that just briefly?

7 **DR. ZIEMER:** Yeah, sure. Go ahead.

8 **DR. WADE:** And I couldn't emphasize more the  
9 importance of Dr. Melius's point. Again, from  
10 the very beginning we -- we've talked about  
11 this policy tries to walk that fine line  
12 between saying there are people who have  
13 knowledge, we want to hear their knowledge, and  
14 yet we don't want them to overly influence the  
15 document.

16 We could have taken another approach is to say  
17 those people with knowledge are not welcome  
18 here; we don't want to hear from them. So  
19 we've taken this middle ground approach. But  
20 for it to work meaningfully, we have to assure  
21 Dr. Melius -- or the thought that Dr. Melius  
22 raises is appropriately administered. And I  
23 would very much appreciate thoughts from the  
24 Board or individual Board members of how we  
25 might implement that. If we don't implement

1           that effectively, then the policy falls and the  
2           desired goal, which is to have people with  
3           knowledge present, has to be walked away from.  
4           We don't want to walk away from that if we can  
5           help it. But unless we deal with this issue in  
6           some way that satisfies all, then we -- we have  
7           failed. So it's a very important issue to us  
8           and we would very much like to hear suggestions  
9           -- it doesn't have to be today -- as to what it  
10          would take to assure those that say the  
11          document owner is really just a front for a  
12          process that is dominated by site experts. How  
13          do we -- how do we administer it to assure that  
14          that's not the case.

15          **DR. ZIEMER:** Thank you. Wanda.

16          **MS. MUNN:** And that is my primary concern, that  
17          we not develop a conflict of interest statement  
18          that is so restrictive that it essentially says  
19          anybody who knows anything about this can't  
20          serve on here. And one question that I have,  
21          it's not really crystal clear in my mind, is  
22          how broad is the coverage of this COI. Is this  
23          only for NIOSH employees? If you read the --  
24          if you read the first paragraph of the purpose,  
25          it gets to be pretty broad and includes us and

1 a whole bunch of other people, in that any  
2 persons or entities carrying out responsibility  
3 for the NIOSH dose reconstruction program --

4 **DR. ZIEMER:** I think it's intended to cover our  
5 contractor, the Board, NIOSH's contractor, the  
6 whole --

7 **MS. MUNN:** Uh-huh, and therefore that -- that  
8 even magnifies the concern about if you know  
9 anything about this, you can't possibly serve  
10 here. We have to be very careful, I think,  
11 that we don't get to the point where  
12 individuals, for any purpose, can point to a  
13 specific portion of our conflict of interest  
14 statement and say therefore you have no right  
15 to be here.

16 **DR. WADE:** Just to -- because this is so  
17 important to me, that's the -- that's the nub  
18 issue.

19 **MS. MUNN:** Uh-huh.

20 **DR. WADE:** You want people with knowledge, but  
21 then again you don't want people who authored  
22 these programs back 30 years ago to be the only  
23 people who have the ability to produce these  
24 documents, without independent review at many  
25 levels. So finding that middle ground is the

1 challenge for us, and this is our attempt at  
2 doing it. Dr. Melius's point that there needs  
3 to be an administrative system in place that  
4 develops confidence in those who would question  
5 how this will be implemented is critical to us.

6 **MS. MUNN:** Uh-huh.

7 **DR. ZIEMER:** Other comments?

8 **DR. MELIUS:** Yeah, I have --

9 **DR. ZIEMER:** Jim.

10 **DR. MELIUS:** -- a separate comment. I would  
11 also -- it was one of the questions you raised,  
12 Lew, when you made your presentation. I  
13 actually think it would be helpful to include  
14 more specificity about the different groups  
15 that are involved in this program in your -- in  
16 this policy. I've found that the section on  
17 the Advisory Board to be helpful, 'cause it --  
18 'cause it takes into consideration some of our  
19 -- our functions and what we do, and also some  
20 of the areas where -- some of the gray areas --  
21 gray area -- how do we deal with situations  
22 when we're dealing with 40 or 50 or 20 dose  
23 recon-- individual dose reconstructions where  
24 probably everybody on the Board could  
25 potentially be disqualified in one or two, and

1 issues like that. And I think that -- that  
2 would be helpful. I think having one that --  
3 that covered NIOSH, covered the contractor,  
4 covered the Board and probably covered the  
5 Board's contractor separately would be -- would  
6 be helpful because I think all of those groups  
7 have specified rules and -- and there are gray  
8 areas or areas that, in terms of their  
9 functions, we could probably get greater  
10 specificity and clarity from and it might help  
11 address I think some of Wanda's questions she -  
12 - she raised, also, on...

13 **DR. WADE:** An excellent suggestion.

14 **DR. ZIEMER:** And let me follow up on that.  
15 There may very well be a parallel set of things  
16 -- for example, our contractor looks at  
17 individual dose reconstructions, they look at  
18 SEC petitions. We might start to look at these  
19 in a similar way and say under what conditions  
20 is one of their people conflicted or not, just  
21 as in the case of the Board. So a parallel  
22 kind of structure might be worth at least  
23 thinking about. I think it's a great  
24 suggestion, and perhaps it would carry over to  
25 ORAU as well. I'd have to think about that,

1 but -- I see Kate is nodding her head there, so  
2 perhaps some differentiation of -- of what  
3 those functions are.

4 Other comments? Roy.

5 **DR. DEHART:** As I look through the document, it  
6 appears to me that the majority of information  
7 is provided by the individual as to his or her  
8 experience at the various sites. I don't see  
9 anything in here that would assist someone in  
10 challenging, and I think it would be  
11 appropriate to have -- have a method  
12 established so if there is issue, it can be  
13 formally brought up within the structure of the  
14 document.

15 **DR. ZIEMER:** Can you clarify -- Roy, are you  
16 talking about someone who is said to be  
17 conflicted and wishes to challenge that  
18 decision?

19 **DR. DEHART:** Not -- that wasn't the direction I  
20 was heading in. Someone who has not identified  
21 an area in which they may be conflicted, and  
22 others -- for one reason or another -- wanting  
23 to get clarification on that.

24 **DR. WADE:** We have tried in 7.3, Verification,  
25 the last sentence, to begin to develop a

1 mechanism for people to -- to raise concerns.  
2 Possibly we need to expand upon that, though.  
3 I understand. Thank you.

4 **DR. ZIEMER:** Now you've heard some verbal  
5 questions, comments and concerns here. My  
6 understanding is that this is a work in  
7 progress. NIOSH is developing this. The  
8 procedure -- or maybe you can clarify the  
9 procedure -- is the next step a new draft, and  
10 that would come -- this is a NIOSH procedure so  
11 I don't think the Board has to necessarily  
12 approve the draft, or the procedure, but we  
13 need to be involved in -- in your keeping us  
14 informed as to how it's developing. But what -  
15 - what is the final route that this takes  
16 through the system? It goes up through HHS, I  
17 presume. Is that correct?

18 **DR. WADE:** Most certainly, yes. I mean NIOSH  
19 would, based upon the comments it hears here  
20 and subsequent to this, develop the final  
21 document. It would go through various reviews  
22 within HHS in terms of Office of General  
23 Counsel and -- and by policy people, and then  
24 it would become something we would live  
25 consistent with. Certainly we would bring that

1 document to the Board when next the Board  
2 meets. And no matter how final it might  
3 appear, we would always take comments from the  
4 Board and be guided by the Board. We -- we  
5 want to crystallize something sooner rather  
6 than later so we can start to see that we are  
7 all living consistent with this. But certainly  
8 we would be prepared the next time the Board  
9 would like, be it at the phone call in August  
10 or at the September meeting, to say here is  
11 what we've come to and ask for the Board's  
12 opinion and comments.

13 **DR. ZIEMER:** Now Dr. Wade, you mentioned that  
14 you would like to get some public comment on  
15 this, and although our public comment period is  
16 scheduled for later, I -- I'm going to suggest  
17 that we might invite some public comment now,  
18 or at least as soon -- soon as the Board --  
19 we'll get -- get -- okay.

20 Oh, I'm sorry, I didn't see Mike, then we'll  
21 catch Mark and we'll take Jim. Okay, Mike.

22 **MR. GIBSON:** Just kind of a comment, then maybe  
23 a question or clarification. It seems that  
24 most of the site experts are people who have of  
25 course knowledge, but they have ran (sic) a

1 program or overseen a program at the site, and  
2 I realize that NIOSH has done some limited town  
3 hall meetings, so to speak, with the workers to  
4 get input from them after the fact. How many  
5 site experts that have written portions of  
6 these documents have been hourly workers that  
7 have been out in the field doing the work, as  
8 opposed to overseeing the program?

9 **DR. WADE:** I can try to get you an answer,  
10 Mike. I don't have an answer. That's a valid  
11 question. I don't have that answer. I doubt -  
12 - I don't know if anyone in the room would have  
13 such an answer, but I'll try and get you an  
14 answer to the question of how many people who  
15 have been identified as site experts in the  
16 process have been hourly workers.

17 **MR. GIBSON:** Correct, have actually been out  
18 and potentially been the ones exposed, as  
19 opposed to the ones running the program.

20 **DR. WADE:** I'm sure it's heavily weighted  
21 towards the -- the latter rather than the  
22 former, but we'll get you an answer.

23 **MR. GRIFFON:** I'm just wondering if -- I -- I  
24 know this is draft, but has ORAU and/or NIOSH  
25 done any sort of impact assessment on -- on

1           this policy? You know, what would it -- how  
2           would it impact your current program, would you  
3           expect a lot of review or rewrites of  
4           documents, site profiles, et cetera, based on  
5           this new policy? I know that if I were sitting  
6           in the wings as a site profile document owner,  
7           I think I'd be probably re-evaluating what I'd  
8           put into print, given some of the ones that  
9           I've looked at from the outside. So I'm just  
10          wondering if anybody's assessed -- is this  
11          going to create additional work that has to be  
12          done with a lot of these documents?

13         **MR. ELLIOTT:** Is this on?

14         **MS. MUNN:** It's sounding a little bit.

15         **MR. ELLIOTT:** I don't know where to turn it on  
16          here. Well, I'll talk loud -- there, it's on,  
17          okay.

18          Okay. Yes, we've shared each draft of this  
19          policy with all of our contracting staff and  
20          asked that particular question, is this  
21          something you can't live with or you can live  
22          with; what -- what obstacles, what problems  
23          does it present. And some of the -- some of  
24          the feedback from those individual contractors  
25          -- it's not only ORAU. We've asked Battelle,

1 we've asked EG&G also to -- to review and  
2 comment on these various versions, and some of  
3 that feedback you see in this current version.  
4 And for the ORAU team -- and Kate could speak  
5 to this if she so desires -- but they are very  
6 much interested in what the final version is  
7 going to look like. They're very much  
8 concerned about the amount of work that it is  
9 going to take to review all of the existing  
10 documents and make sure that they have a  
11 document owner that is in place that is serving  
12 as the policy -- this current policy --  
13 requires them to serve, and whether or not  
14 there are individual site experts and subject  
15 matter experts that are conflicted that have  
16 not been fully disclosed, et cetera, et cetera,  
17 et cetera. So I appreciate your comment.  
18 That's where we stand. We're constantly  
19 sharing the various versions as they come  
20 forward to make sure that our contractors have  
21 an opportunity to express their -- their  
22 thoughts about the language.  
23 I'd also take it back to what Dr. Melius said  
24 earlier about the document owners, and I agree  
25 with Dr. Wade's summation on that, as well. I

1           can't enhance that any more. That is an  
2           important, a very critical issue that -- that  
3           we all need to be very cognizant of and work  
4           together on. But I'd offer this and remind  
5           everybody that the term "document owner" in  
6           this parlance and the way this -- this version  
7           presents it has just been very recent and --  
8           and yes, we have been remiss perhaps in -- in  
9           coming to that position and coming to that  
10          philosophical and intellectual state about how  
11          we need to manage and control perceived  
12          conflicts. And we are working hard to achieve  
13          what is -- the intent that is written here.  
14          And no, a year ago we weren't -- we weren't  
15          focusing on that, and perhaps we should have.  
16          We were remiss in that regard.

17          **DR. WADE:** And I would like to add a comment to  
18          Larry's. I've been close to the drafting of  
19          this document and have watched each of its  
20          iterations. In my opinion, the document has  
21          not been directed based upon a consideration of  
22          the amount of rework that would be necessary  
23          based upon the direction the policy takes.  
24          We've been mindful of that consideration, but  
25          we are not trying to steer down a path of least

1 resistance in terms of the amount of rework.  
2 The policy as I believe it to be reflects the  
3 thoughts of the leadership as to what the  
4 appropriate policy should be.

5 **DR. ZIEMER:** Jim, are you okay with giving Kate  
6 the floor --

7 **DR. MELIUS:** Yeah, sure, I am.

8 **DR. ZIEMER:** -- on this issue?

9 **DR. MELIUS:** Yeah.

10 **DR. ZIEMER:** We'll hear from ORAU here.

11 **MS. KIMPAN:** Hi, thank you very much for the  
12 opportunity to respond to this. As Larry said  
13 and Lew said, I think that Jim's question is of  
14 absolute import to our team, the whole process.  
15 Let me give you -- because there are many  
16 different things under discussion here, I'll  
17 reiterate what I've said at the last two  
18 meetings, but it's beginning to become clearer  
19 what we're doing.

20 One thing that the ORAU team is doing for every  
21 document that we have created thus far is going  
22 back through and doing full annotation and  
23 attribution. However the total final policy  
24 lands, and whatever small number of documents  
25 for which a retrospective review would yield a

1            conflicted owner, we will -- as we've said --  
2            conduct a thorough review of all findings to  
3            assure that we've made all the right scientific  
4            findings.

5            I will say again here, we don't expect -- I  
6            heard the word "rework" and "redo". We don't  
7            anticipate reworks or redo's of any of our  
8            conclusions or documents, although we are  
9            always open to changing documents to make them  
10           better, and will be into the future. We  
11           anticipate that you'll -- you'll benefit a  
12           great deal from our first fully annotated and  
13           attributed document, which will be the entire  
14           Rocky Flats site profile. At that point -- and  
15           that's irrespective of the finalized policy, of  
16           course, so this is something we're working on  
17           right now. The first -- the first thing we're  
18           intending to do is assure that there's a great  
19           deal -- as Lew has asked for, Dr. Wade has  
20           asked for in the past, Larry has asked for -- a  
21           great deal of sunshine on what we've done.  
22           We're proud of the folks that we've used, the  
23           conclusions that we've made. It's been a  
24           cooperative process, working with and for NIOSH  
25           and other scientists. As we annotate and

1 attribute every one of these findings in every  
2 one of our documents, we believe that will help  
3 in the realm that Dr. Melius has raised, and  
4 others.  
5 Specifically regarding the policy, we will  
6 accept willingly the policy that NIOSH gives us  
7 to work within, and will endeavor to  
8 immediately report out to the Board how many  
9 documents -- and we've looked through the lens  
10 of this draft, as Larry said. We received it  
11 when others at the Board did. We'll look  
12 through the lens of this current draft and  
13 immediately report out when the policy is  
14 finalized how many documents we have where,  
15 under this new policy -- prior drafts were made  
16 without this policy of course in mind -- where  
17 they require additional scrutiny. We'll be  
18 pleased to report out what those documents are,  
19 who the expert was, who the owner was, the  
20 question about how many experts have been  
21 workers at the facilities, we're more than  
22 pleased to give you all that information. The  
23 entire purpose of the annotation/attribution  
24 exercise is to assure that people know where  
25 our information's from, that we agree, as -- as

1 Lew said eloquently, we're trying to strike the  
2 balance between people who know what we need to  
3 know to do this well, and assuring that people  
4 are, as Dr. Melius noted, comfortable and  
5 confident in the work that we've done on behalf  
6 of these workers and this program. And we  
7 believe that we'll have Rocky out well in  
8 advance of the next Board meeting, make certain  
9 that that gets to NIOSH and to you all for any  
10 input, advice you might have. You know, we're  
11 -- we're developing the annotation/attribution  
12 methodology ourselves in advance of the policy  
13 being finalized, but we absolutely welcome any  
14 input, advice, guidance that the Board and  
15 others may have to assure that we're doing it  
16 the right way and getting the right facts out  
17 there for folks to evaluate.

18 **DR. ZIEMER:** Thank you, Kate. Dr. Melius.

19 **DR. MELIUS:** Uh-huh. One -- one comment that  
20 related to that issue and another comment  
21 related to sort of how the Board should proceed  
22 in handling this.

23 I think the most difficult situation going back  
24 -- and I'm pleased to hear that you have  
25 started to go back and annotate the documents

1 'cause I think that's going to be -- be  
2 critical to sort of evaluating what's going on  
3 and -- and undoubtedly then we're going to --  
4 you know, we may -- may or may not find some  
5 that -- where further evaluation for the work's  
6 going to be needed because we may have some  
7 where a site expert who has some potential  
8 conflict may have been, again, the dominant  
9 author and we annotate that, show that, then  
10 the question is, you know, how -- how do we go  
11 forward with that document. It may be through  
12 a revision or -- or through further review, and  
13 I think that probably has to be done on a case  
14 by case basis.

15 I also think it's important to keep in mind,  
16 sort of separate from the issue of going back  
17 and looking at it from a perspective of, you  
18 know, who was the site expert, who was the  
19 document owner and potential conflict, is  
20 another aspect of this is sort of the peer  
21 review of the information in the -- in the  
22 document. And at least my personal perception  
23 is based on the review that's been done by SC&A  
24 is that that's another sort of parallel area  
25 that needs to be addressed. Has nothing to do

1 with, you know, site experts necessarily or  
2 people with conflicts, but rather we need to  
3 have a -- a stronger program to review these  
4 documents so we're not sort of being surprised  
5 or finding out issues that have significant  
6 impact on dose reconstruction, ability to do a  
7 dose reconstruction if you're going the SEC  
8 context, at such a late point in time. And  
9 some of that I think was just a -- a -- what  
10 happened and we needed to get this program  
11 moving forward and get the site -- dose  
12 reconstruction program going for each site.  
13 But I think we also need to be able to look at  
14 ways to, you know, buttress that in some way,  
15 make -- have a rob-- more robust internal peer  
16 review internal program that will address some  
17 of these -- these same issues. And maybe those  
18 two working together may be what'll be needed  
19 to sort of make sure that the documents that  
20 are in place are as strong as possible, both  
21 from a technical point of view as well as from  
22 a conflict of interest issue -- point of view.  
23 My second comment is just sort of Board and  
24 NIOSH procedure. This -- these documents have  
25 been hard to review because NIOSH keeps

1           changing them. In some ways it's good you keep  
2           changing them because it shows that you're  
3           actively involved and want to get this done,  
4           and I don't think the Board wants to be in  
5           place of sort of continually reviewing and then  
6           -- we'll never get anything implemented. But -  
7           - so what I would suggest is that maybe there  
8           be a period of time after this meeting where  
9           individual Board members can submit comments to  
10          you on -- on this current -- this current  
11          draft, in addition to what we've said here or  
12          to amplify on that. And then, if this is  
13          feasible, before our August meeting we could  
14          have the next draft, maybe then -- which I  
15          think would fit the timetable I've heard you  
16          speak about in terms of getting done, and at  
17          least have it presented to the Board and we  
18          have, for that conference call, some discussion  
19          of this, as appropriate. Whether the Board  
20          then wants to take formal action on it, I think  
21          we can -- can decide. But -- but I think that  
22          would be a reasonable time frame and would be -  
23          - rather than us trying to gather comments for  
24          a document that -- that's continually changing.  
25          And I think it should be in much more of a

1 final form from -- just prior to our August  
2 meeting, which is mid-August, I believe.

3 **DR. WADE:** We have a call on August 8th. So if  
4 we were to say a month from today we would  
5 begin our redraft based upon comments received,  
6 and if we could do that -- a month from today  
7 would be what, the 7th -- no, the 14th?

8 **DR. ZIEMER:** Of July.

9 **DR. WADE:** Of July, then we would take ten days  
10 to draft, and we would commit to getting it to  
11 the Board before that call. Is that  
12 reasonable?

13 **DR. ZIEMER:** Now I asked about the process, and  
14 it seems to me that -- although NIOSH has their  
15 own internal processes, it seems to me that  
16 since this policy basically impacts greatly on  
17 everything that's done in this program, that  
18 the Board may wish to go on record in some way  
19 -- for example, the ideal thing would be if  
20 it's a policy that the Board can endorse in  
21 some way, or ascribe to, or say that we agree  
22 that -- with this policy, some kind of position  
23 on the policy as you go forward within the  
24 agency. That seems to me would be useful since  
25 this policy has great impact on everything we

1 do.

2 **DR. WADE:** Understood. Would we want to try  
3 for that in August or --

4 **DR. ZIEMER:** Or alternatively, if we're unable  
5 to reach such a point, I think it says that the  
6 policy's not ready.

7 **DR. WADE:** Okay. So we will strive to have  
8 this discussed, reaching some Board opinion, in  
9 the August call. If we don't succeed at that,  
10 then we set our sights on September.

11 **DR. ZIEMER:** Does that sound reasonable to the  
12 rest of the Board? Jim.

13 **DR. MELIUS:** Given how difficult it is to draft  
14 something over -- in a teleconference call --  
15 short duration, may I suggest we set up a small  
16 working group of the Board that would just  
17 draft some comments based on the draft -- if we  
18 received it what, you said about ten days or so  
19 beforehand, maybe five days or so -- on the  
20 conference call August 3rd or whatever, I don't  
21 have the calendar in front of me -- that would  
22 -- at least we'd have something ready for the  
23 Board to consider at the -- the -- our meeting  
24 in -- something in writing to work off of  
25 rather than trying to do something over the

1 telephone.

2 **DR. ZIEMER:** You're suggesting that once we  
3 have the -- the next draft --

4 **DR. MELIUS:** Yeah.

5 **DR. ZIEMER:** -- that there be a working group  
6 to review this, and that working group could  
7 either develop a statement or suggest changes.

8 **DR. MELIUS:** Yeah, we would --

9 **DR. ZIEMER:** Or both.

10 **DR. MELIUS:** Yeah, right, if -- a potential  
11 statement that would -- or even if that working  
12 group -- through some differences of opinion or  
13 whatever, people have different views -- could  
14 lay out some of the options that people wanted  
15 considered so that we'd have something in front  
16 of us to discuss at that conference call.

17 **DR. ZIEMER:** It certainly is an appropriate  
18 suggestion. The Chair is willing to appoint  
19 such a workgroup. It's pretty clear to me who  
20 would chair this. I'll take that as a  
21 volunteer; when you make the suggestion, you're  
22 in the workgroup. I would --

23 **DR. MELIUS:** It's what I get for coming late.

24 **DR. ZIEMER:** The penalty. I would entertain  
25 two other volunteers to participate with that.

1 I'm not going to entertain them; I will  
2 entertain suggestions. Who would like to work  
3 on that workgroup with Jim?

4 **MR. CLAWSON:** I will.

5 **DR. ZIEMER:** Okay, Brad is one, we'll get one  
6 other person.

7 **MS. MUNN:** That will be so much fun.

8 **DR. ZIEMER:** Okay, Brad and Mike will work with  
9 you, Jim.

10 **MS. MUNN:** Okay, fine, we'll get the union  
11 crowd to do it, that's good.

12 **DR. WADE:** Could I massage the time frames a  
13 bit?

14 **DR. ZIEMER:** You certainly can.

15 **DR. WADE:** Okay. Rather than giving you a  
16 month, let me give you three weeks. This way  
17 we'll have more time to schedule the working  
18 group. So three weeks from today, which would  
19 be the -- what, the 35th -- the 5th of July --  
20 we will close the docket. We will -- we will  
21 have comments from you. We'll then turn around  
22 and we'll set our goal at ten days to prepare a  
23 draft. Again, we can start on that right now  
24 based upon things we could anticipate. So that  
25 means the middle of July would exist the draft

1           that the working group would comment upon. We  
2           would leave to the working group chair  
3           scheduling such a meeting, but that would give  
4           you a broader window, I think.

5           **MS. MUNN:** So they'd have it to you by the 17th  
6           of June -- of July, yeah.

7           **DR. ZIEMER:** Okay. So for the record, the  
8           working group will be Jim Melius, Brad Clawson  
9           and Mike Gibson.

10          Wanda, additional comments.

11          **MS. MUNN:** To slightly complicate what Dr. Wade  
12          has already volunteered to do, the comment that  
13          not all individuals who are involved in the  
14          actual work on site and who are on the floor  
15          doing the actual work are always hourly  
16          workers.

17          **DR. ZIEMER:** Okay. I'd like to provide an  
18          opportunity for any members of the public who  
19          wish to comment on this issue, conflict of  
20          interest, please address us, if you wish. Any  
21          members of the public. I see Mr. Miller  
22          walking toward the mike. I'll interpret that  
23          as a desire to address the group, Richard  
24          Miller.

25          **MR. MILLER:** Good day. Thank you. My name is

1 Richard Miller. I work for the Government  
2 Accountability Project, and I'm pleased to be  
3 addressing you in yet another ballroom in  
4 another hotel in another city. And I'm very  
5 pleased that the Board is meeting here in  
6 Washington, and I also want to commend Dr.  
7 Howard and Lew Wade for their efforts to  
8 grapple with the conflict of interest policy.

9 **UNIDENTIFIED:** (Off microphone)  
10 (Unintelligible) the microphone.

11 **MR. MILLER:** I'm sorry. I want to -- I want to  
12 commend Dr. Howard and Lew Wade and others for  
13 working on this conflict of interest policy,  
14 because it's been a longstanding issue since it  
15 was first rumored that Battelle and SAIC were  
16 going to be competing against ORAU and MJW for  
17 -- and that the pool of their four contractors  
18 competing for this work raised some concerns  
19 about their longstanding histories. And I  
20 remember when deliberations were under way  
21 about which contractor to hire, one of the --  
22 one of the deliberations was, you know, who had  
23 less of a conflict. And the refreshing thing  
24 was that ORAU's conflict of interest policy  
25 said right up front, on page 1, conflicts a

1 reality here. We can't escape it. The  
2 question is can we effectively disclose, manage  
3 and have a plan to deal with it. Whether  
4 that's been effective or not is another  
5 question.

6 But let me just walk through what I think is --  
7 is -- is -- from my perspective, looking at  
8 this new policy, as well as the experience of  
9 having gone through the earlier policies, what  
10 the -- why conflict of interest plays seemingly  
11 such a knotty issue. I mean we're still  
12 dealing this. I mean for those of you who are  
13 there on the Board a long time, I mean this was  
14 a topic of discussion almost from the first  
15 Board meeting forward. And I think that what  
16 happened is when this program started there was  
17 a presumption that when one looked at the site  
18 health physics data and information and the  
19 history of the radiation protection programs,  
20 that the data was not necessarily going to be  
21 presumed to be either complete, reliable or  
22 necessarily adequate, and that that presumption  
23 of skepticism at some point slipped away. And  
24 it became formal actually in a November, 2005  
25 Board meeting where NIOSH stated no, we are

1           actually presuming that what we get is valid  
2           and credible unless shown otherwise.

3           And so that presumption flipped, and in the  
4           course of that sort of skepticism about --  
5           which was really the very purpose for NIOSH  
6           getting this program instead of leaving it in  
7           DOE -- there was a flip, and I don't know when  
8           exactly it happened. It may -- it may have  
9           happened when -- when -- when NIOSH approached  
10          this Board and asked for permission to waive  
11          conflict of interest rules in preparing site  
12          profiles.

13          But let me just get to the -- with that as a  
14          framework, let me just go through a couple of  
15          the specifics on the policy.

16          In terms of the covered entities in section two  
17          of the June 7th draft, one of the issues that  
18          is not explicitly stated but I think should be,  
19          and maybe it -- maybe I've over looked it, is  
20          that both subcontractors and consultants should  
21          be included. I think all of us remember when  
22          Auxier & Associates had -- didn't have an  
23          adequate conflict of interest clause flowing  
24          down from the ORAU level to the Auxier level,  
25          that they had to wait for their con--

1 subcontract to expire rather than terminating  
2 it, and -- because none of the subcontractors  
3 and -- and consultants were explicitly included  
4 in the COI policy and in the contracting  
5 documents. So I would just want to make sure  
6 that was explicit since we've already gone over  
7 that rocky road once before.

8 Secondly, I think it would be worth asking  
9 whether the Department of Energy's laboratory  
10 employees -- in other words, people who work at  
11 the labs today, who are working on these site  
12 profiles -- should be included. And the reason  
13 I bring this to your attention is that EEOICPA  
14 in itself, in the statute, the organic statute,  
15 says that there is a prohibition on DOE  
16 employees developing dose reconstruction  
17 methods. And yet site profiles, which are  
18 really method documents on a site basis -- you  
19 know, we -- we see laboratory employees, most  
20 recently in Los Alamos, helping to prepare the  
21 bioassay databases and the fundamental  
22 underlying documents while working for DOE.

23 The point was to pull this out of DOE and give  
24 it some independence here, and so my question  
25 is whether that would be covered under your

1 policy or not. We've seen certainly some  
2 conflicting information about the views of ORAU  
3 on that subject, and I think it's worth  
4 clarifying that in this policy and resolve it  
5 one way or another. Maybe that's something the  
6 workgroup can take up, but -- but this has to  
7 be addressed, asked and answered.

8 The question should be Sanford Cohen Associates  
9 as the Board audit contractor be included in  
10 this policy or not. I mean having sat through  
11 the endless meetings y'all had on drafting the  
12 RFP, and for those members who've been on the  
13 Board a long time, I think it took you close to  
14 a year to hash out all of the incredible  
15 details in that RFP, from scope, the conflict  
16 of interest discussions went on for literally  
17 many, many, many meetings and workgroups. The  
18 Board's already set the conflict policy, and my  
19 sense is SC&A right now is held to a higher  
20 standard even than the proposed contract -- I  
21 mean proposed COI policy that's in front of you  
22 today. If you were to go look at the RFPs and  
23 the contracts that govern them and their work  
24 for you on the Board, I would be reluctant to  
25 see the audit contractors COI restrictions

1           watered down.

2           This is a balancing document, as Lew Wade

3           pointed out, that -- that seeks to capture site

4           knowledge, while at the same time trying to

5           create some boundaries and some clarity. But -

6           - but the audit contractor should be beyond

7           reproach. There -- there shouldn't necessarily

8           have to be this same balancing test applied

9           with them, and I -- I would hope that you would

10          retain, not water down, your audit contractor's

11          provisions. And to give you some examples,

12          there are time limits on previous DOE

13          employment. They couldn't bid if they had

14          other NIOSH contracts. Battelle obviously is a

15          NIOSH task order contractor, as we heard today,

16          and then this -- an in the next breath, they're

17          also being brought in to do dose

18          reconstruction. We need an audit contractor

19          that's not afraid to give unbiased advice

20          because they're going to be worried about

21          biting the hand that feeds them. And it's that

22          integrity that they brought to this process

23          that is really the thin thread, from my

24          perspective, that -- that lends much

25          credibility because of -- of -- of -- of their

1 independence. So I would urge you to pull them  
2 out of this. And if you want to reassess that,  
3 that may be fine, but I -- I would not want to  
4 see their provisions watered down to this  
5 balancing test that's played out in this  
6 document.

7 I'd like to question whether these conflict of  
8 interest policies as we see it here are  
9 actually going to become part of the binding  
10 contracts for NIOSH's many contractors and  
11 subcontractors. Is this a policy out here, or  
12 is this woven in and become a contractual  
13 requirement so that it's a condition of your  
14 deliverable that it meet this test? Seems to  
15 me that it has to be built in as a condition of  
16 the contract or it's happy talk.

17 The question brought up here was why DOE  
18 employees -- why employees who were on DOE  
19 stipends would be excluded in footnote 9 from  
20 the conflict of interest policy. I mean I  
21 understand people who were graduate students,  
22 but -- but it seems to me if you're on a DOE  
23 stipend, I'd like some explanation.

24 **DR. ZIEMER:** I think that -- it was intended to  
25 apply specifically to graduate students.

1           **MR. MILLER:** Okay.

2           **DR. ZIEMER:** Was my understanding. In fact, it  
3 probably was intended to apply specifically to  
4 the Chairman of this Board.

5           **MR. MILLER:** Oh, excuse me, Mr. Chairman.

6           **DR. ZIEMER:** Well, look, we're --

7           **MR. MILLER:** I didn't know --

8           **DR. ZIEMER:** -- we're talking --

9           **MR. MILLER:** I didn't understand --

10          **DR. ZIEMER:** -- for example, about DOE fellows  
11 who are graduate students at the laboratories.  
12 They are not employed by DOE, really. They get  
13 their stipends through their university, but  
14 the money's DOE funds. They're -- they're not  
15 working for the contractor. They're not  
16 working for DOE. They are on site learning,  
17 and they're students. I believe that's --

18          **DR. WADE:** Yes, that's correct.

19          **DR. ZIEMER:** -- that's the context in which  
20 this is written. This is not a stipend in the  
21 case of, you know, the visiting scientist who's  
22 --

23          **MR. MILLER:** I see.

24          **DR. ZIEMER:** -- you know, there for a year and  
25 gets a stipend or a --

1           **MR. MILLER:** I see.

2           **DR. ZIEMER:** Yeah.

3           **MR. MILLER:** Okay.

4           **DR. ZIEMER:** But maybe this needs to be  
5 clarified or --

6           **MR. MILLER:** That would be helpful. This gets  
7 to the question of the Advisory Board's role in  
8 the conflict. Currently under Title 18 you all  
9 go through, as Board members, you know, a COI  
10 review. Title 18 also provides for waivers for  
11 people with conflicts of interest. The  
12 question is, will this policy, if it applied to  
13 the Board, control in lieu of the Title 18  
14 review, or would the Title 18 review be  
15 overlapping, separate, and how -- if there were  
16 differences between this and what came out of a  
17 Title 18 review -- would they be reconciled?  
18 But it's not clear to me you have the authority  
19 to come up with a policy that preempts Title  
20 18, although you interpret Title 18 through  
21 your own internal policies and whether and  
22 where and how to create -- and I'll give you a  
23 good example is that, you know, I've -- having  
24 had a chance to -- reviewed all but a couple of  
25 the waiver letters for -- for Board members

1 here 'cause they are public documents, is that  
2 -- that the -- you know, some individuals have  
3 no business relationships working at or for a  
4 facility, but say may have been affiliated with  
5 a labor union, like Mike Gibson was at the  
6 Mound facility. He doesn't meet the at or for  
7 test necessarily -- or maybe he does, I don't  
8 know -- but if it's -- if it's a labor union  
9 coming in and files an SEC petition and he had  
10 previously been a member of that union and the  
11 question was whether, you know, under Title 18  
12 you may or may not conflict him as an  
13 individual, but under this policy it doesn't  
14 appear you would, and then it's not really  
15 clear how you would reconcile Title 18 letters  
16 with this policy. So it seems to me it would  
17 be useful to figure out what the intersect is  
18 between the two of those. Maybe you've already  
19 figured that out, I don't know.

20 **DR. ZIEMER:** Well, certainly Title 18's got to  
21 be adhered to in any event.

22 **DR. WADE:** Correct.

23 **MR. MILLER:** That's right. The question is  
24 where do you draw the lines. I mean there's so  
25 much ambiguity in Title 18. I mean it itself

1           seems to be a *table rase* that gets written  
2           fresh each time, doesn't it?  It's a -- the --  
3           the -- the other...

4           Let me just jump to the question of -- kind of  
5           the site expert issue in the draft document and  
6           -- and -- you know, one of the things that I  
7           think has provoked NIOSH to kind of revisit the  
8           conflict issue for the umpteenth time now was  
9           what happened at Paducah, and most of you are  
10          familiar with it so I don't want to restate the  
11          whole history.  But you know, what we know is  
12          that data that was prepared by Carol Berger was  
13          cut and pasted into NIOSH documents that had  
14          previously -- and there was subsequent reports  
15          that seemed to cast doubt on conclusions of her  
16          previous work, but nonetheless it went in a  
17          NIOSH document and thus it was -- went up  
18          through four tiers of review somehow of ORAU  
19          and NIOSH and went out the door and didn't get  
20          caught.  And -- and -- and -- and so the  
21          question I guess is what are the consequences?  
22          When we get to the consequences section of the  
23          policy here -- you know, Carol -- it's my  
24          understanding -- I may be wrong here, but from  
25          talking to people at Livermore and elsewhere --

1           that she's working on the site profile there.  
2           Now I don't know if she is or still is, but she  
3           was, and the question is, you know, do you sort  
4           of -- you know, was the message here that well,  
5           you know, poor performance is going to be  
6           rewarded with newer and more lucrative  
7           contracts. And if that's the case then, you  
8           know, how seriously is NIOSH taking these? I  
9           mean I -- I mean I don't know, NIOSH may have  
10          concluded she had no conflict of interest  
11          there. That was certainly the conclusion of  
12          the -- of the contract oversee outside team  
13          report, and yet public comments have come out  
14          of NIOSH to the contrary saying there was a  
15          conflict. I mean I -- I -- you know, I don't  
16          know, I -- I don't know whether people can see  
17          a conflict with her situation at Paducah,  
18          having worked for Marietta, or not, and then  
19          having written the bulk of the site profile.  
20          But the question is, what do you do when people  
21          are in breach, if they are found in breach, and  
22          do you give them new assignments at other sites  
23          to reward them for (a) not self-disclosing,  
24          which she didn't do; and (b) should have been  
25          in the database of ORAU flagging this, which

1           should have clearly made it evident to everyone  
2           that this was a problem, or -- or -- you know -  
3           - I think the point's made. And -- and so then  
4           the question is, who really owns the site  
5           profile? I mean at Paducah what we learned is,  
6           thanks to the oversight team report, she wrote  
7           the bulk of that document even though she was  
8           listed as a subject expert.

9           Who owns the Rocky Flats site profile? That  
10          was a question that crossed my mind. Now,  
11          although he's not listed as an author, Roger  
12          Falk, we have now discovered, has written at  
13          least half of the internal dose TBD by virtue  
14          of having crafted the entire sections on the  
15          MDLs for lung counting and urinalysis. And --  
16          and -- and the question was, was his work on  
17          this disclosed, and the answer is no. The --  
18          other than being listed as a subject expert.  
19          Yet word for word, half that internal dose  
20          document is his. But curiously, somebody  
21          stripped his name off of the two key documents  
22          that they cut and pasted, and I have those two  
23          key documents here. They're marked draft.  
24          They're -- one's the MDL for the lung counting  
25          and one's for the bioassay, and -- and the

1 question is, so how did you figure that out?  
2 Well, 'cause, you know, it seems to me if this  
3 had been disclosed his COI would have been  
4 transparent.  
5 Turns out that buried in this document is an  
6 acknowledgement, a one-paragraph  
7 acknowledgement thanking other people for  
8 helping (unintelligible) prepared the document,  
9 so this author says I want to acknowledge the  
10 work of others in helping me prepare this, but  
11 who's the acknowledgement from? And until you  
12 follow it back and figured out who the  
13 acknowledgement originated from, you would  
14 never have known. So the warning to ORAU is,  
15 strip out acknowledgements so we don't catch  
16 them again. Okay? I hope that's not the  
17 lesson that's taken away, but there was the --  
18 the clue was buried in the document that the  
19 document owner obviously, who was listed -- Ed  
20 Skalsky, I think it was his; no, maybe I'm  
21 wrong -- whoever it was who was the document  
22 owner on that clearly was not the document  
23 owner. And -- and -- and so it's not that this  
24 is a gotcha game, it's that -- what's going on  
25 here. Why was there a necessity to do that.

1           And you might say well, what difference does it  
2           make. I mean this is all about -- we're all  
3           going to disclose this retroactively, says  
4           Kate. Well, here's what matters, because when  
5           you read the site profile document itself, lots  
6           of questions come up. Now fortunately this has  
7           been a subject of the SEC petition and an  
8           extensive review in the working groups, and  
9           we've discovered, for example, that the high-  
10          fired oxides issue was grossly under-scoped in  
11          the site profile. Cases have been adjudicated  
12          with lung cancer in the 771 building, as we  
13          heard at the Rocky Flats meeting out in Denver.  
14          If you worked in 771, as a building that  
15          handled high-fired oxides, you would hope --  
16          you would kind of hope that the super S model  
17          might apply to lung cancer cases and you  
18          wouldn't be bypassed in that, and yet this  
19          document, this early site profile at least,  
20          clearly under-scoped the breadth and the degree  
21          and the extent to which high-fired was, beyond  
22          just a fire in '65. It was actually part of  
23          the production process. It was part of the  
24          furnacing. So I just bring this question,  
25          which gets to the next issue, which is somebody

1           could help us understand what is Karin Jessen's  
2           true role in the Rocky Flats SEC evaluation.  
3           And having sat in on a number of these  
4           conference calls and having heard it raised at  
5           the last meeting in Denver, she's listed as the  
6           SEC evaluation report author, but at least when  
7           I listened to a number of these conference  
8           calls, she's not spoken or defended the  
9           technical issues on the Rocky Flats SEC. Now  
10          maybe she has written the entire thing and  
11          she's just a quiet gal, but seems to me that  
12          Roger Falk and lot of other people do the  
13          talking and defending of this document, or can  
14          speak informatively about the research that  
15          underpinned it. And I just -- question is that  
16          Dr. Melius I guess has raised this is how do  
17          you avoid titular heads. And maybe she isn't a  
18          titular head. Maybe I'm wrong and I'm  
19          misreading it and someone's going to show me  
20          the number of hours she put in and that Roger  
21          Falk just happened to stop by to chew some gum  
22          by the water cooler, but I'm not sure that's  
23          the case. And I'm not sure Rocky Flats is the  
24          only place this is a problem.  
25          In the -- section four of the June 7th draft

1 I'd like to just bring your attention --  
2 something which -- which sort of came to my  
3 mind, which is that in the existing today  
4 conflict of interest policy there are sets of  
5 do's and don'ts regarding organizational  
6 conflict of interest, and I'm going to bring a  
7 couple of those to your attention shortly. And  
8 these are not in the June 7th draft. All of  
9 this is sort of a general statement of policy,  
10 and Lew Wade just recently mentioned that this  
11 is something that was on their radar. And I  
12 guess I would respectfully request that you  
13 think about reinstating, at least for purposes  
14 of clarity, and maybe even more importantly so  
15 that no one can ever misconstrue intent that  
16 when you take something out it's meant that it  
17 doesn't apply anymore. If there's a reason to  
18 have those clear do's and don'ts on OCI, put --  
19 I would recommend that you put them back in.  
20 And let me just give one that comes to mind.  
21 There's a -- and this is right out of the  
22 existing policy that's in place today. It says  
23 no contractor element will participate in a  
24 review -- dose reconstructions or participate  
25 in research supporting site profiles or

1           determinations of whether or not to add a class  
2           of employees to an SEC for those DOE sites or  
3           activities where it is the prime contractor --  
4           like and M&O or an M&I -- a team member  
5           (unintelligible) prime contractor, a program  
6           manager or subcontractor managing dosimetry  
7           programs, or otherwise intends to be employed  
8           as such within 12 months of starting this  
9           contract. That's a very strong OCI provision.  
10          What it says to me as I read it is that it  
11          would bar contractors managing DOE dosimetry  
12          programs from writing site profiles at a given  
13          site. And this is really in a sense what the  
14          statute I think intended. But here's an  
15          example where I'm not sure whether it was ever  
16          implemented quite rigorously, and I'm open to  
17          hearing different points of view on this, but  
18          let me just lay out a concern that -- Battelle  
19          runs the dosimetry programs under contract to  
20          the Department of Energy at Hanford. That's a  
21          given. And it's also composed -- Battelle  
22          employees, (unintelligible) Northwest Labs  
23          employees -- also compose the majority of the  
24          teams preparing the internal and external dose  
25          site profiles at Hanford. Not one or two, the

1 majority of the teams.

2 So while you may have a gentleman from ATL as  
3 the team lead, the rest of his team is all  
4 Battelle or pretty much Battelle folks. So you  
5 kind of -- you know, you try to apply some kind  
6 of substance over form and you -- then you look  
7 a little further and you find out that some of  
8 these same people who prepared the site profile  
9 at Hanford also served as expert witnesses  
10 defending litigation for worker compensation  
11 claims at Hanford.

12 Now, you know, from my perspective, you know,  
13 Battelle wrote these site profiles. I don't  
14 care that Ed Skalsky's name is at the top from  
15 ATL. That doesn't mean anything to me. And it  
16 -- and it -- and it means something because I  
17 want Jack Fix, I want Don Peel\*, I want all  
18 these people who have great expertise to have  
19 their knowledge on the table. But they're an  
20 active contractor at the site. You think  
21 they're going to turn around and say hey, the  
22 work that we've done here has been insufficient  
23 in the past. Here's how we've underestimated  
24 dose for employees for decades, but now we've  
25 been forced to confront it because of NIOSH

1 regulations. I mean where their professional  
2 judgment comes to bear in reviewing their own  
3 past work is important. It's what happened  
4 with Carol Berger. It's an -- I'm not saying  
5 it happened, I'm not saying it didn't happen at  
6 Battelle. What I'm saying is that prohibition  
7 in the ORAU contract does not, at least as I  
8 read it, appear to have been honored in  
9 substance. Maybe it was -- maybe some lawyer  
10 can lawyer their way out of it, and I'm sure  
11 there's plenty who can. But my question is is  
12 was it a violation of the contract, and legally  
13 are payment for services in a situation like  
14 this proper if in fact you're not performing  
15 under the terms of your contract, which is to  
16 produce documents at least as free from bias as  
17 your COI policy dictates.

18 Which that gets me to the enforcement issue,  
19 and I'm sorry to go on so long. But the -- one  
20 of the things that came to my attention was the  
21 correspondence between Dick Toohey and OCAS  
22 staff a while back which raised concerns about  
23 conflicts of interest for two site profiles,  
24 one involving Idaho and one involving Mound.  
25 And Dick asked well, what should we do about

1           it, and the answer that came back from OCAS was  
2           do nothing. And that left me with a very  
3           queasy feeling that it never really was treated  
4           very seriously. In fact, I remember when --  
5           when Larry Elliott came before this Board and  
6           asked for permission to waive COIs on site  
7           profiles, and the Board said no. But it looked  
8           to me then, going forward -- at least it's my  
9           observations reviewing some of these cases --  
10          that OCAS decided to honor the COI policy in  
11          the breach, that if you could get away with it,  
12          you'll look the other way. So when we brought  
13          the -- over a year ago, 15, 16 months ago now,  
14          we brought the Paducah conflict to the  
15          attention of NIOSH, no meaningful actions  
16          really got taken on it until Senator McConnell  
17          began to prod NIOSH to assess the conflict and  
18          the quality of the science here, and we're  
19          grateful to him for that, and we're grateful  
20          that Lew and Dr. Howard have now started to  
21          focus more critically on it. But it took a  
22          year to get this really crystallized under  
23          people's microscope again.

24          So the question is, what is or will NIOSH do  
25          differently this time with this revised policy

1           meaningfully.  If you slow up this long enough,  
2           you can get through the program and you don't  
3           have to deal with it.  That's kind of the fear  
4           we have.  And simply putting footnotes and  
5           annotations on pages, without dealing with the  
6           substance -- as we heard today -- might not cut  
7           it, either.  So who is going to be assigned to  
8           NIOSH to oversee both the NIOSH federal staff  
9           as well as the contractor's COIs -- who?  And  
10          who will audit and validate the disclosures?  
11          Well, we heard in New Mexico in October of 2002  
12          that there was going to be an audit conducted  
13          of conflict of interest compliance throughout  
14          the program within nine months of that meeting.  
15          It never happened.  So I just bring that to  
16          your attention from historical perspective.  
17          In addition, you know, as -- as was discussed  
18          this morning, the question arises about what to  
19          do if Board members had familial relationships.  
20          Lew's raised this, and I know Dr. Poston has  
21          this on his radar screen and has -- has flagged  
22          it accordingly and appropriately.  But should  
23          somebody, when you deliberate on a COI policy,  
24          who's going to be rendering a judgment on COI,  
25          if it affects their own family members, be

1 included in that COI discussion. I just flag  
2 that as a question because at least, you know,  
3 one of Dr. Poston's family members is -- is --  
4 is -- has done a very large number of dose  
5 reconstructions, as I've been told, and -- and  
6 he himself has two conflicts of interest sites,  
7 Argonne and X-10. And further it's been  
8 brought to my attention through certain dose  
9 reconstructions that have been brought to us at  
10 GAP that he's actually conducted dose  
11 reconstructions at sites where he's conflicted.  
12 And so the question then becomes how do you  
13 deal with this conflict, and is it so  
14 instrumental -- as it was with Sally Gadola  
15 when Sally was, you know, a member of the Board  
16 here -- for those of you who didn't know her, a  
17 nurse and a real asset. But you know, when  
18 ORAU won the contract, Sally was unfortunately  
19 required to leave, and -- and so I just -- I  
20 flag the question here because although I think  
21 Dr. Poston has a creditable reputation as an  
22 academic and as a member of the health physics  
23 society, I think the White House didn't  
24 necessarily do him a service by putting him in  
25 harm's way here, because the standards that are

1 expected of this program have really got to be  
2 high enough that nobody's worrying too much  
3 about family ties and financial relationships.  
4 Those are my thoughts (unintelligible)  
5 questions.

6 **DR. ZIEMER:** Thank you for those provocative  
7 comments, Richard. Let me ask if any other  
8 members of the public wish to address this  
9 issue of the conflict of interest?

10 If not, I -- Board members, any final comments  
11 on this? And Lew has set out the timetable,  
12 you've all heard it. I think it's time for our  
13 break and then we'll return for the rest of the  
14 session.

15 **DR. ROESSLER:** What time do we return?

16 **DR. ZIEMER:** Well, let's reconvene at 4:00.  
17 (Whereupon, a recess was taken from 3:38 p.m.  
18 to 4:14 p.m.)

19 **DR. ZIEMER:** We're ready to resume our  
20 deliberations. Just before we start the public  
21 comment period, we have a housekeeping issue,  
22 Board members.

23 **DR. WADE:** Okay, we'll get some more Board  
24 members.

25 **DR. ZIEMER:** The housekeeping issue simply has

1 to do with your calendars. There's been a  
2 calendar distributed which covers the period  
3 from September through May of '07. So Lew,  
4 tell us what we need to do here.

5 **DR. WADE:** Well, we have a -- as you recall, we  
6 have a call scheduled for August 8th. You have  
7 a Board meeting scheduled for September 19, 20  
8 and 21. I would suspect that we would have  
9 another face-to-face Board meeting early  
10 December, possibly another one late February.  
11 And in between those meetings we would schedule  
12 a call. So given the fact that, you know,  
13 February might spill into March, I would ask  
14 you to mark your dates of non-availability from  
15 October, November, December, January, February,  
16 March, and hopefully before we leave here on  
17 Friday we'll have two more Board meetings  
18 scheduled and two calls scheduled.

19 Last time I told you we would sched-- I would  
20 have the geographic location for the September  
21 meeting, and I will have that to you by Friday.  
22 It just seems to me prudent to see how some of  
23 these discussions go before we decide where to  
24 be. We're leaning towards Nevada.

25 **MR. PRESLEY:** Henry and I been talking about

1 Amchitka.

2 **DR. WADE:** That's early December.

3 **PUBLIC COMMENT**

4 **DR. ZIEMER:** Okay, let's proceed. We're now  
5 ready for our public comment session. I have a  
6 number of individuals who have signed up.  
7 First -- and let me see if they're actually  
8 here in the assembly -- Robert Steffan\* from  
9 Senator Obama's office, is Robert here at the  
10 moment? This basically is the Illinois  
11 delegation. If -- if they've already left, we  
12 can put them on tomorrow. Dan McKeel was here  
13 earlier, I -- is Dan here?

14 **UNIDENTIFIED:** (Off microphone)

15 (Unintelligible)

16 **DR. ZIEMER:** Oh, okay. I -- I think, and Dan  
17 is also representing the southern Illinois  
18 Steelworkers. John Ramspott with the Illinois  
19 group, so --

20 **UNIDENTIFIED:** (Off microphone)

21 (Unintelligible)

22 **DR. ZIEMER:** Okay. There is another public  
23 comment session tomorrow, and we can take them  
24 then. Then let's see about Jeff Walburn, is  
25 Jeff here? Okay. Jeff, welcome. You can use

1 the mike right there.

2 **MR. WALBURN:** How do you do, I'm Jeff Walburn.

3 I'm speaking today in behalf of the SPFPA,

4 Local 66, at Portsmouth. That is the security

5 union. It's the Security, Police and Fire

6 Professionals of America. I'm with my union

7 president, David Bowe. And the comments that I

8 have for you today is concerning our site

9 profile, and the fact that we feel there is

10 criminal activity on our site dealing with

11 falsification of our dose.

12 Now, DOE has been taken out of this system, and

13 rightly so. But many times they sit on the

14 very documents that you all seek to verify the

15 activity that was done on each site. Now I can

16 only speak for Portsmouth, but many places you

17 have no buildings and no documents. That is

18 not the case at Portsmouth.

19 Now you've given people 30 days, and I hear in

20 your process you had to pick some sort of date.

21 You got 30 days. If you can't come up with a

22 document -- I'm here to tell you today that

23 this 40-plus group of documents that I have

24 that I'm going to give you, and have a list

25 that I want entered into the record, it took me

1 12 years to get.

2 I was injured on the site. It took me 12 years  
3 to get these documents. It has been -- every  
4 kind of obstruction that you could think of has  
5 been thrown in my way by DOE, by the  
6 subcontractors. The latest letter that we have  
7 from Gregory Friedman, the IG, to Congresswoman  
8 Schmidt March 22nd of this year, is that there  
9 was no systematic changes of dose at  
10 Portsmouth; that my badge was the only one  
11 changed; and that everything was done  
12 administratively proper. Once you read these  
13 documents, gentlemen, you will know that Mr.  
14 Friedman is obstructing the -- the dose  
15 recreation. He is injuring further people that  
16 are ill there at Portsmouth. He is -- he is  
17 standing in the way of proper diagnosis of  
18 those individuals because he is not forthcoming  
19 with documents that he knows exist on that  
20 site.

21 Through a federal subpoena that I filed myself  
22 through my attorney, we got 5,000 documents  
23 that came out. But I met with Mr. Elliott and  
24 Mr. Zimmerman\* in Piketon in a meeting recently  
25 -- I believe it was November of last year.

1           They signed for documents that also Dr. Wade  
2           has gotten. These documents show systematic  
3           change of dose there at Portsmouth by the  
4           subcontractor. They also show that USEC, who  
5           was on the dual path to success -- that's what  
6           they called it -- who became the privatized  
7           group, sent a falsified document to the Senate,  
8           who was in pursuit of the dose there at -- at  
9           Portsmouth, with the cover letters and talking  
10          points -- they had two sets of talking points -  
11          - we have them -- one if I had the document,  
12          one if I did not have the document. Now this  
13          is the kind of things that are going on that  
14          you all should be suspect, but you don't have  
15          subpoena powers. So it sort of makes you a  
16          toothless tiger to roar at DOE, and you don't  
17          even have the subpoena powers to get the  
18          documents.

19          Now one thing that you do have is the right to  
20          file Freedom of Information Act documents. And  
21          if you would do so to Idaho Falls, as I have --  
22          I'm not going to give you this document; I'm  
23          asking you to do this -- you would find out  
24          that Lockheed Martin didn't even have their  
25          DOELAP certifications between '93 and '95, so

1           they were criminally out of certification at  
2           the site. They did not have DOELAP, which  
3           presents quite a problem for people who are  
4           injured in the process there, and then the  
5           documents are being covered up.  
6           This -- you take the IG report versus the POEF  
7           report, that is the report of Portsmouth.  
8           There are two. One has a February 9th date on  
9           it. That's the one that went to the Senate.  
10          It has about 12 pages in it. It was married,  
11          altered, blacked-out to look as though my badge  
12          was the only one changed. Then the full report  
13          which starts out -- the first two pages, it has  
14          February 16th on them, and then changed to  
15          February 9th thereafter, and in interviews  
16          tells how they systematically changed the  
17          badges, how they changed the dose, that -- when  
18          Mr. Friedman says they did everything  
19          administratively proper, the two individuals  
20          that came forward to testify or to say that  
21          they had done this deed there at Portsmouth  
22          were systematically crucified, in print, ad  
23          hominem attacks on their sexuality, on their --  
24          the heritage of their children and the fact  
25          that they may even want to kill themself (sic),

1 and it's in the POEF report, 150-96-0008. Read  
2 it. I've provided a key for you. That  
3 document was on the site when Vernon McDougall  
4 came to do the site profile. He did not get  
5 that document. He didn't get the other 5,000  
6 documents. He didn't get the documents that  
7 would show that moderators was blocking the  
8 casts\*, and we had scenarios for deep tissue  
9 dose.

10 Now, I hear dogma and I hear rhetoric. I even  
11 heard from the Justice Department whenever they  
12 were investigating, said you didn't get any  
13 deep dose or deep tissue dose there. I said  
14 really, where you getting that from? Said they  
15 were getting it from DOE. But we've got  
16 scenarios that there were, so the point I'm  
17 making -- if you use data in dose  
18 reconstruction that was criminally altered, I  
19 don't think there's a scientific community in  
20 the world that would warrant that. And -- and  
21 you say you've added this other realm that you  
22 say when you got a problem, you -- that's a go-  
23 to. It should be call the cops, call the  
24 authorities, call the Senate. Because we are  
25 asking for a Senate investigation on this

1 matter at Portsmouth. I can't speak for  
2 anywhere else, but I can speak for Portsmouth.  
3 I'd like to go through this and see if there's  
4 things that I have left out, but when we met  
5 with Mr. Elliott and Mr. (sic) Neton, his  
6 comments -- Mr. Elliott -- was that that was  
7 conspiracy. You know, when you got one company  
8 do it and the other one covering it up, that's  
9 conspiracy. Dr. Neton says well, of course the  
10 IH and your procedures, you post that first  
11 dose, then you do your changes, but you always  
12 leave that posted dose. At our site we have a  
13 letter from Mr. Paul Bransford that suggests,  
14 under Goodyear, that he was ordered to destroy  
15 the tape backups. Now if you look at that as a  
16 single point document, it means nothing. But  
17 if you put it with the other 40 and watch it  
18 run, it means plenty.

19 And I don't have any doubt that any of you  
20 gentlemen are smart enough to read these  
21 documents and see the ramifications and  
22 implications. But that's what we live with at  
23 our site. We're being turned down  
24 systematically.

25 Now I saw -- and I appreciate all those bar

1 graphs, but they don't answer me one question  
2 for how I'm being done at Portsmouth. I want  
3 to know how I'm being done for Portsmouth, and  
4 that's -- that's the performance that I'm most  
5 interested in. Not that I don't care about the  
6 rest of the people in the country and their  
7 plight. I do. And I think that if they see  
8 this documentation which I'm going to give you  
9 and you're not going to -- I hope you're not  
10 going to suppress it, because they need to see  
11 it, because the methods that DOE has used and  
12 the subcontractors have used at these sites  
13 needs to be called into question, and it makes  
14 you very -- your very program suspect if you  
15 use that type of data.

16 But my -- my question is, we've had -- I can  
17 speak to -- to both parts, Part B, Part E on my  
18 part. The IG of DOE, along with Patricia  
19 Warren, who has this report -- they have the  
20 report. Jill Siegel\*, who's now Under  
21 Secretary of Energy, when she was legal counsel  
22 for DOE, refused to give this report to  
23 Congressman Portman, who was in the pursuit of  
24 answers on sick workers. What right did she  
25 have to refuse her boss, a Congressman, that

1 report? DOE had that report. She -- they had  
2 it through an investigation that Patricia  
3 Warren, who worked for the IG, had. The IG  
4 asked for the reports, and he says that he sees  
5 nothing. But -- so I don't think that you all  
6 are part of the problem, and I think there's  
7 certainly a responsibility to report to the  
8 authorities that we're suggesting that these  
9 facts do exist, and we have supporting  
10 documents. We don't have a single-point  
11 document. We have a body of evidence.  
12 If health hazard evaluation is the limit of  
13 your scope, and if there's evidence of criminal  
14 wrongdoing, you know, when will you go to the  
15 authorities? Part E -- in my part, Friedman  
16 says well, these badges weren't of a dangerous  
17 level, not to worry about it, they were  
18 changed. That was the third thing they did.  
19 They changed the work product document where I  
20 was injured. DOE was lied to. They've never -  
21 - they've never completed the investigation.  
22 They have the evidence that the IG has refused  
23 to see it. They've since rehired the  
24 individual that perpetrated it. They're  
25 promoting him through the system.

1           Then they changed my medical records. I have a  
2           copy of them. So they changed the work product  
3           document when I was injured. They changed my  
4           medical records, then went into Workers Comp  
5           and argued that, because they'd wiped it out or  
6           put a semicolon and added a bunch of things,  
7           that I didn't even have inhalation injury. And  
8           since they'd hid the work product document so  
9           well, no one was ever going to find out. So  
10          two union safety reps come with NIOSH  
11          investigators, Aaron Holtz\* and  
12          (unintelligible), and they happened on this  
13          hidden document and everyone reads it, and in  
14          your health hazard evaluation you mention they  
15          were doing this work, but you don't tell how  
16          you come by the document. You don't tell that  
17          there was surreptitiously-produced documents  
18          that were hidden, you don't come by it. So  
19          here the story goes out through DOE that no  
20          work was being done. They intimidate the  
21          hourly workers at the site, and they won't even  
22          come forward -- I'm laying in the hospital for  
23          11 days with a chemical uptake and possible  
24          rad, and the other workers won't come forward  
25          because they're afraid of their job, they'll be

1           fired if they tell the truth. Ask them.  
2           Herman Potter's here today. He was a -- he was  
3           the safety rep that helped find that document.  
4           But also that morning an argon gammagraph went  
5           off. Someone's suggesting that the argon  
6           gammagraphs at our site didn't work. I say  
7           they do work. But if they -- if they -- the  
8           scenario is is that they spike a  
9           (unintelligible) and if the cast didn't go off,  
10          it just may be an anomaly. But then we have  
11          the documentation that you all have signed for,  
12          and I -- I trust that Larry Elliott has shared  
13          that documentation with you all that it may not  
14          have been an anomaly.  
15          Why is DOE setting on site profile documents  
16          that will determine how people got sick and why  
17          they are sick and why they may be being  
18          misdiagnosed? I realize that you don't have  
19          the authority and powers to hold hearings, but  
20          you can request that, and I think that many  
21          times you've -- you talk about that you had  
22          Presidential appointments to these jobs here.  
23          Would the President listen to you if you asked  
24          for hearings on this matter at Portsmouth, when  
25          it may cast a reflection and shadow against the

1 entire program? If documents exist that are  
2 not produced, is this program a sham? DOE  
3 knows they would be held accountable if these  
4 documents are produced.

5 You can proceed if you wish, but we wish to go  
6 on record calling for a Senate investigation of  
7 criminal activity at Portsmouth. NIOSH needs  
8 subpoena powers. Without it, once again,  
9 they're a toothless tiger. You can't get to  
10 the bottom of the truth. No one fears you.  
11 You come and knock on the door and they say go  
12 away, we're not home.

13 I -- I think I've said enough here, but I'm --  
14 I'm asking you at Portsmouth, start at Idaho  
15 Falls. That's Freedom of Information Act, you  
16 don't even need -- you don't even need a  
17 subpoena to get that information. And I  
18 guarantee you, you will find where I found --  
19 they said they went to NVLAP, but they were so  
20 criminally out of compliance with DOELAP, they  
21 let their -- their -- they let their license  
22 lapse, and then they lied going in the door to  
23 NVLAP, and that's right in the report.

24 I'm going to give you this set of documents  
25 today. Like I said, there's about 40-plus

1 documents. There is a list of the documents  
2 there. The top one would be the -- the letter  
3 from Dave Bowe that went to Mr. -- or Dr. Wade,  
4 clear back in October. And John Howard, MD  
5 answered that letter, but we've met with Larry  
6 Elliott -- one -- one thing that stuck in my  
7 mind, they said -- someone said why -- why, we  
8 even gave you more dose than you're supposed to  
9 have. And I said -- some of us are old enough  
10 to remember Foghorn Leghorn -- I don't accept  
11 comments like that, that I got more dose than I  
12 was supposed to have, when the dose I was  
13 supposed to have -- I know why I didn't get it,  
14 and I want someone to get to the bottom of it.  
15 Thank you.

16 **DR. ZIEMER:** Thank you very much, Jeff. Yeah.  
17 These -- Jeff, these documents will, with your  
18 permission, all end up on our web site under  
19 the Portsmouth document list, so they will be  
20 public documents at that point.

21 Now let me check again to see if Robert Steffan  
22 -- has Robert come into the assembly? Or -- or  
23 Dan McKeel? Or John Ramspot?

24 (No responses)

25 Okay, apparently not. So I will -- we'll plan

1 to reschedule them for the public session then  
2 tomorrow. I assume that -- now -- you know,  
3 sometimes -- sometimes people sign this  
4 thinking they're signing the registration  
5 sheet, but -- but these individuals have  
6 indicated the amount of time they wish to  
7 speak, so I think they knew what they were  
8 doing. So I'll -- I'll assume that they do  
9 wish to address the assembly.

10 I suppose the Board members won't object to  
11 finishing a little early.

12 **DR. WADE:** You might see if there's anybody  
13 else who wants to.

14 **DR. ZIEMER:** I -- we -- yes, we can open the  
15 floor, if there's anyone else who wishes to  
16 make public comment that didn't have a chance  
17 to -- to sign up for that, we can certainly  
18 accommodate.

19 (No responses)

20 If not, we'll recess till tomorrow morning.

21 Thank you -- 8:30.

22 (Whereupon, the day's business was concluded at  
23 4:35 p.m.)

24

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**CERTIFICATE OF COURT REPORTER****STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of June 14, 2006; and it is a true and accurate transcript of the testimony captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 8th day of July, 2006.

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**STEVEN RAY GREEN, CCR****CERTIFIED MERIT COURT REPORTER****CERTIFICATE NUMBER: A-2102**