

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

WORKING GROUP MEETING

ADVISORY BOARD ON

RADIATION AND WORKER HEALTH

NON-QUALIFYING SEC PETITIONS

The verbatim transcript of the Working
Group Meeting of the Advisory Board on Radiation and
Worker Health held in NIOSH, Cincinnati, Ohio on
November 9, 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

(9:10 a.m.)

1
2WELCOME AND OPENING COMMENTSDR. LEWIS WADE, DFO3
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DR. WADE: This is the Working Group that's looking at the issue of SEC petitions that did not qualify, and the Committee is made up of Dr. Poston as Chair -- Dr. Lockey as Chair, Dr. Melius, Wanda Munn, and Gen Roessler with Brad Clawson as an alternate. Brad is not with us, chose not to be with us as an alternate, so I'll turn it over.

11
12

Larry, do you have some introductory comments you want to make?

13

INTRODUCTION TO SEC PETITIONS14
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MR. ELLIOTT: Yes. I'd like to welcome the Working Group members to Cincinnati and here to Taft Labs. We're pleased to have you. We have prepared a day for you of -- and certainly as I outline it if you want to change this in any way we'll accommodate that. But what we had prepared for you today would

1 be a brief presentation on the procedure,
2 procedures which you will be given a copy of -
3 - I have a copy here on the table of
4 processing petitions as they are received here
5 in the office.

6 To give you an understanding of that
7 procedure or that process, and then we would
8 also have a -- there was an internal
9 assessment that I asked for on this particular
10 process at the point of disqualifying
11 petitions, and we'll give you a five, ten
12 minute brief on that assessment. That'll also
13 be on the table, provided for you copies to
14 take home or whatever.

15 And then we will have arranged by -- I
16 guess there's what, 25 or so?

17 **MR. RUTHERFORD:** They're all there lined up
18 starting from the left to right, number one
19 all the way to -- and their associated
20 petition number is on the outside of the
21 binders as well as on the inside of the
22 binders, and they're broken up into receipt
23 letters and all the documentation that was
24 supporting the petition.

25 **DR. WADE:** And there are about 25?

1 **MR. RUTHERFORD:** Yeah, there's roughly 25 to
2 30. I can't remember it now, somewhere in
3 that range. I could tell you exactly --

4 **MR. ELLIOTT:** That's okay. So there you see
5 them. You see the volume of information that
6 you have before you, and we thought you, you
7 know, we would stand at the ready as you went
8 through it to examine it and ask questions of
9 us. Bomber would be here or one of us would
10 be in the room additionally if necessary.
11 I'll be bouncing in and out; I've got several
12 things going on, but that's kind of what we
13 had planned. If that doesn't meet your
14 desires or intentions let us know. We have a
15 brief presentation on process, brief
16 presentation on the assessment that was done
17 on the process and what its findings and
18 conclusions were; answer any questions at that
19 point, and you know, have at it.

20 And this with the cautionary note that
21 what you're about to delve into has Privacy
22 Act information in it. And this discussion
23 you're about to have, you can get down to the
24 details of petitioners and their names and who
25 they are and what they're asking for. I'd ask

1 Dave Sundin to speak a little bit to you about
2 the Privacy Act and why we find ourselves
3 protecting these individuals' identity and how
4 we accommodate them in that regard.

5 **DR. WADE:** One clarifying question: that's
6 the entire universe then of denied -- of non-
7 qualified petitions?

8 **MR. ELLIOTT:** Yes.

9 **MR. RUTHERFORD:** Well, there are actually
10 four petitions that are under administrative
11 review that have not completed the whole
12 process, and we -- since they were still in
13 the process and have not been closed we did
14 not include those at this.

15 **MR. SUNDIN:** Just to further elaborate, if
16 the result of the administrative review is
17 still that they're denied petition then we
18 would obviously funnel those to you as well.

19 **DR. LOCKEY:** What's the timeframe for those,
20 or what timeframe is that?

21 **MR. RUTHERFORD:** That's from the beginning
22 of -- actually, before that. The first five
23 petitions, which you won't see numbers on the
24 outside of the binders on the left, they're
25 actually on there. That's numbers one through

1 five. Those were actually petitions that were
2 received prior to the rule being promulgated
3 and we --

4 **MR. ELLIOTT:** They're letters of interest I
5 would say.

6 **MR. RUTHERFORD:** Yeah, exactly.

7 **MR. ELLIOTT:** We didn't know what they
8 needed to create to meet a petition but they
9 were letters.

10 **DR. MELIUS:** Who actually reviews the
11 petitions?

12 **MR. RUTHERFORD:** Who's the body? I do as, I
13 review it from a health/physics, you know, as
14 a health physicist looking at the petition
15 base provided. ORAU reviews it on their side.
16 They actually review it first, you know, the
17 petition is in and it's uploaded.

18 They review it. We send out a
19 petition receipt letter to the petitioner that
20 we've received their petition and ORAU reviews
21 it, reviews their basis. They develop any
22 issues, deficiencies, clarifications that are
23 with the petition and put together a
24 consultation call to call the petitioners and
25 discuss their petition with them.

1 They go over those deficiencies,
2 clarifications. You know, we are reviewing
3 this whole process the whole time, OCAS, and
4 then once the deficiencies are identified to
5 the petitioner verbally and through a letter
6 then they're given a 30-day period to respond
7 to those deficiencies.

8 And if they, you know, within that 30-
9 day period if they do not respond to those
10 deficiencies we go to a proposed finding,
11 meaning that the petition will not qualify
12 based on these deficiencies, and then they're
13 given another 30 days.

14 Previously, that was a seven-day
15 period. Correct me if I'm wrong, Dave. That
16 was a seven-day period and based on
17 recommendations by the Board, and which is in
18 the new proposed final rule change we went to
19 a 30 day, an additional 30 day. We
20 implemented that actually before, you know,
21 even though the rule was not finalized, we put
22 that process in place actually after the Board
23 recommendation in Washington, I think at the
24 Washington meeting, so we've actually
25 implemented that. So -- and then there's

1 professional judgments that are developed --

2 **DR. MELIUS:** No, I was just trying to see
3 and figure who and which individuals are
4 involved. That's all.

5 **MR. RUTHERFORD:** Okay.

6 **MS. MUNN:** He wants to know where to point
7 the finger.

8 **MR. RUTHERFORD:** Well, Dave Sundin.

9 **MR. ELLIOTT:** As the rule requires, the
10 petitions are sent into the office and we
11 receive those. Dave usually gets eyes on them
12 first or Bomber may get his eyes on them
13 first. So they know what's coming in. Then
14 they're put into a database system that we've
15 developed. And that is then shown to the
16 right folks over at ORAU, who are asked to do
17 what Bomber said.

18 Look at this. Does it meet the
19 specifications; does it meet the criteria for
20 a petition. What are the deficiencies
21 otherwise? Create a list of those so that
22 that can serve as a talking-point paper for
23 consultations with the petitioner on a
24 telephone call.

25 Then that is documented in a letter as

1 to what was agreed upon in that conversation.
2 You'll see all of that in there. And then the
3 professional judgment document that Bomber's
4 talking about is kind of the end of the trail
5 where it says this did not qualify for these
6 reasons.

7 **MS. MUNN:** Well, for goodness sake.

8 **MR. RUTHERFORD:** We said you weren't going
9 to be here. Wanda said you weren't going to
10 be here.

11 **MS. MUNN:** I said you weren't going to be
12 here.

13 **MR. CLAWSON:** Yeah, I made it.

14 **MR. RUTHERFORD:** Well, Larry, do you want to
15 start and go through your preliminary
16 presentation?

17 **MR. ELLIOTT:** Sure. That's -- Dave's going
18 to do that I believe.

19 **MR. RUTHERFORD:** Do you want to start off
20 with the Privacy Act comment or not? Are you
21 going to cover that in your --

22 **MR. ELLIOTT:** You're going to have a lot of
23 paper today, so anything you don't want to
24 carry away with you just give us your stack
25 and we'll mail it to you or FedEx it to you,

1 okay? And if you want a copy of any of these
2 that you see today you are allowed to have a
3 copy of those. You're under -- protected by
4 the Privacy Act but you're allowed to have
5 them.

6 PRIVACY ACT CONSIDERATIONS

7 **MR. SUNDIN:** I think the Privacy Act is
8 fairly simple. On advice of OGC we protect
9 the identity of petitioners as private
10 information. There are Social Security
11 numbers as you'll see on some of the forms as
12 well. We have no way of predicting what a
13 person's expectation might be with respect to
14 privacy when they submit petition.

15 Our system notice and our Privacy Act
16 advisement on the forms themselves make it
17 clear that we will only share their
18 information with a limited set of entities and
19 the general public is not one of the routine
20 uses.

21 Certainly if someone shows up at a
22 Board meeting and says I'm the petitioner then
23 they've essentially waived their right to
24 privacy as the petitioner but not with respect
25 to all the information they may have submitted

1 in the petition. So that's the short and
2 sweet of that.

3 SEC INFO

4 As Larry indicated, we're sort of here
5 to provide you with information that we hope
6 will make your job as easy as possible. I
7 like to start with first principles usually
8 and to that end I've extracted the specific
9 section in the law which talks about adding
10 SEC classes. I mean, that's where this whole
11 process gets started.

12 And most of you probably heard
13 presentations on the SEC by Ted Katz and
14 others. Certainly those members of the Board
15 that have been with -- on the Board for awhile
16 have heard several presentations about the
17 SEC. Others, I'm sure, are coming up to speed
18 and probably have a general sense of what the
19 process is.

20 But the law makes it pretty clear that
21 in addition to the statutorily-defined SECs,
22 the gaseous diffusion plants and Amchitka
23 explosion sites, there's this process to add
24 classes of employees to the SEC if two
25 criteria are met. And if you look at the

1 indented portion of that first page those are
2 the two criteria that Congress said must be
3 established before a class can be added.

4 So there has to be a finding that it's
5 not feasible to estimate doses with sufficient
6 accuracy and there's a reasonable likelihood
7 that those doses that we can't estimate may
8 have endangered their health. So there's your
9 one page authority.

10 Out of law comes regulations, and I've
11 given you a copy of the regulations that we've
12 promulgated in '04 to announce to the world
13 our procedures for adding classes to the SEC.
14 As Bomber mentioned, we had actually some --
15 arguably some petitions in September of '02 so
16 we kept them on hand until such time as we
17 developed a rule, and then we sent those
18 people a letter saying here's the rule, here's
19 the forms. If you want us to evaluate
20 whatever it is that you sent in let us know
21 and we'll do so. I think two of those people
22 chose that option so you'll find them later on
23 in the process.

24 **DR. ROESSLER:** So those first five will be
25 those letters of intent but then we will see

1 two of those five in the --

2 **MR. SUNDIN:** They were assigned another SEC
3 number when they exercised their option to
4 stand on what they had submitted earlier. The
5 rule has been amended once so far, and so
6 that's the second Federal Register
7 announcement. This is the main rule, and the
8 second piece behind that is the amendment that
9 went in on December '05, which basically
10 implemented some changes that were required
11 based on amendments to the Act itself and
12 Defense Authorization Bill, Defense
13 Authorization Act of '04 or '05, sorry. Dealt
14 primarily with timeframes and time tables.

15 I know that rule reading is not
16 anyone's favorite activity although I think
17 it's important to have these available to you
18 because there's a certain -- there's a few key
19 sections of the rule which I think you'll need
20 to focus on. I mean, you're free to approach
21 this any way you want, but there are some -- a
22 few key sections that we have to pay attention
23 to as we're evaluating a petition.

24 But I did -- somewhere along the line
25 we've worked up a four-page narrative

1 description which is the next thing you'll
2 find in the package. It attempts to translate
3 what the rule says in terms of process into a
4 more narrative format. So it's a -- I
5 believe, a fairly -- a faithful representation
6 of what the rule says in terms of process.

7 And then next you'll find a handout, a
8 PowerPoint presentation if you will, that I
9 extracted from a recent presentation that Ted
10 has put together, and I thought I'd just sort
11 of go through this quickly and then get out of
12 your way here and let Bomber talk about a
13 couple of other pieces of background
14 information that he has handed you.

15 Again, just to outline what I think --
16 what we've given you and I think what the key
17 pieces of material that might inform your work
18 or make it more efficient, we've described the
19 specific rule sections that outline what basis
20 the petitioner must provide in order to
21 qualify. So it's primarily Section 83.9 in
22 the rule, although 83.7 through 9 and also
23 83.11 talk about what the petitioner must
24 bring to the table in order to satisfy the
25 basis. So you kind of want to, I think, brief

1 yourself up on those sections or at least have
2 them flagged.

3 Obviously, the SEC petition documents
4 are something you're going to want to get into
5 and review and that's why we've got the
6 binders set up for you. And in particular the
7 key document which represents OCAS' basis for
8 their finding is in those documents, should be
9 in all those documents. And it's titled, I
10 believe most recently now, a professional
11 judgment document. You'll basically, I think,
12 be able to spot it as a document which goes
13 through every document that the petitioner
14 brought us and makes a finding as to whether
15 or not it meets the basis.

16 I want to talk just a little bit about
17 what it means, what a basis is. What -- and
18 these are outlined in the rule and also sort
19 of clarified on our petition forms themselves.
20 As a matter of fact we could make available
21 the forms, but the forms are laid out to make
22 it, hopefully, easy for someone to check what
23 basis it is they're shooting for and then
24 describe narratively or with attached
25 documents what evidence they're bringing to

1 establish that basis or attempt to establish
2 that basis.

3 Briefly, basis number one or one of
4 the bases is documents or statements that
5 indicate that exposures to members of the
6 class were not monitored either through
7 personal or area monitoring. The gist is
8 there was no monitoring, personal or area.

9 A second possible basis is that if
10 there were monitoring records that they've
11 been lost, falsified, or destroyed. In other
12 words there's reason to distrust the records
13 that exist.

14 **DR. LOCKEY:** Let me ask you a question: what
15 do you mean by statements?

16 **MR. SUNDIN:** Well, a statement could be a
17 simple affidavit from a petitioner or other
18 party, other knowledgeable party. We ask in
19 general that those statements be notarized so
20 that we can be sure that the person that signs
21 it is who they say they are. But that's a
22 statement, that's how we take a statement.
23 It's an affidavit.

24 **MS. MUNN:** It doesn't require any
25 substantiation other than the statement --

1 **MR. SUNDIN:** No, but as you'll see later we
2 have a duty to evaluate the adequacy and
3 credibility of the statement.

4 **MS. MUNN:** Right.

5 **MR. SUNDIN:** So a statement does not do
6 anything more than register an assertion. In
7 terms of how we then deal with that assertion
8 it's a process of essentially weighing the
9 evidence against other information that we
10 might have available.

11 **MS. MUNN:** Thank you.

12 **MR. SUNDIN:** Another way a petitioner can --
13 another thing that a petitioner can bring to
14 bear is a report from a dosimetry expert that
15 documents the limitations of existing records,
16 and in particular those records that are
17 relevant to the petition as opposed to some
18 other records. And that expert's basis for
19 believing that these limitations would prevent
20 adequate dose reconstruction, prevent dose
21 reconstruction.

22 A fourth kind of basis would be a
23 government report or a journal article that
24 identifies a lack of records relevant to that
25 petition. And then because we also look to

1 incidents in the context of health
2 endangerment determinations we also -- and I
3 think probably you're familiar with this, but
4 absent some evidence of an incident, that is
5 something like a criticality episode, event,
6 or a failure of radiation controls that leads
7 to extremely high levels, the health
8 endangerment provision is essentially devolves
9 to the statutory one, 250-day dwell time at
10 the facility.

11 So if they're claiming that there's an
12 incident as the basis of health endangerment
13 then we need them to describe what that
14 incident was to us, what they're claiming.

15 **DR. LOCKEY:** How does the 250 day fall under
16 that?

17 **MR. SUNDIN:** Well, most petitioners -- well,
18 I don't think we've -- we have not yet come
19 out with a petition finding that there was an
20 incident. Two hundred fifty days is -- it's
21 either a presence at an incident or 250 days,
22 workdays, at a plant to meet the health
23 endangerment criteria, the second prong of the
24 statutory test.

25 We recognize that Congress -- I guess

1 we were discerning the guidance from Congress
2 with respect to the 250 days based on their
3 previous work with at least the gaseous
4 diffusion plants. It wasn't a requirement for
5 the explosions obviously at Amchitka because
6 it was a different scenario. So that's what
7 we picked up in our rule, either presence at
8 an incident, and we described it as best we
9 could, or 250 days, workdays, at a facility
10 during the period of time that makes up the
11 class definition.

12 **MR. KATZ (by telephone):** This Dave?

13 **MR. SUNDIN:** Yeah.

14 **MR. KATZ (by telephone):** Can I chime in
15 here?

16 **MR. SUNDIN:** Sure, at any time.

17 **MR. KATZ (by telephone):** This is Katz, Ted
18 Katz. Just to clarify though, this petition
19 is based, it's related to incidents. This
20 wasn't intended to capture the issue of
21 whether or not there was a discrete incident
22 as defined in the law that would relate to
23 health endangerment. This was simply a
24 recognition that there may be circumstances
25 where there was an out-of-normal incident that

1 occurred that might not have been monitored
2 and that regardless of whether it was
3 extremely high exposure or not, that that
4 might be a basis for saying that the dose
5 couldn't be reconstructed.

6 So this basis, again, it's just about
7 the plain fact that there could have been
8 incidents that weren't monitored, you know,
9 more likely than routine processes.

10 **MR. SUNDIN:** You're absolutely right, Ted,
11 and I sort of was blurring the distinction on
12 health endangerment versus this as a separate
13 basis for unmonitored exposures.

14 **MR. ELLIOTT:** This basis -- all of these
15 bases are found in Section 83.9 out of your
16 rule. I would add at this point there's a
17 nice little table there that I always point
18 out when we have workshops or workers or next
19 week we're going to have DOL folks in here,
20 and I point this table out to them as well.
21 If you look at the right-hand side of that
22 table, B is what we're talking about.

23 These are the things that if a person
24 lists in their petition, the petition will
25 qualify. I say that because if you read

1 through the 83.9 Section, you will see those
2 words, they believe. To me that -- I
3 translate that to mean that that's their
4 belief and we owe them an explanation as to
5 why, you know, their belief may not be
6 accurate if that's the case or why we agree
7 with their belief.

8 **DR. ROESSLER:** Are you on page 30782?

9 **MR. ELLIOTT:** Yes.

10 **DR. ROESSLER:** I just want to make sure I'm
11 on the right page.

12 **MR. ELLIOTT:** So if you look at I think
13 that's a nice little table. I ask Lori Ishak
14 to point that out to petitioners as the SEC
15 Counsel, Counselor and say if you hit each one
16 of these things your petition is going to
17 qualify and we owe you a response.

18 **MR. SUNDIN:** I mentioned earlier that OCAS
19 is expected to judge the credibility and
20 adequacy of information that's provided. So
21 that's just the point of the next slide on
22 this handout is that -- and I'm referencing
23 the code section where that's laid out. This
24 provides a little bit more substance on the
25 words credibility and adequacy. It's sort of

1 the plain meaning of those words.

2 Credibility, is it believable in light of
3 other relevant information. And then
4 adequacy, is it in and of itself sufficient to
5 make the case that the petitioner's trying to
6 make.

7 The following next two slides are just
8 a series of potential questions that we sort
9 of find ourselves asking or ruminating about
10 as we look at a petition. They might or might
11 not provide guidance for your job, but I
12 thought I'd throw them in there just to sort
13 of suggest the nature of our inquiry or
14 evaluation of petition materials.

15 Credible and adequate evidences is
16 one, and specifically have the people been
17 exposed. I mean that's sort of a threshold
18 question. Were there radiation exposures and
19 we have had petitions involving non-covered
20 facilities; for example, facilities that are
21 not covered under this Act or portions of
22 facilities that we cannot figure out. We
23 cannot determine that there was any radiologic
24 exposure. So that sort of threshold that we
25 sometimes have to struggle with, not a lot but

1 occasionally. If there was a credible
2 exposure scenario and the petitioner has
3 established that, then we have to go through
4 the steps.

5 **DR. LOCKEY:** Can I ask you a question: do
6 you have a facility that's covered and you
7 said but the petitioner worked in an area
8 where you don't have the information or --

9 **MR. SUNDIN:** No, where there were no
10 exposures.

11 **DR. LOCKEY:** Where you have documented no
12 exposures?

13 **MR. SUNDIN:** Yeah.

14 **DR. LOCKEY:** So it's not an unknowable. We
15 have documented no exposures?

16 **MR. SUNDIN:** Right. Well, the primary sites
17 we compiled site profile documents which we
18 look at closely, obviously when a petition
19 comes in and in some cases there are strictly
20 administrative buildings for example that
21 there's no evidence there was any source
22 material or an exposure pathway that we can
23 establish.

24 So if there is an exposure scenario
25 then we go through the steps of figuring out

1 whether or not the evidence suggests that
2 there was monitoring data missing, if the
3 workers were not monitored. If the workers
4 were monitored then we have to determine
5 whether that monitoring program adequately
6 covered the class, covered the radionuclide
7 that the petitioner has talked about,
8 monitored the most highly exposed workers
9 within each -- or a credible sampling scheme
10 or monitoring scheme.

11 If the monitoring records seem to
12 exist, are they available to OCAS? If they
13 are available to us and the petitioner is
14 raising the basis about the credibility that
15 is lost, falsified, or destroyed then has the
16 petitioner established that? If the
17 petitioner has not established that have they
18 provided evidence that would call into
19 question our judgment that those monitoring
20 records adequately cover the class?

21 So again, that's sort of a snapshot of
22 some of the discussion that we go through in
23 looking at the evidence the petitioner's
24 brought to bear. If you have questions on
25 this before Bomber sort of provides additional

1 information I'd be happy to try and answer.

2 **DR. ROESSLER:** I have a question, a very
3 basic one. The facilities not covered under
4 the Act, and I'm trying to read in here how
5 that determination is made.

6 Is that a Department of Energy
7 facility or Atomic Weapons employer facility?
8 Is that an easy thing to figure out?

9 **MR. ELLIOTT:** It's posted on DOE's website.
10 You can go from our website to that under
11 related links and you can pull up the whole
12 list and see the facility, all the facilities
13 that are covered and their covered definition.

14 **DR. ROESSLER:** And everybody agrees with
15 that list?

16 **MR. ELLIOTT:** I don't know about that.

17 **DR. ROESSLER:** But it's covered in the Act,
18 so it --

19 **MR. ELLIOTT:** In the Act it's listed out as
20 DOE's responsibility to provide a list of
21 covered facilities. And then there's been
22 amendments to that where DOL has some
23 responsibilities added now to essentially make
24 determination on covered period, I believe.

25 **MS. MUNN:** We have what, 230, 200 and what?

1 **MR. RUTHERFORD:** Sites?

2 **MS. MUNN:** Yeah.

3 **MR. RUTHERFORD:** More than that.

4 **MR. ELLIOTT:** Three hundred and -- there
5 were 320 something; something like that. We
6 had claims for over 140 of the sites.

7 **MS. MUNN:** Right.

8 **DR. MELIUS:** It's hard in some of them
9 because it's mixed use and in some of these
10 smaller facilities it's --

11 **MR. CLAWSON:** This is my question was when
12 you're saying a facility, are you taking those
13 as a whole? Let's take for example Rocky
14 Flats. You said some administrative buildings
15 weren't or will be covered, whatever, but then
16 they took and stored plutonium right next to
17 them and they weren't monitored. You know,
18 that's the thing that I'm getting at is are we
19 dicing up some of these facilities like Rocky
20 Flats or, say, Hanford or any of these and
21 saying, well, these buildings wouldn't have
22 anything with that. So if you weren't there -

23 -

24 **MR. SUNDIN:** Well, it's clear that the
25 entire Rocky Flats facility's covered so we

1 would only get to that question if we believed
2 that the class being recommended for addition
3 did not have a plausible exposure scenario.
4 And what you mentioned seems to me -- I don't
5 -- you know, I'd have to have more information
6 but just because they were in an
7 administrative building if there was source
8 material in sufficient proximity to generate
9 exposures to those administrative personnel
10 then I think we would have met the basis or,
11 you know, crossed that threshold with a
12 plausible exposure scenario.

13 **MR. CLAWSON:** The reason I brought this up
14 is at Denver that came out, and I just wanted
15 to make sure that we were looking at all
16 avenues for that because that stuff does move.

17 **MR. SUNDIN:** I'm not sort of ruling on --

18 **MR. CLAWSON:** I'm trying to get the sense of
19 how this is working, and I just want to make
20 sure that we're clear the way we look at
21 things.

22 **MR. RUTHERFORD:** I think if you look at each
23 case individually and, you know, with the
24 information provided. If they provided that
25 example that you just mentioned, if I was

1 reviewing that, I would, you know, one, I
2 would look at site profile information or
3 anything that I could see that went into --
4 that identified that.

5 I would look, okay, well, was there
6 monitoring for those individuals that were in
7 that area. If there was no monitoring for
8 those individuals, and I couldn't find
9 anything to refute what she had said that
10 would clearly qualify, you know, that was a
11 good example of administrative people that
12 were potentially exposed.

13 **DR. MELIUS:** More than just agreements that
14 I -- the nuclear Navy's not covered and
15 commercial processing and where you have mixed
16 -- sort of mixed facilities have done it
17 either different points in time or different
18 parts of the same facility and people working
19 in both and usually lousy records. It's been
20 a battle on some of that.

21 **DR. WADE:** Remember the list changes because
22 we had the experience where we qualified a
23 petition on National Bureau of Standards. We
24 brought a positive recommendation to the
25 Board. The Board said yes, and then DOE de-

1 listed the facility, and then we're done.

2 **DR. ROESSLER:** So as we go through these
3 notebooks of the 25 or 30, it seems like the
4 first thing we'd need to ask was this facility
5 covered under the Act.

6 **MR. RUTERHFORD:** And actually I've got some
7 information here that's going to probably help
8 you a little bit on that and I'll give this to
9 you.

10 **DR. LOCKEY:** Before we go there, if a
11 petitioner files and it's a covered facility
12 and you have a site profile on that facility
13 that seems like that'd be relatively straight-
14 forward. But what if you don't have a site
15 profile of a facility and the petitioner's
16 claiming something and you have to dig for
17 information on that site. How is that
18 handled?

19 **MR. SUNDIN:** That's not all that unusual. I
20 mean we do have information on facilities that
21 we've obtained, even where facilities have not
22 compiled a site profile. I mean, our data
23 capture efforts have turned up data on quite a
24 few facilities. And so -- and we don't
25 develop site profiles for all facilities,

1 primarily those that have a large amount of
2 claims.

3 But in that case we would have to go
4 to what we call our site research database and
5 see what information we've uncovered on that
6 facility that we didn't develop a site profile
7 on but which still may be relevant to the
8 issues raised in the petition.

9 **MR. RUTHERFORD:** And an example is if we
10 have a site that somebody's petitioned and
11 said this class were not monitored and we go
12 into our database and we don't find records
13 that include monitoring records for those
14 individuals or for this -- because, you know,
15 we do have, like for example, Rocky Flats or
16 any of the sites, we have claimants already.
17 We can go into those claimant files.

18 We look at those claimant files. Do
19 we have anybody that falls into the class
20 that's defined? Were they monitored? Because
21 if an individual says that this group wasn't
22 monitored we go into those and we look at
23 those claims and we determine, okay, they were
24 or weren't monitored. If they weren't
25 monitored and they provided the basis then

1 we'd qualify.

2 If they were monitored then we would
3 go back and we would say your basis is not
4 supported. You're going to have to -- because
5 we've got monitoring records for those
6 individuals. You're going to have to provide
7 a new basis or more information in that
8 situation. We don't automatically disqualify
9 it at that point. So that's an example how we
10 would go down that process.

11 **DR. LOCKEY:** How long does it take you to
12 get to that point where you don't have a site
13 profile, where you have to go back and look at
14 your database information?

15 **MR. SUNDIN:** Well, we try and meet the new
16 statutory deadline of 180 days in all these
17 cases. We miss it occasionally obviously, and
18 I think the cases where we don't have a site
19 profile as sort of a compiled view or a
20 consensus opinion about the information we
21 have, it may take longer.

22 **MR. RUTHERFORD:** That's for the evaluation.
23 For the qualification though we have timelines
24 that we try and get a consultation call
25 together within, I think, ten days, ten

1 working days, which that would identify
2 deficiencies right then. So if we get a
3 petition in, within ten days we're going
4 through as much as we can of our database to
5 see if we have information that would indicate
6 that their basis is wrong or not, you know,
7 right or wrong.

8 And so in that ten-day period we'll
9 develop a deficiencies and things that we want
10 clarification on. If we can't do it within
11 that time period, you know, and here's another
12 example is if we've identified a future data
13 capture that we don't have monitoring records
14 yet for this facility we will go ahead and
15 qualify it because if we don't have the
16 monitoring records, even though there may be a
17 data capture identified a month away that
18 could pull those records because of our
19 requirements we go ahead -- we'll go ahead and
20 qualify it in most cases unless somebody's had
21 their hands on those records and looked at
22 them and can, you know -- but in most cases we
23 would go ahead and qualify that.

24 **DR. LOCKEY:** So it's only in cases where you
25 have hard -- actually good data that indicates

1 that this particular petitioner is -- we
2 covered racial monitoring data or whatever.

3 **MR. RUTHERFORD:** Yeah, if you -- or if they
4 provided us a basis -- I mean, something
5 that's not plausible or credible and I can't
6 think of anything right now but a situation.
7 But Ames, Iowa, is one we did not have a site
8 profile for Ames. And that one actually
9 qualified pretty quick because the petitioner
10 put together a good petition, identified their
11 bases. We looked at our research database,
12 site research database. We realized we didn't
13 have any monitoring records at all for thorium
14 and thorium was clearly indicated. I mean,
15 that qualified quickly and we moved on.

16 **MR. SUNDIN:** I think the important thing to
17 stress, too, and it may be apparent to
18 everybody but just to make sure it is, is that
19 qualifying a petition does not mean we'll end
20 up recommending adding a class.

21 **MR. RUTHERFORD:** Exactly.

22 **MR. SUNDIN:** I mean you always have to keep
23 in mind the statutory provisions. Can we do
24 dose reconstructions with sufficient accuracy?
25 And the steps toward qualifying a petitioner

1 just to sort of make sure that there's some
2 basis for believing that we can't do that job.

3 And then the evaluation's really where
4 we decide for sure whether or not we can do
5 dose reconstructions. So many times
6 petitioners, I think, feel like if I qualify
7 then I'm sort of in, and that's not the way
8 the laws work with the processes.

9 **DR. WADE:** Just from a policy point of view,
10 just to put something on the table that this
11 Working Group or even the Board might want to
12 talk about. Our approach now is to try and
13 work as hard as we can to see that every
14 petition is qualified. And if a petition
15 comes in and we're able to say, no, it doesn't
16 meet the test then that call is designed to
17 explore other avenues. Because right now we
18 want to see that every petition that can
19 qualify does qualify. You could be the judge
20 of whether we've lived true to that, but
21 that's really the instruction that we have
22 now.

23 **MR. RUTHERFORD:** And I'll offer up that I
24 think we've gotten better with that over time,
25 meaning that, you know, as the process has

1 gone on -- since the Washington Board meeting
2 where we talked about, you know, a petitioner
3 got up and said, you know, well, they didn't -
4 - no one called me. No one did anything in
5 that situation. You know, since then we have
6 -- every petition will get a consultation call
7 and the person will -- you know, we've had
8 petitions submitted in the past where there's
9 just nothing there at all, and we've sent them
10 insufficient information letters which lays
11 out their -- the issues.

12 Well, we didn't call them. And you
13 know we sat through the Board meeting, we
14 listened to the petitioner that talked about
15 how they didn't get that verbal communication.
16 Since that time every petition that comes
17 through will get a call and they will go
18 through these steps with them. They'll help
19 them try to work them through the process.

20 **DR. WADE:** What you'll probably see as you
21 look through that a change of attitude may be
22 reflected in the record which would be nice
23 and you can judge us on that.

24 **DR. ROESSLER:** Of the 25 or 30 notebooks
25 that we're going to look through how many

1 failed because they weren't a covered
2 facility?

3 **MR. RUTHERFORD:** Yeah, I actually got that
4 for you and I was going to -- I'm going to
5 give this to you, Gen. This is your package,
6 too. I actually have a procedure, our
7 internal procedure, Section 6-1, goes through
8 the qualification; if you want to look into
9 that that's our qualification process. And in
10 these tables, these SEC tables, the Table
11 Number 5, the last table, is the -- actually,
12 the next to the last table, is the -- all the
13 -- I'm going to give it to -- everybody's got
14 it except for Gen because I'm holding hers.

15 The Table 5 is the petitions that did
16 not qualify and on the side it lists the
17 reason why it didn't qualify. So if you look
18 through -- actually the table just before
19 that, Dr. Lockey, Table 5.

20 **DR. WADE:** Do you have extra copies for the
21 court reporter?

22 **MR. RUTHERFORD:** Yeah, I'll get extra
23 copies.

24 But Table 5 lists the actual petition number
25 and it correlates to a binder up there and on

1 the right-hand side it indicates the reason
2 why it didn't qualify. And you'll notice that
3 there's roughly I think only 16 of the roughly
4 30 binders over there only 16 of them I think,
5 16 or 17, did not qualify because they didn't
6 meet the petition requirements.

7 The other ones were because they were
8 classes -- the class they submitted for we
9 already had classes in the SEC. They weren't
10 covered sites that had been identified and/or
11 the applicant withdrew their submission. And
12 few of these we had where the individual was
13 waiting on a dose reconstruction, their own
14 dose reconstruction got tired of that process
15 and said I want to submit a petition. Well,
16 then they got their dose reconstruction and
17 they withdrew their submission.

18 **MS. MUNN:** They were --

19 **MR. RUTHERFORD:** Yeah, so we have a few of
20 those in this situation.

21 **DR. ROESSLER:** So I think I know the answer
22 but I want to be specific. So the last four,
23 not a covered site, are the ones that fit the
24 question I just asked?

25 **MR. RUTHERFORD:** Yes.

1 **DR. ROESSLER:** And the rest of them it's all
2 much more difficult.

3 **MR. RUTHERFORD:** Yeah, there's more
4 information there.

5 **DR. LOCKEY:** Missing numbers are ones that
6 didn't qualify?

7 **MR. RUTHERFORD:** Yes, obviously, or -- and
8 actually the whole set here -- I went ahead
9 and gave you everything because Table 1 is the
10 petition classes that we've added since we
11 started the program. Table 2 is the -- are
12 petitions where evaluations have been
13 completed and evaluation reports have been
14 sent to the Board as actually even as
15 yesterday, a couple of these were sent out
16 yesterday.

17 And Table 3 is petitions that are in
18 the qualification process right now. They're
19 being evaluated. Or actually they've been --
20 they're qualified and they're in the
21 evaluation process, yes, as I said. Table 4
22 is actually petitions that are actually in the
23 qualification process. They haven't been
24 qualified yet, but they are in the process.
25 And some of those are actually under Admin

1 review.

2 **MR. ELLIOTT:** Does that include 78?

3 **MR. RUTHERFORD:** The one that just came in?

4 **MR. ELLIOTT:** The one I just signed just
5 now?

6 **MR. RUTHERFORD:** I didn't get that one here
7 yet.

8 **MR. ELLIOTT:** I just signed number 78
9 acknowledging we received it and it's going to
10 qualifications.

11 **DR. WADE:** Just to close this issue of the
12 four under Admin review then. They're in here
13 but they're in Table --

14 **MR. RUTHERFORD:** Table 4.

15 **DR. WADE:** Table 4. And they jumped out?

16 **MR. RUTHERFORD:** Yeah, you can see it on the
17 side, status applicant had requested review of
18 proposed finding.

19 **DR. WADE:** So for this fine group to
20 understand the entire universe those are four,
21 some of them might come their way --

22 **MR. RUTHERFORD:** Right.

23 **DR. WADE:** -- in this exercise.

24 **MR. RUTHERFORD:** Yes.

25 **DR. ROESSLER:** So it's not over once we get

1 through all this.

2 **DR. WADE:** It's never over.

3 **MR. RUTHERFORD:** Also, what we've provided
4 is an actual internal assessment that was
5 completed and as Larry mentioned that the --
6 Larry requested a review of the process and
7 the petitions that we had determined that did
8 not qualify and we had closed. And we used a
9 health physicist that was not part of the SEC
10 process at all. In fact, he focuses mainly on
11 dose reconstruction and did have -- his
12 background does have some quality assurance,
13 quality assessment-type work that we felt was
14 appropriate.

15 And we gave him the rule. We gave him
16 our internal procedure. We gave him these
17 binders. In fact, these exact binders are the
18 binders he used as well, and he did his
19 review. And the assessment had no findings as
20 that we had failed in our determination.
21 There was some questions on a couple of our
22 professional judgments of how we had worded
23 the professional judgment. But the results of
24 the order that there were no findings that
25 they felt -- where he felt that we had closed

1 -- wrongly closed a petition.

2 **DR. ROESSLER:** So he -- Who does he work
3 for?

4 **MR. ELLIOTT:** He works for OCAS. He's in
5 Stu Hinnifeld's team structure. And, you
6 know, I would say that -- you know this is
7 J.J. Johnson's work. He's a great guy. We
8 can introduce you to him if you want, but it's
9 his perspective. That's what it is. I stay
10 out of these kind of internal -- when I ask
11 for an internal assessment I set the charge
12 and then I step back and just watch what
13 happens. And so if you want my thoughts on
14 the assessment I'll be glad to share those
15 later.

16 I think you have an important task
17 before you today. I welcome your involvement
18 in this process in looking at what we do and
19 the ways we can make it better.

20 **DR. WADE:** Let's talk a little bit, Larry,
21 about what could be the outcome of this
22 Working Group's work. Let's say in the worse-
23 case scenario this Working Group was to find a
24 petition that they felt was inappropriately
25 not qualified. What would be the follow on

1 that from them?

2 **MR. ELLIOTT:** I would think that we would
3 look to reopen based upon that type of advice.
4 We'd take that into consideration. Look at
5 the case-specific situation, and we have the
6 ability to reopen these. You know, that would
7 require us going back to the petitioner,
8 explaining what had happened, explaining our
9 interest to work with them. We need to work
10 with these petitioners. We can't do it alone,
11 and they have some obligation and
12 responsibility, I think, to aid us in our --
13 together.

14 **DR. WADE:** So if this group was to say here
15 is a case where we felt a petition was
16 disqualified inappropriately then you would
17 take the responsibility of taking that action,
18 that recommendation --

19 **MR. ELLIOTT:** Uh-huh.

20 **DR. WADE:** -- and making a judgment as to
21 whether to reopen it?

22 **MR. ELLIOTT:** Uh-huh.

23 **DR. WADE:** On a more mundane level what if
24 this group comes up with recommendations that
25 it feels should be implemented by you in this

1 process?

2 **MR. ELLIOTT:** Certainly we'd welcome to hear
3 those and consider those and those could be
4 reviewed. It could be maybe you want us to be
5 better communicators about what's going on
6 here. You know, I think we can always do a
7 better job in that. Have we the right steps
8 here? Does the process have a logic to it?
9 Does it make sense? Are we -- is our customer
10 service obvious here? These are things I ask
11 myself and my folks, so --

12 **DR. WADE:** I just wanted to make sure that
13 we all had the appropriate expectations as to
14 --

15 **DR. LOCKEY:** Larry, it looks like from what
16 John Johnson -- his summary report on the
17 results. It looks like the ones that are
18 petition requirements were not met was mainly
19 due to the lack of response times sensitive
20 materials. That's the main reason someone's
21 closed off.

22 **MR. ELLIOTT:** I think that's the main reason
23 as I read his report.

24 **MR. SUNDIN:** The other thing -- the
25 important thing to keep in mind is that we

1 believe we have to have some sort of deadline
2 for a response. If the petitioner comes in
3 with additional information past the deadline,
4 we consider that new information. So very
5 often a petitioner, I think -- it's hard for
6 me to guess what the motivation might be not
7 to respond with additional information to
8 address deficiencies, but they may feel like
9 they do not have information that would
10 address the deficiencies. But that's not a --
11 when 30 days passes, that's not the end of the
12 process for this petitioner.

13 **MR. ELLIOTT:** We can re-open it --

14 **MR. SUNDIN:** They can always submit by rule.

15 **DR. LOCKEY:** They get it six months later,
16 they can re-submit it?

17 **MR. ELLIOTT:** Sure.

18 **MR. SUNDIN:** Sure.

19 **MR. ELLIOTT:** We may have a petitioner who's
20 not well. And they, for whatever reasons they
21 don't want to share the burden of being a
22 petitioner with anybody else. They're
23 carrying the load, and they don't want to deal
24 with us for awhile because of their illness,
25 and so they come back at us later.

1 We have other folks that just seem to
2 drop out of sight. Once we have that initial
3 consultation with them we never hear another
4 word back.

5 **MS. MUNN:** They go away.

6 **DR. MELIUS:** I think it's sort of a daunting
7 prospect to have to submit one of these
8 petitions, and I mean even if you would set
9 through every Board meeting and hear the
10 discussion, whatever, every work group meeting
11 and so forth, I'm not sure you'd sort of be
12 able to easily sort of figure out what to
13 submit and what best to submit and then
14 there's lots of issues with access to the
15 information and so forth as we know.

16 One of the other things I think we
17 should consider is the transparency of the
18 procedure also. And I will confess, and some
19 of you are not responsible. If I remember
20 right the first set of regulations you
21 proposed we actually had the Board reviewing.
22 It was sort of an appeals process to the Board
23 on turned down petitions. I know we discussed
24 it.

25 **DR. WADE:** I know we discussed it.

1 **MR. ELLIOTT:** Ted would probably have a
2 better memory than I on this.

3 **DR. MELIUS:** And we decided we didn't want
4 to do it because it would be --

5 **MS. MUNN:** My memory is we discussed it, and
6 we made it very clear that we were not to be
7 an appeal board.

8 **DR. MELIUS:** Right.

9 **MS. MUNN:** It's not in our charter.

10 **DR. MELIUS:** Right, and then I don't think -
11 - at least I didn't realize sort of this
12 Privacy Act issue which has essentially made
13 it a non-transparent process. It's not like
14 there's a set of records out there that, you
15 know, freely available so somebody could
16 understand why petitions were turned down, why
17 they were accepted. What was, you know,
18 acceptable information, what wasn't out there.

19 I mean, you can see for things that
20 are accepted how the evaluation went, but you
21 still don't have an idea of how your -- what
22 kinds of information --

23 **MR. SUNDIN:** Well, we do put the identified
24 petitions on the website --

25 **DR. MELIUS:** Oh, do you?

1 **MR. RUTHERFORD:** -- once they're qualified.

2 **MR. SUNDIN:** Sometimes that's an extensive
3 job. With Rocky Flats, for example, it was
4 over five or six hundred pages, but they're
5 all out there.

6 **MR. ELLIOTT:** And we talk to interested
7 parties that call us and say what's this
8 petition all about. Am I potentially
9 included? Can I be a petitioner? And our
10 answer is certainly you can take part in this
11 if that's your desire.

12 **DR. MELIUS:** But the decision making isn't
13 transparent.

14 **MR. ELLIOTT:** No.

15 **DR. MELIUS:** That's -- you know, how you --
16 what basis you decided on? What were your
17 criteria so somebody submitting the petition
18 may not, you know, from another facility --
19 someone who may not trust you.

20 **MR. SUNDIN:** On the other hand, it's not
21 always volume of material. I recall with the
22 Pacific Proving Ground petition was one line,
23 one line. I mean it hit the bases. If the
24 facility in fact has the defect that they're
25 alleging, case closed.

1 **DR. WADE:** It would seem to me if this
2 Working Group wanted to make recommendations
3 towards greater transparency or increased
4 transparency that would be certainly welcome.

5 **DR. LOCKEY:** On the website that you post do
6 you list the deficiencies that weren't met?

7 **MR. SUNDIN:** Generically, like we do on this
8 table?

9 **MR. RUTHERFORD:** The petition requirements
10 not met.

11 **DR. LOCKEY:** But beyond that point because
12 if you look at Johnson's review it's --
13 they're turned down mainly because a lack of
14 response to questions.

15 **DR. MELIUS:** And that's the problem, and
16 again, not to fault anybody, but it's because
17 they've gotten correspondence back saying this
18 doesn't -- we don't think this meets the
19 requirements. Well, so what's posted or
20 what's submitted there is the decision isn't,
21 you know, sort of the basis for why they
22 didn't meet the requirements is that you
23 didn't get back to us with more information
24 within the timeframe, and so it's not helpful.

25 **MR. ELLIOTT:** There's a --

1 **DR. LOCKEY:** What could be listed on the
2 website is what was not provided and so if
3 anybody else has it then they can provide it.

4 **DR. WADE:** And just again to speak to policy
5 a bit, as Larry mentioned, Lori Ishak has been
6 moved into a position to aid and assist
7 petitioners. And then since this is a
8 confidential discussion we're trying to secure
9 the services of Denise Brock to come to work
10 for us in some capacity and to assist
11 petitioners in the process.

12 We want to do everything we can to
13 allow people everything they need to succeed
14 in this process, and we also welcome
15 suggestions for increased transparency as
16 well.

17 **DR. LOCKEY:** Who assists petitioners?
18 What's her name?

19 **MR. ELLIOTT:** Lori Ishak. If you want to
20 meet her, I can bring her down. She's been to
21 the Board meetings.

22 **MR. RUTHERFORD:** ORAU also has a person that
23 talks to -- Pat Crafts who talks to
24 petitioners on a number of occasions through
25 the process.

1 **DR. WADE:** And Denise Brock was a successful
2 petitioner before your time, but I'm sure
3 Wanda remembers her. And we want to make
4 every resource we can available to these
5 people so that they are in the best position
6 to succeed. Then we have to make our
7 judgments as to whether they have succeeded or
8 not. I would ask that you don't share that.
9 That's just something in the works.

10 **DR. LOCKEY:** Anything else?

11 **DR. MELIUS:** Yeah, the appeals process.
12 Could someone sort of describe what that is
13 and what's going on with that? Again, briefly
14 but --

15 **MR. SUNDIN:** There's actually two levels of
16 appeal, but I think the one you're talking
17 about is the appeal of our decision that they
18 did not meet the basis; they didn't qualify.
19 All that we require is that they request in
20 writing a review. It's an administrative
21 review of people appointed by John Howard, HHS
22 Personnel that are not involved -- were not
23 involved with the petition evaluation. I
24 think it's typically been a three-person
25 panel. I believe that is specified as three?

1 **MR. ELLIOTT:** Yes.

2 **MR. SUNDIN:** That petition -- or that group
3 then is given all the documents that went into
4 the -- that comprised the case file on them,
5 and they have a chance to look at those
6 documents. It's basically a document review
7 process. They don't take testimony from
8 either us or the petitioner, and then they
9 make a recommendation to the Director of NIOSH
10 about whether or not they think that our
11 decision was correct. The Director then
12 evaluates that report and renders a decision
13 to the petitioner which is communicated to
14 them in writing.

15 **MS. MUNN:** How many of those have you had,
16 Dave?

17 **MR. SUNDIN:** I think only two up to now, but
18 we've had this group of four recently. The
19 one, the first one, I believe, was SEC 24. It
20 was a covered facility General Electric, but
21 the petitioner did not work there during a
22 covered time. That was a fairly
23 straightforward decision. I'm trying to
24 remember what the other one was.

25 **MR. RUTHERFORD:** General Electric, Fernald

1 25, I think. That was the one where he
2 actually identified as similar. They worked
3 in an administrative area and said that
4 identified a bunch of incident reports. They
5 had a bunch of incidents reports to support
6 their case, but there were incident reports
7 for areas. They weren't part of that
8 administrative area.

9 **MS. MUNN:** They weren't applicable today.

10 **MR. RUTHERFORD:** Right.

11 **MR. ELLIOTT:** The findings of those were
12 they didn't take -- the Board or the panel
13 didn't take exception to our determination.

14 **MR. SUNDIN:** They found that we made the
15 right decision.

16 **DR. WADE:** Just to give you something else
17 to think about, the names of the review board
18 members have been held to this point. The
19 NIOSH Director has been asked to consider
20 making those names public, and he's inclined
21 to do that. We haven't finalized that process
22 yet, but if this work group wants to comment
23 on that then that would be appropriate as
24 well. To this point we've not released the
25 names. We're inclined now to release the

1 names of who comprises the review board.

2 **DR. MELIUS:** I'm not trying to guess who
3 they are but has there been consistency in
4 terms of who's been appointed? I should say
5 continuity.

6 **MR. SUNDIN:** There's a new chair, but the
7 other members of the work group are the same,
8 if I recall.

9 **DR. WADE:** But the chair has always been a
10 person of a particular position in NIOSH; who
11 was in that position changed so the chair
12 changed. But we'll likely make those names
13 public.

14 **MS. MUNN:** That's always a two-edged sword.

15 **DR. WADE:** Yeah, you know, but we've tried
16 to live by the value of transparency here.

17 **MR. SUNDIN:** I think the spirit of the
18 review process is not that you take a lot of
19 oral testimony or -- and so that, I guess, is
20 one reason not to --

21 **MS. MUNN:** That should diffuse --

22 **MR. SUNDIN:** -- open the process up, but I
23 understand the need -- the attitude that
24 people would like to know.

25 **DR. WADE:** But we'd also tell these people

1 that they shouldn't take such calls. They
2 shouldn't engage in such discussions. But
3 that's no reason not to have their names --

4 **DR. MELIUS:** Is there -- in your interaction
5 with the petitioner, staff, or ORAU, or
6 whoever's having it, is there a record of like
7 phone calls and stuff?

8 **MR. RUTHERFORD:** Yes.

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

10 **DR. MELIUS:** So that's part of the record.

11 **DR. WADE:** Did we print those out?

12 **MR. RUTHERFORD:** See, I'm not sure we have
13 all of the phone calls in there.

14 **MR. ELLIOTT:** It has a phone log, and then
15 we have an interaction where we log that in.

16 **MR. SUNDIN:** Those may not be in --

17 **MR. RUTHERFORD:** Those may not be in there.
18 If you specifically want a certain one or
19 anything like that I can print them off. I
20 think I can print them off.

21 **MR. ELLIOTT:** They may not be in these
22 binders.

23 **MR. SUNDIN:** I know that we provided that
24 for the appeal.

25 **MR. RUTHERFORD:** Yes, yes, the appeal's got

1 everything.

2 **DR. MELIUS:** That was actually my question.

3 **MR. SUNDIN:** But I don't think we included
4 them in the binders. It's a sort of a special
5 -- we had to go and ask ORAU to deliver them.

6 **MR. ELLIOTT:** This database system has been
7 set up similar to our claims file system where
8 we -- whatever interaction occurs is recorded
9 and phone logged or there's correspondence
10 folders. That should serve as the analysis
11 record for the petition.

12 **DR. MELIUS:** Now, I think my concern was
13 mainly for the appeals group that I think it's
14 just helpful to have given the nature of the
15 process.

16 **MR. ELLIOTT:** Jim, back to your -- I'm going
17 to correct a statement I made earlier to your
18 question of how many covered facilities. This
19 is a -- if you see me walking around a Board
20 meeting with this, feel free to ask me. You
21 can look at it if you want. This is my
22 briefing book that I carry and they make for
23 me on a weekly basis.

24 There's 318 total sites that are
25 covered, and we have 155 of those sites we

1 have one or more claims. One hundred and
2 fifty-three of those sites we have more than
3 45 we have 40 claims or less. Is that right?
4 Yes. Yeah, well you can see it on here.
5 There's a lot of interesting data here. The
6 number of sites that we've completed a hundred
7 percent of the cases for, I think, are around
8 20 now. You can see states whenever you want
9 to look, so if you have an interest in that.

10 **MS. MUNN:** I saw that data somewhere a few
11 weeks ago, but I just didn't remember what the
12 total number was. Three hundred is a lot of
13 sites.

14 **DR. LOCKEY:** Any other questions? Any other
15 information the Board wants or the Working
16 Group wants?

17 **WORKING GROUP READING SESSION**

18 **MS. MUNN:** I'm fine. I'm ready to start
19 reading. First, I want to read this.

20 **DR. LOCKEY:** I thought maybe spend a little
21 time and look through this and just looking at
22 these documents --

23 **MS. MUNN:** I think it would be -- it's
24 always helpful for me to re-orient myself to
25 the Federal Register, as much as I hate to.

1 **MR. ELLIOTT:** Your lunch is scheduled to
2 arrive at noon. I'm going to step out and I
3 don't know -- Bomber's right over here two
4 doors down.

5 **MR. RUTHERFORD:** Yeah, my office is two
6 doors down. That's where I figured I'd --

7 **MR. ELLIOTT:** You know where the rest rooms
8 are. There's coffee maybe there. I don't
9 know.

10 **MR. RUTHERFORD:** There's coffee down there.
11 We usually have some pretty hardcore coffee
12 drinkers.

13 **DR. LOCKEY:** Are there cups?

14 **MR. RUTHERFORD:** If you don't have a cup,
15 let me know. I'll find one for you.

16 **MR. ELLIOTT:** If you need me back in the
17 room just have somebody come and find me.

18 **MR. KATZ (by telephone):** It sounds like I
19 should drop off at this point.

20 **MR. SUNDIN:** We'll probably -- yeah, I think
21 we'll get out of the Board's way or the work
22 group's way, but are you going to be available
23 if there's any questions?

24 **MR. KATZ (by telephone):** Yeah, I'm
25 available till 1:00. I have a meeting at

1 1:00, from 1:00 to 3:00 or 3:30 or so, but
2 otherwise feel free to call me, anybody.

3 **DR. LOCKEY:** At your office number?

4 **MR. KATZ (by telephone):** At my office.

5 **DR. LOCKEY:** Okay, will do, thanks a lot.

6 **MR. KATZ (by telephone):** Good-bye.

7 **MS. MUNN:** Thanks, Ted, bye.

8 **MS. HOWELL:** Is anyone else still on the
9 line? Chia-Chia?

10 **MS. CHANG (by telephone):** I'm still here.
11 Should I stay here?

12 **MS. HOWELL:** I think we're going to hang up
13 now.

14 **DR. WADE:** Unless someone's on the line who
15 feels compelled to stay on. Anybody else on
16 the line?

17 **(No response)**

18 **MS. HOWELL:** All right, bye, Chia-Chia.

19 **MS. CHANG (by telephone):** Okay.

20 **DR. WADE:** Ted might be an asset to you if
21 he's available.

22 **DR. ROESSLER:** Do you have a notepad? I
23 traveled lightly and I don't have anything to
24 write on.

25 **MR. RUTHERFORD:** Yes. I'll bring you both

1 new notepads.

2 **MS. MUNN:** Good.

3 **MR. RUTHERFORD:** Does everyone got pens?

4 **MS. MUNN:** I don't have the full file.

5 **DR. WADE:** Mr. Chairman, what's your
6 pleasure relative to the court reporter? Do
7 you want him to stay and record comments made
8 in passing as you read or do you want to have
9 people read and then at a certain time go back
10 on the record; is that your preference?

11 **DR. LOCKEY:** I don't have enough experience
12 with that issue. I've never done this before.

13 **MS. MUNN:** It seems to me that in all
14 probability we're going to be reading and
15 reading and reading here for a number of
16 hours.

17 **MR. RUTHERFORD:** I don't think we need the
18 court reporter.

19 **DR. WADE:** Okay, so you can stand down, but
20 then stay ready and then we'll -- when we go
21 back on the record. Because if there's
22 talking and reading and snoring or whatever
23 they do, we don't want to record that.

24 **MS. MUNN:** The snoring is me.

25 **DR. LOCKEY:** I think it's going to take us a

1 little time to re-familiarize ourselves with
2 the process and make sure we understand it
3 then probably bring you back in and say is the
4 correct process as we see it. And then at
5 that point we'll be ready to do that.

6 **DR. ROESSLER:** I think that's a good --

7 **MR. ELLIOTT:** I think as you read through
8 these you'll see the obvious steps that we've
9 outlined in the process. You'll see those and
10 how we've documented those.

11 **DR. LOCKEY:** So a little education process
12 off the record and discuss among ourselves,
13 make sure we have it correct, through further
14 discussion with you and then go over there.

15 **DR. WADE:** So we'll go off the record and
16 later we'll go back on. Just so everyone
17 understands when you're back on the record
18 we'll take a complete transcript. We'll have
19 that transcript reviewed for Privacy Act
20 information and then it will be made public.
21 I don't know if you'll get into Privacy Act
22 information or not, but there is that
23 potential. So we'll go off the record now.

24 **(Off the record)**

25 **(On the record)**

1 **DR. LOCKEY:** The question is in the letter
2 that goes out does it mention about the
3 administrative review?

4 **MR. RUTHERFORD:** And I don't see it. I
5 think it --

6 **MS. MUNN:** But Gen had the three items that
7 we discussed.

8 **DR. ROESSLER:** I've got two of them written
9 down.

10 **DR. WADE:** I would ask you to read them then
11 we'll have them on the record.

12 **MS. MUNN:** Yeah.

13 **DR. ROESSLER:** The one point was that the
14 letter should include -- the letter to the
15 petitioner should let them know that they can
16 get an additional 30-day period if necessary.
17 The second one was that it should include a
18 statement that if new information develops the
19 petition can be reopened, resubmitted. I'm
20 not sure what the right word is. And the
21 third one was you need to put --

22 **MS. MUNN:** Administrative review is also an
23 option.

24 **DR. LOCKEY:** There's a process for
25 administrative review. One of the things I'd

1 like -- one of the reasons I like about a
2 second phone consultation is it allows NIOSH
3 through talking with the person whether, in
4 fact, any progress has been made and whether
5 it's warranted to give a 30 day -- an
6 additional 30 days. By doing that you could
7 say what progress have you made on this, this,
8 this, and this.

9 And if they've made no progress at all
10 and they're not feeling that they -- it
11 appears that they haven't attempted to do any
12 additional work then maybe an additional 30
13 days is not warranted. That allows at least
14 some kind -- and it also lets the petitioner
15 know that somebody's going to be calling me in
16 20 days to see what progress I'm making.

17 **MS. MUNN:** And that point was not captured
18 in the three that we just discussed.

19 **DR. LOCKEY:** No, it should be added.
20 And so that's why I'd like a second phone
21 consultation because it allows some objective
22 evaluation by you to determine whether, in
23 fact, progress is being made.

24 **DR. WADE:** But to speak for the process
25 under LaVon's leadership, I couldn't imagine

1 that you would let the 30-day clock run out
2 without calling them.

3 **DR. LOCKEY:** No.

4 **DR. WADE:** It's just not the way we do
5 business, but it would be good to get it in
6 your recommendation.

7 **DR. LOCKEY:** It puts the petitioner on
8 notice that somebody's going to be checking up
9 on me.

10 **DR. WADE:** It has all kinds of benefits, and
11 we're not going to let it go cold and say
12 yippee, 30 days are over and we didn't hear
13 from them.

14 **DR. LOCKEY:** So I'd like to propose that
15 three weeks into the 30-day period that a
16 second phone consultation be made for an
17 evaluation as to whether progress has been
18 made and whether a 30-day extension is
19 warranted.

20 **MR. RUTHERFORD:** That makes sense. I don't
21 see any problem with that, doing that. The
22 nice thing is the rules are under revision --
23 I mean our procedures are under revision right
24 now anyway so all these things that --
25 recommendations that come out, I mean, it's a

1 good time to put it in there.

2 **DR. WADE:** And under LaVon's leadership
3 there's a great receptivity to this kind, so
4 that's a good thing.

5 **MS. MUNN:** I do hope that Lou's guesstimate
6 of the amount of --

7 **MR. RUTHERFORD:** Petitions?

8 **MS. MUNN:** Number of petitions and the
9 amount of staff time that's going to be
10 required is fairly accurate.

11 **DR. WADE:** I said 200 petitions by the time
12 we're done.

13 **MR. RUTHERFORD:** And you know, it's so
14 funny, you said that when this process
15 started. I had a little disagreement with Jim
16 Neton. Jim said oh, I can't see us getting
17 more than 50, and I said Jim, I bet you we
18 have around 200 of these things. So your
19 statement, I'm right behind you on that one.

20 **DR. WADE:** I'm right behind you it seems
21 like.

22 **DR. ROESSLER:** Does this seem like a
23 reasonable upward number?

24 **DR. WADE:** But see a lot of these --

25 **MS. MUNN:** We did 75.

1 **DR. WADE:** The last 50 are going be onesies
2 and twosies; because as I said, we're not
3 going to clear the deck without some of these
4 actions.

5 **DR. LOCKEY:** Do we need to say anything
6 about knowledge of this SEC application
7 process and access to the system on record?

8 **DR. WADE:** Since we're already talking about
9 it, LaVon, I mean, it all starts with people
10 have to know that this process is out there.
11 Now, I know that we try. Why don't you speak
12 to that and your thoughts and what this group
13 is thinking of making some recommendations?

14 **MR. RUTHERFORD:** You know, and we've
15 actually talked about that on a number of
16 occasions of what we can do to make not only
17 the knowledge that the SEC is, you know, the
18 rule is here and this process there but how
19 the process works. So we've talked about, you
20 know, doing additional presentations during
21 the workshops and we've added those.

22 We've added information to the actual
23 website. We've, you know, in fact, we've got
24 Lori Ishak's phone number and everything right
25 there on the website for calling and ask

1 questions. And worker outreach meetings,
2 we're including SEC discussions there.

3 But you know, if you've got ideas that
4 we can get out -- get the information out
5 better, that's great. Throw them out. We'll
6 definitely look at them.

7 **DR. ROESSLER:** The website is a very good
8 vehicle for persons like ourselves who are
9 used to the Internet. But even in my own
10 field of health physics, people I work with --
11 and these are mostly educated people -- I'd
12 say maybe 40 percent of the people in this
13 group do not use the Internet. And so that
14 with this group of people I think it's
15 unreasonable to assume that --

16 **MR. RUTHERFORD:** I agree.

17 **DR. ROESSLER:** -- a major number of them
18 will be -- have access to the website so there
19 has to be another vehicle too and there are.

20 **MR. CLAWSON:** But you know, I do have to
21 give a compliment because we're reviewing this
22 dose reconstruction. One of the things that
23 they said in here was while reviewing this
24 revised report keep in mind wide range of age,
25 demographics, and educational level of the

1 primary energy workers and survivors of the
2 goals of the revised report is to make the
3 results of the dose reconstruction
4 understandable for the claimant.

5 That's what we're trying to do, and I
6 thought that was very good of -- to put that
7 in there that we're trying to -- we've got to
8 remember that. And what you said is very
9 true. There's a lot of people that --

10 **MR. RUTHERFORD:** I don't know what the other
11 avenues that we've used.

12 **DR. ROESSLER:** What about the movie? It's
13 been awhile since I reviewed it or that film
14 that was put together. Does that mention the
15 SEC process?

16 **MR. RUTHERFORD:** Yes.

17 **DR. ROESSLER:** Well, that's a good -- yeah,
18 that was a good effort there.

19 **MS. MUNN:** I'm really looking forward to
20 having that available.

21 **DR. ROESSLER:** I think that's more -- and
22 the workshops that you mentioned are good
23 vehicles.

24 **MR. RUTHERFORD:** I think some of the video
25 clips are actually going to be on the website,

1 too, as well.

2 **MS. MUNN:** But having that information
3 available on either tape or a lot of these
4 people you're talking about are not going to
5 be into DVDs yet. They'll still be in
6 videotape and having something like that that
7 they could watch more than one time would be a
8 major benefit I think, just having it
9 available.

10 **DR. LOCKEY:** How do we want to -- is there
11 any way we want to look at that process, how
12 effective it is? How -- is there a way to
13 audit it or to get feedback as to whether
14 you're --

15 **MR. RUTHERFORD:** Whether we're hitting --

16 **MS. MUNN:** Whether the videotape's good?

17 **DR. LOCKEY:** No, whether you're --

18 **MR. RUTHERFORD:** Just getting information to
19 the source. I don't know. Is there a way to
20 assess that?

21 **DR. WADE:** I mean, there are ways. You
22 know, they can be expensive. I mean, you
23 could target a site and then you could
24 randomly select from amongst the worker
25 population. Then you could call them and ask

1 them if they know of their rights, if they
2 know of the SEC -- there are ways to do this.
3 I mean, you're going to have to decide how far
4 you want to go, but there are ways to do this
5 if you think it important.

6 **MS. MUNN:** But in order to target the
7 audience that you need to ask that question of
8 you have to first of all know the medical
9 status of the people that you're calling,
10 because there's no point in calling them if
11 they're not potential claimants anyway.

12 **DR. WADE:** You could make -- you start your
13 universe with claimants and find out if
14 claimants are aware of the SEC route.

15 **MR. RUTHERFORD:** Well, even under actually
16 SEC rules you don't have to have a cancer,
17 remember under SEC, to actually petition for a
18 site. So you could petition for inclusion to
19 the SEC without the cancer. I mean, you won't
20 get paid or anything until you -- but any
21 energy employee can petition.

22 **DR. WADE:** But if this Working Group would
23 like to ask NIOSH to develop a methodology for
24 evaluating the effectiveness of our outreach,
25 then do that. I mean, we're not going to come

1 up with it right now, but we would certainly
2 take that test to heart.

3 **DR. ROESSLER:** It might be more effective to
4 look at other groups who have done -- tried to
5 reach members of the public and look at their
6 -- and go right to it, and I'm thinking of
7 written materials that are available at
8 libraries and onsite and so on. Literal,
9 simple brochures I think is -- for this type
10 of person is more effective.

11 **MR. RUTHERFORD:** Now, you know, at Fernald
12 we had actually public information as part of
13 our library which would be a good place for
14 information like that. I mean I'm sure the
15 other -- I'm sure all the DOE sites have a
16 place where public information's made
17 available.

18 **MR. CLAWSON:** I thought also, too, the
19 unions had come about with a program --

20 **MR. RUTHERFORD:** Yeah, we've been -- we've
21 included that in the unions. We've done that.

22 **MR. CLAWSON:** I know that Idaho does and I
23 know that Hanford does, too.

24 **DR. ROESSLER:** But they should go home with
25 a few simple statements and then a phone

1 number.

2 **DR. WADE:** And then you bring those people
3 in periodically and you, you know, we sit them
4 down and we talk to them. But you can assume
5 that we're not doing as good a job of outreach
6 as we could.

7 **DR. LOCKEY:** Certainly if you have an
8 outreach program it's always good to know if
9 you're reaching your audience. And how do you
10 do that unless you somehow survey your own
11 audience. It may not -- that's not just
12 applicable to this process. That's applicable
13 to the whole program.

14 **MR. RUTHERFORD:** I agree.

15 **DR. LOCKEY:** In some of our Board meetings -
16 - you know I'm not a neophyte in this on this
17 particular Board -- some of the questions that
18 the audience asks show a real lack of
19 understanding of the process and that may be
20 that that's their fault. At the time they
21 haven't had the time to look into it and to
22 read about it. But it'd be nice to know what
23 kind of benchmark you're reaching in
24 comparison to other programs.

25 **MR. RUTHERFORD:** Sure.

1 **DR. ROESSLER:** It's not only their fault.
2 The people -- the sad part for me -- and we're
3 getting off this SEC thing a little bit but it
4 applies there also -- is to hear people stand
5 up and think that they had a valid reason for
6 being a claimant or maybe a SEC and they've
7 been misled by groups of people.

8 And I thought maybe it was mostly
9 activist groups until I talked to a health
10 physicist friend of mind a couple days ago,
11 and, of course, we can't tie our shoes but
12 this fellow is telling people submit your
13 claim. He doesn't ask him anything; submit
14 your claim. You have nothing to lose. But if
15 they don't have the basic requirements they're
16 being misled. That's where some of this comes
17 up I think.

18 **DR. LOCKEY:** I guess my recommendation is
19 that there should be some kind of bench audit
20 of your outreach program. Not necessarily
21 just for this but for the program as a whole
22 and that's something NIOSH should consider at
23 some point in the future and see how well
24 you're reaching your audience.

25 **DR. WADE:** Just to check the pulse.

1 **DR. LOCKEY:** If you get back and you find
2 that only five percent of the people
3 understand really what's going on, I don't
4 know if that's good or bad or what in
5 comparison to other outreach programs, but
6 that would be to me an eye opener.

7 **DR. WADE:** Do you want to make that a
8 recommendation you'd make now and I can then
9 broadcast it or do you want to include it in
10 your report?

11 **DR. MELIUS:** I think we can include it in
12 our report because it pertains to SEC but that
13 it's something that --

14 **DR. ROESSLER:** And doesn't our report go to
15 the Board for follow up? Forwarding?

16 **DR. LOCKEY:** Why don't we go around and say
17 I think I've worked my way through the
18 process. Maybe there's pieces I'm missing
19 that we need to continue to work our way
20 through. Does anybody have any other --

21 **DR. MELIUS:** I just have another one type of
22 question, and I confess I didn't read this
23 ahead of time or for awhile. Is your
24 procedure which they handed out here? And
25 frankly the procedure doesn't provide much

1 guidance. It's a sort of step-like of what to
2 do, but in terms of actual how do you -- in
3 terms of interpretation --

4 **MR. RUTHERFORD:** What are the health
5 physicists reviewing the document --

6 **DR. MELIUS:** Right, right.

7 **MR. RUTHERFORD:** How does he make his
8 determination.

9 **DR. WADE:** What are you looking at, Jim?
10 Let me look at that.

11 **MS. MUNN:** This fat one?

12 **DR. MELIUS:** It says internal procedures for
13 the evaluation of special exposure cohort
14 divisions. And the first section of that, up
15 to page roughly ten, is basically petitions.

16 I guess my question to you is if
17 you've got enough experience now that it's
18 worth trying to put that into a procedure.

19 **MR. RUTHERFORD:** It's funny you say that
20 that way because that's why we didn't put it
21 in a procedure. But you know, I think that
22 maybe that's something that we could go back
23 and try to do now. You know, the checks and
24 balances we've put into the process and this
25 is why -- there's a number of reasons why we

1 were revising the procedure. Not only because
2 the rules have been revised, but we've learned
3 a lot in the last three years, two-and-a-half
4 years, and we're trying to get it
5 incorporated.

6 And so we've put this professional
7 judgment reviews. We have more than one
8 person involved in that because we've learned
9 that what I may think is something is not the
10 same. So we have kind of a team that works on
11 these. So those -- yeah, I think that we can
12 probably come up with better criteria and put
13 into the procedure now, internal procedure for
14 making our professional judgment.

15 **DR. MELIUS:** Because I think that would also
16 be helpful for the outreach effort. How do
17 you have someone do outreach if they don't
18 know sort of how to fill out the form. It
19 doesn't tell them, well, this particular thing
20 is important or not. And I suspect you know
21 what's important, and I suspect you tell
22 people on the phone, but it doesn't inform
23 them up front about that.

24 And I'm afraid if I was coming in
25 blind in reviewing these, you know, without

1 having gone through the Board meetings and
2 understanding. I mean, I think I would have a
3 hard time sort of figuring out when you made a
4 judgment about whether or not something
5 qualifies. So it's -- as opposed to, you
6 know, they didn't submit information or the
7 more bureaucratic, administrative thing.

8 **DR. ROESSLER:** They do have a paragraph in
9 here on page eight, it's in a little box
10 actually, where they try to address the things
11 that I have a lot of questions about, and I'm
12 going to be looking at some of the notebooks
13 to see how they handled it. And this is
14 judging evidence and the credibility and
15 adequacy and sufficiency and that sort of
16 thing. That area's what I think we need to
17 look at; is what they're doing, how they're
18 judging the evidence. I think that's
19 something where we can contribute from the
20 outside looking in.

21 **DR. MELIUS:** No, I agree. I guess what I
22 was saying is can they capture some of that
23 better in the procedure so there's more
24 consistency --

25 **DR. ROESSLER:** Yeah, and I just took off

1 from that because it's --

2 **DR. MELIUS:** Yeah, and I think it's that.
3 You had me all excited for awhile. I'd read
4 ahead and I was getting into the petition
5 evaluation. Gee, this is really detailed and
6 until I finally figured it out I was -- I
7 jumped the process a little bit.

8 **MR. RUTHERFORD:** And I'll definitely admit
9 that I think we've -- over the last year,
10 we've actually recognized some of the -- a lot
11 of the issues you're bringing up and we need
12 to get them in the procedures, so it's good.

13 **DR. LOCKEY:** So you're really asking to
14 spell out what do you mean by adequate.

15 **DR. MELIUS:** Yeah, I think, spell it out
16 better. I don't think you do it
17 comprehensively or completely, but I think
18 providing some -- based on what you've
19 experienced both evaluating petitions as well
20 as doing what's been submitted so far or
21 there's some things you can put down because
22 it would help somebody, either help you better
23 communicate, do a better job. I don't think
24 you can ever do a -- have one that will
25 address every situation. I think that's --

1 **MS. MUNN:** And I don't think you're ever
2 going to find a definition of adequacy that's
3 going to make everybody happy either.

4 **DR. MELIUS:** Well, I think you can come up
5 with a nice robust definition.

6 **MS. MUNN:** Well, we haven't been able to so
7 far, robust --

8 **DR. ROESSLER:** Should we get that in there?

9 **MS. MUNN:** Isn't that Falstaff or something,
10 robust?

11 **DR. LOCKEY:** All right. Is there anything
12 else?

13 **(No response)**

14 **25 FILES REVIEW**

15 **DR. LOCKEY:** Then I think we can go through
16 25 files. We can go off the record for that.

17 **(Off the record)**

18 **(On the record)**

19 **DR. LOCKEY:** When I looked at that Table 5
20 about why ones were sent back and rejected,
21 most of it had to do with -- well actually, it
22 was Mr. Johnson's --

23 **MR. RUTHERFORD:** Assessment.

24 **DR. LOCKEY:** Yeah, is that they just -- none
25 of the information was provided; right?

1 **MS. MUNN:** Yeah.

2 **DR. LOCKEY:** So the ones that they may most
3 valid look at is where information was
4 provided and it was felt to be --

5 **MR. RUTHERFORD:** Insufficient. It was felt
6 that that basis wasn't there.

7 **DR. LOCKEY:** And do you know which ones they
8 would be?

9 **MR. RUTHERFORD:** It would be the petitions
10 and we can narrow it down to at least 15
11 anyway because the petition requirement's not
12 met. It would be those in that grouping.

13 **DR. LOCKEY:** Johnson said most of those were
14 due to nothing was submitted.

15 **MR. RUTHERFORD:** If you look at -- I can,
16 you know -- only because I was thinking about
17 it I would look at the Fernald one even though
18 I was conflicted. I stayed out of that pretty
19 much as much as possible, but I think it's 25,
20 you know, that one. That is one where we
21 determined that -- if I remember correctly,
22 that the area she -- the person had indicated
23 there was not a potential for; it's not
24 exposure condition. So that's one.

25 **DR. LOCKEY:** That'd be 23 I think; right?

1 **MR. RUTHERFORD:** Yeah, FMPC.

2 **DR. ROESSLER:** Is that Fernald?

3 **MR. RUTHERFORD:** That's Fernald.

4 **DR. ROESSLER:** I'm curious about 36, Oak
5 Ridge Institute for Science Education, and
6 sort of why did they even think they qualified
7 in the first place, but I don't know anything
8 about it. I think I just want to look at that
9 one and --

10 **MR. RUTHERFORD:** Yeah, take a look at that
11 one. Actually, they -- you know, it is a
12 covered facility. ORAU is covered, and it's a
13 -- in fact, you know, Oak Ridge Institute of
14 Nuclear Studies which is the original.

15 **DR. ROESSLER:** Oh, I know some of that. We
16 did research with animals there.

17 **MR. RUTHERFORD:** Yes, they did research on
18 animals.

19 **DR. ROESSLER:** Yeah, and some on people,
20 too, didn't they?

21 **MR. RUTHERFORD:** Yeah, that was a cancer
22 research hospital.

23 **DR. ROESSLER:** Is that within this petition?

24 **MR. RUTHERFORD:** No, that petition if I
25 remember correctly -- gosh, I can't remember

1 that one.

2 **DR. ROESSLER:** I remember that came up
3 before.

4 **MR. RUTHERFORD:** The Oak Ridge Institute of
5 Nuclear Studies which the original name before
6 ORAU, that one, SEC-33, was the one we
7 actually recommended adding a class at the
8 last Board meeting. That was for the cancer
9 research hospital. So that one --

10 **DR. ROESSLER:** That was separated out from
11 here.

12 **DR. LOCKEY:** If you look at Attachment 1
13 under this.

14 **MR. RUTHERFORD:** Yeah, I was getting ready
15 to say I think that'll give you a little more
16 of what you're looking for.

17 **DR. LOCKEY:** Under what Johnson wrote. I
18 don't want to be influenced by that one way or
19 the other, but he went through --

20 **DR. ROESSLER:** Oh, each one.

21 **DR. LOCKEY:** Yeah, he did. You see here?

22 **DR. ROESSLER:** It's right down --

23 **MR. RUTHERFORD:** Do you want me to have him
24 come in?

25 **DR. LOCKEY:** Yeah, why don't you have him

1 come in for a minute. I'd just like to get
2 his perspective.

3 **MR. RUTHERFORD:** And this is J.J. He's the
4 one that did the assessment, and they just
5 wanted to ask you a couple of questions about
6 it.

7 **DR. LOCKEY:** What we're trying to do is just
8 -- this Working Group of the Board is trying
9 just to familiarize ourselves about the
10 process about SEC petitions and when they're
11 not thought to be adequate for going to the
12 next process, where they denied the initial
13 cutoff point. And we saw that you went
14 through that process as an internal audit.

15 And so we'd just like to have your
16 perspective on what you found and what were
17 the main reasons that they were -- the
18 requirements were not met and if you were
19 recommending that we look at -- focus really
20 on the four or five which ones should we focus
21 on. We're trying to get through all of them,
22 but which do you think would be most informing
23 for us to look at.

24 **DR. JOHNSON:** Well, first of all generally
25 across the board, many of them were found to

1 be not adequate to move to the next level
2 because either perhaps the EE got his dose
3 reconstruction back and it was compensable or
4 perhaps there was some incomplete information
5 and the EE or the claimant just decided not to
6 follow through with any additional follow up
7 on the information that was requested in order
8 to support the claim. That was probably, you
9 know, a very high percent of them, you know,
10 that the claimant decided not to provide any -
11 - or did not have any additional information
12 to support their claim.

13 There were some also out there that
14 were clearly an individual and not a class and
15 so with that it didn't qualify.

16 **MR. RUTHERFORD:** Do you understand what he's
17 talking about?

18 **DR. LOCKEY:** Are there any where the
19 applicant filed some information and the
20 information was not complete? And how did you
21 handle that situation where some information
22 was filed and maybe the partial information
23 filed is adequate but the rest of the packet
24 wasn't filled out or something? How do you do
25 that? How do you handle that?

1 **MR. RUTHERFORD:** What we do is during --
2 that would have been identified during the
3 consultation phone call and the letter,
4 anything that wasn't complete that they needed
5 to complete the package. And typically and
6 you know in reviewing all these or all that
7 I've done, the thing -- not putting in
8 facility location, those little things like
9 that, those we will work out for them. We
10 will make sure those are done, you know.
11 Getting that information that's information
12 that we can help them --

13 **DR. LOCKEY:** I was trying to get a handle on
14 that. The boilerplate stuff you make sure
15 that's not a reason to knock it out.

16 **DR. JOHNSON:** That is not going to knock you
17 out. It's going to be that -- the reason
18 that's going to knock you out is if you can't
19 provide a basis for moving to the next step.
20 And you can provide a basis, but is it
21 credible to provide enough supporting
22 information that that basis occurred.

23 If a person says that -- and you know,
24 we've had these, and believe it or not, and
25 Dave mentioned this, we had a one-liner that

1 said that steamfitters, pipe fitters, and
2 plumbers were not monitored at Y-12. And at
3 first we looked at it and went, well, you
4 provide us no time period or anything like
5 that, but that was easy stuff to deal with.
6 But what we did is we went back and looked and
7 said okay, do we have any monitoring data on
8 steamfitters, pipe fitters, and plumbers?

9 And it was clear. We were lacking
10 internal monitoring data at that time for
11 steamfitters, pipe fitters, and plumbers, you
12 know. So that was a good basis. They
13 provided the basis even though it was a one-
14 line sentence, but it was one that we could go
15 back and look at our data and say, yeah, we
16 don't have data for that. We've got to
17 qualify it and move it to the next step.

18 The ones where it's more difficult is
19 where individuals say, well, we weren't
20 monitored. Employees weren't monitored. And
21 if you make it very broad, employees weren't
22 monitored, then we go back and we say, well,
23 okay, we've got monitoring data for employees.
24 Then you have to go back and you say, listen,
25 we've got monitoring data for employees. Do

1 you want to make this a little tighter? Do
2 you want to narrow it down to groups that we
3 can --

4 **DR. ROESSLER:** Times.

5 **MR. RUTHERFORD:** Yeah. And you try to help
6 them work their class definition to something
7 that is real. And that's where a lot of them
8 will stumble because they'll realize that
9 okay, this person may not have been monitored
10 but 29 other people were, whatever. I'm just
11 using that as an example. Because they don't
12 know, a lot of them don't know how much --
13 especially if they're a survivor they don't
14 know how much information we do have.

15 So that's where a lot of them end up
16 failing is that they realize that what they
17 thought was an issue may not be or class
18 definition of something that's real.

19 **DR. MELIUS:** And that's a hard -- it can be
20 a burden on them.

21 **MR. RUTHERFORD:** Yes, it is. I agree.

22 **DR. MELIUS:** Because they don't know enough
23 about the facility or --

24 **MR. CLAWSON:** We go back to that
25 classification issues of all I know is my

1 husband worked out there.

2 **DR. MELIUS:** I don't think we've come to
3 grips with in general and I think it's sort of
4 the how do you find sub-groups and how we
5 wrestle with that. We either tend to do very
6 narrow ones even when we evaluate them or we
7 do the problems like Rocky Flats where we end
8 up looking at the whole facility in essence I
9 think. It's difficult.

10 **MR. RUTHERFORD:** It is very difficult.

11 **DR. LOCKEY:** Which of the ones you reviewed
12 would be most constructive for us to look at
13 from a learning perspective?

14 **MR. RUTHERFORD:** Do you remember? It's been
15 like three months.

16 **DR. JOHNSON:** I don't know exactly the
17 summary, but I know the sites.

18 **DR. ROESSLER:** We've got the list. Tell us
19 the sites.

20 **DR. LOCKEY:** Here's your list.

21 **DR. JOHNSON:** I think it's the Hanford site.

22 **MR. RUTHERFORD:** Yeah, although the -- that
23 one and I think you're probably talking about
24 SEC 50. That was the one for -- it was one of
25 the ones that was under administrative review

1 for Hanford because you actually had it. In
2 his up front summary he actually mentioned
3 that one because of the professional judgment
4 that was done on that one.

5 **DR. ROESSLER:** But we don't have that one on
6 the list.

7 **MR. RUTHERFORD:** Well, and the reason why
8 you don't is because -- and it's why I
9 mention, is that it was under administrative
10 review. SEC 57 came in, another Hanford
11 petition, --

12 **MS. MUNN:** Here it is.

13 **MR. RUTHERFORD:** -- yeah --

14 **DR. ROESSLER:** On John's list but not on our
15 list.

16 **MR. RUTHERFORD:** Well, what happened was
17 when SEC 57 came in it put out new information
18 on Hanford and we said you know what? We're
19 going to qualify 57 but recognizing we're
20 going to qualify 57, SEC 50, the information
21 there's kind of a sub-class of this. We
22 should go ahead and go back, pull that out of
23 administrative review and qualify it as well.
24 So we ended up qualifying SEC 50 and 57 as
25 part of our Hanford, so we're going to do the

1 Hanford evaluation. So that's why --

2 **DR. MELIUS:** But you had turned down 50?

3 **MR. RUTHERFORD:** Yeah, we had originally
4 turned down 50, and the reason why we turned
5 it down is the petition was set up that the
6 petitioner said that DuPont workers were not
7 monitored during this period. And we had a
8 percentage of monitoring data for that and we
9 said -- we went back and we said well, we have
10 monitoring data for these workers. This is an
11 issue where, you know, you're going to work
12 through that class definition.

13 **DR. MELIUS:** And it's also -- I think it's
14 hard to make a judgment on what's adequate
15 monitoring.

16 **DR. ROESSLER:** We haven't solved that
17 ourselves yet.

18 **DR. MELIUS:** We haven't solved it and to do
19 a petition. You can argue that anybody could
20 qualify that one. I mean, you could make it
21 so liberal that anybody qualified for the
22 study. But I don't think this is adequate
23 monitoring for this class because you have to
24 prove the whole -- or disprove the whole
25 class.

1 **DR. ROESSLER:** John, of the ones we have on
2 our list that worked are there any with --
3 where the judgment situation is something that
4 we could maybe get some information from?
5 Where there was a lot of judgment about
6 adequacy and those sort of things?

7 **DR. JOHNSON:** Well, 50 was clearly one of
8 them.

9 **DR. ROESSLER:** That's not on our list.

10 **MR. RUTHERFORD:** That's because we qualified
11 it. But 47 was another one, but 47's under
12 administrative review as well.

13 **DR. LOCKEY:** Which type was that?

14 **MR. RUTHERFORD:** That was NUMEC.

15 **DR. ROESSLER:** NUMEC.

16 **MR. RUTHERFORD:** Yep, that was the other
17 one.

18 **DR. ROESSLER:** We do have a 48 as NUMEC on
19 our list.

20 **DR. LOCKEY:** So when you say it's under
21 administrative review it's been -- it's under
22 that panel of three people.

23 **MR. RUTHERFORD:** Yes, the panel of three are
24 looking at it and it may come to you. It may
25 come to you.

1 **DR. LOCKEY:** And 50 was --

2 **MR. RUTHERFORD:** Actually Hanford, and it
3 was for the early years of Hanford, the DuPont
4 workers.

5 **DR. LOCKEY:** All right. So that wasn't
6 administrative review that just --

7 **MR. RUTHERFORD:** It was actually under
8 administrative review, but what happened was,
9 and I mentioned, when we got SEC 57 in the
10 door, new information was provided by the
11 petitioner under 57 that we were going to
12 qualify Hanford. And we recognized that, hey,
13 because of this new information it really
14 makes -- we should go back and qualify 50 as
15 well. So that's what we did.

16 **DR. LOCKEY:** So that's why it's not on our
17 list.

18 **MR. RUTHERFORD:** Exactly.

19 **DR. LOCKEY:** And 47; is that on our list?

20 **MR. RUTHERFORD:** No, it's not on your list
21 because it's under administrative review.
22 Now, you may get it. You may get it when
23 they're done, but --

24 **DR. MELIUS:** Have you sent out 57 to us yet?

25 **MR. RUTHERFORD:** It went out a few days ago.

1 You've got a ton of stuff in the last few
2 days.

3 **DR. MELIUS:** That's why I was asking. I
4 know I got a couple things the other day. I
5 can't remember Hanford but I know I --

6 **DR. LOCKEY:** All right. So you're saying
7 look at which ones now? Hanford, SEC --

8 **DR. ROESSLER:** Do you want to look at the
9 list to see if that reminds you?

10 **DR. LOCKEY:** Which ones?

11 **MR. RUTHERFORD:** Like I said, I would look
12 at Fernald. I would do that just because one,
13 I'm conflicted and didn't look at it, and so
14 I'm interested to hear what your opinion is.

15 **DR. JOHNSON:** Which one is --

16 **DR. ROESSLER:** Twenty-three.

17 **DR. JOHNSON:** Is that the lady?

18 **MR. RUTHERFORD:** Yeah, that was the lady.

19 **DR. JOHNSON:** She worked at GE also?

20 **MR. RUTHERFORD:** Yeah. Those two, 23 and
21 24.

22 **DR. LOCKEY:** So look at 24, too?

23 **DR. ROESSLER:** Twenty-four, the employment
24 period --

25 **MR. RUTHERFORD:** Yeah, 23 and 24, yeah. The

1 24 I wouldn't worry about working in; that's
2 just my opinion just because it's outside, it
3 was pretty cut and dry.

4 **DR. LOCKEY:** So 23, what other ones should
5 we look at beside that?

6 **DR. ROESSLER:** I'm particularly interested
7 in not straightforward things like dates and
8 stuff like that but the judgment of adequacy
9 and whatever those other words are.

10 **MR. RUTHERFORD:** I will tell you for the
11 most part if they get to the point of, you
12 know -- unless their basis is that there's not
13 monitoring data, and we clearly have
14 monitoring data, your bar's not real high. I
15 mean, it's pretty easy to get qualified
16 because we try to help them.

17 **DR. JOHNSON:** I have found having gone
18 through these cases that each case had been
19 given very -- what do I want to say, a very
20 hard look at meaning that each one had gone
21 through certain stages of review depending
22 upon where it stopped. And whether it's going
23 back to the claimant or the EE and asking
24 questions and verifying that this is what you
25 meant in the application and/or trying to

1 clarify the position that they have made in
2 following out and filling out the
3 questionnaire.

4 That I have found that I recall in no
5 case have there been things kind of just
6 dangling out there and just, if you will, just
7 haphazardly just don't worry about it or
8 forget about it or it's not an issue-type
9 thing. The phone calls, the documentation
10 following up the phone calls have been very,
11 very complete in my opinion.

12 **DR. ROESSLER:** So if in question they go
13 from the evaluation stage to the qualification
14 stage, they go from NIOSH to the Board to
15 decide is what it seems like.

16 **DR. LOCKEY:** Or they get put into the formal
17 SEC review process. Then they go to the next
18 step which is a much more intensive review.

19 **MR. RUTHERFORD:** Yeah, much more rigor.

20 **DR. ROESSLER:** Yeah, this is a first cut.
21 Being very --

22 **DR. JOHNSON:** Detailed.

23 **DR. ROESSLER:** Yeah, if the requirements are
24 not met it's pretty clear is what I think
25 you're saying that they weren't met.

1 **DR. JOHNSON:** And I don't know if it's
2 appropriate for me, but I think the thing that
3 bothered me the most is the three panel
4 administrative review and its timeliness. You
5 have a time period to complete and provide
6 certain documentation which is the process.
7 But then when it comes to that aspect of it
8 it's -- there's not time limit, and there are
9 some out there that are just hanging out there
10 or had been hanging out there for some time.

11 **DR. LOCKEY:** Don't the administrative
12 reviews have a time limit?

13 **MR. RUTHERFORD:** No, and I totally agree
14 with J.J. I think we need, you know, I
15 wouldn't mind seeing that recommendation.

16 **DR. WADE:** Again, that's outside of OCAS' --

17 **DR. ROESSLER:** Where's that in the rule that
18 that's --

19 **DR. WADE:** If you think there should be a
20 time requirement, feel free to put in one. It
21 will be well received.

22 **DR. LOCKEY:** I think there should be a time
23 requirement.

24 **MS. MUNN:** Whether we should specify a given
25 time requirement, but it seems that there

1 ought to be some kind of --

2 **DR. LOCKEY:** Couldn't they meet on a
3 quarterly basis?

4 **DR. ROESSLER:** It says will complete reviews
5 within 30 workdays of the request.

6 **DR. LOCKEY:** No, we're talking about the
7 administrative review afterwards when they --

8 **DR. ROESSLER:** Yeah, but this is it. This
9 is it. They may be not sticking with that.

10 **DR. WADE:** So you might want to say that
11 that should be enforced.

12 **MR. RUTHERFORD:** Yes. Yes.

13 **MS. MUNN:** Failing to follow the guidelines.

14 **DR. LOCKEY:** That Larry Elliott should get a
15 review within 24 hours.

16 **DR. WADE:** This is not Larry. This is off
17 Larry. It's the timeliness of the
18 administration.

19 **MR. RUTHERFORD:** I told you I said I agree
20 with you. It was a good call.

21 **DR. ROESSLER:** So we asked him and he
22 commented.

23 **MR. ELLIOTT:** The regulations say 30 days;
24 right?

25 **DR. ROESSLER:** Yeah, what we need to do --

1 **DR. LOCKEY:** I think our Working Group says
2 that we should (unintelligible) with the
3 regulations 30 days.

4 **MS. MUNN:** We should adhere to the
5 regulations.

6 **DR. ROESSLER:** It's 30 workdays.

7 **MR. ELLIOTT:** It's not their intent to take
8 this much time, but there's been a transition
9 which maybe they've talked about.

10 **DR. WADE:** There are people changing jobs
11 and things but that's no reason. You should
12 stand with your recommendation.

13 **DR. LOCKEY:** We'll make that recommendation
14 that the administrative review should be where
15 it is. Well, why don't we go off the record
16 again and then we'll go through this process.

17 **(Off the record)**

18 **(On the record)**

19 **WORKING GROUP DISCUSSION**

20 **MR. CLAWSON:** I would like Lew to put forth
21 how much effort. I was quite impressed with a
22 lot of phone conversations and stuff like
23 trying to bring people in to educate them,
24 that it can't be an individual, and trying to
25 put them into a class. You know, when we see

1 an individual have five or six different plans
2 there, and they're filing for one that isn't
3 even a Department of Energy or nuclear workers
4 to try to get them into a class. I think
5 they've done a fine job in a lot of these.

6 **DR. LOCKEY:** So what I see is that there
7 really is adequate documentation as to why a
8 petition would be denied. That's provided
9 that they had good phone records. They have
10 outlined in their phone conversations the
11 logic that's used.

12 **MR. CLAWSON:** I really -- this phone
13 documentation and stuff like that is very
14 useful in trying to figure out the process
15 through this, and I think they've done a very
16 good job on that. I still do believe that
17 some of the letters that are sent out are a
18 little bit too stiff, but...

19 **MS. MUNN:** Yeah, but we've looked through a
20 large segment of all of the rejected SEC
21 petitions up through number 74 and the
22 meticulous attention to detail is impressive
23 in the file.

24 **DR. LOCKEY:** Things are well documented I
25 think.

1 **MS. MUNN:** No question that the
2 documentation is there. There's also no
3 question that every -- it seems to me every
4 possible effort has been made to communicate
5 with these folks at any level that was
6 necessary.

7 Whether that was always successful, as
8 you pointed out, Jim, the letters themselves
9 are often very formal and sometimes difficult
10 to get to the meat of, but certainly that
11 didn't occur in the telephone communications.
12 The telephone communications seem to be very
13 user friendly and every effort made to touch
14 all the bases.

15 **MR. CLAWSON:** I was impressed with a couple
16 of them because -- in this one right here they
17 use a -- he was worried about the 21 days and
18 in the telephone conversation they said that
19 he could extend that. He chose to use a
20 lawyer to do that but that he could extend the
21 30 days. So I'm seeing that the phone
22 conversations are trying to assist them that
23 the drop-dead date isn't there, but I think
24 that could be formalized in a letter a little
25 bit better.

1 **DR. ROESSLER:** I agree the phone
2 interactions are very good, very down to
3 earth, people have a chance back and forth.
4 The letters, I happen to think Dr. Howard's
5 letters are very easy to understand. Maybe it
6 appears at a different time, maybe it doesn't
7 need to be so legalistic. But when I read his
8 letters, to me they have more of a laying it
9 out, explaining it clearly, maybe even a
10 little bit of a warm feeling. Whereas, I
11 think the first letters that have been adopted
12 to respond are too legalistic.

13 And I'm wondering if that couldn't be
14 revisited because they come across as very
15 heavy, and because they come across as heavy
16 they're not very friendly, and they're hard to
17 understand. It's hard to read them and at
18 first glance I think somebody gets this in the
19 mail or from FedEx and they're wondering what
20 happened.

21 And they get it and they're probably
22 very nervous to begin with. It's hard to find
23 the bottom line, and then to kind of soften
24 the message because it's a turn down. I don't
25 know whether it needs softening but they're

1 too legalistic.

2 **MS. MUNN:** It's hard to know how to strike a
3 balance between the requirements for legal
4 language and the desire for claimant-friendly
5 communication. That's got to be hard to
6 achieve.

7 **DR. ROESSLER:** Well, maybe they can have
8 some interaction on that.

9 **MS. MUNN:** Can't hurt to try.

10 **DR. LOCKEY:** So the recommendations of the
11 Working Group is to try to -- that overall the
12 process seems to be working and well
13 documented and intact. That the phone
14 consultation particularly is excellent, but
15 the letters that go out, initial letters and
16 follow-up letters are difficult to understand,
17 difficult to follow and not audience friendly.

18 **MS. MUNN:** Yes, we've already given the four
19 other points that we wish to make, so they're
20 documented; correct?

21 **DR. LOCKEY:** That's correct.

22 **DR. ROESSLER:** Did we document the one about
23 the three panel review time? It's stated in
24 the rule what the time is, but apparently --

25 **DR. LOCKEY:** There is a letter that is

1 included in that letter.

2 **DR. ROESSLER:** And that's already in the
3 record.

4 **DR. WADE:** But your record also established
5 the fact that NIOSH needs to be encouraged to
6 meet that deadline.

7 **DR. ROESSLER:** And enforce it better.

8 **DR. WADE:** Would you like the transcript
9 then to be given to you to pull out this
10 material or do you want to attach the
11 transcript to your -- I don't know how you
12 want to handle the mechanics of this then.

13 **MS. MUNN:** I'd like for the Board to get --
14 I mean, I'd like for the Working Group to get
15 the transcript back to --

16 **DR. WADE:** This transcript?

17 **MS. MUNN:** Yes, uh-huh, to give us an
18 opportunity to assure ourselves that we did
19 cover the things that we wanted to cover. I'd
20 hate to leave anything out of this particular
21 session.

22 **DR. LOCKEY:** One of us could put together a
23 one-page summary statement. I think that's
24 what you're talking about.

25 **DR. WADE:** I guess the target if you start,

1 the target would be for the Working Group to
2 present to the Board in December. And that
3 would be this summary of recommendations with
4 the transcript having been reviewed by you
5 guys attached. So we just need to make that
6 happen.

7 Now, when could we expect the
8 transcript? Any time tomorrow would be fine.
9 I think the contract is probably two weeks.

10 **DR. LOCKEY:** So what we need is a summary
11 statement and a transcript and I'll take a
12 draft of the summary statement. I'll just
13 dictate something this afternoon, what are my
14 thoughts and get it out to everybody. And
15 then everybody look at the transcript and go
16 back and look at the summary statement and see
17 if it reflects what the transcript says and
18 what our thoughts are.

19 **MS. MUNN:** Good plan.

20 **DR. WADE:** And if we can aim to have it to
21 the Board a week before the Board meeting.
22 Those Board members get really testy about
23 that kind of stuff.

24 **MS. MUNN:** Yes, they do.

25 **MR. RUTHERFORD:** How many total were there?

1 **MS. MUNN:** I have two right here.

2 **DR. WADE:** There's six on this table.

3 **DR. ROESSLER:** I think there were 25, 25 if
4 you don't include the ones that weren't a
5 covered site.

6 **MR. RUTHERFORD:** Yeah, that sounds right.

7 **DR. LOCKEY:** I think we went through about
8 two-thirds of them.

9 **MR. RUTHERFORD:** And it's actually -- the
10 total number you can just kind of take right
11 off this table right here except for those
12 five.

13 **DR. ROESSLER:** I would also like to speak
14 for another outreach effort. I think I've
15 already said this, but I think that there
16 should be some effort to tell people who are -
17 - who could apply for an SEC class that they
18 need to make their petition as specific or as
19 narrow as possible. It should be one type of
20 work, one time period, one facility. I think
21 there's a lot of confusion on that, and that
22 could save some effort on their part and
23 everybody's part.

24 **MR. RUTHERFORD:** Everybody, just like you
25 said.

1 **MR. CLAWSON:** Yeah, I noticed that several
2 of them were five and six different sites and
3 then as you guys stated you got to select one
4 site, da-da-da-da, and you know, they were Y-
5 12 and K-10 or whatever like that.

6 **MR. RUTHERFORD:** Well, and if you look at a
7 lot of those, those are individuals that
8 worked at all those different sites and their
9 dose reconstruction may have gotten turned
10 down or they're just looking at trying to get
11 a petition in on every one of them.

12 **DR. WADE:** God bless them.

13 **DR. LOCKEY:** Is there anything else?

14 **(No response)**

15 **DR. LOCKEY:** We certainly appreciate your
16 help and your time.

17 **MS. MUNN:** Yes, thanks all of you,
18 especially for getting all of this material
19 together for us, laying it out.

20 **DR. WADE:** It was my sense that this was
21 sort of the last corner of our universe that
22 the lights really hadn't gone on for close
23 examination. I'm glad you guys came and did
24 it. You know everything about SEC petitions
25 that are qualified.

1 **MR. RUTHERFORD:** You see that all the time.

2 **DR. WADE:** And we know all about dose
3 reconstructions that are approved or denied.
4 But this little corner was dark and now it's
5 light. And your recommendations will help us
6 do our job better certainly.

7 **DR. ROESSLER:** And I think what I've gained
8 here overall is that this is certainly a
9 claimant-friendly process. I have no problems
10 with the way these were reviewed. I don't
11 think any of them were rejected that shouldn't
12 have been. I thought maybe we were going to
13 find some of that, but it's very friendly.

14 **DR. WADE:** It can be more friendly. We
15 could always be more friendly. Because we're
16 dealing with these wonderful people who've
17 surrendered their health to their country's
18 well being, so it's incumbent upon us to serve
19 them ever better. That's what we're asking
20 you for advice on.

21 **MR. CLAWSON:** I'd also like to -- and you
22 can pass it on to compliment you on the
23 diligence that has gone into this. I was
24 really impressed with the phone conversations
25 but also, you know, some of the letters were a

1 little bit to the T and everything else like
2 that, but I could see, I guess, maybe from my
3 knowledge of the assistance was trying to be
4 helpful with them. I'd like you to pass that
5 on to everybody else. I was very impressed.
6 I thought they really did a fine job and I'd
7 like to compliment them all on it.

8 **MS. MUNN:** I was very pleased to see that
9 because I think sometimes in our full Board
10 setting we don't get the full implications of
11 how much time and effort goes into each one of
12 these individual submissions and a review of
13 this kind makes it painfully clear to those of
14 us who actually see it that we really cannot
15 fault the effort of the Agency in their
16 attempts to fulfill the requirements of the
17 law here.

18 **DR. WADE:** It's appropriate that when we
19 meet in public we talk about the problems.
20 It's the way it is and the way it should be.
21 But there is a tremendous amount of work and
22 particularly in this process now under
23 Bomber's direction. I mean, this is something
24 the Agency's extremely proud of. It doesn't
25 mean we can't always do better, but we can be

1 extremely proud of the way we reach out.

2 **DR. ROESSLER:** Good job, Bomber.

3 **MR. RUTHERFORD:** Well, I think Mr. Sundin
4 gets part of that good job.

5 **DR. WADE:** We don't like to give him too
6 much credit. He doesn't do well with
7 compliments.

8 **MS. MUNN:** Don't embarrass him.

9 **MR. SUNDIN:** Thank you.

10 **DR. LOCKEY:** It helps me sometimes, remember
11 your audience is probably maybe a 60 or 70
12 year old widow.

13 **MS. MUNN:** Yes.

14 **MR. CLAWSON:** Well, we've said this from the
15 very beginning. One of the hardest things is,
16 is for the people that are filing this that
17 don't really even know what their spouse did
18 or anything else like that and it's difficult
19 for them.

20 **MS. MUNN:** But our technical basis documents
21 for the site are continually becoming more and
22 more specific with respect to what's there.
23 So that it's not as difficult to place an
24 upper bound on possibilities as it was when we
25 started.

1 **MR. CLAWSON:** Those are living documents.

2 **MS. MUNN:** They are.

3 **DR. WADE:** We're cursed with that, aren't
4 we?

5 **MS. MUNN:** We are indeed, no question.

6 **DR. WADE:** Thank you very much, a very good
7 Working Group. We give you high marks, except
8 for one member but that's a different issue.

9 **DR. ROESSLER:** High marks and low pay but
10 that's fine. We've got to get those high
11 marks.

12 **DR. WADE:** The harder you work the lower
13 your pay will get.

14 **MS. MUNN:** I guess it's time for us to leave
15 now.

16 **DR. LOCKEY:** Thank you very much everybody.

17

18

19 (Whereupon, the Working Group meeting
20 concluded at 2:45 p.m.)

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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 Shane Cox, Certified Court Reporter, reported the above and foregoing on the day of November 9, 2006; I, Steven Ray Green, then transcribed the proceedings, 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 2nd day of January, 2007.

STEVEN RAY GREEN, CCR
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