

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

ROCKY FLATS

The verbatim transcript of the Working  
Group Meeting of the Advisory Board on Radiation and  
Worker Health held telephonically on June 17, 2008.

STEVEN RAY GREEN AND ASSOCIATES  
NATIONALLY CERTIFIED COURT REPORTERS  
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### TRANSCRIPT LEGEND

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-- "uh-huh" represents an affirmative response, and "uh-uh" represents a negative response.

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

-- (inaudible)/ (unintelligible) signifies speaker failure, usually failure to use a microphone.

**P A R T I C I P A N T S**

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ULSH, BRANT, NIOSH

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

(2:30 p.m.)

1

2

WELCOME AND OPENING COMMENTSDR. CHRISTINE BRANCHE, DFO

3

**DR. BRANCHE:** Good afternoon. I'm Dr.

4

Christine Branche, and I have the pleasure of

5

being the Designated Federal Official for the

6

Advisory Board on Radiation and Worker Health,

7

and this is the Rocky Flats work group meeting.

8

Let's begin please with the Board members,

9

please mention your names.

10

**MR. GRIFFON:** Mark Griffon.

11

**MR. GIBSON:** Mike Gibson.

12

**DR. BRANCHE:** Thank you. Are there any other

13

Board members participating in the call?

14

(no response)

15

**DR. BRANCHE:** At this point we do not have a

16

quorum, so we can proceed. Would the NIOSH

17

staff please mention your names and say if you

18

have a conflict with Rocky Flats?

19

**DR. ULSH:** Yeah, this is Brant Ulsh, and I have

20

no conflict.

21

**MR. ELLIOTT:** This is Larry Elliott, Director

22

of OCAS, and I have no conflict.

1           **MS. ADAMS:** Nancy Adams, Office of the  
2           Director, no conflict.

3           **MS. CHANG:** Chia-Chia Chang, Director's Office,  
4           no conflict.

5           **MR. BLOSSER:** Fred Blosser, Director's Office,  
6           no conflict.

7           **DR. BRANCHE:** ORAU staff, would you please  
8           mention your names and say if you have a  
9           conflict?

10          (no response)

11          **DR. BRANCHE:** SC&A staff, would you please  
12          mention your names and say if you have a  
13          conflict?

14          **MR. FITZGERALD:** This is Joe Fitzgerald. I  
15          don't have a conflict.

16          **DR. BRANCHE:** Staff from HHS, would you please  
17          state your names, and state whether or not you  
18          have a conflict?

19          **MR. MCGOLERICK:** Robert McGolerick, no  
20          conflict.

21          **MS. HOWELL:** Emily Howell, HHS, no conflict.

22          **MR. BROEHM:** Jason Broehm, CDC Washington  
23          Office, no conflicts.

24          **DR. BRANCHE:** Other federal agency staff, would  
25          you please state your names and say whether or

1 not you have a conflict?

2 (no response)

3 **DR. BRANCHE:** Are there any petitioners or  
4 their representatives who would like to state  
5 their names?

6 **MR. GRIFFON:** Hold on one second. Somebody's  
7 on the other line giving the call-in number.  
8 Hold on one second.

9 **DR. BRANCHE:** Okay.

10 **MR. GRIFFON:** Sorry, I'm back, this is Mark.

11 **DR. BRANCHE:** Okay.

12 **MR. GRIFFON:** Okay.

13 **MR. PRESLEY:** This is Bob Presley.

14 **MR. GRIFFON:** Oh Bob, good.

15 **DR. BRANCHE:** Good, wonderful. Are there any  
16 workers or their representatives who would like  
17 to state their names?

18 **MS. BARRIE:** This is Terrie Barrie with ANWAG.

19 **DR. BRANCHE:** Thank you, Ms. Barrie.  
20 Are there any members of Congress or their  
21 representatives who would please state their  
22 names?

23 **MS. BOLLER:** Carolyn Boller, Congressman  
24 Udall's office.

25 **MS. GNIRK:** Gale Gnirk, Congressman John



1 Salazar's office.

2 **MR. KESSLER:** Zane Kessler, Senator Ken  
3 Salazar's office.

4 **MS. RUTTENBER:** Margaret Ruttenber, State  
5 Health Department.

6 **DR. BRANCHE:** Are there any others who would  
7 like to state their names for the record?

8 **COURT REPORTER:** Dr. Branche, this is Ray. I'm  
9 sorry to interrupt, but could I please ask the  
10 two people from Senator Salazar's office to  
11 state your names kind of slowly for me, please?  
12 (Whereupon, multiple speakers spoke.)

13 **DR. BRANCHE:** I'm sorry, there are three of  
14 you. One second, there were three of you, and  
15 if all three of you could please state your  
16 name slowly, that would help us I think.

17 **MR. KESSLER:** Zane Kessler, U.S. Senator Ken  
18 Salazar's office.

19 **MS. GNIRK:** Gale Gnirk, Congressman John  
20 Salazar's office.

21 **COURT REPORTER:** I'm sorry, could you spell  
22 that last name, please?

23 **MS. GNIRK:** Yes, it's G-N-I-R-K.

24 **COURT REPORTER:** Thank you. And there was  
25 another one, please?

1           **MS. BOLLER:** Carolyn Boller, Congressman Mark  
2           Udall's office.

3           **COURT REPORTER:** Right, I got yours. Okay,  
4           thank you very much.

5           **MR. KOTSCH:** Christine, this is Jeff Kotsch  
6           with Labor. I'm sorry I'm running late.

7           **DR. BRANCHE:** Oh, well thank you for joining  
8           us.

9           **MS. MUNN:** And Christine, this is Wanda Munn.  
10          I'm sorry I'm late. I was on another  
11          teleconference.

12          **DR. BRANCHE:** Okay. Are there any other --  
13          right now I have Mr. Griffon, Mr. Gibson, Mr.  
14          Presley and Ms. Munn. Are there any other  
15          Board members who have joined us?

16          (no response)

17          **DR. BRANCHE:** Okay. We do not have a quorum of  
18          the Board and so we can proceed. I ask that  
19          everyone participating today, if you could  
20          please mute your phones, we are all on by phone  
21          and it's important for us to mute our phones  
22          when we are not speaking. If you do not have a  
23          mute button, then please use star 6 to mute  
24          your phones. And when you're ready to speak,  
25          please use that same star 6 so we can hear you.

1           And again I ask that everyone observe telephone  
2           etiquette, and if you need to go off the call  
3           please do not put us on hold because whatever  
4           music or sounds your hold system uses will  
5           interrupt the quality of our sound today.  
6           Thank you so much. Mr. Griffon.

7           SEC CLASS FOR ROCKY FLATS

8           **MR. GRIFFON:** Okay, yeah, I didn't send out an  
9           agenda but I think at the last Board meeting we  
10          made it fairly clear that the only discussion  
11          item is really around the implementation of the  
12          SEC class for Rocky Flats, and with that in  
13          mind I guess what we had -- the advice that I  
14          asked the Board for was you know how do we  
15          proceed and one thing that we all agreed on at  
16          the Board meeting, objective, was to have the  
17          Department of Labor give us a better sort of  
18          briefing on how on this bulletin and how they  
19          are implementing this class. And then maybe we  
20          can have a little bit of discussion about you  
21          know whether we have remaining concerns about  
22          that or whether that meets our intent of our  
23          original definition as we had crafted it in our  
24          letter to the Secretary. So with that in mind  
25          I had asked and I hope, Jeff, I hope you

1 received my e-mail and would be willing to give  
2 us sort of a step-through on how, you know,  
3 this bulletin and your criteria and how you're  
4 implementing this class when you're having to  
5 make the decision, and then you know we can  
6 discuss it after your, after you give a  
7 briefing. Jeff Kotsch?

8 **MR. KOTSCH:** Yeah, do you want me to start now?

9 **MR. GRIFFON:** Yeah, if you could.

10 **MR. KOTSCH:** Basically I'm going to just read  
11 through some stuff which basically takes us  
12 through, there's three criteria in both --  
13 well, in the initial bulletin which was dated  
14 October 15<sup>th</sup>, and then there was a supplemental  
15 bulletin on January -- I'm sorry, the first one  
16 was on October 15<sup>th</sup>, 2007, and the second one  
17 was an 814, was January 23, 2008, which  
18 clarified some of the requirement, you know,  
19 one of the requirements in there.

20 So let me just step through. There's  
21 three basic criteria that we use to interpret  
22 the SEC class at Rocky Flats. The way the  
23 class definition is written, it requires that  
24 an employee worked at least 250 days at the  
25 plant during the designated time period and

1           that the employee was monitored, or should have  
2           been monitored for neutron exposures for at  
3           least 250 days during that time period. So the  
4           real crux of it is how do we get to the, how do  
5           we determine the, relate it to neutron  
6           exposures, language of this definition.

7           So to do that we use three different  
8           tests. The tests are applied separately and  
9           satisfying a single criterion is sufficient to  
10          place the individual in the SEC class. The  
11          first one is, and the most important one is  
12          inclusion in the Rocky Flats neutron dose  
13          reconstruction project, the NDRP, which  
14          contains 5300 names of workers. For the  
15          employees that are listed on the NDRP list, the  
16          250-day requirement is measured for their  
17          employment at the Rocky Flats facility. Every  
18          employee on that list is actually monitored for  
19          neutron exposure while working at Rocky Flats  
20          or was known to have worked in the plutonium  
21          building which would have given them exposure  
22          to neutron and was assessed for neutron  
23          exposure as part of the project.

24          The workers on the NDRP list were those  
25          with significant neutron exposure and thus for

1           these employees DOL presumes 250 workdays of  
2           exposure for duration. Basically if you have -  
3           - if you're on the list and you have 250 days  
4           of employment, this criterion would affect, 250  
5           days at the site. This seems to have been the  
6           most common avenue for inclusion in the class.  
7           Those on the list need show nothing further  
8           beyond the employment of 250 days during the  
9           SEC period at Rocky Flats. So that's the first  
10          of the three criteria.

11                 The second test is the employment in a  
12          building identified as the plutonium building.  
13          Most employees who worked in the known  
14          plutonium buildings are included in the NDRP  
15          list and are included in the SEC class on the  
16          basis without further analysis. Employees at  
17          Rocky Flats who are not on the list and are  
18          potentially qualified for inclusion in the SEC  
19          by virtue of having worked in a building in  
20          which plutonium was present have to demonstrate  
21          250 days in that building as specified by HHS  
22          when it found that the health endangerment was  
23          demonstrated by minimum employment within the  
24          parameters established for the class.

25                 For workers who were included in the

1 class based specifically upon employment in  
2 certain buildings, there must be a showing that  
3 they were present in such buildings, not just  
4 at Rocky Flats, as a whole. So this one is  
5 specific to the buildings, 250 days in the  
6 particular buildings that are considered as one  
7 or all plutonium facilities. So it could be  
8 time in just one or in a collection of all the  
9 buildings that are considered plutonium  
10 buildings.

11 To do this, DOL accepts credible  
12 evidence. Again, all these things are done on  
13 a case by case basis in the district office.  
14 Credible evidence of presence, including DOE  
15 employment and dosimetry record information  
16 collected by NIOSH for its dose reconstruction  
17 and claimant and coworker affidavit.

18 So if either of these first two tests or  
19 criteria are met, the employee has a specified  
20 cancer, DOL will accept their inclusion into  
21 the SEC. If neither of the first two criteria  
22 is met, DOL considers whether the employee  
23 should have been monitored for neutron dose  
24 based on NIOSH's completed dose reconstruction  
25 report.

1           The current, and this is where the  
2           hundred millirem per year limit stems from  
3           based on DOE regulations. Employees expected  
4           to receive that amount of radiation exposure  
5           during a year are to be monitored, and those  
6           expected to receive less were probably not  
7           monitored -- or were not required to be  
8           monitored.

9           Under our bulletin 814 which is the  
10          second one, the clarifying one, the claims  
11          examiner reviews the NIOSH dose reconstruction  
12          report to determine if there is at least one  
13          year during the period 1952 through 1966 in  
14          which the dose reconstruction assigned the  
15          employee with at least 100 millirem of neutron  
16          dose for that particular year. Only one year  
17          at or above the hundred millirem during this  
18          period is needed for finding to be made that  
19          the employee should have been monitored. For  
20          employees determined to have met the current  
21          threshold level of neutron exposure to require  
22          monitoring at at least one year during the SEC  
23          period, that is the hundred millirem, the 250  
24          day requirement is measured by their employment  
25          at Rocky Flats as a whole. Since under the



1 current standards they should have been  
2 monitored for the entire period during which  
3 they were exposed to neutron.

4 Hang on one second.

5 I mean there's other information in  
6 those bulletins. There's guidance for the  
7 claims examiners, but those are basically the  
8 three tests.

9 These were developed -- Let me just go  
10 on a little bit more. These were developed in  
11 consultation with NIOSH, and we took, as we  
12 did, we took steps to expand the class actually  
13 by adding Building 881 to the list of known  
14 plutonium buildings under the second criterion.  
15 That was one thing, and then further, our  
16 inclusion in the third criterion was based on  
17 the belief that the definition of the class  
18 required us to include in the class any worker  
19 with a final NIOSH dose reconstruction report  
20 that credited 100 millirems of neutron dose to  
21 the worker, provided, again, they met the 250  
22 workday test. The last thing is we have  
23 discussed -- DOL has discussed with NIOSH  
24 whether we are correctly interpreting, or if we  
25 need to correctly interpret like a dose

1 reconstruction that has some indication of  
2 neutron dose, whether that, whether NIOSH,  
3 whether we're correctly reading the dose  
4 reconstruction as far as the extent of the  
5 neutron dose that it calculates, and also we  
6 would discuss with NIOSH any further inclusion  
7 of buildings under the second criterion, too.

8 So Mark, I mean that's a brief overview  
9 of the -- I mean the core of those bulletins  
10 are those three tests or criteria.

11 **MR. GRIFFON:** Right, and I guess, I mean it  
12 brings up a couple of questions. But can you,  
13 just on the front end, can you tell me if you  
14 look at that time frame right now, you know,  
15 people that would fit into the class by the  
16 time frame we defined, how many cases did not  
17 meet one of these three criteria?

18 **MR. KOTSCH:** I don't know, I mean I don't have  
19 that --

20 **MR. GRIFFON:** You don't have those numbers  
21 there?

22 **MR. KOTSCH:** I'm trying to think how to figure  
23 that out. I guess you'd have to look at the  
24 denied ones. I could check on that. I mean I  
25 don't have that number right --

1           **MR. GRIFFON:** I thought at one point you told  
2 me it was very few cases.

3           **MR. KOTSCH:** Yeah I don't think -- that's what  
4 I'm saying. It's not a large number. There  
5 were six cases I think I discussed at the last  
6 Board meeting that kind of caught between the  
7 two bulletins and actually one of them, I think  
8 there's only one of them that might have been  
9 actually caught, would have been affected by  
10 the second one but not the first one. You know  
11 what I'm saying?

12           **MR. GRIFFON:** Yeah, I think I know what you're  
13 saying, yeah. 'Cause I mean, I don't know,  
14 there's several little questions within these  
15 criteria that I have, like the third one to me  
16 seems you know really potentially problematic,  
17 but if it's just, you know, catching the final  
18 cases, that's one thing, but if you know,  
19 you're, it almost seems a little bit circular  
20 because you're looking at NIOSH's dose  
21 reconstruction report to determine if someone  
22 was monitored or should have been monitored,  
23 but I think a lot of what the DR's based on are  
24 the first two items, NDRP or presence in one of  
25 those buildings. If they're present, they

1           might assign a missed dose. I don't know if  
2           that's, you know, shedding any more light onto  
3           the question of whether someone, you know, was  
4           you know, went unmonitored and could have  
5           received a hundred millirem. You know what I'm  
6           saying, Jeff?

7           **MR. KOTSCH:** Yeah, and that's what we grappled  
8           with, too. I think there's some -- I don't  
9           know how high a level of confidence, but that  
10          the first two catches most of the people that  
11          probably were exposed to neutrons, either  
12          through the actual monitoring or their presence  
13          in a facility that had, you know, plutonium  
14          facility or the one with the generator that  
15          actually had neutron exposure associated.

16          **MR. GRIFFON:** Right.

17          **MR. KOTSCH:** The last one was a mechanism that  
18          we had seen a couple of dose reconstructions  
19          that appeared to be, have some indication of  
20          neutron, but were not contained in either of  
21          those two other ones. They were buildings  
22          outside of the list, and they were not on -- I  
23          mean outside the list of buildings and also  
24          outside the list of the NDRP employees. So  
25          that was the trigger to say well, one trigger

1           would be well should that building maybe  
2           perhaps be included in the -- which I think  
3           what happened with, you know, with the addition  
4           of 881, and/or did NIOSH have reason to believe  
5           that there was some neutron exposure there, for  
6           whatever reason, and they're not either in one  
7           of those buildings or on that list. But from  
8           what we can tell, or at least what I've seen,  
9           they seem to be a very small number of people  
10          being affected by that last criterion.

11          **MR. GRIFFON:**       Yeah, but certainly it's  
12          important to those few people. I mean we want  
13          to make sure we get it correct, and if we can't  
14          be perfect, I think we all want to err on the  
15          side of the claimant, and my question would be  
16          if it's so, you know if it's, I mean we go back  
17          to these anecdotal examples that we've had of  
18          people that were assigned to the other  
19          buildings but did jobs in the plutonium  
20          buildings, as you're describing them, and you  
21          know, if they were, you know, if the program  
22          was perfect and monitored everyone, then it  
23          would be in the NDRP and there'd be no issue  
24          there. But you know, I think we've got some  
25          reason to believe there might be some gaps in

1           that database, so then you know, and their work  
2           history would show them not working in the  
3           plutonium buildings. And that's the few, maybe  
4           it's only a few, but that's the few that we're  
5           a little concerned about whether we are  
6           capturing them, or how to capture them.

7           **MS. BOLLER:** Mark, it's Carolyn. I have a  
8           question for someone. Of these 5,308 on the  
9           NDRP list, how many of those folks filed  
10          claims, and how many of those have been paid?

11          **MR. KOTSCH:** Well, I mean I don't know that  
12          Labor has, how we'd sort that 'cause we'd have  
13          to check that list against...

14          **MR. GRIFFON:** Yeah, that's probably a tough  
15          statistic to --

16          **MR. KOTSCH:** Yeah, we certainly don't have it;  
17          we certainly haven't sliced it that way.

18          **MR. GRIFFON:** Right.

19          **MR. KOTSCH:** Because it also obviously is  
20          dependent upon you know this element of one of  
21          the cases.

22          **MS. BOLLER:** But would you not know how many  
23          people you have paid under the SEC?

24          **MR. KOTSCH:** Yeah, I mean I don't have that  
25          number. Unfortunately I don't have that number

1 right in front of me, but yeah. I'm sorry, I  
2 can't tell you whether those people were on  
3 that list or not.

4 **MS. BOLLER:** But we can get that number.

5 **MR. KOTSCH:** Yeah.

6 **MS. BOLLER:** Yeah. Now here's my other  
7 question. What are you, what, how in this  
8 formula are you accounting for the surviving  
9 spouse or family member who has no clue where  
10 their spouse worked at Rocky Flats? Because  
11 they were all on a Q clearance and they  
12 couldn't discuss their work. So in some of the  
13 notices we've seen come back it's like provide  
14 us with the information that tells us where  
15 your spouse or your family member worked. How  
16 do they fit into this, or are they just SOL?

17 **MR. KOTSCH:** Well, I mean beyond what they  
18 provide obviously, NIOSH is picking up from DOE  
19 information on their work locations and their  
20 activities, you know their work titles and  
21 things like that. Plus if they had any, like I  
22 said, for the number two, or actually for any  
23 of them, they can you know they can provide,  
24 each one is done on a case-by-case basis based  
25 on you know the evidence that's provided, so

1           they could, if they had, if they happened to  
2           know coworkers, they could get affidavits or  
3           you know there are other sources of information  
4           that corroborate (sic) ---

5           **MS. BOLLER:**   An 83-year-old woman is gonna go  
6           find coworkers of her late husband who she  
7           doesn't know worked with?

8           **MR. KOTSCH:**   Well, I just said that's a  
9           possibility.

10          **MS. BOLLER:**   Yeah.

11          **MR. KOTSCH:**   And I would think that the primary  
12          information should be coming through out of  
13          basically DOE records and then you know that  
14          NIOSH is collecting.

15          **MR. GRIFFON:**   And then I think, Jeff, we have  
16          you know this question of you know some of  
17          those buildings that people were -- like the  
18          example I've been using for several calls, is  
19          the maintenance building where there clearly a  
20          maintenance worker assigned to that maintenance  
21          building, I forget the number offhand.   But  
22          the, you know what I've heard from several  
23          people they would go out on assignments to  
24          these other buildings.   Now often they were  
25          probably badged to go in those buildings, but



1           was that always the case? I'm not sure we know  
2           that. So that's the question I have, is those  
3           people that...

4                     And then I think the other thing I'm  
5           trying to grapple with is in the 250 day  
6           criteria, I could certainly see a case where  
7           someone is on the NDRP list who was not exposed  
8           to neutrons for 250 days. You know, they may  
9           have been one of these maintenance people that  
10          got assigned a badge and worked in there for  
11          two weeks or something on a particular job and  
12          then they, that was the only time they were in  
13          there for the five years. So they, in this  
14          case, they were the lucky one I guess, or  
15          whatever, you know...

16          **MR. KOTSCH:** Yeah, we presume, we knew that  
17          exists, that situation exists but you know we  
18          also know that they were definitely -- if they  
19          were on that list they were pretty, it seemed  
20          pretty evident that they had some neutron  
21          exposure. Now we realize it may not be 250  
22          days. That's why we apply the criteria for the  
23          site rather than just try to put them in a  
24          particular building or something. You know, in  
25          an effort at least for them, to be you know

1           somewhat claimant favorable, just use that  
2           presumption.

3           **MR. GRIFFON:** But in that last category you  
4           have to show 250 days in the particular  
5           building, right?

6           **MR. KOTSCH:** In the second one, yeah.

7           **MR. GRIFFON:** Yeah. And in that case couldn't  
8           you have the same situation where you had a  
9           maintenance worker went there for a couple  
10          weeks job, certainly got exposed to more than a  
11          hundred millirem per year, or could you know;  
12          this is just my hypothetical example, you know,  
13          got exposed to more than a hundred millirem in  
14          those two weeks but wasn't in the NDRP, you  
15          know.

16          **MR. KOTSCH:** Are you saying the one that,  
17          something is showing up in the dose  
18          reconstruction?

19          **MR. GRIFFON:** No, I'm saying the person that  
20          could slip through the cracks here, that you  
21          have you know that they, they're not on the  
22          list and then you look at your building  
23          criteria and based on their work history,  
24          they're not in there; they're assigned to a  
25          maintenance building. But the reality was you

1 know they got sent over for occasional  
2 maintenance job there, but even if you added up  
3 every one of those little maintenance jobs they  
4 wouldn't have done that for more than 250 days,  
5 but they might have you know if it was current  
6 standards, they might have been required to  
7 have a badge 'cause they might have exceeded  
8 the hundred millirem.

9 **MR. KOTSCH:** Yeah, but in your example they  
10 were not even badged, right?

11 **MR. GRIFFON:** Right, right.

12 **MS. MUNN:** This is Wanda --

13 **MR. GRIFFON:** And you know if that's not a  
14 potential then I guess, you know, we drop this  
15 thing, but from what I've heard, that might be  
16 a potential that is out there.

17 **MS. MUNN:** It's been a long time since I've  
18 read through the materials supporting our  
19 concerns here, but didn't Rocky Flats have the  
20 same kind of process in place that other sites  
21 had which required essentially work  
22 instructions for any activity that took place  
23 inside radiation zones? Wasn't there a process  
24 in place where the job description had to be  
25 outlined and the work instruction approved by -

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**MR. GRIFFON:** Wanda, I'm having a very hard time hearing you.

**MS. MUNN:** Maybe it's the telephone that I'm on. I'm using an unusual one. Is this better?

**MR. GRIFFON:** Yeah, try that, yeah.

**MS. MUNN:** Can you still not hear me?

**DR. BRANCHE:** This is Christine. One second. Ray Green, can you hear her?

**COURT REPORTER:** Actually I'm hearing her very well, yeah.

**DR. BRANCHE:** Mark, can you hear her now?

**MS. MUNN:** Now?

(no response)

**MS. MUNN:** Have we lost Mark?

**MR. GRIFFON:** I've got you. It's better now. Okay.

**MS. MUNN:** Would you like me to rephrase the question?

**MR. GRIFFON:** Yeah, go ahead Wanda, thank you.

**MS. MUNN:** My question was since it's been such a long time since I've looked at any of the documentation supporting any of the activities of how work was performed at the plant, my question was didn't Rocky Flats have the same

1 kind of process in place that was in place at  
2 other sites, which when work was going to be  
3 performed inside any radiation or potential  
4 radiation zone, work plans had to be presented  
5 and signed off by RPTs. Wasn't that process in  
6 place? The reason I'm asking that is because  
7 if that process were in place then the  
8 individual, regardless of where they were  
9 assigned, would have had to have been issued at  
10 least a temporary badge. And I can't imagine  
11 that jobs would have been undertaken at any  
12 radiation zone that didn't have work procedure  
13 associated with it.

14 **MR. GRIFFON:** Yeah, Wanda, I hear what you're  
15 saying. I think it might be a little more  
16 complicated in the NDRP because someone along  
17 the line had to make the decision that they  
18 were exposed to neutrons. Unless they had a  
19 neutron film. A lot of times they would have  
20 the gamma, and it would just be you know an  
21 estimate of the dose based on N/P ratios. So  
22 someone along the line had to look, but they're  
23 looking at the same job history cards we are is  
24 my fear, you know? So someone along the line  
25 had to make a decision of whether certain

1 individuals, you know, they had gamma badges  
2 and I think they were pretty global with the  
3 gamma monitoring. But then they wouldn't have  
4 found a neutron unless they felt they were in a  
5 neutron area. They did have some neutron films  
6 but not for everyone. That's at least my --  
7 it's been a long while since we discussed this  
8 as well, for me, so...

9 **MS. RUTTENBER:** Mark, this is Margaret. That  
10 is true. Everybody wore a dosimetry badge for  
11 gamma, but they did not all have neutron  
12 badges.

13 **MR. GRIFFON:** And this is Margaret Ruttener  
14 for -- I did ask Margaret -- Thank you  
15 Margaret. I did ask Margaret to join us since  
16 she's spent a lot of time researching this site  
17 and to the extent she can help clarify, that  
18 would be great.

19 **DR. ULSH:** Mark, this is Brant Ulsh. The  
20 trigger for entry into the NDRP was not having  
21 neutron dosimetry. It was having beta gamma  
22 dosimetry in one of the plutonium buildings as  
23 listed in the NDRP. If you had a gamma  
24 dosimeter issued in those buildings, then  
25 you're in, even if no neutrons.

1           **MR. GRIFFON:** Issued in one of those buildings,  
2           so... I mean, are you making my point for me  
3           again, Brant, or clarifying?

4           **DR. ULSH:** No, I'm just clarify --

5           **DR. BRANCHE:** He's clarifying.

6           **DR. ULSH:** Yeah, I think the misperception is  
7           out there that you had to have neutron  
8           dosimetry to be in the NDRP, and that's not the  
9           case.

10          **MS. MUNN:** Un-uh.

11          **MR. GRIFFON:** Right, right, and I agree with  
12          that, but --

13          **MS. MUNN:** And so that means if you were  
14          badged, period, then you were going to be in  
15          the NDRP, right?

16          **DR. ULSH:** That is correct.

17          **MR. GRIFFON:** If you were badged in one of  
18          those buildings.

19          **DR. ULSH:** That's correct.

20          **MR. GRIFFON:** Right. So if you were badged as  
21          a maintenance, out of the maintenance shop and  
22          were sent to that building, how would the NDRP  
23          have put you on the list?

24          **MS. RUTTENBER:** May I speak, Mark?

25          **MR. GRIFFON:** Yeah, yeah, please.

1           **MS. RUTTENBER:** This is Margaret. The building  
2           is 334, and actually I'm looking at all the job  
3           titles associated with that, and as you know,  
4           that's a multi-craft crew building, and there  
5           were a few people that remained in that  
6           building all the time, but their badges and  
7           their time cards were all housed in 334. And  
8           the hot buildings, such as 771 and actually  
9           444, the beryllium buildings, they had their  
10          own multi-craft crews for when they were doing  
11          big projects, so they had you know expansion  
12          issues or any kind of thing they would call in  
13          additional multi-craft crews like pipe fitters  
14          and other individuals to come and help, from  
15          the electric shop as well. And so they would  
16          still be assigned to 334, but they would go  
17          into the 771 area or the ^ area I should say or  
18          the beryllium area. So there is a group of  
19          workers that would fit into this little cohort  
20          that you're talking about that could possibly  
21          have not been captured as having had neutron  
22          exposure. And it's interesting, Mark and I  
23          have talked, there have been individuals that I  
24          have looked up on our database from our  
25          research, that they do in fact, as we get out



1 of those SEC years and they started in the '70s  
2 breaking out neutron from gamma and beta,  
3 actually do have neutron exposure as well and  
4 have been assigned to, still 334. I think  
5 that's the case we were talking about, Mark,  
6 when you called me.

7 **MR. GRIFFON:** Yeah, yeah, that's my question is  
8 you know are -- I fear that those, that kind of  
9 situation wasn't incorporated into the NDRP.  
10 Maybe it was or maybe to the extent they knew,  
11 I don't know if they tried to you know deal  
12 with that, but I'm not sure they had the  
13 information to deal with that.

14 **DR. ULSH:** At this point there is a cohort in  
15 the NDRP that's in the all other building  
16 category.

17 **MS. MUNN:** Mm-hm.

18 **DR. ULSH:** And that was at least meant to  
19 include those kinds of people, Mark.

20 **MR. GRIFFON:** Yeah.

21 **DR. ULSH:** I can't swear to you that there's  
22 not a single person who fits into the category  
23 that you're talking about, but there are  
24 certainly examples of people who were stationed  
25 outside of the plutonium buildings that were

1 included in the NDRP, and presumably they are  
2 the kinds of people that you're talking about.

3 **MS. RUTTENBER:** And Mark, it is our intention,  
4 it's the Health Department's intention to work  
5 with NIOSH, and certainly within a short few  
6 weeks we will be providing them with our  
7 databases so that they compare them to what  
8 they have. I think ours is probably in a  
9 little bit more user friendly setup, but that's  
10 our intention, within the next few weeks to  
11 help in supporting this effort.

12 **MR. GRIFFON:** Yeah, okay, I mean I guess my  
13 feeling is, and I don't know how others in the  
14 work group feel, but you know if it's, if we  
15 have a situation where you know we're, I guess  
16 I would want to err toward the side of the  
17 claimant. And if we had very strong evidence  
18 or irrefutable evidence that the individual was  
19 never in any neutron areas, they were always in  
20 an administrative area and they worked there  
21 their whole career and you know the CATI agrees  
22 with that and you know, I think that would be  
23 one thing, but if you have this other situation  
24 where you're you know in the maintenance  
25 building, DOE, I guess I had kind of assumed

1           when we wrote the initial definition that if  
2           you had this kind of situation, DOL would look  
3           at the job title and say, you know since we  
4           can't be sure, we're gonna err on the side of  
5           the claimant, but I can understand DOL's  
6           position, too, on this.       They need some  
7           evidence to show they could have been in those  
8           buildings.   So I'm not sure exactly how -- I'd  
9           like to hear from other work group members if  
10          you have an opinion at this point.

11         **MS. MUNN:**   This is Wanda.   You've already heard  
12         from me but it seems to me that these folks  
13         would be on the list.   That's the only real  
14         thorny issue, and perhaps they might be on the  
15         list because they've only been in that building  
16         once or twice, but that the work project  
17         required the kind of -- that it required  
18         badging in order to get in so they had it for a  
19         short period of time regardless of what it was.  
20         I don't know how one could ever prove by any  
21         record that might exist now.

22         **MR. GRIFFON:**   Well I guess, Wanda, I guess we  
23         just heard from Margaret, and we don't have her  
24         database, but we just heard you know that there  
25         was a situation where there were, would have

1           been badged in 334 and sent out to work in  
2           those other buildings.

3           **MS. MUNN:** Right.

4           **MR. GRIFFON:** And they were not, did not have  
5           any neutron dose prior to you know, so they  
6           weren't accounted for in the NDRP. And I guess  
7           you know if it was done, and you know I know, I  
8           understand Brant saying you know we have,  
9           certainly have indication that they did try to  
10          do it, was it perfect, you know obviously we  
11          can't attest to that. But on the flip side of  
12          that is, and that's why I asked Jeff early on  
13          how many cases this affected, you know if it  
14          truly is a handful of cases. I don't know if  
15          it's still six; that might have been an early  
16          number. But if it's a small number, and you  
17          know we're making this kind of decision,  
18          obviously it's overall it's not a big deal but  
19          to those few individuals, it's a big deal. So  
20          why not just err on the side of claimant  
21          favorability?

22          **MS. MUNN:** Well, there's one reason why not to  
23          always do that. And the one reason is the  
24          tendency to mislead the workers is in terms of  
25          whether or not they were harmed by the

1 exposure. We want to be accurate in that  
2 regard as well.

3 **DR. BRANCHE:** Mark, this is Christine. I'm  
4 trying to make sure I understand what you mean  
5 by a decision because this is a closed case for  
6 the Board, and you wanted to explore how DOL  
7 was making decisions about the inclusion in the  
8 class and how they were making their funding  
9 decisions and that's been explained to you.  
10 And so what decision is it that you're seeking  
11 from the work group members?

12 **MR. GRIFFON:** Well, I -- maybe decision was a  
13 poor choice of words, but I was trying to get a  
14 sense of whether other work group members feel  
15 that we need to take any action in terms of our  
16 original definition and maybe that's not the  
17 case. But you know do we have to take any  
18 action in terms of our original class  
19 definition?

20 **MR. PRESLEY:** Hey Mark?

21 **MR. GRIFFON:** Yes.

22 **MR. PRESLEY:** This is Bob Presley.

23 **MR. GRIFFON:** Hey Bob.

24 **MR. PRESLEY:** I honestly do not see anywhere  
25 where we need to change anything over or do

1 anything different than what we did. I mean  
2 what Jeff read has taken care of everything,  
3 seems like. That's my opinion.

4 **MR. GRIFFON:** Okay.

5 **MR. GIBSON:** Mark, this is Mike.

6 **MR. GRIFFON:** Okay, Mike.

7 **MR. GIBSON:** I, you know, I agree with you. If  
8 there's a potential where the claimants could  
9 fall through the cracks like this, I'm not sure  
10 that the definition we gave to the Board or  
11 perhaps even the Board itself tried to send  
12 forward to the Secretary is maybe it got  
13 interpreted somewhere wrong down the line, but  
14 this may be something I believe we might ought  
15 to take back to the Board and let them know  
16 that we have concern here.

17 **MR. GRIFFON:** Yeah, I mean my sense is it's  
18 either going to come down to these, this  
19 handful of individuals that you know were  
20 working during that time period and are not,  
21 don't meet one of the criteria, you know,  
22 they're either, they're probably going to have  
23 to you know battle this individually and you  
24 know this question of you know provide us with  
25 more information. I think as Carolyn said

1 earlier, that's difficult, especially for these  
2 survivors, you know. They don't have anything  
3 more to provide, you know. So, you know, my  
4 question was if we, you know, if we have you  
5 know very thin evidence to show, you know, to  
6 indicate that they couldn't receive, they  
7 didn't go unmonitored, then I think we better,  
8 you know...

9 On the other hand if we have a clear  
10 case, I agree. I think we've done the best we  
11 could and we -- I don't want to give the  
12 impression necessarily, you know, I don't want  
13 to give the impression that somebody that  
14 worked in an office building, you know, nowhere  
15 near any potential exposures, and we add them  
16 to the class. I don't want to give, mislead  
17 people that they had health endanger when they  
18 were nowhere near stuff. On the other hand,  
19 you know, if you have people saying that they  
20 were on these maintenance crews, they know they  
21 were, you know, all right I know you can't find  
22 my name in this NDRP record, but I'm telling  
23 you this is what we did. And we have at least  
24 some testimony here from Margaret Ruttenber,  
25 saying that you know this situation, that kind

1 of situation did exist according to her  
2 research at the plant. Then maybe you know we  
3 should be a little more cautious of how we  
4 implement that criteria. I'm talking mainly  
5 about that second, but even I think the second  
6 and third criteria that Jeff presented kind of  
7 overlap a bit. But at least the second, you  
8 know, this question of being in the building  
9 for 250 days...

10 **DR. BRANCHE:** Mark, this is Christine.

11 **MR. GRIFFON:** Yeah.

12 **DR. BRANCHE:** This is my recommendation that  
13 you consider, given the information that you  
14 heard and as you cogitate what you need to do.  
15 I caution you to remember that there's no open  
16 issue on this before the Board because it's  
17 already been sent to the Secretary. However,  
18 based on the fact that as you learn more about  
19 how the information of the Board formally sent  
20 for this HHS Secretary's signature, you can,  
21 your work group, I would recommend that the  
22 work group as a whole offer a letter for the  
23 Board's consideration about, that would go to  
24 the Secretary to talk about your concerns, what  
25 you've heard from the Department of Labor, and



1           how based on what you've learned about the  
2           implementation of the class, it's given you  
3           some wisdom about how you would rectify class  
4           definitions in the future, if any future  
5           language were to come before the Secretary, you  
6           can share your concerns about how this  
7           particular class definition is being  
8           implemented, but again, you then leave it to  
9           the Secretary to do with it as he sees fit.  
10          You're going to have to couch this, and you  
11          have to make certain that your work group is on  
12          the same page about what language would go  
13          before the Board. I don't know if you can do  
14          that before our meeting next week.

15          **MR. GRIFFON:** No, I'm not sure we can. I think  
16          we're a little bit split on this issue right  
17          now. So you know I don't know that we can come  
18          to any consensus, but mainly this was, you  
19          know, a question of, and I understand what  
20          you're saying, Christine. It's one thing to  
21          sort of I guess learn from this and understand  
22          how we need to write our definitions in the  
23          future. I'm not sure if we had to do it again,  
24          I'm not sure if we could have crafted it any  
25          better or any differently, but we certainly,

1           this at least gives us a sense of how the  
2           language is being interpreted and implemented,  
3           so in this specific case. But one thing is  
4           it's that one thing of direction going forward,  
5           but I think a lot of individuals on the phone  
6           are concerned about this particular class, so I  
7           think we do need to, you know, maybe at least  
8           consider action on this and the action may be  
9           just a letter clarifying our definition. But  
10          the work group doesn't have consensus on that  
11          right now.

12          **DR. BRANCHE:** But if I can interject, Mark.  
13          Actually by virtue of what you have learned,  
14          perhaps if you don't want to have a letter, if  
15          there's no consensus about a letter, certainly  
16          the wisdom of how future definitions as the  
17          Board moves forward on other of the issues  
18          before it, the wisdom that this work group has  
19          gained as you've considered other pieces of  
20          information that have come to light, a letter  
21          from the work group as far as -- This would  
22          just be a letter or a note or a memo or  
23          something from the work group to the Board as  
24          the Board deliberates in the future. That's  
25          another avenue that you have at your disposal.

1           In other words helping the Board mature as it  
2           understands the vagaries and language and what  
3           doors certain pieces of language open, what it  
4           means to have 250 days. There are a number of  
5           things that you all have discussed since I --  
6           You know I joined this late in the game and  
7           after the decision was made and the information  
8           was sent to the Secretary. But over the months  
9           that you've deliberated on these finer points,  
10          if there's something that can be helpful to  
11          your colleagues on the Board, that's another  
12          avenue that you have as far as educating your  
13          colleagues.

14         **MR. GRIFFON:** Right, right. And as I said,  
15         that is one thing we might want to consider,  
16         but my initial concern is this class itself,  
17         not future, you know, definitions.

18         **MS. BOLLER:** Can I ask a question? This is  
19         Carolyn.

20         **MR. GRIFFON:** Sure.

21         **MS. BOLLER:** You know, I've been accused of not  
22         being the brightest light on the porch, and  
23         that's fine, but, and I can hear the  
24         snickering, so that's okay. But this SEC was  
25         approved as I understood it because there was a

1           lack of records, and you all could not prove  
2           who was and who was not exposed to neutrons.  
3           Now you had the list of folks, and that's  
4           wonderful, but the other language then says, or  
5           who might have been, and you did not have  
6           accurate records in order to prove who was or  
7           who wasn't. So what's the issue here that we  
8           got to go through all this bureaucracy other  
9           than to intentionally deny people what they may  
10          have coming? I don't get it. I mean we keep  
11          going around and around and around. I don't  
12          get it. Will somebody please explain it?

13         **DR. BRANCHE:** Well, there's no formal -- the  
14         Board's made its decision and sent the  
15         recommendation to the HHS --

16         **MS. BOLLER:** Christine, I clearly, I understand  
17         that, I understand they made the recommendation  
18         and they sent it to the Board.

19         **DR. BRANCHE:** But my issue, there's a closed  
20         issue for the Board format.

21         **MS. BOLLER:** I understand that, but I'm asking  
22         for an explanation because here was my  
23         understanding from the Board's original  
24         decision that they sent to the Secretary was  
25         that those who were monitored or should have

1           been monitored, and the reason the SEC was  
2           granted was because they didn't have, or the  
3           Board believed there were not adequate records  
4           to be able to evaluate everybody who worked  
5           there. So based on the lack of supporting  
6           documentation, they granted the SEC and said,  
7           here. So you got a group that's on the list.  
8           Terrific. You can prove that, but you can't  
9           prove anybody else, so they fall into the  
10          category of should have been tested.

11                 What the Board did was the right  
12          decision to say everybody who falls during that  
13          period of time, 250 days on the worksite, gets  
14          it. And yet we are moving forward in all of  
15          this in efforts to deny people these benefits,  
16          based on the SEC. That's how I read it.

17                 Now could somebody please explain to me,  
18          didn't the Board make their decision based on  
19          that information, that they didn't have enough?

20          **DR. BRANCHE:** I think your questions really are  
21          directed to the Department of Labor.

22          **MS. BOLLER:** Well, we did that, but they come  
23          back and say that HHS is the one who made the  
24          decision, so --

25          **DR. BRANCHE:** And that is an incor -- I'm going

1 to take the risk and -- That is an incorrect  
2 statement.

3 **MS. BOLLER:** Well, I mean the letter that we  
4 got basically said we're following HHS'  
5 directive. I've gone back and looked at HHS'  
6 stuff; I can't find anything that says, you got  
7 to be 250 days in a building in order to be  
8 eligible if you're not on the NDRP. Where is  
9 it, other than the memo that came out from DOL?

10 So, I'm sorry, I'm not yelling at you.  
11 I have swollen vocal cords, and I sound like  
12 I'm angry all the time. But I just am trying  
13 to figure out if the working group made the  
14 decision that said, and they gave it to the  
15 Secretary of HHS, and he approved it and it  
16 went through the process, yes, you're right,  
17 there is a decision. But my understanding was  
18 the Board made a decision because they didn't  
19 believe NIOSH could prove their case because  
20 they didn't have accurate records.

21 Now you're asking these people to come  
22 back and prove that their husband or their  
23 spouse or their loved one actually worked in a  
24 building for 250 days. Impossible. Not gonna  
25 happen. If you can't prove it through the

1 records at DOE, then how do you expect a widow  
2 to prove it? I don't get it, other than it  
3 seems to me there's an effort to avoid granting  
4 these benefits to people who deserve them. End  
5 of my tirade. Thank you.

6 Could somebody answer it?

7 **MR. GRIFFON:** Yeah, and that's what I, I mean I  
8 guess it comes down to in our language and the  
9 way it was interpreted by the Department of  
10 Labor, comes down to that question, monitored  
11 or should have been monitored, and we've always  
12 said monitored or should have been monitored  
13 based on the current regulatory standards which  
14 would mean, you know, a person had the  
15 potential to receive a hundred millirem per  
16 year. That's actually you know PED -- I think  
17 that's all external dose the way you know  
18 reads.

19 But anyway it gets into the hundred  
20 millirem question. And then we get back to  
21 this, so I don't actually think we're too far  
22 apart. The question is you know we went  
23 through this with Y-12 a little bit, too. And  
24 Pete's description sort of Y-12, Pete Turcic's  
25 description for the Y-12 site was that you know

1           if we have you know questionable jobs you know  
2           that, then it's going to come down to there's  
3           that judgment area, there's that gray area, you  
4           know, the certain job titles or job  
5           descriptions may certainly show that they  
6           weren't in any area requiring monitoring. But  
7           then there's that gray area, and I guess that's  
8           what we're questioning around and discussing  
9           around so much here is that that gray area and  
10          that's why I always use this maintenance.

11                 And and whether NIOSH may not agree with  
12           this, but I think the Board's basis for our  
13           decision was that there you know, as Carolyn  
14           just described it, there were concerns about  
15           the adequacy of a neutron record so given that,  
16           you know, I guess we would have that question  
17           of you know was everybody, anybody, who was  
18           sent into those areas to work, would they have  
19           been captured in the NDRP. Would they have  
20           been monitored and included in the NDRP? And I  
21           have less confidence of that, I guess, than  
22           maybe NIOSH does, and that's why I'm saying,  
23           now does that mean our definition was not  
24           appropriate, I'm not sure. And that goes back  
25           to Christine's question, you know, what what,



1           you know, what kind of action do we have from  
2           here? I'm not sure, but my concern is that,  
3           you know, we have some cases and some  
4           individuals, and even if it's a small number we  
5           certainly want to get it right. So I guess it  
6           comes down to that question of this monitored  
7           or should have been monitored, and how well and  
8           how well or how that is interpreted. And I'm  
9           not sure next steps, you know, in terms of  
10          clarifying that. That's why I was asking Jeff  
11          also, you know, maybe we can get an update on  
12          the number of cases that didn't meet your  
13          criteria during this time period and maybe a,  
14          you know a -- I would like to see the number  
15          and a description, you know like job title,  
16          building, certainly without getting into  
17          Privacy Act issues. But that might help us to  
18          understand your, your logic through this  
19          process.

20          **MR. PRESLEY:** Hey Mark?

21          **MR. GRIFFON:** Yeah, go ahead Bob.

22          **MR. PRESLEY:** Bob Presley. I, number one, I've  
23          got to go here just in a minute.

24          **MR. GRIFFON:** Yeah, I think we're close to  
25          wrapping up, yeah.

1           **MR. PRESLEY:** What I would like to see is, you  
2 know, Christine is 100 percent correct on this.  
3 If we do anything there needs to be a letter or  
4 us to have a discussion with the Board on  
5 correcting or clarifying some of these issues,  
6 and I honestly don't think that we can do it  
7 today. If you -- what I would like to see is  
8 maybe put your concerns in writing and then  
9 let's look at those things. We need to discuss  
10 a little bit more because --

11           **MR. GRIFFON:** Well, I'm willing to draft a memo  
12 to the Board, and I'll before this next meeting  
13 I'll circulate it to work group members, and  
14 you know there may not be time to get -- but at  
15 the very least even if we don't present a memo  
16 at the next meeting, we can have a verbal  
17 discussion.

18           **MR. PRESLEY:** Right.

19           **MR. GRIFFON:** But if I can circulate a draft  
20 memo and we can all send it to the Board, that  
21 would be wonderful. If not, maybe we can just  
22 have it as an open discussion item in the work  
23 group updates. But yeah, I think we need to  
24 try to move the ball along, and one way to do  
25 that might be for me to draft a memo and

1            hopefully, if we get everyone agrees on the  
2            work group, we can submit it to the Board and  
3            formalize it that way and discuss it a little  
4            more formally.

5            (Whereupon, Ms. Munn and Mr. Presley spoke at  
6            the same time.)

7            **DR. BRANCHE:** Hold on, two of you are speaking  
8            at the same time. Please, one at a time.

9            **MR. PRESLEY:** Hey Mark, do that and then we'll  
10           cuss and discuss it back and forth in the  
11           Board, in the working group, and try to get  
12           something for the Board, okay?

13           **MR. GRIFFON:** Right, right, right, and I think  
14           I'm anticipating Wanda's question. If there's  
15           not time, I'll hand a memo, a draft, I'll get a  
16           memo to the work group first. I won't, I won't  
17           you know forward it to any other Board members  
18           until we have consensus.

19           **MR. PRESLEY:** That's wonderful.

20           **MR. GRIFFON:** Yeah, if we don't have time, we  
21           don't, it's a little tight right now.

22           **MS. MUNN:** I really think that it's unlikely  
23           that we'll have time.

24           **MR. GRIFFON:** Yeah, yeah.

25           **DR. BRANCHE:** I can tell you right now that

1           there isn't going to be time.

2           **MS. MUNN:**     And I do even question whether  
3           something written is in fact in order.  Mark,  
4           we all recall the blood, sweat and tears that  
5           went into the crafting of words for our  
6           recommendations from the original opening of  
7           the Board's deliberations.  And this monitored  
8           or should have been monitored language is  
9           language that we sweat over mightily for  
10          several months before we decided to incorporate  
11          it into the recommendations that we made.  I  
12          have never heard anything personally that I  
13          felt was more appropriate for the work that we  
14          do and that would apply as thoroughly as it  
15          does to the decisions that we have to make.  If  
16          other people have language that they feel is  
17          more appropriate, more accurate, more easily  
18          defined, and is easily workable for the  
19          Department of Labor as well as for our own  
20          Secretary, then I for one would certainly  
21          welcome any suggestion of that language.  
22          You've worked hard on it, and I am very loathed  
23          to change it without --

24          **MR. GRIFFON:**  But like I said, Wanda, I don't  
25          think, and I've thought about this too, would I

1 change anything in that language, and I've  
2 sweated over this for a long time, but you  
3 know, and I'm hard pressed to as well. I think  
4 this gets into more of the, you know, and I  
5 don't know if it's the case here, but you know  
6 the potential for unintended consequences, you  
7 know. So in the memo, and maybe I'll just  
8 draft it and it'll end up in the circular file,  
9 but I'll at least take a stab at outlining  
10 things and circulate it to the work group. And  
11 if we think we can't come to consensus or think  
12 it's not worth forwarding to the full Board,  
13 then we can just scrap it. But I'll at least  
14 try to outline. I think my concerns get more  
15 into implementation, and that really, that is a  
16 DOL, the DOL side, I understand that, so you  
17 know as far as updating our language it may not  
18 be important but it may be -- I don't know, it  
19 may be important for us to share with the Board  
20 just so that the DOL understands some of our  
21 concerns. You know if I look back at this I  
22 can remember I think a number of us were  
23 surprised on the 250 day, you know, being in  
24 the particular buildings, but when I look  
25 closer at that, I realize well you know that

1                   probably was done accurately by DOL, but you  
2                   know was that the way I was thinking about it  
3                   when we were drafting this class, you know I  
4                   wasn't thinking about it that way, so I think  
5                   it might be worth just outlining in a memo so  
6                   we can all at least look at it at the work  
7                   group level then we can decide if we need to  
8                   bring it to the Board.

9                   **MS. MUNN:** I do think the work group needs to  
10                  take a look at that.

11                  **MR. GRIFFON:** Okay, I'll take a stab at that as  
12                  the next step. And the other question I would  
13                  have, and this is more for Margaret and NIOSH,  
14                  I don't know is there any status on where or  
15                  when your data transfer might occur and to what  
16                  extent that might be useful in helping DOL  
17                  implement this.

18                  **DR. ULSH:** Mark, could you repeat your  
19                  question, please? I'm sorry.

20                  **MR. GRIFFON:** Getting the data from Margaret  
21                  Ruttenber. I think there have been some  
22                  discussions and at least it's been initiated.

23                  **DR. ULSH:** Yes, Margaret and I are meeting at  
24                  9:30, Thursday morning.

25                  **MR. GRIFFON:** Oh, okay.

1           **DR. ULSH:**     To hand over the data, right,  
2           Margaret?

3           (no response)

4           **DR. ULSH:**     Well, I guess --

5           **MR. GRIFFON:**   She may be off the line.

6           **MR. ELLIOTT:**   Margaret may have left. This is  
7           Larry Elliott. I have sent a letter to --

8           **MS. RUTTENBER:**   No, I'm on the line, I'm sorry.  
9           We are -- that was our intention, but we had,  
10          our attorneys had met. There's just some  
11          questioning about confidentiality and data  
12          usage. And I spoke with Larry this morning,  
13          and we're well on our way. I had thought it be  
14          done by Thursday, but Brant's just going to  
15          look at what we have, and I'm hoping within the  
16          next two weeks that we can get this data to  
17          NIOSH. I'm almost certain we can, aren't you,  
18          Larry?

19          **MR. ELLIOTT:**    Yes, I am. As Margaret says  
20          we've spoken about this today, and I have also,  
21          Margaret, talked with our chair of our HSRB --

22          **MS. RUTTENBER:**    Oh, good.

23          **MR. ELLIOTT:**     -- other letter will be  
24          forthcoming.

25          **MS. RUTTENBER:**    Perfect.

1           **MR. ELLIOTT:** Brant's mission on Thursday will  
2 be to scope out what it will take to transfer  
3 the information to us. And as we've said many  
4 times, Mark, we think that we have the same  
5 information that the Ruttenbers have put  
6 together except for perhaps in some cases there  
7 may be some work history information that we  
8 may elaborate a better understanding of where a  
9 worker was and what they did.

10          **MR. GRIFFON:** Yeah, and I think --

11          **MR. ELLIOTT:** Beneficial not only to us, but  
12 also it will be more beneficial perhaps to DOL  
13 as they try to take care of some of these  
14 claims that are in the difficult area.

15          **MR. GRIFFON:** And Larry, I think I'm on the  
16 record -- if I'm not, I am now -- of saying  
17 that you know our conference call with  
18 Margaret, you and I and Brant, having these  
19 discussions about the data, does seem that we  
20 had all the same data for the work group to  
21 review. It helped going up to this SEC class  
22 decision except for, and that was the one  
23 question about this additional possible work  
24 history information that might be useful, so I  
25 agree with that, but that part might be very



1 helpful in implementation stuff. So that's  
2 good that that's on course and that might be  
3 helpful.

4 All right, so I guess the only action  
5 out of this is that I will draft a memo for the  
6 work group internally to look at first and  
7 we'll decide as a work group whether we want to  
8 forward that on to the Board and take it up as  
9 an action, you know, a discussion item, at the  
10 Board level. But that's the only action for  
11 now that I have.

12 **MS. MUNN:** That's very good. I think that's  
13 appropriate, but my actually I think it would  
14 be foolish of us to assume that we're going to  
15 get much further than that between now and the  
16 time that we meet in St. Louis. I don't think  
17 we're going to have anything that specific that  
18 can be brought to the whole Board at that time.

19 **DR. BRANCHE:** Mark, this is Christine.

20 **MR. GRIFFON:** I agree, yeah. Yes?

21 **DR. BRANCHE:** Just so that everyone understands  
22 and can get their expectations tweaked  
23 accordingly, just about every minute that was  
24 before and after and between the meetings, the  
25 meeting of the Board next week, has pretty much

1           been taken.    So I just want to make sure you  
2           know that.

3           **MR. GRIFFON:**   Yeah, I understand that.

4           **DR. BRANCHE:**   Okay, 'cause not every Board  
5           member has been involved with all of the  
6           discussions back and forth, and there are  
7           several times that are on hold and so until you  
8           hear a formal, get a formal announcement from  
9           Zaida about a work group meeting, understand  
10          that just about every cubbyhole of time has  
11          been eaten up.

12          **MR. GRIFFON:**   Right, I appreciate that.

13          **DR. BRANCHE:**   Okay.

14          **MR. GRIFFON:**   The only other action that I  
15          would ask is for, and I guess we can't really  
16          assign actions to the Department of Labor, but  
17          it would be appreciated, Jeff, if you could try  
18          to answer that question I had about how many  
19          cases are we, you know, during that time frame,  
20          how many cases are actually been left out of  
21          the SEC that obviously had a listed cancer but  
22          were left out for you know as a non-neutron  
23          worker, so to speak.

24          **MR. KOTSCH:**   I'll see what I can do, Mark.

25          **MR. GRIFFON:**   And you can give us that maybe

1                   during your update or whatever.

2                   **MR. KOTSCH:** Right.

3                   **MR. GRIFFON:** Yeah. All right, and I think  
4                   that's all I have. I appreciate everyone  
5                   attending, and we'll try to move the ball  
6                   forward here on this. I know a lot of people  
7                   have been concerned about this for a long time  
8                   so we just want clarity on it and appreciate  
9                   everybody helping out.

10                  **DR. BRANCHE:** Thanks, folks. Thanks, Mark, but  
11                  are you finished Mark?

12                  **MR. GRIFFON:** Yeah, that's it.

13                  **DR. BRANCHE:** Then that's the formal close of  
14                  our call. Thank you very much to everyone.

15                  **MR. GRIFFON:** Thank you.

16                  **DR. BRANCHE:** Thank you.

17

18

19                               (Whereupon, the meeting was concluded at 3:45  
20                               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 I reported the above and foregoing on the day of June 17, 2008; 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 18th day of June, 2008.

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