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.
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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.
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PROCEEDINGS

(2:30 p.m.)

WELCOME AND OPENING COMMENTS

DR. CHRISTINE BRANCHE, DFO

DR. BRANCHE: Good afternoon. I’m Dr. Christine Branche, and I have the pleasure of being the Designated Federal Official for the Advisory Board on Radiation and Worker Health, and this is the Rocky Flats work group meeting. Let’s begin please with the Board members, please mention your names.

MR. GRIFFON: Mark Griffon.

MR. GIBSON: Mike Gibson.

DR. BRANCHE: Thank you. Are there any other Board members participating in the call?

(no response)

DR. BRANCHE: At this point we do not have a quorum, so we can proceed. Would the NIOSH staff please mention your names and say if you have a conflict with Rocky Flats?

DR. ULSH: Yeah, this is Brant Ulsh, and I have no conflict.

MR. ELLIOTT: This is Larry Elliott, Director of OCAS, and I have no conflict.
MS. ADAMS: Nancy Adams, Office of the Director, no conflict.

MS. CHANG: Chia-Chia Chang, Director’s Office, no conflict.

MR. BLOSSER: Fred Blosser, Director’s Office, no conflict.

DR. BRANCHE: ORAU staff, would you please mention your names and say if you have a conflict?
(no response)

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

MR. FITZGERALD: This is Joe Fitzgerald. I don’t have a conflict.

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

MR. MCGOLERICK: Robert McGolerick, no conflict.

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

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

DR. BRANCHE: Other federal agency staff, would you please state your names and say whether or
not you have a conflict?
(no response)

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

**MR. GRIFFON:** Hold on one second. Somebody’s on the other line giving the call-in number. Hold on one second.

**DR. BRANCHE:** Okay.

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

**DR. BRANCHE:** Okay.

**MR. GRIFFON:** Okay.

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

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

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

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

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

**MS. BOLLER:** Carolyn Boller, Congressman Udall’s office.

**MS. GNIRK:** Gale Gnirk, Congressman John
Salazar’s office.

MR. KESSLER: Zane Kessler, Senator Ken Salazar’s office.

MS. RUTTENBER: Margaret Ruttenber, State Health Department.

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

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

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

MR. KESSLER: Zane Kessler, U.S. Senator Ken Salazar’s office.

MS. GNIRK: Gale Gnirk, Congressman John Salazar’s office.

COURT REPORTER: I’m sorry, could you spell that last name, please?

MS. GNIRK: Yes, it’s G-N-I-R-K.

COURT REPORTER: Thank you. And there was another one, please?
MS. BOLLER: Carolyn Boller, Congressman Mark Udall’s office.

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

MR. KOTSCH: Christine, this is Jeff Kotsch with Labor. I’m sorry I’m running late.

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

MS. MUNN: And Christine, this is Wanda Munn. I’m sorry I’m late. I was on another teleconference.

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

(no response)

DR. BRANCHE: Okay. We do not have a quorum of the Board and so we can proceed. I ask that everyone participating today, if you could please mute your phones, we are all on by phone and it’s important for us to mute our phones when we are not speaking. If you do not have a mute button, then please use star 6 to mute your phones. And when you’re ready to speak, please use that same star 6 so we can hear you.
And again I ask that everyone observe telephone etiquette, and if you need to go off the call please do not put us on hold because whatever music or sounds your hold system uses will interrupt the quality of our sound today.

Thank you so much. Mr. Griffon.

**SEC CLASS FOR ROCKY FLATS**

**MR. GRIFFON:** Okay, yeah, I didn’t send out an agenda but I think at the last Board meeting we made it fairly clear that the only discussion item is really around the implementation of the SEC class for Rocky Flats, and with that in mind I guess what we had -- the advice that I asked the Board for was you know how do we proceed and one thing that we all agreed on at the Board meeting, objective, was to have the Department of Labor give us a better sort of briefing on how on this bulletin and how they are implementing this class. And then maybe we can have a little bit of discussion about you know whether we have remaining concerns about that or whether that meets our intent of our original definition as we had crafted it in our letter to the Secretary. So with that in mind I had asked and I hope, Jeff, I hope you
received my e-mail and would be willing to give us sort of a step-through on how, you know, this bulletin and your criteria and how you’re implementing this class when you’re having to make the decision, and then you know we can discuss it after your, after you give a briefing. Jeff Kotsch?

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

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

**MR. KOTSCH:** Basically I’m going to just read through some stuff which basically takes us through, there’s three criteria in both -- well, in the initial bulletin which was dated October 15th, and then there was a supplemental bulletin on January -- I’m sorry, the first one was on October 15th, 2007, and the second one was an 814, was January 23, 2008, which clarified some of the requirement, you know, one of the requirements in there.

So let me just step through. There’s three basic criteria that we use to interpret the SEC class at Rocky Flats. The way the class definition is written, it requires that an employee worked at least 250 days at the plant during the designated time period and
that the employee was monitored, or should have been monitored for neutron exposures for at least 250 days during that time period. So the real crux of it is how do we get to the, how do we determine the, relate it to neutron exposures, language of this definition.

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

The workers on the NDRP list were those with significant neutron exposure and thus for
these employees DOL presumes 250 workdays of exposure for duration. Basically if you have - - if you’re on the list and you have 250 days of employment, this criterion would affect, 250 days at the site. This seems to have been the most common avenue for inclusion in the class. Those on the list need show nothing further beyond the employment of 250 days during the SEC period at Rocky Flats. So that’s the first of the three criteria.

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

For workers who were included in the
class based specifically upon employment in certain buildings, there must be a showing that they were present in such buildings, not just at Rocky Flats, as a whole. So this one is specific to the buildings, 250 days in the particular buildings that are considered as one or all plutonium facilities. So it could be time in just one or in a collection of all the buildings that are considered plutonium buildings.

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

So if either of these first two tests or criteria are met, the employee has a specified cancer, DOL will accept their inclusion into the SEC. If neither of the first two criteria is met, DOL considers whether the employee should have been monitored for neutron dose based on NIOSH’s completed dose reconstruction report.
The current, and this is where the hundred millirem per year limit stems from based on DOE regulations. Employees expected to receive that amount of radiation exposure during a year are to be monitored, and those expected to receive less were probably not monitored -- or were not required to be monitored.

Under our bulletin 814 which is the second one, the clarifying one, the claims examiner reviews the NIOSH dose reconstruction report to determine if there is at least one year during the period 1952 through 1966 in which the dose reconstruction assigned the employee with at least 100 millirem of neutron dose for that particular year. Only one year at or above the hundred millirem during this period is needed for finding to be made that the employee should have been monitored. For employees determined to have met the current threshold level of neutron exposure to require monitoring at at least one year during the SEC period, that is the hundred millirem, the 250 day requirement is measured by their employment at Rocky Flats as a whole. Since under the
current standards they should have been monitored for the entire period during which they were exposed to neutron.

Hang on one second.

I mean there’s other information in those bulletins. There’s guidance for the claims examiners, but those are basically the three tests.

These were developed -- Let me just go on a little bit more. These were developed in consultation with NIOSH, and we took, as we did, we took steps to expand the class actually by adding Building 881 to the list of known plutonium buildings under the second criterion. That was one thing, and then further, our inclusion in the third criterion was based on the belief that the definition of the class required us to include in the class any worker with a final NIOSH dose reconstruction report that credited 100 millirems of neutron dose to the worker, provided, again, they met the 250 workday test. The last thing is we have discussed -- DOL has discussed with NIOSH whether we are correctly interpreting, or if we need to correctly interpret like a dose
reconstruction that has some indication of neutron dose, whether that, whether NIOSH, whether we’re correctly reading the dose reconstruction as far as the extent of the neutron dose that it calculates, and also we would discuss with NIOSH any further inclusion of buildings under the second criterion, too.

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

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

MR. KOTSCH: I don’t know, I mean I don’t have that --

MR. GRIFFON: You don’t have those numbers there?

MR. KOTSCH: I’m trying to think how to figure that out. I guess you’d have to look at the denied ones. I could check on that. I mean I don’t have that number right --
MR. GRIFFON: I thought at one point you told me it was very few cases.

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

MR. GRIFFON: Yeah, I think I know what you’re saying, yeah. ‘Cause I mean, I don’t know, there’s several little questions within these criteria that I have, like the third one to me seems you know really potentially problematic, but if it’s just, you know, catching the final cases, that’s one thing, but if you know, you’re, it almost seems a little bit circular because you’re looking at NIOSH’s dose reconstruction report to determine if someone was monitored or should have been monitored, but I think a lot of what the DR’s based on are the first two items, NDRP or presence in one of those buildings. If they’re present, they
might assign a missed dose. I don’t know if
that’s, you know, shedding any more light onto
the question of whether someone, you know, was
you know, went unmonitored and could have
received a hundred millirem. You know what I’m
saying, Jeff?

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

MR. GRIFFON: Right.

MR. KOTSCH: The last one was a mechanism that
we had seen a couple of dose reconstructions
that appeared to be, have some indication of
neutron, but were not contained in either of
those two other ones. They were buildings
outside of the list, and they were not on -- I
mean outside the list of buildings and also
outside the list of the NDRP employees. So
that was the trigger to say well, one trigger
would be well should that building maybe perhaps be included in the -- which I think what happened with, you know, with the addition of 881, and/or did NIOSH have reason to believe that there was some neutron exposure there, for whatever reason, and they’re not either in one of those buildings or on that list. But from what we can tell, or at least what I’ve seen, they seem to be a very small number of people being affected by that last criterion.

**MR. GRIFFON:** Yeah, but certainly it’s important to those few people. I mean we want to make sure we get it correct, and if we can’t be perfect, I think we all want to err on the side of the claimant, and my question would be if it’s so, you know if it’s, I mean we go back to these anecdotal examples that we’ve had of people that were assigned to the other buildings but did jobs in the plutonium buildings, as you’re describing them, and you know, if they were, you know, if the program was perfect and monitored everyone, then it would be in the NDRP and there’d be no issue there. But you know, I think we’ve got some reason to believe there might be some gaps in
that database, so then you know, and their work
history would show them not working in the
plutonium buildings. And that’s the few, maybe
it’s only a few, but that’s the few that we’re
a little concerned about whether we are
capturing them, or how to capture them.

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

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

**MR. GRIFFON:** Yeah, that’s probably a tough
statistic to --

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

**MR. GRIFFON:** Right.

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

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

**MR. KOTSCH:** Yeah, I mean I don’t have that
number. Unfortunately I don’t have that number
right in front of me, but yeah. I’m sorry, I
can’t tell you whether those people were on
that list or not.

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

**MR. KOTSCH:** Yeah.

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

**MR. KOTSCH:** Well, I mean beyond what they
provide obviously, NIOSH is picking up from DOE
information on their work locations and their
activities, you know their work titles and
things like that. Plus if they had any, like I
said, for the number two, or actually for any
of them, they can you know they can provide,
each one is done on a case-by-case basis based
on you know the evidence that’s provided, so
they could, if they had, if they happened to know coworkers, they could get affidavits or you know there are other sources of information that corroborate (sic) ---

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

**MR. KOTSCH:** Well, I just said that’s a possibility.

**MS. BOLLER:** Yeah.

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

**MR. GRIFFON:** And then I think, Jeff, we have you know this question of you know some of those buildings that people were -- like the example I’ve been using for several calls, is the maintenance building where there clearly a maintenance worker assigned to that maintenance building, I forget the number offhand. But the, you know what I’ve heard from several people they would go out on assignments to these other buildings. Now often they were probably badged to go in those buildings, but
was that always the case? I’m not sure we know
that. So that’s the question I have, is those
people that...

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

MR. KOTSCH: Yeah, we presume, we knew that
exists, that situation exists but you know we
also know that they were definitely -- if they
were on that list they were pretty, it seemed
pretty evident that they had some neutron
exposure. Now we realize it may not be 250
days. That’s why we apply the criteria for the
site rather than just try to put them in a
particular building or something. You know, in
an effort at least for them, to be you know
somewhat claimant favorable, just use that presumption.

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

MR. KOTSCH: In the second one, yeah.

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

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

MR. GRIFFON: No, I’m saying the person that could slip through the cracks here, that you have you know that they, they’re not on the list and then you look at your building criteria and based on their work history, they’re not in there; they’re assigned to a maintenance building. But the reality was you
know they got sent over for occasional maintenance job there, but even if you added up every one of those little maintenance jobs they wouldn’t have done that for more than 250 days, but they might have you know if it was current standards, they might have been required to have a badge ‘cause they might have exceeded the hundred millirem.

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

MR. GRIFFON: Right, right.

MS. MUNN: This is Wanda --

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

MS. MUNN: It’s been a long time since I’ve read through the materials supporting our concerns here, but didn’t Rocky Flats have the same kind of process in place that other sites had which required essentially work instructions for any activity that took place inside radiation zones? Wasn’t there a process in place where the job description had to be outlined and the work instruction approved by -
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
kind of process in place that was in place at other sites, which when work was going to be performed inside any radiation or potential radiation zone, work plans had to be presented and signed off by RPTs. Wasn’t that process in place? The reason I’m asking that is because if that process were in place then the individual, regardless of where they were assigned, would have had to have been issued at least a temporary badge. And I can’t imagine that jobs would have been undertaken at any radiation zone that didn’t have work procedure associated with it.

MR. GRIFFON: Yeah, Wanda, I hear what you’re saying. I think it might be a little more complicated in the NDRP because someone along the line had to make the decision that they were exposed to neutrons. Unless they had a neutron film. A lot of times they would have the gamma, and it would just be you know an estimate of the dose based on N/P ratios. So someone along the line had to look, but they’re looking at the same job history cards we are is my fear, you know? So someone along the line had to make a decision of whether certain
individuals, you know, they had gamma badges and I think they were pretty global with the gamma monitoring. But then they wouldn’t have found a neutron unless they felt they were in a neutron area. They did have some neutron films but not for everyone. That’s at least my -- it’s been a long while since we discussed this as well, for me, so...

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

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

**DR. ULSH:** Mark, this is Brant Ulsh. The trigger for entry into the NDRP was not having neutron dosimetry. It was having beta gamma dosimetry in one of the plutonium buildings as listed in the NDRP. If you had a gamma dosimeter issued in those buildings, then you’re in, even if no neutrons.
MR. GRIFFON: Issued in one of those buildings, so... I mean, are you making my point for me again, Brant, or clarifying?

DR. ULSH: No, I’m just clarify --

DR. BRANCHE: He’s clarifying.

DR. ULSH: Yeah, I think the misperception is out there that you had to have neutron dosimetry to be in the NDRP, and that’s not the case.

MS. MUNN: Un-uh.

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

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

DR. ULSH: That is correct.

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

DR. ULSH: That’s correct.

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

MS. RUTTENBER: May I speak, Mark?

MR. GRIFFON: Yeah, yeah, please.
**MS. RUTTENBER:** This is Margaret. The building is 334, and actually I’m looking at all the job titles associated with that, and as you know, that’s a multi-craft crew building, and there were a few people that remained in that building all the time, but their badges and their time cards were all housed in 334. And the hot buildings, such as 771 and actually 444, the beryllium buildings, they had their own multi-craft crews for when they were doing big projects, so they had you know expansion issues or any kind of thing they would call in additional multi-craft crews like pipe fitters and other individuals to come and help, from the electric shop as well. And so they would still be assigned to 334, but they would go into the 771 area or the ^ area I should say or the beryllium area. So there is a group of workers that would fit into this little cohort that you’re talking about that could possibly have not been captured as having had neutron exposure. And it’s interesting, Mark and I have talked, there have been individuals that I have looked up on our database from our research, that they do in fact, as we get out
of those SEC years and they started in the '70s breaking out neutron from gamma and beta, actually do have neutron exposure as well and have been assigned to, still 334. I think that’s the case we were talking about, Mark, when you called me.

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

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

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

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

**MR. GRIFFON:** Yeah.

**DR. ULSH:** I can’t swear to you that there’s not a single person who fits into the category that you’re talking about, but there are certainly examples of people who were stationed outside of the plutonium buildings that were
included in the NDRP, and presumably they are the kinds of people that you’re talking about.

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

**MR. GRIFFON:** Yeah, okay, I mean I guess my feeling is, and I don’t know how others in the work group feel, but you know if it’s, if we have a situation where you know we’re, I guess I would want to err toward the side of the claimant. And if we had very strong evidence or irrefutable evidence that the individual was never in any neutron areas, they were always in an administrative area and they worked there their whole career and you know the CATI agrees with that and you know, I think that would be one thing, but if you have this other situation where you’re you know in the maintenance building, DOE, I guess I had kind of assumed
when we wrote the initial definition that if you had this kind of situation, DOL would look at the job title and say, you know since we can’t be sure, we’re gonna err on the side of the claimant, but I can understand DOL’s position, too, on this. They need some evidence to show they could have been in those buildings. So I’m not sure exactly how -- I’d like to hear from other work group members if you have an opinion at this point.

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

MR. GRIFFON: Well I guess, Wanda, I guess we just heard from Margaret, and we don’t have her database, but we just heard you know that there was a situation where there were, would have
been badged in 334 and sent out to work in those other buildings.

**MS. MUNN:** Right.

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

**MS. MUNN:** Well, there’s one reason why not to always do that. And the one reason is the tendency to mislead the workers is in terms of whether or not they were harmed by the
exposure. We want to be accurate in that regard as well.

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

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

**MR. PRESLEY:** Hey Mark?

**MR. GRIFFON:** Yes.

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

**MR. GRIFFON:** Hey Bob.

**MR. PRESLEY:** I honestly do not see anywhere where we need to change anything over or do
anything different than what we did. I mean what Jeff read has taken care of everything, seems like. That’s my opinion.

MR. GRIFFON: Okay.

MR. GIBSON: Mark, this is Mike.

MR. GRIFFON: Okay, Mike.

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

MR. GRIFFON: Yeah, I mean my sense is it’s either going to come down to these, this handful of individuals that you know were working during that time period and are not, don’t meet one of the criteria, you know, they’re either, they’re probably going to have to you know battle this individually and you know this question of you know provide us with more information. I think as Carolyn said
earlier, that’s difficult, especially for these survivors, you know. They don’t have anything more to provide, you know. So, you know, my question was if we, you know, if we have you know very thin evidence to show, you know, to indicate that they couldn’t receive, they didn’t go unmonitored, then I think we better, you know...

On the other hand if we have a clear case, I agree. I think we’ve done the best we could and we -- I don’t want to give the impression necessarily, you know, I don’t want to give the impression that somebody that worked in an office building, you know, nowhere near any potential exposures, and we add them to the class. I don’t want to give, mislead people that they had health endanger when they were nowhere near stuff. On the other hand, you know, if you have people saying that they were on these maintenance crews, they know they were, you know, all right I know you can’t find my name in this NDRP record, but I’m telling you this is what we did. And we have at least some testimony here from Margaret Ruttenber, saying that you know this situation, that kind
of situation did exist according to her research at the plant. Then maybe you know we should be a little more cautious of how we implement that criteria. I’m talking mainly about that second, but even I think the second and third criteria that Jeff presented kind of overlap a bit. But at least the second, you know, this question of being in the building for 250 days...

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

**MR. GRIFFON:** Yeah.

**DR. BRANCHE:** This is my recommendation that you consider, given the information that you heard and as you cogitate what you need to do. I caution you to remember that there’s no open issue on this before the Board because it’s already been sent to the Secretary. However, based on the fact that as you learn more about how the information of the Board formally sent for this HHS Secretary’s signature, you can, your work group, I would recommend that the work group as a whole offer a letter for the Board’s consideration about, that would go to the Secretary to talk about your concerns, what you’ve heard from the Department of Labor, and
how based on what you’ve learned about the implementation of the class, it’s given you some wisdom about how you would rectify class definitions in the future, if any future language were to come before the Secretary, you can share your concerns about how this particular class definition is being implemented, but again, you then leave it to the Secretary to do with it as he sees fit. You’re going to have to couch this, and you have to make certain that your work group is on the same page about what language would go before the Board. I don’t know if you can do that before our meeting next week.

MR. GRIFFON: No, I’m not sure we can. I think we’re a little bit split on this issue right now. So you know I don’t know that we can come to any consensus, but mainly this was, you know, a question of, and I understand what you’re saying, Christine. It’s one thing to sort of I guess learn from this and understand how we need to write our definitions in the future. I’m not sure if we had to do it again, I’m not sure if we could have crafted it any better or any differently, but we certainly,
this at least gives us a sense of how the language is being interpreted and implemented, so in this specific case. But one thing is it’s that one thing of direction going forward, but I think a lot of individuals on the phone are concerned about this particular class, so I think we do need to, you know, maybe at least consider action on this and the action may be just a letter clarifying our definition. But the work group doesn’t have consensus on that right now.

**DR. BRANCHE:** But if I can interject, Mark. Actually by virtue of what you have learned, perhaps if you don’t want to have a letter, if there’s no consensus about a letter, certainly the wisdom of how future definitions as the Board moves forward on other of the issues before it, the wisdom that this work group has gained as you’ve considered other pieces of information that have come to light, a letter from the work group as far as -- This would just be a letter or a note or a memo or something from the work group to the Board as the Board deliberates in the future. That’s another avenue that you have at your disposal.
In other words helping the Board mature as it understands the vagaries and language and what doors certain pieces of language open, what it means to have 250 days. There are a number of things that you all have discussed since I -- You know I joined this late in the game and after the decision was made and the information was sent to the Secretary. But over the months that you’ve deliberated on these finer points, if there’s something that can be helpful to your colleagues on the Board, that’s another avenue that you have as far as educating your colleagues.

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

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

MR. GRIFFON: Sure.

MS. BOLLER: You know, I’ve been accused of not being the brightest light on the porch, and that’s fine, but, and I can hear the snickering, so that’s okay. But this SEC was approved as I understood it because there was a
lack of records, and you all could not prove
who was and who was not exposed to neutrons.
Now you had the list of folks, and that’s
wonderful, but the other language then says, or
who might have been, and you did not have
accurate records in order to prove who was or
who wasn’t. So what’s the issue here that we
got to go through all this bureaucracy other
than to intentionally deny people what they may
have coming? I don’t get it. I mean we keep
going around and around and around. I don’t
get it. Will somebody please explain it?

DR. BRANCHE: Well, there’s no formal -- the
Board’s made its decision and sent the
recommendation to the HHS --

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

DR. BRANCHE: But my issue, there’s a closed
issue for the Board format.

MS. BOLLER: I understand that, but I’m asking
for an explanation because here was my
understanding from the Board’s original
decision that they sent to the Secretary was
that those who were monitored or should have
been monitored, and the reason the SEC was granted was because they didn’t have, or the Board believed there were not adequate records to be able to evaluate everybody who worked there. So based on the lack of supporting documentation, they granted the SEC and said, here. So you got a group that’s on the list. Terrific. You can prove that, but you can’t prove anybody else, so they fall into the category of should have been tested.

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

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

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

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

DR. BRANCHE: And that is an incor -- I’m going
to take the risk and -- That is an incorrect statement.

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

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

Now you’re asking these people to come back and prove that their husband or their spouse or their loved one actually worked in a building for 250 days. Impossible. Not gonna happen. If you can’t prove it through the
records at DOE, then how do you expect a widow
to prove it? I don’t get it, other than it
seems to me there’s an effort to avoid granting
these benefits to people who deserve them. End
of my tirade. Thank you.

Could somebody answer it?

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

But anyway it gets into the hundred
millirem question. And then we get back to
this, so I don’t actually think we’re too far
apart. The question is you know we went
through this with Y-12 a little bit, too. And
Pete’s description sort of Y-12, Pete Turcic’s
description for the Y-12 site was that you know
if we have you know questionable jobs you know
that, then it’s going to come down to there’s
that judgment area, there’s that gray area, you
know, the certain job titles or job
descriptions may certainly show that they
weren’t in any area requiring monitoring. But
then there’s that gray area, and I guess that’s
what we’re questioning around and discussing
around so much here is that that gray area and
that’s why I always use this maintenance.

And and whether NIOSH may not agree with
this, but I think the Board’s basis for our
decision was that there you know, as Carolyn
just described it, there were concerns about
the adequacy of a neutron record so given that,
you know, I guess we would have that question
of you know was everybody, anybody, who was
sent into those areas to work, would they have
been captured in the NDRP. Would they have
been monitored and included in the NDRP? And I
have less confidence of that, I guess, than
maybe NIOSH does, and that’s why I’m saying,
now does that mean our definition was not
appropriate, I’m not sure. And that goes back
to Christine’s question, you know, what what,
you know, what kind of action do we have from here? I’m not sure, but my concern is that, you know, we have some cases and some individuals, and even if it’s a small number we certainly want to get it right. So I guess it comes down to that question of this monitored or should have been monitored, and how well and how well or how that is interpreted. And I’m not sure next steps, you know, in terms of clarifying that. That’s why I was asking Jeff also, you know, maybe we can get an update on the number of cases that didn’t meet your criteria during this time period and maybe a, you know a -- I would like to see the number and a description, you know like job title, building, certainly without getting into Privacy Act issues. But that might help us to understand your, your logic through this process.

MR. PRESLEY: Hey Mark?

MR. GRIFFON: Yeah, go ahead Bob.

MR. PRESLEY: Bob Presley. I, number one, I’ve got to go here just in a minute.

MR. GRIFFON: Yeah, I think we’re close to wrapping up, yeah.
MR. PRESLEY: What I would like to see is, you know, Christine is 100 percent correct on this. If we do anything there needs to be a letter or us to have a discussion with the Board on correcting or clarifying some of these issues, and I honestly don’t think that we can do it today. If you -- what I would like to see is maybe put your concerns in writing and then let’s look at those things. We need to discuss a little bit more because --

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

MR. PRESLEY: Right.

MR. GRIFFON: But if I can circulate a draft memo and we can all send it to the Board, that would be wonderful. If not, maybe we can just have it as an open discussion item in the work group updates. But yeah, I think we need to try to move the ball along, and one way to do that might be for me to draft a memo and
hopefully, if we get everyone agrees on the work group, we can submit it to the Board and formalize it that way and discuss it a little more formally.

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

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

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

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

**MR. PRESLEY:** That’s wonderful.

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

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

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

**DR. BRANCHE:** I can tell you right now that
there isn’t going to be time.

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

**MR. GRIFFON:** But like I said, Wanda, I don’t think, and I’ve thought about this too, would I
change anything in that language, and I’ve sweated over this for a long time, but you know, and I’m hard pressed to as well. I think this gets into more of the, you know, and I don’t know if it’s the case here, but you know the potential for unintended consequences, you know. So in the memo, and maybe I’ll just draft it and it’ll end up in the circular file, but I’ll at least take a stab at outlining things and circulate it to the work group. And if we think we can’t come to consensus or think it’s not worth forwarding to the full Board, then we can just scrap it. But I’ll at least try to outline. I think my concerns get more into implementation, and that really, that is a DOL, the DOL side, I understand that, so you know as far as updating our language it may not be important but it may be -- I don’t know, it may be important for us to share with the Board just so that the DOL understands some of our concerns. You know if I look back at this I can remember I think a number of us were surprised on the 250 day, you know, being in the particular buildings, but when I look closer at that, I realize well you know that
probably was done accurately by DOL, but you
know was that the way I was thinking about it
when we were drafting this class, you know I
wasn’t thinking about it that way, so I think
it might be worth just outlining in a memo so
we can all at least look at it at the work
group level then we can decide if we need to
bring it to the Board.

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

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

DR. ULSH: Mark, could you repeat your
question, please? I’m sorry.

MR. GRIFFON: Getting the data from Margaret
Ruttenber. I think there have been some
discussions and at least it’s been initiated.

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

MR. GRIFFON: Oh, okay.
DR. ULSH: To hand over the data, right, Margaret?
(no response)

DR. ULSH: Well, I guess --

MR. GRIFFON: She may be off the line.

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

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

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

MS. RUTTENBER: Oh, good.

MR. ELLIOTT: -- other letter will be forthcoming.

MS. RUTTENBER: Perfect.
MR. ELLIOTT: Brant’s mission on Thursday will be to scope out what it will take to transfer the information to us. And as we’ve said many times, Mark, we think that we have the same information that the Ruttenbers have put together except for perhaps in some cases there may be some work history information that we may elaborate a better understanding of where a worker was and what they did.

MR. GRIFFON: Yeah, and I think --

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

MR. GRIFFON: And Larry, I think I’m on the record -- if I’m not, I am now -- of saying that you know our conference call with Margaret, you and I and Brant, having these discussions about the data, does seem that we had all the same data for the work group to review. It helped going up to this SEC class decision except for, and that was the one question about this additional possible work history information that might be useful, so I agree with that, but that part might be very
helpful in implementation stuff. So that’s good that that’s on course and that might be helpful.

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

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

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

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

**DR. BRANCHE:** Just so that everyone understands and can get their expectations tweaked accordingly, just about every minute that was before and after and between the meetings, the meeting of the Board next week, has pretty much
been taken. So I just want to make sure you
know that.

MR. GRIFFON: Yeah, I understand that.

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

MR. GRIFFON: Right, I appreciate that.

DR. BRANCHE: Okay.

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

MR. KOTSCH: I’ll see what I can do, Mark.

MR. GRIFFON: And you can give us that maybe
during your update or whatever.

MR. KOTSCH: Right.

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

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

MR. GRIFFON: Yeah, that’s it.

DR. BRANCHE: Then that’s the formal close of our call. Thank you very much to everyone.

MR. GRIFFON: Thank you.

DR. BRANCHE: Thank you.

(Whereupon, the meeting was concluded at 3:45 p.m.)
CERTIFICATE OF COURT REPORTER

STATE OF GEORGIA
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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
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