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

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ADVISORY BOARD ON  
RADIATION AND WORKER HEALTH

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DAY THREE

ABRWH BOARD MEETING

The verbatim transcript of the  
Meeting of the Advisory Board on Radiation and  
Worker Health held at the Doubletree Oak Ridge,  
Oak Ridge, Tennessee, on January 26, 2006.

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January 26, 2006

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

(8:30 a.m.)

WELCOME AND OPENING COMMENTSDR. PAUL ZIEMER, CHAIRDR. LEWIS WADE, EXECUTIVE SECRETARY

1 DR. ZIEMER: Good morning, everyone. We're ready to  
2 begin our third day of sessions on the Advisory  
3 Board on Radiation and Worker Health here at  
4 Oak Ridge. I'll begin with the usual reminder,  
5 and that is to register your attendance in the  
6 registration book in the hallway.  
7 Also again, a reminder that there are copies of  
8 the agenda and related documents on the tables  
9 to my far right, those -- particularly members  
10 of the public who have joined us today, if you  
11 have documents you need to get that we will be  
12 discussing, those are on the table.  
13 Dr. Lewis Wade, our Designated Federal  
14 Official, has some opening comments, as well.  
15 **DR. WADE:** Yeah, just a very brief comment. I  
16 -- again, I would like to thank the Board. You  
17 know, last night was a long night and I think  
18 we all feel great sympathy and empathy for the  
19 people who come to speak to us and it makes the  
20 evening long and arduous. I'd like to, on the  
21 record, thank Dr. Ziemer for what I thought was

1 an outstanding job of representing, with as  
2 much compassion as I could imagine, the issues  
3 that we're trying to deal with. So I would  
4 like to personally and on the record thank Dr.  
5 Ziemer for his work.

6 **DR. ZIEMER:** Thank you very much. Also, one  
7 item that one of the attendees last night  
8 wished to have placed on the record and was  
9 unable to do so because we ran out of time, she  
10 left her statement with Larry Elliott and,  
11 without objection, I'm going to ask Larry to  
12 read that statement into the record this  
13 morning.

14 **MR. ELLIOTT:** This was Ms. Lindsey -- Alvin N.  
15 Lindsey -- asked me to read this statement, and  
16 she and her brother spoke at public comment  
17 night before last and she could not be here --  
18 if you recall, they were from Savannah River  
19 Site and they needed to get back home, but she  
20 asked me if I would see if we could enter this  
21 into the record.

22 (Reading) On behalf of our father, Robert D.  
23 Lindsey, and other similarly situated claimants  
24 who have been denied under Part B, we request  
25 that the government look closely at other



1 chemical toxic exposures intended by the  
2 statute. Respectfully submitted, Beulah J.  
3 Lindsey, Alvin N. Lindsey.

4 I explained to her that subtitle E covered  
5 those other toxic exposures and I asked her to  
6 touch base with her claims examiner at DOL.

7 **DR. ZIEMER:** Thank you very much, Larry.

**STATUS REPORTS AND DEVELOPMENT OF PLANS**  
**FOR SITE PROFILE REVIEWS - NTS, SRS**  
**DR. PAUL ZIEMER, CHAIR**

8 Now you have your agenda before you and we will  
9 try to follow it as closely as we're able to  
10 today. We're going to begin with two  
11 preliminary site profile reviews. One is the  
12 Nevada Test Site and the other is the Savannah  
13 River Site. Dr. Makhijani is prepared to give  
14 us an overview of the -- or basically a status  
15 report of the site profile reviews on those two  
16 which are underway. This basically is a status  
17 report, but we want -- keep in -- keep in mind  
18 we have a queue of site profiles under review  
19 and at various stages, and this is our first  
20 look at these two, and there will be more to  
21 come. But at least we'll get them under way,  
22 as it were, with this briefing this morning.  
23 Dr. Makhijani.

24 **DR. MAKHIJANI:** Thank you, Dr. Ziemer. I

1 believe that you did get a briefing on Savannah  
2 River earlier from us, but there was no matrix.  
3 So we did submit matrices for the Nevada Test  
4 Site review and the Savannah River Review.  
5 They're back there. You -- the Board has  
6 copies of my slides, but I don't think there  
7 are enough there for the public. But we could  
8 get more later and put them out.

9 **DR. ZIEMER:** So let's -- we'll begin with the  
10 Nevada Test Site, and I believe the matrix may  
11 be in the book, I -- yes, make sure you have  
12 the matrix, as well, in its current form.

13 **DR. MAKHIJANI:** So just -- I -- when we  
14 prepared this matrix, John -- John Mauro -- and  
15 I thought it might be useful to list the --  
16 even summarize the matrix even further, so you  
17 have a set of bullet points in the front of the  
18 matrix. And what my slides are basically is a  
19 -- is a reproduction of that.

20 So just to follow along the categorization of  
21 issues of -- that is typical of site profiles  
22 but not in the same order, the major internal  
23 dose issues at Nevada Test Site that we  
24 identified in our review were that there's no  
25 internal dose monitoring data --

1           Before -- before I go on, let me preface this  
2           that we reviewed Revision 0. We know that  
3           Revision 1 is in the works, and Revision 0 does  
4           have disclaimers that it doesn't cover the  
5           atmospheric testing period, although it has  
6           some conclusions about the atmospheric testing  
7           period. We did provide findings on the whole  
8           period of Nevada Test Site operations, so not  
9           necessarily meant as criticisms of the site  
10          profile, but to move the thing ahead and since  
11          we know Revision 1 is in the works.  
12          There's no individual internal dose monitoring  
13          until late '55 or '56. The some plutonium  
14          bioassay was initiated then. Tritium bioassay  
15          was initiated I think in 1958, and a full array  
16          of radionuclide internal monitoring was not  
17          established until about the mid-'60s -- '67, I  
18          think. There was some fission product bioassay  
19          in the early '60s, so there -- there are very  
20          significant gaps in the internal dose record  
21          for which there's no method yet published by  
22          NIOSH as to how those doses would be estimated.  
23          That is for a difficult period in the time of  
24          atmospheric testing of nuclear weapons.  
25          There are radionuclide lists that are very

1           substantial in the site profile, but they are  
2           not complete in some very important respects.  
3           Because it was a test site, they had very  
4           short-lived radionuclides deposited and so  
5           intakes -- and this comes up in external dose  
6           also -- are very time-dependent because of  
7           rapid decay of the short-lived radionuclides,  
8           and so it's very important that the early  
9           radionuclide lists be complete.

10          The site profile recommends the use of  
11          Technical Information Bulletin 002 for post-  
12          1971 tunnel re-entry workers. This was a  
13          little bit of a surprise because TIB-2 itself  
14          says that it is not to be used for this  
15          purpose, and so there's an inconsistency  
16          between the site profile and TIB-2. We don't  
17          think that it's appropriate to use TIB-2 -- for  
18          instance, because the radionuclides in TIB-2  
19          are not necessarily appropriate for the Nevada  
20          Test Site, partly because of the problem I just  
21          mentioned.

22          Now there -- yes-- day before yesterday you  
23          considered the Pacific Proving Ground, and one  
24          of the issues is relevant here. Currently  
25          photon doses are used to estimate internal

1 doses, and there is the issue of hot particles,  
2 which I'll cover later. But in this context I  
3 just wanted to mention that there are two  
4 issues. There's a data integrity issue and a  
5 hot -- large hot particle issue that will  
6 complicate the estimation of internal dose from  
7 photon doses -- 'cause external dose monitoring  
8 is much more extensive than internal dose  
9 monitoring, at least in the early period.  
10 So there are some issues in regard to external  
11 dose. There are no beta dose until 1966, no  
12 neutron dose until 1966, and partial neutron  
13 dose data until 1979.  
14 Now there's a data integrity question, and then  
15 let me explain that to you a little bit in more  
16 detail. Nevada Test Site apparently had a  
17 policy that's documented in Dr. Barton Hacker's  
18 history of nuclear testing, that's the official  
19 history of nuclear testing, that people were  
20 likely to lose their privilege -- it was  
21 considered an economic privilege of working in  
22 forward areas, or be laid off, if they exceeded  
23 the quarterly dose limit. And so there was  
24 apparently a practice of removing the badges by  
25 some personnel, and the extent of this is not

1           documented. But the fact that it occurs seems  
2           -- seems to be pretty clear. This came up in  
3           our site expert interviews in two different and  
4           completely independent sets of site expert  
5           interviews, including the interview I did with  
6           William J. Brady, who retired as the principal  
7           health physicist, and he said he did it  
8           himself. And this was a very important  
9           economic loss to workers, as you might imagine,  
10          and so this -- the question of the integrity of  
11          the external dose record is very important.  
12          How long this -- Mr. Brady said that this  
13          lasted until the late '60s, if I remember, and  
14          in other site expert interviews it was said  
15          that it may have gone on into the 1970s. It's  
16          kind of murky, but this is obviously an  
17          important issue -- sort of similar to what Joe  
18          Fitzgerald mentioned in regard to Rocky Flats  
19          yesterday.

20          There are obviously a lot of different type  
21          work situations and, as has come up in other  
22          contexts, there's a question of correction  
23          factors for external dose in regard to where  
24          the badge is located and where the job was.  
25          This won't apply to all situations, but there -

1           - there are likely -- the variety of jobs done  
2           at Nevada Test Site was pretty great and  
3           there's likely to be situations where this is  
4           important.

5           There is an assumption in the site profile that  
6           atmospheric test workers were not exposed to  
7           neutrons. This is an unvalidated assumption  
8           and may not be correct for some workers. This  
9           -- this definitely needs to be documented.  
10          It's certainly true that for most workers they  
11          were not exposed to neutrons and they were well  
12          away from the tests. But there were -- there  
13          were pressures to put personnel in forward  
14          areas, and so this is -- this is not a given  
15          for all workers.

16          Came up on the issue of large, non-respirable  
17          hot particles -- that is, particles greater  
18          than 10 microns. This issue was researched  
19          extensively at the time by the Naval  
20          Radiological Defense Laboratory. One of their  
21          reports is cited in the site profile, but  
22          there's no discussion of it. I looked into  
23          this issue in some detail. The Naval  
24          Laboratory concluded that there could be very  
25          significant -- if -- if large particles were

1 deposited on the skin or ingested via  
2 inhalation route, that's -- those are the two  
3 things that they considered because they're  
4 non-respirable; they would wind up in the GI  
5 tract -- that the doses could be very  
6 substantial, but very local. The doses  
7 estimated in the Naval Laboratory's documents  
8 are very high, and this is -- this is obviously  
9 an important problem that would also apply  
10 possibly to atmospheric testing workers or  
11 early re-entry -- atmospheric testing workers  
12 and early re-entry reactor workers.  
13 This situation -- while this is not in the  
14 Naval documents, in our opinion this situation  
15 would be complicated by oronasal breathing of  
16 non-respirable particles, which would also wind  
17 up in the GI tract. So the large particle  
18 issue is -- is significant for some types of  
19 cancers and needs to be researched. Also  
20 whether it applies to early tunnel re-entry  
21 workers and workers exposed to venting of  
22 underground -- there's a mistake there. It  
23 should say "venting of underground tests", not  
24 venting of atmospheric tests. I'm sorry about  
25 that. Atmospheric tests automatically vented.



1           There are a significant number of issues in  
2           regard to environmental dose. We felt that in  
3           sum total the environmental dose methods and  
4           models could significantly underestimate the  
5           environmental dose by an order of magnitude or  
6           more. We didn't feel that the model --  
7           resuspension model presented in the site  
8           profile was appropriate. It's -- the model --  
9           the resuspension model is really more  
10          appropriate only for re-entry -- early re-  
11          entry, within weeks or months, not for re-entry  
12          after years.

13          Fractionation of radionuclides, which also came  
14          up day before yesterday -- this is when the  
15          non-volatile radionuclides are deposited closer  
16          to the site of the test and the more volatile  
17          radionuclides travel farther. So for instance,  
18          strontium and plutonium would be deposited  
19          closer to the site of the test. This needs to  
20          be taken into account in the environmental dose  
21          calculations. There are some gaps in  
22          extrapolations in the environmental dose record  
23          that don't seem appropriate to us.

24          There is a very important question of the  
25          review of records that there -- obviously

1 Nevada Test Site is a very complicated site and  
2 the site profile does contain quite an enormous  
3 review of the archives. But because the issue  
4 -- there are some very, very important issues,  
5 it does seem that in some essential respects  
6 the record review and interview process was not  
7 complete and has resulted in some gaps in the  
8 site profile.

9 Specifically, William J. Brady was there from  
10 1952 to 1990 and was in security and health  
11 physics, retired as principal health physicist.  
12 He was part -- he's been on National Academy  
13 panels on dose reconstruction, and he seems to  
14 have been only briefly contacted, and the  
15 record of that contact is -- is very sketchy.  
16 The documentation of other site expert  
17 interviews is better, but we found that -- we  
18 were told that NIOSH only records what is --  
19 what they consider important. And the  
20 importance of what is said in an interview is  
21 not always evident at -- on the spot, so better  
22 documentation of site expert interview  
23 definitely required -- also felt that the  
24 reference to the official history and the  
25 underlying archive of Barton Hacker was

1 entirely missing from the site profile, which  
2 was a little bit of a surprise. Specifically,  
3 Barton Hacker's history contains references to  
4 archives that could be very important in  
5 investigating things such as data integrity.  
6 Some other major issues -- there's some radon  
7 issues for G-tunnel workers. The status of the  
8 Gravel Gertie workers where weapons were put  
9 together is unclear whether they belong in the  
10 Nevada Test Site or belong in Livermore. I  
11 don't know where NIOSH is in resolving that  
12 issue. There's also, as a result, no  
13 discussion of radon dose issues. This came up  
14 in the Iowa -- this is similar to the Iowa  
15 case, as you might remember.

16 So that's the review team.

17 **DR. ZIEMER:** Okay.

18 **DR. WADE:** I need to interrupt briefly. I  
19 neglected to do my conflict of interest  
20 statement --

21 **DR. ZIEMER:** Right.

22 **DR. WADE:** -- and I'm sorry and I'll try not to  
23 forget again. For Nevada Test Site there were  
24 none. Only Mark Griffon when we're dealing  
25 with an action filed by building trades union.

1 And for Savannah River Site there are none.

2 **DR. ZIEMER:** Thank you. Let's take a moment  
3 now for questions or comments. Gen Roessler.

4 **DR. ROESSLER:** I agree with you, Arjun, on the  
5 point about Mr. Brady and some of these  
6 comments because that could be a very important  
7 issue. But I hope that there's a way of really  
8 validating what he has said. And you did give  
9 another -- you indicated there was another  
10 report, and I'm not familiar with it --

11 **DR. MAKHIJANI:** Yeah --

12 **DR. ROESSLER:** -- back where the external dose  
13 measurements -- or they just didn't wear their  
14 badges, apparently.

15 **DR. MAKHIJANI:** Yes, this -- this came up --  
16 this came up in other site expert interviews  
17 that are -- that were done independently, so it  
18 came up in two different site expert  
19 interviews. And in regard to -- in regard to  
20 the employment conditions, this is documented  
21 in Barton Hacker's history, and there are a  
22 whole set of documents from the time that  
23 validate that there were these kinds of  
24 employment practices at the time. I don't know  
25 that -- I have not come across documents from

1 the time that say workers are not wearing their  
2 badges, we need to improve this. Obviously the  
3 situation appears to have been corrected, so  
4 there may be a document trail that says this is  
5 a problem, we need to fix this, but I have not  
6 come across such documents. Obviously in a  
7 review we did not try to be exhaustive but  
8 tried to highlight the issues.

9 **DR. ROESSLER:** I think it's an important item  
10 to get more information on.

11 **DR. MAKHIJANI:** This is obviously a central  
12 issue. Yes, I agree.

13 **DR. ZIEMER:** One of the problems in the earlier  
14 times, lifetime doses were not kept usually in  
15 -- I think before, what, late '50s actually.  
16 They simply had weekly limits, and it would be  
17 fairly easy for a worker to simply work up to  
18 the limit in a week. Once you had lifetime  
19 exposures, you could easily see from film badge  
20 patterns if someone, over a period of several  
21 weeks, got rapidly up to a limit and then  
22 nothing more occurred for a few weeks, those  
23 patterns would show up. And that may explain  
24 why they stopped -- the practice may have not  
25 been as easy to do later on. But the early

1 ones, it would be very difficult to de-- I'm  
2 just talking about going back to the data and  
3 sort of cross-validating. I think it would be  
4 difficult in the early days to validate it from  
5 the data, unless you had also some daily pocket  
6 dosimeter readings or something that you could  
7 compare with the film badges.

8 **DR. MAKHIJANI:** Just to comment on that, Dr.  
9 Ziemer, apparently the introduction of the  
10 integrated -- integral identification and film  
11 badge in 1966 appears to have helped alleviate  
12 the situation. That's why Mr. Brady thought  
13 that maybe by the end of the '60s this problem  
14 essentially went away. But then other site  
15 experts said that it may have continued to the  
16 '70s, so this obviously --

17 **DR. ZIEMER:** And I think it would be --

18 **DR. MAKHIJANI:** -- needs to be researched.

19 **DR. ZIEMER:** -- very difficult to conceal it,  
20 as it were, as -- because of the exposure  
21 patterns that would show up.

22 **DR. MAKHIJANI:** Yes.

23 **DR. ZIEMER:** Roy DeHart.

24 **DR. DEHART:** Yes, two questions. Would you  
25 remind me what Gravel Gertie operations --

1           **DR. MAKHIJANI:** Gravel Gerties are the  
2 structures in which nuclear weapons were  
3 assembled. In case there were accidental  
4 detonations, it would collapse inward and not  
5 release vast amounts of radioactivity.

6           **DR. DEHART:** Thank you. And another question  
7 on the economic factor, was this a hazard pay  
8 issue?

9           **DR. MAKHIJANI:** Yes, there were hazard pay  
10 issues in forward areas.

11          **DR. ZIEMER:** Other questions? Just for our  
12 benefit, the -- your original document was  
13 issued maybe a month ago -- right? And NIO--

14          **DR. MAKHIJANI:** Maybe two months.

15          **DR. ZIEMER:** Not the matrix, the review --

16          **DR. MAKHIJANI:** Yes, I think --

17          **DR. ZIEMER:** -- about a month ago.

18          **DR. MAKHIJANI:** -- the review, yes.

19          **DR. ZIEMER:** And then the matrix we just got --

20          **DR. MAKHIJANI:** Yes.

21          **DR. ZIEMER:** -- recently.

22          **DR. MAKHIJANI:** Yes.

23          **DR. ZIEMER:** And just for the record, Jim,  
24 NIOSH has not had an opportunity, I don't  
25 think, to react to these comments in any

1 extent.

2 **DR. NETON:** No, we haven't. We appreciate the  
3 fact that SC&A has consolidated the -- the  
4 report to some more manageable significant  
5 issues.

6 I would point out on this monitoring issue, we  
7 have seen this where workers who were  
8 supposedly taken out of areas and not working  
9 and did not have external badge results, for  
10 some strange reason continued to have tritium  
11 being excreted in their urine. And so it's  
12 pretty obvious that they continued to work in  
13 the areas, and we -- we try to take this into  
14 account when we see situations like that.

15 **DR. ZIEMER:** Well, that would be another good  
16 way to cross-validate.

17 **DR. NETON:** One other thing I'd just like to  
18 point out briefly is that, you know, for the  
19 reasons Dr. Makhijani mentioned, there are gaps  
20 in the site profiles and we recognize that. So  
21 for that reason we're moving very cautiously  
22 with dose reconstructions at Nevada Test Site,  
23 particularly during the atmospheric -- above-  
24 ground, atmospheric testing era. So again, the  
25 site profile has been issued to allow there to



1           be information to be used when possible, but we  
2           certainly recognize the limitations and are  
3           not, you know, jumping ahead and using this  
4           document right now for -- for large amounts of  
5           dose reconstructions.

6           **DR. ZIEMER:** Well --

7           **DR. MAKHIJANI:** As I -- as I said, Dr. Ziemer  
8           and Dr. Neton, some -- a lot of the comments in  
9           regard to atmospheric testing are not meant as  
10          criticisms, but to obviate the need for more  
11          iterations when Revision 1 is published so as  
12          to minimize -- to be more efficient.

13          **DR. ZIEMER:** Yes. Dr. Roessler again.

14          **DR. ROESSLER:** I just wanted to pick up on  
15          Gravel Gertie, too, and you compared it to the  
16          Iowa situation. In Iowa we knew that the Iowa  
17          soils have a high radon potential. I don't  
18          know that that's necessarily true in the Nevada  
19          soils, but that's something that certainly  
20          should be -- should be looked at. I don't  
21          think we could just off-hand say it's like the  
22          Iowa situation.

23          **DR. MAKHIJANI:** Yes, Dr. Roessler, I didn't  
24          mean to leave a mis-impression, and thank you  
25          for the correction that -- I wasn't comparing

1           it to the high radon levels in the natural  
2           environment in Iowa. I was comparing more the  
3           structural situation that -- that's an enclosed  
4           structure and radon would tend to accumulate  
5           inside, so definitely an issue that needs to be  
6           taken into account.

7           **DR. ZIEMER:** Okay. Other comments or  
8           questions? Yes, Mr. Presley.

9           **MR. PRESLEY:** I could be wrong, and I've sure  
10          put a bunch of them together out there, but I  
11          don't remember a Gravel Gertie at NTS. The  
12          only Gravel Gerties I've worked in is at  
13          Pantex.

14          **DR. ZIEMER:** Yeah, Pantex has many Gravel  
15          Gerties.

16          **DR. MAKHIJANI:** This was --

17          **DR. ZIEMER:** Maybe they have something  
18          equivalent to that?

19          **DR. MAKHIJANI:** This came up in our  
20          conversations with NIOSH and we had no  
21          indications that such a structure did not  
22          exist, so obviously this has to be open to  
23          correction.

24          **DR. NETON:** We're going to have to go back and  
25          check on that. I'm not familiar with that

1 issue right now.

2 **DR. MAKHIJANI:** Yeah, so it's obviously -- I  
3 mean weapons were being put together there, but  
4 -- and you did it, so --

5 **MR. PRESLEY:** That's not the issue.

6 **DR. MAKHIJANI:** So -- so whatever the structure  
7 was, I guess -- I'm not sure -- obviously this  
8 should be open for correction.

9 **DR. ZIEMER:** Well, we can -- you can follow up  
10 on that.

11 **DR. WADE:** (Unintelligible) information  
12 (unintelligible)?

13 **UNIDENTIFIED:** (Off microphone) There's --  
14 there's one (unintelligible) --

15 **DR. ZIEMER:** Come to the mike. You'll need to  
16 identify yourself.

17 **MR. MOLINO:** Mike Molino, I've been to the test  
18 site a number of times. There's one on  
19 Frenchman Flats right where the -- the balloon  
20 shots were done where they had created the  
21 artificial lake, so...

22 **MR. PRESLEY:** (Off microphone) (Unintelligible)  
23 that was used in the early, early, early years.

24 **MR. MOLINO:** Yes, sir, very early. I think  
25 they only used it for seven shots.

1           **MR. PRESLEY:** It was only used for cover.

2           **MR. MOLINO:** Yes, sir.

3           **DR. ZIEMER:** Okay. Let's then proceed to the -  
4           - the next presentation, which is the Savannah  
5           River Site.

6           **DR. WADE:** We will come back and talk about our  
7           follow-up actions on both of them --

8           **DR. ZIEMER:** Right.

9           **DR. WADE:** -- I assume, at (unintelligible).

10          **DR. ZIEMER:** Right, uh-huh.

11   (Pause)

12          **DR. MAKHIJANI:** Savannah River Site, just a  
13          little review. This is -- there's some history  
14          to this. This -- we completed our review of  
15          Revision 2 of the site profile in October of  
16          2004. A new -- a new site profile Revision 3  
17          was published by NIOSH on April 5th, 2005.  
18          This is an integrated document, unlike --  
19          unlike the others. It's still an integrated  
20          document, I think -- right, Jim?  
21          We have not reviewed Revision 3. The Board did  
22          not ask us to go back yet, so many of the  
23          issues have likely -- or at least some of the  
24          issues have likely been addressed, we don't  
25          know. And so -- so many of these issues may be

1           moot and it has to be essentially resolved  
2           which ones are still valid and which ones are  
3           moot in -- in the comment resolution process.  
4           And there was a presentation to the Board in  
5           October, 2005.

6           The question of recycled uranium appeared in  
7           our review to be important at Savannah River  
8           Site. The radionuclides from the  
9           transplutonium program are -- the coverage of  
10          that needs to be fuller. The exposure to  
11          cobalt-60 needs to be considered. And so  
12          there's a -- there's a array of radionuclides  
13          that need to be considered that were not in  
14          Revision 2, and I don't know, as I said, what  
15          was the coverage in Revision 3.

16          So this -- this is also a question that has  
17          come up several times. Dosimeter calibration  
18          is on normal incidence, and so the question of  
19          exposure angles needs to be considered.

20          Dosimeter adjustment factors are not consistent  
21          in the Savannah River site profile with the DOE  
22          complex-wide recommended factors.

23          Now Hans is here, so if there's amplification  
24          needed on this, I would call on him to clarify  
25          some of these points.

1           There are some familiar neutron-to-photon ratio  
2           questions and neutron dose questions. The  
3           geometric mean and standard deviation is not  
4           technically defensible or claimant-favorable.  
5           There are high uncertainties with both the 1971  
6           to 1975 (sic) TLND neutron doses and the pre-  
7           1971 neutron doses. Obviously the NTA neutron  
8           doses would suffer from the same kind of  
9           problems that we've already discussed.  
10          Now there are some uncertainties that are not  
11          discussed in the site profile in relation to  
12          neutron-to-photon ratios. There are also  
13          variations in neutron-to-photon ratios within a  
14          given facility, such as the FB-line, that need  
15          to be taken into account. And SC&A recommended  
16          the use of the 95th percentile values for the  
17          period where there are TLND neutron dose data.  
18          Now there was an incomplete characterization of  
19          the Tank Farms. The Tank Farms in the F- and  
20          H-Areas, there are 51 high-level waste tanks  
21          there, and obviously there's a wide variety of  
22          radionuclides that was put into these tanks.  
23          In the early years, in the 1950s, there were a  
24          number of spills. I've looked at the Tank Farm  
25          databank quite a while back, in the 1980s, and

1           it was recorded in there that many of the  
2           incidents and spills, until 1965, were -- were  
3           at least not entered into a databank, so it's  
4           unclear how the incidents and especially the  
5           unmonitored workers for internal dose, as well  
6           as local hot-spot areas for external dose,  
7           would be dealt with.

8           For instance, if there were a spill on the  
9           ground, then the question of the geometry of  
10          the exposure relative to the badge location  
11          could be important. The Tank Farm database --  
12          databank does contain instances of external  
13          dose in the Tank Farm area, sometimes in the  
14          rems per hour, tens of rems per hour, and very  
15          occasionally even in the hundreds of rem per  
16          hour -- or rad, I should say, Roentgen per  
17          hour.

18          So this -- these are pretty significant issues  
19          and it's very important to try to establish a  
20          complete list of incidents. I know that NIOSH  
21          relies on worker records for incidents, but  
22          since the databank itself said that incidents  
23          were not recorded, there's kind of an open  
24          question, especially in that regard. And the  
25          TBD guidance in regard to exposure needs to be

1 better validated for the databank.

2 This is an issue for the -- did I skip a  
3 (unintelligible) -- sorry.

4 There are inadequacies in the early internal  
5 and external monitoring programs that are  
6 detailed in our review. The personnel  
7 monitoring was determined by area-specific  
8 radiological field organizations. This is an  
9 issue that has also occurred in other places.  
10 Zeroes are recorded for unmonitored workers or  
11 due to missing records. Now this not only  
12 complicates the photon dose estimation, but  
13 obviously also complicates neutron dose  
14 estimate whenever you're relying on neutron-to-  
15 photon ratios.

16 Coworker models for early workers have not been  
17 developed. I don't know whether this situation  
18 has changed. I believe it might have. And  
19 there was a lack of neutron monitoring for some  
20 at-risk workers, which would lead to, you know,  
21 missed neutron dose. And I've already covered  
22 incident records.

23 In the Savannah River site profile and  
24 associated technical guidance, there's the so-  
25 called "high-five" approach where the highest



1 five intakes are attributed for unmonitored  
2 workers, and sometimes also for monitored  
3 workers who just -- for efficiency purposes.  
4 Am I right about that, Dr. Neton?

5 **DR. NETON:** (Off microphone) (Unintelligible)

6 **DR. MAKHIJANI:** Only for unmonitored workers?

7 **DR. NETON:** I think so.

8 **DR. MAKHIJANI:** Okay.

9 **DR. NETON:** (Off microphone) (Unintelligible)  
10 (On microphone) Some monitored workers I think,  
11 if we can demonstrate that the bioassay on  
12 those workers is below the level at which the  
13 high five approach would generate.

14 **DR. MAKHIJANI:** Okay. So some -- for some  
15 monitored workers, but mostly unmonitored  
16 workers. We found instances in the record  
17 where there were intakes that were recorded  
18 that were higher than the high five, so it  
19 doesn't seem that the high five is in all cases  
20 an actual high five.

21 There seemed to be an inconsistency with the  
22 regulation 42 CFR 82 because in going from the  
23 high five there's a use in estimating the dose.  
24 The first step is the use of the ICRP-30 model  
25 to estimate the intake. And so -- and there's

1 an assumption that the high five approach is  
2 necessarily the worst-case approach, and so in  
3 reviewing it, various factors led us to  
4 conclude that generally it may be a worst-case  
5 approach and obviously may result in very high  
6 overestimation of dose in most or even possibly  
7 all cases, but it's not clear that you could  
8 demonstrate this at the present time -- in the  
9 present state of documentation that we've  
10 reviewed.

11 So there are some limitations associated with -  
12 - in the occupational environmental dose. If I  
13 might illustrate this, the occupational  
14 environmental dose is based on an off-site  
15 source term. We question the applicability of  
16 an off-site source term to on-site exposures.  
17 For instance, there was open-pan burning of  
18 plutonium-contaminated solvents in the burning  
19 ground. This is not a significant issue likely  
20 for off-site exposures, but obviously could be  
21 a pretty significant issue for on-site  
22 exposures. And so the use of the off-site  
23 source term may be appropriate in some  
24 situations, but -- but not in all situations  
25 and -- and needs further work.

1           There's the recurrent question of incidents and  
2           incident lists. There's a need to improve  
3           internal dosimetry with regard to radionuclide  
4           solubility. The oronasal breathing has since  
5           been addressed, and ingestion dose, and NIOSH  
6           is revising its approach, so -- and there is a  
7           question of organically-bound tritium and  
8           stable metal tritides. Perhaps these are small  
9           contributors to the dose, as NIOSH has said,  
10          but this is an issue that we had brought up and  
11          that perhaps could be resolved relatively  
12          rapidly.

13          So there are sources of external dosimetry data  
14          that are not being used in the dose  
15          reconstruction process. I don't recall  
16          actually, honestly, what this refers to. Maybe  
17          Hans can amplify on that if you have a  
18          question. And there are special exposure  
19          circumstances for subcontractors and  
20          construction workers that need to be dealt  
21          with.

22          You already know the review team from the last  
23          briefing, I guess.

24          **DR. ZIEMER:** Okay, thank you very much. Let's  
25          have discussion on this. Wanda?

1           **MS. MUNN:** Arjun, could you please tell me what  
2           is the FB-line? I'm not familiar with the  
3           site.

4           **DR. MAKHIJANI:** The FB-line is attached to the  
5           F canyon where the back end of the plutonium  
6           refinement is done, and plutonium oxide I  
7           believe is produced at the end of the FB-line.

8           **MS. MUNN:** Okay.

9           **DR. MAKHIJANI:** If I recall correctly.

10          **MS. MUNN:** And you indicated that there may be  
11          additional external dose dosimetry. What --

12          **DR. MAKHIJANI:** Now this I don't recall, Ms.  
13          Munn. Hans, do you recall -- this is a little  
14          bit rusty with all of us because --

15          **MS. MUNN:** I understand.

16          **DR. MAKHIJANI:** -- we filed this review in  
17          October, 2004, so -- and --

18          **MS. MUNN:** The same is true here.

19          **DR. MAKHIJANI:** So could --

20          **DR. BEHLING:** I'm drawing a blank.

21          **DR. MAKHIJANI:** Could we get back to you --

22          **MS. MUNN:** Sure.

23          **DR. MAKHIJANI:** -- on that, Ms. Munn --

24          **MS. MUNN:** Sure, it's not crucial.

25          **DR. MAKHIJANI:** -- by e-mail and copy -- copy

1 the rest of the Board and NIOSH.

2 **MS. MUNN:** Thank you.

3 **DR. MAKHIJANI:** Sorry about that. When I saw  
4 it when I was reading, I -- I thought to give  
5 you a disclaimer right away.

6 **MS. MUNN:** (Off microphone) (Unintelligible)

7 **DR. BEHLING:** I'm taking a guess here, but I  
8 think, if I recall, there was a period of time  
9 between the early '70s and the later '80s  
10 during which time certain data was not being  
11 recorded. Is that -- does that draw --

12 **DR. MAKHIJANI:** Let's just get back on the  
13 record with --

14 **DR. BEHLING:** Yeah, but I think that's  
15 (unintelligible) --

16 **DR. MAKHIJANI:** -- a more definite answer  
17 rather than -- I'm a little uncomfortable with  
18 -- this is an important issue and we should  
19 give you a correct answer. Sorry for the  
20 blank.

21 **DR. ZIEMER:** While you're pondering other  
22 questions, just for clarity of this review  
23 process, I'll remind the Board -- in fact it's  
24 in your October minutes that you read last  
25 night -- that the initial report from SC&A on

1 Savannah River was at the October meeting. And  
2 at that time in the minutes it was reported  
3 that NIOSH had made initial responses to seven  
4 findings and seven observations that -- that --  
5 that's what the minutes says, I'm quoting from  
6 the minutes. (Reading) NIOSH has made initial  
7 responses to the seven findings and seven  
8 observations.

9 But then it goes on to say that it was agreed  
10 that there would be face-to-face session where  
11 the parties would sit down and so on and the  
12 development of the matrix would occur, which is  
13 the point we're at. So I'm unclear about  
14 whether you had an initial response to some  
15 items or what this referred to, but --

16 **DR. NETON:** No, that doesn't sound correct to  
17 me. I don't -- I don't remember us doing that,  
18 although I wish we -- it'd be nice if we had.  
19 What we did at the October meeting was provide  
20 a brief summary of a reaction to a few of the  
21 issues that were raised in SC&A's findings. I  
22 think in particular we talked about the high  
23 five approach a little bit and maybe our  
24 reaction to stable -- the organically-bound  
25 tritides. I'm drawing a blank. But we have

1 not provided a detailed response --

2 **DR. ZIEMER:** Maybe this is referring to some  
3 sort of preliminary reactions or comments --

4 **DR. NETON:** Possibly, yes.

5 **DR. ZIEMER:** -- as opposed to official  
6 (unintelligible) --

7 **DR. NETON:** (Unintelligible)

8 **DR. ZIEMER:** -- to me 'cause I hadn't seen  
9 anything in writing --

10 **DR. NETON:** Yeah, NIOSH has not --

11 **DR. ZIEMER:** -- to correspond to this, so --

12 **DR. NETON:** We have not officially responded to  
13 -- to these findings. And in fact, this is the  
14 first time, in mid-January, that we received  
15 the consolidated matrix that now has these six  
16 primary issues and ten secondary issues  
17 identified.

18 **DR. ZIEMER:** Again, the minutes refer to the  
19 fact that the matrix is to be developed and in  
20 fact there is a motion that occurred at that  
21 meeting instructing the contractor and NIOSH to  
22 proceed on the usual lines in the development  
23 of the matrix and going through the resolution  
24 process, so that action was actually taken. I  
25 was a little puzzled by that statement, and if

1 -- when we come to the minutes, if that needs  
2 some rewording, we need to do that, as well.  
3 John?

4 **DR. MAURO:** Perhaps I can help you. I was at  
5 the working group meeting and that was on the  
6 agenda, but it turned out that --

7 **DR. ZIEMER:** No, this is main Board meeting.

8 **DR. MAURO:** Oh, I th-- I mean -- okay, we did  
9 have a working group meeting with that on the  
10 agenda subsequent to that meeting, but we only  
11 -- if we spent a half-hour on it at the back  
12 end of the --

13 **DR. ZIEMER:** Well, maybe this was in the -- let  
14 me see what part of the minutes this is in.

15 **DR. MAURO:** I remember because Joyce Lipsztein  
16 was on the line and we did have an opportunity  
17 to start to address some of these issues, but  
18 we really didn't go very far with it.

19 **DR. ZIEMER:** This appears to be the main Board  
20 meeting, and -- when this item was discussed.

21 **DR. WADE:** Right, I think that probably refers  
22 to NIOSH's fairly spontaneous --

23 **DR. ZIEMER:** Yes.

24 **DR. WADE:** -- response at the meeting  
25 (unintelligible).



1           **DR. ZIEMER:** It probably needs to be reworded  
2           in a way to --

3           **DR. WADE:** Right.

4           **DR. ZIEMER:** -- indicate it was not an official  
5           response. Okay. But I did want the Board to  
6           be aware that there was an action already in  
7           place in moving forward on the resolution  
8           process on this one, and the matrix is the  
9           first step of that.

10          Okay, further comments or questions?

11          **DR. WADE:** Lacking technical comment -- I mean  
12          this underscores the fact that the Board has an  
13          awful lot on its plate and -- and priorities  
14          are set by sometimes other things, particularly  
15          SEC petitions. And I think it's incumbent upon  
16          us to -- to keep the entire field of play in  
17          view and keep these things moving forward.

18          **DR. ZIEMER:** Thank you very much.

19          **DR. MAKHIJANI:** Thank you, Dr. Ziemer.

20          **DR. WADE:** I think now we need to talk about, I  
21          would suggest, what we do with regard to Nevada  
22          Test Site, and then if there's anything in  
23          addition we need to do with Savannah River.  
24          Arjun has raised the issue of now a Rev. 3  
25          that's there and not been reviewed, so I think

1 we need to spend a couple of minutes just  
2 deciding on a cour-- on courses of action.

3 **DR. ZIEMER:** The Nevada Test Site has already  
4 moved to the matrix format. Based on Board  
5 precedent I think the expectation is already  
6 there. We may not need formal action on each  
7 of these to move in that direction. The main -  
8 - the main item we would have to address is the  
9 workgroup that would work on each of these.  
10 I do want to check, did -- Mark, did your  
11 workgroup do anything on Savannah River  
12 already?

13 **MR. GRIFFON:** (Off microphone) (Unintelligible)  
14 --

15 **DR. ZIEMER:** I'm trying to --

16 **MR. GRIFFON:** -- (unintelligible) --

17 **DR. ZIEMER:** -- I'm trying to determine whether  
18 you have any ownership that you don't want to  
19 relinquish on Savannah River.

20 **MR. GRIFFON:** I don't think we -- if we did  
21 anything, it wasn't --

22 **DR. WADE:** It was very --

23 **MR. GRIFFON:** -- it was very preliminary.

24 **DR. WADE:** -- very preliminary?

25 **DR. ZIEMER:** Okay. I have already heard from

1           some of the new incoming members that they are  
2           willing and interested to participate in some  
3           of these workgroups.

4           **DR. WADE:** Anxious, anxious.

5           **DR. ZIEMER:** Anxious? How naive they are.  
6           Right? Also I think for -- for distribution of  
7           workload, it would be appropriate to involve  
8           others in some of these site profile  
9           workgroups. Three or four individuals seems to  
10          work out pretty well, does it not? Get a  
11          little cross-section of individuals. The Chair  
12          would be interested in learning of interest --  
13          actually we have Nevada Test Site, we have  
14          Savannah River Site, we also have Hanford  
15          working group, so actually there are three that  
16          we need to deal with. I know that Dr. Poston  
17          indicated an interest in Hanford. Is that  
18          still the case, Dr. Poston? Can -- can we put  
19          you on a Hanford workgroup?

20          I think I would be interested in learning what  
21          workgroups people are interested in being  
22          involved in, and of course you have to avoid  
23          conflict of interest. Mr. Presley is  
24          interested in the Test Site, and we don't have  
25          any conflict of interest issues if experts are

1 on the workgroups, I don't believe. Is that  
2 correct, Lew?

3 **DR. WADE:** Correct, as long as we're dealing  
4 with site profile issues and we're not really  
5 voting. I mean I -- that's fine for them to be  
6 (unintelligible).

7 **DR. ROESSLER:** I'd be interested in the Test  
8 Site.

9 **DR. ZIEMER:** Okay, Nevada Test Site, Roessler,  
10 Presley -- any others on Nevada -- interested?  
11 Munn. We can take another if there's someone  
12 interested. That's a good start. Might be of  
13 interest -- okay, we've got Clawson, there's  
14 four.

15 Now Board members, I'm going to make these  
16 appointments, if there's no objection -- if  
17 some of you feel that you want to compete for  
18 these...

19 **DR. WADE:** Now just for your considera-- the  
20 new members, the conflict of interest issues  
21 will have to be worked through, but you can  
22 make tentative appointments.

23 **DR. ZIEMER:** Yes, right. Savannah River Site?  
24 Roy DeHart.

25 **DR. MELIUS:** Paul, I'll do Hanford.

1           **DR. ZIEMER:** Okay, we'll put Dr. Melius on  
2           Hanford.

3           **DR. ROESSLER:** Do we need to volunteer for more  
4           than one?

5           **DR. ZIEMER:** You don't have to, you may -- you  
6           may.

7           **DR. ROESSLER:** I would like to not volunteer  
8           for Savannah. If I need another assignment I'd  
9           prefer Hanford.

10          **DR. ZIEMER:** Now --

11          **DR. ROESSLER:** And it's not -- no reflection on  
12          --

13          **DR. ZIEMER:** -- we have Mark and Presley and  
14          Gibson already on two, and -- oh, DeHart,  
15          you're also on those. Okay.

16          **MR. GRIFFON:** And Wanda is.

17          **DR. ZIEMER:** And Wanda, right. Okay.

18          **UNIDENTIFIED:** (Off microphone)  
19          (Unintelligible) Hanford (unintelligible).

20          **DR. ZIEMER:** Okay.

21          **DR. LOCKEY:** (Off microphone) (Unintelligible)  
22          Savannah River.

23          **DR. ZIEMER:** Okay, we'll put Lockey on Savannah  
24          River. Okay, let's see, I'm going to --

25          **MR. GIBSON:** (Off microphone) (Unintelligible)

1 for Savannah River.

2 **DR. ZIEMER:** Savannah River, Gibson, okay.  
3 Then we lack one, I'll put myself on Hanford  
4 then --

5 **MS. MUNN:** Good.

6 **DR. ZIEMER:** -- unless someone else wishes.

7 **UNIDENTIFIED:** (Off microphone)  
8 (Unintelligible)

9 **DR. ZIEMER:** So and now --

10 **MR. GRIFFON:** I'll take Savannah River.

11 **DR. ZIEMER:** You want Savannah River, too?  
12 Okay.

13 **MS. MUNN:** I'll be glad to be an alternate for  
14 Hanford, Dr. Ziemer, if you'd like.

15 **DR. ZIEMER:** We -- we have four on each of  
16 these. I'll assume if we need alternates we'll  
17 just call on people as needed, but -- we all  
18 need to be cognizant of all these site  
19 profiles, in any event, and if we have a case  
20 where one or two members cannot attend, we need  
21 to call on others to fill in as needed.

22 So the teams now would be as follows: For the  
23 Nevada Test Site, Roessler, Presley, Clawson --

24 **DR. WADE:** Munn.

25 **DR. ZIEMER:** -- and Munn. Okay. And we

1                   probably -- we need a team leader for that, so  
2                   Presley, if you would be the leader for that,  
3                   please.

4                   And then for Savannah River Site we have  
5                   Griffon, DeHart, Gibson -- who did I miss?

6                   **DR. WADE:** Dr. Lockey.

7                   **DR. ROESSLER:** Lockey.

8                   **DR. ZIEMER:** Oh, Lockey. Okay, and perhaps  
9                   DeHart can be the team leader for that.

10                  **DR. WADE:** Fine choice.

11                  **DR. ZIEMER:** And then Hanford would be Poston,  
12                  Melius, Clawson, Ziemer, and Melius, I'll ask  
13                  you if you'll be the team leader.

14                  **DR. MELIUS:** Fine.

15                  **DR. ZIEMER:** Okay. And of course the -- on  
16                  these newer ones, there will be a time period  
17                  during which NIOSH will be involved in  
18                  preparing their initial responses before  
19                  workgroups ever get involved, so there will be  
20                  a little breathing space -- probably on  
21                  Savannah River and the Test Site and -- and  
22                  actually on Hanford, as well, for those  
23                  responses to be developed before we get into  
24                  the workgroup mode. But at least we're ready  
25                  to go then.

1           **DR. WADE:** Right, I think we have an open issue  
2           on Y-- on -- excuse me, Savannah River, and  
3           that is the fact that Rev. 3 has not been  
4           reviewed by your contractor. I mean do you  
5           want to commission that? John, anything -- any  
6           input you have on this? I assume if we were to  
7           ask --

8           **DR. ZIEMER:** Yeah, and maybe we can get some  
9           early determination of the major differences in  
10          Rev. 3 and Rev. 2. There -- I think Arjun  
11          suggested some of the issues may have already  
12          been resolved in the Rev. anyway, but --

13          **DR. MAURO:** I'd like to offer a yes, it'd be  
14          relatively easy to -- a read, a quick read,  
15          quickly identify areas that have changed and  
16          will be in a very good position in a short  
17          period of time to just let you know what the  
18          significances -- in other words, does the  
19          matrix narrow down -- you know, so maybe we  
20          could actually come up with, expeditiously, a  
21          revised matrix that reflects Rev. 3, and I  
22          don't see that as being a very significant  
23          level of effort.

24          **DR. ZIEMER:** All right. I was asking Lew if  
25          this required a formal Board motion to instruct



1 the contractor to so proceed.

2 **DR. WADE:** Well, maybe you could have a motion.  
3 Motions are nice.

4 **DR. ZIEMER:** Or -- or I'll just ask, is there  
5 any objection on the Board if we ask the  
6 contractor to proceed along those lines?  
7 Without objection, it is so ordered.

8 **DR. WADE:** Just to bring sort of a temporal  
9 pressure to this, maybe -- now we have a Board  
10 call scheduled for March 14th. Maybe we can  
11 put on the agenda for that call sort of status  
12 reports on each of these actions, and this  
13 really can keep it in front of the Board and  
14 keep these things moving.

15 **DR. ZIEMER:** Thank you very much. I got a note  
16 here -- I guess this is from you, Ray, that --  
17 a reminder to Board members to use your mikes,  
18 get them perhaps a little closer than you are.  
19 After three days, Ray's hearing is depleted.  
20 Ray does a great job. We really appreciate the  
21 work he does, and we need to help out to the  
22 extent we can by using those mikes.

**CONFLICT OF INTEREST DISCUSSIONS**

23 **DR. LEWIS WADE, EXECUTIVE SECRETARY**

24 Now our next agenda item is conflict of  
25 interest discussions and Lew, you're going to

1           lead us in that.

2           **DR. WADE:** Yeah, let me sort of outline what's  
3 brought us here and what I suggest happens over  
4 the next, you know, time we're going to spend  
5 on this.

6           This issue is really initiated by a  
7 communication dated February 20th from Richard  
8 Miller to Jim Neton and Dick Toohey, and that  
9 material is in front of you. It's been in  
10 front of you before. This raised issues about  
11 the Paducah site profile conflict of interest  
12 issues and also technical issues.

13          In response to that communication, there was a  
14 contract oversight team that was put together  
15 and a report that was issued, and you have that  
16 report, as well. It's dated 10/11/2005. This  
17 report was made available to you at the last  
18 Board meeting, it was not discussed. You have  
19 that report.

20          In light of that report, Mr. Miller wrote to  
21 the NIOSH Director and Secretary Leavitt a  
22 letter dated December the 9th, also in your  
23 file. The NIOSH Director responded to Mr.  
24 Miller in a dated December 29th. What happened  
25 as a result of Richard's letter to the NIOSH

1 Director was the NIOSH Director, as Richard had  
2 asked, took a personal interest in this issue  
3 and has invested himself in the task of the  
4 conflict of interest policy, in this case as it  
5 relates to the ORAU contract. And you have in  
6 your package a draft of a recently-released  
7 conflict -- conflict of interest policy for  
8 ORAU.

9 I should say that this task -- the leadership  
10 in that task was taken by John Howard. I  
11 should quickly point out that it was done  
12 cooperatively with our colleagues at ORAU and I  
13 thank them for their willingness to engage in  
14 this activity. I can only tell you that John  
15 Howard is committed to see that this issue is  
16 dealt with in the right way intellectually.  
17 And you'll notice in John's letter to Richard  
18 dated the end of December, he asked me to  
19 provide you with a copy of Richard's original  
20 letter and he also asked me to -- to ask you to  
21 provide input specifically to the scientific  
22 quality of the materials contained in the  
23 assessment report.

24 So basically there are two issues here. There  
25 are the conflict of interest issues as

1           currently embodied in the draft policy for  
2           ORAU.  And then there's a second set of issues  
3           that relate to the technical issues that were  
4           raised by Richard with regard to the Paducah  
5           site profile.  And I think I'd like to deal  
6           with them separately.

7           So what I would propose we do is Larry Elliott  
8           can come to the microphone and sort of walk us  
9           through the assessment report quite quickly,  
10          and then the draft conflict of interest policy.  
11          I would ask then -- Kate Kimpan might have a  
12          comment she would like to make as she's a co-  
13          owner of that.

14          At that point I would break from the normal  
15          rules and ask Richard Miller to -- to make any  
16          comments he would like.  Richard is the driver  
17          of this, and I think it'd be appropriate for  
18          the Board to hear Richard's comment.

19          Once that's completed, then I'd like to turn to  
20          the question of the technical issues and ask  
21          Stu Hinnefeld to come forward and briefly give  
22          us a status of the technical issues.  And then  
23          the Board can deliberate as to what it might  
24          want to do relative to commenting on the  
25          conflict of interest policies and also

1           responding to John Howard's request to you to  
2           look at the scientific quality of the  
3           assessment report.

4           So if that makes any sense to you, that's what  
5           I would propose. If there's no questions, we  
6           could ask (unintelligible) --

7           **DR. ZIEMER:** Let's proceed on that basis, so we  
8           begin with Larry Elliott.

9           **MR. ELLIOTT:** Thank you. As Dr. Wade  
10          indicated, we provided a copy of the assessment  
11          report to you back in October in advance of  
12          your Knoxville meeting. I commissioned this  
13          review by this assessment team. The members of  
14          the assessment team were Michael Rafky out of  
15          the Office of General Counsel on our NIOSH  
16          radiation legal team; Lauri Ishak, who's a  
17          Presidential management empl-- fellow at NIOSH;  
18          and Robert Daniels, who is a health physicist  
19          in another program area of NIOSH.

20          The charge that I gave to this assessment team  
21          was to evaluate the concerns that were raised  
22          in the February 20th letter to Dr. Toohey and  
23          Dr. Neton, and specifically the purpose of this  
24          assessment was to determine whether a conflict  
25          of interest policy violation occurred during

1           the development of the Technical Basis Document  
2           for the Paducah Gaseous Diffusion Plant, and  
3           whether or not, in addition to that, was there  
4           information, data or technical pieces that were  
5           not incorporated into that site profile that  
6           should have been. So the scope of this  
7           assessment focused on those two primary areas:  
8           was a violation of the conflict of interest  
9           policy committed, and whether or not there was  
10          technical information and data that was not  
11          included -- purposely not included in the site  
12          profile.

13          You'll see here that the conclusions are  
14          presented as to each of those two primary  
15          questions. The findings are so stated. The  
16          conflict of interest policy that was employed  
17          during the approval of this site profile was  
18          found to be ambiguous.

19          I would remind the Board that this particular  
20          request for a proposal for this contract called  
21          for a conflict of interest policy to be  
22          presented within each proposal for the  
23          contract, and that conflict of interest policy  
24          originally from the RFP was to speak to  
25          controlling conflicts on dose reconstruction

1           for claims. As time went on, this Board and --  
2           through concerns raised we saw the need and  
3           ORAU complied with the need to include and make  
4           a change in their conflict of interest policy  
5           to address site profile development. That  
6           change was the current policy under effect when  
7           these concerns about the Paducah site profile  
8           were raised. And rightfully so, these new  
9           concerns that were raised about Paducah have  
10          been attempted to be addressed and reflected  
11          upon in the current revision of the conflict of  
12          interest policy that you have before you as a  
13          draft.

14          The conclusions with regard to the -- whether  
15          or not there was a violation of the current  
16          policy, as I said, the violation of the then-  
17          current COI policy did not occur. That was a  
18          finding of this assessment team, although the  
19          language of the policy was ambiguous and the  
20          underlying intent of the policy, they felt, was  
21          followed.

22          However, they identified several problems with  
23          that policy besides the ambiguous language.  
24          There were -- there was no clear definition of  
25          roles and responsibilities. There was

1           confusion presented in the language of the  
2           policy with regard to what a subject expert  
3           could be in control of with regard to the  
4           development of a document. There was -- in  
5           addition to that, there was no clear  
6           understanding as to what a document owner was  
7           or what a primary author was. There was an  
8           interchanging and an intermixing of these kind  
9           of terms and roles and responsibilities.  
10          With regard to the technical basis of the  
11          Paducah site profile, there was concerns raised  
12          that the subject expert did not include a  
13          careful consideration and inclusion of all data  
14          into the text of -- and the presentation of  
15          information in the site profile. And you can  
16          read through these conclusions here. I think  
17          Stu will speak also to them in a moment. But  
18          basically this boils down to certain job  
19          categories and process areas -- ash -- ash  
20          recei-- ash and -- ash receivers in the  
21          pulverizer area where some data was not  
22          accounted for in the site profile, and I'll  
23          allow you to read through that.  
24          We took very seriously the comments and  
25          concerns that were raised in Mr. Miller's



1 letter to Dr. Howard, and we worked closely  
2 with the ORAU folks, and you can see -- I'll go  
3 now to the revised policy. And this revised  
4 policy as presented today provides, I think, a  
5 lot clearer explanation and definition of roles  
6 and responsibilities. It also inserts clearly  
7 a definition regarding what a conflict is, as  
8 well as what bias is. It prescribes who has a  
9 span of control and authority over a document,  
10 and it -- it identifies clearly what the review  
11 process is and what level of attribution and  
12 disclosure is required. So I think it's a much  
13 clearer, a much stronger policy and it is far  
14 more comprehensive than the two previous  
15 policies that have been -- ORAU has been  
16 operating under.

17 And with that, I think I'll stop at that point.

18 **DR. WADE:** As I said, Kate is a co-owner of  
19 this, so I think it's appropriate she has an  
20 opportunity to make a comment.

21 **MS. KIMPAN:** A lot shorter than Larry. Hi,  
22 thank you very much for this opportunity. I  
23 want to start by thanking Dr. Howard and the  
24 staff at NIOSH and actually some of the folks  
25 from HHS for their excellent guidance and

1 leadership on the charge to our team to make  
2 this policy one that we can all embrace in its  
3 words and in its spirit.

4 I'd like to start by saying how extremely proud  
5 I am of the work that our ORAU team has  
6 performed and is performing for NIOSH on behalf  
7 of sick workers all over the country. This is  
8 a very important issue to us. Our credibility,  
9 how we're viewed, the quality of our work is of  
10 primary import. This policy is our policy. It  
11 is important that we have full disclosure, that  
12 we're clear about who has contributed, in what  
13 way, the effects of that contribution.

14 You heard Larry just make a very important  
15 distinction about the owner of a document and  
16 who that person might and should be. Even  
17 though this policy is in its draft form, we on  
18 the ORAU team embrace it fully. I've already  
19 directed a number of changes on documents that  
20 are currently in process and in review to  
21 assure that this policy, although it may  
22 change, we're embracing the spirit of this  
23 which is no one who is in a biased or  
24 conflicted or potentially biased or conflicted  
25 role will be a document owner for any part of

1 any of the work we do. We look forward to  
2 everyone involved in this project adhering to  
3 those same methods and rules. This is an  
4 extremely important policy to assure the good  
5 quality of the work that we're doing -- it is  
6 viewed as good quality and is assured as good  
7 quality.

8 So we are proud to say that we're embracing  
9 this policy right now as it is. We look  
10 forward to changes that may occur, but as Larry  
11 pointed out, there was enough clarification  
12 that emerged in our charge from Dr. Howard and  
13 as we worked our way through this policy, we're  
14 clear enough about what we're going to need to  
15 do in terms of providing proper attribution,  
16 proper documentation of who the roles of  
17 different participants were, and proper  
18 documentation about who the right owner of a  
19 document ought to be. Whether it's a new  
20 document that hasn't been begun, whether it's a  
21 document that's in revision, we will assure  
22 that we have independent, non-biased, non-  
23 conflicted individuals who own our findings,  
24 our conclusions in the synthesis of this  
25 important information.

1           **DR. ZIEMER:** Thank you, Kate. Larry?

2           **MR. ELLIOTT:** I'd like to add one more comment  
3 to that. We feel so strongly about this policy  
4 and its clarity and it's comprehensiveness  
5 that, once ORAU does finalize this, it will be  
6 placed on our web site and I will pick this  
7 policy up and modify it to become the OCAS  
8 policy. So we will change the -- whatever ORAU  
9 has presented, we will turn that into OCAS and  
10 we will live by this same policy.

11          **DR. ZIEMER:** Larry, can you fill us in on the  
12 time table? The policy itself requires NIOSH  
13 to approve it, ultimately. Isn't that correct?

14          **MR. ELLIOTT:** That's correct.

15          **DR. ZIEMER:** And you are soliciting input from  
16 the Board on this, as well?

17          **MR. ELLIOTT:** We would welcome input. We'd  
18 welcome your comment.

19          **DR. ZIEMER:** I don't know that Board members  
20 necessarily have had a chance to fully digest  
21 it, but I'm asking about the timetable. When  
22 are you expecting to finalize this -- your  
23 approval of this, or is there a time line?

24          **MR. ELLIOTT:** We would put it up on our web  
25 site as a working document, as a draft -- a

1           provisional document, if you will, that we're  
2           working under. And as comment comes in, Kate  
3           and I will get together and make a decision on  
4           how to address the comments that are provided  
5           and we'll move forward that way. And once we  
6           make a change, we will so notice on the web  
7           site and notice this Board that we've made a  
8           change.

9           **DR. WADE:** We're certainly prepared not to  
10          finalize it if the Board wishes to make comment  
11          at its next meeting or whatever suits the  
12          convenience of the Board.

13          **DR. ZIEMER:** Well, we can certainly ask for  
14          comment at this time, as well --

15          **DR. WADE:** Sure.

16          **DR. ZIEMER:** -- if there's specific heartache  
17          or issues that need to be raised, this would be  
18          an appropriate time -- or questions. Maybe  
19          there are questions or comments right now that  
20          Board members wish to raise on this. Again, I  
21          don't know that they've had a chance to fully  
22          digest it, however.

23          **MR. ELLIOTT:** I'm sure you haven't, and I just  
24          want to note that on our web site right now we  
25          have the original -- the second revision of the

1 ORAU policy for comparison against this.

2 **DR. ZIEMER:** Right.

3 **MR. ELLIOTT:** We do not have the one that was  
4 provided with the assessment report. We've  
5 taken that down because we just -- we felt it  
6 did not meet the intent that we wanted it to.  
7 So you can go to the web site, you can see the  
8 original ORAU policy that was in effect at the  
9 time Mr. Miller raised concerns about Paducah.  
10 You can compare that to this new, and I think  
11 more in depth, clearer policy.

12 **DR. ZIEMER:** I'm wondering, Board members,  
13 would you like this to be on the agenda again  
14 for the next meeting?

15 **MS. MUNN:** It might be nice.

16 **DR. ZIEMER:** What's your pleasure?

17 **MS. MUNN:** Yes, I'd like -- personally like to  
18 have an opportunity to absorb it a little  
19 better, and yes.

20 **DR. ZIEMER:** Okay. And so the opportunity both  
21 to comment and to learn if there are any  
22 modifications that have arisen between NIOSH  
23 and ORAU in the meantime. Roy DeHart.

24 **DR. DEHART:** I have one question and that  
25 addresses the issue of any problems with

1 management. When we have worked -- looked at  
2 conflict of interest before, the issues of  
3 availability of experts who would not be  
4 conflicted has come up, and I was just  
5 wondering if this is a concern on the part of  
6 management.

7 **DR. ZIEMER:** Kate?

8 **MS. KIMPAN:** I'll answer and Larry can  
9 certainly come up. Dr. DeHart and others, we  
10 are absolutely clear that we need to use people  
11 who know the facilities, know the operations.  
12 There's no lack of clarity about that, I don't  
13 think, by any of us. What we need to assure on  
14 behalf of the ORAU team and the documents we're  
15 providing is that any bias or conflict that  
16 might be inherent in someone's prior role is  
17 not reflected in our findings and conclusions.  
18 So we intend to use site experts who have had  
19 experiences at DOE in these facilities on this  
20 program. They will not own the conclusions in  
21 a document. They'll be properly used as  
22 experts about that site or about operations.  
23 There'll be full attribution and declaration  
24 about the nature and content of their  
25 contribution, but they will not be -- if they

1           are so conflicted or potentially biased -- in a  
2           position to own the final conclusion. We'll  
3           assure that that's done by the right  
4           independent reviewer.  
5           And you're right, this creates challenges when  
6           some of the information in these documents is  
7           so incredibly detailed you must almost be an  
8           expert to be able to assess the assessments of  
9           an expert. That's an operational challenge  
10          that we will embrace as an operational  
11          challenge. Our feeling about this policy is  
12          it's the right policy, it's the right  
13          philosophy, it's the right way to be to assure  
14          good product, and I'll deal with the  
15          operational issues -- which are significant --  
16          as we proceed. It might add additional burdens  
17          of difficulty for us in either time or  
18          expertise. We may have to look harder to make  
19          certain that we're staying on track with our  
20          schedule to produce. But this is so important  
21          that nothing else is more important than this,  
22          so we're going to make sure you know who has  
23          done what in a document, what that contribution  
24          was, and how an independent, unbiased,  
25          unconflicted reviewer has assured that the



1 conclusions or any conclusions that might be  
2 drawn are drawn in a proper way scientifically.

3 **MR. ELLIOTT:** I hesitated on reading to the  
4 Board, but I think it might benefit the Board.  
5 It surely may benefit the audience. But to  
6 draw some distinctions here I'm going to read  
7 from this current policy, and I think it might  
8 help everyone's understanding and recognition  
9 of what we're trying to do here. And I'm  
10 looking at and I'm going to read from the  
11 document with regard to the responsibilities  
12 and restrictions on certain roles that are  
13 played here.

14 (Reading) A site profile document owner is  
15 responsible for coordinating and documenting  
16 site profile documents, ensuring all pertinent  
17 information is captured in the document,  
18 evaluating the information, establishing or  
19 setting forth specific findings or conclusions.  
20 The site profile document owner shall  
21 objectively evaluate input, with no special  
22 consideration given -- given due to the source,  
23 whether it be a site expert or otherwise. A  
24 site document owner has an affirmative duty to  
25 seek out all pertinent data, and is required to

1 be the person who synthesizes all pertinent  
2 data into a single document or a set of  
3 documents, draws findings from the data and  
4 makes conclusions that will guide future  
5 actions arising from those findings or  
6 conclusions. And furthermore, a site document  
7 owner shall specifically evaluate the input of  
8 site and subject experts, in addition to all  
9 other data, for technical accuracy, for  
10 validity and to ensure both the sources of the  
11 document input and team members potential or  
12 actual biases/conflicts of interest are clearly  
13 identified within the body of the document.  
14 Then I want to take you to a subject expert.  
15 (Reading) A subject expert may be employed to  
16 advise on a site-specific issues and incidents  
17 as necessary for site profile documents and SEC  
18 petition evaluations. Subject experts are  
19 those individuals who have expertise in the  
20 subject matter of the activities performed at  
21 the site, but who do not have any current or  
22 prior work experience at or for the site  
23 itself. A subject expert may serve as a  
24 document owner due to the lack of potential or  
25 actual bias of (sic) conflict.

1           Now a site expert. (Reading) A site expert may  
2           be employed to advise on site-specific issues  
3           and incidents as necessary for the site profile  
4           documents and SEC petition evaluations. Site  
5           experts are those individuals who, because of  
6           current or prior work experience (including  
7           consulting) at or for the site, have personal  
8           experience of the radiation protection program  
9           at that site.

10          Because a site expert is therefore potentially  
11          biased or conflicted when interpreting data  
12          from a site or at -- for which he or she  
13          worked, the site expert is not permitted to be  
14          a document owner. While the site expert may  
15          not draft a site profile or an SEC petition  
16          evaluation documents that are properly the  
17          responsibility of the document owner, she or he  
18          may provide input to the document owner  
19          regarding the site where the site expert is  
20          potentially or actually biased. This input is  
21          subject to detailed health physics and  
22          management review and approval by the document  
23          owner, the ORAU team members and the OCAS  
24          review staff. The important -- the input may  
25          be obtained from the document owner -- may be

1           obtained by the document owner in formats such  
2           as narratives, testimonials, oral or written  
3           interviews of the site expert, and/or current  
4           or former site workers by the document owner,  
5           and historical information about processes and  
6           exposures at the site, any quantitative data,  
7           tables or numerical or technical data gathered  
8           or previously generated by the site expert  
9           and/or others.

10          With regard to narrative input the site expert  
11          may provide explanatory notes about information  
12          provided by the site expert and in cases where  
13          the site expert has previously provided or  
14          documented that information elsewhere. The  
15          site expert may also provide opinions to the  
16          document owner about the information that the  
17          site expert has reviewed and/or provided to the  
18          document owner. This is to ensure that all  
19          relevant information about the site located by  
20          the site expert is offered to the document  
21          owner to ensure the most comprehensive  
22          evaluation possible of those data and the site.  
23          Any data or opinions or other information  
24          provided by the site expert and used by the  
25          document owner in the final document must be

1 fully attributed to the site expert and other  
2 sources as warranted; independently analyzed by  
3 the document owner to determine its suitability  
4 for use; and accompanied by the document  
5 owner's explanation of why she or he believed  
6 the use of the information was both appropriate  
7 and correct. It is the responsibility of the  
8 document owner to determine the content of the  
9 documents, not the site expert.

10 And I'll stop at that point. I -- there's  
11 other passages that I could read that speak to  
12 the review process, but I think those are the  
13 key distinctions we need to draw on now.

14 **DR. ZIEMER:** We need to hear from --

15 **DR. WADE:** Right, Richard Miller, if you would  
16 --

17 **DR. ZIEMER:** -- Richard.

18 **DR. WADE:** -- comment. While Richard comes to  
19 the microphone, I think we owe in the program a  
20 debt of gratitude to Richard for bringing up  
21 these issues and I'm very anxious to hear his  
22 comments.

23 **MR. MILLER:** Greetings. I can only say I am  
24 sobered by today's discussion because this  
25 isn't the first time it's come up. It's not

1           the second time it's come up. I can only  
2           recall -- just for those who are new to the  
3           Board and for those who've been on, very early  
4           on an ambitious conflict of interest policy was  
5           developed. ORAU proffered it forward. It did  
6           not cover site profiles, as we know. Eighteen  
7           months nearly elapsed between the request by  
8           this Board to include site profiles. Finally a  
9           site profile policy was incorporated into the  
10          ORAU conflict of interest policy. That  
11          conflict of interest policy permitted at least  
12          the following to occur.

13          As Larry Elliott said, there may have been  
14          ambiguity in the previous conflict of interest  
15          policy, but let me just read you exactly what  
16          that conflict of interest policy said, because  
17          I don't think there's any question that, even  
18          under the old policy, there was a clear-cut  
19          violation. The old policy -- let me just pull  
20          up here -- says that no individual will perform  
21          a review or approve dose reconstructions, site  
22          profiles or determinations on adding SEC  
23          classes or for DOE facilities at which they  
24          were formerly employed or, for contractors, for  
25          whom they have been employed. Site experts

1           were limited to advising on site-specific  
2           issues and incidents as necessary. That was  
3           it.

4           Now in the particular instance here, Carol  
5           Berger, working under IEM, her company, wrote  
6           the Technical Basis Document for internal dose  
7           at Paducah. Ms. Berger cut and pasted the work  
8           that she had done for Martin-Marietta and IT  
9           back in 1992, including tables, right into the  
10          NIOSH document. Those tables, which dealt with  
11          transuranium alpha activity levels in parts of  
12          the Paducah plant, were not cited, but what we  
13          have -- what we knew from subsequent literature  
14          that's posted on the DOE web site even today,  
15          is that it underestimated anywhere from four to  
16          seven-fold either the neptunium-237 or  
17          plutonium concentrations of alpha activity in  
18          the air. These were air samples that actually  
19          were taken in the '60s and '70s by Union  
20          Carbide at the plant, and would be very useful  
21          for dose reconstruction because you would  
22          basically have some way where, at a site where  
23          they didn't do isotope-specific bioassay  
24          monitoring, you would at least have some air  
25          data to try to work with. And the alpha

1 activity levels were as high as 90 percent  
2 neptunium-237, so we're dealing with a lot of  
3 alpha activity. And so when I use the number  
4 four-fold, what I'm referring to is that the  
5 highest level that Ms. Berger had cited was 22  
6 percent, and yet we found some up around 90  
7 percent and so that's where the four-fold came  
8 from. And so we're not just dealing with .4  
9 percent to 1.6 percent.

10 Ms. Berger's work -- not only was it cut and  
11 pasted into the document, but it had been  
12 significantly criticized in a report that DOE  
13 had commissioned through the University of Utah  
14 and PACE doing an exposure assessment. This  
15 report had been subject to peer review,  
16 including by John Till. And this report found  
17 significant weaknesses in Ms. Berger's previous  
18 work, yet the site profile never identified the  
19 criticisms that were subsequently published and  
20 peer-reviewed, never identified the cited  
21 documents identifying that her work had  
22 dramatically understated the level of alpha  
23 activity. And so it went through four tiers of  
24 review and out the door. Dick Toohey, Judson  
25 Kenoyer; the primary author, Jay Mazler\*, who



1 was Carol Berger's employee on this particular  
2 project, she -- Jay, although may have been the  
3 primary author of this document, he was a  
4 subordinate to Ms. Berger; and in the end,  
5 through Jim Neton's office. And so through  
6 four tiers of review the rubber stamp fell on  
7 this document, even though ORAU has an expert  
8 on their team, Cindy Bloom, who knows a lot  
9 about the Paducah site because she was involved  
10 in the University of Utah review. All of this  
11 managed to slide through.

12 Now some might say well, look, Paducah's a  
13 Special Exposure Cohort site, what's the big  
14 deal, neptunium's mainly a bone and a lung-  
15 seeker, what are we getting all worked up about  
16 here. Right? Let it go.

17 I would respectfully disagree. I think that,  
18 although there will be not large numbers of  
19 claims impacted by this, as a practical matter  
20 multiple primaries could easily be affected.  
21 That's an obvious case. If CLL ever comes to  
22 the fore, I could see where this could become a  
23 very significant factor because neptunium is  
24 such a powerful bone-seeker. And there may be  
25 other cases that are affected that are at the

1 margins.

2 But you know, that's a very significant  
3 underestimate. So the question was, how did  
4 this happen? How did somebody who had worked  
5 at the site, involved in an important health  
6 physics function assessing transuranics, get  
7 hired by NIOSH and allowed to cut and paste her  
8 own work, verbatim, into this document?

9 Well, when the OCAS oversight team report came  
10 forward, they concluded no conflict of  
11 interest. And what they relied on was an  
12 ambiguous word, the word "preparing", that site  
13 experts and site -- site experts would not be  
14 permitted, as we discussed earlier, but -- to  
15 actually be the document owner, but they could  
16 be involved in preparing. And what we have  
17 seen in internal NIOSH communications that ran  
18 up through the General Counsel's office or the  
19 -- of HHS was that they intended to use the  
20 word "preparing" to be sufficiently ambiguous  
21 that one could use site experts any way we  
22 want. Which harkened me back -- and this chain  
23 of communications rose from Dick Toohey up  
24 through Larry Elliott, Jim Neton, Dave Mayman\*,  
25 they all knew they were weasel-wording the

1 previous conflict of interest policy, and this  
2 was deeply disturbing to learn about after we  
3 had raised these concerns with NIOSH.  
4 Now Larry Elliott came before this Board. He  
5 asked -- the Board rejected a request he made  
6 to exempt site profiles from the conflict of  
7 interest restrictions for precisely the reason  
8 that Roy DeHart raised this morning, which was  
9 how are we going to manage the competing  
10 resource demands on the program and not have  
11 conflicts of interest. And the Board said no,  
12 that -- that -- that what -- that -- that the  
13 conflict of interest policy needed to include  
14 the site profiles to preserve the integrity of  
15 this program. And let's never forget why we're  
16 even here today. We're here with NIOSH in an  
17 Advisory Board doing this work because Congress  
18 found they couldn't rely on the Department of  
19 Energy to do the work, that NIOSH was supposed  
20 to bring a level of independence to this  
21 process. And NIOSH turns around and hires a  
22 DOE M&O contractor who has been doing much of  
23 this work, including litigation defense for the  
24 Department of Energy for many years. So the  
25 burden was on this system to have adequate

1 checks and balances due to the paucity of a  
2 pool of available experts to do this. In other  
3 words, it's a small world, it's an esoteric  
4 discipline, but -- involving health physics,  
5 but nevertheless there had to be some mechanism  
6 that, if you're going to rely on this small  
7 pool, to figure out how to effectively police  
8 it.

9 The conflict of interest policy was supposed to  
10 be that tool and mechanism, but it was weasel-  
11 worded.

12 I have to just -- just take a very personal  
13 note aside, because I had written to the  
14 bidders when they were bidding on the -- when  
15 ORAU and the SAIC team were bidding, I wrote to  
16 NIOSH and said conflict of interest has to be a  
17 governing, organizational principle that has to  
18 be managed here and suggested criteria that  
19 would both be workable and functional. And so  
20 to come to this point today, four years later,  
21 and we're dealing with weasel-worded documents,  
22 let me now point you to the latest draft, which  
23 I find remarkable.

24 If I could please draw your attention to page  
25 14, let us look at the definition of the word

1 "conflict of interest" -- a conflict between  
2 the obligations of a person as an ORAU team  
3 employee and a private interest. In most cases  
4 the private interest is a financial one.  
5 Now where I come from, conflict of interest is  
6 not merely financial, nor is it so recognized  
7 by the federal government in the Code of  
8 Federal Regulations. It involves  
9 organizational conflicts of interest, and it  
10 involves professional conflicts, the latter two  
11 of which are omitted from this policy. And I  
12 would respectfully suggest that this omission  
13 in the definitions section largely waters this  
14 document down, if not renders it meaningless.

15 You must --

16 **DR. WADE:** You just (unintelligible) --

17 **MR. MILLER:** You must --

18 **DR. ZIEMER:** Give us -- give us the section  
19 again.

20 **MR. MILLER:** Page 14, definitions --

21 **DR. ZIEMER:** Oh, okay.

22 **MR. MILLER:** -- 9.0, Conflict of Interest.

23 **DR. ZIEMER:** Yeah.

24 **MR. MILLER:** So I would suggest, respectfully,  
25 because I believe that Dr. Howard -- I had the

1 privilege of meeting with Dr. Howard about this  
2 matter a couple of weeks ago in his office in  
3 Washington, and I believe that he is genuinely  
4 sincere in addressing this problem. I don't  
5 know whether he reviewed this document before  
6 it was distributed. I received it on Monday  
7 and read it on the plane down here. But I  
8 would respectfully request that people take a  
9 hard look at this definition, that's my first  
10 suggestion, because I can't fathom how you  
11 could rely on the second part, which is the  
12 definition of bias.

13 Now the definition of bias -- bias is a  
14 (unintelligible) here -- bias is as much  
15 subjective as it is objectively measured, and -  
16 - and bias is a -- is -- is a -- is --  
17 anybody's evaluation of somebody else's bias is  
18 subject to bias. I mean the -- the notion of  
19 policing bias may be a salutary notion if it  
20 hangs out there as a red flag and would be  
21 worthy of addressing in a policy. But frankly,  
22 the person doing the assessment itself can be -  
23 - have their own biases about what that bias  
24 means to them. And so I would respectfully  
25 suggest that we need objective markers that can

1           be measured in terms of past work history, past  
2           publication history, in addition to the  
3           definition of bias here because I -- at least  
4           from my perspective, and I had cited this  
5           exhaustively in the 10-page white paper that I  
6           prepared for NIOSH, which I don't believe was  
7           distributed to the Board, which -- which lays  
8           out why reliance on bias is not an adequate  
9           policing mechanism. And so I would  
10          respectfully -- I -- I don't want to denigrate  
11          the notion that bias should be policed for, but  
12          it is -- it invites trouble. One person's bias  
13          is another person's objectivity. I mean it's a  
14          -- it's a very slippery slope on that  
15          subjective tier.

16          The second suggestion that I would make with  
17          respect to this policy has to do with what it  
18          appears to me to be a multi-tiered approach to  
19          conflict of interest. Apparently this document  
20          sets up what are called those doing key project  
21          functions. I will draw your attention on page  
22          4 of this, under section 1.0, where the  
23          document here and elsewhere describes the  
24          restrictions that will apply to people that are  
25          document owners performing key project

1 functions. Well, key project functions is an  
2 important term of art, almost like a legal  
3 term, that finds its way through this document.  
4 And yet right below it on page 4 it talks about  
5 how this policy it then follows applies to  
6 everybody on the project. Well, if the entire  
7 policy applies to everyone on the project, you  
8 now then have this layered effect of what  
9 applies clearly to key project functions and  
10 what doesn't, and why don't you? Why wouldn't  
11 the same conflict of interest policy apply, for  
12 example, to a primary author as opposed to a  
13 document owner? Primary authors are people who  
14 actually put pen to paper. The document owner,  
15 as Larry mentioned, is merely responsible for  
16 synthesizing the information. But everybody  
17 knows those who control the pen ultimately  
18 shape the document. And I would argue that  
19 primary authors who have a conflict shouldn't  
20 be involved in key project functions either.  
21 In other words, what I'm getting at is we've  
22 got a -- a situation where I believe the way  
23 this is structured it is readily evaded.  
24 I'm concerned with the treatment of subject  
25 experts. As previously read, the -- there was



1 a distinction between a site expert and a  
2 subject expert. The site expert worked at a  
3 facility in health physics function, but a  
4 subject expert may have worked for that company  
5 -- let's just say, not to pick on anyone, say  
6 you have Martin Marietta at Oak Ridge running  
7 the gaseous diffusion operation and you've got  
8 Martin Marietta running the Paducah gaseous  
9 diffusion operation. If you worked at Oak  
10 Ridge, you could be a subject expert on gaseous  
11 diffusion 'cause you didn't work at Paducah,  
12 therefore wouldn't be conflicted as the  
13 document owner, yet you're busy reviewing your  
14 work or your colleagues' previous work because  
15 what is the -- what is it -- what is it that at  
16 least I'm trying to drive at here is that why -  
17 - why are we concerned with conflict? Because  
18 we're concerned whether it affects the quality  
19 of the science that comes out at the end, not  
20 whether somebody crossed some bright line or  
21 not. And you have to draw lines to prevent  
22 people from reviewing their or their  
23 colleagues' previous work and putting them in a  
24 position of contradicting previous positions.  
25 It's why, for example, I'm so troubled with the

1 provision dealing with previous expert witness  
2 work in litigation. There's an exemption for  
3 those people who engage in litigation if they  
4 were subpoenaed. Well, wait a minute, if  
5 you've already gone on the stand and you've  
6 sworn under oath that you believe X, Y and Z  
7 about a particular matter, does it matter  
8 whether or not you were subpoenaed for the  
9 particular proceeding? You've stated a public  
10 position on the record. You're now being  
11 tasked to review the same matter in this dose  
12 reconstruction program. You've got a conflict.  
13 It should be disqualifying, whether you're  
14 subpoenaed or not. I mean I think that -- that  
15 -- I don't know whether the subpoena issue has  
16 come up in a practical sense. I note that it  
17 was added in the revised conflict of interest  
18 policy a few months -- a couple of years ago, I  
19 think at the behest of the General Counsel's  
20 office. But I have to say, in terms of the  
21 policing of bias or policing of conflict, it  
22 shouldn't matter whether you're subpoenaed or  
23 not.

24 I also believe that -- and as Dr. Howard  
25 committed in his letter, that it would be

1           useful to the Board, before making any  
2           recommendations, and I certainly would want to,  
3           see how this applies in the real world. What  
4           does it mean? Let's take a half a dozen site  
5           profile teams and let's just see how this  
6           policy applies. To whom does it apply in what  
7           respect? What restrictions apply to each of  
8           the titles, 'cause when you look at the site  
9           profile teams there could be a half a dozen,  
10          eight, ten people working on a big site. Well,  
11          how is this actually going to play out in the  
12          real rule? Let's get a snapshot to see what it  
13          looks like rather than deal with the  
14          theoretical words here because I -- I do better  
15          with Venn diagrams, I guess. The -- you know,  
16          words and pictures always describe more, as  
17          they say, I think.

18          The other question that I would raise with  
19          respect to the disclosure provisions -- yes, we  
20          agree disclosure is a terrific disinfectant.  
21          In the Berger case, I would note, her conflict  
22          of interest disclosure was never posted on the  
23          ORAU web site. In fact, before I drove to  
24          Paducah a year ago from an Advisory Board  
25          meeting in St. Louis to go to a site profile

1 meeting, I looked on the web site and Ms.  
2 Berger's COI disclosure was not up there. I  
3 called Dick Toohey and said where is it? We'll  
4 get to it. For -- for NIOSH to conclude there  
5 was no COI violation, that's a simple paperwork  
6 violation, but it's an important part of  
7 disclosure that was clearly a violation of a  
8 conflict of interest policy, just as they had  
9 an internal process that if somebody had worked  
10 at a site, they had an internal database that  
11 was supposed to send up red flags that NIOSH  
12 management could then allocate the resources  
13 internally. We thought that was a constructive  
14 internal management approach. It doesn't  
15 appear that was followed, either. So I just  
16 would respectfully disagree that on three  
17 counts there were conflict of interest  
18 violations: the disclosure, the internal  
19 management controls and the specific words of  
20 the conflict of interest provisions of the old  
21 policy.

22 But with respect to the new policy, I would  
23 also just raise the question of whether site  
24 profile revisions will be covered under the  
25 conflict of interest policy. Ninety-five

1 percent of the site profiles have been  
2 completed so far, and now we're in the revision  
3 phase. Dick Toohey told me conflict of  
4 interest policy does not apply to revisions to  
5 site profiles. Wow. So when I raised the  
6 question about Roger Falk\* at Rocky Flats, who  
7 was a significant player in managing the health  
8 physics program there for decades, and I knew  
9 that NIOSH internally had concerns about his  
10 conflict of interest, I said well, now he's  
11 working on the revisions. Can we get someone  
12 with a fresh set of eyes so we don't have the  
13 Berger type problem? It's not covered. I  
14 don't know whether revisions to site profiles  
15 are covered under this or not. It's not clear.  
16 And then finally I would like to just raise the  
17 question about the question of transparency and  
18 validation. I have had the privilege of  
19 printing out all of the conflict of interest  
20 disclosures that were posted at various points  
21 in time and have them in a three-ring binder at  
22 home, and had the chance to read some recent  
23 conflict of interest disclosures that were re-  
24 posted by ORAU on their web site and found that  
25 conflicts that had been previously identified

1           magically disappeared for the same individuals.  
2           We find that remarkable, particularly with  
3           respect to participation in defense of  
4           litigation. I think those cases didn't go  
5           away, but the disclosure did.  
6           Finally -- so I think there needs to be some  
7           validation structure here. I'm not suggesting  
8           the Board does this, I'm just suggesting that  
9           there needs to be some mechanism -- I remember  
10          when Larry Elliott said he would like to  
11          commission -- in Los Alamos when we had a  
12          meeting there -- an internal review of all of  
13          the conflict of interest methods and procedures  
14          and committed to do so within six months or a  
15          year, and none of that audit ever took place,  
16          but it probably would have caught some of this.  
17          How extensive is the COI issue? Is this merely  
18          limited to Paducah? I had, again, only a  
19           cursory review because I don't necessarily know  
20          whether everything I'm reading on the conflict  
21          of interest disclosures is full and complete  
22          and accurate. But at least at five sites there  
23          are significant conflicts of interest where the  
24          -- where the team lead, whatever you want to  
25          call them, primary authors of the TBDs are --

1           have the conflicts of interest under this new  
2           policy, and frankly had it under the old one,  
3           including Rocky Flats, Idaho, Hanford, Pantex,  
4           and of course Paducah. So I would just suggest  
5           we have a much larger set of questions.

6           The question is what happens retrospectively,  
7           obviously this is a huge elephant in the room  
8           that hasn't been discussed, but it -- and let  
9           me just go finally to -- to my final personal  
10          comments on this.

11          I'm very disappointed that we're still  
12          discussing conflict of interest. I would have  
13          hoped this would have been a settled issue. I  
14          would have hoped it would have been a settled  
15          issue before 95 percent of the site profiles  
16          were completed. I'm particularly disappointed  
17          that sleight of hand by senior management and  
18          the program found its way into affecting  
19          conflict of interest which then affected the  
20          quality of science that came out the door of  
21          this program. And it doesn't just taint  
22          Paducah, it taints the program. And I'm  
23          fearful for adverse impacts it has on an agency  
24          like NIOSH, which has a reputation for being  
25          above-board, a white hat agency, whose work

1           should be beyond reproach. It has that  
2           reputation.

3           For some -- question why we're a little  
4           skeptical, it explains at least for me why I've  
5           lost confidence in the leadership of OCAS. I  
6           don't like whitewashed reports like the OCAS  
7           report that came out in October, and I don't  
8           like seeing sleight of hand, and I don't like  
9           it when it affects the quality of the science  
10          coming out the door.

11          So in conclusion, I would just offer that the  
12          draft be treated as a straw man, in that  
13          spirit. I heard Kate Kimpan offer that and I  
14          certainly appreciate and respect that comment  
15          from her. And in that spirit, you know, I  
16          would welcome working with you some more, and  
17          the Board, and would be glad to provide  
18          additional detailed comments. But you have a  
19          flavor that I think this document is still a  
20          work in progress.

21          **DR. WADE:** Thank you, Richard. Before you  
22          leave, you mentioned -- you mentioned a ten-  
23          page white paper.

24          **MR. MILLER:** Yes.

25          **DR. WADE:** Could you provide that to me and I



1 would provide it to the Board?

2 **MR. MILLER:** I'd be happy to. It lays out in  
3 detail our critique of the October conflict of  
4 interest draft policy, as well, and I think  
5 provides guidance going forward on what the new  
6 policy ought to look like in a side-by-side  
7 analysis, so I'd be happy to do so.

8 **DR. ZIEMER:** And Rich, if you'd stay there just  
9 a moment, let's see if the Board members have  
10 any questions to pose to you or additional  
11 items they want clarified.

12 (No responses)

13 Okay, I guess you were --

14 **MR. MILLER:** Thank you, Dr. Ziemer.

15 **DR. ZIEMER:** -- very articulate, as usual, and  
16 we thank you for your input.

17 Okay, let's see --

18 **DR. WADE:** All right, now there's the second  
19 issue -- excuse me, let me get my papers in  
20 front of me -- there's the second issue which  
21 is the technical issues that were raised, the  
22 scientific issues, and I believe Stu Hinnefeld  
23 is going to speak to us about that. Stu --

24 **DR. MELIUS:** Are we going to have time to ask  
25 some questions of everyone involved later?

1           **DR. WADE:** Yes.

2           **DR. MELIUS:** Okay.

3           **DR. ZIEMER:** I wonder if we should take -- we  
4           don't have a break scheduled, but it's 10:30.  
5           I think maybe people are looking like they need  
6           a brief break --

7           **MR. HINNEFELD:** I'll be very brief.

8           **DR. ZIEMER:** Okay. Well, let's --

9           **MR. HINNEFELD:** I'll be very brief and I think  
10          this is kind of an adjunct to the discussion.

11          **DR. ZIEMER:** Okay, let's hear from Stu --

12          **MR. HINNEFELD:** The technical -- the technical  
13          issues raised originally about the Paducah site  
14          profile, there are quite a lot of things that  
15          do prompt and require additional investigation,  
16          and there's just recently been a significant  
17          data -- we call them data captures where we  
18          captured a fair number of documents -- or a  
19          large number of documents from the Paducah  
20          site, you know, some of them very early, that  
21          speak to this exact issue, the analysis and  
22          identification of non-uranium contaminants in  
23          the uranium materials in various places. And  
24          so we've told ORAU synthesize this, give us the  
25          best product available in light of this entire





















1           obvious to those who view this that proper  
2           precautions have been taken to assure the  
3           independence of the final product.

4           But I think you're suggesting it's not easy to  
5           do, and that's certainly the case, yeah.

6           I think Jim was next, and then Henry.

7           **DR. MELIUS:** Henry, were you going to answer  
8           that? If you -- comment on that, you're  
9           welcome to go ahead.

10          **DR. ANDERSON:** Yeah, I --

11          **DR. MELIUS:** Then I'll go --

12          **DR. ANDERSON:** I was going to say that one --  
13          the critical thing is to recognize that there  
14          may be a conflict of interest, and then the  
15          management structure can -- can put in place  
16          and state it and put it out front and say that  
17          we recognize this -- such as this case, and we  
18          looked at that and we specifically reviewed X,  
19          Y, Z to be sure. So you can have these  
20          secondary guards in place, but the key is  
21          saying that we think this could be perceived  
22          and therefore this is how we addressed the  
23          issue and we had external reviewers or  
24          whatever. So I -- I mean there's ways to have  
25          the -- the experts involved and it's simply a

1 recognition that somebody would perceive that  
2 if you quote your own articles, that could be  
3 viewed by somebody as being a conflict. So --  
4 I mean there's a variety of different things  
5 like that that you can put in place that will  
6 recognize how to deal with this.

7 **DR. ZIEMER:** Okay. Now Jim.

8 **DR. MELIUS:** Yeah, just to -- and now I think I  
9 will elaborate on that, and I have some other  
10 comments. One, I think it's also the  
11 importance of transparency, and the thing that  
12 disturbs me about some of the points that --  
13 what Richard Miller made was the fact that  
14 these conflict of interest statements have not  
15 been consistently, you know, made available.  
16 They haven't -- for anybody wanting to evaluate  
17 them. And secondly, this issue of them  
18 changing over time. Now one would expect  
19 things maybe to be added to them. I don't  
20 quite understand how what were perceived to be  
21 conflicts or -- conflicts that needed to be  
22 reported can somehow disappear. Now there may  
23 be an explanation for that and -- albeit, but I  
24 think -- the more that can be done with  
25 transparency, I think the better we'll have a -

1           - a workable system. And we do recognize the  
2 need to have something that gets the products  
3 that we need or work done that we -- that we  
4 need.

5           In regards to the proposed policy, the draft  
6 policy that we've seen, I do have concerns  
7 about the limit-- the apparent limitation in  
8 terms of the definition of conflict of interest  
9 only applied to financial interest. You can  
10 read that -- those statements, I think it's on  
11 page 14, in other ways, I know just -- but  
12 that's certainly the way I read it that it was  
13 -- only applied to financial interests. I'm  
14 not sure that bias is a way of dealing with  
15 some of the organizational -- and other types  
16 of conflict beyond -- that are normally  
17 considered beyond financial conflict of  
18 interest, and I really -- and also have  
19 concerns about how you actually evaluate bias  
20 and -- often transparency is a better way of  
21 dealing with some of the -- the bias issue.  
22 But I really think that needs to be re-looked  
23 at.

24           And the other problem I have also is this -- is  
25 understanding the policy. It's written to --

1 to fit how ORAU works and, you know, there's  
2 task five managers and different layers of  
3 management and so forth that I -- I'm not  
4 certainly familiar with what this means, and  
5 this key document issue, I really think we  
6 really need to spell -- spell out what kind of  
7 documents are we -- we talking about. Is it  
8 the initial site profile, is it a site profile  
9 revision, is it some of these workbook  
10 documents and so forth that are prepared in  
11 addition to -- or -- to, you know, assist in  
12 dose reconstruction based on a site profile?  
13 And I'd much rather see that spelled out in a  
14 way that we can, you know, understand it --  
15 understand it better now.

16 And I guess I'm also a little confused, maybe I  
17 -- I think I -- on one level I understand that  
18 -- that this -- because it is -- the issue came  
19 up regarding ORAU, that it's their con-- and  
20 it's the contract, it's their conflict of  
21 interest policy, but in some ways it might have  
22 been better to sort of -- and we're working  
23 backwards to what NIOSH will implement. I  
24 might have been more comfortable with starting  
25 with what is -- what does NIOSH want in the

1 policy and then, you know -- and then have ORAU  
2 implement that. But if -- I think we can work  
3 this way through ORAU, but I think it may have  
4 to provide some better understanding or be  
5 written in a way that other -- those of us on  
6 the -- who aren't part of ORAU and don't  
7 understand how you operate and so forth or how  
8 ORAU operates can understand the document, and  
9 so I would hope that that would get addressed.

10 **DR. ZIEMER:** Okay. Thank you. I might observe  
11 that much of the conflict of interest focus of  
12 federal agencies, including our own conflict of  
13 interest training, tends to focus on the  
14 financial, when in fact the concern that most  
15 of us have in this program is indeed not the  
16 financial so much as it is the programmatic and  
17 related issues. So we need to make sure that  
18 the document does address that.

19 Yes, Kate.

20 **MS. KIMPAN:** Can I respond to the part of Dr.  
21 Melius's --

22 **DR. ZIEMER:** Sure.

23 **MS. KIMPAN:** -- comment that was a question?  
24 This is regarding what aspects of our  
25 operations this policy applies to. Everything



1 we do. Yes, every revision. Yes, every look-  
2 back at documents that have already been  
3 created, through an independent lens to assure  
4 the products were right. As was pointed out by  
5 several Board members, it is essential for us  
6 to continue to use the contributions of people  
7 who understand what occurred. But we are  
8 absolutely dedicated to what I said earlier  
9 about who owns conclusions and owns what we  
10 will use, along with the fact that we will  
11 participate using full disclosure and  
12 attribution. So when you look at a document  
13 you will know what part Kate Kimpan suggested,  
14 wrote, endorsed, and then an independent  
15 document owner will accept, not accept, will  
16 synthesize and write that. This will apply to  
17 every aspect of our operation, whether it is  
18 task three, five, whatever. Those are our  
19 designations for the large teams we have  
20 working on site profiles or Technical Basis  
21 Documents, working on dose reconstructions and  
22 working on SEC petitions.

23 Any lack of clarity you're finding in the  
24 language, let me be very clear, this will apply  
25 to every aspect of our operations,

1           retrospectively, prospectively, documents that  
2           are in revision, yet to be done or have been  
3           done. This policy will apply rigorously, in  
4           its spirit, not just its words.

5           **DR. ZIEMER:** Okay. Thank you very much, and  
6           perhaps it would be helpful to make sure that  
7           that itself is clear in the document.

8           Board members, we do need to respond to John  
9           Howard's request with respect to the  
10          independent review that was done, and perhaps  
11          enlarging that to the full site profile. And  
12          it would be appropriate to have a motion to  
13          that effect that would, in a sense, spell out  
14          what task we will undertake in response to  
15          that.

16          **DR. WADE:** Could I make a conflict of interest  
17          report before the motion? The only member  
18          conflicted is Charles Owens. Charles is not  
19          with us today, so there is really no limitation  
20          on him as he's not here to vote on a motion,  
21          but there would be a limitation if he was here.

22          **DR. ZIEMER:** Thank you. Does anyone wish to  
23          propose a motion to respond to Dr. Howard's  
24          request? We can postpone action till after  
25          lunch if that's something you wish to consider.

1 (No responses)

2 I hear no motion.

3 **DR. MELIUS:** But I'll make -- hear a motion.

4 **DR. ZIEMER:** I'm sorry, I didn't see your flag  
5 up here, Jim.

6 **DR. MELIUS:** Well, it hasn't been up; I just  
7 put it up. And I was actually trying to  
8 quickly pull up the part of what Dr. Howard's  
9 request was. What -- I would move that we task  
10 our contractor with a review of the revised  
11 site profile, with particular attention to the  
12 issues that were raised in really Richard  
13 Miller's communi-- initial communication to  
14 NIOSH about this, as well as in NIOSH's review  
15 of -- of the conflict of interest issue related  
16 to the original site profile.

17 **DR. ZIEMER:** You've heard the motion. Is there  
18 a second?

19 **MR. ESPINOSA:** Second.

20 **DR. ZIEMER:** And seconded. Discussion?  
21 Robert.

22 **MR. PRESLEY:** I just need a clarification. Jim  
23 said revised, and Larry said that it was being  
24 -- it was in the process of being revised right  
25 now -- is that not correct, sir?

1           **MR. ELLIOTT:** Yes, that's correct, the site  
2 profile is -- has been revised. It's in  
3 comment resolution. We're going back and forth  
4 right now to make sure that ORAU addresses the  
5 comments that we had on that revision, and I  
6 believe we will finish that up very soon. I  
7 can't say this week or next week, but it's  
8 going to be very, very soon, so...

9           **DR. ZIEMER:** We have some additional --

10          **MR. ELLIOTT:** I'm sorry, Stu's going to correct  
11 me.

12          **MR. HINNEFELD:** If I could -- the data capture  
13 I referred to earlier has occurred relatively  
14 recently, and so while we did have a draft to  
15 comment on, and made comments, part of our  
16 comments was you have captured these documents;  
17 make sure you incorporate all these into the  
18 revision. So it's going to be more than a  
19 week. It's probably going to be more like the  
20 end of March before we have a product from the  
21 contractor that would be back into what we  
22 would normally consider comment resolution  
23 period.

24          **DR. ZIEMER:** Nonetheless, in the meantime at  
25 least part of this could get underway because

1 we do have the product which is the review of  
2 the -- what is it called, the assessment done  
3 by the independent reviewers. That has to be  
4 looked at, and in part that's done in the  
5 framework of what exists already, I believe.  
6 Is that not correct?

7 **UNIDENTIFIED:** Correct.

8 **MR. PRESLEY:** My comment was, I -- I don't want  
9 to slow down what we're doing, our -- we've got  
10 a tremendous amount on our plate right now. I  
11 don't want to stop what we're doing on some of  
12 these other sites so that they can get  
13 compensated in their -- in a timely manner.  
14 That's the name of the game. Paducah is an  
15 SEC, and I don't believe by holding this thing  
16 up that we're going to slow down any  
17 compensation work. Is that correct?

18 **DR. ZIEMER:** That is if there was some delay in  
19 actually doing this assessment?

20 **MR. PRESLEY:** Right, if we delayed this  
21 assessment that we --

22 **MR. ELLIOTT:** We are using the currently-  
23 approved site profile for non-presumptive  
24 cancer dose reconstructions. The technical  
25 issues that have been raised go to internal

1 dose, and primarily the doses that we're  
2 reconstructing are skin doses using external  
3 dose. And I certainly don't mean that to  
4 belittle the other types of organ-related  
5 cancers where we would need this internal dose  
6 to be as tight and as complete as possible.  
7 And I'm sorry I misunderstood where we were at  
8 on the status of that, but as soon as it's --  
9 as soon as the site profile has been fully  
10 revised and approved, we would put it before  
11 the Board. It sounds to me like it's later  
12 than March now, so it's not as soon as I was  
13 hoping it would be, but --

14 **MR. PRESLEY:** I just want to make sure that if  
15 we vote to do this, that we're not going to end  
16 up doing it twice and that we're not going to  
17 hold up some of these other petitions down --  
18 or not petitions, but site profiles down the  
19 road. That -- you talk about perception, that  
20 would be bad.

21 **DR. ZIEMER:** Thank you. Good comment. Jim,  
22 another comment?

23 **DR. MELIUS:** I mean I would stand by the  
24 original motion. I'm -- meaning that I'm  
25 comfortable waiting until this -- it's my -- my

1           understanding is the revision actually -- some  
2           of what is going back and forth actually deals  
3           with some of these very issues, and so it  
4           doesn't make sense for -- you know, it-- and  
5           since that's what's driving the need for the  
6           SC&A review, let's let them -- NIOSH finish its  
7           work. And when there is a revised site  
8           profile, then let's have SC&A review it. And I  
9           think that -- and that -- and then it -- you  
10          know --

11         **DR. ZIEMER:** Okay. So the sense of the motion  
12         is this work would get underway at such time  
13         that the materials were available, and we could  
14         simply as that as we go forward that the status  
15         -- we'd be kept apprised of the status as to  
16         when this might be ready for the contractor to  
17         get underway. Would that be accept-- as the  
18         sense of the motion?

19         **DR. MELIUS:** Yes.

20         **DR. ZIEMER:** Yes. So that there's not a -- a  
21         press to drop what's being done to do this, but  
22         to do it in a holistic manner, even if there's  
23         a delay of a couple of months to get it under  
24         way.

25         Further discussion on the motion, pro or con?

1 (No responses)

2 Are you ready to vote on the motion?

3 **THE COURT REPORTER:** Dr. Ziemer --

4 **DR. ZIEMER:** Yes?

5 **THE COURT REPORTER:** Who seconded? I didn't  
6 catch who seconded.

7 **DR. ZIEMER:** Rich Espinosa was the seconder.

8 **MR. ESPINOSA:** I got -- I got a question, Paul.

9 **DR. ZIEMER:** A question -- Rich.

10 **MR. ESPINOSA:** You or Lew had mentioned before  
11 whether this would go under a separate task or  
12 replace one of the other ones that we got?

13 **DR. ZIEMER:** I think we concluded that this  
14 would actually be additional work, and we were  
15 assured by Lew that the resources would be made  
16 available. So this would not replace one of  
17 the site profiles on the priority list. That  
18 was my understanding. Is that --

19 **DR. WADE:** Right --

20 **DR. ZIEMER:** Unless the Board --

21 **DR. WADE:** -- (unintelligible) go under the  
22 site profile (unintelligible) --

23 **DR. ZIEMER:** -- wishes to make such a  
24 designation that something else be dropped.

25 **MR. ESPINOSA:** I'm just wanting to make sure --



1 I'm wanting to make sure that there's no need  
2 for something like that within the motion, so -  
3 - you answered my question. Thank you.

4 **DR. ZIEMER:** Okay. Again, within the sense of  
5 the motion, this becomes additional work that  
6 we would be tasking.

7 Are you ready then to vote?

8 All in favor of the motion, say aye?

9 (Affirmative responses)

10 Those opposed, no?

11 (No responses)

12 Any abstentions?

13 (No responses)

14 Motion carries. Thank you very much.

15 **DR. WADE:** (Off microphone) (Unintelligible)

16 **DR. ZIEMER:** That would be fine.

17 **DR. WADE:** Sort of breaking also with normal  
18 rules of order, but since the new members will  
19 be living under this topic, I didn't know if  
20 any of the new members would like to make a  
21 comment. You certainly have the opportunity to  
22 comment when you come to the table, but --  
23 anything?

24 **UNIDENTIFIED:** Not at this time.

25 **DR. ZIEMER:** Okay.

1           **DR. WADE:** Thank you.

2           **DR. ZIEMER:** They are -- they are wisely  
3 refraining from commenting.

4           **MR. ELLIOTT:** Could I offer another --

5           **DR. ZIEMER:** Larry, please.

6           **MR. ELLIOTT:** I hope this wasn't missed in my -  
7 - my remarks, but as an individual on this  
8 Board, I welcome your comments on the content  
9 of this revised policy. I don't -- we're not  
10 asking you to come to consensus on any  
11 comments, but as an individual member, anybody  
12 that wants to send me or Kate --

13           **DR. ZIEMER:** (Off microphone) (Unintelligible)

14           **MR. ELLIOTT:** -- written comments on the  
15 language in this rule -- or in this proposed  
16 policy, we would appreciate those.

17           **DR. ZIEMER:** Thank you very much. Mark, did  
18 you have an additional comment on this?

19           **MR. GRIFFON:** I was just going to ask Kate, you  
20 know, you -- you mentioned that it covers  
21 everything -- all documents, all whatever in  
22 the program. Is there any intent to -- to  
23 apply this policy retrospectively, to go back  
24 to site profiles, especially those which might  
25 have raised some concern already?

1           **MS. KIMPAN:** Absolutely, and let me break it  
2           into two different areas, Mark, and that is  
3           something that's totally completed and is not  
4           considered actively in the review process,  
5           distinct from those -- and there are many --  
6           that are in the formal review process. For  
7           those in the formal review process, including  
8           the revisions that Richard identified by site,  
9           I've already directed document owners to be in  
10          compliance with this policy. So we've already  
11          made those changes. Most of those are large  
12          site profile documents that are still in the  
13          formal review process.  
14          For any document going forward that hasn't been  
15          begun yet, hasn't been started, there is no  
16          lack of clarity. For documents that have been  
17          already produced, in use, and are not  
18          considered actively in a review process, where  
19          there was a possible or perceived conflict or  
20          bias on the part of the document owner in any  
21          part of the document -- which is a different  
22          role than the team lead at times -- we will  
23          have an independent review by an unbiased,  
24          independent individual or group of individuals  
25          review the conclusions and everything else

1           about that document that ended up  
2           operationalizing those opinions. In addition,  
3           we will go back and do a full disclosure and  
4           attribution. So even if a document sustains  
5           independent review with no problem at all, you  
6           will be able to see -- the exact form of that  
7           is unclear until we've completed it with OCAS,  
8           whether it's in every document, on a web site,  
9           in what form. But we will go back and apply  
10          the policy of full disclosure and full  
11          attribution to that which has gone before.  
12          Let me be clear. I'm not saying we're going to  
13          do over every document that has been done. But  
14          every document or product that has been  
15          completed will sustain an independent review  
16          and will be subject to the full attribution and  
17          full disclosure of who contributed, what that  
18          contribution was, and why we believe that the  
19          conclusions that we've arrived at are the right  
20          conclusions.

21          **MR. GRIFFON:** I guess there's a -- you know,  
22          I'm -- I'm just looking at one of these of 4.1.  
23          -- 4.133 (sic) requires that the document owner  
24          has an affirmative duty to seek out all  
25          pertinent data. And I -- I applaud that. I

1 think that -- I -- I want to see that  
2 operationalized. That's a difficult challenge,  
3 I think --

4 **MS. KIMPAN:** It is.

5 **MR. GRIFFON:** -- for the document owner. I  
6 think -- I guess one of my concerns in the past  
7 --

8 **MS. KIMPAN:** Yes.

9 **MR. GRIFFON:** -- or thus far has been that  
10 there -- there are site experts that -- and in  
11 many cases I think people tend to just maybe  
12 not go any further than asking that site expert  
13 how do we handle this subject. Well, this is  
14 it, this is the end of the game, this is the  
15 best data source we have for this. And I think  
16 the document owner -- you're challenging them  
17 to maybe -- you know, you take that  
18 information, certainly, but you have to do some  
19 level of -- further check or validate.

20 **MS. KIMPAN:** Absolutely. One of the which  
21 interweaves with comments I made yesterday is  
22 we see very valuable sources of information  
23 coming forward in a number of other arenas, and  
24 part of what we're endeavoring to do is to  
25 assure that additional information that might

1 be from someone other than that site or subject  
2 expert are reviewed, are considered, and are  
3 included. And we'll endeavor to do that. If  
4 you or others have suggestions on how we can  
5 assure that our work is thorough, as it's very  
6 difficult to prove a negative -- as you can  
7 see, we can be quite far down a pike and  
8 someone can say I've got a box of information  
9 on my desk that's extremely important. If --  
10 you know, six years kicking around the DOE  
11 complex, I've seen that happen a lot. If folks  
12 have suggestions on how we can assure  
13 thoroughness and completeness, we welcome any -  
14 - any suggestions we can to improve the quality  
15 of our products.

16 **DR. ZIEMER:** Thank you. Okay, any other  
17 comments? Jim.

18 **DR. MELIUS:** Just a procedural comment and  
19 follow-up to Larry's request for comment. I  
20 would also hope that we could put this on the  
21 agenda for our March conference call --

22 **DR. ZIEMER:** Sure.

23 **DR. MELIUS:** -- because I --

24 **DR. ZIEMER:** Just a status report on --

25 **DR. MELIUS:** Well, I would -- maybe even an

1           action, depending on comments and where things  
2           stand. I mean it -- I don't think we should  
3           prolong the -- the process unnecessarily now,  
4           so if there are comments in, then -- and  
5           there's a revision and a revision can get out  
6           to us that -- I think that may -- I'd like to  
7           get -- if we can, get closure on it, rather  
8           than wait till April or, you know, put it off  
9           another six weeks or --

10          **MR. ELLIOTT:** I'd like to get to the point --

11          **DR. ZIEMER:** Good point.

12          **MR. ELLIOTT:** I'd like to get to the point we  
13          have a static document. Right now we -- what  
14          we consider this to be is a dynamic document.  
15          We're working with it, we're looking for your  
16          comment, we're looking to improve it. But at  
17          some point in time we want to say here's where  
18          we're at, this is --

19          **DR. MELIUS:** Yeah.

20          **MR. ELLIOTT:** -- policy and this is how we're  
21          going to live. Currently we are trying to live  
22          under this policy and do the best  
23          (unintelligible).

24          **DR. ZIEMER:** Let us put it on the agenda, and  
25          then if they are at that point, we can take

1 action.

2 **DR. MELIUS:** Yeah, that -- that's --

3 **DR. WADE:** Sure.

4 **DR. ZIEMER:** Okay, very good. Further  
5 comments? Yes, Mr. Clawson is going to be the  
6 first new member to officially speak. You'll  
7 have to go to the mike.

8 **DR. WADE:** You'll have to go to the mike.

9 **MR. CLAWSON:** I guess my -- you want this one?

10 **DR. WADE:** You'll come to learn  
11 (unintelligible).

12 **MR. CLAWSON:** I guess my question is -- and I  
13 applaud Kate and what she's done on this, but  
14 as a new Board member coming in and they're  
15 going back and looking at cases, is -- are we  
16 going to be notified, as Board members, of any  
17 conflicts and what has happened on that,  
18 because I don't want to be blind-sided by  
19 something. I want to be -- you know, you're  
20 talking about going back and looking at these  
21 things, and I want to be able to have a process  
22 that will make sure that we're -- that we're  
23 aware of that and that --

24 **DR. ZIEMER:** We certainly can get status  
25 reports on what has happened, but let's hear



1 from --

2 **MR. ELLIOTT:** Yes, I think -- I think that's  
3 part of the responsibility and obligation we  
4 have to all Board members and to the general  
5 public is when we make a change in a site  
6 profile, we need to notice that. And how we do  
7 that is in a variety of ways. We do it at  
8 these kind of meetings. We get it out in e-  
9 mail distributions to you. We go into our web  
10 site and make those kind of notices happen.  
11 And we need to be very clear as to what  
12 constituted the change, and you'll see that  
13 documented in -- we have a document control  
14 system in place that ORAU uses, and the front  
15 piece of that -- each document speaks to the  
16 number of changes that has occurred. So we'll  
17 try to educate you on that as we go forward,  
18 but that serves as a record of change that has  
19 occurred in any given document. And that is  
20 our obligation to follow up on that.

21 I think we also have an obligation to follow up  
22 on some of the remarks that Mr. Miller made  
23 with regard to the disclosure statements and  
24 how they have changed over time, and I'm very  
25 concerned and interested about that, and Kate

1 and I will be talking about that.

2 **DR. ZIEMER:** Kate, an additional comment?

3 **MS. KIMPAN:** Yeah, I'd also like to say -- very  
4 good question, and working closely with our  
5 colleagues at OCAS, we're also comfortable  
6 providing to the Board, to the public, to  
7 everyone else what we're doing in process  
8 terms. Larry's talking about the very  
9 important possibility that the document might  
10 change and how we document that that's  
11 occurred. We also welcome the sunshine and be  
12 glad to share with you, as we operationalize  
13 our plans for prior documents and upcoming  
14 documents and revisions, be glad to share with  
15 OCAS and them with you the status of where we  
16 are, how we're endeavoring to do it. We intend  
17 to do this the very best that we can to get the  
18 best product that we can which is credible,  
19 passes the scrutiny of the people this program  
20 is really for, the workers that this is all  
21 about. So anything we can do to show the good  
22 faith of our work and what we intend to do, we  
23 welcome doing. And I can provide routine  
24 statuses to OCAS as we operationalize this,  
25 that they're welcome to share with you as to

1           what we're doing, who we're doing it with and  
2           why we're doing it at every site.

3           **DR. ZIEMER:** Thank you. Okay. Thank you very  
4           much, excellent discussion and I think we're  
5           moving well on this.

**TASK III REVIEW - DISCUSSION/CLOSURE**

**MR. MARK GRIFFON/SC&A/NIOSH**

6           We're going to now call on Mark Griffon to give  
7           us a quick update on Task III, which is --  
8           that's the review of procedures task.

9           **MR. GRIFFON:** This should be a brief update. We  
10          took the procedures review, Task III, up in  
11          subcommittee on Tuesday, and focused mainly on  
12          the -- we had previously done most of the  
13          external radiation dose findings, and -- I'm  
14          sorry, the procedures related to external dose,  
15          and we focused Tuesday on the procedures --  
16          mainly focused on internal dose, and the CATI  
17          interview procedures. And basically -- this is  
18          still -- we -- we had NIOSH's response and most  
19          of these -- if the comments were not agreed  
20          upon in the NIOSH response column of this  
21          matrix, we -- we sort of have pushed them along  
22          to the workgroup process. We have more  
23          dialogue before we can close on these. So most  
24          -- you know, all the ones that were not agreed

1           upon were basically pushed along back to the  
2           workgroup for more in-depth discussion, which  
3           we weren't -- I don't think SC&A or NIOSH were  
4           really prepared for that in-depth discussion at  
5           this meeting, so we -- we pushed it along.  
6           We do want to close this out. This procedures  
7           review has been open for a while. One thing  
8           that I did want to note in some of the actions,  
9           and this is part of the problem of pushing this  
10          along, some of the responses have been that  
11          there's a new procedure that has replaced --  
12          and we -- we have not reviewed that, so we have  
13          to make sure we capture that and -- in our --  
14          in our next round of procedures review. We had  
15          asked SC&A to review additional procedures, and  
16          some of the ones that were in the NIOSH  
17          response weren't necessarily on that list, so  
18          we want to cross-walk those and make sure that  
19          we don't lose any of these -- any of these  
20          NIOSH actions which were a new procedure, in  
21          essence.

22          **DR. WADE:** Mark, if I could, just a status on  
23          that -- at least my notes show that the Board  
24          would like me to amend the contract to see that  
25          OTIB-4, the latest release, is added to the

1 list; ORAU-0097, Rev. 00; and ORAU-0031. Now  
2 again, I think your -- your -- it's appropriate  
3 (unintelligible) --

4 **MR. GRIFFON:** (Unintelligible) --

5 **DR. ZIEMER:** And there are some other --

6 **DR. WADE:** -- (unintelligible) --

7 **DR. ZIEMER:** -- there are some other new ones I  
8 think that Kathy already had on the list, is  
9 that correct? In addition to the ones Lew just  
10 read.

11 **MR. GRIFFON:** I thought it was actually 0090,  
12 not 97, was it?

13 **MS. BEHLING:** (Off microphone) (Unintelligible)  
14 97.

15 **MR. GRIFFON:** Oh, it was 97? Okay, sorry.

16 **DR. ZIEMER:** Thank you.

17 **DR. WADE:** Now -- now the contractor has a list  
18 of new procedures to review already in place.

19 **DR. ZIEMER:** Right, that's what --

20 **DR. WADE:** These will be added to this --

21 **DR. ZIEMER:** Added to that list.

22 **DR. WADE:** Right.

23 **DR. ZIEMER:** Right.

24 **MR. GRIFFON:** I did ask -- I don't know if  
25 Kathy has this, but I -- I was wondering, for

1           the Board's sake and for everyone's sake, it'd  
2           be nice to have a listing of those procedures  
3           that you intend to review, and -- and it might  
4           be useful for all of --

5           **DR. ZIEMER:** If you don't have it today, it  
6           could be distributed, but --

7           **MS. BEHLING:** (Off microphone) (Unintelligible)

8           **MR. GRIFFON:** Yeah.

9           **MS. BEHLING:** (Off microphone) (Unintelligible)  
10          (on microphone) I am in the process of putting  
11          together that list, and I've kept notes along  
12          the way here. I am not prepared to give that  
13          to you yet because, in some cases -- I'm also  
14          trying to include on that list where there are  
15          workbooks associated with the various  
16          documents, and that's a little bit more  
17          challenging to do. There's no complete list  
18          out there as I've found yet that lists all the  
19          different workbooks, so I want to make it  
20          complete and I want to ensure also -- because  
21          my list ended actually, I believe, with TIB-93.  
22          And as you heard, we're already up to TIB-97,  
23          and by the time I get home it may be into the  
24          hundreds.

25          **DR. ZIEMER:** Okay, thank you. John, you have

1 an additional comment?

2 **MR. GRIFFON:** If I can just ask Kathy if you  
3 can maybe provide that to -- once you complete  
4 it, maybe e-mail it around to the Board, would  
5 that be --

6 **MS. BEHLING:** Yes.

7 **MR. GRIFFON:** Yeah.

8 **MS. BEHLING:** That's going to be the first task  
9 I'll do when I get home.

10 **DR. MAURO:** In organizing ourselves to do the  
11 next round, there were 33 procedures that were  
12 originally authorized, and then -- and as work  
13 proceeded -- that goes back a ways. That was -  
14 - goes back to August. Work has begun. And  
15 the first step in the process is to get your  
16 arms around those procedures and start making  
17 assignments, which has been done.  
18 Now in the process of going through the set of  
19 33, we found -- I found that some of those  
20 probably don't need to be reviewed. Some of  
21 them have already been reviewed. And what I'm  
22 about to do -- haven't done it yet -- is to  
23 transmit to you a recommendation for  
24 replacements, saying that well, you know, this  
25 is the reason we really don't need to review

1 this. We would recommend we delete that and  
2 replace it with this one, which was not on the  
3 original August list. So at -- one of the  
4 action items that I will be taking is to send a  
5 letter to you all making my recommendations on  
6 replacements and additions that would be  
7 contained within our -- our mandate.

8 **DR. ZIEMER:** Very good, thank you.

9 **MR. GRIFFON:** (Off microphone) That sounds  
10 (unintelligible).

11 **DR. ZIEMER:** Yeah. Okay. Mark, is there any  
12 action we need to take today? The resolution  
13 process is also ongoing, so I think --

14 **MR. GRIFFON:** Yeah, and I'm hopeful that at the  
15 next workgroup meeting we can finalize these  
16 internal dose and CATI interview --

17 **DR. ZIEMER:** Stu?

18 **MR. GRIFFON:** -- resolutions.

19 **MR. HINNEFELD:** What is the schedule for the  
20 next workgroup meeting?

21 **MR. GRIFFON:** Well, we haven't talked about a  
22 date.

23 **MR. HINNEFELD:** Oh.

24 **DR. ZIEMER:** Yes, we -- tell us.

25 **MR. GRIFFON:** Part of the reason I didn't want



1 to talk about a date yet is I think we should  
2 get a sense of the scope, between this and the  
3 dose reviews and site profiles, what we need to  
4 do and how fast we can accomplish it.

5 **DR. ZIEMER:** The workgroup will need to work  
6 with you on that in establishing -- the  
7 workgroup, you're talking about the workgroup -  
8 - yeah.

9 Okay, anything else on Task III, Mark?

10 **MR. GRIFFON:** I think that's it on Task III.

11 **DR. ZIEMER:** Okay. I think on the individual  
12 dose reconstructions, Mark, I don't believe we  
13 need an hour on that. Is that correct? Maybe  
14 we can move ahead on the agenda.

15 **MR. GRIFFON:** Yeah, no --

16 **DR. ZIEMER:** Can you give us a report on --  
17 this is the first item showing at the -- after  
18 lunch period, but I -- I don't believe we  
19 require an hour on that, so...

20 **MR. GRIFFON:** Kathy might want to say something  
21 on this topic, or on the last topic, I'm not  
22 sure.

23 **MS. BEHLING:** I'm not trying to suggest what  
24 you should do here, but I was hoping that we  
25 could still make assignments of the incoming

1 Board members with regard to -- because we're  
2 getting ready to have our conference calls, and  
3 so (unintelligible) --

4 **DR. ZIEMER:** Right, let -- let me indicate what  
5 we'll need to do on that, Kathy. We have Dr.  
6 Anderson's team and Mr. Espinosa's team, each  
7 of which will require at least one replacement.  
8 Those teams have already been identified, but  
9 until we have the conflict of interest  
10 information from -- from legal counsel, we will  
11 need to await putting the replacement name in  
12 there. So at such time as you're ready to  
13 schedule those interactive things, you'll need  
14 to -- I will make the appointments based on  
15 what conflict of interest we have. We know,  
16 for example -- I think the Anderson team is  
17 mainly looking at Savannah River cases, for  
18 example, so it will be easy to do. There are  
19 just -- I think each of those teams --

20 **DR. ANDERSON:** (Off microphone) I just turned  
21 in my disk, so getting that (unintelligible) --

22 **DR. ZIEMER:** Right, but we will --

23 **DR. ANDERSON:** -- (unintelligible).

24 **DR. ZIEMER:** We will make the appropriate  
25 assignments as soon as we get through the

1 conflict of interest issues on these. And  
2 again -- the other teams will continue -- those  
3 assignments were already made, so...

4 **MS. BEHLING:** Thank you.

**INDIVIDUAL DOSE RECONSTRUCTION REVIEWS**  
**DISCUSSION/PLAN OF ACTION/CLOSURE**  
**MR. MARK GRIFFON/SC&A/NIOSH**

5 **DR. ZIEMER:** Yeah. Okay, Mark, why don't we  
6 proceed on -- this is individual dose  
7 reconstruction reviews --

8 **MR. GRIFFON:** I guess we -- I guess just as a -  
9 - just to summarize where we're at on all of  
10 them, and again, we need to talk about timing  
11 and schedules certainly, but the case -- this  
12 first set of 20 cases -- and -- and we're  
13 actually going to check into this. We -- I  
14 know we finalized the letter. I assumed it  
15 went to the Secretary, but now -- now I'm not  
16 quite sure about that after talking with Paul a  
17 little bit, so we -- we have to --

18 **DR. ZIEMER:** Well, we think it has gone, but  
19 we're going to have to go back and make sure it  
20 actually arrived there, but there was a letter  
21 drafted and it -- the first set of 20 basically  
22 this Board closed out on.

23 **MR. GRIFFON:** Right, a final draft accepted by  
24 the --

1           **DR. ZIEMER:** Right.

2           **MR. GRIFFON:** -- the Board, right. The second  
3 set of cases might not be 20, is it 18?

4           **DR. ZIEMER:** It was 18.

5           **MR. GRIFFON:** Eighteen, yeah. The second set,  
6 we -- as of I think last Friday or -- or early  
7 this week, we -- we had NIOSH's response in the  
8 matrix completed, so in the subcommittee we  
9 just briefly went over -- we didn't even  
10 discuss NIOSH's responses really because we  
11 weren't at a place where we could, so that's  
12 got to be item one on our next workgroup  
13 meeting as far as the case reviews go. I think  
14 we need to have the discussion between SC&A and  
15 NIOSH about NIOSH's response to the findings,  
16 and so we're in the resolution process on that  
17 one.

18           The third set of cases, and I'm -- I'm looking  
19 to Hans and Kathy if I get this wrong, but I  
20 think you've issued the final report, final  
21 matrix, but -- but NIOSH just received this, so  
22 now we need to give NIOSH some time to get a  
23 response to those findings, and then bump that  
24 into the same process.

25           **DR. ZIEMER:** Right.

1           **MR. GRIFFON:** And then as you -- as we  
2 indicated, the fourth set is -- SC&A has -- has  
3 pretty much completed their reviews and they're  
4 ready to do the team conference calls with the  
5 -- the groups, as we just previously mentioned,  
6 and we'll make new assignments based on the new  
7 members.

8           **DR. ZIEMER:** So --

9           **MR. GRIFFON:** (Off microphone) I think that's -  
10 - that's (unintelligible).

11          **DR. ZIEMER:** So basically that's a status  
12 report. There's no actions actually needed.  
13 Kathy, if you want to add to that...

14          **MS. BEHLING:** Not that I have anything to add,  
15 I just have a question. Is the letter that was  
16 sent to HHS -- is that going to be posted on  
17 the internet? I haven't seen --

18          **DR. ZIEMER:** It will be posted, if it's not  
19 already. We're --

20          **MS. BEHLING:** Okay.

21          **DR. ZIEMER:** -- we're having to go back and  
22 determine whether -- whether the Chairman had a  
23 senior moment and didn't send the letter or  
24 where it is, but --

25          **MS. BEHLING:** Okay.

1           **DR. ZIEMER:** -- we will find it. Thank you.  
2           Okay, is there anything further on -- on  
3           individual dose reconstruction reviews then?  
4           Questions by Board members?

5   (No responses)

6           Thank you very much. We have a little time.

**REVIEW AND APPROVAL OF DRAFT MINUTES**

**DR. PAUL ZIEMER, CHAIR**

7           This would be a good time to talk about the  
8           minutes.

9           **DR. WADE:** There's never a bad time to talk  
10          about the minutes.

11          **DR. ZIEMER:** First of all, I would call  
12          attention to the minutes of the August meeting.  
13          There's two parts, there's an executive summary  
14          and then the full minutes. The Chair would  
15          like to call for any corrections or additions  
16          to the minutes, and particularly look for those  
17          items that are attributed to you.

18          I'm going to call attention to one item, and  
19          this -- this may turn out to be -- have broader  
20          implications than just these minutes. On page  
21          32 of the minutes, this is the motion on the  
22          Special Exposure Cohort for Mallinckrodt  
23          Destrehan, if I'm not mistaken -- and Dr.  
24          Melius, you can help me 'cause I think you may

1           have made the motion -- I believe the motion  
2           was much more extensive than what is shown in  
3           our minutes.

4           **DR. MELIUS:** Point me to the page again, I'm  
5           sorry.

6           **DR. ZIEMER:** Page 32. Our typical motion  
7           includes instructions to the Chairman on a time  
8           line of action. It usually includes reasons  
9           for the recommendation.

10          **DR. MELIUS:** Correct.

11          **DR. ZIEMER:** This may be an abbreviated version  
12          of the motion, but it occurs to me that,  
13          although the minutes are abbreviated from the  
14          transcripts, the motions themselves should be  
15          full and complete. That would be my  
16          observation. But I'm asking the question  
17          'cause -- I didn't compare this against the  
18          transcripts, but my impression was that this is  
19          not the full motion. Would -- would you agree  
20          that that's the case?

21          **DR. MELIUS:** Correct, yeah, I agree.

22          **DR. WADE:** And in fact the mention of Destrehan  
23          Street is not correct. We need to correct this  
24          motion. We need to include the motion as it  
25          was made.

1           **DR. ZIEMER:** So I will ask -- and let's see,  
2           Ray, do you do this or does staff -- we'll need  
3           to go back to the transcript and insert the  
4           full motion as it appears in the transcript on  
5           page 32. So without objection, we will make  
6           that change in the minutes.

7           I also note on page 28, it refers to a motion -  
8           - it says Dr. Ziemer read the formal motion  
9           into the record, but the motion does not appear  
10          here in our minutes. Again, it would seem to  
11          me that we do need to include the motion  
12          itself. Any objection -- without objection,  
13          we'll add the motion on page 28 -- it's about  
14          the middle of the page.

15          Then on page 29 where there's a break in the  
16          action, and you'll notice that nothing -- if  
17          you'll read through that, you'll notice that  
18          nothing happens on the motion, and so I think  
19          just before the stars on page 29 we will need  
20          to insert a statement, such as the action on  
21          the motion was postponed until tomorrow,  
22          because if you read in the minutes, we -- we  
23          did pick up action on the motion, but  
24          otherwise, as you read this, it looks like  
25          nothing happens, so we need to call attention



1 to the fact that the action actually shows up  
2 the next day, so we'll simply insert, I think,  
3 a statement -- action on the motion was  
4 postponed until tomorrow. So without  
5 objection, we'll make that change.  
6 Any other changes anyone wishes to make? You  
7 may have some minor typos or things like that.  
8 I notice in the -- well, I'll -- I'll simply  
9 pass my -- mine along to Ray. If others of you  
10 have minor wording, things that don't affect  
11 the -- really the meaning or content, we'll  
12 simply pass those along, we'll get those  
13 corrections done.

14 Is there a motion to accept the minutes with  
15 these changes?

16 **MR. PRESLEY:** So moved.

17 **DR. ZIEMER:** A second?

18 **MR. GIBSON:** Second.

19 **DR. ZIEMER:** Seconded. Further discussion?

20 All in favor, aye?

21 (Affirmative responses)

22 Those opposed, no?

23 (No responses)

24 And abstentions?

25 (No responses)



1 original motion so --

2 **THE COURT REPORTER:** I'm not sure where you  
3 are, Dr. Ziemer, where --

4 **DR. ZIEMER:** It's apparently on -- the Melius  
5 motion is on --

6 **DR. MELIUS:** (Off microphone) 33.

7 **DR. ZIEMER:** -- 33. That's the Melius motion,  
8 and you notice on page 34 -- motion was made  
9 and seconded that -- what happened was that --  
10 I think Dr. Melius indicated that he was  
11 prepared to propose a different motion should  
12 the Munn motion fail.

13 **MS. MUNN:** (Off microphone) Yes, that was what  
14 (unintelligible).

15 **DR. ZIEMER:** This gets a little complex.  
16 Having told the Board what his motion was,  
17 there was then a motion to substitute the  
18 proposed Melius motion for the Munn motion, and  
19 that occurred. But the Munn motion never  
20 appears. I'm simply suggesting let's -- let's  
21 insert it so we know what happened. So I  
22 think, Ray, what we will need to do there -- I  
23 guess it's on Capitol Hill policy --

24 **DR. MELIUS:** It goes back to page 27 is the --  
25 where there's reference to Wanda's written

1 motion, but it's not --

2 **MS. MUNN:** (Off microphone) It's not stated  
3 (unintelligible).

4 **DR. ZIEMER:** Okay, so -- well, is that the  
5 motion I already --

6 **MS. MUNN:** Yes.

7 **DR. ZIEMER:** -- asked that we put in? Okay,  
8 that was --

9 **MS. MUNN:** It was -- was not --

10 **DR. ZIEMER:** -- the Munn motion. I knew there  
11 --

12 **MS. MUNN:** It was not --

13 **DR. ZIEMER:** -- was a motion --

14 **MS. MUNN:** -- stated verbatim, yeah.

15 **DR. ZIEMER:** Okay.

16 **MS. MUNN:** In here. It just simply -- the  
17 sense of the motion.

18 **DR. ZIEMER:** I figured it out, okay.

19 **MS. MUNN:** The sense of the motion was  
20 captured.

21 **DR. ZIEMER:** That's the missing motion. We've  
22 already taken care of the missing motion.  
23 Thank you.

24 Okay, then let's return to the October minutes,  
25 so no further action is needed on that if it

1 was already taken care of by the previous  
2 actions. Sorry, Ray, for all that confusion.

3 **MR. GRIFFON:** (Off microphone) (Unintelligible)

4 **DR. ZIEMER:** We'll see what -- we'll see what  
5 the next minutes show up. Henry?

6 **DR. ANDERSON:** (Off microphone) Yeah, Leon --  
7 Leon was there. He's not listed as  
8 (unintelligible). At least he's quoted as --

9 **DR. ZIEMER:** For the October minutes?

10 **DR. ANDERSON:** Yeah.

11 **DR. ZIEMER:** Yeah, has his name been omitted?  
12 And Leon wasn't there by phone, was he?

13 **UNIDENTIFIED:** Wasn't he there?

14 **DR. ZIEMER:** I think he was there in person.

15 **DR. WADE:** I think so.

16 **DR. ZIEMER:** Yeah. Okay, so let us add Leon's  
17 name to the list of attendees. Any other  
18 corrections or additions to these minutes?

19 (No responses)

20 I do not hear any. I'll ask for a motion to  
21 approve.

22 **MS. MUNN:** So moved.

23 **DR. ZIEMER:** Second?

24 **MR. PRESLEY:** Second.

25 **DR. ZIEMER:** Seconded by Presley. Discussion?

1 (No responses)

2 Okay, all in favor of approving these minutes,  
3 say aye?

4 (Affirmative responses)

5 Any opposed, no?

6 (No responses)

7 Motion carries.

8 **THE COURT REPORTER:** So the only thing to  
9 change is adding Owens as an attendee.

10 **DR. ZIEMER:** Yes, that's correct.

11 **DR. MELIUS:** Dr. Ziemer --

12 **DR. ZIEMER:** Yes, sir.

13 **DR. MELIUS:** -- just one sort of minute-related  
14 -- minutes-related observation. The web site  
15 does not contain minutes for our April meeting.  
16 They have transcripts but not minutes. I  
17 believe we approved those, but I -- you know, I  
18 don't recall specifically. I (unintelligible)  
19 --

20 **DR. ZIEMER:** I'm sure we approved them, and so  
21 --

22 **DR. MELIUS:** Yeah, it just needs --

23 **DR. ZIEMER:** -- the NIOSH people will make note  
24 of that and --

25 **DR. MELIUS:** I discovered -- I was trying to

1 find our letter about the secrecy issue, and I  
2 had to end up going to the transcript so I  
3 could find...

4 **DR. ZIEMER:** Oh, that's the reason, the minutes  
5 are secret.

6 **DR. MELIUS:** I guess so, yeah.

7 **DR. ZIEMER:** Okay.

8 **DR. WADE:** (Off microphone) Part of the secret  
9 (unintelligible).

10 **DR. MELIUS:** It's not that I pore through the  
11 web site at all hours trying to find something  
12 that's not there.

13 **DR. ZIEMER:** I'm looking to see if there's any  
14 -- are there any other brief items we need to  
15 handle before lunch, Lew?

16 **DR. WADE:** (Off microphone) (Unintelligible) go  
17 to lunch. (Unintelligible) lunch, if we have  
18 some time (unintelligible) do it between  
19 (unintelligible) this afternoon.

20 **DR. ZIEMER:** Okay, we will recess for lunch and  
21 return for business at 1:30.

22 (Whereupon, a recess was taken from 11:50 a.m.  
23 to 1:30 p.m.)

24 **DR. ZIEMER:** I think we're ready to reconvene.  
25 I'm going to start the afternoon session from

1 here, soon as everybody's assembled.

2 **MS. MUNN:** Or seated, as the case may be.

3 They're assembled, but they're not

4 (unintelligible) assembled.

**RECOGNITION OF DEPARTING MEMBERS**

**DR. PAUL ZIEMER, CHAIR**

5 **DR. ZIEMER:** We have two of our Board members  
6 for whom this is the last meeting, and we want  
7 to take a little time and recognize them and  
8 their contributions. Those two individuals are  
9 Richard Espinosa and Henry Anderson, so let me  
10 say a little about each, and to do that I'm  
11 going to need the slides, so I need to be able  
12 to get -- the thing is loaded, but I need the  
13 projector to be on.

14 (Pause)

15 **MS. MUNN:** I hope you haven't been secretly  
16 taking pictures of us while we didn't know it.

17 **DR. ROESSLER:** But we'll behave from now on,  
18 we'll know what not to do.

19 (Pause)

20 **MS. MUNN:** Oh, what a wonderful thing to do.

21 **DR. ZIEMER:** We'll start with Rich since this  
22 slide is up first, and maybe -- this is just  
23 coincidental that the picture I had of Rich was  
24 with Tony, who is the other member of the Board



1           who, in a sense, is being replaced as well now  
2           by -- by one of the three new people. But this  
3           was at our last visit to Oak Ridge, so let me  
4           say a few things about Rich.

5           Rich Espinosa's been a sheet metal journeyman  
6           and metal shop steward at Johnson Controls at  
7           Los Alamos National Lab since 1994. He's a  
8           member of Sheet Metal Workers Local Union 49.  
9           He completed the chapter's apprentice program  
10          in 1998. In addition, Rich served for two  
11          years in the U.S. Navy from 1990 to '92. He  
12          was assigned to the U.S.S. Theodore Roosevelt's  
13          sheet metal shop. Rich is one of our original  
14          Board members, having been appointed by  
15          President Bush in November of 2001 to serve on  
16          this Board.

17          Now Rich may strike you as being one of the  
18          more quiet Board members, but when he does have  
19          something to say, you can count on it as being  
20          important and worthy of consideration. He's  
21          been an excellent representative on this Board  
22          for the skilled trades, and we will miss his  
23          contributions to the ongoing work of the Board.  
24          And so, Rich, on behalf of all of your  
25          colleagues on the Board, I thank you for your





1 credit for this photograph. It turned out that  
2 what I -- what I had in my camera, Henry, was  
3 even worse than this.

4 **DR. MELIUS:** He had a rough night.

5 **DR. ANDERSON:** (Off microphone) Before my phone  
6 started (unintelligible) you really can't  
7 identify me very well.

8 **DR. ZIEMER:** Is that really him? Henry  
9 Anderson has served as Chief Medical Officer  
10 for Occupational and Environmental Health at  
11 the Wisconsin Division of Public Health in  
12 Madison, Wisconsin since 1991. Other current  
13 appointments that Henry holds and other  
14 activities he is involved in include serving as  
15 State Epidemiologist for Occupational and  
16 Environmental Disease for the Wisconsin  
17 Division of Public Health, Adjunct Professor  
18 for the Epi Institute for Environmental Studies  
19 at the University of Wisconsin, Adjunct  
20 Professor of Preventive Medicine at the  
21 University of Wisconsin Medical School, and  
22 lecturer in the Department of Community  
23 Medicine at Mount Sinai School of Medicine.  
24 Henry, incidentally, has published over 160  
25 scientific articles which cover a broad

1 spectrum of environmental and occupational and  
2 public health topics. He was a founding member  
3 of the Agency for Toxic Substances and Disease  
4 Registry. He's served on the National Academy  
5 of Sciences Institutes of Medicine committees,  
6 which includes activities that involve  
7 developing reports on injury in America and  
8 nursing, health and environment.

9 Henry is Chair of the Environmental Health  
10 Committee of the U.S. EPA Science Advisory  
11 Board. He also is on the Director's Advisory  
12 Committee for the National Center for  
13 Environmental Health. Henry, too, is one of  
14 our original Board members and thus is  
15 completing four years of distinguished service  
16 on this Board.

17 Henry is an individual we can always count on  
18 to provide thoughtful and insightful input in  
19 our deliberations, and we'll surely miss his  
20 pleasant and congenial approach to carrying out  
21 the work of this Board.

22 And so, Henry, on behalf of your colleagues  
23 here today on the Board, I thank you for your  
24 four years of dedicated service, and I wish you  
25 continued success in your ongoing

1 responsibilities and activities.

2 And if you'll join me here, again, we have the  
3 certificate of recognition and a letter.

4 (Reading) This certificate presented to Henry  
5 Anderson, M.D. in recognition and appreciation  
6 for service on the Advisory Board on Radiation  
7 and Worker Health as a member August 2001  
8 through January 2006.

9 Congratulations.

10 (Applause)

11 **DR. ZIEMER:** (Off microphone) Henry,  
12 (unintelligible) say something to  
13 (unintelligible).

14 **DR. ANDERSON:** Sure, I -- it's -- it has been a  
15 pleasure to be at the founding of this  
16 committee and help the program, as well as this  
17 committee, begin to work its way through the  
18 issues. And I think, while there's been a lot  
19 of bumps in the road -- and there probably are  
20 many yet to come, as we heard a few today -- I  
21 think there have been some advances and I think  
22 as we -- as you begin to develop more policies,  
23 the Board will be in a better position to act  
24 on things in a -- in a timely fashion with not  
25 quite always being at the end of the program.

1 Just remembering while I'm going off the Board,  
2 I do have a FedEx package with the Proving  
3 Grounds latest review that I -- as I was at the  
4 airport I was notified by my office that I had  
5 received another FedEx. And I have to say that  
6 that probably sets the record for being sent  
7 information that we're supposed to deliberate  
8 on with as short a period as possible.

9 So I wish you all well. It's -- it's really  
10 more of a graduation than it is a retirement.  
11 Just want to know that there's now a alumni  
12 lobbying group of two, that we're no longer  
13 constrained because of being on the Board and  
14 the potential for bias or conflicts of  
15 interest. So now as the e-mails flow and the  
16 freedom of information of internal e-mail  
17 communication on how well we're doing and  
18 information sent to the White House and things  
19 like that, we're now open and free to, like  
20 Richard, speak out to more accurately reflect  
21 our views on a lot of these issues. Thank you.

22 **DR. ZIEMER:** Thank you, Henry. Oh, and  
23 incidentally, Henry, like you, one of my best  
24 friends in LaFayette now is the FedEx man.

**SEC RULE REWRITE**

25 **DR. LEWIS WADE, EXECUTIVE SECRETARY**

1           Okay, now we'll go back to our regular agenda  
2           item, and what we have on the agenda now is --  
3           the topic is SEC rule rewrite. We were made  
4           aware earlier today that the SEC rule is being  
5           rewritten -- did I miss something?

6           **DR. WADE:** No.

7           **DR. ZIEMER:** Okay.

8           **MS. KIMPAN:** I had a response from something  
9           that was brought up actually this morning, so -  
10          -

11          **DR. ZIEMER:** Okay, we'll catch you in just a  
12          moment, Kate. Thanks.

13          -- so we will have an opportunity to discuss a  
14          strategy relating to the revision of the SEC  
15          rule, and I'll -- I'm going to ask Lew in a  
16          moment to give us some counsel on how we might  
17          proceed on that.

18          But let's hear from Kate. You had a remark  
19          dealing with this morning's (unintelligible).

20          **MS. KIMPAN:** It was -- it was actually a  
21          response to a substantive concern that was  
22          raised, which was there was a person with a new  
23          disclosure form that had less information than  
24          the prior disclosure form. During the break I  
25          tasked my people to look at all of the forms to



1           make certain that the first form and the second  
2           form are consistent. The individual who was  
3           being alleged to have a problem, I've already  
4           had that reviewed and we're correcting the  
5           information on the web site. We're going to do  
6           that for everyone and for all forms to assure  
7           accuracy and completeness of the information  
8           we're providing.

9           **DR. ZIEMER:** Thank you for that update. Okay,  
10           thunderous applause breaks out from -- from  
11           part of the crowd. Let the record show that  
12           Mr. Miller was unable to contain himself.  
13           Okay. Lew, give us some advice on how we might  
14           proceed here as far as the SEC rule update.

15           **DR. WADE:** Well, in terms of this session, I'd  
16           ask Ted Katz to -- to just stand up and walk  
17           you through the rule rewrite. Not to engage in  
18           debate or discussion with you, but just to  
19           expose the rule to you.

20           Then -- the rule comment period closes on  
21           February 21st, so we have a number of options  
22           open to us. Certainly a Board member, as an  
23           individual, can comment at any point they would  
24           like. If there is a strong sense that the  
25           Board would like to comment as a group, as a

1 Board, formally, then we have two options. We  
2 could try and have a Board call that would  
3 allow for some discussion before the 21st, or  
4 we could ask the agency to extend the comment  
5 period out beyond our March meeting -- and I  
6 think the agency would be responsive -- and in  
7 this way we could allow for the regularly  
8 scheduled call of the Board to take place, at  
9 which time the Board could formulate its  
10 comments, and then submit them to the still-  
11 opened record. So I think those are two  
12 options.

13 You know, once we hear from Ted, then you can  
14 decide if it's likely you'd want to comment as  
15 a Board. And if you would, then we could  
16 choose one of the two options that I've laid  
17 out.

18 **DR. ZIEMER:** Okay, Ted Katz.

19 **MR. KATZ:** (Off microphone) Well, Henry, I  
20 don't have a PowerPoint, so (unintelligible).  
21 (On microphone) So -- so HHS published  
22 amendments to its Special Exposure Cohort rule,  
23 as you know, in December. And just to make a  
24 note on that for -- particularly for the  
25 public, the rule is -- as Lew just said -- is

1 open to public comment through February 21st at  
2 this point. So the rule is published as an  
3 interim final rule, which means it's effective  
4 immediately, but sort of a -- like we've talked  
5 about with a number of documents over the last  
6 couple of days, it's in effect provisional  
7 because we can make whatever changes are needed  
8 on the basis of public comment before it's  
9 finalized in reality.

10 So I thought I -- what I'd do is -- is use the  
11 statutory changes and pair those up with the  
12 amendments we've made to the rule, just so that  
13 we can be completely clear and it'll be helpful  
14 to you to hear the actual statutory language  
15 when I run through those. I was intending, Lew  
16 -- I was intending to respond to some of the  
17 questions that Richard Miller raised in the  
18 public comment session on Tuesday, as long as  
19 I'm gong through this, even though those  
20 aren't, you know, specifically in the preamble  
21 and so on, but I thought it'd be useful to  
22 elucidate on those matters.

23 So there are not that many changes, really --  
24 statutory that we had to respond to, and the  
25 first -- the first of these is -- and it's

1 under Section 73.84(q) of the statute, subpart  
2 (c), deadlines. And the first is that not  
3 later than -- and you're -- I realize you're  
4 familiar with these, but -- but let me just  
5 read them verbatim.

6 (Reading) Not later than 120 days after the  
7 date on which the President receives a petition  
8 for designation as a member of the Special  
9 Exposure Cohort, the Director of the National  
10 Institute for Occupational Safety and Health  
11 shall submit to the Advisory Board on Radiation  
12 and Worker Health a recommendation on that  
13 petition, including all supporting  
14 documentation.

15 So that's what the statute says, and -- and we  
16 made two -- two changes to the rule to make it  
17 consistent, compliant with these new statutory  
18 requirements. The first change we made was, as  
19 has been mentioned, to change -- to actually  
20 establish, 'cause there was no definition  
21 previously of a petition, to establish such a  
22 definition in the rule. And the reason we did  
23 that is because there's this process, as -- as  
24 SC&A discussed yesterday, there's this process  
25 that NIOSH goes through with the petitioners to

1 aid them and guide them in producing a petition  
2 that's -- that's qualified, that actually meets  
3 the requirements to serve as the petition, and  
4 that occurs up front and -- and our early  
5 experience, before we had to revise this rule,  
6 was that -- that process takes a bit of time  
7 and can take a bit of time. So as a result, we  
8 defined -- let me just go ahead and read the --  
9 the definition that we gave for -- for our  
10 rule, and that is -- one second, I'm sorry.

11 (Pause)

12 Yes, sorry, petition means a submission under  
13 83.8 of this part that meets all the  
14 requirements of 83.7 through 8 and 9 of this  
15 part and has incorporated any revisions made by  
16 the petitioner under 83 through 7 -- 7 through  
17 83.9 or 83.11 of this part. So in effect that  
18 they've made whatever revisions and added  
19 whatever material they needed to for the  
20 petition to qualify.

21 The second change, which was also mentioned in  
22 Richard's comments, to enable us to meet the  
23 180-day deadline --

24 **DR. WADE:** Can I just interrupt you briefly? I  
25 mean I think it's very important that we

1 describe what we've done, but we shouldn't be  
2 addressing anyone's comments.

3 **MR. KATZ:** Oh, okay.

4 **DR. WADE:** We don't want to get involved in an  
5 ex parte communication, so --

6 **MR. KATZ:** Well -- okay, this is -- the second  
7 change we made was to -- was to reduce the --  
8 the period for -- for a petitioner -- a  
9 petitioner has a right, after they work with us  
10 and submit a petition and make whatever  
11 revisions, at the end of that process if the  
12 petition still doesn't qualify, then NIOSH  
13 notifies them that it doesn't qualify and they  
14 have the right to request a review of that  
15 decision. And there was a 30-day period for  
16 them to request that review, and we reduced  
17 that 30-day period to a 7-day period for that  
18 review. The reason for reducing for seven days  
19 is because the 180-day counting is based on  
20 when that petition met the requirements that I  
21 just read to you, the parts I just read to you,  
22 and so when it actually became a proper  
23 petition. Well, if we, in error, had reported  
24 that it didn't meet the qualifications to the  
25 petitioner and they appealed, and then after

1           this review it's determined that -- that in  
2           fact it did meet the requirements, that period  
3           in which the petitioner brought that issue,  
4           made that request for review, and the period  
5           for which we were doing that review is part of  
6           that 180 days. So if -- if the petitioner had  
7           30 days to do it, that would be even longer  
8           period out of the 180 days for which we  
9           wouldn't be proceeding with the petition  
10          evaluation and our window would be even shorter  
11          in this -- you know, as Lew has talked about  
12          yesterday, you know, the demands on us to  
13          complete a petition evaluation within 180 days  
14          already is pretty substantial. And you know,  
15          given the deliberations of the Board and their  
16          -- the new requir-- the new, you know,  
17          procedures we're going to have for petition  
18          evaluations, you know, demands are going to be  
19          even greater. So that -- that addresses the  
20          180 days.

21          The next provision is -- reads as follows.

22          (Reading) Upon receipt by the President of a  
23          recommendation of the Advisory Board on  
24          Radiation and Worker Health that the President  
25          should determine in the affirmative that

1 Paragraphs 1 and 2 of this subsection (b) apply  
2 to a class, the President shall have a period  
3 of 30 days in which to determine whether such  
4 paragraphs apply to the class and to submit  
5 that determination, whether affirmative or  
6 negative, to Congress.

7 So there's actually a lot in there. The  
8 Paragraphs 1 and 2 are the finding of  
9 feasibility and health endangerment. The most  
10 major change we made in response to this  
11 requirement was to move -- as you know, after a  
12 petition is evaluated and the Board's made a  
13 recommendation and -- and there's been a  
14 proposed decision by -- by the NIOSH Director  
15 in the previous rule, the petitioner had an  
16 opportunity to seek a review of that -- of that  
17 proposed decision by the Director of NIOSH.  
18 But 30 days wouldn't allow for the petitioner  
19 even to bring that request, let alone to -- to  
20 deal with it, to -- to do the review and come  
21 to a final decision. So we moved that all to  
22 the end of the process and the Secretary will  
23 make final decisions, but those final decisions  
24 will have the same review rights that the  
25 proposed decision had before. That's the most



1 major change we made.

2 We also had to -- as you'll note in here,  
3 Congress is requiring, through this statute,  
4 for us to report to Congress both affirmative  
5 and negative decisions or determinations, and  
6 that wasn't a requirement before. So we had to  
7 redo this aspect of the rule to capture that,  
8 to have a provision for reporting to Congress,  
9 even -- even if the Secretary decides in the  
10 negative that -- not to follow the Board's  
11 recommendation.

12 Then let me read -- the next provision -- I  
13 think that covers that.

14 (Reading) If the determination submitted by the  
15 President under subparagraph (a) is in the  
16 affirmative, the President shall also submit a  
17 report meeting the requirements of Section  
18 73.84(L) et cetera.

19 The main thing we did there is we, in effect,  
20 combined the determination with the report that  
21 was already required in the prior statute.

22 This is the -- this is the -- you've seen these  
23 now because the Secretaries had transmitted  
24 these to Congress, but these are these  
25 determinations, the designations.

1           And then it reads (reading) If the President  
2           does not submit a determination required by  
3           subparagraph (a) within the period required by  
4           subparagraph (a), then upon the day following  
5           the expiration of that period it shall be  
6           deemed, for the purposes of  
7           73.84(L)(14)(c)(ii), that the President  
8           submitted the report under that provision on  
9           that day.

10          And we then amended the rule in a minor way  
11          with language to recognize that there's this --  
12          there's this provision and that it would be so  
13          deemed that we'd submitted such a report if we  
14          do not come to a determination in a timely  
15          fashion as this is required here.

16          The other -- the final change is just a change  
17          that Congress made. They had a 180-day review  
18          period previously for the designations of the  
19          Secretary adding new classes, proposing to add  
20          new classes. In effect Congress had a chance  
21          to review that for 180 days and they changed  
22          that to 30 days, so we made that change.

23          And that covers the waterfront.

24          **DR. ZIEMER:** Thank you, Ted. Perhaps there are  
25          questions that Board members have relating to

1           these changes, or related comments. Henry?

2           **DR. ANDERSON:** I'm just curious as to how you  
3           determine that the seven days for the  
4           petitioner was -- was sufficient. I mean you  
5           say you've determined that it's sufficient. It  
6           just seems to me, you know, you reduced their  
7           appeals process to -- they had to appeal within  
8           seven days and provide all of the rationale  
9           when they haven't seen your document. And you  
10          could send it out on a Friday and somebody may  
11          be on vacation for two weeks and -- are you  
12          going to alert them that it's coming and -- so  
13          they can prepare (unintelligible)?

14          **MR. KATZ:** Yes, what -- I mean if -- if you --  
15          if you remember, the process we have is to  
16          actually work with the petitioners to guide  
17          them in developing the petition, so we would  
18          have been -- and have been, I think, with all  
19          petitioners -- been in dialogue all the way up  
20          to that point. It would -- it would not be a  
21          surprise to the petitioners at that point if  
22          they haven't -- if -- if we've raised issues  
23          that they have not addressed and will not  
24          address, you know, they'll know that they're  
25          sort of out of compliance and that they're --



1 question. If I remember right, during the  
2 Mallinckrodt petition I believe that Denise  
3 Brock was told pretty much the day of the next  
4 Advisory Board meeting, so I mean how are --  
5 how do we know or how are we guaranteed that  
6 the petitioners are going to be given  
7 sufficient notice?

8 **MR. KATZ:** I'm sorry, can you explain -- Denise  
9 Brock was told what the date of an Advisory  
10 Board meeting?

11 **MR. ESPINOSA:** I don't remember -- do you  
12 remember what the petition was? For some  
13 reason, I remember that one of the issues that  
14 Denise Brock had on -- on the Mallinckrodt  
15 issue, it was basically told to her basically  
16 the day of the Advisory Board meeting when  
17 we're supposed to be voting on it, so  
18 (unintelligible) --

19 **DR. ZIEMER:** I don't think -- I think that was  
20 the new data or --

21 **MR. KATZ:** New data.

22 **DR. WADE:** Petition evaluation report?

23 **MR. KATZ:** Yeah, I mean she may have gotten new  
24 data very late, that's absolutely possible, but  
25 not --

1           **MR. ESPINOSA:** (Off microphone) Oh, I  
2           (unintelligible) --

3           **MR. KATZ:** -- the qualification of her  
4           petition. Her petition actually qualified.

5           **MR. ESPINOSA:** Yeah, there was new information  
6           that came out pretty much (unintelligible)...

7           **MR. GRIFFON:** I guess just to follow up on  
8           Henry's comment, I mean if you're working with  
9           the petitioner all along, this is a good thing.  
10          But if -- if -- then if they still get  
11          disqualified, that tells me that there's some  
12          serious deficiencies and you couldn't work it  
13          out with the -- with the petitioners. So then  
14          you're still only giving them seven days to --  
15          to make amendments or cha-- or appeal it. I  
16          think at that point they would have to make  
17          some more serious changes to it to -- to the --  
18          you know, to a resubmission or to appeal, and  
19          it might take more research on their part, and  
20          it seems like you're cutting them down to --

21          **MR. KATZ:** But --

22          **MR. GRIFFON:** -- I understand your 180 days,  
23          but I'm thinking of the petitioners, too, here,  
24          you know.

25          **MR. KATZ:** I absolutely agree. You keep in

1 mind that the petitioner can resubmit with new  
2 information at any time, so this doesn't  
3 preclude them from submitting a petition that  
4 has new information. This is for --

5 **MR. GRIFFON:** (Off microphone) (Unintelligible)  
6 it certainly --

7 **MR. KATZ:** -- you know, rendering a judgment  
8 based on the decision -- information that's  
9 there, because in fact the review doesn't allow  
10 the consideration of new information. I mean  
11 it's the information upon which the decision  
12 was made that this is decided upon. Right?  
13 The review. And that's -- that's in the rules,  
14 it's been in the rule and it's the --

15 **MR. GRIFFON:** (Off microphone) (Unintelligible)  
16 can't -- can't be based on new information  
17 (unintelligible) --

18 **MR. KATZ:** Well, they need to have a new  
19 submission.

20 **MR. GRIFFON:** (Off microphone) (Unintelligible)  
21 be a new submission?

22 **MR. KATZ:** Yeah.

23 **MR. GRIFFON:** All right, as long as that's  
24 communicated clearly --

25 **MR. KATZ:** Right.

1           **MR. GRIFFON:** -- to (unintelligible).

2           **DR. ZIEMER:** Okay. But in -- the case you're  
3 describing is a non-- non-qualifying petition -  
4 -

5           **MR. GRIFFON:** Right.

6           **DR. ZIEMER:** -- but did the clock still start  
7 when you've got that non-qualifying petition?

8           **MR. KATZ:** So the clock started as soon as --  
9 as -- at the point we render the decision that  
10 it doesn't qualify, that clock still starts  
11 then.

12           **DR. ZIEMER:** That's when it starts.

13           **MR. KATZ:** If it's -- appeals, right -- if it's  
14 appealed, yes.

15           **DR. ZIEMER:** Okay, so that -- that starts the  
16 clock, even if you've said it --

17           **MR. KATZ:** Even if we said no.

18           **DR. ZIEMER:** -- we have a non-qualifying  
19 petition, why is there a clock going at that  
20 time?

21           **UNIDENTIFIED:** It's not a petition.

22           **MR. KATZ:** Well, it's -- I mean it's not a  
23 petition at that time, but if -- if then it's  
24 reversed, if that decision's reversed, then in  
25 fact they had the information they needed for a



1 petition and --

2 **DR. ZIEMER:** Well, I'm -- I'm kind of asking  
3 why the clock is going when there really is no  
4 qualifying petition in place. That's all I'm  
5 asking.

6 **MR. KATZ:** Because if the decision is rendered  
7 in error, in effect, if NIOSH then comes back -  
8 - if there's a review conducted and it's  
9 decided that in fact it did --

10 **DR. ZIEMER:** Oh, the --

11 **MR. KATZ:** -- meet the requirements --

12 **DR. ZIEMER:** It wouldn't necessarily be based  
13 on new information (unintelligible) --

14 **MR. KATZ:** No, it wouldn't be based on new  
15 information.

16 **DR. ZIEMER:** Larry, you want to speak to that?

17 **MR. ELLIOTT:** (Off microphone) (Unintelligible)  
18 the question as I heard it --

19 (On microphone) The question as I heard it was  
20 is the clock ticking while we're trying to  
21 qualify the petition. It's not ticking. What  
22 we do is we contact the petitioner once we  
23 receive the petition. We schedule a phone  
24 interview with them, a phone consult -- not an  
25 interview, a consultation with them, and we

1 cover the information in that consultation that  
2 they've provided, they've submitted with their  
3 petition. And we note any issues or  
4 deficiencies with regard to the criteria that's  
5 outlined in the reg. We provide them a summary  
6 letter of that consultation and the summary  
7 letter, where there are deficiencies noted,  
8 provides them 30 days of time to respond to  
9 those deficiencies. At that point in time, if  
10 they have responded, then we again talk to them  
11 about does the new information that you've  
12 provided to cure a deficiency really cure the  
13 deficiency. If not, we give them another 30  
14 days. If it does, however, cure the deficiency  
15 -- well, if it doesn't cure the deficiency and  
16 they say well, I have no other information to  
17 give, then the petition is disqualified and  
18 they're told at that point in time it  
19 disqualifies. They're also given another  
20 letter to say why it disqualifies. If it's --  
21 **DR. ZIEMER:** Okay, I'm still not clear if the  
22 clock is going or not going.

23 **MR. ELLIOTT:** The clock is not going until they  
24 -- until we tell them the petition is now  
25 qualified. All of the submittal information

1           meets the criteria in the regulation. We give  
2           them a letter to that effect, as well. That's  
3           when --

4           **DR. ZIEMER:** This appears to say that during  
5           the 7-day period the clock is already going and  
6           it has been -- not -- it's not a qualified  
7           petition.

8           **MR. KATZ:** Larry, you're -- I think -- I mean  
9           this is -- you -- I think this is confusing it  
10          because all of what you said is true up to the  
11          point -- when you say it doesn't qualify, then  
12          they have their seven days to submit a  
13          petition. Now if NIOSH conducts and review and  
14          says nay, you know, not right, OCAS --

15          **MR. ELLIOTT:** That's right, we --

16          **MR. KATZ:** -- it does qualify, then it  
17          qualified at the time you said it didn't, in  
18          effect, because it should have. It should  
19          have, is the point.

20          **DR. ZIEMER:** That clearly is confusing.

21          **MR. ELLIOTT:** Let's go back. There's two  
22          statements that can be made --

23          **MR. KATZ:** It should have.

24          **MR. ELLIOTT:** -- with regard to qualification.  
25          One, it doesn't qualify and here are the

1 reasons and the deficiencies, and we give them  
2 30 days to try to cure those deficiencies. If  
3 we say -- the other statement is it does  
4 qualify. And where am I losing it, though? I  
5 mean --

6 **MR. KATZ:** Because the -- because the decision  
7 is reviewed. When you say yes --

8 **MR. ELLIOTT:** The decision gets -- if they  
9 challenge it -- oh, yeah --

10 **MR. KATZ:** Right.

11 **MR. ELLIOTT:** -- if they say --

12 **MR. KATZ:** This is what we're talking about.

13 **MR. ELLIOTT:** I missed that point. If they say  
14 look, I don't have any other information, this  
15 needs to qualify. We tell them you have seven  
16 days to go through the appeal here.

17 **MR. KATZ:** You have seven days to submit an  
18 appeal.

19 **MR. ELLIOTT:** Submit an appeal.

20 **DR. MELIUS:** And then how long does the appeal  
21 take?

22 **DR. ZIEMER:** And the clock is going during  
23 those seven days?

24 **MR. KATZ:** The clock is going -- yes.

25 **MR. ELLIOTT:** The clock is going from that

1 point where we say --

2 **MR. KATZ:** So then it may take -- it may take a  
3 couple more weeks for -- for --

4 **DR. ZIEMER:** Even though --

5 **MR. KATZ:** -- the review to be conducted --

6 **DR. ZIEMER:** -- they're not qualified still?

7 **MR. KATZ:** It still hasn't qualified. The  
8 review is being conducted, and then the  
9 review's completed, and if the review finds  
10 that indeed this petition should have  
11 qualified, then the reason for the -- the  
12 reason for the dates -- whether it's clear or  
13 not, the reason for the date in here, the  
14 explanation for that, is that that clock was  
15 ticking on NIOSH that whole time because in  
16 reality they had met the requirements, as it  
17 says in here. What this says -- it doesn't say  
18 in here the time of qualification, it says when  
19 it meets the requirements of Sections --  
20 whatever they are, 1 through -- 7 through 9.  
21 So it would have met the requirements, even  
22 though NIOSH hadn't found it so until later on.  
23 That -- that's what's intended anyway.  
24 Obviously it's not clear.

25 **DR. ZIEMER:** I understand -- I understand what



1           If -- if -- and I suspect that the Board is not  
2           prepared at this time --

3           **DR. WADE:** No.

4           **DR. ZIEMER:** -- to develop any comments on  
5           this. If in fact you have comments that you  
6           think are significant enough that it would be  
7           important for them to be, as it were, endorsed  
8           by the full Board, then we would need to either  
9           have a full conference call to attain a Board  
10          position, or this could be done at our  
11          scheduled conference call if NIOSH were willing  
12          to extend the comment deadline. So those are  
13          some options, I would guess.

14          Jim Melius.

15          **DR. MELIUS:** Yeah, I -- I would suggest three  
16          areas for potential comment. I'm going to  
17          identify the areas and sort of the nature of  
18          the type of comments. I'm not looking for  
19          agreement or disagreement with those, but just  
20          -- just sort of to posit out how we might do  
21          this.

22          The first area is I -- I personally think it  
23          would be helpful if we commented on the efforts  
24          that the Board are making to address the  
25          timeliness issue, that the rationale for this

1 change in the law was to promote better  
2 timeliness in terms of the dealing with SEC  
3 petitions. I think with our evaluation plan,  
4 the workgroup, what we adopted the other day,  
5 some other steps that we've talked about, that  
6 we are -- are taking steps to work with NIOSH  
7 to make this process more -- more timely. And  
8 so I think -- you know, we agree with the  
9 intent and -- and are taking steps to be  
10 supportive.

11 The second area is the seven-day issue. I mean  
12 I, again, personally think that's too short a  
13 time for an ap-- a meaningful appeal. I mean  
14 it just -- I understand the clock is ticking  
15 issue. However, I think that the seven days is  
16 not fair to a petitioner to ask them to respond  
17 to what can be a difficult process. I don't  
18 believe it's occurred to date, and it may be  
19 moot and -- and so forth and, you know,  
20 something along, you know, 21 days or something  
21 like that I think is -- is fairer to the  
22 petitioners in terms of deciding and keeping  
23 the process going. It's just -- it's just too  
24 confusing to ask people well, just -- if you  
25 can't do it in seven days, you can resubmit



1 after that and I -- I don't think that's a -- a  
2 fair process. And I don't think it burdens NI-  
3 - overly burdens NIOSH by reducing that because  
4 frankly I think they left themselves enough of  
5 a loophole at the end of the 180 days in order  
6 to be able to keep -- keep going or stretch  
7 that -- that time period out.

8 And that would be the third area I think we  
9 should focus some comments on is the -- is the  
10 interpretation of the 180-day -- 180-day limit.  
11 I -- again, it may be consistent with the law.  
12 In fact they're saying -- they aren't' really  
13 trying to interpret, they're just saying that  
14 they're accepting it statutorily so forth, but  
15 I think there's a variety of comments we may  
16 want to consider to make on that aspect of it.  
17 So those would be the three areas I see as --  
18 would suggest that we consider.

19 **DR. ZIEMER:** Okay, thank you. Let me ask if  
20 there are reactions to that from other Board  
21 members or other areas that you think might  
22 deserve some attention.

23 **MS. MUNN:** Do I hear ten days?

24 **DR. ZIEMER:** Or you might feel that these are  
25 not of interest to you and you just don't think

1 the Board should address them. Rich.

2 **MR. ESPINOSA:** The se-- the seven days also has  
3 me concerned, and I'm just kind of wondering  
4 what would constitute as basically an approved  
5 appeal for the review. You know, could the  
6 petitioner just basically write, you know, I'm  
7 appealing your decision and quote a certain  
8 amount of time to -- to do his research -- his  
9 or her research? Or -- or, you know, are they  
10 just bound by the seven days to provide the  
11 documentation?

12 **DR. ZIEMER:** So you're asking whether they  
13 simply have to assert that they're appealing  
14 within seven days --

15 **MR. ESPINOSA:** Yes, that --

16 **DR. ZIEMER:** -- or do they --

17 **MR. ESPINOSA:** -- that (unintelligible) my --

18 **DR. ZIEMER:** -- have to provide all the --

19 **MR. ESPINOSA:** -- question, yes.

20 **DR. ZIEMER:** And I -- I don't know if we know  
21 the answer to that at the moment, but that's an  
22 issue perhaps. Liz, are -- are you going to  
23 speak to that or you --

24 **MS. HOMOKI-TITUS:** (Off microphone) I was  
25 actually going to talk to Ted about

1 (unintelligible).

2 **DR. ZIEMER:** Okay, just don't get too close to  
3 the mike when you -- when you talk to Ted.  
4 Okay.

5 **DR. MELIUS:** Next time crawl along the floor.

6 **DR. ZIEMER:** Jim, do you have any other  
7 comments?

8 **DR. MELIUS:** Do that.

9 **DR. ZIEMER:** Do you want to defend your -- your  
10 suggestion?

11 **DR. MELIUS:** Actually Liz distracted me, now I  
12 can't remember what I was going to -- I was  
13 going to --

14 **DR. ZIEMER:** We'll hear from Henry and then you  
15 might --

16 **DR. MELIUS:** Okay, then. I actually remember.  
17 Go ahead (unintelligible).

18 **DR. ANDERSON:** Just as gratuitive advice to the  
19 -- gratuitous advice to the Board, you ought to  
20 be sure you're notified when the 180 days  
21 starts, 'cause my assumption's going to be most  
22 of the deliveries will be at 180, and if that's  
23 two days before a Board meeting, then the Board  
24 is going to be in a position of not having had  
25 time and so the delay will then be on the Board

1 side. So I think it's -- behooves the Board to  
2 look at when the 180 days will run up -- run  
3 out for some of these so you can plan in  
4 advance for how soon after that do you want to  
5 have a Board meeting to address whatever the  
6 conclusion is so you don't get caught three  
7 months waiting after something has been sent  
8 out or comes just days before.

9 **DR. ZIEMER:** Okay. Mark?

10 **MR. GRIFFON:** Yeah, I -- I think one -- one of  
11 my areas which I think we need to comment on --  
12 I think it falls under Jim's first section of  
13 timeliness, but the question of the timeliness  
14 of qualifying the petition. I guess that's  
15 undefined at this point, that you could go on  
16 as long as you -- as NIOSH needs to qualify a  
17 petition, and I think that is a fairly  
18 administrative task. I don't know that that's  
19 taken a long time in -- in past petitions, but  
20 I -- there's no time frame on it so that might  
21 be something we'd want to discuss in our  
22 comments.

23 And the second thing is just a -- I guess at  
24 the end of the 180 days, the recommendation. I  
25 think maybe a better discussion of the

1 definition of a recommendation, whether it's a  
2 -- you know, it doesn't appear that it has to  
3 be an up or down recommendation on the petition  
4 now, so we might want to comment on that as to  
5 whether -- what -- just what is a  
6 recommendation or how is it defined.

7 **DR. ZIEMER:** So that's a fourth item, really,  
8 what constitutes a recommendation; is it an  
9 up/down versus --

10 **MR. GRIFFON:** Versus ongoing like research or -  
11 - yeah.

12 **DR. ZIEMER:** Okay, thank you.

13 **DR. WADE:** I also think Mark's first point  
14 should be captured as a separate issue. I mean  
15 this issue of the time frame to qualify, I  
16 think it would be worth capturing that as a  
17 separate issue. I think it's different than  
18 Jim's number one.

19 **DR. ZIEMER:** Yeah, it --

20 **DR. MELIUS:** It is.

21 **DR. ZIEMER:** -- actually sort of crosses  
22 between some of the -- one and two, probably,  
23 maybe even three.

24 **DR. MELIUS:** I have some -- I actually  
25 remembered my earlier --

1           **DR. ZIEMER:** Yes.

2           **DR. MELIUS:** -- thought.

3           **DR. ZIEMER:** Okay.

4           **DR. MELIUS:** It -- it came back, and -- do  
5           that. But just to comment on that last point,  
6           I -- I think what -- my interpretation of  
7           Congress's intent here is to try to make the  
8           whole process more timely, and so, you know, I  
9           think, again, to -- in support of what Mark was  
10          saying about petition qualification is to try  
11          to keep it in -- within some time frame. We  
12          recognize that it's not always in NIOSH's hands  
13          in terms of getting information provided by the  
14          petitioners and so forth, but I think the  
15          overall intent ought to be to try to keep the  
16          overall process timely.

17          Again, going back to the issue of the -- a  
18          seven-day appeal, I would think that would come  
19          up where the -- NIOSH has had some time to work  
20          with the petitioner, they -- they've asked for  
21          more information to be submitted, and then  
22          there's a disagreement between NIOSH and the  
23          petitioner as to whether this is sufficient  
24          information to -- has been provided to qualify.  
25          Again, I don't believe it's happened so far,

1 and -- and when it did come up, I -- I think --  
2 I would like to leave enough time for the  
3 petitioner to have a -- you know, some  
4 reasonable amount of time to gather a little  
5 bit more information to buttress their -- their  
6 submission and to -- to make their argument.  
7 And I -- I just think, given how complicated  
8 this program is, that -- that seven days just  
9 isn't enough, and I think that -- that's where  
10 --

11 **DR. ZIEMER:** Well, and to discuss this fully,  
12 we may need an -- you know, what would the  
13 alternate proposal be, so --

14 **DR. MELIUS:** Yeah.

15 **DR. ZIEMER:** Okay. Wanda Munn.

16 **MS. MUNN:** Are we simply discussing what was  
17 placed before us, or are we now discussing the  
18 content of a proposed Board letter? One --

19 **DR. ZIEMER:** What we're doing, we trying to  
20 identify --

21 **MS. MUNN:** -- gets the feel--

22 **DR. ZIEMER:** -- if there are enough issues of  
23 concern that in fact the Board should try to  
24 develop a formal submission.

25 **MS. MUNN:** That's what I --

1           **DR. ZIEMER:** We are not actually developing  
2 such a submission here today, but trying to  
3 identify whether or not there are areas of  
4 concern. I think we've identified that indeed  
5 there are a number of areas, and if there's  
6 sufficient concern -- I really have five now  
7 that have been identified, and if there's a  
8 consensus that these are -- these rise to a  
9 level of concern amongst the full Board, then  
10 we will establish these as the topic for a  
11 Board meeting by phone.

12           Is there a -- let me ask if there's a kind of a  
13 general consensus that we need to develop some  
14 responses relating to these issues, or others.  
15 Robert, you have a comment?

16           **MR. PRESLEY:** Number one, I think we ought to  
17 issue some comments. On that seven-day issue,  
18 are they just sent a letter, or is it a return  
19 receipt type of a deal or -- or is it just a  
20 letter that goes out and...

21           **DR. ZIEMER:** How do they know?

22           **MR. ELLIOTT:** They will be notified by word of  
23 mouth and then by letter, and I believe that --  
24 all our letters go out FedEx, and so we know  
25 when they receive it.



1           **MR. PRESLEY:** Okay.

2           **DR. ZIEMER:** Thank you.

3           **MR. ELLIOTT:** Pretty certain of that point.

4           I'd also remark about Mark's comment about the  
5           time to qualify. The information I gave you  
6           yesterday on -- that lists the petitions that  
7           have qualified, you can see the time frame from  
8           the date the petition was received to when it  
9           was qualified. It ranges from three to five  
10          months.

11          **DR. ZIEMER:** Further comments on this? Yes,  
12          Roy.

13          **DR. DEHART:** Certainly I'm hearing enough  
14          concern here that I think the Board is going to  
15          be interested in pursuing this. Could we  
16          suggest that a lead be appointed to begin to  
17          put things together so we're not trying to do  
18          it all on the telephone?

19          **DR. ZIEMER:** What -- what would need to happen  
20          would be that we would have to have someone  
21          gather all the proposed comments and -- and put  
22          them together in some form. We -- we -- this  
23          could be done either by a working group or by  
24          an individual.

25          **DR. MELIUS:** I would volunteer to do either or

1 both or whatever, but others (unintelligible).

2 **DR. ZIEMER:** Okay. We are hesitant to pass up  
3 volunteers. I didn't hear any of the new  
4 people volunteering yet, but if it's agreeable,  
5 we'll ask Board members to propose comments to  
6 Dr. Melius. If you will collate them into some  
7 kind of a coherent response -- I know it will  
8 be coherent. Why do I have to even say that?  
9 I don't know.

10 **DR. ANDERSON:** Let's don't get carried away.

11 **MS. MUNN:** Just because you're leaving.

12 **DR. ZIEMER:** I'm more intending it to mean a  
13 categorized response, perhaps along the lines  
14 of the categories that you suggested already.  
15 And then make sure that that is distributed to  
16 Board members in advance of such a phone call  
17 so that we have a basis for considering that in  
18 advance of such a call. The -- if that's --  
19 any objection? Without objection, we'll follow  
20 that pattern with Dr. Melius having the lead.  
21 Now if -- if the Board wishes to do this simply  
22 for our next phone call meeting, we would have  
23 to request an extension of the comment period.  
24 Otherwise, if we could do it in a more timely  
25 fashion, the comment period ends February 21.

1           That would mean that we have only three weeks -  
2           - basically three weeks to get our suggestions  
3           in to Dr. Melius, have them collated, made  
4           coherent and distributed back to you for review  
5           perhaps no later than roughly -- I would say  
6           the 18th at the latest. Well, we need to be --  
7           we need more time than that if we're going to -  
8           - what would happen is the Chair would have to  
9           transmit the comments, so I guess they -- we  
10          could push pretty close to the 21st, but you  
11          know, I would say more like the 15th to have a  
12          phone meeting if we want to do that. About  
13          mid-February would be about -- yeah, about  
14          three weeks off.

15          Any preferences there? Lew, any advice to us  
16          on that? Is there a --

17          **DR. WADE:** I mean I'm --

18          **DR. ZIEMER:** I'm not sure how -- what kind of  
19          difficulties are presented in asking the time  
20          period to be extended --

21          **DR. WADE:** I think --

22          **DR. ZIEMER:** -- versus moving ahead --

23          **DR. WADE:** Right.

24          **DR. ZIEMER:** -- and pushing it here.

25          **DR. WADE:** Well, I mean I think this is

1           important enough, obviously, by the level of  
2           discussion, that we want to do this right. So  
3           I would suggest that -- that we seek, as  
4           quickly as possible, to have the time period  
5           extended. If that request is met, then we  
6           could use our meeting on the 14th. If it's  
7           not, then I'd get back to you immediately and  
8           schedule something maybe for the middle of  
9           February. But I would think we'd rather take -  
10          - you would rather take the time to do it  
11          right.

12         **DR. ZIEMER:** Yes.

13         **DR. MELIUS:** And if I recall, that's been done  
14          in the past, also, so (unintelligible).

15         **DR. ZIEMER:** And Larry's shaking his head that  
16          that appears to be doable and be a brief  
17          extension of a few weeks on the comment period.

18         **MR. ELLIOTT:** Yes, that would be our  
19          preference, too, to just go forward with a  
20          *Federal Register* notice announcing that the  
21          public comment period has been extended, and we  
22          can put that into effect right away. And we  
23          extend it out through -- past the March 14th  
24          date.

25         **DR. MELIUS:** And it is an interim final rule,

1 so --

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

3 **DR. MELIUS:** -- things are in place.

4 **DR. ZIEMER:** Right, right.

5 **DR. MELIUS:** It's not like we're holding up --

6 **DR. ZIEMER:** Right, exactly. So if that's  
7 agreeable, we'll proceed on that basis, and  
8 this will be one of the items for the  
9 regularly-scheduled Board phone call.

10 **DR. WADE:** On March 14th.

11 **DR. ZIEMER:** On March 14th. Thank you very  
12 much. Does that complete this item?

13 **UNIDENTIFIED:** Yes.

**BOARD WORKING TIME/DISCUSSION**

**DR. PAUL ZIEMER, CHAIR**

14 **DR. ZIEMER:** Are we ready for the updates then?

15 **DR. MELIUS:** We have some --

16 **MR. GRIFFON:** I think we have some --

17 **DR. MELIUS:** -- the Department of Justice  
18 letter. I also have some --

19 **DR. ZIEMER:** Oh, yes --

20 **DR. MELIUS:** -- scheduling issues --

21 **MR. GRIFFON:** Right.

22 **DR. MELIUS:** -- regarding -- and assignment  
23 issues regarding the SEC reviews that we need  
24 to --

1           **DR. ZIEMER:** Okay, let's do the Department of  
2 Justice letter. Jim, you were tasked to draft  
3 that and I guess that's been distributed?

4           **DR. MELIUS:** Yes, it has, and I'd actually  
5 start off by pointing out one error in it. It  
6 was actually our meeting in April 2005 that we  
7 were made aware of this issue. I was actually  
8 searching the web site through -- that's how I  
9 discovered our minutes were missing. I finally  
10 found this in the transcript of that -- that  
11 meeting where we -- that letter. And then I  
12 also -- this letter is, to a large extent,  
13 based on the initial -- the earlier letter that  
14 we had sent to the Secretary, so the language  
15 is -- is similar. Let me read it and enter it  
16 into the record.

17           **DR. ZIEMER:** Uh-huh.

18           **DR. MELIUS:** (Reading) The Advisory Board on  
19 Radiation and Worker Health continues to have  
20 concerns about the legal advice from the  
21 Department of Justice Office of Legal Counsel  
22 regarding the procedures for the utilization of  
23 classified or restricted information for the  
24 qualification of claimants for the Special  
25 Exposure Cohort under the EEOICPA program.

1           The Board was first made aware of this ruling  
2           in April 2005, and at that time we wrote you a  
3           letter expressing our concerns and requesting  
4           additional information and clarification on  
5           this matter. At our Board meeting on January  
6           25th, 2006 we were again briefed about this  
7           issue.

8           The Board is concerned about the possible  
9           implications of this legal advice on our  
10          ability to review SEC petitions in a matter  
11          (sic) compatible with the original legislation  
12          and the ensuing regulations governing this  
13          program. While the Board is fully supportive  
14          of the need for preventing the release of  
15          classified or restricted information, the Board  
16          also recognizes the critical importance of  
17          transparency to the EEOICPA program. Due to  
18          the long history of secrecy at DOE nuclear  
19          facilities, former workers are very suspicious  
20          of secrecy related to any health-related  
21          information used as the basis for their claims.  
22          Although having Board members with appropriate  
23          security clearances review any classified or  
24          restricted material necessary for SEC  
25          evaluation may allow the Board to utilize such

1 information in our deliberations, that use  
2 would not be transparent to the petitioners and  
3 other interested parties. The Board is  
4 concerned that such procedures could undermine  
5 the credibility of our recommendations.  
6 The Board respectively (sic) requests a copy of  
7 any written legal advice specific to this  
8 matter, and a briefing by someone knowledgeable  
9 about the basis for this determination. This  
10 would assist the Board in attempting to address  
11 this legal advice while maintaining a process  
12 that is consistent with the original intent of  
13 the EEOICPA legislation.

14 **DR. ZIEMER:** Okay. And you are moving this as  
15 --

16 **DR. MELIUS:** Yes.

17 **DR. ZIEMER:** -- a letter to be sent to the  
18 Secretary of Health --

19 **DR. MELIUS:** Yes.

20 **DR. ZIEMER:** -- and Human Services?

21 **DR. MELIUS:** Correct.

22 **DR. ZIEMER:** Is there a second?

23 **MR. ESPINOSA:** Second.

24 **MR. GIBSON:** Second.

25 **DR. ZIEMER:** And it's open for discussion --



1           seconded by Gibson. Open for discussion.

2           Comments on wording, on content? Wanda Munn.

3           **MS. MUNN:** There is some concern that the issue  
4           of classified information is perhaps not

5           acceptable for what we are trying to do here.

6           And I'm not at all sure -- actually, the only

7           sentence that -- that seems to imply that is

8           the first sentence of the second paragraph.

9           Even though this may be true, I don't believe

10          we can turn our backs on the fact that

11          classified information is going to be a reality

12          and that we will have to deal with it.

13          Implying to the Secretary that we need to find

14          some way to get around that may simply be

15          muddying the water. It would be unfortunate if

16          we -- in an attempt to clarify what we wanted

17          to do and to expedite what we wanted to do, it

18          would be unfortunate if we made things more

19          difficult. Certainly there's -- there's no

20          question that better legal advice about the

21          briefing, and a briefing would be more than

22          welcome, but there is I think a legitimate

23          concern about where to draw the line as to what

24          we request and what we infer in our...

25          **DR. ZIEMER:** Wanda, do you have a change -- a

1 suggested change that would clarify that in  
2 some way, or were you just simply raising the  
3 concern?

4 **MS. MUNN:** I'm just simply raising the concern.  
5 There's -- the remainder of that paragraph I  
6 think is quite clear and doesn't create the  
7 same kind of conflicts that the first sentence  
8 seems to.

9 **DR. ZIEMER:** Jim?

10 **DR. MELIUS:** Two things. One is the first  
11 sentence is largely drawn from our initial  
12 letter (unintelligible) --

13 **DR. ZIEMER:** That is already sent.

14 **DR. MELIUS:** -- and I understand the concern,  
15 and in the last paragraph is where I try to say  
16 that -- that look, we're -- we -- you know,  
17 again, we respect the need for classification,  
18 we recognize that we -- that it has to be --  
19 you know, it's a fact of life in this program,  
20 and we're simply saying we want to be able to  
21 address -- you know, this legal advice has gone  
22 from -- the way it's been portrayed to us from  
23 a policy to advice and I'm not sure exactly all  
24 -- what the right terms are and whether they're  
25 -- they're meaningful, but -- but just saying

1           that we want to be able to incorporate it.  
2           We're affirmatively saying we want to be able  
3           to incorporate what's appropriate to -- do  
4           that, while also maintaining what's important -  
5           - you know, the transparency of this program  
6           and procedures that we've set up in an attempt  
7           to be transparent.

8           **MS. MUNN:** I agree very strongly with what  
9           you've just said.

10          **DR. MELIUS:** Yeah.

11          **MS. MUNN:** I am not at all sure that this  
12          letter conveys that in quite that way. That's  
13          what I'm saying. If, as you said, we recognize  
14          that this is a fact of life and we have --

15          **DR. MELIUS:** Okay.

16          **MS. MUNN:** -- to deal with it, but the letter  
17          hasn't really --

18          **DR. MELIUS:** Okay.

19          **MS. MUNN:** -- said that. It's implied that it  
20          may be a fact of life, but we don't like it and  
21          we'd like to try to find a way around it, is...

22          **DR. ZIEMER:** Okay. While you're thinking about  
23          that, let's get some other comments. Michael?

24          **MR. GIBSON:** I do also agree that, you know,  
25          there's the issue of classification and we're

1 concerned about that, that's -- I also believe,  
2 and I don't know if any of the other Board  
3 members do, but I believe the public does, that  
4 just because some lawyer sitting somewhere says  
5 this is not a violation of due process, I  
6 believe the petitioners believe it is and I  
7 believe it's their Constitutional right.

8 **DR. ZIEMER:** Okay. Thank you. Other comments?

9 (Pause)

10 I sense that Dr. Melius is trying to do some --

11 **DR. MELIUS:** Yeah.

12 **DR. ZIEMER:** -- some wordsmithing there for the  
13 moment to -- it also appears that the -- the  
14 Board agrees with the general thrust of the  
15 letter, and the concern is perhaps on polishing  
16 the wording.

17 **DR. MELIUS:** (Unintelligible) make actually one  
18 comment to both what Mike and Wanda said. You  
19 may not remember, but it's actually posted on  
20 the web site under -- under our -- the  
21 miscellaneous Advisory Board items was -- this  
22 letter wasn't there, but there was a letter  
23 written around the same time from Congressman  
24 Sensenbrenner and Senator Bond raising a number  
25 of concerns about the reported policy -- this

1 goes back to roughly May or June of last year -  
2 - and raising some of these issues about due  
3 process, and even -- frankly, as people that  
4 were involved in -- key people involved in  
5 passing the legislation, pointing out that in  
6 their mind this was not consistent with the  
7 original intent of the legislation, at least  
8 the full implications of -- of the policy as --  
9 as reported at -- at that time. So -- as a  
10 piece of information.

11 Let me try something -- a suggestion, which --  
12 this may make it a little bit long, but in the  
13 second paragraph, (reading) While the Board is  
14 fully supportive of the need for preventing the  
15 release -- this would be the second sentence --  
16 While the Board is fully supportive of the need  
17 for preventing the release of classified or  
18 restricted information, and recognize the  
19 necessary use of this -- such information, it -  
20 - within a DOE nuclear facility, the Board also  
21 recognizes the critical importance of -- I'm  
22 trying to capture your --

23 **MS. MUNN:** Yeah.

24 **DR. MELIUS:** -- your concept of yeah, it's not  
25 only -- not just an incidental issue, it's a --

1 I think that's what you were saying.

2 **MS. MUNN:** I think that's fair.

3 **DR. ZIEMER:** So you're suggesting a friendly  
4 amendment, which would simply be the addition  
5 of the phrase in that second sentence, "and  
6 recognizes the necessary use of such  
7 information in the" -- was it in the DOE...

8 **DR. MELIUS:** In the DOE nuclear facilities.

9 **DR. ZIEMER:** DOE nuclear facilities or nuclear  
10 program, is there --

11 **DR. MELIUS:** Nuclear program, yeah, that's  
12 better. Then a new sentence, The Board -- why  
13 don't we say they also --

14 **DR. ZIEMER:** Well, that would just be inserted,  
15 would it not?

16 **MS. MUNN:** Yeah.

17 **DR. MELIUS:** Yeah.

18 **DR. ZIEMER:** Yeah.

19 **MS. MUNN:** Yeah.

20 **DR. ZIEMER:** Insert. Wanda, does that --

21 **MS. MUNN:** Yes, it does.

22 **DR. ZIEMER:** -- additional phrase --

23 **MS. MUNN:** It -- that does.

24 **DR. ZIEMER:** -- satisfy the concern --

25 **MS. MUNN:** That does my -- satisfy my concern.

1           **DR. ZIEMER:** Okay. Let me ask now, with that  
2 friendly amendment, is the Board ready to --

3           **DR. WADE:** Can you read that?

4           **DR. ZIEMER:** The phrase that would be inserted  
5 -- it would say (reading) While the Board is  
6 fully supportive of the need for preventing the  
7 release of classified or restricted information  
8 -- that's the existing phrase; insert this  
9 phrase -- and recognizes the necessary use of  
10 such information in the DOE nuclear program,  
11 comma --

12          **MS. MUNN:** No, period.

13          **DR. ZIEMER:** -- and then continue, the Board  
14 also --

15          **MS. MUNN:** Period.

16          **DR. ZIEMER:** -- recognizes...

17          **MS. MUNN:** Period, and then --

18          **DR. ZIEMER:** What?

19          **DR. MELIUS:** Period, and then a new sentence.  
20 Then "The Board" --

21          **MS. MUNN:** Then a new sentence, "The Board also  
22 recognizes".

23          **DR. ZIEMER:** That doesn't sound right then.

24          **MS. MUNN:** Yeah.

25          **DR. ZIEMER:** No, it -- it's not a correct --

1 it's "While the Board is supportive" dot, dot,  
2 dot "and recognizes the necessity  
3 (unintelligible) use", comma -- I think it's  
4 just inserted as a phrase. Correct?

5 **DR. MELIUS:** Yeah, that'll be fine, or --

6 **DR. ZIEMER:** Yeah.

7 **MR. GRIFFON:** Yeah.

8 **DR. ZIEMER:** Okay. With that change, let me  
9 ask if there are other modifications or  
10 comments, or are you ready to adopt this  
11 letter, and if so adopted, the Chair will  
12 transmit it to the Secretary of Health and  
13 Human Services.

14 (No responses)

15 Okay, we're going to vote then -- or Jim, did  
16 you have an additional comment there?

17 **DR. MELIUS:** No, I'm -- I'm sorry.

18 **DR. ZIEMER:** Okay. Then all in favor, say aye?

19 (Affirmative responses)

20 And any opposed?

21 (No responses)

22 Any abstentions?

23 (No responses)

24 Motion carries and it will so be ordered.

25 Okay, let's see, what was that other thing?





1           **DR. ZIEMER:** Okay, yes, continue.

2           **DR. MELIUS:** My suggestion and -- obviously --  
3           is that I -- I do think it'd be helpful to have  
4           them involved in some way in the ongoing  
5           workgroups that are dealing with Y-12 and Rocky  
6           Flats because of the timing it's coming up. I  
7           think there are some legitimate issues  
8           regarding the amount of time and effort that  
9           they have left on the site profile task to --  
10          to deal with these, and I think it may actually  
11          facilitate being able to get a good review of  
12          NIOSH's evaluation of the SEC petition at both  
13          of those sites if we have them involved there.  
14          I would suggest that we do a separate one, and  
15          I would suggest Chapman Valve for that one,  
16          only because I'm a little bit more familiar  
17          with -- I really don't recall the other two new  
18          ones -- but as one where we'd actually go  
19          through the whole process 'cause -- where we  
20          would, you know, sort of -- do the initial  
21          stage, you know. I think it's early enough  
22          where we would have, you know, a workgroup get  
23          together with NIOSH and with SC&A at a -- you  
24          know, a time when NIOSH is ready for that, and  
25          then sort of map out what the process would --

1           would -- go from there. The one problem with  
2           all three of those, as I understand them, is  
3           that -- that the -- I don't believe site  
4           profile reviews have been done. Chapman Valve,  
5           as I recall, has a site profile, but I don't  
6           believe the review has been done. And then the  
7           other two I don't think either have -- don't  
8           even have site profiles, so again, other  
9           choices that could be made there, but...

10          **DR. ZIEMER:** John Mauro reported to us  
11          yesterday -- I think it was for Y-12 -- the  
12          fact that -- the resolution process on site  
13          profile, which we recognize is focusing on, in  
14          a sense, SEC issues, you're burning your --  
15          your site profile hours, in a sense --

16          **DR. MAURO:** Yes -- yes.

17          **DR. ZIEMER:** -- and if we were to use Y-12 as a  
18          starting point and assign some of the SEC task  
19          to Y-12, that would certainly alleviate --

20          **DR. MAURO:** Absolutely.

21          **DR. ZIEMER:** -- that. So it seems to me  
22          there's a logic in -- in -- since, in a sense,  
23          you're already involved in Y-12, to --

24          **DR. MAURO:** Yes.

25          **DR. ZIEMER:** -- to flesh that out.

1           **DR. MAURO:** To date, the -- once we've  
2 delivered our draft report, any follow-up work  
3 we're involved in, whether it's a working group  
4 meeting, any direction we get up to this  
5 moment, has been billed against our Task I  
6 budget that we set aside for Y-12. And the --  
7 we -- there really isn't very much been set  
8 aside because it was -- the expectation was  
9 we'd be able to move through the closeout  
10 process pretty expeditiously. I mean that's  
11 really it.

12 Now if in fact you decide certain site profiles  
13 you'd like to have be reviewed under Task V,  
14 you have the option -- for example, you had  
15 mentioned you may want a full review. You may  
16 recall that we divided up our work for Task V  
17 into two really -- basically two categories.  
18 One where you request that we do a full review  
19 of -- of the site profile, or you may do --  
20 we're calling ad hoc investigations where there  
21 may be a particular issue. So in effect, for  
22 the purpose of managing the Task V, it would be  
23 helpful to me if you could designate whether  
24 you're looking for a full review in accordance  
25 with the approved procedures or an ad hoc

1 review, which would -- we'd actually work with  
2 you to define exactly what aspect of the SEC  
3 issues you'd like us to look at.

4 **DR. ZIEMER:** And I think in the case of Y-12,  
5 we already know that --

6 **DR. MAURO:** Yes, we do.

7 **DR. ZIEMER:** -- because we -- we know what the  
8 full review is and we also know which issues  
9 are the SEC issues, so --

10 **DR. MAURO:** Yes.

11 **DR. ZIEMER:** -- that one kind of takes care of  
12 itself. Let me ask here -- Robert, did you  
13 have a comment on that in -- in general, or --

14 **MR. PRESLEY:** In general, which sites do we  
15 have -- of the three that we're talking about,  
16 Chapman Valve, Ames and ORINS, which one would  
17 encapsulate more people -- involvement there?  
18 Would there be -- one of those be more helpful  
19 if we took it on first over any of the others  
20 in reviewing the SEC petition? Or are all  
21 three --

22 **DR. ZIEMER:** Do we know numbers of people  
23 involved, that's what you're asking?

24 **MR. PRESLEY:** Don't know -- yeah, uh-huh.  
25 Right.

1           **DR. ZIEMER:** Don't have that information right  
2 at hand.

3           **MR. PRESLEY:** Okay.

4           **DR. ZIEMER:** What about Rocky?

5           **DR. MELIUS:** Rocky I thought is --

6           **DR. ZIEMER:** Did you mention Rocky?

7           **DR. MELIUS:** Yeah, I was thinking Rocky the  
8 same as SEC, and I --

9           **DR. ZIEMER:** Rocky --

10          **DR. MELIUS:** We keep changing the terminology  
11 here. It's -- I thought -- it's gone from  
12 partial, ad hoc, we had focused, and I prefer  
13 focused 'cause I think we're trying to sort of  
14 -- as we -- as we are trying to do the same  
15 with our -- the Board's overall review of an  
16 SEC evaluation and in NIOSH's development of  
17 the information I'm trying to sort of focus on  
18 what are critical areas. I think we also want,  
19 you know, you, our contractor, to focus in on  
20 what are -- what are critical issues. And  
21 certainly for both Rocky Flats and Y-12, given  
22 the (unintelligible) that should be focused  
23 reviews. I would -- we --

24          **MR. GRIFFON:** I was just going to add onto  
25 that, Jim.

1           **DR. ZIEMER:** Okay, Mark.

2           **MR. GRIFFON:** For Y-12 and Rocky we've already  
3 focused them through the resolution process, so  
4 we know -- we know where to focus now and just  
5 roll those -- those issues right into --

6           **DR. ZIEMER:** What we need to do now --

7           **MR. GRIFFON:** -- the SEC process  
8 (unintelligible).

9           **DR. ZIEMER:** -- is formally identify that the -  
10 - that that part of the focused review is the  
11 site profile task now.

12          **DR. MELIUS:** Yeah, yeah, no, exactly.

13          **DR. ZIEMER:** SEC task.

14          **DR. MELIUS:** And on the kinds of questions that  
15 are important for SEC 'cause --

16          **DR. ZIEMER:** Right.

17          **DR. MELIUS:** -- again, going back what we've  
18 done is we've sort of modified the site profile  
19 process to try to get information necessary for  
20 SEC evaluation, and it's not always as helpful  
21 as --

22          **DR. ZIEMER:** Yeah, Jim?

23          **DR. NETON:** I just have sort of a question or  
24 point of -- question for clarification. I'm  
25 not -- it's not clear in my mind what this --

1           this review is when they're sort of prior to  
2           release of an SEC evaluation report or -- as  
3           such, say like Chapman Valve was -- the issue  
4           was raised. NIOSH is actively engaged in  
5           preparing draft reports that are responding to  
6           the petition. I'm not clear what SC&A's --  
7           where SC&A's involvement would -- would become  
8           engaged with NIOSH. And in fact, in certain  
9           instances, the SEC petition themselves raises  
10          issues with the -- with the site profile  
11          report, and so we are actively evaluating that.  
12          And then if SC&A then is in parallel reviewing  
13          those -- the site profile -- it just sort of  
14          seems to me to be a -- a convoluted process.  
15          **DR. MELIUS:** We're not talking about the site  
16          profile. We're talking about the SEC --  
17          **DR. NETON:** Right, but that's part and parcel  
18          of the whole process.  
19          **DR. MELIUS:** But we have to -- we have to  
20          address both there and -- and you know --  
21          **DR. NETON:** Right, but I'm just -- it's -- can  
22          be very confusing because --  
23          **DR. MELIUS:** I understand.  
24          **DR. NETON:** -- we are currently reviewing the  
25          profile and responses to SEC petition questions



1 possibly, and then -- then we'll have SC&A  
2 going down a parallel path raising the same --  
3 it just seems confusing to me.

4 **DR. MELIUS:** Well, potentially confusing -- I  
5 mean the alternative is to wait till you're  
6 done with everything and then start, which is -  
7 - hurts us in terms of timely -- I mean start -  
8 -

9 **MR. GRIFFON:** I guess --

10 **DR. MELIUS:** Yeah.

11 **DR. NETON:** But --

12 **DR. ZIEMER:** One could argue that until there's  
13 an SEC petition -- a qualified petition --

14 **DR. MELIUS:** There is one.

15 **DR. NETON:** There is a qualified petition for  
16 those three that were under discussion.

17 **DR. ZIEMER:** Is Chapman qualified, though?

18 **DR. MELIUS:** Yeah.

19 **DR. NETON:** Right. It just seems that then  
20 SC&A will be in process doing an SEC  
21 evaluation. I mean that's what I'm hearing,  
22 and --

23 **DR. MELIUS:** Yeah, yeah, yeah --

24 **DR. NETON:** -- if that's the intent, that's  
25 fine.

1           **DR. MELIUS:** -- yeah.

2           **MR. GRIFFON:** I think, Jim, this -- I mean just  
3           -- just to -- 'cause this is our -- our policy  
4           that we've approved provisionally, right?

5           **DR. NETON:** Yeah.

6           **MR. GRIFFON:** And the question is -- the idea,  
7           the notion, was to sit down with SC&A, NIOSH  
8           and maybe a workgroup early on and -- and  
9           outline a path forward, so maybe at that point  
10          you say, you know, based on what we've got  
11          here, you know --

12          **DR. NETON:** Right.

13          **MR. GRIFFON:** -- don't waste your time on this  
14          part of the site profile 'cause we're going to  
15          -- you know, here are -- here are these results  
16          we see -- and you have a meeting where --

17          **DR. NETON:** Yeah.

18          **MR. GRIFFON:** -- you frame (unintelligible)  
19          issues and path forward. I mean  
20          (unintelligible) --

21          **DR. NETON:** Okay, yeah, yeah --

22          **MR. GRIFFON:** -- this is the notion. I think  
23          we've got to work through this.

24          **DR. NETON:** -- yeah, I'm just trying to get a  
25          little more clarity here because it's going to

1           be (unintelligible) --

2           **DR. WADE:** I understand it well enough that I  
3           could try and explain it.

4           **DR. NETON:** Okay.

5           **DR. WADE:** Now or later. Now -- I mean it --  
6           there are two kinds of -- there'll be two kinds  
7           of SEC tasks that we might ask -- you might ask  
8           your contractor to undertake. One is the  
9           complete review and one is the focused review.  
10          Let's deal with the complete review first.  
11          I think, as Mark said, consistent with  
12          discussions we had yesterday, that the first  
13          step in the complete review would be a sit-down  
14          with SC&A and NIOSH and a working group of the  
15          Board, and that meeting would be to identify as  
16          clearly as possible those issues that would be  
17          critical for the successful resolution of the  
18          SEC issue. And I think NIOSH would have to be  
19          candid in saying, you know, these are the  
20          issues we see, or laying out background and  
21          having SC&A say these are issues we see. So  
22          this one meeting would begin to identify the  
23          critical issues. It would -- it would be the  
24          matrix that we would follow. And then we would  
25          ask SC&A to work those issues in parallel with

1 NIOSH working those issues towards hopefully a  
2 time when there's mutual resolution.

3 Now again, that will have to be worked out a  
4 bit as we go, but that's what I see as the  
5 total package.

6 The focused review I think we already have,  
7 where based upon -- for Rocky Flats and Y-12, I  
8 think we have identified key issues in the  
9 matrix that we think are critical to the  
10 resolution of the SEC process. I think what we  
11 need to do is task SC&A with continue to work  
12 on those issues towards resolution with NIOSH.  
13 Only now you'll be working them within the  
14 confines of an SEC task, as opposed to a site  
15 profile task.

16 Now if the Board is comfortable with the  
17 latter, then I could task the contractor to  
18 begin to work on two focused SEC tasks in Rocky  
19 Flats and Y-12, and the substance I would use  
20 to define them would be the open items in the  
21 high priority matrix that has been developed to  
22 this point.

23 Now I admit that the complete review is fuzzier  
24 in terms of how it would play out. But I think  
25 the only thing we can do is to have people of

1           like good intentions sit down and meet, and I  
2           think something will evolve.

3           **DR. ZIEMER:** And those -- proceeding on those  
4           two is fairly clear because that's the  
5           direction we're already going, but then we need  
6           to ask what's next in the queue. Is it Rocky?  
7           Or -- not Rocky, I'm -- we've got Y-12 and  
8           Rocky. What's next in the queue after that?  
9           Even though we may not task them to start  
10          anything, do we want to prioritize this?

11          **MR. ELLIOTT:** I think we're closer on Ames than  
12          we are on Chapman or the Oak Ridge Institute.

13          **DR. ZIEMER:** Ames would kind of be on stand-by,  
14          though. Right? For us.

15          **MR. ELLIOTT:** For you, right, we're -- yeah,  
16          we're working all three of these, but I think  
17          we're farther along on the Ames effort.

18          **DR. ZIEMER:** Would it be helpful to do what  
19          Mark described in terms of even Ames at this  
20          point, sitting down and --

21          **MR. ELLIOTT:** Yes --

22          **DR. ZIEMER:** -- mapping out (unintelligible) --

23          **MR. ELLIOTT:** -- I think so. I think -- to  
24          operationalize what I'm understanding we need  
25          to do here and what I asked for yesterday to be

1 more coordinated, we need -- on our side, we  
2 need to come to grips with what are the issues  
3 we're wrestling with, how far along do we --  
4 have we got, what data do we have, what data do  
5 we not have, and share that. So you know,  
6 we're going to have to identify a point in time  
7 here where we can --

8 **DR. ZIEMER:** So at least --

9 **MR. ELLIOTT:** -- sit down with --

10 **DR. ZIEMER:** -- we know what the road map is,  
11 even though the involvement at that point may  
12 not be very great.

13 **MR. ELLIOTT:** Right.

14 **DR. NETON:** I would -- I would just like to  
15 offer that it's the same people that are trying  
16 to resolve the Y-12 and Rocky Flats SEC  
17 petitions by --

18 **DR. ZIEMER:** Right.

19 **DR. NETON:** -- the next Board meeting that it  
20 would be working on these other three  
21 petitions.

22 **DR. MELIUS:** (Off microphone) (Unintelligible)  
23 absolutely, yeah, yeah.

24 **DR. ZIEMER:** And that's why I say we're just  
25 talking about what's in the queue and -- and we

1           -- we can, if necessary, go ahead and identify  
2 this but not expect that to occur right away --  
3 just to know what's coming up. Right?

4       **DR. WADE:** Uh-huh.

5       **DR. ZIEMER:** Let me ask if -- can we take it by  
6 consent that that's how we should proceed and  
7 instruct Lew to make the appropriate tasking  
8 orders available to proceed with Y-12 and  
9 Rocky? And I don't know what would need to be  
10 done on Ames at this point --

11       **DR. MELIUS:** I think --

12       **DR. ZIEMER:** -- other than to identify it as --

13       **DR. MELIUS:** I think we need a workgroup,  
14 though, on it. We're going to --

15       **DR. ZIEMER:** Right.

16       **DR. MELIUS:** (Off microphone) Whatever that  
17 (unintelligible) takes place, I think we need a  
18 workgroup on Ames.

19       **DR. WADE:** Right.

20       **DR. ZIEMER:** Yeah.

21       **DR. WADE:** Or what -- yes, you need a  
22 workgroup. What I would take as the action in  
23 Ames is to talk to all the parties involved,  
24 understanding the pressures of schedule, and  
25 look at when it would be most appropriate to

1 schedule this initial meeting on the Ames SEC.  
2 And I would need to know what workgroup -- what  
3 Board members to include as a workgroup on  
4 that.

5 **MR. PRESLEY:** Do we -- do we have any clock  
6 ticking on any of these?

7 **DR. WADE:** Yeah, all three of them. I mean you  
8 can see the qualified dates, and we have 180  
9 days from the qualified date. They're all  
10 roughly the same -- 10, 9 and 11.

11 **DR. MELIUS:** I would volunteer on Ames,  
12 probably just to get -- 'cause I think we -- we  
13 also want to be able to evaluate how our  
14 evaluation plan and how we sort of meld it in  
15 with what SEC (sic) proposed and so forth,  
16 so...

17 **DR. ZIEMER:** Mark, your -- your group's already  
18 heavily into Y-12, and also Rocky, so we would  
19 --

20 **DR. WADE:** Yeah, we'd use -- I'd use  
21 (unintelligible) --

22 **DR. ZIEMER:** -- Mark's --

23 **DR. WADE:** -- workgroup on the other two.

24 **DR. ZIEMER:** We can set up a new workgroup to  
25 address Ames. Do we have any other volunteers



1 to work with Jim on Ames?

2 **MS. MUNN:** (Off microphone) (Unintelligible)

3 **DR. ZIEMER:** And the new people can -- okay,  
4 Dr. Lockey, also.

5 **DR. WADE:** And did Wanda raise her hand?

6 **DR. ZIEMER:** And Wanda.

7 **DR. WADE:** So Wanda, Dr. Lockey, Jim --

8 **DR. MELIUS:** You're the tie-breaker.

9 **DR. WADE:** Okay, we've got --

10 **UNIDENTIFIED:** (Off microphone)

11 (Unintelligible)

12 **DR. MELIUS:** We'll just send you to the  
13 meetings.

14 **DR. WADE:** So just in summary, I'll deal with  
15 the contracting officer to issue three tasks  
16 under the SEC task of the SC&A contract. One  
17 will be a complete review, a total review, of  
18 Ames. The specific action I'll take will be to  
19 schedule a meeting of NIOSH, SC&A and the  
20 workgroup consisting of the parties mentioned  
21 at a time that, in my judgment and in the  
22 judgment of the chair of the workgroup, makes  
23 sense. But again, I'll be respectful of the  
24 schedules of people as we try and move towards  
25 the Rocky Flats and Y-12 resolution.

1           Then we'll issue two task orders for focused  
2           reviews, SEC reviews, for Y-12 and Rocky Flats,  
3           and the substance of those will be the opened  
4           issues in the high priority matrices that have  
5           been identified by the workgroup.

6           Now who would -- who's leading that workgroup,  
7           just so I know who to --

8           **DR. ZIEMER:** The Ames one? It's the first  
9           volunteer that gets that job.

10          **MS. MUNN:** It's always the first volunteer that  
11          gets that job. The guy with his name up there.

12          **DR. WADE:** Okay, that's the plan.

13          **DR. ZIEMER:** Thank you.

14          **UNIDENTIFIED:** (Off microphone)

15          (Unintelligible)

16          **DR. ZIEMER:** Yeah, we can take a break --

17          **MR. GRIFFON:** Can I just raise one --

18          **DR. ZIEMER:** Oh, sure, Mark, we --

19          **MR. GRIFFON:** Yeah, I think this is fine as a  
20          path forward. I just -- one question I -- and  
21          I haven't figured out how we deal with this,  
22          but it may be situa-- I mean we -- we said that  
23          we would have -- have the opportunity to use  
24          SC&A on certain SEC reviews. And it may be  
25          that, depending on the particular petition, we

1 don't need to task SC&A for a full review. So  
2 I don't know how we have a prior step to sort  
3 of get a handle on whether we do or do not need  
4 to include them early on -- something I think  
5 we need to think about, especially in the  
6 overall task order. I know there's a limited  
7 number of -- of full reviews that -- that --

8 **DR. ZIEMER:** I would think, Mark, on -- let's  
9 take Ames as an example. Suppose our  
10 workgroup, when this initial meeting occurs,  
11 looks at that and says you know, this is so  
12 straightforward even we can figure it out  
13 without help.

14 **MS. MUNN:** Yeah.

15 **MR. GRIFFON:** I guess that's my point, maybe at  
16 that first meeting we can make a decision that  
17 says, you know, we don't really need your help,  
18 John -- you know, sorry. Yeah, right.

19 **MS. MUNN:** Well, especially on --

20 **DR. ZIEMER:** I think at any time we can say  
21 thanks, but --

22 **DR. MELIUS:** (Off microphone) (Unintelligible)  
23 SEC review (unintelligible) --

24 **DR. ZIEMER:** -- either we have sufficient  
25 expertise or the issues are such that they're

1           fairly straightforward and -- and --

2           **MR. GRIFFON:** Just -- just a few more things  
3           before we break 'cause they're related to this,  
4           if -- if people could please --

5           **DR. ZIEMER:** Proceed.

6           **MR. GRIFFON:** This question on Pacific Proving  
7           Ground, I mean I just don't want to leave that  
8           hanging out there. Are we going to have Board  
9           -- Board involvement with this path forward,  
10          are we going to have SC&-- are we going to ask  
11          SC&A to assist us? I at least think we  
12          committed to Board involvement in our -- in our  
13          original motion.

14          **DR. ZIEMER:** On the Pacific Proving Grounds,  
15          the initial meeting with DTRA and -- and NIOSH,  
16          Mr. Presley has volunteered to represent the  
17          Board at that meeting, so as a minimum we will  
18          have that occur while that exchange of -- of  
19          information occurs. Other -- if there are  
20          others who want to participate in that, we can  
21          add to that, but at least we will have a Board  
22          presence there at that exchange.  
23          Then -- I'm trying to recall, what is the next  
24          step after that?

25          **DR. MELIUS:** I think the next --

1           **MR. GRIFFON:** Should we have a workgroup for  
2           that or just Bob at the -- I'm sure people have  
3           signed up for enough workgroups at this point.

4           **DR. MELIUS:** I would actually think the next  
5           step depends on what we find in the meeting  
6           with DTRA, so --

7           **MR. GRIFFON:** Yeah.

8           **DR. MELIUS:** -- you know, is there something to  
9           review or not? I mean (unintelligible) --

10          **DR. ZIEMER:** (Off microphone) (Unintelligible)  
11          you want to appoint a workgroup at that point.

12          **DR. MELIUS:** Yeah, I -- and then I think --

13          **MR. GRIFFON:** (Off microphone) That sounds  
14          (unintelligible) --

15          **DR. MELIUS:** -- I actually think if there's  
16          something substantial to review that it's going  
17          to take longer --

18          **DR. NETON:** Yeah.

19          **DR. MELIUS:** -- to sort of resolve, so we're  
20          not talking about doing that at a -- wouldn't  
21          be doing that necessarily at our next meeting.

22          **DR. NETON:** Right. I thought this was somewhat  
23          different because there were three very  
24          specific motions that were -- were enacted by  
25          the Board that we're going to track down.

1           **MR. GRIFFON:** (Off microphone) (Unintelligible)  
2           didn't bring it, yeah.

3           **DR. NETON:** And so I don't know that it's the  
4           same type of framework.

5           **DR. MELIUS:** (Off microphone) Yeah, and  
6           (unintelligible) --

7           **DR. ZIEMER:** Well, we have Board coverage of  
8           the interaction, so that's (unintelligible).

9           **MR. GRIFFON:** Okay. And --

10          **DR. ZIEMER:** Did you have another item, Mark?

11          **MR. GRIFFON:** Yeah, just on -- on the path  
12          forward on Y-12 under -- I just wanted to --  
13          and I didn't get a chance -- I was going to ask  
14          Jim during break, but there -- there is this  
15          CD, I don't know if it's become available yet  
16          or --

17          **DR. NETON:** Yes, I don't have it myself yet,  
18          but as soon as I receive it I will get it --

19          **MR. GRIFFON:** (Off microphone) Share that with  
20          (unintelligible) --

21          **DR. NETON:** -- copied and FedExed to the  
22          working group and SC&A.

23          **MR. GRIFFON:** -- (unintelligible) assigned.

24          **DR. NETON:** Yeah, I hope to have it by the time  
25          I get back to Cincinnati, either tomorrow, or

1           maybe Monday at the latest. And there's --  
2           there's no problem in sharing it under the  
3           provisions of the Privacy Act and all that type  
4           --

5           **MR. GRIFFON:** I mean I guess --

6           **DR. NETON:** -- (unintelligible) requirements.

7           **MR. GRIFFON:** I guess the question is, under  
8           this new SEC task, I think we could ask that  
9           SC&A review that in -- sort of in parallel with  
10          NIOSH. I guess that's -- that's the question  
11          maybe to everyone. Do we want SC&A to review  
12          this data on this CD in parallel with NIOSH.  
13          NIO-- they're just -- we're both -- we're going  
14          to all have sets of raw data, so just in terms  
15          of dupli-- you know, duplication of efforts, it  
16          might be a little duplicative, but we're also  
17          up against a time -- a clock here, so the sense  
18          was that, you know, in order to have something  
19          really to discuss at the workgroup, we'd better  
20          let SC&A get this earlier rather than later or  
21          else they won't have much of a -- much of time  
22          to respond.

23          **DR. ZIEMER:** Why don't we -- can we just go  
24          ahead and make that available to them so they  
25          have it in advance, and then it would kind of

1 be your call as the workgroup goes forward --

2 **MR. GRIFFON:** Okay.

3 **DR. ZIEMER:** -- to see what -- what they need  
4 to do. I don't think we want them to spend a  
5 lot of time on this till we get a look at it,  
6 though, and can evaluate it.

7 **UNIDENTIFIED:** Which site are we discussing?

8 **MR. GRIFFON:** Well, the question is -- I guess  
9 the question is just whether they begin to look  
10 and assess that in -- it's -- it's this  
11 question of timing.

12 **DR. ZIEMER:** Yeah.

13 **MR. GRIFFON:** If -- if they're not -- it's  
14 probably going to take NIOSH two or three weeks  
15 to look at this, and if our workgroup meeting -  
16 - I set a tentative date of February 27th, so  
17 if we don't get anything back to SC&A for three  
18 weeks, you know, then the clock's ticking on  
19 them and I -- you know, we want to have  
20 something -- I guess I'm trying to move this  
21 discussion forward so we're all on the same --

22 **DR. ZIEMER:** Yeah.

23 **MR. GRIFFON:** -- page. It's a little bit  
24 unique, but I think we're going to face some of  
25 these kind of issues as we're against the clock



1 on -- on these petitions.

2 **DR. ZIEMER:** Mark, are you suggesting that we  
3 should have SC&A proceed to look at this --

4 **MR. GRIFFON:** That's -- that's my --

5 **DR. ZIEMER:** -- concurrently?

6 **MR. GRIFFON:** That's my suggestion, yes.

7 **DR. ZIEMER:** Board members, does that make  
8 sense to you?

9 **MR. PRESLEY:** Yeah.

10 **DR. ZIEMER:** Any objection?

11 **MS. MUNN:** (Off microphone) (Unintelligible)

12 **DR. MELIUS:** I would get them bo-- we need to  
13 get them going on both. Right?

14 **DR. ZIEMER:** John, is that doable -- and this  
15 would be done now under the SC&A --

16 **MR. GRIFFON:** SEC task.

17 **DR. ZIEMER:** -- task, so the --

18 **DR. MAURO:** See if I understand this --

19 **DR. ZIEMER:** Under the SEC task.

20 **DR. MELIUS:** My understanding of the way in  
21 which we're authorized to get the green light  
22 is -- for Task V is we do need, in effect,  
23 direction. If it can take this form --

24 **DR. ZIEMER:** (Off microphone) (Unintelligible)  
25 that, and this would then become part of the --

1           **DR. MAURO:** Oh, so we -- we --

2           **DR. WADE:** This would be part of the focused  
3 task we would give you on --

4           **DR. MAURO:** Fine.

5           **DR. ZIEMER:** Would it -- it would include the  
6 review of the items on that list.

7           **DR. WADE:** Now what I would tell you is please,  
8 if you need to start to work tomorrow, do so  
9 under the site profile task. And then when  
10 this task order comes into place, then we can -  
11 -

12          **DR. MAURO:** Okay.

13          **DR. WADE:** -- we can change over. I don't want  
14 you to wait for the paperwork, but --

15          **DR. MAURO:** Uh-huh.

16          **DR. WADE:** -- I mean if it's the sense of the  
17 Board that you should do that, I would say  
18 start under the site profile task and then  
19 we'll work with dispatch to get you an SEC  
20 focused task for Y-12 that will then cover the  
21 continuation.

22          **DR. MAURO:** I understand. One point -- comment  
23 I'd like to make is that during the  
24 presentations of Rocky and Y-12 it's not always  
25 apparent which of the 11 or 12 or 13 items

1 represent what we would call dose recons-- site  
2 profile issues. Now I tried, if you recall,  
3 out of the 21 issues that we discussed I  
4 believe dealing with Rocky, I took my best shot  
5 at that time to just communicate my feeling  
6 that well, there are at least, in my mind,  
7 three -- if you recall. I think one of the big  
8 challenges, in order to streamline the process  
9 and really expedite it, is to quickly come to a  
10 common mind regarding which issues are SEC  
11 issues so that we can design a very focused  
12 assault on those issues. And right now it's  
13 not -- I don't think it's that clear which ones  
14 fall -- and I don't know if there'd be  
15 universal agreement right now if we had a  
16 discussion on this matter. So I think one of  
17 the fir-- first and foremost, when we move  
18 forward with the scope of work, is to try to  
19 come to grips with which ones are the ones we  
20 really need to look at.

21 **MR. GRIFFON:** So for Rocky we're probably a  
22 little -- we're a step behind Y-12  
23 (unintelligible) --

24 **DR. MAURO:** No, the other way around. I think  
25 -- oh, yeah, I -- right now, at least in my

1 mind -- okay? -- I have a clearer picture of  
2 what I believe to be the SEC issues on Rocky  
3 than I do on Y-12.

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

5 **DR. WADE:** But just for the Board's  
6 edification, I'll take my lead on that task  
7 order from the chair of the working group, and  
8 then I'll come to you with that, and then if  
9 there -- if you have input, then we can -- we  
10 can dialogue (unintelligible).

11 **DR. MAURO:** Yeah, I -- I think -- in fact, once  
12 we move into the process, it's going to be a  
13 very -- a lot of iteration because we're going  
14 to reach a point where our investigations will  
15 take us to a place where we say well, we don't  
16 know how exactly you should do it, but I think  
17 it can be done. You see, so I think that this  
18 is -- we're -- we're entering a process now  
19 that's a little bit different than the process  
20 we've had before, and I think the degree to  
21 which we could clearly identify SEC issues and  
22 clearly identify what point we can say I -- at  
23 least as your contractor, say I think we have  
24 enough information where we believe it's  
25 possible to do this dose reconstruction. It's

1 just a matter of agreeing on how do -- what  
2 degree of conservatism you may want to use, but  
3 it's a tractable problem and I think -- and I  
4 think this will all unfold as we move through  
5 the process.

6 **DR. WADE:** And while we're entering into a  
7 difficult decision, we're entering into it  
8 after having sort of cut our teeth on other  
9 issues and we've developed a methodology and a  
10 trust that I think will serve us well as we  
11 work through this.

12 **DR. ZIEMER:** Good, I think we'll --

13 **MR. GRIFFON:** Need a break.

14 **DR. ZIEMER:** -- go ahead and take the break,  
15 and then after the break we're going to have a  
16 program update from NIOSH by Larry Elliott and  
17 a program update from DOL by Dr. Case, so we'll  
18 have both of those right after the break.

19 (Whereupon, a recess was taken from 3:05 p.m.  
20 to 3:25 p.m.)

**PROGRAM UPDATES - NIOSH**  
**(INCLUDING UPDATE ON SCIENCE ISSUES)**  
**MR. LARRY ELLIOTT**

21 **DR. ZIEMER:** Okay, we are ready to proceed with  
22 program updates. First we're going to have the  
23 NIOSH update and that'll be presented by Larry  
24 Elliott, and you have a copy of the slides in

1           your booklet.

2           **MR. ELLIOTT:** Thank you, Dr. Ziemer, and I know  
3           the hour is getting late and everyone's tired  
4           and --

5           **MS. MUNN:** This is good news.

6           **MR. ELLIOTT:** -- we'll just keep this to -- as  
7           quick as we can, so --

8           **MS. MUNN:** This is what we look forward to,  
9           Larry.

10          **MR. ELLIOTT:** This is what you look forward to,  
11          okay. Well, as of January 13th of this year we  
12          had completed 12,264 draft dose reconstruction  
13          reports which have been sent to the claimants.  
14          That number includes about 526 I guess drafts  
15          that were in the hands of the claimants. The  
16          number below that, 11,648, are those finals  
17          that have gone on over to Department of Labor  
18          for adjudication. So we -- you know, we're --  
19          we're really I guess proud to say that we've  
20          completed that many cases in four years, and  
21          then I would also qualify that with saying I  
22          wish we had done more. But we're standing at  
23          that right now.

24          We've seen 1,110 claims affected by the Special  
25          Exposure Cohort additions which have -- classes

1           which have been added, and they're listed there  
2           as you see. Department of Labor is working on  
3           the eligibility of those cases and processing  
4           them. And in some instances we may find  
5           ourselves doing dose reconstructions for  
6           certain non-presumptive cases and with -- you  
7           know, for members of those classes.  
8           We've -- as I've reported to you before, we  
9           have a concerted effort underway to finish the  
10          oldest cases up, and we've targeted the first  
11          5,000. We've finished 3,944 of those, and then  
12          the numbers below this -- 88 claims below 5,000  
13          have drafts in the hands of claimants that  
14          we're awaiting the OCAS-1s to be signed on  
15          those; 436 of the claims below 5,000 have been  
16          pulled. And again, that -- what does that  
17          mean? That means Department of Labor has  
18          withdrawn them from our caseload file for a  
19          variety of reasons -- either they were CLL and  
20          they were sent to us in the early days and they  
21          shouldn't have been sent, or the other end of  
22          this spectrum is -- and the most unfortunate  
23          aspect of this -- is that a claimant may have  
24          died without any survivors left, awaiting their  
25          dose reconstruction to be done. I can assure

1           you that's been a handful only, not a -- not a  
2           large number, but we do take that very  
3           seriously and are concerned about that.  
4           Four hundred and -- 46 claims below 5,000 have  
5           been administratively closed, and this is where  
6           we await our 60-day time frame for the OCAS-1  
7           to be signed, and if we don't get that OCAS-1  
8           back, we allow another 14 days' grace and we  
9           try to contact the claims and get the OCAS-1  
10          signed, explain what -- why the importance of  
11          that. And so we've had 46 of those claims  
12          where we've not got the OCAS-1 back and we've  
13          had to administratively close. We will reopen  
14          those cases if they come back forward and want  
15          to submit additional information or if they  
16          want to provide an OCAS-1, and we'll move the  
17          claim on to Department of Labor.  
18          192 claims below 5,000 tracking number are  
19          currently pended, and these are pended for a  
20          variety of reasons. Some of these are pended  
21          because of the lymphoma change that we have  
22          proposed. Some of them have been pended  
23          because of technical issues like glovebox  
24          Technical Information Bulletin that we're  
25          waiting on to be completed, which was done so



1 last month, just a variety of issues. And  
2 there's not one central issue there that would  
3 represent a bulk of those claims.

4 486 claims are active, and this number, since  
5 January 13th, is probably -- all these numbers  
6 have changed dramatically. This is a snapshot  
7 in time, of course, so these numbers do -- they  
8 are fluid and they do change, but 486 are  
9 active -- were active at this time and draft  
10 dose reconstructions were awaiting to be  
11 completed.

12 With regard to the Special Exposure Cohort  
13 petitions, six of those have been evaluated and  
14 sent to the Board for review and they're listed  
15 here. Five petition evaluation reports are  
16 currently in the process of being completed.  
17 That consists of Y-12, Ames, the Oak Ridge  
18 Institute for Science and Education, Rocky  
19 Flats and Chapman Valve. Six current requests  
20 to add a class to the SEC are in the  
21 qualification process, and I believe as of -- I  
22 was told from staff at -- back in the office  
23 this morning we can add Hanford to that list  
24 now. We got one in yesterday for Hanford and  
25 it'll be going through the qualification

1 process.

2 Twenty-one requests to be added to the Special  
3 Exposure Cohort have been administratively  
4 closed; were found not to meet the petition  
5 requirements as outlined in 42 CFR 83; or the  
6 facility in the petition was already a member  
7 of the SEC; or, for whatever reason, the  
8 petitioner voluntarily withdrew the petition.  
9 As you know, we have made proposed changes to  
10 the target organ for reconstructing dose for  
11 lymphoma cases, and in your January 9th meeting  
12 you approved a draft of this OCAS Technical  
13 Information Bulletin and we now have a *Federal*  
14 *Register* notice open for public comment on this  
15 proposed change. I believe the comment period  
16 closes February 4th. Once we have those -- any  
17 comments that are provided on this, we'll  
18 address those comments and implement this  
19 change. We will notice the public and notice  
20 the Board, as well, through -- through an e-  
21 mail to you all, but through a *Federal Register*  
22 notice as to the fact that we are implementing  
23 this change.

24 I might add that we have about 1,000 claims  
25 that are going to be affected one way or

1 another by this proposed change, 500 claims  
2 that have not been treated yet with a dose  
3 reconstruction and 500 claims -- approximately  
4 500 claims that were treated and dose  
5 reconstructed under the previous approaches.  
6 Just some graphics as we usually try to provide  
7 you on the number of claims received from DOL  
8 on the blue line, a line showing the draft dose  
9 reconstruction reports to the claimants in  
10 green, and a red line showing the finals that  
11 have gone to DOL, and this is an intent to show  
12 you that we're working off the backlog of  
13 claims.

14 As you know, we approach the Department of  
15 Energy for dose-related information, and the  
16 number of outstanding requests that we have  
17 right now is 231, and the number of outstanding  
18 requests that are greater than 60 days are 124.  
19 I believe that number has dropped since --  
20 since our last session together in October at  
21 Knoxville. That was up around 165. All I can  
22 say on this -- the greater than 60 days, we're  
23 still seeing the same sites, ETEC and -- I just  
24 blanked on the other site. Let me think about  
25 that and I'll come back to it.

1           Our telephone interview statistics are shown in  
2           this slide. We've conducted over 18,000 --  
3           almost 19,000 interviews, and we've sent out  
4           over 28,000 summary reports of those interviews  
5           to the claimants. I'm working really closely  
6           with Kate on making sure that some of the  
7           comments we heard in public comment period this  
8           meeting are being attended to and addressed,  
9           and she's taking some action -- tomorrow, in  
10          fact -- on making sure we follow up on things  
11          we heard here in this meeting. We have about  
12          181 interviews, as of January 13th, to be  
13          conducted.

14          We have about 5,600 cases that are in  
15          preparation for dose reconstruction, there's --  
16          collecting data, screening the cases, trying to  
17          determine which process -- whether it's an  
18          efficiency approach that will be used to  
19          complete the case or a best-estimate approach;  
20          1,213 cases are in the dose reconstruction  
21          process. At this point in time we had 499  
22          drafts out to the claimants and the final DRs  
23          that are completed and sent on to Department of  
24          Labor, a little over 11,600.

25          Just a graphic depiction of how we're working

1 the cases, broken down into 1,000-tracking-  
2 number categories, and also to show you that  
3 we're trying to work off the oldest cases  
4 first.

5 Administratively closed cases that I spoke  
6 about earlier are shown by -- I guess month  
7 here, by two-months time frame, and shows you  
8 kind of how the distribution of those  
9 administratively closed cases are -- are  
10 trending.

11 We're running at about ten percent rework right  
12 now. These are the number of cases that are  
13 sent back to us for some type of rework from  
14 the Department of Labor, can be -- a rework can  
15 be justified because the claimant had another  
16 cancer that was not provided in their original  
17 submission, additional employment has now been  
18 developed -- identified and developed, or there  
19 has been -- in an appeal there's been a finding  
20 that we did not apply our methodology  
21 appropriately.

22 Lastly, we do take a lot of -- still take a lot  
23 of claimant phone calls and a lot of  
24 stakeholder phone calls, and they're shown in  
25 this slide. We also respond to e-mails, as you

1 well know, and we try to do that within a 24-  
2 hour period of time.

3 I think that's it.

4 **DR. ZIEMER:** Okay, we're open for questions for  
5 Larry.

6 (No responses)

7 If not, we thank you, Larry, for that  
8 presentation.

**PROGRAM UPDATES - DOL**

**DR. DIANE CASE**

9 Next we'll hear from Dr. Diane Case from the  
10 Department of Labor. Diane, welcome. We know  
11 that you're tired.

12 **DR. CASE:** Do you want to adjourn  
13 (unintelligible) --

14 **DR. ZIEMER:** Does anyone have any questions for  
15 Diane?

16 **DR. ROESSLER:** We want the slides.

17 **DR. ZIEMER:** We do have copies in our book, if  
18 you...

19 (Simultaneous conversations ensued.)

20 **DR. ZIEMER:** She got a disk.

21 **DR. CASE:** I guess I forgot to ask which  
22 (unintelligible) -- all right. All right.  
23 Okay.

24 **DR. MELIUS:** Watch out, it's a trick.

1           **DR. CASE:** Is it? Well, anyway, thank you so  
2 much and --

3           **DR. MELIUS:** Jim Neton's revenge.

4           **DR. CASE:** -- once again, I'll be brief. It's  
5 just an update of some slides that we generally  
6 show. The first, number and types of claims  
7 received, this is specifically to Part B.  
8 Number of claims we received since January --  
9 since the inception of the program, 71,000. I  
10 think when we last reported in October it was  
11 69,000 or so, so another 2,000 after about  
12 three months.

13           The number of claims is a term that -- as we  
14 see later, we're going to use the -- cases and  
15 claims sometimes, and claims can be any number  
16 of cancers that are claimed by any one person,  
17 but it can also be a claim from a survivor.  
18 So one case can have a couple of claims on it.  
19 In addition, the number of cancers that are --  
20 or medical conditions that actually exist can  
21 be more than the number of claims received  
22 because each claim can have more than one  
23 cancer or more than one disease.

24           By far you can see the -- of the -- of the  
25 claims we receive, the majority of them have

1           been for non-covered (sic) conditions, so under  
2           Part B that would be due to radiation,  
3           beryllium sensitivity, beryllium illness or  
4           silicosis. The majority of claims we received  
5           have been for non-covered conditions. That  
6           would be medical illnesses, COPD, emphysema,  
7           you name it, things that may or may not be  
8           applicable under Part E. We'll talk about that  
9           later.

10          But as far as cancers go, that's the next  
11          majority of the claims that we receive,  
12          beryllium sensitivity, chronic beryllium  
13          disease, silicosis and RECA-covered conditions.  
14          Now we talk about case status. A case is -- is  
15          sort of that individual employee's case. It  
16          can contain more than one medical condition and  
17          it can also have one or more claimants on that.  
18          It could be the individual himself or herself,  
19          or the claimants on that -- that will be the  
20          survivors.

21          The total cases that we've received, almost  
22          51,000. Those that are in the district office  
23          right now, 20,810 cases have gone to NIOSH for  
24          a dose reconstruction. The majority of the  
25          cases in the district offices have recommended



1 decisions already, and those that are with the  
2 Final Adjudication Branch -- number of final  
3 decisions out of the 50,000-some-odd cases,  
4 about 35,000, 36,000 final decisions have been  
5 made; and those that are pending, about 2,500,  
6 2,600.

7 Final decisions, again based on claims, which  
8 could be more than one claimant, survivor. The  
9 number of decisions approved based on claims is  
10 almost 19,000, those that are denied, about  
11 27,700. Why those claims were denied, again, a  
12 lot has to do -- a majority, non-covered  
13 conditions, the employee's not covered or  
14 considered a covered employee, or survivors are  
15 not eligible, insufficient medical evidence is  
16 a small amount; and those that don't meet the  
17 POC criteria really is about 8,000, which is  
18 second in line to non-covered conditions.

19 For NIOSH referrals, those that are -- that  
20 we've sent to NIOSH and we've -- have been  
21 returned, about 11,000. Those that are pending  
22 at NIOSH, in the queue, about 8,900. We have  
23 had some that have gone to NIOSH that didn't  
24 actually require a dose reconstruction, it was  
25 not required for one reason or another, so

1           those have come back. And cases again, so that  
2           would individual employee's case, those with  
3           recommended decisions, about 2,500; those that  
4           are denied, about 7,400. And the most  
5           important, I think, figure would be the cases  
6           with final decisions, so accepted, about 2,000;  
7           denied, about 6,000. So I -- I guess you'd  
8           say it's about a 30 percent, 40 percent  
9           acceptance.

10          Information specific to Oak Ridge X-10, the  
11          number of cases we referred to NIOSH, 1,100 or  
12          so; the number we've received back with a dose  
13          reconstruction are about half of that, 558.  
14          I'm going to jump down to the cases with final  
15          decisions -- approved, 102; denied, 251 right  
16          now. And in total, the compensation paid out -  
17          - and that would be to claimants, meaning it  
18          could be more than one claimant -- it's, again,  
19          per case -- is on the order of \$14 million.  
20          I have another figure here -- did I just move  
21          this ahead by mistake? I did, okay. Let me  
22          just go back to X-10. I have a note here that  
23          even though we've paid out about \$14 million in  
24          -- to 123 claimants, that's based on the dose  
25          reconstructions and the NIOSH intervention, but

1 in total at X-10 DOL has paid out nearly  
2 \$61,000 to 529 claimants, so that would include  
3 things like beryllium disease, silicosis or  
4 medical conditions, as well.

5 At K-25, these are cases and claimants, those  
6 referred -- cases referred to NIOSH, 1,300;  
7 those returned from NIOSH, 666 -- again, about  
8 half. Go down to the final decisions, those  
9 that have been approved, 76; those that have  
10 been denied, about 300. So once again is  
11 hovering around a 30 to 40 percent -- 30, 35  
12 percent acceptance rate, depending on which  
13 data you look at and which site you're looking  
14 at. So those that had anything to do with  
15 NIOSH as far as dose reconstruction were at \$10  
16 million in compensation has been paid to 108  
17 claimants. And I have additional information  
18 on K-25, so this would include -- this doesn't  
19 include SEC payments, Special Exposure Cohort  
20 payments, but if you do include that, we've  
21 compensated about \$271 million to about 2,700  
22 claimants at K-25 thus far.

23 We'll go to Y-12 plant, cases referred to  
24 NIOSH, 2,400; those that have been returned  
25 from NIOSH, about 1,300. Again, that's just

1           about half again. Those with final decisions,  
2           321 were approved; denied, 528. And again, the  
3           bottom figure, \$47 million paid to, so far, 467  
4           claimants. And I have an update to this  
5           number, as well, and that would be the total  
6           compensation paid for this site is \$170 million  
7           to about 1, 500 claimants. And I believe that  
8           that number differs from the \$47 million versus  
9           \$170 million would include the other diseases -  
10          - beryllium, silicosis, as well as medical  
11          conditions. And quite frankly, I'm not so --  
12          I'm not sure if this also includes money for  
13          SEC -- the most recent SEC cohort at Y-12. I  
14          don't know if that -- if that total amount, the  
15          \$170 million that's been paid out, includes --  
16          includes any payments that have gone so far out  
17          to people who meet the SEC criteria at Y-12.  
18          Next one, W. R. Grace, 22 cases to NIOSH.  
19          We've received four back, two have been  
20          approved. I guess the other two are waiting  
21          with -- going through our process. And a total  
22          of \$300,000 has been paid to two -- two  
23          claimants. I have additional information. The  
24          total compensation paid at this site is  
25          \$450,000 to five claimants. So again, you

1 know, each case or -- two cases will have more  
2 than one claimant on that, so a total of  
3 \$450,000 to W. R. Grace employees.  
4 Pacific Proving Ground, we've had 93 cases  
5 referred to NIOSH. We've had returned ten.  
6 Cases with final decisions, one have been  
7 approved and three have been denied and what  
8 we've paid out so far is compensation to one  
9 claimant, \$150,000. And I have in my note here  
10 that in total to the Pacific Proving Ground  
11 we've paid out \$1.2 million to ten claimants in  
12 total. So again, those people would include  
13 non-radiation-induced issues. It would be the  
14 beryllium or silicosis.  
15 This is a -- be getting to the -- the bottom  
16 line slides. Total compensation, the number of  
17 payments we've issued, 17,000. Of course they  
18 include multiple payments on a given claim,  
19 they could. In compensation alone, based on --  
20 no, total compensation, sorry, we've got --  
21 what is it, \$1 billion, \$1.3 billion, and then  
22 add on to that the medical benefits and that's  
23 an extra \$83 -- where am I, where are my  
24 placeholders -- \$83 million, so...  
25 So I said I know I have to give you all a lot

1 of kudos for still having the presence of your  
2 minds after so long.

3 And then as far as the NIOSH cases go, and  
4 those would be the ones that have to meet the  
5 POC criteria, we've made 2,100 payments and  
6 total compensation of \$314 million.

7 Some accomplishments that have been of -- of --  
8 of late would be our new institution of the  
9 Part E from the Department of Energy. We've  
10 taken that over and it's gone on to the  
11 Department of Labor. Our interim final  
12 regulations were issued in May of 2005. We met  
13 the mandated deadline to get those out. We've  
14 added quite a number of staff to the district  
15 office and our resource centers, and there's  
16 another, I think, all in total, about 220 or  
17 250 new staff at the district offices. And I'm  
18 not sure if that includes about the 15 to 16  
19 new staff we have at the Washington, D.C. FAB  
20 office, as well.

21 We've also done a lot of Part E training for  
22 staff, new and old. Phase I is how to process  
23 Part E claims and Phase II was how to process  
24 complex issues in those claims, such as wage  
25 loss and impairment.

1 Additional Part E accomplishments, we exceeded  
2 our goal of making 1,200 payments by the fiscal  
3 year of -- end of 2005, and we did that. In  
4 fact, we issued 1,535 payments. We've also  
5 done a lot of public outreach for Part E, and  
6 also residual contamination issues, associated  
7 with NIOSH. In November 2005 we'd done 82 town  
8 hall meetings associated with the Part E, as  
9 well as residual contamination.

10 And for the Part E, our goal is to process --  
11 majority of 25,000 Part -- what were Part D  
12 cases by the end of fiscal year of 2006, so  
13 we'd like to get through 25,000 now Part E  
14 cases and get those paid out by the end of  
15 2006.

16 And I think one last slide here, Part E so far,  
17 we've -- the number of claims we have recorded,  
18 37,000 claims. So a lot of those claims came  
19 from Department of Energy. Some of them had  
20 physician panel reviews, some of them didn't,  
21 but in total 37,000 claims recorded. Those for  
22 which we've made recommended decisions, about  
23 3,000 or so. Those with final decisions to  
24 approve, 2,551. Those final decisions, some of  
25 them are based on a positive panel review

1 finding from DOE, plus DOL's review of the  
2 cases and moving them forward. And then some  
3 of them also include DOL processing and looking  
4 at the cases from the very beginning and moving  
5 up, so some of it is DOL alone and some of it  
6 is DOL using what -- some information was there  
7 from the Department of Energy. And in total,  
8 \$274 million have been paid so far on 2,000-  
9 plus cases.

10 And I think that's about all I have to say  
11 right now. It's a lot of figures and dollar  
12 values, but I also have good knowledge of any  
13 other questions that you might have as far as  
14 Department of Labor goes.

15 **DR. ZIEMER:** Thank you very much, Dr. Case.  
16 Let's open the questions here, we've got Dr.  
17 DeHart and then Dr. Melius.

18 **DR. DEHART:** Thank you, Dr. Case. One of the  
19 points that I would find of interest, and I  
20 think you were here when we've had some public  
21 comment periods, and that is the five, six,  
22 seven types of medical problems that are being  
23 reimbursed under Part E, because we hear a lot  
24 of complaints about chemical exposure co-- with  
25 radiation and so forth, and knowing how that's



1           breaking out in terms of pure worker comp would  
2           be of interest.

3           **DR. CASE:** I'll take that, thank you.

4           **DR. ZIEMER:** Dr. Melius?

5           **DR. MELIUS:** Yeah, I have a comment, a question  
6           and a reminder to the Board. The comment was  
7           actually one that Mike brought up last time,  
8           and it came up again last night. It's just the  
9           difficulty of communicating these programs to  
10          the claimants. Like Mike had a letter last  
11          time that --it's quite confusing. People --  
12          we've told them it's easy process, NIOSH will  
13          assist them. Then they get into the Subtitle E  
14          program and suddenly they have to produce a lot  
15          more information on disabilities as well as  
16          sometimes on medical and exposure and so forth.  
17          And anything we can do to facilitate that  
18          process -- I mean I know you're doing the town  
19          meetings and so forth, but -- and we had  
20          another -- one of the people speaking last  
21          night was clearly very befuddled, came to the  
22          NIOSH meeting, heard all this talk and NIOSH  
23          and really was dealing with --

24          **DR. CASE:** Department of --

25          **DR. MELIUS:** -- a DOL issue and a Subtitle E

1 issue, so --

2 **DR. CASE:** Absolutely.

3 **DR. MELIUS:** -- do that. The reminder is  
4 something that -- reminded me of is something  
5 we've postponed doing and I would ask that it  
6 get back on the agenda, and that is the issue -  
7 - I believe it came up with one of the  
8 Mallinckrodt SEC petitions, and that's the  
9 issue of how to deal with the non-SEC cancers.  
10 And if you remember, in one of them we made a  
11 recommendation that -- that those could be  
12 dealt with in some way and -- and we struggled  
13 a little bit with the wording and so forth, but  
14 at the time we talked about the Board sitting  
15 down and talking about what's sort of an  
16 appropriate policy -- you know, what -- when is  
17 it going to be feasible to reconstruct, you  
18 know, certain types of cancer and certain  
19 exposures in the situation where we are also  
20 approving a Special Exposure Cohort. And I  
21 would just ask that that get on the agenda for  
22 the next meeting before we have to encounter it  
23 again 'cause I think it's a -- it's a tricky  
24 area. We could involve -- you know, could end  
25 up asking that a lot of work, needless work,

1 unnecessary work get done, I guess is what I'm  
2 saying, and I think we really need to think  
3 very carefully about how we -- how we sort of  
4 direct that -- that through our actions -- the  
5 Board as we go up to the Secretary and, you  
6 know, what -- what entails from that.

7 My question is if you could -- can -- I don't  
8 think anybody (unintelligible) -- well, let me  
9 finish my question.

10 **DR. CASE:** Do you want to know the figure,  
11 another number? Or...

12 **DR. MELIUS:** No, no, my next question is  
13 actually -- you -- you have cases coming to  
14 NIOSH. I didn't see the cases coming back from  
15 Department of Labor to NIOSH, and that's one of  
16 the things we had inquired about in the past is  
17 --

18 **DR. CASE:** Sure.

19 **DR. MELIUS:** -- sort of a better understanding  
20 of where -- where problems are being  
21 encountered. Did --

22 **DR. CASE:** Could you -- where -- what --  
23 anyplace in particular here that --

24 **DR. MELIUS:** And I wasn't referring to any  
25 (unintelligible) in particular --

1 DR. CASE: Oh, okay.

2 DR. MELIUS: -- and maybe I missed it, but in  
3 the past, in previous presentations, we've had  
4 just a little bit of discussion about cases  
5 coming back from DOL to NIOSH --

6 UNIDENTIFIED: Reworks.

7 DR. CASE: Yeah, reworks.

8 DR. MELIUS: -- to just give us a little sense  
9 of where there are potential problems in the --

10 DR. CASE: Sure.

11 DR. MELIUS: -- program that we need to  
12 address, and --

13 DR. CASE: Absolutely.

14 DR. MELIUS: -- if you're not ready to comment  
15 on that, if you -- even if --

16 DR. CASE: Yeah.

17 DR. MELIUS: -- for sort of future  
18 presentations, I just thought it was helpful  
19 that -- for us and --

20 DR. CASE: Sure.

21 DR. MELIUS: -- sort of improving this program.

22 DR. CASE: I can -- could just give you a very  
23 rough figure. I think since April 2005 I think  
24 the number of rework requests that we've sent  
25 back -- this is very rough --

1 DR. MELIUS: Uh-huh.

2 DR. CASE: -- top of my head, is probably about  
3 450 or so. Now a good percentage of those, as  
4 Stu knows -- get his e-mails back -- there's a  
5 good -- small percentage that get through that  
6 never should have gotten through and they --  
7 they were fine. But a majority of them have to  
8 do with the claimant not bringing information  
9 forward after the dose reconstruction's been  
10 performed.

11 DR. MELIUS: Okay.

12 DR. CASE: So that's a good portion of that.  
13 But I'll definitely make sure that we include  
14 that information in the next one.

15 DR. MELIUS: Okay.

16 DR. ZIEMER: Further questions or comments?

17 (No responses)

18 Okay, thank you very much.

19 DR. CASE: Thank you.

**BOARD WORKING TIME, FUTURE MEETINGS AND PLANS**

**DR. PAUL ZIEMER, CHAIR**

20 DR. ZIEMER: And while we're talking about the  
21 programs, Lew, you had an issue -- or actually  
22 some information that needed to share with the  
23 Board.

24 DR. WADE: Right. Well, again, just -- you

1 know, we -- we've been espousing the virtue of  
2 transparency, and consistent with that virtue  
3 I've just come to understand that in the fourth  
4 round of reviews by SC&A, SC&A identified three  
5 cases where overestimating assumptions were  
6 used in error. It's possible that these errors  
7 could result in -- could impact compensation  
8 decisions, so the cases will be reopened and  
9 re-evaluated. We'll keep you posted. I thank  
10 SC&A for that effort. I think it sort of  
11 indicates the benefit of the audit program.  
12 There's not much more I can say about it now as  
13 these cases are being reopened and re-  
14 evaluated, but I wanted to -- to make that  
15 statement as soon as I had come to understand  
16 that.

17 **DR. ZIEMER:** I think -- let me add to that.  
18 The important thrust of this is that although  
19 the audit is not intended for any kind of a  
20 process for reopening claims, insofar as  
21 something is identified that could have  
22 significant impact, it seemed prudent that the  
23 contractor at least alert NIOSH to this. It  
24 will be their determination, together with  
25 Labor, as to whether it's something

1 significant. But at least not to wait to let  
2 NIOSH know about this, not to wait till the --  
3 the review process has been completed and then  
4 make this issue known. So it's basically an  
5 early alert to NIOSH that something might be  
6 amiss there and allow them to look at this  
7 early on, and therefore the Board needs to be  
8 aware of this. It's really nothing that we've  
9 covered in our procedures, per se, although it  
10 was clear that our intent was not to -- to do  
11 that sort of thing, it was -- the intent is to  
12 -- to identify systematic issues and process  
13 procedures and so on. But insofar as something  
14 like that occurs, I think it's -- we -- we  
15 assumed it would be the Board's intent that  
16 that not be kept from NIOSH for any length of  
17 time.

18 **DR. WADE:** Thank you.

19 **DR. ZIEMER:** Lew, would you -- oh, you  
20 (unintelligible) --

21 **DR. WADE:** -- about future meetings.

22 **DR. ZIEMER:** Right, exactly, and scheduling and  
23 going forward, we are scheduled for the phone  
24 call that's been identified. We're scheduled  
25 for the April meeting, which is expected to be

1 in Denver. What -- what can we expect beyond  
2 that?

3 **DR. WADE:** Okay. March 14th we have a call  
4 scheduled, I'd say 10:00 a.m. Eastern time?

5 **DR. ZIEMER:** Yes, that's on our schedules.

6 **DR. WADE:** Right, okay. On April 25th, 26th  
7 and 27th a face-to-face meeting. I propose we  
8 meet in Denver and, you know, more to be  
9 forthcoming. I would suggest an early July  
10 meeting. We'll get to you with dates and  
11 search your calendars. I'm proposing possibly  
12 Washington, D.C. I think we haven't been to  
13 Washington, D.C. in some time and I know that  
14 there are many people back there who have a  
15 great interest in the program, and I propose  
16 that we can talk about it at our next meeting.  
17 I would imagine then we would have a meeting in  
18 early October, a face-to-face meeting. Again,  
19 I'll get to you -- LaShawn will get to you with  
20 dates. The procedure I'm aiming for is in  
21 between each of those face-to-face meetings  
22 we'll have a phone call to try and deal with  
23 items that require our more immediate  
24 attention. And so that's really the plan of  
25 action. LaShawn will be searching your



1 calendars. The reason I didn't pass out  
2 calendars here is I want to make sure our new  
3 members are fully vested and through their  
4 clearances, and then we'll look at a firm  
5 schedule and the dates.

6 **MR. PRESLEY:** Lew, I have a comment.

7 **DR. ZIEMER:** Yes, (unintelligible).

8 **MR. PRESLEY:** On the July meeting --

9 **DR. WADE:** Uh-huh.

10 **DR. ZIEMER:** June or July?

11 **DR. WADE:** I'm talk-- thinking early July, but

12 --

13 **MR. PRESLEY:** Can you stay away from the July  
14 4th weekend this year?

15 **DR. WADE:** Okay.

16 **MS. MUNN:** Yeah.

17 **MR. PRESLEY:** Please.

18 **DR. WADE:** Well, then maybe late June.

19 **MS. MUNN:** Late June would be a lot better for  
20 me.

21 **DR. WADE:** We'll aim at late June then.

22 **DR. ZIEMER:** Lew will contact us for calendar  
23 information, so...

24 **DR. MELIUS:** I'm a little confused, Lew, by one  
25 thing is are the new members -- be joining us

1 for the April meeting or are we going to be  
2 operating short?

3 **DR. WADE:** No, I -- they -- I expect they'll  
4 join us for the March phone call.

5 **DR. MELIUS:** Okay, good. I just... sort of  
6 implied otherwise when you talked about the  
7 July scheduling, that's why I was a little  
8 (unintelligible).

9 **DR. ZIEMER:** The only thing lacking is what,  
10 conflict of interest information for --

11 **DR. WADE:** Right.

12 **DR. ZIEMER:** Yeah, so --

13 **DR. MELIUS:** Mark has a question.

14 **MR. GRIFFON:** (Off microphone) Oh, it's not a  
15 question. I just (unintelligible) a couple of  
16 dates (unintelligible).

17 **DR. ZIEMER:** Yeah.

18 **MR. GRIFFON:** We -- we've -- I've met with most  
19 of the interested parties, I think, or the  
20 critical parties on the workgroup meetings for  
21 my workgroup, and we've got February 13th, 9:00  
22 to 4:00 I would assume -- approximately 9:00  
23 a.m. to 4:00 in Cincinnati. That's going to be  
24 the procedures review, the second set of cases  
25 and the third set of cases, and we may not get

1 to all of those items, but at least, you know,  
2 provisionally those will be on the agenda.  
3 And then February 27th is -- is going to be  
4 9:00 a.m. to 4:00 also for Y-12 and Rocky Flats  
5 SEC -- or site profile review, and now I guess  
6 SEC, since they've been tasked for --

7 **DR. ZIEMER:** What was your second date, Mark?

8 **MR. GRIFFON:** February 27th. And I did want to  
9 mention these -- I assume these'll both be in  
10 Cincinnati in NIOSH's offices --

11 **DR. WADE:** Well --

12 **MR. GRIFFON:** -- but they're open to the  
13 public, so it's (unintelligible).

14 **DR. WADE:** Right, so if they're going to be  
15 open to the public, they probably won't be in  
16 NIOSH's offices. I would ask the other chairs  
17 of the working groups to look at those dates  
18 and, if possible, sort of combining meetings  
19 might be a good thing in terms of our ability  
20 to accomplish logistics. 'Cause since we'll --  
21 we'll have public meetings, we won't be going  
22 to NIOSH. We'll be, you know, securing the  
23 facility of a hotel, so --

24 **DR. MELIUS:** Could you get an e-mail out in the  
25 next day or early next week with those -- those



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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 January 26, 2006; and it is a true and accurate transcript of the testimony captioned herein.

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

WITNESS my hand and official seal this the 7th day of March, 2006.

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