

1 question on the coworker database and I
2 think that's probably better saved for
3 later. I don't know if it's under Jim
4 Neton's presentation or what, but I think
5 just to get it out here, I'd like a
6 description of how that's being put
7 together, how coworker is being defined and
8 what kind of data you're collecting in that
9 database, so I don't think you --

10 **MR. CALHOUN:** I think that would
11 probably be better for Jim or Dr. Toohey.

12 **DR. NETON:** We can talk about that.

13 **MR. CALHOUN:** Yeah.

14 **DR. ZIEMER:** Okay. Richard?

15 **MR. ESPINOSA:** Yeah, well, same as Dr.
16 Ziemer's question with Los Alamos Medical
17 Center, are you talking about the hospital
18 or...

19 **MR. CALHOUN:** It's actually listed as
20 the Los Alamos Medical Center, and it is --
21 it is the hospital. I've actually -- you
22 know, the one time that I was -- that I had
23 to contact them and I was successful, I went
24 through one of the resource center people
25 and talked to them, and it was associated

1 with the Department of Energy at one time.
2 And when I -- the time frame that I was
3 looking at was in the early '50's and they
4 are no longer associated with Department of
5 Energy at all anymore. I don't know who
6 owns them, but it's -- it's pri--

7 **MR. ESPINOSA:** (Inaudible) it's
8 Lovelace* now?

9 **MR. CALHOUN:** I'm not that familiar
10 with that out there.

11 **DR. ZIEMER:** Thank you. Further
12 questions or comments?

13 (No responses)

14 **DR. ZIEMER:** Okay. Grady, we thank you
15 for a very informative presentation.

16 We're now at the noon hour, at least
17 for those on east coast time. We're glad to
18 have Wanda join us. It's early morning
19 there in Richland.

20 There's a restaurant guide. Is there
21 just the one restaurant guide?

22 **MS. HOMER:** No, I have a number of them
23 --

24 **DR. ZIEMER:** There's a number of
25 restaurant guides that give you lots of

1 options here. Avail yourselves of those, if
2 you wish. We'll recess till 1:30. (12:00
3 p.m.)

4 (Whereupon, a luncheon recess was
5 taken.)
6 (1:30 p.m.)

7 **ANNUAL ETHICS TRAINING**

8 **DR. ZIEMER:** I'm going to begin
9 this afternoon by introducing David
10 Naimon. David is a member of the legal
11 staff for Department of Health and
12 Human Services, and David's going to
13 introduce to us our speaker for the
14 next topic, which is our annual ethics
15 training.

16 **MR. NAIMON:** Thank you, Dr. Ziemer. As
17 the Board members know, we have an annual
18 requirement for ethics training, and on
19 behalf of the HHS Office of General Counsel
20 I wanted to welcome and thank John Condray,
21 who is coming today to give you your -- your
22 ethics training. John is not only one of
23 HHS's top ethics experts, but really one of
24 the top ethics experts in the Federal
25 government.

1 He has been working in the field of
2 government ethics for more than 16 years,
3 first with two years at the Internal Revenue
4 Service, then with ten years at the U.S.
5 Office of Government Ethics, which is the
6 office that coordinates all the ethics-
7 related activities for the Federal
8 government, and then three years at the
9 National Institutes of Health. And then
10 since last year he's been in the ethics
11 division of the Office of General Counsel
12 where his primary client is the Centers for
13 Disease Control and Prevention, which of
14 course includes NIOSH.

15 John got his bachelor's degree from the
16 University of Maryland and his law degree
17 from the Georgetown Law Center, so we're --
18 we feel very lucky that he agreed to travel
19 here today in order to discuss these very
20 important issues with all of you. Thank
21 you.

22 **MR. CONDRAY:** Thank you, David. I must
23 say I -- I've been introduced before, but
24 I've never had my -- the person doing my
25 introduction be introduced before, so I come

1 to you this afternoon as the third domino in
2 the list.

3 I saw several eyes light up at the
4 entertaining prospect of an ethics lawyer
5 who is working for the Internal Revenue
6 Service, and I -- and I can tell you that
7 one of the great things about coming to the
8 Department of Health and Human Services,
9 after working for two years as an ethics
10 lawyer for the IRS and then ten years an
11 attorney at the Office of Government Ethics,
12 I was glad to have a job that was not in
13 fact in itself a punch line.

14 And the -- the -- and that's well and
15 good, because the ethics considerations are
16 issues that -- although we can be flip about
17 them -- and believe me, if you work for ten
18 years at the Office of Government Ethics,
19 you hear every single joke about government
20 ethics that are in the lexicon -- the
21 important -- the thing is that these issues
22 do matter because they can -- they can trap
23 the unwary and they can open up what --
24 valuable government work to collateral
25 attack on ethics grounds. And that's

1 unfortunately been something that's becoming
2 more and more prevalent, and so that's one
3 of the reasons that the Office of Government
4 Ethics has mandated the annual ethics
5 training requirement for many -- many
6 categories of senior government employees,
7 including special government employees who
8 are serving on advisory committees.

9 My objectives this afternoon -- in a
10 one-hour presentation I am going to make
11 absolutely none of you a subject matter
12 expert in the field of government ethics,
13 and I realize this. What I'm really
14 shooting for is that you obtain a general
15 familiarity with the conflict of interest
16 rules that are applicable to special
17 government employees and also to create what
18 a former colleague of mine used to refer to
19 as the wart on the edge of the nose. You
20 may not necessarily know the ins and outs of
21 government ethics, but hopefully it'll give
22 you an idea of where these issues come up.
23 And you think, like a wart on the end of a
24 nose, you kind of look and say I wonder if I
25 should get somebody to look at that, and

1 that's what this lecture is this morning, to
2 try to get you guys to -- to recognize when
3 it is that you want to consult with somebody
4 about these issues, and also knowing where
5 to go when and if you do have a question.

6 After the introduction, the -- I'm
7 going to spend the time outlining the key
8 ethics rules. After you leave today, you
9 hopefully all have this publication, which
10 was done by my office, the ethics division
11 of the Office of General Counsel. It's a
12 part of your materials for the course today
13 -- for the meeting today. And that has, in
14 much greater detail, information on
15 everything that I'm going to talk about this
16 afternoon. So if there's a particular
17 question or an area that you think might be
18 particularly pertinent to your situation, I
19 would recommend that you consult also with
20 that particular handout before -- to sort of
21 educate you on how to phrase a question that
22 you might bring to the committee management.
23 And hopefully we'll have a chance to look at
24 -- to do some brief Q and A, depending on
25 the time after my presentation winds up.

1 The ethics program in the government,
2 particularly for advisory committee members,
3 the first line of review that you see is
4 financial disclosure. All committee members
5 are required to file financial disclosure,
6 and these forms are then reviewed and
7 potential conflicts are identified. Once a
8 conflict is identified, then the conflict is
9 resolved through a number of methods. The
10 primary methods are recusal or
11 disqualification. That's merely stepping
12 out an involvement in a matter where a
13 committee member would have an interest. Or
14 where appropriate, sometimes waivers are
15 issued. And even -- and during the course
16 of service on the committee there are
17 conduct rules that apply and because it's a
18 -- we can reach you even after you leave the
19 committee, there are a few restrictions that
20 apply even after you have -- a committee
21 member has left government service.

22 We'll start with the financial
23 disclosure. As I said, all committee
24 members who are appointed as special
25 government employees are required under the

1 Ethics in Government Act to file a financial
2 disclosure report. This is an OGE-450. The
3 information that's on the report is used to
4 do an initial conflicts check and determine
5 whether a waiver is necessary or
6 appropriate. I want to add one point to
7 that aspect of financial disclosure, which
8 is that although the agency will review a
9 financial disclosure report and -- and that
10 will enable the agency to have an idea of
11 when there might be a situation that would
12 present a conflict of interest, merely
13 filing a financial disclosure report does
14 not place the onus for main-- for following
15 the financial disclosure statutes on the
16 agency. The onus is on the individual
17 employee, as it is for all Executive Branch
18 employees, to stay in compliance with the
19 conflict of interest statutes and
20 regulations.

21 I use -- a quick example of this. It
22 can trip up even people in very senior
23 positions. At the -- some of you may be
24 familiar with the case of Marvin Runyon,
25 who's the former Postmaster General of the

1 United States. He filed a financial
2 disclosure report which indicated that he
3 had large holdings in Coca-Cola stock and he
4 agreed to divest himself of those interests.
5 Unfortunately through a -- some sort of
6 communication error with his broker, the
7 Coca-Cola stock was never divested, a fact
8 which turned up on a number of statements
9 that he received throughout following years.
10 Fast forward a couple of years and Marvin
11 Runyon decides it's a great idea for the
12 Postal Service to put Coke machines in Post
13 Offices.

14 Well, someone -- some sharp-eyed person
15 noticed that Marvin Runyon was still listed
16 on his financial disclosure reports as
17 having Coca-Cola stock, and that -- that
18 fact came up and Marvin Runyon was not only
19 forced to resign as Postmaster General, but
20 was actually prosecuted by the Department of
21 Justice. And he attempted to use the
22 defense to the prosecution that the -- the
23 agency knew or should have been aware of the
24 fact that he had these holdings because of
25 the financial disclosure reports. And the

1 Department of Justice was unmoved by this
2 defense and ultimately he settled for the
3 largest criminal penalty -- or criminal fine
4 that was ever placed on a conflict of
5 interest case.

6 And unfortunately, stigma of that sort
7 of thing can last into your professional
8 career. Mr. Runyon died within the past few
9 months and I could not help but notice that
10 as a part of his obituary a prominent
11 mention was made of the fact that he had
12 been the Postmaster General of the United
13 States but had been forced to resign due to
14 conflict of interest problems. And so I
15 would counsel all committee members, the
16 same way I counsel all Federal employees, be
17 aware of what you have. Know what you have.
18 The defense of I never read my statements
19 anyway doesn't really wash because the --
20 the -- after-the-fact as a justification,
21 it's not very powerful and won't serve as a
22 defense.

23 The statute that tripped up Marvin
24 Runyon, the conflict of interest statute --
25 this is the basic Federal conflict of

1 interest statute, 18 U.S.C. Section 208(a).
2 All Executive Branch employees are
3 prohibited from participating in any matter
4 that would -- particular matter that would
5 affect their financial interests, including
6 those that are attributed to the employee.

7 The matters that -- the types of
8 interests that are attributed to the
9 employee, these include the interests of a
10 spouse, of a dependent child, of an
11 organization that the employee is serving as
12 an officer or director or trustee or
13 employee, and also any organization that the
14 government employee is currently negotiating
15 with for future employment.

16 You'll hear me use the term "particular
17 matter" and "particular matter involving
18 specific parties", and also "broad policy
19 matter". These are terms of art in the
20 ethics area. And a way of thinking about
21 them is to -- is who is being affected by
22 the consideration -- by the -- by what is
23 being -- the issue that's being treated by
24 the committee. A recommendation, for
25 example, on a methodology for making a

1 dosage determination would be a particular
2 matter affecting a discrete and identifiable
3 class, in this case the nuclear industry
4 and/or its employees.

5 You'll also hear the term "specific
6 party matter". A specific party matter is
7 typically a proceeding that adjudicates the
8 rights and responsibilities of individual
9 parties, be they individuals or
10 organizations. Typically these are grants
11 or contracts or investigations or
12 proceedings, the types of things that have
13 specific individuals or companies attached
14 to them.

15 This committee is very unusual. Most
16 advisory committees do not hear specific
17 party matters. However, a Special Exposure
18 Cohort for a specific location would be a
19 specific party matter, so there's some
20 matter -- so there will be some things which
21 will be of particular interest for this
22 committee as opposed to for most advisory
23 committees as I go through my lecture this
24 afternoon.

25 When you have a financial interest or a

1 conflict -- potentially a conflicting
2 financial interest, the way -- the primary
3 method for dealing with these is recusal or
4 disqualification. You'll hear the two terms
5 used interchangeably. The ethics laws --
6 because what's prohibited by 208 is an
7 employee or SGE participating in a matter in
8 which the employee has a financial interest,
9 the remedy is not to participate. It's
10 pretty straightforward when you think of it
11 in that fashion. They -- basically the
12 employee steps out of all con-- all
13 considerations and proceedings that concerns
14 the matter in which that they have a
15 financial interest.

16 Now the statute itself does not have a
17 de minimis provision, so because of the
18 potentially broad reach of the conflict of
19 interest statute, Congress has designed both
20 general and individual waivers, and these
21 general and individual waivers have been
22 further explained in regulations that are
23 issued by the Office of Government Ethics.

24 The -- you'll -- there are broad
25 waivers, regulatory waivers, and these are

1 determinations by the Office of Government
2 Ethics that -- when you're talking about an
3 area -- one of these areas, any sort of
4 conflict that would arise out of these
5 particular ties would be so remote or so
6 insubstantial that it would not present a
7 conflict of interest to a reasonable person.
8 The -- for -- term of art that's used by OGE
9 sometime is not so substantial as to affect
10 the integrity of an employee's services.

11 For example, there's a de minimis
12 waiver for certain stock holdings in a
13 publicly traded company that -- that de
14 minimis amount is \$15,000 for specific party
15 matters or \$25,000 for particular matters of
16 general applicability. And I note that that
17 would be for a -- a cautionary note is if
18 you have an interest which is close to that
19 amount, it -- that can be something that you
20 might want to consider talking to the
21 committee management about because you don't
22 want to be in a situation where you're --
23 you think you're covered by a waiver,
24 there's a spike in the stock price, suddenly
25 your stock price is worth over the

1 regulatory amount and you don't have a fall-
2 back position and therefore you are -- you
3 are suddenly required to step out of a
4 matter that you'd previously been involved
5 with.

6 There's also the -- that apply
7 specifically for special government
8 employees who are serving on advisory
9 committees. There's a waiver saying that
10 for particular matters of general
11 applicability that arise out of the
12 committee member's employment -- any
13 interest that -- that -- financial interest
14 that arises solely out of -- as a result of
15 your employment is not considered to be a
16 conflict of interest.

17 Now if you have a stock holding -- this
18 only applies to the straight employment
19 relationship. If you also have stock
20 holdings in a company that employs you, then
21 this waiver would not apply to that. And I
22 also note, very importantly, is that this
23 waiver is for particular matters of general
24 applicability only. It's not for specific
25 party matters. Therefore if your employee -

1 - if your employer is a party to or going to
2 be one of the affected entities in a
3 specific party matter, then in that
4 situation you would still be obligated to
5 recuse yourself, notwithstanding the fact
6 that this waiver exists.

7 There are also individual waivers. In
8 a specific situation the agency has the
9 authority -- and this is authority that's
10 been granted under the conflict of interest
11 statute to the agency directly -- to grant
12 individual waivers where the agenc-- the
13 agency determines in writing that a
14 financial interest is not so substantial as
15 to affect the integrity of the -- of an
16 employee's official duties. That's a very
17 difficult standard to reach. They -- and --
18 and so waivers are actually very rare. But
19 for special government employees the statute
20 sets up a different status -- different
21 standard, be-- that -- and that's because of
22 the special role of advisory committees.

23 Advisory committees, because of the
24 requirement for -- under the Federal
25 Advisory Committee Act for a balanced

1 membership and all of those other -- those
2 other provisions that acquire -- apply under
3 the FACA, and also because of the fact that
4 the advisory committee's determinations are
5 advisory in nature and must be approved by
6 the governing -- government authority, the -
7 - a special waiver standard was set up for
8 advisory committee members. They -- an
9 advi-- an advisory committee member may --
10 may receive a waiver if it's determined that
11 the need for an employee's services
12 outweighs the potential for a conflict of
13 interest, and waivers therefore are fairly
14 commonly issued for particular matters of
15 general applicability.

16 I would note that even for advisory
17 committee members, they are -- I want to say
18 never, but the lawyer in me shuns absolutes,
19 but I'm not aware of a single situation
20 where a -- a waiver was issued for a
21 specific party matter. So in that
22 situation, we would prefer to -- to deal
23 with conflicts that arise through the method
24 of recusal or disqualification.

25 Another method for dealing with

1 conflicts of interest, which I -- which I'd
2 just like to mention, is divestiture. It's
3 very rare that divesting an asset or a
4 financial interest is done in the situation
5 of an advisory committee because of the --
6 the -- the nature of the employment. You're
7 only here for a few days out of a year. It
8 seems rather draconian to require a member
9 to eliminate a financial holding under the
10 conflict of interest statute. That is,
11 however, done fairly frequently for regular
12 government employees, and there's even a
13 particular provision within the tax code
14 under certain circumstances where the -- the
15 divesting of a conflicting asset will not be
16 recognized for tax purposes. The -- I
17 invariably get -- because one of the
18 attributed interests under the conflict of
19 interest statute is the financial interest
20 of your spouse, it's not uncommon for me to
21 -- people to ask if divorcing one's spouse
22 is a means of getting rid of a financial
23 conflict of interest. The answer is
24 technically, yes. But we don't encourage
25 that.

1 There are a few other criminal statutes
2 in addition to -- in addition to the -- the
3 -- the 208, the financial conflict of
4 interest statute. Now I just want to
5 briefly touch on these statutes, as well.
6 The basic one is 201 -- 18 U.S.C. 201, the
7 bribery statute. As with all other Federal
8 government employees, special government
9 employees may not accept anything of value
10 for being influenced in the performance of
11 an official act. That means anything.
12 There's no de minimis for this. Even if
13 you're cheap, it's still a bribe, and
14 therefore it's considered -- it'll violate
15 the statute. And I'll notice that -- that -
16 - I mention that -- I also touch upon that
17 'cause I -- later on I'll talk about gift
18 exceptions, and there's a gift exception
19 permitting the -- the extravagant de minimis
20 value of \$20 value in gift from -- from a
21 person. However, if you can be bought for
22 \$15, even though it's a de minimis exception
23 to the gift rule, it still violates a
24 criminal statute and -- and you would be
25 prosecuted for that, in addition to just --

1 if \$15 buys a Federal government employee,
2 we're all in very deep trouble.

3 There are also representational
4 restrictions. Sections 203 and 205 -- and I
5 have to say that -- that if -- if you find
6 some of these hard to conceptualize, I will
7 rather blushinglly admit that I was a
8 conflict of interest lawyer for about two
9 years before I could really articulate the
10 difference between 203 and 205. Both of
11 these statutes deal with making
12 representational services to the -- back to
13 the government during the tenure in wh--
14 that you are a special government employee.
15 And I'll notice that these rules are much
16 milder for special government employees than
17 they are for regular employees.

18 Under -- 203 is compensation-driven.
19 Under Section 203, a special government
20 employee may not receive compensation for
21 representational services that it -- before
22 an -- any -- any agency or court in
23 connection with a specific party matter in
24 which the SGE personally and substantially
25 worked on. They -- there are a lot of terms

1 of art in there. Specific party matter is
2 one that we've already gone over. The --
3 the important thing to consider is that if
4 you are -- have worked on, for example, a
5 specific exposure cohort, then you cannot
6 represent another party or receive
7 compensation for representational services
8 for -- in connection with filing -- with
9 filing a claim against or challenging in --
10 in a -- an action that particular
11 determination before a Federal agency or
12 court.

13 Now it only applies to -- to -- to
14 testimony before an agency or court, and I
15 will also note that -- that on the expansive
16 end, if you are involved in -- and this is
17 particularly applicable to lawyers, and
18 hopefully there aren't terri-- a tremendous
19 number of lawyers in the room, but also for
20 any professional partnership. If you are
21 receiving partnership income for -- and --
22 and your partnership is going to engage in
23 representational activities, in that
24 situation please contact us and we need to
25 make sure if this -- if 203 is going to

1 become an issue because -- and the reason
2 that it would is because there -- it -- it
3 bars -- prohib-- it prohibits compensation
4 for representational services. You don't
5 have to be the person who's making the
6 representation. What's required for a
7 violation of 203 is that compen-- that you
8 be receiving compensation in connection with
9 representational services rendered by
10 someone.

11 205 is both broader and more
12 particular, in that 205 does not require
13 compensation. The -- a special government
14 employee may not act as agent or attorney
15 for any other party before a Federal agency
16 or court in connection with a specific party
17 matter that the SGE worked personally and
18 substantially on. It's broader because
19 there's no compensation requirement. It's
20 narrower because it only affects the actions
21 of the special government employee.

22 On the off chance that a special
23 government employee works more than 60 days
24 in a calendar year, the 203 and 205
25 restrictions expand at that point to include

1 any covered matters that are pending before
2 the -- the Department of Health and Human
3 Services through your agency, and that would
4 be acting as an agent or attorney, with or
5 without compensation, or receiving
6 compensation for representational services
7 for any matter that would be before the
8 Department of Health and Human Services.
9 However, for -- for -- that has a specific
10 day -- days re-- number of days requirement,
11 which is not typically triggered in an
12 advisory committee setting.

13 There are statutes that apply after you
14 leave the government, as well. The primary
15 post-employment statute, 18 U.S.C. 207 --
16 207(a)(1) is the -- the -- the most
17 important restriction. That is a lifetime
18 ban on a former special government employee
19 from representing anyone else before a court
20 or agency in a specific party matter that
21 the SGE worked on while with the government.
22 It's commonly referred to as switching
23 sides, and people get very excited if people
24 leave the government and go outside and
25 represent other parties in connection with

1 matters that the employee worked on while
2 they were with the Federal government, and
3 this applies for special government
4 employees as well as for regular employees.

5 The -- there are other restrictions for
6 -- that apply to regular employees. You'll
7 hear -- sometimes you'll hear of two-year --
8 a two-year cooling off period for government
9 employees who have supervisory
10 responsibility, or one-year cooling off
11 period for senior employees. A one-- the --
12 the latter, 18 U.S.C. Section 207(c), one-
13 year -- prohibits senior employees from
14 going back to the agency -- their former
15 agency in connection with any matter in
16 which they're offi-- seeking official action
17 on behalf of another person. That is --
18 that restriction only applies to people who
19 are, as I said, senior employees. Think SES
20 or executive level salaries.

21 And for SGEs, even if an SGE is paid
22 over the -- the trigger amount for
23 compensation, which is -- my recollection is
24 an annual rate of approximately \$136,000 a
25 year -- only if the special government

1 employee serves for more than 60 days in a
2 calendar year.

3 There are also restrictions on
4 teaching, speaking and writing. What I want
5 to say first of all, the most important
6 point, is that nothing prevents either an
7 SGE or a regular employee from receiving
8 compensation related to teaching, speaking,
9 writing that the employee does in a personal
10 capacity. The tricky part is sometimes the
11 line between the personal and the official
12 capacity gets blurry. The regulation sets
13 up a number of -- you'll hear the term
14 "relates to official duties". No employee
15 may receive compensation for teaching,
16 speaking or writing that relates to the
17 employee's official duties. That means if
18 it's done as a part of your official duties,
19 you can't receive compensation.

20 Now I note that that means you can't
21 receive compensation from anybody else.
22 Obviously if you're on the clock, you can
23 receive compensation from the government for
24 the time that you're doing the public's
25 business.

1 Also if the teaching, speaking or
2 writing draws on non-public information that
3 you acquired through your committee
4 membership, or the invitation was based
5 primarily upon your membership on the
6 committee, the -- or where the invitation
7 comes from a source that would be
8 substantially affected by the performance or
9 non-performance of your official duties as a
10 member of the Advisory Board.

11 There are also restrictions on gifts
12 that I mentioned earlier in the context of
13 the -- the bribery statute. You may receive
14 gifts that are not offered as a result of
15 your Board membership. However, if you do
16 receive a gift that's given to a Board
17 member because of your official position --
18 and I will say that in 16 years of Federal
19 service I've never actually received a gift
20 from someone because of my official
21 position; I'm still waiting -- but the --
22 the -- if that -- if this happens to you,
23 bless you, and -- however, after -- after
24 crowing over your good fortune, you should
25 please consult with the -- the OGC or the

1 Federal official responsible for the
2 committee, should that situation arise.

3 Now I want to draw a distinction here
4 between gifts given to you because of your
5 position or achievements in the -- the non-
6 governmental or private sector. Those are
7 generally not problems, and there are a
8 number of gift exceptions that also apply if
9 your spouse has a business and you receive a
10 gift in connection with that. Even -- even
11 if a gift is from a source that would be
12 affected, if it's clear -- for example, if
13 you have a spouse that works for a company
14 that would be affected by something that you
15 do, if the company gives all of their memb--
16 their employees two tickets to the summer
17 picnic, that's not going to be a problem
18 because it's clear-- although it's from a
19 source that would raise concerns, it's
20 clearly not tied to your position on the
21 com-- on the Advisory Board. It's clearly
22 tied to your spouse's employment. Of course
23 you would be recusing from any matter
24 involving that company anyway, but -- I
25 mention that as an aside -- but there are a

1 number of exceptions that also apply. And
2 also if there's a situation where you're
3 interviewing for future employment, there
4 are exceptions permitting you to accept
5 travel and other traditional interview-
6 related expenses or gi-- or -- or gi-- or
7 per diems for -- that are offered in those
8 situations.

9 There are other situations, even --
10 that -- that are broadly categorized as
11 misuse of position that -- that -- basically
12 these are all derived from the principle
13 that government -- that the public office
14 should not be used for private gain, either
15 on -- by the -- the employee of a special
16 government employee or private gain on
17 anybody else's part, as well. Even if the
18 employee gets no direct benefit, if the
19 employee uses their official position so
20 that somebody else derives an improper
21 benefit, then -- then that's a situation
22 that would implicate the regulation. So
23 there was nothing in it for me is not a
24 defense in this situation.

25 Basically an important consideration is

1 that you may not use your position on the
2 Advisory Board to imply either that the
3 Board or the Department endorses your
4 private activities or those of another. You
5 also cannot use your authority as a member
6 of the Board to appear to give a
7 governmental sanction or endorsement to a
8 particular product or -- or company, unless
9 there's specific authority to do so. And in
10 those situations, that's a -- that's the
11 over-arching pattern of my presentation this
12 morning, which is in those situations
13 consult with OGC first 'cause that way we
14 can make sure that all -- that we make --
15 that -- cross all the t's and dot all the
16 i's, that all the jots and tiddles* are
17 taking place, and it's not going to be a
18 situation that -- that's going to blow up
19 after the fact.

20 Fundraising restrictions, they --
21 there's -- again, I want to start out with
22 the -- the broad principle that there's
23 nothing that being a special government
24 employee does that prevents you from doing
25 fundraising for causes you believe in in

1 your personal capacity. What you cannot do
2 is personally solicit funds from someone
3 who's doing business before the committee or
4 the Advisory Board. And of course in any
5 situation where you have access to non-
6 public information, you cannot disclose that
7 information. That's axiomatic to the term
8 "non-public".

9 And extension of the criminal statutes
10 is the impartiality principle. And
11 basically all -- all employees are required
12 to -- to ensure that all government
13 decisions and -- and projects and policies
14 are undertaken for -- on an impartial basis,
15 that the decision-makers were considering
16 the -- the government's interests, and by
17 extension, the public's interests in a
18 matter and not personal private interests.
19 And even when it doesn't rise to the level
20 of a conflicting financial interest that
21 would be implicated by 208, these issues
22 still have to be paid attention to under the
23 broad category of impartiality. That's why
24 under the applicable Office of Government
25 Ethics regulations all special government

1 employees are prohibited from participating
2 in specific party matters -- and the
3 impartiality restrictions deal with specific
4 party matters -- where a reasonable person
5 would question the special government
6 employee's impartiality.

7 They -- this always leads to the
8 question of whose reasonable person are we
9 talking about. The standard is not well-
10 defined in his con-- connection, except in a
11 -- in a fairly circular fashion. A
12 reasonable person is as a reasonable person
13 does.

14 They -- so my advice and counsel to the
15 members of the Board are if you're not sure
16 if there would be -- if you have any doubt
17 whatsoever about a question of impartiality
18 being raised, it's better to raise that
19 question with the OGC and get that resolved
20 before it becomes a problem rather than
21 waiting until some stakeholder whose ox has
22 been gored decides to -- to use that as a
23 means of undermining the work of the
24 Advisory Board.

25 There are certain covered

1 relationships. Although the principle is
2 not well-defined, there are certain
3 relationships which are set forth in the
4 regulation which are specifically raised as
5 being potentially problematic. These
6 includes (sic) such categories as members of
7 the employee's household, the -- the
8 relatives with whom you have a close
9 personal relationship, any person that the
10 employee or a family member is serving --
11 your spouse, a parent or a dependent child
12 is serving as an officer, director or
13 employee or consultant, or any situation
14 where a former employer of yours that --
15 that you served with in the past year,
16 there's sort of a one-year cooling off
17 period, and in that situation you would --
18 you would want to -- that -- that's a
19 covered relationship. In addition to the
20 employee being able to make a -- make an
21 initial determination, the agency also has
22 the authority to step in and -- and make a
23 determination on whether a reasonable person
24 would question the SGE's impartiality in
25 that situation.

1 And I'd like to also men-- to -- to
2 specifically talk here about consultancies
3 (sic). A consultant -- any organization
4 that you're serving as a consultant, if that
5 organization is a party or represents a
6 party in connection with a matter, that's an
7 impartiality concern. Please bring that to
8 our attention so that we can get that
9 resolved prior to any action being taken or
10 prior -- prior to your participating in a --
11 in a specific party matter.

12 There are also restrictions broadly
13 that apply to all government employees, and
14 these are extended through -- to SGEs, as
15 well. And this is the -- the Constitutional
16 prohibition against receiving emoluments.
17 You hear it referred to as the emoluments
18 clause. Under the Constitution, while
19 holding a position of public off-- of profit
20 or trust with the United States government,
21 you may not have an employment relationship
22 with a foreign government or receive
23 emoluments. Bas-- think broadly in terms of
24 compensation from a foreign government.

25 Now sometimes the -- the -- this

1 includes the -- the foreign government
2 directly, and it's -- this is anything that
3 you do in your private capacity. At the
4 time of the drafting of the Constitution,
5 the founding fathers were very concerned
6 about government employees -- the interests
7 of government employees being undermined or
8 their loyalties divided by ties to foreign
9 states and principalities, which is why this
10 clause exists.

11 A question comes up for public
12 universities in -- in foreign states and --
13 and the -- the -- or government-controlled
14 companies -- or government-owned companies,
15 and those sometimes can be on a case-by-case
16 basis, depending on the degree of ownership
17 or control that's exercised by the foreign
18 government. We may determine that it's not
19 an emolument issue. But again that's
20 something that would have to be brought to
21 the attention of OGC so that we could
22 resolve that.

23 Congress has passed an exception to
24 this under the Foreign Gifts and Decorations
25 Act. Generally you can accept a -- gifts

1 worth up to 200 -- approximately \$285 from a
2 foreign government without triggering the
3 restrictions of the emoluments clause. And
4 as part of your -- your packets you probably
5 received a -- you should have received a
6 questionnaire on foreign entanglements, and
7 that's -- that was intended to address and -
8 - and -- I'm not sure of the exact name -- I
9 see laughter in the committee. I'm not sure
10 of the exact name of -- of -- of the form,
11 but it -- it was designed to -- to determine
12 whether committee members have ties to
13 foreign governments so that we could resolve
14 those in advance.

15 I will say that this pres-- this
16 restriction is -- although a longstanding
17 one, is currently being re-examined by the
18 Department of Justice. And it is possible -
19 - highlight the use of the term "possible" -
20 - that it may be determined by -- by the
21 Department of Justice that the -- the -- an
22 advisory committee membership is not
23 considered an office of profit or trust with
24 the United States and therefore the
25 emoluments clause would not apply. I stress

1 that we're not there yet. They -- and
2 that's the Department of Justice's call, but
3 there may be some relief on the horizon from
4 that particular restriction.

5 Expert witnesses, serving as an expert
6 witness, the -- and this is tied once again
7 to matters -- to -- that you work on as a
8 member of the Advisory Board. You may not
9 participate as an expert witness in
10 connection with a matter or proceeding that
11 you work on as a government employee. It's
12 -- I like to think of this as switching
13 sides during the fact as opposed to after
14 the fact. Like 207, it applies while you're
15 still serving as a special government
16 employee. There is a provision set forth in
17 the regulation of getting -- basically you
18 can do it if you get the government's
19 permission to do it.

20 They -- there are also restrictions
21 that apply in the area of lobbying. And --
22 and I apologize for this particular slide
23 which has a particularly large amount of
24 text on it, but the -- the -- the
25 information in there is important.

1 Committee members are prohibited from
2 engaging in any activity which directly or
3 indirectly encourages or directs a person or
4 organization to lobby one or more members of
5 Congress. That's in your official capacity
6 as an Advisory Board, so what we don't want
7 to see is the Advisory Board issuing
8 leaflets to people in the community to go
9 call their Congressman or representative to
10 get a law changed or a particular -- or a
11 particular policy overturned. The Congress
12 doesn't like it when the Executive Branch
13 does that. Congress doesn't really want to
14 be -- want to have a -- see that -- the
15 money that they've appropriated for the
16 committee be used for a lo-- you'll hear the
17 term grassroots lobbying, and that's what
18 this restriction is designed for.

19 I note that like the other statutes
20 mentioned in Title 18, this is a criminal
21 statute, so attention must be paid to the
22 extent that the potential liabilities are
23 fairly severe. When authorized, committee
24 members may before -- appear before -- this
25 does not prevent you from appearing before a

1 group for the purpose of informing or
2 educating the public about a particular
3 policy or legislative proposal. If you're
4 not sure in a particular situation, call OGC
5 and make -- and that way they can vet the
6 contents of the lecture and make sure that
7 the Department -- the Advisory Board or you
8 are going to get into hot water over -- over
9 a statement made to an organization.

10 However, what it does not prevent is
11 you serving -- as private citizens,
12 expressing your own personal views. You
13 can't express the views of the committee as
14 a whole or the views of the Department, but
15 you can express your own private, personal
16 views. In doing so you can state the fact
17 that you're affiliated with the commit--
18 with the committee or the Advisory Board,
19 and you can state the -- the Board's
20 position -- the Advisory Board's official
21 position on a matter, to the extent that you
22 don't use non-public information. But you
23 can't represent your views as those of the -
24 - the Advisory Board. You cannot take new
25 positions or represent those views as the

1 positions of the committee or the Advisory
2 Board on the matter. The -- and I would
3 also -- as with other sort of general
4 restrictions, in presenting your own
5 personal views, you can't use government
6 computers, copiers, telephones, staffer
7 resources or other -- letterhead or other
8 appropriated fund-- matters that are paid
9 for by the government. If it's a personal
10 activity, that's fine, but it has to be done
11 in off-duty time. They...

12 In addition to lobbying, there are also
13 restrictions on Hatch Act or political
14 activity. Now these restrictions are
15 actually -- in the 1990's they were loosened
16 for most Federal employees. And for SGEs,
17 as long as you're even remotely
18 sophisticated, this will not be a problem.
19 The Hatch Act restrictions apply only during
20 the period of any day in which you're
21 actually performing government business.
22 They -- so -- and the example used is that
23 if a special government employee attends a
24 com-- advisory committee meeting in the
25 morning -- from 8:00 in the morning till

1 1:00 o'clock, and then travels up to -- to
2 Capitol Hill, if the advisory committee were
3 taking place in the Humphrey Building at
4 HHS, it's two blocks to Capitol Hill. You
5 go up the hill so you can attend a political
6 fundraiser or even solicit political
7 contributions from the attendees, that's
8 fine. It's understood that as a special
9 government employee your Federal role is a
10 very limited one.

11 I note that where -- where we would get
12 into trouble is if you see a fellow Advisory
13 Board member picking up their cell phone
14 during the course of a meeting and starting
15 to make political telephone calls, please
16 discourage them from doing so. They -- and
17 I will say that there are some Hatch Act
18 restrictions that -- that will apply during
19 -- at any time that you're -- that you are a
20 special government employee.

21 You cannot at any time use your
22 government office or authority to affect an
23 election or undert-- or as -- as a means of
24 coercing a political response out of -- or
25 funds out of an entity or organization. But

1 so long as you're clearly not doing it in a
2 way that's tied to the Advisory Board, then
3 the -- the political activity restrictions
4 will not apply in that situation.

5 The -- I'll turn to the last slide, the
6 -- the blessed last slide of our pres-- my
7 presentation this -- this afternoon. I
8 thank you for your time and attention. The
9 most important message -- as I said at the
10 very outset, you have -- all these
11 restrictions I talked about are -- are --
12 are covered in more detail in the handout
13 that you've received in connection with the
14 meeting this afternoon. Also, if you're not
15 sure about a situation, if there's a wart on
16 the end of your nose, then please bring that
17 to the attention at OGC through David
18 Naimon's shop, and they will assist you in
19 resolving a potential conflict before either
20 another -- a stakeholder or another
21 committee member or another -- an outside
22 entity creates a problem for the Advisory
23 Board and for the decisions and policies of
24 the Advisory Board by launching an attack on
25 you and on the Advisory Board and on the

1 policy on ethics and conflicts of interest
2 grounds.

3 I do have a couple of minutes before I
4 have to -- to run back and catch a flight,
5 so if there are specific questions about the
6 -- the areas -- now I will say I will not
7 get into a particular member's situation
8 while standing at the podium and being
9 transcribed (sic) in connection with this
10 meeting, but I will in -- deal with
11 questions generally about the conflict of
12 interest statutes or regulations if the --
13 the Board has them.

14 **DR. ZIEMER:** Thank you. Let's open the
15 floor for questions.

16 (No responses)

17 **MR. CONDRAY:** I see you all spellbound
18 by my eloquence and therefore I shall yield
19 the podium.

20 **DR. ZIEMER:** Let me ask --

21 **MR. CONDRAY:** Oh, we do have one
22 question.

23 **DR. ZIEMER:** This has to do with
24 recusal, and we generally -- we have an
25 operating rule here that if we're voting on

1 a matter that deals with a facility -- for
2 example, one of the national labs, we had a
3 vote earlier on -- this -- this is sort of
4 specific for purposes of illustration, but
5 we were trying to prioritize which -- I
6 think it was which -- which site profiles we
7 would review first, and individual --
8 individuals from particular sites then did
9 not vote on their site or about their site
10 or for their site or against their site,
11 actually.

12 Now where you talk about stepping out
13 of all proceedings concerning a matter --
14 for example, we talked here this morning
15 about a couple of sites that were not
16 providing sufficient information, and we
17 have individuals from those sites here. Now
18 is -- is -- is the real rule only directed
19 toward issues if that individual has
20 financial interests or what does financial
21 interest mean? I mean if they work there,
22 they're getting paid.

23 **MR. CONDRAY:** In a situation -- you
24 remember the financial interests, it's the
25 financial interests of employee, the

1 financial interests of an -- the -- any
2 attributed financial interests which
3 include, generally speaking, employer's
4 interests, those interests of a spouse or a
5 dependent child, or an organization that
6 you're serving as an officer, director or --
7 or consultant or -- or trustee.

8 Now in a situation where you're talking
9 about a particular facility, as a policy
10 that makes a lot of sense because it would
11 be very difficult for me to imagine a
12 situation -- there are any number of ties
13 that would be implicated in a situation
14 where a member of the Advisory Board was
15 associated -- was affiliated with a
16 particular site. And where -- and in -- in
17 that situation, the -- the recusal or
18 disqualification would be a broad means of
19 dealing with all of those conflict of
20 interest concerns.

21 Now where I thought you were going with
22 this question had to do with what -- the
23 requirements of recusal or disqualification,
24 which would include -- and I will say that
25 if the Board is in a public meeting, you

1 don't actually have to leave the room in
2 connection with that because the information
3 that's being discussed is public. It's --
4 however, if the meeting is in closed
5 session, then -- in order -- in order --
6 then in order to properly consider yourself
7 recused or disqualified and to make sure
8 that you weren't picking up -- didn't have
9 access to information that you shouldn't
10 have access to because of your -- the -- the
11 conflict of interest concern, in that
12 situation the -- the member should leave the
13 room. But the -- the -- in a situation
14 where you're talking about dealing with a
15 specific location, there's so many different
16 kinds of ties that would require recusal or
17 disqualification that -- that -- that it's
18 hard for me to -- to address a specific one
19 other than to say that it would be hard for
20 me to imagine a situation where a recusal or
21 disqualification wouldn't be appropriate for
22 -- for a Board member who is affiliated with
23 a particular site.

24 **DR. ZIEMER:** Does the reclu-- recusal -
25 -

1 **MR. CONDRAY:** Say disqualification.

2 **DR. ZIEMER:** -- part includes not only
3 things like voting on some issue, but even
4 the discussion of it. Is that correct?

5 **MR. CONDRAY:** That's correct.

6 **DR. ZIEMER:** Yes.

7 **MR. CONDRAY:** The -- the participation
8 includes providing advice or
9 recommendations, as well as having a part in
10 the specific decision.

11 **DR. ZIEMER:** Other comments or
12 questions?

13 (No responses)

14 **MR. CONDRAY:** Thank you all very much.

15 **DR. ZIEMER:** We thank you for being
16 with us today, John, and appreciate your
17 input.

18 **REPORT ON QA/QC OF THE PHONE INTERVIEW PROCESS**

19 Next on our agenda is a report on the
20 QA/QC process for the phone interviews, and
21 that will be presented by Richard Toohey
22 from ORAU.

23 **DR. TOOHEY:** Okay. Can you hear me
24 okay? Let's go ahead with this. What I
25 thought it would be good to do on this one -

1 - talk a little bit about our task four,
2 which was originally called CATI, Computer-
3 Assisted Telephone Interviewing. But we
4 renamed it claimant contact, because it
5 includes a lot more now than just the
6 telephone interview process. So I'll go
7 over the first bit fairly quickly. You're
8 probably already familiar with it. And then
9 get into the meat of what you wanted to hear
10 about today which is the quality assurance
11 and quality control we apply to this process
12 to make sure we are capturing the data that
13 the claimant provides in the interview, and
14 then making sure those data are applied to
15 the dose reconstruction.

16 So we have numerous responsibilities,
17 and like so much else of this project, they
18 have increased as time has gone on. We
19 essentially handle almost all the mailings
20 to the claimants now except the initial
21 acknowledgement of receipt of the claim.
22 But the introduction letter introduces ORAU
23 and tells them we will be contacting them to
24 schedule the interview.

25 We conduct the initial interview and

1 technical review of that. A -- not a
2 transcript, but a report of the interview is
3 mailed to the claimant, and then the
4 claimant's comments on that -- whether
5 written on the report or provided
6 telephonically -- are then captured. The
7 report is updated as necessary.

8 A lot of the information we capture
9 from the claimant on the interview are
10 simple demographic things -- addresses,
11 phone numbers, things like that -- and we
12 automatically get those into the NIOSH
13 database system, so they are captured. In
14 some cases where the claimant wants an
15 authorized representative -- typically one
16 of their children or in some cases an
17 attorney -- to represent them in this
18 process, we'll mail the forms out, get those
19 back. If we're unable to contact the
20 claimant to schedule the interview, a
21 registered letter goes out that just says
22 hey, we've tried to contact you, we've been
23 unsuccessful. We'd like to have this
24 interview. Please call our toll-free number
25 to schedule it.

1 Also if the claimant declines the
2 interview, there is a letter goes out to
3 them confirming that they declined the
4 interview, and that's again captured in the
5 analysis record.

6 As was mentioned, the dose
7 reconstruction introduction letter goes out
8 to the claimant, which primarily provides a
9 list of possible dose reconstructors who
10 will be working on their claim and asks the
11 claimant do they object to any of these
12 people on the basis of potential conflict of
13 interest. And of the 6,000 or more of those
14 that have gone out, we've only had two come
15 back from the claimant saying no, I don't
16 like this person. We've had many more --
17 well, many more; four or five -- come back
18 from the claimant specifically requesting
19 the conflict of interest rule be waived
20 because they would prefer somebody from the
21 site who knows something about the site to
22 do their dose reconstruction. Again, we get
23 back to them saying well, sorry, we're --
24 really it's better if we don't do that. But
25 we do also say we do have people

1 knowledgeable about the sites contributing
2 to the site profile and the exposure
3 conditions on the site, things like that.

4 Any additional data or information the
5 client sends in and anything they have that
6 they want to send in and add to their file
7 is fair game. We receive that and scan it
8 in, make it -- sure it's part of their
9 record.

10 Something we just took over at the
11 beginning of the year was conducting the
12 closeout interview with the claimant, and
13 this is after the claimant has received
14 their dose reconstruction report and the
15 OCAS-1 form. We simply call them and ask
16 them do they have any questions about it.

17 And if there's been a delay in
18 returning that OCAS-1 form, we ask them if
19 there's a problem, are you willing to send
20 it back -- explain what it means. And the
21 one problem we've seen -- and like many
22 others, it -- as you know, this is a very
23 complicated, involved process and can be
24 confusing. The OCAS-1 form simply is the
25 claimant's agreement that they have nothing

1 more to add to their file, no other
2 information, no other documents, at this
3 time. It doesn't mean they agree with the
4 conclusions of the dose reconstruction
5 report, which many of them think it means.
6 So again, in the closeout interview we try
7 to make that clear, and sometimes we're
8 successful and sometimes we're not.

9 Any additional information provided by
10 the claimant -- and that might be an
11 incident report or something. There have
12 been a number of cases in the interview
13 process where the claimant has acknowledged
14 involvement in an incident, and then we have
15 gone back to get -- try to get the incident
16 report, if any, from DOE, if it was not
17 already in the claimant's data submittal.

18 We of course do the scheduling of all
19 interviews. Another point on that, one
20 number -- one reason the number of phone
21 calls you saw on Jim Neton's presentation
22 was so high, it typically takes a couple of
23 rounds of telephone tag to schedule the
24 interview. We will call people. If we
25 don't reach them, we'll leave a message.

1 They call us back, so it takes about three
2 or four calls before we're actually
3 connected with the claimant to do the
4 interview. A lot of times the -- many of
5 our calls, of course, are requests for
6 status of the claim -- from the claimant, as
7 you might imagine.

8 Our staffing in task four is 33 people.
9 We have -- two of the interviewers are half-
10 time, so we have a total of 32 FTE, so half
11 of those are people -- well, more than half
12 are actually doing the interviews, and we
13 have a late shift. We have a couple of
14 people work into the evening, 8:00 or 9:00
15 p.m. eastern time, give us a better chance
16 of catching people on the west coast. And a
17 couple of 800 operators man the line, and
18 then schedulers, reviewers, clerical staff
19 handles the mailings, and some supervisors.

20 So I'll go over these statistics fairly
21 quickly. One reason -- I have to apologize,
22 when I put these together, for once I put my
23 slides together in advance of the meeting,
24 so all I had were the April numbers and Jim
25 Neton gave you the more updated ones, but

1 just to synchronize things, as Jim showed,
2 through the end of May we've done about
3 14,400 interviews -- well, no, I'm sorry,
4 14,400 claims have received at least one
5 interview. And we've only got about right
6 now 1,200, 1,300 claims awaiting interview.
7 The one statistic is -- it's an average of
8 about 1.33 interviews per claim or per
9 Energy employee, because every claimant --
10 if there are multiple children with no
11 surviving spouse, all the children are
12 claimants, they each get an interview. So
13 it's about one-third more interviews than
14 there are actual claims in there, but we've
15 knocked most of them out. As you've seen,
16 we're averaging about 300 a week and our
17 maximum was close to 500 one week, but there
18 was a lot of overtime involved in that.

19 The closeout interviews, as I
20 mentioned, we took over in January and we've
21 completed about 3,300 of those. Again, it's
22 with every claimant, so again that's an
23 average about 1.33 per dose reconstruction.
24 OCAS was doing those initially, transferred
25 them over to us beginning of the year.

1 We've done about 2,000, and we're averaging
2 about 105. And of course, as I hope is
3 obvious, as we complete the backlog of
4 initial interviews, the interviewers are
5 transitioning over doing the closeout
6 interviews, plus any interviewing or
7 information-gathering that may be necessary
8 for SEC petitions that come in.

9 On the 800 operations, again, that's
10 about 3,000, 4,000 calls a month come in.
11 The vast majority of them are the status of
12 the claim. You know, where is my claim in
13 the process, how long is it going to take,
14 that sort of thing. People do call in
15 changes in addresses, phone numbers, things
16 like that. Frequently, though, children
17 will call in where the claimant has in fact
18 passed away. And then unfortunately, that
19 almost kicks them back to square one since
20 then the survivors have to refile the claim
21 with DOL. Any updates they have to their
22 interview or -- or requests for information
23 that we can give them. This has down-
24 trended over the last year as more
25 information's been put up on the NIOSH web

1 page, so... But it's pretty steady.

2 We send out a lot of mail, as you can
3 see. And then a copy of every letter to a
4 claimant is entered into their claim file in
5 NOCTS, and we also have pretty automated
6 capability now. If NIOSH needs to send out
7 a mass mailing for some reason, we can
8 generate that letter and get it out in the
9 mail pretty quickly.

10 Okay, let's get to the meat of things,
11 QA on this process. One of the first things
12 is training of the interviewers. The
13 interviewers, the health physicists who
14 review the interview reports and -- and the
15 one -- they should really say -- it should
16 probably be a QC person within the task. QA
17 is the loftier organization who makes sure
18 the QC people are doing their job. They get
19 telephone skills training, how to talk to
20 people on the telephone, and especially
21 talking to elderly people, who form the
22 majority of the claimants or may have
23 hearing difficulties or the like. They get
24 an overview of the Act and the DOE
25 facilities and what went on at that. Many

1 of the interviewers have worked at DOE
2 facilities, particularly Mound and Fernald
3 in the Cincinnati area. But some had not,
4 so we got everybody up on what the Act is about.

6 We give them what is the equivalent of
7 general employee radiation training under
8 the DOE package, which is the introduction
9 to radiation, protection concepts and all
10 that, just to give them the basic vocabulary
11 of the business so they know what the
12 claimants are saying or referring to in
13 that. And then before they actually get cut
14 loose to do interviews, there's extensive
15 on-the-job training. And they will do
16 several interviews which are monitored by a
17 supervisor, from which they get immediate
18 feedback, before we certify them to cut them
19 loose.

20 The people who are not so much directly
21 involved in doing the interviews themselves,
22 of course, get the telephone skills training
23 and on-the-job training. I should mention,
24 it's not listed here, but everybody in -- on
25 the ORAU team gets Privacy Act training,

1 also, and it's one of my pet peeves. I keep
2 emphasizing, you know, this is Privacy Act
3 data. You can't leave it lying out on your
4 desk. You can't take it home with you. You
5 can't talk to your -- your spouse about that
6 and everything else, so everybody gets that.

7 Okay. We maintain a database on the
8 telephone interviews, and these are
9 basically QC things. There are automatic
10 checks run on a daily basis on that to make
11 sure we don't call a claimant to schedule an
12 interview with them before that letter's
13 gone out to them that says hey, we're going
14 to call you to schedule your interview. We
15 don't do an interview unless it's already
16 been scheduled and -- and is on the
17 calendar. We also check to see after the
18 interview that the initial draft to the
19 claimant is on its way back to the claimant
20 within a week. The same thing on any
21 updates that the claimant may provide on
22 that draft for a revision. We also track
23 that we haven't missed a scheduled
24 interview. We won't do a closeout interview
25 unless there was an initial interview done.

1 Obviously that would be cart-before-the-
2 horse. And we also check to make sure we
3 don't try to schedule a closeout interview
4 unless the draft dose reconstruction report
5 and OCAS-1 has actually been sent to the
6 claimant.

7 This is all automated and just pops up.
8 We use Microsoft Outlook to schedule the
9 interviewer's time, and whenever an
10 interview is scheduled, there's an automatic
11 check run against this thing and so on.

12 The other automatic queries are to make
13 sure that any correspondence that's mailed
14 to the claimant is in fact automatically
15 uploaded to that claim file, and that the
16 dates on the correspondence match those in
17 the database. And again, this is creating
18 the -- what is now called the analysis
19 record for the claim, which then accompanies
20 that claim back to DOL when we've completed
21 the dose reconstruction.

22 General QA on this, we do silent
23 monitoring of both initial and closeout
24 interviews by supervisory staff. Generally
25 it's performed randomly. The opening part

1 of the interview -- the interviewer will
2 tell the claimant that this telephone call
3 may be monitored for quality assurance
4 purposes. You know, same thing you hear
5 when you call up Delta Air Lines.

6 The interviewer can also request
7 monitoring, and in fact on their computer
8 screen in front of them while they're going
9 through the CATI script and entering the
10 claimant's data, they've got a little button
11 they can hit which will signal a supervisor
12 to get on the line. And basically if the
13 claimant has raised some issue that the
14 interviewer hasn't a clue what they are
15 talking about or what it means or what's
16 going on, they can get a health physicist on
17 that line to help them with that,
18 essentially instantaneously. The HP
19 reviewers are assigned blocks of time when
20 they have to be available for this.

21 The comments that the monitor has are
22 entered actually into a spreadsheet, so a
23 poor man's database. There is immediate
24 feedback to the interviewer via e-mail, what
25 you did good, what you did bad, areas for

1 improvement, whatever like that. Anything
2 that would identify a group trend, some
3 ongoing problem with that then gets
4 addressed on a group basis in weekly staff
5 meetings of task four. The -- of course the
6 feedback to the interviewer is immediate and
7 generations of lessons learned and, as I
8 said, the interviewer can be assisted with
9 difficult claimants or questions. And of
10 course, as you can imagine, because the long
11 time it's taken, many of the claimants are -
12 - are upset, why is it taking so long. And
13 like most of us, they say let me talk to
14 your supervisor. Push a button, the
15 supervisor's on the line.

16 Okay, there are the, as I said, weekly
17 staff meetings and interview sessions to
18 discuss how things are going, new
19 approaches, issues that have come up,
20 improvements in the software. We did roll
21 out a new and improved version of the CATI
22 software a few months ago.

23 We have put together some quick
24 reference guides for the interviewers, just
25 kind of checklists to make sure they have

1 covered all the bases in the interview
2 process. And there's dual screens. Each
3 interviewer has a dual computer screen and
4 one has the CATI script on it, the other has
5 sort of this checklist thing so they can
6 keep track that they've covered all the
7 bases.

8 Another thing we do, any claimant who
9 calls in saying they've had a problem or an
10 interview with any of that, their calls are
11 -- normally those calls come in to the 800
12 number. They're logged in and then returned
13 by a supervisor to find out what the issue
14 is, and they get logged and tracked. And I
15 should also say every call that comes in is
16 logged in to the NOCTS database in the
17 telephone conversation file in there. And
18 then of course tracking these things gives
19 us individual and group metrics on their
20 performance.

21 Some of the challenges we have
22 encountered is contacting claimants. As we
23 know, a number have passed away in the
24 meantime. People leave the country on
25 vacation. We've got a lot of snowbirds.

1 You know, we try to call people from
2 Hanford, and they're in Arizona, you know,
3 gone to Florida. There've been a few we
4 haven't been able to contact because they're
5 in the slammer. It happens.

6 The closeout interviews on a dose
7 reconstruction where the probability of
8 causation was less than 50 percent, by now
9 people know what that means, that they're
10 likely not to be compensable. So there are
11 issues in there. And as I said, especially
12 in those cases, there's difficulty in
13 convincing the claimant to return the OCAS-
14 1. And again, we try to explain it in any
15 number of ways we can. Now all -- it just
16 says you don't have anything to add. If you
17 do, put it on and send it back in; we'll
18 capture it and start over. But there are a
19 number just refuse to return it. And then
20 as Jim Neton mentioned, after 60 days
21 there's an administrative closeout in there.

22 And of course ability to communicate
23 with elderly or emotional claimants.
24 Another small issue we have -- in a lot of
25 cases a claimant would want a -- a son or

1 daughter to assist in the interview, but we
2 really can't do that unless they're
3 designated as an authorized representative,
4 so we have to send that form out and get it
5 back in and all that sort of stuff. But it
6 -- it's not a real big problem and we have a
7 way to handle it.

8 So we're -- OCAS is still mailing out
9 the draft dose reconstruction reports.
10 We'll probably be taking that over for them,
11 and then getting ready to go on the Special
12 Exposure Cohort process. And exactly what
13 sort of workload that's going to be on us
14 is, at this point, anyone's guess.

15 I didn't mention -- perhaps I skipped a
16 slide, but let me just go over a few things.
17 On the draft DR report, it is reviewed by a
18 health physicist reviewer. They have a
19 checklist they work against for things like
20 accuracy of terminology, issues, work
21 processes and any of that thing, as well as
22 spelling, grammar and everything else before
23 that goes out.

24 We get about one-quarter of the draft
25 reports back with comments on them that --

1 and the vast majority of those are
2 additions. Again, as you might expect with
3 an elderly population -- oh, I forgot to
4 mention that, and they write it down and --
5 you know, that's what the whole process is,
6 then that is captured and added to the case
7 file. And a lot of times I think, as was
8 mentioned earlier by Jim, we get information
9 on additional work history -- you know, I
10 worked at site A plus site B. Well, it's
11 not in their records and then that means we
12 have to -- unless they were likely to be
13 compensable on the data we already have from
14 site A, we have to go get records from site
15 B, and of course DOL has to verify that,
16 additional cancer diagnosis, things like
17 this. So there are a number of issues that
18 can crop up in the interview process which
19 move the process back to the verification of
20 employment/diagnosis stage. But there's a
21 process to handle that.

22 So really the primary quality control
23 on the draft DR report is by our reviewer,
24 and then by the interviewee themselves.

25 Then the other issue on using the

1 information in the CATI report in dose
2 reconstruction, that report is in the dose
3 reconstruction file that the dose
4 reconstructor references to use. They are
5 required to review it. There are re-- there
6 is required verbiage in the dose
7 reconstruction report that says I have
8 reviewed the information in the interview
9 and however it was used. And as I said, a
10 lot of times the -- the information that
11 comes out in an interview is I was in an
12 incident of some kind at some time. And
13 then we have to go track that down, and
14 hopefully we can find enough information and
15 apply it in the dose reconstruction itself.
16 And then of course the check that the
17 interview information has been used in the
18 dose reconstruction report is our own peer
19 reviewer who reviews the DR report before it
20 goes to OCAS, and the OCAS reviewer who
21 approves it before it goes out to the
22 claimant, and then the claimants' review of
23 it themselves.

24 And again, we found a feedback loop
25 that once the final DR report has gone out,

1 claimants will then add additional
2 information to that, send it back in and,
3 again, we fold that back in and redo the
4 report as necessary.

5 So let me just check here, I think
6 that's all I had formally, so -- ah, one --
7 one more thing, just a -- the procedure
8 list. We have three procedures in place.
9 The fourth one is the checklists used by the
10 reviewers. And the only reason that's still
11 in draft is when it went through internal
12 review, the QA people said oh, this is
13 really a quality procedure and you should
14 put other things in here to qualify it as
15 such under some criteria they have, so we're
16 putting that in. But that will be out
17 fairly quickly and over to OCAS for their
18 approval.

19 Okay, so that is it. So I'll be glad
20 to attempt to answer any questions you may
21 have.

22 **DR. ZIEMER:** Thank you. First Roy and
23 then Jim.

24 **DR. DEHART:** I have two questions.
25 First, we have talked in the past about the

1 possibility of having assistance for some of
2 the older people, and is there any attempt
3 to encourage them to have coworkers or
4 anyone there during the interview, sort of
5 as a mind kick-off to help hit -- get the
6 memory hooks going or anything of that sort?

7 **DR. TOOHEY:** Gosh, I don't think there
8 is on our end up front. If they bring it
9 up, then yeah, they can have anybody they
10 want there while we capture that data, but
11 they can't have somebody actually do the
12 interview for them, unless it's an
13 authorized representative.

14 **DR. DEHART:** I understand that, but I
15 was --

16 **DR. TOOHEY:** Do we go out and actually
17 tell them up front -- oh, you can bring
18 people? I don't think so. Jim?

19 **DR. NETON:** (Off microphone) We don't
20 do that, but we do send them a copy of the
21 questions they're going to (Inaudible) in
22 advance, so they have the opportunity to go
23 over all the questions and talk to as many
24 people as they need to (Inaudible) refresh
25 their memory (Inaudible) answers

1 (Inaudible).

2 **DR. TOOHEY:** Actually where I mentioned
3 that before, if there's a local advocacy
4 group, they help this quite a lot.

5 **DR. DEHART:** That's -- that's my point.
6 I just wondered if we're encouraging them to
7 take that step as we prepare them for
8 interview.

9 **DR. TOOHEY:** Not per se. And in fact
10 the one problem -- most of -- we're getting
11 very few complaints, but most of the ones we
12 are, which you've heard before, primarily
13 from survivors -- I don't know the answers
14 to any of these questions. And again, they
15 have the opinion that they have to provide
16 the data and their inability to answer these
17 questions will adversely affect the dose
18 reconstruction. Again, we try to assure
19 them no, that's not the case. We rely on
20 DOE or other sources to get the data. This
21 is just to help us capture anything you
22 might have.

23 **DR. DEHART:** It might be worthwhile
24 taking the initiative to suggest that there
25 -- if there are others -- advocacy groups,

1 coworkers, whatever -- that your father used
2 to work for -- work with, maybe you could
3 help them -- have them help me go over these
4 questions that I know I'm going to ask.

5 **DR. TOOHEY:** Sure. I know there have
6 been a number where that has been the case.

7 **DR. DEHART:** I would think that that
8 would --that would be helpful, as I think
9 over my own past experience it would be
10 helpful to have somebody remind me.

11 The other question -- I'll wait to see
12 if Jim hits it.

13 **DR. ZIEMER:** Jim.

14 **DR. MELIUS:** The pressure's on. Well,
15 I have three -- can I get three, just so I
16 have three tries to get your question in.

17 My first question is, how long for the
18 interviewers -- you talked about their
19 training. How long is the telephone skills
20 training?

21 **DR. TOOHEY:** You know, off the top of
22 my head I don't know that. I'll take a
23 whack and say it's at least one hour, maybe
24 two. That does include some role-playing,
25 practical, back and forth.

1 might assist them in site-specific
2 terminology? I know we talked about a site-
3 specific addenda questionnaire which was out
4 of the question because of OMB process --

5 **DR. TOOHEY:** Yeah.

6 **MR. GRIFFON:** -- but -- the reason I
7 ask this is because these people don't know
8 isotopes, generally speaking, but they do
9 know trade names or -- or code names or
10 things like that --

11 **DR. TOOHEY:** (Inaudible)

12 **MR. GRIFFON:** -- right, exactly.

13 **DR. TOOHEY:** Yeah, we do have a
14 glossary of that. It's not -- it's sort of
15 complex-wide. It's not site-specific.

16 **MR. GRIFFON:** Okay. So they -- they do
17 know those.

18 **DR. TOOHEY:** Yeah, it's basically the
19 terminology --

20 **MR. GRIFFON:** Uh-huh.

21 **DR. TOOHEY:** -- familiarization for the
22 interviewers.

23 **MR. GRIFFON:** And that is not included
24 in any way with the questionnaire to trigger
25 their memories or anything like that --

1 probably not.

2 **DR. TOOHEY:** No.

3 **MR. GRIFFON:** No. Okay. And I think
4 this might be my final question. Are you
5 looking at this data in aggregate in any
6 way? Are you looking -- are you putting the
7 questionnaires into any kind of database and
8 looking -- by site? For instance if, you
9 know, I'm -- I'm going to the coworkers
10 step. I don't know --

11 **DR. TOOHEY:** Oh, for site trends.

12 **MR. GRIFFON:** -- if this is being --

13 **DR. TOOHEY:** Not yet.

14 **MR. GRIFFON:** Yeah, for site trends or
15 --

16 **DR. TOOHEY:** Not yet, but that's on the
17 agenda.

18 **MR. GRIFFON:** On the hor-- okay.

19 **DR. TOOHEY:** Yeah, because -- you know,
20 when we discuss using coworker data, there's
21 really two sets; these huge volumes of site
22 data gathered for previous epidemiology
23 studies, and then there's the dose
24 reconstruction data for claimants from the
25 site. We're building that -- I think now we

1 call it the job exposure matrix off the
2 completed dose reconstructions, which
3 includes those interviews.

4 **MR. GRIFFON:** Okay.

5 **DR. TOOHEY:** But you know, a couple of
6 thousand finals on hand, we haven't really
7 started mining that yet to look for site
8 trends.

9 **MR. GRIFFON:** All right. And one -- I
10 think one final question. Do you do any
11 kind of classification description at the
12 front of your interview?

13 **DR. TOOHEY:** We don't initiate it.
14 Many times the worker will say well, I can't
15 discuss this; it's classified. And we have
16 a script for the interviewer to follow which
17 is well, none of the questions we're going
18 to be asking should involve classified data.
19 If you feel the information you want to give
20 us is classified, then we make arrangements
21 for a face-to-face interview by a cleared
22 person in a secure facility.

23 **MR. GRIFFON:** Okay.

24 **DR. TOOHEY:** We have done dozens of
25 those.

1 **MR. GRIFFON:** The other -- the other
2 thing, my experience is that it was helpful
3 for us to have -- we actually had
4 classification people from the sites come in
5 and do this and tell group -- groups that we
6 were interviewing that, you know, you worked
7 here 30, 40 years ago. Classification rules
8 have changed, a lot of things have been
9 declassified, and you can talk about these.

10 **DR. TOOHEY:** Well --

11 **MR. GRIFFON:** Otherwise they may never
12 tell you on the interview --

13 **DR. TOOHEY:** Exactly.

14 **MR. GRIFFON:** -- but they're storing
15 this information and --

16 **DR. TOOHEY:** Well, and we found that in
17 the supposedly classified interviews we've
18 done that then those reports are reviewed by
19 -- by an ADC on the site and there, to date,
20 have not been any classified data actually
21 provided by claimants. But as you say, in
22 the intervening 30, 40 years, it's been
23 declassified.

24 **MR. GRIFFON:** Right. My point is to --
25 to --

1 **DR. TOOHEY:** Yeah.

2 **MR. GRIFFON:** -- I guess in sort of a
3 more proactive way to sort of say it's okay
4 to talk about most of this stuff or -- or --
5 I don't know how --

6 **DR. TOOHEY:** I don't think I'm going to
7 stick my neck out that way, but I'll be glad
8 to, you know, let OCAS arrange it with DOE.
9 See, the one problem with that --

10 **MR. GRIFFON:** I understand.

11 **DR. TOOHEY:** -- yeah, and we have
12 discussed this, is -- as you well know --
13 it's site-specific.

14 **MR. GRIFFON:** Right.

15 **DR. TOOHEY:** And then of course trying
16 to do it generically just -- just doesn't
17 work.

18 **DR. ZIEMER:** Robert?

19 **MR. PRESLEY:** Dr. Toohey, when the
20 OCAS-1 form goes out -- we've heard two or
21 three people state today that the claimants
22 or people that are filling in for the
23 claimants don't understand what they're
24 getting. Is there a letter that goes out,
25 an explanation letter that goes out with

1 that that would explain to these people
2 exactly what this is and what to do with it?

3 **DR. TOOHEY:** I'm going to pass that one
4 to my colleague, Dr. Neton. I think so, but
5 I honestly don't remember.

6 **DR. NETON:** (Off microphone) Yes,
7 there's -- there's a letter that goes out
8 that explains exactly that (Inaudible) --

9 **UNIDENTIFIED:** Jim, you're mike's not
10 working. Turn the mike on.

11 **DR. NETON:** Oh, I'm sorry.

12 **MR. ELLIOTT:** Thank you.

13 **DR. NETON:** Yes, there is a letter that
14 goes out with the -- with the OCAS-1 form
15 and the draft dose reconstruction report
16 that essentially says that they are not
17 signing that they agree, that it is they are
18 done providing us information, or something
19 to that effect. It's in there.

20 **MR. PRESLEY:** Okay. Thank you, Jim.

21 **DR. MELIUS:** Yeah, two quick follow-up
22 questions and one Jim Neton may talk about
23 later, so it's not appropriate. That's this
24 whole -- this incidents database which is
25 not, as I understood from our last meeting,

1 is not part of the site profiles but there's
2 this series of documents -- database that
3 you're keeping, so forth. I'm assuming that
4 if during the interview you discover
5 incidents that aren't part of the site
6 profile or not recorded, that gets referred
7 into this system?

8 **DR. TOOHEY:** Yes.

9 **DR. MELIUS:** Okay.

10 **DR. TOOHEY:** When we hear about an
11 incident from a claimant, the first thing to
12 do is we look and see if we've already got
13 the report. If we don't, we go ask DOE for
14 it.

15 **DR. MELIUS:** Okay.

16 **DR. TOOHEY:** If they can't provide it,
17 then we've -- you know, try to follow a
18 thread, dig a little bit deeper to find out
19 what -- what actually happened. And
20 sometimes we can and sometimes we can't.

21 **DR. MELIUS:** But is there any way of
22 recording -- well, what if you can't find
23 it? Is it still recorded in this incidents
24 database in a way that -- what if, you know,
25 another claimant mentions the same -- you

1 know, you start to see a pattern or
2 something?

3 **DR. TOOHEY:** The fact that the claimant
4 refers to it is captured. If it -- if it's
5 not in the database, we know what we've
6 asked for, so if we know we can't get it
7 from DOE and it forms a pattern, yeah, that
8 gets kicked back to dose reconstruction
9 research, the people who do the site
10 profiles. And say hey, look at this and
11 come up with it. The problem is, most of
12 what the workers could provide us would not
13 be adequate data to support a dose
14 reconstruction. They may be able to tell
15 you the isotope, but not how much, the form
16 -- you know, duration, things like that.

17 **MR. ELLIOTT:** Don't forget we also have
18 an affidavit approach that could be employed
19 here.

20 **DR. TOOHEY:** Yeah.

21 **MR. ELLIOTT:** And once you have an
22 affidavit and you verify the reasonability
23 of it, then that I think is also added to
24 the incident reporting.

25 **DR. TOOHEY:** Yes.

1 **DR. MELIUS:** Yeah, I'm just trying to
2 figure out what this -- this extra database
3 is and how it fits with the site profile, so
4 if Jim talks about it later or as you
5 develop it, if you want to brief us on it at
6 another meeting, that's the most efficient
7 way, that's fine.

8 My last -- just really a comment to
9 follow up on Roy's first question, this idea
10 of referring people to some of the advocacy
11 or representational groups around, I think
12 that would be particularly helpful for
13 survivors beforehand because, you know,
14 again, they don't all live in the area, you
15 know, there or they may not have -- have the
16 contacts and so forth. And I've certainly
17 been impressed at -- both up here in Buffalo
18 but many other sites that we've been at at
19 how helpful and knowledgeable these people
20 can be in helping, you know, determine what
21 happened to people, where people worked and
22 so forth. And I think having them referred
23 to some of these groups prior to the
24 interviews may actually help make those
25 interviews more worthwhile and -- and

1 helpful, you know. He wor-- you know, my
2 father worked with this group or -- or
3 whatever. It may be more useful.

4 **DR. TOOHEY:** Let me add that we're
5 starting to see some of that come back from
6 the worker outreach program where we're
7 presenting the site profiles to organized
8 labor and -- and where there is no remaining
9 organized labor entity, we can address
10 assorted stakeholders.

11 **DR. MELIUS:** And then I'm just thinking
12 if there's the survivors living, you know,
13 1,000 miles away, at least they could refer
14 them -- they may not have direct access or
15 hear -- read about it in the newspaper or
16 whatever, but at least would be referred and
17 could be helpful to them.

18 **DR. TOOHEY:** Actually we've got kind of
19 an initiative to work on that. Vern
20 McDougal*, who's working with us and has
21 good union representative -- a lot of the
22 unions of course have their retiree
23 organizations and mailing lists, and we're
24 exploring ways to help that get some of the
25 word out.

1 **DR. MELIUS:** Okay, good.

2 **DR. ZIEMER:** Mike, you had a comment,
3 question?

4 **MR. GIBSON:** These incident reports
5 that you go back to DOE or -- they're
6 generated by the contractor, most of the
7 time --

8 **DR. TOOHEY:** Yes.

9 **MR. GIBSON:** -- and with the inception
10 of Price Anderson -- I mean these fines and
11 everything else -- these contractors
12 vigorously try to downplay the incident and
13 the extent of the incident, the isotopes
14 involved, so how are you depending on that
15 information that you may get from them as
16 being -- trying to develop a worst-case dose
17 estimate?

18 **DR. TOOHEY:** Well, once I know the
19 isotope and I know something about the
20 characteristics of the incident and the
21 process, I can start making some brackets
22 for worst case. But I would also remind you
23 that the worst-case situation is primarily
24 applicable to a case that's likely to be
25 non-compensable, so we're going to give them

1 a maximum dose assessment. Other cases we
2 want to actually give them the best estimate
3 of the dose, and that takes more digging.
4 And like every other part of this, the DOE
5 submittal is only part of what we have to
6 consider. There may be independent reviews
7 of claimant input, coworker input and other
8 things like that. And we just take
9 everything into account and do the best we
10 can.

11 **DR. ZIEMER:** Rich, originally we --
12 when we learned that you were doing some
13 sort of quality assurance on the telephone
14 interviews -- because we've had an ongoing
15 interest in exactly how those were
16 progressing and so on -- I think that led to
17 this presentation today. It's -- it's an
18 evolving process, obviously, that you're
19 developing the QA/QC parts of this. And we
20 ourselves will probably end up doing some
21 independent evaluations through our audit
22 approach. But there's been several items
23 that have sort of been asked for here. I'd
24 like to -- rather than having many
25 individuals on the Board ask you to provide

1 different pieces of things, I'd like to try
2 to pin down what it is the Board feels they
3 need as we go forward, in terms of
4 additional information. I think several
5 things have been alluded to, and just so we
6 have it in the record and agree to whatever
7 that we can kind of pin that down and say
8 okay, these things the Board needs or -- or
9 if we don't think we need them, we can say
10 so, but...

11 **DR. TOOHEY:** I'm ready to copy.

12 **DR. ZIEMER:** And -- yeah, I think Jim
13 mentioned some things, maybe Roy did and
14 maybe others.

15 **DR. MELIUS:** I was just going to
16 suggest maybe procedurally if we could
17 reactivate that working group that met
18 'cause I mean I have my notes from that that
19 might help us -- I mean, Tony, you -- you --

20 **DR. ZIEMER:** Was that your working
21 group on interviews?

22 **DR. MELIUS:** On interviews, and if we
23 interact with -- with whoever, Larry and
24 (Inaudible), I think we could probably pull
25 together a request and it just might be more

1 efficient than trying to go through a list -
2 - list here, and I think -- certainly I --
3 I'd certainly be willing to do that if
4 that's a -- would help move this along.

5 **DR. ZIEMER:** We can certainly do that.
6 I don't recall who was on that working
7 group, actually. Tony was?

8 **DR. MELIUS:** Tony and I, Richard I
9 think --

10 **MR. ESPINOSA:** Don't volunteer me. I
11 wasn't on that group. I don't believe I
12 was.

13 **DR. ROESSLER:** Was it Wanda?

14 **DR. MELIUS:** I can't -- I don't --
15 we'll find it.

16 **DR. ZIEMER:** Well, it does not
17 necessarily have to be those same
18 individuals if -- if two or three of you
19 want to agree to go back and develop some
20 items that you think we need to see. It'll
21 be one thing to say, you know, out of
22 general interest, but some specific things
23 that would be helpful to us in evaluating or
24 even just saying what might we suggest that
25 they consider. We don't -- you know, I

1 think we can talk about what they might
2 consider as they go forward, also, that
3 might be helpful to their QA/QC process.

4 **DR. MELIUS:** The reason I think -- I
5 suggested the working group is that we -- it
6 went through and developed a sort of a list
7 of steps in the process and -- and what the
8 QA/QC procedures that were either in place
9 or were planned for those different steps.
10 And I think -- I think they made a
11 significant amount of progress --

12 **DR. ZIEMER:** And perhaps just look at
13 those and --

14 **DR. MELIUS:** Exactly --

15 **DR. ZIEMER:** -- sort of lay it side by
16 side and --

17 **DR. MELIUS:** I don't think this has to
18 be a very onerous or lengthy task, but I
19 just think it would be more efficient than
20 try -- 'cause I frankly can't remember all
21 the things --

22 **DR. ZIEMER:** And I don't, either.
23 Tony, did you want to comment on that?

24 **DR. ANDRADE:** I just wanted to
25 congratulate Richard and -- and the

1 Associated Universities with the work they
2 have done in that I believe they've
3 implemented just about every suggestion that
4 we did come up with in the working group,
5 and perhaps even more.

6 However, now that this data collection
7 process has really come together, I think in
8 general what we would like to see are the
9 trends, the issues and the things that come
10 out from looking -- from analyzing the data,
11 so that the data itself is probably
12 meaningless if -- you know, if it's
13 displayed on the screen, but those things
14 that are -- that have been discovered and
15 those things that have come to light as a
16 result I think in general are what Jim and I
17 would suggest for a future meeting.

18 **DR. TOOHEY:** I think I probably have in
19 my files what I think was a draft report of
20 that working group that we started to work
21 on, then that got dropped for some reason
22 and very -- we went on to other things and -
23 -

24 **DR. MELIUS:** Yeah, I think it got
25 dropped 'cause you were in -- we presented

1 it at a meeting, discussed it and a lot of
2 stuff was being implemented so it didn't
3 make sense to --

4 **DR. ZIEMER:** Right, and the working
5 group was ad hoc and in that sense this does
6 not have to be the same identical group.
7 Are the two of you volunteering to
8 participate?

9 **DR. MELIUS:** Yeah.

10 **DR. ZIEMER:** Let's get one more person
11 -- Wanda? The three of you then constitute
12 the working group. Who -- do you want to
13 take the lead, Jim, and the three of you
14 develop a report for us at the next meeting
15 then and we'll --

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

17 **DR. ZIEMER:** And if you would -- now
18 I'll simply ask you to review what we looked
19 at before and review what ORAU has been
20 doing, and kind of do a side-by-side and if
21 there's some -- some gaps that we think
22 would be helpful for them to address, that's
23 fine, too. Again, I don't think we want to
24 necessarily be in the business of laying out
25 their QA/QC program, but we want to see what

1 it is telling us. Okay. And if there's
2 some things that could be mined from the
3 data, that would be great. Okay. So that -
4 - those three will constitute a -- an ad hoc
5 working group to address this issue.

6 Are there any further comments for Dr.
7 Toohey?

8 (No responses)

9 **DR. ZIEMER:** Okay. Richard, thank you
10 very much. We appreciate --

11 **DR. TOOHEY:** Thank you.

12 **DR. ZIEMER:** -- as usual your good
13 report to us.

14 Now we're well past our break time but
15 we will take our 15 minutes.

16 (Whereupon, a recess was taken.)

17 **DR. ZIEMER:** I'd like to call the
18 meeting back to order. Before we take our
19 next agenda item, we have with us today one
20 individual member of the public who wishes
21 to address the Board and who will not be
22 able to be here this evening. That
23 individual is Fred Stockwell. Fred is with
24 a group called Steelworkers Organization of
25 Active Retirees, or SOAR, and he's going to

1 soar up to the microphone there. Would we
2 be better to use a lapel mike for Fred?

3 **UNIDENTIFIED:** I think we can do --

4 **DR. ZIEMER:** Can do it there, okay.
5 Fred, welcome.

6 **MR. STOCKWELL:** Thank you for this
7 opportunity to speak today. I was a steel
8 worker for 38 years at the Bethlehem Steel
9 plant. I am presently the president of the
10 Steelworkers Organization of Active
11 Retirees, the acronym is SOAR. I understand
12 that for some reason they discounted the
13 South Buffalo Railroad and said -- oh, she's
14 going to pass these out to you there, I
15 hope. I don't have a lot of them. I didn't
16 realize there were that many people here
17 today, so if she will pass them to the Board
18 members.

19 My father-in-law worked for the South
20 Buffalo Railroad. He went there in 1936 and
21 died of cancer in 19-- in the early '60's.
22 And I'm wondering what happened here, why
23 did they discount him? He died of liver
24 cancer. Now the South Buffalo Railroad is a
25 wholly-owned subsidiary of the Bethlehem

1 Steel Corporation. It is not a contractor
2 (Inaudible). Their property was on the
3 Bethlehem Steel Property at the Lackawanna
4 plant. No other railroad could come into
5 the Bethlehem Steel plant, the Lackawanna
6 plant. They brought everything in and they
7 had no cabooses.

8 Some people think conductors
9 (Inaudible) have cabooses. Well, they don't
10 have cabooses. They either rode the engine
11 or they rode the car as they were bringing
12 them in, and they brought all the steel up
13 to the open (Inaudible) or the blast
14 furnace, wherever it was coming -- going to,
15 and that's what came in from the ra-- for
16 the radiation with all the radiation on it.
17 And so I'm not sure exactly why they
18 discontinued that because there probably are
19 other South Buffalo people that have been
20 discontinued. And I know that there are
21 other Bethlehem Steel workers that have just
22 been -- not really discontinued, but we
23 don't know too much about this.

24 I have filed -- oh, three or four years
25 ago when this came out, and I never heard

1 anything from anybody about this at all.
2 Nobody ever said Fred, you're rejected. And
3 at that time I did mention my father-in-
4 law's name, and nobody ever said he was
5 rejected. Well, the last meeting that I was
6 out at in (Inaudible) Park, that's where I
7 found out that they had literally discon--
8 this said that the South Buffalo Railroad is
9 not part of -- was a contractor. They -- I
10 don't have all the information with me
11 because it is -- I'm getting more and more
12 and I'm sending it to Annette and Annette is
13 getting it, and I've talked to the union
14 district four office and they have many
15 cases of a thing that show that they were
16 negotiating with them for the Bethlehem
17 Steel or the pensions and everything else.
18 I have one copy of the book, but I think
19 it's important that we get -- why did they
20 just not -- or why did they say that the
21 South Buffalo Railroad was not part of the
22 industry there. Their Buffalo tank was
23 there, South Buffa-- now these are
24 subsidiary -- wholly-owned subsidiaries, and
25 I don't know what happened to all them

1 books.

2 Apparently -- I was hoping to give them
3 to you people and I have one copy of that so
4 unfortunately that's what happened. They
5 were supposed to go up to the front table
6 there. We can make more if you want them.
7 If you let me know that you would like them,
8 I certainly will get them for you. There's
9 interesting part -- this is from the Courier
10 Express, 1967 edition, and they did quite a
11 number on the South Buffalo Railroad. I
12 think that picture on the front page -- I
13 think that's a posed picture. You'll never
14 see an engine that close to that much fire.
15 That's kind of a no-no, but anyhow, they are
16 the people that moved the steel in and out
17 of the plant. No other railroad could do
18 anything in the plant, that was it. So that
19 is what I came to speak about and we'll see
20 where it goes from there. Thank you very
21 much.

22 **DR. ZIEMER:** Thank you very much, and I
23 -- am I correct in assuming that the -- at
24 least the Department of Labor has this
25 information or are looking into that?

1 **UNIDENTIFIED:** (Off microphone)

2 (Inaudible)

3 **MR. ELLIOTT:** You need to come to the
4 mike, please.

5 **DR. ZIEMER:** Please use the mike.

6 **UNIDENTIFIED:** (Off microphone)

7 (Inaudible)

8 **UNIDENTIFIED:** (Off microphone) Turn it
9 on.

10 **MS. PRINDLE:** Annette Prindle, district
11 director in the Cleveland district office.
12 I have the information that Fred has
13 submitted and I just got the last of it last
14 week, so I will submit that to our national
15 office.

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

17 **MS. PRINDLE:** Thank you.

18 **DR. ZIEMER:** So there'll be some
19 follow-up that will occur, Fred. Thank you.

20 **MR. STOCKWELL:** Thank you very much.

21

22 **SPECIAL EXPOSURE COHORT RULE**

23 **DR. ZIEMER:** The next item on our
24 agenda is the presentation on the Special
25 Exposure Cohort rule, and Ted Katz is going

1 to lead us through that. Ted?

2 **MR. KATZ:** Hello -- hello? Is this
3 working? Thank you, Mr. Chairman, members
4 of the Board. I was speaking with Genevieve
5 before this session and she suggested I
6 raise for y'all a possibility which is --
7 this presentation is discuss-- focused on
8 discussing changes from the last notice of
9 proposed rulemaking that you reviewed to the
10 final rule. I know it's been a while,
11 though, since you reviewed the notice of
12 proposed rulemaking and the previous -- even
13 though you spent a lot of time on this rule
14 over the last couple of years, it's been a
15 while since you've been looking at this
16 material. So if you'd like, I can sort of
17 give you a thumbnail sketch of the overall
18 rule, the requirements and so on before I go
19 into the issues of what we changed and why,
20 if -- if there are a number of you that
21 think that that would be useful. If you
22 don't want me to spend the time, though,
23 I'll just launch right into the change
24 issues as I've prepared. It's up to --

25 **DR. ZIEMER:** Any objection to the

1 overview?

2 **MR. ESPINOSA:** I was just kind of
3 wondering if you have maybe a red-lined
4 copy?

5 **MR. KATZ:** No, I don't.

6 **DR. ZIEMER:** Why don't you proceed --
7 any objection to having the overview and --

8 **DR. MELIUS:** This will still leave time
9 for questions?

10 **DR. ZIEMER:** Yes.

11 **MR. KATZ:** I can -- but Rich, I can
12 certainly -- I'm not -- I don't think we'll
13 have time in this session. I can certainly
14 -- at another time I can go through the rule
15 at that level, if you'd like. I mean if --
16 if the Board would like --

17 **DR. ZIEMER:** But you're going to point
18 out the differences --

19 **MR. KATZ:** Yeah, I'm going to point out
20 the major differences here, but I understand
21 what Rich is saying, and if -- if you'd like
22 a more detailed treatment, you know, that's
23 something I'd -- we won't have time to do in
24 this session.

25 Okay. So just one other thing to

1 mention, which is this slide presentation is
2 slightly different from the version that's
3 handed out, if all of you have that. I've
4 fussed with it a little bit just to pull
5 things together and add some things that I
6 had left out.

7 So let me just then go about the basics
8 of the rule and so on as it stands and the
9 requirements for it. I'm going to add more
10 to -- than what we have here, but EEOICPA
11 has two basic requirements for HHS for us to
12 add a class to the Special Exposure Cohort.
13 One, we have to find -- this is a reminder,
14 but we have to find that it's not feasible
15 to estimate doses with sufficient accuracy
16 and just -- in shorthand I talk about it's
17 not feasible to do dose reconstructions in
18 my presentations. And secondly, that
19 there's a reasonable likelihood that the
20 radiation dose is -- may have endangered the
21 health of members of the class. So those
22 are sort of substantive requirements in
23 EEOICPA that we have to address to be able
24 to add a class to the cohort.

25 In addition there are sort of three

1 important procedural requirements that we
2 have to address, one being that to initiate
3 the process of considering a class, we need
4 a petition from that class. And the second
5 being that the Board has an opportunity to
6 provide advice on the addition or non-
7 addition of a class in response to a
8 petition. And thirdly, that once a
9 decision is made, if a decision is made by
10 the Secretary of Health and Human Services
11 to add a class to the cohort that Congress
12 has a 180-day period to consider that
13 decision, to expedite it within that period,
14 to reverse it, what have you. And these are
15 all -- again, these are all requirements of
16 EEOICPA, not things that NIOSH formulated.

17 So going from there then, you know, the
18 NIOSH rule, just in an overview sense, does
19 the following things. One, it -- it puts
20 together procedures for implementing all the
21 statutory requirements that I just
22 described. It also establishes the
23 requirements for who's an eligible
24 petitioner and the contents of a petition.
25 And I think the -- we've made the

1 requirements of an eligible petitioner
2 exceptionally broad, I think. It's hard to
3 think of how anyone is left out, according
4 to those requirements. In terms of contents
5 of the petition, we've made, you know, the
6 bar exceptionally I think low in the sense
7 that -- that really what petitioners are
8 doing is simply having sufficient
9 information to indicate there might be a
10 concern about a class, it should be
11 considered to be added to the cohort. It is
12 not the burden of the petitioners to make
13 the case that a class should be added.
14 That's really the burden of the whole
15 evaluation process. All they're doing is
16 bringing to the attention of NIOSH, this
17 Board and the Secretary of Health and Human
18 Services classes that need that
19 consideration. And then it provides
20 procedural -- sort of procedural rights to
21 the petitioners throughout the process.

22 Let me just then summarize the process
23 as it is in the final rule very shortly, and
24 then I'll get into what we've changed.

25 So the process begins -- the

1 petitioning process begins with getting a
2 petition from a class, and that's from any
3 parties -- the eligible parties or either
4 members of the class, employees themselves
5 or their survivors, or unions that represent
6 or represented members of that class, or a
7 representative that members of the class or
8 their survivors empower to represent them
9 and submit a petition on the behalf of the
10 class. Those are the sort of three
11 categories of petitioners.

12 They submit a petition. It comes to
13 NIOSH, and the first thing NIOSH does is
14 determine whether the petition meets the
15 basic requirements -- again, the low bar I
16 expressed -- for receiving full
17 consideration of NIOSH, the Board and
18 Secretary of Health and Human Services.
19 That is a -- as it's laid out in the rule
20 and in more detail in procedures that we've
21 -- internal procedures that are available
22 through our web site for how we're going to
23 handle this. You know, that is a process
24 that involves working with the petitioners -
25 - NIOSH working with the petitioners and

1 helping them address those requirements.

2 And then NIOSH makes a proposed finding
3 as to whether the petition ultimately then
4 meets those requirements for being
5 considered. If it does, it goes on to the
6 next step. If it doesn't, the petitioners
7 have an opportunity to request an
8 administrative review of that decision, that
9 find-- proposed finding. And that review
10 would be run by the director of NIOSH and it
11 would involve individuals independent of the
12 OCAS process of making the determination in
13 the first place.

14 Okay, so then on to the next step. So
15 then NIOSH has decided now that a petition
16 meets the requirements and deserves
17 evaluation. The next step is for NIOSH to
18 do its evaluation of the petition according
19 to these two criteria -- address whether or
20 not it's feasible; and if so, make
21 determinations about health endangerment for
22 that class. And just -- well, I'll get into
23 details of that actually in doing the
24 comparison, so I won't run through those
25 now.

1 At the end of that process, NIOSH
2 produces an evaluation report that goes to
3 the Board and the Board will hold a session
4 or sessions to address that petition. The
5 Board will -- the petitioners will be
6 invited to present -- this is part of their
7 petitioning rights -- to present their views
8 to the Board on the NIOSH evaluation which
9 they'll receive, as well as on their
10 petition. The Board will do its
11 deliberation, considering all this
12 information and other information it deems
13 appropriate and will make a recommendation,
14 its advice, to the Secretary as to what
15 should become of the petition.

16 I need to step back a second. NIOSH --
17 in its evaluation, it could -- it could, as
18 a result of one petition, advise that there
19 be -- a class be added to the cohort, that
20 there be a class not added to the cohort, or
21 both. I mean 'cause there could be multiple
22 decisions. We could have received a
23 petition that in fact when you do the
24 research, you find there may be some
25 members, there may be some class for which

1 you can't do dose reconstructions and other
2 members for which there's sufficient
3 information to do dose reconstructions, so
4 there could be multiple decisions.

5 The Board then gives its advice, and
6 then the next step is to have a proposed HHS
7 decision and the director of NIOSH would
8 issue that proposed decision as to whether
9 to add one or more classes, to not add
10 classes, so on.

11 Then the petitioners have the
12 opportunity to seek an administrative review
13 if we decide not to add a class to the
14 cohort, or if we make a determination about
15 health endangerment that would, in effect,
16 potentially exclude someone from being a
17 member of the class in either of those
18 cases. So any sort of adverse -- adverse
19 result, they would have the opportunity to
20 seek administrative review.

21 At the conclusion of that process, or
22 if there is no request, you move straight to
23 it, the Secretary makes a determination. If
24 the Secretary decides to add classes as
25 required by EEOICPA, that determination goes

1 into a report to Congress and Congress then
2 has its 180 days to review that decision or
3 act on it beforehand what it may do. And
4 then at the end of that whole process, NIOSH
5 will report out the results.

6 And there's actually reporting
7 throughout the process to the petitioners
8 and to the Board on the steps along the way.
9 So that's just a short of nutshell of the
10 rule.

11 Now let me -- unless there are any
12 questions about the general, let me get into
13 what has -- what we've changed from the
14 second notice of proposed rulemaking that
15 you reviewed a year ago -- spring.

16 Okay, so in the second notice of
17 proposed rulemaking our feasibility test was
18 that if we had sufficient -- access to
19 sufficient information to estimate the
20 maximum radiation doses that could have been
21 incurred in plausible circumstances by any
22 member of the class. That was the basic
23 test for feasibility. In addition, we had
24 provisions -- in some circumstances
25 feasibility could be cancer site-specific

1 and hence cancer-specific. We had
2 provisions so that we could determine that
3 it's not feasible to do dose reconstructions
4 only for individuals with certain cancers
5 and to hence add a class to the cohort that
6 would be cancer-specific, limited to certain
7 cancers.

8 So the Board's advice in response to
9 that proposal was to admit these provisions
10 that would allow HHS to add a class limited
11 to certain cancers -- the cancer-specific
12 classes, as they've been referred to -- and
13 also to develop guidelines on how NIOSH
14 would determine feasibility, implementation
15 guidelines.

16 The public's comments on feasibility --
17 well, I mean, the popularity contest was won
18 on this issue of omitting cancer-specific
19 provisions. We -- we heard this from almost
20 all commenters, and a lot of commenters felt
21 that this was -- this is really sort of --
22 would be too much of an inequity that --
23 that classes that we add would be cancer-
24 specific when the classes that were
25 established by Congress aren't limited to

1 particular cancers except for that they're
2 limited to the 22 cancers that Congress
3 specified under EEOICPA.

4 They also recommended in public
5 comments -- for example, a time limit on
6 dose reconstructions as a feasibility test,
7 a cost limit on dose reconstructions,
8 deficiency or absence of records as a test,
9 and they also -- public commenters asked for
10 additional details in the rule or in
11 guidelines regarding feasibility.

12 The final rule on feasibility -- the
13 changes from the second notice of proposed
14 rulemaking, we accepted the comment to
15 eliminate the cancer-specific provisions.
16 They're gone and the rule is very clear that
17 there is no cancer specificity in these
18 determinations.

19 We also made a lot of clarifications.
20 Clarification about the -- clarify the
21 feasibility determination for petitioner-
22 claimants for whom NIOSH cannot complete a
23 dose reconstruction. This is -- again, if
24 NIOSH has attempted to do a dose
25 reconstruction for someone and cannot

1 complete it, the idea from the inception was
2 that that would be a sufficient basis to
3 determine it's not feasible to do dose
4 reconstructions for a class involving that
5 individual -- involving that individual --
6 you know, the circumstances of that
7 individual. And there was some
8 misunderstanding, though, particularly in
9 public comments, about whether that really
10 applied, so we made it very explicit in the
11 rule that there's no further determination
12 required with respect to feasibility.

13 We also clarified the limited role of
14 maximum dose determinations and the process
15 information -- and clarified that process
16 information may be necessary. What that's
17 about is the rule, as it was written before,
18 would have had us determining whether we
19 could estimate maximum doses in every case.
20 However, we certainly expect we'll get
21 petitions in cases where we actually have
22 loads of data, and we're not talking about
23 doing maximum dose estimates but we're doing
24 very specific, very precise dose
25 reconstructions, relatively speaking. And

1 in those cases, you know, there'd be no
2 point in proving that you can do maximum
3 doses. The point is to prove that you can
4 do dose reconstructions, so...

5 We also clarified that NIOSH must have
6 some information from the site where the
7 employees worked, and this relates to a
8 statutory provision relating to probability
9 of causation determinations that sort of --
10 in a -- in a sort of deductive sense
11 requires that you have some information from
12 the site to do a dose reconstruction.

13 Now as I said, we have internal
14 procedures, as well, to flesh out how we
15 will actually go about the dose
16 reconstruction process. There are step-by-
17 step procedures that our folks inside will
18 use to do these -- I mean -- I'm sorry, to
19 do these evaluations of petitions, and as I
20 explained, it's a very abbreviated process
21 in a case where we've done -- attempted a
22 dose reconstruction and couldn't do it. But
23 for all other petitions -- I mean the place
24 we will start, because we're trying to be
25 very efficient in how we handle these

1 petitions, considering that we may get many
2 petitions and they're likely to require a
3 lot of work in any event. But we'll first
4 go to our dose reconstructions that are
5 complete or ongoing to see if we have the
6 evidence there to address the feasibility
7 issues that are raised by the petition.

8 And then the next step is if those
9 existing dose reconstructions, if there are
10 any, are not determinative on the issues,
11 then we go according to the hierarchical
12 approach that you use also for dose
13 reconstructions, which gives preference to
14 personal dosimetry information. And then
15 the second order of information would be
16 area monitoring and the third order would be
17 source term process information. So we'll
18 follow that same hierarchy in evaluating
19 feasibility.

20 Oh, we have also a number of provisions
21 -- other provisions for timely consideration
22 of petition. One -- and this is also in the
23 rule, as well as the procedures -- the OCAS
24 director may determine that
25 records/information is not or will not be

1 available on a timely basis. So even if the
2 -- if records exist, if they can't be
3 accessed in a timely basis, the director of
4 OCAS could make a determination, and in
5 effect you would treat it as if the records
6 didn't exist.

7 Second, we're -- the evaluations that
8 NIOSH does will be limited to address the
9 feasibility issues identified by the
10 petition and those required to demonstrate
11 feasibility. And what we're trying to say
12 here is this -- this is not going to be --
13 can't be, for us to efficiently deal with
14 petitions, a fishing expedition in terms of
15 evaluating the petition. So the issues --
16 the feasibility issues that the petitioners
17 raise will be addressed, but you know, just
18 to give you an example, you know, if you
19 have a petition covering an enormous time
20 span, an enormous number of operations and
21 so on, and the petition issues are specific
22 and limited, we wouldn't be fishing for
23 other issues there may be to feasibility
24 that one wouldn't know, haven't been raised
25 as suspect, and so on on our own.

1 And the third is the petitioner issues
2 that are not critical for determining
3 feasibility may be addressed separately if
4 they would substantially delay consideration
5 of the petition. This is just to say that
6 if -- if we can make determinations about
7 feasibility but the petitioner raises some
8 issues that don't impair our ability to do
9 dose reconstruction but they are issues
10 about, for example, the quality of
11 monitoring or what have you, we will address
12 those issues but, you know, we'll bifurcate
13 that so the petition process can move on if
14 -- if it would require a lot of time, if
15 it's going to require months to address
16 those issues and they're not determinative.

17 So the second test -- again, if
18 feasibility's the first, second is health
19 endangerment. In the second NPRM we limited
20 determination to an employment duration
21 requirement for exposed employees. We used
22 the same 250-day requirement that applies
23 presently for the employees of the gaseous
24 diffusion plants -- that's our default. But
25 we also allowed for HHS to specify presence

1 as sufficient in cases -- discrete incidents
2 of exposure in which doses were likely to
3 have been exceptionally high.

4 The Board -- you -- advised us on
5 health endangerment -- you recommended that
6 employees be credited for days of employment
7 within separate classes if necessary to meet
8 the 250 work days criterion. In other
9 words, if an employee worked 150 days in one
10 class that's in the cohort and 100 days in
11 another class, combine those days and that
12 would still meet the health endangerment
13 requirement.

14 And the public comments on health
15 endangerment, there weren't that many. One
16 was to allow -- again, just as the Board
17 recommended -- employees aggregate the days
18 of employment within separate classes. And
19 a second comment was to waive the 250-day
20 requirement for operations that lasted fewer
21 than 250 days. So this is what we did.

22 We added a provision, as you
23 recommended, to allow employees to qualify
24 as a member of the class by aggregating
25 employment among classes included in the

1 cohort. This includes classes that we add,
2 as well as the classes that exist already --
3 or the class that exists already -- classes.

4 And we covered that second issue that I
5 just raised. Operations that last fewer
6 than 250 days would be covered by this same
7 provision. It would give in effect equal
8 treatment to all employees, so if someone is
9 in a short-term operation, that class can
10 still meet the requirements to be added to
11 the cohort, and that employee had worked at
12 another -- at another SEC site, that
13 employee would -- would qualify. It puts
14 everyone on the same level here.

15 **DR. ZIEMER:** But not by itself.

16 **MR. KATZ:** Not by itself, no. Not
17 within -- they have to have worked 250 days,
18 unless we find that there's exceptionally
19 high exposure and simply presence would be
20 sufficient, in which case it wouldn't matter
21 what duration the operation was. It would
22 have no effect on them. They would be
23 covered.

24 Other Board comments and HHS responses,
25 the Board recommended we include a facility

1 definition in the rule. However, EEOICPA,
2 as the Board discussed -- EEOICPA already
3 specifies facility definitions -- two
4 different definitions, one for AWE
5 facilities and one for DOE facilities. And
6 we're -- though we're required to live by
7 those definitions, we did add a footnote to
8 the rule to explain this was a Board concern
9 that multiple buildings on a site could be
10 considered a single facility, but that --
11 but will be a case-by-case determination as
12 to whether, you know, a petition is coming
13 from a facility or not, based on those
14 EEOICPA definitions.

15 The Board also made recommendations
16 about the petitioners' evidence regarding
17 unrecorded exposure incidents. And you made
18 really two recommendations. One, the rule -
19 - the proposed rule could have been
20 interpreted to require three affidavits when
21 you're down to a situation where you're
22 relying on witness evidence that an incident
23 occurred, and the Board recommended that it
24 be two. And the other Board recommendation
25 was that where there are no surviving -- or

1 can be found -- eyewitnesses, that you be
2 able to consider the evidence from non-
3 eyewitnesses, and we have changed the rule
4 accordingly. We have actually eliminated --
5 there is no numerical requirement whatsoever
6 for the number of affidavits, and we are
7 allowing for people who have second-hand
8 information to provide evidence.

9 The Board also recommended that there
10 be an administrative review of findings by
11 NIOSH that a petition doesn't qualify for
12 consideration -- that front end of the
13 process that I explained -- and we have
14 included the review process as I just
15 described it, run by the director of NIOSH.

16 Okay, other changes/clarifications in
17 the final rule. We have -- and some of
18 these arise from actually figuring out, sort
19 of working through in the step-by-step
20 process we had to to develop the
21 implementation, internal procedures, what
22 were going to be some implementation
23 problems, and some of these relate to that.

24 The first one on here is the number of
25 petitioners per petition. We didn't have

1 any cap on the number of petitioners. We
2 didn't have any verbiage on the number of
3 petitioners in the proposed rule. We have
4 capped the number of petitioners per
5 petition to three. It doesn't -- it doesn't
6 limit the number of people covered by the
7 class, but -- but it became apparent to us
8 that it would be really unmanageable and --
9 and detrimental rather than helpful for the
10 petitioners to have a large number of
11 petitions. You know people, when they think
12 of petitions, of course they think they get
13 strength by numbers. In this case, our
14 determinations are technical, not based on
15 the number of petitioners signing. But the
16 problem is if you have large number of
17 petitioners signing, they gain all the
18 rights of the petitioner -- rights, for
19 example, to present to the Board. If you
20 had 100 petitioners that you had to hear
21 from before the Board could even begin
22 deliberations, that might be an issue. But
23 there are all sorts of -- I mean NIOSH has
24 to first, on the front end, determine that
25 the petitioners are all qualified

1 petitioners, as well. It's an
2 administrative process, but the more
3 petitioners, the more work that would be.
4 And the process, you know, runs through all
5 the way to the time of appeals.

6 And if you have differences, you know,
7 between petitioners on issues -- on the
8 front end, for example, of getting the
9 petition in shape to meet requirements, if
10 you have differences between them, the more
11 petitioners there are, the harder it's going
12 to be to get that petition past the starting
13 block. You know, on the back end, on the
14 appeals decision, if you have differences
15 between petitioners you can have issues
16 there, too.

17 We also added a new information
18 requirement. This is similarly related to
19 sort of practical problems in
20 implementation. Once we've considered a
21 petition, if someone submits a petition
22 after that, if they submit petitions -- let
23 me back up -- conterminously. If we receive
24 a bunch of petitions relating to the same
25 class, on the front end we have provisions

1 to aggregate those, to combine them and
2 treat them as -- in effect -- if they were
3 one petition. You know, they'll do the
4 process together. But if we've already done
5 the work of evaluating a petition, you know,
6 at that point forward, or if the Secretary's
7 already decided on a petition, you get
8 another petition in that's precisely the
9 same as the petition that was already
10 considered, there we have a requirement then
11 that that petition, the new petition has to
12 provide new information that hasn't been
13 considered, to be considered. Otherwise,
14 we'd end up in -- we could end up in an
15 endless loop where we'd have to go through
16 the whole process, despite the fact that
17 we've already deliberated. It would still
18 have to come before the Board. It would
19 still have to go to the Secretary. This was
20 a way to avoid that, which would get in the
21 way of us dealing with other petitions that
22 haven't been considered.

23 Evidence requirements, we clarified
24 that the evidence provided will be weighed,
25 in effect, for adequacy and credibility. I

1 mean that -- that should go without saying,
2 but needs to be said and we added that
3 clarification to the rule.

4 We added a review -- we didn't add, we
5 elaborated exactly how the review of
6 proposed decisions would occur, and that is,
7 again, to remind you, once NIOSH makes a
8 recommendation on behalf of HHS, a proposed
9 decision or decisions to add classes, not
10 add classes, then we laid out elaborately
11 what the process would be by which a
12 petitioner would seek a review if it's a
13 denial of a class or it's a health
14 endangerment determination that might
15 exclude individuals, and that process is run
16 by HHS. They're independent -- a panel of
17 independent -- three independent people from
18 HHS personnel would -- would do that
19 administrative review and that would be
20 considered by the Secretary. And there are
21 more details in the rule about how that's
22 done.

23 Finally, multiple -- multiple
24 decisions. We also clarified -- as I said
25 on the front end, when NIOSH evaluates a

1 petition, it may find that there are
2 actually a number of decisions that come out
3 of the same petition, decisions to add or
4 not to add both. And it wasn't -- the rule
5 didn't clearly allow the Secretary to issue
6 multiple decisions, which would have been
7 held hostage, you know -- the decisions to
8 add a class would be held hostage to
9 decisions to deny one because people would
10 want a review and so on, so we have
11 clarified that.

12 And we also clarified protection under
13 the Privacy Act, that -- that the Board is
14 going to be involved in a process of
15 evaluating these petitions and NIOSH and the
16 Board are going to have to work together
17 carefully to ensure that privacy is
18 maintained, very similarly to the issues
19 you'll have in reviewing dose
20 reconstructions, but to protect the privacy
21 of individuals when we're dealing with a
22 class. And not all members of the class are
23 necessarily willingly sort of giving their
24 data to the public.

25 And that's the end of my prepared

1 remarks, but...

2 **DR. ZIEMER:** Okay. Well, we'll open
3 the floor for questions then, Ted. Thank
4 you very much. Who's first? Okay, Jim.

5 **DR. MELIUS:** I'll go. What -- just
6 review for me the length of time from --
7 roughly from the time a petition arrives at
8 NIOSH to the time people would get
9 compensated.

10 **MR. KATZ:** Well, I mean -- I mean it
11 depends, of course, but -- but starting from
12 the back end and going forward, just 'cause
13 it's easier, I mean there's 180 days that
14 Congress has the opportunity to review a
15 decision before it becomes effective.

16 **DR. MELIUS:** Uh-huh.

17 **MR. KATZ:** So that's a given, 180 days,
18 you know, unless Congress acts before then.
19 Then you have -- let me just -- well, I'll
20 just keep going from the back forward. Then
21 you have the Secretary's determination, you
22 know. I don't know what the length of that
23 is, but in part there is -- if there is
24 going to be an administrative review, the
25 petitioner has 30 days to request such a

1 review, and then there's whatever time that
2 review requires. You know, then moving
3 forward from there, there is the -- NIOSH
4 making the proposed determination, after the
5 Board has given advice.

6 **DR. MELIUS:** Uh-huh.

7 **MR. KATZ:** You know, there's the
8 Board's deliberations. I think it's going
9 to be pretty variable how long the Board
10 requires to deliberate over a petition
11 because these are going to be different
12 scope petitions and so on. I think some,
13 you know, are likely to be much easier than
14 others, simpler and quicker.

15 **DR. ZIEMER:** Excuse me, Ted. Does the
16 NIOSH determination -- is that specified in
17 --

18 **MR. KATZ:** In the rule, so it's --

19 **DR. ZIEMER:** -- the rules by how -- I
20 mean in -- the number of days?

21 **MR. KATZ:** No, there's -- there's no
22 time requirement on it 'cause it'll depend -
23 - it'll be a case-by-case, but -- and then
24 backing up from there, there's the NIOSH
25 evaluation of the petition. You know,

1 again, in some cases -- for example, the
2 case where we've done a dose reconstruction
3 and couldn't do it -- attempted a dose
4 reconstruction and couldn't do it, that, you
5 know, NIOSH evaluation is going to be pretty
6 quick. In a case where it's a very narrow
7 class, I think, and -- and there's very
8 clear information, it's going to be much
9 quicker. If it's an enormous class covering
10 all sorts of operations over a long time
11 period, you know -- I mean I think you would
12 expect that evaluation would take a good bit
13 of time. And it depends also on how many
14 allegations -- you know, issues are raised
15 by the petition itself, too.

16 **DR. MELIUS:** Uh-huh.

17 **MR. KATZ:** So how much is documented
18 there and how helpful that is to the
19 petition process.

20 **DR. MELIUS:** 'Cause I saw at least one
21 *Federal Register* notice in there for --

22 **MR. KATZ:** Oh --

23 **DR. MELIUS:** -- for -- before the Board
24 considers the -- so there's --

25 **MR. KATZ:** -- there's multiple *Federal*

1 *Register* notices.

2 **DR. MELIUS:** Right, yeah, I -- okay.

3 **MR. KATZ:** Those -- I mean we really
4 don't think that that's -- those will really
5 affect timing. I mean those will be worked
6 on concurrently with doing NIOSH
7 evaluations, with the Board doing its action
8 and so on, and since those are just notices
9 versus regulatory actions, which you're
10 familiar with, you know, they should be, you
11 know, relatively expedient.

12 **DR. MELIUS:** Yeah, I think they're less
13 than four years or whatever.

14 **MR. KATZ:** Less than four years.

15 **DR. MELIUS:** Do that. But there's also
16 provision in there that the Board can
17 collect its own information, also?

18 **MR. KATZ:** There is. I mean the Board
19 has the right to determine -- it has two --
20 I mean it actually -- it can re-- you can
21 request of NIOSH to go back and do more
22 evaluation, after NIOSH produces a report,
23 you know, but there's this open-ended catch-
24 all for...

25 **DR. MELIUS:** So -- so what's a fair

1 assessment of the -- the process in a...

2 **MR. KATZ:** The time?

3 **DR. MELIUS:** The time, yeah.

4 **MR. KATZ:** Well, I -- again, I think
5 it's going to be all over the place. I
6 think they're going to -- there will likely
7 --

8 **DR. ZIEMER:** But you can --

9 **MR. KATZ:** -- be some cases that --

10 **DR. ZIEMER:** -- readily figure out a
11 minimum pretty fast, and the minimum --
12 you're going to have to allow the Secretary
13 of Health and Human Services 30 days plus
14 the evaluation time, so call it 30 plus 30,
15 minimum. We're going to probably have about
16 a 30-day turnaround time, minimum. NIOSH
17 will have another 30 day minimum. Right
18 away you're up to ten months.

19 **DR. MELIUS:** Yeah.

20 **DR. ZIEMER:** If everything is smooth
21 and straightforward. So it seems to me one
22 could easily say roughly a year from the
23 front end to the back.

24 **MR. KATZ:** I think the exception might
25 be -- might be -- those cases where we've

1 already found we couldn't do a dose
2 reconstruction. But otherwise, yes, I think
3 -- you know, at -- at minimum --

4 **DR. ZIEMER:** Even there, but you have
5 the six months to start out with for
6 Congress to look at it.

7 **DR. MELIUS:** You have the class
8 definition issue that --

9 **MR. KATZ:** You do have the class
10 definition issue.

11 **DR. MELIUS:** -- you know, which I
12 think, you know --

13 **MR. KATZ:** Yes.

14 **DR. MELIUS:** -- is going to take as
15 much time as -- I'm not sure that's very
16 different from doing -- you know, a de novo
17 petition coming in.

18 **MR. KATZ:** I mean I guess that -- we'll
19 leave that to be seen --

20 **DR. MELIUS:** Yeah.

21 **MR. KATZ:** -- but --

22 **DR. MELIUS:** Yeah. What is it in this
23 rule that took so long? What was the
24 stumbling point? I don't --

25 **MR. KATZ:** I'm really slow.

1 **DR. MELIUS:** Well, we noticed that.

2 **MR. KATZ:** There is -- actually I
3 worked really hard on this rule.

4 **DR. MELIUS:** No, and I'm sort of asking
5 what --

6 **MR. KATZ:** There's -- HHS is a very big
7 department with -- and there are a lot of
8 people involved, and every person has to
9 come up to speed. And then there, you know,
10 three other departments involved. And --
11 and this rule is -- is -- you know, is -- in
12 a way, it's very complex, even though it
13 seems like it would be simple. But it's
14 not. I mean the dose reconstruction rule, I
15 would say, in a -- is really a much -- was a
16 much simpler job than this --

17 **DR. MELIUS:** Uh-huh.

18 **MR. KATZ:** -- because it's dealing with
19 a situation that, you know -- you know,
20 people don't -- we don't deal with it.
21 There's no path, nobody's done this before,
22 so --

23 **DR. MELIUS:** And so people should be
24 happy that it took another year to...

25 **MR. KATZ:** They should be ecstatic --

1 **DR. MELIUS:** Because the --

2 **MR. KATZ:** -- yes.

3 **DR. MELIUS:** Okay.

4 **MR. KATZ:** Because it should have taken
5 five. No, I'm not -- we -- no, we were --
6 we pushed very hard, and I think all the
7 people involved pushed very hard to make
8 this rule happen as soon as it could. But
9 it was a difficult job.

10 **DR. MELIUS:** What about these
11 guidelines on feasibility and so forth that
12 you refer to in the rule? Are those
13 available yet?

14 **MR. KATZ:** Yes, they're -- absolutely,
15 they're -- I believe they're on our -- the
16 OCAS web site and we should be providing
17 them directly to all the members of the
18 Board --

19 **DR. MELIUS:** Have you?

20 **MR. KATZ:** -- but I don't know that we
21 have provided them to members of the Board
22 yet, but --

23 **DR. MELIUS:** (Inaudible) not to the
24 Board.

25 **MR. KATZ:** -- but they just hit the web

1 site on Friday with the rule.

2 DR. MELIUS: The petitions and
3 everything.

4 MR. KATZ: Right, as well as the
5 petition forms are on the web site, as well
6 as the instructions, which will be very
7 useful whether you use the forms or not, and
8 so on -- which provide more sort of advice
9 to petitioners on how to go about dealing
10 with the questions.

11 DR. NETON: I'm getting some feedback
12 that the guidelines -- I'm getting some
13 feedback that the guidelines may not be on
14 our web site just yet. I know the petitions
15 are out there --

16 MR. KATZ: Is that --

17 DR. NETON: We'll make sure they get
18 there --

19 DR. ZIEMER: Is Chris here? Does Chris
20 know?

21 DR. NETON: Chris, do you?

22 MS. ELLISON: I'm sorry?

23 DR. ZIEMER: Do you know if the
24 guidelines are on the web site yet, Chris?

25 MS. ELLISON: To my knowledge, the rule

1 is out there. There is information -- the
2 forms are out there on the web site. I
3 don't know anything about any guidelines. I
4 do not recall --

5 **DR. NETON:** The guidelines --

6 **MS. ELLISON:** -- receiving any
7 guidelines.

8 **DR. NETON:** -- will be out there as
9 soon as possible, they're just not up there
10 yet. The rule was just issued on Friday, so
11 --

12 **MS. ELLISON:** Right.

13 **MR. KATZ:** The guidelines are completed
14 and...

15 **DR. MELIUS:** What's in them, then? Can
16 someone explain to us what's in them?

17 **MR. KATZ:** So that -- the guidelines
18 are -- I mean I -- yes, I can. I mean it --
19 again, it's -- I just touched on it a little
20 bit, but they're a step-by-step -- you know,
21 to me they're kind of boring reading, but
22 they're a step-by-step how we go about
23 dealing with the entire process, from
24 determining that they're qualified
25 petitioners to helping the petitioners with

1 their submittal and meeting the requirements
2 of a petition to -- I'm sorry, there's
3 someone --

4 **UNIDENTIFIED:** (Off microphone)
5 (Inaudible) copy of a petition if anybody
6 wants to see it right now, the form?

7 **MR. KATZ:** Yeah, that's the pet--

8 **DR. ZIEMER:** That's the petition --

9 **MR. KATZ:** But that's the petition.

10 **DR. ZIEMER:** -- and not the guidelines.

11 **MR. KATZ:** Right, right, but these are
12 -- we're talking about the internal
13 procedures for how we deal with the
14 petitions. They go through step-by-step the
15 entire process of NIOSH preparing the evalu-
16 - doing the evaluation --

17 **DR. MELIUS:** Uh-huh.

18 **MR. KATZ:** -- and how it would go about
19 addressing feasibility and health
20 endangerment and so on.

21 **DR. ZIEMER:** Well, could we simply ask
22 that, as soon as those are on, to --

23 **MR. KATZ:** We can provide these to the
24 Board --

25 **DR. ZIEMER:** -- just give us either a

1 copy or just send us an e-mail and say
2 they're ready and we can download them or --

3 **MR. PRESLEY:** Send -- no, send them,
4 please.

5 **DR. ZIEMER:** -- or send them.

6 **MR. KATZ:** Yeah -- no, I'm sorry, I
7 just -- I just -- I just assumed they were
8 out, but I'm -- I apologize.

9 **DR. MELIUS:** Uh-huh.

10 **DR. ZIEMER:** Roy DeHart.

11 **DR. DEHART:** Two inter-related
12 questions. I realize you've been pretty
13 well consumed with getting this all taken
14 care of, but have you or others considered
15 what the impact is going to be in the near
16 term over the next six months or so, any
17 feel for how many petitions you're going to
18 have, any concept of what the workloads are
19 going to be?

20 **MR. KATZ:** No, I mean -- in reality,
21 no. I mean I -- in reality we don't know
22 how many petitions we'll receive and what
23 scope they'll be. I mean we do have some
24 information. We have a variety of people
25 who have already notified us of their intent

1 to petition. And if Larry were here, he
2 could probably rattle off, you know, what
3 the numbers were, at least.

4 **DR. NETON:** I can speak to that
5 briefly. I think we've received somewhere
6 on the order of three petitions -- potential
7 petitions early on. We're in the process
8 of drafting letters to notify those people
9 that the SEC rule has been published and to
10 evaluate whether or not the petitions that
11 we received were valid under the construct
12 of the regulation.

13 Other than that, we've been working
14 very closely with Oak Ridge Associated
15 Universities to develop the infrastructure
16 and the computer resources to handle the
17 petitions. That's in place on a fairly
18 rudimentary basis. And we've actually gone
19 through and done some mock petition
20 evaluations to try to flesh out the details
21 as best we could. That's about the extent
22 of what we've done.

23 **DR. DEHART:** That was basically my
24 other question, and that is -- I -- is there
25 an issue of staffing? Do you have -- are

1 you going to have adequate staff? Is this
2 going to be something that's going to have
3 to be addressed by the Board or any
4 recommendations coming from us?

5 **DR. NETON:** We hope we have adequate
6 staffing. But as Ted indicated, we just
7 can't predict the volume of the petitions
8 coming in. Right now I believe Oak Ridge
9 Associated Universities has identified three
10 health physicists that will be doing the
11 petition evaluations. A lot of the initial
12 effort's going to go into the qualification
13 phase to determine if, you know, more
14 information is needed to become a valid
15 petition, so we're working up that end, but
16 until -- until we start receiving them, we
17 really just can't predict.

18 **DR. DEHART:** I think my concern would
19 be that of the same concern that the Board
20 might have, and that is that -- are we going
21 to see a bleeding-off of manpower from the
22 thrust that we have ongoing in doing
23 reconstruction, et cetera, and consequently
24 slow that down in order to start addressing
25 the -- the petition drive.

1 **DR. NETON:** We share that concern, and
2 again, until -- until we see what's coming,
3 we can't really, you know, staff to -- to
4 handle the petitions until we know what --
5 what the level is going to be. I think -- I
6 personally believe that what we have right
7 now is adequate. I don't expect thousands
8 of petitions. I mean given that we have
9 16,000 cases, if every 16 people apply for
10 SEC status, you'd have 1,000 petitions. I
11 don't think that's going to be the case.
12 We're hoping that, you know, the valid
13 petitions, the ones that are qualified, stay
14 in the fairly low numbers, but it's
15 anybody's guess.

16 **DR. ZIEMER:** Gen Roessler.

17 **DR. ROESSLER:** Ted, you mentioned that
18 NIOSH has identified a number of situations
19 in which they cannot do dose
20 reconstructions?

21 **MR. KATZ:** No, no, I -- I said that --

22 **DR. ROESSLER:** That wasn't what you
23 said?

24 **MR. KATZ:** -- when we do identify --
25 when we attempt a dose reconstruction and

1 can't complete it, that meets the
2 requirement with respect to evaluating
3 feasibility.

4 **DR. ROESSLER:** Okay. Then my question
5 would be have there been any where you've
6 identified that you can't do dose
7 reconstruction?

8 **MR. KATZ:** Well, I mean the issue is --
9 right now is, the way we've organized our
10 efforts to deal with dose reconstruction so
11 far, almost avoids that because we're --
12 been dealing with the dose reconstructions
13 we could do, as -- as Jim mentioned earlier,
14 for example, the cases where there wasn't
15 monitoring, we're not even -- you know, the
16 profiles, for example, are not addressing
17 the non-monitoring issue at this point, so I
18 mean we've been doing dose reconstructions
19 that are sort of the low-hanging fruit, the
20 ones that can be the most expeditiously
21 addressed at this point.

22 **DR. ROESSLER:** Okay, so that's not an
23 area where you could predict what might come
24 up. Then my next question would be what
25 factors -- and maybe this is something that

1 comes up in the future. What factors would
2 go into determining that you can't do dose
3 reconstruction? I can see no monitoring. I
4 guess I'm just trying to -- this is naive,
5 but I'm trying to figure out where a
6 situation where you'd say they qualify,
7 which means they must have some sort of
8 source term, and yet you can't do dose
9 reconstruction. I guess this is addressed
10 probably to Jim to kind of get a feeling for
11 the -- you know, the impact of this on -- on
12 all of us.

13 **DR. NETON:** Yeah, it's -- it's a
14 difficult process. Without, you know, going
15 through a detailed example of a real life
16 condition, which we probably -- I'm not
17 prepared to do here -- it's hard to
18 envision. If -- if there were -- you know,
19 there has to be two conditions, one of which
20 is we can't -- we know there was radioactive
21 materials present -- material were handled,
22 but we really don't have a feel for the
23 quantity, the upper limit of the amount of
24 material that was processed, but we do
25 believe that it -- you know, it was a very

1 large amount that we just can't put a cap
2 on. Given that there are no cancer-specific
3 exposure scenarios now, though, one could
4 envision certain cancers -- particularly
5 lung cancer, maybe -- not being able to put
6 an upper cap on some exposure scenarios for
7 a lung cancer. That would of course bring
8 in all 22 cancers, so that -- I think that's
9 a requirement -- right, Ted? -- that if one
10 -- one cancer -- one particular cancer
11 cannot be quantified, dose reconstruction
12 can't be done, then all of the rest are in.
13 And so, you know, you'd have to look at
14 organs where there's a large potential for
15 dose. And clearly for inhalation exposures,
16 that would be the lung cancer-type
17 scenarios. But it's hard to --

18 **MR. KATZ:** Well, it's -- it's
19 circumstances -- I mean in general it's
20 circumstances where there -- where you don't
21 have source term and process information,
22 which, you know, is -- is not unheard of.

23 **DR. NETON:** And I could say that we're
24 looking through this right now. Some of
25 this is work that we've done -- we've done

1 so far with ORAU. We've actually been
2 looking through, you know, where these
3 situations might exist. But it's too early
4 for us to comment on anything that we've
5 done so far.

6 **DR. ZIEMER:** Jim.

7 **DR. MELIUS:** Yeah. I think Gen's
8 question's very good because I think the
9 chief problem with what you've done -- and
10 maybe we haven't seen everything -- is that
11 you've never -- you have yet to define
12 sufficient accuracy, and so you're doing
13 that on a case-by-case basis, which then's
14 going to throw it back on the Board to try
15 to make some determinations as to the
16 quality of your dose reconstructions through
17 our contractor's review. And secondly, the
18 -- the quality or the qualifications of the
19 Special Exposure Cohort petitions, you know,
20 based on some set of arbitrary guidelines --
21 I -- since we don't have them in front of us
22 and you're not presenting them today, it's
23 hard to talk about them, but it seems the
24 burden's on us. Now we had requested in our
25 comments that we have an opportunity to

1 review those guidelines, and I'm a little
2 confused as to where that stands. My
3 understanding from -- this draft was -- or
4 this final rule was that we were not going
5 to be given that opportunity, or at best we
6 were going to be given it in parallel to the
7 petitioning process. But it also would seem
8 to me that people applying for petitions
9 would have to know something about those
10 guidelines 'cause those are what are going
11 to determine whether they qualify or not.

12 **MR. KATZ:** Well, I mean actually they
13 don't. Let me just address a couple of
14 those thing-- both of those issues you
15 raise. Start with the petitions. The
16 petitioners don't need to know that, because
17 what they need to know is simply that low
18 benchmark that gets the petition -- what is
19 required for a petition to receive a full
20 evaluation, and that is the only information
21 that -- they're not required to prove the
22 case that -- of feasibility whatsoever. And
23 they're given full and complete and clear
24 information about what the requirements are
25 for submitting a petition that's valid and

1 gets evaluation. So there's no -- this --
2 it doesn't raise any problems for the
3 petitioner.

4 I'd also say that I think, despite the
5 fact that it's qualitative, it'll be --
6 it'll be very clear. It's not -- there -- I
7 don't think there is a problem with the
8 Board making determinations -- different
9 determinations about when it's feasible
10 because in every case it's -- if you can't
11 put -- if you can't estimate maximum doses
12 in the worst case, that's when you determine
13 that it's not feasible. And those
14 situations, despite the fact that it's murky
15 as to how much source term information do
16 you need to be able to do that and proc--
17 information you need to do that, I mean
18 it'll be very clear that you can't --

19 **DR. MELIUS:** Well --

20 **MR. KATZ:** -- you can't estimate --

21 **DR. MELIUS:** -- yeah, but then the
22 corollary -- the corollary of that, as I
23 pointed out many times, is that that means
24 that you're being -- that there's -- it --
25 going to be an error in terms of doing your

1 dose reconstructions then. Either your
2 actual dose reconstructions aren't going --
3 being done with sufficient accuracy, which
4 we would pick up in the re-- you know, the
5 review process and have to make some
6 judgment on because you're basing them on
7 maximum dose and does the maximum dose
8 really provide a sufficiently accurate dose
9 reconstruction I think is the question. And
10 if your guidelines don't address that -- and
11 I can't tell now, you've got me even more
12 confused -- then I think we're going to end
13 -- the Board is going to end up having to
14 make that assessment 'cause we're reviewing
15 both the petitions and your -- and your
16 program. It's either one or the other is
17 going to be faulty 'cause there's a direct
18 trade-off between -- between the two.

19 **MR. KATZ:** If we've completed a dose --
20 if you're reviewing dose reconstructions and
21 we've completed a dose reconstruction -- I
22 mean you can have issues about the dose
23 reconstruction. If it happens to be a dose
24 reconstruction which is in effect -- or
25 prac-- you know, a maximum dose or

1 thereabouts because it's relying entirely on
2 source term and process information -- I
3 mean then -- you know, you will very clearly
4 have laid out for you the assumptions, the
5 scientific basis for making that maximum
6 estimate, and whatever is questionable about
7 that you will have the opportunity to
8 scrutinize. So I mean actually in reality,
9 in practice, it's not going to be sort of a
10 mystery as to what to do or what to
11 recommend in those cases. But you know,
12 we'll see.

13 **DR. MELIUS:** That's correct, and I
14 think the Board's going to have to see it on
15 a case-by-case basis. And rather than
16 having a set of guidelines and regulations
17 to follow, we're going to have to be
18 determining it as -- as we go along and I
19 think there's a lot of potential problems
20 there and I think a lot of potential
21 unfairness to the -- the claimants. And I
22 think you're also wrong about -- I mean I
23 don't think claimants are going to want to
24 submit petitions without an understanding of
25 whether they qualify. I mean who wants to

1 spend the time and effort and wait around
2 for at least a year to get an answer back
3 when chances are that, you know, you may or
4 may not qualify 'cause you don't understand
5 the criterion. Simply because the initial
6 criteria for qualifying as a petitioner are
7 low does not mean that, you know, the
8 probability of the chances of success for
9 your petition are -- are going to be high
10 or...

11 **MR. KATZ:** But the rule very clearly,
12 though, specifies the likely circumstances
13 in which feasibility becomes an issue. I
14 mean where there isn't source term
15 information, where there isn't process
16 information, it pretty clearly expresses
17 those -- those -- those basic general
18 guidelines. So the petitioners have those
19 in the rule and they will -- there -- there
20 isn't more -- you can't turn the petitioners
21 into health physicists to take them further
22 and know their, you know, probability of
23 success. But it's -- you know, we've
24 limited the burden of what it takes to
25 submit a petition -- I think -- low enough

1 that we're not taxing the petitioners with
2 an inordinate amount of work to submit a
3 petition. And from there, you know, the
4 petition process -- you know, the burden is
5 on NIOSH and you and the Secretary -- you,
6 the Board.

7 **DR. MELIUS:** Exactly, that's the
8 problem.

9 **DR. ZIEMER:** It sounds like the
10 guidelines that they're talking about here
11 are more in the way of operational
12 procedures on stepping through the right
13 steps, more like a checklist. The -- you --
14 your point, Jim, that we may indeed end up
15 looking at these on a very individual basis,
16 almost like individual dose reconstructions,
17 is probably true. I think we were hoping
18 that there would be some -- little more easy
19 way just to say if you meet these criteria,
20 it's pretty straightforward. But it sounds
21 like that's not going to be the case, that
22 the guidelines are not -- I don't think they
23 were what we were thinking about at the
24 time.

25 **MR. KATZ:** Well, there is --

1 **DR. ZIEMER:** At least it appears that
2 way to me. We need to see them, I suspect.

3 **MR. KATZ:** I mean there have -- let me
4 just -- the guidelines do, for example,
5 reference the parts of the dose
6 reconstruction guidelines addressing
7 technical issues of how you do dose
8 reconstructions, when you are limited to
9 source term and process information and so
10 on. But I have to say that the Health
11 Physics Society, which represents all the
12 professionals -- health physicists in this
13 country and -- and all public commenters and
14 the Board, they're -- and our entire staff
15 have not been able to come up with litmus
16 test type approaches, little sort of simple
17 tests that would work. And if we could have
18 done something like that, that would mean
19 just checking a box, we would have loved
20 that. I mean that -- that's wonderful. But
21 -- but this, I don't think, is a situation
22 that gives itself to that. It's going to
23 take judgment.

24 **DR. ZIEMER:** Tony.

25 **DR. ANDRADE:** I'd just like to state

1 that -- I'll address three items here.
2 Number one, in the rule it is stated that
3 NIOSH/OCAS will provide a report to the
4 Board for its consideration. So by default,
5 we will see every single one of them.
6 That's part of our jobs.

7 Number two is that with the detailed
8 procedures going on the web, and if people
9 feel like it will do them -- if it will
10 provide them some advantage, then by all
11 means go and read them and -- and seek
12 advice and -- and use them if -- if you will
13 and -- in the petition process, although I
14 doubt seriously if those detailed, step-by-
15 step procedures for review are going to help
16 -- personal opinion.

17 And third is let's not mix apples with
18 oranges. If a report comes down to this
19 body and says that NIOSH has looked at these
20 -- has looked at an individual petition and
21 they believe that it may qualify -- and by
22 the way, they let the petitioners know
23 what's going on -- then that has no bearing
24 whatsoever on the quality of dose
25 reconstructions that have been done in the

1 past. In other words, that does not bring
2 into question the whole issue of sufficient
3 accuracy. That means that they have
4 identified -- not the types of cases that
5 they're working on now, but the more
6 complicated cases that are going to come up
7 in the future. That will bring around
8 complicated questions that perhaps they and
9 we will determine insofar as the issues of
10 feasibility are concerned. So I -- I just
11 want to make that clarification. There is
12 no connection between sufficient accuracy
13 and ruling on an issue with respect to
14 Special Exposure Cohort status.

15 **DR. ZIEMER:** Other comments? Yes,
16 Leon.

17 **MR. OWENS:** Ted, have any plans been
18 made to provide educational assistance to
19 claimants from the standpoint of going to
20 the different sites where we have met and
21 having workshops for claimants or other
22 interested individuals who might want to
23 submit a petition?

24 **MR. KATZ:** As far as I know, we don't
25 have any plans for that.

1 **MR. OWENS:** And I guess a follow-up
2 question then -- I think that the Board,
3 when we look at all the sites that are
4 listed per EEOICPA, I think there could be a
5 great concern from the standpoint of
6 resources. And I don't know exactly when
7 that question would surface for NIOSH, but
8 if we look throughout the country at -- and
9 if we take a look at the definitions,
10 whether it's a facility or a site, of all
11 the possibilities that we could encounter, I
12 think it lends itself to resources for
13 NIOSH. And of course that's a -- my own
14 opinion, but I guess the question is, at
15 what point in time would the Board be
16 informed of the need for additional
17 resources?

18 **MR. KATZ:** I think you -- we -- we
19 would recognize it and act on it as quickly
20 as we could, and without even requiring the
21 Board to -- to ask us to address a resource
22 problem like that, but I mean we of course --
23 - I think as we come in -- you know, we have
24 Board meetings very frequently and if we're
25 in a situation where we're deluged with

1 petitions, you'll know it, as well, because
2 we'll be posting information about petitions
3 and so on and we'll be informing the Board
4 as this goes along as to how we're doing.

5 **MR. OWENS:** I understand the point that
6 you made from the standpoint of not knowing
7 exactly how many petitions you might
8 receive, but I was just interested as to
9 whether or not any projections have been
10 made, because again, we're looking at over
11 300 possible sites. And I think there are a
12 lot of people who are very upset and I think
13 a lot of people also are interested in SEC
14 status. So I can then surmise that there
15 might be a tremendous number of groups of
16 individuals who might petition.

17 **MR. KATZ:** I think that's entirely
18 possible.

19 **DR. ZIEMER:** Thank you. Mark?

20 **MR. GRIFFON:** I tend to remember a
21 phrase, "feasible to estimate with
22 sufficient accuracy", so I think sufficient
23 accuracy is a part of this equation. I just
24 wanted to build on something that Jim was
25 saying. The feasibility test seems to be

1 laid out in this with this maximum dose, but
2 the sufficient accuracy I don't think is
3 laid out at all. And you know, I saw some
4 of the examples that were in the text. You
5 know, I can come up with an example on my
6 own where you say well, I know something
7 about the source term, I know very little
8 about the -- how much this class, these
9 individuals accessed near the source term,
10 what the particle size was, what the solu--
11 you know, there's a lot of unknowns, but I
12 do know a little about the source term, so I
13 can come up with a maximum -- you know,
14 let's say 4,000 rem to some organ. But when
15 I -- you know, there's no condition in this
16 that says well -- so I -- so I got to
17 maximum this, I get some sort of maximum
18 dose, but there's no condition on this that
19 says anything about how you're going to use
20 that in the individual dose re-- so it's
21 feasible that I can do a dose reconstruction
22 there at that point. Then for the -- all
23 those people in that class, theoretically
24 you would go back and do your normal dose
25 reconstruction process. But there's no

1 condition that says that you use -- so
2 you've got all -- maybe all you have is one
3 datapoint, so you're going to say that the
4 dose is somewhere from zero to 4,000.
5 Where's your -- where's your median, you
6 know? There's no condition in the Special
7 Exposure Cohort that requires you to know
8 anything more other than zero to 4,000. You
9 have -- you know a maximum, that's good
10 enough, they don't qualify for Special
11 Exposure Cohort, they're back in the dose
12 reconstruction process, and then you can say
13 well, you know, yeah, we know 4,000's the
14 max, but it's very unlikely that the
15 individual spent much time there. For all
16 these scenarios we believe that it's more
17 toward the zero so we'll skew our
18 distribution with a median toward 20 rem,
19 with a tail going out to 4,000. It's a
20 little different than the example presented
21 in the text, but I think --

22 **DR. NETON:** Well, they're -- if I can
23 just address that --

24 **MR. GRIFFON:** Go ahead.

25 **DR. NETON:** -- briefly. There is no

1 requirement that would put a distribution
2 about the exposures, first of all. If it
3 were so insufficiently known --

4 **MR. GRIFFON:** But there's no
5 requirement to put a maximum dose, either,
6 is what I'm saying.

7 **DR. NETON:** Well, you couldn't. That's
8 what I'm saying. So if we knew what the
9 maximum potential could have been, based on
10 the source term, we could put a maximum dose
11 and assign that to each and every -- maximum
12 exposure, let's put it that way, 'cause the
13 dose would come later -- to each and every
14 claimant.

15 But let's take the scenario where there
16 is a time period where there were some very
17 rudimentary monitoring measure-- rudimentary
18 measurements taken, and so we would feel
19 fairly comfortable putting a maximum dose on
20 that time period.

21 Now let's go back further in time and
22 let's say that no monitoring occurred before
23 a certain date. This is very hypothetical.
24 There was no monitoring at all occurred, and
25 we know that the exposure potential was at

1 least as great as that monitoring period,
2 but we have no basis for what -- what it was
3 maybe above and beyond that, no basis to
4 extrapolate backwards. That may be an
5 example of a type of situation where you
6 know that they were large, you have a period
7 with some very rudimentary data that you're
8 comfortable putting a maximum, but you're
9 not comfortable or it's not with sufficient
10 accuracy to go back in time and put a cap on
11 the upper limit going backward in time. I
12 mean those are sort of the situations that
13 may apply here. I mean there's other
14 situations, obviously, but that's an example
15 of what I might offer. So you could put a
16 maximum at one time period, but you have no
17 idea how great -- how much greater it could
18 have been or the lack of engineering
19 controls may not have been there, so you
20 just can't put a cap on it at that point.
21 It's just not possible.

22 **MR. GRIFFON:** Right.

23 **DR. NETON:** And so NIOSH could not come
24 out with a credible exposure model for that
25 time period. That's the kind of situation I

1 believe we're addressing with this -- this
2 regulation.

3 **MR. GRIFFON:** But you're -- you're
4 saying -- I mean this goes back to -- to our
5 discussions in previous meetings about
6 accuracy versus precision, I know that.

7 **DR. NETON:** Yeah, sure.

8 **MR. GRIFFON:** But you're saying that
9 any -- anything you can cap is basically
10 adequate for a determination of a Special
11 Exposure Cohort.

12 **DR. NETON:** If we can put a cap on it,
13 it -- it's -- it's not necessary -- it --

14 **MR. GRIFFON:** I'm sorry, I --

15 **DR. NETON:** To not put a cap on it is
16 necessary to become a part of the Special
17 Exposure Cohort. If we can put a cap on it
18 --

19 **MR. GRIFFON:** If you can put --

20 **DR. NETON:** -- and put a maximum dose
21 on that time period and in fact if we
22 applied it to all cases in that time period
23 -- now it's not a dose, it's an exposure
24 model that would be that -- what is the
25 maximum air concentration, for example, that

1 could have possibly been in that facility in
2 this five-year period. If we can do that,
3 then it is -- we're not required to, but we
4 could put a maximum dose -- a maximum
5 exposure to each and every claimant in that
6 time period.

7 **MR. GRIFFON:** Right, and if you can't
8 calculate a maximum, that's the only time --

9 **DR. NETON:** And if going backwards in
10 time, or even forwards in time, if
11 engineering controls or process streams
12 change that we don't know and we -- and
13 there's no way of extrapolating -- when
14 there's no monitoring data and there's no
15 way to extrapolate into those periods that
16 is reliable, then that may be a scenario
17 where we would -- we would possibly say we
18 couldn't put a cap and would recommend it
19 for Special Exposure Cohort.

20 **DR. MELIUS:** So is that in your
21 guidelines?

22 **DR. NETON:** Is that in the guidelines?
23 Not exactly those words, no.

24 **DR. MELIUS:** Well, we're not expecting
25 you to quote them.

1 **DR. NETON:** I think that there are a
2 couple of examples that were going to be put
3 in there and I'm honestly --

4 **MR. KATZ:** Their guide--

5 **DR. NETON:** -- not sure what --

6 **MR. KATZ:** The guidelines address -- I
7 mean they really -- they refer to the dose
8 reconstruction guidelines that tell you what
9 to do when you are limited to source --
10 source term and process information --

11 **DR. NETON:** If one runs through --

12 **MR. KATZ:** -- which --

13 **DR. NETON:** -- the gamut -- I'm sorry,
14 Ted.

15 **MR. KATZ:** -- which is the --

16 **DR. NETON:** If you run through --

17 **MR. KATZ:** -- scenario the (Inaudible)
18 is talking about.

19 **DR. NETON:** -- (Inaudible) and you end
20 up with source term and you -- you have an
21 idea, and the source term is not there, you
22 just don't know and you don't know about the
23 engineering controls, then that's where --
24 that's where you're left.

25 **DR. MELIUS:** But does it say that,

1 though? I guess --

2 **MR. KATZ:** Yes. I believe --

3 **DR. MELIUS:** It seems to me there has
4 to be some posi-- some positive guidance as
5 to when you don't have sufficient accuracy.
6 I mean that's -- at least what I would refer
7 to as sufficient accuracy.

8 **DR. NETON:** I believe they do address
9 that.

10 **MR. KATZ:** It's -- but it's not --

11 **DR. NETON:** We're descriptive in that -
12 -

13 **MR. KATZ:** Yeah, and it's not --
14 there's -- there's no bright line with one
15 item or another because, for example -- I
16 mean you could have a relatively small
17 amount of source term and not know -- have
18 to know any process information. If it's a
19 relative small -- you could cap doses -- you
20 don't need to know a whit about the process
21 or the environment or anything. You could
22 just do --

23 **DR. NETON:** But there are some
24 facilities --

25 **MR. KATZ:** -- (Inaudible) case...

1 **DR. NETON:** -- that we're saying, you
2 know, uranium metal that may have had some
3 surface oxidation and they processed it for
4 a period -- this is an example -- maybe a
5 week, we could put a surface oxidation model
6 on that and generate the entire amount
7 airborne and probably demonstrate -- you
8 know, I mean assign a maximum dose, and
9 process those dose reconstructions.

10 **DR. ZIEMER:** One of the issues I think
11 that reoccurs is the use of the word
12 "accuracy", which is probably not being used
13 accurately, and that is -- it appears to me
14 what they -- when they talk about capping
15 the dose, in my mind it's probably very
16 inaccurate. It's a worst-case thing. It's
17 probably not accurate. It's probably very
18 inaccurate. But they're talking about
19 ability to make a judgment on causation or
20 probability of causation and therefore if
21 they have sufficient information to make the
22 judgment, then it's, quote, sufficiently
23 accurate to make the determination.
24 Scientifically it may be very inaccurate, as
25 I see it. The real number is virtually

1 never that maximum thing. I mean I've seen
2 -- I've seen accident cases where you -- you
3 take a source and it's completely airborne
4 and look at -- look at what a person intakes
5 from that if they're standing right there,
6 and if you said they took in the whole
7 thing, you would be orders of magnitude off.
8 But if it's sufficient to make the decision,
9 that upper cap number, that's -- may be
10 sufficiently accurate. I don't think it's
11 necessarily -- if we're talking scientific
12 accuracy, I don't think (Inaudible).

13 **MR. KATZ:** But it's -- it's just --

14 **DR. ZIEMER:** It's sufficiently accurate
15 to make the determination.

16 **MR. KATZ:** Which means, in effect, that
17 we're assured we're overestimating, not
18 underestimating the person's dose, which
19 means that they'll be treated fairly when it
20 comes to --

21 **DR. ZIEMER:** Right.

22 **MR. KATZ:** -- having their probability
23 of causation determination.

24 **DR. MELIUS:** But fairness is -- meaning
25 that two people working side by side or in

1 the same area are going to be also treated
2 equitably in that -- that process, and
3 that's what I worry about and that's where I
4 think, you know, having a set of guidance
5 for doing this I think is -- is important.

6 **DR. ZIEMER:** That they all get the same
7 treatment.

8 **DR. MELIUS:** They all get the same
9 treatment, so either they're -- that's why I
10 think there's a trade-off between the
11 individual dose reconstructions and the --
12 you know, and the Special Exposure Cohort
13 side of things, and I think a set of
14 guidelines is...

15 **DR. ZIEMER:** Let's -- Richard's been
16 waiting to have input in --

17 **DR. MELIUS:** Well --

18 **DR. ZIEMER:** Rich.

19 **MR. ESPINOSA:** Looking at the rule, one
20 of the things that I don't see is the
21 definition of site and facility, and with --
22 with concerns of the 250 days with contract
23 employees and maintenance employees, you
24 know, I know that we can add 250 days from
25 one SEC to another SEC, but what about

1 classes of employees that work in multiple
2 facilities? You know, right here it says
3 that multiple -- multiple facility --
4 EEOICPA does not allow multiple facil--
5 facility classes, but what about building
6 and construction trades, maintenance
7 workers, RCTs, security guards?

8 **MR. KATZ:** Exactly, so -- so I mean in
9 their cases, they would -- you know, where
10 they worked at three different facilities,
11 they would petition for each of those
12 facilities, a class in each of those
13 facilities. You have a class in each of
14 those facilities and they worked 250 days
15 over the course of working at each of those
16 facilities, they'd be covered, even though
17 there isn't one class covering all three
18 facilities.

19 **MR. ESPINOSA:** Okay.

20 **MR. KATZ:** Do you understand?

21 **DR. ZIEMER:** Does that answer the
22 question or --

23 **MR. ESPINOSA:** Yeah, it kind of answers
24 the question. And also the burden of proof
25 over this. For one example, within my area,

1 TA54, there's several areas of -- of this
2 specific site, but if one -- if -- if one
3 area of the site is classified as an SEC, I
4 don't know how they could prove the 250
5 days. The burden of proof just doesn't make
6 sense to me on some of this stuff.

7 **MR. KATZ:** How the individuals when
8 they --

9 **MR. ESPINOSA:** Well, yeah, or the class
10 --

11 **MR. KATZ:** -- seek compensation could
12 prove that they were --

13 **MR. ESPINOSA:** Yeah, or the class of
14 people. Like I'm saying, TA54, you've got
15 area G, you've got multiple areas.

16 **DR. ZIEMER:** Some areas may be --

17 **MR. ESPINOSA:** Yeah, one area --

18 **DR. ZIEMER:** -- SEC and some may not?

19 **MR. ESPINOSA:** -- of TA54 might be
20 considered under an SEC status, but yet all
21 the employees there are assigned to just
22 TA54, not area G.

23 **MR. KATZ:** I mean this is -- I mean in
24 fact, this is sort of touching on an issue
25 that you'll see when you read the -- the

1 internal procedures, but -- but -- I mean we
2 will be working with DOL because they will
3 have to -- when we define a class, they will
4 have to be able to make that operative so
5 that they can make determinations of whether
6 someone is in or not in, based on the
7 information that's available. So we'll be
8 working with DOL to ensure that -- if they
9 can do that.

10 **MR. ESPINOSA:** And that goes back --
11 you know, goes hand in hand with my
12 question. You know, I don't see the
13 definition within the rule of site versus
14 facility.

15 **MR. KATZ:** The rule -- the rule relies
16 on the definitions that are in EEOICPA. It
17 doesn't create its own definitions. What it
18 does have is a footnote explaining that you
19 could have multiple buildings, multiple
20 areas within a site at DOE, for example, and
21 they could all be classified as one
22 facility, come in under one petition.

23 **DR. ZIEMER:** But they may not, also.
24 Right?

25 **MR. KATZ:** They may not. It just -- it

1 depends on the case.

2 **DR. ZIEMER:** Let's see, Jim and Mark.

3 **DR. MELIUS:** Yeah, one comment for our
4 own deliberations is I think we need to
5 decide as a Board sometime soon how we're
6 going to handle these petitions and what
7 kind of help we're going to get -- need or
8 require from our contractor. It's something
9 I think that was complicated (sic) in the
10 original contract but I think we didn't have
11 a rule to work off of. But given the lead
12 time it takes to do that, I don't want us in
13 the position of having to delay the process
14 any more that -- than is necessary to -- to
15 work that through, so we're going to have to
16 start thinking about a task order or
17 something that would tie into what -- how
18 NIOSH is going to present their review and -
19 - and so forth so we can review it and --
20 and facilitate that review.

21 **DR. NETON:** I would just like to remind
22 everyone that there is a cutoff date for
23 task orders this fiscal year -- new task
24 orders -- and I can't remember, it's either
25 June or July. I can look that up and -- and

1 have that available, but it's coming soon.

2 **DR. ZIEMER:** Mark.

3 **DR. MELIUS:** Take your time on the
4 petitions.

5 **MR. GRIFFON:** One last bite at this
6 apple with the sufficient accuracy thing. I
7 mean I just wanted to follow up on what Paul
8 said, that -- that actually this upper max
9 is actually very inaccurate.

10 **DR. ZIEMER:** Yeah.

11 **MR. GRIFFON:** But you went on to say
12 but it would be the conservative estimate --
13 claimant-friendly estimate. But when we
14 listen to Jim -- I mean the point I'm making
15 is that that upper maximum, according to the
16 SEC rule, may -- Jim says may -- be used in
17 the individual's dose reconstruction. It
18 may not be used, either. They can use a
19 distribution from zero to that upper
20 maximum. And -- and my -- you know, my
21 point there is that, you know, that's not a
22 very bright line. If you're going from zero
23 to 4,000 rem on an organ dose, accuracy or
24 precision, that's not -- and you know, I did
25 discuss off-line some of the -- the

1 potential sort of semi-quantitative ways to
2 -- to make decisions on that, but if you're
3 getting a different POC when you use the
4 upper maximum dose versus the distribution
5 that is entered in the individual's dose
6 reconstruction, if you're getting one that's
7 higher than 50 and the other cite comes out
8 lower than 50, is that sufficient accuracy?
9 I guess that would be a way I'd pose it, you
10 know, 'cause I agree with you that -- and --
11 and not to be completely cynical about this,
12 but someone can come up with a outrageous
13 upper bound on something and -- and just say
14 okay, it's feasible. We can do some sort of
15 dose reconstruction for this class. I'm not
16 saying that would get past our review and
17 all that, but that -- that's just the -- the
18 cynical view of it. You can al-- you can
19 probably come up, in most cases, with a very
20 drastic upper bound to some dose. That --
21 that estimate -- according to this, if I
22 read it correctly, that estimate of the
23 maximum, even if it's the only thing you
24 have, it doesn't have to go in the
25 individual's dose reconstruction, does it?

1 I mean it -- you said "may" be used.

2 DR. NETON: Well, it depends on what
3 information we have available. I mean if --

4 MR. GRIFFON: You may have more.

5 DR. NETON: If there's more information
6 for us to estimate a mode, a central
7 tendency of the distribution, we would
8 probably use that. But if there was nothing
9 other than the source term and we knew that
10 some grinding operation was going on --

11 MR. GRIFFON: Then you --

12 DR. NETON: -- there's nothing that
13 would prevent us from saying we don't know
14 anything except there's probably less than
15 1,000 times the maximum air concentration.
16 I mean that would be what we'd do, but we've
17 done --

18 DR. ZIEMER: And everybody would get
19 that --

20 DR. NETON: Yeah, yeah --

21 MR. GRIFFON: My point there is that --

22 DR. NETON: -- (Inaudible) exposure for
23 --

24 MR. GRIFFON: My point there is if it's
25 so inaccurate, you've got one -- you've got

1 one assumption that you're making that you
2 think is the worst case, but you're working
3 with so minimal data you may not even be in
4 the ball park then, so maybe --

5 **DR. NETON:** And that's where the
6 individual -- you know, that's where
7 scientific evaluation comes in, that's where
8 the Board has a contractor to evaluate to
9 determine if we're on the right track, if we
10 -- if we've cut too many corners, that sort
11 of thing.

12 **MR. GRIFFON:** Yeah.

13 **DR. NETON:** But there are judgments
14 that are made here.

15 **MR. GRIFFON:** I think we -- I think --
16 you know, we want to have an opportunity to
17 weigh in on the procedures, too, because
18 then I think we could -- I think we need to
19 have a little br-- if possible, some -- some
20 slightly brighter lines before we go into
21 the review phase. I mean I'd like to have
22 some better...

23 **MR. KATZ:** I just -- I didn't get a
24 chance to -- I mean 'cause Jim raised the
25 issue of the Board not getting the

1 procedures, but that we intend for the Board
2 to have the opportunity to review them, and
3 we express that in the rule. Obviously we
4 couldn't give you the procedures until the
5 rule was published because we were in
6 rulemaking. We couldn't give them to you in
7 advance. We certainly expect that you will
8 scrutinize the procedures and give us any
9 advice you can on those procedures. All we
10 say in the rule is that we will not hold up
11 beginning the consideration of petitions
12 until you're done with your review of those
13 procedures. But you know, everything is
14 going to take some -- some time, so...

15 **DR. ZIEMER:** Jim?

16 **DR. MELIUS:** Well, it just -- to that
17 point -- I mean, Ted, I find it hard that it
18 -- suddenly the burden's on the board to
19 suddenly complete something that's taken
20 NIOSH over three and a half years. And
21 while you may think it's a joke, I don't
22 think many of the claimants out there who
23 have been promised an SEC petition process
24 in the original law would consider it to be
25 something to joke and laugh about. And I

1 think it's a major failing of this program,
2 of NIOSH and of the Department that this
3 process has taken so long to get a final
4 rule, and I would hope we could expedite and
5 get things done quicker in the future.

6 **DR. ZIEMER:** Tony?

7 **DR. ANDRADE:** I think the final rule as
8 written is an excellent piece of work. I'm
9 sure that lots of people really sweated over
10 the details on how to come up with it and
11 the internal procedures that will be seen,
12 I'm sure.

13 But I want to make something absolutely
14 clear here, because it seems like we're just
15 not connecting insofar as the equity that --
16 or the difference that -- of the procedures
17 that go into dose reconstruction versus what
18 we're going to do with respect to potential
19 Special Exposure Cohorts.

20 If there is sufficient information to
21 derive from -- sufficient information say on
22 a source term to derive a maximum exposure,
23 then all people who have been exposed to
24 that, barring differences in jobs and other
25 exposures they may have been subjected to,

1 will be -- are applied that same exposure.
2 Okay? That same -- same exposure is applied
3 to them. In other words, there is equity.
4 There is -- if a maximum can be constructed,
5 that maximum is applied all across. There
6 is no distribution of doses.

7 When -- believe it or not, when we had
8 more data -- okay? -- when we had more data,
9 not only source information but CAM*
10 information, dosimetry information, et
11 cetera, et cetera, and those data can be
12 attributed to an individual, that's when it
13 becomes a little bit more murky because you
14 can calculate an individual dose that may
15 not be the maximum dose to that person.

16 So different people under different
17 scenarios, when you have a lot of data, can
18 have different doses, even if it -- even if
19 they're working at the same facility. Okay?

20 Let's not confuse that -- let's not
21 confuse that issue. I think people are hung
22 up on that, and unless you've done health
23 physics work in the past, I guess it's --
24 it's hard to comprehend that, but the more
25 data you have, the easier it is to assign a

1 dose to an individual that may not be the
2 maximum dose that one would assign if all
3 you had was a source term. Okay? I just
4 don't know how to make it more clear than
5 that.

6 **DR. ZIEMER:** Thank you. Wanda?

7 **MS. MUNN:** I guess I just felt it
8 necessary to comment that I have not heard
9 anyone making jokes about anything that we
10 have done here. If -- if anyone has done
11 so, it certainly has not been in my hearing.
12 To the best of my knowledge, both staff and
13 the members of this Board have been very
14 serious and very dedicated in their approach
15 to what we have to do.

16 I appreciate this rule particularly. I
17 know we've all waited for it a long time,
18 and I spent a lot of time going through it
19 since it was made available to us on the web
20 and highlighting items that made the changes
21 clear to me. I'm very pleased to see the
22 process outlined that the Board is going to
23 have to address because it appears that this
24 is what we have been primarily constituted
25 for. Up to this point we have been awaiting

1 this rule so that we would know how to move
2 into this last -- what I believe is the last
3 stage of the requirements of the law.

4 So thank you to the staff for getting
5 this to us before this meeting so we have an
6 opportunity to see it, look forward to
7 seeing the procedures. Would seem wise to
8 me that we not allow our imaginations to
9 place us in a position where we are pre-
10 judging what may occur now that the rule is
11 available. I for one would like an
12 opportunity to see what is going to occur
13 now so that we may better evaluate what our
14 actions need to be in the future.

15 **DR. ZIEMER:** Thank you, then Mark?

16 **MR. GRIFFON:** Just a -- maybe Tony was
17 -- was pointing to me on that misunderstand-
18 - I don't think I'm misunderstanding the
19 difference between maximum dose and the
20 estimate. But anyway, the -- you know, my
21 point, again, was that -- and I think we can
22 deal with this in the guidance stuff, but my
23 point was that you may have a couple of
24 datapoints that suggest very low exposures
25 for certain people in a class -- or for the

1 whole class, and one datapoint that suggests
2 a potential for a very high exposure, and
3 then you ha-- then you will have a
4 distribution and -- but is it sufficiently
5 accurate? In other words, there's so little
6 data on either side that is that
7 sufficiently accurate, and this SEC rule
8 says if I can calculate a max, I don't care
9 about the rest, it's sufficiently -- it's
10 feasible -- it's feasible to estimate a
11 dose. How that gets played out in the
12 individual's dose reconstruction from there
13 on is a different issue. But I won't harp
14 on this anymore.

15 **DR. ZIEMER:** Well, unfortunately we are
16 dealing with a lot of theoretical or
17 hypothetical cases here, and the proof of
18 the pudding will come down to actual cases.
19 And the Board will have the opportunity to
20 look at every one of these and make a
21 determination on the very issues we're all
22 talking about here, and then we will have
23 real data, real situations, real facilities
24 --

25 **MR. GRIFFON:** Yeah, but I --

1 **DR. ZIEMER:** -- and I think we can
2 construct a lot of what-ifs that may or may
3 not be realistic. So we are going to have
4 to look at actual cases and determine the
5 extent to which these issues are really
6 problems. And then we'll have to deal with
7 it.

8 **MR. GRIFFON:** I disagree to some extent
9 'cause I think we have some real-world
10 experience, and all I'm saying is in the
11 guidelines we may be able to develop some --
12 some better sort of -- of maybe not bright-
13 line tests but some sort of indicators of
14 sufficient accuracy. And I -- I've thought
15 through some possibilities and I think we
16 should have some dialogue with NIOSH on that
17 in the gui-- you know, maybe as a second
18 draft of the guidelines. That's all I'm
19 saying.

20 **DR. ZIEMER:** Okay.

21 **MR. GRIFFON:** The only other point I
22 wanted to raise before we break 'cause I
23 know we've got a break coming soon here, is
24 there's a section in here on the health
25 endangerment. You talk about the 250 days,

1 but there's also a condition in the preamble
2 part or whatever that talks about internal
3 versus external exposures, and that for
4 internal exposures it'll be assumed all
5 cancers are covered but for external not
6 necessarily the case. Am I reading that
7 wrong?

8 **MR. KATZ:** No, you're -- you're not.

9 **MR. GRIFFON:** Give me the
10 interpretation of that.

11 **MR. KATZ:** There's no -- for health
12 endangerment there's no issue with respect
13 to internal/external doses whatsoever.
14 There's nothing -- there's nothing in the
15 rule, there's nothing in the preamble
16 addressing that.

17 In the preamble there was a discussion
18 -- which you may be thinking of -- of when
19 the Board considered the issue of
20 feasibility on a case-specific basis of --
21 of what were real scenarios where it would
22 be feasible for some cancers and not
23 feasible for others. And in effect -- I
24 mean what we discussed is -- is those
25 situations really involve external exposures

1 where it would be feasible for some cancers
2 and not feasible for others.

3 But when you're talking about internal
4 exposures, there would be some amount of
5 dose that would get to other organs, even
6 though you can't, you know, quantify very
7 minimal -- it may be very minimal, but since
8 you can't quantify the -- and this is an
9 issue that you actually raised in that
10 discussion. You can't quantify the total
11 dose coming into the lung, then how can you
12 quantify the sequelae, the resulting doses
13 to other sites.

14 And we acknowledge that in the -- in
15 the preamble and said so --

16 **MR. GRIFFON:** What I'm -- I'm talking
17 about is this -- I'm sorry, I have this
18 older version, it's page 19 in this older
19 version. It -- as a result --

20 **DR. ZIEMER:** What section is it? Maybe
21 that will help us.

22 **MR. GRIFFON:** It's under -- in the
23 preamble, I guess, section (b), feasibility
24 of dose reconstructions, relevance of type
25 of cancer to feasibility determinations.

1 **MR. KATZ:** Right, which is --

2 **MR. GRIFFON:** Right. And I mean it
3 says (reading) As a result -- this is after
4 the theoretical discussions.

5 (Reading) As a result, the scientific
6 finding concerning the feasibility of
7 estimating doses in cases involving internal
8 exposures -- internal underlined, emphasized
9 -- would have to apply to all cancers.

10 So that led me to believe that -- that
11 the same principle was not --

12 **MR. KATZ:** In other words --

13 **MR. GRIFFON:** -- used for external --

14 **MR. KATZ:** -- feasibility determination
15 -- if -- if we were going about a cancer-
16 specific feasibility determination, it would
17 have to apply to all cancers --

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

19 **MR. KATZ:** -- but we've taken that out
20 of the rule --

21 **MR. GRIFFON:** You take --

22 **MR. KATZ:** -- so it's not an issue.

23 **MR. GRIFFON:** So it's --

24 **MR. KATZ:** It's not an issue.

25 **MR. GRIFFON:** -- (Inaudible) is

1 straight, I just wanted to clarify that --

2 **MR. KATZ:** That's just a discussion of
3 -- of the reasons --

4 **MR. GRIFFON:** A variety --

5 **MR. KATZ:** -- how our thinking went as
6 to why we eliminated the cancer-specific
7 provision.

8 **MR. GRIFFON:** Okay, I -- okay, thank
9 you.

10 **MR. KATZ:** Yeah.

11 **DR. ZIEMER:** Yeah, Mike.

12 **MR. GIBSON:** Just a clarification for -
13 - from NIOSH for the record. You know,
14 we've had a lot of talk back and forth here
15 about determining worst case exposure to
16 determine if someone's eligible for the
17 Special Exposure Cohort. I will tell you I
18 am one from the field, I have health physics
19 experience, I've been involved in
20 rulemaking, policy/procedure review, et
21 cetera. Is NIOSH stating to us here now
22 that if they have enough data, whether it's
23 one datapoint or several, to determine a
24 maximum dosage to determine eligibility for
25 Special Exposure Cohort, will you use that

1 same maximum dosage for their individual
2 dose reconstruction if they're denied their
3 Special Exposure Cohort status?

4 **MR. KATZ:** If they're -- if they're
5 denied. Oh, and that's where -- there was
6 some discussion here about the difference
7 between maximum exposure and individual
8 doses, those are different. So you would be
9 applying the single exposure model to the
10 situation, but you wouldn't have as a result
11 the same doses to each individual because
12 those doses would depend on other factors,
13 including what type of cancer they have and
14 -- but -- Jim, you want to --

15 **DR. NETON:** More than likely this would
16 occur in a situation where you've had an
17 estimate of air concentration and NIOSH was
18 able to determine -- it more than likely
19 would not be based on a single measurement,
20 but if we have multiple measurements where
21 we could estimate the maximum air
22 concentration that could have possibly
23 occurred, that air concentration then would
24 be used and people, based on their occupancy
25 time in the area and other factors, would be

1 -- their internal dose would be calculated
2 using that air concentration that was
3 estimated to be the upper limit, that's
4 true. It could be. It doesn't have to be,
5 but it could be.

6 **MR. GIBSON:** Could be, so you're not --
7 that's applying what -- on the record, NIOSH
8 is saying that you won't specifically use
9 the worst-case dose estimate to deny someone
10 SEC status as you will to apply to their
11 dose reconstruction.

12 **MR. KATZ:** And it depends on whether
13 you have other data to do better than that.
14 If that's the -- if that's the limits of
15 your data, to use that worst-case exposure -
16 - I mean then you're using it. Right?

17 **DR. NETON:** That would be the last --
18 would be the last piece of data we would
19 have that -- before we would go to SEC or
20 before we say we can't do it. We have to
21 have something. You know, we're not going
22 to make this up out of thin air. We're
23 going to have to have some kind of data that
24 would substantiate the air concentration in
25 the example I used that we apply. And it

1 would be up to review to determine if that
2 was sufficient -- you know, was -- did NIOSH
3 have sufficient data to make that upper
4 estimate.

5 **MR. GIBSON:** I understand that. I'm
6 coming from the back -- back end. If
7 someone applies for Special Exposure Cohort
8 and you go through what data you have and
9 determine a worst-case exposure, say no,
10 this petition doesn't qualify. Will you
11 take that same determination, that highest
12 level, and use it as their dose
13 reconstruction (Inaudible) for the
14 probability of causation or whatever?

15 **DR. NETON:** I don't know that in the
16 SEC petition evaluation that we would
17 necessarily flesh out the exact details of
18 how would we do the dose reconstruction, you
19 know, down to the model we would use, but we
20 would have to ascribe the data that were
21 available to do the dose reconstruction. In
22 other words, I don't -- I don't think we
23 would do dose reconstructions to say we can
24 do dose reconstructions in an SEC petition
25 evaluation. We will -- we will outline the

1 type of information that we believe are
2 available to allow us to estimate doses in
3 that cohort.

4 **MR. GIBSON:** Worst case.

5 **DR. NETON:** Worst case, yes.

6 **MR. GIBSON:** So the ans-- if I can get
7 an answer for the record, it's that the
8 estimated dose used to determine whether or
9 not someone qualifies for SEC status is not
10 necessarily the exposure or the dosage that
11 will be assigned to them when you do dose
12 reconstruction. There is a difference.

13 **DR. NETON:** Well, I think what I'm
14 saying is I don't know that we will ac--
15 we're not going to actually calculate doses
16 to members of the SEC petition cohort.
17 We're going to describe as clearly as we can
18 the information that we believe is available
19 to allow us to do those dose
20 reconstructions, so -- and that may involve
21 some -- some spelling out of air samples
22 that were available and the concentrations
23 that would be used in the exposure models,
24 so you know -- but we're not going to
25 develop an entire exposure model to -- to

1 document that we believe we can do dose
2 reconstructions.

3 **MR. GIBSON:** I understand that. Let
4 me try --

5 **MR. GRIFFON:** It gets back to the same
6 thing I was discussing. I really think it -
7 -

8 **MR. GIBSON:** Right, I mean there's
9 health physicists discussing it, now I'm
10 trying to say -- you're trying to take --
11 take a worst-case scenario to see if they
12 qualify or not for SEC. That wouldn't
13 necessarily be the dosage -- if they're
14 denied SEC status, that wouldn't be the
15 dosage applied to them on their dose
16 reconstruction.

17 **MR. GRIFFON:** Well, you wouldn't
18 necessarily --

19 **MR. GIBSON:** Not necessarily --

20 **MR. GRIFFON:** (Inaudible)

21 **MR. GIBSON:** (Inaudible)

22 **DR. NETON:** That would be the worst-
23 case scenario, but we may be able to do
24 better than that, depending on what
25 information was available. I'm sorry, I

1 misunderstood --

2 **MR. GIBSON:** So there's a difference.

3 **DR. NETON:** Okay, sorry.

4 **DR. ZIEMER:** Tony.

5 **DR. ANDRADE:** Okay, one more time. I
6 think I now fully understand where Mark and
7 Mike are coming from, and I think what --
8 where Jim is coming from and where we're all
9 having a little bit of difficulty in
10 understanding each other is the following.

11 If we don't have enough information
12 available on all of the things that normally
13 are considered in a dose reconstruction --
14 dosimetry, source term, process information,
15 et cetera -- if there is not enough
16 information or that information is very
17 sketchy about the source term and therefore
18 the range of doses that people could have
19 received, then indeed that thing -- that
20 particular situation would point directly to
21 a special cohort status.

22 **MR. GRIFFON:** But that's not what the
23 rule says. That's my point.

24 **DR. ANDRADE:** But I -- I think that's -

25 -

1 **MR. GRIFFON:** Well, maybe I'm -- maybe
2 I'm being too cynical, but that's not the
3 way the rule is written. It's if you can
4 get a maximum, it's feasible, you're done.
5 The question I'm grappling with is
6 sufficient accuracy. And like Paul's
7 pointed out, you can get a maximum that's
8 very inaccurate. Maybe in the guidelines --
9 I'm saying I have some ideas on it and I've
10 -- I've brought these up to NIOSH -- not on
11 the Board, but off-line -- ideas of maybe
12 ways to look at a brighter-line test for
13 sufficiently accurate 'cause I think that --
14 you know, you can have -- you can have a
15 max-- just to be cynical, you can put that
16 wide distribution out just to say well, we
17 don't want to do an SEC for this group, you
18 know.

19 **DR. ZIEMER:** Well, folks, we're
20 starting to recycle discussions that we've
21 had a number of times. I think -- I think
22 we all realize there's an issue here that we
23 may have to grapple some more with, but it's
24 going to be harder and harder to grapple
25 with it on an empty stomach.

1 No, in reality we now -- we do have an
2 evening session. We need to allow some time
3 for a break and for folks to eat their
4 dinner, so we're going to recess until 7:00
5 o'clock.

6 Well, I'm skipping site profile status
7 because if we do site profile status
8 tonight, we're going to skip supper -- well,
9 maybe I should call for a motion on which
10 you'd rather skip, but I --

11 **DR. MELIUS:** The only question I have
12 is does Jim Neton want to present the
13 Bethlehem slides from that -- he has some
14 overheads on -- before the session tonight?
15 Not now, but before the session tonight --

16 **DR. ZIEMER:** Well, that --

17 **DR. MELIUS:** -- sort of an up-- an
18 update --

19 **DR. ZIEMER:** -- would depend on how
20 long that will take. We need to allow time
21 for the public.

22 **DR. NETON:** Oh, I see, you'd like to
23 have an idea what the Bethlehem Steel --

24 **DR. MELIUS:** Well, I think -- I think
25 you have three overheads on -- I mean --

1 DR. NETON: I could literally do that -

2 -

3 MR. KATZ: Turn the mike on.

4 DR. NETON: -- (Inaudible) minutes.

5 MR. ELLIOTT: Turn the mike on, please.

6 DR. NETON: I'm sorry. I could
7 probably do that in ten or 15 minutes, it's
8 two slides or a slide and a half, so it's up
9 to you all.

10 DR. MELIUS: Do it at 7:00, that's what
11 I'm --

12 DR. ZIEMER: Is there any objection to
13 doing that at the front end for the -- and
14 the -- it would be beneficial for the
15 members of the public, as well.

16 DR. MELIUS: 'Cause it's going to come
17 up and I -- I figure --

18 DR. ZIEMER: Sure. Jim --

19 DR. NETON: I can do that.

20 DR. ZIEMER: -- let's plan on that.

21 DR. NETON: So that would be the
22 beginning of the public -- we're not going
23 to start the public session early. Right?

24 DR. ZIEMER: No, we'll start it at 7:00

25 --

1 **DR. NETON:** Fine.

2 **DR. ZIEMER:** -- and go from there. And
3 then the rest of your presentation we can
4 work in tomorrow. So we will recess until
5 7:00 o'clock. Thank you.

6 (Whereupon, a dinner recess was taken
7 from 5:30 p.m. to 7:00 p.m.)

8 (7:00 p.m.)

9 **INTRODUCTION**

10 **DR. ZIEMER:** I feel like you're so far
11 back here, I have to come back and see who's
12 here.

13 Welcome to the public session of the
14 Advisory Board on Radiation and Worker
15 Health. Actually all of the sessions are
16 public, but this is the public comment
17 session.

18 My name is Paul Ziemer and I Chair this
19 Board. I want to introduce the other
20 members of the Board. I'll point out to you
21 first of all that the program that we're
22 involved in is administered by four Federal
23 agencies. That may or may not be a good
24 thing. You would have to decide for
25 yourself, but these are the four agencies

1 involved.

2 This particular Board works closely
3 with NIOSH, which is part of the Department
4 of Health and Human Services, and we provide
5 our advice to the Secretary of Health and
6 Human Services. So that's the group that we
7 work with closely. The National Institutes
8 for Occupational Safety and Health is part
9 of NIOSH -- or a part of Health and Human
10 Services, that second agency that you see
11 there. But also the Department of Labor,
12 the Department of Energy and the Attorney
13 General's people are all involved in this
14 program.

15 Now the members of the Board -- they
16 all have placards up here, and I do have
17 their names listed, and these individuals
18 are appointed by the President under the
19 requirements or under the provisions of this
20 particular law that has put this whole thing
21 in motion. The law says that the Board
22 consists of no more than 20 members. We
23 actually have 12 members of the Board. The
24 members include affected workers, their
25 representatives, and representatives from

1 the scientific and medical communities. And
2 we have that kind of a spectrum of
3 individuals here in this group represented
4 today.

5 (Pause)

6 So here are the members of the
7 committee. Larry Elliott is the Federal
8 officer and he serves as a member of this
9 Board, and then the others as you see listed
10 there -- Henry Anderson is not here tonight,
11 An -- we call him Tony, really, Antonio --
12 Tony Andrade. Tony, indicate who you are --
13 and I hope you can read these. Tony's at
14 Los Alamos. Roy DeHart, Rich Espinosa, Mike
15 Gibson over here, Mark Griffon, Jim Melius,
16 Wanda Munn, Leon Owens -- Charles Leon
17 Owens, Robert Presley and Genevieve
18 Roessler. So these are the members of this
19 Board.

20 And finally I want to tell you or
21 remind you of what the responsibilities of
22 the Board are, as defined by law. We have
23 been involved in developing some guidelines
24 that this program uses. Those have to do
25 with what's called the determination of

1 probability of causation, the likelihood
2 that a cancer was caused by radiation
3 exposure. And also involved in reviewing
4 and assessing the guidelines for what are
5 called the dose reconstructions which are
6 done for individual claimants.

7 Now the Board itself does not do the
8 dose reconstructions. Those are done by the
9 Federal agencies. But we have had input on
10 developing the guidelines that are used to
11 carry those out.

12 You also notice that we have a
13 responsibility to assess the scientific
14 validity and the quality of the dose
15 reconstructions. For the Board that is a
16 kind of audit responsibility. We are just
17 getting underway with that. We will go back
18 and select a number of cases that the --
19 that the agency has assessed, and number of
20 dose reconstructions, to evaluate -- in a
21 sense, audit them and see whether or not we
22 concur with their methodology and their
23 findings on those. But we do not go back
24 and review all of the dose reconstructions.
25 This is a sampling to see if we note any

1 errors -- systematic errors or other kinds
2 of issues that might arise -- or is the
3 agency carrying things out the way that the
4 rules say that they should. So it's an
5 audit type of function.

6 And then the third thing or the third
7 main thing on the bullet -- or third main
8 bullet here is the determination of what are
9 called the Special Exposure Cohort groups.
10 They're -- the legislation allows or
11 provides for certain groups to petition to
12 become part of what is called the Special
13 Exposure Cohort, whereby separate individual
14 dose reconstructions no longer would have to
15 be done for those individuals if they so
16 qualified, or groups of individuals. And
17 that process -- the Board is also involved
18 in those determinations.

19 The rule on how Special Exposure
20 Cohorts -- or additions to what is called
21 the Special Exposure Cohort, the rule on how
22 that is done just came out two days ago,
23 basically. I think it was the day before
24 yesterday. So that process is just getting
25 underway.

1 So the Board really confines itself to
2 those issues. We do not get involved really
3 directly in people's individual cases.

4 Now there may be a number of you here
5 today that want to talk about your
6 individual cases, and that is fine. We're -
7 - we typically hear a lot from people around
8 the country about their experience with the
9 program, positive or negative. And the
10 benefit to the Board is not so much knowing
11 what your personal case is about -- although
12 we're glad to hear that -- but it is more to
13 learn what your experiences are with the
14 program, where you think changes could help,
15 what difficulties you might have encountered
16 that might be indicators of bigger problems
17 in the program, that sort of thing.

18 We are not here to answer questions
19 about your specific cases. In fact we could
20 not do that, because of privacy rules, in an
21 open forum anyway. So if you have
22 particular issues about -- if you're a
23 claimant or a person who is involved in a
24 case, if you have specific questions, you
25 may want to talk to some of the staffers

1 afterwards and they can follow up on
2 specific things for you if that is an issue
3 for you.

4 But we -- we do welcome hearing
5 information about your experiences. We
6 can't necessarily answer questions -- you
7 may have some questions, and if you do have
8 questions we will try to find individuals
9 who can answer them for you. But mainly
10 we're here to learn what you have to say.

11 **BETHLEHEM STEEL SITE UPDATE**

12 Now before we actually start with your
13 comments, one of the staff people here, Dr.
14 Jim Neton -- Dr. Neton is on the NIOSH staff
15 and very much involved in the dose
16 reconstruction process and the development
17 of site profiles for various facilities
18 around the country. And Jim has prepared
19 some information about the Bethlehem Steel
20 site and that site profile, and we thought
21 that would be of interest to many of you
22 tonight. He just has a few slides about
23 that and we'll use that at the beginning
24 here, and then have the opportunity to hear
25 from you. So I'm going to turn the pointer

1 and the mike over to Jim Neton.

2 **DR. NETON:** Thank you, Dr. Ziemer. I
3 just have a couple of slides on the
4 Bethlehem Steel profile. It's my pleasure
5 to be here this evening to talk about what
6 we've been doing on the Bethlehem Steel
7 profile. I recognize some familiar faces in
8 the crowd from the town hall meeting we had
9 less than a month ago here, and I did
10 indicate at that town hall meeting that
11 we're working on this and I'm happy to say
12 that we finished our analysis -- at least of
13 the profile.

14 I have some other slides that we won't
15 get into this evening. This is more for the
16 public meeting tomorrow, but since you guys
17 were all -- since the general public is here
18 specifically to talk about Bethlehem Steel
19 tonight, we thought we'd go over where we
20 are with the ingestion pathway.

21 Just as a way of reminder to the Board
22 and some members of the public why Bethlehem
23 Steel is an Atomic Weapons Employer and
24 included in the compensation program,
25 Bethlehem Steel is a facility that obviously

1 processed steel, but between 1948 and 1952
2 was under contract with the then Atomic
3 Energy Commission to attempt to take billets
4 of uranium -- big round hunks of uranium --
5 and roll them, in a very vigorous rolling
6 process with a lot of pressures, into rods -
7 - uranium rods that could be shipped to
8 Hanford and inserted in the reactor and --
9 and make fuel for the war effort -- or
10 plutonium for the war effort.

11 During that time frame, this -- '48 to
12 '52 is the time frame that the site is
13 acknowledged to have a contract, and we
14 developed an exposure model for those four
15 years. And we determined that -- the model
16 was an air -- air concentration model. We
17 had no bioassay data there that -- we
18 assumed that 12 rollings took place each of
19 those years between 1948 and '52 for a total
20 of 48 rollings, and developed an air model.
21 And we said this is -- these are the air
22 concentrations that people breath, and the
23 upper limit of the air concentration was
24 somewhere around 1,000 times the maximum
25 acceptable concentration at that time, which

1 roughly equates something in the vicinity of
2 50 milligrams of uranium per cubic meter --
3 huge, huge dust loading. I mean a very
4 thick cloud of uranium dust at those levels.

5 What's been pointed out to us, and
6 rightfully so, is that we did not explicitly
7 include the ingestion pathway. We did a
8 pretty good job, I feel, of addressing the
9 inhalation of uranium, but there was no
10 model in that profile that talked about what
11 the doses were to the general worker in the
12 vicinity of the rolling operations from
13 eating -- ingestion or -- eating or drinking
14 contaminated material and touching material
15 and transferring it to their -- their mouth.
16 So as I said, the pathway was not explicitly
17 addressed, although we did consider it. And
18 from health physics perspective, usually
19 ingestion pathways are very small as far as
20 delivering dose to the worker. But you
21 know, we do -- we do need to address it.

22 So to consider this model we assumed
23 that there were three ways that people could
24 ingest uranium in the facility. First is
25 when you inhale material, the lung is pretty

1 good at clearing particles from your -- from
2 your -- from the lung, you know,
3 contaminants. So you would inhale uranium
4 and your mucociliary latera*, the clearance
5 mechanism of the lung, will clear the
6 uranium up into your throat and you'll
7 swallow it. That is one mode of ingestion.
8 That model is addressed in the ICRP model
9 that we use, the lung model that's a
10 standard model for our process, and so we
11 didn't have to address that. That was
12 inherent in our analysis.

13 The second two issues weren't though,
14 the settling of airborne uranium on food or
15 drink, and then the transfer of contaminated
16 surfaces from the hand. One touches a
17 contaminated surface and goes to your mouth
18 and will ingest a certain amount of uranium.

19 What we've committed to do, and we do
20 this with any profile and dose
21 reconstructions that we perform, if we do a
22 reanalysis, we will go back and evaluate the
23 previously processed cases that had been
24 denied by the Department of Labor to see
25 what effect that new pathway or that new

1 analysis may have on the compensation
2 decision, or in our case, on the dosimetry
3 calculation and ultimately Department of
4 Labor would make a re-evaluation and
5 decision on that new pathway for
6 compensation.

7 Okay. Just briefly -- and this is only
8 the second slide I have so I'll try to be
9 fairly brief so you guys can have time to
10 ask questions, but settling on the food or
11 drink was modeled using continuous settling
12 into an open container. We assumed that a
13 person would have a coffee cup or some type
14 of beverage container and the uranium in the
15 air, as I mentioned, went up to 1,000 times
16 the maximum allowable air concentration. So
17 we took that exposure model and based on
18 what we know about the settling properties
19 of uranium -- it has a certain velocity that
20 it settles down on the surfaces -- we
21 assumed that this container sat out in the
22 work place the entire day and was open to
23 the atmosphere and accumulated all the
24 uranium that was in the air that would
25 settle into the container, and then assumed

1 that 100 percent of the settled material in
2 that container was ingested.

3 Now this is a kind of a nice analysis
4 because we don't have to worry about how
5 many cups of coffee a person drank. We just
6 assumed that that coffee cup was open to the
7 atmosphere and the air concentration for the
8 entire day, so that's the first model we
9 ran.

10 The transfer to hand allowed for the
11 ingestion of ten percent of the uranium
12 transferred to the hand. In other words, if
13 you touch a surface and it's on your hand,
14 we assumed that ten percent of what
15 contaminated your hand became ingested.
16 It's a fairly, we believe, favorable --
17 claimant-favorable analysis. We found some
18 literature indications that one percent may
19 be more appropriate, but we wanted to be
20 conservative and we chose ten percent.

21 We also -- this model also was based --
22 and we -- on the settling of the uranium in
23 the air, this up to 50 milligrams per cubic
24 meter over a full 24-hour day, and assumed
25 an equilibrium concentration -- in other

1 words, what settled and what's removed,
2 there's a -- there's an equilibrium value
3 that would be eventually established that
4 the air -- air concentration would -- would
5 account for, and the only removal mechanism
6 that we considered. We didn't consider
7 housekeeping or, you know, dispersion by
8 wind or resuspension. We just assumed the
9 only -- the only mechanism for removing that
10 material from the surface was contamination
11 of the hand. So the hand is constantly
12 picking up this ten percent of the material
13 that's deposited.

14 The other piece of information that's
15 relevant is that when you ingest uranium,
16 only a certain percentage of it becomes
17 absorbed by the body. The rest of the
18 material will be excreted in the feces.
19 There are two choices in the models that we
20 use. One says that only .2 percent -- two-
21 tenths of a percent is absorbed by the
22 gastrointestinal tract, and the other model
23 says two percent. The choice is depending
24 on whether the uranium is in a very
25 insoluble form or slightly more soluble.

1 There are indications that Bethlehem
2 Steel -- this may be -- is more likely
3 insoluble uranium, but we chose the more
4 claimant-favorable value of two percent,
5 meaning two percent of what a person
6 ingested was absorbed and 98 percent would
7 be unabsorbed and passed through the body.

8 The end result of all this -- this is
9 documented in a Technical Information
10 Bulletin that we've incorporated into the
11 Bethlehem Steel profile. It is out there on
12 our web site for viewing and you can look at
13 the -- the mathematical model that we used
14 to do this. But the end result is, with
15 these two pathways taken into consideration,
16 it works out that about 20 percent of the
17 air concentration -- the value ingested is
18 equal to about 20 percent of what is in the
19 air concentration per cubic meter per day.
20 So that's what we've assumed in this model.

21 We have gone back and looked at the --
22 a couple of cases. We have not completely
23 finished the reanalysis, but we've looked at
24 a couple of the claims that were pretty
25 high. As some of you know, there were some

1 that were in the upper 40 percent range for
2 probability of causation. We've looked at
3 those and there's been very little effect on
4 the change in the probability of causation
5 calculation, primarily because the dose that
6 we assume from the air concentration model
7 overwhelms the dose that is a result of this
8 additional ingestion pathway that we've
9 added.

10 If you think about it, at the upper end
11 of the distribution we are having a person
12 inhale air that has 50 milligrams of uranium
13 per cubic meter. And with the -- if the
14 cancer is not in the lung but an organ
15 distant from the lung, we assume that that
16 material is fairly soluble and rapidly
17 clears to the other organs, so a lot of that
18 inhalation ends up going into the
19 bloodstream and circulating through the
20 other organs. Where this model allows for
21 some ingestion, but much smaller amounts of
22 -- a much smaller degree of this material
23 reaches the body than via the inhalation
24 pathway that we modeled previously.

25 I'm not comfortable right now saying

1 that this will not change any claims that
2 have been processed thus far, but our
3 original suspicions are that this would not
4 add much dose and would not likely change
5 many claims appears to be well-founded. But
6 I will caution you and say that we're still
7 looking at this and I can't say -- in this
8 program -- you can't say with any certainty
9 until you look at all the data, and so we'll
10 be doing that in the next week or so and
11 notifying the Department of Labor of any
12 cases we believe that it may have affected
13 to be compensable. We will write this up in
14 a program evaluation report -- this is
15 standard practice for us. When we do a
16 reanalysis like this we document this and
17 publish it -- put this out on our web site
18 so it will be available for viewing by the
19 general public, as well.

20 With that, I think I'll stop, and if
21 there's any brief questions, I'd be -- if
22 there's time -- I don't know, Dr. Ziemer, do
23 you want to answer any questions or --

24 **DR. ZIEMER:** Any questions from the
25 Board we can delay till tomorrow, but if

1 anyone in -- amongst the general public
2 wishes to ask Dr. Neton a question on what
3 he just talked about -- yes, sir, please
4 approach the mike and you'll need to state
5 your name for the record.

6 **PUBLIC COMMENT**

7 **MR. KOCHANSKI:** My name is John
8 Kochanski. I'm from Niagara Falls, New
9 York. My father worked for Carborundum, a
10 NIOSH (sic) site. I would like to know the
11 expertise of NIOSH in detecting radiation?
12 How long has NIOSH been doing this, and what
13 is their expertise? Do they have scientists
14 from MIT or Harvard? Do they have geiger
15 counters? Do they understand what radiation
16 is and have they been to the sites to see if
17 there's still radiation today because all
18 the buildings are sitting there. What is
19 NIOSH's job? It's to determine if this
20 caused death. There is sites that are still
21 there. They have radiation -- residual
22 radiation in them and there's tight
23 neighborhoods, there's articles of high
24 cancer rates. It's not only the workers.
25 It's everybody who lives in the area

1 forever. What is the life of radiation? It
2 doesn't go away in one day. You have a lot
3 of work to do. Please, if you need money,
4 if you need more workers, you will get it.
5 And I would like to know why I wrote a
6 letter to NIOSH five weeks ago about my
7 father's case and I didn't get any
8 information in five weeks. If you need
9 someone to answer your mail, maybe you can
10 hire them. But radiation is exact. There's
11 a lot of experts that you can consult.
12 There's a lot that you can do. These are
13 neighborhoods. These are poor people. We
14 don't want to see the spilling of radiation
15 forever. Has the EPA even been contacted
16 about these sites? Thank you very much.
17 And by the way, my father was in the Pacific
18 Theater. He couldn't go to college. He
19 didn't have the money. That's why we're
20 standing here. Have a good day.

21 (Applause)

22 **DR. ZIEMER:** Thank you very much. And
23 in terms of responding to the letter, I
24 think we can ask the staff to follow up --
25 they have the name -- and find out that

1 particular thing.

2 Also, I would point out to -- to the
3 gentleman that in fact NIOSH and their
4 contractor, Oak Ridge Associated
5 Universities, have in fact over the past
6 couple of years hired many of the top health
7 physicists in the country to assist in the
8 program. So indeed they have many, many
9 experts, including Dr. Neton himself, who
10 won't tell you this, but he is a very well-
11 respected expert himself in these areas.

12 We have received a written letter from
13 Elsie Owens, a letter which included a
14 number of questions for the NIOSH staff. I
15 think a letter which Ms. Owens did not wish
16 to have necessarily read in the public arena
17 here, but her letter has been made available
18 to the NIOSH staff and they will be
19 addressing, Ms. Owens, your questions.

20 I do want to give you opportunity,
21 though, if you have any additional comments
22 or questions that you want to raise with
23 respect to the letter, which we are having
24 the staff follow up on -- Ms. Owens or the
25 individual accompanying her, do either of

1 certainly be able to check on that and --

2 **MS. OWENS:** And also Louise Slaughter
3 from Niagara Falls and Schumer were -- had
4 taken to Washington to try and get the
5 cutoff date increased to two to four more
6 years, and I haven't heard anything more on
7 that.

8 **DR. ZIEMER:** Representative Slaughter's
9 office had someone here earlier today. I
10 don't know if she's still here or not.

11 **MR. ELLIOTT:** She's left.

12 **DR. ZIEMER:** She's left, okay.

13 **MR. ELLIOTT:** Let me --

14 **DR. ZIEMER:** Let Mr. Elliott respond.

15 **MR. ELLIOTT:** Yes, ma'am, with respect
16 to the cutoff date, that is not decided by
17 NIOSH. That's a decision that's made
18 jointly between Department of Labor and
19 Department of Energy, I believe. You
20 certainly can avail yourself of your
21 Congressional support, though, to seek that
22 change, I guess. But NIOSH has no control
23 over the cutoff date.

24 **MS. OWENS:** (Off microphone) Who does?

25 **DR. ZIEMER:** Well, Department of Energy

1 --

2 **MS. OWENS:** Oh, the Department --

3 **DR. ZIEMER:** -- and the Department of
4 Labor.

5 **MS. OWENS:** Oh, and you don't know if
6 anything has -- if that's been brought up at
7 all?

8 **DR. ZIEMER:** We do have a Labor
9 representative here.

10 **MS. MOSIER:** Yeah, I'm from the
11 Department of Labor, Roberta Mosier. The
12 dates that we use for these claims is based
13 on the wording that is in the Act, which
14 defines covered employee as someone who was
15 working at a covered facility during the
16 period of time when they were performing
17 work for Department of Energy. So it's our
18 interpretation that absent legislative
19 change, without the law being changed, we
20 would not be able to cover someone who only
21 worked after a covered -- after a period
22 when DOE work was being done. So at Hooker,
23 if -- you know, the work for Department of
24 Energy stopped in 1948. Even if there were
25 residual contamination, the way the law is

1 currently, we do not believe that we would
2 be able to extend coverage.

3 Now I know that there have been a
4 number of legislators who have been working
5 on legislation to make a change, to cover
6 people during a residual contamination
7 period. But that hasn't -- you know, it
8 hasn't been passed yet.

9 **MS. OWENS:** Was that ever cleaned up?

10 **MS. MOSIER:** Was it -- I -- I don't --
11 I don't know that information. That's
12 probably in the residual contamination
13 report, I would think, isn't it?

14 **MR. ELLIOTT:** Yes, it would be, but I'm
15 -- and I'm sorry, I don't -- don't remember
16 what Hooker -- our entry on Hooker Chemical
17 had to say, but it's -- we'll -- we'll work
18 to get you that answer.

19 **MS. OWENS:** I was reading in our
20 Niagara Falls Gazette that so far Hooker
21 Chemical, Linde and none of those cases have
22 been settled, and I was wondering, is there
23 some reason -- it said they -- none of the -
24 - anyone from Niagara Falls has been
25 settled?

1 **MS. MOSIER:** Right, the reason is most
2 of those claims -- there are some that --
3 where there have been decisions and those
4 are mostly the ones that were not eligible
5 because they worked outside the covered
6 periods. The rest of them have been
7 referred to NIOSH for dose reconstruction.
8 And since they don't have completed site
9 profiles for those locations yet, we haven't
10 gotten them back from NIOSH. So once --
11 once they've finished the site profiles,
12 we'll be able to -- Department of Labor will
13 be able to make a decision on those.

14 **MS. OWENS:** I understand they were
15 cutting a lot of that stuff -- this was for
16 -- during the Manhattan Project --

17 **MS. MOSIER:** Uh-huh.

18 **MS. OWENS:** -- for Hooker and other
19 companies, and disposing of that material in
20 Model City, waste. You know anything about
21 that?

22 **MS. MOSIER:** No. No, I don't, sorry.

23 **MS. OWENS:** Lake Ordnance, that's --

24 **MS. MOSIER:** Okay.

25 **MS. OWENS:** -- LOOW --

1 **MS. MOSIER:** Right, right.

2 **MS. OWENS:** Yeah, that's where it was
3 dis-- that's in the Model City.

4 **MS. MOSIER:** Okay. Right, okay.

5 **MS. OWENS:** You don't know of anything
6 --

7 **MR. KOCHANSKI:** (Off microphone) Does
8 the Department of Labor have any labor law -
9 -

10 **DR. ZIEMER:** You'll need to approach
11 the mike if you have a question. And also
12 we didn't get your name here so we can --

13 **MR. KOCHANSKI:** My name --

14 **DR. ZIEMER:** -- follow up on your other
15 question, so if you would repeat your name
16 for Mr. Elliott.

17 **MR. KOCHANSKI:** My name is John
18 Kochanski, K-o-c-h-a-n-s-k-i, long Irish
19 name.

20 **DR. ZIEMER:** Thank you.

21 **MR. KOCHANSKI:** Now for the woman from
22 the Department of Labor, have any labor laws
23 been violated? Under Roosevelt's New Deal
24 there were stringent laws that applied to
25 the safety of the worker. Has the Justice

1 Department looked into the facts of
2 unnecessary risks to employees? You have
3 laws. You are with the Labor Department.
4 There are clear-cut laws and if you would
5 send me a response, I would be very
6 interested to know. My father didn't see
7 his 60th birthday.

8 **DR. ZIEMER:** Thank you. Now the next
9 person I have on my list is Ralph Krieger or
10 -- is it Krieger?

11 **MR. KRIEGER:** Yeah.

12 **DR. ZIEMER:** Yes, Ralph, who's with
13 PACE and from Alden, New York.

14 **MR. KRIEGER:** (Off microphone) It's too
15 bad a lot of people (Inaudible) my wife
16 (Inaudible) dose reconstruction, but the
17 first thing I want to ask the Board (on
18 microphone) I'd like to a have a round table
19 discussion and a Linde site profile. I'm
20 requesting you out of the Board.

21 **DR. ZIEMER:** I'm sorry, restate the
22 question.

23 **MR. KRIEGER:** I -- it's not a question,
24 it's a request.

25 **DR. ZIEMER:** Request to --

1 **MR. KRIEGER:** Respectfully given, we
2 would like a round table discussion and a
3 Linde site profile.

4 **DR. ZIEMER:** A Linde site profile.

5 **MR. KRIEGER:** As a matter of record.

6 **DR. ZIEMER:** Thank you.

7 **MR. KRIEGER:** This afternoon I listened
8 to a number of issues that were brought up
9 about dose reconstruction and one of the
10 things that they came -- along the line and
11 I have an article here that I got out of one
12 of -- one of the books that I get from the
13 Congress, and the Secretary of Health and
14 Human Services, in accordance with section
15 3513, 21 specified cancers. Specified
16 cancers means the following -- and it goes
17 down to the bladder, bowel and brain, you
18 name it, all the way down. But one of the
19 ones that came up to mind that came today
20 that was in discussion was that the
21 possibility of prostate cancer being
22 eliminated. My question is, being that the
23 prostate is located next to the cayunes
24 (sic) and the cayunes is very susceptible to
25 cancer, which organ is -- is -- is -- organs

1 would be more susceptible, prostate or the
2 cayunes?

3 **DR. ZIEMER:** We probably need a medical
4 doctor to answer that, but the organ's
5 location itself is not the determiner of
6 susceptibility. I believe I'd be correct to
7 -- as --

8 **MR. KRIEGER:** When you're being exposed
9 -- excuse me, sir. When you're being
10 excused to all the irradiation elements --
11 gas, because it's decaying product, and the
12 radi-- radiation that's coming off, and the
13 dust, you're being exposed to all the
14 elements of nuclear contamination -- gamma
15 radiation, for one. And we know what the
16 gamma radiation was at Linde because our X-
17 ray technicians put down a film on the floor
18 with a lead pencil and covered it. The next
19 day it was exposed. That was in building
20 30.

21 Now another issue that you brought up
22 that was discussed here, Department of Labor
23 kind of said that they didn't have any
24 information on this. I don't know if they
25 got this report. This is kind of an older

1 report, not this year, October of 2003 by
2 Louise Ginzbergen*, MD, MPH, director,
3 Trinity Engineering Association, Cincinnati,
4 Ohio, report on residual radioactive and
5 beryllium contamination at atomic weapons
6 employees (sic) facilities -- facilities and
7 beryllium vendor facilities. This document
8 has all the sites. Many of them are marked
9 out. Linde's marked here; Chandler Street,
10 which did the barrier product -- barrier
11 development for Oak Ridge; (Inaudible)
12 Products and it was in Buffalo, New York;
13 Utica Street Warehouse where they warehoused
14 it. And then we come to the Linde site in
15 Tonawanda. This is your document by my --
16 Congressman sent to me.

17 Linde Ceramics Plant, Tonawanda, New
18 York, 1940 to 1950, DOE. Then it's got 1996
19 on there. This document-- this
20 documentation reviewed indicates that there
21 is a potential for significant residual
22 contamination outside of the covered period
23 in which weapons-related production
24 occurred, 1940 to 1997. Well, they're still
25 on the site. They're still cleaning it up.

1 Probably won't have it done, if they're
2 lucky, by 2007.

3 Since the beginning of the first of
4 this year, six of my men, my former members,
5 have come down with cancer, were operated
6 on, two of them are dead since the first of
7 the year. As of today, one of my best
8 friends, who worked with me for the
9 organization, is in the hospital today being
10 operated on -- which makes seven so far this
11 year. That ain't counting last year, seven.
12 The year before that, the year before that,
13 the year before that, the year before that.

14 It's ironic, as I listen to you talk
15 today, the Board, discuss this dose
16 reconstruction where most of the men worked
17 in secrecy -- absolute secrecy. You opened
18 your mouth, you were gone. Absolute
19 secrecy. Very few people at Linde ever wore
20 dose badges 'cause they were afraid if they
21 wore the dose badges they would give away
22 the secret 'cause other people -- the
23 employees -- want to know why they were
24 wearing dose badges. This discussion on
25 dose reconstruction is the most ludicrous

1 when they asked questions, they said don't
2 worry about it. That's what they told us at
3 Linde when I was president here, don't worry
4 about it, it ain't going to hurt you -- as I
5 was watching the bodies pile up.

6 It's a damned shame that General Grimes
7 (sic) could create three nuclear bombs and
8 we can't even get our own people taken care
9 of.

10 **UNIDENTIFIED:** Very good.

11 (Applause)

12 **MR. KRIEGER:** Thank you.

13 **DR. ZIEMER:** Thank you for your
14 comments. Let me point out also, in --
15 there's a lot of frustrations on many of
16 these things. This -- this Board of course
17 is trying to do what it can, as mandated by
18 law. We are not able to address all the
19 issues. Those that we're responsible for,
20 we are trying to address to the best of our
21 ability.

22 Sir, we have some other people that are
23 before you, and I'll give you the mike again
24 at the appropriate time.

25 We have Linda Burgess from Bethlehem

1 Steel, who's a resident of Lancaster, New
2 York is next. Linda?

3 **MS. BURGESS:** Good evening. Thank you
4 for the opportunity to speak with you. I
5 speak on behalf of my mother. My father,
6 John Cruiser*, was a brick layer in the hot
7 gang at Bethlehem Steel from '48 to '78. On
8 July, 1987 he was diagnosed with pancreatic
9 cancer and he died 15 months later. He was
10 63 years old. He was a husband, father to
11 three of us, and grandfather to six.

12 He served in the Army during World War
13 II. He fought in the Battle of the Bulge
14 and received two purple hearts. He survived
15 one war, only to be sent into another, the
16 Cold War. Unknown to him, he worked with
17 uranium in the furnaces of Bethlehem, which
18 caused his death.

19 We applied for compensation to the
20 EEOICPA in 2001 and were subsequently
21 denied. Probability of causation that
22 killed him was 3.13 percent. Since the time
23 that my mother's claim was denied, I have
24 had the opportunity to study the matrix for
25 Bethlehem Steel. I have many questions

1 regarding the dose reconstruction and that
2 document. Reports indicate that all work
3 was done between '49 and '51. But reports
4 also indicate that seven additional rollings
5 took place in 1952. I also have a letter
6 from Paul Kasanovich*, compensation agent
7 for Labor Union 2603, stating that in 1955,
8 for a period of six to eight months, one day
9 a month the ten inch bar mill rolled steel
10 rounds of the uranium lead content for the
11 Atomic Energy Commission.

12 The matrix determined that the number
13 of exposure hours per year, by assuming 12
14 ten-hour work days per year for the 1949 and
15 '50. That is without any documentation
16 regarding rollings. Yet the same assumption
17 is not made for 1955, when rollings were
18 also reported. If the assumption can be
19 made without documentation for '49 and '52,
20 why isn't the same assumption made for '55?

21 The dates of the rollings are listed in
22 the document. In documents obtained from
23 the Department of Health and Human Services
24 I discovered an experimental rolling that
25 was not listed in the matrix. This rolling

1 took place on November 17th, 1951. Perhaps
2 the reason that it was not listed was that
3 it was canceled because there were not
4 enough good billets made. Out of
5 approximately ten ton of conditioned billets
6 rolled, only three ton of billets were
7 produced. There is no record regarding the
8 other seven ton of uranium ore. That's
9 seven ton of missing uranium ore.

10 I also have documents from National
11 Lead Company of Ohio reporting on the
12 rolling of 222 uranium billets at Bethlehem
13 on April 12th, 1952. It states that round
14 billets lose an average of six pounds per
15 billet. The square ones, however, because
16 they're harder to roll, they lose an average
17 of 11.5 pounds. Now since I don't know
18 whether each billet was square or round in
19 Bethlehem, I can't for any certainty tell
20 you how much uranium was lost, but if you
21 take the 1,637 billets that were rolled
22 between April 26th and -- April 26th of '51
23 and September 22nd of '52 and you double
24 that, because in 1949 and 1950, that would
25 be 3,274 billets for a four-year span.

1 Between six and 11.5 billets were lost --
2 pounds, excuse me -- were lost per billet,
3 so the loss would range, for the years 1949
4 through '52, from 19,644 pounds to 37,651
5 pounds of uranium ore lost. That's not
6 recovered. That's lost uranium.

7 In addition, the 1955 rollings were not
8 accounted for. Based on Mr. Kasanovich's
9 letter, approximately seven rollings took
10 place. He said six to eight, but I'm going
11 to be government-friendly and, you know,
12 give you the seven. If we take six -- 1,637
13 billets for a two-year period, that's 24
14 rollings, this averages out to 68.5 billets
15 per rolling. We can estimate that there
16 were 475.5 billets rolled in '55. The loss
17 of this uranium then ranges from 2,853
18 pounds to 5,462 pounds. So the total loss
19 of uranium is 22,497 to 43,113 pounds.
20 That's lost, not recovered.

21 In the matrix there were several
22 assumptions made. One of them was that
23 there were no records at Bethlehem, so they
24 used Simonds Saw. This assumption was made
25 because the air quality was better at

1 Bethlehem than at Simonds Saw. But Simonds
2 Saw was production and Bethlehem was
3 experimental. Now if you've ever made a
4 cake and you're experimenting with it, you
5 know that when you do it, it makes a mess.
6 But if you know what you're doing, you don't
7 make a mess. Now they were experimenting on
8 this, so my assumption is that they made
9 more of a mess and lost more uranium.

10 At least 24 various assumptions are
11 made in the scientific document. If you are
12 assuming most of the conditions, then there
13 are several assumptions missing. My
14 father's dose reconstruction never took into
15 account many of these items. They assumed a
16 ten-hour day. He worked double shifts. He
17 ate on the job. There was no cafeteria for
18 the men to go for lunch. He took his bag
19 lunch. He sat down, he ate on the job. He
20 used to tell us that the iron ore dust would
21 get into the food. Little did he know that
22 it was uranium ore and not iron ore.

23 Also not noted in the dose
24 reconstruction is the fact that his clothes,
25 hands and shoes had uranium ore dust all

1 over. Again, he was exposed to more uranium
2 -- more radiation than is accounted for in
3 his dose reconstruction.

4 My father met all the regulations
5 regarding exposure dates and onset of
6 cancer. My mother should have automatically
7 received compensation. But the Department
8 of Energy is focusing all their attention
9 and assets to prove that he could not have
10 gotten his cancer from the radiation
11 contamination on the job.

12 The matrix makes many assumptions.
13 Perhaps one of my own that I can make, out
14 of 15 men who worked in the hot gang, 13 of
15 them are dead from cancer and the other two
16 also have cancer.

17 Oak Ridge Associated Universities were
18 awarded a contract for \$70 million to do the
19 constructions. MJW in Williamsville got \$20
20 million to do the Bethlehem Steel matrix.
21 Their entire focus from the beginning of
22 this process has been put together
23 scientific facts to deny my father was
24 exposed and that my mother is entitled to
25 compensation.

1 The spirit of the law is that
2 compensation be given to those who
3 unknowingly gave their lives for their
4 country. My father survived World War II.
5 He couldn't survive the World -- the Cold
6 War. I truly believe that the matrix and
7 the dose reconstruction are flawed and
8 should be nullified, and I continue to
9 search for answers to my questions. My
10 father was not a quitter, and neither am I.
11 I will get the answers. Thank you.

12 (Applause)

13 **DR. ZIEMER:** Thank you very much. Then
14 I have Reverend Jerome Livingston, Bethlehem
15 Steel Action Committee, Buffalo.

16 **REV. LIVINGSTON:** Yeah, I'm glad you
17 gentlemen came here today. As I listened to
18 the presentations today, that's where I
19 pulled my questions from. I listened to
20 Professor Neton when he gave -- when he did
21 about the site profiles this morning, and he
22 depends on records from Bethlehem Steel that
23 don't exist to make up the dose
24 reconstruction.

25 Then I heard Ms. Mosier from the

1 Department of Labor. When she got to page
2 four of her presentation, she said we can
3 produce information, and questions the real
4 validity and the amounts of radiation that
5 the workers have been in touch with.

6 Then when Mr. Calhoun gave his
7 presentation about the dose reconstruction,
8 he got to page five of his handout and he
9 said the sites that -- providing data for
10 the dose reconstruction and Bethlehem Steel
11 wasn't on that list. Then he went to page
12 six of his handout and he said the -- the
13 next tier of sites that were producing
14 information, and Bethlehem Steel wasn't on
15 that list. And so if Bethlehem Steel is not
16 on the list that's providing data, how can
17 you actually give a good dose reconstruction
18 with produced data or with actual data, this
19 is the question.

20 But then I went on and I came in
21 contact today with a report that was written
22 in 1985 and the name of the report is the
23 Elimination Report of Bethlehem Steel
24 Corporation to the U.S. Government. And in
25 that -- in that document, when it gets to

1 the section that says site description, it
2 says the ten inch mill was in use in August
3 of 1976 and has been taken out of service
4 and dismantled. Well, I can take you out
5 there now and that mill is still standing
6 there, and there are people working in that
7 place. So if you are using documents from
8 Bethlehem Steel that are not reliable and
9 they lied to the government that we have
10 those copies of this information, how can
11 you use some produced and not qualify -- you
12 know, Bethlehem Steel is bankrupt, and that
13 property has been razed, so how can you use
14 information that does not exist? Are you
15 producing information to make these dose
16 reconstructions? Evidently. This is the
17 questions that I would like to have you
18 answer.

19 (Applause)

20 **DR. ZIEMER:** Thank you very much. The
21 gentleman approaching the mike, we can take
22 you next.

23 **MR. KOCHANSKI:** My name is John
24 Kochanski. I would like to know if I could
25 get access to every single page of your

1 records that you have in so-called boxes all
2 over the country. I am a U.S. citizen. I
3 have rights. If it takes a Freedom of
4 Information, I would like to -- I would like
5 to see a copy of each paper, just for my own
6 well-being, to know what information you are
7 acting on. Dose reconstruction is a very
8 fancy term. It sounds official. This is
9 radiation. Go to the person's burial spot,
10 check the radiation in their bones and you
11 won't have a problem. Have a good day.

12 **DR. ZIEMER:** Thank you. I have no
13 additional names of people that have signed
14 up, but we can certainly take additional
15 comments. Sir.

16 Oh, I also have one on -- is this Mr.
17 O'Brien?

18 **MR. O'BRIEN:** My name is Eugene
19 O'Brien.

20 **DR. ZIEMER:** Yeah, I do have you.

21 **MR. O'BRIEN:** And I was with the
22 Reverend here before at a previous meeting,
23 and during that meeting I was -- I was
24 amazed. And I'm not blaming you people, but
25 I was amazed that Bethlehem Steel got away

1 with it, that they said the mill was
2 dismantled. So therefore, you didn't go any
3 further with it. It was eliminated because
4 it was dismantled. But now it's still
5 there. You have workers from a new company
6 that's taken over that plant and the stuff
7 is still there.

8 My discussion last time -- I think it
9 was with you, sir -- was that the stuff is
10 on the beams. It's on the floor. They
11 cleaned up the floor. They -- it's like you
12 -- housecleaning, your mother just didn't
13 clean up the floor here. If there was a
14 second floor, you went upstairs and cleaned
15 that. And if there was a third floor, you
16 cleaned that. On the cranes that were going
17 overhead, they all had this dust on them.
18 That's the second floor. The third floor
19 has got like large, 24-inch beams crossing
20 that whole mill. Nobody's ever checked
21 that.

22 They said that they cleaned after every
23 rolling. They only did it on weekends and
24 then they were ready for the crew to come
25 in, it was all cleaned up. How could that

1 possibly be? On Monday morning they had a
2 crew in rolling so-called regular steel. I
3 just -- and the people who were handling
4 that steel, did anybody ever pick up -- they
5 were -- it's a hot mill and it's reverse --
6 wasn't a reverse mill. They had to turn
7 them.

8 Their instrument they had -- the
9 catchers they called them -- those are
10 contaminated. Nobody's ever said a word
11 about that stuff, not a thing.

12 Now we're talking about a walk-through.
13 What's the sense of it if you're not going
14 to do anything about it? If this company
15 that has workers there now -- because I have
16 a nephew that is working there now. I
17 called him up and I asked him, are you using
18 the ten-inch mill, the old ten-inch. Well,
19 yeah, he said, we -- all our motors and
20 stuff are over there. I said have you ever
21 gone over and -- get your motors out? He
22 said yes. I said you ever notice any dust
23 coming down? Oh, a lot of it. So the dust
24 has been up there all these years and nobody
25 has looked up to the heavens, never in the

1 rafters, nobody's looked up at all. That's
2 my opinion, because Bethlehem Steel lied.
3 They out and out lied and said that the mill
4 was dismantled.

5 So instead of this going -- it could
6 have gone into a -- a -- I don't know what
7 you call it, but we wouldn't have to go
8 through all this had it been classified like
9 all the rest. But no, Bethlehem said it was
10 gone, therefore they stopped. So then they
11 -- then they turned to dose reconstruction
12 and it -- we shouldn't have done -- they
13 should never have been. I mean that's my
14 opinion. You tell me I'm wrong? I mean I -
15 - I can't see where I am. But I -- I'm
16 saying you've got men working there now.

17 May not -- it's not in the mills, but I
18 also will back up what this woman said. I
19 know a guy that worked there. I gave the
20 name on some of the papers I filled out --
21 Bill Nysbeth*, his name was. He worked down
22 there -- I was electrician. We worked all
23 over the place. When I got laid off --
24 actually it saved my life. I got laid off
25 on a disability, so I'm glad I'm out of

1 there. But he had to work in that bar mill,
2 in the new one. I said did you ever get
3 into the old one? Yeah, all -- dust all
4 over the place. So it's still there and
5 you've got workers -- I have a nephew that
6 went over there. He's working there now.
7 He told me well, yeah, we go over there and
8 pull the motors out. I said do you operate
9 the crane? Yeah. Everything is up there.
10 But they didn't tell you people, so
11 therefore you're treating this as a case
12 different than any -- the other ones. Am I
13 right or wrong?

14 **DR. ZIEMER:** Thank you.

15 **MR. O'BRIEN:** I don't get an answer.

16 **DR. ZIEMER:** No, I say I don't know.
17 We're hearing it, and we -- we...

18 **REV. LIVINGSTON:** One other thing, Dr.
19 Neton is a solid scientist. That's not to
20 be quibbled with. Mr. Calhoun is a solid
21 individual in the work that he does. In the
22 dose reconstruction that I have a copy of
23 from my father-in-law who passed away who
24 worked there during the covered periods,
25 there are 27 times in the dose

1 reconstruction when the word "assumed" is
2 used. Any scientist worth his salt will not
3 put his name on assumptions. Anybody knows
4 basic science knows this. But we are
5 putting people's lives under assumption and
6 we know -- I just told you that the
7 information that you got from the -- the
8 Federal government received from Bethlehem
9 Steel was an out and out lie, and it was a
10 classified document, which you can't get a
11 copy of. So if they are giving the Federal
12 government classified documents that are a
13 lie, what kind of information are you using
14 to protect these people's lives? The
15 information that you give them might let
16 them give accurate dose reconstruction with
17 the information, but the information is
18 faulty. If you're going to do dose
19 reconstruction, you ought to do it right.
20 That's...

21 **DR. ZIEMER:** Thank you.

22 (Applause)

23 **DR. ZIEMER:** And let me affirm to you
24 that the Board believes exactly what you
25 just said, it needs to be done right. We --

1 we are all -- all struggling all over the
2 country with information and how to evaluate
3 it and its validity, so this is not an issue
4 that is strictly Bethlehem Steel. It's an
5 issue everywhere. The staff, NIOSH, is
6 doing its best to try to ascertain the
7 validity of that information. And insofar
8 as we're able to determine that there's
9 better information -- and sometimes that
10 better information comes from folks such as
11 yourselves -- that we -- we can learn some
12 things that perhaps is not -- are not in the
13 official records. So many times these --
14 what seem to be small pieces of information
15 lead to revelations, if I might call it
16 that. But I can assure you that the folks
17 that you're talking to want to get at the
18 right answers. It's not always easy.

19 I have another person who has signed up
20 and then I'll come back to -- I may have
21 missed Ed Walker from Eden, New York. Ed --
22 yes.

23 **MR. WALKER:** Well, I signed up first,
24 and I kind of wondered if -- maybe they
25 don't want me --

1 **DR. ZIEMER:** I'm trying to be Biblical
2 here, the first shall be last.

3 **MR. WALKER:** Well, my name's Ed Walker
4 and I'm with Bethlehem Group, the action
5 group, and there's about -- I believe around
6 200, and I'm one of the claimants. I'm a
7 survivor claimant. I've got cancer. I got
8 it in the year 2000 and I'm going to kind of
9 briefly go over how I looked at this thing.

10 You're doing a good job in what you're
11 doing. I -- I was down to Cincinnati last
12 week and I was so impressed and it was a
13 great -- I got a lot of information from it,
14 so that was great. But I'm going to just
15 kind of briefly tell you what -- how, as a
16 claimant, and many of the people that I
17 represent that I've talked to have the very
18 same -- same situation as I had.

19 In 2001 we were told -- we heard on TV
20 that if you go sign up, you could get -- if
21 you had cancer and you worked at the
22 prescribed time, that you could get
23 compensation. So I called up, everything
24 went fine. I went in and I signed up. I
25 worked with a group at Bethlehem at the

1 prescribed time, from '51 to '54, and I
2 worked with the special -- with Linda's
3 father in the hot gang, and I was 18 years
4 old. I'd just come out of school. And it
5 was about 15 of us in this hot gang and we
6 worked on specialized -- any place there was
7 a burnout or nobody else would go, we would
8 get called in to patch the holes and work on
9 hot furnaces, whether it be in a bar mill or
10 the coke ovens, wherever it would be.

11 Well, we've looked up -- there's
12 another fella and myself that are alive.
13 Norm isn't here tonight. I tried to reach
14 him, I think he's out of town, but him and I
15 are the only two left on that -- on the gang
16 that worked steady in this hot gang. And
17 we've tried to find the other 15, and from
18 everyone that we've talked to -- there was -
19 - they've all died of cancer. And when I
20 called Norm to be my witness, he says well,
21 why? And I says well, there was uranium at
22 the plant when we worked there, Norm. And
23 he says you're kidding, and I says no. And
24 he says well, why are you, you know,
25 concerned about it? I says well, I've got

1 cancer. And this was like -- just a little
2 over a year ago. He says Ed, I have cancer,
3 too. So that's the first I knew that Norm
4 had cancer after these 50 years. So he
5 signed up, by the way.

6 And I worked with a lot of these heroes
7 that came -- came from the war and fought
8 for the country. I was 18. There was one
9 fella that fought in Corregidor. He was
10 captured by the Japanese. He ran around in
11 the jungle for two -- he escaped from the
12 Japanese, ran around in the jungle for two
13 years. And I told this to Mrs. Clinton --
14 Hillary Clinton when she was up, and she was
15 quite moved by it, and I worked with this
16 fella and he was shell-shocked. Obviously
17 being chased around the jungle for two years
18 before he escaped, he was shell-shocked.

19 And I sat down at the plant, in the
20 plant that we worked in, and I was talking
21 to him and two railroad cars clanged
22 together, and this poor fella sat right up
23 and the sweat poured off his face. I knew -
24 - I knew what I was dealing with in that and
25 I felt so sorry for that man to come back,

1 fight -- and his whole life he was -- he was
2 like that. He was just -- he was just a
3 physical wreck, really, but he -- he could
4 work and he had a family. He had to work.
5 And to think that the government put
6 somebody like this, never told us there was
7 any uranium there, there was -- there was
8 never any badge. There was never any mask.
9 There was nothing. When we went to work on
10 these hot jobs, we worked with asbestos, so
11 naturally -- you know, I -- I'm very moved
12 by these veterans and I know -- I talked to
13 Larry and he was in the service and he knows
14 what it's all about.

15 But anyway, we signed up with -- a lot
16 of other people went and signed up at that
17 time, and I felt there should be no problem
18 working with the group and being exposed to
19 this uranium like most of the people in the
20 plant were.

21 Well, that was in November when I
22 signed up, in 2001, and this is -- this is
23 the feeling of the claimants that happened
24 and this is what's happened to these --
25 these elderly ladies where their husbands

1 have died, same thing. They went in and
2 somebody would tell them about it, they
3 signed up.

4 That spring, the following spring, it
5 was written in the paper that it was
6 reported from -- I believe the Department of
7 Labor -- that the claimants that signed up
8 would be getting their awards in two to
9 three months. Now you've got to remember,
10 these women are in their seventies. I'm in
11 my 70, and they look forward to this. Their
12 husband's obviously gone. Bethlehem Steel
13 is broke, they don't have no health
14 insurance, they have nothing. So they look
15 forward to this.

16 And lo and behold, ten months later we
17 get notices that we got a dose
18 reconstruction coming. Well, what happened?
19 It's all we -- when we signed up, the people
20 told us it's all you got to do is have
21 cancer and work there at that time, and
22 nobody said -- in my case, bladder cancer
23 wasn't -- wouldn't get paid, that that
24 wasn't one of the cancers. We were led to
25 believe that we were going to get paid. I

1 thought we'd get paid.

2 I wish I had known. I wish that man
3 would have told me the day I went to sign
4 that you're not going to get paid because
5 you've got bladder cancer and the dose
6 reconstruction isn't going to let you
7 through, because truthfully, I would have
8 got up and walked home and I would have been
9 happy for the last three years. I wouldn't
10 have -- I would have just -- when I do die,
11 I'd have died happy. I didn't have to go
12 through this thing. And there's a lot of
13 women in the same case.

14 Well, when we come up with this dose
15 reconstruction, we get this questionnaire.
16 This is no problem. You know, I get cancer
17 and -- we get cancer, and they give me this
18 questionnaire. I look at it. I can't
19 answer a question on there. What badge did
20 you wear, what kind of accidents went on? I
21 haven't got a clue. I didn't even know I
22 was working with uranium, how do I know
23 what's going on?

24 So the last three or four pages on
25 there asked some questions that I could

1 answer. But one of the important questions
2 was when we're talking about coworkers is
3 they asked if you had any coworkers, and
4 obviously the other fella that had cancer,
5 and I know a couple of guys that didn't have
6 cancer that weren't claimants, so I put
7 their names down. And I says I got like
8 four witnesses that I worked there, there's
9 no problem with it. So I wrote the names
10 down.

11 They never checked the coworkers. I
12 called them up later when I was going to
13 have my hearing. I called them up and I
14 said did anybody ever check about where we
15 were and what type of work we done? Hadn't
16 heard a word. So I'm -- and this has
17 happened to a lot of other people. I say
18 what's the sense of asking me for coworkers
19 that can prove what I done and where I
20 worked if you're not going to listen to
21 them? Why even do the questionnaire? As it
22 was, the dose reconstruction comes up and I
23 don't stand a chance. Nothing that I said
24 made any difference at all on whether I get
25 paid or not.

1 So -- now you got to put yourself in --
2 you're a 70, 80-year-old lady. She -- she
3 may have -- her husband is gone. She don't
4 know what he done in the plant. She can't
5 find the coworker. She can't answer any
6 questions. We get many calls -- our group
7 gets many calls, what can I do, Mr. Walker,
8 I don't know anybody, nobody's alive that
9 worked with my husband. This questionnaire
10 thing is -- and this dose reconstruction, to
11 me, is a joke. You might as well not send
12 it out. Just send me a letter and say Ed,
13 we're not going to pay you. Simple as that.
14 We figured that you didn't take enough
15 inhalation that you should be getting paid
16 for this cancer thing, and -- and leave me
17 alone. It's fine, I can -- I can accept
18 that. But when -- when you get people like
19 one lady at this meeting we had on the 4th,
20 and I know Larry was there and Jim was
21 there, stood up and they called this lady
22 and told her -- got her check account number
23 because they were going to deposit the money
24 in her account -- and I talked to this lady
25 since then, I found out who it was -- and

1 two weeks later, nothing happened. Three
2 weeks later they send her a notice that they
3 changed their mind, she's not getting the
4 money. That woman is living on \$300 a month
5 pension. She has no insurance. She had to
6 move in with her daughter, and she was
7 promised that. Now there's something -- to
8 me, there's something wrong with this
9 program.

10 And then I find out that on the site
11 profile you used the air samples from
12 Simonds Saw. How about Bethlehem Steel?
13 How about talking to the people that worked
14 there? How about going into the plant and
15 seeing where -- where this work was done and
16 talk to the people, what they went through?
17 If -- if they had uranium there, you can bet
18 -- and I've got quite a few guys that --
19 that have worked there at that time that'll
20 go through and verify this, and nobody seems
21 to care. Nobody called on the site profile.
22 I talked to I don't know how many guys, guys
23 that aren't even in my group, just that I
24 know that worked at the plant at that time,
25 did anybody ever contact you about going to

1 the plant or talk to you about what kind of
2 work you done or how you could have been
3 exposed? Nothing was ever done.

4 So my question is -- I just -- I feel
5 the program is really bogus. I know you
6 worked hard and you've -- people got the
7 knowledge, the technology and everything,
8 but if you're not going to go around and
9 find out what actually happened and what
10 happened to these people and treat people
11 like that, it isn't even so much -- it's the
12 way the people -- the human side of the
13 thing. How can you do that to -- to your
14 mothers, your grandmothers? I don't
15 understand it.

16 (Applause)

17 **MR. WALKER:** That's all I got, though,
18 to say for now. Thank you.

19 **DR. ZIEMER:** Thank you very much. I
20 don't know, Ed, if you were here earlier
21 today when we had a discussion on those --
22 those forms, those survey forms, but we've
23 had some concern about how they were viewed
24 and the concerns that they raised with some
25 of the folks. We're trying to address that

1 because the -- the form is to try to elicit
2 any information that -- that we don't know
3 about. The staff has the site profiles and
4 other information, and they're trying to
5 find out if there's other things, but it may
6 -- it -- it appears at the other end that
7 the expectation is that you have to provide
8 all the information, and that can be very
9 difficult for some of the folks --

10 **MR. WALKER:** Well, the forms, to an 80-
11 year-old woman --

12 **DR. ZIEMER:** That's my -- exactly our
13 point, yeah.

14 **MR. WALKER:** You may just as well print
15 it in Chinese, really. And for me, too. I
16 mean it didn't mean nothing. I -- when you
17 can't fill the thing out, and I went to high
18 school --

19 **DR. ZIEMER:** We appreciate knowing that
20 --

21 **MR. WALKER:** -- didn't go to college,
22 but --

23 **DR. ZIEMER:** -- and we have that same
24 concern and --

25 **MR. WALKER:** -- when I get a form that

1 --

2 **DR. ZIEMER:** -- (Inaudible) figure out
3 how to make those more user-friendly some
4 way.

5 **MR. WALKER:** Yeah, it's just why send
6 it out?

7 **DR. ZIEMER:** Yeah.

8 **MR. WALKER:** Why put the people -- why
9 put these old women through that -- and me,
10 the young man.

11 **DR. ZIEMER:** Yeah. Thank you.

12 **MR. WALKER:** Thank you.

13 **DR. ZIEMER:** Yes, another comment over
14 here, and then -- yeah.

15 **MR. O'BRIEN:** I said we all admit about
16 the mistakes that have been made. Right?
17 This didn't happen -- and I'll come right
18 out and say that Bethlehem Steel, they lied
19 about it. They put everybody on the wrong
20 track. Otherwise they would have went
21 through there and it would have been a
22 different thing. But there's people today
23 that are still in danger. But now I
24 understand -- we were supposed to have a
25 walk-through. We were going to get together

1 and have a walk-through with some of your
2 people and some of this committee here.
3 Well, what is it going to accomplish if we
4 can't go to the Labor Department, and who is
5 going to enforce something? I mean I want
6 to know what's the sense of -- the place is
7 still there. Nobody went through it, but
8 Bethlehem Steel said they ripped it down.
9 But the Labor Department -- there's people
10 working there now. They sold it to another
11 company. They're not using it, but they're
12 using it for storage. But men are going in
13 there and they're getting stuff out, running
14 cranes, and they're -- they're all around
15 that stuff. But nobody has checked into it
16 -- I may be wrong, but nobody has checked
17 it. Who do we go to? I don't know. Can
18 you -- anybody tell me? I guess not.

19 **DR. ZIEMER:** I understand that -- I was
20 asking Larry about the walk-through. I
21 understand that the local folks have invited
22 some of the NIOSH staff to come and see the
23 facility. The enforcement of current health
24 standards -- whose --

25 **MR. ELLIOTT:** That's the Department of

1 Labor Occupational Health and Safety
2 Administration, OSHA.

3 **UNIDENTIFIED:** (Off microphone) That's
4 an agency within the Department of Labor
5 that does --

6 **DR. ZIEMER:** So if there are current
7 health issues --

8 **MR. O'BRIEN:** Can anybody here notify
9 them or make -- nobody?

10 **UNIDENTIFIED:** (Off microphone) You
11 want us to? I mean (Inaudible) --

12 **MR. ELLIOTT:** The work force who's
13 there currently can exercise their right to
14 approach OSHA. They could also exercise a
15 request --

16 **MR. O'BRIEN:** I called -- I called my
17 nephew. I asked him, do you go in the old
18 ten-inch mill, are you using it at all? He
19 said yes. I said do you know there could be
20 a possibility of uranium dust over there on
21 the -- on the beams, on the cranes, and do
22 you know that? No, I didn't know it. Well,
23 I told him, but you know how it is with
24 workers and management. I know a fella that
25 told me in one of my investigations on this

1 they shut off all the cleaners on the newer
2 mills. They have the scrubbers. He was
3 given orders by the main office to shut the
4 scrubbers off at night 'cause then people
5 wouldn't see the junk that was blowing out.
6 In the daytime, shut them -- put them back
7 on again.

8 **DR. ZIEMER:** Well, it sounds like
9 there's some current concerns that perhaps
10 have to be raised by the local folks. Mike,
11 you wanted to add something to this
12 discussion. Mike Gibson from...

13 **MR. GIBSON:** This is an Advisory Board
14 meeting on Radiation and Worker Health, but
15 it's going on the record, it's going to be
16 in the *Federal Register*, the transcripts.
17 Are you telling me there's not a Federal
18 agent in this room that could get ahold of
19 OSHA to tour the plant this gentleman's
20 talking about?

21 **DR. ZIEMER:** I assume there is.

22 **MR. ELLIOTT:** Well, I'm sure that
23 Roberta Mosier can pass that along to OSHA.
24 But I would also -- I was ready to offer to
25 the gentleman that another way to approach

1 this is through a health hazard evaluation
2 request where if -- and this can be done
3 anonymously -- if three or more or an
4 organized -- representative of the organized
5 group at Bethlehem Steel simply made a
6 request to NIOSH to come and evaluate the
7 situation and -- and do sampling and
8 whatever else is necessary to make a
9 determination if -- as to whether uranium
10 contamination exists today in the -- in the
11 mill. So there's two mechanisms, and I'm
12 sure that -- you know, I have confidence in
13 Roberta that she'll take this back and
14 within DOL they'll put it in front of OSHA.
15 And any worker who wants to talk to me about
16 how to initiate a request, I'd be happy to
17 walk them through the process.

18 **MR. KOCHANSKI:** Thank you. The same
19 should go for Carborundum in Niagara Falls.
20 There are 300 or 400 workers at the same
21 buildings that this radiation was processed
22 in. Thank you very much. And one question,
23 how do I get a copy of the minutes of this
24 meeting today? How do I do it?

25 **DR. ZIEMER:** There's two -- two ways.

1 You can request them -- we have a request
2 book -- and they will also be on the web
3 site --

4 **MR. KOCHANSKI:** Thank you.

5 **DR. ZIEMER:** -- as soon as they're
6 ready, so you're welcome --

7 **MR. KOCHANSKI:** I can't afford a
8 computer. You saw to it.

9 **DR. ZIEMER:** I'm not sure any of us
10 can, but you can -- you can get a written
11 copy. There he goes. Sir?

12 **MR. WALKER:** I don't want to take up
13 much more time, there's other people got
14 questions, but the one -- another thing that
15 bothers this group is that it was -- it was
16 published in the Buffalo News that there was
17 four government sites down south that had a
18 special cohort and just simply having cancer
19 and working there, there was no questions
20 asked, they got paid. Now --

21 **UNIDENTIFIED:** (Off microphone)
22 (Inaudible)

23 **MR. WALKER:** Was it at Oak Ridge? I
24 don't know all -- all the sites, but if that
25 special cohort -- it's all you had to do was

1 prove you had cancer and worked there, now
2 it's being modified for us and it's
3 altogether different than what they had, why
4 did the government sites receive it; when
5 they got up to Bethlehem Steel, the rules
6 changed?

7 **DR. ZIEMER:** This is a legislative
8 issue that is imposed on all of us here.
9 You need to be speaking to your
10 Congresspeople --

11 **MR. WALKER:** And we have.

12 **DR. ZIEMER:** Yeah. I mean the law is -
13 - we're following the way that our
14 Congressmen wrote the law, and they had some
15 of those groups --

16 **MR. WALKER:** But it's very troublesome
17 to these people.

18 **DR. ZIEMER:** We understand that.

19 **MR. WALKER:** They hear that, where they
20 got it.

21 **DR. ZIEMER:** Right. There's a --
22 there's a --

23 **MR. WALKER:** And there's no -- bladder
24 didn't make it, this didn't make it --

25 **DR. ZIEMER:** No --

1 **MR. WALKER:** -- you got it, across the
2 board. It even stated in the paper, even if
3 you smoked cigarettes, you got it.

4 **DR. ZIEMER:** We understand the issue.

5 **MR. WALKER:** Okay.

6 **DR. ZIEMER:** Sir?

7 **MR. ESPINOSA:** Good evening. My name
8 is Kevin Espinosa, spelled the same way as
9 Mr. Espinosa on the Board. I just had one
10 question for Dr. Neton, hopefully you can
11 answer my question. I believe earlier
12 tonight in your presentation you said that
13 you assumed that 20 percent had settled onto
14 the food that was eaten, 20 percent per
15 cubic meter. Could you clarify what you
16 were saying on that?

17 **DR. NETON:** If I gave that impression,
18 that's not what I meant to say. I said that
19 20 -- 20 percent could be used -- after you
20 look through the whole model, the
21 calculational method that we used, the
22 mathematics worked out such that we could
23 assume that 20 percent was -- what was in
24 the air per cubic meter ended up being
25 contamination being eaten by touching a

1 surface or by ingesting food or coffee that
2 was in the area. Now that's not -- that's
3 the way the math worked out, but there's a -
4 - there's a long derivation on our web site
5 that you can look up that describes how --
6 how we got to that -- that ultimate result.
7 I don't know if that answers your question
8 or --

9 **MR. ESPINOSA:** It does. I should also
10 -- is there any idea of how long it took for
11 these particles to settle out? I mean we're
12 saying that it settled in one day and was
13 vacuumed up -- it was vacuumed up actually
14 immediately after it was -- after the
15 contamination fell to the ground. I don't
16 think it fell in an hour. I mean I think it
17 took a couple of days to fall on these guys
18 who were working there during the week
19 Monday through Friday.

20 **DR. ZIEMER:** Well, you can give your
21 criteria --

22 **DR. NETON:** If you look at the web
23 site, again, I think it's .00075 meters per
24 second is the settling velocity of uranium
25 in air, but it's continuously settling, so

1 once it's dispersed in the air, it settles
2 continuously throughout a 24-hour period is
3 what we assumed.

4 **MR. ESPINOSA:** And when was it vacuumed
5 up, then?

6 **DR. NETON:** No, it doesn't matter
7 whether it was vac-- we assumed it never was
8 vacuumed up for this calculation. It just
9 settled during the whole operation of those
10 derbies, and then when the operation was
11 done, we assumed that there was cleanup done
12 after that. But during the op-- during the
13 24-hour period we assumed constant
14 generation of up to a 50-milligram per cubic
15 meter air cloud, and that 50-milligram per
16 cubic meter air cloud settled out of the air
17 and deposited on the surfaces over 24 hours.

18 **MR. ESPINOSA:** (Off microphone) And the
19 particles that were on the beams that
20 settled down the next couple of days
21 (Inaudible)?

22 **DR. NETON:** Well, that's another issue
23 that was raised by this gentleman, and that
24 was actually part of the motivation for us
25 to go and do the tour of the facility, to

1 look at the logistics of where things were
2 in relation to the bar mill, to see the
3 height and everything, to see if our
4 exposure model actually addressed settling
5 of contamination up on the beams. So we
6 were going there primarily from a
7 perspective of validating our exposure model
8 rather than looking for additional
9 contamination.

10 **MR. ESPINOSA:** Thank you very much.
11 It's nice to get some answers.

12 **DR. ZIEMER:** Thank you. Another
13 comment? Yes.

14 **MS. BARTOSYEK:** Hi, I'm Janice
15 Bartosyek. I'm with the Bethlehem Steel
16 Action Group. I have a few questions that
17 I'd like to ask of you. First of all, I'd
18 like to make a statement.

19 I agree with Ed that the way the
20 program was presented to us initially in
21 2000 -- 2000 or 2001, it was I think blatant
22 government misrepresentation. I mean he's
23 correct when he said if a person had cancer,
24 basically they -- and worked at Bethlehem
25 Steel in the mill, they would be compensated

1 for what happened. And it never was
2 presented to us in a way that it had to be
3 proved through all of these other methods
4 that the cancer was caused by exposure to
5 radiation.

6 Now I want to thank Larry for the
7 packet of information that I received from
8 the -- after the last meeting, and I read
9 everything within it. And there was a map
10 of -- in the Bethlehem Steel profile there
11 was a map that was included in it. I'm not
12 sure who's best familiar with the Bethlehem
13 Steel records or profile. I'm looking at
14 this gentleman, presuming that he's maybe
15 the best qualified.

16 **MR. ELLIOTT:** Unfortunately, Grady
17 Calhoun was the --

18 **MS. BARTOSYEK:** Okay, well --

19 **MR. ELLIOTT:** -- most knowledgeable
20 about that and he's --

21 **MS. BARTOSYEK:** Well, on this map --

22 **MR. ELLIOTT:** -- left for the day.

23 **MS. BARTOSYEK:** -- there was a -- okay,
24 it was a -- it was Lackawanna, New York and
25 all of the buildings of Bethlehem Steel.

1 There was this certain area that was right
2 next to the lake that was circled on this
3 map, and I don't get it. I don't know why -
4 - ah, thank you. I don't know if the circle
5 is representative of the bar mill ten,
6 supposedly. I mean it's not, but does
7 anyone know what this represents, the
8 circled area?

9 **MR. ELLIOTT:** No, why don't you -- if
10 you would, Janice, would you -- would you
11 either -- we'll send you an e-mail about
12 that. We'll try to provide some
13 clarification. I don't have an answer for
14 you tonight. I don't know --

15 **MS. BARTOSYEK:** Okay, 'cause I was just
16 --

17 **MR. ELLIOTT:** -- I'd have to look into
18 this.

19 **MS. BARTOSYEK:** -- wondering if this is
20 the area or the mill that supposedly they
21 presume was torn down or --

22 **UNIDENTIFIED:** (Off microphone) No.

23 **MS. BARTOSYEK:** Oh, no? Something
24 else? A different issue? Okay.

25 **MR. ELLIOTT:** Let me follow up on that

1 and I'll get back to you. Okay?

2 **MS. BARTOSYEK:** Okay. Now in 2000 or
3 2001 there was a list on the -- of beryllium
4 vendors on the internet site for -- I think
5 it was DOL. And now that has been pulled
6 off. And at one time Bethlehem Steel was
7 listed as a beryllium vendor, and later on
8 it was said that they never were a beryllium
9 vendor. Can somebody make a comment about
10 that?

11 **MR. ELLIOTT:** I have no idea what
12 you're talking about there. There was --
13 there was -- I think you're referring to the
14 residual study contamination report, but it
15 included beryllium vendors as well as
16 radiation-exposed AWEs, and there was an
17 error that was inadvertently made in the
18 Bethlehem Steel determination. We talked
19 about this back last month.

20 **MS. BARTOSYEK:** Uh-huh.

21 **MR. ELLIOTT:** And the documentation
22 that we have indicates that there was a full
23 cleanup done so that there was not
24 significant residual contamination. That's
25 based upon our document review. We're

1 anxious and interested in making a site
2 visit if we can and looking at it from that
3 perspective. But I'm not clear on where
4 your information is coming from that this
5 was a beryllium vendor site and then it
6 wasn't. I don't know -- I have no idea what
7 you're talking about there.

8 **MS. BARTOSYEK:** Well, because it was on
9 one of your -- the government internet sites
10 as -- and Bethlehem Steel was listed as a
11 beryllium vendor. And I happened to get --
12 print out that information and I've reviewed
13 it numerous times, so I don't feel that I
14 misinterpreted what I printed off the
15 internet at that time. And I pursued the
16 beryllium/silicosis type of thing because at
17 that time my dad -- he did not have any
18 identified cancer problems so I presumed
19 that maybe he had a emphysema and, you know,
20 whatever, other -- other type of problems.
21 And the government at that time mentioned to
22 me that Bethlehem Steel was not a beryllium
23 vendor.

24 Now the other question I have is what
25 is the total number of pages retrieved of

1 government records on Bethlehem Steel?

2 **MR. ELLIOTT:** Here again, I don't know
3 that -- answer to that question
4 specifically.

5 **DR. ZIEMER:** You can probably get the
6 information.

7 **MR. ELLIOTT:** I can get that and have
8 it -- you know, have it delivered to you.

9 **MS. BARTOSYEK:** Okay. In reviewing the
10 information you had sent to me, I compared
11 it with the information I had gotten off of
12 one of your internet sites before the last
13 meeting and looked at all of the rollings,
14 the dates of the rollings, and I noticed on
15 the information you sent me there were five
16 that were not listed previously on NIOSH's
17 site profile for Bethlehem Steel. And I
18 wonder if it has since been added? That
19 information was extrapolated from what you
20 sent to me and I compared it to the list to
21 see if it was already on that list, and I
22 saw that these -- well, they were the
23 experimental rollings, but they were not on
24 that list from -- I don't know, April or
25 May, that was on your internet database.

1 **MR. ELLIOTT:** Dr. Neton --

2 **MS. BARTOSYEK:** Does that --

3 **DR. NETON:** I'm not sure --

4 **DR. ZIEMER:** If we don't know the
5 answer to that, again, we can ask the staff
6 to follow-up and get that information.

7 **MS. BARTOSYEK:** Okay. I'm sorry I
8 didn't bring that information with me. I
9 had done a comparison and I could have
10 easily shown it to you but I left it behind.

11 **DR. ZIEMER:** Thank you.

12 **MS. BARTOSYEK:** Okay. Thank you.

13 **DR. ZIEMER:** Thank you very much. We
14 have another individual signed up or
15 requesting --

16 **MS. OWENS:** (Off microphone)

17 (Inaudible) use the mike. (Inaudible)
18 thirsty for Manhattans by now.

19 (On microphone) I just wanted to say
20 just one thing of talking. My husband died
21 of cancer in 1998, which started in his
22 kidneys and metastasized to his brain, bone
23 and lungs. He was a wonderful man and a
24 proud -- proud, patriotic American. He
25 served in the United States Air Force for

1 many years and spent time in World War II,
2 the Korean Conflict, the Berlin Airlift and
3 Viet Nam. Although the risks were
4 phenomenal in all of these military
5 missions, he fortunately survived them all,
6 only to fall victim to what I strongly
7 believe was disease caused by the
8 radioactive contamination he was exposed to
9 in the production of these weapons of war.

10 One thing else here I wanted to -- I
11 think I did say he started to work at Hooker
12 in early 1950. Now according to the
13 Department of Energy, they had assigned 1948
14 as the last year that they were willing to
15 compensate the victims at Hooker
16 Electrochemical. The Department of Energy's
17 position is that their contractual
18 relationship with Hooker to produce these
19 lethal materials ended in 1948; therefore
20 they are not responsible for any damages to
21 employees after that in time. However, if
22 the contamination is so extremely difficult,
23 or even impossible to remove completely, how
24 can -- and by no means be accomplished
25 swiftly, how can they be absolved of

1 responsibility simply because the actual
2 production had ceased? And if not the
3 Department of Energy, should not some
4 governmental entity be accountable for the
5 damage inflicted on these innocent
6 Americans?

7 **DR. ZIEMER:** Okay. Thank you and --

8 **MS. OWENS:** Thank you.

9 **DR. ZIEMER:** -- the gentleman has
10 another comment here.

11 **REV. LIVINGSTON:** (Off microphone) This
12 is the question that I --

13 **DR. ZIEMER:** This is --

14 **REV. LIVINGSTON:** -- for maybe --

15 **DR. ZIEMER:** -- Reverend Livingston.

16 **REV. LIVINGSTON:** -- Dr. Neton and the
17 rest of the panel. From what I -- the
18 information that I can gather, that the
19 scientists who work in this field is such a
20 small gene pool, don't -- isn't it a fact
21 that the people who work at Oak Ridge also
22 work for NOSHA (sic) and vice versa? So
23 isn't it a case of the people who are doing
24 the research -- isn't it government checking
25 government? Don't we have such a small gene

1 pool of the people who are doing the work
2 that they -- I mean half the people who work
3 for Oak Ridge used to work for NOSHA (sic).
4 Either they work for NOSHA or they work for
5 Oak Ridge. How can we get a true accounting
6 of everything that's going on if you have
7 government checking government?

8 **DR. ZIEMER:** Let me partially answer
9 that. We do have the conflict of interest
10 rules that we follow, which also make known
11 what the previous associations of various
12 folks are because in a sense you're right,
13 there's a somewhat restricted group of
14 individuals who have sort of expertise, some
15 of whom are around this very table today.
16 So the -- about the best we do on this is
17 make known what those associations are and -
18 - and also try to -- try to get honest
19 people who are willing to, in some cases,
20 stick their neck on the line if they have
21 to. The fact that they have worked
22 somewhere previously does not necessarily
23 mean that they can't do their job. It could
24 raise some issues and we're aware of those
25 perception problems and try to minimize them

1 to the best that we're able, really.

2 A gentleman here, identify yourself,
3 please?

4 **MR. LAWRENCE:** Just a quick follow-up.
5 I'm not signed in but my name is David
6 Lawrence. I'm from West Seneca, New York.
7 And I don't know if you're going to have
8 anything further -- as I was standing here
9 you -- you addressed it. It gets into the
10 potential conflict of interest issue, and
11 you may have covered this today in your day
12 meetings. I was not here.

13 I assume there will be a firm hired to
14 participate in work on the audit -- auditing
15 the --

16 **DR. ZIEMER:** Yes, that firm has already
17 been hired and identified and --

18 **MR. LAWRENCE:** And that firm is?

19 **DR. ZIEMER:** SC&A Associates, and they
20 will be participating in the meeting
21 tomorrow, giving a report to the Board
22 tomorrow.

23 **MR. LAWRENCE:** And what would -- how
24 would you characterize the status of
25 potential conflicts of interest? Have they

1 or do they receive contracts from Federal
2 government agencies, the firm hired to do
3 the audit?

4 **DR. ZIEMER:** Other government agencies?
5 I don't recall what their current -- I'm --
6 I don't think I know the answer to that at
7 the moment. I think they certainly have in
8 the past.

9 **MR. LAWRENCE:** I think for the record I
10 want to make that known that that is an
11 issue that we are concerned about.

12 **DR. ZIEMER:** Right.

13 **MR. LAWRENCE:** With Oak Ridge and --
14 please, someone correct me if I'm wrong, but
15 I believe Oak Ridge Associates who prepared
16 the dose reconstruction regularly receives
17 government contracts from various agencies.

18 **DR. ZIEMER:** Thank you. Other
19 comments? We do have -- I forget the exact
20 wording of the requirement, but SC&A is not
21 permitted, I don't think currently, to have
22 any major DOE contracts. Is that how it's
23 worded? Maybe, Jim, you can help me out. I
24 forget the exact requirement. There are
25 some requirements on that.

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C E R T I F I C A T E

STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, STEVEN RAY GREEN, being a Certified Merit Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript was reduced to typewriting by me personally or under my direct supervision, and is a true, complete, and correct transcript of the aforesaid proceedings reported by me.

I further certify that I am not related to, employed by, counsel to, or attorney for any parties, attorneys, or counsel involved herein; nor am I financially interested in this matter.

WITNESS MY HAND AND OFFICIAL SEAL this _____ day of June, 2004.

STEVEN RAY GREEN, CVR-CM
GA CCR No. A-2102