

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

convenes the

THIRTY-SECOND MEETING

ADVISORY BOARD ON  
RADIATION AND WORKER HEALTH

VOL. III

DAY THREE

The verbatim transcript of the Meeting of the  
Advisory Board on Radiation and Worker Health held  
at the Westin Hotel, St. Louis, Missouri, on August  
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C O N T E N T S

August 26, 2005

|   |    |
|---|----|
| CONFLICT OF INTEREST DISCLOSURE POLICIES      | 8  |
| POLICY ON CAPITOL HILL VISITS                 | 15 |
| APPROVAL OF MINUTES                           | 31 |
| SC&A SITE PROFILES                            | 33 |
| DOL'S POSITION ON NON-COVERED CANCERS         | 44 |
| TASK IV FOR CONTRACTOR                        | 46 |
| BOARD DISCUSSION:<br>HEADS-UP ON SEC PETITION | 48 |
| COURT REPORTER'S CERTIFICATE                  | 70 |

### TRANSCRIPT LEGEND

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

In the following transcript "off microphone" refers to microphone malfunction or speaker's neglect to depress "on" button.

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

1 THE MALLINCKRODT SEC PETITION WAS THE BEGINNING OF  
2 THIS DAY AND ENDED WITH ANNOUNCEMENT OF A RECESS.

3 (Whereupon, a recess was taken from 10:10 a.m.  
4 to 10:40 a.m.)

5 **DR. ZIEMER:** Okay, we're ready to reconvene.  
6 Some of the Board members now feel like they --  
7 they may be able to leave earlier and have a  
8 longer weekend or something. We actually had  
9 left most of the afternoon open for discussion  
10 on Mallinckrodt, so that becomes a moot point.  
11 Let me tell you what we have left on our  
12 agenda. We have policy on Capitol Hill visits  
13 and a motion that we carried over from  
14 yesterday to deal with. We have, from our --  
15 from General Counsel and Liz more specifically,  
16 the conflict of interest disclosure statements  
17 which are to be posted on the internet, and  
18 she's going to talk about that in -- not quite  
19 yet, but in a minute. And then we have also --  
20 we indicated before we'd like to at least do  
21 some preliminary prioritization of the site  
22 profile review process. So I think we have  
23 those three items to deal with, and it seems to  
24 me entirely possible and feasible for us to

1 complete these actions yet this morning, so at  
2 least we will try to do that.

3 Let us begin with the Capitol Hill visits  
4 issue.

5 **DR. WADE:** Well, they -- they're doing some  
6 copying. Maybe we can --

7 **DR. ZIEMER:** Oh, okay. Maybe we can go ahead  
8 with the --

9 **DR. WADE:** -- Liz.

10 **DR. ZIEMER:** -- with Liz with the conflict of  
11 interest disclosures. Let's do that.

12 **CONFLICT OF INTEREST DISCLOSURE POLICIES**

13 **MS. HOMOKI-TITUS:** Thank you. At the last  
14 Board meeting there was some discussion by  
15 individual members, and we think a sense of the  
16 Board, that you all wanted your conflict of  
17 information (sic) information posted on the  
18 OCAS web site. And as the Office of General  
19 Counsel -- since that is not an HHS policy to  
20 normally allow employees' information such as  
21 this to be posted, we would feel more  
22 comfortable if you would look at the  
23 information that we've provided to you. If you  
24 agree with it, if we could get a formal motion  
25 from the Board and approval by the Board by

1 consensus to post this information. And also  
2 we were hoping that this would be a good  
3 opportunity for you all to look over the  
4 information that we have for you as it's listed  
5 here, and if there's some concern about what's  
6 listed, if you could let Lew know and he can  
7 let us know and we can be in touch with you to  
8 talk about it.

9 **DR. ZIEMER:** So these could be revised or  
10 updated if necessary.

11 **MS. HOMOKI-TITUS:** Absolutely. We're actually  
12 hoping that they will be updated 'cause I think  
13 some of the --

14 **DR. ZIEMER:** But this is based then --

15 **MS. HOMOKI-TITUS:** -- biographical information  
16 --

17 **DR. ZIEMER:** -- on the information you  
18 currently have --

19 **MS. HOMOKI-TITUS:** Right.

20 **DR. ZIEMER:** -- and it's formatted so that  
21 they're all pretty similar. They begin with  
22 the name, position, the biographical  
23 information, the waiver statement, the year  
24 issued and --

25 **MS. HOMOKI-TITUS:** The recusal sites.

1           **DR. ZIEMER:** -- the re-- re--

2           **MS. HOMOKI-TITUS:** Recusal, yes.

3           **DR. ZIEMER:** -- recusal sites. So what we need  
4           then is a motion from the Board to -- counsel  
5           has -- or the legal offices have decided that  
6           they need a specific action from the Board that  
7           we agree to have our individual conflict of  
8           interest statements posted on the web site. Is  
9           that the nature of the motion that we need?

10          **MS. HOMOKI-TITUS:** That's the nature of the  
11          motion, and if you all want changes to this,  
12          this is just all (unintelligible).

13          **DR. ZIEMER:** And we can -- we can edit our  
14          individual ones, but the motion is an all-  
15          encompassing one that we all agree to allow our  
16          personal disclosure statements, in this format  
17          --

18          **MS. HOMOKI-TITUS:** Right.

19          **DR. ZIEMER:** -- to be posted on the web site.

20          **MS. HOMOKI-TITUS:** Or another format, if you  
21          prefer.

22          **DR. ZIEMER:** Okay. So I will entertain a  
23          motion to that effect --

24          **MR. PRESLEY:** So moved.

25          **DR. ZIEMER:** Moved by Presley, seconded --

1           **MS. MUNN:** Second.

2           **DR. ZIEMER:** -- by Munn, that we proceed to  
3 have our conflict of interest disclosure  
4 statements posted on the web site in the format  
5 suggested.

6           Is there any discussion?

7           **MR. PRESLEY:** Can we go back and change just a  
8 little bit of this?

9           **DR. ZIEMER:** I think Liz said we can edit our  
10 individual ones --

11          **MS. HOMOKI-TITUS:** Yeah, if you'll edit it and  
12 just give --

13          **MR. PRESLEY:** And give it to you.

14          **MS. HOMOKI-TITUS:** -- it back to us, then we'll  
15 clean them up. And they will be updated  
16 regularly as your waivers are updated, as well.

17          **DR. ZIEMER:** Okay. Gen Roessler?

18          **DR. ROESSLER:** I just have a question. Mine  
19 says a waiver has not been issued for Dr.  
20 Roessler. I'm not sure I want that posted. I  
21 don't know what it means. It sounds like I  
22 have a problem.

23          **DR. ZIEMER:** Oh, you may have a problem, but  
24 we're not going to --

25          **DR. ROESSLER:** I'm not sure.

1           **MS. HOMOKI-TITUS:** It means you actually don't  
2           have a problem because the Ethics Office has  
3           determined that you don't have any conflicts.

4           **DR. ROESSLER:** Well, that's what I thought it  
5           meant, but it doesn't sound that way by the  
6           wording.

7           **MS. HOMOKI-TITUS:** Okay, if you want to change  
8           the wording, just let me know.

9           **DR. ROESSLER:** All right. I'll talk to you  
10          later --

11          **MS. HOMOKI-TITUS:** Okay. I mean we could just  
12          put the no --

13          **DR. ROESSLER:** -- (unintelligible) waiver.

14          **MS. HOMOKI-TITUS:** Yeah, no waiver is  
15          necessary.

16          **DR. ZIEMER:** That's legalese for you don't have  
17          a problem; it's the problem.

18          **MS. MUNN:** Please don't leave before the  
19          meeting's over.

20          **DR. ZIEMER:** Jim.

21          **DR. MELIUS:** Yeah, I apologize for -- the  
22          reporter caught me outside, but yeah, I -- I  
23          think we discussed this at the last meeting,  
24          and I think it's just fair that we have our  
25          disclosure, as well as we've asked for it from

1           our contractor and from ORAU and from everybody  
2           else involved in this -- this program, and I  
3           think it provides some transparency.

4           **DR. ZIEMER:** Right. So you're speaking for the  
5           motion.

6           **DR. MELIUS:** Yes, I am. Actually, Dr. Ziemer,  
7           I made the suggestion last time and you told me  
8           we didn't need a motion --

9           **DR. ZIEMER:** Well, we thought we didn't, but --

10          **DR. MELIUS:** -- and couns-- counsel overruled  
11          us.

12          **DR. ZIEMER:** -- counsel overruled us, yeah.

13          **MS. HOMOKI-TITUS:** Sorry.

14          **DR. ZIEMER:** Yeah.

15          **DR. MELIUS:** And I would appreciate -- and I'm  
16          not saying that it happened in this case, but  
17          in the future, should counsel feel that a  
18          motion would be more appropriate to have than a  
19          suggestion, please let us know as soon --

20          **DR. ZIEMER:** I think they --

21          **DR. MELIUS:** -- as you can.

22          **DR. ZIEMER:** -- determined that later.

23          **MS. HOMOKI-TITUS:** Counsel will. I'm sorry,  
24          that determination was made later.

25          **DR. ZIEMER:** Yeah.

1           **DR. MELIUS:** Okay, that's fine.

2           **DR. ZIEMER:** Okay. Ready to vote on this  
3 motion?

4 All in favor, say aye?

5                           (Affirmative responses)

6 Any opposed?

7                           (No responses)

8 Any abstentions?

9                           (No responses)

10 Mark, are you in favor of the motion? You  
11 don't know what it is, but --

12           **DR. MELIUS:** You're in charge of another  
13 working group.

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

15           **DR. ZIEMER:** Right. We're going to consider  
16 that you voted for it, unless you tell us  
17 otherwise.

18 Any abstentions?

19                           (No responses)

20           **DR. WADE:** As a matter of procedure, I would  
21 like -- we would like to do this, you know,  
22 quickly, so let's say if any member has  
23 comments, to get them to me by Wednesday of  
24 next week and then I'll turn them over to  
25 Counsel with an aim to post things maybe the

1 end of next week.

2 **DR. ZIEMER:** Okay. Thank you very much. Thank  
3 you, Liz.

4 **POLICY ON CAPITOL HILL VISITS**

5 Next let's move to the policy on Capitol Hill  
6 visits. This -- this is a motion that's  
7 already on the floor and we -- we didn't really  
8 table it, we just allowed it to, as it were,  
9 linger in the background. This is a single  
10 sheet of paper that says Advisory Board on  
11 Radiation and Worker Health Statement of  
12 Policy. And then it has three paragraphs.  
13 This is Wanda Munn's suggestion. We had some  
14 preliminary discussion on it, and so we'll now  
15 open the floor again for additional discussion.  
16 Dr. Melius.

17 **DR. MELIUS:** I actually have a procedural  
18 question. I thought I was asked, but maybe I  
19 did this spontaneously -- came up with an  
20 alternative motion or statement of this motion  
21 that I think tries to capture some of the same  
22 issues, but address some of the concerns that  
23 were raised by the Board. And I don't know how  
24 you want to handle it procedurally --

25 **DR. ZIEMER:** Well, let me suggest the following

1           then.

2           Sometimes it's easier to handle a motion and  
3           then -- and then handle an alternate than try  
4           to amend the original one. What -- what could  
5           be allowed would be an indication of, for  
6           example, if this motion were defeated I would  
7           offer the following substitute motion --

8           **DR. MELIUS:** Yeah.

9           **DR. ZIEMER:** -- so that the assembly has some  
10          idea of what it is that would be offered as an  
11          alternative. In essence, you are saying I am  
12          speaking against this motion, but I like parts  
13          of it and I would frame it in a somewhat  
14          different way, I guess is what you're -- you  
15          seem to be saying.

16          **DR. MELIUS:** I -- I --

17          **DR. ZIEMER:** I don't want to make it sound like  
18          you're too friendly to Wanda's motion, but --  
19          but there's a degree of friendliness that has  
20          emerged here.

21          **DR. MELIUS:** And -- and I also would -- in that  
22          context would I think -- believe that how I  
23          might word such an alternative motion has been  
24          handed out to everybody, has it not?

25          **DR. WADE:** I'm waiting for it.

1           **DR. MELIUS:** Oh, okay.

2           **DR. ZIEMER:** Well, just characterize it for us  
3 so that we have that --

4           **DR. MELIUS:** I would characterize it --

5           **DR. ZIEMER:** -- in our minds as we proceed.

6           **DR. MELIUS:** Yes, yes. I would prefer  
7 something worded to the effect of recognizing  
8 that the credibility of the EEOICPA program and  
9 the work of this Advisory Board can be enhanced  
10 by communicating these efforts to Congressional  
11 staff, it is the policy of the Board to  
12 encourage such meetings when they are  
13 requested. The scheduling of such meetings  
14 should be communicated to all Board members.  
15 Board members that wish to participate in the  
16 meeting should inform the Board Chair and  
17 contractor, who will then communicate with the  
18 Congressional staff to determine whether the  
19 staff would like to also invite the Board  
20 member or members to attend the meeting.  
21 The Board also understands that our contractor  
22 must notify NIOSH about these official visits,  
23 and should ensure that their staff takes  
24 appropriate precautions to properly  
25 characterize the status of the information

1           being communicated. Further, Board members  
2           participating in such meetings will  
3           appropriately communicate any potential  
4           conflict of interest issues to the  
5           Congressional staff.

6           **DR. ZIEMER:** So the thrust of that would be to  
7           make it more of an option on the part of the  
8           Congressional staff to make the invitation, as  
9           opposed to suggesting that it's more mandatory.  
10          Is that --

11          **DR. MELIUS:** Correct, I don't believe we can  
12          sort of force the Congressional staff, nor do  
13          we wish to force the Congressional staff to  
14          invite Board members, but I think we can make  
15          the offer. I think that's appropriate. And I  
16          --

17          **DR. ZIEMER:** Right.

18          **DR. MELIUS:** -- was trying to set up a  
19          procedure that would address that, and I was  
20          also trying to address some of the other  
21          concerns --

22          **DR. ZIEMER:** Right, right.

23          **DR. MELIUS:** -- raised in Wanda's...

24          **DR. ZIEMER:** Okay. Others -- we're still  
25          dealing with the main motion now which is

1 before us to -- pro or con or other comments.  
2 Yes, Wanda.

3 **MS. MUNN:** The only problem I have with Jim's  
4 approach is what I see as an abrogation of  
5 responsibility of the Board. Perhaps I'm just  
6 being too rigid in my view of how things  
7 operate, but it seems to me that Congressional  
8 inquiry should be made to the Board which has  
9 been established by Congress, rather than by  
10 the Board's employee. And if I am erroneous in  
11 my view, then clearly Jim's suggestion is the  
12 appropriate way to go. But it seems to me that  
13 this Board should decide for themselves whether  
14 inquiries about our activities should come  
15 through us or whether they should come through  
16 our employees. That really is the basic issue.

17 **DR. ZIEMER:** Right --

18 **DR. WADE:** Could I --

19 **DR. ZIEMER:** Yes, and I think Lew has als--  
20 previously commented, but you may want to  
21 clarify that, because part of this issue is can  
22 we in fact dictate to Congress who they ask to  
23 speak to.

24 **DR. WADE:** Right, and I made my position clear  
25 and I won't -- and I won't repeat it, but it

1 still holds, regardless of the motion. But I  
2 think also requests can come to the agency for  
3 -- from the Hill, and the agency intends to  
4 respond to those requests as it sees fit. Now  
5 we will be guided by the spirit of anything you  
6 do, but the agency will not surrender its  
7 ability to decide how to deal with such  
8 requests.

9 **MS. MUNN:** (Off microphone) (Unintelligible)  
10 not.

11 **DR. ZIEMER:** Okay.

12 **DR. MELIUS:** And I -- can I just add --

13 **DR. ZIEMER:** Yes.

14 **DR. MELIUS:** -- I think this is a difficult  
15 area 'cause the agency and the Congressional  
16 offices may have different interpretations of  
17 what they're allowed or not allowed to do, and  
18 who can handle what situations. I think the  
19 intent has been, on everyone's part, to be  
20 responsive and that this is helpful. And I  
21 think in -- it's very difficult for us to  
22 capture in any memo all -- all the  
23 contingencies, all the possible situations. I  
24 think it was -- I think what I was trying to  
25 capture in my alternative to Wanda's memo was

1 sort of a procedural way to inform people and -  
2 - while recognizing, to an extent, the  
3 independence of NIOSH, as well as the  
4 independence of the Congressional staff and --  
5 in making these requests.

6 **DR. WADE:** And NIOSH has no problem with  
7 receiving such advice as proposed in the  
8 motion.

9 **DR. MELIUS:** Yeah.

10 **DR. ZIEMER:** Okay. Further discussion, pro or  
11 con, or questions?

12 (No responses)

13 Okay. Then we are -- we are voting on -- or --  
14 or any amendments to the Munn motion?

15 (No responses)

16 Now one -- one possibility -- let me offer --  
17 there is one possibility, because there is a  
18 level of similarity in the motions. They --  
19 they differ mainly in the issue of -- sort of  
20 the degree of which it appears to be mandatory  
21 that the requests come through the Board. One  
22 possibility is -- is a motion that -- that one  
23 -- that the second version be substituted for  
24 the first, as opposed to simply going through a  
25 straight vote on one and then on another. I

1 say this -- I don't want to anticipate  
2 necessarily how the Board will vote, but it  
3 appears to the Chair that there may not be  
4 widespread support for the original motion as  
5 it stands. But if someone wishes to move that  
6 we substitute a motion which is somewhat  
7 similar but has that main difference, we can  
8 handle it that way, as well.

9 **DR. MELIUS:** I would so move.

10 **MR. GRIFFON:** Second.

11 **DR. ZIEMER:** It's moved and seconded that we  
12 substitute what I will call the Melius motion  
13 for the Munn motion. Now if -- if we vote to  
14 do that, then the Melius motion will replace  
15 the Munn motion as the motion under discussion.  
16 Okay? Is that -- everybody understand?  
17 Now you can challenge the Board's ruling on  
18 that and prove to me from Robert's Rules that  
19 I've done that wrong, but I think I can do that  
20 properly.

21 Okay, then the -- we're voting now on  
22 substituting one motion for another. Okay?  
23 All in favor of substituting the Melius motion  
24 for the Munn motion, say aye?

25 (Affirmative responses)

1 Now all opposed, say no.

2 (Negative responses)

3 There's no -- two no's.

4 Then the Chair declares that the motion passes  
5 and we now have before us the Melius motion to  
6 discuss. Pro or con or amendments?

7 (No responses)

8 I would point out the second paragraph should  
9 read "The Board also understands".

10 **DR. MELIUS:** Yes.

11 **DR. ZIEMER:** Consider that a friendly typo  
12 correction or something.

13 **DR. ROESSLER:** Could I add a grammatical  
14 change?

15 **DR. ZIEMER:** Yes, you can -- if somebody can  
16 figure out how to take care of the dangling  
17 participle in the first sentence.

18 **DR. ROESSLER:** Well, I hadn't even worried  
19 about that one, but I'd like in the third  
20 sentence -- and I enjoy picking on Jim -- to  
21 say "Board members who" rather than "that".

22 **DR. MELIUS:** Yeah.

23 **DR. ZIEMER:** You consider that a friendly  
24 amendment?

25 **DR. MELIUS:** If I could also pick on Jim, in

1 the second paragraph, the -- second line, the  
2 first word, I think "visits," should be plural  
3 so --

4 **DR. ANDERSON:** Just take out the --

5 **DR. ZIEMER:** No, what -- what you need to do on  
6 the dangling participle is that whoever is  
7 doing the recognizing has to be the subject of  
8 the sentence, so it can't be "it is". You have  
9 to say "the Board" -- "the Board's policy is".  
10 Then the participle is no longer dangling. We  
11 don't like them to dangle. So that's simply a  
12 grammatical -- it doesn't change the meaning.  
13 Now any substantive amendments or other items  
14 that anyone wishes to add?

15 **DR. MELIUS:** I have an issue. I think that --  
16 I just want to make -- ask a question. Is --  
17 it's for both Paul and -- as well as our  
18 contractor. Is that policy about informing  
19 appropriate, where we have I've asked that the  
20 meeting should -- Board members who wish should  
21 inform the Board Chair and the contractor. Now  
22 often cases it's John Mauro or somebody in his  
23 office who is sort of handling the contact with  
24 the Congressional staffs, but I -- so I was  
25 figuring that then they may be very well the

1 person following up, but at least Paul would --

2 **DR. ZIEMER:** Where are you -- what sentence are  
3 you --

4 **DR. MELIUS:** I'm on the -- oh, fourth line of  
5 the first paragraph, "Board members who wish to  
6 participate in the meeting should inform the  
7 Board Chair and contractor, who will then  
8 communicate with," et cetera.

9 **DR. ZIEMER:** Well, I have no problem with that,  
10 right. And -- and actually what happens now  
11 under our present policy -- for example, if  
12 John notifies me that he's been invited -- and  
13 under the guidance of this Board, from -- any  
14 such contacts from the contractor come to me, I  
15 immediately will make you aware of them. So  
16 the Board will -- or John, I think, has  
17 actually --

18 **DR. MELIUS:** Yeah.

19 **DR. ZIEMER:** -- copied everybody now, is that -  
20 - eliminates a step so that we become aware  
21 that a visit has been -- or there's been an  
22 invitation to a visit. Under this policy, if  
23 any Board members wish to participate, they  
24 would immediately notify the Chair and the  
25 contractor, who would then be in a position to

1 say oh, by the way, this member of our Board is  
2 available to participate in this visit if so  
3 desired. That's how I would understand this  
4 policy. Is -- is that everybody's  
5 understanding? And then under this policy it's  
6 -- the final call is with the office on the  
7 Hill, whoever --

8 **DR. WADE:** No.

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

10 **DR. WADE:** The final call is with the agency.

11 **DR. ZIEMER:** Oh, with the agency, okay. So how  
12 -- how do we make sure you're in the loop?

13 **DR. WADE:** I don't -- you don't need to make  
14 sure. I'll make sure, as long as you  
15 understand that's what I'm going to do.

16 **DR. ZIEMER:** Yeah, well, I mean you -- you  
17 automatically get notified, also, when John --

18 **DR. WADE:** Right.

19 **DR. ZIEMER:** -- gets these invitations, right.

20 **MS. MUNN:** That's what the policy says.

21 **MR. GRIFFON:** Yeah.

22 **MS. MUNN:** The contractor must notify NIOSH.

23 **DR. ZIEMER:** Right.

24 **DR. ANDERSON:** Just as a point of  
25 clarification, I guess, if a Board member

1 offers to go as -- are they going to be  
2 attending on behalf of the Board, is NIOSH  
3 going to pay for their travel, or is this --  
4 you're interested and if you want to go, you go  
5 on your own, or is this part of a Board  
6 activity?

7 **DR. ZIEMER:** Lew, can you speak to that? The  
8 Chair would hope that it would be an official  
9 part of the activity, otherwise I'm not sure we  
10 can expect Board members to do this on their  
11 own.

12 **DR. WADE:** Right. I mean -- the general answer  
13 is yes, we would consider it part of your  
14 official activity. One of the concerns I have  
15 that we'll talk about at a subsequent meeting  
16 is we -- we have to watch how much we work you  
17 in a given year. There are limits. So we have  
18 to watch what this might add to the workload,  
19 and all that needs to be managed. But if under  
20 this policy it was to be deemed that a Board  
21 member would go on such a visit, we would be  
22 prepared to cover the expense.

23 **DR. ZIEMER:** And again I point out that under  
24 such a visit, Board members are essentially in  
25 the capacity of observers. You cannot speak

1 for the Board, other than where the Board has  
2 already made decisions or has a policy that can  
3 be --

4 **DR. ANDERSON:** I would --

5 **DR. ZIEMER:** -- expressed.

6 **DR. ANDERSON:** I would also point out that one  
7 can't go and expound (sic) your personal  
8 opinion on -- basically lobby legislators --

9 **DR. ZIEMER:** Right.

10 **DR. ANDERSON:** -- if you're there as a Special  
11 Government Employee, so --

12 **DR. ZIEMER:** That's right.

13 **DR. ANDERSON:** -- that's why I was asking the -  
14 - the issue that people need to know. If you  
15 go there and get into a discussion that the  
16 legislative group thinks --

17 **DR. ZIEMER:** Right.

18 **DR. ANDERSON:** -- you're espousing a --

19 **DR. ZIEMER:** Now it --

20 **DR. ANDERSON:** -- particular position, it's  
21 (unintelligible).

22 **DR. ZIEMER:** It's also conceivable that a Board  
23 member could be at such a meeting in a  
24 different capacity, and that would be as a site  
25 expert, in which case they would have to make

1           it clear that they are not there as a Board  
2           member. For example, if the -- let's say that  
3           one of the Congressional staffers wanted to  
4           learn something about Y-12 and -- and they said  
5           oh, we'd love to have Bob Presley there 'cause  
6           he's been there a lot. He would be there as a  
7           site expert citizen, coincidentally maybe --  
8           and they may regard it different if he's a  
9           Board member, but it would have to be made  
10          clear that he cannot be there in that capacity  
11          representing, as it were, the Board.

12         **DR. WADE:** And in that case --

13         **DR. ZIEMER:** I believe that's the case.

14         **DR. WADE:** Right.

15         **DR. ZIEMER:** In that case, we can't pay for it  
16         --

17         **DR. WADE:** In that case the government would be  
18         --

19         **DR. ZIEMER:** -- the government --

20         **DR. WADE:** -- paying for the trip.

21         **DR. ZIEMER:** -- couldn't pay for it, either.

22         **DR. ANDERSON:** (Off microphone) My only point  
23         was the ethics issue is one of (unintelligible)  
24         --

25         **DR. ZIEMER:** Right.



1 (No responses)

2 Any abstentions?

3 (No responses)

4 Thank you. The motion carries.

5 **DR. WADE:** Just to belabor a point that I've  
6 already made, we -- we accept the motion and  
7 its intent and would -- would attempt to follow  
8 it. SC&A is a government contractor. The  
9 contracting officer and the Secretary must  
10 reserve the right to manage that contractor as  
11 it sees fit with regard to Hill visits. But I  
12 -- I assume we will live consistent with this  
13 spirit. If we don't, we'll bring that  
14 information to you.

15 **APPROVAL OF MINUTES**

16 **DR. ZIEMER:** Finally, we have -- well, actually  
17 there's -- there's two items. One is action on  
18 minutes from the Cedar Rapids meeting, April  
19 25th. We did not approve these at our last  
20 meeting because we ran out of time and ran out  
21 of quorum. There's two sets of minutes, one  
22 the subcommittee minutes from April 25th and  
23 the other the full Board minutes from April  
24 25th to 27. First the Chair would entertain a  
25 motion to accept the subcommittee minutes from

1           that meeting.

2           **MR. GIBSON:**    So moved.

3           **DR. ZIEMER:**    Moved, seconded?

4           **DR. ANDERSON:**   (Off microphone)

5           (Unintelligible)

6           **DR. ZIEMER:**    Any corrections or additions?

7                            (No responses)

8           If there are none, all in favor of approval of  
9           those minutes, say aye?

10                           (Affirmative responses)

11           Any opposed, no?

12                           (No responses)

13           Thank you.  As I call for action on the April  
14           25th full Board meeting, I'd like to do this in  
15           the context that if in fact you find any  
16           grammatical or typo corrections after the fact  
17           that you weren't aware of, we will pass those  
18           along as well to -- to the staff for  
19           correction, but is there a motion to accept the  
20           minutes for the April 25th through 27th Board  
21           meeting?

22           **MR. PRESLEY:**    So moved.

23           **DR. ZIEMER:**    And seconded?

24           **MR. GIBSON:**    (Unintelligible)

25           **DR. ZIEMER:**    Yes, Gibson seconds.  Any

1 corrections or additions on those minutes, and  
2 I ask you to particularly look over those items  
3 where you yourself made statements or  
4 assertions or other comments, make sure that  
5 they accurately reflect what you think you  
6 said.

7 Are you ready to vote? The Chair did forget to  
8 remind you to read these, but you've had them  
9 for several days. If there are serious  
10 corrections, I suppose we can accept them after  
11 the fact, but we'd like to get these in -- in  
12 the record as our official minutes. Are you  
13 comfortable with voting? Yes.

14 Okay. All in favor, say aye?

15 (Affirmative responses)

16 Any opposed, no?

17 (No responses)

18 And abstentions?

19 (No responses)

20 Motion carries, the minutes are approved for  
21 the April meetings.

22 **SC&A SITE PROFILES**

23 Then finally SEC (sic) profiles. It would be  
24 helpful if we could at least establish the  
25 front end of the priorities. We may not

1 necessarily have to do them all, but put a  
2 priority ranking on the upcoming site profile  
3 work for the contractor. The list --

4 **MR. GRIFFON:** (Off microphone) You mean  
5 (unintelligible) SC&A (unintelligible) site --

6 **DR. ZIEMER:** For our contractor.

7 **DR. WADE:** You said SEC.

8 **DR. ZIEMER:** I'm sorry.

9 **DR. WADE:** I do it all the time.

10 **DR. ZIEMER:** There are too many S -- SEC  
11 petition -- no, SC&A --

12 **DR. WADE:** Site profile.

13 **DR. ANDERSON:** (Off microphone)  
14 (Unintelligible) list but we didn't put it in  
15 an order.

16 **DR. WADE:** At least the first couple so we can  
17 get them (unintelligible).

18 **DR. ZIEMER:** I'll remind you again of -- the  
19 front end of the list, we have Fernald, Los  
20 Alamos, Mound, X-10, Pinellas, and then we have  
21 Argonne West and...

22 **MS. MUNN:** Livermore. Livermore.

23 **DR. ZIEMER:** Livermore.

24 **DR. WADE:** Well, let's -- let's  
25 (unintelligible) that question.

1           **DR. ANDERSON:** Are there any SECs from any of  
2 these?

3           **MS. MUNN:** Linde.

4           **DR. MELIUS:** Yeah, we have Linde.

5           **DR. ZIEMER:** Linde was added.

6           **DR. WADE:** If I might, I think the six were  
7 Fernald, LANL, Mound, X-10, Pinellas and Linde  
8 --

9           **DR. ZIEMER:** Yes.

10          **DR. WADE:** -- and the alternatives were Argonne  
11 West and Livermore.

12          **DR. ZIEMER:** That's correct. If we can at  
13 least get the first three or four, it would be  
14 helpful. Henry, do you have a suggestion?

15          **DR. ANDERSON:** Yeah, are -- are any of these  
16 have SEC petitions that are going to be coming  
17 up shortly?

18          **DR. ZIEMER:** Stu Hinnefeld will address that  
19 for us.

20          **MR. HINNEFELD:** None of these six have  
21 petitions that have currently qualified for  
22 evaluation.

23          **DR. ANDERSON:** Okay.

24          **DR. ZIEMER:** Thank you. Yes.

25          **MR. OWENS:** Stu, what about Livermore?

1           **MR. HINNEFELD:** We have -- no, there is not --  
2           there is a not a petition that has qualified  
3           for evaluation. Remember, a petition's  
4           received, the first step is to qualify it for  
5           evaluation, and there haven't been any from  
6           these sites that are qualified for evaluation.

7           **DR. MELIUS:** Yeah, but -- how about -- can you  
8           just tell us about petitions?

9           **MR. HINNEFELD:** Petitions in-house? I don't  
10          know that off the top of my head.

11          **DR. MELIUS:** Okay, that's fair enough then.  
12          Okay.

13          **DR. ZIEMER:** Robert?

14          **MR. PRESLEY:** We went ahead and listed Fernald  
15          and Mound, Pinellas and Linde Ceramics. Those  
16          four places are all either in a shut-down mode  
17          or about to be shut down. I would love to see  
18          those done first while the people that can help  
19          us get the information are still here to do  
20          that. And --

21          **DR. ZIEMER:** So you're suggesting those four --

22          **MR. PRESLEY:** What -- what order those four go  
23          in, I don't care as long as they're -- they're  
24          at the top of the list because the -- the  
25          people that know about those sites are

1                   dwindling away.

2           **DR. MELIUS:**   What were the four again, Bob?

3                   I'm sorry.

4           **MR. PRESLEY:**   Fernald --

5           **DR. MELIUS:**   Right.

6           **MR. PRESLEY:**   -- Mound --

7           **DR. MELIUS:**   Yeah.

8           **MR. PRESLEY:**   -- Pinellas --

9           **DR. MELIUS:**   And Linde.

10          **MR. PRESLEY:**   -- and Linde Ceramics.

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

12          **MR. GIBSON:**   I know that Pinellas has already

13                   been deeded over to the county, and you know, I

14                   agree with Bob that -- I would suggest we go in

15                   the order of their date of closing.  You know,

16                   begin --

17          **DR. ZIEMER:**   So you're suggesting Pinellas be

18                   right there at the top of the list.

19          **MR. GIBSON:**   'Cause -- it may be too late.

20          **MR. PRESLEY:**   It may be too late.

21          **MR. GIBSON:**   But then certainly go by the order

22                   of closing dates scheduled by DOE.

23          **DR. ZIEMER:**   Are you making that as a motion?

24          **MR. GIBSON:**   Yeah.

25          **DR. ZIEMER:**   Second?

1           **MR. PRESLEY:** Second.

2           **DR. ZIEMER:** So the suggestion -- or the motion  
3 is to rank those top four as the priority ones  
4 in the order at which the -- which we don't  
5 know at the moment, but we can find out,  
6 whatever that is. Is that correct? That is  
7 the motion.

8           Okay. Jim?

9           **DR. MELIUS:** I have one concern about that  
10 approach, and I'm not quite sure how to balance  
11 it. But Los Alamos is a large site and there's  
12 a lot of pending cases there. And I think we  
13 need to some extent balance the number of  
14 claimants -- potential claimants that could be  
15 helped by the site profile review versus this  
16 closing issue, and it's tough. Obviously  
17 there's -- there has to be some prioritization  
18 and so forth, but I -- I -- my sense is that we  
19 may be holding up a lot of -- there's been talk  
20 of SEC petitions from Los Alamos. I would not  
21 be surprised to see some at some point soon,  
22 and I certainly would like to have something  
23 underway there. I think it --

24           **DR. ZIEMER:** Okay.

25           **DR. MELIUS:** -- and it could -- helpful, but --

1           **MR. PRESLEY:** I think -- I think ORNL or X-10  
2 falls in the same category.

3           **DR. MELIUS:** Yeah, I know, I know, it's --

4           **DR. ANDERSON:** (Off microphone) We're back  
5 (unintelligible).

6           **MR. PRESLEY:** (Off microphone) Yeah,  
7 (unintelligible).

8           **DR. ZIEMER:** Let me ask this question. Are  
9 there any of those four where the -- the shut-  
10 down is not quite so imminent that we might be  
11 able to delay them -- I mean if the shut-down's  
12 over a year off, maybe we can -- do we know  
13 shut-down dates on any of these? Stu, do you  
14 have...

15           **MR. HINNEFELD:** Mike might know better than me.  
16 I believe that -- I can only speak for Fernald,  
17 and I believe its shut-down date is sort of the  
18 end of next calendar year, so --

19           **DR. ZIEMER:** Do we know, for examp--

20           **MR. HINNEFELD:** Or about this time next year.

21           **DR. ZIEMER:** Okay. Mike, do you know on any --

22           **MR. GIBSON:** I think Mound is scheduled for  
23 closure even before that, I think by -- by the  
24 end of the calen-- this calendar year I believe  
25 will just be people doing records and decision.

1 The work will be done.

2 **DR. ZIEMER:** One possibility would be, for  
3 example, to -- to pick up Mound and -- or  
4 Pinellas and -- did you -- was that Mound or  
5 Fer-- no, Mound -- Pinellas and Mound early on,  
6 and then work in one of these big -- either --  
7 either Los Alamos or X-10 --

8 **DR. MELIUS:** Can --

9 **DR. ZIEMER:** -- or both.

10 **DR. MELIUS:** Can I make a suggestion that we  
11 might want to consider, which would be to have  
12 our contractor work with NIOSH and get a little  
13 more detailed information about this closing  
14 issue and timing, and then appropriately  
15 prioritize their work? I think they -- they  
16 know which ones we've recommended be done. I  
17 think they know the issues. But I think it may  
18 very well be with a little additional  
19 information we can make a -- they can make a  
20 better --

21 **DR. ANDERSON:** Pinellas isn't done yet.

22 **DR. MELIUS:** Yeah.

23 **DR. ANDERSON:** Site profile isn't done.

24 **DR. MELIUS:** Right, and -- and -- yeah, that's  
25 another issue that -- I think when we asked

1                   yesterday, there was a -- pretty close to being  
2                   done, but --

3                   **DR. ZIEMER:** Yeah.

4                   **DR. MELIUS:** -- but I think if we leave it up  
5                   to them, recognizing the -- the need to balance  
6                   the issue about availability of information  
7                   versus the number of cases and --

8                   **DR. ZIEMER:** Right, and I --

9                   **DR. MELIUS:** -- potential for --

10                  **DR. ZIEMER:** -- think we heard that Pinellas in  
11                  fact would be done by the time they started --

12                  **DR. MELIUS:** Yeah.

13                  **DR. ZIEMER:** -- the next fiscal year, in any  
14                  event. Mark?

15                  **MR. GRIFFON:** I -- I would -- I would go along  
16                  with what Jim's saying. We can make it clear  
17                  on -- on the record here what our preference  
18                  is, and then let the contractor decide what  
19                  makes more sense in terms of sorting that out.  
20                  Factors including closure, the number of  
21                  claimants, and another factor that I wanted to  
22                  throw out here was the classified issues that  
23                  potentially arise. And Los Alamos, Mound are  
24                  big on that certainly -- maybe Livermore,  
25                  Pinellas --

1           **MR. PRESLEY:** (Off microphone) Pinellas  
2           (unintelligible).

3           **MR. GRIFFON:** -- right, and we've seen right  
4           now with the Y-12 profile -- you know, we can  
5           have some delays there, so it might be good to,  
6           you know -- so they've got to weigh -- but I  
7           think we should say consider these factors and  
8           -- and let them kind of weigh -- weigh them  
9           against each other.

10          **DR. ZIEMER:** Okay. It appears to me that we  
11          are calling for a modification of the original  
12          motion. The original motion was to do Fernald,  
13          Mound, Pinellas and Linde, and it appears now  
14          that we're suggesting either an alternate  
15          motion or a revision to that. Mike?

16          **MR. GIBSON:** I'd -- I'd be agreeable to modify  
17          it to say based on date of closure and, you  
18          know, the potential isotopes and the other  
19          issues we've mentioned. You know, just kind  
20          of...

21          **DR. ZIEMER:** Okay. And I would point out that  
22          now we've identified your four plus Los Alamos  
23          and X-10 -- we actually have six now that we're  
24          sort of asking about how those might -- which -  
25          - which is -- six is what we really have on our

1 schedule for next year, and where to start  
2 those will -- would depend then on the  
3 findings, and that could be reported back to us  
4 at our next meeting.

5 Can I interpret your motion now as being those  
6 four plus the other two identified?

7 Is that agreeable as reasonably friendly and  
8 that we ask contractor, working with NIOSH, to  
9 establish that information and propose a  
10 priority list to us?

11 **MR. PRESLEY:** Back to us in October.

12 **DR. ZIEMER:** Is that agreeable --

13 **DR. MELIUS:** Yeah.

14 **DR. ZIEMER:** -- as the motion? Does that give  
15 us enough, Lew, to get underway and get going?

16 **DR. WADE:** Yes.

17 **DR. ZIEMER:** Yes. Then let's vote on the  
18 motion.

19 All in favor, aye?

20 (Affirmative responses)

21 And no's, opposed?

22 (No responses)

23 Any abstentions?

24 (No responses)

25 And the motion carries.

1           **DOL'S POSITION ON NON-COVERED CANCERS**

2           **DR. WADE:** We have the DOL issue and then we  
3           have --

4           **DR. ZIEMER:** Okay, there was an issue -- a  
5           question that was raised -- actually raised by  
6           the petitioners with respect to if the Special  
7           Exposure Cohort was approved, the status of  
8           those who would not otherwise be successful in  
9           that process, and you have an answer to that.

10          **DR. WADE:** Well, I also see and DOE -- DOL  
11          colleague in the front row. Would you like to  
12          speak to it or you want me to speak to it?  
13          Okay. The question was raised, what would  
14          DOL's position be on the non-covered cancers  
15          should this SEC petition be approved. And the  
16          DOL position is that they would have to with--  
17          await that judgment pending the Secretary's  
18          determination and the exact language in the  
19          Secretary's determination. That would provide  
20          them the information they would need to decide  
21          how to proceed with non-covered cancers.  
22          That's not inconsistent with what you tried to  
23          do in your mot-- in your recommendations to the  
24          Secretary to try and deal with that issue, but  
25          DOL can't decide on that question then until it

1 sees the Secretary's determination.

2 I would tell you, as you well know, that your  
3 recommendation to the Secretary could well  
4 affect the Secretary's determination.

5 **DR. ZIEMER:** So the short answer is we don't  
6 know yet, but it will await the additional --  
7 or the actual formal decision by the Secretary.  
8 Yes.

9 **MS. CASE:** This is Diane Case. I just wanted  
10 to state for the record that Dr. Wade spoke  
11 very eloquently there and very accurately, so -  
12 -

13 **DR. ZIEMER:** You agree with --

14 **MS. CASE:** -- I appreciate that.

15 **DR. ZIEMER:** -- what he said --

16 **MS. CASE:** Yes --

17 **DR. ZIEMER:** -- on your behalf.

18 **MS. CASE:** -- absolutely.

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

20 **DR. WADE:** DOL -- DOL and I are very close.

21 **DR. ZIEMER:** What else?

22 **DR. WADE:** We have this last item which Stu --  
23 Stu, are you in a position to cover your agenda  
24 item?

25 **TASK IV FOR CONTRACTOR**

1           **DR. MELIUS:** We have one other issue, also,  
2           which is a motion, Paul, you asked me to do  
3           about the task four for our contractor --

4           **DR. ZIEMER:** Oh, yes --

5           **DR. MELIUS:** -- the scope. It should be very  
6           quickness.

7           **DR. ZIEMER:** -- okay. Go ahead, let's -- let's  
8           take care of that.

9           **DR. MELIUS:** And has that been handed out?

10          **DR. WADE:** (Off microphone) (Unintelligible)  
11          copies --

12          **DR. MELIUS:** Okay.

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

14          **DR. MELIUS:** I understand. Okay. Well, we'll  
15          give Lew a second 'cause -- let me -- I'll  
16          start reading through it so it'll get entered  
17          on the record.

18          The Board recommends that SCA respond to the  
19          following scope for task four, its individual  
20          dose reconstructions.

21          Number one, 40 basic and 20 advanced dose  
22          reconstruction reviews -- you'll have to  
23          forgive -- my spell checker changed dose to  
24          does, or my spelling did -- typing.

25          Number two, blind dose reconstruction reviews

1 for two cases.

2 Number three, prepare and deliver a report for  
3 each set of Board-assigned cases that will  
4 contain (1) findings associated with individual  
5 case audits, and (2) a summary of all case  
6 findings prepared in accordance with a format  
7 acceptable to the Board.

8 Number four, participate in extended review  
9 cycle, which includes working with NIOSH and  
10 the Board in resolving audit findings, and  
11 assist the Board in preparing an issues  
12 tracking matrix which will be forward by the  
13 Board to the Secretary of HHS; prepares a final  
14 audit report that reflects the results of the  
15 findings resolution process.

16 And actually two through four are lifted from -  
17 - they already proposed. The only real change  
18 was number one, and then additional  
19 clarification: In preparing the advanced  
20 reviews, it is understood that SCA is not  
21 required to evaluate the availability of  
22 additional data sources for cases where a site  
23 profile review is being or has been conducted.  
24 And --

25 **DR. ZIEMER:** Thank you. That comes as a motion

1 before us now based on the Board's previous  
2 discussion and the fact that we are asking our  
3 contractor to go back and revise the cost  
4 estimates for that particular task, which they  
5 committed to do. Let me ask for a second for  
6 the motion.

7 **MR. PRESLEY:** (Indicating)

8 **DR. ZIEMER:** It's been seconded by Mr. Presley.  
9 Is there any discussion on the motion?

10 (No responses)

11 There appears to be no discussion, ready to  
12 vote.

13 All in favor, aye?

14 (Affirmative responses)

15 Any opposed, no?

16 (No responses)

17 Motion carries. Thank you very much.

**BOARD DISCUSSION:**

18 **HEADS-UP ON SEC PETITION**

19 Then we'll hear from Stu on the heads-up on SEC  
20 petitions.

21 **DR. WADE:** Right, he should be in the room in  
22 just a moment.

23 **DR. ZIEMER:** In just a moment.

24 **DR. WADE:** Here he comes -- Stu, you're on.

25 **MR. HINNEFELD:** I think I can once again be

1           brief -- maybe not quite as brief as last time.  
2           I'm here to talk a little bit about a subject  
3           that we think will be brought to the Board at  
4           the October meeting, and it has to do with dose  
5           reconstruction cases where NIOSH has determined  
6           we cannot do a dose reconstruction because  
7           there's insufficient information. So we've not  
8           received a petition from a petitioner, it's  
9           just we've -- based on the information  
10          available, we cannot do a dose reconstruction.  
11          When this program started, NIOSH built the  
12          infrastructure and the tools to be able to do  
13          dose reconstruction. By the time we were ready  
14          to do dose reconstructions, there was a large  
15          backlog of cases, and so our first priority was  
16          let's get some cases done that we can get done.  
17          And as a result, some -- we -- we paid  
18          attention to chronological order. We paid  
19          attention to the first cases, but we didn't  
20          necessarily strictly abide by first in/first  
21          out. And so as a result, there were cases that  
22          were maybe more difficult that were older and  
23          that stayed undone. So this year we have  
24          focused our efforts on older cases and trying  
25          to clear out those older cases because clearly

1 people deserve an answer on their claim.  
2 As part of that process, since we are no longer  
3 just picking cases we can do but we wanted to  
4 clear out those older cases, we now have to --  
5 we are reaching determinations that there are  
6 some where we just will not have enough  
7 information to do dose reconstruction, and  
8 there doesn't seem to be any likelihood that  
9 we're going to find enough to do dose  
10 reconstructions.  
11 And so the regulations provide a process for  
12 dealing with that. The dose reconstruction  
13 regulation, Part 82, describes what steps are  
14 taken when NIOSH reaches that conclusion that  
15 we don't have enough information to do a dose  
16 reconstruction for this case. And at that  
17 point we send -- we notify the claimant, tell  
18 them in writing -- we also have a conversation  
19 with them, we have a closeout phone call, and  
20 tell them that we don't have enough information  
21 to do your case, is there anything you can add  
22 -- we doubt that they can. We don't really  
23 expect to learn anything at that point. And  
24 kind of inform them about the process.  
25 The process is that we tell Labor and

1 Department of Energy that we can't reconstruct  
2 this dose. Labor closes this case with a  
3 denial regulatorily, and we provide -- when we  
4 send to the person -- we send written notice to  
5 the claimant we can't do their reconstruction,  
6 we also send along the short-form SEC petition.  
7 And as part of our conversation with them ahead  
8 of time to explain to them what's going to  
9 happen is that since we can't do this dose  
10 reconstruction, we would -- we would like you  
11 to sign the petition form that we're mailing to  
12 you and send it back as a petition for SEC  
13 status, to add a class of SEC.  
14 So the -- so the point where we are now is that  
15 we are identifying sites where -- for some  
16 period of time at least at that site -- we  
17 don't -- it doesn't seem to be any likelihood  
18 that we're going to find enough information to  
19 do dose reconstructions for that period of  
20 time. And we have -- and to go through this  
21 process, we are identifying a test case for --  
22 when we identify a site like that -- a test  
23 case to send the letter to to say that -- you  
24 know, to engage in conversation with, send the  
25 letter to, and request the petition back for

1           this -- for that -- that person. He petitions  
2           on his -- on his own behalf.

3           Our petition evaluation, though, defines the  
4           class in terms of all the cases that have those  
5           similar characteristics. Now the easiest way  
6           to think of this would be temporally. For  
7           instance, there may be a period of time at a  
8           particular site where we just don't have enough  
9           information -- say very early on, just don't  
10          have enough information to do a dose  
11          reconstruction. And so we will define -- when  
12          we get that petition, the petition evaluation  
13          will define the class of similar employees and  
14          bring that petition evaluation and report to  
15          the Board. This -- we expect this to be  
16          somewhat streamlined, and so -- but it is  
17          presented to the Board and we recommend to the  
18          Board and to the Secretary that this class be  
19          added because we have not been able to find  
20          sufficient information to do the dose  
21          reconstructions.

22          So I think we'll -- I think the Board -- you  
23          know, it's hard for me to say for sure that the  
24          Board will see them in October because a  
25          portion of this process is outside NIOSH's

1 control. A portion of this process is in the  
2 claimant's hands in terms of signing the  
3 petition and sending it in, or choosing to  
4 participate in this process. So -- but we  
5 think we will have -- this process will appear  
6 at the October Board meeting.

7 We wanted to essentially make this notification  
8 that you can expect to see something like that  
9 shortly anyway, and also I'd be glad to try to  
10 answer any questions anybody might have about  
11 what to expect.

12 **DR. ZIEMER:** Stu, are you suggesting that there  
13 might be a large number of petitions that --  
14 each of which involves a relatively small  
15 number of individuals? Or are you suggesting  
16 that there be a methodology for combining such  
17 groups, even though they may be from multiple  
18 facilities in some way?

19 **MR. HINNEFELD:** I believe today the process  
20 would be to do a site at a time. I think there  
21 may be a way to combine them. I don't -- I  
22 don't know if there's a way to bundle many  
23 sites into one or not. Initial thought process  
24 is that we will identify the site and it's a --  
25 and it's a one-site thing.

1           **DR. ZIEMER:** But you're simply giving us a  
2 heads-up as to what may be coming down the road  
3 in this case.

4           **MR. HINNEFELD:** Yes.

5           **DR. ZIEMER:** Liz, did you want to add to that?

6           **MS. HOMOKI-TITUS:** I just thought I may be able  
7 to add something. We believe that even though  
8 these will be individual petitions and petition  
9 reports, that we'll be able to do a lot of the  
10 administrative type work as a group. So  
11 officially they'll be individual site reports,  
12 but there won't be one *Federal Register* notice  
13 per site. There'll be a group of -- one  
14 *Federal Register* notice with a group of --  
15 indicating --

16           **DR. ZIEMER:** For multiple sites.

17           **MS. HOMOKI-TITUS:** -- a group that's coming --  
18 right -- to the Board. So --

19           **DR. ZIEMER:** And that's within the --

20           **MS. HOMOKI-TITUS:** -- administratively --

21           **DR. ZIEMER:** -- framework of the regs so --

22           **MS. HOMOKI-TITUS:** Right, administratively  
23 we'll handle them as a group, but officially  
24 they will be individual site reports.

25           **DR. ZIEMER:** Understood, yes. Yes, Leon.

1           **MR. OWENS:**  Stu, are the claimants -- do we  
2           know the demographics?  I mean are they elderly  
3           widows or --

4           **MR. HINNEFELD:**  Well --

5           **MR. OWENS:**  -- 'cause you know, there -- there  
6           a lot of folks that don't fully understand the  
7           process, and if they see a letter that  
8           basically is a denial, with the length of time  
9           that it's taken us to move forward, a lot of  
10          them just give up.

11          **MR. HINNEFELD:**  I -- I understand that, and the  
12          test case -- you know, we -- we want to select  
13          a test case for a particular site situation and  
14          then have that petition bring along all the  
15          petitioners -- or all the claimants who fit  
16          that class, so they don't all have to fill out  
17          a form and send in a petition.

18          We try to select a test case on a number of  
19          criteria, one of which would be if we know that  
20          the claimant is able to deal with this well --  
21          and we call them -- we do what we call the  
22          closeout interview actually before we send them  
23          the letter.  We do the closeout interview and -  
24          - and try to explain to them, you know, what's  
25          going on.  And it should -- you know, I think

1 if we got bad signals that this one -- that  
2 this person is really not understanding the  
3 process that we're explaining to them, that we  
4 would probably try a different test case --

5 **DR. ZIEMER:** But --

6 **MR. HINNEFELD:** -- in order to -- to -- for  
7 that group.

8 **DR. ZIEMER:** But you are suggesting that you  
9 will do everything you can to shepherd them  
10 through the process then?

11 **MR. HINNEFELD:** Yes. Yes. Yes, we're trying  
12 to bring them through the process to get this  
13 petition in.

14 **DR. ZIEMER:** Dr. Melius?

15 **DR. MELIUS:** Just one comment going back to our  
16 earlier discussions this morning and I believe  
17 Gen's comments about sort of the overall  
18 process. I would think that -- I would hope  
19 that on the agenda for the next meeting, at the  
20 same time that we may be considering these,  
21 that we also have a full discussion of our  
22 handling of SEC petitions because in some ways  
23 this further complicates it. I don't think  
24 it's necessarily bad, but we need to come to  
25 grips with certain issues and so forth. I

1 think one thing in the back of our minds as  
2 we've looked at some of these recent petitions  
3 is well, do you -- is there some way that you  
4 look at sub-classes or, you know, groups of  
5 workers and -- and so forth. That's not the  
6 way the information's been presented to us and  
7 -- and in evaluating the information it's been  
8 that -- we've seen on the recent petitions, I  
9 don't think it was possible or feasible to  
10 break it up further beyond sort of the broad  
11 categories NIOSH tried, which was years of  
12 work, basically. But I think this is -- I  
13 think we're going to start getting into that  
14 issue with these sort of individual, smaller  
15 groups and so forth and -- and it really is --  
16 can present a complicated picture 'cause at the  
17 same time we may be considering petitions that  
18 would also include these -- these groupings.  
19 And I think as we get into this it's -- really  
20 behooves us that we have a full discussion of -  
21 - of where we need to go, how we process this -  
22 - and hoping that NIOSH -- I think I heard Jim  
23 Neton say that earlier, was really -- was  
24 addressing the same thing. I think Jim had  
25 told us that as part of this process they were

1           -- I mean we were going through -- maybe this  
2           was in a workgroup meeting -- were sort of  
3           developing a methodology for evaluating these.  
4           But I think, together with NIOSH, we sort of  
5           need to step back and really have some  
6           discussions on how to handle this. And again,  
7           particularly in the context of this -- these --  
8           type of petition.

9           **DR. ZIEMER:** Right, and actually one of the  
10          issues -- or one of the tasks, really, that  
11          comes under our new task five has to do with  
12          how petitions are handled, not only by our  
13          contractor, but by us. And John Mauro has  
14          already given some thought to how they can help  
15          us develop our procedures so that they mesh  
16          with theirs, as well, in dealing with these  
17          kinds of questions. So obviously we -- we need  
18          to begin to structure that process in a  
19          comprehensive way as we gain experience and see  
20          what's coming down the road here. It's a point  
21          well taken.

22          Now any other questions? This requires no  
23          action today. It's more of a -- again, a  
24          heads-up of some possible directions that this  
25          may take in the future. Stu, I don't believe

1                   you have any action that you need us to take.

2                   **MR. HINNEFELD:** No, no this is just a point of  
3 information.

4                   **DR. ZIEMER:** Any further questions for Stu or  
5 for the others -- yes, Leon.

6                   **MR. OWENS:** Stu, you're at liberty -- are you  
7 at liberty to give us some possible sites where  
8 this might be the case?

9                   **MR. HINNEFELD:** Well, I thought about that and  
10 we've discussed it. And I -- I think -- I'm --  
11 it's -- it's -- we're better served not to  
12 discuss the sites because if it doesn't go the  
13 way we think it's going to go, we'll have  
14 raised expectations by discussing it here and  
15 then it not work out. So just for that reason,  
16 I thought it would -- we thought it would be  
17 better not to discuss the sites.

18                   **DR. ZIEMER:** Okay, any further questions for  
19 Stu? Yes, Robert.

20                   **MR. PRESLEY:** How many cases do you think this  
21 is -- this is going to involve? I can -- I can  
22 see us possibly going through tremendous  
23 amounts of small SEC petitions under this.

24                   **MR. HINNEFELD:** Well, there -- there could be -  
25 - you know, that could happen. I mean there

1           could be a lot. As I said, we have -- we're at  
2           the front end of identifying the situation.  
3           You know, we are starting to make the serious  
4           decision that this one we just cannot do, we  
5           cannot get the information. Up until now, if  
6           we were trying -- as we were trying to keep the  
7           production numbers up, a difficult case was  
8           sort of put aside, and now we're dealing with  
9           the difficult cases.

10          I think, though, that -- recall that the  
11          research or the evaluation essentially is done  
12          before we send -- before we ever contact the  
13          test case claimant. You know, the evaluation  
14          is pretty much done at that point. We've  
15          determined it's not feasible to do  
16          (unintelligible).

17          **DR. ZIEMER:** So basically you're looking for a  
18          streamlined way to handle --

19          **MR. HINNEFELD:** This is --

20          **DR. ZIEMER:** -- all of these.

21          **MR. HINNEFELD:** Well, this is intended -- the  
22          regulation intends this to be a streamlined  
23          approach for adding classes to the SEC.

24          **DR. ZIEMER:** Okay. Further --

25          **DR. WADE:** We'll do everything we can to try

1 and streamline the paperwork.

2 **DR. ZIEMER:** Dr. Melius?

3 **DR. MELIUS:** Yeah. It would be -- be helpful  
4 to know some of this ahead of time, obviously,  
5 and as much information as NIOSH can get to us  
6 before the meeting so we can have time to -- to  
7 think about this.

8 But a related question I had was -- was what  
9 about -- have we decided a location for our  
10 next meeting and do we have other SEC petitions  
11 to deal with at that meeting?

12 **DR. ZIEMER:** The next meeting -- at least at  
13 the moment -- is scheduled for Oak Ridge.

14 **DR. WADE:** Correct.

15 **DR. ZIEMER:** The dates are October 17th, I  
16 believe, 17th through 19th. Is that correct?

17 **MR. PRESLEY:** 17th, 18th and 19th.

18 **DR. ZIEMER:** 17th through 19th.

19 **DR. MELIUS:** And --

20 **DR. ZIEMER:** So --

21 **DR. MELIUS:** And why Oak Ridge? Not that I'm  
22 objecting, but just trying...

23 **DR. WADE:** Because there will be an SEC review  
24 for a Y-12 petition. As I look at the agenda  
25 as we've been building it, we are likely to

1           have a Pacific Proving Grounds SEC and a Y-12  
2           later years SEC on the agenda for the October  
3           meeting.

4           **DR. ZIEMER:** Okay. Other questions? Yes, make  
5           sure you have that one on your calendar. Also,  
6           on down the road we have a January meeting  
7           preliminarily scheduled.

8           Do we have the dates on that?

9           **DR. WADE:** I have 24 through 26 of January.

10          **MR. PRESLEY:** We got any suggestions where  
11          we're going to hold that meeting?

12          **DR. WADE:** Well, did -- we've tentatively  
13          penciled it in for Colorado, but you know,  
14          things can happen, and that's because we're  
15          looking at a Rocky Flats --

16          **DR. ZIEMER:** Rocky Flats SEC petition.

17          **DR. WADE:** Colorado is lovely in January.

18          **MR. PRESLEY:** That's what I was going to say,  
19          that's a real good time to go out there and  
20          some spend some real good nights in the  
21          airport.

22          **DR. WADE:** That hasn't been locked in but that  
23          is our plan.

24          **DR. ZIEMER:** Okay.

25          **DR. MELIUS:** Can I -- regarding sort of the

1           upcoming agenda, both the program that Stu's  
2           been talking about, those type of petitions, as  
3           well as the ones we would consider -- Oak Ridge  
4           is pretty far from Pacific Proving Grounds, and  
5           I would hope we would make arrangements for  
6           people who are involved in that petition to  
7           have access to the -- the meeting in some way.  
8           I don't know what's practical, but I -- I  
9           really think there's a great benefit to -- to  
10          the credibility of the program about us  
11          considering these -- these issues in front of  
12          people that are -- are being impacted and make  
13          it easier for them to get there. And I would  
14          hope we would consider that in some way also  
15          with these new type of petitions, also. I  
16          think we could get some valuable information as  
17          we're sort of developing the process for  
18          dealing with these from having some, you know,  
19          representatives of that petition group present  
20          and -- and informing us about issues related to  
21          that facility and -- and the workgroup  
22          involved. So you know, whether it's going to  
23          be practical to cover every site, I don't think  
24          so. But I think to the extent that it is, that  
25          be taken into consideration.

1           **DR. WADE:** We certainly understand and we have  
2 slightly -- mathematically, we have slightly an  
3 over-constrained situation that we'll work  
4 through.

5           **DR. ZIEMER:** Thank you. Any additional  
6 comments, Mr. Presley?

7           **DR. MELIUS:** Maybe you could fly us from Oak  
8 Ridge out to --

9           **MR. PRESLEY:** I told you Henry and I are  
10 holding out for the Bikini Atoll in January.

11          **DR. MELIUS:** Amchitka.

12          **MR. PRESLEY:** One of the -- one of the things I  
13 need to ask the Board, if we do come to Oak  
14 Ridge on Monday the 17th, do y'all want to eat  
15 barbecue Sunday night the 16th?

16          **DR. ZIEMER:** This is the social part of the  
17 Board's calendar, very important, but --

18          **MR. PRESLEY:** Yeah, this is the social part of  
19 the Board's calendar and one thing I do need to  
20 say. By law we're required to make this a  
21 Dutch treat, so I just need to know if the  
22 Board's -- what the wishes is if you want to  
23 have a barbecue on Sunday night the 16th.

24          **DR. ZIEMER:** Careful, Robert, I'm half Dutch.

25          **DR. MELIUS:** Then you're paying.

1           **DR. ZIEMER:** I'm treating, right.

2           **MR. PRESLEY:** That means you pay.

3           **DR. ZIEMER:** Right. Right.

4           **MR. PRESLEY:** The consensus is then that we do  
5 want a barbecue the 16th?

6           **DR. ZIEMER:** I've asked Robert if it's possible  
7 and we have such a barbecue, and I think many  
8 of you know that Mr. Presley is the barbecue  
9 champion of Tennessee and maybe most of the  
10 south, actually. He's right up there with Ray,  
11 I think -- silver or gold medal. But in any  
12 event, we would -- we would -- there's a  
13 possibility we will be able to hold that in the  
14 Atomic Museum in Oak Ridge, which would be of  
15 great interest to see a lot of the historical  
16 information that is there in that facility.  
17 Mark, you have a comment?

18           **MR. GRIFFON:** I just -- it sounds like we're on  
19 the calendar items, I don't --

20           **DR. ZIEMER:** Yes.

21           **MR. GRIFFON:** -- but I just wanted to see,  
22 while we were all here, if we could set a  
23 workgroup meeting date.

24           **DR. ZIEMER:** Yes.

25           **MR. GRIFFON:** We talked about -- for the

1 procedures review, and we -- we met on the  
2 side, but we were looking at the first week of  
3 October. I don't know if we nailed it down.

4 **MS. MUNN:** I think we did, Mark. I talked with  
5 Mike and he's tied up much of that week, but is  
6 available on the 6th.

7 **DR. ZIEMER:** I'm going to suggest, since it  
8 just involves the four of you, that you -- the  
9 four of you work that out and --

10 **MR. GRIFFON:** Well, the only reason I wanted to  
11 do it in public --

12 **DR. ZIEMER:** So -- know when it is, okay.

13 **MR. GRIFFON:** -- or -- yeah --

14 **DR. ZIEMER:** Right, okay.

15 **MR. GRIFFON:** -- notice of it.

16 **MR. PRESLEY:** October the 6th?

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

18 **MR. PRESLEY:** Yes.

19 **MR. GRIFFON:** October the 6th then --

20 **DR. ZIEMER:** October the 6th is being  
21 suggested, and if that's a serious problem for  
22 the contractor, then we need to know that.

23 **MR. GRIFFON:** Or NIOSH.

24 **DR. ZIEMER:** Apparently not -- or NIOSH.

25 **MR. GRIFFON:** Right.

1           **DR. WADE:** I take that as affirmative, Mark,  
2           October the 6th in Cincinnati, Ohio.

3           **DR. ZIEMER:** Mike, additional comment?

4           **MR. GIBSON:** It's getting back to -- not the  
5           calendar issues, but business a little bit, and  
6           a lot of the petitioners last night, there were  
7           several of them talked about not understanding  
8           the process and a seeming insensitivity to  
9           concerns when they talk to different agencies.  
10          And I just wanted to share with you -- I was --  
11          I was given some information about a friend of  
12          mine who was diagnosed with cancer from Mound,  
13          and this was back when there was Part D, it was  
14          not Part E at the time, but it was July 13th.  
15          It was just to confirm the illness, but there  
16          was a handwritten note from a -- a lady from  
17          DOE that says -- and the gentleman, because of  
18          his cancer, had dementia, so he couldn't  
19          understand, so they were dealing with the  
20          spouse. It says (reading) Mrs. X, I'm not  
21          being morbid, comma, just practical, period.  
22          Please submit this form after Mr. X's death --  
23          and included a survivor's form.

24                 I think that -- that is just outrageous that  
25                 someone -- I mean thank God DOE is pretty much

1 out of the picture right now, but -- and I  
2 would just caution everyone who deals with  
3 these claimants to be sensitive. That's --

4 **DR. ZIEMER:** Exactly. Good point, Mike, and we  
5 probably can't stress that enough to -- and I  
6 suppose we're preaching to the choir, but we --  
7 we often hear these stories that people are  
8 simply not treated very well, and treated in  
9 such a bureaucratic way that it -- it's a  
10 little disturbing. I appreciate your bringing  
11 that up.

12 **MR. GIBSON:** I mean to -- to go out of your way  
13 and hand-wrote -- hand-write a note like that  
14 is...

15 **DR. ZIEMER:** Right, thank you. Jim, did you  
16 have an additional comment?

17 **DR. MELIUS:** No, I'm sorry.

18 **DR. ZIEMER:** Okay. Do we have any other items  
19 that need to come before the Board today?

20 (No responses)

21 Again, for those who might not have been here  
22 earlier, just announce the main action of this  
23 meeting this week at St. Louis was that the  
24 Board has approved recommending to the  
25 Secretary of Health and Human Services that the

1           petition for Special Exposure Cohort status for  
2           the other group, this later group of  
3           Mallinckrodt workers, be approved.

4           And with that, we will recess -- or adjourn our  
5           meeting. Thank you all very much for coming.

6           We'll see you all in Oak Ridge.

7           (Whereupon, the meeting was adjourned at 11:45  
8           a.m.)

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**C E R T I F I C A T E   O F   C O U R T   R E P O R T E R****STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of August 26, 2005; and it is a true and accurate transcript of the testimony captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 7th day of October, 2005.

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