

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

convenes the

WORKING GROUP MEETING

ADVISORY BOARD ON
RADIATION AND WORKER HEALTH

NON-QUALIFYING SEC PETITIONS

The verbatim transcript of the Working
Group Meeting of the Advisory Board on Radiation and
Worker Health held in NIOSH, Cincinnati, Ohio on
March 28, 2007.

STEVEN RAY GREEN AND ASSOCIATES
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TRANSCRIPT LEGEND

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

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

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

(By Group, in Alphabetical Order)

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HOWELL, EMILY, HHS
KOTSCH, JEFF, DOL
RUTHERFORD, LAVON, NIOSH

P R O C E E D I N G S

(9:00 a.m.)

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WELCOME AND OPENING COMMENTSDR. LEWIS WADE, DFO

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DR. WADE: This is Lew Wade, and I have the privilege of serving as the Designated Federal Official for the Advisory Board, and this is a work group meeting of the Advisory Board. This particular work group has been asked to focus on the review of SEC petitions that did not qualify. This work group is ably chaired by Dr. Lockey; members: Roessler, Melius, Clawson and Munn. Melius is not with us today I don't believe.

Jim, you're on the phone? Dr. Melius with us on the phone?

(no response)

DR. WADE: But we do have Lockey, Roessler, Clawson and Munn here around the table. I would start by asking if there are any other Board members attending via telephone? Any other Board members on the telephone line?

(no response)

1 **DR. WADE:** So we don't have a quorum of the
2 Board, and we can continue. We'll go around
3 and introduce ourselves at the table, and then
4 we'll ask everyone on the phone who wishes to
5 introduce themselves to introduce themselves.
6 We'll talk a little bit about phone etiquette,
7 and then we'll begin.

8 So again, this is Lew Wade. I work
9 for NIOSH and serve the Advisory Board.

10 **DR. LOCKEY:** Jim Lockey, Chair of this
11 working group and member of the Advisory
12 Board.

13 **DR. ROESSLER:** Gen Roessler, member of the
14 Advisory Board and a part of the working
15 group.

16 **MS. HOWELL:** Emily Howell, HHS.

17 **MR. ELLIOTT:** Larry Elliott, NIOSH.

18 **MR. RUTHERFORD:** LaVon Rutherford, NIOSH.

19 **MR. CLAWSON:** Brad Clawson, Board member.

20 **MS. MUNN:** Wanda Munn, Board member.

21 **DR. WADE:** And then we'll go out on the
22 telephone. We'll ask people to introduce
23 themselves by height, so will the tallest
24 person please introduce yourself.

25 **MR. KOTSCH (by Telephone):** Jeff Kotsch,

1 Department of Labor.

2 **DR. WADE:** Good job, Jeff.

3 **MS. BREYER (by Telephone):** I think Jeff's
4 got a few inches on me. This is Laurie
5 Breyer, the SEC petition counselor at NIOSH.

6 **DR. WADE:** Anybody else out there in
7 telephone land?

8 (no response)

9 **DR. WADE:** Well, for the two veterans on the
10 phone, obviously, mute if you're not speaking,
11 and when you speak, speak into a handset. Try
12 not to use the speakerphone. And if anyone is
13 snoring, we have a very short list of who it
14 would be, and people will come to your house.

15 Okay, we're ready.

16 **INTRODUCTION BY CHAIR**

17 **DR. LOCKEY:** Well, last time we met formally
18 was on November 9th, 2006, and I think that was
19 a very productive meeting. At the end of it
20 we put together at least a draft outline in
21 regard to general conclusions and
22 recommendations. And, Laurie, I don't, you
23 probably don't have a copy of that available
24 to you right now, but we do have a copy here
25 at the working group.

1 One of the aspects that was left
2 unresolved was that there were some SEC
3 petitions that had been appealed by
4 petitioners. And they had gone based on the
5 rules to a special review committee under the
6 direction of John Howard. We wanted to see
7 what the outcome of that review was. In fact
8 that has been completed, and LaVon had sent
9 out four letters that were under John Howard's
10 signature in regard to the result of that
11 external committee review.

12 I also, unfortunately, at a late date
13 asked LaVon to provide the actual petitions
14 here, and we have a notebook with those four
15 petitions in. So I thought this would give us
16 a chance to hear what LaVon has to say about
17 that review process, what conclusions were
18 drawn. And if there are any other additional
19 recommendations we can make in regard to this
20 process, we should try to do that today. And
21 then that will be the first part of the
22 meeting.

23 And then, Laurie, I think your input
24 as well Denise's input as to how we can make
25 this process more petitioner friendly and

1 understandable would be very important. That
2 was our concern. I think a lot of our initial
3 recommendations are in that direction trying
4 to make this an easier process for people to
5 access to it and understand.

6 **MS. BREYER (by Telephone):** Okay.

7 **DR. LOCKEY:** So your input on that will be
8 very important to us in the second part of
9 this. So again, thank you for participating.
10 I hope Denise is able to join us, too.

11 **MS. BREYER (by Telephone):** Thank you.

12 **MR. ELLIOTT:** To make sure we're accurate in
13 the record, could you add LaVon and Emily to
14 the list of attendees in your summary? They
15 were there.

16 **DR. WADE:** Okay, Laurie, I assume you're
17 staying at a hotel.

18 **MS. BREYER:** I am.

19 **DR. WADE:** Do you have a fax number? I
20 could try and fax you this draft.

21 **MS. BREYER:** The fax number is listed as 5-
22 0-9-9-4-3-8-5-6-4, and you can put it
23 attention to my name, room 1-4-7.

24 **DR. WADE:** So let me repeat, 5-0-9-9-4-3-8-
25 5-6-4, room 1-4-7.

1 **MS. BREYER (by Telephone):** Correct.

2 **DR. WADE:** We'll work on that. I'm not
3 going to go right this minute because I'd like
4 to hear what LaVon has to say, but at the
5 first opportunity I'm going to have this faxed
6 to you. And then it could be in front of you
7 and Denise when it's discussed by the work
8 group. It might help.

9 **APPEALED SEC PETITIONS**

10 **MR. RUTHERFORD:** There were four SEC
11 petitions: SEC 00039, 00040, 00047 and 00054
12 that the petitioner requested an admin review.
13 We had determined they did not qualify, and
14 they suggested the review.

15 SEC 00039, I think if you look down in
16 the letter in about the third paragraph, it
17 was for a statistician at Y-12 from '51 to
18 '59. And we had actually, we had exposure
19 monitoring data for individuals that worked
20 during that period and determined that it did
21 not qualify. The petition and the actual
22 letters were sent to the admin review panel
23 for them to review. And their determination
24 as you can see in the letter was that we did
25 not provide enough clarity to the actual

1 petitioners in our decision. And we also,
2 they felt, did not provide enough clarity to
3 that review panel as to the basis for the
4 reason why we disqualified that petition.

5 If you look -- and actually, after we
6 reviewed that, and we did our assessment, we
7 agreed with that. I mean, we didn't agree
8 with the decision to qualify, that the basis
9 was there, but we agreed the fact that there
10 was not enough clarity in our description of
11 the reason why the petition did not qualify to
12 that petitioner.

13 **DR. WADE:** Which one is this?

14 **MR. RUTHERFORD:** SEC 00039.

15 The review panel recommended we
16 qualify it. We did qualify the petition;
17 however, this is a unique petition. This
18 petition is actually for an incident. It was
19 for a, they provided medical evidence of a low
20 white blood count for a worker that worked
21 during that '51 to '59 or, yeah, '51 to '59
22 period. The worker had actually showed a --
23 make sure I've got the right one -- yes, the
24 worker had actually had indication of a low
25 white blood count in 1958.

1 And that worker was sent to the Oak
2 Ridge Institute of Nuclear Studies Cancer
3 Research Hospital to Dr. Golding Andrews (ph).
4 He was a physician who was doing cancer
5 research at the time with radioisotopes. And
6 we reviewed all the documentation, the medical
7 records, the medical reports and all the, what
8 the indication was, was the white blood count,
9 he had an indication of low white blood count.
10 No indication of when that low white blood
11 count started.

12 The low white blood count continued
13 from 1958 all the way through at least 1965 if
14 you review the reports. So the white blood
15 count, from acute exposure you would typically
16 see a drop in the white blood count, and then
17 a gradual return of that white blood count.
18 So we also looked, we looked at that medical
19 evidence. We also looked at the actual
20 doctor's reports.

21 The doctor's reports indicated that
22 they did not look at the symptoms and indicate
23 that it looked like an acute radiation
24 exposure. And these are leading doctors in
25 that field that are reviewing that. They

1 actually could not make a determination what
2 the cause was of that low white blood count.
3 So eventually this person did end up getting
4 leukemia in later years and passed away.

5 We also looked back, we wanted to
6 review all the incident reports at Y-12 during
7 that time period. There was a criticality in
8 1958 as some of the Health Physicists probably
9 are aware of at Y-12. However, that occurred
10 at a later date, or actually at -- yes, at a
11 later date than what the symptoms started for
12 this individual. So that couldn't have been
13 the cause. Also, we have well-documented
14 individuals that were involved in that
15 criticality at Y-12.

16 We also looked at other incidents, and
17 then we looked at the area that the worker
18 worked in which is we had a specific building,
19 and we reviewed monitoring data that we had
20 during the time period. And we found no
21 indications that would support that, an
22 incident occurring at Y-12 during that time
23 period either through the monitoring data or
24 through incident records.

25 We also looked at the individual's

1 monitoring records who he had. He was a
2 monitored individual. He had external
3 exposure monitoring data. There was a
4 monitoring reading which was brought into
5 question by the petitioner of a, it actually
6 reads 435 millirem and then it's X'd out, or
7 lined out, and a zero's put in, but it's
8 written 100 percent light transmission.

9 And there is an explanation at the
10 bottom where they actually talked to the
11 individual because apparently the film became
12 exposed in the process, and they determined
13 that the 435 millirem was more than likely not
14 a real reading, and so they gave it a zero.
15 They actually had a PhD radiobiologist review
16 this as well, all the information, and the
17 point was made that even if it were 435
18 millirem that that would not be a level of
19 exposure that would cause a reduced white
20 blood count.

21 So we went through the process and did
22 not qualify this. However, if you review our
23 letter sent to the petitioner, and it did not
24 lay this information out in full detail. It
25 did not provide the petitioner a good level of

1 understanding of why we weren't qualifying it.

2 And another thing, and I think if you
3 look at the recommendations that you have
4 already made, we did not perform a follow-up
5 call that could have helped that petitioner
6 understand this a little more thoroughly,
7 understand this better. We provided all the
8 information the admin review panel, but on the
9 direction of our General Counsel, we did not
10 provide any of our additional reviews that we
11 had done internally like with the PhD
12 radiobiologist reviewing the data. We did not
13 provide that to them.

14 We did not provide some of the other
15 internal discussions because of by
16 recommendation of General Counsel that we may
17 be tainting the review panel by feeding this
18 information. Which what we determined really
19 was we need to make sure that all this
20 documentation and all this decision making is
21 in the file so when that review panel reviews
22 it there is no question. It's already there.

23 **MR. ELLIOTT:** Well, it starts with a clear
24 explanation to the petitioner in the letters
25 and in our verbal communications as to why

1 we're not qualifying the petitioner. And then
2 that will serve to aid in a panel review if a
3 panel review is sought.

4 **MS. MUNN:** Does Counsel still have the same
5 position with respect to that data?

6 **MR. RUTHERFORD:** You know, I'm not going to
7 answer for General Counsel.

8 **MS. HOWELL:** I think that with some of
9 these, with the panel review we have to be
10 really careful once that procedure is started
11 about becoming involved because after it goes
12 to a panel by getting involved at that point
13 we could interject ourselves into what's
14 supposed to be a separate proceeding.

15 And so that's the concern that we're
16 trying to avoid. Hopefully, we can fix things
17 by starting from a better place and getting
18 the petitioners all the information that they
19 need before they would ever get to the panel,
20 and hopefully, thereby avoid needing to go to
21 a panel because they'll understand why their
22 petition may not have qualified.

23 **MR. ELLIOTT:** We don't want our actions to
24 be perceived as influencing the panel, and so

25 --

1 **MS. HOMOKI-TITUS (by Telephone):** Now if I
2 could just follow up on what Emily said. The
3 panel is supposed to be reviewing the
4 information that was, that John Howard used to
5 make his decision. So any information that's
6 kind of discovered or put together afterwards,
7 it wouldn't be appropriate to give to the
8 panel.

9 **MS. MUNN:** I guess I'm trying to imagine
10 why, well, I guess at that time we just simply
11 were not being as thorough in our information
12 to the claimant, were we?

13 **MR. RUTHERFORD:** Well, you know, and we
14 didn't provide, we didn't, we were thorough in
15 our own internal review, but we did not
16 document this well and provide this not only
17 to the petitioner, but if it would have been
18 documented better, it would have been provided
19 to the review panel as well.

20 **MR. ELLIOTT:** Our explanation was not clear,
21 and it was not complete, neither to the
22 petitioner in my opinion nor was it found to
23 be complete by the appeal panel in our
24 documentation.

25 **MS. MUNN:** Didn't know what you had done.

1 **MR. ELLIOTT:** Right.

2 **MS. MUNN:** Because the claimant didn't know
3 what you had done.

4 **MR. ELLIOTT:** Right. The way I see this we
5 owe a petitioner an explanation of why we're
6 not qualifying the petition, and I don't think
7 that happened fully in this particular
8 instance.

9 **MS. MUNN:** In which case even if it had gone
10 to the panel, the panel would have had that
11 information, too. Yeah, okay.

12 **MR. RUTHERFORD:** If you look at the two
13 questions actually that the panel asked, and
14 we did not provide information, was what
15 documentation is there that OCAS' efforts to
16 obtain records to confirm or refute the
17 exposure incident on which this petition is
18 based. We did look for exposure incidents,
19 but we did not document that. I mean, we
20 documented it in our professional judgment
21 review, but there was nothing really else
22 besides that.

23 Also, why doesn't the deceased's
24 medical evidence satisfy the exposure
25 incident's evidence requirement. And if we

1 would have documented the review from the
2 radiobiologist and the other information, that
3 information would have been made available to
4 that panel during their review.

5 **DR. ROESSLER:** Just for the record, as you
6 are describing the sequence of events, and you
7 described the petitioner as the petitioner
8 went to the physician, maybe this was later.
9 I thought you said that the person did not
10 look at the other acute symptoms. I'm
11 wondering if you meant did not.

12 **MR. RUTHERFORD:** Yeah, what did I say?

13 **DR. ROESSLER:** I thought you said did not.
14 I just wanted to be sure that since this is on
15 the record what really did, when the
16 petitioner presented to the physician in
17 addition to the low blood count, were the
18 other symptoms --

19 **MR. RUTHERFORD:** Right, exactly, the other
20 symptoms of an acute exposure, nausea and so
21 on, actually, if you look at the discussion on
22 that, there is evidence later that nausea
23 occurred, but it was after the low white blood
24 count was documented. But he had nausea,
25 headaches. He had ear infections, things like

1 that, but it was indicated that it did not
2 occur, it was occurring months after the
3 indication of a low white blood count.

4 **MR. ELLIOTT:** Not immediately post --

5 **MR. RUTHERFORD:** Right, it wasn't post, yes,
6 it wasn't as typical, you know, a typical
7 radiation syndrome from a high exposure you
8 would expect.

9 **MS. MUNN:** More likely symptoms of the
10 developing leukemia.

11 **MR. RUTHERFORD:** Which, you know, I can't
12 say that for sure because I'm not --

13 **MS. MUNN:** No one ever knows, but more
14 likely.

15 **MR. RUTHERFORD:** So what we have now though,
16 we have a qualified petition that we are
17 evaluating and what we are doing to give you a
18 feel, we are evaluating incidents that could
19 have occurred during that time period. You
20 know, we went back again in a more detailed
21 evaluation approach of looking at any
22 incidents that occurred during the 1958 time
23 period also looking at the monitoring data
24 during that time period.

25 And then we are getting a doctor's

1 review again of the medical evidence to
2 provide us if there's any indication that this
3 medical evidence would support an acute
4 radiation exposure. And all of that would be
5 documented in our evaluation. So this is the
6 first time that we'll actually be evaluating
7 an incident, a true incident.

8 **DR. ROESSLER:** So the working group's
9 function at this point is just to become aware
10 of what happened, what you're doing to change
11 the procedures, and we don't really have to
12 make any decision because the petition will
13 come up again.

14 **MR. RUTHERFORD:** Uh-huh.

15 **DR. LOCKEY:** I think what we can do is we
16 can add maybe two points to our recommendation
17 list. And one point would be that a clear
18 explanation be provided to the petitioner as
19 to why their petition did not qualify and that
20 documentation supporting that decision be made
21 part of the permanent file.

22 **MR. RUTHERFORD:** Great, agree.

23 **DR. LOCKEY:** Everybody okay with that? So I
24 think those are two additional things we can
25 add.

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Laurie?

MS. BREYER (by Telephone): I think that's an excellent recommendation, and I have actually an outline of issues, and I think communication being one of them. And I think that obviously trying to provide everybody a clear explanation of why the petition didn't qualify and a record to show what we actually have done is going to be the most important for people who are in the petitioning process or going to file a petition to understanding what's going on in the process.

Because I think the process in and of itself somewhat overwhelms them. You know, they're filing a petition and the qualifying it, the petition evaluation, and then it goes to the Board, then it goes to the Secretary, then it goes to Congress. I think they get kind of overwhelmed just by the process in and of itself. So I think every step along the way where we can give them a clear explanation of what's happening at that step is needed.

DR. LOCKEY: And I think that explanation needs to be given at a level that could be understood by the petitioner.

1 **MS. BREYER (by Telephone):** I completely
2 agree. I think the problem that we have with
3 SEC is very similar to the comments we see
4 with the dose reconstructions, at least from
5 my end, and I don't have a technical
6 background. So people will try to come to me
7 to ask questions about these technical issues,
8 and then I try to get an explanation from
9 someone who does have a technical background
10 and try to explain it to them. And the same
11 way with dose reconstructions.

12 They just don't understand sometimes
13 what these things mean. We actually have a
14 wide level of petitioners, some people who are
15 much more advanced than others, who are very
16 active in the program who do understand these
17 technical issues. And then we have the people
18 whose spouse or parent may have been working
19 at one of these facilities back in the early
20 years and are now deceased, and so they get a
21 letter explaining we looked back and incidents
22 and we go into a kind of a technical
23 explanation, and that means nothing to them as
24 well, kind of the same issues we have with the
25 dose reconstructions. And I think that's

1 important to note as well. So it does need to
2 be in a form I think they can understand.

3 **DR. LOCKEY:** Excellent. Any other comments
4 about number 00039?

5 (no response)

6 **DR. LOCKEY:** Okay.

7 **MR. RUTHERFORD:** SEC 00040 actually was from
8 the same petitioner as 00039. This petitioner
9 actually worked at Y-12 during the early
10 years, and her spouse worked at Y-12 during
11 the early years. This second petition is
12 actually for 1951-'52, and it's for
13 statisticians that worked, or mathematicians
14 that worked in Build 9201-3 at Oak Ridge Y-12
15 plant.

16 The basis provided by the petitioner
17 was that there was inadequate monitoring. We
18 reviewed the monitoring data, and we had
19 monitoring data for individuals that worked in
20 9201-3 and made the determination that the
21 petition would not qualify based on a lack of
22 monitoring data. The review panel reviewed
23 the information and asked some specific
24 questions based on our review.

25 Again, this came down to, in my

1 opinion it came down to how well we documented
2 our decision and the lack that we had
3 monitoring data. The questions that were
4 brought up by the review panel was basically
5 associated, well, do you have monitoring data
6 for individuals specifically in 9201-3? Our
7 review did not lay, did not describe that
8 clearly. Our review indicated that we had
9 monitoring data for individuals at Y-12 during
10 the, you know.

11 And so it did not specifically go to
12 that building in our review. However, we
13 clearly had that data, and if the review, if
14 it was written properly and had said that we
15 have monitoring data for individuals that
16 worked in Building 9201-3 instead of we have
17 monitoring data at Y-12 during those years, I
18 think the decision by the review panel would
19 have been different.

20 So again, it's providing the
21 appropriate level of information to the
22 petitioners and I think following it with
23 verbal, you know, verbally through phone calls
24 to the petitioners, explaining everything,
25 answering any questions, why the petition's

1 not qualifying. And then making sure that
2 those files, the information and all the
3 information that you used to come up with that
4 decision are maintained in that administrative
5 record.

6 In this one we now have a qualified
7 petition, but this petition is for a class of
8 individuals that are already covered through
9 an existing SEC class. Building 9201-3 is
10 part of the SEC 26 petition class that
11 included 1948 to 1957 and a number of
12 buildings that potentially had thorium
13 exposures in. So this individual, however,
14 another problem with this was this petitioner
15 only worked there for 180 days at the site and
16 does not meet the 250-day criteria.

17 What we are doing for this petitioner
18 is the petitioner indicated that DOL did not
19 recognize some covered employment at K-25 they
20 had which would possibly make up the
21 additional 70 days that they would be included
22 in a class. So what we will end up doing is
23 closing this petition because there is nothing
24 more, there's no new information provided by
25 the petition that would adjust the existing

1 class that we already had at Y-12.

2 But what we're waiting to do right now
3 is we're waiting on a decision from DOL to get
4 sent through that regional office to review
5 their covered employment information to see if
6 they did have an additional time period at K-
7 25 which would possibly get them the 250 days
8 that they need. So that's pretty much it with
9 SEC 00040.

10 **MS. MUNN:** Did I understand you correctly to
11 say that this person would be covered under
12 the existing SEC?

13 **MR. RUTHERFORD:** Yes.

14 **DR. WADE:** Be careful of the words.

15 **MS. MUNN:** Yes.

16 **DR. WADE:** The person would be compensated
17 under the SEC.

18 **MR. RUTHERFORD:** They are part of that
19 class. Let's put it that way.

20 **DR. WADE:** They're in that class but they
21 don't have the 250 days.

22 **DR. LOCKEY:** Unless you add the K-25.

23 **MR. RUTHERFORD:** Unless they add the K-25.

24 **MS. MUNN:** And is the same true of petition
25 00039?

1 **MR. RUTHERFORD:** Actually, yes, and I didn't
2 go into that, but petition 00039 actually
3 received a recommendation or a compensation
4 decision from the Department of Labor to --

5 **MR. ELLIOTT:** Representing.

6 **MR. RUTHERFORD:** Yeah, yeah. Awarding that
7 claimant representing and because they were
8 part of that class; however, that petitioner
9 would like to proceed with this petition just
10 to get that evaluation out. So we are
11 proceeding as, you know... They will not get
12 any additional compensation, but we are
13 proceeding.

14 **DR. WADE:** Sometimes closure's important to
15 people.

16 **MR. RUTHERFORD:** Yes, I understand.

17 **DR. LOCKEY:** Any more comments?

18 (no response)

19 **MR. RUTHERFORD:** SEC 00047, this is for the
20 NUMEC Apollo Site. This is a petitioner
21 petitioned on the basis that administrative
22 workers were potentially exposed due to
23 releases from uranium processing buildings,
24 plutonium processing buildings, and that this
25 administrative staff was not monitored. We

1 reviewed the information, reviewed, and the
2 petitioner, all of the information provided by
3 the petitioner is in the binder here.

4 They provided a number of documents
5 that supported that there were exposures that
6 occurred during the plant's operations, and
7 that all the potential exposures that one
8 could see or they've seen at the time. We
9 reviewed the information. We had internal
10 monitoring data and external monitoring data
11 for the plant workers.

12 As I said we had internal and external
13 monitoring data for the plant workers. We had
14 no monitoring data for the administrative
15 workers, but the administrative workers would
16 not typically be monitored at a site depending
17 on where they are. If they're inside
18 obviously in their plants, they would be
19 monitored typically, but this was an
20 administrative building outside of the plants
21 and would not typically be monitored from a
22 film badge perspective.

23 Some sites may have, you know, routine
24 bioassay in later years that they would have a
25 person come in. So we looked at, okay, we

1 don't exactly have monitoring data for those
2 administrative staff, do we have an exposure
3 scenario? We looked at the information
4 provided. Yes, there was releases from the
5 plants that occurred during, you know, the
6 stack releases it.

7 However, all indications were that the
8 administrative buildings would have received
9 nothing greater than ten percent of the
10 exposure concentrations, permissible exposure
11 concentrations. So we looked at the actual
12 environmental monitoring data, and then we
13 also looked at, well, okay, if we need to
14 bound or can we bound the workers' exposures
15 based on the data that we have.

16 We've got to be careful, too, that we
17 don't get into actual evaluation, you know,
18 where we're evaluating a petition. We're
19 actually looking at, okay, do they meet the
20 criteria for qualification to move us into
21 that next step for detailed evaluation. There
22 are individuals where they had admin people
23 that were not monitored, and they thought were
24 potentially exposed. Yes, the admin people
25 were not, we couldn't find any records that

1 they were monitored.

2 However, we also couldn't find
3 indication that they really should have been
4 monitored. And that our decision, as well as
5 we looked at, we had exposure monitoring data
6 for the maximum, or the people that would
7 typically be the maximum exposed individuals
8 and that would be the production workers. And
9 the workers in the area had internal and
10 external monitoring data. So we did not
11 qualify this petition.

12 Now, the admin review panel's review
13 of this is not, they did not question our
14 decision. If you look at their fourth
15 paragraph down in the letter in 00047, in
16 response to the petition it was determined
17 there was inadequate support for the
18 submission basis by stating that doses for the
19 members of the proposed class were monitored
20 and are available.

21 In the same document, however, OCAS
22 acknowledged that office employees were not
23 monitored because they were not in locations
24 that required monitoring. This apparent
25 contradiction conveys a confusing mixed

1 message to both petitioner and the review
2 panel. Consequently, they recommended that
3 there was not clear justification and we
4 should qualify the petition.

5 So this came down to, again, providing
6 appropriate clarity in our letters in
7 responses to petitioners as well as discussing
8 it with the petitioners over a phone call I
9 think would be appropriate. So we have
10 qualified this petition. We are in evaluation
11 phase.

12 And since that time period this
13 petitioner has submitted a second petition,
14 and we have qualified that petition as well.
15 This petition was only qualified for the
16 administrative staff. The second petition was
17 for the production workers that worked at this
18 facility. And although the petitioner did not
19 provide us a basis that would qualify that
20 petition, and I think this is a good thing
21 from our standpoint, we reviewed it. And we
22 were actually, when we looked at other
23 information, we determined there is another
24 basis that should qualify that petition.

25 We recognize that during the first

1 three years of operation we had no monitoring
2 data at all for individuals at that site. So
3 even though that petition basis, the basis
4 provided by the petitioner was not a basis for
5 qualifying that later petition, we had already
6 recognized that issue and felt it was
7 appropriate for us to qualify it, qualify it
8 and help the petitioner to understand what a,
9 or identify a good basis for that petition.

10 **MS. MUNN:** So you're saying that this claim
11 falls under the period where no monitoring was
12 available for anyone?

13 **MR. RUTHERFORD:** Actually, this one did not.
14 This one, but the later one did. This one we
15 had monitoring data for people. The reason
16 why this one qualified by the recommendation
17 of the admin review panel was we, and I'll say
18 that we gave mixed messages to the petitioner
19 in our letter is pretty much the answer or
20 what the review panel said.

21 We said they were monitored, and then
22 we said they weren't monitored. And what
23 should have been said is individuals that were
24 in areas where they could receive exposure
25 were monitored. Individuals that were not or

1 that would not receive exposures that would
2 warrant monitoring were not monitored.

3 **MS. MUNN:** So let me see if I have the mixed
4 messages right. If I understand this
5 correctly, the period for which SEC 00047 was
6 filed does, in fact, have monitoring data for
7 the production people.

8 **MR. RUTHERFORD:** Yes.

9 **MS. MUNN:** And that is the basis for the
10 original refusal of this petition.

11 **MR. RUTHERFORD:** Yes, yes.

12 **MS. MUNN:** There is now a second petition
13 for a different time period.

14 **MR. RUTHERFORD:** (Unintelligible) time
15 period.

16 **MR. ELLIOTT:** That includes production.

17 **MR. RUTHERFORD:** Yes, that includes
18 production workers.

19 **DR. LOCKEY:** And these people?

20 **MR. RUTHERFORD:** Yes. Well, it's mainly
21 focused on production workers, but it is
22 actually going to encompass all.

23 **MS. MUNN:** You have a bounding issue for
24 this one, but you do not have bounding
25 information for the new period? The new

1 petition?

2 **MR. RUTHERFORD:** Well, I don't want to say
3 we had it. I'd say at this time we do not
4 have monitoring data for that earlier period,
5 and we recognize that as a reason to qualify
6 it for evaluation. So we're, we will, we're
7 moving that petition through evaluation now.
8 That's not to say that we won't come up with a
9 method for doing dose reconstruction, but it
10 is clearly a reason to qualify the petition,
11 no monitoring data.

12 **MS. MUNN:** So the second petition is for an
13 earlier period than this one.

14 **MR. RUTHERFORD:** It actually encompasses an
15 earlier period and then up to 1969. I think
16 it's '69.

17 Laurie, am I correct, '69?

18 **MS. BREYER (by Telephone):** I believe that's
19 the date, but I'm not a hundred percent sure.

20 **MS. MUNN:** No, I just wanted to clarify that
21 the new petition is for an earlier time period
22 than this original one.

23 **MR. RUTHERFORD:** Yes.

24 **MS. MUNN:** Okay, got it.

25 **DR. ROESSLER:** But it seems the pertinence

1 here is not that, but the missed
2 communication, the lack of good communication.

3 **MR. RUTHERFORD:** Exactly. I probably didn't
4 even need to throw that in there.

5 **DR. WADE:** What the heck.

6 **MS. MUNN:** Yeah, you did.

7 **MR. CLAWSON:** No, it comes down to clear --
8 because if this was to come up at a different
9 time in a later meeting, we...

10 **DR. WADE:** Better to err on the side of more
11 information.

12 **DR. LOCKEY:** Let me ask you a question. You
13 had mentioned a number of times that perhaps a
14 phone call with NIOSH or from NIOSH to the
15 petitioner after they received their final
16 recommendation. Are you suggesting that an
17 additional step be added to your process that
18 once you send out a final recommendation or
19 final decision that you follow it up with a
20 phone call to spend some time with the
21 petitioner explaining what they have in their
22 hands?

23 **MR. RUTHERFORD:** Yes, at least attempt to do
24 that. Because I think that what happens, in
25 my opinion what happens is when we write these

1 letters, look at how many hands touch these
2 letters before they actually go out. And
3 although we try to be clear, we try to relay
4 the information so anyone could understand it.

5 But still it's touched, everybody
6 wants their portion, wants it to read a
7 certain way. And I think different people
8 will read a letter and may or may not
9 understand it. And I think it just makes
10 sense to follow up with a phone call and to
11 say, okay, I'd like to go over the letter with
12 you to help you understand the reason we made
13 this determination. I think that would be
14 very helpful.

15 **DR. ROESSLER:** Are those phone calls
16 recorded?

17 **MR. RUTHERFORD:** No, they're not.

18 **DR. ROESSLER:** Notes made maybe?

19 **MR. RUTHERFORD:** Yes, we do the notes.

20 **DR. LOCKEY:** You're not doing them now, or
21 you haven't done them in the past.

22 **MR. RUTHERFORD:** We have started recently.
23 Laurie's picked up a few of them and --

24 **MR. ELLIOTT:** These are in instances where
25 we're saying we're denying it for evaluation.

1 **MR. RUTHERFORD:** Right, we haven't denied
2 very many petitions of late so, you know, I
3 think in the future that will be definitely be
4 something we should incorporate into our
5 process.

6 **MS. MUNN:** How have those calls gone, the
7 ones that you've made? Do they seem to have
8 been helpful for the petitioner?

9 **MR. RUTHERFORD:** Go ahead, Laurie.

10 **MS. BREYER (by Telephone):** I would
11 definitely say yes. I think that being able
12 to converse with somebody definitely gives
13 them a more complete understanding of the
14 process because it allows them to interact
15 with us and ask us questions. I think it also
16 can be perceived as we really do know what
17 we're talking about.

18 We have looked at this issue. I think
19 the problem with letters as with a lot of the
20 things is that even though it goes through so
21 many people internally, sometimes people get
22 it and maybe they don't understand what's in
23 the letter because everybody who's reviewed
24 it, we all know what's going on. So sometimes
25 it's easy to miss things because it makes so

1 much sense to us because we all know what it
2 means.

3 And then you get a petitioner who has
4 little understanding of the program, and they
5 read it, and it doesn't make sense to them
6 because they don't know much about the
7 program. Or it just seems like, you know,
8 sometimes it can be a two- or three-page
9 letter, and that may look like, you know, they
10 didn't even spend much time on it. Look, I
11 only got like a two- or three-page letter in
12 response.

13 Whereas, when you speak to people on
14 the phone, and they get to ask you questions,
15 and you're knowledgeable about the subject,
16 you know what they're referring to. If they
17 don't understand something, you're able to
18 provide them an answer. I think it gives them
19 a little more confidence, I think, in the
20 process. And it gives them that ability to
21 understand in more detail than a letter.

22 And I think the ones we've had so far,
23 I think the best example is probably the NUMEC
24 petition that LaVon was just talking about.
25 That was a petitioner who was not necessarily

1 satisfied with the process in general all the
2 way back from when he filed an individual dose
3 reconstruction, and letters and e-mails have
4 been back and forth with this person. And you
5 could tell there was just more frustration and
6 more frustration between e-mails and letters.
7 And I think once we started speaking with him
8 on the phone that greatly diminished. I think
9 he was able to get a better understanding.

10 Typically, LaVon is on that call,
11 Denise, myself and Dave Sundin has
12 participated on those calls as well, and
13 people are there right there to answer his
14 questions immediately so it doesn't come
15 across as a form letter or a kind of a brush
16 off of his issues. So I think that that's
17 what he was interpreting from some of the
18 letters and the e-mails. So I think the phone
19 calls have been tremendously helpful.

20 **MS. MUNN:** I would expect them to be, and
21 I'm glad to hear that because a phone call, in
22 my view, has two real advantages. The first
23 is that you know it's a real person you're
24 talking to. Nothing that you'd get in the
25 mail is ever a real person. It's a piece of

1 paper. And in this case it sounds as though
2 you have the real team there so that it's
3 informing that there are several people
4 involved.

5 The other wonderful thing is the
6 ability for instant response to any question
7 you have. It's so difficult after the fact to
8 sit down and try to organize your thoughts
9 into a letter. So much simpler to ask a
10 question directly at the time it occurs to you
11 and have someone be able to respond.

12 **DR. WADE:** A third thing, if I might add, I
13 mean, we have to watch the trap to thinking
14 that the whole purpose of this is for us to
15 answer people's questions that we understand
16 and they don't. It could well be that they're
17 going to explain things to us that we didn't
18 understand.

19 **MS. MUNN:** Absolutely.

20 **DR. WADE:** And so I think we need to be very
21 careful in our words as to how we approach
22 this. It's not just do you have any
23 questions, stupid.

24 **MS. MUNN:** No, it's the personal exchange of
25 information.

1 **DR. WADE:** Yeah, maybe we misunderstood what
2 they were trying to say to us.

3 **MR. CLAWSON:** You hit it there when you said
4 the personal aspect because most of these have
5 been a miscommunication, and to be able to get
6 real time plus the personal touch of being
7 able to talk to somebody I think will make it
8 a lot better. I think that's great that we've
9 gone that extra route.

10 **DR. WADE:** I would imagine that will come
11 into this work group's recommendations. I
12 also think --

13 **MS. BREYER (by Telephone):** I agree with
14 that.

15 Oh, go ahead.

16 **DR. WADE:** Please go ahead, Laurie.

17 (no response)

18 **MS. MUNN:** Your turn.

19 **DR. WADE:** Go ahead, Laurie.

20 **MS. BREYER (by Telephone):** I just wanted to
21 add to that I agree that this is the personal
22 touch on the phone communications is so much
23 better for strengthening the relationship
24 between the petitioners, or even potential
25 petitioners, and NIOSH and I think that's

1 important. I think that relationship there
2 helps build trust and understanding what NIOSH
3 is doing for the petition whether it qualifies
4 or it doesn't qualify.

5 And I think you can see -- I don't
6 have a chart, but I wish I did have one
7 prepared, but I just started probably in this
8 role July of last year and that was right when
9 I started so I probably didn't start talking
10 to petitioners until a little bit later. But
11 if you go back and look at the petitions the
12 main ones that LaVon has discussed today, you
13 know, there was very, probably less
14 communication using phones and other means as
15 are all the current petitioners because a lot
16 of the current petitioners that we have that
17 are in the qualification phase or the
18 evaluation phase, and I go through and look at
19 those, those people have had a lot more phone
20 communication from earlier petitioners.

21 Like there are very few petitions that
22 are either in the evaluation phase or in the
23 qualification phase that either I have not
24 talked to or Denise has not talked to, and
25 probably LaVon has talked to a lot more

1 petitioners as well. And so I think we are
2 improving on that, and I think it's
3 interesting to look at probably how many post-
4 communications we had, you know, when the
5 program first started or when the SEC petition
6 process really kind of started off and what
7 we're really trying to do now to talk to
8 petitioners. Because I think there'd be a
9 clear difference between the number of phone
10 communications with somebody either at NIOSH
11 or Denise in the past and currently.

12 **DR. WADE:** Just an information question. Do
13 Laurie, Denise and you review the letters then
14 that go out?

15 **MR. RUTHERFORD:** Yes, we do, and I think
16 what Laurie said is very important point.
17 Laurie's been on, and I guess she's been in --
18 How long have you been in your
19 position now?

20 **MS. BREYER (by Telephone):** Just about July
21 of last year, but I would say I probably
22 started, kicking in and talking with more
23 people as they started becoming aware of that
24 role being there, probably a little bit later
25 in the fall.

1 **MR. RUTHERFORD:** If you look at when these
2 petitions were first brought in, you know,
3 this was well before her time, and I think
4 that the letters, you know, we're trying to
5 get more information, more quality information
6 in the letters, and we're also, as Laurie
7 mentioned the phone communications, in fact,
8 she's given me another little graph I'm going
9 to have to add to my list are the number of
10 phone communications per petition over time.
11 So I'm going to have to take a look at that.

12 **DR. WADE:** So I think making --

13 **MS. BREYER (by Telephone):** Well, that's
14 something I could do quickly, LaVon, as well
15 because I know even in, when I was looking at
16 the chart the other day and I was putting Xs
17 by all the people I had talked to, there are a
18 lot more Xs on the more recent petitions than
19 there were on a lot of the previous petitions.

20 **DR. LOCKEY:** Well, one of the things we did
21 at our last meeting in November was recommend
22 that NIOSH formally institute a policy that 30
23 days before a final decision is made that they
24 would make a formal second formal phone
25 consultation to look at the progress the

1 petitioner is making.

2 And I think Lew faxed you that summary
3 from that meeting on November 9th. Maybe you
4 can take a look at that. I think what we'll
5 add to our list if the working group concurs
6 is that as NIOSH is already doing a, add to
7 this a final phone consultation after the
8 final letter is sent out denying a petition.

9 And we'll also put in this a general
10 statement that having the SEC petition
11 counselors on board is definitely going to
12 benefit the whole process in regard to the
13 petitioners as two additional points if
14 everybody's agreed with that.

15 **MR. CLAWSON:** Do you feel since this is the
16 very last one or so forth like this that now
17 you're saying they just take notes on these or
18 are these actually tape recorded?

19 **MR. RUTHERFORD:** They just take notes. They
20 do not tape record them.

21 **MR. ELLIOTT:** On what? The close-out
22 interviews?

23 **MR. CLAWSON:** Yeah, well, the final --

24 **MR. RUTHERFORD:** Phone communications.

25 **MR. ELLIOTT:** You, yourselves, can go into

1 the --

2 **MR. RUTHERFORD:** SEC viewer.

3 **MR. ELLIOTT:** -- SEC viewer, and you can see
4 petitions. And you will see they're tracked
5 just exactly like our claims are tracked.
6 Every time a conversation is held with a
7 petitioner it's captured in a phone log, and
8 that's where these things are summarized.

9 **MR. CLAWSON:** Well, I just wanted to make
10 sure that we were documenting so that later on
11 they couldn't say, well, I brought this up and
12 nothing ever happened. That's all --

13 **MR. ELLIOTT:** What I think we need to look
14 at there is if in these close-out interview
15 interactions and how we're capturing that in a
16 phone log. If there's something there that
17 says to me we should send a letter back, you
18 know, something that stimulates
19 correspondence, we haven't done that yet. You
20 know, to document formally what the
21 interaction was in the close-out interview and
22 to respond to questions. I don't believe
23 we've had one of these close-out interviews
24 elevate itself to that, requiring that next
25 level of correspondence to happen, but that

1 could happen.

2 **DR. ROESSLER:** More written documentation of
3 these interaction sets available is important.

4 **MS. MUNN:** But not necessarily communication
5 with the claimants after it's happened.
6 Sometimes, you know, if everybody goes away
7 happy, then we will have done a good job of
8 communicating what went on. And I would
9 definitely hesitate to suggest the taping of
10 this particular kind of interaction. It
11 really does have a cooling effect for a lot of
12 people to know that they're being recorded.
13 It's --

14 **MR. ELLIOTT:** Well, we've chosen, and we
15 can't go there.

16 **MS. MUNN:** Yeah, I think we'd be unwise to
17 do that.

18 **MR. ELLIOTT:** We can't do that for legal
19 reasons. We can't do that for pragmatic
20 reasons.

21 **MS. MUNN:** Yeah, it just doesn't make sense.
22 Recording notes is by far, in my view, the
23 better.

24 **DR. LOCKEY:** Larry, when you talk about
25 close out interview you're talking about after

1 they've received the final letter? Is that
2 what you're talking about?

3 **MR. ELLIOTT:** After they, yes, after they
4 receive our determination of judgment that it
5 doesn't meet, doesn't qualify to evaluate.

6 **DR. LOCKEY:** We can add that, you're adding
7 this additional step. There will be a close
8 out phone --

9 **MR. ELLIOTT:** For those petitions which are
10 denied I think we should have a close out
11 interview once they receive the letter.

12 **DR. LOCKEY:** We'll call it that, a close
13 out.

14 **MR. ELLIOTT:** It mirrors what we do with a
15 claim.

16 **MR. CLAWSON:** Close out personal --

17 **MS. MUNN:** Telephone communication.

18 **MR. CLAWSON:** Yeah, communication because
19 I'll be right honest. I've read a whole bunch
20 of these, and I deal with this in a lot of
21 aspects. And I still get lost and fluttered
22 and you guys trying to, what are we trying to
23 say here. It is, for us that deal with it
24 even on a day-to-day basis, we understand the
25 process but for somebody that's walking in out

1 of the street it's, where are they going with
2 this. So I really do compliment you on the
3 personal touch if you handle it. I think that
4 would make it a lot better.

5 **MR. ELLIOTT:** One more to go.

6 **MR. RUTHERFORD:** SEC 00054. This is
7 actually a petition that was a multiple site
8 petition that the admin review panel reviewed
9 our decision on this one and concurred with us
10 that this petition should not qualify.

11 **DR. WADE:** So you're batting .250 here.

12 **MR. RUTHERFORD:** Actually, no, no --

13 **MR. ELLIOTT:** It's much better than that.

14 **MR. RUTHERFORD:** It's much better than that.

15 **DR. WADE:** I think it's also an interesting
16 topic for the work group, the admin review
17 panel. You've seen their work now, and you
18 comment upon it or suggest changes.

19 **DR. ROESSLER:** I was just going to say. I
20 think we owe a lot to this panel. They're on
21 the ball. They're helping the processing.
22 They're identifying things --

23 **MS. MUNN:** Very, very detailed, and that's
24 great.

25 **DR. ROESSLER:** Acknowledge their

1 contribution.

2 **MS. MUNN:** Absolutely. Thanks to the panel
3 that clearly do a thorough job.

4 **DR. WADE:** I think that's a great deal of
5 confidence to know that.

6 **DR. LOCKEY:** Well, step forward then.
7 Laurie, did you get a chance to review the
8 fax?

9 **MS. BREYER (by Telephone):** That is what I'm
10 looking at right now. I just picked it up.

11 **DR. LOCKEY:** What I would propose we do is
12 we'll add four points that we can add to our
13 recommendations, and I'll add them to the
14 recommendations that, our draft
15 recommendations from before. Are there any
16 other additional points that we should add to
17 what we had, what our graph of November 7th,
18 November 9th, 2006 says?

19 **MS. MUNN:** What are your additional four
20 points?

21 **DR. LOCKEY:** It would be a clear explanation
22 as to why an -- I may change the language, but
23 and I'll send this out for everybody's review
24 before we finalize the language and then
25 present it to the Board, a clear explanation

1 as to why an SEC petition has not qualified.
2 This explanation should be to the petitioner
3 in language that the petitioner would
4 understand --

5 **MS. MUNN:** In the letter.

6 **DR. LOCKEY:** In the letter, right.

7 And then the number second --

8 **DR. WADE:** Hey, Laurie, can you hear me?

9 **MS. BREYER (by Telephone):** I can.

10 **DR. WADE:** Could you get a hold of Denise
11 and get her a copy of that letter because I
12 think you're going to be on deck in a little
13 bit. Okay?

14 **MS. BREYER (by Telephone):** Okay.

15 **DR. WADE:** Thank you.

16 Sorry.

17 **DR. LOCKEY:** The second point would be that
18 there would be support documentation within
19 the file as to why a petition is denied. So
20 if there is an appeal made, when it goes to
21 the NIOSH panel at Howard's headquarters, they
22 will have the documentation available so they
23 can follow the process through.

24 The third point would be that there
25 would be a close out personal communication

1 with the petitioner with verbal explanations
2 as to why the petition had not qualified, and
3 the fourth is just general for comment that
4 the SEC petition counselors are going to be a
5 tremendous asset to potential petitioners in
6 understanding this process. So we are very
7 supportive of that, of those positions being
8 in place. Language, I'll modify that
9 language.

10 **MS. MUNN:** Yeah, a little verbiage.

11 **DR. LOCKEY:** What I'll do is I'll send that
12 out to, I'll add that to what we have already,
13 send it out to the working group, wordsmith
14 it, comment on it, get it back to me and then
15 we'll present it at the next Board meeting.
16 Is that suitable?

17 **DR. WADE:** Yes, fine. We do want to hear
18 from these young ladies as there might be some
19 other things.

20 **DR. LOCKEY:** Things that we're not aware of
21 that we can perhaps be helpful with. Sounds
22 like it's going much smoother.

23 **MR. ELLIOTT:** I think, you know, as we
24 evolved in our understanding and in working
25 with petitioners it became apparent to us that

1 a clear explanation is really where we want to
2 all be at the end of the day. And we missed
3 it in these examples you had before you today.

4 **DR. LOCKEY:** It avoids rework and a lot of -
5 -

6 **MR. ELLIOTT:** And I think if we look back at
7 some of the earlier ones, we might have been
8 guilty of such there, too, but we're doing a
9 much better job now.

10 **DR. WADE:** No matter how well you do it
11 though the vagaries of communication will be
12 such that there'll be misunderstandings unless
13 you can have the immediate feedback with the,
14 you know, using feedback techniques on the
15 phone to make sure it works. It's amazing how
16 two of us can't communicate to each other even
17 when we speak exactly the same jargon.

18 **DR. LOCKEY:** I find that sometimes I write a
19 paper, and I go back and read it six months
20 later, and I'm not quite clear on what I said.

21 **DR. WADE:** One of my favorite newspaper
22 quotes is an actual quote, was British left
23 waffles on Falkland Islands. The British left
24 waffles on Falkland Islands.

25 **DR. LOCKEY:** I had to think about that a

1 second, just think about that a few times.

2 **MR. ELLIOTT:** I really appreciate the
3 findings of the working group because I've
4 heard them and as you, I hope you have heard
5 today we've implemented some of your work
6 already, so much appreciated your efforts
7 here. It's made us much better.

8 **MS. MUNN:** Your efforts are appreciated,
9 too. We understand what you're going through.

10 **DR. LOCKEY:** Should we take a five minute
11 break?

12 **DR. WADE:** We could. There's one little
13 question I'd put before you. I think I
14 mentioned it once before. There has been this
15 question as to whether or not the names of the
16 members of the review panel should be made
17 public, and there's debate on that. I don't
18 know if this group has any sense of that. I
19 guess my inclination is to say yes to that
20 because it is public business; they're public
21 employees. I don't know if this group had any
22 strong opinion on that. It sort of falls
23 within your bailiwick.

24 **MS. MUNN:** How do the panel members feel
25 about it?

1 **DR. WADE:** I haven't asked them.

2 **MR. ELLIOTT:** Can I pose a counterargument -

3 -

4 **DR. WADE:** Sure.

5 **MR. ELLIOTT:** -- out of just the spirit of
6 throwing it on the table here. I would argue
7 that the names not be released. If I were one
8 of these people, knowing the calls that I take
9 on a daily basis with petitioners and
10 claimants, I think these people need to be,
11 their independence needs to be maintained.
12 And I guess in that light I'd say their
13 identity needs to be --

14 **DR. WADE:** See, and I would say, again, that
15 we should have this debate between us, but we
16 can have it in front of you as well. I mean,
17 these are senior government officials. They
18 understand the nature of their work. They
19 know how to deal with these things. I just
20 think on the altar of transparency I would
21 make this information public.

22 **MS. HOMOKI-TITUS (by Telephone):** Lew, can I
23 add a comment?

24 **DR. WADE:** Sure.

25 **MS. HOMOKI-TITUS (by Telephone):** And it's

1 not a comment in favor or against whatever you
2 all decide regarding releasing these people's
3 names. But I do want to remind you that their
4 decisions are supposed to be made solely on
5 the information that was used to make the
6 decision previously, so I'm not really sure
7 why the petitioners would need to be in
8 contact with them.

9 That really could lead to undue
10 influence on their decision because even if
11 they're not provided with like a written
12 statement or some new information, they are
13 hearing information that wasn't before the
14 decision maker in this case. So whether you
15 release the names or not, you're going to have
16 to be very careful about whether or not these
17 people can actually speak with petitioners.

18 This is supposed to be a on-the-
19 record, and by that I mean written, these
20 people are not allowed to come before the
21 panel and plead their case. So we would have
22 to be very careful about limiting the contact
23 the petitioners have even if they have their
24 names.

25 **DR. WADE:** I'm not proposing that we release

1 contact information. I'm not proposing that
2 there is contact. I'm just saying that their
3 names be out there. I think these people have
4 a right, the public has a right to know who
5 these review boards are, and who constitutes
6 these review boards. But it's an issue --

7 **MS. HOMOKI-TITUS (by Telephone):** But in
8 doing that you are opening them up to contacts
9 that we don't want them to have. They're not
10 allowed to have.

11 **DR. WADE:** They have to be instructed not to
12 have contact.

13 **MS. HOMOKI-TITUS (by Telephone):** Right, so
14 they would have to be instructed not to have
15 contact, and I think it would probably come
16 down to when these people can't, you know,
17 it's sort of are you setting these petitioners
18 up for more frustration because they're given
19 names but now they're not allowed to speak
20 with these people? So anyway, just a
21 consideration.

22 **MR. CLAWSON:** There's another consideration,
23 too. Let's make it clear, if you would have
24 been sent some information that pertained to
25 you or your family or whatever like that,

1 wouldn't you like to be able to know who the
2 people were? That they were qualified to be
3 able to make these judgments that they were
4 doing? Or is it just some people out there in
5 Never-Never Land?

6 **MS. HOMOKI-TITUS (by Telephone):** I think
7 their names are made public after the decision
8 is made.

9 Aren't they, Larry, when the memo was
10 sent?

11 **MR. ELLIOTT:** No.

12 **DR. WADE:** No, not at this point. I don't
13 mind it being after the fact.

14 **MS. HOMOKI-TITUS (by Telephone):** I thought
15 they were. I definitely wouldn't have a
16 problem with their names being made available
17 afterwards.

18 **MR. ELLIOTT:** The problem with that is that
19 if some of these people return for the next
20 review.

21 **DR. WADE:** Sure, there's a little bit of
22 variation. Well, if the work group wants to
23 speak, that's fine. If not, I mean, it's a
24 decision we can certainly make on our own.

25 **DR. ROESSLER:** I'd like to kind of bounce

1 off of Brad's idea. If the petitioner knows
2 the name and then knows that they are not
3 permitted to contact this person, that's a
4 sort of a frustrating situation. And I think
5 maybe very good communication with the
6 petitioner would be necessary to explain why
7 they can't.

8 **DR. WADE:** Well, they can try, there's
9 nothing that stops a petitioner from trying to
10 contact these people. They're free to do
11 that. The individual simply, the reviewer
12 needs to know that they cannot accept
13 information from petitioners, that's all.

14 **MS. BREYER (by Telephone):** I know occasions
15 where I've had people -- or one case, I guess
16 I should say -- where someone is asking for
17 the name of the appeals panel that was
18 reviewing a decision, and I don't know, you
19 know, I don't want to be presumptuous, but I
20 don't know if I would have told that person,
21 given them the names and then said but you
22 cannot contact them.

23 I think that person would have anyway
24 because that's a person who typically
25 inundates us with e-mails and phone calls as

1 it is. So I don't know if you'd be able to
2 stop people who were determined if you give
3 them the names beforehand.

4 **DR. LOCKEY:** If that panel is not supposed
5 to review additional information, in this day
6 and age I can essentially contact anybody I
7 want to contact just by e-mail.

8 **MS. BREYER (by Telephone):** Right.

9 **DR. LOCKEY:** I mean, it's very easy to do
10 that, and so if, in fact, there's supposed to
11 be a barrier between that panel and the
12 petitioner or the general public, and that is
13 defined in the regulation, then the only way I
14 know to keep that barrier in place is to
15 maintain their confidentiality.

16 **MS. BREYER (by Telephone):** I agree.

17 **DR. LOCKEY:** But if that's not written in
18 the regulation as such, it's not part of the
19 regulation, then that perhaps is a different
20 issue. I just don't know the regulation --

21 **DR. WADE:** Maybe I can read it.

22 **MS. HOMOKI-TITUS (by Telephone):** The
23 regulation does not specifically say that the
24 panel cannot be, the names of the panel cannot
25 be made public. But the regulation does say

1 that the panel has to make their decision
2 based on the information that was before the
3 decision maker. So therefore, if they speak
4 with someone who starts telling them about
5 their case history and maybe other incidents
6 that weren't involved, then you are
7 influencing the panel. So therefore, you all
8 can release the names, but you're not going to
9 allow these people to talk to the petitioner
10 or anyone else. They are to make their --

11 **DR. WADE:** Well, be careful of your words of
12 who you're going to allow what to do. I mean,
13 this has to be discussed. It's a policy call,
14 and we'll make the policy call.

15 **MS. HOMOKI-TITUS (by Telephone):** But that's
16 a legal call, Lew, whether or not they can see
17 other information because that's not what our
18 regulation --

19 **DR. WADE:** Whether they can see other
20 information is one thing. Whether they can
21 talk to people is a different issue. I mean,
22 we'd have to be very careful about the --

23 **MS. HOMOKI-TITUS (by Telephone):** Yes,
24 right, whether they can talk to people is a
25 legal question.

1 **DR. WADE:** Okay, we'll work it out.

2 **DR. LOCKEY:** I think this is something that
3 the, we'll have to work out internally with
4 legal input on...

5 **MS. MUNN:** If the current process is working
6 reasonably, I see no reason to change it. The
7 concern is twofold; one, with respect to
8 direct communication with these individuals
9 which should not occur. But the other side of
10 that coin is not just the names of the
11 individuals but the qualifications of the
12 individuals are important for the petitioner
13 to know and understand. It seems that what's
14 being done now appears to be working okay. I
15 see no, do we have a reason to consider
16 changing that at this juncture?

17 **DR. WADE:** Well, the issue's been raised,
18 you know, by individuals so that's what
19 triggers it. I think it's incumbent upon us
20 though as public officials to decide how the
21 public's business should best be done. So I
22 think it's reasonable to consider the issue.

23 **MR. CLAWSON:** Well, and also we look at all
24 the transparency that we have tried to do
25 through this whole process and in everything

1 that we do. And then we get to a final
2 appeals process, and it's like it's behind a
3 closed door. That's my only issue is because
4 people need, as Wanda said, to know the
5 qualifications or so forth like these people
6 really did understand the information that was
7 looking at them and so forth.

8 **MR. ELLIOTT:** What are the qualifications
9 that you feel the panel should be represented
10 or should be portrayed in an explanation of
11 the panel's, how it's constituted? I mean,
12 the only qualification about the panel members
13 given right at this point in time and has been
14 given is that they are not involved in the
15 program and have no involvement in this
16 program whatsoever, and they report to Dr.
17 Howard.

18 So I'm curious to know what you would
19 ask us to do about explaining qualifications
20 because we could add to our letter of
21 notification acknowledgement that the petition
22 is going to be reviewed by the administrative
23 appeal panel. We could say that the
24 qualifications of the panel include --

25 **MS. MUNN:** The qualifications that you've

1 stated are perfectly adequate from my point of
2 view. They're just, they indicate that these
3 are individuals of substance who --

4 **MR. ELLIOTT:** Senior, senior officials who
5 are not involved in the program.

6 **MS. MUNN:** Yeah, they clearly are
7 individuals who can review the material that's
8 set before them with some degree of authority.
9 And that's, what you said about them from my
10 perspective is more than adequate. It's quite
11 fine.

12 I just don't know how you set about
13 explaining what we understand very clearly to
14 the claimant which is that these people are
15 charged with the responsibility of looking
16 only at what our agency has already seen, and
17 they're not an appeals panel in the sense that
18 you may bring new information to them. I
19 don't know how you go about explaining that to
20 --

21 **MR. RUTHERFORD:** Well, I think one way we
22 could explain it to the claimant is, is if
23 they do have new information, that information
24 should be provided to us, NIOSH, and we will
25 re-evaluate the new information. Even a

1 petition that's been closed can be opened
2 again.

3 And new information, if new
4 information comes up, in fact, we had a
5 petition, and we were ready to make a
6 recommended decision that, you know, we
7 actually went through that process, and they
8 provided new information. At the end we
9 pulled back, the administrative closed, and
10 put it back through the process again. So I
11 think, you know --

12 **MR. ELLIOTT:** This is a comment, too, that
13 appears in our correspondence with
14 petitioners. We advise them that a petition
15 can be re-opened, that new information can be
16 submitted. I don't know that it appears as
17 often, as frequently, as appropriately as it
18 should. I think we can look at that and
19 probably do a better job. I don't think that
20 goes to solving Brad's issue.

21 **DR. WADE:** There's a fundamental conflict
22 between doing the public's business openly and
23 with complete disclosure, letting people know
24 who the review panel is versus the negative
25 side of creating pressure for those people or

1 important, but I would offer this, and Liz,
2 correct me if I'm wrong, but the appeal from
3 the petitioner on a denied petition for, that
4 won't make it to evaluation, goes to the
5 Director of NIOSH. The appeal doesn't go to
6 this panel. It goes to the Director of NIOSH.
7 And the Director of NIOSH turns and identifies
8 a panel of his choice.

9 And so it's, in my opinion, ultimately
10 the Director of NIOSH's decision on to name
11 the members of the panel publicly or not. But
12 be that as it may, I just want you to
13 understand it goes to the Director of NIOSH.
14 It does not go to this panel. The Director of
15 NIOSH could look at it himself and say, well,
16 you know, I don't know that I need to convene
17 a panel. I can see the record here, and I
18 think this doesn't qualify, or I think it does
19 qualify, and he can send it back to me and
20 make it happen.

21 **DR. WADE:** Well, I mean, the rule does have
22 some specificity as to the three-member panel.
23 I mean, it's all laid out. I mean, I have the
24 rule in front of me. We could read through
25 it. It's all quite clear.

1 **MR. ELLIOTT:** But it does come to the
2 Director.

3 **DR. WADE:** It comes to the Director, and the
4 Director then appoints three HHS personnel
5 appointed by the Director of NIOSH, who are
6 not involved in developing the proposed
7 finding. Will complete review within 30 days.
8 So it specifies, there's a lot of specificity
9 in it. The one fundamental debate is
10 transparency at what price, and you know, it
11 is the Director of NIOSH's call, and he'll
12 make it. But I was curious as to the work
13 group's thoughts on it.

14 **MR. CLAWSON:** It's like everything is kind
15 of split.

16 **MS. MUNN:** I think it's working.

17 **DR. WADE:** I didn't mean to waste time.

18 **MS. BREYER (by Telephone):** I may have
19 missed this comment. I was having some phone
20 difficulty and had to plug in a charger. But
21 I think looking at these points, the first
22 point about the working group urging that the
23 appeal process be completed within 30 days. I
24 think the person who can get to achieving
25 that, I hear more complaints on my end about

1 people complaining about the timeframe more so
2 than I do wanting to know who's doing the
3 appeal. So if I was to look at which one I
4 believe would bother more people, from what I
5 hear from petitioners that would be a bigger
6 issue.

7 **DR. LOCKEY:** Lew, let me ask you one
8 question about our discussion. If one of the
9 panel members or all the panel members are
10 being lobbied or e-mailed or contacted about a
11 particular petition and are being provided
12 information, not that they're choosing to
13 accept it, but it comes their way, does that,
14 would that disqualify them then from looking
15 at that?

16 **MS. BREYER (by Telephone):** I'm sorry. I
17 think some of that question got broken up.
18 Could you repeat it?

19 **DR. LOCKEY:** Yeah, my question would be is -
20 - this is Jim Lockey -- my question would be
21 in this review panel if their names were
22 publicized, it's easy to contact them just
23 through the web, okay? And they receive
24 information that is not part of the original
25 review process. Now they can say, well, I

1 can't look at this information. I can't read
2 it. I doubt whether in fact that would take
3 place. Would that put that particular review
4 person in a conflict of interest from actually
5 reviewing that SEC petition? Would they
6 automatically have a conflict at that point?

7 **DR. WADE:** See, we have to go back to the
8 rule. I mean, I don't think the rule in any
9 way speaks to information being provided to
10 these reviewers. What the rule basically says
11 is that the request may not include any new
12 information or documentation that was not
13 included in the completed petition. That's
14 all it says on the issue. I don't think it
15 excludes NIOSH providing information to the
16 panel.

17 As a matter of fact, the way it's
18 written -- but those are judgments that we
19 would have to make. And if we were to feel
20 that either the spirit or the letter of the
21 process was compromised by an information
22 dump, then I think we would take action.
23 Again, whether that's going to happen
24 frequently or not I don't know. It's all
25 about transparency versus the problems that

1 come with transparency.

2 **MS. HOWELL:** And one thing that I would
3 point out is just that if you were to release
4 the names obviously when these panels are
5 convened they're not necessarily always the
6 same three people. And a lot of times it has
7 to do with their availability. So then you
8 also get into the issue of if you release the
9 names and you have various petitioners who may
10 talk to each other and realize they have
11 different people on their panel.

12 That could create problems as well
13 with people feeling that, you know, one panel
14 was returned with the recommendation of
15 qualified versus another that was where the
16 denial was sustained by two different panel
17 groups. I just think that there's a lot of
18 different issues you have to consider here.

19 **DR. LOCKEY:** I would propose that this is a
20 working group. We discussed it, but I think
21 you need to resolve this.

22 **DR. WADE:** I might have been remiss in
23 raising it, but it was an interesting
24 discussion. It goes to sort of fundamental
25 value, and it sort of cuts --

1 **MR. ELLIOTT:** The appeal panel is part of
2 this process. I don't think it was out of
3 line.

4 **DR. WADE:** But it triggers all kinds of, if
5 we don't have our act together obviously; and
6 therefore, when we don't have our act together
7 it looks bad when we debate ourselves in front
8 of you guys.

9 **DR. LOCKEY:** I think that what you need to
10 look at is, from my perspective, is what are
11 the consequences if additional information is
12 given to the review panel. What are the
13 consequences based on how the rule is written?
14 Is that considered a conflict of interest at
15 that point? Has it been compromised or not
16 compromised?

17 **DR. WADE:** I think that --

18 **MS. MUNN:** Yes, it's in contradiction to the
19 rule. The rule clearly states thou shalt not.

20 **DR. WADE:** What does the rule say?

21 **MS. MUNN:** I said additional information was
22 in conflict to the rule. Additional
23 information being given to the panel is in
24 conflict to the rule.

25 **DR. WADE:** I don't read that. It speaks to,

1 the request may not include new information.
2 That's all it says. It doesn't --

3 **MR. ELLIOTT:** The appeal request.

4 **DR. WADE:** The appeal request may not
5 include new information.

6 **MS. HOMOKI-TITUS (by Telephone):** I can give
7 you the exact language. It says, "Petitioners
8 must specify why the proposed finding should
9 be reversed based on the petition requirements
10 and on the information that the petitioners
11 had already submitted. The request may not
12 include any new information or documentation
13 that was not included in the completed
14 petition."

15 **DR. WADE:** Right, that's what it says, yeah.

16 **MS. MUNN:** And that's what goes to the
17 panel.

18 **DR. WADE:** Other things could go to the
19 panel. I mean, you know, it doesn't, the
20 issue of whether or not NIOSH could have
21 provided panel members other information isn't
22 clearly answered by that statement.

23 **MS. HOMOKI-TITUS (by Telephone):** Lew's
24 right. This statement clearly says that the
25 petitioner may not provide any new

1 information, but that doesn't necessarily
2 limit NIOSH providing new information.
3 Although I think it has been interpreted in
4 the past to mean that the panel's supposed to
5 be looking at the record as it stood.

6 **DR. WADE:** And I think that's a fair
7 judgment as a matter of fact.

8 **MR. ELLIOTT:** And we have not to date given
9 any new information that a petitioner was not
10 aware of.

11 **DR. WADE:** And I support that. When you
12 look at what the rule holds you to, it doesn't
13 preclude that. It'll be fine. We'll work it
14 out, and the Director will have to make a
15 complex decision.

16 **IMPROVEMENT SUGGESTIONS**

17 **DR. LOCKEY:** Let's move on then. Is Denise
18 on the phone?

19 **DR. ROESSLER:** Don't we need a break?

20 **DR. LOCKEY:** Let's take a five-minute, we'll
21 take a five-minute break here, Laurie, if
22 that's all right with you.

23 **MS. BREYER (by Telephone):** Okay.

24 **DR. LOCKEY:** And then we'll, if you've had a
25 chance to go through the fax that we sent you

1 and comment on it, additions or deletions, and
2 we will discuss that. But we'll take a five-
3 minute break first. Thanks.

4 (Whereupon, a break was taken from 10:25
5 a.m. until 10:35 a.m.)

6 **DR. LOCKEY:** Welcome.

7 **MS. BROCK (by Telephone):** Hi, how are you?

8 **DR. LOCKEY:** Nice to hear your voice.

9 Thanks for joining us. We appreciate it.

10 **MS. BROCK (by Telephone):** Thank you for
11 having me. I'm sorry I was late. I was
12 assuming it was ten o'clock my time, and I did
13 have a hospital appointment today, and as soon
14 as I got in the door, my toll free line was
15 ringing with appointments.

16 **DR. WADE:** Well, we moved up the time,
17 Denise, so you are not at all late.

18 **DR. LOCKEY:** We're moving ahead and we're
19 trying to get our working group work done, and
20 maybe this working group can be sunsetted
21 after today.

22 Laurie, are you on the phone?

23 **MS. BREYER (by Telephone):** I am.

24 **DR. LOCKEY:** Denise, did you get a copy of
25 the, of our draft recommendations from

1 November 9th?

2 **MS. BROCK (by Telephone):** I did not.

3 **DR. WADE:** So I was under the impression
4 that you and Laurie were together. I'm sorry.
5 Do you have a fax number or fax we can --

6 **MS. BROCK (by Telephone):** I certainly do.
7 It is -- are you ready?

8 **DR. WADE:** Yes.

9 **MS. BROCK (by Telephone):** It is 6-3-6-2-8-
10 1-6-3-7-4.

11 **DR. WADE:** 6-3-6-2-8-1-6-3-7-4?

12 **MS. BROCK (by Telephone):** Yes.

13 **DR. WADE:** I'm on my way, but I need a copy
14 of the letter.

15 **DR. LOCKEY:** I'll go through the four things
16 so you understand what we're going to add.
17 What we generated November 9th was original
18 draft recommendations as to how to make the
19 SEC petition process more user friendly.
20 Based on the morning meeting, we came up with
21 an additional four recommendations. I can
22 review those with you now while this fax is
23 being taken care of.

24 **MS. BROCK (by Telephone):** Okay.

25 **DR. LOCKEY:** One was a clear explanation as

1 to why an SEC petition did not qualify. And
2 the explanation should be written in language
3 that the petitioner would understand. And
4 also with that should be support documentation
5 within the NIOSH file as to why that
6 particular petition did not qualify.

7 The third thing would be, and this is
8 what I think you're already doing, a close out
9 personal communication session with the
10 petitioner after they receive their final
11 letter in regard to their petition that was
12 denied. The purpose of that close out
13 communication was to try to explain the
14 reasons the petition was denied and be able to
15 answer questions, so a close out personal
16 session.

17 And then we have a fourth
18 recommendation was that bringing on board both
19 yourself as well as Laurie was going to be a
20 tremendous help to this overall process, and
21 it's going to make it much more petitioner
22 friendly. And we're thoroughly supportive of
23 that process.

24 So those are the four additional
25 things that will not be on the fax that

1 hopefully you will receive in the next moment
2 or so.

3 **MS. BROCK (by Telephone):** Somehow I missed
4 the first one. The second one you said the
5 reasons why it didn't qualify, and the third
6 was basically the close out personal
7 communication interview with the petitioner,
8 and then the fourth one would be Laurie and
9 myself. What was the first one again? For
10 some reason I didn't --

11 **DR. LOCKEY:** The letter that goes out --

12 **MS. BROCK (by Telephone):** The letter.

13 **DR. LOCKEY:** -- that denies the petition,
14 and it should be clearly explained as to why
15 the petition has been denied in petitioner-
16 friendly language.

17 **MS. BROCK (by Telephone):** Okay.

18 **DR. LOCKEY:** Not legalese language but
19 something that I would understand or I've read
20 some of the letters, and I have to read them
21 three or four times before I understand it.
22 So I'm not saying to make it more friendly in
23 that, but at least friendly on my level.

24 **MS. BROCK (by Telephone):** I sure felt that
25 it was very helpful with the petitioners that

1 Laurie and Bomber and myself were on recently
2 when we were talking about why it didn't
3 qualify. I thought it went very well, so I
4 think that that actually helped.

5 **DR. LOCKEY:** Laurie?

6 **MS. BREYER (by Telephone):** Yes.

7 **DR. LOCKEY:** Do you want to start, and then
8 we can start through this process and Denise
9 will have the draft I think relatively
10 quickly.

11 **MS. BROCK (by Telephone):** Yeah, it's coming
12 through for me now.

13 **MS. BREYER (by Telephone):** Would you like
14 me to start with going over these bullet
15 points as kind of an overview of some of the
16 issues that, you know, I hear or have seen?

17 **DR. LOCKEY:** Why don't you start with the
18 issues you've heard about first and then go
19 through the bullet points?

20 **MS. BREYER (by Telephone):** I get a wide
21 variety of calls I would say. I do get
22 individuals who already might have the SEC
23 petition form, and that's not clear to them,
24 and so they have questions about how to fill
25 out the form. I get individuals who don't

1 even know what the SEC process is so they may
2 have just heard the term SEC and want to find
3 out more information. So they're not really
4 to that point where they're having difficulty
5 with the process so they just want to find out
6 more information about what the SEC is and how
7 to go about potentially filing an SEC
8 petition.

9 I also get calls from people who are
10 currently petitioners, and they have questions
11 about a letter they received or anything else
12 that they might have a question about in
13 general. For instance, what's the next step
14 in the process because it can be a lengthy
15 process with the qualification stage, the
16 evaluation stage. Then they get the petition
17 evaluation form, and they might call and say,
18 okay, I don't exactly know what's going to
19 happen next again.

20 And we'll go over the Advisory Board's
21 role, their opportunity to speak to the
22 Advisory Board, what happens after the
23 Advisory Board, once they make a decision and
24 then the Secretary and then the Congress and
25 so forth, and we'll walk through that.

1 I also get a lot of calls about the
2 Department of Labor's involvement in the SEC.
3 And my vehicle for that is twofold. I'll
4 sometimes get a call about people who want to
5 know I just heard that an SEC class passed
6 for, you know, Y-12. Am I going to qualify
7 under that? And in those cases I refer them
8 to the Department of Labor and try to explain
9 to them the class definition and the SEC
10 qualifications. You have 250 days aggregate
11 and the 22 SEC cancers, then refer that on to
12 the Department of Labor.

13 Or I get calls by people who thought
14 they should have been in the class based on
15 the class definition and maybe the Department
16 of Labor told them they weren't in the class.
17 So that's kind of a rough estimate of the type
18 of calls I get. And I get the random calls
19 about people who just don't understand the
20 program, may not even have filed a claim, and
21 have seen my name on the internet and just
22 want to call and ask me what this whole, what
23 the program is. So I get a wide range of
24 calls, and I also call petitioners if I'm
25 asked to.

1 If like ORAU or LaVon have pointed out
2 something that they think might be confusing,
3 sometimes they'll e-mail me and ask me to
4 contact a petitioner and speak with them. I
5 also notify petitioners of working group
6 meetings and Board meetings. So that's kind
7 of the role that I play right now and kind of
8 the broad group of questions that I get on a
9 daily basis.

10 My general comment about I think that
11 would improve all of these type of questions
12 is communication, and I think everybody talked
13 about that at length this morning. But I
14 think there's really three stages. There's
15 the pre-petitioning process, and that's the
16 stage where people have not filed a petition
17 who might be thinking about it or they just
18 have general questions about the SEC.

19 Then there's the petitioning process
20 which is people who have filed an SEC petition
21 and just need help through that. And then I
22 think there's the post-petitioning process,
23 and that's maybe where people have questions
24 about the appeals process and what's going on
25 there. Or people, like I said, who just heard

1 that an SEC passed and want to know
2 information about where they stand or what
3 that means to their claim. So I think those
4 are kind of the three stages.

5 As far as the pre-petitioning stage, I
6 think that part of what Denise and I are going
7 to be doing are these SEC outreach meetings.
8 The goal of those meetings are to go to
9 facilities where someone might call us, you
10 know, call Denise and myself and say, hey, we
11 don't really understand the process. Maybe
12 you can come and explain it to us. And so far
13 we've had two requests, and Denise might get
14 into this as well, one of those being at
15 INEEL. And so we're going to try to do one of
16 these meetings, SEC outreach meetings, at
17 INEEL. I hope probably after the May Board
18 meeting, soon after that.

19 And then Denise got a request from
20 somebody for Santa Susanna which is out in
21 California. And so I think that might help
22 with communication is getting out there and
23 getting at kind of the grass roots level and
24 explaining to people what this is , what it
25 means. And part of the hard part is the SEC

1 obviously doesn't cover everybody, and I think
2 there's a lot of miscommunication about that
3 so I think that needs to get out there as
4 well.

5 I think having access to Denise and
6 myself, the more we can get that out there to
7 people in the pre-petitioning process the
8 better. I know since word has been getting
9 out about my role I've been receiving a lot
10 more calls. You know, some people who are
11 filling out the forms and get to a section and
12 they say I have no idea what this means, and I
13 can walk through that with them.

14 Or people who, I've had people who've
15 already gotten their petitions done and have
16 sent it to me just to look at, you know, to
17 say can you think of anything else I should
18 add or if I should organize it differently
19 before I submit it. And I think that's
20 helpful to people because it gives them a
21 starting point before they even feel like they
22 have to submit it and then go through a
23 process to have somebody that can help them
24 before that.

25 And I think that more information on

1 the web, I think we should put, Chris Ellison
2 and I have been talking about some
3 communication measures for the web, for
4 handouts to take to public meetings, whether
5 they be Board meetings or meetings that Denise
6 and I might go to.

7 And I should also clarify here that
8 there are several meetings, like this Hanford
9 meeting that we're at right now is to gather
10 information from workers for a current SEC
11 petition. So this is really more like a
12 worker outreach meeting for the purposes of
13 gathering information for a current SEC
14 petition where the SEC outreach meetings that
15 Denise and I are going to do are going to be
16 more on the pre-petitioning phase, and they're
17 going to be more SEC outreach meetings for
18 people who have not filed a petition but are
19 interested.

20 And then Denise and I are going to be
21 going to Los Alamos next week, and that's not
22 really going to be an SEC outreach meeting
23 either. That was one where someone invited
24 Denise and I to come out. So there's already
25 a group of union members, representatives, who

1 have already organized the meeting, and
2 they're just asking us to come out as guests
3 to that. And so I foresee Denise and I
4 fulfilling those types of roles as well.

5 And then obviously those are
6 communication areas that are in the pre-
7 petitioning phase, and I think that fits in to
8 get to the handout, bullet point number two,
9 that NIOSH has considered auditing the
10 audience in regard to the recognition of the
11 availability of the SEC petition process. I'm
12 not sure how we go about auditing the
13 audience, but I think that's an interesting
14 point.

15 I think the potential SEC audience is
16 huge because it can be anybody who has cancer
17 or someone could file as a representative.
18 They haven't had cancer, but they're filing on
19 behalf of a class. So there could be some
20 difficulties in auditing the audience, but I
21 do agree that we need to get out more so that
22 people do have a better knowledge of the
23 petitioning process. And I think that these
24 SEC outreach meetings can help with that.

25 **DR. LOCKEY:** Perhaps a better term would be

1 consider surveying the audience.

2 **MS. BREYER (by Telephone):** Yes, I'm sorry?

3 **DR. LOCKEY:** Maybe rather than audit,
4 surveying the audience.

5 **MS. BREYER (by Telephone):** Right, and we
6 had talked about doing that on some other
7 communication issues so I think that it could
8 be an interesting approach to see what's out
9 there. I know that --

10 **MR. ELLIOTT:** I didn't have any problems
11 with your language, should consider. I think
12 it offers us the opportunity to look at what
13 we might consider an audience to be. And I
14 think it's a segment of the overall audience.
15 I think maybe we can look at those people who
16 are contacting Laurie and Denise. And that
17 would be a segment of the audience, and we
18 could poll them, and we could understand
19 better. From that maybe we can make some
20 decisions about how to apply it on a broader
21 scale. We could define the audience
22 differently than that, of course. I found the
23 wording to be appropriate and welcomed it.

24 **DR. LOCKEY:** Okay, go on, Laurie.

25 **MS. BREYER (by Telephone):** And I also think

1 -- I kind of talked about the pre-petitioning
2 phase. I think on the petitioners, once
3 someone actually has filed a petition, we
4 talked about some of the letters that can go
5 out, and I'm working on phone calls as well,
6 especially when there's a unique issue. We
7 look at these as individual petitions. You
8 know, every petition has or can potentially
9 have something that's unique to that petition.
10 I would say that's going to be the case in
11 most of them. And I think the phone calls in
12 those instances will help.

13 And also on this sixth bullet point on
14 the handout that the letter should be reviewed
15 and made more audience-friendly as well as the
16 point that Dr. Lockey made to Denise this
17 morning when he (unintelligible) points of a
18 clear explanation of why they don't qualify
19 and the supporting documentation. I think
20 that's going to help in that phase. And
21 again, I think access to Denise and I also
22 will help petitioners in that phase of the
23 process.

24 The post-petitioning process, and I
25 don't know, there's not too much communication

1 that can go on except for explaining to people
2 the appeals process if that's what they're
3 calling about. Or they're calling about their
4 qualification under the SEC that involves
5 referral to the Department of Labor in that
6 instance. But I do think that that also ties
7 in with this last bullet point, consultation
8 with NIOSH.

9 I do have that Denise and I were in
10 ORAU, and we listened in to some phone calls.
11 And I know that's something that we're all
12 striving to do, and I think they are all
13 comprehensive and informative. I think as
14 Denise and I mentioned, the last few calls
15 that we participated in it just has really
16 turned around, I think, the view of the
17 petitioner who might have had a negative view
18 coming in or a misunderstanding coming in
19 because I think that's a really important
20 point, that eighth one, with these phone
21 calls.

22 So that's kind of the overview of my
23 comments on the communications, and what I
24 hear from the claimants, and how I think that
25 fits in with the bullet points, especially the

1 second, the sixth and the eighth bullet point
2 on here.

3 **DR. LOCKEY:** Comments?

4 **DR. ROESSLER:** I have a comment. My
5 reaction right now is that this Breyer-Brock
6 team is really a positive in this whole
7 program. Of course, we all know communication
8 is really the key to everything. And I look
9 at Laurie's academic background and her
10 knowledge of the SEC process. And I think the
11 Board has been familiar with her communication
12 skills, and she's very forward thinking. I
13 think this is a real good effort to have come
14 about. And then with Denise's experience with
15 workers, I think this is a real good team.

16 **MS. BREYER (by Telephone):** Thank you. I
17 really like that, the Breyer-Brock team.

18 **MS. BROCK (by Telephone):** Yeah, I like
19 that, too, B and B. It sounds pretty good
20 doesn't it, Laurie?

21 **DR. ROESSLER:** I had to look up your new
22 name on the internet, and then I saw that we
23 have the two Bs here.

24 **DR. WADE:** I just wouldn't give up top
25 billing so easily, Denise.

1 **DR. LOCKEY:** Laurie, do you have, is there
2 any changes you would make in our Board points
3 or additions you would make beyond what we
4 already talked about this morning, the four
5 additions that were put to these?

6 **MS. BREYER (by Telephone):** I think the
7 Board, the working group and everybody that's
8 just sitting in this meeting have a pretty
9 well, good understanding, I believe of the
10 issues so I think it really does boil down to
11 communications. And I think the letters, I
12 think the phone consultation calls that we do
13 or even just in our everyday phone
14 communication that we try to make that as
15 understandable as possible. And that we try
16 to focus it on each individual petitioner
17 which can be hard to do with the amount of
18 work that comes in, but it should still be our
19 goal.

20 You know, we might miss that mark
21 sometimes unfortunately because of our work
22 load, but I think our goal should always be to
23 try to reach that mark of being as
24 individually responsive to people as we can.
25 And I think that is what I heard the working

1 group, I heard as kind of the meat of the
2 working group's suggestions and what I read in
3 these bullet points.

4 **DR. LOCKEY:** Thank you, and we appreciate
5 your input.

6 Denise?

7 **MS. BROCK (by Telephone):** Yes.

8 **DR. LOCKEY:** Did you get a chance to review
9 what we had, our draft from November 9th?

10 **MS. BROCK (by Telephone):** I did. I went
11 over that as quickly as I could and was
12 listening to Laurie at the same time. And I
13 agree with Laurie. We actually get a variety
14 of phone calls each day, and it does seem that
15 since everything's on the bios or on the web
16 page that my calls are increasing as well.

17 And as soon as I walked in the door
18 this morning, the phone was ringing, and I had
19 a call. And it actually was an issue with a
20 claimant whose parent is deceased and had
21 several siblings as well. And it was in
22 reference to the Y-12 SEC. And I think Laurie
23 may have gotten a few of these calls as well
24 where there are some issues with the
25 Department of Labor and how these cases are

1 actually being assessed with the 250 days and
2 where they were actually placed at within the
3 facility.

4 So this claimant was very aggravated
5 and thought that they belonged in a special
6 exposure cohort. So they asked if they could
7 e-mail me a letter that they had written, and
8 I told them I'd be happy to take a look at
9 that. Beyond that, again, I get a variety of
10 calls from anywhere from somebody interested
11 in filing an SEC.

12 As Laurie said we've got someone that
13 worked at Santa Susanna, also at Thomas
14 International which as we looked was just a
15 beryllium site. Laurie and I talked about
16 that. She had found that it looked like it
17 was originally designated as a Department of
18 Energy. And then people that maybe call and
19 say, well, if an SEC's approved, how does that
20 affect my case.

21 Maybe they have one of the 22 cancers,
22 maybe they don't or even if they've been
23 denied, then their concern is, well, I've been
24 through dose reconstruction, but we matched
25 the criteria. How will that affect my case?

1 And so there's just a multitude of
2 calls and I think it's very helpful to have a
3 couple of different people to go to, and so I
4 think that it's very positive. And one of the
5 things that I thought was just amazing was the
6 calls that we've had with the NUMEC
7 petitioners because, as Laurie said to you,
8 sometimes folks can get a feeling of distrust
9 or think that it's such an adversarial
10 process.

11 And I think that all of us bring
12 something different to the table, and we all
13 help each other, and I think it makes a very
14 good team. And I know in that particular case
15 with the petitioners, I feel that they're very
16 happy, very pleased. Bomber, you have to
17 include LaVon in that, too, because he worked
18 so hard on, and that was a unique situation as
19 well because there were actually two
20 petitions.

21 Originally neither one had qualified
22 and since that time they've both qualified. I
23 think they're actually talking about merging
24 that into one. So the petitioners actually
25 feel very comfortable, and their trust factor

1 has increased. And I thought it was very
2 helpful.

3 **MS. BREYER (by Telephone):** Well, I think
4 from having someone like LaVon who has a
5 technical background, obviously, I think the
6 reason I can build a relationship with people
7 as far as on the trust issues and background
8 information by having someone like LaVon who
9 gets on the call as well, and when someone
10 brings up technical issues can answer those
11 technical issues and be informed and
12 knowledgeable about what's going on really
13 helps in those situations.

14 **MS. BROCK (by Telephone):** He's kind, too,
15 the way he, he makes it easy for them to
16 understand, I mean, because a lot of it is
17 very difficult, you know, but the way he
18 speaks to them. I think that really,
19 honestly, I think that makes a big difference
20 with folks.

21 **MR. RUTHERFORD:** Thank you.

22 **MS. BROCK (by Telephone):** Everybody's
23 laughing. Is LaVon usually not nice?

24 **MR. CLAWSON:** No, no, his head is swelling
25 so much we're having to give him more room.

1 No, LaVon does a very thorough job, and I've
2 told him many times when he's done processes,
3 he's a valuable asset to this.

4 **DR. ROESSLER:** Denise, I have a question,
5 Gen Roessler. I was just looking at the
6 website, and I do like the bios for both you
7 and Laurie. You have a phone number listed.
8 I'm wondering if it would be helpful to you to
9 have your e-mail address listed so that you
10 could take these responses at your
11 convenience. I kind of figure with the phone
12 number people could contact you at any hour of
13 the day.

14 **MS. BROCK (by Telephone):** And they do,
15 believe me. I've had calls at three and four
16 in the morning, and I just have to turn the
17 ringer off. And you're right; that would be a
18 very good idea. Because sometimes, just for
19 example, I believe Laurie had e-mailed
20 somebody to try calling me, and it was on that
21 toll free line, and obviously, I was tied up
22 with a claimant.

23 So that probably would have been the
24 best thing was that if you couldn't get me,
25 and she did get me through my home phone which

1 was fine. But sometimes all three phones will
2 ring at once, and then you've got e-mail
3 coming in, too. So that probably would be a
4 good idea.

5 **MS. BREYER (by Telephone):** Yeah, we could
6 also, I know Denise was trying to get a CDC e-
7 mail set up.

8 **MS. BROCK (by Telephone):** Uh-huh.

9 **MS. BREYER (by Telephone):** We can always
10 put the ocas@cdc.gov e-mail for yours as well,
11 and then have like Chris did the other day
12 when somebody had sent an e-mail to you,
13 forward it on --

14 **MS. BROCK (by Telephone):** Yeah, forward it.

15 **MS. BREYER (by Telephone):** -- to your
16 personal account which is an option.

17 **MS. BROCK (by Telephone):** (Unintelligible)
18 McCarthy does that for me as well. And I have
19 people will fax or they'll call and say, well,
20 what is your e-mail address, but I do notice a
21 huge influx of calls. And I think, Laurie,
22 you probably do, too, don't you now that
23 that's on there. I've gotten several more
24 phone calls actually. And you're right. They
25 come in at all hours, day and night, doesn't

1 make any difference.

2 And as far as the outreach meetings,
3 Laurie's touched on that, too. As she said
4 we've got a meeting in New Mexico, and then
5 we've got INEEL and a lady had called actually
6 interested in handling a petition for the
7 Santa Susanna. And I expect we'll probably
8 get more calls in reference to that because
9 there are several people inquiring if, you
10 know, like Fernald. Some people oddly enough
11 don't even realize there's been a petition
12 filed, and they'll ask about it. So I expect
13 we'll get a lot more calls that way.

14 **MS. BREYER (by Telephone):** And I think
15 another good thing is the Santa Susanna lab,
16 if we go out there for that site. Wasn't that
17 the site where we thought there might have
18 been several other AWEs in the area that we
19 could target all at once while we were out
20 there? I think we had looked and there were
21 several other labs or facilities in the area
22 so we could go out there and it wouldn't
23 necessarily, not just for Santa Susanna but,
24 you know, other facilities in that area.

25 **MS. BROCK (by Telephone):** Right.

1 **DR. LOCKEY:** Very good. Comments? Any
2 other comments from the working group or
3 NIOSH?

4 **MR. ELLIOTT:** We're glad to have them on
5 board.

6 **DR. WADE:** Well, I hate to add to this sort
7 of love fest, but I feel obliged to make a
8 comment. I think it's terribly important that
9 we do all these mechanical things as well as
10 we can. And no matter how well we do that,
11 we'll always slip. The only thing that is our
12 last line of defense really is that when our
13 people fundamentally care about the people
14 that they're serving. And in this case it's
15 true it states from Bomber to Denise to
16 Laurie. They care about the people they're
17 serving; and therefore, they'll get the best
18 of this that they can. But we appreciate your
19 guidance in how to do it better, but we offer
20 you our best when we offer you this team.

21 **DR. LOCKEY:** It all comes down to people,
22 and when you have good people, the program
23 will be a good program.

24 **MS. MUNN:** You are all marvelous, and Boomer
25 is a saint.

1 **MR. ELLIOTT:** You just got re-nicknamed.

2 **DR. WADE:** It's getting a little silly here.

3 **DR. LOCKEY:** Well, then to adopt something
4 that Lew uses all the time, step forward, step
5 forward. What I propose is that I will add
6 the names from November 9th to that summary.
7 And then I will put an additional page on this
8 from today's meeting with the four additional
9 recommendations that we have and send that out
10 for the Board to review, give you a chance to
11 comment on it and give it back to me. And
12 then we will present that to the Board at our
13 next meeting as it be formally adopted.

14 **MR. CLAWSON:** It sounds good.

15 **MS. MUNN:** Will that be on our April agenda
16 for the phone call --

17 **DR. WADE:** If we make it, that's next week.

18 **DR. LOCKEY:** I'll have it out this
19 afternoon.

20 **DR. WADE:** Well, if so, we have room for it.

21 **DR. LOCKEY:** I will have it out this
22 afternoon because I'd like to get this working
23 group, you know, at least we can say we have
24 one working group that --

25 **MR. CLAWSON:** You know, one thing I would

1 like to throw out with this worker outreach
2 and stuff, it'd be nice to be able to know of
3 some, you know, the ones that are coming up
4 and so forth like that so that if we could
5 participate or be able to listen or something
6 like for us it gathers a lot of information
7 for us and makes it nice for us to be able to
8 perform our jobs a little bit better.

9 **MR. ELLIOTT:** We are, we heard you before on
10 this Brad, and it's a very valid point that
11 you make. And we have taken steps to make
12 sure that Board members are notified of our
13 activities that occur in their areas or the
14 Board at large knows what's going on in case
15 they want to participate. So I hope you're
16 seeing these things come through now.

17 **MR. CLAWSON:** You are right. I saw it in
18 Hanford and so forth like that, and you know,
19 that's one being on that group I really would
20 have liked to have attended. Unfortunately,
21 we had some other things that came up, but and
22 I do appreciate that.

23 **DR. WADE:** Well, I think we're done. Thank
24 you very much for good work.

25 **DR. ROESSLER:** Good job.

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DR. LOCKEY: Thank you everybody.

DR. WADE: Thank you on the phone.

MR. ELLIOTT: All done for this working
group.

(Whereupon, the meeting was adjourned at
11:03 a.m.)

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CERTIFICATE OF COURT REPORTER**STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of March 28, 2007; I, Steven Ray Green, then transcribed the proceedings, 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 2nd day of August, 2007.

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