

National Institute for Occupational Safety and Health (NIOSH)

Worker Outreach Meeting for the Idaho National Laboratory (INL)

Meeting Date: May 28, 2008, 10:00 a.m.

Meeting with: Representatives of United Steelworkers of America (USW) Local 652, Amalgamated Transit Union (ATU) Local 1517, International Brotherhood of Teamsters Local 983, Security Operations Specialist Association (SOSA), International Association of Fire Fighters (IAFF) I-83, Idaho Building and Construction Trades Council (BCTC), and other interested parties, Red Lion Hotel, Idaho Falls, Idaho

NIOSH Worker Outreach Team

Laurie Breyer, JD, National Institute for Occupational Safety and Health (NIOSH) Office of Compensation Analysis and Support (OCAS), Special Exposure Cohort Petition Counselor

Peter Darnell, NIOSH OCAS, Health Physicist

Jodi Jenkins, Oak Ridge Associated Universities (ORAU) Team, Health Physicist and Document Owner of the Idaho National Laboratory (INL) Site Profile

Brian Gleckler, ORAU Team, Health Physicist and Lead Dose Reconstructor for INL claims

Mark Lewis, Advanced Technologies and Laboratories (ATL) International, Inc., Senior Outreach Specialist

Mary Elliott, ATL, Technical Writer/Editor

Also present:

Bradley Clawson, Advisory Board on Radiation and Worker Health (ABRWH)

Proceedings:

[Name redacted], Coordinator of the Worker Health Protection Program and Safety & Health Representative for United Steelworkers of America (USW) Local 652, opened the meeting at 10:00 a.m. by welcoming the representatives of labor organizations representing workers at the Idaho National Laboratory (INL) and the National Institute for Occupational Safety and Health (NIOSH) and its contractors. He stated that the NIOSH team was present to discuss the INL Site Profile and the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). He introduced Mark Lewis of the NIOSH Worker Outreach Program.

Mark Lewis thanked [Name redacted] for hosting the meeting and expressed his appreciation to the union leaders for their attendance. Mr. Lewis described his background as a long-time union employee at the Portsmouth Gaseous Diffusion Plant. He is now retired and serves as a liaison between NIOSH and labor organizations representing workers in the nuclear weapons complex. He said that his primary role in the NIOSH Worker Outreach Program is to reach out to labor organizations to provide a venue for worker input into the various components of the EEOICPA process. He asked everyone to introduce themselves before turning the meeting over to Peter Darnell of the NIOSH Office of Compensation Analysis and Support (OCAS).

Mr. Darnell described his background, stating that he began his career as an electrician in the U.S. Navy in submarine systems before working at commercial power plants and for the U.S. Department of Energy (DOE) at the Fernald site.

Mr. Darnell gave a brief history of NIOSH and described NIOSH's role under EEOICPA.. NIOSH conducts radiation dose reconstructions for Part B cancer claims for workers from DOE or AWE sites, evaluates SEC petitions, and provides staff support for the Advisory Board on Radiation and Worker Health (ABRWH or the Board). Most of the information that NIOSH uses in the dose reconstruction process comes from the U.S. Department of Labor (DOL) and DOE. NIOSH conducted an epidemiological study at INL that was used in developing the site profile.

To expedite the claims process, NIOSH uses an efficiency process to put the workers' cases into one of three categories, based on their work locations, job classifications, and available dose records: (1) workers that are close to a 50% probability of causation (POC), or close to compensability; (2) workers who are substantially below 50% POC; and (3) workers who are substantially above 50% POC. A worker's dose reconstruction provides the information that DOL uses to decide whether the claim is compensable (greater than 50% POC).

Mr. Darnell presented an overview of the dose reconstruction process:

- NIOSH receives the case from DOL.
- NIOSH requests the worker's exposure records from DOE and assigns the case to a dose reconstructor who reviews the data in the DOE records.
- The claimant is interviewed using a computer assisted telephone interview (CATI) and is sent a report to verify the information.
- The dose reconstructor uses the DOE records, the CATI information, and the site profile to conduct the dose reconstruction, then sends a draft dose reconstruction report to the claimant for review.
- A closeout telephone interview with the claimant ensures that no information has been overlooked. If the claimant agrees that the dose reconstruction includes all relevant information provided by them and they have no additional information to offer, he or she signs the OCAS-1 form.
- After receiving the signed form, the NIOSH team prepares the analysis record and sends the case back to DOL with the compensation recommendation.
- DOL makes the final decision on compensability.

Mr. Darnell stated that the overestimate is used when a worker's information (medical records, dose records, incident reports, and the CATI interview) indicates that he or she likely would not have received enough lifetime radiation dose to reach a 50% POC. He cited the example of a firefighter who may have been in and out of every building on site. Using the overestimate, the firefighter would be given the maximum dose of anyone working in those areas to try to achieve the highest possible POC. The dose reconstruction is complete if the POC remains below 50%.

[Name redacted] inquired if compensation is automatic when the POC is above 50% using an overestimate of dose. Mr. Darnell replied that if the overestimate produced a POC over 50%, the claim is refigured by taking away the higher doses. If the POC is still over 50% using the more

realistic doses, then DOL may compensate the claim. He stated that when either the underestimate or the overestimate is used and the resulting POC is between 45 and 52%, all of the claimant's information is used to reach an estimate that is as precise as possible (best estimate).

[Name redacted] stated that he knew of one individual's case in which the POC had been 49.46%. The claim was re-examined after a review determined that a certain radionuclide was not considered and the POC decreased to 36%. When [Name redacted] asked Mr. Darnell to explain why the POC decreased on the second claim, he responded that due to the large volume of claims that were originally anticipated, the Act allows NIOSH to use efficiency methods in order to process claims more expeditiously. He said that the claim in question was likely processed the first time using an overestimate, which would probably have assigned a higher dose than the worker could possibly have received.

[Name redacted] asked how dose reconstruction could be performed for a worker whose dose is not available – for example, a group of firefighters who responded to an accident in a building on site and were exposed to radiation but may not have been monitored. Mr. Darnell asked if he was talking about the incident in SL1 and [Name redacted] replied that was one instance.

Mr. Darnell said that he would address [Name redacted] question after he finished his answer to [Name redacted]. He stated that if an overestimated claim within the range of 45 to 52% is reopened, the second dose reconstruction must be calculated as a best estimate using all available information or using an extra set of statistics. The likely reason that the POC decreased to 36% after the second dose reconstruction is that the overestimate uses a much higher dose than the worker actually would have received. Since the second dose reconstruction uses more exact data, the result is a lower and more realistic estimate of the dose that the worker actually received.

[Name redacted] of the Queens College Worker Health Protection Program asked Mr. Darnell if factors such as duration of work, period of exposure, and type of job are used to determine the dose estimate. He replied that those factors are considered, along with actual dose records, medical records, and other information. She asked if values were put into a specific computer formula, to which Mr. Darnell replied that there are many calculations that are part of the dose reconstruction. When asked if individual information is used in every instance, Mr. Darnell replied that the internal dose on an overestimate could be based on a conglomeration of up to 28 radionuclides.

Brian Gleckler, the principal dose reconstructor for INL, stated that the number of best estimate dose reconstructions has increased over time. Many of the early cases in the 45-52% range were done using overestimates initially, so when one of those cases comes back for a re-work the POC often decreases. Most of the newer cases are being done using best estimates, so the chance of the POC decreasing for a second dose reconstruction is minimal. Mr. Darnell stated that when a worker has a long employment history at a site, the dose reconstruction is sometimes done using an underestimate of the worker's dose. If the POC is greater than 50% using the underestimate approach, the dose reconstruction is complete.

Mr. Darnell returned to the issue raised by [Name redacted] regarding firefighters responding to incidents without proper monitoring. NIOSH must rely on available records for incidents as well as worker input, but even so, most dose reconstructions are done using a very high overestimate. Mr. Darnell stated that other factors such as age at first exposure and age at diagnosis are taken into account – for example: prostate cancer that is diagnosed at an advanced age will likely have a low POC because it is very common in the general population.

[Name redacted] asked if compensation had been made for any claims for prostate cancer that had not spread to other organs. Mr. Darnell responded that he had seen a few prostate cancer claims approved, although the chance is small. He added that he knew of cases in which workers that were present during criticality incidents had made claims for prostate cancer but were denied because of their age at diagnosis. Best estimate dose reconstructions are based on individual factors to the degree that they are available, but that is not the case with over- and underestimates.

An unidentified attendee asked if a claim with a POC less than 45% had a chance of being compensated. Mr. Darnell said that DOL makes the call whether a case is compensable, not NIOSH. Ms Breyer commented that a case may be reopened if additional primary cancers are reported to DOL. In these cases, the POC generally increases but still must be greater than 50% to be compensable.

[Name redacted] asked if the radiation dose that a worker receives while working on contracts for the U.S. Department of Defense (DOD) is added to the doses received while working on DOE contracts. Mr. Darnell replied that the DOD dose is excluded from EEOICPA because it is compensated under another law.

[Name redacted] commented that more workers may have been compensated if EEOICPA had existed earlier. She said that many workers who have not been to a doctor for years go through the Medical Screening Program and learn for the first time of an illness that they may have had for years. She asked if the program takes into account that the worker may have had the illness before the diagnosis. Mr. Darnell responded that the energy employee's age at diagnosis is one of the key factors in the IREP (Interactive RadioEpidemiological Program) used by DOL to determine the POC. Ms. Breyer said that she is not aware of a medical test that can determine how long a disease has been present before diagnosis.

The representative of the International Brotherhood of Teamsters Local 983 stated that the majority of his union's members do not go through the screening before they retire at the age of 65 or 70. Ms. Breyer stated that Mr. Darnell had used prostate cancer as an example, but a claim may be filed by workers and former workers at any age.

[Name redacted] commented that workers should take it upon themselves to seek regular medical checkups during their careers so that they become aware of medical conditions earlier. He added that it is important for workers to be aware of EEOICPA so they can file claims at any stage of their careers if they become ill. Mr. Darnell said that it is generally the case in occupational illness programs that illnesses become more prevalent as workers age.

[Name redacted] asked how NIOSH reconstructs radiation doses for deceased workers. Mr. Darnell responded that the survivor(s) can file an EEOICPA claim on behalf of the deceased worker, but DOL still requires a medical diagnosis of cancer for a Part B claim and verification of employment. The dose reconstruction is performed in the same manner as a claim by a living energy employee except that the CATI interview is done with each survivor.

Mr. Gleckler revisited the topic of age at diagnosis. He explained that cancers have a specific latency period that is typically 10 to 15 years after the primary exposure to radiation, which is probably a more relevant factor in the POC calculation than the possibility of the illness having been diagnosed a few years earlier.

[Name redacted], of the Worker Health Protection Program for INL, said that he had referred workers with prostate cancer to DOL to file EEOICPA claims so they could get a filing date (as a starting point to have medical expenses paid) in the event that the cancer spread to other organs at a later date. Mr. Darnell stated that only primary cancers are considered in dose

reconstructions, but it is also possible to calculate the radiation dose for an unknown primary cancer by considering the secondary cancer diagnosis. [Name redacted] asked if he was doing a disservice by encouraging someone to file a prostate cancer claim, since he knew of none that had been compensated. Ms. Breyer responded that prostate cancers have been compensated, but reminded him that prostate cancer claims are not eligible to be included in an SEC class. Those claims still have to undergo dose reconstructions. Jodi Jenkins, a dose reconstructor on the ORAU Team, added that a separate dose reconstruction is done for each additional primary cancer diagnosis and the results are combined. Mr. Gleckler stated that the best approach is to reopen the claim for additional cancers and let the program sort it out.

[Name redacted] asked why the DOD dose is not considered in the dose reconstruction calculation. Mr. Darnell responded that only the DOE dose is eligible under EEOICPA; radiation doses received under DOD contracts and at commercial nuclear facilities do not count. Other compensation programs may provide compensation for radiation exposure at DOD facilities.

[Name redacted] asked if NIOSH considers possible exposure scenarios when there is a high incidence of a specific cancer among a specific group of workers whose exposures are not documented – for example: five of six firefighters with undocumented exposures to heavy alpha emissions diagnosed with lung cancer. Mr. Darnell replied that if there is no information on an incident, the best path forward may be to file an SEC petition for the group. There are limitations to the information that NIOSH has, so the worker outreach meetings are an excellent opportunity to get additional information from the workforce. The information that NIOSH gets from workers at the meetings may open up consideration for new issues and questions. He encouraged those in attendance to send any useful information to NIOSH and shared contact information for submitting it.

[Name redacted] asked whether questions about chemical exposure should be directed to DOL. Mr. Darnell responded that those questions fall under Part E, which is handled solely by DOL. Ms. Breyer added that workers who are eligible to file claims under Part B should also file for compensation for chemical exposures under Part E.

[Name redacted] asked whether NIOSH will be affected by the Inspector General's inquiry into EEOICPA. Ms. Breyer responded that there is no way of knowing until findings are issued or the law is changed. Mr. Darnell added that NIOSH has responded to suggestions by the Government Accountability Office (GAO) to make the program more favorable to claimants. The Advisory Board provides oversight to the program, and the Board's contractor reviews NIOSH's work to assure that it is in the best interest of the claimants.

[Name redacted] asked if the dose reconstructors considered that in the early days the workers might reach their dose limits and then be told that the doses would be adjusted so they could go back and finish their jobs. Mr. Darnell replied that depending on the dose reconstruction approach, it would be considered if it was in the information from the CATI. He said that NIOSH is aware that there is not always good dose information from the early days, so often the worker is given the weekly limit for every week, which results in the worker's dose being overestimated. [Name redacted] responded that when an employee burned out, he was transferred to a "clean" area where he might get even more radiation. Mr. Darnell replied that some of the SECs for classes of workers in the early years (1940s and 1950s) were recommended for inclusion in the Cohort because accurate records are not available for NIOSH to perform dose reconstructions with "sufficient accuracy." [Name redacted] responded that the practice continued even into the 1960s.

Mr. Darnell introduced Ms. Jenkins, the document owner of the INL Site Profile, to make a presentation on the site profile and the revisions that have been made to it as the result of worker comments.

Ms. Jenkins stated that the INL site profile contains the *Introduction*, which briefly describes the use of the document in EEOICPA dose reconstruction, and five other sections that provide dose reconstructors with site-specific technical information of the workplace facilities, activities, processes, technology, and events, as well as sources of radiation and potential exposure scenarios. Dose reconstructors also consider a worker's individual information, such as film badge readings, medical X-rays, bioassay results, incident reports, co-worker data, and personal work history information from a telephone claims interview. The site profile is a "living document" that is revised as new information becomes available and also through a regular biennial review process.

NIOSH and its contractor team have conducted three previous INL worker outreach activities to discuss the site profile with affiliated local unions. On April 28, 2004, NIOSH held two meetings on the site profile: one with the Idaho Building and Construction Trades Council (BCTC) in Pocatello and a second with representatives of Paper, Allied-Industrial, Chemical and Energy Workers (PACE) Local 8-652, Amalgamated Transit Union (ATU) Local 1517, Security Police and Fire Professionals of America (SPFPA) Local 3, and International Brotherhood of Teamsters Local 983 in Idaho Falls. The worker outreach team conducted another meeting with the Idaho BCTC on October 11, 2006 to discuss the completed site profile. Ms. Jenkins stated that worker input from those meetings resulted in several changes to the site profile, as did a subsequent biennial formal review. All six sections were revised again in 2007 to annotate references and to attribute statements to the appropriate parties.

Ms. Jenkins gave a brief summary of the five sections that are used to determine an EEOICPA claimant's radiation dose:

- *Site Description* provides site-specific technical information of the workplace facilities, activities, processes, technology, and events used in the dose reconstruction process. INL played a major role in early reactor research and development from the time it began operations in 1949. The site has operated 52 reactors as well as fuel handling and reprocessing, and radioactive waste storage and disposal facilities. INL is a large, complex site with many independent technical areas, contractors, goals, and missions.

Worker comments resulted in these changes to the *Site Description*:

- Added information to Section 2.3 for Idaho Nuclear Technology Engineering Center (INTEC), on Fuel Processing Facility (CPP 601/602), Fuel Storage Facility (CPP 603), High Level Liquid Waste Underground Storage Tanks (Tank Farm), Waste Calcining Facility-1 and New Waste Calcining Facility, the Florinel Dissolution Process and Fuel Storage Facility.
- Added a new sub-section, Ancillary Facilities, to Section 2.3 to include Process Improvement Facilities (CPP 620 and 637), Hot Pilot Plant (later the Headend Processing Plant, CPP 640), and Remote Analytical Facility (CPP 627)
- Added information to Section 2.7.1 Materials Test Reactor, Section 2.7.2 Engineering Test Reactor, and Section 2.11 Test Grid III

Two additional changes to the *Site Description* are not the result of worker comments.

These include the addition of eight new references and Table 2-3 showing the common radionuclides of concern for the reactor areas.

- *Occupational Medical Dose* provides guidance on the amount of dose to assign for occupationally required X-rays. This section discusses the frequencies of X-rays during various time periods in the history of INL. The primary source of information on medical X-rays is *Idaho National Engineering and Environmental Laboratory (INEEL) History of the Occupational Medical Program (OMP) X-ray Process*, a report prepared in 2002 by Bechtel BWXT Idaho at the request of NIOSH. An examination of case files indicated no response from DOE in the area of occupational X-ray records for any era.

Changes to this section include the incorporation of Attachment 3A into the text of the document, change in the treatment of eye and brain dose, and the addition of Table 3-3 as the result of a formal internal review.

- *Occupational Environmental Dose* discusses the ambient environmental levels of external and internal radiation dose. Sources of exposure include stack emissions, ground level releases, criticalities, and waste storage areas. This section provides dose reconstructors with specific information for assigning environmental doses for each year of INL operation.

Recent changes include the addition to Section 4.3 of information on how TLD (thermoluminescent dosimeter) results were chosen, as well as the addition of environmental intake data and TLD data for 2003-2005.

- *Occupational Internal Dose* provides dose reconstructors with information for calculating a worker's internal dose based on bioassay results. The bioassay program at INL began in 1951. Urine was tested for gross beta and gamma dose, and then analyzed for specific radionuclides. Radioactive materials in the body were measured with whole body counts beginning in 1961. The program also used air monitoring and facial and nasal swipes to gauge internal contamination levels. This site profile section also includes the minimum detectable activity (MDA) for urinalysis, fecal analysis, and whole body counting.

Worker comments resulted in several changes to *Occupational Internal Dose*: Section 5.3.4 Workplace Radiation Fields was expanded to include additional information; the sample volume for urine analysis was corrected in Table 5-12; the MDA tables (5-12, 5-13, and 5-14) were revised and the table numbers reformatted; the authors incorporated one year decay time for AI fuel in Tables 5-18 and 5-24; and deleted the word "rigorous" from the characterization of the radiation protection program in Section 5.8.

Two other changes were made to *Occupational Internal Dose*: the categories "INTEC & Unknown" and "Other Areas" were combined into "All but ANL-W" in Table 5-24 for 1971-80; errors in the Fecal MDA were corrected for Th-230 and Np-237 in Table 5-13.

- *Occupational External Dose* describes workplace radiation fields as well as dosimetry technology, practices, and exchange frequencies over time. Data for whole body, skin, and extremity dosimetry is included in this section. INL assigned radiation monitoring badges to personnel whose work was centered at the site and who were expected to receive any radiation dose. Dose reconstructors use information on workplace radiation fields along with information from the claimant's telephone interviews to determine the external dose in the workplace. This section also describes the "missed dose" that the worker may have received below the limit of detection of the dosimeter.

Section 6.5.1 Dosimeter Not Worn was added to *Occupational External Dose* in response to comments from workers who reported that they did not always wear dosimeters while working in radiation areas.

The discovery of records indicating that manual additions were made to dosimetry records for neutron doses based on area monitoring TLDs resulted in the removal from Sections 6.3.4.5 and 6.5.4.2 of the recommendation to assign 50 mrem to individuals working in the mid-1980s in offices without neutron dosimetry.

Ms. Jenkins concluded the presentation by reminding the attendees that the INL Site Profile is a “living document.” NIOSH values input from site workers to add information that is useful to dose reconstruction. Information can be sent directly to NIOSH and will be considered in future revisions of the documents.

[Name redacted] asked if it was just by chance that the site profile sections were all revised in 2007. Ms. Jenkins responded that not all of the changes outlined in her presentation were from 2007, but were made since the outreach team last reported to the labor organizations. More recent changes were made as the result of a regular biennial review, but the 2007 changes were from annotation and attribution of the reference material to credit the information properly to its sources. Mr. Darnell added that while the revision process can be very time consuming, a page change revision can sometimes happen in a matter of days.

[Name redacted] noted that if anyone could provide information on any buildings or areas that have been left out of the site profile, they could contact NIOSH. Ms. Jenkins responded that the workers are the site experts; their input is important to the revision process that keeps the site profile a “living document.” [Name redacted] added that the missions of the buildings changed over the years, especially at the CPP (Chemical Processing Plant). Mr. Lewis noted that the INL Site Profile has not yet been reviewed by SC&A.

Ms. Breyer said that she has seen a lot of anger and frustration at meetings from people who are quick to point out what is missing from the site profile or to criticize NIOSH for not being aware of certain information. She said that NIOSH welcomes worker input as an important part of the program because NIOSH is aware that there is information that may not otherwise be available. NIOSH considers all of the information received through the worker input, both from outreach meetings and written information, and revises the site profiles accordingly. [Name redacted] added that former workers’ input is valuable in learning how the missions changed through the early years.

[Name redacted] asked about the document revision process and who makes the decision to revise it. Mr. Darnell responded that the process depends on the how drastic the change might be; a minor change may be handled relatively quickly, but probably not as quickly as information that could change a large number of dose reconstructions. When that is the case, a review is conducted to determine the affected dose reconstructions.

A short discussion followed regarding where to find the site profile on the NIOSH Web site.

Mr. Lewis introduced Ms. Breyer, the NIOSH SEC Petition Counselor, to make a presentation on Understanding the Special Exposure Cohort Petitioning Process.

Ms. Breyer described how the DOL administers EEOICPA: determining eligibility of claims, verifying medical and employment information for each claim, and making all final decisions regarding compensation. DOL handles all claims for illnesses related to chemical exposures under Part E of the program.

A discussion ensued regarding the differences between EEOICPA Parts B and E. Ms. Breyer stated that while Part B is a lump sum compensation in which claims may be filed by energy employees or their surviving spouses, children, and grandchildren, while compensation for Part E is determined by the worker’s degree of impairment from the disease and survivor eligibility is

limited to spouses and minor or otherwise dependent children. An unidentified attendee asked, "Who does DOL use for subject matter experts for Part E and what are their credentials? How do they make the determination for compensation?" Ms. Breyer responded that, to the best of her knowledge, medical personnel review the Part E cases, but she was not able to comment further since NIOSH is not involved in Part E. Mr. Darnell added that DOL has a Final Adjudication Branch (FAB) which employs Certified Health Physicists to determine that the final decision was made according to the law when Part B claimant(s) appeal a denied claim. If a claimant provides evidence that the dose reconstruction did not consider all of the available information, the claim is returned to NIOSH to rework the dose reconstruction before DOL makes the final decision for compensation.

NIOSH is only involved in Part B cancer claims, under which its main roles are reconstruction of radiation doses, evaluation of SEC petitions, and development of probability of causation guidelines. NIOSH performs individual dose reconstructions for Part B EEOICPA claims, which can be filed for any cancer except chronic lymphocytic leukemia and for any length of employment. NIOSH is not involved in Part E claims.

DOE provides records for individual employees and site information as requested by DOL and NIOSH.

Ms. Breyer briefly described the dose reconstruction process that Mr. Darnell had presented earlier (see Page 2).

[Name redacted] asked what happens when the information provided by the worker conflicts with the information from DOE. Ms. Breyer responded that the information would be evaluated on a case-by-case basis. Mr. Darnell stated that since NIOSH makes every effort to be claimant favorable in the dose reconstruction process, the information that the claimant provides will generally be what is used, often using the overestimate efficiency process to give as much dose as possible to the worker. [Name redacted] inquired whether the situation might cause NIOSH to review similar cases. Mr. Darnell replied that the situation had recently come up when a worker presented information on site practices that conflicted with the medical information that DOE had provided. NIOSH conducted a review of other cases in which the compensation decision might be affected.

Brad Clawson, a member of ABRWH, stated that revisions to the site profile may also prompt a review of affected claims if the change results in an increase to the workers' doses. New information on the site practices may also prompt a review. Mr. Darnell stated that only claims within a certain margin of compensability are reworked, but claims with lower POCs will only be tagged in the event that there would be a future reviews for another reason.

[Name redacted] asked what happens to a claim when an energy employee passes away. Mr. Darnell replied that when an energy employee dies during the claims process, DOL resubmits the case as a survivor claim and the interview process may be repeated with the survivors if there is new information.

Ms. Breyer continued: When EEOICPA was passed in 2000, classes of workers at the Oak Ridge (K-25), Portsmouth, and Paducah gaseous diffusion plants and the Amchitka Island test facility were given SEC status that allowed their cases to be compensated without having to undergo dose reconstructions because there was not sufficient information to perform accurate dose reconstructions of those workers. To be eligible for automatic compensation, workers from those facilities had to meet the class definition, have worked for 250 days during the specified time period, and have one of 22 specific radiogenic cancers.

Congress provided a process in the Act that allows additional classes of workers to petition to become part of the SEC. The SEC Rule also allows NIOSH to identify classes of workers who should be in the SEC when dose reconstructions cannot be completed with sufficient accuracy. NIOSH has added 28 new classes of workers to the SEC since the Act was passed. DOL does not submit Part B claims for SEC eligible cases to NIOSH for dose reconstruction. Ms. Breyer noted that Part B claims for workers who are not eligible for the SEC class are still sent to NIOSH for dose reconstructions.

[Name redacted] offered the example of a Part B claimant from the Paducah site who is not eligible for the SEC class because he has prostate cancer, which is not one of the 22 radiogenic cancers covered by the SEC. Ms. Breyer responded that claims from SEC sites that do not meet the cancer criteria are still forwarded to NIOSH for dose reconstructions, but the amount of dose given to these cases will be limited by the definition of the class. Mr. Darnell stated that information in an SEC for a given facility tells the dose reconstructor what dose(s) to exclude from such a dose reconstruction. For example, if the SEC states that there is no external dose available for a block of years, then a claim for skin cancer will not likely be paid because the external dose will not be available.

[Name redacted] asked whether a claimant from K-25 who has been compensated for brain cancer under the SEC will get a dose reconstruction if he later makes a claim for skin cancer. Ms. Breyer stated that under Part B, a claimant can only be compensated one time for \$150,000; claims for additional cancers may be submitted for medical expenses only. She explained again how partial dose reconstructions are done for workers from SEC facilities with non-SEC cancers. For example: Workers at the Iowa Ordnance Plant were granted SEC status because there are no internal monitoring records, so a partial dose reconstruction for a non-SEC cancer such as skin cancer can still be performed because external dose may be available. Ms. Breyer gave another example: Since NUMEC was granted an SEC because there are no dose records of any kind, there is not much chance of compensation for a non-SEC cancer because the dose reconstruction is limited to only a very small medical dose, if any. Ms. Breyer said that there have been cases in which more complete dose reconstructions can be done for non-SEC cancers because an individual's files contain records that indicate the worker had internal monitoring even if the SEC was granted on the basis of no internal monitoring for the entire class.

[Name redacted] presented another scenario: Many of the newer SECs have classes that worked in certain buildings or areas during certain years. He noted that a worker at the facility may have employment that extends beyond the SEC time period. The worker may not fit into the SEC class, so there will only be a partial dose reconstruction for that period; but there may be records in a worker's file that show monitoring for other periods that would be considered in a full dose reconstruction for other periods.

[Name redacted] asked Ms. Breyer for compensation statistics for sites with SEC classes versus sites that do not have them. Ms. Breyer responded that the compensation rate at SEC sites is roughly about 60% of the total number of cases (dose reconstructions + SEC cases). Nationwide, the compensation is averaging approximately 30%. The actual compensation rate varies from facility to facility.

Mr. Clawson stated that some SECs are based on the lack of monitoring for certain radioisotopes, as in the case of the lack of thorium monitoring at the Hanford site. In such cases, the consideration of thorium in dose reconstructions for non-SEC cancers at that site during that period are also excluded. Ms. Breyer agreed and stated that the exclusions can be for many different reasons, including lack of monitoring for neutrons or tritium, for example.

[Name redacted] asked whether the lack of adequate dose records is a basis for inclusion in the SEC. Ms. Breyer stated that SEC classes have been added for various reasons, but the original four sites were included in the Act. Mr. Darnell said that the Amchitka site was included because DOE went into the site to perform the remediation; the three gaseous diffusion plants were included because there was an issue with unmonitored dose with regard to plutonium.

Ms. Breyer described the seven main steps in the SEC petitioning process:

1. Petition submission
2. Qualification
3. Evaluation
4. Evaluation report is presented to the Advisory Board
5. Advisory Board make a recommendation to the Secretary of HHS
6. Secretary of HHS designates the class
7. Secretary of HHS submits the recommendation to Congress for approval

The process begins when a petition is submitted to NIOSH. Ms. Breyer described who can be a petitioner.

There are two types of SEC petitions: (1) NIOSH determines that dose reconstructions cannot be performed for a proposed class of workers and initiates the SEC process by contacting a claimant who is included in the proposed class to serve as the petitioner (83.14); and (2) A petitioner submits a petition for a proposed class. The petition includes supporting evidence that dose reconstructions cannot be performed for a proposed class of workers (83.13). Petitions may be submitted to NIOSH either in writing or by using the optional petition forms that are available on the NIOSH Web site. Petitions can be submitted to NIOSH at any time.

To qualify for evaluation, a petition must include:

- The petitioner's contact and identifying information
- A proposed class definition that specifies a single DOE or AWE facility; locations at the facility; job titles and or job duties of the class members; a time period; and identification of any exposure incident that was unmonitored, unrecorded, or inadequately monitored or recorded if such incident is the basis of the petition.

Ms. Breyer gave examples of proposed classes for INL, saying that the class could be so broadly defined that it covered all workers at INL for the entire time of operation, or as narrowly defined as ten firemen who responded to the incident at SL1 and were not monitored.

Although the four original SEC classes included a requirement of 250 days employment at the facility, exceptions to that requirement are possible. That requirement was shortened to 85 days for a class of workers who lived at the SEC site round the clock.

- A description of the basis for believing available information is inadequate to estimate radiation doses, based on one of the following: lack of monitoring; destruction, falsification, or loss of records; an expert report; or a scientific or technical report.
- Documentation or statements provided by affidavits must be provided to support lack of monitoring, or destruction, falsification or loss of records

NIOSH works closely with petitioners during the qualification process to identify any deficiencies in the petition and to assist the petitioner in submitting any materials necessary to help qualify the petition. A petition will not qualify for evaluation if:

- The petitioner is seeking a second opportunity to get a claim paid if DOL's final decision is to deny compensation
- The petition covers an already existing SEC class
- The petition does not provide a basis for the inclusion of a class into the SEC
- The petition covers multiple facilities
- The petition is voluntarily withdrawn by the petitioner

A brief discussion followed regarding what constitutes a qualifying facility. Ms. Breyer stated that a facility would be any of the sites that were qualified as either DOE or AWE facilities. For example, INL and Argonne National Laboratory West are separate DOE facilities, so one petition cannot be filed for both. However, a petition can be filed for more than one location at a given facility, such as CPP and TAN (Test Area North) at INL.

The Naval Reactor Facility (NRF) cannot be included in a petition because the work there was done under contract with DOD. Several of the attendees questioned the reasons why doses they received while working at that facility do not count toward their EEOICPA dose. Mr. Darnell stated that EEOICPA precludes DOD doses because there are several other federal programs in place that provide compensation for those doses. Ms. Breyer added that NIOSH cannot change that part of the Act but can suggest that the unions representing INL work together to present the issue to DOL. Mr. Clawson suggested that the unions could also work together as a group to present the issue to the Advisory Board for review since other issues have been resolved in that manner. He cited the NTS issues for inclusion of the Tonopah Test Range and Area 51 in the NTS site. Mr. Darnell said that because Congress wrote the law, perhaps the unions could effectively coordinate an effort to present the issue to their legislative representatives. He said that the issue has to be resolved at a higher level than NIOSH to affect a change in EEOICPA.

[Name redacted] said he feels that a worker's EEOICPA eligibility should be easy enough to determine by who signs their paycheck – a DOE employee's paycheck comes from DOE, whereas an employee working at TRA or NRF may come from Westinghouse. He said that he has had to tell people who come to the Building Trades Former Worker Screening Program that they are not qualified for the medical exam if they worked at NRF for Westinghouse on the DOD contract rather than at TRA for Westinghouse on the DOE contract.

[Name redacted] said that when firefighters reported to NRF, their dosimetry badges were taken and replaced with DOD badges. Some of the firemen spent many hours in the reactor prototypes at NRF testing the alarm systems. He stated that there is no tracking for those doses in their records. Ms. Jenkins stated that the doses are in their records, but are redacted from the DOE dose records that are provided to NIOSH. [Name redacted] said that firefighters had many emergency response runs to NRF without their (DOE?) badges because they were not permitted to do so. Ms. Breyer reiterated that NIOSH is limited by law to what they can do. She suggested that the unions approach DOL since that agency determines eligibility for the program and covered employment. She cited the case of couriers who transported waste and production materials from the Savannah River Site to Oak Ridge and Rocky Flats. Currently, DOL opinion is that the time in transit between facilities is not covered because part of the couriers' work was not at an eligible facility, but the issue is being deliberated.

[Name redacted] commented that the employment and dosimetry records of INL employees would show that a significant number of INL employees rotated from area to area throughout the site on a regular basis without question. Firefighters, security personnel, and maintenance workers went from one area to another as needed routinely or for emergency responses to incidents. He said that it is unfair for EEOICPA to exclude the dose that INL employees received in the DOD areas – if the workers had known that there would be a distinction between

their doses at the different facilities, they probably would not have taken regular work assignments outside the DOE areas. [Name redacted] added that he had been to several outreach meetings and had not heard that the NRF dose was excluded. [Name redacted] said that the DOD dose had been excluded from the beginning, but a petition from the unions as a group might bring about a necessary change to include it in the EEOICPA dose. Ms. Breyer agreed that the power of the unions can be strong in influencing legislators. She urged the attendees to also take the issue to DOL for clarification as well.

Mr. Darnell said that a core group of nuclear workers for the Pinellas Plant in Florida is working together to make their legislators aware of the issues that they have with EEOICPA. He urged the labor representatives to consider doing the same for their site.

Mr. Clawson reminded the attendees that NIOSH is limited by the Act in their work under EEOICPA and cannot always say what people want to hear. He cited the SEC for the Nevada Test Site and the 250 day requirement for workers who went to the Tonopah Test Range. The workers could not meet the criteria because their work assignments did not last for 250 days, but since they lived at the Test Range during their assignments, ABRWH asked DOL to change the requirement to 85 days (255 man-days) so that the class met the requirements of the law. The Board has also made special considerations for other petitions due to circumstances that do not fall into the standard criteria, such as Hanford and NUMEC. He said that core groups like the one for Pinellas are effective because when they worked together to put political pressure on their legislators, the legislators in turn put pressure on the Advisory Board to affect change. Ms. Breyer added that the media is also an effective tool to bring attention to issues. Mr. Darnell recommended that the group have a clear understanding of their issues before they bring attention to them. He added that NIOSH is available to help educate them in any aspect of the EEOICPA process that falls under NIOSH responsibility.

Ms. Breyer continued the presentation: If a petition does not qualify, it is administratively closed but can be reopened at any time if new information becomes available. An appeals process allows the petitioner(s) to request an administrative review from NIOSH if the appeal is filed within 30 days.

If the petition qualifies, NIOSH reviews the petition as submitted and evaluates it according to the SEC Rule. Notices are sent to the petitioner(s), the Advisory Board, and Congressional and Senatorial Staff. Notices are also published in the Federal Register and on the NIOSH Web site.

NIOSH develops the Evaluation Report using the following sources:

- Information submitted in supporting the basis for the petition
- Information on the types and levels of radiation exposures of potential members of the class
- Facility records and information
- Labor organizations, managers, radiation safety officials, workers, and other witnesses present during the relevant period
- NIOSH epidemiological research on DOE populations and records from dose reconstructions
- Records from research, dose reconstructions, medical screening programs, and other related activities conducted to evaluate the health and/or radiation exposures of DOE employees, contractors or subcontractors, and/or AWE employees
- Relevant Site Profile and/or Technical Basis Documents
- Any other relevant data

The Evaluation Report must address two questions:

- (1) Is it feasible to estimate the radiation doses of individual members of the class with sufficient accuracy?

NIOSH has defined “sufficient accuracy” as having sufficient available information to estimate the maximum radiation dose for every type of cancer for which radiation doses are reconstructed, that could have been incurred in all plausible circumstances by any member of the class, or if NIOSH has established that it has access to sufficient information to estimate the radiation doses of members of the class more precisely than an estimate of the maximum radiation dose.

Ms. Breyer described a scenario in which workers were routinely exposed to radiation from uranium and tritium but received only external monitoring with dosimetry badges for the uranium exposure. Since the workers did not have internal monitoring (urinalyses) for tritium, NIOSH cannot reconstruct the workers’ internal exposures, and therefore may determine that they cannot reconstruct the workers’ EEOICPA doses with sufficient accuracy.

- (2) Is there a reasonable likelihood that such radiation dose may have endangered the health of members of the class?

Health endangerment is established if an individual worked for 250 work days within the parameters established for the class or in combination with work days within the parameters established for one or more other SEC classes, or if the individual was present during a discrete incident likely to involve exceptionally high exposures, such as a criticality event.

Ms. Breyer stated that for every petition for which NIOSH has determined that they cannot do dose reconstructions with sufficient accuracy, they have also established health endangerment.

NIOSH sends notices to the petitioner(s) and to the Advisory Board when the Evaluation Report is complete. The notice is also published in the Federal Register and the report is posted on the NIOSH Web site.

Once NIOSH completes the Petition Evaluation Report, the report and findings are presented to the Advisory Board at a public meeting. The petitioners are advised of the meeting and invited to participate in the discussion. The Advisory Board considers the Evaluation Report, along with public comments and any other relevant information, and then submits their recommendation to the Secretary of HHS to either approve or deny the addition of the class to the SEC. If there are issues that need further consideration, the Board may ask its contractor to review the Evaluation Report before making a recommendation.

The Director of NIOSH considers the Petition Evaluation Report, public comments, and the Advisory Board recommendation to develop a proposed decision to the Secretary of HHS. The Secretary of HHS uses the recommendations provided by the Director of NIOSH and the Advisory Board to make a decision on whether to add or deny adding the class to the SEC. The Secretary submits a report of the final decision to Congress. Congress has the ability to either reverse or expedite the decision. If Congress does not act within 30 days, the Secretary’s decision becomes final and the Secretary of HHS will issue a report providing his decision. If the class is added, then the report will provide the class definition and announce the addition of the class to the SEC. The Secretary’s decision is provided to DOL and the petitioners and is posted in the Federal Register and on the NIOSH Web site.

Ms. Breyer concluded the presentation with contact information for herself and Denise Brock,

the NIOSH Ombudsman for SEC matters. She urged the attendees to contact her at any time if they have questions regarding the SEC.

[Name redacted] asked if any petitions have been submitted for INL. Ms. Breyer replied that there are none currently.

Mr. Lewis thanked Ms. Breyer and offered Mr. Clawson the opportunity to make a closing statement. Mr. Clawson said that the EEOICPA process is a complex one that is not clear to everyone. Since he has been involved with the Board, he has had the opportunity to work with representatives from NIOSH and he has observed that they really do care about the work they do. Mr. Clawson said that he is a Senior Operator in the Nuclear Fuel Handling Division at INL so matters at the site have a personal meaning for him. As a member of the Advisory Board, he is conflicted on INL matters and cannot vote on them. He is considered to be a subject matter expert at the site so he is helping with the site profile review. He confirmed that no SEC petitions have been filed to date for INL. Speaking as an INL worker, he said that he thought that should happen. He said that working through political channels and NIOSH worker outreach events, numerous changes have been made that benefit EEOICPA claimants.

Mr. Clawson explained that the Advisory Board is a balanced group of people from the medical and scientific fields as well as workers from the nuclear industry to provide checks and balances for the different processes of the EEOICPA program. When NIOSH presents a Petition Evaluation Report, the Board looks at every finding in the report to make sure that there is proof. If there is any reason to believe that there is not, the Board forms a working group for that petition and asks its support contractor to review the evaluation. Mr. Clawson noted that people are often upset that the review process can take so long, but the Board must be certain that the claimants are well served. He cited the case of the Rocky Flats petition, in which the class was redefined from all employees at all locations for the entire time of operation to certain classes of workers in certain buildings because thorium and neutron exposures were not monitored in those areas. The class was narrowed because there was information available that allowed dose reconstructions to be done for workers in some buildings during some periods of operations.

Mr. Clawson concluded by addressing the labor representatives as an INL worker, urging them to come together as a group to utilize the resources that NIOSH offers to help them submit a strong SEC petition on behalf of all of the INL workers that they represent. He offered to help them in anyway that he could and reminded them that comments do make a difference. He cited the comments of one person who offered 65 pages that detailed the shortcomings of the Site Profile for the Nevada Test Site that brought about numerous changes to that document that benefited many claimants from that site.

Mr. Lewis summarized the topics of the meeting and also offered his assistance to the labor leaders in their efforts for the INL site. He thanked the attendees for their participation and adjourned the meeting at approximately 12:25 p.m.