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

TWENTY-SEVENTH MEETING

ADVISORY BOARD ON

RADIATION AND WORKER HEALTH

DAY TWO

The verbatim transcript of the Meeting of the Advisory Board on Radiation and Worker Health held at the DoubleTree Club Hotel, 720 Las Flores Road, Livermore, California, on December 14, 2004.

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December 14, 2004

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Mr. Shelby Hallmark, DOL
Dr. John Mauro, SC&A
Dr. Jim Neton, NIOSH

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CORI HOMER, Committee Management Specialist, NIOSH
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WOOSTER, BEVERLY

P R O C E E D I N G S

(9:45 a.m.)

REGISTRATION AND WELCOME

DR. ZIEMER: This is the second day of our meeting here in Livermore. For some of you who are visiting with us today, this may be the first day of the meeting for you. I want to repeat a few of the announcements that we had shared yesterday.

First of all, I'd like to remind all of you -- Board members, staffers, visitors -- to please register your attendance with us today. Even if you registered yesterday, we do this on a day-by-day basis. The registration book is on the table just outside the room, so if you haven't already done that, please do so.

I'd like to remind you again that there are a variety of handouts on the rear table which include copies of the agenda, copies of a number of the presentations, and a lot of related materials that pertain to today's agenda, as well as to other general material pertaining to the work of this particular Board. So please feel free to help yourself to those materials.

Many of the materials that you find on the

table also appear on the web site, so that if you feel like your suitcase is pretty overloaded and you don't want to lug a lot of paper, virtually all of that is on the web site and you can download it at home if you feel that's more convenient. That would be the OCAS web site -- O-C-A-S web site, which is -- you can get to by going into the NIOSH web site, which you can get to by going into the CDC web site, which you can get to by going to the government... Anyway, one way or the other, you can get there, so please help yourself. Larry Elliott, who is our regular Designated Government Official, is back with us this morning. Larry, welcome back, and do you have any preliminary statements or announcements before we go into the -- he doesn't. Okay.

REVIEW AND APPROVAL OF DRAFT MINUTES, MEETING 26

Then we're going to move into the agenda. The first item on our agenda is the action on the minutes from our last meeting. Our last meeting was actually in August, which as I mentioned yesterday, that's -- that's the longest gap we've had I think in three years between meetings because of difficulties in

having one of our meetings actually canceled. But Board members, you've had copies of these minutes. I'd like to ask if there are any additions or corrections to the minutes that anyone has. If you have typos, you can simply pass those on to Cori. If you -- I particularly ask, and you've probably done this, to look at the items where your own statements or views have been encapsulated and make sure that the minutes correctly reflect what you said or what your intent was.

So again I ask, are there any additions or corrections to those minutes, either the Executive Summary or the Minutes themselves?

(No responses)

And I also remind everyone that the actual transcripts that these minutes summarize are also on the web site, at least -- are they on by now? They are on by now.

Then I will entertain a motion to approve the minutes.

DR. ROESSLER: So moved.

MR. ESPINOSA: So moved.

MR. PRESLEY: Second.

DR. ZIEMER: Moved and seconded. All in favor

of approving the minutes, say aye?

(Affirmative responses)

DR. ZIEMER: All opposed, say no?

(No responses)

DR. ZIEMER: Any abstentions?

(No responses)

DR. ZIEMER: Motion carries. Thank you very much. And with that action we got way ahead of schedule.

PROGRAM STATUS REPORT

We're going to begin then in terms of our presentations with a program status report. Laurie Ishak, who is a Presidential Management Fellow with the OCAS group, is going to do the program status report. So Laurie, welcome back to the podium.

MS. ISHAK: Thank you very much, and good morning. As Dr. Ziemer introduced me, my name is Laurie Ishak and I will be doing the program status report. And the agenda originally had Heidi Deep as the presenter. However, because of personal reasons, she couldn't make it so I'm filling in for her.

I kind of have some good news. First that my presentation's scheduled for an hour, but it

shouldn't take me more than about half an hour to get through it, so I'll keep you on schedule. And the bad news is, you'll have to listen to me for half an hour, so I'll try to keep you entertained.

Now as you know, the purpose of the program stats is to present to the Board the progress OCAS has made both from a short-term perspective and a long-term perspective. This first slide shows our progress since October of 2001 and goes all the way through the current time. The blue line represents the cases that we've received from the Department of Labor. The green line represents the number of draft dose reconstruction reports that we've sent to claimants. And the red line represents the final dose reconstruction reports that we've sent to DOL.

As you can tell, the number of claims we've received from DOL is decreasing, and approximately we're receiving -- or we're receiving approximately 200 to 300 a month from the Department of Labor. The number of drafts that we're sending out is over 500 for the last three months, and I'll break that down on

another slide. And then the final number of claims -- dose reconstructions that we're sending to DOL is averaging between 400 to 500 claims a month.

Now the cases received from the Department of Labor, that hasn't changed too much since our last meeting in Idaho. Cleveland has 3,675 claims representing about 21 percent of the number of cases that we receive from the Department of Labor. Denver, we received 1,987 total cases, representing about 11.4 percent. Jacksonville, 6,425 cases, representing the most at 36.7 percent. And then Seattle, 5,407, representing 30.9 percent of our total claims, bringing the total number of cases that we received from the Department of Labor to 17,494 as of November 30, 2004.

Now this bar graph represents that first graph that I showed you, the line graph, the number of cases received from DOL. Now this breaks it down by quarter as opposed to month, and you can see that we're gradually receiving less and less cases from the Department of Labor, and that number's going down. And so you're seeing that by quarter, which represents three months,

we're receiving about 700 to 800. Quarter five's not over yet, so that's why that number is so much lower, but that equals out to about 200 to 300 a month.

Now the number of draft dose reconstructions, reports to claimants -- and again, this is -- this one's monthly. As of November 30th, 2004 you can see that we're averaging over 500 claims that was -- or 500 draft dose reconstructions that we're sending to claimants. At last meeting in Idaho in August we were almost at 500, but not quite there. But since then we maintain numbers well over 500.

And in the first graph where we showed you the number of claims coming in from DOL is decreasing, we get about 200 to 300 a month, the number of draft dose reconstruction reports going out to claimants is increasing, where about 200 to 300 more are going out than what's coming in, so it's always positive for production numbers.

Now this graph also is -- was represented on the line graph on the first chart. It's the number of final dose reconstruction reports

that we're sending to DOL. You can see we're averaging about 400 -- mid-400's, high 400's the last three months. However on this chart it's a little deceiving because we can't really control the number of final DR reports that we send to DOL because once we send the draft dose reconstruction report to the claimants, they review it, they sign their OCAS-1 and send it back to us. And until they do that, we can't send a final report to the Department of Labor, so that's why the two graphs don't necessarily match up because it's the claimant's responsibility to return the OCAS-1. And every month we have about 400 to 500 claims that are in the hands of claimants, waiting for them to send us back the OCAS-1s. So that's important to remember on that.

Now here we have the number of DOE responses that we've sent to request for exposure records. You can see that we've sent 17,476 requests to the Department of Energy for exposure records. Now the chart -- we received 17,494 claims from the Department of Labor, so we've got about 18 cases that we need to send out a request for exposure records. And then

responses received from Department of Energy, we received 16,948 responses, and that's also probably important to note that sometimes when we get responses they may contain no information, so the response may be we have no information on this employee. And other times we do get exposure records, but that number can be misleading because of that, as well. It doesn't mean we necessarily have exposure records for 16,948 of our claimants.

The age of the outstanding requests, there are 60 claims that have been outstanding for 60 days or less. There's 33 that have been outstanding for 90 days or less. There's 18 that have been out 180 days -- or 120 days or less, and 32 for 150 days or less. I guess I should say or more. Excuse me, or more.

DR. ZIEMER: Yeah, Heidi (sic), could you clarify that? You're -- it's -- 60 days or less would be all the -- everything.

MS. ISHAK: Right.

DR. ZIEMER: Or you mean 60 days or more.

MS. ISHAK: Days or more, I -- right. Thank you. I should have said 60 days or more.

DR. ZIEMER: Yes.

MS. ISHAK: I noticed that by the time I got to the last one and thought well, there's more than 32.

All right. Telephone interview statistics. As you all know, we do telephone interviews or -- for -- with claimants. They can opt out of the telephone interviews if they choose to, but when we receive claims we talk to either the claimants or the survivors and give them opportunity to provide us more information or anything that they would like to add before we begin our dose reconstruction. There have been 17,043 claims where we have completed at least one interview. And after we complete the interview we send out interview summary report and the claimants can look at it and then they can choose to add anything or clarify anything if they choose to. And of those interview summary reports, we sent out 23,175, and we have more reports because some claims might have multiple claimants on the survivors. And the number of interviews left to be conducted is approximately 360. And again, that number doesn't always match up with the top number, if you add them together, to our total number of

cases because some choose to opt out of the telephone interview. However, they choose at any time to decide to go back -- they say they don't want to do a telephone interview, they can at any time contact us and we will perform a telephone interview with them if they change their mind at a later date.

Here we have the number of interviews conducted from 2002 all the way through the current time. And you can kind of tell the chart goes up by the need for the telephone interviews. Now we're conducting a lot less because we've caught up and have conducted most of the telephone interviews for the claims that we have in now. We're only doing about 400 -- 300 to 400 a month.

Now this slide has changed some since our last meeting, so I'll explain it to you. The first point we have here, the bullet, is cases in pre-dose reconstruction assignment development. And what that means is any case that has come in and hasn't been assigned for dose reconstruction. It could be waiting for a CATI interview, it could be waiting for DOE records, it could be waiting for site profile document,

it could be waiting for data collection, but it has not been assigned for dose reconstruction. And of the 17,494 total cases we have from DOL, 5,223 of them are in that period of development.

We have 5,983 of the 17,494 that are assigned for dose reconstruction.

The third bullet, we have 625 DR draft reports that are sent to claimants. And I want to point this out as well 'cause it can be kind of misleading when I changed it. We used to report the total number of draft dose reconstructions that have been sent to claimants, so we've sent more than 625, but this is the current number that are with claimants that have not been sent to DOL yet.

And then the last number is the final number of DR reports we've sent to DOL, and that's 5,663. So when you add all those numbers up, that'll give you the 17,494, so you know where they all at -- are at.

So we've completed -- over 30 percent have been sent to DOL, and then completed DRs that are in the hand of claimants, you add that into that and that makes it go up a little more.

All right, these are the cases completed by NIOSH tracking number. You can tell that we've completed more in the higher number -- or we've completed -- there are higher numbers for the lower tracking numbers, so you see that we're trying to complete some more in like the 1,000 to 5,000 range, and you can see here where we're making progress on that. Almost half of the claims that are 1,000 or below and over a third on the ones between 2,000 and 5,000. And these are as of November 30th, 2004, as well. Here we have the administratively closed records. In administratively closed records, we close them when we, for instance, send out an OCAS-1 form, we give them 60 days to respond and send by the signed OCAS-1. If they don't respond we send them another letter saying that you have 14 days to send us your -- back -- back your signed OCAS-1. And then if they continue to not respond, be non-responsive, then we'll administratively close the record. And you can see that there are a few that we've done that at around four or five a month. And that's not permanent. If somebody were to contact us and send us an OCAS-1 later on, we

would open the case again and then send the final DR report to the Department of Labor. Reworks, the total number of reworks we received from the Department of Labor is 454, and we've returned 247 of those back to the Department of Labor. You can see that the green bar represents the number of DR reports received monthly and the blue are the number of returned monthly. And of these reworks, about 90 percent of them, come back to us because there's additional information that DOL receives. For instance, additional employment information comes in or an additional cancer. And when that happens, it comes back to us, we include that back in and look at the -- the reports and the DRs and then send it back to DOL, with changes if they're needed.

The number of phone calls and e-mails that we're getting, OCAS currently gets 34,786 -- as of December 7th that's how many we've received. ORAU has received 128,454. And the number of e-mails that OCAS has received is 5,363. If a claimant has a question about the program or if they want to know their claim status, they can call either OCAS and talk to one of our public

health advisors who will help them and assist them on their claim. They can also call ORAU, and ORAU's number is also higher because that includes the telephone interviews and the scheduling of the telephone interviews. They can call ORAU or they can also choose to e-mail us. They can e-mail us with general questions or they can go on-line and do an automatic status request on-line if they choose to get their status information and the Privacy Act information is verified that we can give it to them.

SEC petitions, as of December 6th, 2004 we received 13 total SEC petitions. Nine of them are active. Two of them have qualified, and four of them have been closed. Of the active petitions we have one from Hanford, four from Iowa, one from Mallinckrodt, one from Paducah and two from Y-12.

Now an Iowa petition has been qualified. We published a notice in the *Federal Register*. On Monday, October 25th, 2004 that was published. And a petition and evaluation plan has been presented to the subcommittee. It includes Line 1, which includes Yard C, Yard G, Yard L,

the Firing Site, the Burning Field B, and storage sites for pits and weapons including Building 73 and 77. It includes the job titles of all technicians, laboratory, HP, chemical, X-ray, et cetera; engineers, inspectors, safety personnel and maintenance persons and production personnel, hourly and salaried. And it covers a period of employment from 1947 to 1974.

Also the Mallinckrodt Chemical Company SEC petition has qualified for evaluation, and that includes the Mallinckrodt Chemical Company Destrehan Street plant, St. Louis, Missouri; and job titles, all employees that conducted AEC work at the plant -- at the Street (sic) plant, and from 1947 to 19-- I mean -- I'm sorry, 1942 to 1957, and that notice will be published in the *Federal Register*. It hasn't been published yet, but that notice is being worked and sent out, and the petition and evaluation plan has also been submitted to the subcommittee for review on Mallinckrodt.

We've also had some changes in EEOICPA. On October 27th, 2004 the President signed subti-- the Ronald Reagan Defense Authorization Act,

and that contains provisions that amend EEOICPA 42 USC Section 7384 and subsequent provisions. The two major changes is their coverage expansion to employees at certain sites with residual contamination, and it also changes some of the time lines that were originally outlined in EEOICPA.

The coverage expansion to employees at certain residual contamination sites, the definition was changed -- or I guess I should say expanded to include workers who were employed at AWEs during period time -- during time periods when NIOSH determined that significant residual contamination existed outside of the period when weapons-related production occurred. So that's been included to include the original residual contamination report that NIOSH conducted.

The time lines have also changed. NIOSH now -- or OCAS now has a 180-day time limit to provide a recommendation to the Board regarding qualified SEC petitions. The Secretary of HHS has 30 days to -- from the receipt of the Board's recommendation to submit a determination to Congress to either add or deny

the addition of an SEC, and then Congress has 30 days to decide whether to add or deny a class be added to the SEC.

And the final slide is OCAS accomplishments. As I showed earlier, we've reached over 5,000 completed final DR reports sent to DOL, and we're expecting by the end of December to be at 6,000.

The SEC petition representing a class of workers from both Iowa and Mallinckrodt has qualified and has been published in the *Federal Register* or will be published in the *Federal Register* and submitted to the Board for evaluation.

And we've had some staffing updates. We've included another health communications specialist. We have three new health physicists, a new technical program manager has been named, and we've added a research epidemiologist.

We've also completed 21 technical basis documents since our last meeting in August, and we have put together an estimated completion date for site profile documents in response to the GAO report that came out, and that should

be in your packet with all the dates and sites and the estimated completion dates for those site profile documents.

And that is the end of my presentation if anybody would like to follow up with questions.

DR. ZIEMER: Thank you very much. Larry has one clarification to make. Thank you, Laurie.

MR. ELLIOTT: Just to clarify that the SEC evaluation plans for the petitions that have qualified went to the working group, not the subcommittee. You have a working group to -- that's been designated to look at those and make comment on those. It went to the working group which Bob Presley chairs, not the subcommittee.

DR. ZIEMER: Thank you. Leon, you have a comment? And if this is not your comment, you might add it, but we know that you were -- had some information on the time line issue on the SEC petitions, so this would be a good time to raise that, if that wasn't what you were planning to raise.

MR. OWENS: No, sir, it wasn't. I had a question -- a couple of questions in regard to --

DR. ZIEMER: Oh, do both then.
MR. OWENS: -- the presentation, but...
MS. ISHAK: Well, I think -- I think somebody's going to be presenting on the SEC plan, as well -- program -- process.
MR. OWENS: The first question I had was in regard to the four SEC petitions that were closed.
MS. ISHAK: Uh-huh.
MR. OWENS: Could you give us specific information as far as those petitions themselves or...
MS. ISHAK: As in the sites that they represented?
MR. OWENS: Yes, ma'am.
MS. ISHAK: There were four sites. One was Los Alamos National Laboratory. There was also a petition that we received for multiple facilities, as opposed to one site, and two K-25 petitions which were already covered under the original SEC class definition, so didn't qualify under the new -- new rules.
DR. ZIEMER: And Larry, do you want to add --
MR. ELLIOTT: They're on our web site. You can -- you can -- we'll notice on our web site when

we qualify. When we find a petition ineligible, we'll put that on our web site, too, and these four are on there now.

MR. OWENS: And the other question, in regard to the 32 outstanding requests of 150 days or more, do you have information as far as are those specific sites?

MS. ISHAK: They are. The ones that are more than 150 days?

MR. OWENS: Yes, ma'am.

MS. ISHAK: We have six from Lawrence Livermore, ten from General Electric Vallecitos -- I'm not sure I pronounced that correctly -- four from Allied Chemical Corp., one from Hallam Sodium Graphite Reactor; two from Y-12 and ten from Hanford.

MR. OWENS: Thank you.

MS. ISHAK: Well, and two from Sandia National Laboratories.

MR. ELLIOTT: And if I could add that we follow up on these with DOL on a monthly basis, and certainly the ones that are out over 120 days we target as a specific action item to follow up on and find out what's -- you know, what's the status, where are they going, how close are

they or how far away are they to finding information.

DR. ZIEMER: Okay. I didn't see who was next; we'll just go down the line. Dr. Roessler?

DR. ROESSLER: First of all, I'd like to thank Nichole and the OCAS office for the organizational chart that I had asked for last time that -- we received it by e-mail on -- last Thursday, I think it was, so you should have it in your packet. That was very nicely done.

Then I have a question. On the phone calls that claimants -- the phone calls or e-mails claimants make to either ORAU or OCAS, how long does it take for them to get a response? Do they talk to somebody immediately or do -- is there a time lag between --

MS. ISHAK: They talk to somebody immediately in most cases. I think that if -- if they do get a voice mail, I think the policy is to return a call within 24 hours, but in most cases they'll get somebody because the system is set to roll over to a line that's not busy if they just call into the main 1-800 number as opposed to a direct PHA. Usually they call the

1-800 number and it gets directed to an open line, so they should talk to somebody immediately.

And with the e-mails, it's the policy to return e-mails within 24 hours of receiving the e-mail, unless there's a problem where there seems to be inadequate Privacy Act information and we think that it might be somebody who doesn't have the -- the right status to receive information, but they still receive an e-mail within 24 hours saying that we're sorry, due to Privacy Act releases we cannot release this information over the internet.

DR. ROESSLER: I think that fast response is very important.

MS. ISHAK: I think so, as well. I think that's something that we try to do to make sure and stay on top of...

DR. ZIEMER: Roy?

DR. DEHART: A question. If I remember correctly, there was a goal set for the number of DRs to attain, and that was I think 800 per month.

MS. ISHAK: Two hundred a week was the original goal that we had set.

DR. DEHART: Okay, yes, about 800 a month.
MS. ISHAK: Uh-huh.
DR. DEHART: We've -- we're currently at about 500, over the last three to four months. When do we hope to attain that -- that goal of 800?
MS. ISHAK: Well, originally -- originally we had said that our goal was 200 a month (sic), and --
MR. ELLIOTT: Two hundred a week.
MS. ISHAK: Or 200 a week, I'm sorry. Definitely we passed when our goal was 200 a month, 200 a week. And that was what we were estimating that ORAU should be completing. Since the August Board meeting, ORAU's done a thorough review of their capabilities. And after they presented that to us, we've looked at it and the number that we're trying to reach now is 160 we think is more reasonable to get done each week, and I think we're gradually progressing to that. You know, 530 a month is -- my math's not too good here -- 125 -- about 475, so we're getting to -- getting to 160 a week pretty quickly.
DR. DEHART: Wasn't that -- have as a basis for compensation a -- an award point if they were

to attain 800? Was that readjusted then when you --

MR. ELLIOTT: Yes, we --

DR. DEHART: -- downloaded the number?

MR. ELLIOTT: -- we did readjust. Based upon the analysis that was presented to us by ORAU, we entered into a negotiation for their current cost performance award fee that they're operating under for the next six -- for this current six-month time frame, and the goal now is 160 a week during this performance award fee cycle. We'll renegotiate that for the next cycle.

DR. DEHART: Okay. Just a comment. Could we please put two photographs or two graphs on a page rather than three?

MR. ELLIOTT: Yes. Okay, we hear you. We will do that.

DR. ZIEMER: And possibly -- I think on some of these if you actually print them out in black and white rather than color -- it's very hard to read on -- they show up great on the screen, but if you go to the black and white print which gives you basically a mirror image, it probably will show up better. Jim?

DR. MELIUS: Yes. However, make sure that the colors you're using do show up when you do them in black and white 'cause that can be a problem, also.

DR. ZIEMER: Maybe if they're larger that'll solve it. They're very hard to read.

MS. ISHAK: I'll give you some color-coded (unintelligible) your packet.

DR. MELIUS: We'll do that. To follow up on Roy's question, I'm looking -- I guess it's on page four of your handout. I don't know what -- it's the slide -- cases completed by NIOSH tracking number.

MS. ISHAK: Uh-huh.

DR. MELIUS: And I've asked this before, but the -- there still seems to be a significant backlog among the early cases that -- so those are people, like say in the first 1,000, have been waiting a long time and their cases are not -- not completed yet. So I guess I would ask, one, is what progress are you making that area? My recollection is there was a -- ORAU and you had a team that had been put together to focus on those and try to figure out ways of resolving those particular cases, and I guess

I'd like an update on that.

MS. ISHAK: Well, I don't have the numbers since our last August Board meeting, but I know we have almost half of the 1,000 done, as you can see from the numbers that I have on there. I won't repeat them back to you, but I do know that we're focusing on claims below 5,000. I don't have any specific progress as made by the team that was put together with ORAU and OCAS up here with me on the progress that was made, but I know that they are focusing on completing the claims below 5,000 as they -- they exist. I don't know if...

MR. ELLIOTT: Let me add to that. As we talked about in Idaho Falls in August, we have incentivized this particular aspect of production to look at the first 5,000 cases by tracking number. ORAU is under in this cost performance award fee cycle and incentived to complete those first 5,000 by the end of this month. As you can see, they're probably not going to make that.

These are -- there's some difficult cases in there, in that first 5,000, that rely on coworker data. We've been trying to -- ORAU

has been working to develop a model on use of coworker data. We have some other situations where we're looking very -- at very difficult situations where there's only one or two cases for an AWE site and we're looking at whether or not, you know, we can actually do dose reconstruction or should those be put into the SEC. So we are focusing our attention and ORAU's attention on those first 5,000 cases, with the hope and goal that we can move through those to closure.

DR. MELIUS: One of the other areas that I think were delaying some of these cases were dealing with construction workers, and if I remember, Jim Neton had presented to us that they're working on -- in terms of modifying the site profile process and -- in order to better deal with construction. Could you update us on progress on that?

MR. ELLIOTT: Yes, yes. We are -- we have been working with CPWR to put together a contract to support site profile development chapters on construction trades, and I believe this week that'll be put into effect. It will -- will be -- we'll see CPWR assign one or more particular

people to support the ORAU site profile teams in that regard and pull that information together. And they're targeting Hanford and Savannah River first.

DR. MELIUS: Okay. Another question. You've mentioned the ORAU contract a few times here and this cycle. Could -- just -- maybe I missed it and I apologize. I was -- I was a little bit late this morning, but could you tell us sort of what is the cycle that you're -- terms of awarding and where that stands and so forth? I think when we asked last time you were in the midst of negotiating that and so the amount of monies involved and so forth were -- you couldn't tell us, but --

MR. ELLIOTT: Yes.

DR. MELIUS: -- can you update us on that?

MR. ELLIOTT: Yes, we -- we asked ORAU to provide a cost proposal for the next 18 months, starting in January. This will still leave 18 months of the contract award period that they will have to propose for at the end -- we'll have to cycle this so that we can get the last 18 months awarded properly, but this next cycle where we asked them for a cost proposal and a

project management plan on how they would work over the next 18 months in order so that we can use that to modify the contract and, for the next 18 months, put additional funds into the contract for their work.

That should -- that award should happen in January. They will have expended their original award at that time, which was $70 million for five years, so we'll be into about -- going into the third year here, we'll add -- be adding money to this contract based upon a cost proposal, a project management plan, a staffing plan that will reflect what work will be done over the course of the next 18 months. And then again we'll have to enter into another cost proposal, another management plan, another staffing approach. We anticipate that at the last 18 months we're going to see the bulk of this workload completed and we'll be scaling back in that contract effort.

DR. MELIUS: Can you share with us at this point what -- how much --

MR. ELLIOTT: I can't share what the costs right now.

DR. MELIUS: Okay.

MR. ELLIOTT: It's not been awarded, so --
DR. MELIUS: Okay, I'm not going to -- okay. I have another question on the SEC issue. I recollect, and maybe my recollection is wrong, that there was also a Congressionally-imposed deadline about timing in terms of between the time NIOSH completes its evaluation and a meeting of the Advisory Board with that, or is that just a --
MR. ELLIOTT: That was for the first -- that was for the petitions that were submitted before October 31st.
DR. MELIUS: Right.
MR. ELLIOTT: And you will have -- you will have addressed those in the time line that is specified in that Act.
MS. ISHAK: We also have to noti-- publish a notice in the *Federal Register* 30 days prior to a Board meeting where we present a petition --
DR. MELIUS: Okay.
MS. ISHAK: -- to the Board.
DR. ZIEMER: This may be discussed also in further detail --
MS. ISHAK: Right, Ted Katz I believe is doing --

DR. ZIEMER: -- tomorrow when we --
MS. ISHAK: -- an SEC --
DR. ZIEMER: -- talk about that, so --
DR. MELIUS: Okay.
MS. ISHAK: -- process --
DR. ZIEMER: -- we'll get into those --
MS. ISHAK: -- presentation.
DR. ZIEMER: -- issues. Jim, did you have additional questions? I've got one from Richard here.
DR. MELIUS: You can go to Richard and I'll -- come back to me 'cause I do have another question.
MR. ESPINOSA: On the DOE responses --
DR. ZIEMER: What slide are --
MR. ESPINOSA: -- page three, exactly what are -- what are you receiving from DOE in terms of well, we're looking into it or we have no data on this employee?
MS. ISHAK: Well, there's ongoing dialogue between OCAS and DOE when situations arise. For the most part, we're receiving whatever data they have if there are any exposure records. If we get information back from them that there are no exposure records, we log that

into our system and we might -- later on if -- during the telephone interviews, for instance, they say no, I know there's exposure records on me, then there might be a follow-up with DOE, so it's an ongoing communication dialogue between DOE and OCAS when situations arise. The general practice is when we get a case from DOL, we send a request to the site that the claimant worked at, and we get a response usually back within 30 days is our goal, and then we put that in our system. And then sometimes we get exposure records, sometimes we get nothing. If we get nothing and the employee continues to say or survivor say well, we know that there are records, then -- you know, that's handled on a case-by-case basis.

MR. ELLIOTT: I would add to that that I think we've shown great progress here in working strongly with DOE that right now we don't -- we don't see an issue with a particular site. All of these are individual case issues, something going on individually with the case that -- that has caused, you know, a problem in finding records or understanding what DOE has to offer. And so that's what we're following up on now.

Right -- we don't have, as we've reported in the past where we've had certain sites that we're dealing with problems, we don't have that going on right now. We are watching it close because of appropriations and where DOE stands with money to support this effort to comply with our records requests, and I think we're on top of that, too. And the only one we've hurt in that regard is having no money available at the end of the year was Hanford, and we worked that out with DOE and got them moving again, so...

MS. ISHAK: Did that answer your question?

DR. ZIEMER: Thank you. Jim?

DR. MELIUS: I have a question, partly of clarification on sharing of information that the Board has. I noticed with this -- our binder this time we suddenly have blue stamps on it saying that -- maybe they were there before, maybe I hadn't noticed it -- document is part of the official meeting file. We've also had some issues with Privacy Act related to individual dose reconstructions and we've had pre-decisional documents, and not everything comes labeled and it's confusing.

For example, for Bethlehem Steel we've got a report from our contractor which was done with a note from you, Larry -- actually I got the note from you first, but -- the vagaries of the internet system -- but saying that that was I think basically pre-decisional, shouldn't be shared. We then get comments from NIOSH about the same document that had no -- nothing on it, just -- I assumed it was a public document. I don't know, maybe it wasn't, shortly before here and it's very confusing. It's obviously -- particularly the Bethlehem document has been at issue in terms of public perception of this process of all the way to getting an editorial in the Buffalo newspaper. Could someone clarify for this sort of where we're going with this? We've talked a little bit about it with your counsel yesterday. I can't remember if you were still there -- that was in the open session, but we would sort of -- at least I would like some clarification on -- on this issue and sort of what is policy, what is legally required, what is -- how are we going to handle this in terms of sharing documents and so forth?

MS. HOMOKI-TITUS: Well, I can start off with the blue stamp that's on this -- the papers that are in your notebook. We've started adding those because a number of members of public have been bringing documents and placing them on the back table for other people to pick up while they're at the Board meeting, so we wanted to be clear about what was actually part of the official record of the Board and what other people were bringing. That's why this stamp was developed.

The Privacy Act information obviously cannot be shared publicly. There's not really a lot that we can do about that. We're following the Privacy Act requirements, and we will continue to redact Privacy Act information that's provided to the public. You all, as you know, are special government employees, so therefore you have access to Privacy Act information that the public does not, but you are also bound as special government employees to maintain the privacy of that information, the confidentiality of it.

As far as the pre-decisional goes, there are legal precedents for the Department holding

information as pre-decisional, and that's a Departmental decision as to when they're going to hold a document as pre-decisional and when they're not.

DR. MELIUS: So if I understand, and you said this yesterday, also, that's a policy issue, not a legal requirement, if I --

MS. HOMOKI-TITUS: It's a policy issue based on the legal determination. There's a legal determination that -- that the U.S. government can hold documents as pre-decisional.

DR. MELIUS: Yeah, but there's not --

MS. HOMOKI-TITUS: And it's a policy decision made based on that legal determination.

DR. MELIUS: Yeah, but it's not a legal requir- - like whereas with the Privacy Act there would be a legal requirement not to share --

MS. HOMOKI-TITUS: No, you're right, it's not a legal requirement that it be held -- withheld.

DR. MELIUS: Uh-huh.

MS. HOMOKI-TITUS: And like I mentioned to you all before, it's being released today when you all review it, so -- except for the dose reconstructions, which I believe you all voted to withhold until it's settled by the Board, if

I --

DR. ZIEMER: We'll discuss that later this morning, right.

MR. ELLIOTT: There's one other designation that Liz should talk about and that's business confidential that you may see stamped on some documents from Sanford Cohen & Associates that has proprietary information and that --

MS. HOMOKI-TITUS: Right, we would obviously -- the same way that we protect privacy information, we would protect business confidential information for either contractor. We wouldn't want to give out the information that's going to allow their competitors to underbid them in contracts, so unless SC&A or ORAU wants to release that information, they can give us permission to do so, but otherwise we would hold it as confidential.

DR. ZIEMER: Okay. Any further questions for Laurie? One more. Henry?

DR. ANDERSON: The numbers are pretty small on the administratively closed cases. Do you -- do you attempt to contact those people other than by mail? I mean I -- with some of these that are -- I mean many of the -- if the

claimant is deceased and you have an elderly person, you could also have, in the process of this, that that person could become ill or could be deceased and you wouldn't know and you're mailing, and it goes to somebody who's an executor who isn't doing anything and your time frame is such that -- I mean do you --

MS. ISHAK: Well, there's a 60-day letter --

DR. ANDERSON: -- attempt to determine is the person still alive? I mean do you call or --

MR. ELLIOTT: Well, if I can answer this, Laurie --

MS. ISHAK: All right.

MR. ELLIOTT: Every person gets a close-out interview, so we make a phone call saying you have a copy of your dose reconstruction report; can we explain it to you? Are there any questions that you have about it? Is there any additional information that you wish to provide? And we run those close-out interviews probably a week or so after the report has been sent out. If we don't -- at the time frame that we expect to see that the OCAS-1 form signed and sent back to us, if we don't see that, another phone call goes out and another

letter goes out, and we give them 14 days at that point, at the -- another 14 days to either submit their OCAS-1 or say that they're not interested. At the end of 74 days expired, if they haven't contacted us, they haven't said they've got additional information to provide or they haven't signed the OCAS-1 form, then they're closed out. They are re-opened at any point in time thereafter when the claimant or an authorized representative comes forward and says here's the OCAS-1, please process my claim.

DR. ANDERSON: So it's more than just the mailing.

MS. ISHAK: Oh, yes.

DR. ANDERSON: Okay. And would any of those have been compensated?

MS. ISHAK: Compensated?

DR. ANDERSON: Yes.

MS. ISHAK: Yes, some of them have been.

DR. ANDERSON: No --

MR. ELLIOTT: We have --

DR. ANDERSON: No, those that are administratively closed, is somebody not signing it --

MR. ELLIOTT: We've had one that was administratively closed that was compensable, and we went to a little extra lengths to make sure that the authorized representative understood what was going on. It was a situation where the Energy employee had -- was deceased.

DR. ANDERSON: Yeah. Okay.

DR. ZIEMER: Mark has a question.

MR. GRIFFON: Yeah, just a question. I think it might come up with our subcommittee discussions a little more, but the completed dose reconstructions, I was wondering, it might be helpful for our case selection process to have again -- and this might be an ongoing tracking question -- to have a breakdown of those completed DRs by site, by POC, by cancer type. I'm not sure that that -- if you have that now, but --

MR. ELLIOTT: We don't have that now, but I thought yesterday we committed that --

MR. GRIFFON: Right.

MR. ELLIOTT: -- we would fill out your matrix for you --

MR. GRIFFON: Yeah.

MR. ELLIOTT: -- for each Board meeting. And I think that's the information you're asking for now. I mean it would be resident in that matrix. Right?

MR. GRIFFON: I think so. That would be part of the tracking, right.

MR. ELLIOTT: Yeah.

MR. GRIFFON: Okay.

DR. ZIEMER: That would be the base value against which we would be comparing our selections.

MR. GRIFFON: Right, that's our sampling selection, right, right, okay.

MS. ISHAK: Also as an FYI, you had -- your comment reminded me. You also have in your binders -- based on a comment from one of the Board members in the Idaho Falls meeting about questions about what was going on in Idaho Falls region, we put together a description of covered facilities in California for your review, and it has a summary of the document, as well as a breakdown of the cases in California and where those -- the number of cases we received from DOL on those cases in California under Subtitle B and where they are

in the process. So that's in your booklet, as well. That's only specifically to California, but just as -- your comment made me remember that that was in there, and that was put together for your review. And from now on, whenever -- whatever site you choose, we'll put together a breakdown of facilities -- covered facilities in that area and our progress related to that area 'cause I know some Board members wanted that at Idaho Falls, so that's also in your packet to look at and review.

DR. ZIEMER: And perhaps if there are questions on that, this would be an appropriate time to raise those, as well.

Jim, do you have a question?

DR. MELIUS: I hope this brings -- this is a Liz question, to alert you. I said I assumed that the response we got from NIOSH and I guess an attached response from the Department of Labor on the Bethlehem Steel site review by SCA, was that considered pre-decisional? I mean I -- I don't recall it being labeled as such and I'm just trying to understand.

MS. HOMOKI-TITUS: That may be more of a Larry question.

DR. MELIUS: Okay, let it be a Larry --
MR. ELLIOTT: It was not pre-decisional. Those are our reaction-- our comments on the technical accuracy that we tried to provide, and it's -- they're available for public consumption. They'll be on our web site today.
DR. MELIUS: Yeah, but would they have been available before -- I guess I'm trying to understand how a document that reviews a pre-decisional -- you're labeling one document as not being available to the public, and yet your comments on it are available to the public, and somehow that doesn't make sense or I'm misunderstanding.
MS. HOMOKI-TITUS: They're both available to the public today.
DR. ZIEMER: I think he's asking were they available --
DR. MELIUS: Were they available a week ago --
DR. ZIEMER: They weren't --
DR. MELIUS: -- when we got them?
DR. ZIEMER: -- weren't marked pre-decisional at that time, was the question.
DR. MELIUS: Yeah, I'm just...
MR. ELLIOTT: Well, they weren't stamped pre-

decisional. You weren't cautioned to -- to control their -- their distribution. They were --

DR. ZIEMER: Were they intended to be --

DR. MELIUS: It came by e-mail, if I recall.

MR. ELLIOTT: They came on an e-mail.

DR. MELIUS: Came in e-mail. I'm just trying to understand the policy. I'm not -- you know --

MR. ELLIOTT: Yeah, I --

DR. MELIUS: And so the policy would be that your comment --

MR. ELLIOTT: This was NIOSH's position on what we reviewed.

DR. MELIUS: Yeah, but -- but -- it seems to me there's a disconnect here.

MR. ELLIOTT: I think the -- the conundrum is is that your technical support contractor's document is a pre-decisional work product for the Board. We didn't consider NIOSH's -- we provided comment and clarification on technical and factual accuracy to your contractor. They either chose or chose not to incorporate that, and we felt it necessary to provide our -- our comments for clarification to the Board in your

discussion and your deliberation. The conundrum is is theirs come out as pre-decisional; ours did not. I understand that.

DR. MELIUS: Okay.

MR. ELLIOTT: It is confusing. I do know that.

DR. MELIUS: Well, we can talk more -- more about it in specific -- I'm just trying to --

DR. ZIEMER: Right, the issue probably would be that the NIOSH document reveals the content basically of the other one by identifying the issues.

MR. ELLIOTT: Like the Board, we're working through this process trying to figure out how it should work or how it won't work, and so we welcome your comments and your input on that.

DR. MELIUS: Well, then let's talk about it. I mean my comments are input and it's been expressed before is that the comments from our Board -- from our contractor to the Board, their review, should be a public document at the time that it is made available to the Board. Given that, you know, NIOSH accepts comments from the general public or from technical people on site profiles, you have an ongoing process for -- for doing that, given,

you know, the -- what we witnessed in this case, a public perception that somehow because we were -- or you were -- NIOSH, the government was withholding this document that, you know, it was secret or there's something that shouldn't be shared with the public and so forth. You're now making it available at this meeting. It seems to me that it's no reason -- there's no Privacy Act -- there's other reason -- there's no reason that it shouldn't be made available to the public, posted on your web site at the time it is provided to us.

MS. HOMOKI-TITUS: I have to disagree with that. There was Privacy Act information that had to be pulled, so that document would have been held at least until it could go through review by our privacy officer.

MR. ELLIOTT: I think we should -- you should have this discussion during your work session and after the site profile review. I think that's when it's best held.

DR. ZIEMER: Tony, comment?

DR. ANDRADE: A very quick comment on that particular situation. It's standard business practice out in the real world that documents

are generally held, not as private doc-- not as secret or classified in any such sense, but documents having -- that are still being massaged for technical accuracy are held until both agencies usually come to some consensus position on what the final set of findings, what the final set of comments are. This -- this just goes across the board and it -- I mean this is both -- this happens both in business and -- and in the government, so I don't -- I disagree from that point of view, as well, insofar as just general availability of -- of raw information and comments being made available that can be misused in a political manner; it could be misused in a business manner, and I think that would be detrimental to the work of the Board, and so I think we should keep that in mind.

DR. ZIEMER: Let's save the debate on this issue till our work session and focus on this report for the moment. We will definitely have this as a topic for our work session.

Let me ask for other general questions here for Laurie.

(No responses)

If not, thank you very much, Laurie.

MS. ISHAK: Thank you.

STATUS AND OUTREACH - DEPARTMENT OF LABOR

DR. ZIEMER: I want to ask -- is Shelby here? Shelby Hall-- yeah, Shelby, you show up on the agenda as having an hour presentation. We're probably a little early for our break. Is your presentation going to take a full hour?

MR. HALLMARK: Only if there are extensive questions.

DR. ZIEMER: Well, we're not going to guarantee the extensive questions part. Why don't you proceed with your -- with your presentation and if we need to take a break mid-term, we will. But I think we might as well go ahead here. Status and outreach, Department of Labor.

MR. HALLMARK: Good morning -- is this live? Okay, I'm going to try to get organized here. My first call from Washington was at 6:30 this morning, so I'm not entirely organized. I have a Blackberry for the first time, and it's not a good thing.

Just to give you a very quick overview of where we are with the Department of Labor, and then hopefully we will have time for questions, as

you know, unlike HHS's situation, we do still have a Secretary of Labor and so we're moving ahead. Ms. Chao in fact is on record as indicating that one of the reasons why she is staying on at Labor is to pursue the work involved with EEOICPA, and we take that as very important and helpful in this context.

We see Part B of EEOICPA as being now fully established and reaching maturity, after a long -- relatively long period of time of development, as cases are now flowing through the system. We recently passed, a week or two ago, the $1 billion mark in total benefits paid under Part B, which as we know in Washington means we're up to serious money now.

We're continuing to pursue improvements in Part B. As I said, we're now into the full-fledged processing of cases under dose reconstruction.

We're continuing our outreach with regard to individuals who still may not be clear about their eligibility under Part B, or not fully understood the program.

And we're also working on trying to move medical bill payments for eligible claimants into our funding stream. Many people who have

been approved and are eligible to receive 100 percent first dollar medical payments still are not having those bills flow through our system. They were being paid under private insurance or under a combination of insurance and Medicare, and that often we believe continues to be the case, and we're interested in making sure that the payment streams are appropriate and we are supposed to be the first payor in this instance.

Let me see if I can find out how to use this machine, I'll see if I can move along here.

(Pause)

There we go. So what we have here is the general data with respect to our claimant situation and -- I seem to have lost this document; no, here it is -- 60,000 cases in hand so far, so it's a fairly large program already. And you see here a listing of the types of conditions that have been claimed. Obviously these add up to more than 60,000 because multiple conditions can be claimed, but I think that the interesting number here at the bottom of non-covered conditions, we -- as I've mentioned to the Board in previous

presentations, especially at the outset, the program received a lot of claims under Part B which were truly Part D claims. They were claims for conditions other than radiation-induced cancer, beryllium or silicosis for miners. And that has now started to dwindle and we expect obviously as we get started under Part E, which I'll talk about in a moment, that that problem will be resolved because we will be receiving claims for EEOICPA and it will determine under which of the two parts the case should be applied -- or both.

I've shown this slide and Pete Turcic -- who is in the audience this morning and who I'll be calling on if anybody asks me really tough questions -- has shown to you before, this breakout of where we are in the various claims situations. I mentioned 60,000 claims. When you count that in terms of cases, cases being individual workers; claims being potentially multiple survivors of workers, that's why there's a difference in the numbers, 44,000 total cases in the door since (sic) November 25th, 27,000 of them completed to final decision. And then there's -- the other 17,000

are in these three statuses on the left here, about 4,000 or 5,000 that are pending within the Department of Labor process. So we feel this is a -- we're moving along very quickly. NIOSH is moving now and as discussed just in the previous presentation, moving to resolve the ones that are pending with them. But it's where the bulk of our 40 percent or so that are unresolved.

We received about 10,000 claims -- or cases this year, and so that accounts for the numbers that are in the unresolved status, except for the backlog in dose reconstruction.

Final decisions are broken out here by approval on the left and denied on the right, and then the denials are broken out by reasons for denials. Again, our -- I think it's interesting to note that our approval rate is still very high, about 40 percent. The reasons for the denials are -- we've talked about before and I think this also reflects the maturity of the program. As we started out in early days, the second bar there -- I guess that's purple; I don't know, I'm color blind. The second bar is denials based on the

individual having not one of the Part B covered conditions, and as I said, early on we got a lot of claims that were -- really came in the wrong door. They were Part D claims that came to us, and so we were simply denying them as not being one of the three covered conditions. That -- that now has dwindled -- as a percentage it's still 50 percent of our total denials, but the others, which are the sort of more substantive denials -- the person was not a covered employee under the program, the survivor is not one of those who's eligible under the program, or they weren't able to mount sufficient medical evidence to prove the case, and then the last one is the specific instance where the NIOSH POC number is less than 50 percent. Those are the more substantive kinds of denials, and they now represent 50 percent of the denials. Earlier they were less than a third when we've talked about this. That number -- that percentage obviously is going to grow as the program becomes more clear.

And let's see here, we have -- where are we with regard to the NIOSH referrals. We've

gotten back, as Heidi (sic) and Larry were explaining this morning, about 5,600 -- we never can quite reconcile this number because of the puts and takes and the backs and forths and the time periods, but it's a good -- in that general area, and a few of them that have come back to us have been situations were a dose reconstruction was not even required. We may have sent it to NIOSH in error, for example. And of those 5,600 or 5,700 cases, we have acted on approximately -- roughly 5,000 with a recommended decision which is in our district office. And as you see here, the approval rate is roughly 20 percent, which is -- we have found that to be higher approval rate than we really expected, and I think when this program was getting started back in 2000 or even before 2000 when it was in gestation, what we were hearing from DOE in terms of expectations was that the percentage of approvals of dose reconstruction cases, as opposed to just all the other types of cases where we don't go to NIOSH, would be very low, that it would be under ten percent. In fact, I recall DOE estimated it as one or two percent

as being the likely outcome in terms of their expectation of what people's exposure might have been.

We don't know that this is a mature approval rate, and Larry may be able to answer more questions about the degree to which the 5,600, 5,700 that have been completed now represent an adequate sample of the full environment. But still, 20 percent is probably an indicator from our perspective that the claimant-favorable aspect of the NIOSH process is in fact working.

And you go down to the last bullet here, now the final decision -- our -- we have a two-stage adjudication process. Final decisions -- actually the approval ratio there is a little higher, but that's probably because more of those cases are in the appeal process and have not yet come to closure.

And at the last bullet we're showing $140-plus million have been paid to people who have gone through the dose reconstruction process, which again, as I indicated, indicates that while this process has taken a while to get going, it is now moving ahead and it is a functioning program.

This just gives you a little indication of how our adjudication process works and some of the rights that claimants have under our final decision process. The Final Adjudication Branch is within Pete Turcic's operation, but it operates as a separate new pair of eyes to look at the case. And the claimant has a right to ask for an oral hearing, which will be held near their place of residence; they can ask for a review of the written record; or they can waive their objections, typically what they would do if the case has been approved at the recommended decision level so that you can in effect move on quickly to the payment status. With respect to our FAB process of reviewing cases that have been through NIOSH dose reconstruction, which I think is of particular interest to the Board, we do review those cases very carefully with respect to the factual material that has been addressed in the dose reconstruction report, and with regard to the application of the methodology that NIOSH -- that we've -- that we understand is NIOSH's process. We don't, or we try not to, evaluate the methodology itself, as laid out in NIOSH's

procedures and regulations.
The outcomes of the -- of our reviews are -- they could be -- we can affirm -- the FAB hearing officer or claims examiner can affirm the recommended decision; they can reverse it and go the other way; or they can remand it to the district office, and in some cases to NIOSH for further consideration.
And taking a little look here about this cohort of cases -- first of all, these are all the claimant responses to our recommended decisions during last fiscal year. So this adds up to a total of roughly 11,000 or so. And of those, about 1,500 asked for a hearing or a review of the written record, which is the sort of written equivalent of a hearing. The rest either waived their objections or didn't respond, which is I think an indication that there's a fairly good acceptance -- that's about 12 percent asked for an appeal, in effect. So that, to us, suggests that there's a fairly good acceptance of the process of adjudication at the district office level as it's playing out.
The hearing requested -- this -- this gives you

a rather complex chart here by quarter of hearings requested and conducted. I guess that shows -- demonstrates that the requests have gone up a little bit during the past four quarters, and we're catching up on those. I don't think it represents a big backlog. We expected our hearing requests to go up as more dose reconstruction cases came through the system. They're more complicated, they're more susceptible to -- to dispute or for factual questions.

This is the same chart with respect to reviews of the record, so that's just a different avenue of appeal. And again you see a slight increase over the four quarters in the number of requests, and we're still catching up. Again, we are doing well in terms of our timeliness goals and meeting the -- moving those cases through.

Now I think this is a particularly interesting slide for the Board in terms of your evaluation of how dose reconstruction cases are faring when they come back to DOL and are being evaluated in our process. Now I think we're still kind of working on these data here, so I

think they are approximate, but I will talk a little bit about this if I can. First of all, the 631 at the top there of total remands with respect to cases that have been through the NIOSH process, that means the case went through NIOSH, got to our final adjudication board in the context of some sort of review by final -- by the FAB, and ended up going back to the district office for one reason or another. As you see, that includes 120 cases that were approved, and on review by our FAB examiner we decided that there was a problem with it and sent it back to the district office. Some of those have been approved finally anyway, and others are still in the process, as you see there, the 46 final approvals.

The majority, however, are cases that were recommended for denial at the district office level, so -- and typically there was going to be a hearing or review of the record on those. And during that process we found a need to send the case back to the district office. And most of those that are shown here are pending the -- still pending a final decision because they've gone back for one reason or another.

Now one thing I'd want to say about that, that's all the possible reasons for remand, so the remand may have been -- had nothing to do with NIOSH's process, the dose reconstruction. It may simply have been that the district office erred in one fashion or another in compiling their recommended decision. I believe -- and Pete will correct me if I'm wrong, but I believe the number of cases that have actually been remanded from FAB decisions to NIOSH -- in other words, we found in looking at the case that the NIOSH report had failed, in our view, to address some factual issue, or some new factual information had been raised such as an employment period which our adjudicator felt was sufficiently documented that we felt it needed to go back for NIOSH to expand their review. Those cases that I've just -- that category is less than 200 in our estimation. Larry may have a better feel about that. Again, getting exact counts is difficult between the two agencies, but in the neighborhood of 200. And I suggest to you that out of 5,700 cases that we've looked at, if we've had to send 200 of them back to NIOSH for

reasons which could include either an error in their application or a failure to see a piece of information and develop it completely, or the introduction of new information at our hearing, is a pretty good indicator that we're not way off mark here. Obviously if that -- if that number were very much higher because errors were coming out in this process, it would be something that would be of interest, I think to all of us.

Here's just a quick description of the types of cases -- of issues that we have found and sent back in that category of 200. I don't have data here -- I would like to have had this, but we weren't able to capture this from our computer system. We'll try to do better in future presentations to you. Informa-- but here are the categories. Information provided in the interview but not addressed in the NIOSH report, that's -- that's a category of things that we've seen; exposure from ingestion not addressed; an incident -- a specific incident that's been identified, not addressed -- again, that may or may not -- that could have been one that was in the dose reconstruction report and

not addressed in its findings, or it could have been something new that was raised by the claimant; unmonitored dose treated as missed dose, and this is an issue I think was talked about a little bit yesterday, just a procedural error; and an inappropriate cancer model used. Those are -- and again, not very many of those kinds of issues found.

Now moving on here to our recent additions in the world of EEOICPA, and you've heard already from Heidi (sic) about the 2005 Defense Authorization bill which created a new program for the Department of Labor. It abolishes the old Part D program which DOE had been responsible for administering, which was a state worker's comp assistance program, and creates a whole new program, Part E, which is a Federal entitlement -- similar, but not exactly like Part B -- to be administered by the Department of Labor. And as -- as Heidi (sic) mentioned, makes some relatively narrow changes to Part B, as well.

Just to give you a brief overview of what we're looking at in Part E, it's similar to Part D in certain major respects. It covers the DOE

facility employee cadre not AWEs and beryllium vendors. It covers any illness due to toxic exposure, not just the nuclear weapons-related ones which are the Part B focus. Survivors are eligible if the death of the employee was caused or contributed to, which is language that comes from the old Part D and is carried over as such. And the survivor definition is the traditional definition of who's eligible in worker's comp, in general. That is, spouses or -- or typically your dependent children, children who were under the age of 18 or thereabouts at the death of the employee. And so that's different -- that's like Part D, because it was the state worker's comp program, but not like Part B, because the definition of survivor under Part B is the expansive definition that Congress gave which includes adult children.

And to take the other side of the coin, the new Part E is different from Part D in that the benefits are Federal. This is a Federal entitlement program, like Part B in that sense. It's not a ticket to get help in the states. We have impairment and wage loss benefits

available for -- for living employees, and lump sum entitlements for survivors. There is a Part B-like adjudicatory process. In other words, the physician panels that were set up for the Part D program to be run by the Department of Energy are no longer required, which helps in terms of the efficiency and speed of the program.

Part B approval is equal to Part D approval. I think that's actually backwards. A Part D approval from one of the physician panels that's already looked at a case under the DOE process is automatically grandfathered into Part E eligibility. Also individuals who are eligible under Part B, as in boy, are automatically eligible under Part E, the new program, so -- and that is important to the claimant population in that if I received $150,000 under Part B, I'm also eligible to receive benefits under Part E, and there's no off-set between those two, so that's a -- that's an important facet of the new program.

The Congress added eligibility under Part E for uranium miners and transporters and millers. They were not eligible under the old Part D

program. They are now eligible under Part E. And there's an Ombudsman office -- Richard, where are you? There you are. There's an Ombudsman office to help individuals and to assist the Secretary in implementing the program, and the Secretary's Office is pursuing that. That's a new provision.

We're working on implementing Part E as hard as we can, which is why I got a call at 6:30 this morning. And we are working very closely with the Department of Energy to transition the 25,000 claims they had pending as of the passage of this statute over from them to us. And there's a very cooperative and smooth transition going on right now, I'm glad to report. In fact, we already have in hand somewhere upwards of 18,000 of those cases, Pete, is that about right?

MR. TURCIC: About 16.

MR. HALLMARK: Sixteen? All right. So most cases are in our hands already, and the rest in many cases are either still being reviewed under the Part D panels that are still in operation, or are not in urgent status.

We're already developing those cases under Part

E. We are working to implement regulations, as the last bullet here shows. They're required by May of 2005 under the statute, but in the meantime we're working on the cases now so there won't be any kind of hiatus between the hand-over. And we are planning to conduct outreach under Part E, another round of town hall meetings as we did back in 2001 to let people know about this new program, which is a substantial change, as you can understand from my brief presentation here, so that people know -- those who have already filed Part D claims will know that they're now going to be processed under Part E; that people who have not filed under Part D can figure out how to do that and give full information about that. And we are now, by the way, in full response -- running the resource centers ourselves by the Department of Labor. As Leon knows, this was a joint effort with Department of Energy and Labor from the inception back in '01. Now we have both sides of the house and so we'll be running those offices around the country and using them as a means of outreach, as well. I think Heidi's (sic) talked a little bit about

the changes that the legislation has made with regard to Part E -- B -- B as in boy, I'm sorry -- the major piece being, of course, that the window for covered employment at AWE sites has been expanded to include not just the period of time that the AWE was working on DOE activity, but any additional period of time that NIOSH has designated as having significant contin-- continuing contamination. That -- we -- that -- that -- an individual previously had to have worked during the contract period with DOE. Now they can have started work after that contract was over, but during the contamination period.

There's also a requirement in the statute that NIOSH go back and do further studies. I know Larry's anxious to do that. I think by 2006, is that correct, Larry? And as we've already discussed, there are deadlines with respect to SEC petitions that we don't need to go into here. And I think that is the end of my slides. I'm sure as --

DR. ZIEMER: Okay, thank you. Let's open the floor for questions for Shelby.

MR. HALLMARK: There were just a couple more --

before we do that --

DR. ZIEMER: Oh, sure.

MR. HALLMARK: -- there were a couple of comments that I wanted to make in addition to what was covered in the slides that came up as a result of our conversation yesterday, and one of them was that Dr. -- Dr. Wade mentioned that the budget process for NIOSH, and ultimately to support the Board, is related to the Department of Labor, and I just wanted to explain a little bit for the Board's information how that works, and the -- in fact Dr. Wade was correct. Every -- all the money that NIOSH and HHS receive to administer the EEOICPA program is appropriated to the Department of Labor and then transferred to NIOSH. We of course get it from OMB and Congress in an appropriation process.

In the context of the discussion that was held yesterday, I think it's important to note that the appropriations process is -- for non-defense, non-homeland security agencies, is not rosy at the present moment. And I think it's important for the Board to consider that fact in its deliberations about how it proceeds and how it -- what it recommends that NIOSH should

do with respect to funding its contractor. We received a substantial rescission in our 2005 budget. A rescission is, for those of you who are not government wonks (sic), is removal of monies that had already been appropriated. And we expect that 2006 is going to be a less favorable year than 2005, so I would just again caution that in considering recommendations with respect to contractor activity that that scarcity environment be taken into account. NIOSH is obliged, under the circumstances, to make decisions that are -- that will maximize the efficiency and effectiveness of the funds, and I would suggest that, for example, in the discussion yesterday about an iterative process with the contractor to come to closure on evaluations of the dose reconstruction, that the Board think in terms of making that process work efficiently and with as few iterations as possible so that in fact you can get it done and achieve the results that you're looking for. That's comment number one.

The comment number two is regarding the -- sort of the general process issue, and as Department of Labor's the chief consumer, if

you will, of the dose reconstruction process, and so we're very interested in how the Board goes about its responsibility to evaluate that product and make sure that it's the best it can be. And we appreciated the discussion yesterday and the outcome. I think that one point that I think would be very important for the Board to consider in categorizing and characterizing any comments that are -- that are generated with respect to the dose reconstruction process, is that documents like that are going to be viewed by our claimant population from the perspective of how the evaluation of the process impacts on the ultimate yes/no claimant outcome. And as one of the few non-doctors in the room yesterday I was fascinated by the discussion that went on with respect to the evaluation that SC&A has done of dose reconstruction. But it occurs to me, and I think from our perspective it's something that the Board ought to keep close in mind, is that its products are going to be viewed from this perspective of is my dose reconstruction that I received from NIOSH fundamentally sound; did I get the right yes or

no call. In pursuit of the scientific excellence and precision that is part of the responsibility of the Board, to try to make that process better I think it's important that the -- there's -- there's a categorization of the comments such that the public can decide whether this is -- the recommendation is one that is important to make our process more clear and more precise, or if it's really fundamental and we're -- NIOSH is making mistakes, if you will, fundamental mistakes about whether this is a yes or a no. So I really think that's an important comment to make.

So with that, any questions?

DR. ZIEMER: We'll begin with Rich.

MR. ESPINOSA: (Off microphone) (Unintelligible) --

DR. ZIEMER: Use your mike there.

MR. ESPINOSA: With the number and types of claims I'd be interested in seeing a breakdown by site and by illness in concerns of Subtitle E and B. And I'd also like to know if there's any efforts being made on doing a -- basically a site profile for toxins and stuff under

Subtitle E.

MR. HALLMARK: Okay. A breakdown under Part -- your -- your question is a breakdown of the data that we're showing here with respect to sites --

MR. ESPINOSA: Site and illness.

MR. HALLMARK: -- and conditions? All right. That kind of material can be pulled together, I believe.

MR. ESPINOSA: (Off microphone) (Unintelligible) for future report.

DR. ZIEMER: For future reports Rich is suggesting that would be helpful.

MR. HALLMARK: Right.

DR. ZIEMER: Not necessarily right now. Right? Thank you.

MR. HALLMARK: And with respect to Part E and site profiles, we do have a -- part of the legislation points the Department of Labor to doing something along those lines, and we do have a -- that's part of our implementation plan that we're working on right now to develop as much information as we can about the kinds of exposures that were experienced on all the different sites, and to codify that in ways

that will -- that will speed the process. So yes, we are -- we do have a site profile process for Part E, as well.

MR. ESPINOSA: And as for -- with concerns to your outreach, has there been any schedule implemented on going out to the sites and town hall meetings and stuff like that?

MR. HALLMARK: We are working on a schedule. We don't have -- we don't have an approved schedule yet, Richard. The expectation is that as soon as possible after the new year, we'll get started and we'll probably announce a -- you know, once we're able to put it in motion, we'll probably announce that, at least a number of those events in a single announcement.

MR. ESPINOSA: Once you get it in motion, how are you going to -- how is the information going to be delivered to -- you know, how are you going to notify the communities of your outreach?

MR. HALLMARK: Well, we -- as in the past with respect to actual town hall meetings, we will have a sort of a blitz of information. We contact media outlets, we -- obviously we work with the Congressional delegation in a given

site, and obvi-- our resource centers and a whole matrix of information goes out so that we get as much notice in that particular area as we can in advance of the event. But we also plan lots of other means of informing the public. We already have some information up on our web site. We'll be expanding that. We expect to issue a letter to all of the 25,000 Part D existing claimant community explaining the new program and that we will be further in touch with them. And by the way, people who have filed under Part D as in dog do not have to file a new claim. It will automatically be treated as a claim under Part E. So we'll be communicating directly with them with -- through our web site and in as many other ways as we can to get the word out.

DR. ZIEMER: Gen Roessler.

DR. ROESSLER: My question has to do with your slide 12 where you discussed -- that's too close -- what happens when DOE -- maybe that's it, I got feedback -- when DOL gets the NIOSH decision and then you have people who go over the decision, what technical qualifications do these people have and how much time do they

actually spend on each -- each review?

MR. HALLMARK: Well, our claims examiners and hearing representatives are not health physicists, that's -- that's certain, although we do have a health physicist or two -- including Jeffrey Kotsch back here in our audience -- to help inform them and to give them guidance. We rely on a procedural framework that informs the claims examiner as to the issues they need to focus on. For example, as is pointed out in the slide, are there factual issues that are mentioned in the dose reconstruction -- or that the claimant has brought forth evidence to us afterwards -- which are not addressed in the conclusions and findings of the dose reconstruction report. Now they won't try to -- we don't have the basis for saying these are -- these are necessarily significant or they would change the outcome. But if they haven't been addressed, that would be the basis for us going back and saying that NIOSH needs to evaluate their report again. Obviously if the employee has indicated an employment period which we credit that's outside of what NIOSH has used as

the basis for their dose reconstruction, then that would need to be re-evaluated. As I say, these are -- so they're sort of procedurally-defined categories which do not require our claims examiner to make a scientific judgment, simply that there is an issue that has -- has been raised that we credit and which was not addressed in the report itself. But as I say, the number of cases that fall into that category has been less than 200 to date.

(Tape difficulties)

THE COURT REPORTER: Would you mind starting over with your question?

DR. DEHART: I don't even remember what I said, but I'll try.

As you recall, under the Part D there was a physician panel which addressed the issue of diagnosis and causation. I understand that that will not be envisioned in the Part E as under the Department of Labor. How do you intend to address causation and its relationship to the disease? As you may well know, we are seeing all kinds of medical ailments -- such as stroke, heart attack, high blood pressure, diabetes, et cetera -- from

claimants, and it becomes somewhat difficult in dealing with making a causation statement when we're dealing with chemical toxicity, which is the majority of the claims, although radiation is also considered as a toxin under this issue.

MR. HALLMARK: Well, we -- we view the new structure in Part E as beneficial, and especially in terms of the promptness of the program. One of the major difficulties of the panel structure -- which was set up for reasons which perhaps -- it probably made sense in terms of the program as it was designed for Part D, but which we think is probably excessively time-consuming under Part E. We do -- we do -- we will retain the causation standard that was enunciated in the regulations for Part D, which is cause contributed to aggravated -- which is a broader standard and a lower bar to achieve than some worker's comps programs normally apply.

How would we get there and how do we address this difficulty of trying to connect conditions to difficult -- or not necessarily obvious exposure situations? I think that would run the whole gamut of all medical kinds of issues,

and that's something we have a lot of experience in other programs of doing. There may be cases which are particularly complex where, as we have done in the past in other programs, we need to call together multiple physicians, you know, from different disciplinary groups to address a particular case which we consider to be particularly knotty.

So in asking -- basically the way we will do business is the claims examiner will obtain information through evaluations that are -- that are done by physicians, and then use that evidence to make their determination. If the evaluation is -- needs to be complex and we need to in effect have a panel of experts, then that's what we'll do. If the medical evidence that's submitted by the claimant from their treating physician is sufficient to make that causal connection, then we're able to say yes, it is, and go on about our business. So it's that range of possibility that we think makes this structure more efficient and prompt in terms of the way we'll be able to get this program done.

DR. ZIEMER: Dr. Melius?
DR. MELIUS: Yeah, I've got a few questions. First of all, I guess I would advise a little bit of caution in using -- saying that -- I think the 20 percent claimant payment rate for -- or positivity rate, whatever you want to call it for -- for claims is above expectations based on DOE's expectations. Maybe you can't say it, but I can. I mean their performance in this whole program has not been -- has been far from ideal, and I'm just not sure what we can -- can say much, based on, you know, whatever the rate of people getting -- meeting the definition in terms of probability of causation isn't -- and also particularly based on how NIOSH has approached this so far. There's still -- you know, again, of the first 1,000 claims, 400 or so still haven't even been -- gone through the entire process, so we really don't know what the ultimate --
MR. HALLMARK: No, I agree --
DR. MELIUS: -- number was --
MR. HALLMARK: -- and just as a caveat, I'm referring back to the initial process, back when we were trying to estimate the cost of the

program in 1999/2000, the estimations that were being generated at that time, not -- not -- nothing with respect to the interim.

DR. MELIUS: Yeah, I mean I just think it's very -- that was very hard projections to do --

MR. HALLMARK: And I would agree that we don't know --

DR. MELIUS: -- that's all.

MR. HALLMARK: -- if this percentage is going to alter over time.

DR. MELIUS: Yeah, so whether it's claimant-friendly or how people are filing claims or whatever, there's just a lot of factors in there.

Secondly, to follow up on Gen's question, I think it would be useful if you could come back to us with some sort of analysis of the remands and -- and issues that you are discovering during your review of these cases in some sort of a statistical -- you know, proportional sort of way, just to give us a better idea of what's going on.

Also I think -- you know, we have our dose reconstruction review process. It's focused differently, appropriately --

MR. HALLMARK: Sure.

DR. MELIUS: -- but I think they can -- it can inform -- your process can inform what we do and so forth and avoid duplication and misunderstanding, and I think you've got enough cases now that it would be helpful, you know, again, and -- to us and I think maybe to you, too, in terms of this process. So if possible by our next meeting or the meeting thereafter, I think it would be helpful.

DR. ZIEMER: Let me insert here, that may apply particularly to slide -- the information on slide 12, which were a number of categories. It would be of interest, I think, to know what you're finding there.

MR. HALLMARK: Absolutely, and I -- in fact, I tried to get that, but our computer system wasn't nimble enough to gather that.

DR. ZIEMER: In the future that would be good information.

DR. MELIUS: Those that are due to new information -- okay, that's separate, but there's others where there may be issues that -- I just think it would be helpful to the process.

I noticed in NIOSH's slide that the number of claims under Subpart B has gone down recently, and would your expectations be that, as part of your outreach and part of this new and more claimant-friendly Subpart E, that the number of claims would be going up again, or -- any idea on -- any thoughts on that?

MR. HALLMARK: The number of Part B as in boy claims has -- after obviously the peak in the first two years -- has declined. But it's been relatively steady. It hasn't -- there hasn't been a precipitous or continuing decline. It's stayed around 12,000 over the last year or two, so we haven't seen a -- as much -- actually as much of a tailing-off as we really expected. My anticipation is that as we do the outreach for Part E, and obviously -- it's now -- we're going to be viewing this in the future as one integrated program which has two different eligibility streams, which are in fact inter-related. But as we do that outreach, we will -- we expect to see more Part B claims generated, as well as obviously we expect to see many more Part E claims. So we expect that trend to continue, and I -- and I expect that

will also result in some increase in the number of transfers to NIOSH.
Now that number has been kind of dwindling down into the, you know, 70's, 80's a week or less, recently. But you know, I think it could -- it could inch back up again.
DR. ZIEMER: Comment?
MR. ELLIOTT: I think we should also anticipate that we're going to see an increase in claims under the residual period aspect, too --
MR. HALLMARK: Correct.
MR. ELLIOTT: -- and I just think that as we look at that we want to make sure that we communicate clearly and appropriately that in many cases, for different types of cancer, the residual alone may not result in a compensable dose reconstruction, but we anticipate we'll see more claims coming from that venue.
DR. ZIEMER: What will the impact of that be on claims that have already been processed? Are there a number that you're going to have to go back with that expanded time period and --
MR. ELLIOTT: Yes.
DR. ZIEMER: -- rework?
MR. ELLIOTT: Yes, we will be looking -- as our

rule requires, we will re-evaluate those cases that have already been processed and determine whether or not there's a change in compensability based upon revised dose reconstructions.

MR. HALLMARK: I don't -- I'm not sure that that's -- I think I have to take exception. My understanding of cases that we have sent to NIOSH, insofar as we have so far sent a AWE case to NIOSH, the person had to have worked during the contract period. Okay? If they worked during the contract period, then NIOSH was obliged to count, for the dose reconstruction, the contract period exposure and any exposure during the radiation tail for -- contamination period for that individual.

DR. ZIEMER: So that would have already been covered.

MR. HALLMARK: So that -- so assuming they've done that properly, that would -- that would be correct. If the individual's employment started after the contract period, in the contamination period --

DR. ZIEMER: It wouldn't have previously been submitted.

MR. HALLMARK: -- we would have deemed that to be a non-covered employee and so if we were following our procedure correctly, it never would have gotten to NIOSH.

Now there are -- my recollection is we know of 300 cases that we denied because their employment fell outside of the window. Those 300 cases we need to go back and look at and possibly determine whether we should go ahead and send them to NIOSH. Some of those 300 may be people who did not work during a contamination period, either, but we -- those are things that we'll have to decide. But that will -- and obviously then there would be more claims that will come in, as Dr. Melius is suggesting, from people who worked during those contamination periods and that will generate more work in the Part B stream for NIOSH, but I think -- it's important to know that those which have gone to NIOSH have been fully treated to our -- under the procedures to date.

DR. ZIEMER: I'm going to get Mark, and then jump back.

DR. MELIUS: Okay.

MR. GRIFFON: Actually one was to follow onto

Gen and then Jim on that dose review reports. I think -- I agree, an analysis would be useful on that.

Also you mentioned a procedure that you use to do the reviews, and I think -- I don't know if that's on the web somewhere or if that's written up somehow. That may be just a useful tool to look at. I'm not sure it's --

MR. HALLMARK: I think -- I think all our procedures are available through our web site and so I would point you to the dol.com -- .gov, not com.

MR. GRIFFON: That's great.

MR. HALLMARK: I wish I got a percentage of this.

MR. GRIFFON: The next question I had was I noticed in the Bethlehem Steel site profile, in NIOSH's comments -- actually DOL commented on the site profile review, as well, and I was wondering if -- if this is part of your function -- I mean in terms of -- these DR reviews, I was interested in the analysis on that. Are you doing -- do you have an ongoing function on reviewing site profiles, or is that part of your function? I was -- I wasn't clear

that it was, but I --

MR. HALLMARK: Well, we -- as I say, we are the ultimate consumer of everything NIOSH does, and so we do review their materials. We have reviewed the iterations of site profiles over time and -- and provided comments back to NIOSH on those TBD documents and so on. It's our -- our sense is, obviously, that we -- that since we have to adjudicate cases under the -- under the results of the NIOSH process, that we have a stake and an interest in trying to make those as good as possible, just as -- as does the Board. So that's -- that's where we're coming from in that regard and I -- you know, I -- I think that's been a profitable process.

MR. GRIFFON: So is this sort of on a request basis or would -- or is this an ongoing -- are you -- and are the DOL review comments available through the OCAS web site? I mean are they all rolled into the reports we'll find on the OCAS web site or...

MR. ELLIOTT: They -- it is an ongoing process. All of our site profiles, as Shelby mentioned, have been reviewed by DOL. And no, the individual comment sheets that we receive, not

only from DOL but also from our own technical reviewers, are not on the web site, but they are accessible to the Board through that -- I believe that general database that we keep. Or if not, we will make them available.

MR. GRIFFON: DOL's are, too? I wasn't aware that DOL --

MR. ELLIOTT: Yeah, DOL's are included in the com-- we have a comment resolution process that we go -- we have a form that is used to track all comments and whether or not the comment was addressed and how it was addressed.

MR. GRIFFON: And the last -- Jim, you can finish up, but the last one is on Subtitle E, just to follow on with Roy's comment, I was curious if -- and I'm not aware of this -- if Subtitle E has any setup or provision for an independent review of -- of the claims processing, sort of like what we -- maybe not exactly like what we've got here, but...

MR. HALLMARK: Not precisely. The ombudsman is set up to provide recommendations to the Secretary about the general procedure. The way that -- it's a claims process and the -- what the statute says is that the Department of

Labor will apply basically the same adjudicatory process that we have developed under Part B, which as I, you know, indicated from the slides seem to indicate it has been successfully implemented and received. And the statute goes one step further and codifies what we had always expected was the case with respect to Part B, that there is an access to Federal court for individuals who are unsatisfied with the outcome in our adjudicatory structure. That was our legal interpretation of what happens with respect to our decisions under B, but it wasn't specific. In the new statute it is a specific designation of review.

DR. ZIEMER: Okay. Dr. Melius?

DR. MELIUS: Yeah, just two other brief comments. One is, in terms of your advice in terms of being fiscally prudent and given what's happened to the deficit, I think we also all have to recognize that this has been a brand new program starting up, much as NIOSH has had to modify its contractor, it's in the process of doing that and I think things have gone over expectations in terms of -- of how

much some of these issues have cost. I think that may as well apply to other parts of the program, and I think, you know, within the Board, I think we just also have to take very seriously that whatever money is asked for or needed is justifiable, and that gets put forward much as I think there's a process within NIOSH and other agencies that have been working on this process under that.

MR. HALLMARK: Agreed.

DR. MELIUS: Yeah. I also have a few questions on your comments -- Department of Labor's comments on the Bethlehem site profile review. If you or Pete are going to be here this afternoon, I'd be glad to defer those to this afternoon.

DR. ZIEMER: Why don't you reserve that for that discussion period.

MR. HALLMARK: We will be here and --

DR. MELIUS: Okay.

MR. HALLMARK: -- glad to participate.

DR. MELIUS: Okay. Thank you.

DR. ZIEMER: Yes, Henry?

DR. ANDERSON: This is just I guess for me to know where our review fits in compared to your

review, and this is for Larry. The cases that -- the individual cases that the Board and our contractor has reviewed, is that before, after, at the same time as the ones that go to DOL? In other words, it appears about ten percent are remanded. Are we before or after remand?

MR. ELLIOTT: Your review is -- from the very start of this, your review is on final adjudicated cases. They're -- they're out of -- the decision has been garnered.

DR. ANDERSON: Okay.

MR. HALLMARK: Yeah, the remands obviously would have -- would cycle back and become --

DR. ANDERSON: Yeah.

MR. HALLMARK: -- and receive a final decision at a given point, and the sample is from those which are past the final --

DR. ANDERSON: Yeah, okay.

MR. HALLMARK: -- decision.

DR. ANDERSON: I just wanted to be sure we were not -- something was not going on after ours.

MR. HALLMARK: No, I think that was very carefully determined to ensure that we don't create -- that your review process doesn't -- doesn't create tumbling in the adjudicatory

process.

DR. ZIEMER: Thank you very much, Shelby. We're going to continue now, and the continuation is a break -- 15 minutes.

(Whereupon, a recess was taken from 10:20 a.m. to 10:40 a.m.)

DR. ZIEMER: I'd like to reconvene the meeting, please. Before we begin our next topic, Liz wants to make one comment regarding some previous remarks on the --

MS. HOMOKI-TITUS: I just --

DR. ZIEMER: -- documents. Yeah.

MS. HOMOKI-TITUS: I just wanted to make a --

DR. ZIEMER: Clarification.

MS. HOMOKI-TITUS: I just wanted to make a clarification. When Dr. Melius and I were discussing documents that have Privacy Act information in them, he was discussing the SC&A report on the Bethlehem site profile review. There is no Privacy Act information in that document, but that still does not mean that that document would not go to our privacy office and be withheld at least until it was reviewed, just as any other document that's prepared would go to our Privacy Act office for

review before it would be -- ever be released.

DR. ZIEMER: Okay.

MS. HOMOKI-TITUS: So I just wanted to clarify that. I believe in my answer I indicated --

DR. ZIEMER: Right, when you had talked about redacted information, you were --

MS. HOMOKI-TITUS: Right, I believe I'd indicated there was Privacy Act information in that, and there was not, and I was corrected on that so I wanted to be sure it was on the record that there was no Privacy Act information in that document, but that they would be reviewed.

DR. ZIEMER: Thank you very much for that clarification.

SUBCOMMITTEE REPORT AND RECOMMENDATIONS

The next item we have is subcommittee report and recommendations. This is the subcommittee on dose reconstruction, which met yesterday morning. Most of the Board members, who are also members of the subcommittee, were present at that, but I will report to you that the subcommittee has recommended -- from a list of random -- randomly-selected cases, they have recommended 12 cases for review, which is not

enough for our next batch of 20, so the subcommittee also requested that an additional 25 randomly-selected cases be provided for us, and requested that the full Board assist in selecting the other eight cases.

For the record, I want to identify for the Board members -- for the full Board, the 12 cases that were recommended for the next review. There was a 13th case for which the vote on whether to carry it forward was tied, and we will need to resolve that and I'll identify that in a moment, and then we will supplement then from the next list of 25 cases which carry the I.D. numbers -- the date plus 26 through 50, and that sheet is being distributed to you now.

Board members, the recommended cases from the original list of 25 randomly-selected cases, they all carry the prefix 2004-12 and then they have the following numerical designations for our temporary I.D. here -- cases 1, 2, 3 --

DR. MELIUS: Paul, could you --

DR. ZIEMER: I'll slow down.

DR. MELIUS: We're just getting the handouts here.

DR. ZIEMER: This is the -- yesterday's handout, but you may need that. It's in horizontal rather than vertical format.

DR. MELIUS: Got it.

DR. ZIEMER: Starting at the top then with -- it would I.D. 1, 2, 3, 7, 15, 16, 17, 18, 19, 20, 23 and 25. That's 12 cases. Case number 9, a Rocky Flats lung cancer case, there was a tie vote on whether or not to include that, so I'd like to start with that one. We'll determine whether to include that. This is case number 9 with a probability of causation 78.8, lung cancer, Rocky Flats, working years 10.9, work decade 1950. Do you all see the case?

Now we'll use the procedure we used yesterday, just to vote it up or down, or abstain. Do we have any abstentions on this case?

(No responses)

Okay. Up means you favor carrying it forward. Up -- hands up? This was split yesterday, so --

DR. ANDERSON: (Off microphone) The explanation of what we're doing is (unintelligible).

DR. ZIEMER: What's that?

DR. ANDERSON: I mean I think when we initially voted I think -- then we discussed people's reasons for it and --

DR. ZIEMER: Right, and you may have changed your mind since then, so -- and you have another -- you have some additional lists. Okay, let me see the hands -- up?

(Affirmative indications)

DR. ZIEMER: Down? Put your hand up if you're voting down.

(Negative indications)

DR. ZIEMER: Well, it looks like the downs have it.

You're abstaining?

DR. MELIUS: I'm abstaining. Since I missed all the confusing discussion, I don't --

DR. ZIEMER: You don't want to add to the confusion.

DR. MELIUS: I don't know whether I'm up or down.

DR. ZIEMER: Okay. So that case will be excluded, also.

So that means we need to supplement this list with eight more cases. Take a moment and look over the next list of 25 cases. The

subcommittee had indicated the desire to include, if possible, cases in the 40 to 49.9 percent range. I see a couple on here that are in that category. I'd just call those to your attention as we move down the list.

Well, as -- yes, and let's take a moment to identify facilities on the new list that I -- have not already been included. The Iowa Ordnance Plant has not appeared on any of our lists to date.

MS. MUNN: Nor has Paducah -- Paducah or Blockson.

DR. ZIEMER: Are there others here that -- Allied, is that a new one?

MR. PRESLEY: Yeah, that's a new one.

MS. MUNN: So is Livermore.

MR. GRIFFON: And Livermore, yeah.

MS. MUNN: Iowa, Livermore, Blockson and Paducah -- and Allied.

DR. ZIEMER: Blockson we have had.

DR. MELIUS: One.

MR. GRIFFON: Paducah and K-25 I think are both -- K-25's been listed before, but along with Y-12, so it's --

DR. ZIEMER: Right.

MR. GRIFFON: Never alone.
DR. ZIEMER: Now the procedure that we used yesterday was to go through the list sequentially, but we can make some exceptions. I'd like to ask the Board, for example -- there are two cases on here that fall in the 40 to 49.9 range. These are cases number 28 and 49. And for example, 49, there's a possibility we wouldn't otherwise get to that case in getting our next 12, so I ask you at the front end, do you wish to include case number 49? So let -- if it's agreeable, let's determine that at the front end.
MS. MUNN: Well, we already have three from that site.
DR. ZIEMER: And that site is Rocky Flats. We had one Rocky Flats case in our original list --
MS. MUNN: I thought we had three.
DR. ZIEMER: In our original list -- or no, I'm sorry --
MS. MUNN: Three.
DR. ZIEMER: -- we had three in the original list --
MR. GRIFFON: Three that we've --

DR. ZIEMER: -- and there was one other Rocky Flats case on this list, which was not accepted.

MR. ELLIOTT: I think there's another bit of information the Board -- There's another bit of information that the subcommittee asked for yesterday, and that was the number of cases that have been adjudicated -- finally adjudicated that fall between 40 percent POC to 49.9, and I think --

DR. ZIEMER: In the present batch --

MR. ELLIOTT: -- Stu Hinnefeld has that in the present batch, yes.

DR. ZIEMER: That percentage was eight percent?

MR. HINNEFELD: It was about eight percent -- it's about 8.1 percent --

DR. ZIEMER: Of the --

MR. HINNEFELD: Of the sampling pool.

DR. ZIEMER: Of the completed cases or of all cases?

MR. HINNEFELD: Of the sampling pool, of those cases that are eligible for us to sample --

DR. ZIEMER: Which is basically completed cases.

MR. HINNEFELD: Yes.

DR. ZIEMER: Yes, thank you. Did everybody hear that? So of the completed cases, about eight percent are in that category.

MR. GRIFFON: That's eight percent of like 5,600 or whatever? Is that that -- that completed --

DR. ZIEMER: No, there are not that many --

MR. GRIFFON: Finally adjudicated number?

DR. ZIEMER: Finally adjudicated is what --

MR. HINNEFELD: The finally adjudicated number is quite a lot less, I want to say in the 2,000 to 3,000 range, if that many.

DR. ZIEMER: No, less than that final.

MR. HINNEFELD: Probably less than that.

DR. ZIEMER: More like 1,000.

MR. ELLIOTT: Suffice it to say, it's a very small number.

MR. HINNEFELD: 2,000 or 3,000 -- 2,000 or 3,000, according to Shelby.

DR. ZIEMER: Okay, are you ready to act on number 49? To include?

(Affirmative indications)

DR. ZIEMER: One, two, three, four -- well, it looks like unanimous. We'll include 49. Now I'll jump back --

UNIDENTIFIED: You have to approve the first 12.

DR. ZIEMER: Oh, yes, I'm sorry, let's do that. The first 12 come as a recommendation from the subcommittee, so before we continue, let us act as a group on the first 12, and then we will add to it individually. Is that agreeable? This comes as a recommendation from the subcommittee, does not require a second. It has the form of a motion since it's a report from the subcommittee, so it's on the floor. Any discussion on the first 12 cases that are recommended by the subcommittee?

(No responses)

There appears to be no discussion. All in favor of accepting those first 12 cases that were previously identified, say aye.

(Affirmative responses)

DR. ZIEMER: Any opposed, no?

(No responses)

DR. ZIEMER: Any abstentions?

(No responses)

DR. ZIEMER: Okay. We have accepted those first 12 cases. Now we will individually, as full Board action, add to those and -- did we

vote on -- we were just voting -- we voted on -- unanimously to add number 49, so that is on the list.

Now let me return to the top of the table here, case number 26.

MR. GRIFFON: Are you going yes or no?

DR. ZIEMER: Yes. Five, six, seven, eight, nine, ten, eleven -- okay, that -- more than a majority, that case will be included.

Number 27, Bethlehem Steel, lymphatic multiple myeloma. If anyone needs further information on numbers of cases, we had -- three Bethlehem Steels were done in the first batch. In the 12 that we just approved there was one.

Bethlehem Steel, in? Out? The outs have it. That one will be excluded.

The next one is the Lawrence Livermore breast cancer case number 28. In? Unanimous, that's in.

Number 29, Savannah River case, male genitalia. In? Appear to be no ins. Outs, just to confirm? Okay, that one is out.

Oak Ridge Gaseous Diffusion, non-melanoma skin, squamous cell case number 30. In? One, two, three, four, five, Chair votes in, six. Outs?

One, two, three --

UNIDENTIFIED: Abstain.

DR. ZIEMER: -- one abstain --

MR. PRESLEY: Two abstain.

DR. ZIEMER: Two abstain. That one will be in. The next one, number 31, a Savannah River Site lymphoma and multiple myeloma. In? Out? It's out. I should call for abstentions on all of these. Any abstentions on Savannah River, for the record? Okay.

The next Savannah River, acute myeloid leukemia. In? No ins? Outs? Abstentions? Out.

Thirty-three, Hanford, breast cancer case. In? Four. Out? One, two, three, four, five, six out. Abstentions?

MS. MUNN: One.

DR. ZIEMER: One. That is out. Feed Materials Center, rectal cancer, number 34. On any of these if anybody has any questions or needs more information, please chime in or we're just going to proceed with the votes. In? Out? Abstentions? One. One abstention, that one is out.

Rocky Flats breast cancer, number 35. In?

Just one? Out? Abstentions? It's out.
Feed materials, male genitalia, number 36. In? Nine, ten. Out? One. Abstain? One. That one is in.
I'm just going to pause a minute and see -- one, two, three, four -- we have selected five. We need three more. Keep that in mind as we proceed down the list.
Savannah River Site number 37, skin and oral cancers. In? Out? Okay. Abstentions? It's out.
Bethlehem Steel connective tissue cancer, number 38. In? Out? Abstention? It's out.
Bethlehem Steel skin basal cell, malignant melanoma, number 39. In? Out? Outs -- abstentions? That one is out.
Savannah River Site lymphoma, multiple myeloma, number 40. In? Out? Outs have it -- abstentions? Okay.
MR. GRIFFON: Paul, how many do we have left, four or --
DR. ZIEMER: Well, we need three more.
MR. GRIFFON: And keep in mind Allied's last on the list and so --
DR. ZIEMER: We've already -- oh, yes, okay.

Let me -- well, let me help us with this. Without objection, the Chair will jump to the bottom of the list for the moment. Let's decide what to do with Allied and that'll help us.

This is number 50, the pancreas cancer, Allied Chemical. All in -- ins? Let me see the ins. One, two, three, four, five, six -- that's -- abstentions on that one? One abstention. And that one will be in.

Now we have two remaining then.

Back to number 41, bladder cancer, Savannah River. In? Out? Lot of outs. Abstentions? That one's out.

Oak Ridge Gaseous Diffusion Plants -- well, this is K-25 and Y-12, it looks like, male genitalia, 42 -- number 42. In? One, two, three, four, five, six. Out? Three, and abstentions? One. That one will be in. That's 42. That is seven cases.

Savannah River lung, number 43. In? Out? Abstentions? Okay, that one's out.

Number 44 Blockson, skin, basal cell. In? Abstentions? By conclusion I'll assume -- Okay, that one's out.

Oak Ridge breast cancer number 45. In? Out? Is everybody abstaining? Okay, that one's out. Now Paducah, male genitalia, number 46. In? One, two, three -- seven, eight, nine, ten. Out? One, and abstentions? One. That one will be in.

Then we have reached our eight right there and then are returning -- the other will also return to the pool then. That's cases 47 and 8 are automatically out since we have our pool now -- one, two, three, four, five, six, seven, eight.

Just to reconfirm this last group, it would be cases number 26, 8 -- 26, 28, 30, 36, 42, 46, 49 and 50. Everybody have that? Thank you.

These cases will -- the details will be provided to the contractor for their review.

We also need to assign teams, as we did before. We need two individuals for each case. If you want to go with the same teams, that's fine. We need to make sure that the -- I'm trying to recall how we actually did the assignments last time.

DR. DEHART: (Off microphone) I think (unintelligible) we had a health physicist on

each team.

DR. MELIUS: That didn't work. It didn't work. They got all -- because of conflicts and -- it was hard.

DR. ZIEMER: Let me double-check the teams. We had -- Henry and Robert were on one team. Roy and Genevieve, Tony and Mark, Mike and I, Leon and Wanda, that's five teams.

DR. ROESSLER: What happened to Rich?

DR. ZIEMER: Rich, oh, yeah.

DR. MELIUS: Rich and I, the A team.

DR. ZIEMER: What happened -- what happened to you, Rich?

MR. ESPINOSA: I --

DR. ZIEMER: How come I'm not seeing your name on here? Oh, here we are, we've got Jim Melius and Rich. Good, okay. That's right, because some teams had three and some had just two cases I think is -- or one team -- or three and four, is that how it was?

DR. MELIUS: We had four.

DR. ZIEMER: I'm going to see if we can -- without getting too complex on this, just take these teams in the order that I just mentioned and see if we can get them assigned to these

cases as they come. We may have to juggle.
MR. PRESLEY: Paul?
DR. ZIEMER: Uh-huh?
MR. PRESLEY: Can Henry and I take 2, 3 and 7 'cause I've got a conflict of interest on 1.
DR. ZIEMER: Yeah, if you have conflicts of interest, we've got to -- we've got to eliminate those right away. Let's see if we can try that.
So Henry and Robert, 2, 3 and 7. Okay, I'm calling -- that's -- just for my code, team one. Okay.
Roy and Genevieve -- let's see, Roy, do you have a problem on case 1 at all?
DR. DEHART: On 1? Three -- I'm sorry --
DR. ZIEMER: Well, it's Oak Ridge.
DR. DEHART: They're doing 1 and 2 and 7.
DR. ROESSLER: No, they're doing 2, 3 and 7.
DR. ZIEMER: They're doing 2, 3 and 7. I'm looking --
MR. ELLIOTT: Roy can't do Y-12.
DR. ZIEMER: You can't --
DR. DEHART: Yes, I can't do 1.
DR. ZIEMER: You can't do 1, but you could do 4 --

DR. ROESSLER: We didn't pick 4.
DR. ZIEMER: I'm sorry, let me get the right ones here. We're down to -- actually 15, isn't it, the next one?
UNIDENTIFIED: Yes, it is.
DR. ZIEMER: Can you do 15, 16 and 17?
DR. DEHART: Yes.
DR. ZIEMER: Okay. Team three will be Tony and Mark. Let's see, we have a problem on 1 at all? Can you guys do 1? Okay. And then how about --
MR. ELLIOTT: Mark, you've got --
DR. ZIEMER: Mark, you have a problem on 18?
MR. ELLIOTT: What about K-25?
MR. GRIFFON: I don't have a problem with that.
MR. ELLIOTT: You're listed on K-25.
DR. ZIEMER: You have a conflict on -- you're listed as -- on a K-25 --
MR. GRIFFON: I'll pass it for now, but I didn't think I had that. I mean just to make this easy, I'll step down.
DR. ZIEMER: Let's drop it, just in -- so we don't have to worry -- we'll take you back off of that one. And let's see, Feed Materials? You're okay on Feed Materials, so let's do that

one. Bethlehem Steel and Hanford? Okay? That's -- those are 18, 19 and 20. Okay?

UNIDENTIFIED: Number 1?

DR. ZIEMER: Nobody has number 1 at the moment. Next, Ziemer-Gibson. I'll have a conflict on 1, so let's -- and on 23, as well, so let's go to -- I'm okay on 25, I believe -- well, you know what, I'd probably better not be on 25. I just went off one of their review committees at Battelle, so -- am I listed on Battelle?

MR. ELLIOTT: (Off microphone) But you are listed on (unintelligible) recusal required (unintelligible).

DR. ZIEMER: Yeah, I'll have to recuse on Battelle, so let's go with Iowa Ordnance -- Mike, are we okay on that one? And Lawrence Livermore, you okay? And I'll be out on 30, so let's go to 36. Okay?

Now Leon and Wanda, how are we on case 1 for you two?

MS. MUNN: Fine here.

DR. ZIEMER: Oak Ridge?

MS. MUNN: Uh-huh.

MR. OWENS: I should be.

DR. ZIEMER: Should be okay?

MR. OWENS: I should be fine.
DR. ZIEMER: Yeah. Okay, case 1 will be Leon and Wanda. What do we have on the first page yet?
MS. MUNN: Twenty-three.
DR. ZIEMER: Twenty-three, Y-12, Leon and Wanda then. And then -- what about 30?
UNIDENTIFIED: Twenty-five.
MS. MUNN: Can't do 25 --
DR. ZIEMER: Oh, I missed 25.
MS. MUNN: -- can do 30.
DR. ZIEMER: Yes, 25.
MS. MUNN: Can't do.
DR. ZIEMER: No, you can't do 25.
MS. MUNN: Can't do.
DR. ZIEMER: That's basically Hanford -- 30?
MS. MUNN: Sure.
DR. ZIEMER: Okay. Melius-Espinosa.
DR. MELIUS: We get the leftovers, Rich.
DR. ZIEMER: No, the good stuff, we always save the good stuff for last. Let's see, on the first page -- or first list we have still number 25. Correct? Pacific Northwest? We're okay?
DR. MELIUS: Okay, we're fine.

DR. ZIEMER: And then is 42 the next one? That's Oak Ridge. You okay on Oak Ridge?

DR. MELIUS: Yeah.

DR. ZIEMER: And then Paducah?

DR. MELIUS: Yeah.

MR. ELLIOTT: Forty-six.

DR. ZIEMER: That's number 46. Okay.

DR. ROESSLER: Give them another one.

DR. ZIEMER: No. You two are begging for more. Right?

MR. ESPINOSA: I thought I heard volunteer for the last two.

DR. ZIEMER: The last two -- we have a Rocky Flats and an Allied. Which teams want to volunteer for either of those?

MS. MUNN: I'd like Allied --

MR. OWENS: I --

DR. ZIEMER: Okay.

MS. MUNN: -- if it's --

DR. ZIEMER: No.

MS. MUNN: You can't do it?

DR. ZIEMER: We've got Mark and Tony doing Allied and -- who volunteered for Rocky? Okay, Wanda and Leon for Rocky, and that covers all of our cases. Okay?

Anyone identify any conflict of interest now that has not already been taken care of with your assigned cases? The recorder has those. I think all of us have a list. Any questions on the subcommittee report then?

(Pause)

Now I think -- does that complete all of our subcommittee action? Appears to. I think probably we -- we have a little bit of time before lunch. I think perhaps it might be appropriate if I reported on the closed session of the Board for -- from yesterday afternoon, reported out that information for the public meeting.

The closed session yesterday was for the purpose of reviewing the individual dose reconstructions -- the reviews of the individual dose reconstructions as provided by the Board's contractor. That involved review of some 20 cases from our first batch of reviews. In the course of the discussions that ensued, a number of issues arose which included issues of factual correctness, issues of format and related things. And the net result is that the Board has made the following motion, which

I will read to you. I'm actually reading from my notes as the -- the transcriber may have a few words slightly different, but I think I will be able to capture pretty fully the motion that the Board approved. I believe it was unanimously approved. And this is a six-part motion. I will give you each part by number.

First, that -- that NIOSH complete its technical and factual review of the SCA report. NIOSH had made a partial review but had not completed the technical and factual review of the SCA report; that SCA --

Number two, that SCA and NIOSH resolve and clarify issues in the report where there were -- and I'm adding parenthetically where there appear to be disagreements on the facts of the case -- or cases.

Three, that SCA prepare a new report to the Board to address any issues raised by NIOSH, including corrections and changes that SCA may make. I will add parenthetically that SCA had already prepared a list of errata that they wanted to add to their report and we had not had a chance to review that.

Four, that SCA provide a better categorization

of their findings and categories of findings. Five, that NIOSH communicate to the Board any unresolved issues that arise from their collaboration with SCA on the items talked about in item -- part two of this motion. And six, that SCA provide to the Board, at least one week before our next meeting, their revised report.

That is the motion. I'll ask the Board, have I described it correctly? It's not verbatim, but I think very close. We could have the reporter read it back fully, but that basically summarizes the nature of the motion. The net -- which was passed. The net result of that motion is that the Board is not at this point ready to release a final report on those first 20 cases. Okay?

Board members, any additional comments at this time? Have I failed to describe anything correctly? Yes, Mark.

MR. GRIFFON: And you might -- you might be getting to this, but just to say the Board is in that process. We set up in a later motion a working group --

DR. ZIEMER: Yes.

MR. GRIFFON: -- that will work with NIOSH and the contractor to sort of --

DR. ZIEMER: Right, we have a working group that will work with NIOSH and the contractor as they -- so that we're fully engaged as -- on some of the issues that we have identified in the reports are addressed and resolved.

And Richard?

MR. ESPINOSA: Just for the record -- just for the public record, it might be important to announce the members on the working group.

DR. ZIEMER: Yes.

MR. ELLIOTT: And the specific charge for the work group.

DR. ZIEMER: The working group that is to monitor these actions will be chaired by Tony Andrade. The other members are Mark Griffon, Rich Espinosa, Wanda Munn and Mike Gibson. Those are the members of the work group, and basically they're -- they're charged -- I don't have the exact wording of the charge, but their charge is to work with the contractor and NIOSH to address the issues that were covered in the motion and to help prepare the final materials that come back to the Board, which would be

SCA's final report to the Board. Okay? Other Board members, any additional input on that? Okay, thank you very much.

Are there any housekeeping things that we need to take care of just before lunch? Okay, we're going to then have our lunch break. Right after lunch we'll begin the session on the site profile reviews and more specifically the Bethlehem Steel site profile. We are recessed till 1:00 o'clock.

(Whereupon, a lunch recess was taken from 11:30 a.m. to 1:05 p.m.)

DR. ZIEMER: If you would please take your seats, we'll begin the afternoon session.

I'd like to call attention to the fact for our session this afternoon Dr. Wade will be serving in the capacity of the Designated Federal Official for this particular session.

SITE PROFILE REVIEWS

Our main topic of interest this afternoon is the site profile review for Bethlehem Steel. Members of the Board, you should have several documents. First of all is the site profile document itself. Secondly the review that was

done by our contractor, SC&A. Also there is a document that has been provided by NIOSH, which is a set of comments on the site profile review. And I believe also you will have a set of comments from Department of Labor.

Now as we proceed this afternoon, we've set aside the first hour for a presentation, starting with the SC&A presentation where Joe Fitzgerald will give us an overview of the site profile that SC&A has developed for us. Following that we will have the presentation from NIOSH by Dr. Neton, and they will provide some comments on the site profile review. And then we will have basically the rest of the afternoon session for the Board to discuss the documents. And Board members, when we get to that point -- and keep in mind that one of our objectives here is to develop the Board's position or the Board's comments on the review. And at that point I'm going to suggest a sort of road map as to how we might proceed that hopefully will be helpful to you as we go through our comment period.

So let us begin with the overview of the site profile review itself and call on Joe

Fitzgerald. And Joe, I understand you have a couple of supplementary pages to go with -- with the material that's in our -- or is that --

MR. FITZGERALD: Yes.

DR. ZIEMER: Is that correct?

MR. FITZGERALD: Is Cori here?

DR. ZIEMER: Okay. Is it this set of tables?

MR. FITZGERALD: Yeah, based on yesterday's experience --

DR. ZIEMER: Board members -- and I believe these are available also to the public, there are some -- a three-page supplement to the slides that -- or the Power Points that Joe will use. So Joe, please proceed. Welcome.

MR. FITZGERALD: Good afternoon. I'm going to -- given the brevity of time that we have, I'm going to probably just skip over some of the preliminaries that I think you have in your slides. And frankly we've talked about these before in terms of approaches, what have you. I do want to go to one slide, though, if you'll bear with me. Yeah, I want to -- I want to talk through this a little bit because I think, given this is the very first site profile we've

reported on and given some of the comments that we certainly have seen from NIOSH, I just wanted to emphasize some of the attributes of what we're doing.

Certainly you're familiar with the horizontal and the vertical -- we've talked about that quite a bit. But in terms of interviewing workers, site experts in particular, the notion there is a real objective to -- to get information, to understand processes and to effectively start pulling the string. And that -- you know, just a little perspective on that, certainly not to use that as an exclusive source of information. I think it's a very valuable source of information. It supplements much of what we've gone through the records. It points to I think some of the secondary records that we've found to be very important, so I want to emphasize that certainly that was one of the charges that this Advisory Board approved for us, which was to fully avail ourselves of the input we would get from the workers at the sites. And I think for Bethlehem Steel in particular, we felt that was a very valuable perspective and something that

we would use as a guide.
Now again, given I think some of the comments we've seen, this is 50 years ago, so in terms of corroboratory information, in some cases we didn't have corroboratory evidence but we felt there was enough perspective and information that was provided that it gives us the ability to tee up some issues, to point to some possible concerns that we want to pursue elsewhere, or we certainly would want to raise for the Board's attention. So just to put some perspective on that, certainly that we found to be a valuable input and a part of our procedures.
In terms of the conformance with regulations, standards and procedures, you know, frankly, we -- we understand that a lot of these procedures originated with -- with NIOSH, with OCAS and, you know, we're not being presumptive to question the authors on how -- on what the procedures mean and how we interpret them, but I think our perspective is that where we see some notions or evidence of potential inconsistencies, we think it's important to raise those to understand what they mean, and

perhaps in some cases to have NIOSH explain these -- these issues and inconsistencies and raise those and surface those, not from the standpoint of challenging procedures so much as to understand how they're being applied in real life. And I think in terms of the site profile review we're looking at manifest use of procedures applying policies, and we're trying to report back on what we're seeing and how that plays out.

This last point, the Chairman has almost in every meeting I think raised the issue of don't solve the problem. You know, this is not a confirmatory exercise. There's certainly not enough resources. And after our experience I would certainly agree that it takes a great deal of resources to drive a number of these issues to ground. But we certainly wanted to substantiate the issues to the degree that we felt they were legitimate issues to bring forward to this Board. And we wanted to distinguish between that information we felt was significant and had a strong basis in the information that we looked at, we termed those "findings" in the report and that distinguishes

them from "observations", which we identified in the report as being perhaps less significant and perhaps without as much of a basis. We did not find as much information or we didn't see as much documentation, and we wanted to make that distinction that -- we didn't want to lose that feedback for the Board's benefit. But by the same token, we wanted to signal that perhaps we felt we had a little less either corroboration or information for that.

So in any case, we did have a factual accuracy and representation review by NIOSH before submitting the report to the Board. It's the opportunity to go through the report in draft and to feed back to us any instances where we -- there was felt to be any factual errors or representation issues, those kinds of things, and that's part of the process that we're -- that we're exercising here.

With that, and given the time that we have, I want to just frankly ask Arjun Makhijani -- Dr. Arjun Makhijani to come up and go through the technical findings. Arjun's a co-author of the site profile, along with Kathy Robertson-DeMers, who's in the first row -- Kathy, you

want to raise your hand? So they're the two -- two technical authors and I just wanted to get right to the meat, given the time frame that we have.

DR. MAKHIJANI: Thank you, Joe. We were confronted with a job in Bethlehem Steel site profile review in a situation where there's manifestly big gaps in the data, data are very incomplete. For instance, there are no dosimetry data, no bioassay data and so on. Even the air concentration data are rather scattered. There are many gaps. There are no data for some rollings, very few data at particular job locations and so on.

In a situation like that, we felt that it is important to develop a method to join the two terms, "scientifically sound", which applies in every case, whether you have complete data or not, with the idea of "claimant favorable", because in this case you've got gaps in the data and so you have to fill those gaps by resolving it -- giving the workers the benefit of the doubt -- or the claimants. Now in practice, when you raise those terms of "claimant favorable" and "benefit of the

doubt", you have to give a quantitative substance to that. And the first thing that we decided was, you can't first go to the term "claimant favorable". You have to first go to the term "scientifically sound" and "statistically sound" and look at that, and then step back from that and say well, which workers do these statistics represent, what is claimant favorable in the context of properly fitting the data. So claimant favorable considerations are crucial, but in the logic of what we -- how we viewed the problem, they come second.

If you're not scientifically sound and you don't have the right statistics, then every claim you make for claimant favorable may be put into question and some claims would turn out to be wrong. And just to put things in perspective, this is a large part of the problem that we found occurred with NIOSH is there was an attempt to be claimant favorable by using a very important datapoint from Simonds without going through the exercise of first being statistically sound.

That consists of two things -- the prior slide

cons-- shows categories of workers. You cannot apply a one-size-fits-all to workers. If you try to do that, you're going to be claimant-favorable and reasonable for some workers, and perhaps not for other workers, and that turned out to be the case.

We found, for instance, that workers who were not involved in uranium processing, they were eligible for compensation, even though the statistics of the triangular distribution are not quite right. Clearly for these workers it's all claimant favorable that NIOSH goes through Table 2 and Table 3. They weren't present in the rolling process, so they were clearly not exposed to those high levels of uranium.

At the same time, the workers who were in the rolling process, some were in hazardous jobs, some were going into furnaces and cleaning up, some were handling uranium a lot, some were at rollers a lot of the time. And others may have been inspectors who were wandering the facility, for whom an average facility profile would do. And so unless you know what the worker is doing, you can't use the statistics

appropriately because the job is not to describe the facility. The job is to make an individual's dose calculation in a manner that's scientifically reasonable and fair to that person. And fair in this case, because of the gaps in data, mean that you have to actually be claimant-favorable, but on the basis of sound science.

So we found that NIOSH's site profile had some strengths. They used the right solubility class for inhalation doses. They rightly realized that internal inhalation doses will be very important. We also supported the use of NIOSH data -- NIOSH's use of data from Simonds, with some caveats and cautions, and these -- I'll come to -- these are very important because they're not exactly comparable facilities. In some cases Simonds concentrations will tend to be higher because the process involved putting uranium through the rollers twice, which was not the case. But in other cases, Simonds would tend to be less polluted because they had some ventilation and, according to information that we have from the workers of the time, there was no ventilation

in terms of engineering controls at Bethlehem Steel. So we endorse that with some caution, and I feel personally that it was -- it's a shade or two on the side of reasonable to use it, but what -- can't stretch that very far. So there are a number of weaknesses in the site profile and they're limit -- listed there. Air concentration data were not critically evaluated. ICRP gives guidance on how you use short-term data and fixed data in -- to calculate worker doses. There's new Reg. 1400 which gives these guidance. We didn't say that there should be some factor by which all air concentrations should be multiplied. Please remember that we were making, first of all, an illustration of scientifically sound methods and the relevant guidances which should have been used. And we believe, even after examining NIOSH's response to us, that NIOSH should evaluate ICRP-75. We're not saying there should be some multiplicative factor for the data or not, but it definitely should be evaluated. There's an asymmetry between minimum doses and maximum doses, and that involves like taking category of workers and so

on into account that's very important. And we think ingestion doses are under-estimated and so on, and I'll go through some of these points. I'm not going to hit all of the points that we covered, but try to explain some points in detail.

So let me get to one of the very, very big issues. We felt -- when we looked at -- the most important thing in the whole site profile is a single number. That number is in Table 3 of the site profile. It -- it's a number that's drawn from Simonds data. It says that the high air concentration is 1,000 times MAC. This number in the whole site profile really drives both the compensation claims for those who are not compensated at the minimum dose level, but it drives both compensation and it drives denial. These other numbers really are pale in comparison to that single number of 1,000 times MAC, because that gives you an average -- it alone essentially determines the average of the triangular distribution, which is the sum of all three parameters divided by three -- 1,000 divided by three is 333.3, and when you add up all three, it's 334. So

essentially all other numbers pale in comparison. So 1,000 times MAC is really the crucial number in the whole site profile. Therefore, we decided to focus on the reasonableness and scientific soundness of that number. And since it is drawn from Simonds data, we thought we should take a hard look at that dataset. When we looked at the dataset from which it was drawn, we found that the data did not fit a triangular distribution. A good fit would be the points would lie along the line. So you could be claimant favorable or not and you may get -- can make many claims, but this is starting off on the wrong foot. As I said, you have to first go to the science and then go to the claimant favorable.

So we tried to do that. We tried other fits. This is a lognormal fit, and this is the normal way in which air concentration data are expected to fall. And NIOSH itself has presented some lognormal calculations in its response and you can see that and -- that it is a bet-- this is a better fit, normally. You can see there's one kind of weird point there that doesn't quite fit, but the other -- you

don't expect a very, very good fit because these are scattered data with many -- many gaps. Many stations have just a single datapoint, and they may be stations at which no data were taken. So this is a reasonable starting point for examining the data.

Now NIOSH has said that 1,000 -- this is a paraphrase -- 1,000 times MAC is the indicated maximum air concentrations at Simonds. The maximum point in the attachment number four comes from a particular work station called roller number one, and there were only three samples taken at this roller number one. So if you ask yourself the statistically appropriate way to approach the question of what's the maximum possible number -- first of all, NIOSH did not use the maximum of 1,071. It used 1,000 and said that the probability of any air concentration above 1,000 is zero. That's what a triangular distribu-- that is that it is impossible to get a value of air concentration greater than 1,000, when we actually had 1,071. That was a relatively minor error in numerical terms, but a procedural -- as a procedural error, it's important. However, when you ask

yourself -- the question is, if you make many measurements at that station, what kind of air concentrations would you expect? Since you have only three datapoints, there are a number of different ways to fit those datapoints. You can use a lot of different distributions. And Dr. Shimalenski*, who's a statistician who worked with us -- along with Dr. Peter Bickel of UC Berkeley; he's actually in Washington and so could not be here -- but they're both extremely expert in their fields and we work very closely with them, and this work is essentially their work. I took statistics under Dr. Bickel when I was a student at Berkeley, actually, 30-odd years ago, and -- and so this is their work that I am explaining to you and I'm presenting to you.

So when you start here and ask that question, then you can come up with a set of values. And Dr. Shimalenski did some calculations which indicated that the -- you can be sort of fairly confident at the 95 percent level, something like -- close to that, that the maximum measurement at this station will be something between 1,470 times MAC and 4,900 times MAC.

Now these are huge numbers. They're all above one thou-- all the answers were above 1,000 times MAC.

Why is that? Because you had three relatively large measurements, and it's likely that if you make more measurements that you'll find something more than your largest measurement. And -- and so we were -- but -- but please bear in mind that we did not actually recommend the use of any of these numbers in dose reconstructions. We made methodological illustration that when you do a statistically correct representation of the data, these are the kinds of numbers you get. You should not be using triangular distributions and post facto kind of going and saying it's claimant favorable.

If you look at this distribution and say well, what's claimant favorable for an inspector who's wandering around the facility, what's the 95 percentile value of this, and the answer to that's about 570 times MAC, which is considerably bigger than the average of Table 3, which is 334 times MAC.

If you ask yourself the question what's the air

concentration if a worker stood at roller number one all day, what would he experience, and the answer to that may be something in the several thousand MAC.

Now NIOSH has raised the point that we should have used time-averaged data. And I looked at this question actually, and I consider -- SC&A considers that the use of time-averaged data from Simonds for Bethlehem Steel would be wrong. The details -- it would be stretching the comparison over the limit. There were only two rollers at Simonds. There were six at Bethlehem Steel. There was ventilation at Simonds. There was no ventilation. The layout of the equipment was different. We don't know the job -- the number of people in various jobs at Bethlehem Steel, which we have data at Simonds. There's no real good way to transfer that data to Bethlehem Steel. So the suggestion that Simonds time-averaged data could be applied to workers at Bethlehem Steel I think stretches this comparison way beyond the breaking point.

You could ask the question well, for argument's sake, you could use Simonds time-averaged data

for Simonds workers, and what would that give you? So we did a little bit of a quick exercise. I worked with Dr. Bickel, who did some numbers on the airplane, and all of the sort of responses to NIOSH's response have been done rather rapidly, and so you might imagine that this is very preliminary and for the sake of illustration, and they're not reviewed and well-considered numbers. We haven't actually done all of the work in the normal way that we did this. But the idea that you could take time averaging that was done for industrial hygiene purposes at face value and use this for those calculations is statistically incorrect. We find that it is indefensible to -- to do that.

The reason is, the proper way to approach time averaging would be to construct an air concentration profile for every place in which the worker spent time -- lunch area, roller number one, some other place and so on -- and the places are catalogued in the documents. However, many places have only a single air sample. You can't do an air concentration distribution with a single air sample. If

you're using that to represent the workers, it would be statistically very, very dubious, and it certainly would not be claimant favorable at all.

The -- but there is a procedure for -- in terms of lack of data that you can develop, which is you can develop an air concentration profile for stations where you have numbers of datapoints, and then you can develop a facility profile -- and I've shown you, this is a facility profile -- and then you can weight it. You could say 20 percent of the time at roller number one, 80 percent of the time sort of over the facility. It's crude, but statistically at least defensible. Crude because the data don't support anything more than crude. And when you do that, the time-weighted average, the 95 percentile -- and these are all unreviewed numbers and we would ask your indulgence to change them upon review, but I'm just giving them to you since some numbers have been put out there that -- that we don't think are correct. The time-weighted average for the most contaminated work station in Simonds works out to considerably over 1,000 times MAC.

And so the -- you have to consider the statistically sound approach first, and only then can you consider -- so what's the bottom line in all of this. The bottom line is that NIOSH did not adopt scientifically sound and statistically sound ways to approach the problem in the first step, and that's what should have been the first step. NIOSH's approach is certainly claimant-favorable for some workers, but we have very little question that NIOSH's approach is not claimant-favorable for some workers. And that's very important because it's not claimant favorable enough that it could affect some compensation claims, especially those compensation claims that are not far from 50 percent probability of causation.

Now NIOSH has also said that we should have used Bethlehem Steel data for making these conclusions. As we said, the most important -- as I said, the most important point in NIOSH's site profile was drawn from Simonds data and so we focused on that. Because NIOSH made that choice, it made it inevitable for us that we should focus on that. And we did not actually

go to Bethlehem Steel data because it was not our charge to complete all of this. We illustrated the methodology. We didn't prescribe what NIOSH should say or do in terms of actual numbers to use, but we suggested that this approach should be used.

Now NIOSH has presented some numbers regarding Bethlehem Steel data, and unfortunately I've examined this and I discussed this with Dr. Bickel some, also, and -- and again, we've both agreed that this approach that NIOSH has used again for the analysis is not statistically sound. NIOSH itself has said that there are two processes that were used at Bethlehem Steel. There was an early process and then a later process, the salt bath process in which emissions were much reduced. But if that is the case, you have to split up the data into early data and later data because they're two com-- quite different populations of data, as the statisticians say.

If you look at the later data, NIOSH is quite right. The air concentrations are quite low. If you look at the earlier data, the air concentrations are -- all the higher

concentrations are in the earlier data. Now we haven't critically evaluated this earlier data. A lot of the data are illegible. We don't know exactly which stations they belong to in many cases. We have not attempted a critical evaluation of them. I just did some quick numbers of an empirical lognormal fit, just for purposes of illustration. These numbers are not meant to be prescriptive or definitive or even well-considered. I just did them just to show that when you split -- when you adopt a sound approach, at least your concept should be right. And we -- the unfortunate thing is that NIOSH's concept in doing the statistics even here, not in a single instance did we find that NIOSH's concepts in using the statistics were right because in Bethlehem Steel data it is essential that you should split the early data from the later data.

Well, the bottom line on Bethlehem Steel for dose reconstruction, in SC&A's view, is -- is that if you -- once you do that, you could do that, then you have to know exact worker history for every claimant. This would add a layer of complication and uncertainty to

claimants that would be quite considerable, fif-- more than 50 years after the fact. And so this -- this is a very, very difficult issue which -- which I think the Board will need to grapple with in terms of if you want to adopt some of the things that have been presented by NIOSH.

Let me go to the next big issue, which is ingestion doses. NIOSH used the approach that fine particles will deposit on food and that this is the main pathway for ingestion doses. We don't agree with this. We suggested some numbers that are out there in terms of possible ingestion. We again did not prescribe what should be used as numbers. The main avenues -- pathways for ingestion are likely to be big uranium flakes coming off of the rolling or coming off the floor when the floor is hosed down and things like that. And -- and this needs to be evaluated and taken into account. In OTIB-4 which is the Technical Information Bulletin published by NIOSH, which includes Bethlehem Steel and covers Bethlehem Steel, the inges-- indicated ingestion doses are more than 50 times greater than those in the site

profile. Now I find it quite strange that NIOSH has not done a well-considered analysis of ingestion doses. And even in the Huntington site profile, Dr. Mauro, when he did the -- did the site -- the dose audit, found that the deposition did not fit the model of fine particles, but was greater than that.

Now NIOSH has not done a good analysis of ingestion, and yet it has concluded that ingestion doses are low. Well, this is backwards. You first have to do the analysis, and then conclude how big ingestion doses are. We believe ingestion doses are underestimated enough that they may -- may, if properly estimated, affect some cases. We have no way of telling at the present time, but certainly if you look at OTIB-4, those ingestion doses are big enough that they could affect some cases.

Number of rollings. NIOSH has said they are -- there's evidence only for 13 rollings and has assumed 48, and this is very claimant-favorable. We looked at this question in the site profile review, and we agreed that assuming 48 rollings is claimant-favorable,

from what evidence there is. You can't really decide. But the contract was signed in '49, and '49 was the first Soviet test. The whole nuclear weapons complex were being ramped up a great deal. The fact that there's no documentation, in the face of a lot of documentation having been destroyed and Bethlehem Steel having gone bankrupt, isn't -- isn't clear evidence as -- that there were no rollings and therefore it's definitively claimant-favorable, it just means we don't have the documentation. And we found that NIOSH hadn't done a complete document search, records search. It had not gone to Bethlehem Steel records center in Saylorsburg, Pennsylvania, which was pointed out to us during the worker meeting that NIOSH held in July. And so before you can -- the bottom line is that 48 rollings is claimant-favorable, but it's also reasonable in view of the contract and the fact that there was a Soviet test, and you have to put it in the context of the time and do the best you can. And we think that NIOSH did the best they could, and we agree with NIOSH that this -- however, you cannot say we were claimant-

favorable in '49 to '52 and therefore somehow this rubs off in '55 to '56. This is a technical non sequitur.

We also found technical non sequiturs in other places, like saying the uptake of uranium from the stomach is two percent and this is claimant favorable, and so you don't have to worry about a claimant-favorable value for intake of what's going into the stomach. Those are completely different problems. '55/'56 the workers ready to swear -- NIOSH told us they don't decide the time -- who's covered in terms of the time period, and we actually revised our draft to indicate that NIOSH should refer this to the Department of Energy, which they said at the time -- maybe the Department of Labor should look into it. But when workers are ready to swear there were rollings, then we feel that this is a festering, longstanding issue which should be addressed with greater alacrity and thoroughness.

Let me -- let me just wrap up. I know I'm probably pushing the time. Let me -- let me put SC&A's position, both in terms of our site profile review and in terms of -- to the extent

that we have had time to study NIOSH's response, and we've taken a pretty good look and -- and done some -- some work, and you -- you have a table before you that -- that was also quickly produced and should be considered a draft table because it was produced today.

NIOSH's statistical approaches for anal-- to analyzing both Bethlehem Steel and Simonds data for dose reconstruction are not correct. That should be the first thing. The triangular distribution is not a good way to represent the data.

NIOSH's site profile is claimant-favorable for some workers, notably those not involved in uranium-related work. NIOSH's approach is not claimant-favorable for uranium rolling workers, especially those in high exposure locations or jobs.

NIOSH's ingestion doses are likely to be considerable underestimates.

The scientific and statistical errors in the site profile are of a magnitude that could affect some claims, notably those that are just below compensability in the probability of causation. There may be also -- there may also

be some that are affected by ingestion dose underestimates based on OTIB-0004, though this must await more definitive analysis. Thank you.

DR. ZIEMER: Thank you very much. Joe, do you have any additional comments at this point?

MR. FITZGERALD: No.

DR. ZIEMER: Okay. Let's move on to the presentation from NIOSH, and we'll turn the podium over to Jim Neton.

DR. MELIUS: Excuse me, Paul. Maybe I missed it, but we're going to hold all our questions --

DR. ZIEMER: Yes, right.

DR. MELIUS: -- to the end? Okay.

DR. ZIEMER: Right.

NIOSH RESPONSE TO SITE PROFILE REVIEW

DR. NETON: Thank you, Dr. Ziemer. Well, I'd like to say that we do appreciate and recognize the amount of hard work that -- is this working, I can't tell -- the amount of hard work that went into the SC&A review. It was certainly a large piece of effort, judging by the size of the document review. And we recognize that there are a couple of issues

that they point out in their document that NIOSH needs to address a little better.

We also -- I'd also like to recognize that we think that the review process, the independent review process is -- is good. It's a good process that needs to be done, and ultimately we'll have a stronger defense and -- and product of our position later on down the line when claims become challenged, and this is going to -- in the end they make the product better, whether that's through NIOSH doing better job documenting what we -- what we've done, or incorporating area -- concerns or issues that were raised in the review process.

That being said, I would like to make some comments on what was just presented. Interestingly enough, I think SC&A's presentation was more rebuttal of our comments than their original presentation, so it's kind of a little different perspective here. Their prepared presentation is very different than what you just heard.

But I'd like to just point out that there are several areas of concern. We have very serious concerns about the Bethlehem Steel profile

review. The first one is that there's a misinterpretation by SC&A of the dose reconstruction requirements under 42 CFR Part 82 related to worst case assumptions. This is most notable in the several instances, and you've just heard Arjun -- Dr. Makhijani speak about the use of this so-called OTIB-4 document. OTIB is Orau Technical Information Bulletin number four. That is a maximizing approach document that was adopted to apply worst case assumptions underneath -- under the efficiency process. And I'll talk a little bit about that to show how either the ingestion or the inhalation doses that SC&A asserts should be assigned under that document more appropriately is an incorrect understanding of the way NIOSH approaches this process.

I think the second issue is a failure to put claimant-favorable assumptions into context. You've heard some discussion by Dr. Makhijani about where NIOSH may have not done statistical analysis properly or -- or things of that nature. But I think that SC&A in their review certainly ignored a lot of claimant-favorable approaches that we've adopted that overshadow

some of the issues that they've raised, and failed to even acknowledge that those things are over-estimates and put them in the appropriate context they deserve to be put. And I'm going to give you some examples of that as I go.

I think the selective or inappropriate interpretation of monitoring data -- I think we've heard some rebuttal to the effect that time-weighted average exposures are not appropriate. I think we're going to say that we totally disagree with that, and I'll comment a little bit about that in a future slide.

And then I think one thing that I think does a disservice, particularly to claimants and people who are reading these documents, is speculation on possible exposure conditions that could have been out there. Could there have been solubility type F uranium. I mean that makes no sense in a uranium facility. That would be a very soluble form of uranium that's more typical of uranyl nitrate. Or speculation about particle sizes that are extremely small that have not been observed in uranium facilities. I don't know whether this

is just a misunderstanding of issues, a lack of understanding of the concerns in the occupational exposure setting, I don't know, and I won't speculate.

Okay, the first issue here is misinterpretation of worst case assumptions and, again, the mistaken belief that we must use worst case assumptions. The dose reconstruction regulation permits but certainly does not require us to use worst case assumptions when a claim is denied. I believe there's a statement exactly to that effect in the SC&A review. That is totally untrue. And that in fact is the basis of one of their findings or non-conformance, as they call them, and I suggest that that's totally false.

There is a huge difference between a claimant-favorable estimate and an intentional overestimate. Claimant favorable we've heard where there are gaps, as Dr. Makhijani correctly pointed out -- if there are gaps in the data and there are equally plausible scenarios, we will pick the higher value that tends to give the claimant more dose. That is true.

But there are approaches in the efficiency process that we've adopted where we will do intentional overestimates, large overestimates, to help process a claim so that -- I think -- I'm paraphrasing the language in the regulation, but it says in cases where additional research would not result in any -- would not result in the claim -- changing compensation on one side or the other, we can stop the dose reconstruction using these high overestimates and move it forward. This is only applied in cases that are non-compensable. And in particular, as you'll -- when I talk about OTIB-4, this is applied to non-compensable claims that are what we call non-metabolic cancers, cancers of organs that do not concentrate the radioactivity. That's exactly what OTIB-4 is. It's written in that document and so its application to Bethlehem Steel cases could have been done, but they would have been non-compensated, as well. I think the implication is that if we used these high values in OTIB-4, these cases could have been compensated under these high, over-arching assumptions. That's just not true.

I'd point out this is a -- misunderstanding is the basis for these several non-conformances in their document.

We've all seen this before, and I'd just like to rehash a little bit of this, just to show what we've done. In the case of OTIB-4 -- let's take OTIB-4 as an example -- this is a flow chart right out of our own procedure, PR-003, where we say we determine the organ of interest and most probable mode of exposure, so let's take a pancreatic cancer in a person who worked at a uranium facility. Let's take OTIB-4. OTIB-4 assumes a 100 MAC air on a continuous basis for however many years the worker was -- was at that facility. If you put all that uranium into the person, have him breathe it, is there a low probability? Well, under the conditions that we pre-select for OTIB-4, the answer is yes.

Now we say okay, that's for the internal dose. Now there's another Technical Information Bulletin that says let's apply the highest external exposure we can envision at a uranium facility and assign that to the worker. If we assign that highest estimate and the PC still

is less than 50 percent, the dose reconstruction is complete. It's also non-compensable, though. So this -- this approach is not geared towards giving very high intentional overestimates to compensate claimants. And I think that's -- that's a misunderstanding that needs to be pointed out. So OTIB-4 could not be used to compensate cases -- claims for ingestion or inhalation at Bethlehem Steel.

Okay, let's -- I just want to pre-stage some of my remarks with some dosimetric facts about uranium, because I think they're relevant here. As SC&A has appropriately pointed out, and I'm glad that we agree, that inhalation is a very -- delivers a very high dose per unit intake 'cause it's the exposure mode of concern here. I'm glad we can come to agreement on that. And it also has the property of concentrating only in several select organs. In this case -- if you inhale it, of course it's going to be in the lung, but it's also going to concentrate -- to some extent, more or less, depending on the organ -- in the kidney, liver and bone. So one can envision that the cancers of relevance here

that have a higher potential than others for developing a high PC would be kidney cancer, liver cancer, bone cancer, possibly leukemia, and of course lung cancer if you inhale it. Uranium is a chemically-toxic metal. The Maximum Allowable Air Concentration in the 1950's was based on chemical, not radiological, conditions. It was recognized very early on that uranium is a kidney toxin. It -- once it gets into your kidneys, it precipitates out in a certain portion of the kidneys and plugs it up, essentially, and keeps it from working. Some of the exposure scenarios that SC&A has speculated may have existed would result in acute renal failure and probably death to the workers.

The uptake from ingestion is fairly low. It's .2 to 2 percent. We use 2 percent in our profile, being claimant-favorable, even though oxides of uranium are most notably -- which is -- I think everyone would agree, in the health physics community, oxides of uranium are typically less soluble and probably .2 percent is more appropriate, so we -- we feel we've got a factor of ten overestimate there.

External Exposure values from uranium are about -- less than ten millirem per hour to organs that are deep in the body. Not superficial organs like the thyroid, but organs that are fairly deep in the body, so it's not a high exposure rate for even large quantities of uranium.

It's a couple hundred millirem per hour to the skin. There's a beta particle that irradiates the skin significantly, and if you have slabs of uranium -- large slabs -- you could get something approaching this if you -- if you actually had contact, were sitting on the uranium for any extended period of time, something to that effect.

Skin contamination, which was raised in the SC&A review, has a fairly low -- you can't get a lot of uranium on your skin to give you a high dose, the mass-limited quantities. It's 8.4 millirem per nanocurie hour per square centimeter. Now what does that mean? On a practical basis, it means you could have about a quarter of a million disintegrations per minute of uranium on 100 square centimeters of your skin and it would deliver about 8.4

millirem per hour -- not a huge amount. And as I'll show later, these alleged or speculated skin contaminations that may have existed were certainly addressed in our large overestimates for external dose that were not considered by the SC&A review.

Okay. I'd like to discuss a little bit about claimant favorability in the profile. And I think as -- Dr. Makhijani did point out some of these, so I won't go over them in some detail, but we did assume that there were 48 rollings in the accordant '48 and '49, and I will state that there is an error in the Technical Basis Document. It says that there was a signed contract in 1948. We have no evidence that a contract was signed in '48. That was -- to my knowledge -- I just contacted the Office of Worker Advocacy. They couldn't find one. So we don't know that there was a contract in '48. We certainly know there were rollings in '51 and '52. The '48 contract -- the indication that rollings occurred in '48, according to the Office of Worker Advocacy, the reason they set that window is because there was an internal Bethlehem Steel communication -- not internal,

a letter to a request from an employee inquiring about possible rollings. And the person, 26 years after the fact or so, indicated rollings occurred between '48 and '51, I think, to develop a method to roll steel at another facility. So that is the factual basis for the -- for there being a window of '48 to '52.

We did use the highest single air concentration at Simonds -- whether it's 1,000 or 1,070, I'll grant them that 1,070 is probably more technically accurate. But we used it -- and this is -- this is extremely important. We used it as a surrogate for time-weighted average exposures. Now this is a key distinction here. If you notice, the document title is not an air sample model for Bethlehem Steel. It is an exposure model. Now by exposure model, we're really saying what did the worker really breathe in while he was there. So if we took the highest single air sample that we could find at Simonds Saw and Steel, and applied it and assumed the worker breathed it every minute for every hour of every production run, it's going to be pretty

conservative. 'Cause I think even SC&A would agree that people don't have their face in roller one every minute of every hour of every day, and in fact, the air samples that were criticized by SC&A as being short and not representative of the work environment were short out of necessity because they were short duration events.

One shears a piece of uranium. That takes about ten seconds or whatever. It's a very short period of time. A billet can run through the process at Bethlehem Steel in about two minutes, once it was running under high production. So you've got two-minute, 30-second, 10-second episodic little puffs of air that come out that were captured in -- in the breathing zone samples. In fact, the highest sample that we took -- and it's correct -- came out of a furnace on its way to roller one, I think. And I'll point out that this was a gas-fired furnace that just raw-heated up a five-inch billet -- five inch diameter billet. It was recognized early on and it's estimated that using those -- not the baths, the salt baths, but the gas-fired furnaces, about .5 percent of

the uranium was oxidized in that process. So here's where we're seeing the highest air sample. I have trouble believing that that's not the highest air sample, or close to it, that we have. And we assume that that person was carrying that billet to that roughing mill every minute of every day of every hour of every run. It's unbelievable that we could not consider that to be claimant favorable.

The mode of the external dose is based on the highest survey at Simonds Saw and Steel, as well. And SC&A I guess challenged that as -- as maybe not being claimant favorable, but I have some data later that I'll get to that I think can show that we believe it is.

Just to wrap up here with the favorableness, we did use ICRP model default parameters that we believe are claimant favorable, organ-dependent solubility classes. I was very interested to hear that SC&A believed that Type S was appropriate for inhalation. What they didn't tell you is that we also assumed the opposite for organs that -- outside of the lung, so we assumed if you breathed it in, it was very soluble if you had bladder cancer because that

would maximize the dose to the bladder. So we sort of had this bifurcated process where, depending on what you breathe in, we assumed the worst case -- I mean the best case for the claimant.

They made some big -- some deal in the document about maximally exposed workers heavy breathing. The fact is, the upper end of our model did assume heavy breathing. We did not adjust for particle density. The default ICRP particle density is 3 grams. Oxides of uranium are somewhere in the 9 to ten range. We didn't even bother to correct for that.

I talked about the GI absorption, and the use of the highest non-metabolic organ dose -- some of the organ dose's organs are -- are not modeled because their dose is going to be so low they were of no concern in the ICRP biokinetic models, so we take the highest organ that was modeled that didn't concentrate uranium and apply that. That's led to some confusion in dose reconstruction reviews, but -- but suffice it to say that we do pick the highest organ that doesn't concentrate uranium and use it consistently in the process.

Okay. I'd like to -- I think the SC&A report says something to the effect that this is the general area sampling program at Simonds Saw and Steel and therefore it's not applicable and doesn't fulfill the requirements of ICRP-75, or something to that effect. I think -- I think that there is a lack of understanding on SC&A's part of the early AEC sampling programs. This was in fact the genesis of representative air sampling. This was a novel technique at the time of taking a 20-liter-per-minute air sample pump, around 20 liters per minute, and placing it at work stations where the workers resided -- I mean and worked. And they would take these time-weighted averages. So for instance, the 32 air samples at Bethlehem Steel were taken all around the work process, including the locker room, including 15 feet from the rolling, one on the east side, one on the west side -- a very representative profile of the -- of the exposure in the workers' environs. And using that profile, they would come up with an estimated time-weighted average. I will agree that there may be some differences in the processes, but I think it's very informative

and -- to a large extent as to what the average worker and the highest exposed worker could have been breathing.

Again, these short-term samples were really intended to reflect exposures at non-continuous operations. The report says that short-term samples are not valuable. They were short-term samples by design because the process did not occur that long. They also helped to optimize sample counting efficiency, and these were integrated into the time-weighted average exposure assessments, and there's about a dozen pages or so in a Bethlehem Steel -- or Simonds Saw document that -- that demonstrates how they did these calculations.

The AED Medical Division, now -- then it turned into the Health and Safety Laboratory, now it's the Environmental Measurements Laboratory -- processed almost all the samples. The SC&A report questioned the value -- the validity of the samples, that we don't know the pedigree. Maybe they were, you know, not -- not processed properly. The quality control measures could have been poor. Well, it was recognized in the -- from the very first time I ever looked at

these air samples that Naomi Halden*, who actually signed most of these samples, was Dr. Naomi Harley, now a professor at New York University, fairly well-renowned in the radiation sciences business. I've gotten her -- since she -- she measured most of these samples, if not all of them -- I don't know if they're all -- but a large majority of these samples. There's a statement attached to our comments that provides the indication of the level of quality and care that were taken in processing these samples, and we don't believe this to be an issue.

Again, the samples are really more aligned with a representative sampling as defined in ICRP-75. There seems to be a misunderstanding on SC&A's part about what personal air sampling really means. Personal air sample does not always mean you have a little lapel air pump that breathes -- samples two to four liters per minute, full-time basis. The ICRP-75 document itself even asserts that a good representative sampling program could be composed of a fixed sampler at area locations where the workers are known to be, supplemented with the general area

samplers where the workers also are, but they're not these episodic, high concentrations that occur because of the work process.

I've noticed in some of these comments that SC&A has provided to us as a rebuttal, I think they called it, to our comments -- they indicate that the geometric mean could be much higher if you ignored the general area samples. Well, I would suggest that you can't do that because the time-weighted average samples include worker occupancy time in general areas, including locker rooms, including being 15 feet from the mill. You know, it's part of the process. Just because it's a general area sample does not mean it's invalid. The highest concentration samples, which were the personal samples or the proximity samples, are valuable. But you know, you need to take in the whole picture. You can't throw away the GA samples and say that now the geometric mean is much higher. That's -- that is scientifically invalid, in my opinion.

Okay. I'd just point out some of the early sampling locations. These are the type of areas -- you know, all stands. There were

samples at Bethlehem Steel at all six stands, three locations at the shear and different orientations from the shear, at the salt bath, opposite stands at 15 feet, over and above -- a good smattering of where they believed that the air concentrations could possibly be elevated in this work environment.

And the worker categories that were evaluated using the time-weighted average analysis, I think there were nine -- ended up with nine worker categories with -- out of 32 workers.

So again, I think -- this is the genesis of personal air sampling and representative air sampling. This is not, as portrayed in the review itself, as a -- as a not -- as a general area sampling program that could not be used to reconstruct internal exposures.

Let's talk a little bit about air samples collected in '51 and '52. I'm glad that we agree that '51 and '52 exposures were lower. I need to point out, this document -- the profile -- was developed two years ago, almost two years ago to the day, and we didn't have all this data -- these data when we did this, but we were trying to give claimants a timely

answer to their claim that came in our door. We didn't have nearly the quantity of air sample data at Bethlehem Steel, so we couldn't make any inferences from that. Now that we have more air sample data and access to it, I think there's a good reason for us to go back and revisit the profile, and we can -- I firmly believe that the air samples in 1951 and '52 need to be reduced considerably from what they are right now. There is no indication that the air samples in 1951 and '52 are anywhere near the 1948 rolling samples that occurred at Simonds Saw and Steel when they came out of a gas-fired combustion furnace and carrying to the roughing roller. In fact, in '51 and '52 I saw no evidence of roughing rolling occurring. Of the six rollings that we have, these were all pre-finished rollings. They occurred -- they were two-inch diameter by one-and-a-half-inch diameter pre-rolled ovals at Allegheny Ludlum. They came and were rolled down to about a one-and-a-half-inch or something diameter. The Simonds Saw and Steel started with five-inch billets and rolled them down in many cases to a -- like about a one-inch

diameter -- a huge difference in the mechanics of the process. And I agree they're different. I would submit that the Bethlehem Steel process, particularly in '51 and '52, was much less messy and involved by the nature of the differences in the work processes.

If you look at these samples -- I'm not going to harp on this -- the geometric mean of .2 MAC, a geometric standard deviation of 8 -- I won't quibble that this couldn't be a little higher. This is just to illustrate that this is a low value, .2 MAC versus the 1,000 MAC that we assigned to the high end of the triangular...

This is just a fit. I'm not sure why a Z-score analysis of data is statistically invalid. I've been using this for years. We've published literature, articles using this approach, in the peer-reviewed literature. I think it has some scientific validity.

This is a pretty good fit, R squared .97, so it does fit a lognormal distribution pretty well, and in fact I think it could be used, to some extent, in evaluating the early samples. And if we threw out the '52 data and used the very

early samples, it may go up some, but it's certainly not going to be anywhere near the '48 and '49 rollings that we assumed.

Okay. The early air samples at Simonds were 1,000, we talked about that. Time-weighted average. Here's where we have a little bit of a difference. I believe, based on our analysis and review of that time-weighted average analysis, it gives us a pretty good feel that the workers at a messier environment rolling five-inch billets were -- could be characterized using something like this. I'm not saying this is the final product, but this is -- this just gives you a flavor for how much lower this is than was provided in the profile.

Okay. I think this -- this slide says a lot. This solid line here -- this is a Monte Carlo simulation that I did by inputting the distributions that we -- we generated from the different air samples, so you'll see this yellow squiggly line here is the site profile document. We ran -- I forget -- 50,000 iterations or something like that of each run, and here is the time -- here is the distribution of the triangular. Now if you

look at the blue line, it's the Simonds Saw and Steel -- not time-weighted average values, but all the values of the 32 runs. And yes, a couple of these points pop over here at the 1,000 MAC. But again, we're talking about an exposure matrix here, not an air sample matrix. And here's the Bethlehem Steel. So by any measure, this certainly over-arches the two air sample distributions.

If you prefer to use the Q-Q plot that SC&A use, this is a similar analysis that demonstrates the same thing. Perfect agreement would be a straight line. I think it's important to point out, though, that any point below this straight line indicates that the model overestimates the exposure. I don't think that was pointed out very clearly. So anything above the line -- and here I'll agree this point is slightly above -- it would under-- tend to underestimate the exposure. But all these points clearly show that the triangular distribution over-arches all the datapoints for the sample sets. I've got the Bethlehem Steel '51/'52 data here, and here is the time-weighted average distribution that we generated

for Simonds Saw.

Okay. The site profile used, for external dosimetry, 1.8 rem as the mode for skin, evaluated an annualized dose of 30 rem to the mode and 250 rem for the maximum exposed person. Remember, we assume these rollings occurred for 12 days, ten hours a day, so 120 hours exposure. If you annualize that, the maximum estimate we assume was 250 rem to a worker. So the mean annualized dose of the distribution is 133 rem, a huge amount of shallow dose exposure to the worker. That's what was applied in the model.

If you look at another facility, like Fernald, that between 1952 and 1955 processed about 25 million pounds of uranium in one given year, and machined 15 million pounds, the highest dose to 4,500 man-years of monitoring data is ten rem. So I have trouble understanding why this is not claimant favorable, and would not tend to include some of these episodic incidents and off-normal occurrences that may have occurred at Simonds Saw and Steel. This is a major, major difference. And this is a fact -- the effect -- if you put this as a

constant into our distribution, you would get the same value as if you put the distribution in since the values are so narrow compared to the uncertainty of the overall models. And so again, I have trouble agreeing with SC&A's review that this was not necessarily claimant favorable.

Just a little bit about some of the speculative exposure conditions. They've talked about the 4,350 MAC. They suggest that they didn't intend for that to be used; however, it appears in their report as the value. It's pretty hard to imagine why they would have put it in there if they don't believe it could have been a real value. I mean I just don't understand the logic behind putting a 4,000 MAC value in there and then saying well, it's for illustration purposes only; we don't believe it to be true.

This proposed particle size distribution of .01 microns, ten nanometers -- it was a finding, by the way, which means that there's sufficient evidence to -- for -- for SC&A to come to the conclusion that NIOSH was not claimant favorable, or something to that effect, in their review. They provide no evidence there

were such particles in this range. In fact, there seems to be an understanding on their part that our five-micron distribution is a single point, because they make the case well, there surely were particles smaller than that. It's true, the ICRP model assumes a five-micron particle size, but a geometric standard deviation of two and a half. So they account for a large particle range, and in fact I think 95 percent of the particles would fall above I think .4 microns or something like that, but there are particles smaller than that. So I think there may be a fundamental misunderstanding of the ICRP models going on here. I can't tell from the review.

Again, if they didn't believe that Type F could have been a possibility, why raise it -- the specter in the report? I mean it just makes no sense to raise that in a report and say we never intended for NIOSH to address this. If they don't believe it existed, then why put it in? And again, these are just principally oxide exposures.

I won't go into this, but if you do Type F and -- fast solubility at the highest end, you get

a three-and-a-half gram intake, which -- which puts you above the LD50 for uranium, which -- lethal to 50 percent of the people that breathe it.

Just some brief comments on ingestion. I think I'm probably running a little over, but I'll just wrap up. We talked about the site profile using a claimant-favorable .02 -- or .2. This 100 milligram ingestion, they raise it based on an NCRP, I think, document that they point to. I think the uranium -- uranium was a pretty dusty operation. By all accounts, uranium rolling mills are very dusty. In fact, the workers continually talk about how dusty it was. But they also say that when they rolled uranium it was less dusty than steel, which makes sense. Uranium is a dense metal -- 18 grams per cubic centimeters, quite dense material, doesn't go very far when you get it airborne, kind of settles out fairly quickly near -- near where you generated it.

So we believe that, you know, this ingestion pathway, other than fine particles settling, SC&A speculates that they could have ingested from touching surfaces, we believe would have

been in a milieu of other steel dust that's around the site. I mean this is a very dusty site. I believe if you -- if you consider the difference in the percentage of time rolling versus -- rolling uranium versus steel, you'd come up with something, even using SC&A's logic, of some-- somewhat closer to what we came up, which was about a total gram uranium ingestion.

And this may be called a non sequitur, but the fact -- the fact of the matter is that the doses from ingestion of uranium are very small. I think when we added -- way back in February, 2002 -- our ingestion pathway model, the entire gram of uranium ingestion added less than one millirem dose to every claim per year for all organs except the kidney and the bone marrow, which had -- I think the median value -- the mean value was somewhere around 30 millirem. So you know, you can't get there from here. Residual contamination, we're -- we somewhat disagree with the comments that were made that this -- the survey's not valid. The residual contamination we're talking about is was there contamination at this site from 1952 forward

into 1970's. The survey that we had was the next to the last rolling that was ever -- that was documented to be conducted. That rolling had a survey of about -- I don't know, 14 smears, very low contamination in three areas -- on the floor less than 1,000 dpm. That's free-releasable area by even today's conventional standards, by the Department of Energy or -- requirements. The floor surveys averaged 13 dpm. That's essentially almost indistinguishable from background, in my mind. So clearly in 1952 there wasn't much there, so why we can now come to the conclusion that there's significant contamination over the next 20 years is very difficult to understand. And conclusions, I won't go over these. I think I've gone over my time, but I think they speak for themselves. Thank you.

DR. ZIEMER: Thank you, Jim, for that presentation. Now we're going to have a time of open discussion. Before we do that, let me make some general remarks about how we might proceed. And it occurs to me that, since this is our first site profile, we might have in mind not only how we deal with this particular

one, but can we think of it in terms of how we might deal with site profile reviews in general and what will our template be.

This particular review by our contractor included eight findings -- they're listed in the summary. A number of them have been highlighted in the presentation, but you'll find eight items categorized as findings. You will find seven observations, which relate to technical and process questions. Those are issues that, as the contractor has described them, issues that might need to be considered. And there are three procedural conformance issues, which raise some issues about the procedures that are used in terms of how the site profile was apparently used.

Now -- so they have those categories of things, the findings, the observations and the procedural conformance issues.

Now it occurs to me that there are several possible ways that we can approach dealing with or -- I'm searching for the proper word -- but taking what our contractor has given us and determining how it becomes our report. Let me suggest several possibilities, and this may

stimulate you to think of yet other possibilities.

One approach would be to review each of the individual findings, observations and concerns -- that is one by one -- and determine whether or not we agree with those. Yes, I agree with this; I don't agree with that, or -- in other words, they could be handled one by one and we could determine which we agree with or which we don't agree with, or even which ones we don't think we can even evaluate fully, because it does occur to me that in some of the technical issues, we may have as much trouble evaluating our contractor's views as we would evaluating the NIOSH positions.

A second possibility would be to accept the document as the findings of our contractor -- that is without necessarily endorsing or rejecting them. We accept these as their findings, and then request that the issues that they have raised be considered as input that may result in some sort of revisions to the site profile. NIOSH then would -- in that scenario in my mind -- would need to report back at some point how and to what extent,

after considering these issues, the site profile may be altered or amended.

A third possibility it seems to me would be to accept the document as the findings of our contractor, just as in the previous one I just described, but with the identification of specific items that we would especially like to see followed up on. Not necessarily saying that yes, we agree or disagree with these, but we think these are items -- these particular items we would like to see followed up, and perhaps have additional further discussion on. This would be -- this might include reporting back on the specific items by NIOSH in terms of how they dealt with them.

Now some of these issues of course NIOSH has already responded to here, but depending on how the Board looks at both the findings and the responses, you may say I want to hear more on this topic. So there's some possibilities that I offer, sort of as a framework that we can sort of build around.

I would like to get some kind of feedback as to whether any of these make particular sense to the Board, or if there's yet another scheme

that you might offer as to how we might in fact engage with the document to come to a -- a position where it will be useful, both as a Board document and useful to NIOSH as they move forward. And again thinking in terms of also how future documents might be handled, viewed and -- and commented on.

Dr. Melius, please.

DR. MELIUS: Yeah, there may be another possibility in terms of how NIOSH handles our comments, and I think it may affect how we want to transmit them.

DR. ZIEMER: Sure.

DR. MELIUS: That is that this site profile is two years old. There's been -- and Jim Neton or someone can correct me, I think there's been one correction to it in terms of the ingestion pathway issue already. But as Jim Neton acknowledged in his response was that there is other -- new information, some of which I think our contractor included in their review, which NIOSH was aware of but had chosen or -- whatever not to include in the site profiles yet.

I think there's a need with these site

profiles, particularly in a site like this where they're being used and some limits to the population involved and so forth, that there be some plan for the way that these site profiles get -- get revised and changed. And they talked about them as sort of under a continual process, but it seems to me that it -- it's going to be an intermittent process. At some point there's enough new information that NIOSH may want to review the site profile, decide -- there's a whole range of issues that they have to -- that have been raised, factual and otherwise, and -- as they've learned more, and there ought to be a revision process. And it may be that then our comments from our contractor simply become one of the inputs into that revision process along -- there've been -- for example, Bethlehem -- there's been some meetings up there, some -- a tour of the -- what's left of the facility, I believe, some -- some other information-gathering that's gone on, and that all ought to be brought together in, you know, some sort of a process to revise that document.

I also think it's (unintelligible) that brings

closure rather than this continual saying well, there's new information; we'll incorporate, we'll incorporate. Well, there has to be a time when they sort of weigh all this.

I also think it addresses this claimant-favorable issue which I interpreted very, very differently from SC&A's comments. But -- but there -- it does have to be sort of a balancing there of -- of the technical and of what's claimant-favorable and so forth, and I think that's best done not in an individual particular technical issue, but something -- from a larger perspective in looking overall how the site profile's going to be used.

DR. ZIEMER: You're basically suggesting that perhaps NIOSH might use the opportunity of the reviews -- at least for those 16 that we do review -- as a mechanism to, in a sense, formally update said site profiles, using that as part of the input.

DR. MELIUS: Right.

DR. ZIEMER: And that certainly -- whichever -- whatever we adopt as a means of review could carry with it that kind of recommendation, as well. That's not really necessarily a fourth

option, but a way to take one of these options and utilize it for that purpose, I believe, is --

DR. MELIUS: And it certainly may factor into how we decide to do that --

DR. ZIEMER: Oh, sure.

DR. MELIUS: -- rather than us trying to finalize a communication. It may be let's submit this in the context of --

DR. ZIEMER: Of updating.

DR. MELIUS: Yeah, right.

DR. ZIEMER: Thank you. Let's go to Tony.

DR. ANDRADE: Well, believe it or not, I agree with Jim. No, in reality what I wanted to say here was that one of the options that you laid out makes a lot of sense, and that is that we accept the SC&A document, as is, and allow it to be used as an input -- and make sure that it is designated as such, an input -- for NIOSH to consider, not necessarily only to update a site profile. As has been discussed and shown to us I believe in a very convincing fashion by Jim, the updates to the site profile may not be necessary or huge updates to the site profile may not be necessary if two other things are

done. One is if, during the dose reconstruction process, as we had opportunity to discuss, there could be better documentation of an approach that was used, and if in the guidance documents that dose reconstructors use these approaches are actually laid out and explanations are given to reasons why we, for example, bifurcate on the use of different solubility classes for one given material, and that is precisely for the reason of providing claimant-favorable results for the different type organs that are affected by a given radionuclide. So if we can use and accept this in that spirit, as input, such that guidance documents can be updated -- and site profiles, as necessary -- then I think that what you're suggesting, Paul, would be a good approach.

DR. ZIEMER: Well, I've suggested at least three things. They can't all be good.

DR. ANDRADE: No, but the -- the one that I said is -- is to accept it as-is, as one input to the process of updating, but --

DR. ZIEMER: Okay, that option involves simply accepting it, without identifying whether we agree or disagree with it.

DR. ANDRADE: Okay, but -- right, exactly, without identifying whether we agree or disagree. The thing is, the only place where I differ with what you said is that you were very specific to updating site profiles, and so is Dr. Melius. What I'm saying here is I don't see the need to update the site profiles so much, maybe a couple of datapoints here and there, if they are datapoints. But it's rather the documentation of the approach to doing the dose reconstructions -- okay? -- which are in the guidance documents, or some people call them procedures.

DR. ZIEMER: Okay. Thank you. Who's next? Okay, Leon and then Jim.

MR. OWENS: Dr. Ziemer, if I remember correctly, the Board had very specific objectives that it wanted the contractor to address in the site profile reviews. And if I'm not mistaken, the final draft was signed off on in May. I guess my first question is how many of the Board members have had an opportunity to review those objectives and then match what we have heard from our contractor with the objectives that the Board had

specified?

DR. ZIEMER: Do you have those -- I think I have them with me.

MR. OWENS: Yes, sir, I do, and I think that it would be wise for the Board to consider the points that the contractor has made and match those with our objectives, rather than just agree with what the contractor has said. And then if we do agree after we have taken the time to look at the objectives, then we could possibly formulate a course of action or recommendations to NIOSH based on those objectives.

DR. ZIEMER: Let's make sure -- Leon, I'm going to -- I'm pulling out my copy here to see if we're on the same page here. Objective one had to do with completeness of the datasources. Is that correct?

MR. OWENS: Yes, sir.

DR. ZIEMER: Objective two had to do with technical accuracy.

MR. OWENS: Yes, sir.

DR. ZIEMER: Objective three, adequacy of data. Objective four had to do with consistency among site profiles, and obviously only one having

been reviewed, can't be addressed at this point. And the fifth one was regulatory compliance. I believe those are the categories --

MR. OWENS: Yes, sir.

DR. ZIEMER: -- of objectives. Under each of those, there's -- there's a lot of detail, but those are the categories. And do you want to comment? I --

MR. OWENS: Yes, sir, that's --

DR. ZIEMER: Can I assume that you in fact have done what you have just delineated --

MR. OWENS: Yes, sir --

DR. ZIEMER: -- and please --

MR. OWENS: -- and again --

DR. ZIEMER: -- give us your feedback.

MR. OWENS: Well, I just -- I just think that the Board needs to have a discussion in regard to these objectives, Dr. Ziemer, before we even proceed. And I don't know how many of the Board members might have the documents. If they don't, I think it would be wise for us to make copies and at least review this before we proceed any further with a course of action.

DR. ZIEMER: Okay. You've heard Leon's

comments on that. Let me get some other comments here, but --

DR. MELIUS: Let me --

DR. ZIEMER: -- we can do something in the break here in a minute.

DR. MELIUS: Let me address two points. One is Tony's last comment. I'm not making a value judgment that the site profile needs to be changed, only that there be a review of the updated information, new information, including a report from our subcontractor, and a decision made; does that warrant revision or not. And that, you know, follows the usual process and so forth, but it's not making a value judgment yeah, absolutely, it must or -- now we can discuss whether we want to recommend something, you know, on that, but at this point I think it's just a process thing and it's trying to get some way of bringing closure to this in a timely fashion.

Secondly, I agree with Leon, and I guess in response to NIOSH's review of the review, I actually did pull out the charge to the contractor and review it 'cause I thought maybe I misunderstood something and so forth and, you

know, I personally believe that they did fulfill -- they're responding to their charge, what -- their charge we had given them to do and that what they had written was appropriate and I personally felt that some of NIOSH's comments back were at least out of context, if not inappropriate in terms of somehow implying that they weren't meeting that charge, but other people may feel differently. I agree that we should discuss that issue.

DR. ZIEMER: Okay. Wanda?

MS. MUNN: This is a very painful pilot project here. Certainly the comments with respect to review of initial requirements are well taken, and I certainly support that suggestion, Leon. As we go into our deliberations with respect to this particular site profile, I would hope all of us would be mindful of what effect major changes to the document may have with respect to claims that have already been processed. One of our major concerns from the outset, I believe, has been timely processing of claims. If claims have already been processed and site profiles that support those claims are significantly changed over time as other

information becomes available, then it could create issues that we might find insoluble -- a point I think we need to certainly consider strongly as we deliberate how to proceed.

DR. ZIEMER: Well, I might insert, though, that NIOSH already has in place a process for reviewing claims that have been completed in cases where -- because as was indicated, all of the site profiles may be subject to change as new information becomes available, whether it comes from review process or -- or worker information or even another claim. And so the possibility of going back, I think -- and reviewing past claims, particularly those that were denied, with new information is going to be there regardless, probably.

MS. MUNN: Yes, I agree.

DR. ZIEMER: Okay. Tony again?

DR. ANDRADE: I was just going to say that this Board should not be afraid to accept new information and/or make recommendations on a major revision to a site profile if such information does come up. But from what I've seen, at least today in what we -- in what you're calling the pilot project, and it

certainly is -- I'm not convinced that I've seen anything major that would --

MS. MUNN: I don't think so, either.

DR. ANDRADE: -- that would -- that -- any major change that would go into the site profile.

MS. MUNN: I think it's unlikely we would.

DR. ZIEMER: Okay. I'd like to hear from others, either on the information presented by our presenters, or on the approach to handling the information. Roy DeHart.

DR. DEHART: What I heard was some significant technical differences of opinion as to how to approach the creation of dose in these -- in these models at the sites.

MS. MUNN: Yes.

DR. DEHART: I think those need to be resolved in some way. The question was mentioned that perhaps one group isn't understanding what really needs to be done, or understanding what is provided under various documentation programs, or isn't understanding what the regulations have. Those issues need to be resolved. We had recommended just yesterday a possible solution in doing dose calculations,

and essentially what we asked to happen was that the NIOSH authors and the audit group get together and try to resolve as much of this as can be. I think that has to be a part of whatever the process is that the Board recommends in going forward.

DR. ZIEMER: Let me play the devil's advocate, however, for a moment here -- and you know, I sort of agree with that. On the other hand, one of the roles of the independent review is to bring in some -- some other thinking for consideration. We're only an advisory board. And I don't -- I don't think we want to get in a role of trying to force our contractor and force NIOSH to necessarily agree on some technical issues, for which there may be valid, scientific differences of opinion on the -- you know, the statistical issue. That's not easily resolved. I'm sure there can be valid differences of opinion as to what is the best way to -- to characterize some of these distributions. Certain ones have some advantages in one way, some in another way, and you -- you understand what I'm saying.

DR. DEHART: Oh, yes.

DR. ZIEMER: So although if there are issues of fact that need to be cleared up, it seems to me that's one thing. The other is if there are valid other ways of looking at these things, it seems to me we'd let them stand. Then the agency, NIOSH, can look at those and they can either say yes, I think we ought to revise things; or no, we think what we're doing is the better way. It seems to me that's their option. And unless the Board mandates and says we're smart enough to know which of those distributions is best, and we're going to demand through the Secretary that that's the way it ought to be done, I think on most of these issues where the scientific disagreement occurs, I'm not sure this Board is any more capable of deciphering the truth than any other group. We may have to hire yet another contractor to tell us whether SCA is doing its job right. Well, you understand my point. Audit the audit.

So in a certain sense, there's a role for the differences, and they can -- it's not wrong for there to be a disagreement. And I don't think the Board necessarily has to say this then is

our position, particularly on those cases where we may not be prepared to be able to -- or may not be able to fully evaluate the merit of the technical argument. But we can certainly say here's some information; please consider it as you go forward.

Okay, I'll get off the stump and go back to Jim Melius.

DR. MELIUS: Or let someone else get on the stump. Right?

Just in res-- follow up to Roy's -- Roy's point, there may -- I would also wish that we would try to resolve some of these issues, although I do agree with Paul that maybe it's impossible and -- do that, and I guess it's hard to sort through that for two reasons. One is that there's this polemic on both sides that doesn't really address the scientific issue but sort of projects that you don't understand, you don't understand. And that's hard to sort through that, rather than saying, you know, this other approach should be considered and so forth. And my question, though, along this line is -- is to Jim Neton is to whether the -- and -- or whoever is responsible for the NIOSH

comments, maybe it's Larry or -- should answer this, but do these represent sort of the full NIOSH response to the -- the review of Bethlehem by SCA? Is this dealing with every issue that you thought was appropriate to respond to? Are there some comments that you accept that you didn't deal with in this report? Are there things that you thought you needed to -- needed more time to explore and so forth?

DR. NETON: By and large it incorporates most of our comments, but not all. There's a few issues that are remaining out there that SC&A raise that -- that need to be explored.

DR. MELIUS: And I think just along those lines, it would be helpful -- and you did it to some extent but I just didn't think -- I had trouble -- I sat there and spent a lot of time trying to match up the site profile, the SCA review and the NIOSH response to SCA and, you know, figure was everything being, you know, addressed. Were you accepting some, not accepting some. It was very hard to do, and I think some better organization of the NIOSH comments would have been helpful in that regard

and -- do that --

DR. NETON: I can -- I can address that. The rationale behind our comments was that we viewed this as a preliminary -- a report to the Board, and we had no idea how the Board was going to handle this document.

DR. MELIUS: Okay.

DR. NETON: Why we didn't feel it was appropriate to address all the comments -- for instance, if the Board reviewed the document themselves internally and decided that some of these comments weren't valid. So it was not our intent to -- to prejudge the Board's decision on this.

DR. MELIUS: And then one of the things we may want to consider is we need to communicate how these will be dealt with in the future so NIOSH knows what the expectations are, the contractor --

DR. ZIEMER: Right, and that's the sense in which I'm suggesting that if we can identify a sort of template that we can use going forward that would apply and say this is how we are going to handle documents in the future, either take them point by point or highlight certain

items or just accept it and say here it is, do something with it, you know.

Okay, who else has comments? Okay, Henry, please.

DR. ANDERSON: Yeah, I mean I support Jim's recommendation. I don't think we need to, you know, adopt I think their comments coming in. I guess where I was looking at it and trying to look at this really was a discrete review of a document, and I think a lot of the issues identified and discussed and explained may not be explained in the document, and therefore -- I mean I kind of saw one of the issues as claimant-friendly. Well, that's a very difficult thing to define, and it seemed our reviewer sort of did a word search, found that and then looked -- has that been explained. But wasn't explained, scientifically or whatever, versus holistically, saying well, is this whole document and are the basic concepts of it or what -- what did NIOSH intend by what was in the site profile document, and I think -- I mean that's the kind of way I looked at it as that structurally or -- we really have to keep in mind that what was being reviewed was

what was written in the site profile. And if not necessarily trying to interpret what was behind what was written in the site profile, I think we got a whole lot more richer discussion from NIOSH explaining why it was some kind of -- or what could be viewed as undefended statements in the site profile were in fact well thought out, had been considered and issues like that, and this is a big document already and could have been considerably even more. So I think that's part of the thing we have to look at or I would say to NIOSH look at, not so much the arguments about whatever, but rather was it adequately explained. I mean choices had to be made, and one choice isn't necessarily better than another; it just has to be adequately described and discussed. If it isn't, you know, I think that's what was sort of -- I took a lot of the comments as that's how that was done and I think it's valuable to have somebody go over it like this, and then I think we can pass it on and it's up to NIOSH -- and I don't think right or wrong is really the way to look at it, but rather as, you know, does the site profile recognize that there's

other ways to do it versus this is the way it's got to be, and that may be a thing in the site profiles that we need to look at as we go further along, are they too definitive as opposed to a description of here's, you know, how we arrived at the conclusions we did. And I think that's where some of the disagreement was. It was perhaps good justification for what was done, but it wasn't necessarily adequately documented or described in the site profile. I haven't gone through it, but trying to cite all of those things and to say well, they didn't understand it because what they were basing it on is the site profile rather than the whole program. Well, those are really quite different things and I think you can arrive at the same -- both sides could be right, based on what they based their comments on.

DR. ZIEMER: Okay, thank you. Mark?

MR. GRIFFON: Yeah -- yeah, I think I -- I sort of agree with Henry. One thing that struck me when I reviewed the first -- I think it's the NIOSH review of the -- of the SCA review was that there was a lot of detail in there that

was very good, and I was thinking boy, this should have been integrated -- you know, would have been helpful in the original site profile, would have been more -- more descriptive and maybe less questions would have been raised. I'm sure some -- some issues still -- there are still differences of opinion.

Second thing, I think -- I think my -- my opinion is that we as a Board should try to make some recommendations. And going back to Leon's comment, if we can look at our original objectives for the site profile review and from this report we may be able to make some recommendations, and some of those may be -- you know, where we get into situations where there's specific technical issues, we may -- the recommendation may be as simple as NIOSH consider the proposal made by SCA.

Other things we may be able to weigh in a little more strongly. For example, you know, some -- there were some findings about whether or not all data was -- whether or not NIOSH made a good attempt to get all data that was available, so we may want -- you know, that's -- that's not as technical of an issue. It's

more of a -- a data collection issue.

DR. ZIEMER: That approach is the one where we accept the report and highlight certain items for emphasis.

MR. GRIFFON: Right, okay. And -- yeah --

DR. ZIEMER: I'm trying to get support for one of my views.

MR. GRIFFON: We're supporting all of them. But yeah, I think that -- and then the last thing on that was, even with the technical issues, I think we as a Board have to at least request of NIOSH some kind of follow through on that, that where we say we see a sort of division of difference in technical issues, we request that NIOSH follow up and, where necessary, correct the -- you know, modify the site profile, if necessary --

DR. ZIEMER: Or report back --

MR. GRIFFON: -- or give us an action, what did you do and why, you know. And part of that action may be this whole question of, you know, we have this difference. However, you know, we have assessed it and we believe that any way we run any claims, it's not going to affect any outcomes on any -- you know, sufficiently

affect any doses that it would make a difference in claims down the line, so you know, the change was not necessary, something like that, so...

DR. ZIEMER: Thank you. I want to interrupt the discussion a moment to ask Dr. Wade a procedural question. Does the action of this Board on this document go specifically to the Secretary of Health and Human Services, whoever it may be, or does it go to NIOSH? Or do you know?

DR. WADE: Well, I don't know, in point of fact. I'd offer an opinion, but I'd defer to anybody who thinks they do know.

DR. ZIEMER: Or maybe NIOSH staff knows. I mean if we have a formal recommendation to NIOSH, do we have to feed that back through the Secretary, Larry, or do we simply feed it directly --

MR. ELLIOTT: You advise the Secretary of HHS. That's where your recommendations go.

DR. ZIEMER: Okay. So any formal action on this document, as was the case for the comments on the -- Parts 42 and 43 and so on, formal-- although you're aware of them, they formally go

through the Secretary.

MR. ELLIOTT: Right, and they end up on my doorstep.

DR. ZIEMER: Yes, I know.

MR. ELLIOTT: And then we have to address those, tell you how we handled them or why we did not incorporate them.

DR. ZIEMER: That's -- that's helpful. We're going to take a break in a moment, and when we reconvene we're going to have a motion of some sort. The Chair's going to call for a motion. The Chair may even suggest what it will be.

MS. MUNN: That would be nice.

DR. MELIUS: Can we line up behind doors one, two and three?

DR. ZIEMER: There you go. We'll take a 15-minute break and then reconvene.

(Whereupon, a recess was taken from 2:55 p.m. to 3:20 p.m.)

BOARD DISCUSSION/WORKING SESSION

DR. ZIEMER: Okay, I'll call the meeting back to order, please.

I did want to allow a representative from the Department of Labor, Shelly (sic) Hallmark -- Labor did have comments also on the document,

and Shelly, if you would just take a moment and -- you wanted to comment also on -- on the --

MR. HALLMARK: Thank you.

DR. ZIEMER: -- profile review relative to Labor's views.

MR. HALLMARK: Thank you, Dr. Ziemer, Shelby, with a B, just for the record.

DR. ZIEMER: Yeah.

MR. HALLMARK: I just -- I wanted to express some institutional concern regarding the notion that the Board might pass this report forward with -- with no comment or with only marginal comment. It seems to me that insofar as what we have here is a scientific debate going on, a scientific debate is fine and obviously there are all -- there's plenty of room for people to have different perspectives. The concern is, from our perspective, is that that document would have a life that would play out in the claims adjudication world and in the lives of our claimants. Some 500 or 600 claimants have already received a decision based on the site profile as it stands. Individuals, especially those who might have received a denial, who learn that there's a report that has been

forwarded by the Board which -- at least in terms of the current -- my understanding of the report as it stands now, seems to be extraordinarily negative with respect to the site profile and suggests that the decisions made based on that site profile are in fact questionable, if not flat-out wrong.

That document, whether -- the Board's passing it forward would represent a public statement from this Board, which I don't -- I don't believe is an appropriate way for the Board to address a contract which they -- which you in fact have set in motion. As a party to the budget process that the Board enjoys through NIOSH, I'm concerned that that -- that you haven't really exercised your responsibility with respect to that expenditure if you don't at least try to reconcile and characterize the differences between the site profile as described by NIOSH and SC&A's perspective on it. I don't know whether that reconciliation is possible, as Dr. DeHart has suggested. You know, I don't know to what extent we have a fundamental disagreement. But it seems to me that the Board has some responsibility to try

to untangle that.
If you don't do that, if you do pass the document forward at this point, you also are sending the signal with respect to all the remaining tasks that SC&A is moving ahead with which will simply elaborate and continue the difference of opinion, and presumably continue to move the -- spread the differences and cause the reports that are received on further site profiles and further dose reconstructions to continue to be problematic for this Board to deal with.
So it seems to me that, unpleasant as it is -- as Wanda suggested -- at this moment, that the Board needs to find a way to address this matter and bring some sort of closure.
DR. ZIEMER: Thank you.
MR. HALLMARK: One last point, if I may, with respect to one particular factual issue -- and it may be repetitive in this regard -- there was a comment made about 1955 and 1956 potential other exposures. This is a classic matter of dealing with the adjudicatory process. It's not appropriate, in my view, for NIOSH or SC&A to address additional areas

outside of the employment -- the covered employment period. That is an adjudicatory matter that's reserved to the Department of Labor. In this case, that precise issue has been adjudicated. Cases -- claimants have come forward with that -- with evidence or purported evidence regarding 1955 and '56. The Department of Labor has chosen -- has adjudicated the matter negatively; that is that we did not find there was sufficient information to show that there were rollings in those years. And it would not be appropriate for NIOSH to question the -- add that additional time to their -- to their scope, in our view. Thank you.

DR. ZIEMER: Thank you. Okay, I have Tony and then Jim.

DR. ANDRADE: As you mentioned earlier, Paul, this Board serves in an advisory capacity, not as -- as a scientific body or in any other role. And really for us to try to untangle every scientific issue would -- it would rather -- it would be going towards the impossible side of things. Hence, I wanted to make a comment here.

In talking to a friend of mine, I guess I missed -- what I said earlier was probably not spoken with great clarity, and I probably mis-communicated what I meant. I had no intention of -- of -- or leaving the impression that I've -- all I wanted to do was pass the -- pass the buck or pass the report on into never-never land. Quite the opposite.

On the other hand, what I said about the site profiles was, in general, true. The site profile that was reviewed I believe is factually correct. That's my opinion. The rest of the Board will have their own. But nevertheless, given the fact that NIOSH had to stand up and defend its position or explain its position with respect to how some of the information has been noted in the site profile, then I do believe that the site profile needs -- not to be changed, but those positions explained. Okay?

Now in some cases Jim did note that there were some new data that could be indicated in the site profiles and that those could be updated and changed, as necessary. And so those changes I think would be appropriate. But I

think for the vast majority of his presentation, he rather explained why the positions were taken in the site profile as it were.

Hence, given what I have just said, I'm almost ready to make a motion in that regard, but I would like to hear from the rest of the Board how they feel about it, but what I'm saying is that I accept Jim's explanations and feel that NIOSH is on the right track. SC&A did a good job of explaining alternatives, seeing where a group of professionals could -- could disagree with the information that was there at hand and could be interpreted as -- such as they did, and hence the -- I do believe that the explanations are necessary from NIOSH.

DR. ZIEMER: Thank you. Jim Melius.

DR. MELIUS: I have one question for the Department of Labor in terms of what Shelby just commented on and in terms of this sort of turf issue, who's supposed to -- who's responsible for what. You indicated that you had already adjudicated the issue about the time period for exposure at Bethlehem Steel. Did -- did your review of that take into

account what was mentioned in the SC&A report, which was records from -- possible records from a Bethlehem record center, as well as records from Hanford, Savannah River I believe were the other -- one other site, I can't remember what it was, that might shed light on that issue.

DR. ZIEMER: Pete?

MR. TURCIC: Yes, I did, Jim. In fact, those -- that information -- we received that information. We spent a lot of time, along with DOE, investigating every possible lead we could come up with. And in fact that information -- SC&A knew that, and that was still put in. That -- that was well-adjudicated. I mean hours were spent looking into that, looking every possible place to get records.

DR. ZIEMER: Thank you. Other comments? Mike?

MR. GIBSON: I'd like to go back to Leon's comments, and I agree that, you know, we charged the contractor with -- with a task, and I think that we need to take the task that we gave them and go through this thing and make sure that it was fulfilled so that the government's money is spent properly.

And then secondly, I believe that there are issues in SCA's document that, even though we're not scientists, I believe we could come to a conclusion on, either up or down, depending on how the vote goes. But then secondly, there are the technical issues that may be over our heads and that we could ask for a comment resolution, as outlined in some of the procedures for the others and send those recommendations on to the Secretary.

DR. ZIEMER: Thank you very much. In fact, what -- what might be helpful now, and you have opened the door for this -- we didn't get together on this, but I did talk with Leon during the break and I think we're prepared to first address the issue that you raise, and that is the five objectives as a measuring stick. And this would be separate from what we do with the document. And Leon, if you would, let me give you the floor and you can address the five objectives and give us -- since Leon has actually -- you know, you don't raise a question unless you know the answer. Leon has in fact I think thought through each of these and has laid, as it were, the objectives side

by side with the report. And Leon, give us your take on it and then we'll get some Board reaction.

MR. OWENS: I guess, Dr. Ziemer, when looking at the objectives, the first one is completeness of datasources. And based on SC&A's presentation, I feel that they have fulfilled that objective.

DR. ZIEMER: That basically says to identify principal sources of data and information that were used to write the source -- site profile.

MR. OWENS: Exactly.

MR. GRIFFON: Paul -- Paul, did you get the copy -- do we have a copy --

DR. ZIEMER: Actually if we do that, we've got to run off a lot of copies for everybody. There just -- there will be five things to remember. Item one, completeness of data sources. Write it down. Completeness of data sources, and Leon's suggesting that he believes that that was -- that objective was met.

MR. OWENS: Was fulfilled, yes, sir.

DR. ZIEMER: Yes.

MR. OWENS: Objective number two is technical accuracy. And basically the bullet states

(reading) to critically assess how the sources of data identified in the site profile were used in developing technically-defensible guidance or instruction as cited in the site profile Technical Basis Document. The review procedure for this element should therefore address the question or questions of whether proper technical use was made of the available data.

And I feel that SC&A fulfilled that objective, also.

DR. ZIEMER: That is they did assess the technical accuracy. This says nothing about the conclusion, but that they did it.

MR. OWENS: Yes, sir.

DR. ZIEMER: Proceed.

MR. OWENS: Objective number three is the adequacy of data, and the bullet states (reading) to determine whether the resultant data and guidance contained in the site profile are sufficiently detailed and complete for use in dose reconstruction; or in instances where no or limited data provide a defensible surrogate approach to dose reconstruction. That particular objective I would like to have

additional information provided by the contractor. While they may have hit on that, I'm still not comfortable in saying that that objective has been fulfilled.

Objective number four is consistency among site profiles, which that's open since this is the first one that they have reviewed.

DR. ZIEMER: So it's not applicable in this case.

MR. OWENS: At this point. And objective number five is regulatory compliance, and the bullet states (reading) to determine whether the site profile or Technical Basis Documents are consistent and compliant with the following: stated policy and directives contained in the final rule in 42 CFR Part 82, and guidance and protocols defined in OCAS 1G-- or IG-001 and OCAS IG-002.

And while I note the comments that were made by Dr. Neton for NIOSH in questioning whether or not there was a complete understanding by SC&A of 42 CFR Part 82, I think that that is an interpretation that NIOSH has made and I would say that SC&A has fulfilled this objective, though, in their review.

DR. ZIEMER: Yes. Again, the objective was to assess those, and that assessment could be their either did or didn't comply, but it -- the assessment, you're saying, was made in fact.

So basically what Leon has suggested is that the contractor has met objectives one, two and five; that number four does not apply, and you have a question on number three as to the extent that the contractor determined whether the data and guidance in the profile are sufficiently detailed to complete dose reconstructions.

Now -- and a motion dealing with this would be a motion to the effect that the Board agrees that these items were met by the contractor and that another one may not have been met. However, I think in fairness we should hear from the contractor on that one. I think the point is that -- Leon, you're suggesting that it wasn't clear to you that they actually did that evaluation of the adequacy of the data.

MR. OWENS: That's correct, Dr. Ziemer. I would like to hear from the contractor, unless there's some other comments by other Board

members.

DR. ZIEMER: I wonder if John or Joe -- and of you -- or yes.

DR. MAKHIJANI: Thank you, Dr. Ziemer, Mr. Owens. In regard to this objective, as we understood it, and we -- it's listed in the site profile on page 12, we did hold discussions with NIOSH on this point and also attended -- I myself attended the worker meeting organized by NIOSH in (unintelligible) on July 1st, and a lot of our observations in this area dealt with the information provided by the workers and whether NIOSH had dealt with it or not, and we felt that they'd made inadequate use of the available information. Specifically, the question of incidents like cobbles/hobbles* when these uranium rolls passed through, they have process upsets, sometimes once a day, sometimes more than once a day, and these rods get all tangled up and the workers have to chase them down and then cut them into pieces and so on, and then -- and then ship them off. Or when people crawl into furnaces and the exact types of job descriptions that give rise to exposures. We

felt that -- and we've kind -- described that in here. Maybe we didn't quite -- one of the things maybe I'm picking up from your comment is in the -- in the body of the explanation -- exposition we should have maybe connected it to which objective it goes to, but that -- that part of our report does go to the objective of whether there was inadequate use of the available information.

DR. ZIEMER: It's not completely clear to me whether the objective deals with the way they use the information or whether it was there -- it was even -- this talks about whether there is adequate data there to do the dose reconstructions. I think -- I'm making a fine distinction here, as opposed to whether you think they used it right, which is sort of a different question.

DR. MAKHIJANI: Well, I guess we didn't make a direct call on that, but there's quite a lot of analysis around this question that I'd like to point out to the Board, which is -- we tried to evaluate whether you could actually use these air concentration data from the Simonds facility and -- and, you know, we paid some

attention to Bethlehem Steel, but as I explained, Simonds had the most important numbers so we focused on that. And we found that it was a close call. There were -- there were -- it was okay to use it, but it was -- there was very limited information to do the job. I mean from Simonds there was really one day of data that was really more or less comparable because after October they installed a more extensive ventilation system and the facilities were no longer comparable 'cause Bethlehem Steel never had ventilation. And so the -- it's a very -- it's a very tough situation at Bethlehem Steel with actually making a confident calculation of doses. And some of the higher numbers that we came up with in terms of suggesting that high numbers be used is a kind of substitute for really large gaps in the data. Our suggestion that OTIB-4 be evaluated -- we didn't say it should be used, but evaluated -- are also for the same reason. So Bethlehem -- there's really -- there -- there is a paucity of data at Bethlehem Steel, and I think we have said that in so many ways, but not maybe -- we didn't say

that you couldn't do a dose calculation, but we have said that the uncertainties in these numbers are very, very significant. And so a default procedure should perhaps be employed and evaluated. Now we didn't actually go ahead and evaluate that default procedure, but we did consider the question of adequacy of data and it's sort of on the margin. We didn't say it. Maybe we didn't put a bottom line to it, as we should have.

DR. ZIEMER: So on this particular one, it's focusing on -- pretty much on the question of whether there is sufficient data -- or adequate data to do dose reconstructions and to make a judgment on that issue. And again, let me point out that I think Leon, if I may borrow from what you have told us, you are suggesting a kind of template against which future dose reconstructions may also be measured -- or not dose reconstructions, but site profiles may also be measured, that we would expect the contractor to specifically relate their findings to these issues that would help us to say yes, you've met this objective or you didn't.

Now we have some additional comments. Mike and then Tony.

MR. GIBSON: Just an observation that I had was that I believe based on NIOSH's rebuttal to SCA's report would demonstrate -- which is legitimate, but would demonstrate that SC has indeed evaluated the information that was available or there wouldn't have been such -- such a rebuttal by NIOSH.

DR. ZIEMER: Okay. Tony?

DR. ANDRADE: Two comments. One, Paul, is I agree with your statement regarding Charles's point regarding perhaps in the future having a template against which further site profiles can be evaluated with respect to these expectations. I think that's a very good idea. So Leon, I think we should perhaps form a motion, or you can form a motion along those lines 'cause I -- I do think that -- that's very well done.

But number two, I did want to point out that I think both organizations, SC&A and NIOSH, both came to the conclusion that the adequacy of data was -- was poor, but they both came to the same conclusion that the data that was

available and information that was available from other organi-- from another organization that was performing similar operations was such that the data that was available was sufficient to form surrogate models with which I think dose reconstructions can be performed. And as a matter of fact, SC&A even came up with its own model. Right or wrong, they came up with their own model.

Therefore, it's my personal opinion that objective number three was fulfilled by SC&A.

DR. ZIEMER: Okay. Jim.

DR. MELIUS: Yeah, I would just concur with both Mike and Tony on that point. Again, much of the dispute we've heard and disagreement's been sort of what's the best thing to do with pretty poor set of data and being with -- and how to extrapolate from other sites and so forth. But I do think they've addressed the objective and it ought to be -- in terms of our review at this point -- accepted as such.

DR. ZIEMER: What I'm looking for now will be first a motion to deal with the objectives. That will be separate from a motion on the document itself. In other words, the motion

might be that the Board -- I'm searching for -- you can help me with words. The Board concurs or agrees that the contractor has carried out the five objectives stated in the site profile review procedures in conducting its review, with the exception of objective four, which is not applicable at this point. Or it could be stated more simply as has carried out the objectives stated in site profile review task. The motion would be I move -- I move that the Board recognize that the contractor has carried out the objectives of task one, site profile review.

MR. OWENS: This is the motion, man. Do it, Dr. Melius. Put a motion out there. I'll second it.

DR. MELIUS: We need to distinguish whose words you're --

DR. ZIEMER: I don't want to put words in other people's mouths because that's a very unsanitary way of speaking.

DR. MELIUS: I so move.

DR. ZIEMER: Okay. The motion then -- if you can repeat the motion, I'll allow it to be yours.

DR. MELIUS: I move that we accept the SCA report as meeting the objectives of the task.

DR. ZIEMER: Okay. I'm going to take the words out of your mouth and -- we've not yet accepted the report. I think the motion is that we -- that we concur that the report has carried out the objectives of the task.

DR. MELIUS: As meeting the objectives of the task.

DR. ZIEMER: Well, there's a difference -- procedural difference on -- accepting a report means that you agree with all its findings. That's almost a separate issue. This simply recognizes that the tasks were carried out. I'm making a distinction here because we'll have a separate motion that will deal with the content, per se. Not that this doesn't deal with con-- it deals with meeting the objectives of the task. Does everybody understand -- is this a distinction that's so fine that only I understand it?

MS. MUNN: No, no, it's very clear.

DR. ZIEMER: We have a motion on the floor which we're going to clarify in a minute. Did somebody second it?

MR. PRESLEY: I'll second.
DR. ZIEMER: Okay. Then we'll figure out what it was. Robert Presley.
MR. PRESLEY: It's called assessment criteria and that the Board recommends that our contractor has met the assessment criteria -- or concludes that it has met the --
DR. ZIEMER: The Board concludes that the contractor has met the objectives in the site profile review procedures. And we understand that objective four doesn't apply at this time. Further discussion on that? Wanda, please.
MS. MUNN: Was it our intent also to include a comment with respect to a somewhat more direct reference to those objectives in future reports --
DR. ZIEMER: In future reports.
MS. MUNN: -- in order to provide clear understanding by the Board what items of the report do in fact meet those objectives.
DR. ZIEMER: That could be -- let's take that as a separate motion, so we just have this as clear-cut on this report, and then let me take another motion as instruction for future reports, and you can make that motion.

Other comments on this motion?

(No responses)

DR. ZIEMER: Okay. All in favor, aye?

(Affirmative responses)

DR. ZIEMER: All opposed?

(No responses)

DR. ZIEMER: Abstentions?

(No responses)

DR. ZIEMER: Okay. Wanda, your motion is that we instruct the contractor in future reports to specifically identify and --

MS. MUNN: Yes, this Board requests that the contractor, in future reports, make specific reference to the objectives.

DR. ZIEMER: Five objectives.

MS. MUNN: Uh-huh, yes.

DR. ZIEMER: Okay. Seconded?

DR. DEHART: Second.

DR. ZIEMER: Any further discussion on that?

(No responses)

DR. ZIEMER: Okay. All in favor, aye?

(Affirmative responses)

DR. ZIEMER: All opposed, no?

(No responses)

DR. ZIEMER: Abstentions?

(No responses)

DR. ZIEMER: Motion carries. Thank you. Now we have the weightier matter of the report itself. Does anyone wish to make a motion? Yes, Tony.

DR. ANDRADE: I'd like to move that NIOSH prepare a response to each of SC&A's findings and observations in terms of either an explanation that will be inserted into the site profile, or a short response such as presented to us today, as to why a particular issue need not -- finding or observation need not be addressed.

DR. ZIEMER: Before I call on a second to that motion, can I propose that it be prefaced by a phrase such as the Board receives the document as the findings of the contractor and...?

DR. ANDRADE: Yes. Yes.

DR. ZIEMER: So the motion would include receiving the report as the findings of the contractor. Now I want to make sure you understand that I have worded that in a way that at this point does not embrace the report by this Board, 'cause I'm not sure you're ready to embrace it yet. You may want to hold hands

with it a little bit, but no embracing. Is that -- you're playing footsie?

DR. ANDRADE: That's absolutely correct. And my -- my language was such that there could be points in there that are simply not --

DR. ZIEMER: And your motion --

DR. ANDRADE: -- to be addressed.

DR. ZIEMER: -- includes all points that are in the document.

DR. ANDRADE: All points, and if --

DR. ZIEMER: We'll start with -- okay.

DR. ANDRADE: All points --

DR. ZIEMER: That's the motion. Is --

DR. ANDRADE: -- the findings and observations.

DR. ZIEMER: -- there a second?

MR. PRESLEY: I second it.

DR. ZIEMER: Okay, it's on the floor for discussion. Yes?

DR. ANDERSON: Did you include the procedural issues that they raise or not?

DR. ANDRADE: Findings and observations only.

DR. ZIEMER: Findings and observations, two categories. There are eight findings and -- eight findings and seven observations. Okay. Yes, Leon.

MR. OWENS: I guess my question is, if this motion passes, what is our process then for resolving the issues that we might have as a Board with the overall findings from the contractor, and at what time would we then hold hands with the entire document? Would it be at our next Board meeting or would it be beyond then, since we were hopeful that SC&A would continue on their site profile reviews? That's just a question.

DR. ZIEMER: It's sort of a rhetorical question at this point, but clearly if the motion passes it instructs NIOSH to do something, which means they report back. And incidentally I believe that that process carries it through the Secretary of Health and Human Services. I mean this is -- this is not -- I know Larry is here hearing it, and Jim, but technically it -- it has -- it would be advice to the Secretary, who could say I don't like your advice at all; I'm not going to do it. This is -- what we're doing is advising the Secretary of Health and Human Services, who could very well say thank you, I've gotten your report. I just -- so when you ask about the time frame, I think we

have to realize what the -- sort of the framework of handling it is. I don't think NIOSH can automatically do that without sort of the blessing of the Secretary. Am I right in that?

DR. WADE: You're correct.

DR. ZIEMER: They're nodding. They're -- they're hoping that's the case.

DR. WADE: I think that is the case. You advise the Secretary; the Secretary will speak to us.

DR. ZIEMER: Larry?

MR. ELLIOTT: Yes, that is correct. The Secretary will take whatever you give him and -- or her and make a decision on whether to pass it on down to us or just say thank you very much for your input. That's the way it may be handled.

DR. ZIEMER: Right. And in that regard, probably the extent to which there's more specificity in identifying particular items may be helpful. Or if you say yes, we agree with these or we don't understand this or whatever, that might be helpful, too, taking Shelby's comments that we -- we can't necessarily

disassociate ourselves and just say it's out there, either. If there are things that we think are good, then we can embrace them. If there's issues we don't agree with -- if we know those now.

Okay, who's next? Okay, Jim, you're next?

DR. MELIUS: Okay. I think we're -- somehow an added step got added in here. I thought what Tony was proposing was similar to what we did with the individual dose reconstruction reviews. We were first asking for a complete NIOSH response to the findings and rec-- you know, recommendations from this report that would then inform the Board's deliberation on this report. And I guess I don't quite see where --

DR. ZIEMER: You're asking whether this is an intermediate step before our final action?

DR. MELIUS: Yeah.

DR. ZIEMER: And I don't know the answer to that, honestly. I'm unsure, and I don't know if legal counsel can help us on that at all or --

DR. ANDERSON: Do we need to send it to the Secretary first?

DR. MELIUS: Yeah, I mean I would interpret as we handled the other issue, that we don't -- that maybe a next step it gets sent to the Secretary, but first we were asking for a more complete NIOSH response to this. Again, my question earlier to Jim Neton was was this -- was what was presented to us a full response, and they indicated no 'cause they weren't sure what our procedure was going to be for handling --

DR. ZIEMER: Yeah, and I don't know, and maybe --

DR. WADE: I think there's a question as to whether you were prepared to advise the Secretary at this point. If you are, then do that. If you feel you need more process, then you take those steps.

DR. ZIEMER: That's helpful. Wanda?

MS. MUNN: Seems to me we're still in the forest primeval here trying to flail around and identify exactly how we are to proceed. Actually, it seems to me that we were approaching that yesterday in subcommittee when the understanding I had of the outcome of our discussion was we were going to ask essentially

that there be more dialogue between the contractor and NIOSH with respect to these issues that they raised, and that -- as Tony has pointed out -- a more precise and complete document of this kind probably would be forthcoming from NIOSH for our acceptance and, in my mind, inclusion or attachment, perhaps, to the existing site profile as a definition of how issues that were raised regarding the site profile were in fact resolved. Or if not resolved, at least explained by -- by NIOSH's approach. It would appear that that kind of document would be an appropriate transmittal to the Secretary if that is the decision of this body in how we might proceed in the future.

DR. ZIEMER: Thank you. Mike?

MR. GIBSON: Just a procedural question. If we -- if the motion passes as it stands and we get a clarification of issues from NIOSH about SCA's report, then do we have to embrace or reject the whole report or send it forward to the Secretary, or can we select the sections thereof that we --

DR. ZIEMER: It's my understanding that we can handle it as we believe it should be handled,

which means we could embrace it completely, we could not embrace it completely. We could embrace parts of it. We could reject parts of it. I think it's completely open. There's nothing that dictates what we do with it, so I believe that's true and --

DR. WADE: That's correct.

DR. ZIEMER: -- Dr. Wade is nodding assent that it's completely at the discretion of this Board what it wishes to send forward to the Secretary in the way of advice.

DR. WADE: I mean I do think it's important that the Board understand that when it provides advice to the Secretary, a great weight will be brought to that. And I think you need to be prepared when you take that step to provide a substantive document to the Secretary by way of providing advice. I think that's what Shelby was trying to point out to us -- to you.

DR. ZIEMER: Okay. Mark?

MR. GRIFFON: Yeah, I think, you know, what's -- what's floating around here is a strategy for comment resolution. I mean I was going to make a similar point to what Jim said, which is I'm not sure this means a report to HHS, to the

Secretary. I think this is -- and Wanda hit it on the process that we're using for the dose reconstructions review. That adds in that iterative step, which I think adds in more work for NIOSH and the contractor, and potentially us, you know, but maybe we need to do -- I mean we have to have some comment resolution process. One thing I would add to that is if we are going to go to that next step and request more -- more comments -- we've got lots of comments. We've got comments to comments to comments at this point. I think to ask NIOSH to give us a complete set -- it might be useful for us to actually dig in and go through the findings and say for findings 1, 3, 5 we need more -- more iterative process between -- you know, for these two we can at this point make a recommen-- you know. I don't know that we -- we've said that and done that, so I -- but I think, you know, I -- I in general agree with that --

DR. ZIEMER: That's one of the options, to go through each item and -- each finding and each observation --

MR. GRIFFON: Right, and -- and narrow --

narrow down --

DR. ZIEMER: -- and each specific action.

MR. GRIFFON: -- our request to NIOSH, right. Because they've already given us a lot of responses to findings and --

DR. ZIEMER: Yes. Gen?

MR. GRIFFON: -- observations.

DR. ROESSLER: I think it's becoming clearer to me, but what I want to understand before we vote on Tony's motion is does it include the Secretary or not include the Secretary?

DR. ZIEMER: I think -- now Dr. Wade, what you're suggesting is the Board has the prerogative, if it wishes right now, to try some comment resolution prior to going forward to the Secretary with a final recommendation?

DR. WADE: Indeed it does.

DR. ROESSLER: So the answer's no, it does not --

DR. ZIEMER: Not necessarily.

DR. ROESSLER: Not necessarily.

DR. ZIEMER: Yes.

DR. ANDERSON: Yeah, I -- I mean I think it -- it's not very helpful to send a kind of a draft document up and then say we want you to tell

your people to respond. I think that's a very awkward approach. So I think -- I mean if NIOSH -- if we suggest we get a full response, I guess I would like to add to that full response do they also see that there may be some way to address some of these issues in the site profile. And I think you don't have to choose one science over the other if you recognize that there's multiple ways to do this, and we chose this one for the following reason. That -- that at least recognizes that there are other ways, rather than this is the way, the only way and that's -- so I think I would like to add that as part of -- not just responding here, so now we've got two responses and we either have to choose one over the other. I would like to see so do they see this being helpful to respond in some way within the document -- the site profile if and when it gets reviewed -- something along those lines, so that, you know, there may well be that these are irreconcilable differences, but what we're really looking for is just a recognition that they're there and that this one is as good, if -- as the other. I guess that's where I was

headed with it and so I would like NIOSH to come back with not just here's our complete response, but also is this going to have any impact on the site profile so when we send something then up to the Secretary we can say and we recommend the following, you know, changes or modifications or approaches in the site profile, something like that, along with it so you -- Secretary gets a series of documents in the process. We've narrowed it down to just exactly what our recommendations, as it relates to the site profile, not as it relates to what our contractor writes or what NIOSH -- I mean this is all just in-- information leading to a set of recommendations.

DR. ZIEMER: Okay. Jim, then --

DR. MELIUS: Yeah, I'd like --

DR. ZIEMER: -- Tony, then Roy.

DR. MELIUS: I'd like to offer I think what I hope to be two friendly amendments to Tony's motion. One is that we bring this NIOSH review and interaction with the contractor back to the Board for further discussion before we formalize any recommendations that would go

forward to the -- the Secretary.

DR. ZIEMER: You're talking about -- which review, the one that's called for in the motion?

DR. MELIUS: The one that's called for in the motion.

DR. ZIEMER: And?

DR. MELIUS: And that's the first amendment. The second friendly amendment is that we ask that there be particular emphasis on two particular points, and I'm going to refer to page 8 of the SC&A review -- mainly because I like the tone of the title, overview of opportunities for improvement -- and I would propose there be particular emphasis on the first two points on that page. I think they're, to some extent, the crux of some of the back and forth and disagreement we've had, and I think it would be useful for us to have a more complete discussion of those points and focus on those two.

DR. ZIEMER: I think I'm going to rule that the first one is indeed friendly. The second one, not that it's unfriendly, but it -- there may be more points or they may -- they may be

different points, so I will ask for an actual -- - a formal amendment on that, but the friendly amendment would be that we would ask, as part of the motion -- Tony, if you regard that as friendly, that NIOSH -- the review that you asked for be brought back to this Board. You regard that as a friendly amendment?

DR. ANDRADE: You mean the second part?

DR. ZIEMER: The first part, that the --

DR. ANDRADE: The first part, yes, that's...

DR. ZIEMER: And who was the seconder?

MR. GRIFFON: Just a clarification there 'cause Jim -- Jim said that NIOSH and the contractor's review come back to us, and the motion called for just a NIOSH expanded review. There's a little difference there.

DR. ZIEMER: I'm uncertain as to what -- you were talking about the review by NIOSH. Right?

DR. MELIUS: Correct, yeah.

MR. GRIFFON: Okay.

DR. ZIEMER: Which is what the motion --

MR. GRIFFON: That's not what was stated. I'm just -- okay.

DR. ZIEMER: Okay. And the motioner and the seconder regarded that as a friendly amendment,

so we'll include that as part of the motion. If you'd like to amend the motion with your second part, then I'll call for that as an amendment, then we'll --

DR. MELIUS: You ready?

DR. ZIEMER: Yeah.

DR. MELIUS: Okay. Then I would move that we amend Tony's motion -- in a friendly fashion, but not as a friendly amendment --

DR. ZIEMER: I think it's friendly, but not friendly enough.

DR. MELIUS: -- that the NIOSH response to the -- and presentation to the Board on the SC&A review would lay particular emphasis on two points that are at the top of page 8 of the SC&A review of the NIOSH site -- Bethlehem site profile, number one being apply procedures and standards as discussed in this review, including use of ICRP-75 and appropriate portions of ORAU-OTIB-004; and number two, assure that appropriate statistical methods are applied in analyzing air concentration data after adjustments -- adjustment according to ICRP-75.

DR. ZIEMER: That's the suggested amendment to

the main motion. Is there a second?

DR. DEHART: I'll second it.

DR. ZIEMER: We're discussing the amendment now -- only the amendment. And as I understand the amendment, you're only asking that there be particular emphasis on those points, regardless of how it's resolved.

DR. MELIUS: Yeah. And the rationale for that is these were -- seem to me were the crux of some of the disagreement and discussion that we heard earlier be-- presentations from SC&A and from NIOSH, and I think they're worthy of further discussion and -- on our part, and I think we need to make sure that we have appropriate information to be able to do that.

DR. ZIEMER: Discussion on the amendment?

(No responses)

DR. ZIEMER: Are you ready to vote on the amendment?

Okay, the amendment then is that there be particular emphasis on the first two points on page 8 of the SC&A review.

All in favor, aye?

(Affirmative responses)

DR. ZIEMER: Opposed, no?

(No responses)

DR. ZIEMER: Abstentions?

(No responses)

DR. ZIEMER: Okay. Now we have a motion, as amended, both by friendly amendment and the less than friendly amendment -- marginally friendly amendment -- we're back to the main motion as amended now. The main motion is to accept -- no, the main motion is to receive the report of the contractor and whatever was said by Tony after that. And we may -- we may have to go back and review those words here in a moment. Roy, you have additional discussion?

DR. DEHART: I would just like to mention that I am supportive of the motion and the amendment. That gets back to what comments I had made earlier, and I would remind the Board that this is an opportunity to clarify potential issues that might be existing, because we're going to see this discussion in some form for seven more of these reviews. And hopefully some of the issues will not come up again because they'll have been resolved.

DR. ZIEMER: Okay.

DR. WADE: Could I ask a clarifying question of

Jim? You refer to information on page 8. I assume you're referring to the bolded comments?

DR. MELIUS: The two topics discussed under the bolded --

DR. WADE: The two bolded comments.

DR. MELIUS: Yeah, yeah, which are -- really summarized other parts of the report, but that was the...

DR. WADE: Okay.

DR. ZIEMER: Gen Roessler.

DR. ROESSLER: Does Tony's motion have any time line associated with it? I think it didn't, but I'm wondering if it shouldn't have.

DR. ZIEMER: I don't believe it has a time line with it.

DR. ANDERSON: Only discussion at the next meeting, whether we get something or not.

DR. ZIEMER: Other comments or questions, discussion?

DR. MELIUS: I guess on that point I -- I mean it would be good if it could be at our next meeting. I'm just not sure if that's fair to NIOSH. That's asking a lot and I don't want to, you know, ask them to react to that right away here 'cause I think they've got a -- we've

already given them a lot to do and I'm not sure I want to give them a lot more to do on a short time frame at this point in time.

DR. ZIEMER: Let's pause a minute and I'm going to ask the recorder to -- if he's able to go back and find this and read Tony's motion.

(Whereupon, Dr. Andrade's motion was located and repeated by the court reporter to the Board.)

DR. ZIEMER: ... contractor and asks NIOSH to prepare a response to each of these SC&A findings and observations in terms of either an explanation to be inserted into the site profile, or a response as to why a particular observation should not be -- included, or be -- I missed a word there; I guess it was included -- and that -- and the friendly amendment, and that NIOSH -- the NIOSH review be brought back to the Board for further review and that there be particular emphasis on the first two points on page 8 of the SCA review -- page 8 of the -- first two points on page 8 of the SCA review. That is -- is that the motion as everybody understands it?

Any further discussion? Yes, Robert.

MR. PRESLEY: Do we want to ask that this be presented to the Board by the end of April, put a time period on this?

DR. ZIEMER: That was the question that Gen raised earlier. You've heard Jim's comments that -- again, it's open for the Board. Do you wish to add a time frame or leave it open?

MR. ESPINOSA: Can we get some response about that?

DR. ZIEMER: Tony, Michael -- Tony.

DR. ANDRADE: I think I would like to ask Jim Neton when he believes that something like this would be reasonable. As you can tell, I left this motion intentionally flexible. I really don't expect to see much more, except what was verbalized by Jim, than what is on this piece of paper. Okay? And he said that there were perhaps a few more issues that needed to be addressed. But I didn't want it to turn into a dissertation. I want simple, terse, explanatory remarks that can be inserted into the site profiles such that any reasonable or educated person that understands these things can open it up and understand why -- why this particular item in the site profile is what it

is.

DR. WADE: You know, I think it's reasonable to hear from program people if Jim is comfortable speaking to --

DR. NETON: Yeah, I appreciate the opportunity to weigh in on this. I personally believe that the next Board meeting is -- is very soon. I agree with Dr. Melius on this. We have SEC petitions scheduled for that Board meeting, as well as our consolidation of comments with SC&A on the dose reconstruction reviews. I do think, though, the next Board meeting -- if it is indeed scheduled in April sometime -- is a reasonable time frame.

DR. ZIEMER: Robert, did you have another comment? No. Okay.

Okay, is the Board ready to vote on this motion?

MR. PRESLEY: Do you want to put those words in there about April? You want to tie it down?

DR. ZIEMER: I don't -- I think we just heard that as information. We don't have to insert it necessarily.

Okay. All in favor of the motion, say aye.

(Affirmative responses)

DR. ZIEMER: All opposed, say no.

(No responses)

DR. ZIEMER: Any abstentions?

(No responses)

DR. ZIEMER: The motion carries. Now I want to tell you that in a little bit there -- the Chair will be interviewed by the Buffalo news channel, and I can only tell them basically what the Board's position is, which is encapsulated in this motion. This position, as currently set forth, neither accepts nor rejects the findings of our contractor.

DR. ANDERSON: We found they were responsive to their charge.

DR. ZIEMER: They were responsive to their charge in terms of addressing the issues that we wished to have addressed. The points that they have raised we have asked NIOSH to go back and examine them and to report back to us. And basically this -- as I understand it, and I will try to avoid inserting my own opinions on any -- any points. I won't even tell them how friendly the amendments were. But I want -- want the Board to -- I believe those are my limitations and I sort of serve notice to the

reporters here, don't ask me to give anything beyond that because I cannot speak beyond that. This is the Board's current position on the site profile.

Now -- and Joe, let me -- you wished to speak to this issue that --

MR. FITZGERALD: Not this issue, so I --

DR. ZIEMER: Oh, okay.

MR. FITZGERALD: When there's a break, I want to --

DR. ZIEMER: Oh, okay.

MR. FITZGERALD: -- amend the record.

DR. ZIEMER: Okay.

DR. MELIUS: I have two -- two things to bring up. The first is I think a request for a agenda item for one of our next few meetings, and that's if NIOSH could address the issue of -- of modification of the -- of the site profiles and where they stand, 'cause I think the amendment -- the motion we just passed addresses that to some extent, but I think there are some bigger issues here and I think it'd be worth discussing. I don't think we need a motion -- just do that, but I just would like --

DR. ZIEMER: Just the process itself --
DR. MELIUS: -- that as -- I think it is appropriate to this discussion.
DR. ZIEMER: Sure.
DR. MELIUS: I would also like to discuss the issue of the release of the draft reports, site --
DR. ZIEMER: Right, I think that what we'll do -- we will have time in our work session tomorrow to specifically address that. We do -- you recognize we have an evening session and so we're going to recess a little bit early this afternoon, but we'll definitely include that in the work session tomorrow. That -- that's a procedural issue that we need to look -- to address for future site profiles.
Joe Fitzgerald.
MR. FITZGERALD: Yeah, thank you very much. I want to amend the record and put on the record a reaction to a comment that was made by the Department of Labor, and I thought it was a pretty serious allegation and could not go unresponded to, quite frankly. I'm going to paraphrase the comment by Mr. Turgic (sic), but I think it's something that, you know,

certainly stunned us. It says the Department of Labor -- this is, again, a paraphrase -- has stated that they have evaluated the possibility of rollings in 1955 and 1956 and that this issue was adjudicated negatively, and that -- and this is the part that I think we take exception. SC&A knows this -- that this adjudication was made and went ahead and put this in their report anyway.

You know, certainly we kind of all looked at each other and, you know, asked -- no, we certainly would not have done that, so how could that have been the case. And I just wanted to double-check with Mr. Turgic (sic), you know, just because we were, you know, puzzled at that reference. And apparently the conveyance of that information took place at a breakfast meeting that you, Mr. Chairman, attended with -- with John Mauro and myself and Larry Elliott and Jim Neton, and all I would comment is -- I'm not saying it might not have been said, but certainly in terms of catching everything that was said and -- and frankly, you know, reflecting that as a -- you know, as a vital piece of information, we certainly did

not hear that. I'm not saying it wasn't said, but we didn't hear that. And I think --

DR. ZIEMER: Well, I can simply tell you that the Chair's unable to confirm that that was said at a breakfast meeting, either, but --

MR. FITZGERALD: Right.

DR. ZIEMER: -- that may say more about the Chair than it does about the discussion.

MR. FITZGERALD: But I think my point is that, you know, certainly if the information was received and understood, clearly we would not have intentionally put it in the report anyway. And I think that's the part that I -- we take firm exception to and want to make sure that the record --

DR. ZIEMER: Thank you.

MR. FITZGERALD: -- reflects that.

DR. ZIEMER: Thank you for clarifying the record on that particular issue. Yes, Jim, please.

DR. MELIUS: Just in terms of the discussion of the draft reports and so forth, I'd just like that to be done in the morning session tomorrow. Henry has to leave at around noon and we have a work session --

DR. ZIEMER: Yes --

DR. MELIUS: -- around 10:30, if you could just make --

DR. ZIEMER: Oh, sure, we can do that right at the front end there, sure.

DR. MELIUS: Thank you.

DR. ZIEMER: Thank you. Are there any other items to come before us today -- or at this session?

Okay, we're going to recess. We will reconvene at 7:00 o'clock for the public comment session, and -- and then of course we'll be back here tomorrow morning, as well. So we are recessed.

(Whereupon, a recess was taken from 4:25 p.m. to 7:00 p.m.)

INTRODUCTION

DR. ZIEMER: I'm going to ask you please to take your seats. We're going to begin our evening session. This is a public session of the Advisory Board on Radiation and Worker Health. We welcome you to this portion of our meeting, pleased to have many members of the public visiting with us this evening.

We do have some sign-up sheets for those who wish to make public comment. A number of you

have already signed up and I have those sheets. If you have not signed up but do wish to or intend to make public comments, we ask that you just sign up on the sign-up sheet, it's near the door, and we'll get you on the schedule yet this evening.

My name is Paul Ziemer. I serve as Chairman of the Advisory Board on Radiation and Worker Health. And I want to take just a few minutes here at the front end of our public session to acquaint you a little bit with the work of this particular Board.

The program to which we are involved or with which we are involved and we are advising, in a sense, involves several agencies that are represented by the Secretary of Labor, the Secretary of Health and Human Services -- I'm trying to get this to work here.

(Pause)

This Board has expertise in technology, you know.

(Pause)

The projector has gone to sleep. We hope that those here don't follow suit.

Also involved, the Department of Energy, and

finally the Attorney General. So these are the agencies that are involved in the program.

Now the Advisory Board itself is an -- a group, an independent group which is established by legislation. The legislation indicates that it consist of no more than 20 members, and actually there are 12 members, who are appointed by the President of the United States, who also designates the Chair of the Advisory Board. In addition to the members of the Board...

What did you push here, Jim, to wake this up?

(Pause)

It's very hard for me to do two things at once. Fortunately I'm not chewing gum, either.

The legislation specifies that the membership of the committee should represent a variety of groups, including the affected workers and their representatives, as well as representatives of the scientific and medical communities.

The Board itself currently has 12 members plus a Designated Federal Official, and I just want to tell you the names and point out who the various Board members are that are here this

evening. I've indicated that I serve as the Chair. On each of these names you will also see the person's position. I don't need to repeat all those, but you can read them. Larry Elliott is our Designated Federal Official and here's Larry. Henry Anderson, Tony -- Antonio Andrade is over here, Roy DeHart here, Richard Espinosa, Mike Gibson -- I am going to say something about Mark Griffon. Mark wants it to be known -- he's president, but this is a very small corporation that -- it consists of Mark. He's the president and the janitor, but Mark is a health physicist and he is there in that -- he is here in that capacity, as a health physicist. Jim Melius is here, Wanda Munn, Charles Leon Owens -- we call him Leon; he goes by his middle name actually, and Robert Presley and Gen -- Genevieve Roessler. So this is the current committee, representing a variety of backgrounds, as you see from their titles and so on here.

This group has been essentially in existence now -- we're just completing our third year and have been together a lot over that three-year period. We have visited many parts of the

country. This is our first visit to Livermore, but we do try to have our meetings in the vicinity of the various sites, either DOE sites or some of the other contractor sites that are involved in the program. So this is our first visit to Livermore and we're very pleased to be in this area during this week of our regular meetings, and have the opportunity to hear from some of you, as well.

I need to tell you -- and this'll be -- I think is the last slide. The role of this Board is also specified by the law, and I want to tell you what that is so that you don't have any misconceptions, because the Board does not get directly involved in processing the claims. That's done by the various Federal staff -- agency and staff people.

We are involved in the development of some guidelines, and those guidelines now are in place, one of which is the guideline dealing with what is called probability of causation. That's the guideline that discusses whether or not it is likely that a cancer has been caused by radiation exposure, whether it is likely that -- the probability of causation describing

that likelihood.
And then a guideline which deals with the methodology for dose reconstruction, this Board has been involved in the development of that guideline.
And then we are charged with assessing the scientific validity of the dose reconstruction efforts. This is a type of audit function where we select, somewhat at random, cases that have been processed by the agencies -- by agencies I mean NIOSH and the Department of Labor, essentially -- that have been processed and completed, and we sample from those completed cases. And with the assistance of a -- our con-- the Board's own contractor, we assess the validity of those dose reconstructions as a quality assurance measure.
And then finally we have a responsibility for participating in the determination of what are called the Special Exposure Cohorts. And again, this Board has a function in providing input on the decision as to whether or not a petitioner that petitions to be part of the Special Exposure Cohort actually should be granted that status.

So those are the actual functions of this Board, and all of what we do centers around meeting those requirements.

However, as part of our meetings we do like to hear from the public, even though we don't get involved directly in processing individual claims. We do learn from these meetings what kind of issues, what kind of problems that are envisioned or seen or perceived by individuals who are actually participating in the program through the submission of claims. So although, if you have a particular issue, if you're here as a claimant or representing a claimant and have a particular issue, we would always refer that back to the staff because we do not handle individual claims in this Board, but we do learn from people's experiences perhaps issues about how the program is going, where there are problems in terms of communications back and forth between claimants and the agencies, and issues of that type. So as we hear from you, we learn those kinds of things.

This evening as we have you give your public comment, I want to let you know that the public comments are intended to be just that,

comments. We're not here necessarily to answer questions. If you have questions, for example, on your claim or how something is being handled, then you need to direct that to Larry, who will get you in touch -- you know, separately just say I have this issue, I need to have somebody address it, so that you can have some particular thing taken care of. But in a general sense, you may wish to share experiences or anything like that. But if you say where is my claim or what is being done on it, that's not what the Board is prepared to address tonight. Rather we learn from you as I've described, experiences you've had, problems, if you -- if you have issues, for example, with site profiles that you want to make us aware of, anything like that that helps the Board be more aware of individual issues, site issues, those kinds of things, we're very pleased to have that input.

So with that, I'm going -- I think that was the last -- do I have anything else there? I didn't think so.

PUBLIC COMMENT

With that, I'm going to turn to our agenda of speakers, and I'm simply going to take these in the order that you signed up. The first individual is Ed Walker. Ed is a Bethlehem Steel person, so he's come -- he's come a piece to speak to us tonight. He's from New York. Ed, welcome.

MR. WALKER: (Off microphone) Thank you, Dr. Ziemer. Is this on or off or can you hear me?

DR. ZIEMER: Should be on. Do we have a volume control, or maybe it needs to be snapped on.

(Pause)

MR. WALKER: Okay. Thank you very much, Dr. Ziemer, and I've met with you before in Buffalo. I talked there -- I hope not too much, but I guess not or you wouldn't have had me come back tonight, so at that I'd like to start -- there's probably quite a few that don't know what I'm doing or who I am or anything, but my name is Ed Walker, as he told you, and I'm a claimant/victim. I have cancer. I have bladder cancer. I've had it for four years. It's been in remission and I come from Buffalo and I worked at Bethlehem Steel. I went to work there when I was 18 years old and

worked with a group in a brick-laying gang, a specialized gang that worked on hot furnaces. We were kind of like the firemen of the brick layers when -- there was a big group of brick layers, but there was a special gang picked out and when there was a breakdown of any sort in any part of the plant, we were called upon to go and work there, and we worked there for the duration of the job. If it was a 8-hour job or a 12-hour job -- in many cases 16 hours -- we would go and patch holes in these furnaces. I'll get to that a little later, just more on that, but out of that 16 -- group of 16 that I worked with, there's two of us that are alive today. The rest of them, as far as we know -- we tried to trace back, and as far as we can find out, they all have passed away of cancer. I don't know what all their cancers were, but account of this program I contacted this other fella that I'd worked with a year or two older than I was and I asked him if he had heard about it and he said no. And I told him that I had cancer and he says Ed, he says I got cancer, too. So the two of us that have survived, he has colon cancer and I have

bladder cancer. And kind of ironically -- and I trace back my family tree back into Switzerland, and as far as my grandfathers and grandmothers on either side, or any relative, of all my cousins and uncles, either in the States or that were over in Switzerland, there hasn't one of -- one of them that had died of cancer. There's a couple that have it that it's in remission, too, and when I mentioned that to Norm, he says Ed, none of our -- in my family have had it, either, as far back as we could go.

So with that, this is not -- this is not a story about me. I got with a group. I signed up and -- the application to go in and what I started to encounter was some things that I didn't feel that the group from Bethlehem Steel was being treated fairly. And we kind of formed a group. We started out like any other group, one or two, and it's grown now till there's about 2,000 strong. We've had protests down in Cleveland. We went down and had a protest. We had a protest in front of the plant -- in front of the building, basically, where this uranium was run. Along the way we

picked up the media which, you know, is here from Buffalo and supporting us, Channel 7, locally and other stations also have -- have picked up on it. We met -- five of us went down to Washington two weeks ago and we had a half-hour meeting with Hillary Clinton and Senator Schumer, the senior citizen from -- senator from New York, and we met them both at the same time and we presented what we felt -- why we were being treated the way we're treated. We felt it was very unfair.

They supported us also, and at that I think the off-shoot might be that we're going to have another meeting back at Bethlehem Steel. We've got the support, as I said, of the newspaper, the whole group. All feel that there's something wrong with Bethlehem Steel.

I'm going to go a little bit to the human side of the story, and I've been -- you've seen me here yesterday listening and watching, and I really admire what you people do, really. You're really doing a great job. First of all, I don't feel that any of you people are involved what happened to these people. You did not cause this, but we're looking for you

to help us. But I'm going to go back to (unintelligible) and I'm going to tell you a little story about it.

I worked with a lot of veterans. It was right after the war and I was 18 years old, and a lot of them had fought in Normandy and the Battle of the Bulge, and one particular person was over in Corregidor. And some of you may have heard this story -- I think Mr. Turcic has -- and I worked with that gentlemen. He was also a brick layer. And as we worked in the plant, we just -- you sat down anywhere you could sit down and eat your lunch and talk, or if you -- if the furnace was too hot to get near, that you just couldn't get near it, they had to wait for it to cool down, you would set there and open up your lunch bag or your pail, whatever you had, and you would eat lunch. And I was talking to this fella, friend of ours, he was a brick layer, and he was over in Corregidor in the Second World War. This is the type of people that this is happening to, what the government has done to these people. And he was captured by the Japs. He escaped after five days and he was chased around the jungle

for two years. They were hunting him, and the natives in the country, they protected him. They hid him when the Japs come around, and if the natives were caught, they were also killed for hiding him. And him and I were setting and he was telling me some stories, and he was what we called back then -- I don't know, most of you are so young you probably don't remember, but it was referred to as shell-shocked, and he was definitely shell-shocked. And we were setting in a pile of brick and eating our lunch and two of the trains or the cars hit together and made a pretty loud crash. And again, this -- this man's my hero. I'm 18 years old and he was a Japanese prisoner of war. And -- and that man sat up -- I'll never forget it, it stuck with me the rest of my life -- he sat up. His eyes almost come out of his head, and he was sweating just -- it just ran down. He was soaking wet and the (unintelligible) it was hot in there anyway, and it was that hot, and he apologized to me. I understood what he went through. He worked as a brick layer. That's an example of the type of people I was working with, heroes. He got Congressional -- he

didn't get the Congressional Medal of Honor, but he had a Presidential Citation. This is the kind of people that I worked with, and I'm not belittling anybody that wasn't at Corregidor because they all -- these guys were real true heroes.

They come home, they had to feed their family. They went to work at Bethlehem Steel -- hard. I'm going to compare Bethlehem Steel with hell. If any of you ever -- ever heard or had hell described to them, that's what you worked at at Bethlehem Steel. Today they would put a lock on the gate. You couldn't walk in. There's times when you walked in that facility, you couldn't see 35 feet in front of you, and people worked in there. They had to work. They're looking -- they had to raise the family. There was -- there's no comparison to what -- I don't think -- the only other position there or the only other job that I would regret to work at is in the coal mines, but I compare that about the same as Bethlehem Steel. There was fire shooting out. There was flames in the air. There was whistle blowing. There was -- it was just hell, just what you

would picture hell at.
So these are the kind of people that back in '49 and '50 the government decided that we're going to roll some uranium at Bethlehem Steel because they've got a great facility for rolling steel. It was one of the best in the country. So they contracted with Bethlehem Steel to roll this uranium. We knew nothing about it. We did not have a clue that there was uranium. I did not find out that we were working with uranium for 50 years later. We had no protection whatsoever. I -- I can -- I know the times I was sitting on top of piles of steel, could have been uranium, I don't know. You would -- you'd go to work with your lunch bag, you'd go, you'd set down, it was a hot furnace. They'd say you're going to have to wait a half-hour, you can't get to it. We would wait there, we'd set there. We'd eat our lunch there. There was no locker rooms. There was no -- no protection whatsoever. When you went, you start working on either laying the brick, if there was steel in the way or whatever was in the way, you'd move off to the side. So this is what our government exposed

these men.
Whether it caused all their cancer or not, I don't know. I don't know if it caused my cancer. I can't honestly say. But for the government to do that to these people upsets me to this day, as you can see, and that's one of the reasons I formed this group.
It's been said to me that it's not bad. It wasn't bad. That stuff -- that won't hurt you. That's what we were told, by the way, and there's government -- there's documentation to prove that, that the people were told -- the plant didn't even know it, but the government officials told their people that went out and done these reports, tell them that the material is not harmful to you. You can -- you can work with it, it's not harmful.
These are veterans that just went over, fought for our country for the freedom and justice and to take them -- I hope that none of you people in here have grandchildren or children that go over in Iraq and fight and come home and be exposed to that uranium like that -- or any kind of condition like that, that your government don't do that to you.

And the point being is why did they lie to these people? If it wasn't bad, why didn't they just tell us, you're working with uranium. You're going to have to get a checkup. I looked into it. How many lives would have been saved of these guys that have died of lung cancer, whatever cancer they died from, had they known they had worked -- today you couldn't do that. They'd probably arrest you. You go back in the German prison camp when they told the prisoners go in and take a shower and they got gassed to death. Is it any different than what was done to the people at Bethlehem Steel? Go down there and work; it won't hurt you.

But had they told the people that that was uranium they were working with -- and this is the government's fault, not yours; I don't want you to get that feeling at all -- how many of them could have been checked up and been alive today to live with their grandchildren and have their wives. I've met so many claimants, it's -- and I know you've heard this before, but the first person that I contacted to talk to was eight years old. She brought a picture of her

father. While she's talking to me, she's crying. This was my dad. I lost him when I was eight years old. She's -- she treats me like her father now because I've tried to help her through this system that is so cumbersome that most people don't even understand what's happening to them.

So that, to me, is the human side of the Bethlehem Steel story. And I've heard Bethlehem mentioned here and Bethlehem -- I -- I just want you people to know that I'm an emotional man and if there was -- the people that I know, I've met you people, you're all wonderful people, I could not let you down if you needed help. If this place burns now, I'm not going to run out the door. I'm going to try and help who I can, and -- and I feel that our soldiers, our heroes that were over there I think deserve somebody to step up to the plate and say lookit, fellas, I -- when I went down to Washington to have the meeting with Hillary, after we left my -- I had to get out of there. I don't have -- I'm retired, but I don't have much time, and we walked over to the World War II monument, and I don't know how many people

have been there, but I would suggest you go over there because knowing what I know and what was done to these friends of mine, when I walked through there and visited that monument, it put a feeling on me like those guys were all there just saying thanks for coming and visiting me. It's very emotional -- I found it so. If you do get a chance to get down there, I would recommend you do it.

Getting along, 'cause I know there's other people that are saying when is he going to shut up, that was the human side of the story. Then I got into the program. Of course the program started and Melissa Sweeney went in with me. I worked with her husband. He was one in the hot gang and he had also died about four years ago, and she asked if she could go in with me because she had no idea what her husband done down there, where he worked or who his friends were or coworkers, and she asked if I would go and I said certainly, no problem. So we went together and we signed up, and we were told when we signed up that what we needed was to have cancer, and we had to work there at that time. Well, it was obvious that we both had

that.
And this is what we were told: If you've got cancer and you worked there at that time, you would receive the compensation case. And I said well, you know, I hate to qualify, but I do. And that went on. A couple of months later we saw a news article in the paper a report from -- I don't know who it come, the Department of Labor or who, had an interview on the -- in the paper and it said in a couple of months you -- cases will begin to receive their awards. Well, with no one else to ask, we believed it. Ten months -- ten months after that, we got -- we're waiting. We got a notice that now we're ready for dose reconstruction. We said what's dose reconstruction? Who's he? Well, of course going in the program, we got questionnaires, which was a joke. The questionnaire was a joke. (Unintelligible) couldn't -- the group that I'm with, the actual claimant group -- not the -- all the supporting group, probably 200 of them all had the same feeling, what do I do? You would not believe -- I'm retired. I get 25 phone calls a day -- Mr. Walker, can you help me? What does this

mean? Who do I see? I can't contact anybody; it was 50 years old. My husband died 20 years ago. It's -- it's a sham. These women come up -- not only women, the children and a lot of men come up, we don't have a clue on what to do. How do we apply for this? Where do we go? Who do we see? How can I find -- my dad worked with so-and-so and I tried to call him and he's dead. I help them when I can. I try and find -- at least in some cases I can tell them what job because I was there and I can tell them if he was a carpenter, well, this is what the carpenters normally done, so I can help some of them through the process. But we -- we started on that process, I think it was around in July or August, somewhere around there. My dates could be off a little bit, but we're working on the dose reconstruction and we're dose -- they're asking us questions on the dose reconstruction and metrics wasn't even completed yet. Obviously -- obviously somebody knew what was going to be in -- in the metrics because why would you go through all this paperwork and ask all these questions, get all these applications in unless you were going to

get a metrics, so we knew it was coming, but there -- there was no chance.

And another question before I get too far, why did they tell us that? I would not be here today -- and I could have handled it. I can live with it. If they would have said Ed, we're paying lung cancer patients and the rest of you aren't going to get it, it isn't in the cards, none of these women would have been bothered. None of these women would have had to go back or these children trying to trace down, run all around the country, cry, bring back the thing that they had -- you'll never forget, but you get over and you learn to live with, why did they -- why did they do this to these women?

It wasn't you, I understand that. But the system probably you could blame it on. It would have been so simple -- I mean they could have had you people doing other stuff I'm sure and -- just as important, if not more important, but why did they do that to us?

This -- this is a question that haunts me every night. Why am I going through this? I've got cancer. I could have lived till the end and I

didn't -- I didn't have to, but I just feel compelled to help these people that were friends of mine and -- and I'm trying to help them where they can't. I'm trying to help their wives.

One of the fellas that went down to Hillary's office was not a claimant. He had nothing -- he was 80 years old and he worked with uranium with his bare hands, and I took him down there for the fact that there was a man that had absolutely nothing to gain. He's 80 years old. His wife is -- he's on a death watch with his wife and he says Ed, I'll go with you if I can help these -- these -- he says a lot of these were wives of men that I knew and I worked with, and they're completely lost, and he says I'll go with you and talk. And that's why I took him, because he doesn't gain a penny to do this. He done it just to help people, and this is the kind of people that I think -- I grew up with and I hope are around that can help us, that -- that aren't out to -- I don't understand, first of all, why they just don't take care of -- of the people that were originally supposed to be taken care of. When

they turned around and -- and done on four government facilities, without a dose reconstruction, and I've heard all kinds -- I never can get a straight answer, but I've heard all kinds of stories. Well, you know, they think they had something there, so the politicians I guess thought well, let's just give them their compensation.

I had a fella call in -- into the -- I believe it was to the Department of Labor, could have been EEOICP or whatever it is -- and ask why, when I got my dose reconstruction -- I got 3.29 percent, by the way -- asked this woman why did -- why did I get denied and why was mine so low? And you know what the answer was -- and it -- and it still upsets me. The answer that come out of the thing was we took care of the slam dunk cases first. Now that was a nice slap in the face. Trust me, that was a slap in the face. I got over that -- not quite, but almost.

As -- as we go on, the technical base data was approved in three -- I think it was 3/31/03. They finally got it approved and everything, so we start getting denied. A year and a half

later -- a year and a half later, it's revised. I'm -- I'm just talking from my end. You may know a lot more about what went on during that period, but I'm talking as a claimant that don't know what's going on. A year and a half later it's revised. And then it says we're going to allow ingestion, which I know I ate and drank it 'cause you sat there, you couldn't help but eat and drink it. So they revised it a year and a half -- I think 15 months or something like that, they revised it and included ingestion. And my question to that is, in documentation that I found -- and I don't have the documentation that you people have, but in my documentation I found back in 1949, I believe it was, that Simonds Saw, in a report from -- from -- health report that went through there, that it said in that report that ingestion was a very important part in dose reconstruction and they should consider doing it.

Now if Bethlehem Steel is using the documentation from Simonds Saw -- which I think is wrong in the first place -- to do that, who missed that? I think that's kind of an

important item. Who missed that? Who missed that thing?

I was a -- I was a contractor all my life. I worked four years at the steel plant, but somewhere along the line somebody dropped the ball because that should have been brought in right up front. It wouldn't have changed mine any. You know, I'm not crying on account of that because it wouldn't have bothered me one way or the other, because there's not enough allowed. As a matter of fact, I guess we get 1,000 percent claimant favorable or 1,000 times? I would have probably needed about 300,000 times to get up to the 50 percent. And thank God they gave us those extra time or I would have owed these people money 'cause I was so low on my percentage.

So I'm trying to get along here. I'm going to drop down to -- account of time and want to give the other people -- one of the things that upset me and I just found out 'cause I go over these documents and people will call me and, you know, look -- and there was machining and grinding, and I called this to -- attention to Richard Miller. I called him up and I says I

found, after all this time and all the times I went over that documentation, I noticed this machining coming up and grinding, so I said I looked through the documentation and it mentions it throughout. Well, grinding of any substance, particularly uranium -- and it -- it mentions five ton ground. All the ones that needed grinding had to be ground. And machining, machining I haven't figured that out yet. I feel like -- I'm like Columbo trying to find all this stuff out, and I don't know what the machining consists of, but it mentions it throughout the documentation. And I've started to check with the group that I work with, I've asked at the meetings if anybody is familiar with any grinding or machining. I've gotten some reports, but I don't feel confident enough -- I'm sure what they told me was true, but I don't understand it in my head just how the operation went and just where it went on. But I didn't hear anything in this dose reconstruction or anything about any machining or grinding, and that -- that's going to be -- you know that's worse than just running it through the mill. That rod that was going

through that -- I -- you mentioned about it, I think maybe Mr. (sic) Neton mentioned it, but that rod came through it an inch and a half, red hot, between these stands, was like shooting a rod through this room, coming through there red hot at 200 to 300 feet per minute. When that didn't hit the next stand right, that rod went up in the air. And it was -- it was cloudy and dirty in there, and you ran. You had to get out of the way. You had to get out. Sometimes that rod would -- would go and shoot right out of the door, right out of the building. By the time the machine got shut down, then they had to go in there with torches and -- and take care of this. And their own -- your own documentation says some of it took four hours. We're talking about an 8-hour shift of exposure or ten hours or we give you the benefit of the doubt? When was all this machining and grinding going on? You don't reach -- and I'm pretty sure some of the documentation says 30 -- 30 ton had to be ground. Thirty ton's a lot of grinding. You don't do that in a half-hour. Did they do it during the week? Does anybody know? I'm

trying to find out, but was there any consideration? I'm trying to find out because nobody else seems to care, but I seem to care because I think it would change the dose reconstruction quite a bit.

We ate -- as I mentioned before, we ate our lunch on uranium. If it was setting -- I'm not saying I run in and saw it was uranium and sat down. I don't know for sure, but I was in the vicinity and it wouldn't have -- not knowing what it was, why would it stop? We sat in everything else down there.

Working inside the furnaces, I was really put out one -- one fella told me you guys could not have worked in those furnaces, those hot furnaces. Now I'm going to tell you something, and I can bring you witnesses, the guys that worked there -- not continually in the hot gang, but worked -- once in a while these people would be brought in if we were short people. You talk about hell and about working, if that furnace shut down -- just cleared it out of steel -- in some cases still was in the other end of it and the furnace was still on. You would go in there, you might work there for

16 hours. You would go in that -- that -- you would crawl in a hole, two by three hole. Those brick were so hot you might only be able to stay in there a minute, and this is -- I'll take a lie detector test. When -- you come out of there when your clothes start smoking and the next guy would go in and go in. You -- you had wooden handles -- I've seen wooden handles laid down that the guy left in there that were burning when I got in there. I remember stuff like that. So I'm sure this dose reconstruction and amount of contamination that we got wouldn't even come close -- wouldn't even come close, and nobody -- and I'm sure nobody in here, and I wouldn't let you go into a condition like that, but we were in it, and there's no consideration given to this. And this upsets me more. My wife can't fly. We took a train to get out here because I felt if I only could talk ten minutes, I might be able to make you people understand where the people from Bethlehem Steel are coming -- coming from. No ventilation, as the auditing brought out, and there was no ventilation in this building. I've talked to the people. The

people came out to Hamburg and we met with the people there, crane operators, telling us how you -- you couldn't even see and they would not allow you to open the building, so all this -- and one end of it was open where the wind from Lake Erie could blow in and blow it around, and I think you all know what Lake Erie's like. You've heard about it. But they wouldn't allow any ventilation in the building. There was -- there was fan -- hoods up or fan -- places to put them, but they never installed the fans. But there is documentation showing that the government knew this before they stopped rolling at Bethlehem Steel, and I have that documentation. And the answer to them was don't waste the money. It's going to cost you $50,000 to $100,000 to install all these fans and we're going to be moving out and working in Fernald.

This isn't Eddie Walker's story. This is documentation that I've read. The government knew this and said that. I think that's horrible. I think it's -- I'm -- unbelievable. We went in the salt baths -- you were talking earlier about salt baths. They were lined with

brick. Who do you suppose had to crawl in them salt baths, take out the old brick by hand, no gloves, nothing. When they cooled down, they set them aside to go line that bath where you'd had the uranium in there. Who do you think went in there? Not only me, a lot of other people did. Laborers went in there carrying brick out. I didn't see nothing mentioned about any time exposure for that, whether we went down there in the middle of the week and they said there -- go over there and the brick are piled there and all this dust is around, probably uranium, I don't know, and go and line that -- that salt bath. That's what we had to do.

It was brought up today that in Fernald their readings were very good, you know, as good as some that we found from Bethlehem Steel. Certainly they should have been good. All the procedures -- they went from water-cooled rollers to air-cooled. All the procedures, all the ventilation was done at Fernald. Oh, they done all this work, but they didn't have that much. No, and more than likely they were all protected. That I haven't found yet, but I'm

sure they were.
Again, I can only say that I believe Bethlehem Steel -- these people were used as guinea pigs with the uranium. We were used -- guinea pigs on the site profile. We're the first ones being done. Try it at Bethlehem Steel. They were dumb enough to get through it back there, they'll be dumb enough to listen to it now. We were -- we're guinea pigs on the metrics.
We're the first one out. We've had people come up, certain people come up, and I might just as well have gone and talked to that wall. The information that they got -- there was never a return from anybody. Nobody said well, some of your issues we're looking at or nothing, absolutely nothing.
I've gone to -- to hearings where you say present your case. I went to a hearing. I had five other people with me, claimants. I had an attorney sitting there. I told him not to say nothing because he didn't know what was going on, basically. When that man got done I had I don't know how many pages documentation, he talked to all of them. He never said nothing. When it got done, the man stood up and he put

his hand down on my paper and he says you got a 3.9 percentage causation, and he looked me right square in the eye, and he says you ain't getting it. He says unless you can change that number -- how am I, how is any woman, how is any lady like Terry that never worked in the plant and never knew what her husband done going to change that figure? How can they? I worked there and I can't change it because no matter what I say -- I don't challenge the metrics. I don't challenge your dose reconstruction because I think it's -- it's fine. I really do. You've done a great job on it. But what you're putting into it is what I have an issue with.

I went down to Cincinnati and I -- and I learned about the -- the dose reconstruction, how you put it together, and I think at certain facilities it'll work. Your questionnaire will work. But if -- if these people, when you do a questionnaire and you ask people for witnesses and they call back and say what's their phone number and address, I thought well, this is great, they're going to check into it. These people to this day were never called. Terry

told her agent that she couldn't tell him anything. Obviously now we can't -- first of all, when I done it, even -- I didn't even know all these issues about all this -- these accidents that happened at the plant. She told the agent call Mr. Walker because he worked with my husband, and they looked it up and they says oh, yes, we see, he's right here. To this day -- to this day, and this was a couple of years ago, I believe -- I've never been called. Why? Why ask me for it? Why waste the postage if you're not going to do nothing about it? Not you people, but the system.

I'm getting near the end.

DR. ZIEMER: Let me interrupt you for a minute because we have -- we have 12 more speakers. You've gone 30 minutes, and if we do that for each we're going to be here a long time.

MR. WALKER: Okay, I just --

DR. ZIEMER: So please wrap --

MR. WALKER: -- have a couple more --

DR. ZIEMER: Thank you.

MR. WALKER: -- quick things. Today I noticed there was two different opinions from the audit team and one from Jim Neton, and I'm wondering

now, two different opinions, at what point do we -- do we say that Bethlehem Steel is a Special Cohort like these government facilities? And it's -- you don't have to answer that question. I'd like somebody to get back, but not now, it's not important. But with these two differences of opinions, just when -- when do they decide well, Bethlehem needs -- needs a Special Cohort?

And then last but not least, you were talking about the '56 rollings -- '55 and '56, you don't have -- you're not going to answer the question and I don't expect you to at this point, but what were you looking for when you were looking for the rollings, and where did you look for them? I'd like these, if somebody could tell me, send me a letter or whatever. Who looked for it, and did anyone ever look for shipping records, because without having shipping records, you couldn't have had rollings. So if there are shipping records, you might be able to find it there.

At that I'm going to close and I -- I want to thank you all for listening and putting up with me for a half hour. My wife has to do it all

the time.
You know, these people that fought was for liberty and justice. The liberty part we got because that's why I'm here speaking, and I appreciate having the opportunity to. The justice part we need, and that's what we're asking for you to help us with, to help these people and help these widows and help these children that lost their parents and -- and maybe that the government won't do it no more. Maybe these people coming back from Iraq will get a fair shake. A lot of these fellas didn't. Thank you very much.
DR. ZIEMER: Thank you, Ed, for those comments, and for traveling all that way to be with us this week.
Next on the list is Richard Miller from Government Accountability Project. Richard. Is Richard not here?
UNIDENTIFIED: (Off microphone) He's in the bathroom.
DR. ZIEMER: Okay. If I don't pronounce these names correctly, please help me. Jerry Giovacini?
MR. GIOVACINI: Giovacini.

DR. ZIEMER: Giovacini?
MR. GIOVACINI: Yes.
DR. ZIEMER: Okay, who's a Sandia person, Livermore. Please.
MR. GIOVACINI: Thank you.
DR. ZIEMER: Uh-huh.
MR. GIOVACINI: I, too, worked at Sandia National Laboratories and I am a claimant, and hopefully what I have to say here tonight is -- may help you all with your site dose reconstruction at Sandia, California site. And please allow me to read my statement.
DR. ZIEMER: Sure.
MR. GIOVACINI: I worked at Sandia National Laboratories for approximately 26-plus years, from October, 1971 to November, 1997. My first job there -- for my six-plus years of employment I worked in an X-ray diffraction and fluorescence laboratory as a laboratory technician. Here's where I think I got into trouble. I used ionizing radiation to characterize the crystalline structures of weapons grade materials. I physically handled most of the elements in the Period Table setting up standards files and the weapons

grade components. One method of sample preparation consisted of grinding the material to a very fine powder for insertion into capillary tubes. The grinding was performed in the lab on a bench top wearing just a lab coat and a dosimeter. The heating and cooling was the only ventilation provided.

Another method of sample preparation consisted of mounting nuggets in an epoxy-based resin and hand-polishing the surface for a diffractometer or fluorescence analysis. In certain circumstances the diffractometer characterization did allow this ionizing radiation to scatter about the room. In 1978 while calibrating a diffractometer I received an elevated accidental exposure to my fingers of my right hand and the upper trunk of my body when the X-ray beam interlock shutoff failed. I filed an incident report with the safety department. Building 913 has since been demolished. I think that was demolished in approximately 1999.

On April 28th of this year I contacted the occupational medicine department at Sandia in Albuquerque, who supposedly has all my records,

requesting my radiation dose exposure records from my 26-plus years of employment. I was sent an incomplete record. The dosimetry records that I received were only for six years, from 1989 to 1994. Unfortunately, the time during my incident when I worked in the X-ray lab, those records are missing.

After making a second request for the balance of my records, I was told that no other dosimetry records are available, and they could not be found, and that all revenue -- avenues of retrieving the records have been exhausted.

My second job at Sandia was for four-plus years, from 1978 to 1982. I worked in an electrical -- an electronic-repairing calibration lab known as instrument repair and calibration. Here I repaired and calibrated electrical laboratory instrumentation, both in the instrumentation lab and in the field.

While performing this job I was exposed to various levels of electric and magnetic EMF. While working in the field there was also the exposure to radon gas and tritium at the collection and sample analysis stations.

My third job at Sandia -- and this is the one I

retired from -- was from 1982 to 1997. I worked as an electromechanical laboratory technician in building 968, which has now been reassigned to another use, formally known as the tritium research lab. In this lab I built the primary and secondary containment systems for the radioactive isotope tritium and its compounds. Additional job duties included the operation and maintenance of these tritium-contaminated systems, both during the normal work day, plus on call for 24 hours per day for emergency response to operational failures, and of course the more potentially dangerous hazard alarms involving tritium. There was an occasional exposure to tritium in the gaseous form, and the unknown risk of exposure to tritium in the oxide form. The oxide form, as we all know, is more hazardous, approximately 25,000 times more hazardous than the gaseous form. Unfortunately, the overall tritium monitors that were utilized in the tritium lab did not distinguish between the gaseous form and the oxide form of tritium.

On routine job -- one routine job requirement where there was a radioactive exposure during

the performance of the periodic source calibration of these room air tritium monitors. The sources that were used to held adjacent to the tritium monitor ionization chambers to generate these alarms was a cesium 137 and a more powerful strontium 90 source.

As a California site, as Sandia was preparing to terminate tritium operations, during the performance of the periodic -- excuse me -- during the -- I'm lost. At the California site was preparing to terminate tritium operations, the tritium research laboratory went from a tritium R&D laboratory to a decontamination and decommissioning type of mission to transition the facility to another type of research and development. Due to the nature of this type of work, the risk of tritium exposures was greatly enhanced. It was during this transition phase that I received another accidental elevated exposure when cutting a copper manifold with a jaws-of-life type of machine.

In conclusion, during my 26-plus years at Sandia, I held a number of positions and performed numerous tasks. From 1989 to 1997 I have had four occurrences of non-Hodgkin's

lymphoma, with subsequent radiation and chemotherapy treatment. It was due to my medical condition after my fourth occurrence of lymphoma that the Sandia medical department placed me on extended sick leave and advised me of early retirement oppor-- options. The potential -- the potential of additional exposures and the state of my health were the predominant factors in considering this premature retirement. Upon the recommendation of Sandia, I took their disability retirement in November of 1997 at the age of 48.

When I was being treated for my fourth occurrence in 1997 my doctors at Stanford told me that my disease is one that is notoriously difficult to eradicate, and is now in a chronic stage. I was told that it would most probably reveal itself again, and it did just that. Not only did it reoccur, but it's also reoccurred as a more aggressive type of lymphoma. I am currently undergoing chemotherapy and radiation treatment for my fifth occurrence of non-Hodgkin's lymphoma. My doctors have told me and my personal research leads me to believe that my employment history at Sandia more than

likely had an impact on my health, and more specifically that my cancer was more than likely related to my radioactive exposures.
I applied for the EEOICP in 1992 -- that was March of 1992. In June of this year I had my dose reconstruction telephone interview with NIOSH. I believe the next major step in the process is a site profile for Sandia. I hope that the information given in my testimony here tonight will ensure that all relevant issues will be addressed appropriately when the site-wide dose reconstruction is constructed at Sandia, whenever that might be.
I would like to be around tomorrow to listen to the Special Exposure Cohort, 'cause I do believe non-Hodgkin's lymphoma and exposure to ionizing radiation's at the very top of the list, but unfortunately I'm back at Stanford tomorrow for another session of chemotherapy. But you do have my name, you have my phone number, and if I -- and I've been around Sandia for 26-plus years during the early days, and if I could be of further assistance, please give me a call. Thank you.
DR. ZIEMER: Thank you very much, Barry -- or

Jerry. I have Jerry, and our next speaker is Barry, Barry -- looks like Lubowski?

MR. LUBOVISKI: Luboviski, yes.

DR. ZIEMER: Luboviski, okay. Luboviski -- Barry, thank you -- who is -- Oakland, California, uh-huh.

MR. LUBOVISKI: Yeah -- yeah, and I'll give my introduction. Thank you.

My name's Barry Luboviski. I'm the secretary/treasurer for the building and construction trades council of Alameda County, AFL/CIO. Our council represents 28 local unions that represent membership in Alameda County. We have workers working today and -- on a consistent basis at Lawrence Livermore National Lab that are represented by the various unions, and the building trades council negotiates a contract with the contractors that come in on what's known as the labor-only agreement. These are maintenance workers. We've also had literally hundreds of workers at the Lab, union workers, that have been involved in a number of projects at Lawrence Livermore Lab. Most recently under project labor agreement, the national ignition facility was

constructed by hundreds of construction workers through the various phases. So we have a very definite interest and concern about the process, and I want to comment a bit about that.

November 30th of this year we were visited by representatives of the NIOSH team, an outreach team, who contacted my office and said that they were interested in working with the unions that had workers at the facility so as to inform us of this program and so that we could more effectively work together. I was pleased to see that the government had put together a program to address issues for workers who for years have been part of the backbone of those facilities that have been vital to our country's defense and have played a significant role. Certainly this society is invested in the infrastructure, and now I was hopeful that the society and the government would invest in the workers whose lives were at jeopardy by working in these facilities.

At our meeting were a number of the unions in my council. About seven or eight of the unions directly were there -- the electricians, the

carpenters, the plumbers, I believe the roofers were there, the painters. We -- also were representatives there from SPSE UPTI*, another one of the unions out there, and also from Tri-Valley Cares, an organization that has been working with workers that are injured at the facility.

The meeting, I felt, was useful because it opened the door. In fact, if the door was opened and if that was the beginning and the end of substantive dialogue, then I would have to characterize the meeting as a disappointment, if that was the end of the dialogue. If in fact the meeting representative -- represented a sincere and an earnest effort on behalf of all of the government agencies that are involved in this program to really effectively work with the workers and to go through the complex tasks that are necessary for workers to get compensation, then it was an important start.

At the end of the presentation we expressed -- everybody in the room expressed some concern, because there certainly was some things lacking. The job, as I think you've heard

probably far more eloquently than I from the previous speakers, certainly was a challenge to individual workers seeking compensation or their -- or their surviving relatives. And so we wanted to know how the data was going to be collected, and to what level of transparency -- what level of transparency would enable the unions and other organizations representing workers and the workers and community organizations to be able to make and assist in making the necessary assessments.

Any kind of reconstruction is difficult. If I were to ask anybody in this room what they did last Wednesday of last week at 3:00 o'clock in the afternoon, I think a lot of us would be looking at our PDAs, if we had them, or scratching our heads. Yet workers are asked to reach back years and decades to reconstruct information. And so therefore the data that is already in the hands of the Lab is absolutely essential in assisting those workers to recollect. And if this is a partnership and if in fact that's the intent, then we applaud the agencies for doing that.

But we didn't hear that yet, and I haven't

heard that in the speakers here. So to capture and effectively partner with these workers to put together an effective and an accurate site profile, you need the input of the workers, you need input of investigative teams, some of which have occurred by the Lab; and you need those individuals in a role as an ombudsperson or as an assistant who has the confidence and the integrity of the workers to be able to assist in this -- in this very important endeavor.

The data should include the tiger team reports. It should include event data that's historical and consistent and accurate. And it should seek to add to that event data where there are lapses, as we have heard, by cataloguing and the exposure events, some of which have already been done by the Lab, that information should be transparent and -- and accessible by those people that are assisting the claimants.

But in addition, the administrative records of the individual claimants, although there might be confidentiality concerns, certainly are valuable when quantified and when the personal information is taken out so that assessments

can be made. And again, accurate and full records of the exposures of all of the individuals working at the Lab can be done. We have not yet heard whether that's going to happen. We certainly don't believe that that kind of partnering has occurred at this point. I understand that in this morning's testimony that there was an assessment made. In fact, when it was reported that the percentage of approval where -- of appeals on claimants that have filed appeals is low and therefore the assessment is that the process is effective. Well, if people aren't appealing, they must be satisfied with the assessment and the initial awards that have been determined and the determinations being made. That certainly is a grand leap, and I think we can certainly all agree what the percentage is. But to come to that conclusion is both arrogant and I believe foolhardy because there are a number of explanations as to why the appeal rate is low. And speaking for the unions, our concern is that if workers are not afforded effective, good faith support by people that they know and respect to enable them to effectively compile

and to understand what is -- and I've only seen it briefly -- complex and baffling information, which many of these individual claimants have no ability to read, quite rightfully so -- it's a level of sophistication that would be a challenge to, I'm sure, many with PhD's -- and so therefore, again, another assessment can be made on low claimant appeal rate that people are demoralized, people give up, people settle for what they can get out of the worst kind of cynicism, a cynicism born out of despair. And I don't believe that anybody in this room wants to see a process for workers that have literally devoted their lives to the most important work in our country. And so I hope that this Board and this policy body will take a look at some of the remedies, some of the ways to enable us to begin to more effectively address the research that these workers need. Now on that, and then I'll close, two things of concern. One is retaliation. I think we have to be practical. Although all of us would like to believe that workers coming forward will not be retaliated against -- because we're not only talking about former workers, but we're talking

about workers that are working in the plants and these various facilities today, so there needs to be a process whereby it's recognized -- certainly for union workers it should be recognized that those workers can be represented by spokespeople such as union representors such as myself, who can represent their experiences where that representation will be effectively documented and taken with the full weight of the testimony of the individual workers still working at the plant. And there needs to be a process in place to ensure that there will not be retaliation against workers coming forward.

Secondly, we appreciate the resource center and the efforts of the resource center that is attempting to work with workers. It's my understanding that the effective rate is very low, and I think that on a challenge that's this daunting and this complicated that the Board should embrace a number of approaches towards addressing effective outreach, one of which would be looking at funding of some one or some individuals with the technical expertise and the individual confidence of the

labor community, of the local community to be able to come in and play that role of -- that important role of bridge.

Now that's not that unusual in terms of government funding. I deal with WIB funding -- workforce investment board funding -- where the government has said -- the Federal government has said there's problems with unemployment, there's problems with education, problems with transitioning people out of poverty into productive jobs. We aren't going to come in and tell you and your local community how to do that, we're going to give you the funding. And out of a process that involves the unions and involves the community and involves corporations through WIB boards, they've been able to put together effective bridges.

There's a close analogy here, and funds should be put aside and set aside to -- and there should be other meetings set with labor and ask us who we think some of the effective technical experts that are out there that have the confidence of the unions and the confidence of the work force that can come in and assist in an independent role where there will not be a

fear of retaliation, where there will not be the bridge or the gap between people that nobody's ever seen before that are not in the area. I think that that would be an added and an important component.

I'll stop with those comments. I hope that at some point they'll be addressed and we'll hear back. I would like to ask what's the process for hearing back. I'm sure throughout this process you're going to hear a number of questions. When and through what vehicle do we receive answers?

DR. ZIEMER: The general answer to that is that NIOSH, who hears these and has that responsibility for that process will, through their representatives, be in touch with yours. So I'm only answering that in a very general sense --

MR. LUBOVISKI: Fair enough.

DR. ZIEMER: -- and I think -- again, you can talk directly to Larry individual and get a little more feedback.

MR. LUBOVISKI: Good. I would also invite and suggest that this is certainly important enough that there ought to be more hearings in this

local area. And hearing of this gentleman who came across the country, there should be -- there should be more hearings and more of a presence where these workers live in their local communities so that they don't have to come out and come across at personal -- the personal difficult to be able to testify. I think it shows the level of frustration and anger.

Also one of our speakers who's going to speak tonight with the roofers is going to talk anecdotally -- I was hoping he'd come first. You're going to hear about a member and about a frustration at a lower level. Again, one of the conclusions I want you to take when you hear Leroy speak from the roofers is that you're going to hear the frustration that's typical of individual workers that really don't have the power and the sophistication to represent themselves and are left alone, and I hope that you'll take some of our observations from the building trades council and put into effect an effective network that will enable those workers to be able to effectively be represented and reach what in many cases are

the proper findings that would enable these people to get the funding where in many cases we believe workers have not been funded in fact where they should have been. Thank you.

DR. ZIEMER: Yeah, yeah, yeah. And incidentally, some of this is Labor's outreach program, too, and NIOSH will be working with them and --

MR. LUBOVISKI: With who?

DR. ZIEMER: Department of Labor, so they'll be working with them.

MR. LUBOVISKI: Well, and we suppose and hope that the Department of Labor and NIOSH will both be working with the unions as we --

DR. ZIEMER: Right, exactly.

MR. LUBOVISKI: Okay, good, in building these networks. Thank you.

DR. ZIEMER: Thank you very much, Barry.

MR. CISNEROS: Excuse me, I may be out of order, but my name is Leroy and I'd just like to tie this in, if I could speak out of order?

DR. ZIEMER: That would be fine, Leroy. You're Leroy Cisneros?

MR. CISNEROS: Cisneros, correct.

DR. ZIEMER: Yes, we'll jump ahead. Leroy is -

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MR. CISNEROS: Thank you very much.

DR. ZIEMER: -- with Local -- the roofer.

MR. CISNEROS: I'm a roofer, waterproofer, I've been a union roofer for 20 years. These past four years I've had the opportunity to represent our members. Part of my job responsibility is representing workers on safety issues, health hazards on the job site. I just want to -- about three years ago one of our workers was dying of cancer -- well, first of all I just wanted -- as background, we do a lot of work -- our subcontractors that are (unintelligible) to us are doing a lot of work in the Berkeley laboratory and Lawrence Livermore laboratory. There's always roofs to be replaced, new buildings demolished and new buildings built, as people have testified before.

Uranium has been around 50, 60 years. We know the half-life of it. The poison sticks around. My concern is removing an old roof, you know, the dust that the workers have to ingest, breathing and eating around the project. New projects, operating engineers kicking up old

dust. I'm sure -- I'm sure there's a big clean-up problem over there that isn't -- that's always there, and the workers in construction are always there working around it. That's an issue that I'm concerned about. I just want to bring up a story about a brother roofer. He died three years ago, a young man, maybe 53. He worked a lot of his life and a lot of his work was done at the Berkeley Livermore laboratory and at Lawrence Livermore. As I said, our contractors are doing a lot of work over there. And I remember when he -- the last time I seen him at the union hall, he was going through chemotherapy and he said Leroy, he says, you know, all of a sudden he just -- I can't help feeling that all the work I done over there, some -- I believe that I -- some of that exposure is part -- is related to the problem I'm having now. And he just mentioned it to me, and I always remembered that. And I always -- I always felt that some day, you know, that there would be a -- a venue that I could bring it forward and carry this on, and the day has come. I just -- I just like to bring -- I'd just like to -- also I'm -- you

know, this is -- I've got a lot of family in Los Alamos.

Over in Los Alamos in San Juan County it's the poorest -- one of the poorest counties in the area. A lot of the community over there, they all work at the Los Alamos Laboratory. I've got aunts and cousins that works in the hospitals and in the laboratory over there. And frankly, I worked there for one time doing some waterproofing over there. And this -- this issue's not going to go away with the -- with the poison that we're dealing with. It's always there, unless you clean it up. And if you clean it up, there's no more laboratory.

I just thank you for listening to me and I hope that -- that some kind of meaningful process will be -- you know, instead of just words, something meaningful will be taken care of. I came here, I heard about this. I got some information. I'm going to go and try to bring this information to my member's wife and see if she can continue going on with this process with a claim. But from what I'm hearing, she's going to be like putting a thread through a needle, and I hope she doesn't have to do that.

Thank you.

DR. ZIEMER: Thank you, Leroy, for adding those comments. Our next speaker is Joe Richards. Joe is from Sweetwater, Tennessee. Joe?

MR. RICHARDS: Thank you. I work at the Y-12 plant, and I'm a union safety rep, but I'm doing this on my own, what I've got to say tonight.

A few months ago or -- a few months ago we were -- we were contacted to do a site profile, and really didn't know what to do. I've been out there in plants 20 years. There's people that have been out there prior to -- we've been exposed to a lot of things, kind of like construction workers. It seems like when they do profiles, when they come in, they want to talk to the plant -- you know, to the -- to the people actually -- the machinists, you know, the -- and what I'd like to see -- y'all are doing a good job, but what I'd like to see is make sure that when we have these site profiles that everyone is talked to and everyone has a story to tell. Everyone's been exposed, or maybe think they've been exposed to something -- that you all -- that you all hear this and

you all know, and you all take that -- take that in. That's really -- really I guess what I want to see. I know y'all are doing a good job.

The unknowns is what gets us, and times -- times are better. You know, years ago we didn't have the buffer zones and the things we have now, so times are better. But people -- people have been exposed, and they want -- they just want to have their right to say and have their -- to let you all know and maybe get something out of this. And -- and I've talked to some people here today and yesterday, and -- and I -- I think we're going to have something. I think some of the people are going to help us. But basically all -- I -- I guess another question I wanted to ask, and I don't know if this is the right place to ask.

I want to know how much money has been paid out in -- in claims, and then I guess a follow-up on that is how much money has been spent through the government, and maybe this is the wrong place to ask, but how much money has been spent to -- to turn these claims out?

DR. ZIEMER: Let me tell you that the answers

to both of those questions were addressed this morning. I don't have them at my fingertips, but we can get you those numbers. They were in the -- some of the presentations this morning. I think Department of Labor perhaps was -- Shelby, was that in your presentation? Maybe -- maybe he can get together with you and provide you with those --

MR. RICHARDS: Okay.

DR. ZIEMER: -- those very figures.

MR. RICHARDS: And one other thing. It seems like listening to y'all today, got two different groups and you're stalemate, you know, and you're trying to work a process and -- and one side says -- sees it this way and the other side sees it this way. But you've got the workers here in the middle just setting. And you know, they started this program and I -- and I know that it's -- it's a hard program to -- you know, y'all are trying to look at things that you don't even know. You're just -- you can't pull a rabbit out of a hat. But somewhere down the line someone's going to have to say well, this side's right and this side's wrong, and let's go, let's -- let's make this

happen. And I hope that, you know, y'all decide on this -- this -- this meeting here that you decide something and go forward. Left or right, let's get something done and let's -- you know, try to make it right for the workers.

DR. ZIEMER: Yes, thank you.

MR. RICHARDS: Thank you.

DR. ZIEMER: Next we'll hear from Sue Byers from Livermore, Society of Professional Scientists and Engineers. Sue Byers.

MS. BYERS: I'm Sue Byers and I'm with SPSE, which is the Society for Professional Scientists and Engineers. And we're a labor union at the Lawrence Livermore Lab. We're affiliated with -- through the University of California with the University Professional and Technical Employees and the Communication Workers of America. Our members in SPSE are scientists, engineers, professionals and technicians that are employed as employees at LLNL. I'm a 24-year laboratory employee. I've worked at site 300, which is our explosive testing facility, for the past five years. I've also worked in LLNL's superblock. I've worked in the plutonium facility, the tritium

facility, as well as the heavy elements facility.

I also, as the SPSE representative, attended the meeting that Barry was talking about earlier and where representatives of the building construction trades council, SPSE and EPTI* and Tri-Valley Cares came together to hear the presentation from -- on the EEOICPA by NIOSH and the ORAU, the contractor who performed the site profile. And there was a lot that wasn't included. We ended up with a whole lot of questions, things that weren't answered, things that we'd still like to get answered so that we can pass information on to our members, and also have a part of the process.

We're still not sure what is the process for developing the site profile. What's the time line? Who's going to review the process? And how will union and community input be solicited and then be included in the site profile? Worker and community input must be inclusive for this process to work. A list of documents to be reviewed need to be made public so that additions can be suggested. An early draft

profile needs to be made public so that input can be provided. And the final draft needs to be made public for input before it's finalized. And also the profile needs to be open-ended so that new information can be added as it becomes available, and these are the kind of questions we came away with that weren't answered for us. As Livermore Lab scientists, engineers, technicians doing the research, developing and testing with the nuclear materials, many of our employees have worked at sites other than LLNL. You know, an employee's lifetime radiation exposure can come from various sites, and record-keeping for where employees have traveled have not been kept. You know, the lab had its own plane, and employees could just jump on the plane and go to the test site or go to other sites. Documentation was not kept. Travel records were not kept. The work they performed, the projects they worked on, those type of records are not available. They've not been kept. And radiation exposure has not been well-documented.

And this is the kind of information that will help in the claims process publicly, so what

we're requesting is that information be provided publicly on the job exposure matrix by site, individual buildings, years and radiation exposure for other sites, as well as our own. We'd like to have the information for where our employees have worked. LANL, the Nevada Test Site, Sandia Livermore, GE Vallecitos and other sites that will be identified as we go through the claims process. So we need that easily, readily identifiable to us so that we can help our employees and survivors and former employees work through this process.

The information, you know, isn't available to us. But if you know it, then pass it on to us so that we can help work those issues.

Another part of it is what's missing. We believe that the limited documentation -- documentation available for the Livermore employees' work, which can include known exposure, it can also be missed, or what has not been recorded radiation exposure, and dosage records at the various sites -- this has got to be thoroughly addressed. You know, it's very dif-- as we've heard tonight, it's very difficult for workers to put together

information that's never been made available to them or to our employers. So somehow we need to cover in this process how do we handle what's missing. That's, I think, really key from what we've been hearing about the other sites, and we know, as our members are the scientists and engineers who worked on a lot of these projects, we know that there's a lot of missing information.

And additionally, we also believe the site assessments, such as the tiger team assessments, occurrence reporting, radiation -- radiation exposure events are very critical that they be included. They're not only critical that the information in them be included, but they also can be a way to document where radiation exposure could have occurred without being detected, so that there is no dose readings for that exposure. So we're requesting that the full findings of the tiger team assessments from the late '80's and early '90's, and other assessments of management and building safety systems, be released to us to help review that, and also be released to be included as part of this report.

This includes any rollover to the laboratory's def track system, which tracks by buildings deficiencies that have been found and subsequent reportings to the safety programs. This includes management controls for safety and inadequacy of maintenance of the building safety systems, the systems that weren't calibrated, the systems that weren't working like they were designed to work. These are the pieces of information that will help us recreate the missing pieces of our dose reconstruction.

And we also request that the EEOICPA statistics, the data for Livermore and the Sandia labs, be made publicly available throughout this process. I'm just talking statistics. I'm not talking about Privacy Act information -- information on individuals. We'd like to have it posted on the NIOSH web site. Statistics won't reveal personal identities or information, but it will give us the ability to sort by illness, occupation, trade group, whether people are living or dead, and how many claimants have been waiting and for how long they've been waiting. And I think

this information can become really important to us as we help our claimants put together their histories and they can see what else is going on out there.

We also at SPSE are concerned with retaliation and whistle-blower issues. If you listen to the news at all, you've heard the Livermore Lab, Los Alamos have been in the news a lot on the whistle-blower issues. This is a real concern to our scientists and engineers. They're not going to come forward and help us create the dose reconstruction unless we can assure them that they will not be retaliated against and that they will have whistle-blower protection.

You know, we believe that the radiation dose reconstruction and the site profile is a necessary part of this process, and we want to be part of that process to ensure that the current or former workers or survivors with valid claims are paid in a timely manner, and also that the intent of Congress in passing this Act is met. Thank you.

DR. ZIEMER: Thank you very much, Sue, for those comments. And the individuals

responsible for follow-up on that are here and have heard you. Thank you.

Francine Moran, retired claimant from Brentwood, California. Retired from Lawrence Livermore.

MS. MORAN: Good evening. I wanted to let you know about my dissatisfaction of trying to get help from the Department of Energy's sick worker resource center located at 2600 Kittyhawk Road, Suite 101 in Livermore, California. I was informed on three different occasions when I tried to get information the only thing they do at the center is help you fill out the initial forms and applications for compensation. I had hoped they could help me understand the process of the NIOSH reconstruction, how to -- about -- how to go about not having to work within the time frame of the Department of Labor, when -- being scheduled for interviews and to submit their paperwork when having to deal with some very important situations. I was either going into surgery or coming out of surgery, and I was on some very painful -- powerful pain medication. I have a rare -- a rare type of cancer that is

only treatable by abdominal surgery. I have had six major abdominal surgeries in the last five years. I was told by three different representatives at the resource center that they did not have any information for going about rescheduling telephone interviews, names of individuals that may be able to help me in getting assistance, either here or in Washington, D.C. I was told on all three occasions that the only thing they did at the center was help you fill out your initial paperwork and submit it, and that was all they did -- really did at the center.

Being 58 years of age and a retired employee of Lawrence Livermore National Laboratory and a United States citizen, I have filled out a few forms in my lifetime. I'm very disappointed in the resources that have not been made available to me as a claimant. It was only through luck and stumbling blocks that I was introduced to Helga Olson and was informed about this meeting.

As a claimant, being left on your own is very scary. You're left on your own when you're fighting for your life, you're very, very sick

and you're having to make some major, major decisions. Maybe that's why you're not getting the appeals. We are so sick, we are so tired, we can't respond. We're fighting to stay alive. And this is from material we know was caused by where we worked and what we were exposed to.

The times for the inter-- phone interviews -- and I have appealed my re-- my NIOSH reconstruction. I could not believe how inconsiderate they were in scheduling. I had requested that, because of testing and medical reasons, I wanted to be scheduled sometime in February. I would be through with some very extensive testing and doctors' appointments by the end of January, and I would be at their disposal any time in February. I receive a very curt memo telling me that my meeting is scheduled in -- January 5th in San Jose. I live in Brentwood. The time is 9:00 o'clock. Has anybody ever tried to travel Basco* Road, 580, 680, to get to a meeting, you don't know where the hell it is, by 9:00 o'clock in the morning? My only alternative was to get a letter from my doctors explaining the

situation, and then they made a big deal out of it because I had asked for a rescheduling. When I asked to have the meeting made more convenient, even an Oakland office, I was told that was not -- that was not an option.

I want to know where, as a claimant -- I'm sure I'm not the only one in this situation. Where is my help? Where is our help? Where is the information coming from that we have representatives, that we have resources at our availability? I feel like a naked baby on a table. Where do I go for help? All I have is NIOSH and the Department of Labor bombarding me with telephone interviews and documents I don't understand. I don't understand a reconstruction of a dosimeter.

I was -- started working at Lawrence Livermore National Laboratory in 1980. At that time dosimeters were not issued. I was a Q-cleared employee and an administrative assistant, and made an administrative escort. I spent many hours escorting uncleared visitors into very potentially hazardous parts of the laboratory, day after day, hour after hour. The records are gone. Who do I ask? Who do I ask for

assistance? Where do I go?
And one of my last things -- one of my last question is is how do I go about getting my administrative records? Do I call the resource center that tells me the only thing they will do is help me fill out my initial application? Thank you.
DR. ZIEMER: Thank you, Francine, for sharing those comments, which are certainly disconcerting to all of us.
UNIDENTIFIED: May I have two minutes?
DR. ZIEMER: We have other speakers that have signed up, sir, but we will add you to the list if --
UNIDENTIFIED: Okay.
DR. ZIEMER: Yeah.
UNIDENTIFIED: He has to drive back up the hill to --
DR. ZIEMER: Oh, you do?
UNIDENTIFIED: -- and it's about two hours away.
DR. ZIEMER: Please, go ahead.
UNIDENTIFIED: If he could just --
DR. ZIEMER: Identify who you are and then...
MR. BENHARD: My name is Hans Benhard and I was

an employee at Lawrence Livermore National Laboratory for 20 and a half years.

DR. ZIEMER: Hans, could you spell your last name for our recorder?

MR. BENHARD: B-e-n-h-a-r-d.

DR. ZIEMER: Thank you.

MR. BENHARD: First name H-a-n-s, middle initial H.

DR. ZIEMER: Thank you.

MR. BENHARD: I was interested on this lady's comments just a moment ago because, as I went through the process as a claimant in spring of 2003, the first area of discouragement I received was in April when the first half of my medical file went to the Department of Labor up in Seattle. And I got back some very curious letters that I didn't understand, so I called, and I got ahold of this woman who -- I'm not slandering the female sex here, but at best left a lot of intelligent answers to be desired. I said I have listed in detail in my medical reports to you the various skin cancers I have, and I've suffered from skin cancer for almost 30 years -- 28 years, to be exact. And she said well, you know, you should realize

that squamous cell and basal cell carcinomas are not really cancer. And I said oh, really? They're not the mumps. And she said also you would have had to have worked 250 days at Oak Ridge National Laboratory to be considered a contaminant. And I said oh, really? 'Cause I was a director in motion picture and television production for Lawrence Livermore Lab for 20 and a half years. And I said there's one area at Oak Ridge National Laboratory by that reactor building, all you have to do is go in that area for at least a half an hour and you don't have to worry about 250 days of exposure; you've already had it -- a lethal dosage.

And for those of you who might be interested, I'm going to take my coat off 'cause I just had part of my continuing surgery today, and if you look at the back of me, those aren't bullet holes, that's the marks of the surgery that leaked through my shirt from the surgery I had in the middle of my back for a squamous cell and -- squamous cell carcinoma today, and I go through this almost every two to four weeks, of surgery. My upper body is just a mass of scar tissue, and I've been going through this for a

long, long time. And the responses I've gotten from the Department of Labor and also DOE leaves me somewhat unfulfilled as to the validity of communication that I've received from those people because I don't think -- like that woman I talked to in Seattle at the Department of Labor office, she was not a health physicist. She sure as hell was not a PhD in radiology. I keep wondering, why doesn't somebody like John W. Gofman, who is the world's leading expert in radioactivity and X-rays, why is he not on a panel of people to assess claimants' problems with cancers, whatever cancer that they might have? And I -- I don't want to go on and on about this, I don't want to bore people to death about it, but I think there are some valid concerns about those of us who are claimants and we're not getting the answers we should be getting. And I've reached the point -- and I'm 72 years old. I'm getting damned sick and tired of listening to people's bureaucratic, you know, monosyllabic answers to questions that I think should be more pertinent and more relevant to the subject. Thank you.

DR. ZIEMER: Thank you. Okay, thank you very much.

Inga Olson, Livermore?

MS. OLSON: Steve -- Steve was going to come. I'm going to -- I can go at the end. He -- is that all right?

DR. ZIEMER: Oh, okay. Steve is --

MS. OLSON: Steve Butler.

DR. ZIEMER: Yes, I -- that -- I have Steve on the list here. Sure, Steve.

MR. BUTLER: Thank you very much. My name is Steven Butler and my father was Clement Butler. I'm a claimant in an EEOICPA claim, along with my two sisters. My father worked at site 300 and he worked at Lawrence Livermore Lab. He worked about 19 and a half years there and he eventually ran the transportation department at site 300.

I know it seems kind of a dumb thing to say, but I'm going to -- I'm going to try and do it to you this way. I've got all my fingers, I've got both my eyes, I have no major injuries myself. And the reason why is because my dad was also a cabinet-maker and he taught me how to use power tools. And he told me, you

respect these power tools. They'll cut through your hand just as fast as they'll cut through this sheet of plywood, and I always listened to that.

And I worked in the trades. I worked in construction for many years and I had no major injuries, and the reason why is 'cause my dad said you respect these tools. So I know my dad's work ethic was very good.

He worked for 19 and three-quarter years at Teamsters Local 70 out here in Oakland, and he also worked about 18 or 19 years in the checkers union. He worked full time since he was eight years old. Okay?

He got to enjoy one year of retirement, and at the end of one year of retirement, he was diagnosed with pancreatic cancer and he spent the next 11 months pretty much in bed and in a lot of pain, and he really suffered a lot. And you've got to picture how unusual this is for a guy who started jogging in the '70's and was a weightlifter and tried really hard to stay in shape and stayed away from drugs and stayed away from alcohol and cigarettes and did everything he could 'cause he wanted to live a

long healthy life and be very healthy, so he worked out almost every day, sometimes as long as three hours a day. And all the people I've talked to who knew my dad, they would say, you know, how's your dad doing? And I'd say well, you know, he's -- he died. And they would just be shocked, you know -- that guy? He used to jog around the facility every day. He used to run, he used to work out. That guy died? I'd say yeah, he -- he died, he had pancreatic cancer.

So everybody who knew him was shocked, and we were shocked, and of course most of all, he was shocked. So we found out about this claim, this EEOICPA claim, so me and my sisters decided okay, we'll get ahold of his -- his wife, he got remarried -- and we'll see what we can do about this thing. And it's $150,000 and we're not really in this for the money. You've got to kind of picture, here's a guy who was just a few months short of a full retirement with the Teamsters. He's got his Social Security, his Lab retirement, Teamsters retirement that he could have gone back and worked six months and gotten a full retirement,

and then he could have gone back and worked for the checkers union for less than a year and gotten another full retirement -- three full retirements. So he was looking forward to enjoying his life. He didn't enjoy much of it. And we can't, as a family, figure out what happened, because we were shocked that he would -- he would not live.

His brother was an Olympic athlete. His father lived a long life. His mother lived a long life. We don't have pancreatic cancer in our family. My -- one of my aunts did die from skin cancer, but the problem was she had a diagnosis of skin cancer, she never went back to get it rechecked and by then it had spread three years later. But no other cancers in the family, so we're really surprised.

And I wanted to comment on Francine, who -- she said that she felt like she got no help from the sick worker resource center. We didn't either. They said pretty much the same thing, we can't really help you for two reasons. One, we can only help you with filling out your forms -- which of course we'd already done.

And the other thing was that she said because

of HIPAA violations -- and I've worked in a hospital before so I understand about HIPAA -- we can't help you. Well, I don't understand why not because, as claimants and as people who've already released his medical records, certainly, you know, HIPAA should not be an issue at this point in time, but we were told that it was the main reason that they couldn't help us, because of HIPAA. So they were all but useless, I'm sorry to say. They were friendly to us; however, they were useless. So here's my dad -- and we did this -- we did the best we could. We've had a lot of difficulty getting records from the Lab. My sisters tried very hard to get these records and has been told that they -- that they wouldn't release them to her. So we know that he worked -- he went to Los Alamos. We know that he went to Tonapah. We know that he went to Rocky Flats. We know that he went to Texas, I think it's called Pantex. We know that he went to the Nevada Test Site, and I just found out -- this is just a couple of days ago -- on Sunday I found out he's a member of the NEST* team. I didn't even know what it was. His

wife didn't even know what it was. But then we found out oh, he's also on the NEST team. That's another factor that we didn't know. Nobody at the Lab helped us with this information. If anything, they were -- they were not helpful at all and stonewalling us, and it seemed almost trying to prevent us from getting this information, which we're just trying to do the right thing. The man's dead. There's another factor, too, that I want to bring in. I don't -- I'm not a radiologist. I don't understand pancreatic cancer. But what I do know is that my dad ran around that site. He worked out at that site. He took showers at that site, so maybe he doesn't fit your typical profile. I know that he was very conscientious about cleanliness, so he cleaned his truck. He cleaned the inside of his truck. He was always concerned about contamination. Maybe he was exposed to even more stuff because of the running around and the working out and the showering, so maybe he doesn't fit some sort of typical profile. Everybody's an individual. Okay? Like many of the people here have said, nobody's just a profile. Everybody's an

individual. So here he was trying to take extra good care of himself. He may have actually increased his risk. That's unfortunate.

So the chronic exposure was something that we were concerned about, and when we read the report they said one sentence. They said he jogged around the site. They made it sound like it happened one time, not for 19 years that he jogged around the site. He jogged around the site almost every day, so what about chronic exposure being a factor? Is it possible that it's not just acute exposure that somehow plays into the risk factors, and that was not considered?

We've appealed this -- this decision. They came up with a -- I believe it was about 26 percent responsible, and that was very disappointing to hear. We were all kind of hurt by that, actually. It hurt quite a bit, because we know that this guy was a very healthy person, very conscientious and we just can't figure out, how did he die of cancer? What did he do? What did he come into contact with? And we're pretty convinced that it was

some of these substances or compounds or radiation or whatever that he came in contact with 'cause we can't figure out anything else that our dad ever did or was around besides his work-related at -- at the Lab.

So we would like some help in being able to get this information to the appeal because we've been told by the person at the appeal level that we can't challenge the methodology, but we can only challenge the factors that go into the methodology. And I understand that that has various legal implications because of the -- the way that the government has said well, we'll accept this type of methodology and such, and so I kind of understand that. But then you've got to understand it from our point of view, which is but we can't get the information that we need to introduce those other factors. It's not being made available to us.

What's interesting, and I just have to comment on this, we also protested that our meeting was scheduled for San Jose on January 5th at 10:00 o'clock because it was in San Jose, and we said, you know, that's about a three-hour drive from Livermore. At that time in the morning,

it's a rough drive and maybe we can have it closer, Oakland -- even San Francisco would be better than San Jose. And the guy told us no, the other party that we're meeting with at 9:00 o'clock is coming from that area. Now that I know she's in Brentwood and I know how far away that is 'cause I used to do that commute, it's interesting because that's -- I tried to tell this guy, you know, that maybe -- maybe that's not true. Why don't you call that other party and tell them where we're coming from and see if we can -- he said no, we have to have it at a Federal building and it has to be in San Jose and your appointment's at 10:00 o'clock in the morning, and we'll reschedule for February, but that's -- that's the way it's going to be. So it's -- that's -- may be just one example that I think is kind of hard proof that -- I can -- I'll swear under oath that this guy told me that.

I thank you for having this opportunity. I thank everybody for allowing me to speak, and I just want to paint a picture for you. December 23rd two years ago -- I'm a skier, I'm an avid skier. I love to ski. I had one of the best

days of skiing in my life. I skied up at the Sierras. I had a great day of skiing. I came down. I hit the hot tub. I went to sleep. December 24th about 3:30 in the morning I got a phone call from my dad's sister who said Steven, you need to come to the hospital. Your dad's not going to make it. And I live in Stockton, and I said okay, you know, Mary, how serious is this 'cause this is like the fourth time that I've been told. And she said Steven, he's not going to make it. So I went there and I got to the hospital at 5:00 o'clock, he was dead.

You know, these are real people. This is really serious. The guy only got 11 months of retirement, and he was a very conscientious worker. He used to study those laboratory books. He used to memorize those things. He was very concerned. He was very safe. He only got one traffic incident in his entire life, it was a minor fender-bender. He worked hard for the Lab and I think people need to work hard to help all of us to do the right thing, which is just to do the right thing in protecting ourselves and protecting other people that work

there and speaking up for what's right as if they were exposed to this stuff. Help us get the records and help us -- help us prove this stuff. Thank you very much.

DR. ZIEMER: And Steven, thank you for sharing that with us, as well.

Inga, I have you next on the list -- Inga Olson.

MS. OLSON: I'm from Tri-Valley Cares, a non-profit group in Livermore. I'm the program director and I also facilitate the support group for sick workers, many of who are here speaking today.

I want to acknowledge you all for moving the meeting from San Francisco to Livermore. We really appreciate that because most of the people wouldn't have been able to come out tonight over to San Francisco, so thanks very much for making that switch.

And one thing I would like to request is when you meet -- I know you're not going to be coming back to Livermore again, but when you meet, you know, in whatever town, if you'd do some more media outreach, because you know, if it gets put in the papers there's going to be a

lot more people that'll come and that'll find out about it. And it's surprising, even in Livermore there's still people that don't know about this Act. And then there's a lot of people that don't believe in it. You know, they're not applying. So when they see stuff like this, it just gives more credibility, and also some of these people, if they could see the agenda, they'd actually come to some of these things and it might give them some encouragement, you know, because you all are really serious here. You're having serious conversations and I think that it would help them to hear some of what's going on and see how hard you're working to make this program be successful for these people who are sick, or for their survivors.

There's a couple -- there's just a couple of things I want to ask for. I'd like to request that two local facilities be added as covered facilities. We have sick workers in our group from those facilities and they're not -- they're not covered. One is the Interstate Nuclear Services. We had a nuclear laundry down here in Pleasanton and we've got -- we've

got a woman, and there was a couple people -- her relatives and a friend that died. They're gone, but she's alive and she's fighting hard for her life, but she's not covered, and we think that it's an inconsistency because the DOE laundries area covered but then the Interstate Nuclear Services, the subcontractors, are not covered because they're not -- you know, they're not AWE. They didn't -- they didn't build the bomb. But you know, the builders of the bomb wouldn't have been building it without the clothes that they laundered. And I could go on about that. The other facility is the Naval Radiological Defense Laboratory at the Hunter's Point Naval Shipyard. But I know you hear Naval and you say it doesn't count, but this was the precursor, you know, to -- you know, before there was a DOE. This is where Lawrence Berkeley employees worked and Lawrence Livermore employees worked. There wasn't a DOE. It was a precursor body and we have -- we have people that are sick there from that site, as well. And we understand that there are AEC buildings out there or there are AEC contracts,

so people were working and being paid on AEC contracts, so that it should be -- it should be considered and we ask that you help us by getting some of that research so that the people that are sick that worked there -- this can become a covered facility.

We also want to request a site profile. Our support group has people from Sandia Lab, Livermore Lab. You know, there's GE Vallecitos down the street. You know, there's a lot of facilities here in the Bay area. And then you know, people -- people are down in LA and they kind of crawled into our group via phone and stuff, so -- but the -- but Sandia National Laboratory has 54 cancer cases that have been referred to NIOSH. They've been sitting there for anywhere from a year to three-plus years. And you know, we've got to get that site profile done at Sandia. People need that to be done because their individual dose reconstructions are sitting because there is no site profile and you have nothing scheduled, from what I can see. And it seems like a real opportune time since Sandia is right next door to Livermore, you know, to do it right now

while the site -- the survey team is there, so I'd like to put in that request.

Also I want to just piggy-back on -- we want to confirm that workers and family members will be actively involved in the draft site profile.

And we'd like to see more outreach at -- for that meeting than there was at this meeting so we really get like a good slice of people to tell their stories and corroborate, you know, like individuals so we've got more than one individual to talk about what hap-- what really happened at the Lab so that the survey will be as comprehensive as possible, that -- so no worker will be excluded un-- unfairly because of in-- you know, uncomprehensive (sic) site profile.

We'd also request that your survey team at Lawrence Livermore and Sandia come to Tri-Valley Cares. We've been here for two decades and we have a two-decade-old library with an annotated bibliography, and we have records of accidents. We have some of the tiger team reports. We have the operation technical summaries. We have a whole host of documents, and I think that it would help to ensure the

thoroughness of your -- your sources for the site profiles for Lawrence Livermore and Sandia.

The Lab employees, both at Livermore and Sandia, worked frequently at other sites. They were Livermore Lab employees or Sandia Lab employees, but they were at Y-12, they were at Rocky Flats, they were down every week on the corporate jet to Nevada Test Site. And what we're finding is when their dose reconstructions get done -- 'cause some are getting done, even before the site profile -- or when they get their records, those records don't come along with their records from Livermore Lab. Like those records from like a stint -- a month here or a month here, they're not coming along with all their records, so we believe that there's missed dosage in a lot of cases for the different sites that the worked at on a temporary basis, because they were Livermore Lab employees who were only at these sites, you know, temporarily.

We also request that -- that NIOSH provide a public session about how to file a petition for a Special Exposure Cohort, because we believe

we have a stable metal (unintelligible) problem, both at Sandia National Lab and at Livermore National Lab, that involves workers demolishing tritium facilities.

We request funds for a technical consultant to assist us with the Special Exposure Cohort.

Lastly, the sick workers have come to Tri-Valley Cares for help, and we work on a shoestring budget, and we're not funded to help the workers. And that's okay. You know, this is part of our mission and this is really important to us. We want to do this. But we also feel that people are not getting the adequate help that they need from your systems. And we want you to please look into these problems because there's a lot of taxpayer money being spent on these systems, and it's not that tough to make these systems right. And if you just investigate -- I know you had some consultants looking at your methodology -- I know that you can get these systems right where people feel satisfied. And I'm not equating satisfaction with getting paid or, you know, getting a yes on your award. I'm equating satisfaction with people knowing that

they gave it their best shot. And whether it's no or yes, they feel confident that they were helped. So thank you very much.

DR. ZIEMER: Thank you. Thank you. Next we have Fran Schoerber-- Scher-- Scheiberg -- Schreiberg, yes, Oakland, California.

MS. SCHREIBERG: Thank you. My name is Fran Schreiberg and I'm here representing Work Safe, which is a coalition of labor and community groups that's dedicated to promoting occupational safety and health, not something that I've heard a whole lot of people talking about here today. We're talking about a workers' compensation program, not a program to prevent injuries, illnesses and deaths. And I do wonder in my mind, although this is obviously not something that you're talking about, I do wonder about how the current workers at these facilities are being protected, and I think this is something you all ought to address at some point.

I'm really impressed with the speakers that I've heard today. I am not an expert in this particular type of exposure. I'm just impressed with the -- the victims who have been

here today, and they are victims, with their families, the survivors, with the unions and the community groups that are trying to help these folks, from Tri-Valley Cares, from the building trades, from the engineers' union, as well. And as I sat here listening to what people were saying, I became more and more angry, actually, at what these folks are having to go through. And they're having to go through this without help.

I -- although I'm a lawyer, I don't practice law. I actually do training for unions and workers on health and safety. I do a little bit of legislative work and help with writing regulations and so forth. I'm -- I'm pretty much a worker advocate. But I don't really do litigation, but I'm hearing people being put into a system that is essentially shifting to their shoulders the burdens of litigating their own cases. You say it's a non-adversarial system because, quote, there's nobody on the other side. But there is someone on the other side. It's on the other side of the table, and that is the person who's handing out this money. And although it's a paltry sum and in

fact I think it is a paltry sum compared to the kinds of cases that involve fraudulent concealment or involve failure to warn, which is in fact what our government did to these folks, this is a paltry sum of money. And what you're doing is making these folks be their own adversaries with a complex set of exposures based on epidemiology that is actually narrowly construed, which they can't contest because you've regulated it. And that's how the law is being structured, and they're stuck with what they have, and they have very little information that they can even get to you to controvert a conclusion. And then on top of that, they aren't even given the information that they need to actually assert their legal rights to go through an appeal process, to get an administrative record to try to challenge the underlying information where they do have a chance to maybe get that. And if I was representing them, if I was acting as if I was a lawyer, to me, what I think you need to do, and I think you need to allocate money to help these people to do it, whether it's through lay advocates or a real resource center, 'cause

apparently from what I've heard today, this so-called resource center is not a resource center. It does not help these people press their claims. What I think you need to do are a couple of things, and let me just look at my notes because I wrote them down.

The first thing is is that this site analysis that y'all are trying to pull together for the Lawrence Livermore National Lab and for these other sites, as well, because a lot of these people traveled from one place to the other -- when we met with these folks from NIOSH and from the different consultants that NIOSH and DOL have, it sounded to us as if you were shifting to us the burden of coming up with information and preparing something that would be a site analysis. As I listen more today, it -- it occurs to me, and as I talk to a couple of people, you're going to come up with this site analysis, but we're not really going to be able to give you meaningful input into the site analysis unless -- until we know exactly what government data you used, and I heard this from other speakers, we need to know the underlying data that you use to produce the site analysis,

and that data has to be fairly precise. It has to be precise in a temporal nature and it has to be precise in a spatial nature. In other words, we need to know what buildings, what particular job categories you are -- you're cre-- you're using to make your conclusions. It has to be a real job site analysis or matrix, whatever it is that you all want to call it. It's the kind of stuff we do every day when we analyze a work place for current occupational health and safety problems. We need to have all that underlying data. And you all have to produce the records for us, and it has to be transparent, as Barry and a number of other people said.

The second thing is is then you go and you talk to the workers, and you interview those workers. And it's not just a handful of workers who themselves are brought together by a community group such as Tri-Valley Cares. I think it's incumbent on the government to talk to every single survivor, every single one of those workers, and get data from them about what they know happened. We're talking about missing reports. Well, where the heck do you

get the information? You get it by talking to as many people as possible. We can't do that. We don't even have the names of these people. You have the names. You have the employment records. You're the government. And every single one of those workers needs to be talked to and that information needs to be put into this system and into this site analysis.
The next thing is, as far as I'm concerned, their individual exposure records have to be put into this system, as well as the area monitoring. There are -- there are widows, there are survivors -- children who are survivors who have none of this information. And I'm not saying that this is information that you have to do to violate people's privacy, but you can put this information into a computer program, you can put it into a site analysis as the coworker data. Where is the coworker data, 'cause when I -- when I have -- you know, when -- when tort attorneys go in and represent a person and that person -- or a survivor -- in other words, that person isn't there, where do they get that information? They go to coworkers, and they use coworker

exposures in like situations, in situations where that other worker worked. How can we get that information? How can these individuals get that information? You need to get that information and it needs to go into this system, as well as, by the way, the historical reports of the -- all the accidents and near-misses and so forth.

In addition then to the individual interviews and all of that data, I -- okay, I think I mentioned having the -- the exposure records of the coworkers.

And finally, I think the individual workers who are submitting claims need to have very concrete assistance, which I mentioned at the very beginning of this. And that means they need an advocate, and that advocate is going to actually have to be paid. And it would seem to me that -- it doesn't have to be a lawyer, it can be a lay advocate, but it needs to be somebody who's trained and who has an understanding of this system and who feels that they're an advocate as opposed to a place that fills out pieces of paper for people. And that means they give them information about how to

go about getting their administrative records, how to analyze that stuff, how to challenge it, how to gather the information that they need to supplement it if that's what the government wants from them, and how to take their appeals up. All told, from the amount of money that I understand y'all are spending on your consultants, you know, I realize that this is outside the purview of this group, but you might well think about the fact that maybe the law is inadequate and needs to be changed, and maybe at some point this group will have the ability to come forward and to say that to someone because the epi that you're using, which as I understand it is based on atomic bomb survivor information, clearly is inadequate. You need to have a broader view of the epidemiology that's involved here. I'm hearing that today from all of these people that are testifying.

And in addition to that, one might think that if you look at the balance of money that you have spent on consultants and what it would mean to take that money and have a presumption that anybody who walks out of one of these

plants is actually presumed to have a cancer caused by the radiation that were -- that was inside these work places, have this be a real workers' comp system. Don't make them jump through hoops on this causation. Give them the presumption, then give them the $150,000 bucks.

DR. ZIEMER: Okay. Thank you, Fran, for sharing those thoughts.

We're then going to hear from Sharon -- Sharon or Shannon -- Wood.

MS. WOOD: Sharon.

DR. ZIEMER: Sharon -- Sharon Wood.

MS. WOOD: My name is Sharon Wood. I'm a claimant for my husband, who died 17 years ago of cancer. He was a mechanical technician at Lawrence Livermore Lab. And I'm also representing one of his coworkers who died a year after he did, also from cancer. These two fellows trav-- he worked for -- in the weapons division for most of his 26 years, and I guess I -- I haven't completed -- NIOSH hasn't completed the claim. It's been there for almost three years. I applied in October to Seattle and it was sent on to NIOSH in March, and you know, I get these quarterly reports

that tell me how many people it's -- submitted and how many people they've completed -- or sent off. I've had the -- some of these interviews and -- but I don't understand -- he traveled to almost all of the nuclear facilities that's here. He traveled to Argonne and Hanford and -- and Rocky Flats and Los Alamos. And he spent six week out on Christmas Island in the atmospheric nuclear tests. He spent years traveling back and forth to Nevada Test Site and, you know, I don't know where all he went. Those travel records are not available. About the only thing I have is some documents that showed what kind of projects he was on for some of that time. Anything, you know, past six years, apparently the lab -- as far as travel goes -- and he's been dead for 17, so I don't know how -- you know, I don't know what they're going to do as far as figuring out whether he had a high enough exposure or not. And if he didn't, then I have to appeal and I don't know how to get ahold of anything else other than what I have.

Now I'm pretty sure that some of that work was probably low level radiation. He -- I don't

know that he had any overt contamination, but he spent a lot of years in and around those sites where they were working actively. He was -- essentially was placing photographic and other diagnostic equipment and then collecting them afterwards. I have slides of the atmospheric shots that were taken out on Christmas Island that he brought back with him, developed at the Lab and released to him. So this -- this process has been rather frustrating. I've made numerous calls to NIOSH, who started out with two or three people, and now I understand it's well over 100 people. They've spent somewhere around $95 million and there's 13,000 claims and they've cleared 6,000 -- or 600. That's according to the paperwork I've got -- what, in September, October. So this was -- the whole thing was supposed to be -- you know, we're going to be turning this around. That's before they decided they had to put -- make this department NIOSH. And I don't know how you -- you do a site survey or profile of Lawrence Livermore Lab that would predate, you know, 30 years ago or 20 years ago. But you know, so we're -- I'm

really frustrated as far as this goes. The friend that I represent, she's older and she's had two strokes and a heart attack. Whether she'll ever see any of this I don't -- and -- if there is any compensation, I don't know, you know. My husband lasted seven months with his cancer, and the Lab retired him on the day he died. So it's been a long time. Anyway, I thank you for coming and listening to our stories, and -- and I hope that something will come of this, that a little bit more -- a little faster. Thank you.

DR. ZIEMER: Thank you, Sharon. Gina LaMens, Lammens -- Gin-- is it Gina? No?

Okay, let me move on. Barbara Green?

MS. GREEN: Hi. As stated, I am Barbara Green. I'm representing my husband, Frank Green, who is a claimant. The first -- I -- just hearing everything that I'm feeling has come from all the people that have spoken before. You are begged to apply for this pittance, may I say. And then you're challenged all the way, saying that you probably don't deserve it anyway, is the way you feel. I think I'm hearing that from everyone that's spoken this evening.

I -- what I get -- it's four years for us, as far as the amount -- the time of the claim, and each time I have called anybody I always get another group of papers that tell me that this is where they are and this is what's going on. I think my book is about that thick now. And so nothing new comes from it, but they kept sending, every time I do call or, you know, have any questions, they do send me some more paperwork. It's repetitive and as I say, I've got about that much from four years. I don't know how many pounds, I think I should weigh it.

Anyway, how long can a claim take? I know they keep saying that the site profile at the laboratory where my husband did work, he has said that the reason that you're not going to have a real chance of finding out what's going on out there, that most of the people are dead that he worked with. In fact, all of them that he knows, the people have all died that he has been involved in.

I've been to several of the meetings. I've met -- I've probably met some of you before. I met at one of these hotels and oh, yeah, we'll

contact you. He'll be a good person to be able to give us some background about the rad lab and these kinds of things, and we hear from no one -- except more paperwork when I had to make the call, I might add.

It's just frustration. I think that's what we're all speaking to. I think that's about really all I had to say is that I do feel terribly frustrated. I think that the money that they're speaking to as I'm hearing the figures -- I don't know how much money has been allotted to this program. I'm hearing now the consultants are being hired to have you all work together better, which is kind of a sad thing, and I've been hearing everyone say here this evening -- and I've only been here -- I wish I hadn't done my Christmas baking, I wish I'd been here earlier today -- that you're all doing a good job. Well, I'm going to share with you tonight, I've only been in here an hour and a half and you're not. That's all I can tell you. You're not. You're not working together.

DR. ZIEMER: Okay. Again, thank you for sharing your thoughts with us. It's probably

difficult for us to appreciate the level of frustration many of you feel.

Peter Demires?

MR. DEMIRES: Yes. Hi. My name is Peter Demires. Last evening I get a call from Inga and I'm not prepared, and I was thinking I'm no going to talk, but I want to say some things. I hear all the speakers. All of them they (unintelligible) what they say. I have lived that picture in my life. I worked 20 and a half years for the Lawrence Livermore National Lab, machinist, worked with all toxics. I worked all the departments. I'm a -- diagnosed positive in the beryllium and asbestos. When I tried to get -- actually the DOE recommend to the Lawrence Livermore Lab to do the test for the beryllium and they said -- they got blood from me, they test it, it came positive and they take blood again and they sent them to Denver, Colorado and check it. It was a positive again. Now they have to send me to UCLA Medical Center in Los Angeles. The doctor in the lab, he tell me don't worry, and he's try to cover the thing, say I don't want you to say to anybody else what happens to you because

from the first 20 we got two positives and was very bad for the Lawrence Livermore Lab, which have positive -- contaminate -- people exposed. After I go in the medical center in Los Angeles, they found there I have also asbestos, and I have the later X-rays from the lab and they found that in the X-rays. And when I came back I asked the doctor how come every year you get my X-rays and you don't have see I have asbestos? They say we can be mistake, but don't worry, maybe next year you are going to be healthy. I say what's the matter with you? I didn't have the flu. I didn't get no medicine. How I'm going to be healthy next year? So they try to cover those things. The Workers Compensation deny the claims right away. The letter say about they have representatives in the lab, Workers Compensation, who they work for the lab, they get money. These people they can't serve really fair and honest because they scared of their supervisors as much -- I never get what I deserve because I was outspoken. I see the discrimination. I see people they scared. I know they are employees who they are sick.

They have higher dosages of toxics of me and they're scared to talk. Myself, when I see there is no cooperation with the Workers Compensation, the management of the lab, I hire attorneys. I have three claims, back injury, asbestos and beryllium. I have radiation. There's no big amount. I don't how much going to affect me in the future, but one of the things I know, my wife, she get breast cancer and I was -- we are lucky because was (unintelligible) in the early stage and now she survive.

There are a lot of things over there. If people doesn't go in, they don't know. There is no safety things because when I worked the toxic materials as a machinist, they tell me nothing wrong. I asked a mask to wear. I work dust beryllium, pure beryllium. They say don't worry, if you wear a mask, they other ones, they're going to scared to work on this. They have no good protection system. Now I hear -- I'm out of the lab for three years. Now I hear they have better equipments to work, but still is very dangerous, is a very much bad for everybody. Not only for the people they work

there, for you, all you who are outside because beryllium is just a little bit, it could be outside and contaminate hundreds of people. So what I think is they should care better Workers Compensation system to be independent, not for the ones they had in the lab, because all this times they deny the claims, people they scare to go outside because the lab is going to fire them or they're no going to promote.

Safety, the safety was little safety. The only thing was mechanical safety rules. They give us the classes. When they talk to us about radiation, the tell us don't be worry about radiation. If you sleep with your wife, already you produce radiation. Why, you guys don't want to sleep with your wife? Why you scared of radiation? That it was very cheap excuses, but that they give us. And they are hundreds and hundreds of them, who they are, they contaminate or they adding a danger to get in this, and they scared, or they affiliate with the galvination (sic) of the system.

Don't say nothing, just keep it secret. And that's all I have to say, and thank you you listen.

DR. ZIEMER: Thank you. Lorraine Spencer, is it? Spencer, uh-huh.

MS. SPENCER: I'm Lorraine Spencer. I'm involved in two claims. One is for my father. My brother and I are both in on that one. He was a mechanical technician at Lawrence Livermore National Laboratory. We came in the early '50's when the Laboratory just opened, and he was one of the many techs that used to put the beryllium in the warheads. Well, the final cancer that killed him was pancreatic cancer. And the beryllium -- did it come home to the family. My mom and dad died within five months of each other, both of cancer. We come from a huge Italian family and they're the only two on each side of their family with cancer. All right, put that one aside.

I am representing my father-in-law. He died at 54. He worked at General Electric Vallecitos. His case is 347. It has been in for four long years. My mother-in-law is still alive. I'm trying to get this done for her. All I ever get from NIOSH when I call -- and the gal who's out there, Linda, I believe, and she's oh, I know you -- okay, and all I get is, you know,

if your mother-in-law dies, which she's not in good health, it can go to the survivors. That's not what this is all about. I actually showed my father-in-law's radiation dose that was documented, he was chronically radiated for 15 years. A health physicist said to me is this gentleman still alive? I said no. He said I wouldn't think so. Okay? So anyways, we're trying to get that done, but what you're hearing here is there is not one happy camper, and everyone just keeps getting put off. At this point we have dug up the dead. It's either yes or no. How long does this go on? And do you need help? I'm here to offer help. I'm willing to volunteer. Is there something I can do for you to help this thing move along, because I'd like to bury these people. Okay? I'd just like to put it to bed. So please, call us. I'd be willing to do anything. I imagine there's a lot of people here that would be willing to do that, too. Thank you.

DR. ZIEMER: Thank you. Let me go back to one that maybe had stepped out. Is it Gina LeMans or -- she's left? Okay.

Richard Miller -- back in the room? Yes.

MR. MILLER: Good evening. My name is Richard Miller. I work for the Government Accountability Project in Washington, D.C. And I know it's late and I will not cause you to endure me for too long, but I do want to say that I am immensely impressed with the testimony, listening to people tonight, and I just want to thank all of you who came out to speak for coming out to speak and getting your issues on the record. There's a lot of senior decision-makers in this room who came from Washington for this hearing -- or from Atlanta, and so you may not know all the other people in the audience, but I was kind of watching their faces so I'm glad you got a chance to get -- get the issues on the record.

I was one of the people who wasn't allowed in your meeting yesterday. See, there was a meeting that was held here yesterday, folks, to talk about the audit of the radiation dose reconstructions. And the point is, are you going to get a decision back from NIOSH which is believable and credible. Are you going to get an answer, whether you like it or you don't get money, the question is do you believe at

the end of the day that the decision was well-vetted, that it's well-defended. And when you get this gibberish back in the mail with your NIOSH dose reconstruction report and the IREP input model -- everybody can tell us what IREP is -- and y'all look at this stream of dose inputs and you have no idea where those are derived from 'cause your dose reconstruction report is a little sketchy, and then you're somehow supposed to fathom whether you got a fair decision or not, under some efficiency method or worst case method, you don't really know.

Well, this Board has a key role in whether this program sinks or swims in terms of the credibility of the decisions that come back. And that is, they're supposed to audit the radiation dose reconstructions. They're -- the Congress told them they are supposed to audit a representative sample and to look at the methods that are used.

Now they had a meeting here yesterday and they closed the door under the guise that they were going to be discussing these matters pursuant to the Privacy Act. And I had asked, before

they went into Executive Session, to discuss these 20 radiation dose reconstructions which are under audit, whether or not we would at least see a transcript of what was discussed behind the doors.

Now I happened to go out to dinner with some folks, and I heard y'all had a lot of fun behind closed doors yesterday, and that it was contentious. But I don't know what the contentions were. And I heard there was vigorous debate, but I don't know what the debate was about. I don't even know if it involved the Privacy Act. I don't know what went on. But if the process is going to have some credibility, there's got to be sufficient transparency, respecting the Privacy Act at the same time. So I'm going to restate my request that I made before you went into Executive Session, which is that I would like to see a transcript, with the appropriate redactions made, of what went on behind closed doors, and your discussion for three hours that looked at the credibility of the first 20 radiation dose reconstructions that were reviewed by your contractor. And I was very pleased that Cori

Homer was to provide me with and refresh my memory on what the Government in the Sunshine Act says, and I just want to refresh my memory and perhaps yours, as well.

It says that the agency has to retain its transcript for two years. It does not say you can't see it for two years. In fact, it says the opposite. It must be made available for inspection upon request -- no, not six months later like you do under FOIA, but upon request. And secondly, what it says is that it should be made available to the general public. And so I'd like to just restate that if one of the core underpinnings of the credibility of this program, which is derived from what you do, is please post the transcripts on your web site of your closed session with appropriate redactions at the same time you post the transcripts of this open session that's held here today and has been held for the last two days. I really think you need to do it. And if you're going to meet behind closed doors and you're going to debate process, and you're going to debate how you're going to resolve conflict, and you're going to make policy decisions about processing

these dose reconstruction evaluations, and you're going to set up foregoing review processes, these aren't things covered under the Privacy Act. Those are policy issues you were discussing behind closed doors. But we're locked out while you do it behind there and I really think you need to have the light of day, sunshine come in and let everybody see what y'all were talking about behind closed doors. The second thing I would like to suggest is a process for how to resolve -- what was remarkable to me just sitting in the audience today was the debate going on over the site profile. This was not a polite exchange. This was people gritting their teeth at each other. What's going on here? And is that what's going on with the dose reconstruction audits, as well? People are gritting their teeth at each other? Is this how we're going to resolve disagreements or questions about the scientific credibility about what's going on? People are hunkered down in their bunkers, firing facts or mischaracterizing each other's positions so you can knock them down. Is it one straw man for one and one straw man for the other? Is this

how we're going to get to the credibility of the issues? Is that -- is that what the tone is? 'Cause from me sitting here and the impression I've carried away from this meeting is that the tone of the debate seems to be quite adversarial, and I wish it wasn't. Because it makes me question if people are defensive about the facts or defensive about how they interpret the science or that people say one should not challenge whether or not it is sufficient claimant favorable because the law doesn't allow it -- I hear attacks about the very basis for this Board, which is to question NIOSH's application of science, NIOSH's application of its discretion and how it exercises its discretion. And when I see the Labor Department and the NIOSH teaming up to attack whether or not the audit can even evaluate whether things are sufficiently claimant friendly or not, I have to puzzle to myself what's wrong here. What's wrong that the Labor Department and NIOSH are teamed up attacking the very cornerstone of this program, which is that it's supposed to give the benefit of the doubt and supposed to be claimant

friendly in the face of uncertainty, and in this sea of the absence of data one has to make a lot of value judgments. And what was so troubling to me was to read the written attack on the audit report from both agencies saying you have no legal right to even examine whether or not one can make claimant favorable decisions. That's not what the law says. What's wrong here?

I mean something from the outside looks funny, because I don't know whether you've done it or not, but I did a keyword search for the hundreds of times I've heard the word claimant friendly used by Dr. (sic) Elliott and by Dr. Neton and the rest of the staff, claimant friendly, claimant friendly, claimant friendly, and all of a sudden we can't evaluate that question. That's challenging the judgment, the discretion that's being exercised here. It's not a calculational error. We're not talking about that. We're talking about the exercise of discretion in the sea of uncertainty with so little data and so many hard questions to answer.

I think one of the things that troubled me was

that the process seems to be, as Wanda so I think adeptly pointed out, the forest -- you know, the murk and the primeval ooze of trying to formulate a policy coming out of all these questions was you have a subcommittee that you conceived. You put the charter out. It had a task to review the dose reconstructions. That subcommittee we were told would meet between every Board meeting. The last time that subcommittee met to review dose reconstructions was in August. Here we are in December and none was scheduled in between. Why is it that NIOSH and the Chair have not scheduled meetings for this subcommittee to begin to vet and pre-vet this process? I mean I don't understand what the process is if you've got a subcommittee set up and you're not using it for the purposes -- the eight purposes for which it was delineated.

I'd like to just make a comment about the cost of the audit. Today we heard a great deal of discussion and yesterday in the meeting chaired by Dr. Wade about contracting issues and whether or not the cost of the audit may exceed $3 million, and it seemed clear across the

spectrum that this was not going to be done for $3 million, given 400 audits that have to be done. And yet for all the people who are here today who want to know whether the answer they get is credible, we've got to do -- those audits have to be done. You know, there's -- this isn't going to get done on the cheap. Congress has not set a ceiling on the amount of funds available for the audit. That's a given fact. And yet I wondered when I heard the discussion about well, one needs to consider budget constraints. You sure do, but you also have to consider whether this program is going to fulfill Congressional intent. And if the issue is additional funds at the time you all deem appropriate to request those funds, I certainly hope the Labor Department's going to be there, willing and forthcoming, as opposed to the exchange we heard about well, you haven't asked me and I haven't said no yet, but you know, watch out.

Finally I want to just talk a little bit about appeals. At GAP we receive a call or an e-mail almost every day from someone whose claim's been denied. It's the danger of having it on

your web site that you do this kind of work. And in the course -- I guess the thing that -- that people consistently say is how do we interpret these dose reconstruction findings? What is an administrative record? What are the bases of this gibberish that we get? I mean people -- as Francine mentioned here earlier, people are very much at sea. And I think they do deserve -- and I don't know what the mechanism is, and I know Larry's been very creative in trying to find ways to, you know, make this program as transparent as he can, to try to find ways to convey what the program is trying to do, your web site is just chock full of stuff. But when claimants get those -- those determinations back, I'm not sure whether it's in the exit interview process or where in the -- where in the final process it is, people need to decode that into English again for them. And I would just leave you with a thought. If you can do that and you can help people understand the product that you've produced for the Labor Department to adjudicate, it's going to help people have a much broader understanding of what they're

dealing with. And I don't know whether that's, you know, the famed ombudsman or whether that's going to be, you know, a function within NIOSH or whether there's somebody that has to fill that function, but there really is a well-identified hole here and I hope folks will think a little bit about how to fill that hole. Thank you.

DR. ZIEMER: Uh-huh.

MS. OLSON: Dr. Ziemer, Gina --

DR. ZIEMER: Thank you, Richard.

MS. OLSON: -- Gina LeMans had to leave 'cause she has yet another cancer and another surgery --

DR. ZIEMER: Yes, I was told that Gina --

MS. OLSON: -- but we have one other member that I -- he wanted to speak. Did you want to speak?

UNIDENTIFIED: I've already spoken.

DR. ZIEMER: He's already spoken, yes. Yes. Thank you.

My battery has indicated that it's out. I hope you can hear me. Let me thank all of you for coming tonight and sharing your various stories. Maybe it is working. And sharing

with us.
Not all of the issues that you raise are necessarily ones that this Board can address, but there are others here, as Richard has already pointed out, who are in a position to address many of those issues. And they certainly have been heard. The Board, in many cases, is in a position at least to prod others to do certain things, as well. But we appreciate hearing both your frustrations, your concerns and your offers to assist as we move forward in some of these various areas, including the site profiles.
If you have particular individuals you need to talk to afterwards, please feel free to do that. We will have a little bit of time I believe before we have to necessarily vacate the room, so you can hang around a bit, but again, thank you for coming tonight. This Board will be meeting all day tomorrow. All of you are welcome. Sometimes people say this is a board because that's how you feel when you sit in on the deliberations, and it's even too late in the evening to -- but in any event, you are welcome to be with us tomorrow, as well.

Thank you, and goodnight.

(Whereupon, at 9:45 p.m. the Chair declared an adjournment to Wednesday, December 15 at 8:30 a.m.)

C E R T I F I C A T E

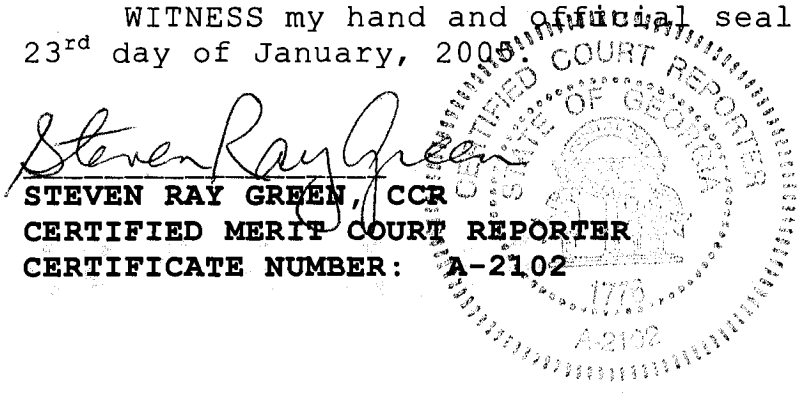
STATE OF GEORGIA :

COUNTY OF FULTON :

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the 14th day of December, 2004; 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 23rd day of January, 2005.



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