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

EIGHTEENTH MEETING

ADVISORY BOARD ON

RADIATION AND WORKER HEALTH

VOLUME I

The verbatim transcript of the Meeting of the Advisory Board on Radiation and Worker Health held at The Adams Mark St. Louis, 315 Chestnut Street, St. Louis, Missouri, on October 28, 2003.

C O N T E N T S

October 28, 2003

TRANSCRIPT LEGEND

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In the following transcript a dash (--) indicates an unintentional or purposeful interruption of a sentence. An ellipsis (. . .) indicates halting speech or an unfinished sentence in dialogue or omission(s) of word(s) when reading written material.

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In the following transcript "uh-huh" represents an affirmative response, and "uh-uh" represents a negative response.

In the following transcript "*" denotes a spelling based on phonetics, without reference available.

In the following transcript (inaudible) signifies speaker failure, usually failure to use a microphone.

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

(By Group, in Alphabetical Order)

BOARD MEMBERS

CHAIR
ZIEMER, Paul L., Ph.D.
Professor Emeritus
School of Health Sciences
Purdue University
Lafayette, Indiana

EXECUTIVE SECRETARY
ELLIOTT, Larry J.
Director, Office of Compensation Analysis and Support
National Institute for Occupational Safety and Health
Centers for Disease Control and Prevention
Cincinnati, Ohio

MEMBERSHIP

ANDRADE, Antonio, Ph.D.
Group Leader
Radiation Protection Services Group
Los Alamos National Laboratory
Los Alamos, New Mexico

DeHART, Roy Lynch, M.D., M.P.H.
Director
The Vanderbilt Center for Occupational and Environmental Medicine
Professor of Medicine
Nashville, Tennessee

ESPINOSA, Richard Lee
Sheet Metal Workers Union Local #49
Johnson Controls
Los Alamos National Laboratory
Espanola, New Mexico

GIBSON, Michael H.
President
Paper, Allied-Industrial, Chemical, and Energy Union
Local 5-4200
Miamisburg, Ohio

GRIFFON, Mark A.
President
Creative Pollution Solutions, Inc.
Salem, New Hampshire

MELIUS, James Malcom, M.D., Ph.D.
Director
New York State Laborers' Health and Safety Trust Fund
Albany, New York

MUNN, Wanda I.
Senior Nuclear Engineer (Retired)
Richland, Washington

OWENS, Charles Leon
President
Paper, Allied-Industrial, Chemical, and Energy Union
Local 5-550
Paducah, Kentucky

PRESLEY, Robert W.
Special Projects Engineer
BWXT Y12 National Security Complex
Clinton, Tennessee

ROESSLER, Genevieve S., Ph.D.
Professor Emeritus
University of Florida
Elysian, Minnesota

AGENDA SPEAKERS

Ms. Chris Ellison, NIOSH

Mr. David Sundin, NIOSH

Mr. Jeff Kotsch, DOL

Mr. Tom Rollow, DOE

Mr. Mark Griffon, Workgroup Chair

STAFF/VENDORS

CORI HOMER, Committee Management Specialist, NIOSH
STEVEN RAY GREEN, Certified Merit Court Reporter

AUDIENCE PARTICIPANTS

NANCY ADAMS
WILLIAM M. BECKNER
DEBORAH BERKEY
DENISE BROCK
EVELYN COFFELT
GERI L. DREILING
CLARISSA EATON
DONNA EHLMANN
CHRIS ELLISON
WILLIAM C. FRANSON
DAVID GWEN
CHRIS HADDOX
RUSS HENSHAW
LIZ HOMOKI-TITUS
THOMAS M. HORGAN
PATRICK KELLY
JAMES KNUDSEN
JEFF KOTSCH
ROBERT LEIFIED
CAROL LUEDDECKE
HAROLD LUEDDECKE
ROBERT MCGALERRA
DANIEL W. MCKEEL
LOUISE MCKEEL
RICHARD MILLER
CHERYL MONTGOMERY
EDWARD MUECKE
DAVID NAIMON
STEVE POWELL
LOUISE S. PRESLEY
TOM ROLLOW
D.M. SCHAEFFER
SARA SHIPLEY
BARBARA A. SMIDDY
FLORENCE STROPER
DELORES STUCKENSCHNEIDER
DAVE SUNDIN
STAN/ANN SZTUKOWSKI
BOB TABOR
BRIAN THOMAS
PAMELA TODOROVICH
RICHARD TOOHEY
DAVID UTTERBACK

JIM WERNER
MARILYN ZIEMER

P R O C E E D I N G S

(9:00 a.m.)

REGISTRATION AND WELCOME

DR. ZIEMER: Good morning, everyone, and welcome to the 18th meeting of the Advisory Board on Radiation and Worker Health. We're all pleased to be here in St. Louis. I suppose there's a lot that can be said about St. Louis. I heard the weather man say this morning this was a bluesy day in St. Louis, and I thought well, that's appropriate, I suppose. But anyway, we're pleased to be here, even on a bluesy day in St. Louis. My name is Paul Ziemer. I'm Chair of the Advisory Board. I'm not going to actually introduce all the members of the Board, but for those who are here observing, members of the public, the Board members' names are on the placards in front of them, so you can identify who they are.

This morning we have one individual who will not be with us at the meeting. Dr. Henry Anderson is not able to be with us. Dr. Jim Melius will be joining us a little later in the morning, I understand is flying in

from overseas, actually, so will not arrive until a little bit later.

We ask that everyone present, including the Board members, register their attendance on the -- in the registration book which is back at the entrance. Also, members of the public who wish to make comment during the public comment period, we ask that you please sign up on the sheets in the back -- there's a sign-up book or sign-up sheets -- so that we have some idea of how many wish to address the Board and can allot the time accordingly.

There may be a number of other members of the public join us a little bit later. I'm going to make some comments now in terms of the public comment period, but I may have to repeat these comments later, as well.

Those are as follows: First of all, to remind members of the public that this is an opportunity for you, as a public member, to comment on the program, the policies, concerns you might have relative to this particular compensation program. It is not really a time to ask questions about personal claims. If you have questions about personal claims, timing or issues about where

your claim is in the process, we ask you to do that privately with the NIOSH staff.

Also I would like to point out that the format for the public comment period is really not intended to be a question and answer period. Rather it's simply a time where members of the public can place on the public record their comments. If you do wish to raise questions, particularly if there are a lot of people at that point present, you may wish to raise those questions, but we would then defer answering them -- if you do have questions, something about the program, we may have to get back to you with an answer at a later time in order to preserve time for all who may wish to speak.

A couple of other pieces of information for you today. On the table here near the front there are copies of minutes and other information from past meetings, and we invite you to make use of those as you may wish.

You may also notice that there's a television camera present here today. The Village Image News, I believe is the correct title of the group that's televising. That's a local public access group here. They've asked

for and been given permission to televise the proceedings here. And I just want to tell the Board members not to get your hopes up that this will be a new reality TV show of some sort. This is simply for public access information.

With those comments, I'm going to invite Larry Elliott to make any additional comments he may wish, and then we will proceed with the agenda.

MR. ELLIOTT: Thank you, Dr. Ziemer. I'd like to welcome the Board to St. Louis on behalf of the Secretary of Department of Health and Human Services and the Director of NIOSH, Dr. Howard. I'd like to welcome the public to the Advisory Board meeting. It's the first time we've been in St. Louis and we -- the Board does go around the country and hold its meetings, and we're pleased to be here to share this Board meeting with the public here in St. Louis.

We have a full agenda. Today you're going to hear status on the dose reconstruction program at NIOSH, as well as status on the overall program from the Department of Labor, as well as status on the Department of Energy's responsibilities under the

program. We also will have time on the agenda for the working groups that have been assembled to speak and provide reports on their various activities on developing task orders for your contractor to perform the audit that you are required to do of our dose reconstructions, as well as we have a closed session tomorrow afternoon -- which will be closed to the public -- to discuss the independent government cost estimates that have to be generated regarding those task orders.

I would remind the Board of your responsibilities to recuse yourself, given your individual waivers. We have recently gone through a new waiver process and so many of you have new waiver letters. And as we proceed into the review of dose reconstructions, I would remind you of those obligations.

Dr. Ziemer announced that we do have a video being taken of this meeting. I need to make sure that everyone understands that NIOSH will not be able to provide copies of that video because it's not -- we're not conducting the taping and it's not our responsibility to provide tapes from that.

We hope that you find this meeting informative and productive. And again, welcome to St. Louis.

REVIEW AND APPROVAL OF DRAFT MINUTES - MEETING 17

DR. ZIEMER: Thank you very much, Larry. We're going to now proceed with the agenda. Our first item on the agenda is the review and approval of the draft minutes of meeting seventeen. Let me make several comments. First of all, these minutes are quite extensive. The total number of pages is 54. Some of you only received these minutes last night. Some only received them this morning. Some have not yet received them; that is, those who have not yet arrived. Therefore I'm going to rule that we will actually not act on these minutes today. But I do want to make a couple of comments relative to the minutes.

First of all, if you would, please read them and indicate any technical information that you believe is incorrect, and you can let Cori know that. Actually I'm going to be going through the minutes in much detail myself because I -- I actually would like them to be consolidated to a shorter version, and I'm going to work with Ray, who's helped us with the minutes --

our recorder -- to come up with a more abbreviated version of these, if we are able to. I do appreciate the effort that Ray's made to get us a good set of minutes, but I've already indicated to Ray that I feel that they're too long. We have the transcript available, and so I'd like to get these shortened up a little bit. But in the meantime, if you would indicate to us any technical information that you feel needs to be corrected, let Cori know or you can let me know, or both. And then I will work with Ray -- it may be that Ray has already made these as concise as can be done. This is two days worth of deliberations and we had a lot of discussion in that last meeting, so that's all here. It also is in the transcripts, however, and there may be cases where we can shorten up the minutes simply for efficiency's sake.

I will, however, ask tomorrow that we approve these, at least in principle, with the understanding that we may wish to prepare an abbreviated version, as well, for the final copy.

Is there any objection to proceeding on that basis?

(No responses)

DR. ZIEMER: There appears to be no objection, so it will be so ordered.

CLAIMANT COMMUNICATION

DR. ZIEMER: We're going to move ahead then and Chris Ellison from NIOSH is here with us today. She's going to discuss with us the communication process that the Agency has with claimants, go through that in some detail so that we understand exactly what the interchange/exchange is between the Agency and the claimants. That -- when I say the Agency, I think we're also including the work that the contractor does in assisting in that regard.

So Chris, we're pleased to have you here this morning. Please proceed.

MS. ELLISON: Thank you. Good morning.

DR. ZIEMER: You may need to snap that -- there's an on/off switch on that hand mike, please -- or that lavaliere mike.

MS. ELLISON: Good morning. As Dr. Ziemer has said, that here -- I'm -- this morning to give you a current overview of some of our activities in approaching the claimants and getting information to them about their

claims and the program itself.
Primarily we do this through four major ways. We have the phone calls that we get from the claimants. According to our database this month of October, we've logged in over 7,000 phone calls. Now those phone calls do include a number of things. Of the phone calls that have been logged in include inquiries as to the status of the claims. It also includes information on the closeout interviews, scheduling of the telephone interviews, all contacts that have been made with claimants on those basis have been logged into the system.
And if I separate it out just a little bit, roughly so far in the month of October we've handled a little over 1,000 inquiries as to the status of claims. So that -- that -- currently the activity with the phone calls.
Another way that we provide information to claimants is through e-mails. During the month of October we've received roughly 118 e-mails. And they do vary -- phone calls and e-mails vary quite a bit, depending upon activities that have occurred in the media and other things with -- that are occurring on the web

site.
Which is also the third piece of information that we have available for the claimants to gain information on our program. And we do try to update the web site as frequently as we can with the most current information. I know that I updated the web site this past Friday to include the newly-approved side profiles for Mallinckrodt and Blockson Chemical, so those are the two new features that appeared on our web site.
And the last major piece that we do use with communicating information to the claimants are the letters, and there are a variety of letters. And after I go through these, I will show you some of the new things that we have developed. But all of our letters that we currently have in use cover the major stages of the dose reconstruction program, and trying to keep claimants up to date with where their claim is according to those major stages.
The first one that the -- letter that the claimant does receive is what we call an acknowledgement letter. The letter basically tells the claimant that we've received their case from the Department of Labor. There are

some details in this letter that tell the claimant why their case was sent to NIOSH. We give some information on what dose reconstruction is, and at that time we also assign the tracking number to the claimant and tell them what that is so that they can call in and provide us with that tracking number. It's a way to follow the claim through the system and things. And then when we send that acknowledgement letter to the claimant, we also enclose three things. There's a brochure that is sent to them which is general information on the program, a little on NIOSH, and also the compensation program. There's also a fact sheet that is sent to them with this letter which describes in detail some of the information about the dose reconstruction process, what is required and what all it entails. And then the last thing that currently is being sent with the acknowledgement letter is a magnet, and the magnet we hope -- there's a space on there for them to write their tracking number and it has all the contact information and various telephone numbers and e-mail information and the web site, so hoping that they'll keep that close to their refrigerator so they

can give us that tracking number when they ever -- if they should happen to call.

After the acknowledgement letter is sent, the next major step in the dose reconstruction program is the telephone interview. And we do send them a letter ahead of time with that -- regarding that interview. One of the things that we do include in that letter are the -- a copy of the questions. We want people to know ahead of time what to expect from that telephone interview. And one of the things that is conveyed in the letter and then on the cover sheet of those questions, we do convey a question that -- when we remind people that participation in this telephone interview is voluntary, and we are aware of the fact that even though some individuals may not be able to answer all of the questions, we encourage them to participate in the telephone interview because any information they do provide can be of some benefit potentially for that dose reconstruction. And that is pointed out in the attachment with the questions and things.

The next letter after the telephone interview, the next

major step or item to occur in the dose reconstruction process, is the summary report. After they've had that telephone interview the claimant will receive a copy of a summary report so that, for the record, they see what is going to be submitted into their claim. And during that, when we provide them with that summary report, we do ask that they review it and provide us with any comments or corrections that they may have so that we can fully envelope everything that was discussed in that telephone interview in that summary report.

The next major piece of communication in the letters that we send is what we call the dose reconstruction introduction letter. Basically at this point, this letter is sent out when we have obtained enough exposure information and are ready to proceed with the actual dose reconstruction. Something that is mentioned in this letter -- there is some discussion in the letter about the conflict of interest and how that is dealt with when assigning the dose reconstructions.

And attached with the letter is the list of potential individuals and their affiliations so that people can review the list and see who potentially can be assigned

to work on the dose reconstruction for their case. And the next thing then that we send is a letter regarding the draft dose reconstruction. Enclosed with that letter will also be the draft reconstruction report, and with this letter we also send what we call the OCAS-1 form, and there are instructions in the letter to sign and return the form. There's also information in this letter about the closeout interview that will be scheduled, because once the draft reconstruction is sent to the individual, we then conduct a closeout interview with each individual so that then it's -- the purpose is to explain the draft dose reconstruction report, answer any questions that they may have at that time as to what was done in the dose reconstruction.

The last major letter that we receive is sent out only after we have completed the dose reconstruction stages. That means after that OCAS-1 has been received back to us, then we can finalize that dose reconstruction. And once the administrative record and the final dose reconstruction is sent back to the Department of Labor, at that time the claimant also receives a letter to let

them know that.

So those are -- those are the primary stages of our dose reconstruction and the core letters that go out to represent those stages.

One of the things, listening to the phone calls and trying to get people to understand the program, and because of those facts we've now added -- or the -- the two new communication pieces to our program.

The first one is a flow chart. It basically explains and shows the claimant what to expect during the dose reconstruction process. On the brochure that we sent the claimants there's a list-by-list item of the major steps of the dose reconstruction program. This has been provided as a visual and I'll go into more detail about it in a minute.

And the second new piece that we've developed for claimants is an activity report, and this is in primary response to the multiple questions that we get as to the -- you know, when they are inquiring about the status of their claim. We know that that is a major concern for the claimants, so the activity report has been developed to address those questions.

Here's the flow chart. And I know -- and for the Advisory Board, in the back of my presentation is a full-blown page of this so you don't have to try to look at it on the little printouts there. What's been developed with this flow chart is -- there's two things going on in the flow chart. The right side shows what NIOSH is responsible for in the dose reconstruction process. It kind of -- it shows the major stages and the major steps. And then the left side, in the gray box, shows the claimant what they will receive from us. And they're kind of -- the items are lined up according to the process on the right. It's a little bit of a visual, little bit different than numbering it one, two, three, four, some -- it's a two-fold thing. Some people can understand steps better. Some people want to see it visually. And this is available currently on our web site.

And the other piece that we've newly developed is, like I've said before, the activity report. But of the current plans with the activity report, that it will be mailed out quarterly, and that will be in the month of January, April, July and October. The contents are two

-- the activity report will be divided primarily into two different areas. The first will be an area for the status report and the second will be program information.

Now we've currently been in the process of -- these -- what -- we've divided these two pieces out into two mailings. The current status of this mailing we want to include in a cover letter. We couldn't just send the flow chart to individuals and expect them to understand what we had done, so we basically wanted to make sure -- we're trying to give each claimant the right to understand the process, so we went back through and mailed the flow chart to all of our current claimants, and that has been completed. But the cover letter basically said here is a flow chart to help you better understand the process. And in that letter we also explained that we would be sending out activity reports.

Now the activity reports are in the process now of being printed and we're preparing to begin mailing them out this week. Specific information that's found in that activity report, they will see the exact status of

their case. They will -- in that activity report will appear everything they should hear that -- if they would call us or receive an e-mail, information as to when we receive their case will be on there, when an acknowledgement letter was sent to them and all of the basic stages. Therefore, from that activity report, a claimant can see what stages have occurred with the dose reconstruction that their claim has been in and what stages then are left. And also I'd like to mention, with that activity report we will plan to mail that out to the claimants until they receive a copy of their draft dose reconstruction.

And both of these mailings -- each time -- right now in the system we have just slightly under 20,000 claimants that we will be sending this to. And when I say claimants, that includes Energy employees, survivors and authorized representatives.

And that's basically where we are. Are there any questions?

DR. ZIEMER: Thank you very much, Chris. Let's open the floor for questions at this point. Gen Roessler.

DR. ROESSLER: Chris, the web site is very good and

very up-to-date and very complete. But my question is, I'm wondering how -- can you determine or is there any measure for determining how effective it is? I know you can do hits and things like that, but I'm just wondering how many of the claimants or potential claimants or other interested individuals are actually going to the web site for the information.

MS. ELLISON: We do monitor hits. And to be quite honest, I know we're -- we're changing systems and how they're tracking the hits, and I have not received a report in some time because they're setting up a new way of looking at that. We do receive occasional e-mails from individuals regarding the web site. To be quite honest, most comments have been favorable. There's a vast amount of information available on the web site, and we've tried to gear it to an -- you know, two types of individuals. There's some information that's there that's strictly only pertinent for claimants. There's some information that's for a more technical audience. You know, the Department of Labor and Department of Energy also use our web site. And it's difficult, but you know -- but right now primarily

the only input we have are e-mails we receive, or phone calls. And they do occur minimal. Most of the phone calls are wanting to know when the Advisory Board's going to meet -- I know any time there's an Advisory Board meeting, I get questions about when -- when is the agenda going to be posted and things -- and location. Usually people are a little impatient on that. But other than that, primarily things are pretty low. We don't hear too much about the web site.

DR. ZIEMER: Roy DeHart.

DR. DEHART: This is a dynamic process occurring over time and repeated. And having been involved in similar sorts of situations -- not with these numbers, but -- how many dead letters are you receiving? In other words, letters that are returned to you because the address is incorrect. And if you are getting those, how do you try to identify or find the people?

MS. ELLISON: I do know I -- the exact numbers of returned mail I cannot answer. If we do receive a response or a letter back undelivered, we do try to contact the Department of Labor and there are issues that we're trying to work out with that. Recently we

had tried to put a return address correction on our envelopes, but I think that's going to have to stop, but...

DR. ZIEMER: Chris, has there been any confusion amongst the claimants in terms of the letterhead and who the letters come from? As I look at these I see the identity of ORAU, Dade Moeller Associates and MJW.

MS. ELLISON: Uh-huh.

DR. ZIEMER: There's very little NIOSH identity in the letter. Does that cause any confusion amongst the claimants as to what the -- who -- who's sending this and why?

MS. ELLISON: So far it does not appear to. In the acknowledgement letter there is some detail about contact information. And at NIOSH we do have public health advisors that are assigned to the claims, and those primary core letters, when they come from NIOSH, are signed by that public health advisor. And always, from that acknowledgement letter on, they are mentioned that they also can contact our contractor for status updates and things. And so it is mentioned from day one, that they -- when they receive letters from us, of

the existence of the contractor. And so far, there's not been any confusion. I know usually in the letters that ORAU does send out, they state that they are assisting NIOSH with the dose reconstruction program, so -- but not to my knowledge.

DR. ZIEMER: Right. I just want to make sure that people actually read the letter --

MS. ELLISON: Right.

DR. ZIEMER: -- and identify that that's the case. Otherwise -- it is a form letter, after all, and I get a lot of form letters and I look at who they're from and -- before I pitch them. Sometimes I look at who they're from before I pitch them.

MS. ELLISON: Right.

DR. ZIEMER: And I just want to make sure that people who think they're in the NIOSH/Department of Labor program actually are fully aware of the role of the contractors and that there's no confusion there.

MS. ELLISON: Right.

MR. ELLIOTT: If I could remark upon that question -- it's a very good question, and we attempted to anticipate fully the confusion that letters are going

to generate when the letters come from different entities. The first letter that Chris talked about, the acknowledgement letter, is on NIOSH letterhead and it, as she says, introduces the ORAU team and indicates that -- and maybe the next letter also is a NIOSH letter, I need to get my mind straight on that -- it is a NIOSH letter.

MS. ELLISON: Huh-uh.

MR. ELLIOTT: It's not a -- well, anyway, each letter in succession introduces who's going to communicate with the claimant next, which -- whether it be NIOSH or whether it'll be ORAU. And so we try to make sure that in those letters, you know, the claimant understands what's the next step and who they're going to be talking to in the next step.

And I agree with Chris, I don't think we've heard much concern or -- or confusion about that. We need to get on top of also the number of dead letters. We're working on that end, as well. And right now, with dose reconstructions becoming finalized, it's even more important to us to be able to find those people. We've got perhaps like 50 I think that we are -- we're

tracking down now at the dose -- final dose reconstruction stage, just to try to get their decision to them. And so this is an important piece, so I appreciate those questions and we are working on them.

DR. ZIEMER: Thank you. Then it appears this has not been an issue at all. If it becomes an issue, then you'd have to say okay, maybe there needs to be some identification such as these -- on behalf of NIOSH or something in the letter to clarify that. But if it's not, I don't want to solve a problem that doesn't exist. Actually, I do. University professors like to solve a lot of problems that don't exist, but -- what other questions do we have?

(No responses)

DR. ZIEMER: There appear to be no further questions. Thank you very much, Chris. We appreciate --

MS. ELLISON: Thank you.

DR. ZIEMER: -- your update on that. Now we're ready for our regular program status report. Dave Sundin is -- is Dave going to give the report or Jim? I see -- oh, you're -- Jim is the helper. Okay, Dave, welcome back and we're anxious to hear the update.

PROGRAM STATUS REPORT

MR. SUNDIN: Good morning. It's not on?

DR. ZIEMER: It's not on.

MR. ELLIOTT: Can everybody --

MR. SUNDIN: Good morning.

MR. ELLIOTT: -- in the back of the room hear? 'Cause I was worried about Chris's presentation. I didn't know if --

MR. SUNDIN: Can you hear me in the back? Good, thanks. Okay.

Well, good morning, and I'll echo Dr. Ziemer's comments. It is great to be in St. Louis here at the foot of the Gateway Arch, the banks of the muddy Mississippi, and home to many former Mallinckrodt workers, Weldon Spring plant workers and United Nuclear Corporation workers and their families.

I'll be presenting a brief overview of the program status, and I'll follow the basic approach that I've used in previous meetings here.

Of course, as you know by now, we began receiving cases from Department of Labor around two years ago actually, October, 2001. And to date, we've received 14,500-some

claims. And as Chris very ably described, we begin our communication process with claimants at that point by starting them out with acknowledgement letters, and continue to attempt to keep them posted about what we're doing with their claim.

Also importantly, and again, I've mentioned it before but I think it's important to keep in mind, one of the important things we do is to scan all claim documents when we receive them so that we have an electronic file to deal with, which is really absolutely essential as we get dose reconstructionists throughout the country opening these files and beginning to do their work. So there is that step in the process which has so far served us well.

About 16 percent of our cases continue to involve AWE employment or Atomic Weapons Employers. That's important because, with few exceptions, we don't have as many points of contact to go to to get actual personal exposure information on employees that worked at Atomic Weapons Employers. There are about four I think points of contacts from AWEs where we actually are able to get some personal exposure information.

There's a smaller number of cases in process, at the bottom of this slide, 13,500, and I believe that's the number that you will see on our web site when you look for claim status. The reason that's less than the number of cases received is that we subtract out, for purposes of reporting cases in process, those claims which have been returned to Department of Labor as complete, and also those cases the DOL has asked that we pull. There's not a large number of pulled cases, but some cases come to us that we shouldn't have, and when DOL recognizes that, they ask that the case be returned to us.

This is a time trend chart of the rate at which we are receiving cases from Department of Labor. And as the chart shows -- and you've seen this before; I've just updated it with the first quarter of fiscal '04 number to date -- the trend is generally downward since about second quarter -- or fourth quarter of fiscal '02, where we received over 2,700 cases. We're now getting cases referred to us at around 200 a month, and declining slightly.

Of course, as you're aware, each -- Department of Labor

has done their work on the case before we receive it. They've developed the verified employment and the types of cancers that the Energy employee had. And at that point we do generate requests to the appropriate Department of Energy point of contact to request the personal exposure information. And for a significant number of the claims, the -- there are multiple employment sites. The Energy employee, for example, worked at several different sites, so we need to generate several different requests for exposure information.

This shows you where we are with our requests for exposure information. The reason that the number of responses received, 20,000-some, exceeds the number of requests that we've sent, which is right at 16,500, is -- really there's two reasons. One is that, as I mentioned, Energy employees can work at multiple sites. And the other reason is that some sites are sending their responses in several separate packages. For example, some sites will send us the X-ray -- the diagnostic X-ray information as one response, and then the personal exposure radiologic information as a

second response.
I think if you remember -- which you probably don't -- the slide from our presentation in August, there's been improvement across the board, really, in the responsiveness of the Department of Energy points of contact. The total percentage of outstanding requests that are 60 days older or more is now eight percent. It was actually 12 percent in August. So we continue to see improvement in the timeliness of the DOE responses.
There are of course a significant number, really -- 730-some -- that are 150 days or more outstanding, and I'll explain that in the next slide.
This shows the top eight sites from which we request exposure information, and you'll notice that five of these sites have a 90 percent or better response rate within the 60-day period. So really the major sites are doing quite well. There are a couple of sites that we're still working with, with the help of DOE's Office of Worker Advocacy.
Savannah River Site has a significant number of responses that are at 150 days or more, as does INEEL.

And really those two numbers make up the bulk of that 700-some that were 150 days or older.

The quality of the responses we're getting from Savannah River Site is quite good. It's just that they started a little later than some of the other sites to get the machinery up and running to get the information to us.

Idaho, I believe I explained last time, has spent a significant amount of front-end work in indexing their records in a way that they can now begin to provide the information to us more efficiently. And that process is complete and we're starting to see some -- much better response from Idaho.

We do continue to send periodic status reports to each of the DOE points of contact to list out actually very specifically the cases that we show on our books as being 60 days or more outstanding. It's sort of a check with them to make sure that they know of the -- they have the same list of cases that are overdue. So we do that every month as our goal. We -- there's certainly periodic reports that go out.

And of course outside of this effort is a rather large

parallel effort to compile site-specific profile information to develop the Technical Basis Documents that then go into making up a site profile, which is a very essential piece of information to do dose reconstructions at a particular site. And there are 15 teams that are working on completing site profiles. Dr. Neton will give you more information on that during his presentation.

The telephone interviews that we offer each claimant are an important part of our dose reconstruction process. Interviews were not required under the statute, but they were built into the NIOSH process because we believe that it's important that we communicate with claimants and allow them to give us what information they can to help us do the dose reconstruction.

ORAU continues to do a very good job and make impressive progress in completing interviews with claimants. And again, it's not always easy to locate people to establish -- to set up a time and a date for the interview, but whereas in August we were reporting something around 6,000 completed interviews, we're now

approaching 10,000 a couple of months later. So this group has been very effective at getting these interviews done.

And then of course the next step, as Chris mentioned, is to send a summary report to the claimants and make sure that we got the interview recorded properly. The claimant has an opportunity to add to that or correct information, and then of course we send them a corrected report if that's necessary.

The group at ORAU that's doing the telephone interviews will also be conducting the closeout interviews very soon. That is the interviews that are done after the claimant has received their draft dose reconstruction report. So given the success that this group has had with doing the first interviews, we expect that this is a -- this will also be a success in terms of conducting what we call the closeout interview.

Well, now the bottom line. When I reported to you in August, the number of final dose reconstructions that had been sent to the -- back to the Department of Labor and also to claimants and DOE was around 350. As of yesterday morning sometime, we've got roughly 1,000

draft dose reconstruction reports that are out to claimants or have actually come back from claimants and are over to DOL.

So we've made some progress. We've got a long ways to go, but I think the hard work that we've put in and our contractor's put in is beginning to pay off.

There are I believe around 32 Mallinckrodt claimants that are represented in either claims that have received their draft or have gone over to Department of Labor, and I think maybe around three -- rough numbers, and again, it changes daily -- three Mallinckrodt claims I believe are back at Department of Labor by now.

The early break-out here is around -- approaching 40 percent of the claims we've returned have a probability of causation of 50 percent or greater. We realize that's probably a percentage that will change and likely in fact go down as we work more of the tougher cases. But that's the rough indication.

I thought I'd show you a very rough profile of the types of cancers that are represented in our claimant population. And I should say there's plenty of caveats

to over-interpreting this list. But what I've done here is, first of all, removed the gaseous -- the SEC sites, because the cancer profile in those sites tends to be, in general, different than the rest because if a claimant had an SE-- a specified cancer, they're -- they will be coming to us only to reconstruct the non-specified -- dose for a non-specified cancer or a -- so I couldn't figure out exactly how to integrate those. I took those out, so this does not include those sites. Also bear in mind that claimants can have multiple cancers, so that's why we've got 20,400 total cancers represented among 14,500 claimants. Also this is only primary cancers. I've not attempted to profile secondary cancers here. In general, secondary cancers come into play in our system only if a primary is unknown, so while a lot of people have secondary cancers arising from an identified primary, if the primary is known, that's of course what we do the dose reconstruction on.

But as you can see, skin -- non-melanoma skin cancer predominates in terms of frequency, and that includes both basal cell carcinoma a squamous cell carcinoma,

for which there are in fact two different models in IREP, but for purposes of just descriptive statistics, I've lumped them here.

Next is the all male genitalia. That's the grouping of ICD-9 codes that makes up the IREP model, which includes primarily prostate cancer. There would be a few other cancers in there, but the vast majority of that second category are prostate cancers.

Lung is also up there pretty high, and then as you go down the list, you see how the others array themselves. Even though of course the literature demonstrates that certain cancers are more apt to be related to radiation, I would caution against sort of over-interpreting anything here because, in the case of multiple cancers, of course there may be one cancer which may be significantly more radio-sensitive than others. So -- and certainly the uncertainty in the individual claimant characteristics have an important part in the whole dose reconstruction and probability of causation. That's just a crude look and something I've been curious about and thought you might be interested in.

In terms of recent accomplishments, NIOSH has a role under the statute to appoint physician panels to assist the Department of Energy in implementing their responsibilities under Subtitle D. We have appointed 123 physicians to date. And based on DOE's request that we identify more and appoint more physicians, we have initiated another recruitment effort. We're now looking at approximately 85 CVs from physicians that have expressed an interest in serving and will add any and will appoint any that are highly qualified from among that group.

I mentioned briefly the site profile teams that are staffed up and developing data. And we now have I believe four site profile documents that are out on our web site. Bethlehem Steel has been there for a while. Savannah River Site, Blockson Chemical and, most recently, the Mallinckrodt Technical Basis Document is available on the web.

The residual contamination final report has been drafted and is in review. And of course as you -- as this group knows, the contract for supporting your effort to evaluate the completed dose reconstructions

has been awarded.

So I think I'll stop there, and if there are questions, I'll try and answer them.

DR. ZIEMER: Thank you, David. Let's have questions now. First Roy.

DR. DEHART: David, could we go back to the cancer types? Maybe if you can just flip that chart back. The reason I mention that, as perhaps you're aware, I'm doing some of these medical reviews in Subtitle D. And the medical information that we see frequently is mis-diagnosed. It's called one thing and the medical record supports something else. Dealing with the cancer types, as you've pointed out, the code -- the medical coding of those are critical in determining how you're going to calculate the dose, et cetera. Is there a problem -- are you doing that or is it coming out of Department of Labor? Who's -- who's assuring that the diagnosis and the code that's being used is accurate?

MR. SUNDIN: Well, it is Department of Labor's responsibility to ensure that the cancer is -- or that the disease is a covered condition and that it's

supported by the right kind of medical -- by credible medical evidence. So Department of Labor does review the medical evidence provided by the claimant and they assign the ICD code. I mean if we notice errors, or what we think are errors, in that assignment, we will communicate back to Department of Labor and ask them to clarify or to review the case. But that code is assigned by Department of Labor.

DR. DEHART: And the response of Labor to a potential mis-coding is what? Is it positive? Do they -- is it positive, do they -- do they go back and look and change?

MR. SUNDIN: They go back and look, and if it needs to be changed, they change it. There are occasions where what may appear to be an error to us is not. So it goes either way, but they're quite willing to go back and review if something looks, on the surface, to be an error.

DR. DEHART: Okay. I can think of a common problem. That would be metastatic disease to the lung.

MR. SUNDIN: Yes.

DR. DEHART: And instead of -- it might be diagnosed as

a primary lung.

MR. SUNDIN: Right. Well, as you probably well know, metastatic cancer doesn't mean that it was a secondary cancer. It sometimes -- that terminology is used to describe a primary cancer that metastasized, so yeah, that's why, looking at the pathology reports, all the underlying medical records, is very important. And DOL has a -- you know, an extensive procedure manual to describe what information is most credible to establish the diagnosed condition.

DR. ZIEMER: Robert?

MR. PRESLEY: Robert Presley. Dave, the report for residual contamination in draft, is that available for our consumption?

MR. SUNDIN: It will be when it's released to Congress, but not until then. I'm not even exactly sure at what stage of review it is. I know it's out of NIOSH, so -- but there could be changes that would be made. So at the time that it is sent to Congress, it will be made available to the Board.

DR. ZIEMER: Mike Gibson?

MR. GIBSON: (Off microphone) The site profile teams --

DR. ZIEMER: Use the mike there, please, Mike.

MR. GIBSON: The site profile teams that are staffed and developed, personally I feel like we really haven't had much information on how that was developed and how those teams were formed. And you know, that's a very critical step in assuring that you're getting adequate information to do dose reconstruction. Could you go into more detail about that?

MR. SUNDIN: Well, I think probably I will defer a detailed discussion on that to Dr. Neton's presentation. I believe he intends to cover not only the progress, but how the teams are put together and so forth.

DR. ZIEMER: Is that agreeable, Mike, and Jim's going to discuss the site profile process, so --

MR. GIBSON: Yes, that's fine.

DR. ZIEMER: Okay. Thank you.

MR. SUNDIN: Since that is an agenda item, I think I -- recommend that, anyway. That's tomorrow morning, Mike.

DR. ZIEMER: Be sure, though, that that question gets answered, Mike, tomorrow.

Could you give us some idea of what the time commitment

is to a physician on the physician panel? I'm just curious, what -- maybe Roy can answer that better than...

DR. DEHART: I think most of you know that I sit on the Subtitle D panel, as appointed by NIOSH in support of DOL. The average case that we currently are seeing -- I'm sorry? You can't hear me?

DR. ZIEMER: Just get close.

DR. DEHART: It's on now, isn't it? The average case that I'm seeing will run between 400 and 600 pages. Those pages include sort of a site profile. And in fact, I was talking to Mark, I just had reviewed a case that was from a gaseous diffusion plant and his report on the gaseous diffusion plant's risk was included in there. So if we're looking at Y-12 or K-25 or Savannah River, we have a description of those case, and that'll run 100 pages. And then the medical records and all are reviewed. I average something on the order of four to six hours per case. Some of the cases may run far less.

For example, I've had two cases that had absolutely no medical records. The claimant had not been able to

provide any medical records, or chose not to provide them, and that made the case review very simple.

MR. SUNDIN: I know, just to add to that, that's useful, to get the inside view. DOL -- DOE has indicated that they're extremely interested in identifying physicians that are able to devote as many hours as possible. A lot of physicians, of course, have got other duties, or even perhaps active practices, so it's difficult to squeeze as many hours out of some of these people as DOE would like. So our latest recruitment announcement emphasized that we were particularly interested in hearing from physicians that may be able to work full time, even -- a retired physician, who had a recent -- you know, may be recently retired, had an active clinical practice and could be otherwise qualified would be extremely useful to DOE. And as a matter of fact, there's been a few physicians identified that are willing to work full time, willing to relocate to DO-- to Washington for a short tour of duty to sort of sit down in one contiguous space and just go through a number of cases. So it is a significant time commitment that conflicts

with other duties, so we're interested in -- if you know other physicians --

DR. DEHART: One other point I think that would be appropriate is that each case is reviewed by three separate physicians, and they either meet by phone or e-mail and determine whether they're in concurrence or not. A minority report can be filed, so you've got -- you have three physicians looking at each record.

DR. ZIEMER: So there really is a significant time commitment involved there. Okay. Thank you. Dave, I wonder if you might also give us a sort of interpretation of your third slide, which had to do with the cases received. That's the bar graph on cases received by quarter. And the clear peak there at the fourth quarter of last year and -- does this mean that the bulk of the cases have now been submitted, or does this mean that the word got out there initially -- I'm just trying to understand what the implication here is, for example, in terms of projected number of cases, total, that we'll have down the road. Do we expect an upsurge again later? How do we understand this bar graph?

MR. SUNDIN: Well, I'm not sure that I would do any long-range trend projection based on this, but I -- and this may also be an interesting question to raise of Pete Turcic or the DOL representative because they are sort of sitting on cases that are undergoing development that may or may not come to us. So they, in a sense, have a better picture of the potential additional cases. And of course they are involved with the traveling resource centers that go out and reach out to potentially new claimants.

But I do know that NIOSH was not, in a sense, open for business until we had promulgated our rule on dose reconstruction, even though it was issued as an interim final rule. It took some time to actually get that in place. So DOL in fact had cases waiting for NIOSH when the rule was published. So there was an initial bolus of cases that moved over to us that had already been developed, and many more that were nearly complete at that time. DOL got the cases sent to them even before the Act became active, of course. People were filing claims, so they were working on claims from virtually day one.

I think the easier cases, if you will, the ones that DOL has not had to work with the claimant a lot to get developed and ready to come to NIOSH probably have gotten here. But again, I -- that may be a useful question for DOL also to comment on. New cases clearly do continue to come to DOL. You know, not all claimants filed early. There are continuingly -- claimants still continue to come in. But certainly the large group that they were working with at the outset of the program I think has filtered, for the most part, our way.

DR. ZIEMER: Peter, will you be -- is Peter here?

MR. ELLIOTT: Supposed to be here.

UNIDENTIFIED: No, he's not.

DR. ZIEMER: Well, then maybe we can re-ask the question. I'm just interested in what the long-range projection will be in terms of total cases. I'm sure NIOSH is interested in that number, too. But Labor may be able to tell us a little better then what's down the road, I think is what you're saying. Correct?

MR. SUNDIN: I think so. Certainly they know how many cases they're developing right now, and that may be on

their web site, now I think about it.

DR. ZIEMER: Okay. Other questions for David?

(No responses)

DR. ZIEMER: Okay. There appear to be no other questions, David. Thank you very much.

MR. SUNDIN: Thank you.

STATUS REPORT - DEPARTMENT OF LABOR

DR. ZIEMER: Actually I was going to suggest that we go ahead with Peter's presentation before the break, since we're a little ahead of schedule. We're trying to track down -- I wonder if --

MR. ELLIOTT: Jeff Kotsch is going to do it.

DR. ZIEMER: Is Jeff -- yes, can we -- okay. Jeff Kotsch is going to do the presentation. Thank you. And if possible, answer the last question.

MR. KOTSCH: Good morn-- can everybody hear me back there? Good morning. My name's Jeff Kotsch. I'm the health physicist with the Department of Labor's Energy employee's compensation program. My director, Pete Turcic, is unable to attend today. He's -- and he sends his apology. He stayed back in Washington to work a Congressional oversight hearing that he has to

attend on Thursday, so -- and unfortunately, I don't think there's any electronic presentation materials for this presentation. So this'll just be the audio portion of the audio/visual presentation. Which is probably a good thing 'cause I don't have to use the remote control.

Primarily it's going to be a recitation of a fair amount of numbers, all of which are current as of October 23rd, 2003. As of that date, the Department of Labor has received 48,311 claims. And for most of these other numbers, I'm going to round them off just for the ease of presentation rather than going off and trying exact digits. But of those claims, the majority, 32,800, are cancer claims. And then it drops off -- beryllium sensitivities, we've got about 2,100 claims; chronic beryllium disease, CBD, about 2, 300 claim; silicosis, 900; RECA claims from the Department of Justice, 5,100. And then there's a bunch of others that actually is 23,000-plus claims that don't fall into any categories, really are not claim conditions -- lung and -- different kinds of lung conditions, heart conditions and things like that.

And then we had 36,597 cases. Now let me just -- I always have to make sure I get myself clear on when I talk about cases and claims. There's a case for every employee, but there could be more than one claimant or claims on that case. Obviously if the employee's still living, he's the claimant. But if he's the -- he or she is deceased, then the claimants can be either the spouse or the children. So you can always -- you'll always have more claimants than cases.

Again, as of October 23rd, Department of Labor has reported 14,552 cases to NIOSH. We have 1,700 pending final decision. We have 19,300 that have reached a final decision, and we have about 1,500 in the pipeline at our district offices that are pending some kind of a decision.

So again, 48,311 claims, 36,597 cases. 20,100 cases have received a recommended decision, and another 14,000, like I said, 14,552 cases have gone on to NIOSH. That, for the Department of Labor, gives us a percentage for cases that have gone to some kind of an initial decision of 95 percent. That is, either they've gone to recommended decision and been denied or

approved, or have gone to NIOSH for dose reconstruction.

We have 19,300 cases that have gone to final decision, and that's about 53 percent of our cases that have received a final decision. That's resulted in compensation payments to 9,143 claimants, to the amount of $673,991,000 in compensation payments. And medical benefits have been paid to the amount of $19,765,000 as of October 23rd.

Of those cases that went to final decision, there were actually about 24,000 claimants involved in that and there were about 10,200 that were approvals and 13,700 were denials. The majority of the denials are basically -- about 8,800 -- for non-covered medical conditions. And then there are a number of other categories -- employees not covered, survivors not eligible, conditions not related to employment, things like that -- that result in a denial.

A little bit just about performance of the Department of Labor during the past fiscal year, 2003. We have two groups that we basically set targets for as far as claims processing goes. One group involves the AWEs,

the beryllium vendors and the DOE subcontractors and then their claims. For that group the Department of Labor has set a goal of 180 days to work those claims through the process. In the first quarter of last year -- the last fiscal year -- we were at an average processing time of 242 days. By the third quarter we were down to 142 days, and by the end of last fiscal year we were down to 102 days, well below the goal of 180 days.

For the other group, for initial processing -- which includes the DOE and the RECA claims -- the DOL established a goal of 120 days, because it was assumed that the information would be more readily available for these. For the RECAs, it comes from -- RECA claims, it comes from the Department of Justice. It's pretty easily accessible for DOE. Obviously from the larger facilities it should be easier to get the information. So anyway, the goal for this group was 120 days for the initial processing of claims.

We started the last fiscal year at 177 days, but by the third quarter we were down to 64 days, and actually ended up a little higher by the end of last fiscal

year. We were at 80 days as an average for processing that information for the initial processing.

And then the last thing, we were just -- I just wanted to talk about was the status of NIOSH referrals, again, as of October 23rd of last -- of this year. And these numbers don't exactly match the ones that Dave presented because of the differences in the dates and things like that.

Anyway, our numbers as far as -- as of the 23rd of October, we had 859 cases returned from NIOSH, 720 of these had completed dose reconstructions. The others, dose reconstructions were not required. Included in those are cases that have -- that are involved with chronic lymphocytic leukemia or something like that. Then of that population, the cases that have a recommended decision with the Department of Labor are 582. Acceptances were 216 of those and denials were 366. And then we've got 307 cases that are in final decision. Of those, 176 are acceptances and denials are 131. So you can see we're actually above 50 percent for acceptances right now. That -- as David said, those numbers, as with their numbers, will

ultimately probably decrease and be going down. But for the moment, that's -- those are the numbers that we have.

That's the end of what I was going to talk about. You had raised the question about where do we go from here or what's coming, and that's an interesting question, I know, for -- even for our people at the Department of Labor. We do have a continuing outreach program that -- through both traveling resource centers and the fixed resource centers that are operated with the Department of Energy. Sometimes the efforts wane and -- ebb and wane because of -- whether they feel that there's a sufficient number of claims being generated. I think now that we're actually on an upswing again, they'll begin more resource -- traveling resource center and going out into the field to promote -- more actively promote the program and go through various union newsletters and other kinds of communications channels to try to get the word out to make sure that people are aware of the program. I think we're running about -- overall receiving about 200 cases per week. I think we're sending about 40 to 50 a week to NIOSH. We were

earlier in the year running about 100 to 120 a week to NIOSH, but I think it's down around 40 or 50 a week. But as far as the long-term projections, I know the Department of Labor's -- I'm not the best one to answer that question. I can certainly pass that back to Pete, but I know there is an outreach program that's in place to try to, you know, get the word out and make sure that people are aware of the program. As far as projections go, I'm -- unfortunately, probably don't have the best answer for that as to which way it's going to go. It has obviously tailed off from the initial surge and the -- you know, the initiation of the program.

DR. ZIEMER: Let me ask a question that perhaps you or someone from NIOSH can answer. Is it generally felt that all of the major facilities have gotten the word about the program, in terms of past workers? All of the national lab type facilities, the facilities like the Mallinckrodt here and others of that type around the country. Are there any pockets where we would have expected to see cases and we aren't seeing any? Or claims, rather?

MR. KOTSCH: Yeah, again, I have to -- I guess my caveat is that I'm not -- that part of the program I'm not as familiar with as I am with the technical portion of the program because of the work that I do. It's my recollection is -- my understanding of the program, we've gotten the word out fairly well across the board. I know there's always been some concern that -- like at Hanford -- at least my understanding is at Hanford we didn't receive the number of claims, I guess, that we would have initially expected, based on the population that's present there -- or the number of people that have worked there. A large number of people in the DOE complex at some point in time worked at Hanford, it appears, and we just haven't gotten -- I know we haven't gotten that -- what we might have thought --

DR. ZIEMER: The numbers you expected aren't that high, so --

MR. KOTSCH: Yeah, the numbers we expected, even though that's -- obviously the word's been there and there have been claims there. I'm not aware of any other sites -- I mean there may be some AWEs that may not

have been hit, but there was a pretty good program to get out there and spread the word.

DR. ZIEMER: NIOSH, you have any comments on that? Or -- okay. Mark?

MR. GRIFFON: Yeah, just a quick question about the outreach. Do you have -- does DOL have an outreach plan that might be made available to this Board? The reason I ask is there is a number of groups that have experience. I do work with the medical surveillance programs at DOE and we've had various successes at different areas, rely on different methods to reach some of the retirees, and --

MR. KOTSCH: Yeah --

MR. GRIFFON: -- we've found -- we've found that certain areas we have great successes with some means of outreach and not with others, and so I think you might -- there's a number of places you might tap into, so I'm wondering if you have a plan that --

MR. KOTSCH: Yeah, I know the program has a plan. It's in another group than the group I'm in, and I know that they have been looking at and discussing, you know, all the different ways of getting the word out, Mark, like,

you know, union newsletters and different kinds of newspapers, even the more local newspapers in an area versus just the, you know, more established. You know, but there's those weekly -- even the advertiser type newspapers trying to get the word out in some of those, especially for when they do the outreach in a particular area.

But certainly I can pass the question back to Pete and ask him if we can get the plan to the Board. I know there is a plan on the way they want to approach outreach.

DR. ZIEMER: Yeah, I think probably just as a matter of information, it would be of interest to many Board members just to know that. Although it's not our direct responsibility, it certainly relates very much to what we do.

I think we have Leon next and then Genevieve Roessler.

MR. OWENS: Dr. Ziemer, I'm not speaking for DOL, but I would like to respond to Mark's question. Mr. Turcic attended the atomic council at -- atomic council's composed of about 15 or 20 PACE locals, and Mr. Turcic attended that three weeks ago, and we had a session on

outreach. So there were a lot of ideas that were passed back and forth and I think that once those ideas are compiled, that will be used for an actual outreach program by DOL. So there has been participation by the active unions.

DR. ROESSLER: Gen Roessler. Just a little expansion on the same question with regard to outreach, which I think would be important for the Board to know, or at least my question is, what about those retirees that have left the geographic region? And I assume that some of these newsletters and materials are sent to people who used to work at a site but have moved away and should have the information.

MR. KOTSCH: Gen, those are things I know that they're exploring and, you know, working through, like Leon said, the unions to try to get the word out through union newsletters and other -- we know that retirees obviously exist in different places other than where they worked. So yeah, the effort is to get to those people, too.

MR. OWENS: Again, I think the challenge has been accessing the information that some of the DOE sites

have had relative to employment records so that we can reach these retirees. We've had some difficulty with some of the sites in getting that particular information. I know at my particular site, since we're now privatized, the private corporation was reluctant to provide information, so the union has entered into an agreement with them to allow them to send out mailers. We initially had 1,500 retirees that we sent information to, but there is a list of roughly 10,000, so we're now able to tap into that list. And I'm sure that at Hanford they've experienced the same thing.

DR. ZIEMER: Thank you for that additional input. Again, although this is not a direct responsibility of this Board, I think it is in our interests to make sure that those who may be eligible for our program actually get the word. And anything that we can do to help enhance that would be useful. And you know, we're not asking the Labor Department to be accountable to us, but I think there is an interest in what they're doing. Might it -- might I also ask, since you didn't have any handouts and we got a lot of numbers thrown at us and they're very hard to track, can we get a summary of

what you told us --

MR. KOTSCH: Yeah, I --

DR. ZIEMER: -- before our minutes come out?

MR. KOTSCH: Well, I got -- I just got the notice to come out here yesterday morning before --

DR. ZIEMER: Right.

MR. KOTSCH: -- I left, so --

DR. ZIEMER: No, I appreciate that, but perhaps --

MR. KOTSCH: Certainly.

DR. ZIEMER: Perhaps sooner than we get our minutes, we might have -- just like a one-pager with the highlights would be helpful.

MR. KOTSCH: Okay.

DR. ZIEMER: We'd appreciate that. Other comments or questions?

(No responses)

DR. ZIEMER: Thank you very much.

MR. KOTSCH: Okay.

DR. ZIEMER: We're going to take our break at this time. We're -- let's plan to reconvene at 10:45. Thank you.

(Whereupon, a recess was taken.)

STATUS REPORT - DEPARTMENT OF ENERGY

DR. ZIEMER: We'll now proceed with the next item on the agenda, which is a status report from the Department of Energy. Department of Energy of course has an important role in this program in terms of providing dose and site information. The individual from the Department who now has a big part of the responsibility in supporting this effort is Tom Rollow. Tom used to be with the Office of Nuclear Safety in the Department. He's now with the Office of Environment Safety and Health. Tom, we're pleased to have you here with us today.

MR. ROLLOW: Thank you. Good morning. I can't tell if this is on or not, but I guess I -- now I can hear myself talking. Do we have some slides booted up here or... Okay, good.

I'm the director of the Office of Worker Advocacy at the Department of Energy. I've been in this job for about seven months now. And what I thought I'd do today is give you a short -- about a dozen slides, give you the status of where the Department of Energy program stands currently, and then answer any questions

that you might have. If you'd just give us one moment here, we're loading a CD-ROM into the computer.

(Pause)

I'm sure the Advisory Board is well aware the Department of Energy both manages the Subtitle D portion of the program, Labor of course manages the Subtitle B portion of the program, and in addition to that we also provide records from the DOE sites to the Department of Labor and to NIOSH to support the Subtitle D portion of the program.

DR. ZIEMER: The pressing question now is how many NIOSH staff people does it take to load a CD-ROM?

MR. ELLIOTT: It helps to know the computer.

DR. ZIEMER: We'll pause just a minute here. I think Jim's got it under control.

MR. ROLLOW: Well, at the Department of Energy, our favorite saying, when we're dealing with IT challenges like this, is it's not rocket science and that's why we can't do it.

(Pause)

MR. ROLLOW: Well, let me just go through some of the points that I have on the slides that I passed out to

you, and I think we had some handouts also for the audience.

The Department of Energy currently has a total of about 20,000 applications for Subtitle D, and I apologize for the microscopic nature of the handout here. When we do get this loaded up you'll be able to see it in a little larger format on the screen.

Total cases completed to date for the Department of Energy is a little over 1,000 cases. That includes both cases that have findings in the physicians panels, as well as ineligibles and people that we have withdrawn their applications. We are currently producing cases at the Department of Energy for the physicians panels at a rate of about 50 cases per week, and so those are starting to stack up. You can see in the numbers on the chart that I've provided for you that we have -- cases that are currently being developed is over 3,000, and that we have about 456 that are actually waiting to go to the physicians panels in different phases.

We have been looking at the Department of Energy at ramping up the program to move it faster. The

Secretary actually asked us to -- last April/May time frame, to begin an initiative to process all cases in a 12-month period. The challenge with that directive from the Secretary is it does take resources, and so we have been working inside the Department to identify resources to apply to this program to movement inside the Department of Energy.

We were successful in recently winning approval for Congress to move $9.7 million from other projects in DOE to the EEOICPA Subpart D case processing. And in addition to that, we are also looking for additional funds in the FY '04 year to move into case processing. The bottom line is that we have pretty much maxed out our current operations at our current budget and case processing at about 50 cases per week. We'll actually, through some efficiencies, be able to increase that case processing up to about 75, maybe to 100 cases per week with our current budget. But we need an influx of new -- of budget, approximately $43 million for the total FY '03/FY '04 12-month period to accomplish the Secretary's objective, which is to process all the backlog at the time, which was in the April/May time

frame, which was about 15,000 cases, to process those in 12 months.

Those funds are in various stages of being requested, either inside the Department or Congress. Funds for out years, in '05 and beyond, of course would be requested through the President's budget approval process. And there is in your package a chart showing what we project as the funding needs for this program to accomplish those objectives.

If we don't -- if we're unable to obtain these resources to process these cases in this nature, it will take an extended time to process the Subpart D cases. The estimates right now, depending on how you do the mathematics, if we were to do 100 cases per week and we have 20,000 cases, then we're obviously talking 200 weeks or over four years -- four to five years to process all the cases.

This also does not take into account the challenge that we have with the physicians panels, which is on the tail-end of the process. The physicians panels, as you recall, is a panel of three physicians appointed by NIOSH, and we have about 120 physicians that are

actually appointed at this time. But each panel consists of three physicians and they're generally working part time. And the production rate that we're able to utilize these 120 physicians working part time is about 17 cases per week, which is far short of the 100-case per week goal and well far short of the goal to get 15,000 cases done in a year.

We're working aggressively with NIOSH and with the occupational health physician community to provide some remedies to that situation. For example, one of the things we're considering doing is bringing in physicians full time. We think that a team of three full time physicians working close by our case processing operation can process about 20 cases per week.

Thank you. Pull the trigger. Okay, I can do that. I'm not going to go through this chart. This was at the beginning of the presentation. If we need to have some points of discussion, we can come back to this chart which shows the Department of Labor and the Department of Energy process. And this is just some descriptive material that talks about the Labor program

versus the DOE program.
These are the numbers of the cases that I was talking about, and I think I've been through those so I won't dwell on that, but we can come back and talk about it if you have some questions in a few minutes.
This is the reprogramming effort I was talking about. If we continue current operations, when we say $12 million -- 12 years, one projection has us not only having the 20,000 cases that we currently have, but also adding to that. We're still getting cases in -- new cases in at the rate of about 120 to 150 per week. And so our model assumes that we will continue getting new cases in for about two years. So on top of the 20,000 cases we have now, there's probably another 10,000 cases coming, so that's a total of about 30,000 cases. And if you do the math on that, we're processing at 40 to 50 cases per week, which is our current rate, the math would map out at about a 12-year period. And that would not just be due to the current backlog, but that would be the future backlog, also, the cases we'd get in over the next two years.
The Secretary feels that this situation is unacceptable

and that's why he's asked for the option on the right, which is to expedite processing and reprogramming. One year, from funds available, we'll start this initiative. We just, as I mentioned, received approval of the $9.7 million to reprogram from Congress a couple of weeks ago. We will not start the ramp-up for this major effort until we are able to identify the rest of the money to accomplish this. And in fact, we've been having discussions with some hill staff that -- not to go do that until we get a clear signal from Congress that there will be some more funds coming.

We term this a batch process. What I've tried to do in the seven months I've been at the Department of Energy Office of Worker Advocacy is try to get the process going in a systematic fashion. We're all parts of the process. We're all parts of the assembly line and working at the same rate. This reprogramming effort, this expedited processing effort, though, we'll revert back to what we call batch processing. A concept is to stand down from processing cases for about a month, and you'll see where it says month one, all remaining data requests to the field. We will get all the requests

for personnel records -- that's exposure records, employment verification records, industrial health records and site profile data that we don't have -- we will get that all from the field -- requested from the field the first month of this effort.

And then in months one through six -- in other words, in parallel with that first month but continuing for another six months -- the DOE sites will work at getting all those records back to us. Once we start receiving records back -- we actually have records in-house right now that we're working on in the steady state process, so we won't -- we don't need to stop processing cases. Basically in months two through 12 then, the case processing people will start processing cases at a higher rate.

Also, not shown on this chart is a growth factor which we have to incorporate into the process to basically go out and hire about 130 to 140 case processing personnel. And we've already identified sources for those new hires and we're ready to do that if we do get the go-ahead for this effort.

This is just a graphical representation to show you how

unacceptable case processing spanned out over 12 years is. The green line would be the 12-year option and the red line would be the one-year option.

This is just a picture representation of our budget, and I do need to caution you that, as with any budgets in the Federal government, anything beyond FY '04 -- anything really beyond FY '03 is proposed right now because the FY '04 budget has not been approved by Congress, and the FY '05 budget has not even been requested by the President yet of the Congress.

This is a graphic which shows case processing activity inside my office, so these are the cases that have been put together and sent -- and are ready to be sent to the physicians panel. And you can see we've had our ups and downs. The print's a little small on this, but the left-hand end of the chart is April and the right-hand end is last week. And we just hired about 24 new case processing personnel in the past month and a half. This was not a function of the $9.7 million that we got, although it will help us to pay the bills here. That 75 cases we did last week I think is probably a spike. I think we'll probably come down from there

this week and next week, but I think the range of about 50 to 55 cases per week is easily achievable.

When you're looking at data like this, it's probably more relevant to look at like a four-week moving average or something rather than to respond to individual datapoints.

Challenges to accelerating cases per week. We originally set a goal of 100 cases per week to the physicians panel back last spring. That was based on my and my staff's projections. When I got into this job, looking at the resources and estimating the time it would take to process these cases, that was -- that estimate -- we were unable to make that 100 cases per week. And we now think the number on the current budget, the current $16 million budget is about 50 cases per week.

Records collection continues to be a challenge. We have a little bit more records that we collect than the Department of Labor does for their program -- in fact, significantly more. We get, in addition to employment records which Labor collects, we also -- and radiation exposure, which it goes to NIOSH, also -- we are

collecting the medical and industrial health records. And some of the challenges that we have, which are really challenges with both Subtitle B and Subtitle D parts of the program, is we're talking back to the 1940s. We've had contractors change in the field, which makes it difficult sometimes to find the records. Subcontractors disappeared and some workers have worked multiple sites, which is a challenge. I know NIOSH is dealing with that a lot in the dose reconstruction area. And a lot of records are archived. I end up sending my records people to strange places like Atlanta and caves in Montana and places like that to pull these records.

We're getting a good handle on that, though, and I think we're on the downhill slope on the records side, though. We've got a pretty good handle where the records are, and pretty good processes in the field for pulling the records together now.

We are trying to assemble the best case for the worker. There are different varying degrees of sophistication and time we can put into this process. We could just slap the files together and send them on to the

physicians panels in whatever form we get the records from the sites. But I have medically-trained people that are trying to do a good job of putting the best case forward for the individuals so that they get the best and most accurate results.

Accomplishments and vulnerabilities I just wanted to go over with you briefly this morning. There's some infrastructure issues that we had back in DC which really are not much interest to this Board, but we've been moving people around in different office space trying to get the appropriate office space for the operation. I know NIOSH had some of the same experiences in Cincinnati some number of months ago, and that is -- it is very disruptive when you've moving people. We're actually moving people this week, and the production numbers will actually drop a little bit this week because of that.

We also hired a management consultant company that does consultant work with state Work Comp agencies to come in and look at our operations and give us some ideas of some improvements that we can make, and they're in the draft stages of that report. We should be getting the

results of that in the next few weeks or a month or so. And that's -- I think I would characterize that as kind of an efficiency expert kind of recommendations, and we'll meet with them and score those and figure out which ones can have a lot of pay-back for us and we'll implement those into our process.

NIOSH has helped us get more physicians for the process. We're still far short of the number of physicians that we need if we're going to continue to work on a part-time basis. We're also working -- an idea, as I mentioned before, on a full-time basis, getting physicians from the Public Health Service, VA, hiring them directly, whatever we can do to get -- I think full-time physicians are going to be a big part of the answer here.

There's some other innovative ideas that are floating around on the physicians panel, also. The panel right now is made up of three physicians. A majority of our cases are unanimous votes by the three physicians, and so there's other ideas such as why don't we have panels that are two physicians, and then only bring in a third physician as a tie-breaker. Those kinds of issues need

to be well-vetted before we implement them, and they're also currently written into our rule, so any changes in that process would probably involve rule changes. Vulnerabilities to our program really ends out -- is out there on that payer* end. Some -- excuse me, vulnerabilities internal to the program. Some sites are still having difficulty meeting quota for data. And I don't mean to put Paducah on the report. In fact, Paducah actually has been making pretty good progress in the past few months, but we still continue challenged, bringing in the records under the current budget structure. If we do go to the batch process, I think that a lot of that will be alleviated because we'll basically put a lot more people on the jobs in the field at DOE. I've already mentioned the issues with the numbers of physicians.

Overall issues, these are really more external kind of issues for the program, which I think you're all well aware of and you've seen discussed in the media. Payment of the worker compensation is complicated, a complicated issue, and I know you know that. It's different in all states. It's different in most

states, I guess I'll say. Also our relationships with our contractors at each site and their relationships with their insurance carriers and the state governments and state funds all play into this.

I characterized it once to a reporter to say that well, there's probably about 20 different variables that you have to multiply together to come up -- to determine whether there's going to be a willing payer at the end of the process when we have somebody apply for work compensation -- Workers Compensation, and those variables are different for different points in time, different relationships the contractors had at the sites with the Department, different relationships they had with the state government, with the insurance companies, and it's a very complicated mathematical equation,l if you will.

A couple of states, just as examples here -- Ohio for the most part operates a State insurance fund, and there's also some potential statute of limitation issues there, although those may be removed for this program. Subcontractors generally provided their own coverage at DOE sites, and so the Department does not

have a relationship where it can order a contractor not to contest a claim if there was a subcontractor who came to the site whole, with his on Work Comp claim coverage. The US Enrichment Corporation is not a DOE contractor and is -- course is running portions in Paducah operations and we don't know how they'll respond when they get Worker Compensation claims, but I cannot make a direct order to them not to contest because they're just leasing the property from us, the facilities from us.

There is a GAO audit in progress, which has been discussed in the media. It's focused on both the willing payer issue, as well as production. The report on that audit is not out. We were told the report would be out sometime in the March time frame, although I -- you are seeing some of the facts that they've identified being discussed in the media.

We have a reprogramming, which is very important to us, that we either request for FY '04. We hope the appropriators will make that available during the conference process in the next few weeks. I don't know how that's going to come out, nor would I guess at it,

but that's the additional funds we need to move this program faster.

Applications are still coming in at 125 to 150 per week, and physician availability to serve on panels still continues to be an issue.

I apologize for the size of this chart here, but I think if you just look at the optics here, it's high on the left and it gets low on the right, and that's the good direction. This is actually a reflection of how well we've been doing on employment verifications for the Department of Labor. In the early days -- and I think that chart starts -- looks like June of '02, as best I can read the chart there, we had literally over 1,000 that were over 60 days old. Department of Labor's performance metric on this is to -- for the Department of Energy to return employment verifications to the Department of Labor, once they're requested, in 60 days. Then there's a percentage, I think, that were allowed to be over 60 days. I think it's like ten percent or something. But we actually for the past five months have got it down to less than two percent, so I think our performance -- the Department's

performance there in getting the documents back to Labor have been very good.

I'd also like to draw your attention to the fact that employment verifications for Labor, we have provided over 33,000 of those employment verifications for the Department of Labor, and they use that in the Subtitle B program. So the Department of Energy does play a significant role in providing data for the Subpart B program.

This is our performance on providing information back to NIOSH, which I think is more near and dear to your concerns here. The reason that there's some gaps is that some months we didn't run the numbers to determine what the status of the program was. NIOSH has a similar criteria for us, which is to get the data back to them within 60 days and to not have over ten percent past due, past that 60 days. We're down below eight percent, and we're going to continue driving this down.

I think it's important for me to mention here that the Department of course has three roles. Not only do we process the Part D claims, but we supply this data to NIOSH and to the Department of Labor. I've made it

clear to the field offices that support me in this effort and support NIOSH and the Department of Labor that their first priority is to support NIOSH and the Department of Labor with this data so that when we have challenges, whether they be resource-driven or whatever at the sites, the first customer they serve is the Department of Labor and NIOSH. So we do not want the Department of Energy to be a problem or the long leg -- the long pole on the tent for those operations. And that's really all I brought to show you today. I'd be happy to answer any questions.

DR. ZIEMER: Thank you very much, Tom. Mike Gibson will start the questions.

MR. GIBSON: Not only are -- you know, I'm glad to hear the Secretary's upset at the backlog of the cases, but I can also tell you that the people I'm passing from my former site, you know, they're very well frustrated, too. I also notice that some of the Senate are very concerned about this, too, and are looking at possibly ways to move this responsibility to another agency. Could you give me the Department's opinion on that?

MR. ROLLOW: Well, I need to be careful here. I'm not

really in a position to comment on pending legislation. I will tell you this. The original law as written in the year 2000 asked the Department of Energy to do this -- carry out this part of the -- the Subpart D portion, and we're going to do that to the best of our ability and going -- and complete that job. If the Congress or the President decide to change that, I think that's what you mean when you're talking about pending legislation, then we'll support that 100 percent and work with whatever remedy they choose to put in place there.

DR. ZIEMER: Mark Griffon.

MR. GRIFFON: Tom, just to follow up on the data requests, the last slide that you showed, I've noticed -- and I don't have the references in front of me, but I think it was the Savannah River Site profile that NIOSH put out, they mentioned that certain archived records would be very difficult to retrieve. And I'm wondering if, you know, who -- how is that -- how -- how is that process determined between DOA and NIOSH? You know, NIOSH requests records that they believe might be valuable to their site profile and DOE says

well, these are too difficult to retrieve or -- who -- who is responsible for that? Is it the individual sites, DOE staff, or is it headquarters or how is that --

MR. ROLLOW: Well, basically the way this program is funded and operating, I fund the retrieval of those records. So ultimately I have a say in what's done there. I'm not familiar with this specific case. I'd be happy to take a look at it later. But we generally err on the side of going -- at least my records people tell me -- very far and very deep on these records. I'll be happy to take another look at this. I haven't specifically discussed it with Larry Elliott, but will be happy to discuss it with NIOSH and see if there's something more that we can or need to do there to support NIOSH.

MR. GRIFFON: And just a follow-up. Do you have any sense of the types of records that have been requested versus the types that you've provided? For instance, personnel records versus like area monitoring or air sampling records or -- or, you know -- I guess records by categories sort of, that have been requested versus

provided by the Department back to NIOSH?

MR. ROLLOW: No, I'm not familiar with -- you're saying have we -- were we not responsive in providing what they requested or --

MR. GRIFFON: Yeah, I'm just wondering if you had any breakdown on --

MR. ROLLOW: No, I just -- I don't have that with me and -- I can get that kind of information and get it back to you.

MR. GRIFFON: Or NIOSH may have that breakdown, as well, I don't know, but I'd be interested...

DR. ZIEMER: Roy DeHart?

DR. DEHART: Tom, last week before coming to this meeting there was an article in our local paper in Nashville, and I understand there were similar publications elsewhere, which are totally confusing the two programs. And they're talking about the Worker Comp program with a guaranteed $150,000 of the Special Cohort side. I don't know how you get the right information out once it's out there in a newspaper, but somebody needs to be clarifying what these programs are providing. And I know you're trying -- I assume that -

- but it's not getting through.

MR. ROLLOW: That's a very good point. It took me even a month and a half when I first got this job to understand the difference in the two programs. It is a very complex program, the way it's set up in the legislation. And that's not a criticism of the legislation, but to accomplish whatever the goals were of the legislation, it's very difficult to do. We're very much aware of that and every conversation I start -- I mean you may have even noticed this slide show, this esteemed group here that's been involved with this for many years and you know it frontwards and backwards and sideways, the first two slides of my presentation here even to you today were to explain this if I needed to, and that's the left side is Labor, the right side is DOE, that first chart. And the second was in prose, trying to explain the difference in the programs. We are continuously challenged. I went to Fernald week before last to talk to the Fernald II workers and that put three programs up on the podium in front of them -- the Fernald II program for those who -- that are familiar with it, as well as the Subpart D and Subpart

B programs -- and you talk about a confusing mess, it really was. And it took about an hour and a half to untangle that, to explain to people -- and I'm not sure that we successfully did it for everybody.

So my commitment is, at least from the Department of Energy standpoint, that we will continue to do more and more communication on that. We're looking at more things we can put on our web site to describe those differences rather than just let people read the dusty, dry law, but also put some graphics up there that explain the difference. And my telephone operators, making sure when people call -- and they do do this well already, but to sort it out. Are you -- did you mean to call the Department of Labor, are you working on this program -- and send people to the right places. But it is a continuous challenge.

DR. ZIEMER: Tom, the fees for physician panels, are those out of your budget or out of the NIOSH --

MR. ROLLOW: They're out of my budget.

DR. ZIEMER: Your budget.

MR. ROLLOW: Yes, sir.

DR. ZIEMER: Okay. Thank you.

MR. ROLLOW: And you may be aware that the fees are fixed by law to a certain pay scale in the Federal government, and that is one challenge that we do have attracting enough physicians, as it is on the low end of the scale for what these physicians are used to being paid.

DR. ZIEMER: Unlike the fees for the Board. Right? Okay. Other comments or questions for Tom?

(No responses)

DR. ZIEMER: There appear to be none, Tom. Thank you very much, we wish you all success in your part of this effort.

DR. DEHART: I have a question. Will you be around at lunch?

MR. ROLLOW: Yes, I'll be here the greater part of the day.

DR. ZIEMER: Okay. Thank you. Now let's stop a moment and look at our agenda. Our lunch schedule is a ways off yet. I'm wondering if we could think about starting the dose reconstruction information -- Mark, do we need to wait till after lunch? I know your folks have met early this morning, your work group. You may

have been counting on the lunch hour to get all of your things ready, so let me ask that question because --

MR. GRIFFON: I was sort of counting on that.

DR. ZIEMER: You were counting on that, okay.

MR. ELLIOTT: We could take public comment.

PUBLIC COMMENT PERIOD

DR. ZIEMER: Yeah, we could do that. Let me ask -- although the public comment period is not scheduled till later this afternoon, we could, if there are some interested -- we could take some public comment now, although we certainly don't want to require that since some may have been counting on doing it later in the day. But if there are any -- first of all, let me ask if any -- if there are some signed up and do they wish to wait or --

MR. ELLIOTT: Cori's getting that.

DR. ZIEMER: Okay. We'll wait just a moment here.

(Pause)

DR. ZIEMER: We do have a number that have signed up. Is there any objection if we hear some of the public comment now? Tom Horgan from the Senator's office is here. Tom, do you object to going now, or would you

prefer to wait?

MR. HORGAN: Not at all. Fine, it'd be great if it helps the program.

Okay. I'm Tom Horgan, and I am the professional staffer on the health, education, labor and pension subcommittee on aging and where I handle labor and work force issues, and that is chaired by Senator Christopher Bond of Missouri, the state you're in. And I just first of all want to extend a warm welcome to everyone to the St. Louis area and the great state of Missouri. It's the -- either the Gateway to the West or, as my late father would say, the back door to the east, depending on which direction you're headed in. But that being aside, I certainly appreciate -- as you all know, we have quite a few former atomic energy sites in our area, predominantly the Destrehan site, which was I believe based in downtown St. Louis, as well as the Weldon Spring site, which is a rather large site that has just recently been cleaned up out in Weldon Spring in St. Charles County, about 25 to 30 miles out Highway 40, just across the Missouri River. There are some other sites in Hematite*, as well,

vicinity properties and what have you, so this is very helpful, I believe, to myself as a member of the committee, as a member -- a staffer of the committee and someone who works on Missouri issues in this area. Again, thanks for coming.

I think it's also helpful to the public. We certainly appreciate this. I want to commend NIOSH for coming in and all of you for making the long trek in. This is a very highly complex issue, and I realize it's not the easiest piece of legislation to implement. And what we need to find out is from experts in the field, we need to get your feedback. And I certainly thank everyone for showing up here today. I know there's quite a few interests. You know, you can imagine a lot of the constituents here are a little frustrated right now. But you know, again, I understand it's not the easiest piece of legislation to implement. But again, I just wanted to give y'all a warm welcome and thanks for coming. This is, I believe, very -- going to be very helpful.

MR. ELLIOTT: Thank you, Tom. Dr. Ziemer had to step away for a moment. He'll be right back I'm sure.

Anyone that has signed up, we don't want to take time away from this afternoon. We will commit to having public comment period as the agenda specifies later this afternoon.

Next on the sign-up list is Carol Bergesh Lueddecke. I hope I didn't mess your name up.

MS. LUEDDECKE: (Inaudible)

MR. ELLIOTT: Okay.

DR. ZIEMER: For the record, she's indicated that her questions were already answered. Yes, thank you. Denise Brock? Denise has been with us before. Denise, do you want to proceed now?

MS. BROCK: I, too, would like to thank you all for coming to St. Louis. I know I've asked several times and I'm happy to see you here today. Again I have several questions or comments. I guess my first would be to Tom Rollow from DOE. Is that okay if I do that?

DR. ZIEMER: We can have you pose the question, Denise, but we may -- depending on the length of the answer, we may ask Tom to answer that separately.

MS. BROCK: Okay. Thank you. To the willing payer issue, I guess I'm somewhat perplexed by that. I

noticed you mentioned another state, but we're in Missouri and we have that same issue here. Willing payer seems to be -- to me to be somewhat of an oxymoron. I don't think anybody really wants to pay this from this area. We have a situation that -- here that Mallinckrodt years ago had private insurance. And then of course you've got a statute of limitation problems. Now we've got Tyco that purchased Mallinckrodt, and I believe Tyco has their own set of issues. So I'm really curious. Are these people without remedy on Subpart D? We don't have anybody to take care of this, so where does this go?

DR. ZIEMER: Why don't you go ahead with other questions. These questions will go on the record, and then -- depending on our time -- we may allow some responses. But as I indicated earlier, this is not intended to be a question/answer session for the public comment period.

MS. BROCK: Okay. And then I guess maybe another one, for the record again, would be to Tom Rollow as far as documents. And maybe I'm asking the wrong person, but I'm wondering about FOIA requests, maybe from -- to Amy

Rothrock*. If we are trying to obtain certain FOIAs that have documents and memos in there, is it possible to -- do you take those into consideration under Subpart D, as well, as far as exposures to people. And I understand that a lot of these diseases have latency periods. How does that factor into a worker's comp? If a worker didn't become sick until years later, is there remedy for that person?

Go ahead? And I would also like to address the outreach. We had 3,300 employees -- direct employees of Mallinckrodt; 400 of those -- or somewhere around 400 -- have filed claims. I believe there was not a whole lot of outreach in this area until recently. And I believe it's everybody's responsibility, and I include myself in that, to try to contact each and every one of those 3,300 employees or their survivors. Anybody that was exposed to any of this radiation and was made ill or died, they deserve compensation or their surviving family members do. And I don't know what it is that we need to do to get that word out there. But again, it's not just the direct employees. We have building and construction trades council

meetings that I try to attend -- anybody involved in cleanup, dismantling or construction of these facilities -- and I just don't know what else it is that we need to do to try to get that word out there. And it is a complex program, but the way I try to tell everybody, it was just split into two parts. One was implemented by DOL and the other one's by DOE. But I think that a lot of this just needs reform and there just -- there has to be a way to do this. The money's there. We have to find a way to get the word out to these people and take care of them.

Thank you, and I'm sure I'll have more tomorrow.

DR. ZIEMER: Thank you, Denise. In terms of the two questions you raised, those are questions that the Board members may also wish to know the answers to. And I'm going to suggest, Tom, if you are able to address those now, we'll give you some time to do that. Otherwise, if you could supply the answers for the record later, both to the Board and to Denise.

MR. ROLLOW: I can answer those now. Let me get to the microphone.

DR. ZIEMER: Tom can address those issues now.

MR. ROLLOW: The first question had to do with the wiling payer issue, and it's a very complex issue and not very satisfactory for some parts of the community. The law ordered the Department of Energy to not -- to order its contractor not to contest a claim in the Workers Comp system -- in the State Worker Comp system. The Department of Energy does not pay claims directly. There is no fund, no entitlement to pay these claims. It basically uses the State Work Comp system. The law is very specific that it says the Department of Energy can order a contractor who employed a contract worker not to contest the claim.

The problem we have is that there are a lot of facilities where DOE -- there are some facilities where DOE is no longer present and has no contractor at that facility. And so no relationship, no contractor that we can order not to contest the claim.

In other cases, there are subcontractors that may have worked at a site who did not work for our contractor, but worked for a subcontractor, and they came to the site either with their own Work Comp arrangements, and we have no -- we just have no vehicle, no legal way to

order them not to contest -- to order someone not to contest that claim, and that's the willing payer issue. Yeah, "willing" is a funny word, but there is no payer there -- now, does that mean there's no payer? No, it does not. Workers Compensation in each state works differently and different rules, but you can apply for Workers Compensation, but what you don't have is the Federal government perhaps at the tail end of that process. But there may be a State fund, there may be insurance companies that hold policies. They'll have to review that.

You also mentioned a question about FOIA, Freedom of Information Act, requests and can that information get into the process. I'm not really sure that I understand your question there, but you also tied it up -- related it to getting sick later. You want to clarify that?

MS. BROCK: Yes, I'm sorry. I probably confused the two. I'm wondering if -- if a claim is denied under Subpart D -- and I'm not really -- I have to say I'm sorry because I'm just not as familiar as what I should be with that program. But hypothetically, if that goes

in front of that physician panel and that claim is somehow denied for whatever reason, maybe that person -- I don't know, is that saying there -- is it similar to the dose reconstruction? Would it be saying that that person was not exposed enough? And I'm wondering if a FOIA request that would have extra information in it could be obtained and reviewed. Does that somehow factor into Subpart D?

MR. ROLLOW: Okay. In the Subpart D process every applicant is allowed to submit items for the record. And so if they have FOIA'd from former employers or from the Department certain information that they want to see in their record, they can add that to their record. And there are several opportunities in the process, including they get a last look at the package before it goes to the physicians panel.

The physicians panel does not deny anything. The physicians panel either has a finding that it was more likely than not that their illness or injury was caused by their work at the Department of Energy, or they do not have that finding. That doesn't necessarily mean that this person will see a denial in the State system.

It just means that they will not have a positive finding from the physicians panel.

MS. BROCK: Okay. Thank you.

DR. ZIEMER: Thank you very much, Tom, for clarifying those issues for everyone.

Clarissa Eaton, are you interested in speaking now or would you prefer to wait till this afternoon?

MS. EATON: I'll speak now.

Good afternoon. Thank you for coming. My name is Clarissa Eaton. I'm from Festus*, Missouri. Fortunately I'm not a claimant, nor do I have any family members who are claimants. I am a board member of the United Nuclear Weapons Workers of the St. Louis Region.

And just to give you a background of how I got involved in this, our home was contaminated by Mallinckrodt. Right now there's -- at least we know of 60 pounds of uranium about 3,000 feet from my home.

I realize that we have a serious problem here in the state of Missouri. I'm glad somebody's here from Kit Bond's office. We haven't heard a lot from his office and I'll be sure to keep that in mind at voting time.

I am here on behalf of the weapons workers who once worked for my behalf as an American citizen. It is my duty and honor to be here to express my concerns, for the public record. We owe this to the men and women who worked to protect the United States.

First of all, I'd like to say that the missing records, I don't believe that that's an accident. It seems to be typical these days with these big corporations and it seems to be standard operating procedures. In that case, I believe that the worker deserves the benefit of the doubt and that the burden should not be on the employee, and that we need to get serious about addressing the health concerns and hazards to these workers, and come forward and do your jobs. And I would appreciate that, and I know the families would.

I also believe that, as a DOE facility, that everyone that worked at these facilities after, whether it be commercial, should be included because of the residual contamination that was left over. I don't think it should stop at the Cold War weapons workers because essentially after that, the walls, the buildings -- to this day the plant in Hematite is so contaminated it

should have been dismantled in 1974. Instead it was sold to a commercial facility and they played a big game of hot potato and just kept selling the property and not addressing the cleanup problems.

Missouri has now become a state of pollution, and we have a serious problem here, and I hope that everyone here hearing this message will lift the veil of what has been going on. You, the professionals, the health and safety people, the chemists, all the high-paid people that should have been watching out for us, including the State agencies, they have really let me down. I am astounded at the things that are going on right under our nose and in our own back yards.

I also would like to ask about the other health-related conditions that aren't mentioned. I know there's cancer and -- but I know there's also a lot of other things that aren't ever mentioned, like Parkinson's disease, different things that are affected, like the degreasers and things that were used to clean up this radiation stuff. I know TCE, which is another thing that is in our water that my family was drinking -- there's lots of things that aren't discussed or

covered. And I know if it was my grandfather or one of my family members, I would definitely like to see that they get justice.

I think this process is extremely slow, and I think it's embarrassing, and it's also insulting to the claimants. Thank you.

DR. ZIEMER: Thank you very much, Clarissa, for your comments.

Let's see -- oh, Bob Tabor. I'm trying to read the writing here. Bob has been with us before. Bob, do you wish to address us this morning or --

MR. TABOR: Yeah, very briefly. I'm Bob Tabor from Fernald Atomic Trades and Labor Council from the greater Cincinnati area. Just say I'm happy to be here once again.

I just wanted to follow on with some comments that Tom Rollow made. He mentioned a few weeks ago that the DOL, DOE, people from the Workers II compensation -- no, not compensation, the health program that's provided the employees there. There was an outreach effort at our site. I think there was probably maybe, just by my visual estimations, 200 to 300 people

probably that turned out for that, mostly retirees. Unfortunately, I think more people left more confused. Jim was there, by the way, also.

Our people that participated on the panel, as well as myself, I think did an excellent job as specialists, you know, in their particular area. But the efforts to communicate that as an outreach, you know, effort wasn't well planned as far as how do you coordinate the communication so it makes some sense to the people. I believe that possibly some kind of an overhead that may simplify the program, because people would speak to like Federal programs, and maybe somebody in the audience would ask well, how many programs are there, and -- you know, and one said well, we have two programs. We have a Federal program for this and a Federal program for that. You know, personally, I believe the answer should have been there's the Energy employees occupational compensation act program and it's got two subparts, kind of something like your overhead showed there. And you know, this subpart is handled by this particular agency and this part handled by that agency. This is not rocket science to bring

that kind of a communication across to these folks. You had a lot of confusion inasmuch as a number of these retirees is something that we need to take into consideration when communicating, you know, anything in outreach is that a lot of these folks have already applied to states for compensation, way before any of these programs were invented. So there was confusion over, you know, the DOE's Office of Worker Advocacy and state compensation efforts there, as opposed to people who have already previously applied directly to the states, as well as those who've applied to the DOL for the Subtitle B, you know, process.

I appreciate the effort that was made. Unfortunately, it didn't come off as good. So my comment would be that if we do anything like this in the future, you know, to also try to provide outreach to people who maybe don't know about the program, that we think our way through this and have some overheads with some simple explanation of just the basic structure of the program, you know, from that perspective.

It's easy for me to get up and explain to somebody how to do that, but after all, I've been to every one of

these sessions and I deal with this on a daily basis, you know, on my own home ground for those folks making application. And of course I will say I'm very pleased with the progress that's being made with the resource centers. Those folks are really making a genuine effort to re-establish credibility and to help those claimants out there. So you know, I applaud them for that effort and whatever Department or Agency's responsible for that.

On another note -- let me see, another comment that I'd like to make here -- and it might be -- I don't know if I want to form this in the way of a comment or a question. Willing payer issue. There's some confusion, I think, with a lot of the claimants out there relative to the Department of Energy's -- let me see if I can frame this right. Some people believe that the Department of Energy is supposed to have told the prime contractors not to oppose the claims at the state level. I'm not so sure that we don't need some additional clarification, or maybe I don't understand it.

Apparently what it is is people that have claims or

make claims at the state level, at least those that I know that have made those claims that were maybe employees at my site, the prime contractor has showed up with their legal people and have opposed those claims. And that left the claimant somewhat surprised, because their impression was well, we thought the DOE was telling the prime contractors not to do this. My basic understanding is that that does happen, but only if you have worked your claim through the Office of Worker Advocacy and it's been seen by the physicians panels and some decision has been made one way or the other.

Now I don't know which it is, but I know that prime contractors are showing up because most of -- are saying well, this didn't happen on my watch. We have -- we have a claim number with the state and this didn't happen under our claim number. Whereas the position of the unions and the employees are well, it's our understanding, you know, that -- this would be the union speaking in this sense -- would say well, it's our understanding that, you know, when a new prime contractor takes over this site, he inherits, you know,

the work force and he inherits the problems that that site had previously. So when you make a claim, as far as I'm concerned, it should be under the current prime contractor. But the current prime contractor says well, wait a minute here, you're going to have to file that claim with the previous contractor, or the previous contractor before that.

So there's some considerable confusion relative to Workers Comp claims, the recommendations coming from the DOE to the prime contractors and what that criteria is, and possibly Tom might be able to clarify that because it's difficult for me to answer a lot of our claimants' questions on that. Does any of this make any sense, what I just said? And maybe that might be a subject matter that could be offered up for some clarification at whatever point in time.

DR. ZIEMER: And thank you, Bob. And Tom, if you do want to respond at this point, I'll certainly give you that opportunity, or maybe you can bring some clarification for everyone, as well, on that issue.

MR. ROLLOW: Sure.

DR. ZIEMER: Or those issues.

MR. ROLLOW: I mentioned earlier an equation that had about 20 variables in it, and you just went through about 16 of those variables. This subject really needs a lot more time than we're going to be able to give it today, so I'll give you a couple of short answers on it.

The program -- the legislation tells the Department of Energy not to contest claims that do come through the Subpart D program only, so that's what the order is from the Congress to the Department of Energy. That's what my office does.

Commentary on the Workers Compensation process in this country at the state level, it does tend to be an adversarial process. Both sides are challenged to prove their points. The claimant's challenged to prove what they're claiming, and the contractor or the contractor's representatives are challenged to disprove it, or prove the truth lies somewhere else. And so I apologize for that, but that's -- that's the way the process works.

To my knowledge, the Department of Energy has not put out a do-not-contest order to other than claims that

come through the Subpart D process. And there's reasons for that which we don't have time to go in today, but the state process has to work the way the state process works, and the Federal government has no say in that. And those -- those rules are made up by the states. And we're not asking our contractors to roll over on every claim.

Now if there are some over-adversarial relations that take place at contract sites that you're aware of, then those issues might need to be raised either with the Department or with the local management at those sites. So does that answer your question, I hope?

MR. TABOR: Yes.

MR. ROLLOW: Thank you.

DR. ZIEMER: Thank you very much, Tom. We're now going to take our lunch break. I do want to emphasize that there will still be the scheduled public comment period this afternoon, as well. We do thank those who commented already for being willing to move their comments up earlier in the schedule. But again, that doesn't preclude the same individuals or others from commenting later today.

We will break for approximately an hour and a half, so let's shoot for 1:15 return time, which is just slightly earlier than what is on the schedule, since we are breaking a half-hour early anyway. So let us return at 1:15, please. And it's okay to leave things here. I gather the room will be locked.

MR. ELLIOTT: Will be monitored.

DR. ZIEMER: Or monitored, at least. Thank you very much. We're recessed till 1:15.

(Whereupon, a lunch recess was taken.)

DOSE RECONSTRUCTION WORKGROUP

DR. ZIEMER: Not quite the gavel, I don't have my gavel today, but we will come to order.

We're going to now begin our discussion from the dose reconstruction work group and Mark Griffon will lead us through that, and then we'll have a discussion period. Mark, are you set to go?

MR. GRIFFON: Yeah. If it's okay, I'd just as soon present from here 'cause I was going to go through some of these documents and we'll probably be shifting documents around, so...

Just wanted to give an update on what the working group

has done on the dose reconstruction review work. Since the last Board meeting, the working group has had a few other meetings. We agreed to meet in Cincinnati and primarily the purpose of that was to meet with the NIOSH staff and sort of walk through the procedure on how to process claims and -- and work on the other tasks that we needed to -- to complete, which were the site profile review task and the case tracking task. And so we met in Cincinnati September 8th and 9th, and then we did a follow-up conference call on October 10th to finalize some of those documents, and that's what we have here today mainly to focus on is the -- if you remember the last meeting, we had talked about the individual dose review task -- individual dose reconstruction review task, as well as the methods and procedures review task. And the Board voted on those and approved those. And now we have before you -- I think we've passed these out. Right, Paul?

DR. ZIEMER: In the packet, I believe.

MR. GRIFFON: In the packet are the site profile review task and the dose reconstruction review tracking task. And then the other document, which you've seen before

-- I even think we discussed this other document at the last meeting. It's called the Advisory Board on Radiation and Worker Health Procedure for Processing Individual Dose Reconstruction Reviews. So this is sort of our procedure on how to proceed with the case reviews. And this has been substantially modified from the last time the Board met. So those three items are really the new things that the working group is bringing before the full Board.

What I'd like to do is just walk through those and highlight some ma-- you know, significant changes, and then maybe, you know, we can open it up for discussion, if that makes sense.

Let's see -- okay. Let me start with that procedure first, the Procedure for Processing Individual Dose Reconstruction Reviews, if people found that. That's the lengthier document, three-page document.

DR. ZIEMER: In your packet I think it's the second document under that tab. No, third, I'm sorry. Or maybe I have the wrong one.

UNIDENTIFIED: The one with all the bullets towards the --

MR. GRIFFON: Oh, it starts with all the bullets at the top, yeah.

DR. ZIEMER: Okay, got it, right.

MR. GRIFFON: Okay?

DR. ZIEMER: It's actually the fourth one, then.

MR. GRIFFON: Is it the fourth -- the fourth one in the book, yeah. Wanda, you got that?

MS. MUNN: Well, it's the fifth one in mine.

MR. GRIFFON: Okay.

MS. MUNN: I have the bullets.

MR. GRIFFON: All right. Some of this you'll recognize from the last draft that we worked on with the full Board. Highlights of the changes, and I'm not saying this is every word that was changed, but the main things we addressed -- Section A, Selection of Cases for Review, the main points to note are that the cases are selected by the Board and the cases are randomly selected -- stratified random selection on the parameters of interest. And in a later section, I think we outline -- in the case tracking procedure, actually, we outline some of those parameters of interest. And also in that section we note that the

contractor will be responsible for tracking progress on the case reviews.

Section B, things here of particular interest to us is that -- if you look at this, we're talking about 25 cases every two months, on average, I guess is the way we're looking at this. And that's -- later in this document we mention that that's six cases to four three-Board-member panels. So we -- we -- and the reason we -- we debated on this issue of -- all Board members are going to be involved in reviewing the cases. We thought it made most sense because different Board members are going to rotate off the Board at different times. We thought at the outset everyone should be involved to do some of these reviews so we could construct four-member panel-- three -- or four three-member panels to do the reviews. So that means every two months, each of us is going to have to review six cases. This doesn't really address conf-- you know, conflict of issue -- interest issues whereby you might have to recuse yourself from certain panels and certain cases. But on average, we're saying probably the commitment from Board members is going to be six

cases between every Board meet-- every two months. This section also -- another thing to note is that the section does call for a subcommittee. You'll see the dose reconstruction subcommittee, and I think in our working group we agreed and we actually drafted a draft charter for a dose reconstruction subcommittee to oversee the review of the -- of the -- of this process. And you know, one of the primary reasons for that is that, by definition, the subcommittee would have to be an open meeting to -- open to the public, whereas these working group sessions are sort of ad hoc and not open -- you know, not necessarily open to the public. So we thought that once we start the reviews, we should have it more formalized and that it should be an open process, and we're recommending that a subcommittee be formed to do that task.

DR. ZIEMER: And I might insert at this point, you recall that a working group is more like an ad hoc group. It has a specific, defined task, whereas a subcommittee is an ongoing group. We see this as an ongoing effort now from this point forward --

MR. GRIFFON: Right.

DR. ZIEMER: -- as opposed to a single sort of one-time effort thing, and therefore it would call for a subcommittee under FACA rules since it would be an ongoing -- more like a permanent committee of this Board and therefore becomes a subcommittee and we'll have to follow those guidelines in terms of the constitution of the committee, the charter and the rules of engagement. And we'll address that at a later point then.

MR. GRIFFON: Section C talks about the distribution of data. Some of the primary things we discussed here with the working group was questions about privacy and Privacy Act issues. And I think we came to the conclusion that NIOSH was going to provide de-identified data for all these reviews. Is that -- I'm not sure if you -- we finalized that, but that was the -- yeah.

MR. ELLIOTT: That was your recommendation.

MR. GRIFFON: Right. Right, I think NIOSH is looking into the cost and timeliness issues on that -- in that regard, but that -- that is -- our recommendation is to -- that all the -- all the reviews would be done on de-

identified data to avoid Privacy Act concerns.
Section E -- or Section D was -- it didn't really change. It was the interface of the Board and review contractors with relevant experts, and that section basically remained the same as in the last document. And Section E -- yeah, the main -- one thing to note here is that -- and I think this is for the contractor, which -- which has a -- the contract has been awarded, and I think it's good for the contractor to note in this section that there's a great deal of interface between the Board and the contractor, and that's spelled out in pretty good detail here on how closely the contractor will have to work with the individual panels and the subcommittees and -- and have to present back to the full Board, so they're going to have to take that into account in their -- in their planned work.
Section F -- Section F specifies the reports that will come out of this process, the summary reports and that's -- that's -- each panel will provide a summary of the six cases that they review. This is aggregate data. You know, we're not -- we're not bringing a

report back on each case that you reviewed, necessarily, but it's a summary of the six cases. And then there's an aggregate report from the Board to HHS, so those are spelled out there.

And finally, Section G is recommendations, and I don't think that was greatly modified from the last time. Does it make sense to stop here and discuss this and then go on to the other two then?

(Whereupon, Dr. James Melius arrived and joined the Board members at the table.)

DR. ZIEMER: Yes, I think we should see if there's any questions or comments on this draft. This would be basically an operational document that, if we approve this, it becomes our working guide, as it were. And it's our own document, so it could be changed at any time.

MR. GRIFFON: Right.

DR. ZIEMER: It's not like this is a final recommendation to somebody. It's our own process or procedures, which can be added to, modified, whatever, as we get further into the process. But at least this is how, presumably, we believe it should proceed at

this time, once we've agreed to it. So comments? Okay, Wanda first.

MS. MUNN: Are we going to, in one of the other documents, discuss the subcommittee itself? Or is this an appropriate time to be asking questions --

DR. ZIEMER: We can --

MS. MUNN: -- like how large do we --

DR. ZIEMER: -- ask questions --

MS. MUNN: -- expect this to be?

DR. ZIEMER: -- now, but that would be a separate action. The makeup -- I lost my volume here. The makeup of the subcommittee -- is the operator back there? I think I lost volume here.

MS. MUNN: Yeah, you did.

MR. PRESLEY: Can you turn Dr. Ziemer up just a little bit, please?

DR. ZIEMER: Or at least turn my mike up. There, it's back, I think. Thank you.

But if you have questions now, that is part of the recommendation. But I think it'll be a separate -- basically a separate charter and an appointment -- an official appointment of a subcommittee.

Also -- this is really getting strong now. Welcome to Jim Melius. Jim, we're glad to have you join us. The record will show that Jim has now arrived, so to speak. So did you want to raise a question on that part, Wanda?

MS. MUNN: My only question had to do with how large this subcommittee was envisioned to be. I'm thinking the subcommittee, and beyond that, each member of the Board, will be dealing with a certain number of cases. And I guess my -- I can't quite identify how large or how small others are envisioning this subcommittee to be.

DR. ZIEMER: Well, what the -- the group has recommended that there be a chair, at least two members and a government representative. I believe you envisioned this -- four is the minimum size, I believe.

MR. GRIFFON: I don't know that we made that recommendation, but yeah, I was thinking of something similar to the size of the work-- the existing working group. You know, not larger than that, but -- and I don't know if there's FACA requirements on the size or makeup of --

DR. ZIEMER: We can check on that, but at some point we had -- I thought your group had developed that recommendation.

MR. GRIFFON: I don't -- I don't recall.

DR. ZIEMER: Well, in any event, then if it's not yours, it's going to be the Chair's. Somebody's got to claim it. Anyway, it would be probably a minimum of four. It might be five. In that -- in that range.

MR. GRIFFON: In that range, yeah.

DR. ZIEMER: This would serve as kind of a steering committee, be responsible for -- well, guiding the process, if I can use that terminology.

MR. GRIFFON: Right. Yeah, I mean I think the subcommittee is going to have some ongoing, you know, work. And I think we -- we did discuss at the working group that, you know, the Board may choose to delegate some responsibilities to the subcommittee, for a lot of reasons, but one of which is just the timing. You know, if -- if the contractor had to wait for the Board to meet each time for certain decisions to be made, it might be -- you know, might be very cumbersome. So one of those tasks might be the case selection process. So

there is some work for this subcommittee to do in a -- on and above the panels, you know, the individual panels. Jim?

DR. MELIUS: Yeah. I guess I'm on now. I'm not sure if I'm asking the same question Wanda did, but I think we can assume that this document would work within some structure which we have to talk about, whether it's the -- a subcommittee, whatever. And then we would then sort of fill in some of these -- who would do some of these tasks or how some of this would get -- be made operational at some point. So we would approve or, you know, make whatever appropriate changes are in this document, with the understanding that we would then, as we sort of fleshed out the process, be going back and might -- you know, might -- having said this, you know, the subcommittee will -- you know, based on cases selected by the subcommittee in some way or things like this. Is that how we're envisioning this --

MR. GRIFFON: Yeah, I think so. Yeah. Yeah.

DR. ZIEMER: Other questions on Mark's presentation so far?

Now we can go ahead and act on this document, which

comes, I believe, Mark, as a recommendation of the working group for adoption by the Board. Is that correct?

MR. GRIFFON: Yes, yes.

DR. ZIEMER: Or would you rather wait and have in context the other documents that are sort of part and parcel of the bigger package before you vote on them individually? Would you rather hear the rest of the picture first?

MS. MUNN: I'd rather hear them all and then vote individually.

DR. ZIEMER: Okay. Anyone object to that?

(No responses)

DR. ZIEMER: Then we'll come back individually and act on each one. Is that agreeable? Any objection?

(No responses)

DR. ZIEMER: Without objection then, Mark will proceed.

MR. GRIFFON: Okay. The other two documents, the Site Profile Review task is the first one, and this is a task that we generated -- a lot of the language you'll see in the --

DR. ROESSLER: Second to last.

MR. GRIFFON: Second to last in the notebook, Gen says. Site Profile Review task is -- again, I think you've seen the first draft of this. A lot of the language was extracted from the RFP. The primary addition to this was in the third paragraph, the large paragraph at the bottom of the page. We added -- tried to add some more specificity to it, since we've seen a few of the site profiles that have come out. One part in particular talks about we're reviewing the worst-case estimates. It's near the bottom of the paragraph, so there's language in there about the fact that they shall review the worst-case estimates -- and NIOSH/ORAU have included in some of their site profiles worst-case estimates, so the -- the -- for the most part, it is similar to the last draft.

The other things in -- that has been added to this document is on the second page, Period of Performance and Deliverables. You know, we're asking the contractor up front to give a procedure on the site profile review process and how do they plan to review these site profiles, proceduralize it for us. They would -- they would come back to the Board with that

procedure for our approval before they proceed.
Also in the Period of Performance, we estimated ten to 12 DOE site profile reviews and two to four AWE site profile reviews. This is quite a bit of a larger scope than I think we projected in the initial RFP, but we've also seen a shift -- a lot of these are going to be out early on, and we think this'll probably be front-loaded. In other words, in years two through five of this contract, you -- there wouldn't be as many site profile reviews to do, so a lot of these are going to occur in this first year. And so this is a larger task item than I think I envisualized it when we did the first draft of the RFP. So that -- that was the other specific that was added. We -- we tried to estimate the number of DOE sites and AWE site profiles that would be reviewed.

DR. ZIEMER: Okay. And this appears to incorporate most of the changes, or maybe all the changes we talked about before, as far as I can tell.
Tony, comment or question?

DR. ANDRADE: Question, quick question. Given that the scope now includes some -- oh, perhaps a minimum of 12

sites, including both DOE and AWE sites, then I guess the question is, this task would not really begin until a number of site profiles have been developed by NIOSH. So this task will probably not be issued for some period of time yet?

MR. GRIFFON: I'm not sure exactly of the timing of the site profiles. I know there are a bunch currently in the hopper and ready for -- almost ready for approval, so I don't know that we would have to delay the task a whole lot before releasing it, but maybe Larry can help us out there, or Jim.

MR. ELLIOTT: Well, yeah, let Jim answer this question.

DR. NETON: Yeah, this is Jim Neton. We have a goal to complete a large number of site profiles by the end of this calendar year. I was going to address that tomorrow, but I believe right now we've anticipated 15 major sites -- those are DOE sites -- to be completed by the end of the year. Again, that's a goal, a target, you know. There may be situations outside our control that might delay those slightly, but -- but that's the plan.

DR. ZIEMER: But it certainly appears that there would

be no reason to -- to delay getting underway with this part of the task at some level. They're obviously going to be all done at once, anyway, from -- as far as our review's concerned, anyway, so...

DR. ANDRADE: Okay. Well, my question stems from this concern. I know that the initial site profiles that are being developed are being -- and I don't want to say this in a prejudicial way, but some of the simpler sites, some of the sites that perhaps dealt with one isotope or maybe just a few and had limited operations are being looked at first. And I wonder if that's going to affect the overall product of this particular task.

DR. NETON: This is Jim Neton again. That's not the case. Actually the site profiles are being completed principally on the number of claims that are out there outstanding, so you -- it will cover the majority of the sites that, you know, had complex isotopic work and that sort of thing. These would be the major DOE facilities covering somewhere approaching 80 percent of our claimant population.

DR. ANDRADE: Good. Thank you for that clarification.

DR. ZIEMER: Okay.

MR. GRIFFON: I know, also, again, you know, with this -- the Board is going to control the selection of the sites for review. I'm not sure how it would work, though, hypothetically, as Tony was saying, if there's not a -- enough sites that we are interested in reviewing that are completed, the profiles. I don't know if this task can be, you know, sort of a no-cost extension kind of idea or -- or how that works. You know, if this -- in other words, if the year's run out and they've only done three site profile reviews, I don't know how that works in the task contract approach, but anyway...

DR. MELIUS: I have a question along the same line.

MR. GRIFFON: Jim.

DR. MELIUS: It would seem to me that we're almost forced to put a lot of the -- as you said, front load on the site profiles and get a number of those done, because if I understood from the last meeting how NIOSH is going to go about doing the individual dose reconstructions now, they're going to be very dependent on the site profiles. So we're going to be evaluating

the individual claims, we're going to be referring back to these site profiles as part of that process, and I don't know if this working group has thought through -- I mean I don't know if we have enough information yet to sort of figure -- to work this out, but to me, the two are much more intertwined than I think we thought originally they were going to be. We were under the impression that the site profiles would be sort of developed over time, some way built from the individual cases, where now we're going -- starting from the other end. I don't know, you know, whether five years from now there's really any difference. I don't think so, but certainly at this point it's going to be very dependent on -- the initial cases for some period of time are going to be very dependent on what's in the site profiles. At least, you know, a high proportion for each site. So I think -- I think we need to put a large task out early to look at some of those. How we sample from those and so forth I think is a little bit more challenging. I think that's a good point Tony -- Tony makes about that. But I do think we're going to have to -- to spend a fair amount of the effort

initially looking at those site -- site profiles.

MR. GRIFFON: And we did base this, you know, this ten to 12 number was based on Dick Toohey's projections and Jim's and Dick's projections on, you know, when they were going to complete -- so we're assuming there's going to be a fair amount of sizeable complex sites that we'd be interest-- you know, be very interested in reviewing.

DR. ZIEMER: I think here in the procedure you have to proceed as if that's the case. And number two, one of the things that I believe we're asking the contractor to do is recommend to the Board the sampling procedure of the profiles. Is that not correct? In other words, how are we deciding which profiles -- this is not 100 percent profile review. Second paragraph says there'll be a review process. Procedure may include recommendations -- let's see -- contractor shall review selected profiles. And part of this -- the contractor has to come to us, I think, and say how are you going to select these, what's the process.

MR. GRIFFON: Well, we --

DR. ZIEMER: And whatever that process is, is in a

sense independent at that point of whether the profile's done or not. He may select one and we say okay, this is one we want to -- to review now. Oh, it's not done? Well, what then? But --

MR. GRIFFON: Yeah, I did -- I did call, in this document, for the contractor to develop the site profile review procedure, which could include, you know, the selection process. I do, however, think that that function has to remain a Board function --

DR. ZIEMER: Yeah, it says --

MR. GRIFFON: Right.

DR. ZIEMER: It comes back --

MR. GRIFFON: It says --

DR. ZIEMER: -- to the Board for approval.

MR. GRIFFON: Right. So I agree with that, yeah.

DR. ZIEMER: Yeah, I mean we --

MR. GRIFFON: Right.

DR. ZIEMER: We're not going to let the contractor say I'm going to take the --

MR. GRIFFON: Right.

DR. ZIEMER: -- 12 smallest sites and review them. There's got to be some rationale for how they're

selected that the Board approves.

MR. GRIFFON: Right.

DR. ZIEMER: But once having done that, then you have to turn around and say okay, are those profiles available.

MR. GRIFFON: Uh-huh.

DR. ZIEMER: And if not, what do we do. Jim, another comment.

DR. MELIUS: I think there's also a point, thinking through this process -- for the Bethlehem Steel site, I mean an individual dose, you know, case would -- it's the same as doing the site profile. I think, you know, they overlap so much 'cause it's -- you know, everything was built from that site profile, I think. You go to a Los Alamos or a much more complicated site, then you're going to have a mix of some things covered by the site profile, some not. And we may want to rethink that matrix of how to select cases -- individual cases based on how we've done -- you know, what site profile reviews we've done. There's no sense in repeating -- you know, if the entire individual cases depend on the site profile --

MR. GRIFFON: Right.

DR. MELIUS: -- there may -- we may not want to put as much effort into that. I mean we want to make sure that they followed it correctly, but it certainly wouldn't take as much time and effort as -- as doing a full site profile. Other cases -- we may want to somehow select cases that aren't well covered by a site profile 'cause those may involve, you know, more difficult technical circumstances. And I think having the contractor do that is -- is I think a good first step in terms of thinking through and -- I mean the only real I guess more complicated site profile we -- we've seen, I guess the one of the two is the Savannah River, and so working off of that and based on what information Larry and his staff have already gotten about the mix of cases there, they can probably I think come up with a pretty good plan, but -- provide a good review without a lot of duplication of effort and...

MR. GRIFFON: That makes sense.

DR. ZIEMER: Wanda?

MS. MUNN: How does the working group arrive at the choice of numbers for the number of sites that are

going to be reviewed? I guess my real question is what percentage of the total sites that are going to be profiled are we talking about when we say ten to 12?

MR. GRIFFON: I'm not sure what percentage that works out to, but -- Jim's going to answer that.

DR. NETON: Yeah, I think -- I think, if I recall, at the working group meeting we actually provided the site profile completion plan for review, and I think at that time we had something on the order of 15, so ten or 12 would be the majority of the site profiles that were going to be completed in this calendar year. But they are the major sites.

MR. GRIFFON: And the -- I guess the rationale for -- for picking such a high percentage was that they were going to impact on so many cases anyway, as Jim was talking about, given the -- the presentation we had at the last few meetings. It's pretty clear that, you know, these are going to be relied upon heavily for individual dose reconstruc-- so we thought in the first year it was important to -- to -- for the Board to review many of these, especially for the larger sites, because they're going to impact so many individual

cases and how they'll proceed. So we do front-end it -- front-end load it with a high percentage. I don't see that happening in the two, three, four -- you know, further years out of the work.

MS. MUNN: In the interest of expediting our entire process, there is some question in my mind as to whether or not this large number is justified if we do in fact find, in initial review of some of the earlier large site profiles, that the process and the result appear commendable, reasonable, acceptable.

DR. ZIEMER: And the point you're making then is that if the -- what you might call the audit process shows that the process is working, that it may be not necessary -- we don't have to validate every site profile. That's not necessarily the job. The job is to audit and find weaknesses in the system.

MS. MUNN: In the system or the process, and --

DR. ZIEMER: So you're suggesting that --

MS. MUNN: -- I guess --

DR. ZIEMER: -- the number may turn out -- you might want to do more or less, depending on what you find --

MS. MUNN: That's --

DR. ZIEMER: -- early.

MS. MUNN: I guess the word "will" stopped me there, where we say the contractor will perform this certain number. I'm wondering if it isn't -- if it's necessary for us at this juncture to establish such a high number as being absolutely necessary to be done. That's my bottom line question.

DR. ZIEMER: Anyone on the subcommittee want to respond to that one?

MR. GRIFFON: Well, I mean I guess -- you know, the rationale in my mind was that -- that the -- especially for the larger sites, that it was going to impact a lot of dose reconstructions and -- I'm not sure that we need that strong of -- you know, maybe we can back it off to "may", but I think the variety of those large sites, too, and the -- in my experience with the variability in the data at some of these large sites, you know, I think that they are unique enough that -- you know, it may not be necessarily true that if one was very sound that the next one is going to be as, you know, thorough or whatever. And it impacted on -- you know, I thought it was going to impact a lot on the --

on the large number of overall cases, so -- you know, maybe ten to 12 isn't the right number, but we thought we needed a large percentage -- of those major sites, anyway.

DR. ZIEMER: Others have comments on that issue? Roy.

DR. DEHART: Actually the wording, as it is written, gives us that flexibility because you're using the term "approximate" and you're giving a range from ten to 12. So it could be eight. But the contractor's going to need some kind of guidance in order to bid on this, or to give a figure, so he's going to --

MR. GRIFFON: That's part of why we had the numbers in there was to give them something to bid against, you know.

DR. ZIEMER: Others? Okay. We're looking for items that you feel should be modified. We'll come back and have formal approval again, but -- shall we proceed then?

I sense that there is some concern about the specificity, but we want a guidance number for our contractor. The approximate -- I don't know what the plus or minus is on the approximate, but ten to 12

sounds like a range. Is it nine to 13 or... But there's sort of a feeling that it's a little bit fuzzy. Is that what you're saying? Is it fuzzy enough or no? Okay.

Proceed, Mark.

MR. GRIFFON: The last new item is the Dose Reconstruction Review Tracking task, and this -- basically really, this -- responsibility for the contractor here is to develop a tracking system capable of -- the second paragraph outlines some of the parameters, and we -- in here I think we said that the following types of parameters, to the extent available or some language like that. I can't find it right now, but we left ourselves a little flexibility there, but these are some of the parameters that we may consider selecting across as far as our selection criteria. And we -- we want the contractor to develop a database system to be able to track the cases that are being reviewed on these parameters, and then in addition -- once they set up the database, they also have to do the tracking and give sort of progress reports back to the Board so that we know how many cases we've done and

what -- what they fit -- you know, how many approved cases did we review versus unapproved. You know, that sort of -- we can get that sort of break-out of -- of what kinds of cases we reviewed, sort of descriptive statistics of the kinds of cases we've reviewed. So that sort of just takes the tracking function -- originally I was thinking of that being a subcommittee task, but it makes a lot of sense to have the contractor just to do that task, to track the progress on these tasks -- or on these cases as we're -- as we're doing them.

And that's really the crux of that task. Anything to add from the working group? I don't think I missed anything.

DR. ZIEMER: This probably is something the contractor would have to do for their own purposes, anyway --

MR. GRIFFON: Right.

DR. ZIEMER: -- keep track of what they're doing. But we're making it a formalization where they provide that data to the Board on a regular basis. Are there any questions on this document, or items that need clarification, or additional parameters that should be

included?

Tony?

DR. ANDRADE: Is it envisioned that the same contractor will be doing -- for example, is the three levels of review on individual cases?

MR. ELLIOTT: There is only one contractor, so the same contractor will be doing all tasks that you place before them.

MR. GRIFFON: Have you announ-- have you announced the award of the contract or... Can we announce that?

DR. ZIEMER: It can be announced. Let's finish this discussion and then we'll ask the staff to formally announce the outcome of that bidding process.

Tony, was your question answered?

DR. ANDRADE: Yes.

DR. ZIEMER: All right. Mark, any other issues?

MR. GRIFFON: Those are the -- the three new items that we worked on. I did -- the only -- there was one other thing that came up during the development of the procedure for processing individual claims, the first thing that we looked at with the bullets here. One issue came up and Jim -- Jim's comment reminded me of

this, that we -- we will be doing a lot of the site profiles sort of at the front end of this process. A question came up as to whether -- when the cases would be available for review for the Board. And I guess the working group has taken the position that -- that once we have -- and -- and please step in if I get this language wrong, but once we have DOL's final approval, is that the correct language? Once we have DOL's final approval, our work -- the work group's recommendation is that those cases should be available for review.

DR. ZIEMER: Now we can ask Jim to clarify this, or perhaps one of the legal staff, but I believe there was a brief time period -- that might have been as short as 30 days after -- after DOL -- well, let's ask -- let's ask Jim or the staff to clarify when the cases would be available for review.

MR. ELLIOTT: They would -- they would be available for review -- is this not working?

DR. ZIEMER: There you go.

UNIDENTIFIED: It's got a short in it.

MR. ELLIOTT: Can you hear me now?

MR. PRESLEY: No.

MR. ELLIOTT: No, you can't hear me now? Bad mike. Cases would be -- oh, this is a good mike. The Chair got the best mike. I'll have to back away.

DR. MELIUS: You got the fuzzy bureaucrat mike.

MR. ELLIOTT: I got the fuzzy bureaucrat -- governmentspeak. The cases would be available for review upon the final decision from DOL. And as long as the cases is not in appeal, it would be available. Does that answer your question? Does that help? So once there is a final decision from DOL and there is apparently no appeal underway, that case would be eligible for your audit.

DR. ZIEMER: Did that answer the question? Whose question was that? Mark's, oh, okay.

Okay, let's go back now and see where we are. I want to ask a question -- we have in the packet a couple of documents that we previously approved. One is the individual dose reconstruction review.

MR. GRIFFON: Right.

DR. ZIEMER: But I notice that in this version there are a couple of marginal notes that have been added, which I think grow out of the presence of the three new

documents.
For example, statement of work on individual dose reconstruction review, the comment in the margin now says I believe this is what you have have -- this doesn't make sense -- what you have having done -- I guess what you are having done under a separate task, so you may want to delete this paragraph, referring to paragraph two.
Is that saying that it is now covered in one of these new documents and therefore doesn't need to be mentioned here? Or what -- what is that?
MR. GRIFFON: I don't know whose -- who made those comments, actually. Did -- who -- these are new to me, these comments. But the notion there -- this language has been carried through every draft and it's nothing -- you know, we had the procedures review before. The idea was that even when they're doing individual case review they should -- they're going to be looking back at the procedures, also. It's not going to be maybe a thorough review, but they're going to say it's consistent with the approach. It might be as simple as a check in a box on that level. It's not going to be,

you know, detailed review of the entire procedure and method.

DR. ZIEMER: Right. Well, and also there's a marginal comment on the second page. I'm just asking where these comments --

MR. GRIFFON: Yeah.

DR. ZIEMER: -- come from. Are they from the sub-- working group? This is the individual dose reconstruction review, a document I think that we've approved previously.

MR. GRIFFON: Yeah, I think what might --

DR. ZIEMER: There you are. There now appear some marginal notes which suggest some changes, and I was puzzled as to what that meant.

MR. GRIFFON: I think -- 'cause if I see on page three, the comment about the phone interview, I think these are old comments that unfortunately --

DR. ZIEMER: They disappeared in the file.

MR. GRIFFON: Right, when I forwarded the file, I didn't delete these hidden bubble comments.

DR. NETON: That's correct, Mark. I think these are errant commen-- I mean they were in there, but when you

removed the track changes mode, they shouldn't appear and somehow these -- this was printed out and --

DR. ZIEMER: So just X them out then?

MR. GRIFFON: X them out, yeah, they're no longer -- I think they've been addressed, yeah.

DR. ZIEMER: And that's true also --

MR. GRIFFON: I'll make sure I provide the right copy.

DR. ZIEMER: -- of all three pages.

DR. MELIUS: Good thing they're all polite.

MR. GRIFFON: Yeah, just don't look at those comments.

DR. ZIEMER: Okay. So you have in your packet the approved individual dose reconstruction review document. You have the approved --

MR. GRIFFON: Procedures and methods.

DR. ZIEMER: I'm looking for the title -- Dose Reconstruction Procedure and Method Review. Is that correct, Mark?

MR. GRIFFON: Uh-huh.

DR. ZIEMER: The new Site Profile Review task that was just discussed, the new Procedure for Processing Individual Dose Reconstruction Reviews, and the new Dose Reconstruction Review Tracking document.

Now let's go back -- the first one that was discussed today is the Procedure for Processing Individual Dose Reconstruction Reviews. This comes as a recommendation from the working group, constitutes a motion, requires no second. Is there further discussion on this document?

(No responses)

DR. ZIEMER: Are you ready to vote? I remind you that if this document approves -- or is approved, it becomes, in essence, our working document. It is not forever cast in stone. We can change it at any time, upon action of the Board.

All those who favor adopting the Procedure for Processing Individual Dose Reconstruction Reviews, say aye.

(Affirmative responses)

DR. ZIEMER: Those opposed say no.

(No responses)

DR. ZIEMER: Those abstaining?

(No responses)

DR. ZIEMER: The motion carries.

Next the Site Profile Review task. This comes as a

recommendation from the working group and hence constitutes a motion and does not require a second. Is there further discussion on that document? With the inclusion of the ten to 12 site reviews.

Wanda, you started to pull the mike towards you there?

MS. MUNN: Yes, I remain somewhat concerned about the establishment of that large a number. I understand the rationale, but I -- I'm uncertain myself whether greater specificity or less specificity is wiser in situations like this. The ultimate question really is do we wish for a given number of site profiles to be done, regardless of what the findings of the first reviews show. That's really the issue.

DR. ZIEMER: Let me suggest something here and then we'll ask Gen Roessler also to comment. I believe the Board can change the task at any time, can it not? For example, if we wish to have more sites reviewed, what do we do? This -- initially this gives us a parameter against which the contractor can bid. Suppose, once the contractor's underway, we say well -- suppose we say you know what, we only need five reviews, or maybe we need 20. What do we do? What's the process for

that?

MR. ELLIOTT: You can very well add to your task. You can modify the task and add work to it as it proceeds. At the same time, you need to be very careful and -- you're placing a scope of work in a task in front of your contractor, and you need to get them to propose against that. And when you award that task, that's what needs to happen. So if you -- along the way, you can't back away. If you say we want X done, that's what the contractor's going to go forward and do. Okay? So you can state what you want done. You can add to it, but you can't take away from it. Once you've agreed to what it is you want done and how much it's going to cost, then you must proceed along those -- that course.

DR. ZIEMER: It appears that it might be better to have a lower number and -- with the flexibility of increasing, rather than a larger number with no flexibility for decreasing.

Gen Roessler.

DR. ROESSLER: I just don't think this is a large number, in view of the fact, as Mark stated, that

there's going to be -- there are so many sites that are so different from each other that we want to make sure that the contractor looks at enough of them to make sure that it's being done properly. And the fact that we say approximately in there I think also gives us a little flexibility. I'd stay with what we've got. That was the intent, was the idea that there's a wide variety of different sites that should be looked at.

DR. ZIEMER: Okay. Thank you. Other comments? Jim?

DR. MELIUS: I would just add to that, given the current work plan from NIOSH, which is so -- so dependent on these site profiles for doing individual dose reconstructions, I think it is -- given that work plan, I think it's critical that we do a significant number and I think -- I agree with Gen that this is a reasonable number to -- to be looking at under that plan.

DR. ZIEMER: Okay. Others want to speak? We don't have a proposed amendment on the floor, but we're trying to get a sense of whether -- probably whether there should be an amendment proposed. Other comments? Maybe the degree of comfort or discomfort that others

may feel with the number would be helpful for -- for the group. Roy?

DR. DEHART: As I was suggesting before, I think we have flexibility. And more importantly, I think we have a need to get the -- get the site surveys checked quickly.

DR. ZIEMER: Okay. Further comments? Tony.

DR. ANDRADE: I think given the process that Larry described insofar as our ability to -- and flexibility to add scope to a given task, I think Wanda's comment is -- is very appropriate. And also given what we heard from Jim earlier that even some of the very complicated sites are going to be looked at, a site profile may very well be a very large compendium of data. At Los Alamos you're going to be looking at uranium operations, plutonium operations, accelerator operations, production of radioisotopes thereof, et cetera, et cetera, et cetera. I mean that's just one facility, one member of the complex. Hence I would be -- my inclination would be to start with something like perhaps five total, and then add to the scope if the Board deems it necessary or of interest.

DR. ZIEMER: Leon? You need a mike? Get a mike there. That one may be -- is that working now? It doesn't work.

MR. OWENS: Dr. Ziemer, I'd like to commend the working group for its job that it's done, but at this point I would like to call for the question.

DR. ZIEMER: The question's been called for. The Chair can recognize that as a motion to end debate, or I can give you one last chance if anyone wants to make an amendment. Calling for the question is, in essence, a motion to end debate, which requires a vote in and of itself. Are you making a formal motion to limit debate?

Is there a second?

MR. ESPINOSA: Second.

DR. ZIEMER: There's no discussion allowed. It requires a two-thirds vote to end debate. All in favor, aye?

(Affirmative responses)

DR. ZIEMER: Opposed?

MS. MUNN: No.

DR. ZIEMER: I think the ayes have it.

MS. MUNN: I think they do.

DR. ZIEMER: Ten to two.

UNIDENTIFIED: Eight to two.

DR. ZIEMER: Eight to two, the ayes have it, and debate is ended and we now call for the motion, which is to adopt this document.

UNIDENTIFIED: So moved.

DR. ZIEMER: It doesn't -- it's on the floor. There -- this would be the document as presented by the working group. Thank you.

All who favor adoption of this document, say aye.

(Affirmative responses)

DR. ZIEMER: Those opposed, say no.

(No responses)

DR. ZIEMER: Any abstentions?

DR. ANDRADE: (Indicating)

DR. ZIEMER: Thank you.

UNIDENTIFIED: One abstention.

DR. ZIEMER: One abstention, okay. Let the record show that there is an abstention. Thank you.

Now if I am tracking correctly, I think we're on the tracking document. Is that correct?

MR. GRIFFON: Correct, yes.

DR. ZIEMER: I hate to get off-track. Okay. The document now that comes before us is Dose Reconstruction Review Tracking. Again, this comes as a recommendation from the working group and constitutes a motion, does not require a second. Is there further discussion on this document?

(No responses)

DR. ZIEMER: Are you ready to vote? It appears that we're ready to vote.

All in favor, say aye.

(Affirmative responses)

DR. ZIEMER: Any opposed, no.

(No responses)

DR. ZIEMER: Any abstentions?

(No responses)

DR. ZIEMER: Motion carries. Thank you. Let me thank the working group for their efforts. They've spent considerable time, both in a special meeting in Cincinnati, phone conference and even meeting early this morning to finalize things, so we thank them for their excellent work.

BOARD DISCUSSION

It would be appropriate now if we had information on the awarding of the task contract. Larry, would you want to do that -- or Jim, or who's...

MR. ELLIOTT: The contract for technical support to the Advisory Board on Radiation and Worker Health has been awarded to Sanford Cohen & Associates. I believe that award is on our web site now. This is a five-year award for $3 million and we welcome them to -- to this work. I anxiously await and look forward to a review of our dose reconstruction program and where we might improve it.

DR. ZIEMER: Thank you very much. Any questions at this point?

(No responses)

DR. ZIEMER: Okay.

(Pause)

MR. ELLIOTT: Okay, here's an amendment -- an amendment to my announcement. It's not on our web site yet because we are -- as I've just been told, we're working with procurement to make a proper announcement on our web site. There's certain pieces of their proposal

that can go on -- and we've gone through this with our ORAU team. I should know better than to think we can just put up a whole document. So we're working with procurement to get the right pieces that will be presented on our web site.

I think it would be good if we could take some time and talk about the subcommittee and how -- since Cori's in the room, we may need her input on how a subcommittee functions or may function and may not function with regard to reporting and delivering information and products and carrying on the will of the Board. So I would encourage you to hold that discussion.

DR. ZIEMER: Let's begin by asking Cori if you or one of the staff could review for us sort of what I might call the rules of engagement for a subcommittee in terms of FACA requirements for meeting and related issues. I know that we have to have a charter. I believe the Chair appoints the members of the subcommittee, but we need to have a charter, and what other rules must we follow?

MS. HOMER: Okay, establishing a subcommittee, we have to provide, first off, a subcommittee name and identify

membership. The chair of the subcommittee must be a member of the parent committee. That's generally a person selected through discussion with the Executive Secretary and the Chair of the parent committee. Other members -- we should have at least two other members of the parent committee in addition to the chair appointed.

We have to identify the function of the subcommittee and frequency of meetings. It doesn't have to be extremely specific, but we do have to provide some information about how frequently they plan on meeting. The name of the Executive Secretary must be identified, as well.

I have rules for a subcommittee. To begin with, a subcommittee doesn't function independently of the full committee. The subcommittee must report back to the parent committee and not directly to the agency. All members of the subcommittee have to be members of the parent committee. External consultants can be invited to share their expertise with the subcommittee, but cannot participate as members in any way.

Subcommittees established do not have to be chartered

separately, but are covered by the charter of this parent committee. We can establish a subcommittee based on the full charter.

Subcommittees are subject to all other requirements of the Federal Advisory Committee Act. We have to announce subcommittee meetings, as we do full committee meetings, in the *Federal Register* within a certain time frame in advance of the meeting. They must be open to the public, unless covered under a Privacy Act -- specific Privacy Act clause that would allow us to cover -- to close that meeting. Minutes must be kept and a designated Federal official must be present at all the meetings.

There aren't any specific written guidelines about how a chair is selected or who does that, but again, it's generally done by the Executive Secretary and the Chair of the parent committee.

Any questions?

DR. ZIEMER: Now Cori, could you clarify -- aside from minutes, is there a transcript required, as well, or just minutes?

MS. HOMER: Minutes are required, transcript is not.

That would be at the discretion of probably the agency as the transcript is at the discretion of the agency for the full committee.

MR. OWENS: Dr. Ziemer?

DR. ZIEMER: We have a question. Leon?

MR. OWENS: Cori, you did say that the chair and the committee members normally are appointed by the Chair of the parent and the Federal member, but that's not necessarily rules per FACA.

MS. HOMER: No, no, that is not specifically rules because there are no rules in the Federal Advisory Committee Act on how that's done. But the Centers for Disease Control and HHS, that's been the process.

DR. ZIEMER: Thank you. Other comments or questions? Oh, Jim Melius has --

DR. MELIUS: Yeah, I'm not sure this is a question for Cori, but I guess -- I think what I'm trying to understand is what advantage -- why do we need a subcommittee as opposed to working groups? What are the pros and cons, 'cause I think that's the real issue here. It seems to me that subcommittee adds -- I'm not sure it's a necessary level of formality to this and I

think that's what we need to try to understand and --

DR. ZIEMER: Let me partially answer that and Cori can probably help me out, but my understanding is that a working group is more of an ad hoc group that has a specific task to carry out, and when the task is done, it's done. It's sort of a one-time thing. Now as to our working group, the task took a while to finish, but that was the task.

Whereas a subcommittee is more like a standing committee that has ongoing responsibility, and that's how this was being envisioned, ongoing responsibility to oversee the dose reconstruction review process.

MS. HOMER: That's -- exactly.

DR. ZIEMER: And there may be some other issues.

MR. ELLIOTT: If I may, I think the pragmatic benefit of having a subcommittee perform the work that you've identified here in this one document -- selecting cases, identifying, you know, who's going to serve on the panels to review what the contractor and those kind of things -- makes more sense than having the whole committee meet. I think there's been some discussion about how many meetings it will take to accommodate and

make this happen, and do you want the whole Board to meet. It's certainly your prerogative, your discretion. You can decide if the whole Board needs to meet on a more frequent basis than you've been meeting, or you want to have a subcommittee handle some of these kinds of day-to-day functions in setting up your review process.

Does that help, Dr. Melius?

DR. MELIUS: It helps, it just --

DR. ZIEMER: You were asking about work group versus --

DR. MELIUS: Yeah, but I'm trying to think -- again, it's sort of the pros and cons of doing this and so forth. And one clearly relates to how often we meet, but -- you know, I hadn't expected that to change, I guess, hadn't thought about it.

MR. ELLIOTT: It would get worse, I think, if -- but --

DR. MELIUS: Is somebody from the -- I guess the working group, or has someone done a schedule to think through a time frame of when certain things would get done and so forth and what the amount of time required would be?

DR. ZIEMER: For this subcommittee, or --

DR. MELIUS: For this subcommittee or for this -- for this review process. Then I -- I think the -- whether it's a subcommittee or a working group or how we accomplish it is -- is secondary. I was just trying to get a better handle on what -- what's involved in -- there's some -- you know, frankly, if we're meeting every month anyway, what difference does this, you know, make? I mean the subcommittee's going to meet as part of the meeting, so it seems to me that all we're doing is making it a little bit more complicated that there's a separate set of minutes rather than the minutes being, you know, reported in the working -- a working group reports back to us.

DR. ZIEMER: Yeah, this -- this group, for example -- based on our documents -- would be the one that -- working with the contractor who establishes the cases that would be reviewed, I guess, and assigns them out to specific Board members. It's a sort of -- as I would see it -- a steering group type of thing.

MR. GRIFFON: Yeah, we did -- I mean we talked about a number of things that -- number of responsibilities that could be delegated to the subcommittee if the

Board decide, and that's where I think we weren't sure yet. We -- but some of the things we were talking through when we were talking about these tasks that are released, and the contractor comes back with a proposed work, there are a number of -- of points where the Board needed to approve or the subcommittee needed to approve, and we were -- we were concerned about some of these points being two-month delays each time when they -- you know, they've got a year period here to do a task. And if they have a product that the Board needs to review -- one week after our meeting say they're completed with a product, maybe there's certain of those tasks -- maybe not all of them, but certain of those tasks that can be delegated to a subcommittee to expedite that process. That was part of the thinking.

DR. ZIEMER: One of the -- The other -- Let me interrupt, though, at this point -- related issue is what authority does the subcommittee have --

MR. GRIFFON: Right.

DR. ZIEMER: -- in acting on behalf of the Board.

MS. HOMER: They cannot act on behalf of the Board.

DR. ZIEMER: They cannot act on behalf of the Board.

MR. GRIFFON: No.

MS. HOMER: Well, there is a way that --

DR. ZIEMER: Unless the Board does what?

MS. HOMER: Provides very specific authority to act on their behalf.

DR. ZIEMER: Yeah, on a specific issue.

MS. HOMER: But we have to be very specific about that.

DR. ZIEMER: Go ahead, Mark.

MR. GRIFFON: Well, I -- I guess the other -- the other benefit to the subcommittee as opposed to a working group -- this is not subcommittee versus full Board, but subcommittee versus working group -- was the idea that going forward -- just the openness of it, that it would be open to the public and we wanted to make sure that, as we're having these subcommittee meetings and discussing groups of cases, that that process would be opened, you know, so that was another part of the -- but that...

DR. MELIUS: But -- but -- I guess my concern there would -- 'cause I was actually thinking the opposite. I mean one of the concerns I have about a subcommittee is it becomes -- it's not as transparent to the public.

I mean not that there's not huge numbers of public people that, you know, come to all our meetings and so forth, but the fact that they're sort of open discussion of anything that's of public interest I think is useful. And I mean, you know, in reality, are people going to go to the subcommittee meetings? It seems to me they're going to be relatively short and so forth. And then I guess related to that is what's the burden on the subcommittee in terms of meeting? Are these going to be the kinds of tasks or activities that they're going to have to meet person as opposed to conference call? And with formal announcements and so forth, so -- I mean do people want to -- do people on the subcommittee want to put that amount of -- amount of -- are they going to want to put that amount of time and effort in with meetings between meetings if those meetings are going to have to be in person?

DR. ZIEMER: Okay. Cori, did you have any additional items on the structure or the rules for a subcommittee that you wanted to add to that?

MS. HOMER: Not particularly, no.

DR. ZIEMER: Any others want to either respond or make

other points on what -- issues that have been raised? Yeah, Roy?

DR. DEHART: As I remember, going back in history, as we were talking about the purpose of the subcommittee and what its function would be, we were also looking at the Board and trying to determine how often or frequently the Board would meet. And I think we've decided quarterly is going to be sufficient, because the subcommittee is going to be able to take care of this kind of -- of function. Isn't a quarter arrangement for -- what we determined for travel and so on?

MR. GRIFFON: I don't -- I don't -- I know we had that discussion. I'm not sure we came to a conclusion on that. That was part of the discussion was, you know, maybe some of those in-between periods could be covered with subcommittee meetings. But then -- you know, I guess if -- if we had to be very specific on what powers could be delegated to the subcommittee, that may be problematic, too, so I don't -- you know.

DR. ZIEMER: Let me read something to you. I don't think I wrote this. I think your group did, Mark.

It's called Subcommittee for Dose Reconstruction Review. It's dated October 7th, which is the date when you guys --

MR. GRIFFON: Right.

DR. ZIEMER: -- had your conference call. This appeared in my e-mail. I don't think it's spam.

MR. GRIFFON: I think it is.

DR. ZIEMER: Let me read it. (Reading) The subcommittee will be responsible for the following tasks related to dose reconstruction review: Negotiate with contractor over individual tasks (costs and technical scope), case selection for individual dose reconstruction reviews, case assignments, taking into account conflict of interest and a balance of scientific, medical or worker perspectives, development or revisions of procedures related to dose reconstruction review, and prepare draft report from review panels including dose reconstruction review summary reports, procedures review reports and site profile review reports.

Under procedures approved by the Board, the subcommittee may be authorized to make decisions on

behalf of the Board for specific responsibilities as delegated by the Board.

Does that sound familiar to any of the working group?

MR. GRIFFON: I don't know where it came from -- no. Yeah. Yeah, certainly we -- certainly we drafted that.

DR. ZIEMER: Okay.

MR. GRIFFON: But -- and I --

DR. ZIEMER: But as a starting point --

MR. GRIFFON: Right.

DR. ZIEMER: -- that gives an idea of --

MR. GRIFFON: Yeah.

DR. ZIEMER: -- the kind of thing we were --

MR. GRIFFON: Right.

DR. ZIEMER: -- thinking about.

MR. GRIFFON: Right. And -- and -- but we -- we did also, in that meeting, question the, you know, rules under FACA and --

DR. ZIEMER: Right.

MR. GRIFFON: You know, so there's some...

DR. ROESSLER: I think one of the motivations for having the subcommittee was looking at the difficulty that we have in getting the whole Board together for

any meeting, I think if you reduce the number by half or less, there must be some formula somebody can come up with, but it just makes it much easier to get that group together. And if they have a specific task that the Board as a whole has assigned to them and given the committee the right to do it, then it can be done in a much more efficient manner. That's -- I'm just repeating what I think our discussions were.

DR. ZIEMER: Perhaps the initial idea at least was that going forward, the main activity of this Board might in fact be reviewing dose reconstructions since the rule making is over and that's past and that sort of thing. And I think the idea was that perhaps the Board itself as a full Board would not have to meet as frequently and that such a subcommittee might work with the contractor in getting the reviews done and meeting with -- and having the meetings in between the main Board meeting, whatever frequency that was. But perhaps the full Board can do that job.

DR. DEHART: There was another concern, too, and that is there is another major workload awaiting us, perhaps, and that's the special cohort. And the Board

will be fully engaged in that.

DR. MELIUS: Two comments, though if I recall right that there also will be -- each of us on the Board or many members of the Board, I'm not -- will be involved in doing the individual dose reviews. Now some of that's conference call, some of that may be in person. I don't know if we've really -- that's been thought through or described to me or I've forgotten, but -- so for -- be lots of meetings anyway as this -- as this effort goes on.

And secondly, I guess I'm still a little confused on this whole contractor thing exactly what a subcommittee can do and how it has to go -- I think if we do delegate specific tasks related to the contract to them, then those meetings have to be in person. Correct? Those can't be by conference call? Or they -- I'm just --

MR. ELLIOTT: No, they -- once a task order is let, they can be -- to negotiate a task order may require a closed session with the contractor to discuss dollar figures.

DR. MELIUS: Okay.

MR. ELLIOTT: It may not.

DR. MELIUS: Uh-huh.

MR. ELLIOTT: But once it's let, once it's awarded to be done, then you could have whatever meetings you wanted to have with a subcontrac-- with your contractor could be done by phone or in person.

DR. MELIUS: Okay.

MR. ELLIOTT: Just I want it to be clear for the record that we're not advocating one way or the other. We just want to help the Board do the work, and it certainly is the Board's discretion to decide how best to do this work. So we stand here at the ready to help you do that.

DR. ZIEMER: Other comments? Mark?

MR. GRIFFON: I think it was -- you know, a lot of it was for efficiency, being -- you know, we see a lot of work ahead for the entire Board, and part of the reasoning was to make it more efficient. But if it -- if it -- if we come to the conclusion that there's only certain tasks we're willing to delegate to a subcommittee and it's not going to add much to the efficiency, I don't know if it's -- you know, then it

may not be as useful of a concept, so...

DR. ZIEMER: There seems to be some level of uncertainty whether this is needed or not. One thing that could be done would be to say we will form the subcommittee when we're convinced we need the subcommittee. If that's not this meeting, it can be at the next meeting, or never. Do we need to get some experience with the contractor first and kind of get a feel for what the workload's going to be in terms of individual dose reviews plus whatever is needed to monitor and oversee the contractor? I don't know. What's your feeling? I mean this is a Board decision. I'm quite willing to appoint a subcommittee if the Board believes it needs one to proceed.

Mike, Jim, Roy -- Mike.

MR. GIBSON: It's my feeling that I believe that we need to get to know a little bit about the subcontractor. We need to let them get to know a little bit about us and our expectations, and just get familiar with each other before we decide what might be the best path forward for the process.

DR. ZIEMER: Thank you. Jim?

DR. MELIUS: Yeah. I think that having a subcommittee relatively soon would -- is going to be necessary in terms of dealing with the contractor and negotiating some of the tasks and so forth, if I understand that process right. I have some concerns about delegating too much to a subcommittee in -- in losing some of the transparency and some of the involvement of the Board in decisions in terms of the credibility of the overall -- all process because -- for lots of reasons, just -- selection of cases, there's going to be concerns about and -- 'cause it's not going to be every case that's looked at obviously and people will have concerns. I think what I'd like to think would work procedurally is that for either the working group or a new working group to come back for our next meeting with a -- I'd like to see a specific charge for the subcommittee and a document that's a little longer than that, sort of figure out a schedule, what they would specifically do, how they would report back and what -- and what specifically we would need to delegate to them in order to make the contracting task order process work well, as well as the individual views. And I think that --

you know, in the next couple of months, with the contractor in place, I think that could be accomplished and I don't know if we're still planning on meeting in December or early next year, but by that time have it place -- something in place. I think that would work in keeping efficient process.

DR. ZIEMER: Okay, thank you. Roy, did you have a comment, too?

DR. DEHART: Yes, I want to jump in on Jim's comments because those were some of the ones that I wanted to make. I think before we can vote on what a subcommittee's going to do, I think we need to know what the charter of the subcommittee is.

Having concern about delegating I think is not really a major concern. This Board always has the prime responsibility of what happens, including everything that happens with the subcommittee, and the Board, by vote, can end the subcommittee. So I see no reason not to form the subcommittee, as long as we keep in mind that we are overseeing whatever happens within that subcommittee.

DR. ZIEMER: Thank you. Wanda?

MS. MUNN: It would seem logical and wise to me that a brand new contractor would, at a very minimum, want to become familiar with the personalities on this Board, to at least read the transcript of this discussion here, and therefore be prepared to bring to us any concerns or any questions that they might have, given the documents that we have just approved today.

DR. ZIEMER: Thank you. Other comments? Okay. Larry?

MR. ELLIOTT: I wonder if it'd help in the Board's deliberation here if I walked you through the process of issuing task orders. I mean give you a sense of what that's going to be like and whether you can insert subcommittee versus Board where I mention it. Would that be helpful?

MR. PRESLEY: Yes.

MR. ELLIOTT: Okay. The task order process would involve the Board approving the tasks to be placed before the contractor, which you've done today. You've essentially handled these four. NIOSH will now submit these tasks to the contracting officer in Pittsburgh and for submission to Sanford Cohen & Associates. We also -- at the same time that we make that action,

we'll send a funding document that is forwarded to Atlanta in our office down there that handles tracking of money, and simultaneously we send that task to Sanford Cohen & Associates. Sanford Cohen & Associates will have 14 days to prepare their response, their proposed response to a given task and how they -- what skill levels and how much money they feel they need to do the work.

That will then come back. The proposal will need to be reviewed and approved by either the Board or the subcommittee, depending upon if you have a subcommittee and you give them that charge, you give them that specific authority to review and approve. You could just have them review and then recommend to the full body.

If the Board accepts or if the sub-- if you give the subcommittee the authority to do that, if the subcommittee accepts, the contracting officer is then instructed to award the task. If they don't accept, if revisions to the proposal are required, then once the task is resubmitted to Sanford Cohen & Associates, they will have now seven working days -- seven working days,

not a week, seven working days -- to revise the submission. And once -- and then once these come back to -- through NIOSH to the Board or to your subcommittee, you can take as long as you want to deliberate on them. You're not -- there's no time placed upon you as a body to make a decision. The only time element is placed upon your contractor to provide proposal back.

So once you approve the task, it's awarded and reporting requirements are then outlined in that task, how often do -- how often do you want them to report, what kind of reports do you want from them.

Does that -- I don't know if that helps, but that's the process. That's pretty much the cycle of things with the time embedded.

DR. ZIEMER: Mark, comment?

MR. GRIFFON: Yeah, and I think that was, you know, part of our rationale and our discussions on the working group level. It was this sort of 14-day cycle. You know, we -- you know, we certainly want to get this process going, so if they get a response to a task within 14 days and the next Board meeting is a month

and a half away, and I don't know how long in advance is required to announce a Board meeting, but you know, even if we moved one up, you know, it would be a delay. So that was part of the rationale. And then if changes were required, we may have another delay in there till the next Board meeting, so we thought the subcommittee might be able to add some efficiency to that process.

DR. ZIEMER: Jim Neton has a comment, then Tony.

DR. NETON: Yeah, I don't want to confuse the issue, I just want to comment on Wanda Munn's idea that you could ask the contractor to review the minutes and then come and become familiar with the Board and that sort of thing. This is a task order contract, so there is no mechanism to pay the contractor to do anything other than through a task order. So you would have to write a task order to get them to do that, that's what I'm saying. So you're sort of in a catch-22 here, so just be advised.

DR. ZIEMER: Not going to do anything you don't get paid for. Okay. Let's see, who had -- Tony had a comment.

DR. ANDRADE: Question is for Larry.

DR. ZIEMER: You know you're in trouble if you have an attorney whispering in your ear. Right? Okay. Tony has a question for you, Larry.

DR. ANDRADE: Larry, I just wanted to know if there's any potential gain in efficiency, given that there is some minimum time for announcing meetings, or if there's some provision for announcing multiple meetings, for example, in the *Federal Register*, such that if you know you have a heavy workload over the next couple of months, you can do so.

MR. ELLIOTT: Thank you. That's a very good question and it actually offers me a great segue to comment on what I just heard in my ear.

I want to call your attention to what Cori said a moment ago. Even if you have a subcommittee, we still have to announce their public meetings in advance. And generally they like for us to do that 30 days in advance, but given our history with this particular Board, you know, they understand that we do things in real time. So we get them there at least two weeks in advance and they still would like to see it 30 days,

but that's kind of the time frame.
Yes, we can -- and Cori will stand up and correct me if I'm wrong here again -- but we can, if you know what your schedule of meetings would look like, where you want to have them and all of that, the date specified, we can roll that out in a *Federal Register* announcement. We probably would have to have a rolling *Federal Register* announcement to say the next meeting of the series would be coming up, so...
MS. HOMER: (Off microphone) We could announce one *Federal Register* notice for one year, if you have those dates, the problem being (Inaudible).
(On microphone) The problem being if you announce even six months ahead of time, having one meeting change will require an amendment to the *Federal Register* notice.
MR. ELLIOTT: I truly believe we would establish a policy that would say, if you want to go this way and you want to have a series of meetings, we'd do one *Federal Register* announcement, as Cori says. But because I want to make sure we have ample opportunity for the public to know about these meetings and remind

the public, we would not just rely on one announcement. We'd go back after -- say you had one meeting, we'll announce the next set, and we'll keep that going on until we exhaust the schedule. Okay?

DR. ZIEMER: Roy.

DR. DEHART: I think this is a practical question. What's the quorum requirement for this Board versus what would be the quorum for a subcommittee?

DR. ZIEMER: Well, the quorum for the Board we established early on. The Chair doesn't remember what it is, but -- but Cori's got it at her fingertips. I know it's more than half, though.

MS. HOMER: The quorum for the full Board is one more than one-half, and that's just a widely-accepted quorum for any committee or any group. The subcommittee would be the same way, one more than one-half would equal a quorum.

DR. ZIEMER: Okay. Other comments? Now we don't have to come to closure on this issue this afternoon. We can revisit it tomorrow after you've had a chance to mull it over and -- yeah, Jim. In fact, we can even delay it further if we need.

DR. MELIUS: (Off microphone) Well, I guess is there anything -- I guess this is for the working group and Larry (Inaudible) -- anything that -- that we ought to be doing between now and the next Board meeting if -- and I don't know if we decided yet whether that's in December. There's sort of a -- I think as sort of a practical issue, we may want to set up a subcommittee just to meet between now and the next meeting of the Board in order just to get the task orders -- initial -- initial task order -- something -- process underway. I mean that could be a simple thing that we would do tomorrow, so...

MR. ELLIOTT: Let me speak to that by answering what we have in mind and as far as what we're ready to do. We're ready to take your task orders and Martha DiMuzio is on leave this week, but when she gets back next week in the middle of the week, we would forward those on, as I identified here in the process, to Pittsburgh procurement office and the funding document down to Atlanta and start the process. And so Sanford Cohen & Associates would have perhaps 14 days starting next Wednesday or next Thursday -- calendar days -- calendar

days for the first piece, so they'd have 14 calendar days to prepare their response. So you can look at your calendar and figure that out. I think Dr. Ziemer's got it here. It's going to be around November 19th. Okay? So at that point, we were ready to either convene your subcommittee and share the proposal with your subcommittee, or we can hold the proposal until you meet in December.

You've selected two days in December as everybody's available to meet. I think we've also got a -- the 9th and the 10th, I believe, of December. And you talked about Amarillo or Vegas for Nevada Test Site and we've worked with a hotel in Las Vegas. We're also trying to assemble or coordinate a site tour to the test site if that is of interest to anybody. But at that point, in Las Vegas at your meeting, we would need to handle this -- this set of task orders. You need to negotiate those out perhaps, or if you're fine with what you see in the proposal, then you make approval of them and we would see them awarded post that meeting.

So do you have to have a subcommittee to make that happen? Do you have to have another Board meeting in

between? No. You get the proposal back after the 14-day time period. We would hold onto that until we met in Vegas and then you could take action on it. If you had a subcommittee, you could have them meet before then. Does that make sense?

MR. PRESLEY: Would the full Board still have to vote on it?

MR. ELLIOTT: Depends upon what you specify as an authority to the subcommittee.

DR. ZIEMER: Okay. Mark, you had a comment?

MR. GRIFFON: Yeah, I was just going to ask Larry to elaborate on the -- when we review the -- when we review their submittal, you negotiate technical skill and cost? And if we negotiate cost, does that have to be Executive Session or --

MR. ELLIOTT: Yes.

MR. GRIFFON: Whether it's a subcommittee or full Board, it's got to be --

MR. ELLIOTT: Whether it's a subcommittee or a full Board, once you start talking about the costs piece, you would do that in closed session. You can discuss the technical merit of their proposal -- in other

words, did their proposal address the technical scope of work adequately. You can do that in open session. But once you start talking dollar figures, you've got to go in closed session.

DR. MELIUS: (Off microphone) I'm not sure which -- I'm not advocating any of these, but it seems to me there's some different possibilities. One is that we could have -- charge a subcommittee with doing that initial review, let them -- let them approve the task orders there, or -- which may be more important, if they need -- needs to be renegotiated, there's a problem and it needs to go back out for another proposal, they would have the authority to do that, but not the authority to do the approval. That would depend on full Board approval for this first time through. We could wait until we get the -- to Las Vegas, I guess, and do it all there, then set up a subcommittee that would -- at that point, should there have to be a renegotiation, would have the authority based on whatever instructions we gave them based on full Board review.

We could also I think set up a work group to look at the task, just in order to be able to report back to

the Board and -- you know, particularly with, you know, some more of the detail and with their experience in having written up these task orders and so forth. So there would be maybe necessary -- necessity to meet, but at least a group that would be charged with doing a review before the next meeting.

Just looking at the calendar, the only practical thing is that if we're talking about around November 20th, we're starting getting into Thanksgiving and so forth. I'm not sure if it's even practical to do a -- a subcommittee meeting between now and then, what we really gain from it, but that's --

MR. GRIFFON: Only gains us a week or so to -- yeah.

MR. ELLIOTT: I think you've identified as many scenarios as I can envision that you could do this under. You mentioned a working group. You certainly could use a working group, but you could not designate any -- delegate any authority to that working group to make any decision on behalf of the Board. That you cannot do. That only can happen with a sub-- an established subcommittee.

DR. ZIEMER: Further comments? So the real issue again

comes down to the extent to which the Board wants some action to occur before December 9th, which is our next meeting.

Mark, question.

MR. GRIFFON: I think -- you know, especially for this first round, one of -- one of Jim's options of having the first round go to full Board review for approval makes sense to me, and then it -- because I think the time it's going to take us to -- you know, we did a very cursory draft charter of a subcommittee, but we have to think through how much power we want to -- you know, what task we want to delegate to a subcommittee, who's going to be on the subcommittee, all those issues have to be worked out. And in the calendar here -- for this first round, anyway -- I don't think it gains us much time. So I think it might be beneficial for the first round to go to full Board approval and then -- you know, maybe, like -- like Jim said, with a work group review as soon as we get them in, just so they can present back to the full Board. But -- but then after that December 9th meeting, maybe we can further discuss, you know, a subcommittee for ongoing work

there.

DR. ZIEMER: I think it was Mike that suggested it might be of value to have the full Board meet initially with the contractor anyway, and maybe the Board would prefer a full Board face-to-face, which that -- that opportunity presents itself in that context. Yes, Robert.

MR. PRESLEY: Would it be to our advantage to add a extra day to the meeting in Vegas and meet with the contractor and go over this?

DR. ZIEMER: I think that's going to depend on what other agenda items we have. It may be that we only need one day or one day and a half for the open meeting, and then -- I'm not sure it would take more than a half-day with the contractor, anyway. But the point is well taken. We can -- we'll have to look at the full agenda.

Again, we can revisit this tomorrow. I think you have the issues before you. Unless I hear any specific motions to move forward on the subcommittee, I'm going to just ask that it be held in abeyance, at least till tomorrow, and then we can -- Jim?

DR. MELIUS: (Off microphone) This is more for -- for thought. To me, the -- there's some advantage now with these task orders to having a subcommittee (Inaudible), but that's -- I don't think it's going to be an ongoing advantage to a subcommittee. It may be a taskable one to have as other tasks come up, it would expedite that and so forth. But is this issue of selecting cases and reviewing -- and assigning people for review, and so forth, and sort of how we schedule all of it -- this and I think it would be useful -- I do think we ought to think about setting up some sort of a work group or something -- some way to really come up with a proposal that would think through what a schedule would be. Now we talk about quarterly meetings, then we would have, for example, a full Board and then between those -- each of those meetings, a meeting of a subcommittee so that would be roughly six weeks between meetings.

DR. ZIEMER: Well --

DR. MELIUS: Is that -- is that adequate?

DR. ZIEMER: -- one thing we can do is the following, and we can -- we can work on this some tomorrow. We actually have a draft, a straw man draft, and we can

look at that and say, you know, what are the -- what items are missing, what should be added, and we can polish that up and say okay, this -- and then -- and then use that at the next meeting -- you know, we'll have an opportunity between -- I don't think we need a work group to address that further. We have the straw man item that we can work from I think as a starting point, add to it, delete and so on.

DR. MELIUS: But my only question is who's going to --

DR. ZIEMER: Unless I'm the only one --

DR. MELIUS: -- do the polishing?

DR. ZIEMER: -- that has that mysterious document.

MR. GRIFFON: I thought that was distributed to everyone, but maybe not.

DR. ZIEMER: Well, in any event, we can make it available tomorrow.

DR. MELIUS: But again, my only question is who's going to do the polishing that you said...

DR. ZIEMER: Well, if we have input from the Board, at least on the straw man thing, then the Chair or Mark, we can work together and polish it up, a final draft for the next meeting, if that -- if that's the way the

Board wishes to go. And then -- and then we can establish -- again, we'll revisit it tomorrow. If you're comfortable waiting till December and -- and going full Board, and there may be some advantages in doing that, at least in the initial contact with the contractor, then we can go from there. If there -- if the Board feels the urgency of gaining a week or two on this issue, and NIOSH is prepared to have us move forward -- I mean it'll be our call, let's put it that way.

I'm going to suggest -- we don't have it on the agenda, but I'm going to suggest a comfort break for the Board and others, and we'll reconvene in about 15 minutes. I want -- before we -- before we take a break, I want to make sure that any members of the public who wish to comment during the public comment period please be sure to sign up. It appears that we will be able to move that comment period up a little bit in time, so please take care of that as soon as you're able to. Thank you. We'll recess for 15 minutes.

(Whereupon, a recess was taken.)

DR. ZIEMER: Okay, we're going to reconvene. We're a

little bit ahead of schedule, but I think we're not so far ahead that it'll catch people off-guard.

PUBLIC COMMENT

DR. ZIEMER: Our next portion is an opportunity for public comment. I have four individuals that have signed up now for public comment. There may be others who will be coming in, but we'll begin with these individuals who've already signed up, beginning with Richard Miller from Government Accountability Project. Richard.

MR. MILLER: Greetings to the committee. It's Richard Miller, Government Accountability Project. I just wondered if I had over-- maybe in running in and out that I had missed -- do we have a schedule or has there a schedule been announced for when the Special Exposure Cohort rule is going to be made available? I just -- I just note it only because we're approaching the third anniversary of the passage of the law and we still don't have a rule.

MR. ELLIOTT: The Special -- is this the bad one again? Okay.

The Special Exposure Cohort rule has been revised and

is under review. As soon as the Department releases that, we'll publish it and it'll be available for petitions to be generated against.

MR. MILLER: Yeah, can you give us any more insight than that? Because that was the exact same answer we got in August, and I know that, you know, you don't control what goes on above you in the food chain and -- but I mean are we looking at something where this is like imminent or -- because it's -- the reason I'm asking is it's very difficult to evaluate these site profiles without the benefit of understanding how the Special Cohort rule intersects with what constitutes feasibility or non-feasibility for dose estimation for -- for parts or subparts or subgroups of your -- of your facilities. And so there's -- it's -- it's sort of a -- it's hanging out there. I'm sure it's not escaped your attention.

You've nothing more to add, I see. Yes. Okay. May the record reflect.

Secondly, I would like to re-raise an issue that was raised at the last meeting concerning the conflicts of interest requirements that do not apply to those

performing the site profiles. It's come to my attention, and I assume it's come to NIOSH's attention, that one of the companies which has been retained to do the K-25 site profile, Auxier & Associates, has also been retained by insurance company in Alaska to fight a Subtitle D claim that had gone through the physicians panel. And so I just was puzzled that if you've got the same outfit sort of on both sides of the program, albeit different Titles of the program, where are the boundaries beyond which you all would consider that kind of conduct permissible or impermissible, I guess. I mean where -- what -- what are the boundaries here for the folks doing site profiles, if any?

MR. ELLIOTT: Richard, I'm going to answer your question this way. We are looking into this particular example that you have identified and we're working with the ORAU team. We are, too, concerned about individuals who work on our products and the -- let me just state this for the record -- the products of a site profile or a dose reconstruction in their final form are NIOSH products. But we fully recognize that certain expertise are applied to those products along

the way. And we're examining this particular situation and we have legal review of it right now.

MR. MILLER: Well, let's just look at the policy question and I'll get out of the weeds then. And -- because it's just -- it -- it -- it raises this circumstance, I think. You know, it's -- it's -- it's like seeds in a moist flower bed, you know, they're going to sprout some more. And -- and I don't think this is the exception, and yet I guess the question I have is has -- since you all took under consideration -- I think it was where it was left at the last Advisory Board meeting -- the question of whether you would apply the conflict of interest requirements that apply to those who do dose reconstruction to those who are performing site profiles, whether you've rendered any policy determination with respect to that question.

MR. ELLIOTT: Yes. All -- all people who are working on site profiles, their disclosure statements are on the web site now.

MR. MILLER: But the -- what about the do-not list which is contained in the ORAU conflict of interest disclosure in their contract? There's a set of do-

nots, beyond disclosure.

MR. ELLIOTT: I defer that question to Dick Toohey. I'm not sure exactly I understand what you're --

MR. MILLER: Well, I'll tell you what I --

MR. ELLIOTT: -- referring to.

MR. MILLER: -- mean by do-nots, just so the record's clear. I mean there is individuals who are serving in defense on these claims can't perform dose reconstruction if you're working at a site where you were previously employed or by an employer. I believe there's both an individual limit and there's also a corporate limit, I believe, within that.

MR. ELLIOTT: Right, and that's the do-not. Okay, I'm understanding a do-not now.

MR. MILLER: That's what I mean by the do-nots, and that's what I was questioning. I noted that there has been some disclosure made on the ORAU web site with respect to those individuals assigned to these teams, I must say. I found --

MR. ELLIOTT: We do not want to see anybody working on our product who's testifying on the opposition side. That's the policy.

MR. MILLER: Well, okay. I don't know what the policy is because what we heard last time was that the ORAU policy that applies to dose reconstruction will not apply to those doing site profiles, and I'm just trying to understand --

MR. ELLIOTT: No. No, no --

MR. MILLER: Has that changed since the last meeting?

MR. ELLIOTT: The policy is that we do not want to see anyone working on our products serving in the -- litigation on the opposition.

DR. NETON: I think Larry's addressed that -- that issue that arose that you just alluded to regarding someone testifying against us or against -- on Subtitle D, even though they worked on a profile. But I think the other issues that you raise related to persons who have worked at a site doing site profiles, I think we still believe that the expertise required to do the site profile lies with the people who have experience at the sites. So at this point, we have not made the decision that a person who worked at a facility would be barred from working on the site profile. I think that's a -- I think we discussed this at previous Board

meetings and I thought that it was generally understood that that was the most -- that was taking advantage of the expertise that was out there to its best benefit. We are looking at this legal issue, though, that you raised, and considering that.

MR. MILLER: Let me -- let me cut to the chase then a little bit further, because seems like if you have different standards that you're applying for those that do dose reconstruction in terms of your -- your professional standards of conduct that you expect than you have for those who do site profiles, you have an incongruity there. The -- my question is, is that clearly spelled out and do we actually see where the bright lines are, because from my perspective, given what I've now gotten from reading your four site profiles that you've done, this is really the well-nourished, you know, material from which one will extract individual dose reconstructions -- not quite cookie-cutter style because some of these are a bit more complex, although Bethlehem was certainly a cookie-cutter case, and without going to the merits of any of these site profiles right now, the idea was

you've got the raw material, you pull it out and bingo. And it didn't look terribly challenging. I mean it's challenging, but it didn't look anywhere near as challenging as it once did in terms of doing dose reconstruction.

I'm all for the efficiency. I'm just questioning what are the standards of conduct you're going to apply to those that are performing it. And that, from my perspective -- and let me give you another example. One of the site profiles we saw -- Mike Gibson will recall -- a former EG&G health physics official from the Idaho National Engineering Labs who, in his disclosure, couldn't recall all of the cases that he'd been involved in as a defense expert. Now having been on the other side of a couple of cases from him, I had no trouble recollecting his -- his involvement in -- in -- in this. His name's Bryce Rich* and -- and -- and a nice fellow, and -- and -- but, you know, my question is, where do the lines apply for these folks? And one, I just want to advise you, his disclosure's woefully incomplete. It just says I don't remember what cases I worked on. You know, it's sort of -- it's like getting

to Congress and saying well, Mr. Chairman, I can't quite recollect, you know, and we've all laughed, but -- but here we are. So I just, one, would encourage you to have disclosure there. But two, I would like to see clear policy where the ORAU policy clearly spells out what those standards of conduct are and what they should be, because I don't -- I -- I'm hearing what you're saying, Larry, and I appreciate what you're saying. But I think this really needs to be spread out very, very clearly for those of us who are looking at this from the outside.

So that -- that's sort of my suggestion for the Board and the -- and the staff.

MR. ELLIOTT: I want to be clear for the record that the example that you brought up, Richard, is accurately portrayed. What we have here is one individual from this particular company who's working on one site profile, who is not the individual testifying against the Subtitle D claim in Alaska, but another colleague of his in that same company. And so that's the issue. Can -- can a person perform that kind of expert witness testimony as an individual without

demonstrating or identifying their affiliation, or even if they do identify their affiliation, is that a perceived conflict and how do we handle it. So I just want to make sure that's --

MR. MILLER: Right, I'm glad you clarified that because it's really the question of are you biting -- or do you have a risk of someone biting the hand that feeds them, one; two, are you creating an appearance standard; three, are companies -- are companies -- are individuals then held to a standard and the companies they work for are not held to that standard. Okay? I -- I -- I mean I think we saw -- seen a lot of this with law firms trying to parse out which lawyers at a law firm can be on opposite sides of the same divorce, and -- and -- at a -- and I hope that we don't parse it the same way lawyers parse their ethics here.

DR. ZIEMER: Thank you, Richard. You lawyers take that and that and that.

Next I have Daniel McKeel, if I pronounced that correctly, from Washington University. Daniel.

DR. MCKEEL: I'm Dan McKeel. I'm a pathologist at Washington University and I have really two concerns

that I'd like to relate. The first one is I got the Technical Basis Document for Mallinckrodt last Friday afternoon from the web site and have certainly not had a chance to review it in detail. But there was something that I wanted to call to your attention that I think is such a glaring omission that it actually calls into question basically the entire document, as far as I'm concerned. And that is, in the bibliography -- and maybe I missed something; if I did, I apologize. But on pages 69 and 70 there are two citations by Elizabeth Dupre-Ellis about articles that I'm intimately familiar with. One is about the external radiation exposure in the Mallinckrodt uranium cohort. That was published in the *American Journal of Epidemiology* in the year 2000.

And then on page 70 there's a study which I got a copy of by Dr. Dupre-Ellis from 1998, and the copy I have was under the NIOSH Health and Human Services banner, so I'm sure that's the same publication.

What's not on here are two other publications that Dr. Dupre-Ellis herself authored, and I find this extremely strange, because she works for Oak Ridge Associated

Universities, and that was a 1995 study on the internal exposures to the Mallinckrodt cohort, the dust study results. I think it was blended with three other places. But that's in *Epidemiology*, 1995. It's cited in the CEDR catalog for 1999. So I find that extremely strange and I would just echo the concern of why I'm con-- why I find that disturbing is that to publish data, exposure data, in a peer-reviewed, excellent journal such as *Epidemiology* or the *American Journal* implies that you have full data for that. And I've read those papers carefully. There's no mention in there about missing data, how missing data is handled, so I'm assuming that there's very little missing data. And I find that amazing not to have those two publications cited in this document. So that's just a concern that I have.

The other concern maybe is even larger, and that is that in all this process, it seemed to me that one set of facts that's needed has not come out at all. And that is -- just take for example Mallinckrodt, which a lot of us in St. Louis are interested in -- is how many workers do you have complete radiation exposure data

for, just a number like -- why don't we say 500 out of 764. So not having that data, I decided that I would write Mr. Neton and see if he would provide that data to me, and I don't want to paraphrase his answer, but basically the answer was that data is -- that number is not known.

And the reason that concerns me is this, that if you have -- let's say 90 percent complete data on the Mallinckrodt cohort and ten percent missing data, I think everybody would say well, that's okay; you can probably do an excellent dose reconstruction based on that. But suppose it was the reverse. Suppose you had complete radiation data on ten percent and basically you were making educated guesses on 90 percent. That wouldn't be all right. And so it seems to me that that number is absolutely critical and essential, and I would beg you all to produce that number, let people know about it. This is not just for Mallinckrodt. This is for all the sites. Because unless and until that number is produced, it raises the question that we're really operating on lots of missing data. And you don't have to read very far in the Technical Basis

Document to know that there's a huge amount of missing data and a lot of very broad assumptions that -- personally, as a scientist in the medical field -- I would be unwilling to make in my own research. So there are just two comments and I appreciate your listening.

UNIDENTIFIED: Excuse me, I (Inaudible) to your list.

DR. ZIEMER: Thank you. I'm sorry --

UNIDENTIFIED: (Inaudible)

DR. ZIEMER: You can -- yes, you can be added to our list. We have a couple of other individuals here, but others who have come in since we reconvened, if you do wish to speak, there is a sign-up list in the back, so you can still be added.

Next I have -- and thank you -- is it Dr. McKeel? Yes. Thank you.

And next we have Nancy Adams, who's with United Nuclear Weapons Workers. Nancy.

MS. ADAMS: I'm Nancy Adams and I'm also the daughter of a long-time Mallinckrodt worker. And I have a concern about dose reconstruction. Because of my own personal experiences and the experiences of many of the

claimants that we've talked to, we have almost 400 or so that we are -- have been in contact with -- I feel there's a lack of dose information on many of these long-term Mallinckrodt workers. And here -- here's a little bit of what happened with my -- our own.

My father's missing records -- really peculiar. He started working there in 1943, in March, and retired in 1968, in June. He was a worker for 25 years until retired, was in several nuclear incidents at the plant downtown, was on disability for a good number of years, totaling about a year -- a good number of months, I mean, totaling about a year. He worked in multiple buildings at both Destrehan and Weldon Spring when they moved the plant -- uranium processing out there, came back to Destrehan afterward -- and was one of the subjects in the study that Dr. McKeel referred to. We happen to know for sure that he was because all of his records were removed from Mallinckrodt for that study. That's what we were told, and I can tell you who told us that. It's a good -- a good source.

But when we filed a FOIA request, had no incident reports -- report data, no medical data, nothing but an

employee record and a badge number. And this is at DOE and we filed for this request after we did our phone interview because we were finding things along the way, and it turned out that we were trying to give some of the material to the person giving the phone interview and we were told oh, you don't need to do that. We have 16 pages of your father's medical records. And we thought oh, okay, great. But there's nothing. We have nothing. They tell us there's nothing.

So if there are large numbers of missing files on the long-term workers, how can the data be accurate? My father's missing records aren't an anomaly. I've heard this same thing over and over and over again. How can you do comparison data if you don't have the ones who worked there from the beginning for 25 years? And this is not uncommon.

So it just makes me feel -- I just can't help but feel that there's some -- either gross negligence or fraud. Thank you.

DR. ZIEMER: Thank you, Nancy, and your comments have been noted by the staff here.

Next -- I think it's James Mitulski -- is that -- do I

pronounce that correctly, James?

MR. MITULSKI: Yeah, that's fine.

DR. ZIEMER: United Nuclear Weapons group, as well.

MR. MITULSKI: Yeah, my dad, James Mitulski, worked at Mallinckrodt for 20 years, part of it downtown, part of it at Weldon Springs. And one of the things that Nancy said, I would back up, in terms of inability to recover data. I talked to many people at our meetings who had a hard time proving they ever even worked for Mallinckrodt. The only way they were able to prove that they worked for Mallinckrodt was not from documents from Mallinckrodt or from any other organization except their Social Security records. There were just no records that they were even ever there. And some of these people are the people involved in your study, because they either have cancer themselves or their relatives have cancer, or other diseases that seem to stem from the situation at Weldon Springs.

And basically Weldon Springs is what I'd like to talk about a little bit. My concern about dose reconstruction there, too, is that somebody like my dad

worked at six different buildings, oftentimes three of them at a time. And there were many incidents that occurred in these buildings that I'm sure nobody will find anywhere in records.

Like for instance, one of the things that happened to Dad was there was -- in the metal building -- a 3,000 pound crucible that they used to melt uranium. Now somebody had devised an invention that would gather the uranium into three ingots that were put together -- held together by a metal band. And when that metal -- when this first went into process, the ingots would not fill up at the same time. They would overflow. The metal band would melt because of the uranium rolling over the sides and Dad and another man would go into the furnace and clean -- well, Dad has had part of his foot amputated because of a very rare form of cancer on his foot. I'm sure things like that are not recorded anywhere.

The other thing is, when you work in three different buildings -- and they were all hot buildings, and he'd run -- he was a supervisor. He'd run from one building to another. I don't know how you can judge the time he

spent in one building and another to do dose reconstruction.

Another thing that bothers me is if the government spent $900 million to cover up the Weldon Springs site because it was so dangerous, it seems like a non-sequitur that everybody that worked there was put in harm's way. And they're willing to spend a lot more millions to keep that building -- that -- that former building area secure. So that bothers me, too.

And then the fact that these other groups of workers, because of their fine legislators, were able to move into a -- what do you call it, Denise? -- Special Cohort status, it almost seems -- it almost seems like a prejudicial act that some workers who worked in an equally radioactive environment are not questioned about their ability to receive the monies that were appropriated to them, while other workers, because of not working in a state where the legislatures were able to pass this -- this particular bill, are subject to this -- this kind of scrutiny. If the United States government would pass a law that people in Illinois were granted food stamps but people in Missouri were

not eligible for them, it would certainly not fly very well. And I kind of see this as the same kind of situation. You know, some people have been granted their -- their compensation simply because of a law that was passed, while others have not. It seems very inequitable to me.

That's basically all I have to say. Thanks.

DR. ZIEMER: Thank you, James. And then I have Barbara -- is it Barbara Smiddy? Yes.

MS. SMIDDY: Yes.

DR. ZIEMER: If you'll identify the organization or --

MS. SMIDDY: Excuse me, that's G. B. Windler Florist. That's my brother's -- I'm retired from Monsanto. These people are all Mallinckrodt. I started corresponding, talking on the phone with the EEOIC in July of the year 2000. Okay? I was sitting there having coffee one morning, bleary-eyed, before I went to work, and it flashed across the screen. There's only 12 survivors showed up down here regarding the Weldon Springs situation. I believe it had just been okayed that they were going to have a distribution. Okay? So I thought okay, my dad -- I'm 59 years old --

59-and-a-half, almost. My dad worked at the small arms in Weldon Springs during the second World War. I've got it all in that briefcase, somewhere between '42 and '46. I was born in June of '44. And my dad went from making $10 a week and driving from Grand and Merrimac in south St. Louis, to $100 a week 50 miles one way to work for the small arms in Weldon Springs. Okay?

My father passed away June 30th, 1964. I was 20 years old. And he died of lung cancer. Now I have been corresponding with the EEOIC. We -- they made us jump through their hoops and said send us this, send us that. I've got a certified copy of his working -- you know, from the Social Security, his records, his work records. And it went to the point of adjudication April 10th of this year, to be denied. And -- but the glitch of it all was, they didn't tell us that they were going from 1950 forward. That's, quote/unquote, a covered facility. Okay?

So needless to say, I'm a little put out about it. Go through all these hoops, and the man worked there -- and nobody can find him. I called Mallinckrodt; they can't find him. Until I talked to a lady at the U.S.

Department of Labor yesterday. She says well, that was an Army -- an Army -- whatever, I've got it in my papers -- that belonged -- she says maybe you should talk to the Department of Defense. So I thought oh, good, I've got another two and a half years to go through this craziness, and I won't.

This morning I called President Bush's comment line. So I get on the phone, and you can imagine my -- my long distance with the White House. My nickname's Blabbera. Well, anyway, I get ahold of this guy and he says well, what is Weldon Springs? And I start telling him about it. He says oh, yeah. And I said well, you know, we have a -- a guardian angel named Denise Brock -- they've nicknamed Brockovich -- I know of what you speak. He says I want you to know I'm writing this down now, and I'm going to give this to President Bush. Well, it's not just my dad. I cannot -- I want to know where you started -- when did they decide that you're going to cover from fifties forward? You know, the atom bomb was dropped, and that's when the war ended. Okay? Now these poor devils that worked out there at Weldon Springs for the small arms, and that's what my

dad worked for, nobody knows about them.
Now Mallinckrodt is a big company. I retired from Monsanto, and Mallinckrodt's a big company, they carry a lot of weight. And I'm really pulling for these people.
I told the gentleman this morning, you know, if I don't -- or my brother and I don't get any remuneration from this in our lifetime, and it comes after I'm under the ground pushing up the daisies, I want it to go to the Humane Society because evidently our human aspect is zilch. All this money, this $900 million -- what was it, $900 million? If you break that down for the claims, that's your $150,000, that's your $150,000, that's your $150,000 for how many years, and that pile of rock is never ever going to go away, and what's buried out there will never go away.
So I'm an old number-cruncher from Monsanto, and bottom line is bottom line, and the word "plug" is a dirty word in the accounting function. And if you don't bring out the facts -- I went through the same thing. I couldn't find medical records. My dad died in '64. Lutheran Hospital -- oh, we don't keep them past such-

and-such. And I thought well, if it's keeping all of us and your organizations employed, that's fine. But I think these people really need a break, 'cause I lost my dad when I was 20. I didn't get married, so he couldn't walk me down the aisle anyway, but there's been a lot of families and a lot of, lot of anguish gone over this -- gone on through this. And I thank you. Have a heart. Okay?

I'm going to, I guess, contact the Department of Defense and start this whole 360 again, but I -- I do want an answer, where did they start, what was their decision-maker from the fifties forward, and they've forgotten all these guys that opened our borders, that fought for our freedom. They gave them the stuff initially 'cause that was a uranium place back in the forties. Thank you.

DR. ZIEMER: Thank you for your comments. I don't know that we have any answers to those questions today, but if the staff is able to, I know that they will make information available to you.

Let me ask if there are other members of the public who've come in in the meantime and -- we still have

time, if there are others who wish to speak. Yeah, Denise, please.

MS. BROCK: Would it be okay if I tried to address Barb, because I think I understand what she meant by that? I think that when this first started, we probably were confused. Prior to the Weldon Spring/Mallinckrodt going in -- and I'm assuming you all are aware of this, I don't know; I'm assuming DOE is aware of this. Prior to that Weldon Spring/Mallinckrodt going in, there was a TNT/DNT plant, and I think this is correct -- Dr. McKeel would probably know that. It's a small arms plant, and I believe it was owned by the Army. And I think that's what the confusion was is that the Department of Energy -- this covers Department of Energy facilities. Is that correct? It does not cover Army-owned facilities, and so therefore people such as Barb's dad -- and we have numerous people that were exposed to -- to carcinogens or toxins that just were made sick, as well. But unfortunately, there hasn't been remedy up to this point for those people. And there are just numerous people that worked at that site. And so when

people say Weldon Spring, I think that's very confusing. And I -- the way I understand it, I think that Mallinckrodt or DOE purchased some of the very same buildings that the TNT/DNT were in. And so what they have there in this big, huge mound, is basically a witch's brew of mixed contaminants there. So not only is it TNT/DNT workers, Mallinckrodt workers, anybody that's involved in the runoff and ground water and soil there, so it is, it's absolutely horrible. But is that correct that that is why the TNT/DNT workers are not covered?

DR. ZIEMER: That's apparently correct, because the -- that would be specific to that facility, I believe. There's not a restriction in the legislation on the year 1950 because some other facilities were certainly in operation as atomic weapons facilities prior to that.

MS. SMIDDY: (Off microphone) How can it be addressed? How can these people be covered?

DR. ZIEMER: I don't know if I can answer that directly, but I will say that it's a legislative issue because, you know, in a sense, this group is restrained

to working with the group for whom we have legal -- in a sense, legal responsibility. I'm sure that -- and this is why we have representatives in Congress to seek redress on issues of this sort. I think the other gentleman made the point that it doesn't look always fair because some -- and this is true of all kinds of things. You know, one -- us guys in Indiana don't think we get our fair share of the Federal monies, you know. We pay those taxes in and they go down to Texas or somewhere else. But it's -- your legislatures have to help out on these kinds of things, and that seems to me where a lot of this starts. When we're seeking redress for past issues, we need the help of our Congressmen. And some are more effective at this than others, that's for sure.

Certainly we sympathize with many of these issues and feel hamstrung that there are some things that we can't do anything about ourselves, but -- so we recognize that.

Are there any others? Richard Miller, are you --

MR. MILLER: A follow-up question.

DR. ZIEMER: Yes, sure.

MR. MILLER: At the last meeting there was a discussion -- and I know you all have been digging into this -- about the availability of the IMBA model or something so we can take the site profiles and convert them into organ dose. Can you give us any update on where that is at this point?

DR. NETON: Yeah, we did -- is it on? We did look into that issue with our contractor who provided the IMBA program. And unfortunately, it's not possible to have a web-based version of the IMBA program. It is -- is proprietary-type -- a proprietary-type calculation engine that -- that NIOSH has had a front-end put on it, so to speak, so that it's customized for our application. But it would be equivalent to asking Bill Gates to put Excel spreadsheets on the web -- I mean then who would buy them sort of thing -- so it is available through our vendor.

I will say that we have available at NIOSH a public reading room that would have IMBA available for use. I understand it's not convenient, but that is one -- one option. Outside of that, I can -- we cannot come up with any solution that would make IMBA generally

available to the -- to the public.

MR. MILLER: Would -- would you be interested in doing some $1, low-cost licenses to members of the public that are interested? We'd be happy to sign up, if it's on a CD and it doesn't have to be web-based. It's really difficult to try to take these site profiles and go the next step. And I know you want transparency in the program, too. I -- I mean I know that's where you're at. What can be done to fix that? I mean it's just a question of money? I mean just to cut to the chase, is this just money that's necessary to make -- how is this Board going to audit if it doesn't have access to IMBA, or are you going to give the Board IMBA?

DR. NETON: We have a license agreement with our contractor that members of the Board and our contractor are -- have access to use the software, but it's a licensure issue with members of the general public.

MR. MILLER: Okay. Well, that's good. I'm glad the Board has it. Now the next question is, what other methods -- if you're going to make it available in Cincinnati, is there any other place on the planet that

it could be made available for those of us who -- I mean I'm sure all of us live in the Cincinnati region, but you know, what can be done -- I mean is there some practical solution? I mean is -- is what you need is $10,000 and the problem goes away? Or is this -- what -- how big is this problem?

MR. ELLIOTT: The only practical solution is, for those who want to use IMBA outside of the availability that we can make, they need to purchase the software and get a license themselves. That's it. That's the licensure issue and that's the way it is.

MR. MILLER: You're using proprietary software that's not available to the general public to make decisions about public compensation -- about a public compensation program. That's a real problem. I mean we don't -- we -- I mean I -- this is opaque, and we've been patient, but I mean I think you all have to grapple with this a little bit more on the licensure question. I mean I don't know whether it goes on the internet or whether you work out some arrangement to let people use CDs of it or how you'd want to limit its distribution, but this is -- this is -- this is

starting to pose a question.

DR. NETON: You raise a good point, Richard, but I would suggest that it is software that is proprietary, but the methodology that is used is -- is open and we -- we do have verification/validation type runs that can be used to document that it is indeed calculating what we've intended it to calculate. But the methodology itself, the ICRP methodology is generally available to the public.

MR. MILLER: Yeah, yeah -- no, I think that's right. We could all sit down and we could all do the hand calculations, as I'm sure you all do. But you know, at the end of the day, if one wants to run sensitivity analyses, you want to look at particle size, you want to look at a number of variables as you move forward where you have uncertainties, you want to -- you want to sort of test the boundaries of your own uncertainty analysis, it's really hard to do that in any kind of effective way fairly, I think you would admit, without the benefit of the software that you're using, particularly if you want to replicate exactly the outcomes that you're getting, like to make sure we're

in the ball park. So I -- I don't know what the solution is, but I -- I guess --

DR. ZIEMER: Well, I was going to actually ask you what you thought should be done, Richard, but maybe -- since you don't know the solution -- Richard -- okay, Mark.

MR. GRIFFON: Just an -- just an -- just an option, maybe. I don't know if this is possible, but the DOL resource centers might be a place where you could have a version dedicated that would stay at that facility, but at least it's a little more reasonable for people to travel to their local DOL resource center than to Cincinnati. I don't know if that's viable through the license agreements or not, but --

DR. ZIEMER: I think we've heard the point, and maybe -- I don't know if this is something the staff could explore or, you know -- obviously --

MR. MITULSKI: Where is that resource center?

DR. ZIEMER: -- somewhere out there there may be a simple solution that we haven't thought of, and thank you for making the point. Okay.

MR. MITULSKI: That's all I was going to say was maybe there could be something set up in a -- in like the St.

Louis Public Library, that there would be a dedicated site that would plug into this program.

But where is this -- where is the closest office that you're talking about?

MR. GRIFFON: The resource center.

DR. ZIEMER: Cincinnati is what you're -- no. Oh, you're talking about the DOL --

MR. GRIFFON: Yeah, the Department of Labor resource center, the closest one to this area I believe is Paducah -- Paducah, Kentucky.

MR. MITULSKI: So it would still be pretty far.

MR. GRIFFON: Yeah.

MR. MITULSKI: But I don't see why, you know, there couldn't be a -- like in either a public library somewhere or something -- a computer dedicated to -- or in a government building somewhere here, a computer dedicated to connecting to this program.

DR. ZIEMER: I'm not sure that those of us sitting here at the table know what the licensure issues are on that fully, but perhaps it can be explored. At least -- the point has been raised and may be worth following up. Thank you, Richard.

Are there others who have comment?

DR. MELIUS: I have a follow-up comment. Jim Melius, behind you.

DR. ZIEMER: Oh, Jim.

DR. MELIUS: Sorry.

DR. ZIEMER: I was looking for a member of the public.

DR. MELIUS: 'Cause I think it may be helpful at this time, and I apologize if you'd talked about it this morning, and it may very well be on the agenda tomorrow afternoon. But the last time we talked about how you were going to possibly make -- give public access or opportunity for input and comments on the site profiles, and it would seem to me that some of the comments that have come up today are related to that -- that issue. So is -- have you made progress on that, Larry, or is that something we can talk about?

MR. ELLIOTT: Tomorrow on the agenda we have Dr. Neton presenting information on site profiles. You will hear him speak tomorrow about this. What we have done, though -- in brief, for those who are here this afternoon -- we have, one, placed the site profiles on our web site, and anybody that calls in, we'll send

them a hard copy if they don't have web access. We ask for written comments to be generated. If anybody has comments or input that they want to provide on these documents, they are asked to do so and provide it to our regulatory docket office. NIOSH keeps a -- the docket office keeps track of all written comments on a variety of publications, and so that's the mechanisms that we have put in place for receiving, collating and sharing comments. Any -- any comments that the docket office would receive would then go on the web site or be available upon request.

Also we are taking the opportunity to go out to the site where -- specific to a Technical Basis Document or a site profile once it's approved for use and sharing that in a meeting with our organized labor and representatives of non-organized labor that are from the site, explaining the document to them, explaining and providing examples of dose reconstructions that were built from the document so that they can understand how the dose reconstruction process works and where these site profiles are critical in that process. And asking those individuals, if they have

comments, we would like to receive those.
We also -- we're doing that both at the site level and at the national level, so we're talking with the national labor reps about our documents and what kind of comments they might have on them. So that's -- that's, in a nutshell, where we're at with that. Jim Neton might have more details tomorrow in his presentation.

DR. MELIUS: One detail, if you have it already, is there any -- a meeting scheduled out here for the Mallinckrodt profile now that it's out? Are you at that point yet? I'm...

DR. NETON: I will actually be discussing the Mallinckrodt profile tomorrow morning as part of my Technical Basis Document update, but we do not have a general meeting to discuss the Mallinckrodt -- Mallinckrodt profile in the St. Louis area. It's difficult to identify -- the facility, you know, is no longer in business doing this operation, so it's difficult to identify the organized labor representatives, at least, that we would present this to.

DR. ZIEMER: Any comment?

DR. MELIUS: I just find that hard to believe, that you can't -- given even some of the comments we've heard here today from various parties that have been involved with this and are interested this. It seems to me that pulling together a group of people that have -- with knowledge of the facility and sort of representational interest wouldn't be that difficult, and I certainly would hope that you would do it. And if that could be combined with some sort of a public availability session to talk to -- address some of the kinds of questions that came up today, I think it would be helpful for everyone involved. I mean there's a lot of confusion out there, as well as there's some questions that have already been raised today in the -- what, the two or three days since it's been publicly available. And I don't think it would be that difficult to pull together a -- various types of review meetings.

DR. ZIEMER: Thank you. Mike?

MR. GIBSON: And just to follow up on Jim's comment and one I made last -- at the last meeting, wouldn't it be more efficient to add workers that have been in the

field and been through these exposures to these site profile teams while they're going on, rather than showing them a finished product, and letting the people put together the site profile that in some cases tried to hide these exposures for years?

DR. ZIEMER: Is that a specific question to Jim or is that a rhetorical --

MR. GIBSON: To -- to whoever's putting together the site profile teams.

DR. ZIEMER: Okay. Jim, do you want to address that now or you want to --

DR. NETON: I think I might want to defer to discuss that tomorrow. I mean I am going to talk -- I have an hour scheduled to go into those issues, unless you'd like to go into it right now. But if it'd be okay, I'd rather --

MR. GIBSON: No, that's fine --

DR. NETON: -- talk about it tomorrow.

MR. GIBSON: -- to talk about it tomorrow.

DR. NETON: Similar to what came up this morning, I think.

MR. HORGAN: Larry, I don't want to knock anybody out

of time, I just want to make a quick question, if it's okay.

DR. ZIEMER: Identify yourself, please.

MR. HORGAN: Tom Horgan, Senator Bond's office. Did I just hear that we're not going to really talk about the site profile for Mallinckrodt tomorrow? Is -- is -- we are? Are we going to have a discussion where we can get feedback from members of the Board, because I -- you know, with the -- working for the committee that has legislative oversight -- the authorizing committee that has legislative oversight of NIOSH, Health and Human Services and the Department of Labor, that's one of the main reasons I came in, to learn more about the Mallinckrodt site. And you know, everything I've found today has been very helpful. Some of it's a little over my head, but it's been helpful and I appreciate the procedures, but I sure hope we're going to have a discussion about the site profile for the Mallinckrodt site because -- where we can get feedback from the Board because, you know, that's what -- from what I understand, is what details the dose reconstruction process for that particular site. So I sure hope we do

that. Okay?

DR. ZIEMER: I believe that's included in the schedule tomorrow, yes.

DR. MELIUS: Yeah, but I think what we -- I was referring --

MR. HORGAN: (Off microphone) (Inaudible) I was just a little confused (Inaudible).

DR. MELIUS: What I was referring to was at the last meeting we had a discussion of -- that there be, one -- one, which Mike mentioned -- involvement of people who are -- have interest in the site or represent workers at the sites in development of the profile. Secondly, that once the -- the profile is approved or whatever the process is, that there be a session where people get a chance to meet and NIOSH to present the profile, there'd be a review of the profile by people with an interest and knowledge of the site to answer some of these questions, and there may also be a -- a good time, in association with that, for a meeting with the general public, people with, you know, family members, whatever, that -- affected by this program to explain what's going on with the profile, where things

stand, as well as to answer some of their questions.

MS. BROCK: Could -- could I address that for just a moment? Denise Brock again. Last week -- or actually earlier this week the UAW, which oddly enough was the union for Mallinckrodt -- years ago it was independent, and then after that it became the UAW. There are several retirees at that UAW. I had recently planned a rally and had been -- more -- earlier than that had actually been going to many of the building and construction trades, and that's how I came in contact with the UAW, had a meeting set up with them and had actually sent one of my board members, as well as I sent the Paducah resource center in to speak with these retirees, let them know about the compensation program. But we have much interest in this area. I spoke last night at my rally. We have had very little publicity in this area. Again, there were 3,300 direct employees. We only have 400 claims filed. There are numerous people out there that either worked there or have survivors that are living that may possibly be aware. But I think that the biggest wealth of our information would come from our workers such as Jim

Mitulski, and I have several other workers and I was just curious if perhaps if the site profile is done and there is not time to -- to go over that with these workers, if there's not some time in the very near future, if we couldn't get some of these workers in here to make comments or anything contributory to even the site profile, to add to it. I know their -- their stories are just amazing and their memories are, as well. And it would be great if we could actually do that tomorrow somehow. I just don't know how many people we could get together in that short a time, but I'd sure be willing to give it a try.

DR. ZIEMER: Comment from Larry.

MR. ELLIOTT: In Cincinnati in August at the Board meeting, we heard individual comments, and we've considered those comments. My response to Dr. Melius's question a moment ago gave you the decisions that we have made about how we're going to handle rolling out these Technical Basis Documents or full site profile. I don't want anybody confused. We are going to take these documents out into the field and solicit comments and input. We certainly -- I don't -- maybe there's

some confusion on Jim Neton's remarks a moment ago. This is only the first step in the process to meet -- to the -- have this Board meeting in St. Louis to talk about this recently-developed Technical Basis Document or site profile for Mallinckrodt. You'll get a -- you'll get a brief introduction to that tomorrow and welcome Board comment, welcome public comment on that. It's not the final step, though. We will bring it back. We are going to do this with all our Technical Basis Documents. We heard the individual comment from Mr. Gibson about putting workers on the site profile teams. That is not a viable solution, so we've opted for this, to go out and present these documents and present examples of dose reconstruction, try to get folks to understand how the documents are used and what a dose reconstruction actually looks like, and take their comments. We need comments to the written record, though. And so that's what we have decided. We've given due consideration to individual comments of this Board, and we're proceeding along those lines.

DR. MELIUS: Well, Larry, I'm confused now 'cause Jim Neton said there was no meeting out here. Now you're

saying there will be meetings? I --

MR. ELLIOTT: We don't -- your question was has a meeting been scheduled, and Jim's comment was no, there has not been a meeting scheduled as of yet. This Board meeting is the first step in this process.

DR. MELIUS: So -- so there will be a meeting scheduled?

MR. ELLIOTT: That's what I've been saying, we're going to take --

DR. MELIUS: Well, I'm just trying to make sure.

MR. ELLIOTT: -- the site profiles into the field.

DR. ZIEMER: Thank you. Further comments? Board members, any further comments this evening? Mike.

MR. GIBSON: With all due respect, it just -- it just seems to me that, you know, the legislators felt it necessary, the President that signed this bill felt it necessary to establish this Board equally by doctors and scientists and workers in the field. And it just -- it appears to me that each step, where possible, throughout the process, workers ought to be involved. And I know workers don't understand all the scientific jargon of dose reconstruction and everything else. But

they know when they were sent into a room and alarms went off and the professionals in the room turned the alarm up and told them to go back in, it was just radon, when in fact it was actinium. Those things ought to be considered. Those things aren't even -- haven't been brought to the table in the original document, probably, because the people that turned the dial up are the people that wrote the site profile. And that just -- to me, that's just blatantly unfair.

MR. ELLIOTT: There is no argument with that, Mike. I have no argument with that at all. I agree with you 100 percent, and there are mechanisms, there are points along the process that we solicit that kind of information. One of those steps is the interview process. We've added with the site profile process the opportunity, by making visits in the field, organizing meetings, hearing people comment about them and asking for written comment, that's another point in the process to solicit the workers' input to this. I value that. I've always valued that and I -- and I think we have addressed the -- the ability to gain and garner those thoughts and those perspectives in various

ways in the process. I don't argue with you. I just want -- I hope you understand that we have tried to bring the worker perspective to bear in more ways that just workers sitting on this Advisory Board.

DR. ZIEMER: Thank you. Other comments?

(No responses)

DR. ZIEMER: Okay, it's time for us to recess for the day. We will pick up again in the morning, as per the agenda. Thank you all for your participation today. We look forward to seeing you tomorrow.

You need to take your things with you. Don't leave things in the room overnight. This will not be necessarily secure.

(Whereupon, the meeting was adjourned at 5:00 p.m.)

C E R T I F I C A T E

STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, STEVEN RAY GREEN, being a Certified Merit Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript was reduced to typewriting by me personally or under my direct supervision, and is a true, complete, and correct transcript of the aforesaid proceedings reported by me.

I further certify that I am not related to, employed by, counsel to, or attorney for any parties, attorneys, or counsel involved herein; nor am I financially interested in this matter.

WITNESS MY HAND AND OFFICIAL SEAL this _____ day of November, 2003.

_____
STEVEN RAY GREEN, CVR-CM
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