

UNITED STATES OF AMERICA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR DISEASE CONTROL AND PREVENTION

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NATIONAL INSTITUTE FOR OCCUPATIONAL  
SAFETY AND HEALTH  
ADVISORY BOARD ON RADIATION  
AND WORKER HEALTH

+ + + + +

61st MEETING

+ + + + +

TUESDAY, FEBRUARY 17, 2009

+ + + + +

The meeting came to order at 1:00 p.m., in the Coral Room of the Doubletree Hotel Albuquerque, 201 Marquette Avenue Northwest, Albuquerque, New Mexico, Dr. Paul L. Ziemer, Chairman, presiding.

PRESENT:

PAUL L. ZIEMER, Chairman  
JOSIE M. BEACH, Member  
BRADLEY P. CLAWSON, Member  
MICHAEL H. GIBSON, Member (via telephone)  
MARK A. GRIFFON, Member  
JAMES E. LOCKEY, Member  
JAMES M. MELIUS, Member  
WANDA I. MUNN, Member  
JOHN W. POSTON, SR., Member  
ROBERT W. PRESLEY, Member  
GENEVIEVE S. ROESSLER, Member  
PHILLIP M. SCHOFIELD, Member

THEODORE M. KATZ, Acting Designated Federal  
Official

## REGISTERED AND/OR PUBLIC COMMENT PARTICIPANTS

ABRAM, J.T.  
ADAMS, NANCY, NIOSH CONTRACTER  
ABRYTA, MICHAEL  
AL-NABULSI, ISAF, DOE  
ARENDS, JONI, CCNS  
BARELA, JOE  
BARREYAS, ANDREA, LANL  
BARRITAS, BARBARA, LANL  
BARBOA, MARGARET, LANL  
BIERNACKI, STEVE  
BASTLINE, ROBERT, SC&A  
BLEA, RICKY, UA  
BONSIGNORE, ANTOINETTE, SEC PETITIONERS  
BRADFORD, SHANNON, NIOSH  
BREYER, LAURIE, NIOSH/OCAS  
BROEHM, JASON, CDC  
CANO, REGINA, DOE  
CHAVEZ, JUANITA, LANL  
CHAVEZ, LEE, LANL  
COHEN, SANFORD, SC&A  
CUREZZO, PHILIPPE, DOE  
CUSTER, T.L., SNL  
DEGARMO, DENISE, SIUE/DOW  
DOMINGUEZ, PATRICIA  
DOMINIGUEZ, SAMUEL  
DUGAN, DEAN  
EVASKOVICH, ANDREW, LANL  
FACULJAK, DEBBIE, LANL  
FITZGERALD, JOE, SC&A  
GOMEZ, LEO  
GRIMES, KIRK, SNL  
HAND, DONNA, NUCLEAR WORKERS  
HAYES, SAMMIE  
HAMERON, GARY, LANL  
HANSON, JOHN, SIUE/DOW  
HERBERT, SAM  
HERRERA, MARCELLA, LANL  
HERRERA, SYLVIA, LANL  
HESCH, VICTOR, LANL  
HESCH, YOLANDA, LANL  
HINNEFELD, STU, NIOSH  
HOMOKI-TIDUS, LIZ, HHS

HOWELL, EMILY, HHS  
ISHAM, J.  
ISHAM, SUE  
JACQUEZ-ORTIZ, MICHELE  
JOHNSON, BARBARA  
JOHNSON, RICHARD  
JOHNSON, TRACY, DOL  
KNOX, WAYNE  
KOTSCH, JEFF, DOL  
KRAMER, SANDY, WESTINGHOUSE  
LECTOR, RACHEL, DOL  
LEWIS, MARK, ATL  
LOPEZ, MANDY  
LUJAM, JOE  
MAKHIJANI, ARJUN, SC&A  
MAURO, JOHN  
MCFEE, MATT, ORAU  
MCKEEL, DAN  
MELLADO, THOMAS, DOL  
MERRITT, MAUREEN, ANWAC  
MILLER, MARLENE  
MONK, RICHARD  
NOGAR, MARCELLA  
ORTIZ, ANITA  
ORTIZ, LLOYD, LANL  
ORTIZ, ORLANDO  
OSTROW, STEVE, SC&A  
OZ, GABRIEL  
PADILK, RUBEN, SANDIA LAB  
PIERUCK, BARBARA  
PRIDY, B., SNL  
RINGEN, KNUT, CPWR  
RODRIGUEZ, SYLVIA, STATE OF NEW MEXICO  
ROEGBAD, JANICE  
ROMERO, MICHAEL  
RUTHERFORD, LAVON, NIOSH  
SNODGRASS, ROGER, LANL  
STAFFORD, S.W., SNL  
STRASCINA, YVONNE  
STUDD, DAVID, CDC  
THUOT, MICHAEL, LANL  
TRUJILLO, REBECCA, JOHNS HOPKINS  
VARGAS, PEGGY  
VALERIE, LORETTA, STATE OF NEW MEXICO

VIGAL, ERNESTO  
VIRGIL, RONNIE, LANL  
WATERS, DAVID, LANL  
WORTHINGTON, PAT, DOL  
ZARCHERO, MARY JO, ORAU

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Adjourn

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P R O C E E D I N G S

1:14 P.M.

1  
2  
3 MR. KATZ: Good afternoon. This is  
4 Ted Katz. I'm the Acting Designated Federal  
5 Official for the Advisory Board on Radiation  
6 and Worker Health.

7 And at this point, we're going to  
8 convene, in session. Dr. Ziemer, who chairs  
9 this board, is en route, and I believe will be  
10 here fairly soon, but let's get -- there's a  
11 lot we can get rolling, and hope he will come  
12 in shortly.

13 There are a number of Board members  
14 who are en route, actually. Same thing, a lot  
15 of travel difficulties today. So in addition  
16 to Dr. Ziemer, we have Phil Schofield. He's  
17 en route. He had something come up of a  
18 personal nature. Gen Roessler should be in  
19 shortly, Dr. Roessler, and Mark Griffon also  
20 should be in shortly in the next half an hour  
21 or so.

22 Dr. Lockey also has a tight

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1 schedule, and should be in shortly, but we do  
2 have a quorum of the board. Let me check  
3 before we go further, with the phone.

4 First, Mike Gibson, are you on the  
5 line?

6 MEMBER GIBSON: Yes, I'm here.

7 MR. KATZ: So Mike Gibson is on the  
8 line. And let me just take care of -- well  
9 first let me just say welcome, especially to  
10 everyone who's here in person associated with  
11 LANL or another site. We are very glad to  
12 have you.

13 I give you a warm welcome on  
14 behalf, not only of Dr. Ziemer, the ordinary  
15 Chair of the Committee, but also Dr. Christine  
16 Branche, who's the Acting Director of NIOSH, a  
17 welcome from her. She had hoped to be here  
18 today and couldn't make it, and also Acting  
19 Secretary of Health and Human Services,  
20 Charlie Johnson. He extends his welcome to  
21 you, as well.

22 So let me just check with the

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1 people on the phone. A couple of notices:  
2 just please, everyone on the telephone, use  
3 your mute button or star six while you're  
4 listening, except when you're speaking to the  
5 Board, and please, if you need to disconnect,  
6 put your phone on hold, please. I mean, hang  
7 up, do not put your phone on hold, and call  
8 back in. If you put your phone on hold, it  
9 will disrupt the meeting, because the noise  
10 will come through the whole sound system for  
11 the meeting from your hold button. Thank you.

12 So we have -- first on our agenda  
13 is, I'd like to record the votes from the last  
14 meeting. We had several Special Exposure  
15 Cohort votes in the meeting in December in  
16 Augusta, and a couple of Board members were  
17 absent for some of those votes. So this is  
18 just to put those votes on the record.

19 And that is for December 17th,  
20 there was a vote to add metallurgical  
21 laboratories to the Special Exposure Cohort  
22 and for that vote, Phil Schofield, Mr.

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1 Schofield and Dr. Lockey were absent. They  
2 have since -- on the 17th, I got a vote from  
3 Mr. Schofield, and on the 19th, I got a vote  
4 in favor of that addition from Dr. Lockey.

5 So the Board vote was unanimous for  
6 medical laboratory, and I should also update  
7 you to let you know that that special exposure  
8 cohort class has now formally, actively been  
9 added as of the 15th. That would have been  
10 Sunday. So they are now -- those individuals  
11 are part of the Special Exposure Cohort.

12 Then the following day we had vote  
13 to the Board on Vitro Manufacturing, and on  
14 Mallinckrodt 1958, for the year 1958. Both of  
15 these classes, the members present voted to  
16 add to the Special Exposure Cohort, and for  
17 those votes, Dr. Lockey was also absent, and  
18 he voted on the 19th in favor of that, as  
19 well. So those were unanimous votes to add  
20 those two classes to the Special Exposure  
21 Cohort, and those two classes have also now  
22 been officially added to the Special Exposure

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1 Cohort as of Sunday, the 15th.

2 So that concludes the absentee vote  
3 recording.

4 So next on the agenda, to get  
5 rolling here, we have a NIOSH update. Just to  
6 make mention, Mr. Larry Elliott, who heads the  
7 OCAS program, is not well at the moment, and  
8 cannot be present for the meeting.

9 So we're going to have Dr. Neton  
10 make a few remarks that would have been at the  
11 outset of his program update, and then Ms.  
12 Laurie Breyer will follow up with the ordinary  
13 items of the update, and let's get rolling  
14 with that.

15 DR. NETON: Thank you, Ted. Larry  
16 was going to provide sort of a brief update of  
17 what he called a news brief with some status  
18 of some ongoing issues that are happening in  
19 real time before he got into the formal  
20 presentation of the program status. And so  
21 I'll just go through those briefly, and then  
22 Laurie Breyer will take over.

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1           First, we want to indicate that we  
2 received the signed paperwork from the  
3 Colorado Department of Public Health at the  
4 end of January. That was a signed agreement  
5 allowing NIOSH to take possession of the so  
6 called Ruttenberg data. That's the  
7 epidemiologic study of workers at Rocky Flats.

8           We shortly thereafter scheduled a  
9 trip to Denver, and I think last week -- yes,  
10 it was last week that we sent out  
11 representatives from OCAS to collect -- to  
12 review the data with Dr. Ruttenberg, and to  
13 collect it, and we brought it back to NIOSH  
14 Cincinnati office, and we are currently  
15 reviewing it.

16           We're going to do a thorough  
17 review, compare the full dataset against the  
18 information that's currently in our database,  
19 and we expect this to take awhile. This is a  
20 fairly extensive dataset collected over a long  
21 period of time, so it may take up to a couple  
22 of months to complete the full review.

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1           After we complete the review,  
2           though, we do intend to provide a full report  
3           that will be distributed to the public via our  
4           website, as well as a copy to the Advisory  
5           Board.

6           Second, just an update on the  
7           Government Accountability Office assessment  
8           that's currently ongoing within OCAS. I  
9           think Larry mentioned at the last meeting that  
10          we have a GAO assessment going on. It's  
11          looking at several areas of our program,  
12          primarily related to claims processing times,  
13          costs of the program, quality control issues,  
14          and in our case, our worker outreach claimant  
15          assisting issues.

16          We had a preliminary kickoff  
17          meeting with the GAO, answered some questions.

18          We received a revised set of questions from  
19          them fairly recently, and NIOSH staff are in  
20          the process of responding to those questions.

21          Third, the ongoing ORAU contract  
22          extension is still ongoing. They have been

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1 extended now until March 31st, and until the  
2 contract gets awarded, we'll continue to  
3 extend their contract to ensure that we have  
4 continued productivity and consistency within  
5 our program.

6 And finally, the new security plan  
7 that has been created has been put up on our  
8 website. There are three documents that have  
9 been added to that site. These include a data  
10 access and interview procedures, a DOE  
11 classification review of documents of  
12 procedure, and the handling and control of  
13 unclassified information procedure.

14 Those three documents were issued -  
15 - signed, issued, and put on our website for  
16 the public to view them, and I believe that,  
17 after the program update, there's going to be  
18 a special session here on the security issues  
19 that includes participation from Department of  
20 Energy and NIOSH, and Stu Hinnefeld will be  
21 providing NIOSH's input into that presentation  
22 in Larry's absence.

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1           So that's all I have. And then I  
2 think Laurie will come up and provide the  
3 program statistics update.

4           MR. KATZ: Do we have any questions  
5 from the Board members for Jim? Thank you,  
6 Jim.

7           MS. BREYER: Good afternoon. Like  
8 Ted and Jim introduced me, my name is Laurie  
9 Breyer, and I am going to be doing the program  
10 staff's presentation in Larry's absence.

11           Most of the presentation that I'm  
12 going to be speaking about today is  
13 information that at least the Board has seen  
14 regularly. There's not too much new in the  
15 presentation, but really an update on what  
16 we've completed since we spoke to you in  
17 December, although we do have a new slide on  
18 here, the OCAS web updates page.

19           And I wanted to briefly discuss  
20 this, especially as, like for example, the new  
21 security documents are up, that the Board  
22 knows where they can find documents when

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1 they've recently been added to the website.

2           And one thing about our website is  
3 that we have a lot of information on there.  
4 In fact, one of the largest complaints we hear  
5 is there's a ton of information, it's almost  
6 hard to navigate.

7           And so the reason why we have a lot  
8 of information on there is we try to be as  
9 transparent as possible, releasing as much  
10 information as we can within the confines of  
11 the law, so that interested parties and  
12 members of the public can view the documents  
13 and have the access to the information that  
14 the Board is deliberating, or that NIOSH uses  
15 to complete dose reconstructions.

16           Whenever something new is out on  
17 the website - let's say you're waiting for a  
18 security document to come out, or you're  
19 waiting for a TBD to come out - on the right  
20 hand side of the web page, you'll see on the  
21 screen where it says, find it, that's what we  
22 call the navigational bar.

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1           On there, there is a link that  
2 says, latest update to OCAS website. If you  
3 click on that link, it will take you right to  
4 this page, and this page will list anything  
5 new that has been added to the website.

6           So if you're trying to find  
7 something new that's newly been added, and  
8 you're not sure how to navigate through the  
9 site, that's the easiest way to do that.

10           Now I think most Board members, and  
11 a lot of people from -- members of the public  
12 are on our automatic e-mail distribution list.

13           So if we add something to the website, you  
14 should be getting an e-mail that says this  
15 information has been added to our website, and  
16 it lists the information.

17           So if you're not getting those e-  
18 mail updates, please see me after the meeting.

19           We can make sure to get you on there. There  
20 have been a couple e-mail addresses that we  
21 get messages back saying that the e-mail is  
22 undeliverable, but when we check the e-mails,

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1 it seems to be the right e-mail address.

2 So if after this meeting you're  
3 having problems, you're not getting those e-  
4 mails, let us know, because that will also  
5 keep you informed of when anything new is  
6 added to the website.

7 Now onto the regular program staff  
8 that we present at the Board meetings. We've  
9 had 28,735 cases referred to NIOSH for dose  
10 reconstruction. Of that, we've completed  
11 about 80 percent of the cases and returned  
12 them back to DOL, totaling 23,111 cases. Of  
13 those, 23,013 have been submitted with a DR  
14 report, 824 have been pulled from dose  
15 reconstruction by the Department of Labor, and  
16 2,274 have been pulled from the dose  
17 reconstruction process for SEC consideration,  
18 and have been sent back to DOL.

19 We currently have 5,150 dose  
20 reconstructions or claims remaining at NIOSH  
21 for dose reconstruction, which is  
22 approximately 18 percent, and there are

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1 another 474, or two percent, that have been  
2 administratively closed.

3 Now again, administratively closed  
4 means that we completed a dose reconstruction  
5 for the claim, and asked the claimant to  
6 return an OCAS-1 form which they need to sign  
7 for us to move forward to sending the final  
8 dose reconstruction to Department of Labor.

9 If the claimant never returns that  
10 OCAS-1, then the case is administratively  
11 closed. Of course, they can always be  
12 reopened if the claimant chooses to do so.

13 This slide really is just a visual  
14 depiction of the slide I just presented. You  
15 can see that the blue represents cases  
16 completed, which is 20,013 of the cases. You  
17 can also see that the cases at NIOSH are the  
18 yellow and the green, which are the active  
19 cases and the pending cases. You can see that  
20 we have 3,951 are active; 1,199 are pended.

21 We were asked a couple of meetings  
22 ago to be able to break down why some of these

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1 cases are still pended at NIOSH, the active  
2 cases, anyway. So of the 1,199 pended cases  
3 at NIOSH, we've put together this slide, which  
4 kind of has the top six reasons.

5 This isn't a comprehensive list,  
6 but at least gives you an idea of what some of  
7 the top reasons are for the majority of the  
8 cases at NIOSH, and you can see that the main  
9 pended reason for cases are TBD modification  
10 issues. So we have 537 of the 1,199 pended  
11 cases at NIOSH are waiting for a TBD  
12 modification.

13 We're not going to do a dose  
14 reconstruction for a claim if we know that the  
15 TBD might change. If we're going to change  
16 the way we do a dose reconstruction for a  
17 site, we'll pend that case until the issue is  
18 resolved, and then go and do a dose  
19 reconstruction for that claim.

20 The next category is SEC issues,  
21 and that is for when cases fit into a newly  
22 added SEC class, but they don't meet the

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1 criteria, such as having 250 days or an SEC  
2 cancer.

3           So we have to pend those cases to  
4 determine how we're going to go back and be  
5 able to do a dose reconstruction for the  
6 claims that fit in the class, but don't have  
7 the SEC cancer or the 250 days, or they're  
8 pended because maybe the Board has voted to  
9 add the class, but it hasn't gone through the  
10 final designation yet. It hasn't gone through  
11 the Secretary and Congress, so we'll pend it  
12 before we send it -- until it becomes final  
13 before we send it to DOL.

14           Now some of these cases in the  
15 first two categories, TBD and SEC issues --  
16 some of those are repetitive. So some of the  
17 537 may fall in the 376 and vice versa,  
18 because it may first get pended for a TBD  
19 issue. The class then gets added as an SEC,  
20 and then it also gets pended for non-SEC  
21 methodology. So some of those are a little  
22 bit repetitive, but not many of them.

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1           And then you can see some of the  
2 other categories we have: incorrect employment  
3 information, incorrect cancer information or  
4 ICD-9 code, we're awaiting additional  
5 information from DOE or an AWE site.

6           And to point out, that is not the  
7 initial request for DOE information or AWE  
8 information. That means that we've gotten  
9 their initial request, but then maybe there's  
10 new information that's added to the claim.  
11 For example, the claimant says I worked at Los  
12 Alamos, but I went to a lot of other sites as  
13 part of my job. And so we submit a second  
14 request to DOE asking for maybe visitor logs  
15 or visitor records or something.

16           So this isn't the initial request.

17           These are ones that are pended, because we'd  
18 get additional information and have to put a  
19 second request in to get information for a  
20 worker.

21           And the last category is  
22 incorrect/missing claimant or survivor

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1 information, and these are the majority.  
2 There are also some miscellaneous ones, like  
3 people who are asking for an extension for  
4 returning their OCAS-1. Those claims will get  
5 pending until we receive the OCAS-1.

6 Now of the 20,013 dose  
7 reconstructions we sent back to DOL for final  
8 adjudication, 6,491 of them, or 32 percent,  
9 had had a PoC greater than or equal to 50  
10 percent; 13,522 or 68 percent of the cases had  
11 a PoC less than 50 percent.

12 Now again, Department of Labor will  
13 run the final PoC calculation and determine  
14 eligibility, but when they left NIOSH, this is  
15 what the PoCs were at. So you can see, 6,491  
16 were greater than or equal to 50 percent.

17 And then two slides back, there  
18 were also the 2,274 that fit into the SEC. So  
19 if you add those numbers together, then that'd  
20 be approximately 39 percent that either had a  
21 PoC greater than or equal to 50 percent, or  
22 would be eligible under an SEC.

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1           And this slide, just again, is a  
2 visual depiction of where most of the cases  
3 fall out of those 20,013 claims within the PoC  
4 scale. So you can see the 6,491 that are  
5 greater than or equal to 50 percent, and then  
6 the majority of them fall within 40 percent or  
7 less. And you can see there are a few that  
8 fall in that 41 to 49 percent range.

9           Now of the active cases remaining  
10 at NIOSH, again the 5,150, there are 2,058 of  
11 them that are in the dose reconstruction  
12 process, meaning they've been assigned to a  
13 health physicist or about to be assigned to a  
14 health physicist.

15           Seven hundred and fifty-seven of  
16 them have had an initial draft dose  
17 reconstruction sent to the claimant, so  
18 approximately 15 percent of the 5,150 active  
19 cases have had an initial dose reconstruction  
20 done and are in the hands of claimants, but  
21 since they haven't been sent to DOL yet,  
22 they're still considered active cases, but we

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1 have made progress on 15 percent of these  
2 cases as far as having an initial draft dose  
3 reconstruction sent out, and 2,335 are in the  
4 development to begin the dose reconstruction  
5 process, meaning that we have done a CATI  
6 interview, an introductory interview with  
7 them, and we have requested information from  
8 the Department of Energy. And a lot of the  
9 pending cases would fall in this category, as  
10 well.

11 And then we have 3,177 cases, or 62  
12 percent of them, are older than a year. In  
13 December, we had reported that there were  
14 3,406 cases that were older than a year.  
15 Since December, we have been able to decrease  
16 that number by 229 cases, to bring that number  
17 down some, because we do realize that we need  
18 to get some of these cases out, or that's our  
19 goal, to get them out in less than a year.

20 Now in the efforts to complete  
21 first 5,000 cases, we reported this at  
22 probably several Board meetings now. And just

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1 to keep you up to date, there hasn't been too  
2 much change. We've had 3,802 final dose  
3 reconstruction reports to DOL, and you can see  
4 where else they fit into the categories as far  
5 as status goes, the two main ones being the  
6 ones in red at the bottom, the DOL returned  
7 cases, which means that we've done an initial  
8 dose reconstruction for them, sent the final  
9 dose reconstruction to DOL, and they have been  
10 sent back, but they have had work done on  
11 them.

12 And then they could be sent back  
13 maybe for a PER issue or a change in TBD, but  
14 they have had a final dose reconstruction sent  
15 out at a point.

16 There are 24 that are currently,  
17 though, waiting dose reconstruction. Those  
18 are the 24 that have not had initial dose  
19 reconstruction done for those yet. Of those  
20 24, they represent 18 distinct sites. So it's  
21 not that it's 24 claims all from the same site  
22 that are all on hold. They represent quite a

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1 few sites.

2 And of those 24, 16 of them are in  
3 pending status, and the reasons are listed  
4 here. Three of them are pended for DR  
5 methodology, because they do not fit into an  
6 SEC class. So that means we've added an SEC  
7 class, but these three cases do not fit in  
8 there. They don't have 250 days or an SEC  
9 cancer.

10 Four of them are pended awaiting  
11 SEC designation. That means there's an SEC  
12 class that the Board voted on probably in  
13 December that has gone to the Secretary, or is  
14 waiting to become final, and again, these are  
15 as of January 31st. Ted announced that some  
16 had become effective on the 15th, but this was  
17 as of January 31st. So these cases were  
18 pended waiting final designation of an SEC  
19 class that they could be evaluated under.

20 Eight of them are pended for TBD  
21 modification issues, and one is an SEC  
22 petitioner. We will pend their claims as the

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1 SEC is going through the process, and the  
2 petitioner is actually going to be one of the  
3 SEC petitions we're discussing at this  
4 meeting.

5 Eight of the 24 are in active  
6 status. Two of those eight have been paid  
7 under the SEC, meaning they fit into an SEC  
8 class, they went to DOL, and they were paid.  
9 However, they have non-SEC cancers, as well,  
10 and so they came back to NIOSH for a dose  
11 reconstruction for medical benefits for the  
12 non-SEC cancers. So it's waiting for a dose  
13 reconstruction to see if the dose  
14 reconstruction will come out compensable to  
15 pay medical benefits for that non-SEC cancer.

16 Four of them are NUMEC Apollo  
17 claims that were non-SEC claims, and they were  
18 recently unpended as we determined the  
19 methodology to complete the dose  
20 reconstructions for those.

21 One was unpended per DOL. It was  
22 an employment date that was waiting to be

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1 verified, and that's now active.

2           And there's one, again, that  
3 employment was verified as less than 250 days  
4 at Y-12 in the SEC class, and it's now  
5 currently awaiting a DR.

6           Submittals versus production:  
7 again, you all should be very familiar with  
8 this graph. It hasn't changed much. At the  
9 bottom, where it says quarter 1, 2009, it  
10 looks like it drops off there, but really the  
11 only reason it does that is this graph is run  
12 based on data from each quarter, and since  
13 we're still in quarter 1, then it looks like  
14 it drops off because not all the data is there  
15 to report. So it's not run by month, or else  
16 it would look consistent there.

17           So, but you can see, as of the end  
18 of quarter 3, 2008, that the green line and  
19 the red lines, which are draft reports to  
20 claimants into DOL, are a lot higher than the  
21 blue line, which is cases coming in, which is  
22 allowing us to get the dose reconstructions

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1 done for some of the older claims, as well.

2           Again, this is another visual aid  
3 just to kind of help you see where the cases  
4 break down by tracking number. The blue is  
5 the completed cases. Really, the main thing  
6 to look at here is that kind of mustard yellow  
7 color, and then the gray color at the top.

8           Those are active cases and pending  
9 cases. So those are what NIOSH still has work  
10 to do on cases within those tracking numbers.

11           Here's the rework slide. It stays  
12 pretty consistent. You can see a spike  
13 starting around quarter 3 of 2007, and those  
14 are resulting from the reworks of PERs that  
15 came back for program evaluation reports, but  
16 they stay pretty consistent. Some of those  
17 reworks are because of that. So that's why  
18 you see that spike.

19           Here again is the new slide that  
20 Larry presented at the December Board meeting,  
21 and so we kind of tweaked it a little bit to  
22 add in some milestones, so to speak.

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1           You can see where we received our  
2 first claim on October 11, 2001, at the very  
3 tip of the graph. Then you can see where we  
4 got the first draft DR to the claimant on May  
5 31 of 2002, the ORAU contract awarded on  
6 September 11, 2002. Then you have the first  
7 TBD approved in March of '03.

8           And you can just see, as we reach  
9 some of these milestones -- the vertical line  
10 shows days, the horizontal line shows tracking  
11 numbers, but you can see that, as we reach  
12 some of these milestones, that the time to do  
13 a dose reconstruction goes down.

14           You can see that trend starting to  
15 move down, and then you see a little spike  
16 kind of in some of the later claims, and  
17 that's because it was taking longer to do some  
18 of the initial DRs as we had to go back and do  
19 some of the PER returns.

20           So you see a little spike there,  
21 but this just kind of gives you a quick  
22 snapshot of the processing of claims over the

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1 last seven years, eight years.

2 Here's another graph which gives  
3 you an idea of the time frame for processing  
4 claims. You can see that, overall, this shows  
5 the time it takes to process claims for  
6 initial draft dose reconstructions. So that  
7 means, to get the first draft dose  
8 reconstruction to the claimant.

9 The overall time is 677 days. And  
10 then we put on here, starting in 2005 where  
11 you can see the time was 918 days, all the way  
12 down to 2008 where that number is almost in  
13 half by 484 days. So you can see that, over  
14 time, that that number is decreasing.

15 And then this slide right here  
16 shows the average days for all sites to get a  
17 final dose reconstruction to DOL. So the  
18 previous slide was for initial dose  
19 reconstructions to the claimants. This slide  
20 gives you an idea of the time for processing  
21 claims for final dose reconstructions to DOL.

22 And you can see again that the

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1 overall time was 722 days through 2008 where  
2 the number came down to 537 days as the  
3 average number of days to process claims that  
4 year.

5 The DOE response to requests for  
6 exposure records, which we report normally in  
7 program stats, there is currently 278  
8 outstanding requests and 150 outstanding  
9 requests that are greater than 60 days.

10 The program assessment rating tool  
11 or PART goals, you know, Larry discussed in  
12 the December Board meeting, and this is just a  
13 recap of that in a table for our PART goals  
14 for FY 2009.

15 And in the first column, you'll see  
16 the goal objectives. So OCAS' goals are to  
17 complete 35 percent of initial cases within  
18 six months of receipt, meaning we get them in  
19 and get them out the door within six months.

20 You can see our baseline goal for  
21 FY08 was 31 percent, was what we met in FY08.

22 Then you can see in FY09 our goal is to

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1 complete 50 percent of legacy cases, and you  
2 can see that the FY09 goal is 50 percent. The  
3 baseline in '08 was 54 percent.

4 Our third goal is to complete 40  
5 percent of DOL returns within six months of  
6 receipt, and the goal is again 40 percent, and  
7 we'll set the baseline this year, or in FY09.

8 And then the fourth goal is to  
9 complete 60 percent of SEC evaluation reports  
10 within 180 days for 83.13 petitions. Again,  
11 the goal is 60 percent. The baseline will be  
12 set in FY09.

13 SEC classes: Ted reported some  
14 changes today, but these numbers are as of  
15 January 31st. Thirty-five SEC classes have  
16 been added, 20 of those through the 83.13  
17 process, or approximately 57 percent. Fifteen  
18 of them have been added through the 83.14  
19 process, or approximately 43 percent of the  
20 SEC petitions for the newly added classes.  
21 This represents classes of workers from 29  
22 sites, and 2,274 potential claims.

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1           And now we have a few slides from  
2 some of the sites that are relevant to where  
3 we're meeting this week. For Los Alamos  
4 National Lab, NIOSH has received 1,011 Los  
5 Alamos cases. Four hundred and seventy-three  
6 have been completed and submitted to  
7 Department of Labor. One hundred and thirty  
8 of those, or 27 percent, had a PoC of greater  
9 than or equal than 50 percent, and 343, or 73  
10 percent, had a PoC of less than 50 percent.

11           The next bullet shows that 271 have  
12 been pulled by DOL. If you remember, there is  
13 an existing SEC class for LANL pre-1975. So  
14 those 271 cases are cases that were pulled  
15 predominantly for the SEC, which also could  
16 affect the bullet, the sub-bullet for PoCs  
17 less than 50 percent.

18           So for anybody who worked prior to  
19 1975 who did not fit in the SEC class but had  
20 a dose reconstruction done, they only would  
21 have received a partial dose reconstruction.  
22 So that can be looked at when you're looking

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1 at the sub-bullet on 343 had a PoC of less  
2 than 50 percent.

3 And the last bullet on here is 267  
4 active LANL claims are at NIOSH currently.

5 Again, here is just the PoC or the  
6 distribution of PoCs for LANL claims, just to  
7 give you an idea, a snapshot, of where most of  
8 the claims fell in the dose reconstruction  
9 process.

10 And then Sandia National Lab. We  
11 have 289 Albuquerque cases referred to -- or  
12 Sandia National Lab-Albuquerque cases referred  
13 to NIOSH. Sixty-three percent of them have  
14 been completed and submitted to DOL for a  
15 total of 183. Twenty-nine had a PoC of  
16 greater than or equal to 50 percent, and 154  
17 had a PoC of less than 50 percent. Nineteen  
18 have been pulled by DOL, and 87 of the cases,  
19 which is about 30 percent, are active  
20 currently at NIOSH awaiting dose  
21 reconstruction.

22 And then again, their last slide is

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1 the distribution of the PoCs for the Sandia  
2 National Lab-Albuquerque site.

3 And that's the end of the  
4 presentation. I'd be happy to take any  
5 questions that the Board may have.

6 MR. KATZ: Thank you, Laurie. I  
7 should at this moment recognize that several  
8 Board members, including our Chair, have  
9 joined us, Dr. Ziemer. And I'll be turning  
10 the reins over to Dr. Ziemer, and also Mark  
11 Griffon and Bill Schofield, and then at this  
12 point I'll let Dr. Ziemer carry on.

13 CHAIRMAN ZIEMER: Thank you all for  
14 coming. I think we should go ahead and start  
15 the meeting, don't you think?

16 I flew in on Continental, and was a  
17 little nervous when I learned that there was a  
18 gas valve that wouldn't close this morning. So  
19 I was happy that they delayed the flight to  
20 fix the gas valve, but it did result in  
21 missing a connection and scrambling in. I  
22 just barely beat Mark Griffon here. So I felt

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1 good that I wasn't the last one at least, Mark  
2 and Phil.

3 Gen Roessler also will be joining  
4 us. She had similar very close connections, I  
5 understand. So we may even have a quorum  
6 before the afternoon. Well, we do have a  
7 quorum, but you know.

8 Anyway, thank you very much, and we  
9 appreciate the presentation. Laurie, I wanted  
10 to start with one question, which might have  
11 caused some confusion to people. It was the  
12 production by quarter.

13 And the slide shows that each year  
14 has three quarters. I have figured out that  
15 that doesn't work very well, so you need to  
16 clarify that for the folks here. There's a  
17 reason for that, but you need to perhaps  
18 clarify it.

19 MS. BREYER: Okay. And we've been  
20 talking about kind of re-tweaking some of our  
21 slides. You know, it's easy to stick to the  
22 ones you have and kind of fill in numbers, but

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1 that is something we'll try to figure out a  
2 way to explain better.

3 CHAIRMAN ZIEMER: Well, I think the  
4 slide is probably right, but they weren't able  
5 to work all the labels in there.

6 MS. BREYER: Exactly. I think to  
7 get in here, like you see at the beginning,  
8 you see quarter 1 and quarter 3. You don't  
9 even see 2 or 4. And then you have quarter 1,  
10 quarter 3 again, quarter 1, quarter 3, and it  
11 just kind of goes quarter 1, quarter 3. I'm  
12 not sure why those two were the ones picked.  
13 And then it ends with quarter 1 kind of  
14 dropping off here.

15 CHAIRMAN ZIEMER: Well, less people  
16 think that we left out the non-productive  
17 quarters; I think the data is all there. Just  
18 the labels didn't work out very well.

19 MS. BREYER: Right. And we don't  
20 want people to think that.

21 CHAIRMAN ZIEMER: But it probably  
22 would be good if we got a uniform axis on

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1 there. Let's see if we have other questions.  
2 Jim, were you going to address that? Jim has  
3 a better explanation.

4 DR. NETON: You got it exactly  
5 right, Dr. Ziemer. There just wasn't enough  
6 room on the X axis to put it all the way that  
7 needs to be there. So the data are plotted  
8 properly. It's just the designators aren't  
9 all there.

10 CHAIRMAN ZIEMER: Thank you. Jim  
11 Melius?

12 MEMBER MELIUS: Thank you. I have  
13 several questions. Thank you for the more  
14 detailed update on the first 5,000 cases.

15 I found it a little puzzling why  
16 there were so many reworks coming back from  
17 DOL. It seemed like a high percentage, given  
18 the amount of time that's been passing. It  
19 was 496 out of the 5,000 were returned cases.  
20 I mean, I would just be curious what -- are  
21 those SEC? I mean, what's --

22 MS. BREYER: I'm thinking some of

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1       them are probably SEC. I'd have to go and get  
2       them to run a query on that, but SEC and PERs.

3                   CHAIRMAN ZIEMER: Let's see if Stu  
4       Hinnefeld can clarify that. Stu?

5                   MR. HINNEFELD: I can suggest some  
6       things that probably contribute to that, is  
7       that the case -- if the case was returned to  
8       us recently, even though it was really filed  
9       long ago, and it's been fairly recent that we  
10      had a very large number of cases returned for  
11      PER purposes, program evaluation purposes, and  
12      so I would guess that a big chunk of those  
13      came from the first 5,000. And so that's why  
14      --

15                  MEMBER MELIUS: So they have been  
16      completed, come back, and --

17                  MR. HINNEFELD: They were  
18      completed, yes. Everything in that 496 number  
19      had a final dose reconstruction done once at  
20      least, and it was sent to the Department of  
21      Labor. It was subsequently then returned to  
22      us, either because of, like I said, a PER

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1 issue, or there may have at some point been  
2 found maybe an additional cancer developed, or  
3 something like that.

4 MEMBER MELIUS: Okay. It would be  
5 interesting to have a breakdown for that, just  
6 out of curiosity.

7 My second comment's just a  
8 suggestion, is that you try to move on to the  
9 second 5,000. Those cases are, my guess is,  
10 five years old, or something of that length of  
11 time, or should be, you know, I think people  
12 are equally frustrated with that time period,  
13 and it would be interesting to see where they  
14 are and what falls into those.

15 CHAIRMAN ZIEMER: Let me interrupt  
16 just a minute. I'm assuming your question  
17 deals with reporting to us. I think they are  
18 working on them, but you want to know what  
19 they're -- what's happening, yes.

20 MEMBER MELIUS: It would be good to  
21 have an update on those.

22 MS. BREYER: So I'd like to change

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1 this to summary of efforts on the first 10,000  
2 cases, or between five and ten?

3 CHAIRMAN ZIEMER: Or five and five  
4 would be good.

5 MEMBER MELIUS: Five and five I  
6 think would be a better suggestion.

7 Third, and I think I made this  
8 comment to Larry last time or whoever was  
9 presenting last time. Some of your  
10 statistics, I think, are very misleading,  
11 because you report average time to complete a  
12 dose reconstruction as bigger than in the last  
13 year. So that's sort of a falsely low number,  
14 because it does not reflect all the people  
15 that are in the tale unless you're reporting  
16 it differently than you indicate on your  
17 slides.

18 DR. NETON: Yes. I think maybe we  
19 could do a better job explaining that. I  
20 don't think it's a falsely optimistic number.  
21 The idea is that, if the case comes in today,  
22 we have all of the tools, or most of the

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1 tools, we believe, in place to process the  
2 case, and that really shows in those new ones  
3 that come in after, say, 20,000.

4 That doesn't account for the fact  
5 that there's some recalcitrant type cases that  
6 are out there that have been on the books for  
7 a long time that skew the averages. And I'd  
8 be the first one to argue that using an  
9 average for a distribution is not necessarily  
10 normally distributed. It's a very misleading  
11 number in itself.

12 MEMBER MELIUS: In fact, my next  
13 recommendation was to use something like a  
14 median or something that would better reflect  
15 your actual performance like that -- right,  
16 that the outliers don't --

17 DR. NETON: If you have a case out  
18 there for 20,000 days, it's going to skew the  
19 entire distribution.

20 MEMBER MELIUS: Exactly, and you're  
21 not -- for 2007, '06, I mean, as you go back  
22 in time, you're capturing more of those in the

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1 average, the mean number that you're using,  
2 and I mean, I'd be curious.

3 I have no doubt that you're doing  
4 it quicker. It just, I can't tell that. I  
5 have lingering questions if you're just  
6 reporting it the way you're reporting it.

7 DR. NETON: Well, I think it does  
8 report out the fact that, if a case -- when  
9 new cases come in, we can process those fairly  
10 rapidly after they come in, because we've got  
11 the tools in place.

12 There are always going to be that  
13 small percentage of cases that are going to  
14 remain on the books for a while because of  
15 some special issues. They're difficult cases,  
16 the employments are at many, many sites, or  
17 they're at AWEs, where we don't have models  
18 available, that sort of thing.

19 I agree. I think we could do a  
20 better job explaining what those figures are.

21 CHAIRMAN ZIEMER: Stu, did you have  
22 an additional reply? Okay. Jim, additional

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1 questions?

2 MEMBER MELIUS: I think I've run  
3 out.

4 CHAIRMAN ZIEMER: Thank you. Okay,  
5 Wanda Munn?

6 MEMBER MUNN: Laurie, a really  
7 simplistic question. How long do our recent  
8 additions to the website stay up as recent  
9 additions?

10 MS. BREYER: Well, that's a good  
11 question. I'm not --

12 MEMBER MUNN: Because sometimes I  
13 think, oh, I saw that just a little bit ago,  
14 maybe it's still on the easy to find spot, and  
15 find that it's gone, and I've never had a feel  
16 for whether those were changed as a function  
17 of how many new additions are made, or as a  
18 function of time.

19 MR. HINNEFELD: Well, I don't know  
20 that, but I had to find it out just now. That  
21 is right now a fixed length list. And so when  
22 a new addition goes on, it goes to the most

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1 recent, it goes at the top, and the bottom one  
2 drops off.

3 MEMBER MUNN: Okay. That's what I  
4 needed to know. Thank you.

5 CHAIRMAN ZIEMER: Okay. Any  
6 further comments or questions on the update?  
7 Okay, thank you again, Laurie. We appreciate  
8 the input.

9 MS. BREYER: Thank you.

10 CHAIRMAN ZIEMER: Our next topic of  
11 discussion is the DOE and NIOSH security plan.  
12 We're going to hear from Dr. Worthington. I  
13 think we'll hear from someone from NIOSH, and  
14 Ted, I don't know who that is. Is Stu doing  
15 the triple duty today? Okay. Sorry to learn  
16 that Larry was not able to be here, but we're  
17 pleased to begin with Dr. Worthington.

18 And Board members, after we have  
19 both presentations, I want to have us discuss  
20 whatever issues are of concern to you.  
21 Actually, perhaps what we'll do is we'll have  
22 some discussion of the DOE plan immediately

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1 after Dr. Worthington's presentation, and then  
2 the NIOSH. But we can include -- as we go to  
3 NIOSH, include DOE, as well, because they're  
4 inter-linked.

5 And it's my intent that, if  
6 necessary, we will carry over issues into our  
7 work time later in the week, particularly if  
8 we have items that we want to develop in terms  
9 of recommendations, or if we need further  
10 information, or if we need to develop wording  
11 on anything.

12 So we're not going to be limited to  
13 the one hour we have today. If necessary, we  
14 will extend the time as needed. So Pat, we're  
15 pleased to have you with us again today, and  
16 look forward to hearing your remarks on this  
17 new phase of the security plan.

18 DR. WORTHINGTON: Good afternoon.  
19 Can everyone hear me? I certainly sympathize  
20 with individuals that had some travel  
21 difficulties. I don't know if you remember,  
22 the last meeting I was stranded in Atlanta,

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1 because Augusta was fogged in. So there seems  
2 to be a fog over us sometimes when we're  
3 trying to get here, but again, I'm glad to see  
4 all of you.

5 As you know, this program is very  
6 important to us. I have a number of people  
7 here from Department of Energy today that are  
8 related to this program and supporting me.  
9 And so they may be involved in some  
10 question/discussion later on. I want to make  
11 sure you're aware that they're here.

12 Regina Cano is here and Greg Lewis,  
13 and we have from our security side of the  
14 house, Guy McDowell, who is also available.  
15 Again, this program is very important to Mr.  
16 Pedonski. He certainly made sure that  
17 resources across our organization from  
18 security to ES&H -- they were made available  
19 to help develop the plan that was issued under  
20 Glen's signature on the 23rd of January.

21 It certainly was a very long  
22 effort, and we certainly apologize for the

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1 length of time, but we certainly needed quite  
2 a bit of interaction between the government  
3 agencies, between Department of Labor and  
4 NIOSH, in coming up with what we viewed as a  
5 consolidated plan regarding the Federal  
6 organizations to bring that to you for further  
7 discussion.

8           Again, this program, this plan that  
9 you've seen and that we'll discuss today, is  
10 intended to provide some institutionalization  
11 for the security requirements that have  
12 already been on the book to formalize and  
13 document the requirements for there, and to  
14 make things more transparent into more  
15 accountability performance with regard to DOE  
16 itself.

17           Certainly, again, these are not new  
18 requirements. They've been on the book, but  
19 this was an opportunity to do the things that  
20 I just mentioned, so that, as we continue with  
21 this program, and we envision that it will be  
22 on for a long, long time, that when players

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1 change, that it's always clear in terms of  
2 what the roles are, and what the requirements  
3 are with regard to security.

4           There have been some incidents  
5 where there was disclosure of information.  
6 Just because there's an incident, it doesn't  
7 mean that the organization associated with the  
8 incident has, in fact, violated security. It  
9 could be a situation where it was a person,  
10 procedure, or practice.

11           If it was a person that was  
12 involved, we certainly wanted to make sure  
13 that those individuals are aware of what  
14 caused that inadvertent disclosure. If it was  
15 a procedure or practice, we want to make sure  
16 that it's revised or rewritten or issued so  
17 that similar incidents don't occur.

18           And so I want to, you know, again  
19 now talk a little bit more in detail about the  
20 plan, and to make sure that, as we go through  
21 the discussion here today, that it is clear  
22 that there's never an intent to deny access.

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1 That certainly is to put some process in place  
2 that would ensure that we'll be able to do  
3 that.

4 Okay. I missed the first task,  
5 which was going to the next slide.

6 This is sort of the outline for the  
7 presentation this afternoon. And we wanted to  
8 use this outline to make sure that we were  
9 able to present a broad overview of all the  
10 things that we're trying to accomplish in this  
11 plan.

12 And I just want to bring attention  
13 to everybody here today that there are things  
14 that we've been doing all the time in this  
15 program. Could we do them better? Could we  
16 be more transparent? Certainly, we could do  
17 that.

18 And so I want to talk a little  
19 about the purpose of the plan, what it is that  
20 we're trying to do, and the key elements of  
21 the plan. Personnel security certainly is  
22 critical. Badging: We've been offering

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1 badges for a number of people, and we continue  
2 to do that, and we want to outline how that's  
3 done.

4 Site visits: Again, this program  
5 will work only if people that need to can get  
6 to the sites and get the information that they  
7 need.

8 Interviews: And I'll spend some  
9 time talking about that, because that's  
10 critical, because typically, we're talking  
11 about interviews of workers, and they're a  
12 very important part of this process, and how  
13 can we facilitate that, and make sure that  
14 things are available that workers are able to  
15 talk in an environment that's appropriate for  
16 what they want to say.

17 Document reviews, and certainly  
18 there is a need for document reviews with  
19 respect to security at various junctures along  
20 the way. We want to talk about those, and  
21 kind of where we are as we go on through this  
22 process, and how we believe that the timing

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1 for doing these things are greatly improved.  
2 And to talk about revisions, because there's  
3 never a perfect plan.

4           You want to be as close as you can  
5 to delivering a plan that will meet the  
6 objectives of all the parties, but certainly,  
7 there's a time appropriate from time to time,  
8 and you can't predict that, but a need for  
9 revisions. So I want to talk about that as we  
10 go through the program.

11           Again, a little bit more about the  
12 overall purpose, and again, to get back to the  
13 notion that this plan is intended to  
14 facilitate access to the material that's  
15 needed by individuals in order to be able to  
16 carry out this work.

17           It was an ongoing effort, as I  
18 said, across the different organizations to be  
19 able to come up with this security plan that  
20 we'll talk about, and that we hope that the  
21 plan will do what it was intended to do, and  
22 that was to eliminate confusion.

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1                   What do you need to do and how do  
2 you need to do it, and how do you set those  
3 processes in motion, and that it would  
4 establish expectations, and again, the idea of  
5 expectations; they're not just for the people  
6 that are on board today, but so there's  
7 continuity in the program, that it's clear,  
8 people can go and read it. They can  
9 understand what they need to do, and if they  
10 don't, there's an avenue to ask questions on  
11 how to implement that, and that ultimately  
12 that there aren't unnecessary delays in  
13 getting the information where you want to do  
14 it.

15                   So again, we want to further  
16 identify the roles and responsibilities of all  
17 the organizations, and to set forth the  
18 practice and protocols that will be needed.

19                   Reference: I think that many of  
20 you have seen the plan already, but here is  
21 the way to get to the plan. It's the website  
22 where the plan will be located.

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1                   Personnel security: I want to talk  
2 a little bit about personnel security. And  
3 again, this is something that we've been doing  
4 for some time in this program.

5                   Clearances are certainly in the  
6 security -- to meet security requirements, we  
7 wanted to make sure that people were cleared  
8 to receive the information that they are  
9 looking for, and that we want to manage those  
10 clearances.

11                   And part of that process in terms  
12 of managing the clearances, we wanted to make  
13 them available to you, but also to do training  
14 and refresher courses, so when you go through  
15 the plan, you'll see information, and then  
16 we're holding the agencies and organizations  
17 responsible for making sure that these  
18 refresher courses and training -- they're not  
19 long. They're not, you know, days upon days,  
20 but as we go through and implement the  
21 requirements in the plan, from time to time we  
22 do need a refresher.

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1           We need to step back and say, you  
2 know, am I implementing it as required, and  
3 here are the things that I need to do, and  
4 maybe to realize that as they go through the  
5 refresher, that maybe as you implement it over  
6 a period of time, there may be a need for some  
7 revisions, or questions, or interactions.

8           Reinvestigations:           Certainly  
9 there's a period for clearances, and so  
10 reinvestigations are required.   Tracking,  
11 updating, notifications are important.

12           There are certain things that may  
13 happen in your life that will require updates  
14 of the clearances. One is that, if you are  
15 leaving the country, sometimes we do need to  
16 go to other countries for personal or for  
17 business, and you're required to notify us  
18 that you're doing that, and that will be  
19 reflected in the clearance.

20           And if you're no longer working on  
21 the program. For some reason, some of us,  
22 from to time, we move on to other things, or

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1 we retire, or get other positions. And so  
2 that would need to be factored into whether  
3 the clearance was still needed, or if it's  
4 being held by the new organization where  
5 you're going.

6 Badges: I want to talk a little  
7 bit about badges. That's been an area of  
8 frustration, I think, over the last year.  
9 Part of that may have been the fact that the  
10 government, not just Department of Energy, but  
11 government-wide, they have gone to the HSPD-12  
12 requirement.

13 And for that requirement, you would  
14 not be issued a permanent badge, and that's  
15 different. And so sometimes when things are  
16 different, it's a source of confusion.

17 The badges, if you're cleared,  
18 you're still a cleared individual. It's in  
19 the computer. The information can be readily  
20 pulled up, but you actually get sort of a  
21 temporary badge when you're at the site, and  
22 that actually is critical in terms of making

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1 sure that we're notified early enough that you  
2 need a visit, that we've prepared and allow  
3 enough time for you to be able to do those  
4 things.

5           Again, the DOE already facilitates  
6 temporary badges for visits. We've been doing  
7 that, and again, advance notice is critical.  
8 Again, this is nothing new. We've been doing  
9 -- issuing badges for the life of the program.

10 We'll continue to do that, and we'll try to  
11 expedite those things to the extent that we  
12 are able to do that. Again, in working with  
13 you in terms of as much advance notice as we  
14 can. So that's the critical part of the DOE  
15 role, which you'll hear more from Gina later  
16 on today about, sort of updates.

17           But the main role of Department of  
18 Energy is to facilitate things. And so we  
19 want to be able to facilitate getting the  
20 badges so that you get to the site soon and  
21 get to do what you need to do.

22           Appropriate clearances are in

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1 place. I'll just spend a moment just talking  
2 about that. Typically, there are a number of  
3 individuals on the program that are Q-cleared,  
4 but depending upon the information, the type  
5 of activity that you want to look at, you may  
6 require some clearance above that. And so we  
7 wanted to make sure that we are -- Typically,  
8 we're talking about what we call Sigmas. We  
9 want to make sure that we're aware of that and  
10 we're able to facilitate that for you.

11 DOE -- one of the things we wanted  
12 to do is to facilitate NIOSH's examination of  
13 DOE's site documents. We wanted to make sure  
14 that you have the appropriate facilities; you  
15 have the right people available that can help  
16 clear those things.

17 And so again, facilitating getting  
18 it done, making sure that access is made  
19 available in the right places for getting  
20 information.

21 Security briefings provided by DOE  
22 sites officially at the site of each site

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1 visit. That's a very important part of the  
2 process. I have been with Department of  
3 Energy now since 1991. If I go to any site,  
4 and I'm expected to spend time at the site, I  
5 also get a security briefing. It's certainly  
6 important, because there are some things that  
7 are site-specific.

8           There could have been changes in  
9 requirements of whatever it is, and it sort of  
10 puts you at the site. You're at the site, and  
11 you become more comfortable now with what you  
12 can and can't do, and where do you go for  
13 information, and how you can make sure you get  
14 the access that you needed.

15           So that is very critical. We  
16 wanted to make sure that that's planned, and  
17 it's talked about in the plan, and it's very  
18 important that you are able to get to a site.

19           Again, reading the paper is  
20 certainly a good thing to do, but the paper  
21 certainly is always more meaningful in some  
22 cases when you actually have a chance to walk

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1 the spaces. So we want to be able to  
2 facilitate that.

3 Site visits: Access to site and  
4 subject matter experts. Subject matter  
5 experts -- that's certainly critical as you're  
6 trying to plan your process and to get started  
7 in the review or your review activity.

8 Sometimes there is a need to just  
9 meet and spend time with subject matter  
10 experts that are very familiar with that area,  
11 particularly as it applies to that site.  
12 Again, in the DOE's role as facilitators, we  
13 wanted to make sure that we're able to do  
14 that.

15 I'll talk about interviews on the  
16 next slide, because that's very, very  
17 important. Again, as I mentioned at the  
18 beginning of this discussion, there have been  
19 some incidents. We want to make sure that we  
20 minimize the number of incidents, and that  
21 requires reviews at certain junctures to make  
22 sure that we're not releasing information that

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1 is critical.

2 Interviews: Again, I believe that  
3 we all view the actual interviews,  
4 particularly with workers, to be very critical  
5 to this process, and many of the workers that  
6 you come into contact with -- they may have  
7 retired, they may have left the organizations.  
8 They may have signed documents in terms of  
9 what they could not or could say once they  
10 leave the Agency.

11 So we wanted to make sure that we  
12 facilitate suitable locations for secure  
13 interviews where that's needed. That's  
14 certainly critical to bring people together,  
15 and then say, well, I am unable to discuss  
16 this in this environment. So we want to plan  
17 for those things, and make sure that you're  
18 able to talk to the workers and get the  
19 critical information that's needed.

20 And again, the plan lays out the  
21 process there, and it discusses this  
22 particular activity. And again, I want to

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1 point out that the plan is about facilitating,  
2 making sure we're meeting the requirements,  
3 and that information is available where it's  
4 needed.

5 And so that's intended to protect  
6 both the interviewer and the interviewee in  
7 terms of if there's a need to have something  
8 in a secured area. It's not intended to  
9 disallow anything, but to make sure that,  
10 where needed, people can be more open about  
11 their discussion.

12 Document review: DOE is committed  
13 to providing unrestricted access to DOE  
14 information and documents. I want to keep  
15 coming back to that. And the critical point  
16 here is that we wanted to make sure that the  
17 individuals receiving that document were  
18 cleared to do so.

19 If there's ever a need for a  
20 redacted document, we want to make sure that  
21 the individuals on the team that need to see  
22 all the information that they're cleared at a

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1 level to do that, and they're in a space where  
2 they can actually review the documents. So  
3 that certainly is very important.

4 And again, we want to minimize the  
5 number of reviews that we need to do, but  
6 certainly, in terms of -- I talked about  
7 transparency in performance and  
8 accountability. They're certainly on DOE's  
9 part, as well. And so we want to make sure  
10 that -- where it's appropriate, that we review  
11 final documents before public release.

12 I started out this discussion with,  
13 we've had some incidents, and we wanted to be  
14 more formal, and more transparent, and more  
15 consistent in our approach, and to develop a  
16 plan that would allow for that.

17 I want to put that aside for now  
18 and just take a window in time, because  
19 actually what you see in the plan is a result  
20 of making changes and trying to be able to  
21 deliver the right services in a more timely  
22 manner.

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1           So the window of time I want to  
2 look at is the time since the last Board  
3 meeting, and that was from December to  
4 February 9th. We actually reviewed 31  
5 documents that were submitted to DOE  
6 headquarters for review, and I want to talk  
7 about the time required for that.

8           I'm talking now about documents in  
9 terms of reports that are generated, and they  
10 come to DOE for review to make sure there  
11 aren't any classification concerns associated  
12 with those documents.

13           We're finding that, in that window  
14 of time, would you believe that we've improved  
15 our process by formalizing the things in the  
16 plan, and then executing those things in the  
17 plan. We now have an average of a little over  
18 five days in terms of -- this is the time for  
19 a classification review of the actual document  
20 itself. I'm not talking about the time  
21 required for us to receive the document, which  
22 would certainly be a couple of days, or time

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1 afterwards that we've completed the  
2 classification review that we get the document  
3 back to the people that need to have it.

4 So we think that this plan has  
5 certainly offered many opportunities for  
6 delivering better services so that decisions  
7 can be made on behalf of the claimants. This  
8 includes evaluation reports, SC&A, white  
9 papers, and other NIOSH generated documents.

10 I want to point out that this is  
11 different from review of DOE source documents.  
12 Certainly, they would take longer. They  
13 typically are bigger documents, and so we want  
14 to make sure that the understanding about this  
15 streamlining -- even though we streamlined  
16 across the board, this example is intended to  
17 focus on the actual reports themselves.

18 And again, on a few occasions NIOSH  
19 has come to us for expedited reviews, and we  
20 tend to be able to do that if we need to.  
21 Clearly, every review can't be expedited, but  
22 if we need to do that, we look for ways to do

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1 it.

2 We have dedicated now within our  
3 organization individuals that are in security  
4 that have to look at these reports, that  
5 they've been told, you know, by Glen, that  
6 this is the highest priority in his  
7 organization. So they make sure that, when  
8 documents come, that we are focused on trying  
9 to get this kind of turnaround time for those  
10 documents.

11 Revisions: Again, one could never  
12 issue a perfect plan. So we understand that  
13 adjustments, additions or changes to the plan  
14 may be needed. And certainly, the plan that  
15 you see, that you have before you, is the  
16 result of lessons learned from the things that  
17 happened during the time of this program.

18 And so, as we go forth and  
19 implement the plan, I'm certain that there  
20 will be opportunities for lessons learned and  
21 refinements and revisions. And so we  
22 certainly are open to being able to continue

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1 to improve on this process for the workers.

2 And I am available for the many  
3 questions that you might have about where we  
4 are and the intent of this plan.

5 CHAIRMAN ZIEMER: Okay, thank you,  
6 Dr. Worthington. We'll have time now for a  
7 number of questions, and I think it also  
8 appropriate, if there are particular concerns,  
9 those can be raised, as well.

10 Let me begin by asking kind of a  
11 general question. It has to do with how the  
12 entities that are using the plan are  
13 identified in the plan. I'm concerned about  
14 the terminology and the consistency of it.

15 For example, on page six under  
16 Personnel Security, we talked about DOL, NIOSH  
17 employees, their contractors, and the special  
18 government employees. And I understand the  
19 SGEs to be this Board. We are in that  
20 category.

21 And so it seemed to me that that's  
22 a fairly inclusive statement. However, when I

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1 go back to the earlier part of the document,  
2 for example, under Item 3(a), the major roles  
3 and responsibilities, it refers only to DOL  
4 and NIOSH employees and their contractors.

5 And this may be an oversight, but  
6 I'm kind of wondering, if the intent there is  
7 to be more inclusive, why would not the SGE  
8 component be included there, and likewise -  
9 and that's in Item 1 under 3(a) - and a  
10 similar comment on Item 4 under (a): And  
11 there in Item 4, the contractors are not  
12 mentioned either, only DOL and NIOSH.

13 So I'm sort of wondering if this  
14 was just an oversight, or if there's some  
15 particular way that this was being interpreted  
16 that is not necessarily clear to me.

17 DR. WORTHINGTON: I believe that  
18 it's intended to be more inclusive. I don't  
19 know, Guy, if you or Gina would want to  
20 comment on that. I don't have the plan up  
21 here with me, but I can get that, was making  
22 notes.

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1                   CHAIRMAN ZIEMER:    So probably the  
2 terminology should be consistent whenever that  
3 arises.   And might I ask, for interpretation  
4 purposes, is the Board's contractor, SC&A,  
5 considered in this document to be a NIOSH  
6 contractor?

7                   MR. McDOWELL:    They would be a --  
8 we lump all of them, for lack of a better  
9 term.   But in other words, you're either going  
10 to be a government agency, or you're going to  
11 be a contractor supporting a government  
12 agency.

13                  CHAIRMAN ZIEMER:    Okay.    Do you  
14 have an additional comment on that?

15                  MR. KATZ:    Ted will clarify this.

16                  DR. WORTHINGTON:    That microphone  
17 is not working well.

18                  MR. KATZ:    That microphone is not  
19 working well.   People are not hearing.

20                         Let me just clarify.    The SC&A  
21 contract is a contract with CDC.   That is sort  
22 of the parent agency.   NIOSH is a part of it.

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1                   CHAIRMAN ZIEMER:       That is the  
2 reason I asked the question. I want to make  
3 sure the document is clear on who is covered.  
4 The intent, I believe, is to include SC&A, but  
5 I am simply pointing out that the language may  
6 not be correct technically.

7                   I know the intent was to include  
8 them. So I am suggesting that --

9                   DR. WORTHINGTON:   And that is an  
10 excellent comment. We appreciate that,  
11 because one of the intents was to not confuse  
12 but to clarify, and it is intended to be more  
13 inclusive. So we want to work on that.

14                  CHAIRMAN ZIEMER:   And it might be  
15 appropriate -- we think of them as the Board's  
16 contractor, although we don't come up with the  
17 dollars to pay them. The intent is quite  
18 correct. Technically, they are contractor to  
19 NIOSH's parent agency, not to NIOSH directly.

20                  All right. Good. Other questions?  
21 Jim Melius, and then we will hear from Brad.

22                  MEMBER MELIUS:   Just to follow up

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1 on that. As I have said before, I think it  
2 was a fundamental problem the way that these  
3 agreements were negotiated and developed that  
4 the Board was not involved, and I think it is  
5 a fundamental failure of these documents to  
6 recognize the Board's independent  
7 responsibilities for oversight for major parts  
8 of this program.

9 I really think that the documents  
10 need to be rewritten in order to recognize  
11 that role, and then in accordance with that,  
12 the recognition that SC&A is the contractor  
13 that has responsibilities to the Board, not to  
14 NIOSH.

15 Now most of my concerns about that  
16 are with the NIOSH documents, but I think it  
17 also gets into the DOE documents, much as De.  
18 Ziemer has raised. But I would just go  
19 further, and I think that these documents will  
20 be much improved if they recognized these are  
21 sort of tripartite agreements or whatever that  
22 would recognize the independent oversight role

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1 of the Board, not make the Board subservient  
2 to NIOSH, which is implied, maybe not  
3 intended, in the DOE documents but certainly  
4 is implied.

5 DR. WORTHINGTON: Thank you for  
6 that comment. Again, one of the purposes of  
7 the plan was to offer further clarification.  
8 We need to listen to the comments and go back  
9 and look for ways to further clarify, and  
10 again it was intended to be a document that,  
11 if there are any changes in players, that new  
12 individuals could pick it up, and would  
13 understand it.

14 So we want to look for  
15 opportunities to do that. Your comment  
16 regarding the agencies involved in developing  
17 the plan and sort of the timing, which was not  
18 your word but sort of the timing of when we  
19 would come before the Board for comments -- As  
20 I had mentioned, I think, in the December  
21 meeting that we wanted to come before the  
22 Board with a consolidated, sort of

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1 comprehensive plan that reflects sort of the  
2 agencies involved in this, and then to hear  
3 from the Board, rather than to try to resolve  
4 any initial inputs from the agencies at the  
5 same time that we would be receiving the  
6 comments from the Board. But we are certainly  
7 here today, and we are listening and very  
8 thankful, actually, for the comments that we  
9 are getting.

10 CHAIRMAN ZIEMER: Thank you. Brad?

11 MEMBER CLAWSON: I would just like  
12 to back up what Jim had said, because what I  
13 am seeing when I am going out to the sites or  
14 whatever like that, SC&A is basically being  
15 just as another contractor. They are just  
16 another one of NIOSH's contractors. They have  
17 nothing -- you know, it is just another -- it  
18 has nothing to do with the Board. The  
19 independence really is not there anymore.

20 We have been to two sites already  
21 that I have seen this, and it is creating a  
22 little bit of, well, you've already got this

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1 information; NIOSH has got this information.  
2 SC&A is gathering separate information, and  
3 they are being portrayed as just another  
4 contractor of NIOSH. And that is not right.

5 Another thing I want to talk to,  
6 and I don't know, Pat, if you are the one, is  
7 the badging issue. One of the things that I  
8 have been seeing is there is quite a bit of  
9 confusion. Savannah River was a prime  
10 example, so forth, of it.

11 We did not know -- I knew that I  
12 was going to be able to get in, but we got  
13 there that day, and our contractors did not  
14 know if -- there was questions if their  
15 clearances were RRI. They weren't.

16 Gina and Greg really worked with us  
17 and helped us and stuff like that, but somehow  
18 -- and this is just my suggestion -- that our  
19 contractors should have their clearance for  
20 the length of the contract that they have with  
21 us, so that each time we go to a site there  
22 isn't a question if it's happened or if it is

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1 in limbo or whatever like that.

2 I think -- and I know you guys are  
3 trying to get away from badging them and so  
4 forth like that, but it would sure make things  
5 an awful lot easier to be able to do that.

6 DR. WORTHINGTON: I think some  
7 people are walking up to the mike. I wanted  
8 to make a comment as they are coming forward.

9 There were some nuances associated  
10 with, I believe, what occurred at Savannah  
11 River in that what you describe as the life of  
12 the contract, that the contractors would have  
13 the clearances for that time period, unless,  
14 of course, it was somehow another conflict  
15 with the need for reinvestigation.

16 I believe that some of the  
17 contracts were being extended during that time  
18 period. So that meant that the time it was  
19 initially entered into the computer regarding  
20 the length of time for the contract, if it was  
21 an extension, that is a different action. So  
22 some of those things had to be addressed, and

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1 that caused some nuances.

2 We are aware of that now, and while  
3 technically what happened was correct, we will  
4 be watching for those things, because we are  
5 aware -- it's a small group of us here -- that  
6 we are aware if there are extensions going on  
7 or whatever, and we want to be more proactive  
8 in helping to address those things, and this  
9 timeliness of your request is also more  
10 timeliness for us in terms of looking for  
11 those kinds of things, anything that would  
12 create a wrinkle associated with that  
13 activity.

14 So, again, I believe that we can do  
15 better on those in the future, even though  
16 technically that was the case.

17 MEMBER CLAWSON: One thing I want  
18 to make you aware of, we sent all the  
19 information that had who was going to be  
20 there, who was going to be everything. For  
21 me, it took four and a half minutes to go up,  
22 show them my badge. For five other people, it

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1 took two hours and 25 minutes.

2 I was timing it for a reason,  
3 because I wanted to make sure.

4 DR. WORTHINGTON: I understand, and  
5 that is good. We need to hear that, so we can  
6 work on it.

7 CHAIRMAN ZIEMER: Greg?

8 DR. WORTHINGTON: Greg, you have  
9 some specifics?

10 MR. LEWIS: Yes, and I think, to  
11 address that --

12 DR. WORTHINGTON: Can you all hear?  
13 Okay, good.

14 MR. LEWIS: To address that point,  
15 that had to do mostly with the new HSPD-12  
16 requirement. Again, that is not a DOE rule.  
17 We are not trying to limit the access to  
18 badges or limit who we supply badges to. Due  
19 to government regulations, we cannot supply  
20 non-DOE individuals with a DOE badge.

21 Just like what you said, you had a  
22 DOE badge, and it was easier to access the

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1 site. The other four individuals did not. We  
2 are trying to work through that, and that is  
3 why more advance notice is required than we  
4 typically had before. The further in advance  
5 you can let us know that you are going to be  
6 visiting a site, for those individuals without  
7 DOE badges -- this will be most of you, unless  
8 you happen to also work at a DOE site -- we  
9 will be able to arrange for temporary badges  
10 and make sure the clearances, et cetera, are  
11 in place.

12 There were some issues at Savannah  
13 River. I would say I would hope that is due  
14 to growing pains with the new requirements and  
15 new regulations. So we are trying to get our  
16 process approved and make sure that you avoid  
17 those problems in the future.

18 DR. WORTHINGTON: But we want to be  
19 more proactive as we are aware of the things  
20 that are coming up, and that we can allow more  
21 time for making sure that the plans are in  
22 place.

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1           Again, the HSPD-12 requirement has  
2           caused some nuances at the various sites, and  
3           some of them are further along in terms of  
4           being able to implement and be reactive to  
5           that process. So, again, we want to allow  
6           more time.

7           You had, I believe, a comment  
8           regarding at the site, if SC&A can receive  
9           documents and if there are any problems  
10          associated with looking for NIOSH instead of  
11          SC&A. I think that was sort of your comment.  
12          There was a comment on that.

13          MEMBER CLAWSON: Well, what came up  
14          about it was when we were reviewing these  
15          documents and so forth, it was portrayed that  
16          they were just one of NIOSH's contractors,  
17          that SC&A was just another one of their  
18          contractors.

19          So everything was going through  
20          NIOSH on this, and basically, no, they are  
21          not. We've got to have a degree of  
22          independence.

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1 DR. WORTHINGTON: And we want to,  
2 as always, look for process improvement. Over  
3 the years with this particular program, we  
4 are, in theory -- budgeting for document  
5 retrieval had not been done in previous years,  
6 and the cost continues to go up.

7 We have been looking for ways to  
8 streamline the process to make sure that we  
9 don't have duplication of requests for  
10 documents, and that was happening across the  
11 board with different groups coming in for  
12 different activities.

13 We had asked for single point  
14 accountability in terms of a single point of  
15 contact for requests, which is a little bit  
16 different from not working directly with SC&A  
17 and others on the documents. I think we have  
18 been doing -- working quite a bit with them on  
19 those things.

20 So it was -- that particular piece  
21 is intended to have some coordination so that  
22 things that may have already been requested

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1 from others that they are made available. But  
2 certainly, we are respectful of all of the  
3 groups, and we are working with all of the  
4 groups.

5 I don't know, Gina or Greg, if you  
6 have further clarification on that, but that  
7 is not the intent.

8 MEMBER CLAWSON: And I understand  
9 it isn't. I just want to go on record of  
10 letting you know that there is an issue. I  
11 know that each one of these sites that we go  
12 are going to have their own little nuances,  
13 their little quirks that we are going to have  
14 to work through, and the point of contact is  
15 good to a point, but also, too, we need to  
16 keep the separation between the Board's  
17 contractor and NIOSH; because what happened  
18 with a lot of it is just all the paper goes to  
19 NIOSH. Then all of a sudden, well, no, this  
20 section of it was to come to SC&A, this is  
21 what they had reviewed.

22 Also getting into your reviews and

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1 stuff like that, Savannah River is a different  
2 ball game, and we did just tag onto them.  
3 They had already asked for the 50 boxes and so  
4 forth, but also, too, it is going to come to a  
5 time with both points of contact. They have  
6 to be able to get their own information if  
7 they are looking into it.

8 We will have to work through that.

9 DR. WORTHINGTON: And we  
10 understand. Like I said, we will continue to  
11 look for ways for process improvement, because  
12 we are the facilitators. We want to get the  
13 documents to the right people, the right  
14 places, have them in the right environment for  
15 review, clear additional individuals if we  
16 need to do that, have higher level clearances  
17 if we need to do that.

18 So we really are looking for ways  
19 to continue to facilitate getting the  
20 information to the right people.

21 MEMBER CLAWSON: You also had  
22 another point back there of 5.4 days to be

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1 able to turn the white paper around.

2 DR. WORTHINGTON: Yes.

3 MEMBER CLAWSON: Now you clarified  
4 that that was only a certain section of it.

5 DR. WORTHINGTON: That was for the  
6 -- the 5.4 days is for the documents that were  
7 generated at the different sites, key reports.  
8 Reports is the word I want to use, reports  
9 that are generated. They are not DOE source  
10 documents. Certainly, those things take  
11 longer, because they are bigger, but when  
12 reports are generated by the teams.

13 We give high priority when they  
14 come into DOE, there are people that know,  
15 that drop things that you are doing and get  
16 these reports out. Those reports right now,  
17 that window from our last meeting, you know, a  
18 little over five days.

19 So again, not accounting for the  
20 time to get it back and the time for it to  
21 come in, but to actually be by the  
22 classifiers. We believe that that has really

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1       been a significant improvement.

2                       That is our target, you know, to do  
3       it as quickly as possible and to get it back  
4       out, because many of these team members are  
5       working on other things, too. They want to  
6       complete that and be able to move on to other  
7       actions or whatever.

8                       MEMBER   CLAWSON:       And I do  
9       appreciate that, and we do see that it is  
10      important. But what I have been seeing is a  
11      little bit longer time on that.

12                      DR.   WORTHINGTON:    Again, but we  
13      want to talk about that window between the  
14      last meeting and now, because all of us know  
15      that it has been a struggle on everybody's  
16      part to recover from things that had occurred,  
17      to define the process, to document it, to make  
18      it easier for people to read and understand.

19                      So we have to sort of put that  
20      marker behind us and say that this is what we  
21      have done; is it effective? Is that plan and  
22      the process defined in there? Is it going to

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1 work? What are you seeing now, and can you  
2 continue to do that or to improve on that;  
3 because that was the whole purpose of the  
4 plan.

5 MR. KATZ: Pat, let me just get  
6 your confirmation or clarification on another  
7 point that Brad raised, the point of the  
8 badging and he made the comparison of how  
9 quickly he could come through versus the  
10 Board's contractor's, SC&A members.

11 I understand that CDC is in the  
12 process -- well, I do know CDC is in the  
13 process of implementing sort of this modern  
14 day badging system.

15 DR. WORTHINGTON: HSPD-12?

16 MR. KATZ: Yes, exactly. So even  
17 NIOSH employees at the present time -- most  
18 NIOSH employees don't have these state of the  
19 art badges. But as I understand it, once that  
20 is implemented and we will have those badges  
21 as well for SC&A, the contractors that should  
22 speed the process enormously. Is that

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1 correct?

2 DR. WORTHINGTON: I think Gina  
3 wants to offer some additional clarification.

4 MS. CANO: In regard to those HSPD-  
5 12 badges, unfortunately, once the CDC  
6 receives those badges, or HHS, we won't be  
7 able to accept those badges at a DOE facility,  
8 because they are your employee.

9 What is difficult and challenging  
10 is that we have to verify that they are indeed  
11 a DOE -- that they have rights to be on site.  
12 Unfortunately, it is going to be challenging,  
13 and that is something that DOE is kind of  
14 working through right now as well.

15 DR. WORTHINGTON: But we will  
16 continue on our part to make sure that people  
17 are cleared within the DOE system and that  
18 they are able to do the things they need to  
19 do.

20 CHAIRMAN ZIEMER: Okay, Josie  
21 Beach, and then Jim Melius. Oh, I missed  
22 Phil. Okay. Phil, you were first.

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1                   MEMBER SCHOFIELD:        I have a  
2 question.  If I want to go up to Los Alamos,  
3 go to Sandia, I don't have -- like Brad, I  
4 don't have current badge, because I am not  
5 actively employed at either facility.  But I  
6 need to go look at a document.

7                   Can you give us an estimation how  
8 long it would take for us to make arrangements  
9 to go in and do that particular document that  
10 has to be viewed in behind the controlled  
11 area?

12                  DR. WORTHINGTON:  Are you -- some  
13 of the other individuals can come up and give  
14 some more specifics.  But are you a current Q-  
15 cleared individual?

16                  MEMBER SCHOFIELD:  Yes, I am.

17                  DR. WORTHINGTON:  So, Gina, do you  
18 want to -- or Greg, if you want to talk about  
19 the scenario, his question is, if he wanted to  
20 go to Los Alamos or Sandia, for example, and  
21 he wanted to go to that site and review a  
22 document in a cleared area, how much time

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1 would it take him to do that, based on the  
2 system that we are operating under today? He  
3 already has a Q clearance. He wants to go to  
4 Los Alamos or Sandia to review a document in  
5 the appropriate environment, whatever that is  
6 for the document.

7 MR. LEWIS: To be honest, it would  
8 depend on the time to get the necessary  
9 clearance or whether -- typically, we have  
10 been able to do this most times within a week.  
11 So, a week advance notice, we will typically  
12 be able to do it. However, the more advance  
13 notice you can give us, the easier it will be  
14 for us to facilitate that visit with  
15 appropriate access.

16 DR. WORTHINGTON: Again, we are the  
17 facilitator. The earlier we can hear about  
18 it, we will start working with the site to try  
19 to make that happen.

20 CHAIRMAN ZIEMER: Josie?

21 MEMBER BEACH: Okay. My comment,  
22 you already touched on it with Brad's

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1 question, but I did want to further clarify  
2 under Rules and Responsibility, Number 4, the  
3 timely return on classified information.

4 Right now, we have a document out  
5 for my Work Group, Mound. It took five weeks  
6 to get back. Notes, we are having still  
7 difficulty with notes. When we finally did  
8 get some notes back -- and I know you are  
9 aware of this -- they were un-legible.

10 Also, for a work group, if I am  
11 trying to set up a meeting, I would like to  
12 have some way of knowing where my documents  
13 were in the system. Is there anything in the  
14 works to be able to go and look up documents?

15 DR. WORTHINGTON: Again, I will ask  
16 Gina or someone else to come up from the group  
17 to talk about that, but there is a NIOSH  
18 tracking and a DOE tracking of documents and  
19 the status of where those documents are.

20 MEMBER BEACH: Who has access to  
21 them?

22 MS. CANO: We have access to that

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1 information at Headquarters. So we work with  
2 NIOSH as well and provide the information to  
3 them with regards to the status of the  
4 document. So you can always contact us  
5 directly, and we provide you that status.

6 We would just check with our office  
7 classification and figure out where it is in  
8 the queue, but we can also -- we can always  
9 provide you status.

10 DR. WORTHINGTON: And we have been  
11 meeting at least monthly with our counterparts  
12 with NIOSH and SC&A on the status of  
13 outstanding documents and where they are, and  
14 the next steps in terms of moving them  
15 forward.

16 MS. CANO: Also an important point  
17 is that classifications offices out in the  
18 field as well are aware of the security plan  
19 and their role and the importance of working  
20 with SC&A, the Advisory Board and NIOSH, and  
21 to provide timely responses.

22 So if you are running into

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1 problems, please let us know. You know, we  
2 ask that you do, and we will work with that  
3 particular site.

4 DR. WORTHINGTON: I believe that  
5 the comment regarding the illegible document,  
6 Gina, was one that was discussed in a recent  
7 meeting, and the original document that was  
8 provided was also almost impossible to read.  
9 But I believe that we are looking into a way  
10 to see if we could enhance it or something.  
11 Is that correct?

12 MEMBER BEACH: And five weeks for  
13 document turnaround -- can you give me an idea  
14 of maybe in the future? Are we looking at  
15 something quicker than that?

16 DR. WORTHINGTON: Are you talking  
17 about an actual --

18 MEMBER BEACH: It was a white  
19 paper.

20 DR. WORTHINGTON: A white paper.

21 MS. CANO: It depends on the  
22 document and the circumstances surrounding the

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1 document.

2 DR. WORTHINGTON: If there were any  
3 circumstances around the document, then that  
4 creates additional concerns. Again, we  
5 believe that the review processes that we have  
6 in place for documents would minimize those  
7 kinds of things and make things better.

8 MS. CANO: Then it also depends on  
9 source documents versus white papers.  
10 Sometimes source documents do take a little  
11 bit longer time to review, because they might  
12 be lengthy. May have to go back to old guide,  
13 so forth. So it may take some additional  
14 time, but we do put the documents report,  
15 white papers as a priority.

16 DR. WORTHINGTON: They are the  
17 highest priority versus source documents.

18 CHAIRMAN ZIEMER: And let me  
19 suggest that, on particular issues that we  
20 have currently, maybe we can work on those  
21 separately and then more focus on the document  
22 here. Greg, did you have an additional

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1 comment?

2 MR. LEWIS: One more comment.  
3 There have been documents that have fallen  
4 through the cracks, so to speak. To that end,  
5 to address those, we have had two meetings. I  
6 think we are planning on meeting on a monthly  
7 basis with someone from NIOSH and from SC&A in  
8 a secured setting in our headquarters in  
9 Washington to address such issues, both  
10 documents outstanding, you know, where it is,  
11 we haven't seen this one.

12 So we go through document by  
13 document what is going on and make sure that  
14 there is nothing -- make certain there are no  
15 issues, and there is nothing forgotten about.

16 MEMBER BEACH: Or no lost notes?

17 MR. LEWIS: Certainly not.

18 MEMBER BEACH: Not to beat this  
19 issue up, but when you're waiting weeks and  
20 weeks for documents or notes, and then you get  
21 them and we can't read them, I would imagine  
22 someone would look at those before they ship

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1 them off. Hopefully, in the future that won't  
2 happen again.

3 DR. WORTHINGTON: Certainly.  
4 Again, we are in the process improvement  
5 business right now in terms of a little better  
6 product, and again I know there was a lot of  
7 debate -- not debate, but a lot of discussion  
8 about that document that was very difficult to  
9 read and how we could improve on that.

10 So maybe the first thing was to get  
11 it back and to say we will continue to work on  
12 that. I need to clarify that, but we were  
13 aware of that and trying to, I think, work  
14 through that issue.

15 MR. LEWIS: Also to clarify, that  
16 particular document had been redacted, and a  
17 full version is in a setting where it can be  
18 reviewed by people. The document we had was a  
19 copy of a copy of a copy and so on. It was  
20 redacted and made one more copy, and it was a  
21 little tough. We are going to try to do what  
22 we can to make that better.

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1                   CHAIRMAN ZIEMER:  Let's go back to  
2 this side, and Jim Melius.

3                   MEMBER MELIUS:  Along those lines,  
4 to me, I think that one way of stopping this  
5 is if DOE had a transparent tracking system  
6 that would log and identify, keep track of all  
7 documents that are in review, and there would  
8 be a way of doing an inquiry into that system  
9 that, if a document is delayed, someone could  
10 get an estimate on how long it will take to  
11 clear a particular document.  But I think it  
12 needs to be transparent to NIOSH and  
13 transparent to the Board and to the Board's  
14 contractor what the status of documents are.

15                   Also, I think if we kept track,  
16 then we would avoid, you know, how long is  
17 something taking, and is it getting better, is  
18 it getting worse, are there problems, and  
19 reassure everybody that DOE is committing  
20 appropriate resources to this effort.

21                   Invariably, it is going to delay  
22 the process.  I think we just want to be able

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1 to minimize any inappropriate delays by  
2 documents being misplaced, lost or not being  
3 appropriately tracked through the system.

4 DR. WORTHINGTON: And again, I want  
5 to reiterate that we are on a regular basis  
6 now going through each document, making sure  
7 that things aren't lost.

8 In terms of the transparency -- and  
9 I may need Security to help me out here -- we  
10 have been having open dialogue in a secured  
11 setting with SC&A and with NIOSH and DOE  
12 regarding where we are with each and every  
13 document.

14 I don't know if there are some  
15 security reasons that would prevent the entire  
16 tracking thing from being transparent to non-  
17 cleared individuals.

18 MR. McDOWELL: That would have to  
19 be done independently.

20 DR. WORTHINGTON: Right.

21 MR. McDOWELL: Based on its own  
22 merits.

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1                   CHAIRMAN ZIEMER: Can you come up  
2 to the mic, so we can get it recorded here.

3                   MR. McDOWELL: It would have to be  
4 done independently. It would have to be  
5 looked at. I am not saying that all of them -  
6 - you know, as far as the tracking system, you  
7 would have to understand what the basis was,  
8 what the documents are. I don't know.

9                   DR. WORTHINGTON: And it has been  
10 transparent to those organizations, to people  
11 from those organizations, from SC&A and from  
12 NIOSH and DOE. My commitment is to look at  
13 what can be transparent on a more -- on a  
14 wider range, and maybe some of those things  
15 would be --

16                   MR. McDOWELL: And on a general  
17 basis, they can't do that.

18                   DR. WORTHINGTON: We will look at  
19 that.

20                   MEMBER MELIUS: And not getting  
21 into the details, but I would think there  
22 would be a way of labeling documents in a way

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1 that would -- or it maybe, you know, Los  
2 Alamos Number 1 or something, you know, some  
3 number like that, so it doesn't identify a  
4 document per se, but --

5 MR. McDOWELL: That is something we  
6 would have to review.

7 DR. WORTHINGTON: We will look into  
8 that. Again, thank you for the comment on how  
9 to be more transparent. So we want to carry  
10 that back.

11 MEMBER MELIUS: I have one more  
12 suggestion, which has to do with the interview  
13 process. Many of the people that have worked  
14 or work at the sites that are claimants in  
15 this program or involved in the petition and  
16 so forth are suspicious of DOE's intent  
17 regarding this program, and based on past  
18 history, that may very well be justified in  
19 many cases.

20 I think it would be important that  
21 there be some statement provided from DOE with  
22 this program, both to the people currently

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1 working at the DOE sites and also to the  
2 interviewees, that when they are going in for  
3 a secure interview that, one, DOE is committed  
4 to the full disclosure of all information that  
5 can be revealed and so forth; and secondly,  
6 that there will be no reprisals against these  
7 people for that, for reviewing the information  
8 or having these interviews.

9 I think that would be very helpful.  
10 My past experience, many people are concerned.  
11 The one area I get concerned about with this  
12 program is that people will be intimidated by  
13 just the process itself, and by seeing this as  
14 some new process within DOE, a new procedure  
15 and so forth, even though it may just be  
16 institutionalizing and updating a process that  
17 is already in place.

18 DR. WORTHINGTON: I certainly want  
19 to thank you for that comment. Actually, this  
20 morning with my team that I have here, we were  
21 talking about other ways that we could improve  
22 on the program, is there a need from the

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1 highest levels of the Department, our goal but  
2 a specific statement, regarding things such as  
3 what you just said. So thank you for that  
4 comment, and we will look into how we might be  
5 able to do that.

6 CHAIRMAN ZIEMER: Okay. Thank you.  
7 Additional comments? I have one additional  
8 question. This is for clarification or to  
9 help my understanding.

10 On page 16, and I think it occurs  
11 maybe also on 17, where after you have gone  
12 through the process where, for example,  
13 various drafts have been reviewed and the  
14 clearances have been obtained, and at some  
15 point there is a final report which has been  
16 appropriately scrubbed and so on.

17 Just on page 16, for example, just  
18 ahead of Item B, it talks about that final  
19 report and its distribution, and that it can  
20 only be -- it is talking about unclassified  
21 reports here -- can only be transmitted  
22 electronically with OMB approved encryption

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1 software.

2 I guess I am wondering, first of  
3 all, why is that required? And number two,  
4 will that minimize or impede our own  
5 distribution of these final reports once they  
6 are out and ready to go? Perhaps I am not  
7 understanding the requirement.

8 MR. McDOWELL: If I am reading this  
9 accurately, this would be applicable to  
10 unclassified information, but sensitive  
11 information. The information -- or the old  
12 information still must be encrypted  
13 appropriately. You can't --

14 CHAIRMAN ZIEMER: Well, at this  
15 point it is still --

16 MR. McDOWELL: It is not  
17 classified. It is unclassified information.

18 CHAIRMAN ZIEMER: But it is still -  
19 - okay.

20 MR. McDOWELL: You don't need a  
21 clearance to have it, and we can transmit it  
22 to you, but to get it to you, it would have to

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1 be in this form. It is not necessarily public  
2 releasable, for example.

3 CHAIRMAN ZIEMER: Okay. I  
4 understand what you are saying. So it is not  
5 really - it is a final report from your  
6 employment view, but it is not from our  
7 perspective.

8 MR. McDOWELL: That would be the  
9 only requirement I would see up front that  
10 would require it to be encrypted.

11 MS. CANO: Once we release it --

12 CHAIRMAN ZIEMER: A little closer  
13 to the mic.

14 MS. CANO: Once we review the  
15 document, then --

16 MEMBER MUNN: Can we please get  
17 that mic fixed? That is just dreadful. This  
18 afternoon we are going to have real trouble,  
19 if we have public comment and we don't have a  
20 mic that works standing here.

21 MS. CANO: The final reports, once  
22 we review it and release it to you, you can

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1 distribute it openly, and that is not a  
2 problem. But looking at draft documents, just  
3 to protect the document, you know, we would  
4 request it sent through encryption programs.

5 DR. WORTHINGTON: I think what I am  
6 hearing from Dr. Ziemer is that maybe we need  
7 to revisit the language in 16. It wasn't  
8 completely clear is what I think we heard.

9 CHAIRMAN ZIEMER: I think I  
10 understand what the intent here is, and I had  
11 misunderstood it, but others may as well.  
12 Brad?

13 MEMBER CLAWSON: I agree with you,  
14 because I guess one of my situations that I am  
15 looking at is a final report. Say we go take  
16 some notes, some interview notes. Now we are  
17 trying to send all of those to DOE, everything  
18 else like that. But usually in the process,  
19 what they do is they take and review -- we  
20 send the notes off. You send them back saying  
21 it's okay.

22 They do a rough draft, but usually

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1 they give those to the claimant to assure that  
2 this is what was said, but in this they really  
3 can't until they get the final draft to DOE.

4 DR. WORTHINGTON: We need to look  
5 at that to see if we need further  
6 clarification in that section.

7 CHAIRMAN ZIEMER: Thank you very  
8 much. Let's go ahead now and hear from NIOSH  
9 on their portion of the program, and Stu  
10 Hinnefeld is going to make that presentation.  
11 Then we will have the opportunity to discuss  
12 that as well.

13 MR. HINNEFELD: Okay. As I have  
14 already been introduced, you all know who I  
15 am. I am sure Larry is very sorry he couldn't  
16 be here for this, and I am even probably more  
17 sorry.

18 I wanted to offer -- before I  
19 start, I wanted to offer one more perspective  
20 on the point that Brad made, and I see Brad --  
21 oh, okay, he is still here -- the point Brad  
22 made about the work of both contractors or

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1 NIOSH and our contractor and the Board's  
2 contractor all being at a site at the same  
3 time and how the SC&A worked through us and  
4 they weren't really being very independent.

5 Recall that we have engaged with  
6 SC&A at the request of the Department of  
7 Energy to try to coordinate our various  
8 information requests at these sites for  
9 efficiency reasons.

10 As Dr. Worthington said, there is a  
11 sort of a money issue here. There was not  
12 money budgeted for this. It is becoming more  
13 expensive. They only have so much money to  
14 get to the sites to assist in these document  
15 captures.

16 So from their standpoint, it is  
17 more efficient to have coordinated requests  
18 rather than us sending independent requests  
19 and then SC&A sending independent requests  
20 quite often for the same things or overlapping  
21 things.

22 So a part of that, our perspective

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1 on that is we are fulfilling this coordination  
2 role that we would just as soon not have. Now  
3 we don't particularly like trying to do that,  
4 but we have done that for that purpose.

5 So in some instances, I'm sure it  
6 appears that way when we try to fulfill that  
7 coordinating responsibility. I am sure that  
8 may look like there is some problem with  
9 independence. I would hope that we have not  
10 in a meaningful way interfered with the  
11 board's contractor's activities, but maybe we  
12 have and I am just not aware of it.

13 As Jim mentioned earlier in his  
14 presentation, we have added three additional  
15 documents to the website that describe what we  
16 intend to do to comply -- to keep compliance  
17 with the Department of Energy security plan,  
18 the document that Dr. Worthington spoke about  
19 in the implementation of the EEOICPA program.

20 I think you will probably have some  
21 of the same comments in our documents in terms  
22 of referring to SC&A as a NIOSH contractor

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1 that you had on the Department of Energy's,  
2 and I have noted those. So we will take those  
3 back to consider. In fact, they are a CDC  
4 contractor.

5 The documents -- we published a  
6 policy in two different procedures in order to  
7 try to document our approach to complying with  
8 the DOE security plan, the first document  
9 being Policy Number 1 which is titled Handling  
10 Controlled, Unclassified Information.

11 So in this category of controlled  
12 unclassified information, we have sort of two  
13 broad categories within that. One is  
14 unclassified control nuclear information,  
15 which is a particular marking that is placed  
16 on Department of Energy documents sometimes,  
17 and I will invariably refer to that by the  
18 acronym UCNI at some point during this  
19 presentation, and the other category being  
20 Official Use Only documents, which I will  
21 probably refer to as OUO from time to time.

22 So these are the two categories of

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1 information that fit into what we consider  
2 controlled unclassified information and,  
3 therefore, that this policy describes  
4 requirements for, and it outlines the process  
5 of receipt, access and use of that  
6 information, in order to ensure that these  
7 records are created, received and are  
8 maintained in compliance with the requirements  
9 for this information.

10           These markings were generated by  
11 the Department of Energy. They are  
12 essentially their records. So as another  
13 Federal agency, we have agreed to essentially  
14 play nice and say, okay, we will comply with  
15 your rules in order to use your things, which  
16 seems to me kind of the reasonable thing to  
17 do. If we were using HHS classified materials  
18 -- and I believe there are such things, even  
19 though we don't use any in this program --  
20 then I would expect HHS would have a series of  
21 rules, and other Federal agencies we would  
22 expect to play by our rules.

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1                   This applies to all NIOSH  
2 personnel, and here we say including the  
3 Advisory Board and its contractors, NIOSH  
4 contractors and subcontractors. I should  
5 probably say the CDC contractors and  
6 subcontractors also who are engaged in the  
7 program, and it also describes some  
8 requirements for interviews.

9                   Here is some additional description  
10 on types of information. The UCNI information  
11 is sensitive but not classified, and we do  
12 control the dissemination of that material.  
13 OUO information is not classified but may be  
14 exempt from public release under FOIA.

15                   It includes another subcategory  
16 which is export controlled information, which  
17 we don't often encounter, but we have  
18 encountered, and there are DOE directives that  
19 describe how to handle OUO. There is  
20 actually, I believe, a section of the Code of  
21 Federal Regulations that describes dealing  
22 with UCNI material.

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1 Documents received from DOE  
2 facilities are marked in accordance with these  
3 sensitivity levels. So these are two of the  
4 markings on information we are liable to get.

5 Here is -- for access to UCNI  
6 information, employees -- it should be  
7 provided only to employees who are authorized  
8 for routine or special access and routine  
9 access during conduct of official business.  
10 In other words, you would need to have a need  
11 to know.

12 So if you have an assignment for  
13 this project that requires you to learn what  
14 you can about this site and there is this UCNI  
15 document that contains some of that  
16 information, then you have the need to know,  
17 and then you can do that. You don't need a  
18 security clearance in order to access UCNI  
19 information.

20 The authorized individual who has  
21 the UCNI information has to maintain physical  
22 control over it. We don't, as a matter of

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1 practice, put UCNI information on the SRDB.  
2 We retain that in hard copy, and we will  
3 provide it to the authorized users who need to  
4 see it.

5 The information is stored to  
6 preclude unauthorized disclosure. Authorized  
7 individuals may reproduce but must mark and  
8 protect the copies. So there is not a  
9 restriction against copying, but you have to  
10 mark and protect them.

11 There are special requirements for  
12 destruction, including a cross-cut shredder, I  
13 guess, which is different than the one I have  
14 at home that just cuts it in a little line,  
15 and it can be transmitted only by means that  
16 preclude unauthorized disclosure or  
17 dissemination.

18 Reasonable precautions have to be  
19 taken to prevent access to documents that are  
20 marked OOU. Okay, now we are into OOU  
21 information, reasonable precautions to protect  
22 -- to prevent access to who are not required

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1 to see that information to do their job.

2 The information must be stored to  
3 preclude unauthorized disclosure. Authorized  
4 individuals may reproduce, but must mark and  
5 protect copies. Destruction requires, again,  
6 a cross-cut shredder, and can only be  
7 transmitted by means that precludes  
8 unauthorized disclosure and dissemination.

9 The other -- I'm sorry. Now we are  
10 getting into one of the procedures, the second  
11 document of the three that we have published.

12 This document is our procedure number 10, and  
13 it is titled Data Access and Interview  
14 Procedures.

15 It provides general guidance for  
16 the coordination and submission of access -- I  
17 think that is access requests -- to sites and  
18 requests for information, also for the conduct  
19 of interviews of current Energy employees or  
20 former workers; outlines process to coordinate  
21 and submit data requests to DOE; outlines the  
22 process to conduct worker interviews; and

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1 ensure protection of sensitive information.

2           So interviews become a little bit  
3 of a different case, because an interviewee  
4 may, in fact, provide information that,  
5 unknowing to the interviewee, is sensitive,  
6 would likely not be known to the interviewer.  
7 So he takes some protections, some  
8 precautions, to prevent the dissemination of  
9 that material.

10           This identifies several positions  
11 or responsibilities for certain people. The  
12 NIOSH point of contact has certain  
13 responsibilities. The DOE site point of  
14 contact -- this is very frequently the EEOICPA  
15 point of contact for the sites.

16           The NIOSH site point of contact is  
17 our point of contact, our technical lead for  
18 the site, usually one of the health  
19 physicists.

20           The DOE Headquarters point of  
21 contact are people in Dr. Worthington's office  
22 who work with us to do this coordination

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1 effort, and they also are the ones who  
2 dispense the funding for the EEOICPA program  
3 to the various sites.

4 The NIOSH contractor point of  
5 contact -- and I guess we should also say CDC  
6 contractor point of contact, who coordinates  
7 contractor data requests with us, for  
8 instance. And then they may at some point, I  
9 believe, deal directly with the DOE points of  
10 contact as well.

11 NIOSH site point of contact has  
12 certain responsibilities; for instance,  
13 checking the site research database for a  
14 NIOSH request so that we don't request  
15 information we already have. That is one of  
16 the aspects of this, is to make sure that  
17 these data requests do not duplicate  
18 information that we already have available to  
19 us. That is just not very efficient.

20 We always notify the DOE  
21 Headquarters point of contact prior to  
22 notifying the site, so that the Headquarters

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1 people are engaged and aware of what the  
2 activities are. Then we do submit the formal  
3 requests, the information request, the access  
4 request, what it is.

5 The DOE site POC provides the DOE  
6 information we ask for or, if we need to go  
7 there and do our own capture or have access,  
8 then they coordinate with us to accomplish  
9 that data capture.

10 The NIOSH site POC coordinates with  
11 the DOE site POC. NIOSH site POC submits a  
12 list of participating individuals and requests  
13 forms to DOE site and DOE headquarters. Now  
14 this is to get access, you know. Whether it  
15 is a cleared visit or not, you still need to  
16 have access to the site, even if you are not  
17 going to look at cleared items. So we need to  
18 let them know who is coming, and there are  
19 certain pieces of information you need to  
20 provide.

21 If it is, in fact, classified --  
22 you know, people with clearances and are going

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1 to look at classified information, then you  
2 heard from Dr. Worthington, there is more to  
3 be done yet. So the more lead time in those  
4 situations, the better.

5 So then if there are requirements  
6 for -- site requirements for badging and  
7 training, the DOE site POC coordinates those  
8 and arranges for the visitors to have those.

9 This says NIOSH reviewers, and I  
10 think that means everybody that is coming,  
11 whether it be NIOSH, NIOSH contractor, CDC  
12 contractor, Special Government Employee who  
13 are visiting these sites, if it is, in fact --  
14 I believe this pertains to classified visits.  
15 We have meetings with the classification  
16 officers for the site in order to get an  
17 overview of the sensitivities. So you come to  
18 inform us in our work.

19 The DOE site POC coordinates  
20 retrieval of information, and then we attempt  
21 to coordinate the technical review of the  
22 documentation.

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1           Now for information that we want to  
2 capture, if in fact this is a classified  
3 visit, this would occur perhaps after we have  
4 selected the documents that we would like to  
5 capture.

6           If it is an unclassified visit, it  
7 would occur before we show up to look at it.  
8 If we are sending people without clearances,  
9 then these things would have to be reviewed  
10 and make sure they are marked appropriately  
11 before we got there.

12           So we try to coordinate these  
13 activities with the site to make sure that  
14 either the information that we have requested  
15 is there and available to us or, if we have  
16 requested to look at classified information,  
17 that they will have reviewers who will be able  
18 to -- after we have decided which we would  
19 like to capture, if in fact they can be  
20 released, then they would review them for  
21 release at that time.

22           This procedure also addresses the

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1 conduct and coordination of interviews. As a  
2 general rule, workers are given a standard  
3 caution against revealing potentially  
4 sensitive data in an unclassified setting, and  
5 we always say that, if you think that some of  
6 the information you are going to tell us  
7 might, in fact, be classified, let us know,  
8 and we can arrange for a secure interview, an  
9 interview in a secure facility where you can  
10 speak with impunity about whatever you want,  
11 and we will make sure that we have only people  
12 with clearances there.

13 So if we do get secure interview  
14 requests, then we coordinate with the DOE site  
15 POC to arrange for a time and a place for  
16 those interviews.

17 Anytime there is an interview,  
18 there is a summary of the interview that is  
19 prepared. If it is a non-secure interview --  
20 in other words, we don't have any reason to  
21 believe that this information has any  
22 sensitivity to it -- we prepare a summary of

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1 the interview, and sometimes it is referred to  
2 as notes or typed notes. I think some of our  
3 policies call it notes, but it is an interview  
4 summary that we then provide to the Department  
5 of Energy.

6 If it is at an active site, there  
7 is a site person that we provide it to. If it  
8 is from an inactive site, we provide it to the  
9 Headquarters.

10 For secure interviews, the  
11 handwritten notes that are taken by the  
12 interviewers are reviewed for classification.  
13 So this occurs in a secure environment. You  
14 don't get out with your handwritten notes  
15 until a reviewer says you can have them.

16 Once the interview notes are  
17 reviewed and marked as unclassified, then they  
18 are provided to the interviewee for  
19 concurrence. So this would be the summary,  
20 the interview summary. We give them back to  
21 the interviewee to make sure that what the  
22 interviewee said we faithfully captured or

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1 whoever did the interview faithfully captured  
2 it.

3 Those then unclassified interview  
4 notes are submitted and are entered into the  
5 Site Research Database where everyone  
6 associated with the project, is working on the  
7 project, then can see them.

8 Classified interview notes, we  
9 don't get. The Department of Energy keeps  
10 those. If we have interview notes that turned  
11 out that they are sensitive and are  
12 classified, the Department of Energy will hold  
13 onto those for us, and they would be available  
14 for review by appropriately cleared people who  
15 have a need to know later on.

16 For documents that are obtained  
17 during interviews -- now this would be an  
18 instance where an interviewee would say I  
19 brought these documents which I think will  
20 explain things to you; and if they are not  
21 marked, if they don't have a marking on them  
22 or perhaps even if they do, because we don't

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1 know if the marking is still current and  
2 appropriate, if the person who brings them to  
3 us says I want these back, then the first  
4 thing we do is we copy it. We keep a copy,  
5 and we send it back. So he has his copy back.

6 Then we provide our version to the  
7 DOE to determine if it needs to be marked in  
8 some fashion. Once it is determined that they  
9 don't need to be marked or that they are  
10 unclassified -- and in this case, not UCNI --  
11 then we enter them into the Site Research  
12 Database. Again, if in fact they are  
13 classified, then DOE would retain those for  
14 us.

15 The final of the three documents,  
16 DOE Classification Review of Documents,  
17 describes -- which is our procedure number 11  
18 -- outlines the process to coordinate review  
19 of documents by DOE Classification Office, and  
20 this refers to EEOICPA project prepared  
21 documents. This is not source documents or  
22 DOE documents. I don't think that is what

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1 this addresses. This is things that we write  
2 that now we provide to the Department of  
3 Energy for review.

4 This right now applies to all the  
5 documents we prepare, whether associated with  
6 a DOE or an AWE site. So there is a list of  
7 them and the kinds of things that fall into  
8 this.

9 This would be all NIOSH personnel,  
10 Advisory Board and its contractor, all NIOSH  
11 contractors and subcontractors.

12 Now the documents that are subject  
13 to this procedure are generated from source  
14 material that is unclassified or it may be OUO  
15 or it may be UCNI. I mean all those documents  
16 they use to prepare these project documents,  
17 because we can have and use all those types of  
18 information.

19 The reason for this review by the  
20 Department of Energy is to ensure that we  
21 don't assemble a document that contains from  
22 several source documents that now, all of a

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1 sudden because we've put some things together,  
2 inadvertently we have come up with something  
3 that should be -- that is more sensitive than  
4 what we started with. I believe I have heard  
5 that referred to as the mosaic effect. So  
6 that is the purpose for this review.

7 For documents that are created from  
8 classified source documents, these -- if I am  
9 not mistaken, if we are working from a  
10 classified source document, we are not at our  
11 own offices. We are at a DOE facility who are  
12 holding those for us. So it is prepared at  
13 that document in accordance with the  
14 requirements that the Department of Energy  
15 tells us on how to prepare this.

16 Typically, as I understand it, you  
17 are on a -- you can write on a computer that  
18 is not connected to anything. You know, it  
19 can't go anywhere except there. It is their  
20 computer there. You don't get the computer  
21 file. You don't get anything until they say,  
22 okay, what you have written is okay. Then

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1 they will let you have what it was. So that  
2 is when we are working from classified source  
3 materials.

4 Now for documents that are created  
5 from assumed unclassified, which would include  
6 OUO or UCNI source documents, the draft  
7 documents have limited distribution among the  
8 development team. For instance, if there is -  
9 - let's talk about our contractor, ORAU.

10 If they are preparing a site --  
11 some sort of site profile or technical based  
12 document that pertains to a particular site,  
13 they get a draft before they do their internal  
14 peer review, their own technical review which  
15 they will do before they even give it to us --  
16 Before they do their own internal technical  
17 review, they send that draft document to the  
18 applicable either DOE site or the DOE  
19 Headquarters, depending upon whether there is  
20 a site -- whether it pertains to an active  
21 site or not -- and sent via a hard copy or a  
22 CD. It is not e-mailed, and there is no

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1 transmission via e-mail prior to the review  
2 and clearance by the appropriate DOE site  
3 office.

4           When DOE has completed that review  
5 -- now when these are sent, if I am not  
6 mistaken, we at NIOSH get notified. So we  
7 have a master tracking of the various  
8 documents that are at Headquarters.

9           When DOE reviews these and they  
10 inform us, okay, review is complete, no  
11 problems, then at that point it can go on with  
12 its normal review. For instance, if it is an  
13 ORAU document, DOE says okay, no problems with  
14 this, they would then do their internal peer  
15 review, have a final product, send that to us  
16 for our review and approval.

17           Review of documents that have had  
18 DOE site office or Headquarters review, So  
19 once that has been done, DOE site, or we have  
20 that initial review, now those documents can  
21 be electronically distributed for technical  
22 review and approval, and after a final

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1 approval but prior to posting on our website,  
2 we send again a hard copy or CD to the  
3 appropriate DOE Headquarters, because  
4 theoretically there have been some  
5 modifications made to the document during the  
6 various technical reviews, and to make sure  
7 that those technical comments and comment  
8 resolutions have not changed the nature of the  
9 documents. So there is another review there.

10 So you can see there are two review  
11 cycles built into the preparation of all the  
12 documents here.

13 Once DOE says, okay, this final  
14 version is good, too, then we can put it on  
15 our website.

16 I didn't ask for questions,  
17 apparently, in my slide show. I didn't put  
18 that together. I don't suppose that will stop  
19 people from having them. So I will try to  
20 answer whatever questions you may have.

21 CHAIRMAN ZIEMER: Stu, you  
22 probably have sensed from some of the

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1 questions and comments earlier when we talked  
2 about the DOE's plan that there are some  
3 concerns about the -- shall I call it the  
4 independence of the Board's review and how  
5 that is impacted by being included in the  
6 NIOSH part of the program.

7 I think we may have to deal with  
8 that in some way in order to assure that, if  
9 the NIOSH procedure includes the Board, that  
10 it is very clear that there is some level of  
11 independence, an appropriate level of  
12 independence and transparency.

13 Assuming that that could be  
14 achieved -- I am going to assume that for the  
15 moment, but I don't want to say that that is a  
16 given -- then it seems to me, the document has  
17 some of the same issues that the DOE document  
18 had in terms of how we describe who is  
19 covered.

20 For example, under Scope you don't  
21 mention the CDC subcontractor, although you  
22 did make a remark, I think, that --

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1                   MR. HINNEFELD:     Right.     I noted  
2     from the other discussion that that was likely  
3     something we would have to look at.

4                   CHAIRMAN ZIEMER:   However, I notice  
5     that the responsibilities only fall on the  
6     employees in Section 4.3.   So since we are not  
7     employees of NIOSH, are we off the hook there?  
8     I don't think that was what was intended.

9                   MR. HINNEFELD:     It wasn't the  
10    intent, I'm confident.

11                  CHAIRMAN ZIEMER:   But notice there  
12    a completely different description of who is  
13    responsible there.   Then this occurs in some  
14    other places.   So one would have to go back  
15    and make sure that things are appropriately  
16    described.

17                  Also, I notice in Section 5.2 --  
18    this is perhaps not a major point, but here is  
19    a case -- I am really asking about terminology  
20    -- where thumb drives, flash drives and so on  
21    should be password protected.

22                  That sounds like it is optional.

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1 Does the agency have a particular meaning of  
2 should or is this the same as shall or must?  
3 But those kinds of words are important. Some  
4 people would interpret should as, yes, it is a  
5 pretty good thing to do, but it is not really  
6 always required. So I think you need to look  
7 at that kind of terminology as well.

8 MR. HINNEFELD: Right. I think  
9 part of that might be due to the evolving  
10 nature of computer security requirements that  
11 we are receiving from HHS and CDC. So that  
12 may be part of that evolving process of coming  
13 into compliance with what the expectations  
14 are.

15 CHAIRMAN ZIEMER: I know that our  
16 contractor has had some comments on this  
17 document, and we have had copies of those, and  
18 I think we won't take them up right now, but I  
19 do want to sort of get on the floor some of  
20 the general questions and perhaps concerns.  
21 Then we are going to take a break, but let's  
22 proceed for about five minutes right now or so

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1 and get some initial comments and concerns on  
2 the table. Dr. Melius?

3 MEMBER MELIUS: Two things. First  
4 off, before I list one of my major concerns, I  
5 would like to ask maybe at some point after  
6 the break we could have our contractor sort of  
7 report on their experience with this process  
8 to date and some of the problems that they  
9 have seen in terms of delays and obtaining  
10 information and review of information and so  
11 forth; because I think it would help inform us  
12 how we review this particular document.

13 One of my major concerns about  
14 this, which I mentioned to Dr. Worthington  
15 earlier, but really feel it is much more  
16 directed at NIOSH since you appear to be the  
17 one that -- the agency that has driven this  
18 process and at least would be the one that did  
19 this, and I notice that in the comments from  
20 our contractor, you have already rejected  
21 these claims and criticisms. But I think that  
22 this document as written fundamentally

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1 undermines the independence of the Board and  
2 of our ability to credibly provide independent  
3 reviews of the documents that we are --  
4 documents, the dose reconstructions, the SEC  
5 evaluation and other things that we are  
6 mandated by the Act to do.

7 I think that, going forward, that  
8 if this document stays in place and gets  
9 implemented, I don't think the Board can claim  
10 to be independent anymore and should not be  
11 trying to fool the public, the claimants, and  
12 the petitioners that we have any remaining  
13 independence.

14 Essentially, you will control all  
15 access to information. You essentially will  
16 control our contractor. I think, unless that  
17 fundamental flaw is fixed, I don't think there  
18 is much need to address the other points, and  
19 very valid points, that Dr. Ziemer has raised  
20 about the inconsistencies in the document.

21 Frankly, what I was also concerned  
22 about, Stu, was your -- I don't think NIOSH

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1 even understands what is in this document or  
2 how it is being implemented.

3 Now it is probably unfair to you  
4 since you are using Larry's slides, I suspect,  
5 and we are trying to interpret them on the  
6 fly, but there is a lot of confusion out  
7 there, and I think parts of this are not  
8 clearly written.

9 I think it really needs a major  
10 rework, but unless we address the independence  
11 issue -- and maybe this is a time that we need  
12 to go back to this whole issue of how is our  
13 contractor oversight provided.

14 We had talked early on that maybe  
15 we should have another agency being the  
16 contract source for overseeing the contract,  
17 letting the contract for the Board's  
18 contractor, for SC&A.

19 I think we really need to revisit  
20 this, because if this is the approach that  
21 NIOSH is going to take, attempt to control all  
22 access to a site by our contractor and by the

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1 Board, then I don't think we can pretend to  
2 have independent oversight in this program.

3 CHAIRMAN ZIEMER: Thank you. Brad.

4 MEMBER CLAWSON: Stu, I know they  
5 say don't shoot the messengers, but  
6 unfortunately, you are the only one here, and  
7 I apologize. But I will tell you something  
8 right now, and I'm looking up the date of this  
9 -- the date of this is effective 1/23/2009. I  
10 am really disappointed that the Board was not  
11 involved in this at all.

12 I tried up front to be able to get  
13 involved in this at the very beginning, but,  
14 no, everything proceeded to go on. The whole  
15 independence of this Board is important on  
16 these claimants and everything else.

17 To tell you the truth, I really  
18 feel kind of slapped in the face with this,  
19 because actually, it will -- you will be able  
20 to control everything that we see, everything  
21 that we get, everything that we are able to  
22 do.

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1           Now we understand that there is a  
2 basis and why we need to be able to do this,  
3 but if we could all communicate, as we talked  
4 about on the phone, we can still reach the  
5 same thing. But the thing is with this, we  
6 really can't.

7           CHAIRMAN ZIEMER: Thank you, Brad.  
8 Wanda Munn.

9           MEMBER MUNN: The concept of the  
10 desirability to have the Board involved in  
11 this process is certainly well taken. On the  
12 other hand, in practical terms, if we  
13 recognize the fact that NIOSH is not, as has  
14 been portrayed here, an overseer but rather  
15 the entire support activity for this Board,  
16 then there needs to be a better definition  
17 established between this Board and NIOSH as to  
18 where that line lies.

19           Clearly, the Board does not have  
20 the facility itself to perform the clerical  
21 and administrative tasks that NIOSH performs  
22 on our behalf, and if they are not -- if we do

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1 not have other capabilities available to us,  
2 then it appears some discussion needs to occur  
3 at some juncture, probably not now, with  
4 respect to how this perception of the agency  
5 being a gatekeeper rather than being technical  
6 and administrative support for the Board  
7 probably needs to be on the table somewhere.

8 CHAIRMAN ZIEMER: Well, the Chair  
9 certainly understands the need for  
10 coordinating the efforts to seek documents  
11 from the Department of Energy. That is, to  
12 coordinate both the efforts of the Board and  
13 NIOSH.

14 If that could be done in a single  
15 document, that would be fine. I would want to  
16 hear, and I think the comments that Joe  
17 Fitzgerald raised on behalf of our contractor  
18 -- although we didn't have ourselves input  
19 into that even -- our comments I would want to  
20 hear discussed some more to understand why we  
21 could not have a separate point of contact who  
22 would clearly coordinate with the NIOSH point

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1 of contact.

2 So you know, if there's 50 boxes  
3 available, we've got to agree on what 50 boxes  
4 those are at some site visit, to use a  
5 specific example, because DOE has some  
6 limitations, too, and we can't demand to have  
7 our 50 boxes and NIOSH wants their 50 boxes.

8 So, clearly, there is a  
9 coordination issue here, but the issue of  
10 determining how we can best achieve an  
11 efficient way to get at documents while  
12 maintaining the necessary independence -- and  
13 independence, I believe, is mandated by the  
14 law or the Act -- we need to discuss further.

15 I think we need to take our break,  
16 though. Let's take a 15 minute break, and  
17 then we will come back. Thank you very much.

18 (Whereupon, the above-entitled  
19 matter went off the record at 3:22 p.m., and  
20 resumed at 3:47 p.m.)

21 CHAIRMAN ZIEMER: Okay, we are  
22 going to proceed. For the record, I would

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1 like to have the record show that Dr. Jim  
2 Lockey has joined us. He actually came in  
3 during the previous presentation, but welcome,  
4 Jim. We are glad to have you back.

5 Gen Roessler came in before Dr.  
6 Lockey. You have been here so long, we've  
7 gotten used to having you here. I think Mike  
8 Gibson is still on the phone. So we have a  
9 full cadre of the 12 Board members here or  
10 present by phone.

11 I would like to allow us to  
12 continue the discussion a little bit more on  
13 the security plan. We will have a chance to  
14 return to it during our work session, but I  
15 would like to hear from some of the other  
16 Board members who haven't had a chance to  
17 express their views.

18 I am particularly interested in  
19 hearing concerns about the issue of the  
20 Board's independence vis a vis the NIOSH  
21 security plan, because I think our path  
22 forward will depend on the extent to which the

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1 Board is or is not comfortable with the plan,  
2 particularly the NIOSH plan as it currently  
3 stands. So, Phil.

4 MEMBER SCHOFIELD: I want to tell  
5 the people here that the way I see this, this  
6 is a real bottleneck. This is almost saying  
7 NIOSH will get to pick and choose what we get  
8 to see, what documents we want.

9 Now I can perfectly understand DOE,  
10 but we can have our own POC, and we will  
11 notify NIOSH saying, look, this is documents  
12 we are interested in and we are going to look  
13 at, come along, if you want to. If you don't,  
14 that's fine, too, but we need to look at these  
15 documents, rather than this being funneled  
16 through NIOSH, which to me is just one  
17 bottleneck that they can pick and choose what  
18 we can look at and what we can see.

19 CHAIRMAN ZIEMER: Thank you. Jim,  
20 let me -- if there are others? Okay, Jim  
21 Melius.

22 MEMBER MELIUS: Just a brief

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1 follow-up on what we were just talking about.  
2 I am not sure what the intentions are for this  
3 document, but going forward I just can't see  
4 how having the point of contact being the  
5 NIOSH person basically in charge of the SEC  
6 evaluation or whatever at that site is  
7 workable, where you can avoid the perception  
8 of conflict of interest or the perception of  
9 some sort of bias.

10 I don't want to be down here, you  
11 know, six months from now trying to defend an  
12 SEC evaluation review where that issue comes  
13 up. We have to take steps to avoid that.

14 I have been saying this for quite  
15 sometime, and we have been ignored up to now.  
16 I see now indication from NIOSH that they will  
17 even accept or consider this issue, and that  
18 is what I found most disturbing.

19 When Joe Fitzgerald raised it, it  
20 was summarily dismissed by the anonymous  
21 person who was responding in the document  
22 review. I assume it was Larry, but it may

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1 have been somebody else. I think it is a  
2 fundamental problem.

3 Unless we get beyond that, we  
4 shouldn't even be wasting our time with this  
5 document.

6 CHAIRMAN ZIEMER: Mike, did you  
7 have a comment? Was that Mike Gibson on the  
8 phone?

9 MEMBER GIBSON: No, that wasn't me,  
10 Paul.

11 CHAIRMAN ZIEMER: Oh, okay. Other  
12 Board members? Okay, Brad, go ahead.

13 MEMBER CLAWSON: I guess one of my  
14 concerns is we have spent so many years to try  
15 to keep the transparency a bit, to be able to  
16 keep the independence of the Board and, in my  
17 eyes, I don't see this.

18 I was very upset to be able to find  
19 out about the phone calls on this procedure  
20 that had gone on that none of us had known. I  
21 accidentally fell into one, and what I see on  
22 this paper is not what was discussed on that.

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1           When we do a procedure or something  
2 like this, this is opened up so that everybody  
3 knows what is going on. I threw out -- I  
4 understand that we have to have a point of  
5 contact. DOE has no problem with who they  
6 give the information to or whatever, but they  
7 need to be able to kind of have a point of  
8 contact.

9           I felt -- and I threw out that that  
10 is fine. Have NIOSH have a point of contact  
11 and have SC&A have a point of contact.  
12 Between those two, they can communicate and be  
13 able to do this, which this was dismissed as  
14 not feasible and wouldn't work.

15           I really think that we need to sit  
16 down, and we need to put some serious thought  
17 into this.

18           CHAIRMAN ZIEMER: In your view as  
19 you expressed it, SC&A would be operating in  
20 behalf of the Board as the Board's point of  
21 contact in the support capacity?

22           MEMBER CLAWSON: Yes, they would,

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1 and they would be able to do their requests or  
2 so forth. Then that way, they can do the  
3 Board's work. They can keep their  
4 independence, but as this is written right  
5 now, that isn't there. Like Wanda was saying,  
6 we needed to have a different terminology for  
7 it. I'm just a good old boy. It comes back to  
8 kind of the fox watching the henhouse.

9 CHAIRMAN ZIEMER: Ted, did you have  
10 your comment, and then we will go to Jim.

11 MR. KATZ: Sure. Let me just say,  
12 from the perspective of NIOSH and Dr. Branch,  
13 OD level, I think everybody has been pretty  
14 articulate about the very real perceptual  
15 concerns here.

16 I mean, I think it is true, no  
17 matter how well meaning those points of  
18 contact are -- another point that Dr. Melius  
19 raised -- it is that person that is the head  
20 of the SEC evaluation that is serving as sort  
21 of the funnel point or however you want to say  
22 it for coordinating requests and so on. I can

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1 see that that is just -- you can't get away  
2 from that perceptual problem.

3 I think this does have a solution.  
4 I think we can come up with an approach that  
5 gives the Board its independence, its own  
6 staff separate from the OCAS staff, to address  
7 this point of contact request, document  
8 control, and so on, while still achieving the  
9 kind of coordination that DOE needs so that  
10 they are not running in four directions on the  
11 same purpose.

12 So while I can't lay out a very  
13 specific proposal at this point, I am  
14 certainly committed. I think Dr. Branch would  
15 be committed to coming up with a solution that  
16 works for the Board, that is guided by the  
17 Board's concerns and interests, and that  
18 achieves the kind of independence or sustains  
19 the kind of independence that the Board needs  
20 to function effectively.

21 CHAIRMAN ZIEMER: Thank you, Ted.  
22 We appreciate that input. Now, Dr. Melius.

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1                   MEMBER MELIUS:     One comment on  
2     that, and then a separate issue. The comment  
3     on that is what is -- and this is a rhetorical  
4     question. I don't expect an answer. These  
5     procedures have already been finalized, and  
6     now you are coming to us. These are being  
7     implemented, and now we are going to spend  
8     some period of time trying to work out a new  
9     way, a new approach that would deal with this  
10    issue.

11                   Probably -- I think there were a  
12    number of issues that Dr. Ziemer mentioned  
13    that need to be tightened up, and meanwhile  
14    this is being implemented. I think that is --  
15    the process itself, I don't understand. As I  
16    said, that is rhetorical. I don't expect you  
17    to answer that.

18                   CHAIRMAN ZIEMER: I like to answer  
19    rhetorical questions. So when you are done -

20                   MEMBER MELIUS: Well, go ahead.

21                   CHAIRMAN ZIEMER: No. What I would  
22    like to see is during the work session this

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1 week, I would like the Board to have a  
2 specific recommendation on a path forward. I  
3 think we can proceed on an interim basis.

4 I mean, we have a way to get to the  
5 documents we need, and we can work with DOE to  
6 do that. But I think we need to think about  
7 what it would look like.

8 Would it look like a change in this  
9 document that would have that transparency, or  
10 would it look like a separate Board document  
11 that would be a parallel document with the  
12 DOE-NIOSH documents? We need to give that  
13 some thought and be ready to make a  
14 recommendation.

15 We need to make sure that  
16 everything -- that legal counsel is  
17 comfortable with the direction we go, but we  
18 want to find a way that -- and this will help  
19 NIOSH, too. I don't think they want to be  
20 seen as directing the Board's activities or  
21 curtailing the Board's activities.

22 So I think we will all benefit from

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1 having a plan which achieves the independence  
2 and the transparency. So we need to give some  
3 thought to what that is going to look like,  
4 and perhaps can at least have a framework for  
5 going forward by Thursday. So that will be  
6 something to cogitate on in the meantime.

7 Additional comments?

8 MEMBER MELIUS: I would also --  
9 Well, two comments. One is I would hope we  
10 would take the time at some point, because I  
11 know we are getting squeezed for time, to hear  
12 from our contractor about some of the issues  
13 that they have encountered related to this  
14 document or the implementation of this  
15 document, and with classified and other  
16 information delays.

17 My other comment, a number of years  
18 ago, once upon a time, we ran into a potential  
19 problem with security at another site. It was  
20 the Iowa site.

21 If you remember, at one point the  
22 Board was about to recommend an SEC be granted

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1 -- the petition be granted at one of the Iowa  
2 sites based on the fact that the information  
3 was classified, we were unable to access it in  
4 a transparent way that was appropriate, we  
5 felt was appropriate, for this program.

6 At that point, we were stymied by  
7 an unnamed -- or maybe he was named, or she, I  
8 don't know, but somebody within the  
9 administration who said that that could not be  
10 the basis for granting an SEC.

11 We were never able to get that in  
12 writing, and I don't think we ever even got  
13 fully briefed on that, because it was  
14 apparently some sort of a verbal or oral  
15 communication from somebody from counsel's  
16 office to counsel's office or something.

17 Anyway, we were able to work around  
18 it at the time, but in reviewing these  
19 documents now I still see that kind of  
20 situation as something that we may have to  
21 encounter. Certainly, with some of the sites  
22 that we are dealing with now and petitions we

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1 are dealing with now, that is a possibility.

2 I also think that both NIOSH and  
3 DOE need to give some thought to that, that if  
4 we are going to go through sort of elaborate  
5 procedures and lots of time trying to work our  
6 process and make that compatible with the  
7 security, very justifiable security, needs of  
8 the Department of Energy, I just worry that we  
9 are going to reach a point where this program  
10 can't legitimately justify what we are doing,  
11 because the information will be so classified  
12 and we won't be able to discuss it, report it  
13 or really deal with it in a way that is fair  
14 to the petitioners or to the claimants.

15 I think that is something that we  
16 need to think about. As I said, at the time  
17 we encountered it the first time, my proposal  
18 or recommendation was that we do it in a way  
19 that is favorable to the claimants.

20 No claimant should be punished or  
21 have their claim turned down because the  
22 information was so classified that they had no

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1 access or there is no transparency, at least  
2 not adequate transparency, to the process that  
3 made the process fair for them.

4 I think that we need to rethink  
5 through that issue again. We have avoided it  
6 so far. I am not sure we can continue to  
7 avoid it and, certainly, some of the sections  
8 of these documents raise that issue again.

9 There is a new administration, and  
10 perhaps a better or fairer assessment of how  
11 that conflict needs to be resolved.

12 CHAIRMAN ZIEMER: And, certainly,  
13 the scenario of the type you suggest could  
14 arise in a number of different ways that we  
15 probably can't fully anticipate, even if we  
16 tried to develop something that would address  
17 it in a general way.

18 So I think at this time we have to  
19 deal with these documents that we have and try  
20 to move forward with them. It may be that, as  
21 we get into this, some other related issues  
22 such as this type where there is a limitation

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1 put on what information can be made available,  
2 for example, to petitioners or even to  
3 claimants becomes problematical.

4 Other comments? I will call either  
5 tomorrow or during our work session on Joe  
6 Fitzgerald and SC&A to give us some specific  
7 feedback on this issue. So we will return to  
8 it.

9 The document, the SC&A document,  
10 their critique of the NIOSH document and their  
11 sort of comment matrix and the NIOSH responses  
12 were distributed to the Board. So you should  
13 have that. Brad, do you have an additional  
14 comment?

15 MEMBER CLAWSON; I would also like  
16 to be able to hear from some of the NIOSH  
17 people that have -- because when we discussed  
18 it, and after a phone call, they had a little  
19 different opinion of how this was going to be  
20 implemented.

21 CHAIRMAN ZIEMER: Right. And I  
22 think, in fairness, Stu and maybe Jim later in

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1 the week may be in a position to flip a coin,  
2 but perhaps can help us better understand  
3 NIOSH's position on that as well.

4 I do want to give both Department  
5 of Energy and Department of Labor an  
6 opportunity to proceed with their updates.  
7 Dr. Worthington is going to give us sort of --  
8 or no, I believe Gina will give us the regular  
9 DOE update, which is kind of a status report  
10 of what is happening with the documents. Then  
11 we will also have a chance to hear from  
12 Department of Labor.

13 Hopefully, these will be brief  
14 enough. I am hoping we won't consume the time  
15 that we had set aside for these.

16 MS. CANO: Thank you, Dr. Ziemer  
17 and the Board. Again, I am Regina Cano. I am  
18 the Director of the Office of Former Workers  
19 Screening Program. This office is responsible  
20 for the Energy Employees Compensation Program,  
21 and then we are also responsible for the DOE  
22 Former Workers Screening Programs.

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1 I am going to go ahead and give a  
2 quick overview. I know the Board has heard  
3 this many, many times, but for those that are  
4 here for the first time, I will give you a  
5 quick overview of DOE's responsibilities under  
6 the program.

7 We have basically three. First, we  
8 provide -- We respond to DOL and NIOSH's  
9 requests for information, and that is in  
10 response to individual claims. So that could  
11 be employment verification or exposure  
12 records.

13 We also provide support and  
14 assistance, as you've heard, to DOL, NIOSH and  
15 the Advisory Board through research and  
16 retrieval of relevant records from DOE sites.

17 Then we also update and research  
18 issues related to the covered facilities  
19 designations. Right now, there are over 343  
20 covered facilities, and we manage that website  
21 -- or that list on the DOE website.

22 In regard to responding to

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1 individual claims, in approximation about  
2 6,500 employment verification requests,  
3 respond to Labor. We also respond to NIOSH,  
4 approximately 4,000, and those are for dose  
5 records. Then document acquisition requests,  
6 otherwise known as the DAR, about 7500 a year.

7 For the total number of requests  
8 for '07, we had about 22,000, in '80 about  
9 18,000.

10 As mentioned, we do support record  
11 retrieval activities at our sites. These next  
12 few slides are just kind of an example of  
13 ongoing activities. It is not reflective of  
14 all the activities, because there might be  
15 sites that are pulling documents on a smaller  
16 basis, but these are our larger research  
17 retrieval activities at the moment.

18 In regard to Brookhaven, that has  
19 been an ongoing effort probably for the past  
20 six or seven months. We have hosted a number  
21 of visits for NIOSH. We have had public  
22 meetings. We continue to work with NIOSH and

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1 Brookhaven to make sure that they receive the  
2 information that they need.

3 Hanford, this has been a large  
4 effort, as you know. This has been going on  
5 for over a year now, but we have actually  
6 worked through a lot of the issues that we had  
7 early on, and we feel like we are making  
8 progress.

9 In the past we have hosted six  
10 major document identification visits. We have  
11 been able to provide -- actually get through a  
12 lot of our backlog. I know there was a  
13 backlog there for a while, and we have  
14 actually been able to get through that,  
15 complete the backlog, and now we are just  
16 working on current requests that come in from  
17 NIOSH.

18 We have about 30 boxes that are  
19 currently under review. We have 70 boxes  
20 awaiting review by NIOSH contractors before it  
21 goes through document review, and then we have  
22 26 boxes cleared by DOE, and are awaiting

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1 scanning by the NIOSH contractor.

2 In regard to Mound, this is another  
3 ongoing effort. We have hosted over 20  
4 document review visits. We have conducted 170  
5 search requests which responds to about 4,000  
6 pages. We have retrieved 70 boxes for review,  
7 and we have digitized those documents. We  
8 have conducted document reviews for over 20  
9 classified documents.

10 Los Alamos, We have hosted several  
11 visits with NIOSH, and we continue to work  
12 with them, and trying to facilitate and  
13 provide the information that they need.

14 In regard to Savannah River, so far  
15 we have hosted eight visits. We also are  
16 working through some issues that have come up  
17 through Savannah River. We have a new point  
18 of contact in management at Savannah River,  
19 but they continue to work with us  
20 cooperatively and work through the issues that  
21 we identify. But to date, again you will see  
22 the numbers. They have also processed 225

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1 classified documents.

2 Now Lawrence Livermore National Lab  
3 -- they are not an SEC per se, but this is  
4 just another example. We support NIOSH  
5 relevant to SEC activities. There are also  
6 other smaller record retrieval activities that  
7 we support for NIOSH, whether it be for their  
8 technical basis documents or it may be an  
9 Advisory Board review of site profiles or  
10 other work that NIOSH is involved with.  
11 Livermore happens to be one that we are  
12 working with, with NIOSH right now.

13 As I also mentioned, we are  
14 responsible for the database that comprises  
15 343 covered facilities. DOE's role under  
16 EEOICPA is to designate beryllium vendors and  
17 AWEs.

18 I also want to reiterate, because  
19 it seems that there is always confusion about  
20 rules and responsibilities, that we do  
21 designate the AWE facilities' beryllium  
22 vendors, but it is Labor's responsibility to

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1 designate the DOE facilities and clarify or  
2 designate the covered time frames.

3 Facility research, as I mentioned,  
4 we are working with the Office of Legacy  
5 Management. They have expertise. They often  
6 assist us in researching questions that NIOSH  
7 sends to DOE in regard to covered time frames,  
8 designated facilities. To date, we have also  
9 assisted Department of Labor in answering  
10 specific questions related to designated  
11 facilities with over 350 documents. This has  
12 occurred within the past year.

13 I will go through the initiatives.  
14 You heard this before. Within the past couple  
15 of years, we have instituted a number of  
16 initiatives to improve our customer service  
17 within the agencies, our sites, the management  
18 at the sites, and then with DOE Headquarters.

19 We have named a POC. We hold  
20 weekly calls with NIOSH and Department of  
21 Labor, as well as the Advisory Board to work  
22 through any issues that may arise.

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1           Again, as you have heard today, we  
2           have been collaborating with Department of  
3           Labor and NIOSH to streamline and improve the  
4           process. We do want to emphasize that  
5           coordination of efforts is important to us,  
6           and we thank everybody for continuing to work  
7           with us on this effort.

8           The top bullet, working with the  
9           CIO's office -- I'm not sure if this was on  
10          the presentation last time, but this is  
11          important in that, as you know, subcontracts  
12          are very difficult for us to find. Many times  
13          these subcontractors leave the facility or the  
14          site, and they take these records with them.

15          We have been working with the CIO's  
16          office to make sure that there is proper  
17          contracting language in those contracts to  
18          guaranty that they don't walk away with those  
19          important records.

20          The other project we have been  
21          working on for a couple of years -- and I'm  
22          happy to say that we awarded the cooperative

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1 agreement to the hospital in January, and that  
2 is to take possession of the Los Alamos  
3 Medical Center records, the medical records  
4 that previously belonged to DOE, and those are  
5 records up to 1964.

6 As a matter of fact, the contractor  
7 is on site this week conducting ES&H surveys.

8 So we hope we will be able to start working  
9 through those records within the next few  
10 weeks.

11 This last bullet, expanding  
12 outreach/coordination of Former Worker Program  
13 and Energy Compensation Program. As I  
14 mentioned earlier, within the Office of Former  
15 Workers Screening Programs, we have the  
16 program of the Former Workers Screening  
17 Program. This is one program we think that  
18 these two programs complement each other.

19 We want to make sure that this  
20 program and EEOICPA work and collaborate more  
21 with each other so we can make sure we get the  
22 proper message out to our workforce as well as

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1 our field management.

2 Outreach efforts. When I say  
3 outreach, this also means outreach to our  
4 agencies as well as our workers. Again, we  
5 are working with -- we had a working group  
6 that met last week. All agencies were  
7 involved, Department of Labor, NIOSH, both  
8 Ombudsman's Offices and our Former Worker  
9 Program to talk about ways that we could  
10 improve the program. How can we coordinate  
11 efforts? How can we collaborate? Because  
12 oftentimes the screening programs will  
13 identify occupational health concerns, and  
14 then they then direct these employees into the  
15 Energy Compensation Program. So I  
16 think it is important that both programs  
17 become ambassadors, in essence, so they can  
18 actually talk more about what the other  
19 program does and in confidence, and with the  
20 understanding that is agreed upon by all  
21 agencies.

22 Again, training to the District

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1 Office, the DOL District Offices. This has  
2 been provided within the past couple of years,  
3 and we are going to try to expand that to the  
4 Resource Centers. This has been, we found,  
5 very valuable and useful.

6 EEOICPA point of contacts. As a  
7 matter of fact, we have two here in the  
8 audience. We have Filipa Gregio who is with  
9 Los Alamos and Linda Sanchez who is with the  
10 Service Center. They are here today.

11 They often attend public meetings.  
12 They work with the Resource Centers. They  
13 work -- they are critical. Again, they work  
14 with NIOSH and the Advisory Board's contractor  
15 to make sure that they receive the information  
16 that they need, and again they are the on-site  
17 source of EEOICPA information for our workers.

18 Oftentimes workers go straight to them and  
19 ask them questions about the program.

20 As I mentioned, the Former Worker  
21 Screening Program. Again, I just wanted to --  
22 I think this is the first time we have ever

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1 actually talked about the screening program or  
2 provided it in our overview, and I think it is  
3 important that we recognize that this is an  
4 important program to DOE.

5 We make sure that after these  
6 people are seen within the screening program  
7 and they identify a potential health defect,  
8 that we get them into the EEOICPA program.  
9 They have been doing this from the early onset  
10 of EEOICPA. So this is something they have  
11 been doing since early 2000 when the Energy  
12 Compensation Program was established.

13 We have Becky Trujillo from our  
14 Former Worker Program Screening Program. She  
15 is one of our outreach coordinators. So she  
16 is here today as well.

17 We have two screening programs for  
18 Los Alamos, and then we also have one for  
19 Sandia. So we just wanted to provide you with  
20 that information, but we have Becky Trujillo.  
21 Again, she is our outreach coordinator.

22 I believe that's it. If anybody

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1 has any questions -- I hope I went fairly  
2 quickly.

3 CHAIRMAN ZIEMER: Very good, Gina.  
4 Let's open the floor for questions. Phil,  
5 want to start?

6 MEMBER SCHOFIELD: This isn't so  
7 much a question as it is a thank you. We  
8 appreciate Gina for all the hard work you have  
9 done on the medical records issue, and  
10 Michelle Hacquez-Ortiz. These two people have  
11 done a tremendous amount of work, and we  
12 appreciate it.

13 CHAIRMAN ZIEMER: Thank you. Well  
14 said. Other comments or questions?  
15 Apparently not. Again, thank you very much,  
16 Gina, and for your team and the work that they  
17 are doing to assist and support what we are  
18 doing.

19 Now we are going to go ahead and  
20 have an update from Department of Labor, and  
21 Rachel Leiton is going to give us that today  
22 instead of Jeff. So welcome, Rachel.

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1 MS. LEITON: Thank you. Good  
2 afternoon, everyone. I am very happy to be  
3 here to provide you with this brief  
4 presentation. I will try to keep it brief,  
5 knowing there is a lot of other items on the  
6 agenda.

7 I am Rachel Leiton. I am the  
8 relatively new Director for the Energy Program  
9 over at the Department of Labor. I took over  
10 for Pete Turcic when he retired in the fall of  
11 this year. I have been with the program since  
12 the beginning, since its inception, as the  
13 Policy Chief.

14 So I am just going to go over some  
15 -- again, I know you have probably seen all of  
16 this before, but for those of you who are new,  
17 I will just give a brief background of where  
18 we are with the program and where it came  
19 from, what it is all about.

20 Part B became effective in July of  
21 2001. Since that time, there have been 64,889  
22 cases filed, which represents 95,653 claims.

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1 The difference is basically whether it is an  
2 employee's case or a survivor's claim. That  
3 is how we differentiate between the survivors  
4 and the employees, because you could have  
5 several survivors on a particular case.

6 We have referred over 28,000 cases  
7 to NIOSH since that time. On October 28,  
8 2004, we received part E, which was formerly  
9 Part D of the EEOICPA which was administered  
10 by DOE. At that time -- Since that time, we  
11 have received 55,600 cases, which represent  
12 77,988 claims.

13 In October of 2004, we did receive  
14 over 25,000 cases that were transferred from  
15 the Department of Energy as a result of the  
16 Part D program.

17 EEOICPA compensation. This gives  
18 you some details about how much we have paid  
19 so far. We have paid \$4.5 billion total in  
20 compensation. In Part B that is \$2.84  
21 billion. In Part E, that is \$1.44 billion.  
22 We have also paid \$286 million in medical

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1 benefits thus far.

2 Paid cases. We have 48,000-plus  
3 payees in both Parts B and E, and again the  
4 35,000 is the actual cases versus the payees.  
5 That breaks down to 35,116 Part B payees and  
6 23,132 cases. For Part E, that is 13,499  
7 payees and 12,853 cases.

8 Quickly, the Part B section. It  
9 was our first new entitlement program in OWCP,  
10 which is the Office of Workers Compensation  
11 Program, since black lung in 1969. It covers  
12 radiation induced cancer, beryllium illnesses,  
13 special exposure cohort cases -- that is what  
14 we talk about here -- silicosis for miners in  
15 Nevada and Alaska.

16 Then there is a supplemental  
17 payment for RECA uranium workers who received  
18 RECA Radiation Compensation Act, which is  
19 administered by Department of Justice.  
20 Certain uranium workers received \$100,000 from  
21 that program, and can also receive \$50,000  
22 from our program.

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1           The old Part B program was a state  
2 workers comp program, and people could apply  
3 for assistance through that program to get  
4 state workers comp. Since that program was  
5 not Federally funded, they created Part E so  
6 that we could provide Federal funding for  
7 these Part E eligible folks.

8           Part B individuals who were DOE  
9 employees, Federal DOE employees, DOE  
10 contractors and subcontractors, atomic weapons  
11 employees, beryllium vendors are all covered.

12          Certain survivors of those deceased workers  
13 are also covered. That would be a spouse --  
14 In the order of survival would be the spouse,  
15 the children, regardless of their age,  
16 parents, grandchildren, grandparents, and then  
17 yet again RECA Section 5 uranium workers and  
18 their survivors.

19          Under Part B there is presumptive  
20 coverage for workers with 22 specified cancers  
21 at special exposure cohort sites, meaning if  
22 they have a particular cancer that is listed

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1 within the Act and they worked at a certain  
2 SEC site for a certain number of days, they  
3 can be covered automatically without going  
4 through NIOSH dose reconstruction.

5 There were four that were in the  
6 original legislation. Those are three gas  
7 distribution plants plus Amchitka Island in  
8 Alaska. As of February 15, 2009, there are 39  
9 SEC classes added by HHS. Actually, that  
10 includes, I believe, the three GDPs and  
11 Amchitka.

12 Part B benefits allows for 150,000  
13 lump sum compassion payment. Basically, that  
14 is for anybody who we have determined has  
15 either cancer, beryllium disease or silicosis,  
16 and has met the threshold for either going  
17 through a dose reconstruction or meeting the  
18 requirements of an SEC. We also cover medical  
19 benefits for any conditions that we cover.

20 We also cover medical treatment and  
21 monitoring only from beryllium sensitivity.  
22 If it is chronic beryllium disease, we pay for

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1 all medical expenses.

2 Part E, as I said, was created in  
3 2004. It is a federally funded program like  
4 Part B. An individual can receive lump sum  
5 payments of up to \$250,000 on top of the  
6 \$150,000 in some cases that they may receive  
7 from Part B, plus medical benefits for  
8 accepted conditions.

9 There are some significant  
10 differences between Part B and Part E. In  
11 Part E only DOE contractors and subcontractors  
12 are covered, not Federal employees, not atomic  
13 weapons employers or beryllium vendor workers.

14 They are not part of Part E, that section of  
15 the Act.

16 Certain survivors of deceased  
17 workers are covered as well, but the  
18 definition under Part E is very different from  
19 the definition under B, because you either can  
20 be a spouse or, if you are a child and there  
21 is no spouse at the time of the employee's  
22 death, you would have had to have been under

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1 the age of 18, under the age of 23 and  
2 enrolled in a full time educational  
3 institution, or any age and incapable of self-  
4 support. So adult children under Part E are  
5 not covered, in general.

6 Also another huge difference in  
7 Part E is that Part B only covers four  
8 conditions, cancer, silicosis, beryllium  
9 disease. Under Part E we cover any condition  
10 as long as we can establish that there was  
11 exposure to toxic substances in the workplace.

12 Okay, some statistics. This is an  
13 overview of our final decisions on covered  
14 applications. Basically, we have approved  
15 24,886 of these covered applications, and in  
16 the denials we have denied 18,674 covered  
17 applications.

18 The rest of these numbers basically  
19 tell you that there is a breakdown of survivor  
20 not eligible, the 12,000. The bar there in  
21 green is for PoCs, probability of causation,  
22 returns from NIOSH that were under 50 percent,

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1 and the blue bar is the medical -- We received  
2 information from a claimant that shows that  
3 they didn't have enough medical to support  
4 that they had a condition that would support  
5 their claim. This is only Part B we are  
6 referring to.

7 New SEC related cases, 2,265 cases  
8 were withdrawn from NIOSH for review for the  
9 SEC. That represents approximately -- I'm not  
10 sure I have the percentage. Oh, this is the  
11 whole percentage of all. So it is 2,265 cases  
12 total, and then we have issued 2101 final  
13 decisions, of which 2,074 were final  
14 approvals.

15 Thirty-nine recommended decisions,  
16 but no final decision -- that means that we  
17 have one layer that we have almost gotten to,  
18 which is the recommended. After a recommended  
19 decision, the claimant can appeal and go to a  
20 final decision. We got 39 more of those so  
21 far to do.

22 We have 46 cases pending, and 79

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1 cases closed. Closed usually means that they  
2 have withdrawn their claim or something along  
3 those lines, but we have issued 92 percent of  
4 final decisions on these cases thus far that  
5 we have received.

6 NIOSH referral case status. We  
7 have referred a total of 28,654 cases to  
8 NIOSH. 22,251 cases have been returned from  
9 NIOSH, and this is over the history of the  
10 program. 19,503 are currently at DOL with  
11 dose reconstruction. Thirty-two are being  
12 reworked for return to NIOSH. That is of the  
13 22,000, and 2,716 withdrawn from NIOSH with no  
14 dose reconstruction. That could be for PERs  
15 or for SECs and various other reasons.

16 We show that 6,403 cases currently  
17 are at NIOSH. I know that varies from NIOSH's  
18 number and the reason for that is we are  
19 currently reconciling some of these numbers.  
20 I think we just count things slightly  
21 different, and we hope to get that number much  
22 closer next time we come to an Advisory Board

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1 meeting.

2 We have had -- Out of those 6,500,  
3 3,500 approximately of them were initial or  
4 original referrals to NIOSH, and 2,841 are  
5 reworks or returns to NIOSH.

6 This is a graphical representation  
7 of the dose reconstruction status that we have  
8 record of, 19,503 cases are at DOL with the  
9 dose reconstructions I indicated. 16,876 of  
10 those dose reconstruction cases have final  
11 decisions, approximately 6,000 of which are  
12 final approvals, and over 10,000 are final  
13 denials, 2,234 dose reconstruction cases with  
14 recommended but no final decision, and 393  
15 dose reconstruction cases pending a  
16 recommended decision by DOL, which means it  
17 has come back from NIOSH, and we are about to  
18 write a decision.

19 So we have written final decisions  
20 in 87 percent of the dose reconstruction cases  
21 so far.

22 NIOSH case related compensation.

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1 Out of all the cases that we have sent to  
2 NIOSH and approved, we have paid \$1.2 billion  
3 in compensation, which represents 12,301  
4 payees.

5 We have also paid \$903.1 million on  
6 dose reconstructed cases, which represents  
7 8,570 payees, and -- this is the breakdown,  
8 actually, of those that are dose reconstructed  
9 and those that were SEC related. So \$302.4  
10 million on those was for SECs, which  
11 represents 3,731 payees.

12 This is just a breakdown of the  
13 cases that we have received monthly from NIOSH  
14 -- or actually, that we have received in  
15 general, and this goes back to July of 2008.  
16 As you can see, it has been fluctuating  
17 slightly. It has gotten a little bit less,  
18 but since it is monthly, some of the months  
19 just fluctuate.

20 Part B cases sent to NIOSH monthly.  
21 This is what we send to them monthly. It is  
22 not that far different when you look at it

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1 graphically from what we receive, but there  
2 are certain uptakes. This is between July of  
3 2008 and December 2008.

4 SEC petition site discussions. For  
5 Los Alamos we have basically had 5,109 cases  
6 filed with 7,539 claims filed under both Parts  
7 B and E. We have sent 480 for NIOSH dose  
8 reconstruction. We have issued 1,267 Part B  
9 final decisions for LANL, 714 of which were  
10 approvals, 672 Part E approvals, and then we  
11 have paid \$146 million at LANL thus far for  
12 Part B.

13 Westinghouse. There are 77 cases,  
14 17 NIOSH dose reconstructions, 24 final  
15 decisions for Part B, five of which were  
16 approvals, and Part B is not applicable in  
17 their case. We've paid \$940,000 at  
18 Westinghouse.

19 Tyson Valley. There have been very  
20 few at Tyson Valley, as you can see. We only  
21 have six cases as a Part B only facility, and  
22 one of those was a dose reconstruction case.

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1 We have one final decision. It is pretty  
2 minimal at this point.

3 General Steel. There has been 623  
4 cases, 208 with NIOSH dose reconstruction, 257  
5 with final decisions, 48 of which were  
6 approvals and one Part B approval thus far. A  
7 lot of the disapprovals under Part E are a  
8 result of non-covered survivors, and we have  
9 paid \$7.2 million at General Steel.

10 Blockson Chemical, 213 cases, Part  
11 B only for Blockson. 105 dose  
12 reconstructions, 127 final decisions, 53 of  
13 which were approvals, \$8 million in  
14 compensation.

15 Dow-Madison. Thus far we have had  
16 371 cases, 34 for NIOSH dose reconstruction,  
17 119 final decisions, 80 approval with \$11  
18 million in paid compensation.

19 I would like to talk just a second  
20 about -- this is kind of a new section of our  
21 slides -- about overall program impact. As  
22 you know, OMB -- Office of Management and

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1 Budget -- will do a performance rating  
2 assistance tool on various programs throughout  
3 the Departments, throughout the government,  
4 and they did one of these a couple of years  
5 ago for our program and kind of insisted that  
6 we -- since we are the administrators of the  
7 program, that we coordinate with our partner  
8 agencies, both Department of Energy and NIOSH.

9 So we have been tasked with making  
10 sure that we understand what they are doing,  
11 how they are writing, what their statistics  
12 are, and what their goals are. Part of that  
13 is we have gone over the PART tool with them,  
14 and worked with them on the goals that they  
15 created. We have been happy to have that  
16 cooperation on determining what those goals  
17 may be.

18 One recommendation that has come  
19 out of that is on their first goal with regard  
20 to the average days for conducting a dose  
21 reconstruction. It is just that those be  
22 simply dose reconstruction cases rather than

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1 counting SEC cases, working with them on that.

2 We have also had an OIG report  
3 recently. This is Inspector General, which  
4 they have also indicated that, since we are  
5 the administrators of the program, that we should  
6 be measuring all aspects of the program,  
7 keeping track of these sorts of things.

8 So we have been trying to balance  
9 that and look at all -- both DOE and NIOSH in  
10 that aspect. So I cover some of the trends  
11 that we have been looking at.

12 This is basically average days on  
13 Part B cases from the filing date to the final  
14 decision date. The first bar represents cases  
15 that have been sent to NIOSH. The yellow is  
16 the number of days that it takes DOL to  
17 prepare the response before it goes to NIOSH  
18 on average. The red bar there is the number  
19 of days at NIOSH. The green is how long it  
20 takes us normally to issue a recommended  
21 decision, and the blue is the average days to  
22 a final decision after a recommended decision

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1 in these cases.

2 The second bar here is our cases  
3 that were not sent to NIOSH. The green is,  
4 again, the average days to a recommended  
5 decision, with the blue average days to a  
6 final decision.

7 The Part B cases -- this is just --  
8 the last bar is just all Part B cases averaged  
9 together.

10 This is the representation of Part  
11 B cases that have been filed in general.  
12 Thirty-eight percent of them have been NIOSH  
13 cases, plus the SEC cases referred to NIOSH  
14 represent six percent, and SEC cases that have  
15 never been referred to NIOSH represent eight  
16 percent. The rest of RECA cases and other  
17 types of cases that we receive under Part B,  
18 silicosis, chronic lung disease, et cetera.

19 This is a chart that is -- it is  
20 the average days from filing date to final  
21 decision date. The difference between this  
22 chart and the chart that I will show next is

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1 that this is called a five-year final  
2 decision, and it kind of shows how far back  
3 some of these final decisions go.

4 So the average days are coming  
5 down, but we are still looking. The red one  
6 here is the cases that have been sent to  
7 NIOSH, and we are looking at the status on the  
8 date that we had a final decision on it, and  
9 then the green one is all cases in general.  
10 The blue one is cases that have not been sent  
11 to NIOSH, which as you can see is this one  
12 just looked at from a different way of  
13 plotting. This is plotted by year of filing.

14 So as you can see, near the end  
15 there we are just looking at a smaller number  
16 of cases that have been filed and, therefore,  
17 the numbers are coming down. That is not to  
18 say that they are not coming down. It is just  
19 looking at it from a different perspective.

20 This is referrals to NIOSH and dose  
21 reconstructions received from NIOSH. This is  
22 similar to the submittals versus referrals

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1 that NIOSH has. The only difference, here you  
2 will see that they spike, and NIOSH and DOL  
3 count PEPs and PERs differently. We count  
4 every time we send something to them, and I  
5 think that their count is just referrals,  
6 original referrals. We are still working on  
7 those, but with just a different way of  
8 counting them.

9 The numbers themselves, if you look  
10 at the way it looks, aside from that spike are  
11 pretty similar. It looks like they are coming  
12 down. The blue is the referrals to NIOSH, and  
13 the red are the dose reconstructions received  
14 from NIOSH.

15 This chart is a representation of  
16 the reworks versus the PEPs and PERs and the  
17 initial referrals, and this is by quarter.  
18 You will see that not every quarter is listed  
19 on there, but they are plotted pretty much,  
20 for the same sorts of reasons. We can't fit  
21 every section on there.

22 You will see that the blue here --

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1 The blue is the initial referral, and then you  
2 will see in 2008, quarter one -- I'm sorry,  
3 2006, quarter one, you will start seeing the  
4 yellow, which is just reworks in general that  
5 we have to send it back for some reason,  
6 whether it is a new cancer, new employment.  
7 Then the red shows the PEPs and PERs, and you  
8 will see that spike there in 2008, quarter  
9 one. Those are the ones we are still trying  
10 to work down and get back from NIOSH. It just  
11 shows an interesting way of looking at the  
12 reworks and the PEPs and PERs.

13 This is cases pending initial DOL  
14 determination and cases pending NIOSH dose  
15 reconstruction. The big purple line are Part  
16 E cases. That was when we first got the  
17 25,000 cases from Department of Energy, and  
18 how we worked those down.

19 Then we have the NIOSH cases, which  
20 is the middle line, and the Part B cases. But  
21 they are getting closer together at the end  
22 there in December of 2008.

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1 NIOSH showed an overview of pended  
2 cases. Some of those were broken down by  
3 seeking employment information from DOL,  
4 additional medical information from DOL, and  
5 claimant/survivor information.

6 When we saw that slide last time,  
7 we worked with NIOSH to determine what those  
8 cases were, and from our records we have  
9 worked it down to only 55 total pended cases  
10 at DOL, which means, if they have pended it  
11 and asking us for information, we have 55  
12 left, according to our records.

13 There is a gap there, because we  
14 have a formal form that we have to send to  
15 them when we make a change. So that is  
16 probably why our numbers aren't quite matching  
17 here, but our records show we have either sent  
18 an e-mail or we have corrected those and un-  
19 pended them. So the next time you should see  
20 the numbers getting lower on both ends.

21 That is really all I have, and  
22 welcome to questions.

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1                   CHAIRMAN ZIEMER: Thank you very  
2 much, Rachel. A quick question on the slide  
3 dealing with the average days from filing date  
4 to final decision for the -- yes, that one.  
5 Does that represent all cases over the past  
6 several years, not just this past year?

7                   MS. LEITON: No, all cases.

8                   CHAIRMAN ZIEMER: Okay, thank you.  
9 Other comments? John Poston?

10                  MEMBER POSTON: It is just a  
11 comment, not a question. I am amazed. Based  
12 on my math, that is nine days short of three  
13 years. Now I understand why so many folks are  
14 frustrated.

15                  CHAIRMAN ZIEMER: Thank you. Brad?

16                  MEMBER CLAWSON: I was just  
17 wondering, do you have a copy of your slides  
18 on the back of the table back there for  
19 people?

20                  MS. LEITON: Yes.

21                  MEMBER CLAWSON: Okay. I just want  
22 to make sure. I saw a lot of people

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1 frantically marking down. I just want to make  
2 sure they realize that --

3 CHAIRMAN ZIEMER: Yes. All of  
4 these presentations should be on the table.  
5 Oh, there are none left?

6 MS. LEITON: There are none left?

7 CHAIRMAN ZIEMER: Maybe we can get  
8 some additional copies run. Dr. Melius?

9 MEMBER MELIUS: I'm sorry. Would  
10 you share what parameters you are tracking for  
11 this program as part of your OMB and other  
12 tracking?

13 MS. LEITON: I'm sorry. What are  
14 you --

15 MEMBER MELIUS: Sorry. Could you  
16 tell me what parameters you are tracking for  
17 the program? You are showing some of these,  
18 but are these all of them?

19 MS. LEITON: We track a lot of  
20 information. We just took some of them that  
21 might be relevant to NIOSH and to you guys,  
22 but we track -- we have operational plan goals

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1 that are rather extensive. We track from the  
2 time it takes to process a case to an initial  
3 determination, in general the time it takes to  
4 take an initial action, meaning sending a  
5 development letter, the time it takes to issue  
6 final decisions.

7 We have a very extensive  
8 operational plan that goes into detail as to  
9 what we track.

10 MEMBER MELIUS: What I am asking  
11 for is could you share with us what you are  
12 tracking relevant to this program?

13 MS. LEITON: Okay. Well, we track  
14 --

15 MEMBER MELIUS: In writing? I  
16 mean, you don't have to go through it. That's  
17 all.

18 MS. LEITON: Oh, sure. You want me  
19 to describe these a little bit more in  
20 writing? Is that what you mean?

21 MEMBER MELIUS: Yes. What are --

22 CHAIRMAN ZIEMER: What are the

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1 parameters?

2 MEMBER MELIUS: -- the parameters.

3 CHAIRMAN ZIEMER: You don't have to  
4 do that right now.

5 MS. LEITON: Okay. That's good.

6 CHAIRMAN ZIEMER: Other questions  
7 or comments? Very good. Thank you again,  
8 Rachel, for that presentation. We are always  
9 pleased to get the updates from Labor on those  
10 activities.

11 MS. LEITON: Thank you.

12 CHAIRMAN ZIEMER: We are going to  
13 move ahead now to the Los Alamos National  
14 Laboratory SEC petition, and I am going to ask  
15 our designated federal official to take a few  
16 minutes to describe the decision process for  
17 the local folks here, Ted, if you wouldn't  
18 mind doing that. I'll put him on the spot.  
19 Just briefly so there is a clear understanding  
20 of what the process is.

21 Then the Chair is going to leave  
22 the table, because under our rules we have on

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1 petitions and certain of our activities, some  
2 of the members of the Board may be conflicted.

3 I myself am conflicted because of certain  
4 activities that I was involved in here at this  
5 site in the late Nineties. I believe Dr.  
6 Poston is also conflicted. Is there anyone  
7 else? Yes, Phil Schofield.

8 So three of us are conflicted on  
9 this site. Fortunately, there are enough  
10 Board members left so that they can proceed.

11 We do have a work group on Los  
12 Alamos. That work group is chaired by Mark  
13 Griffon, and Mark has agreed to be the  
14 Chairman pro tem for this part of the meeting.

15 So, Mark, I am going to turn the Chair over  
16 to you, and I am going to scoot out of here,  
17 as is Dr. Poston and Mr. Schofield.

18 MR. KATZ: Okay, let me start it  
19 off. Just a very brief description of the  
20 entire process. Really, the main point to  
21 take away from this brief presentation is just  
22 that what is happening today is really just

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1 the beginning, the outset of a Board process  
2 of evaluating a petition.

3 There is quite a bit that comes  
4 before this point at the Board, and I will run  
5 through that very briefly. But the Board is,  
6 in effect, taking up this petition at this  
7 meeting at the outset. Typically with  
8 petitions of this kind of scope and so on,  
9 there will be two or multiple Board meetings  
10 at which the petition will be discussed, and a  
11 lot of work will go on.

12 Let me just do this chronologically  
13 so you can understand that a bit. So far, as  
14 the petitioners know but maybe everyone else  
15 here doesn't, what has happened is the  
16 petition has been submitted. It was qualified,  
17 meaning that it met some basic requirements  
18 for a petition to be taken up by the Board, as  
19 well as evaluated by OCAS and so on.

20 That all happened, and now OCAS,  
21 which is a part of NIOSH, which runs this  
22 program, does reconstructions and so on, has

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1       come out with an evaluation report which  
2       evaluates the two basic issues that are always  
3       relevant for a petition, which is, is it  
4       feasible to do dose reconstruction, and if it  
5       is not, was health endangered, those two  
6       points.

7               So OCAS has done that evaluation  
8       and published an evaluation report and  
9       submitted it to the Board, and today shortly  
10       we will present that report to the Board to  
11       kick things off.

12               Now just to tell you a little bit  
13       more about the Board's proceedings, the Board  
14       will take this up today, and probably on  
15       Thursday there will be Board discussion time  
16       where it will take it up again and certainly  
17       follow up on issues that are initially raised  
18       today, not just issues raised by the Board  
19       members but also issues that are raised by the  
20       petitioners when they present here today, and  
21       people that are speaking on behalf of the  
22       petitioners that will be presenting today, as

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1 well as all of you here from LANL who may have  
2 something to contribute to the process, too.  
3 All of you -- your input is essential to this  
4 process of the Board, and the Board always  
5 learns a lot from the public generally, not  
6 just the petitioners, in doing these  
7 evaluations.

8 So subsequently, after the Board  
9 takes this up today and then follows up with  
10 some actions on Thursday, one of those actions  
11 very typically for a petition of complexity  
12 and large scope is to assign its work group,  
13 for one, to evaluate the petition, but also it  
14 has its contractors.

15 You have heard SC&A, which will do  
16 a very in depth technical investigation of  
17 issues related to the petition. That  
18 information will come to the work group. The  
19 work group will have typically multiple  
20 meetings to burrow into those issues and  
21 resolve them, and all this comes to conclusion  
22 when everybody is satisfied that they have dug

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1 through all the issues sufficiently, and the  
2 Board then can as a whole take up the petition  
3 with the aim of coming up with a  
4 recommendation going forward.

5 So I just wanted to give that  
6 prelude. Mark, you can kick things off now.

7 MEMBER GRIFFON: Okay. I think the  
8 way we have this broken up on the agenda -- I  
9 think everyone has seen the agenda -- is that  
10 we have NIOSH here to present the evaluation  
11 report.

12 This is, I believe, the third SEC  
13 petition from LANL, and we have previously  
14 approved two earlier time period SECs. This  
15 one extends from '75 to 2005.

16 So NIOSH is going to do a  
17 presentation. I just wanted to ask Ted or  
18 NIOSH staff, are there copies of the report  
19 available in the back and overheads of what is  
20 going to be presented? Are there enough  
21 copies is, I guess, the pertinent question.  
22 You might want to check on that while we are

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1 working on this.

2 Then after that is completed, I  
3 will open it up for Board questions. Then we  
4 are going to hear from the petitioner. I  
5 talked to the petitioner. There are several  
6 people that are going to speak on behalf of  
7 the petition.

8 Then all of you are here also, and  
9 we do have a public comment after a brief  
10 break. So you will have plenty of opportunity  
11 to weigh-in. We want to hear, as Ted said,  
12 from everyone. There is a public session  
13 after a brief break, and it will be fresh in  
14 your minds, the presentation and everything  
15 you have heard from the petitioner. So you  
16 can certainly weigh-in on those discussions.

17 So I will start off now -- I think  
18 they are looking for the documents back there.

19 I will start off asking NIOSH, Dr. Greg  
20 Macievic. Am I saying your name correctly?  
21 Macievic, I'm sorry -- Macievic. Dr. Greg  
22 Macievic is here from NIOSH to present, and I

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1 will turn over the floor to you.

2 DR. MACIEVIC: My name is Greg  
3 Macievic. I am a health physicist with OCAS,  
4 and I was the main lead on the NIOSH -- on the  
5 Los Alamos National Laboratory SEC Cohort  
6 evaluation report, and we will jump right in  
7 and say that the purpose of the report is to  
8 evaluate the feasibility of reconstructing  
9 doses for service support workers -- and this  
10 includes, but is not limited to, security  
11 guards, firefighters, laborers, custodians,  
12 carpenters, plumbers, electricians,  
13 pipefitters, sheet metal workers, ironworkers,  
14 welders, maintenance workers, truck drivers,  
15 delivery persons, rad technicians, and area  
16 work coordinators, who worked in any of the  
17 technical areas with a history of radioactive  
18 material at Los Alamos from the period of  
19 January 1, 1976, through December 31, 2005.

20 Since this comes up several times,  
21 I will just refer back to this instead of  
22 repeating this all the time.

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1           So both EEOICPA and 42 CFR 83.13  
2           require NIOSH to evaluate qualified petitions,  
3           which this was, requesting that the Department  
4           of Health and Human Service add a class of  
5           employees to the SEC.

6           The evaluation is intended to  
7           provide a fair and science based determination  
8           of whether it is feasible to estimate with  
9           sufficient accuracy the radiation doses of the  
10          class of employees through NIOSH dose  
11          reconstructions. So can we scientifically and  
12          feasibly do the dose reconstruction? As was  
13          mentioned just a few moments ago, we have done  
14          two previous SEC evaluations. I will do the  
15          second one first, and that was September 1,  
16          '44 through July 18, 1963 for RaLa workers in  
17          Technical Area 10 in the Bayo Canyon Site,  
18          Technical Area 35 and Buildings H, Sigma and U  
19          located within Technical Area 1.

20          Now the second evaluation, which is  
21          the one that I previously worked on, which was  
22          the SEC evaluation for March 15, 1943 through

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1 December 31, 1975 -- Basically, this  
2 evaluation that we are doing today is really  
3 part two or a continuation of the first  
4 evaluation, because in the first one we ended  
5 it on December 31, 1975, because the  
6 petitioners set that date, and at the time  
7 with the amount of data we had, we could not  
8 with any accuracy say we could do doses or  
9 make a cutoff time earlier than that.

10 So we ended with December 31, 1975.  
11 So what we have had to do -- and the reason is  
12 that the site itself -- there was plenty of  
13 external dosimetry information, internal  
14 dosimetry information on specific  
15 radionuclides, five main player radionuclides,  
16 which I will talk about these later in the  
17 report. But there were a group known that we  
18 called exotic radionuclides that were smaller  
19 amounts in quantity, restricted in area, but  
20 we could not evaluate to what extent a person  
21 might have had an intake of these materials.

22 So what we had to do in this one is

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1 to extend and quantify those materials, the  
2 exotic radionuclides.

3 So this petition was received on  
4 April 3, 2008, and the petitioner proposed  
5 that class definition that was read before,  
6 and it was qualified on May 29, 2008, and the  
7 class evaluated by us. We stayed with the  
8 same class definition and all the words.

9 Now this petition was supposed to  
10 be -- or the evaluation report was supposed to  
11 be submitted in December essentially or at the  
12 end of November, I forget, right into that  
13 time period. But there were delays in getting  
14 data from the site, and it took longer than  
15 anticipated, and on October 8, 2008, we  
16 notified the Board that we wouldn't be able to  
17 meet that deadline, and it was extended for  
18 two months. That is why we are doing it in  
19 the February Board meeting as opposed to the  
20 December Board meeting. The evaluation report  
21 was officially issued on February 4, 2009.

22 Okay. The petition basis had

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1 several things in it that -- these first parts  
2 come from that first evaluation. They  
3 basically are NIOSH saying we at this point  
4 cannot do the evaluations based on the things  
5 that are said here, because the source term  
6 data are not sufficient and complete for dose  
7 reconstruction, that it recognized that a  
8 potential dose reconstruction issue may exist  
9 post-'75, and this was before our data  
10 captures, that the internal dose assessment  
11 for mixed fission products and how we were  
12 going to manage that was not established at  
13 the time, and on this basis NIOSH determined  
14 that the current petition qualifies for  
15 further evaluation.

16 So, really, it is an extension from  
17 the first SEC to do this one.

18 The petition also had things as  
19 worker affidavits to support the statements  
20 that talked about inadequate or no personal  
21 protective equipment or were working in areas  
22 in which other workers were wearing protective

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1 equipment. Service support workers had little  
2 or not participation in the LANL urine  
3 sampling or whole body counting program; that  
4 the Cerro Grande Fire in 2000 was an  
5 unmonitored, unrecorded, or inadequately  
6 monitored exposure incident.

7 The Sigma Americium Contamination  
8 Incident in 2005 was an unmonitored,  
9 unrecorded, or inadequately monitored incident  
10 from an area that was considered non-  
11 radiological, and then afterwards was  
12 considered radiological.

13 There were process hazards analysis  
14 reports, hazard control plans, work  
15 instructions and other things that did not  
16 specify or define the special hazards used for  
17 things like 100-gram quantities of neptunium  
18 powders, that there are neutron correction  
19 factors for different areas on the site,  
20 because there's different energies of neutrons  
21 in different facilities; and that we couldn't  
22 adequately address that problem with the

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1 dosimetry.

2           There was a Tiger Team Assessment  
3 Report that covered the entire site back in  
4 '89-'90 time period, and they evaluated the  
5 entire site and the activities going on, and  
6 gave a report on the status of LANL at that  
7 time.

8           Also that -- again, this is from  
9 the petition itself, that there is no data  
10 available that permits internal dose  
11 contributions from strontium-90 that dose  
12 reconstructions can be done with sufficient  
13 accuracy.

14           There is very little data for  
15 radionuclides available prior to the Eighties  
16 before they started using germanium detectors,  
17 as they became more common in the internal  
18 dosimetry group. No attempts were made to  
19 quantify actinium, curium, protactinium using  
20 chest counts post 1970.

21           Okay. So with that information, we  
22 went on the hunt over to LANL and went to find

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1 documentation to fill in the holes that were  
2 suggested by the petition that had all these  
3 areas that were lacking. At that time, the  
4 amount of data that was there supported that  
5 idea, and we have done more work which we will  
6 talk about in a minute.

7 The sources that we have for our  
8 information that we are using is, we have site  
9 profiles and technical basis documents. We  
10 have the ORAU -- our contractor -- team has  
11 technical information bulletins and procedures  
12 that they have written based on things from  
13 the site. We have had interviews with current  
14 and former employees of the site.

15 There are -- We have had radiation  
16 work permits and special work permits that  
17 give a great amount of information about  
18 activities going on at the site; the LAHDRA,  
19 or the Los Alamos Historical Document  
20 Retrieval and Assessment project, which has  
21 recorded a large number of LANL documents,  
22 procedures, surveys, things like quarterly

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1 reports, health physics reports and other such  
2 things that give a round-out of the field of  
3 how the health physics program was operating  
4 through all these years.

5 We also have our site research  
6 database, which, as of October 1st, had 1644 -  
7 - Well, since October 1st, we have added 1644  
8 files. So there is a total of 3,794 files in  
9 that. Those 1644 were basically captured from  
10 October/November/December, and those three  
11 months, which, I think, was four data  
12 captures, and we also last week did another  
13 data capture, and we intend to do other data  
14 captures, too, to fill in holes on other  
15 information where there appears to be some  
16 lack of documentation. But the site  
17 description is starting to fill in more with  
18 information to give a rounder feel for what  
19 was occurring at the site.

20 Other things, we have quarterly  
21 health physics report. There is health  
22 physics checklists that start essentially in

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1 the mid-Seventies; documentation provided by  
2 the petitioners as well, and Andrew Evaskovich  
3 did a very good job of gathering data that we  
4 could use also in this report.

5           There is case files from the NIOSH  
6 OCAS Claims Tracking, which has a lot of data  
7 in there about internal and external dosimetry  
8 and other activities from the reports and the  
9 files. Found a great amount of radiological  
10 incident report data, historical incident  
11 files from '44 to '91, incident RIRs reports,  
12 radiation protection observations that go from  
13 the Eighties to the present, ORPS reports or  
14 the occurrence reporting and processing  
15 systems from 1990 to the present, dose  
16 assessment report from '98 to the present.

17           We give here some of the -- From  
18 the claims files, there were a total of 629  
19 claims made. Of the 629 that were made, 331  
20 are for the period of January '76 through  
21 December 2005.

22           The number of dose reconstructions

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1 completed for who meet the definition for the  
2 class under evaluation that were completed is  
3 161. So in those files, the number of claims  
4 that had internal dosimetry information, out  
5 of the 244 -- or 74 percent of the 331 had a  
6 good sample or a good listing of internal dose  
7 information. For the external, 93 percent of  
8 the 331 files have external dosimetry  
9 information. So there is a decent amount of  
10 information in those files as well.

11 A brief review of the LANL  
12 operations, for people who want to get more  
13 information on several of these activities and  
14 that there were a lot more descriptions in  
15 the 1943-1975 evaluation report, and in order  
16 to -- since this is basically an extension of  
17 that, I didn't want to repeat every one of  
18 those activities again. So that information  
19 is in that report, and it is really just the  
20 descriptions of what is at the sites, the  
21 different facilities, the different technical  
22 areas and things like that.

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1           The main functional areas, though,  
2           are the weapons development and testing;  
3           critical assemblies; accelerators, reactors,  
4           X-ray equipment, radiography; biomedical,  
5           fusion research; waste management and  
6           treatment. They basically covered the gamut  
7           of things at that particular site.

8           So now we move into a little more  
9           of the meat of the subject, which is that  
10          definition that exotic radionuclides, which  
11          was the thing that caused the SEC in the first  
12          place for 1943-75, and what we followed up  
13          now.

14          The exotic, as we define them, are  
15          the mixed fission products and mixed  
16          activation products, Americium-241 when it is  
17          separated out from the plutonium, thorium-232,  
18          -230, actinium, protactinium-231, neptunium-  
19          237, curium-244, and strontium-90/yttrium-90  
20          combination outside of being paired with  
21          cesium.

22          Now the primary radionuclides,

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1 which I will show on a future slide as we come  
2 through, that have a significant amount of  
3 information, internal/external dosimetry  
4 information on which our plan is based is  
5 going to be tritium, plutonium-238, 239,  
6 uranium-234-5-8, americium-241 and cesium-137.

7 Those are the primary that LANL was  
8 concentrating on most of the time; whereas,  
9 the exotics were in smaller, lesser quantities  
10 in fixed areas of the site and not spread  
11 throughout the facility, but the main focus  
12 was on these primary radionuclides.

13 So they also had heat sources,  
14 kilogram quantities of weapons grade  
15 plutonium. You can see the percentages of the  
16 materials that go into the weapons grade;  
17 tritium for the nuclear weapons, mega-curie  
18 quantities; depleted and natural uranium,  
19 kilogram quantities; enriched uranium, U-233;  
20 mixed fission products in reactor areas with  
21 cesium, strontium and the noble gases; mixed  
22 activation products which are all those I

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1 won't read.

2 We have strontium-90/yttrium-90 as  
3 a residual from the RaLa project, that one  
4 that became an SEC; thorium-230 -- there is no  
5 evidence of that use that we've found since  
6 the 1950s; thorium-232 was used in casing,  
7 machining, and powder metallurgy.

8 Neptunium-237 had periodically been  
9 used or done at the site, and it was in gram  
10 to kilogram quantities, and it was also noted  
11 because of the work on Radiation Work Permits  
12 as to the types of materials that were being  
13 used.

14 Actinium-227: There is no  
15 indication past 1975. It's found as residual  
16 contamination, but we are still using it as  
17 one of the radionuclides that we are going to  
18 compute missed dose with, and we will get to  
19 that a little further down.

20 The protactinium: There are only  
21 references to gram quantities in site  
22 documents, and curium-244 is basically

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1 referenced in some very solid procedures as,  
2 how to use it, where to use it, and that it  
3 was highly controlled in its use.

4 Okay. The LANL data we have gotten  
5 for the internal dose from the master LANL  
6 file collected data for in vivo from 1960 to  
7 2004, in vitro from prior to '91, and also '91  
8 to 2004.

9 Now in the 1970s -- and here is one  
10 of the reasons that, up to the Seventies, the  
11 internal dosimetry group starts to use more of  
12 the -- they begin using the Phoswich detectors  
13 for the lungs for qualifying mixed fission  
14 products and mixed activation products.

15 They had a planar high purity  
16 germanium detector that was used for looking  
17 at the liver and thyroid specifically, and  
18 then a germanium-lithium detector and then a  
19 high purity germanium detector for basically  
20 doing a whole body scan, and these are very  
21 high resolution instruments that could look  
22 for radionuclides with gamma rays, having a

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1 very high resolution.

2 So you could pick out peaks of  
3 anything that might be there, because in their  
4 documentation they do refer to the fact that  
5 not only were they looking for those five or  
6 six main players, but they were also looking  
7 for the potential of any of these other  
8 materials being in the body as well, and that  
9 starts occurring in the Seventies where they  
10 are starting to look for this more. Previous  
11 to that, the documentation is not there for  
12 it.

13 These are just some numbers for the  
14 plutonium and the five main player  
15 radionuclides. There's large numbers of  
16 samples that are done from '76 through 2004,  
17 all these listings of the numbers/amounts, and  
18 these will be values. This information is  
19 going to be used in the part where we  
20 determine dose later on.

21 The Zia employees during these  
22 periods in the Seventies and Eighties had

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1 different categories as to when to leave a  
2 sample, and these are the criteria that talk  
3 about when you would leave the sample or when  
4 it was exempt.

5           You start seeing that jobs that had  
6 short exposure or people with no real  
7 potential, they would leave either base urine  
8 samples or some kind of follow-up sample or a  
9 termination sample.

10           So on the external dose side, I say  
11 that 75 percent of the workers were monitored,  
12 because on the next slide that follows there  
13 is a couple of years where the number of  
14 workers at the site and the number of workers  
15 monitored -- it's about 75 percent for about a  
16 year or two.

17           Then as you get past '76-'77-'78,  
18 now the numbers start climbing up to pretty  
19 much most people on the site are monitored.  
20 You are in the 90 percentages, like on that  
21 fit with the NOCTS or our internal data for  
22 the claimants where 93 percent of the people

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1 of our claimants had external dosimetry data  
2 in their files.

3 So it is pretty well covered, and  
4 as this SEC was intended, it was mainly the  
5 internal dosimetry that was the problem. The  
6 external dosimetry was pretty well defined for  
7 all the years. So we are really looking to  
8 define those exotic in internal dosimetry.

9 So when you go through here, there  
10 were-- They had the beta-gamma film. 1977-'78  
11 you start getting the changeover from film  
12 dosimetry to TLDs. You have NTA film that was  
13 used for that period, but then that goes over  
14 into the Eighties with TLDs and albedo badges.

15 What they did was in the early part  
16 of the Eighties and early Nineties, they added  
17 an NTA film to the albedo badge. So you got  
18 the low energy portion of the spectrum and the  
19 high energy portion of the spectrum for the  
20 neutron dose. Then in 1995 they added track  
21 etch dosimetry, which is a plastic that  
22 records tracks and pits in a surface, and you

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1 count the number of pits, and you get what the  
2 high energy dose is.

3 So they had those areas covered.  
4 So external. And these next three slides  
5 basically show that we have had the monitored  
6 -- number of workers monitored and the total  
7 number of workers.

8 Some of these where you have more  
9 monitored than there are total -- because  
10 these are coming out of different pools of  
11 data from dosimetry files and then worker  
12 files, and they don't always match up. But  
13 the point is looking at it, you see that there  
14 is no huge discrepancy of two to one that they  
15 weren't monitored. They were basically all  
16 monitored for external radiation.

17 You have the gamma number of  
18 workers monitored with a dose greater than 50  
19 millirem, all of these values which they are  
20 also in the technical basis document for  
21 external dosimetry. These numbers are in  
22 there to be used for anybody who wasn't

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1 monitored or if you were doing some kind of  
2 missed dose, you have a very large pool of  
3 data to draw from to estimate a dose for a  
4 person. That is for number of gammas.

5 For the neutrons, doses greater  
6 than 50 millirem, number of workers, and then  
7 what the mean and maximum doses are, all  
8 through the years in question for this  
9 petition.

10 Shallow dose, also again number of  
11 workers monitored, large pool of data that you  
12 have for measuring and calculating external  
13 dose.

14 So in determining the feasibility,  
15 we need to determine the feasibility of  
16 constructing or bounding the internal dose and  
17 reconstructing and bounding the external dose,  
18 and then we have discussed the petitioners'  
19 basis that they submitted as to why it isn't  
20 possible.

21 Again, this is basically a repeat  
22 of where we are going with the exotics. So

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1 you can see again the exotics versus the  
2 primary radionuclides.

3 Okay. So when we did this data  
4 capture, this is the data -- it goes on two  
5 slides -- of the materials that we found that  
6 allowed us to eventually say that we thought  
7 it was feasible.

8 That you have significant bioassay  
9 for the primary radionuclides cover this  
10 petition time frame. Now there is little  
11 bioassay for the exotics. There are some  
12 things that were done in the Nineties, in the  
13 2000 time frame where there was some material,  
14 and there is really not that much for it.

15 You had gross alpha and beta/gamma  
16 monitoring which was done at all the  
17 facilities. So that that is covered, and  
18 these exotics, a good percentage are alpha.  
19 So you are going to be looking for alpha  
20 radiation and treating it as the same as  
21 plutonium versus what you have for these  
22 exotic radionuclides.

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1           So they are looking for -- They are  
2           controlling to a certain level of alpha  
3           contamination. So right there, you are  
4           restricting what your potential is for  
5           exposure.

6           We found employee health physics  
7           checklists, quite a number of these, and a  
8           great many of the employees had them. If you  
9           were going into an area that had the potential  
10          for radiological conditions, it was to  
11          identify those individuals with a significant  
12          potential for radiation exposure. They got  
13          that sheet.

14          It was instituted in the Seventies.  
15          So it is in the period of time that goes with  
16          this petition. The monitoring schedules for  
17          external and bioassay and all that -- for the  
18          bioassay are based on these checklists.

19          So they are looking at the jobs,  
20          trying to determine what the hazards are going  
21          to be, and set up bioassays based on this  
22          information. They are still in use today.

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1 They are now in electronic form, whereas  
2 before it was on an actual paper form, hard  
3 copy. They covered LANL employees, contractor  
4 employees, students, and visitors.

5 To look at the comprehensiveness of  
6 the health physics program, we found extensive  
7 amount of exposure reports, air monitoring  
8 reports, incident reports, work permits,  
9 special operating procedures, radioactive  
10 material handling, stack monitoring,  
11 contamination surveys, nasal smears, whole  
12 body counting and urinalysis reports, CAM and  
13 ALARA reports, all throughout this.

14 One of the things about LANL as  
15 opposed to some site that is more like a  
16 foundry or whatever, these activities are  
17 contained in specific laboratories in specific  
18 buildings, which helps you to localize where  
19 the material is. So you get a feel for  
20 whether this material, these exotics, are not  
21 just laying around on the ground in other  
22 places to be picked up incidentally.

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1                   With all this backing and  
2                   controlling to the alpha contamination and  
3                   beta/gamma radiation, they are looking  
4                   incidentally also for these radionuclides,  
5                   because you are looking for alpha and not some  
6                   instrument that will be used just to detect  
7                   plutonium, or the other five radionuclides.

8                   So you are looking for this. So  
9                   you are controlling down the program. By  
10                  saying this, I am not saying LANL was the  
11                  ideal site for holiness and all that. Far  
12                  from it. I talked to the managers.

13                  So there were several documents  
14                  that we found pertaining to the exotics  
15                  themselves. There are -- and this is not that  
16                  we just found one in one year.

17                  These are examples from different  
18                  years to show that we found the special  
19                  radiation special work permits for thorium in  
20                  '92, RWPs for neptunium in '94, actinium in  
21                  the decommissioning reports of 1981,  
22                  radiological safety procedures -- they are

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1 mentioned in 1977; standard operating  
2 procedures for the actinide elements where  
3 they have very thorough procedures on how to  
4 control, in a couple of particular labs in DP  
5 West, these radionuclides.

6 Then you have an assorted number of  
7 radiation protection memos, 40 SOPs in 1976.  
8 So this is just a sampling, and you do find  
9 them. Again, it is not that there are  
10 thousands of documents, but it shows that  
11 through this period of time, there are ongoing  
12 and knowledgeable actions to actually look for  
13 this material. So it is not out of their  
14 mind, and they are only concentrating on the  
15 five.

16 So and I repeat there that the  
17 exotics were handled, controlled, monitored in  
18 a manner similar to the primaries in the way  
19 they look for the radiation.

20 So this comes down to how do we get  
21 around this issue of then covering these  
22 exotic radionuclides that are present, but

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1 there is really not a lot of information?

2 Well, we have developed a co-worker  
3 dataset on all the five or the primary  
4 radionuclides, and got -- and it is in the  
5 draft technical -- I'm jumping out of myself;  
6 I'll go on with my slides -- in the draft  
7 technical OTIB-0062, which we will be  
8 finishing up, and it has co-worker data for  
9 plutonium-238, 239 uranium and cesium, and the  
10 intake rates. All these intakes from these  
11 radionuclides cover the entire period of the  
12 petition, from '76 through 2005.

13 So if you are using -- Basically  
14 the guidelines for these exotics are either  
15 the same as plutonium or more restrictive in  
16 some of the cases. That is one of the reasons  
17 why we feel that using this co-worker model  
18 will be good.

19 If you had no internal dosimetry --  
20 this is for unmonitored workers.

21 If you had no internal dosimetry,  
22 we are going to bound the intakes of the

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1       exotics using the co-worker data intakes, and  
2       we will assign exotic to primary daily intake  
3       rates by nuclide based on the properties or  
4       controls.

5                   What that is saying is you are  
6       going to take -- In a person who isn't  
7       monitored, if there appears to be these  
8       exotics in the room and you've got the co-  
9       worker model for plutonium, what you are going  
10      to do is look at the co-worker model for  
11      plutonium for the particular year, and then  
12      say, okay, here are the intakes based on the  
13      bioassay or the urinalysis samples that they  
14      computed the intakes.

15                   We are going to take those intakes,  
16      take all these exotics, which you will see  
17      there are some exotics that are closer to  
18      plutonium-238 than 239 -- but you are going to  
19      take those exotics, and you are going to  
20      compute a dose as though it were that -- by  
21      curium using that number from the plutonium  
22      intake.

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1           So you are going to end up with --  
2           and you are going to compute it for the s-  
3           class and m-class of radionuclide, and you are  
4           going to come up with numbers for all these  
5           radionuclides, and then you are going to look  
6           at the maximum value and say that is the  
7           number we are going to use for the missed dose  
8           to this person.

9           So you would assign the highest  
10          dose. So you have plutonium-239 either by  
11          control or similarity in its radiological  
12          properties. You are going to have plutonium-  
13          239, actinium, protactinium, neptunium,  
14          americium and thorium-230.

15          You would use plutonium-238 similar  
16          with curium-244, uranium with natural thorium,  
17          and the cesium-137 would go with the mixed  
18          fission products and the activation products.

19          So if you don't know whether -- If  
20          you think it might be plutonium-239, 238 or  
21          all those, you would take every one of those  
22          exotics, put them in with their appropriate

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1 intake, come up with a whole listing of doses,  
2 and assign the highest value to the person, if  
3 they were exposed, if they were in areas that  
4 had plutonium-239, 238 uranium.

5 If you know he was only working  
6 with plutonium-238 and you have the potential  
7 for -- you would use curium to be the missed  
8 dose, that one, or you would then go and use  
9 the others, if you felt those numbers there. I  
10 hope I'm not making this fuzzier, but I am  
11 trying to take that.

12 We are doing this whole process  
13 associating a whole bunch of -- looking at a  
14 whole bunch of doses to assign what the missed  
15 dose is.

16 Okay. This evaluation -- So it  
17 concludes that internal dose reconstruction  
18 for members of the proposed class is feasible,  
19 and it is based on the in vivo and in vitro  
20 bioassay data for monitored workers, and using  
21 co-worker data to bound intakes to unmonitored  
22 workers, based on the co-worker study

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1 described in TIB-62 and described in the  
2 evaluation report.

3 We get to -- I'll go quicker  
4 through the external, because the key point is  
5 in the internal. External, we basically are  
6 running along the same lines as the previous  
7 SEC, which says we can do internal/external  
8 dosimetry and run all the way through here,  
9 and we've got enough data to give maximums and  
10 minimums, that there is a monitoring for a  
11 substantial fraction of the total workers  
12 since 1945.

13 Beta dose was monitored regularly  
14 with instrumentation and on the film badge,  
15 that you do have enough information from all  
16 that data where you can bound doses, and there  
17 general was -- there was no low energy beta  
18 component that you would have to worry about  
19 in here.

20 Neutron dose: Talks about the NTA  
21 film being used prior to 1980, that if you  
22 want to use it where you -- You basically have

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1 -- since the turnover was going from '77-'78,  
2 you have maybe two years where you were  
3 relying solely on NTA film. So you could  
4 either extrapolate back with the TLD --  
5 extrapolate back with the TLD data, if you  
6 want to do that. That is a possibility,  
7 because you are not talking significant  
8 lengths of time here. You are talking a year  
9 or two.

10 So after 1980, neutron doses are  
11 considered to be sufficiently accurate for the  
12 albedo combined with NTA film, and then the  
13 track-etched dosimetry. So we believe that  
14 the external dose, based on what is currently  
15 in the external technical dosimetry document,  
16 is capable of bounding dose and computing it.

17 Okay. Same thing goes for the  
18 environmental dose with the ambient dose.  
19 That model is in the environmental TBD, and  
20 there is really no change to that, and we  
21 believe that actually does bound the class for  
22 environmental.

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1           The X-ray is the same. The X-ray  
2 TBD does -- We are not making a change to that  
3 or adding. We feel that does bound the dose  
4 with all the information that we do have for  
5 X-radiation.

6           Okay. During the period of this  
7 evaluation, the number of workers were  
8 monitored, and information describing the  
9 workplace radiation fields basically says that  
10 we can bound the dose for external dosimetry  
11 under this period of 1976 to 2005.

12           As I said before, the information  
13 on the X-rays, that the occupational related  
14 X-ray examinations have also been reviewed.  
15 The available information has for that also  
16 been found to be adequate, and external dose  
17 is bounded by the current information that we  
18 have.

19           Okay. I am going to go quickly  
20 through two sample dose reconstructions. This  
21 one is for a hypothetical female born in 1930,  
22 with the amino proliferative disease, and it

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1 was computed to the red bone marrow. She was  
2 a custodian from '75 through 1991.

3 We give you the -- There was  
4 external dosimetry monitoring, but they were  
5 limited to one urinalysis for plutonium-230  
6 and 239, and there was a potential for the  
7 exotic radionuclides to be present.

8 So the photon dose, we have 0.034  
9 rem. We assigned a missed dose for the  
10 neutron with the technical basis document of  
11 1.715 rem photon, 3.891 neutron. The  
12 unmonitored dose is zero. Medical dose 0.114.  
13 On-site ambient, 0.001.

14 Then here is the new dose. The  
15 total external dose of 5.764 rem to the red  
16 bone marrow, and these are going to be on the  
17 -- these two on the public drive so that the  
18 Board can get access to them and take a look  
19 at the details, where this 5.764 came from.

20 So what it was, was a single urine  
21 sample. A dose was computed based on  
22 plutonium-239 intake co-worker model. The

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1 highest dose was computed to be Class S  
2 actinium-227, and of Class S absorption and  
3 the total internal dose turned out to be 6.038  
4 rem to the red bone marrow.

5 So that leaves, adding the internal  
6 and external, 11.8 rem to the red bone marrow,  
7 and that gave a 99 percent probability of  
8 causation at 14.63 percent. So this first one  
9 shows that it is not necessarily going to --  
10 by using this model that you are going to  
11 always compensate.

12 Then for the second worker, to give  
13 you an example of the compensation, we do a  
14 male with liver cancer, it's basically the  
15 same time periods. The monitoring  
16 information. This person has no bioassay at  
17 all, no internal dose monitoring present.  
18 You've got the doses for external, which we  
19 can do.

20 Run through that. I hope I am not  
21 running through too fast, but this is stuff  
22 that -- so total external dose of 2.375 rem to

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1 the liver form the external.

2 The unmonitored dose was computed,  
3 like the previous one on plutonium-238/239.  
4 It was applied from the co-worker model, and  
5 the highest dose was actinium, Class S again,  
6 and total internal dose of 4.6 rem to the  
7 liver. Total together with internal and  
8 external is 6.992 rem to the liver, and a  
9 probability of a 99th percentile causation,  
10 80.94.

11 So the two examples show you can  
12 get above and below that number. So it is not  
13 an extreme idea involved.

14 Okay. So we evaluated the  
15 petition, and we issued the SEC evaluation  
16 report on February 4th. WE had the two-prong  
17 test that is it feasible to estimate the level  
18 of radiation doses for the members of the  
19 class with sufficient accuracy? And does the  
20 radiation dose -- has it endangered health of  
21 the members of that class?

22 We found that with available

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1 monitoring records, process descriptions, the  
2 source term data that we found through these  
3 data captures are adequate to complete the  
4 dose reconstructions with sufficient accuracy  
5 for the evaluated class of employees, and  
6 there was no need to do a health endangerment  
7 determination.

8 So the final page is basically that  
9 we can do feasible dose reconstructions for  
10 all these radionuclides.

11 Questions?

12 MEMBER GRIFFON: At this point, I  
13 do want to break in. I also -- I am looking  
14 at the clock and realizing that, if I don't  
15 stick to the time frame pretty well, Paul may  
16 never give me this mic back.

17 Let me just -- and then I'll open  
18 it up for Board members to ask some questions  
19 briefly, I think, though, because I am going  
20 to preface it by saying that I think my work  
21 group is already committed; and after seeing  
22 what you have brought forward there, the co-

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1 worker models, et cetera, the LANL Work Group  
2 already is committed to reviewing this  
3 evaluation report.

4 I don't know that we have tasked  
5 SC&A, but we will discuss that later this  
6 week, but I think it seems pretty clear that  
7 it needs a little -- there are some technical  
8 details in there that we will probably have to  
9 go through.

10 I am going to start, as Paul always  
11 does, with a couple of questions. Then I will  
12 open it up to everybody else.

13 One which I think is in the minds  
14 of a lot of people here in the audience.  
15 There was some delay. I'm not sure when this  
16 petition was qualified and how long it took  
17 for this evaluation report to be completed.  
18 Can you just give us those time frames?

19 DR. MACIEVIC: Sure. Let's see.  
20 It was qualified back in May or April. Can  
21 you help me, LaVon, if you've got it? It was  
22 April for you.

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1                   MR. EVASKOVICH:    It was submitted  
2                   in April.    It was received, I think, April  
3                   3rd, and qualified May 29th.

4                   MEMBER GRIFFON:    I know that LaVon  
5                   had been in touch with me.    The only reason I  
6                   bring it up is I wondered if it was pertinent  
7                   to our prior discussion.    Can you tell us, was  
8                   it delays with regard to data access?

9                   DR. MACIEVIC:        Well, the data  
10                  access -- Yes, that was -- We spent over  
11                  pretty much two months trying to get access to  
12                  the data.    What it turned out to be is that,  
13                  in talking to upper management who weren't  
14                  quite sure what it was, I gather, we were  
15                  trying to get, and as they got people in who  
16                  were managing the records, talking with them,  
17                  and we were able to -- One, we were put onto  
18                  the Federal Records Center in Denver.

19                  So we started out there first.  
20                  Then we had to have more discussions with them  
21                  to clarify exactly what we wanted from the  
22                  LANL site.    This took several phone calls, and

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1 it was just each side trying to explain  
2 exactly what we wanted until the doors finally  
3 opened up two months after October, October  
4 20th or so, and then we started to get the  
5 information flowing out.

6 So it really was -- for that  
7 portion, was just in communications with the  
8 site, trying to determine -- them trying to  
9 figure out what it is we are asking, because  
10 they are thinking in terms of we are asking  
11 that, you know, we've gotten information to  
12 you already about the claimants; so what else  
13 more do you want.

14 So we are saying, no, we need this,  
15 this, this and this, and where is this. It  
16 took a while to get all that straightened out.

17 MEMBER GRIFFON: I was also  
18 thinking that perhaps it would be helpful in  
19 your monthly meetings for lessons learned and  
20 what some of the data access -- how we could  
21 move that forward.

22 DR. MACIEVIC: Yes.

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1                   MEMBER GRIFFON: I had a number of  
2 questions, but I am going to limit myself to  
3 one, and then open it up to everyone.

4                   On this exotic radionuclide  
5 question, I think you started out -- and  
6 correct me if I'm wrong, but I thought you  
7 started out the discussion saying that the  
8 earlier petition had been qualified based on  
9 those exotics, primarily based on those  
10 exotics, that we couldn't reconstruct the  
11 exotics. You had primary radionuclide  
12 information, but you didn't have the exotics.

13                   What changed in '75? It seems like  
14 you have the same picture.

15                   DR. MACIEVIC: Well, '75 -- the  
16 mid-Seventies, you end up with the checklist  
17 sheets that start talking about where this  
18 material is, what they were doing, how the  
19 bioassays were distributed. You get the in  
20 vivo counting, counting on board much stronger  
21 with the check counts and that.

22                   The Seventies are really a turning

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1 point to -- and this is all based on data that  
2 we saw after we collected it, that the  
3 mid/early Seventies, past that period we  
4 didn't have that information in the first one.

5 So as far as we were concerned, we  
6 weren't sure what we had to use after the data  
7 captures. The Seventies is a definite cutoff  
8 point where you can say we've got internal  
9 data, we've got external, we've got the RWPs,  
10 a lot more RWPs, and SWPs. We've got many  
11 more procedures and descriptions of processes  
12 that weren't available before.

13 MEMBER GRIFFON: Really, it was  
14 then you could document better. The control  
15 of the exotics was more stringent or as  
16 stringent.

17 DR. MACIEVIC: Right.

18 MEMBER GRIFFON: I'll let it go for  
19 now. I didn't see who -- I'm new at this.  
20 I'll ask Jim.

21 MEMBER MELIUS: Just so I  
22 understand, this evaluation report is now a

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1 final report. You are not still collecting  
2 data or developing procedures or finalizing  
3 things?

4 DR. MACIEVIC: Well, this is a  
5 finalized report. We have the data we need  
6 from what we've got that say, yes, we can do  
7 dose reconstruction. What we are continuing  
8 with is, as long as LANL has opened the early  
9 dates for us to allow us to take data, we are  
10 going to try to get as much data as we can,  
11 which will help to boost this information, but  
12 the data that we already have is sufficient  
13 that we have collected with this report.

14 MEMBER MELIUS: But what if it  
15 refutes what you -- What if you find data that  
16 contradicts what your belief is or does not  
17 substantiate or support the procedures that  
18 you are proposing for dose reconstruction?

19 DR. MACIEVIC: Well, I don't  
20 believe that is going to happen. What we are  
21 looking for is more specific data to actual  
22 problems. We are not essentially looking for

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1 all information under the sun.

2 What we've found is like for  
3 strontium-90, there are more urine samples  
4 that are out there that we are going to find.

5 So we could potentially make a co-worker  
6 model from that, as opposed to having to use  
7 other data to work around that. But I don't  
8 foresee that you are going to find something  
9 and say, oh, my god, this doesn't work or it  
10 doesn't --

11 MEMBER GRIFFON: I think Jim wanted  
12 to say something.

13 DR. NETON: I think this is sort of  
14 standard to our approach. We are just looking  
15 to -- you know, if the data are available, to  
16 refine the models and to collect more  
17 information. We have done that at a number of  
18 different sites.

19 We are confident this is not going  
20 to change the opinion. We have enough  
21 documents, a substantial portion of  
22 documentation now that points to that there

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1 were complete hazard analyses done, hazard  
2 control analyses and that sort of thing. We  
3 are very comfortable with that.

4 There is no reason, if the data are  
5 available, that you shouldn't move forward to  
6 refine these models.

7 MEMBER MELIUS: I think it is one  
8 thing to refine them. It is another thing to  
9 develop a new model, which was the example  
10 that was just given. I just want to point  
11 out, I think the petitioners need to be aware.

12 It is a repeated problem with many  
13 of the other sites that we are looking at  
14 where there is this continual process of  
15 getting new data, changing procedures, and it  
16 is a moving target, and it makes it very  
17 difficult to come to resolution and,  
18 certainly, very frustrating on the part of the  
19 petitioners and, frankly, on the part of the  
20 Board and our contractor trying to keep up  
21 with this process.

22 So I am trying to pin you down a

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1 bit on this one so that we understand where  
2 you are and what we are going to be  
3 evaluating, and it is not something that is  
4 going to stretch out for years, which it is  
5 doing at other sites, because you really  
6 aren't ready. You really don't have the data  
7 in hand or the procedures in place and haven't  
8 confirmed them in order to be able to do what  
9 you claim you can do.

10 DR. NETON: I would suggest that  
11 the working groups look at the data we provide  
12 and come to that conclusion themselves. I  
13 mean, we've provided what we have as our best  
14 effort to reconstruct these doses -- a very  
15 scientific, defensible process outlined here,  
16 and let the process work. We are not  
17 proposing to modify this at all. This is what  
18 it is. I am not sure where the issue is here.

19 MEMBER GRIFFON: I think Jim is  
20 getting at the path we've gone down in the  
21 past, and I don't know how to change that.  
22 But one example in the presentation was the

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1 neutrons 375 -- or 380. I think you said you  
2 may go with NP ratios that determine neutron  
3 values.

4 DR. MACIEVIC: Well, we used --  
5 currently use NP ratios, now. That's right.

6 MEMBER GRIFFON: It was not very  
7 definitive. You know, you may do this or you  
8 may do this. So I guess that is where Jim is  
9 going.

10 DR. NETON: Right. I guess I am a  
11 little bit concerned when I am hearing that we  
12 shouldn't go and get additional data to refine  
13 models, if it is available at some point down  
14 the line. I mean, we have always asserted  
15 from the beginning that we would do that. As  
16 data became available, we would collect it and  
17 analyze it.

18 We are not sure, you know, what  
19 additional relevant data may come out of this,  
20 but the data are there, and we haven't looked  
21 through all of it yet.

22 DR. MACIEVIC: Well, if I may say,

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1 the things we are looking for which we have  
2 already made the determination of how we want  
3 to do the model and we have quarterly reports  
4 that refer to X number of samples were taken  
5 for this, this and this, we are going to try  
6 to find the data for those samples, which does  
7 not refute this report, although it doesn't  
8 say -- Instead of a report that says the  
9 samples exist, we've got the samples now.

10 So that is not -- We are not going  
11 backward or changing. We are just saying,  
12 instead of saying trust us based on a  
13 quarterly report, we are saying use the actual  
14 data. So --

15 MEMBER GRIFFON: I think there is a  
16 lengthier discussion to have on this topic,  
17 but let me get the other two more commenters  
18 and maybe more Board comments. But I do want  
19 to give plenty of time for the petitioner to  
20 present. I think Brad was first.

21 MEMBER CLAWSON: Back in Slide 15  
22 when you were talking about the number of

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1 claims, which have internal and so forth, you  
2 made a comment that you felt that you had a  
3 good sample of it. What do you guys determine  
4 is a good sample? Is it 50 percent of people,  
5 75?

6 DR. MACIEVIC: From the bioassay  
7 slides?

8 MEMBER CLAWSON: Yes.

9 DR. MACIEVIC: Well, when you have  
10 basically, for plutonium and uranium, over  
11 2000 samples per year as opposed to one every  
12 other year, or having -- if it is a smaller  
13 number, but you have a set of data that covers  
14 the expanse that you want to cover.

15 There is not a magic NIOSH number  
16 we say, ah, that meets the criteria. That  
17 does not exist, but if it shows that you have  
18 sufficient data to get good statistics, that  
19 would be it, and those slides show there is  
20 lots of data there where you can get good  
21 statistics.

22 MEMBER CLAWSON: Okay. One other

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1 thing, and that was on the environmental, that  
2 you feel that you've got a good handle on  
3 that. Now was everybody at LANL -- were they  
4 monitored? Did they all wear badges?

5 I guess one of the ones that I am  
6 looking at is the guards, because through the  
7 later years we've come to find out that they  
8 were monitoring the outer perimeters and so  
9 forth down into a lot of the canyons and stuff  
10 like that that had higher amounts, basically  
11 the runoff and so forth like that.

12 If I remember right, some of the  
13 outer guards were not monitored. So I'm  
14 wondering how you can -- I mean, the  
15 environmental of it, just give this  
16 environmental number, because some of these  
17 other people -- This isn't going to play into  
18 that.

19 DR. MACIEVIC: Well, you would have  
20 to go to the -- and unfortunately, now off the  
21 top of my head without the environmental,  
22 technical basis document, which goes through

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1 the statistics of what they are talking about  
2 was what they had available to be able to make  
3 that statement.

4 MEMBER GRIFFON: I am sure we will  
5 delve into those topics of enough data.  
6 Josie?

7 MEMBER BEACH: I just have a quick  
8 question. Can you give me an idea of the  
9 percentage of claimants that you will be using  
10 the co-worker data on to reconstruct their  
11 dose?

12 DR. MACIEVIC: What we are looking  
13 at is -- I can't give you one right now,  
14 because it is going to have to be done on an  
15 individual basis, based on the person's job  
16 description, title, where they work. As you  
17 probably know, for the guards and the firemen  
18 and all that, that is something that has to be  
19 worked into what kind of number do you assign  
20 to those people for -- who weren't in the  
21 buildings necessarily but outside. So that is  
22 an open number.

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1                   MEMBER    GRIFFON:           Any    other  
2                   questions now?   I know we all have a lot of  
3                   questions.    I am going to save mine for the  
4                   work group.    I do want to get to the  
5                   petitioner at this point.

6                   The named petitioner is Andrew  
7                   Evaskovich, and I think Andrew has asked me  
8                   that if Harriet Ruiz could lead off.   So,  
9                   Harriet is going to lead off for the  
10                  presentation of the petitioners.   I'll give  
11                  her a chance to get her stuff ready.

12                  We've got several people speaking  
13                  for the petitioner.    As I said, just a  
14                  reminder, there is a sign-up for public  
15                  comment.    We are going to have a brief break  
16                  after this petitioner presentation, but then  
17                  everyone is welcome to participate in the  
18                  public comment period after the break.   So we  
19                  all hope you can stay, and I will stop talking  
20                  so you can come up.

21                  MS. RUIZ:    Thank you.    Thank you,  
22                  Board members, and welcome to the land of the

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1       enchantment.  Lori is handing out some -- It  
2       is just a token of our appreciation as means  
3       the petitioner and the claimants who have  
4       finally gotten compensated under my petition.  
5       You don't know how this has helped so many  
6       families who, some of them have called me  
7       seven years -- seven years -- to get  
8       compensated.

9               I really think that there is a  
10       problem with dose reconstructions.  That is  
11       why you see so many people filing special  
12       exposure cohorts to help their workers.

13               I was going through some files -- I  
14       will be brief.  I was going through some files  
15       and purging things.  It has been a very busy  
16       time since my husband got sick and passed  
17       away.

18               For you new members, my husband was  
19       a state representative.  He was a worker from  
20       Los Alamos.  I took his seat as a state  
21       representative.  In the 46th legislature,  
22       second session in 2004, Ray was very, very

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1 ill. He had maybe two months left to live, but  
2 he -- and this will be in your packet. It is  
3 a House Joint Memorial Number 20, and I won't  
4 go into the details. You can read it later.

5 Because of his passion for the  
6 workers, not just the workers that he worked  
7 with but previously to that point and past it,  
8 up to now, he knew there was a problem on the  
9 Hill. He asked me two days before he passed  
10 away to finish his job. That is why I became  
11 a state representative and got the SEC  
12 qualified and passed, and I cannot thank you  
13 enough. It has been a true blessing.

14 When they brought the evaluation  
15 out on my SEC, there was a section in there  
16 that was going to exclude some of the TAs, and  
17 because of Andrew's wonderful research -- and  
18 I know reading through his SEC, you can see  
19 what a wonderful researcher Andrew is -- he  
20 found some historical documents that actually  
21 we brought to the Board, and you realized that  
22 they should be included. I want to thank you

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1 for that, and also publicly thank Andrew,  
2 because in Denver I didn't have that  
3 opportunity.

4 With that, I am going to give this  
5 to Andrew, because I know everybody is hungry  
6 and tired. Thank you again.

7 Enjoy these little gifts. They are  
8 from a company that has been in Albuquerque  
9 for -- I can't tell you. The granddaughter is  
10 now running the business. Enjoy them, and  
11 they are sweets for the sweet. Thank you.  
12 Andrew.

13 (Applause.)

14 MR. EVASKOVICH: Thank you,  
15 Harriet. I appreciate that. Let me see if I  
16 can bring up my presentation.

17 Good day. My name is Andrew  
18 Evaskovich. I am the LANL petitioner today.  
19 This will be my presentation.

20 Before I begin, I would like to  
21 thank some people from NIOSH who have been  
22 very helpful in this process, Laurie Breyer,

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1 Larry Elliott who, unfortunately, can't be  
2 here -- I have had some discussions with him  
3 that have been informative; LaVon Rutherford,  
4 and also Greg Macievic who has been very  
5 helpful in this process as well. I appreciate  
6 all of your help.

7 I wanted to talk today about the  
8 uniqueness of Los Alamos and try to develop a  
9 way that I could show you that it stands apart  
10 from the other sites. It's there, you know,  
11 the exotics, topography, the geography, the  
12 people that work there, and this is what I  
13 found.

14 (A video was shown.)

15 I feel pretty confident saying that  
16 no other site has had an opera written about  
17 the work that was conducted there.

18 Let me begin. I did quite a bit of  
19 research in order to develop this petition.  
20 The majority of it was based on environmental  
21 data that I was able to find through different  
22 sources. So I am going to discuss that

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1 portion of it, because the bioassay  
2 information is a lot harder to come by for  
3 somebody in my position. I would let NIOSH do  
4 that work.

5 The argument against the bioassay  
6 data basically comes from affidavits and  
7 interviews with people that worked on the  
8 hill.

9 LANL releases radionuclides in  
10 various ways. We have explosions, exhaust  
11 stacks, and then there is the issue of buried  
12 or discharged materials leaching and then  
13 getting resuspended by the wind.

14 I am going to first discuss a  
15 little bit about explosions. Basically, an  
16 explosion is a rapid release of energy  
17 followed by expanding gases, and the expanding  
18 gases compress the surrounding area to create  
19 a shock wave.

20 A lot of explosive testing was  
21 conducted at Los Alamos since its inception,  
22 because they were trying to develop the

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1       implosion device, and they still do explosive  
2       testing on certain materials.

3                       This is a photograph of an  
4       explosion. Some of the key issues: As you  
5       can see here, you have a very large fireball,  
6       but you can also see the shock wave formed by  
7       the compression of the air coming out from the  
8       explosion.

9                       It creates tremendous heat, forms a  
10      fireball, and it rises into the air. This is  
11      important, because the modeling used for the  
12      explosive testing done at Los Alamos is based  
13      on area modeling or an area source as opposed  
14      to a point source, and I believe the  
15      information that I have captured indicates  
16      that it is a point source. I will show you  
17      why here.

18                      The fireball rises up in the form  
19      of a dust cloud, but you have this chimney-  
20      like effect until it reaches up to the point  
21      where the fireball cools to the ambient  
22      temperature, in which case the winds will

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1 carry it away.

2 So, basically, it is like coming  
3 out of a stack, except it is going to go  
4 higher into the air, depending on the force of  
5 the explosion or the amount of the explosives  
6 used.

7 This figure will illustrate some  
8 issues concerning explosions. You can see the  
9 shock wave coming toward the camera there,  
10 debris falling, and notice how the plume goes  
11 up. You have that chimney-like effect.

12 The important aspect is going to be  
13 the vacuum that is created by the explosion,  
14 and you will see as you watch this video and  
15 the successive explosions, the dust that is  
16 kicked up into the air by the explosion is  
17 drawn back toward the center and then lifted  
18 up into the plume.

19 In this portion right here, you can  
20 see the obvious effects of the vacuum as the  
21 dust clouds move back toward the center.

22 Another issue that comes from the

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1 explosives testing is the temperatures of the  
2 explosives that are generated when the actual  
3 explosion occurs, and the temperatures of  
4 materials' boiling points and melting points.

5 As you can see, the heat of the  
6 explosion is about 3500 degrees Celsius, and  
7 the melting points are all underneath that,  
8 and plutonium, in fact, is essentially at the  
9 boiling point for the temperature of the  
10 explosives that were used there.

11 To illustrate this, I have a graph.  
12 The points that are not shown are not  
13 available data. Those are the first four, and  
14 then these are the other four. Then there are  
15 a lot of exhaust stacks that give material  
16 into the air at Los Alamos. In fact, there's  
17 several hundred stacks, approximately 90  
18 involved in experiments that could result in  
19 releasing radionuclides, and 34 of the stacks  
20 were subject to the Clean Air Act monitoring.

21 During this time, they didn't have  
22 a complete inventory of the stacks that must

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1 be monitored, and many emitted radionuclides  
2 without proper monitoring.

3 Then we have an issue with burying  
4 discharged radioactive materials. That  
5 started in the beginning of Los Alamos when  
6 they started burying the disposable wastes up  
7 there. You look for the fluids. In their  
8 early days there was a treatment facility at  
9 TA-45. Currently, it is at TA-50.

10 Large amounts have been disposed of  
11 in the ground, and they don't have reliable  
12 source inventories, and this is based on --  
13 Some information is in your packet there from  
14 the New Mexico Environment Department  
15 concerning areas of concern and potential  
16 release sites. I have included some  
17 information and highlighted that.

18 Additionally, the National Academy  
19 of Sciences was involved in some research  
20 there dealing with groundwater, and that was  
21 one of the determinations that they made in  
22 the report, which is also included in the

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1 petition, of these areas.

2 We also have material disposal  
3 areas, and two of those which are key, B and  
4 B, they have unknown radionuclide inventories.

5 They don't know what is in there, and they  
6 don't know how much is in there.

7 There are 829 solid waste  
8 management units and AOCs that are in the  
9 process of being investigated. These  
10 investigations are pending a decision from the  
11 New Mexico Environment Department. So these  
12 are what I consider, I think, important source  
13 points for determining what is up there.

14 Four-hundred seventy-eight  
15 potential release sites have confirmed or  
16 suspected radiological sites, and they have  
17 been characterized to contain unknown  
18 radionuclides. Waste has been disposed in  
19 hundreds of these areas, and these wastes have  
20 not been characterized.

21 This is from TA-54. Radionuclides  
22 reported in waste in MDA G. There is about 75

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1 different radioisotopes on this chart, and  
2 this is from an official document prepared for  
3 the New Mexico Environment Department as part  
4 of the Resource Conservation and Recovery Act  
5 permitting process, and this was developed in  
6 1992.

7 I think you can see, the list is  
8 quite a bit longer than what Dr. Macievic  
9 presented as far as exotics.

10 I would like to discuss the air  
11 monitoring at LANL, because it is important.  
12 Not only did they have monitoring stacks, I  
13 think there were problems with the AIRNET  
14 samplers. They are very limited. They only  
15 detect plutonium, uranium, tritium and  
16 americium. They don't detect the other  
17 radionuclides, and the placement of the  
18 monitors is to determine the dose to the  
19 public off-site. So they are on the perimeter  
20 of the laboratory.

21 Monitoring isn't close to the  
22 buildings where you can have stack-tip

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1 downwash or other effects which would place it  
2 closer to the workers with a higher  
3 concentration.

4 In 1996 a Federal Judge ruled Los  
5 Alamos National Laboratory was in violation of  
6 the Clean Air Act because of their monitoring  
7 practices. As a result, the Environmental  
8 Protection Agency found that all sources of  
9 radionuclide emissions have not been  
10 identified.

11 There were problems with stack  
12 monitoring equipment and vents. The  
13 monitoring systems did not meet regulatory  
14 requirements, and LANL had not conducted and  
15 was not in compliance with quality assurance  
16 programs required by the regulations.

17 ES&H-17 is charged with the  
18 environmental monitoring at Los Alamos -- they  
19 failed to verify inventories submitted by the  
20 facilities, and those are necessary in order  
21 for record keeping, and also determines your  
22 source term.

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1           The informal method used to  
2 estimate quantities of radionuclides -- one of  
3 them listed in the report was eyeballing the  
4 contents of a container, and they did not take  
5 representative samples of effluent. Samplers  
6 were not placed considering actual emission  
7 locations, and the air was not monitored  
8 around the buildings at LANL. The documents  
9 that I provided in my petition report is where  
10 this information comes from.

11           There are issues with the AIRNET  
12 samplers themselves, because he has good  
13 efficiency for 5 micrometer, but less than 60  
14 percent for 10 micrometer samples, and the  
15 sampler is most efficient if the flow was in  
16 the front of the air sampler. So -- and winds  
17 change direction in Los Alamos. They are  
18 primarily from the south. They can come from  
19 different directions. There are different  
20 aspects of the topography that affect the wind  
21 flow over the mesas and in the canyons.

22           This is a photograph of an AIRNET

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1 station.

2 The Cerro Grande fire was a large  
3 issue. The fire burned over a 47,000 acre  
4 area, 7500 acres of land at Los Alamos and 112  
5 structures. The fire burned numerous  
6 contaminated sites or potentially contaminated  
7 sites and technical areas, 0, 5, 6, 8, 9, 11,  
8 15, 16, 18, 20, 35, 40, 49, 42, 50, 52 and 55.

9 This data is based on some maps  
10 that I have included in the petition  
11 documentation as well, and the sites are  
12 according to the RCRA permitting process.

13 There was a problem with the air  
14 monitoring during the fire because of the  
15 large amount of particulate from the fire  
16 clogged the filters, and there was a loss in  
17 power when the fire was burning on Los Alamos  
18 property. So the AIRNET stations were not  
19 operating, and the AIRNET stations lost  
20 accuracy due to the high winds, which  
21 basically during the high wind affects the  
22 samplers.

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1           You can see here the smoke plume  
2 from the fire. This is Los Alamos. You can  
3 see the fire, and the plume conducts itself  
4 all the way into Oklahoma, Colorado.

5           One of the reports cited in the  
6 evaluation report is LA-UR-011132, and one  
7 footnote in that acknowledges that there are  
8 problems of an order of magnitude larger than  
9 the usual uncertainties due to the sampling  
10 that was done during the fire.

11           These are the doses that they  
12 assigned in that report for workers in  
13 Mortandad Canyon. As you can see, the doses  
14 are fairly small. However, in 1999 when the  
15 Environmental Impact Statement was prepared  
16 for resuspension following the wildfire, you  
17 can see the receptor dose over here in this  
18 column, 690 millirems EF site, and that is per  
19 day. So the doses are considerably higher  
20 according to LANL documents for resuspension.

21           So what I am doing is pointing out  
22 the discrepancies that need to be looked at

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1 when this is reviewed by the working group and  
2 SC&A.

3 Another issue I would like to  
4 address was a noncompliance report written in  
5 1997, and one of the issues cited on the front  
6 of it. I have included a copy of this report  
7 in your packet as well.

8 Basically, I am not too sure how  
9 the report reads, but they cite there was a  
10 problem with the Code of Federal Regulations  
11 835 and the annual limits are not to be  
12 exceeded.

13 Now this is the narrative from that  
14 report. There was a potential that employee  
15 exposures would not have been identified in a  
16 timely manner because of weaknesses in the  
17 LANL routine Pu bioassay program. There is no  
18 documented evidence that the weaknesses  
19 resulted in exceeding the annual committed or  
20 effective dose equivalent for any individual  
21 or in a failure to comply with the ALARA  
22 program.

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1           This report was prepared as a  
2 noncompliance with Price-Anderson Act,  
3 Amended, which potentially they could have  
4 been fined \$75,000 a day for each day that  
5 they were not in compliance with the Code.

6           Some problems with the ORPS  
7 requirements with reporting, and the main  
8 thing is the report should enable the general  
9 reader to understand the basic what, who,  
10 when, where and how the event to satisfy the  
11 issues involved and the actions taken. This  
12 is from the ORPS Manual for preparing these  
13 reports.

14           The biggest thing is all reports  
15 should present enough information so that the  
16 general reader understands why the event needs  
17 to be reported, and what the effect is.

18           Additionally, they have to do more  
19 than merely state a reportable limit was  
20 exceeded, which they didn't even do there.  
21 But I don't think two sentences qualify as a  
22 sufficient narrative for all the requirements

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1 in ORPS to state what the problem was.

2 In the evaluation report, they also  
3 discuss Tiger Team findings, and they said  
4 that basically those dealt with safety issues  
5 such as signage or that -- but not dealing  
6 with the bioassay or the monitoring. However,  
7 looking through the Tiger Team, and these are  
8 just a few instances of that, found with  
9 internal radiation dosimetry they were cited  
10 because they weren't including the TA-36 and  
11 TA-15 LANL personnel for inclusion in the  
12 bioassay. These are explosives testing areas,  
13 and also radiography.

14 Not all personnel at the depleted  
15 uranium facilities are evaluated for petition,  
16 and to comply with the DOE orders. Routine  
17 tritium bioassay samples scheduled by the  
18 field may remain in the field for several  
19 weeks rather than being turned in immediately  
20 after they are provided.

21 The external dosimetry -- there are  
22 problems with that as well. The dosimeter is

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1 not DOELAP-accredited in all 13 categories,  
2 and this is at the time that the report was  
3 prepared. Since then, a new dosimeter has  
4 been implemented at LANL, and it has been in  
5 place for 10 years.

6 There is a problem with the low  
7 energy data dosimetry, and part of the problem  
8 is the low energy radiations from bromine-77,  
9 technetium and uranium. So there are a couple  
10 more examples of exotic radionuclides, and  
11 they are not being monitored.

12 Another issue is with the neutron  
13 monitoring, and they are using correction  
14 factors, but they aren't included in the  
15 dosimetry records for the individual. So you  
16 need to be able to determine how they got this  
17 dose, the data that they used to develop the  
18 dose, and I think that that is an issue that  
19 needs to be looked at.

20 The radiation protection  
21 technicians were not reviewing operations  
22 involving radioactive materials to ensure that

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1 workers who should participate in the bioassay  
2 program do so. So the issue here is missed  
3 dose, because these people should have been  
4 monitored and they weren't.

5 An issue with the phosphorous  
6 protectors is that in the presence of gamma  
7 emitters, they don't accurately measure  
8 plutonium and americium.

9 Under the LANL ES&H self-  
10 assessment, there were some issues as well,  
11 and I included these in my documents that are  
12 sent to -- didn't include the whole document  
13 that was prepared, because I didn't have  
14 ownership of it. So I only made copies of  
15 certain sections that I felt are pertinent,  
16 but I'm sure there is more information there,  
17 because I didn't read it as in-depth and find  
18 everything I think that could have been found.

19 Some of the issues there, the  
20 assigning of people to the bioassay program,  
21 and then the adequately monitored portion of  
22 it. So even then, there were problems back in

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1 '91 with bioassay, and I think these need to  
2 be addressed.

3 This is from the report which was  
4 prepared in '91, which also talks about the in  
5 vivo measurements and the problems with the  
6 equipment that they have there, and the fact  
7 that they don't meet the DOE order and the  
8 ANSI standard and 13.30. So they were going  
9 to have to upgrade the instrumentation and  
10 documented programs for that.

11 The final evaluation report -- and  
12 they did talk about radiation work permits,  
13 and there were some problems with those as  
14 well; pre-job planning and documentation are  
15 inadequate.

16 So I think that calls into question  
17 whether or not those documents are reliable,  
18 and especially this next one. Radiation work  
19 permit forms in use at the laboratory do not  
20 include all necessary information to ensure  
21 job control. An example they gave following  
22 that is, pre-survey or post-survey data.

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1 I do agree with one section or this  
2 sentence of the report; LANL clearly possessed  
3 capabilities to conduct bioassay measurements  
4 for those exotic radionuclides. However,  
5 specific data for such measurements are very  
6 sparse and generally unavailable.

7 I think this calls into question  
8 the quality of the data that is used for dose  
9 reconstructions, and that demonstrates you  
10 have to question whether or not the dose  
11 reconstructions are, therefore, accurate based  
12 on that data.

13 I think the discrepancies that I  
14 presented here so far concerning the report  
15 and what is in my petition require further  
16 review, and I am requesting the Board -- that  
17 the Advisory Board and the LANL Working Group  
18 review the petition, including attached  
19 documents, the evaluation report, and that  
20 SC&A should be tasked to do this as well.  
21 From what I understand from Mark, this is  
22 pretty much going to be taken care of.

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1           So I appreciate the time that you  
2           have given to me, and I hope that you review  
3           the documents that I provided, even though  
4           there is quite a bit of information there. I  
5           appreciate this opportunity. Thank you.

6                           (Applause.)

7           MEMBER GRIFFON: I want to say that  
8           I think Harriett spoke very accurately when  
9           she said that Andrew did a lot of research on  
10          this. We will be looking at this in the Work  
11          Group, I'm pretty sure.

12                         Again, I don't want to get ahead of  
13          myself. I don't think we have tasked SC&A,  
14          but we will discuss it further this week, I am  
15          sure.

16                         I believe there are a few more  
17          presenters for the petitioner, and the first I  
18          have is Michelle Hacquez-Ortiz. She is from  
19          Senator Tom Udall's office, and either mic  
20          that you are comfortable with is fine. I  
21          think they are both working now.

22                         Are you reading a prepared

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1 statement from the Senator or are these your  
2 own comments? Maybe you can tell us.

3 MS. HACQUEZ-ORTIZ: These are on  
4 behalf of Senator Udall.

5 MEMBER GRIFFON: Okay. Thank you.

6 MS. HACQUEZ-ORTIZ: Well, first I  
7 want to commend Andrew Evaskovich. Harriett  
8 has had a lot of support in her quest to get  
9 that first SEC. Andrew was very much a driver  
10 in that, and that was an exceptional  
11 presentation, very well researched. So thank  
12 you for the hundreds of hours that went into  
13 that, Drew, on behalf of all the workers.

14 Thank you very much, Mark, and  
15 members of the Advisory Board for allowing me  
16 to read a statement into the record from  
17 Senator Tom Udall on behalf of his New Mexico  
18 constituents who are sick and dying while  
19 awaiting compensation as a result of their  
20 work at Los Alamos National Laboratory.

21 My name is Michelle Hacquez-Ortiz,  
22 and I have served on the Senator's staff since

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1 his first election to Congress in 1999.

2 As a member of the House of  
3 Representatives, Tom Udall, along with his New  
4 Mexico colleague, Senator Jeff Bingaman,  
5 hosted the first public hearings in New Mexico  
6 on this issue, and worked to ensure that his  
7 constituents would be covered as part of the  
8 Energy Employees Occupational Illness Program  
9 Act of 2000.

10 Senator Udall and his staff have  
11 spent years since the program's inception  
12 trying to realize justice for these claimants.  
13 As some members of the Advisory Board might  
14 recall, Senator Udall followed both the RaLa  
15 and Harriett Ruiz's Special Exposure Cohort  
16 petitions very closely.

17 Likewise, the Senator and his staff  
18 have continued to offer support to Andrew  
19 Evaskovich and the larger class of workers  
20 covered in his proposed SEC petition.

21 The Senator felt it was important  
22 to present this statement to the Advisory

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1 Board to stress his strong support of an SEC  
2 for the proposed class of LANL workers in  
3 whole or in part. He thanks the Board for its  
4 decision to host this week's meeting here in  
5 New Mexico so that the affected claimants had  
6 an opportunity to personally and directly  
7 participate in the meeting.

8 This afternoon NIOSH presented its  
9 case to the Advisory Board, and our view that  
10 the agency is able to accurately reconstruct  
11 dose for the entire SEC class. You will also  
12 hear from numerous LANL claimants about why  
13 granting the petition, even in part, is so  
14 important.

15 The Senator shares his  
16 constituents' concerns about the lack of  
17 sufficient monitoring at LANL, as well as the  
18 integrity of historical data used in NIOSH's  
19 dose reconstruction for the proposed class.

20 Senator Udall would like to  
21 encourage the Advisory Board to keep in mind  
22 that, although NIOSH had months to develop its

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1 evaluation report, petitioners were given less  
2 than two weeks to review and respond to the  
3 report in preparation for this week's meeting.

4 We all know that two years ago, the  
5 Advisory Board approved an SEC petition for  
6 State Representative Harriett Ruiz to cover  
7 all Los Alamos workers from 1943 through 1975.

8 This was due to the unreliable nature of  
9 radiation dose records in these early years of  
10 LANL operations.

11 At your meeting in Denver,  
12 Colorado, representatives from NIOSH stood  
13 before the Advisory Board and recommended  
14 approval of the Ruiz SEC. Less than two years  
15 later, NIOSH again stands before the Board,  
16 this time arguing a very different position.

17 Senator Udall encourages the  
18 Advisory Board to closely consider what his  
19 constituents believe is a mixed message from  
20 NIOSH.

21 First, the agency self-initiated an  
22 SEC for LANL RaLa workers. It then approved

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1 the Harriett Ruiz SEC for LANL workers through  
2 December 31, 1975. In an apparent about-face,  
3 NIOSH now claims that, due to newly discovered  
4 records, not only should the Evaskovich SEC be  
5 rejected in a wholesale fashion, but if NIOSH  
6 knew then what it knows now, the agency would  
7 have recommended denying Harriett Ruiz's  
8 petition beyond 1970.

9 If you accept NIOSH's assertion  
10 that the agency can accurately reconstruct  
11 dose after 1970, what about the obvious holes  
12 that remain? Some of my constituents believe  
13 that these holes are, in a sense, the elephant  
14 in the living room.

15 One hole is the fact that LANL used  
16 everything in the periodic table. There are  
17 questions about the location and quantity of  
18 materials at LANL, like plutonium-240. Has  
19 NIOSH fully answered how they can accurately  
20 reconstruct dose for mixed activation products  
21 and exotic radionuclides used at LANL?

22 Another hole deals with first

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1 responders like firefighters and security  
2 guards who, more often than not, were  
3 insufficiently monitored. Has NIOSH fully  
4 answered how they can accurately reconstruct  
5 dose for first responders?

6 Yet another hole is Area G, the  
7 nuclear dump at LANL, and members of the  
8 proposed class who worked at that site. Has  
9 NIOSH fully answered how they can accurately  
10 reconstruct dose for Area G workers?

11 What about the many workers who  
12 wore their film or TLD badges underneath lead  
13 aprons?

14 To accept NIOSH's wholesale  
15 rejection of the SEC class, the Advisory Board  
16 must be convinced that none of these workers  
17 should be included in the class. Senator  
18 Udall realizes the difficult task the Advisory  
19 Board has in considering the complex issues  
20 associated with the proposed LANL petition.  
21 He understands the hard work and long hours  
22 each of you commit as members of this

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1 important Board.

2 The Senator supports approval of  
3 the petition in whole or in part, and he is  
4 hopeful for a positive outcome on behalf of  
5 these courageous Cold War veterans, so that  
6 they can finally receive the relief and  
7 compensation they so rightly deserve.

8 He thanks you for your thoughtful  
9 consideration of the petition and allowing  
10 time on the agenda for his statement.

11 MEMBER GRIFFON: Thank you.

12 (Applause.)

13 MEMBER GRIFFON: One last presenter  
14 is Chris Neubauer, and Chris is from  
15 Congressman Ben Lujan's office and reading a  
16 statement from the Congressman or your own?

17 MR. NEUBAUER: A statement on  
18 behalf of the Congressman's office.

19 MEMBER GRIFFON: Thank you.

20 MR. NEUBAUER: Good evening to  
21 members of the Advisory Board. Thank you for  
22 allowing us to speak today. My name is

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1 Christopher Neubauer. I am Constituent  
2 Services Manager for Congressman Ben R. Lujan.

3 Today the Congressman offers his  
4 support to Andrew Evaskovich and the class of  
5 workers in his proposed SEC petition.

6 As Ms. Hacquez-Ortiz stated  
7 earlier, it was only two years ago that the  
8 Advisory Board approved an SEC petition for  
9 Representative Ruiz to cover all of Los Alamos  
10 workers from 1944 to 1975, because they found  
11 that the radiation dose records kept by Los  
12 Alamos National Laboratory during this time  
13 were unreliable.

14 NIOSH claims that the Evaskovich  
15 SEC should be rejected due to newly discovered  
16 records which support the ability to conduct  
17 an accurate dose reconstruction. The  
18 Congressman encourages the Board to consider  
19 the holes that remain, including those that  
20 were just outlined by Ms. Hacquez-Ortiz on  
21 behalf of Senator Udall.

22 Consider the recent beryllium

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1 contamination in one of LANL's technical  
2 areas. Even though beryllium is not a  
3 radioactive concern, the contamination is  
4 proof that incidents happen where workers'  
5 exposure to harmful substances suddenly  
6 deviates from the norm.

7 Even if NIOSH can prove that the  
8 newly discovered records support a more  
9 accurate dose reconstruction process, has  
10 NIOSH fully explained how it can account for  
11 any and all inconsistencies where  
12 abnormalities that may have occurred in the  
13 exposure records, especially in the early  
14 years following 1975?

15 Congressman Lujan respectfully  
16 reminds the Board that we are dealing with  
17 real people whose lives and whose families  
18 have been strongly affected by these issues.  
19 These individuals have rights and deserve  
20 compensation and relief.

21 On behalf of his constituents and  
22 these brave veterans, Congressman Lujan asks

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1 the Board to approve the petition in whole or  
2 in part. The Congressman thanks you for your  
3 consideration and for your time. Thank you.

4 (Applause.)

5 MEMBER GRIFFON: And I have just  
6 been told that from Senator Bingaman's office,  
7 we have Patricia Dominguez who is going to, I  
8 think, state his position or make a  
9 presentation for him. Patricia, are you here?

10 MS. DOMINGUEZ: Good evening. My  
11 name is Patricia Dominguez. I am here to read  
12 a statement on behalf of United States Senator  
13 Jeff Bingaman.

14 Let me thank the Advisory Board for  
15 coming to New Mexico to hear NIOSH's  
16 evaluation of the Special Exposure Cohort  
17 petition 00109 covering workers between 1975  
18 and 2005.

19 The cause of workers addressed in  
20 this petition is unique to Los Alamos. There  
21 were service support workers, many who moved  
22 throughout the complex at different job sites,

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1 in many cases for short periods of time.  
2 While the files for permanent laboratory  
3 workers and dosimetry data can be established  
4 with accuracy from 1975 to 2005, it is  
5 problematic at best for these subcontractors  
6 who frequently moved between jobs on and off  
7 Los Alamos.

8 Page 43 of the NIOSH analysis of  
9 the petition notes that, for the Zia Company,  
10 one of the main employers of service workers  
11 at Los Alamos, that access was restricted to  
12 certain plutonium sites, if no bioassays was  
13 recorded in 425 calendar days. For many of  
14 these workers, a typical stay was on the order  
15 of a few months, much less than 425 days.

16 Much of the NIOSH analysis rests on  
17 the correlation in Tables 6 through 4 between  
18 the numbers of workers monitored versus the  
19 number of workers on the site.

20 The report itself on page 33 admits  
21 that the major source of uncertainty appears  
22 to stem from the variability in worker types,

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1 which is precisely the cause that the proposed  
2 SEC is to address these service workers.

3 I appreciate the hard and  
4 thoughtful work that has gone into NIOSH  
5 analysis, but it seems not to account for the  
6 principle contention that many of these  
7 workers were transient in nature. With little  
8 records kept on them by the subcontractors as  
9 compared to permanent Los Alamos employees, I  
10 ask the Advisory Board to respectfully  
11 consider this type of job function as they  
12 perform their evaluation.

13 Again, I thank you for your time  
14 today, and I appreciate all of the efforts  
15 involved in this process. Thank you.

16 (Applause.)

17 MEMBER GRIFFON: Thank you,  
18 Patricia. I think -- Andrew, is that it? Did  
19 we capture everyone that is going to speak on  
20 behalf of the petition? I think so.

21 MR. EVASKOVICH: Yes, it is.

22 MEMBER GRIFFON: I guess I just --

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1 We are about a half-hour over, but I would ask  
2 the Board if you have any follow-up questions  
3 for petitioners or any other comments we want  
4 to make at this time. We do have other Board  
5 working time that we could discuss this, but I  
6 will open it up for any other questions,  
7 comments.

8 MEMBER BEACH: I just had a  
9 question for Andrew. Can we get a copy of  
10 your presentation, at least the latter part of  
11 it? I noticed some of it wasn't in here.

12 MR. EVASKOVICH: The presentation -  
13 - I provided a disk. So it is in a computer  
14 there, and that is NIOSH's copy. I am  
15 assuming they will distribute it to everybody.

16 MEMBER GRIFFON: Jim?

17 MEMBER MELIUS: I just want to  
18 thank the petitioners for their efforts and  
19 information. I would like to at least get the  
20 process going, and I think we need to, one,  
21 task our work group on LANL to review the  
22 evaluation part, which we also got just two

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1 weeks ago, and to begin that process.

2 Secondly, to also task our  
3 contractor to do a thorough review of the SEC  
4 evaluation report in conjunction with the work  
5 group. I will make that as a formal motion.

6 MEMBER BEACH: I would like to  
7 second that.

8 MEMBER GRIFFON: Any discussion of  
9 the motion? No opinions either way? Anybody  
10 supporting the motion?

11 MEMBER MUNN: We are going to have  
12 to do it.

13 MEMBER GRIFFON: I think I will  
14 take it by consent then, that everyone agrees  
15 we have to do a work group, and we should task  
16 SC&A for this. So we don't need to vote.  
17 Well, all in favor, say aye.

18 (A chorus of ayes.)

19 Mike on the phone, are you still  
20 with us? That was an aye. Okay. All right.  
21 So we have a unanimous vote minus the two that  
22 aren't on the Board. Three, I'm sorry, three.

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1                   Okay. I think that should close  
2 out our session now. Paul, 15 minutes?

3                   CHAIRMAN ZIEMER: Ten?

4                   MEMBER GRIFFON: Ten-minute  
5 comfort break, and then we will start public  
6 comment right after the 10-minute break.  
7 Thanks for staying with us.

8                   (Whereupon, the above-entitled  
9 matter went off the record at 6:30 p.m., and  
10 resumed at 6:43 p.m.)

11                  CHAIRMAN ZIEMER: Thank you all for  
12 sticking around for this part of our session  
13 this evening. We are hoping to move right  
14 along, because many of you are getting hungry.

15                  Many of us are getting hungry, as well.

16                  For Board members, if you would  
17 take your seats, we will get underway.

18                  This is the public comment portion  
19 of today's Board meeting. We will have  
20 another public comment session as well  
21 tomorrow. I should point out to you that this  
22 public comment session is not considered

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1 technically to be part of the Los Alamos  
2 petition discussion.

3 So all the Board members are able  
4 to be at the table for this, because we are  
5 simply here to hear what you have to say, and  
6 not everyone speaking either here or by phone  
7 will necessarily be speaking about the Los  
8 Alamos site in any event, because the public  
9 comment session is open to any member of the  
10 public from anywhere in the United States to  
11 give comment on issues that pertain to the  
12 Board's activities and, in turn, to NIOSH and  
13 Department of Labor activities as well.

14 We are here primarily to hear your  
15 comments. If you have particular issues  
16 dealing with a personal claim, you need to  
17 deal with the claim representatives that are  
18 here in the building, and you can be directed  
19 to them. This Board is not in the position to  
20 answer specific questions about claims and  
21 that sort of thing.

22 We do want to hear your comments.

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1 You may be talking in the framework of a  
2 claim, and that is just fine, but we will not  
3 be discussing particular claims this evening.

4 The other ground rule I want to  
5 tell you is that we have a 10-minute time  
6 limit on the comments, and I always like to  
7 point out to people that the 10 minutes is not  
8 a goal to be achieved. It is an upper limit,  
9 and if you can be more concise than that,  
10 that's good, because there are a number of  
11 people who wish to speak, and in fairness to  
12 those who are at the end of the list, we would  
13 like to have time to hear them and not have  
14 everyone getting so worn out that they are  
15 leaving before the folks at the end get a  
16 chance to speak.

17 We also have some legal ground  
18 rules, and our designated federal official,  
19 Ted Katz, is going to go over those legal  
20 ground rules. As soon as he is done, we will  
21 start right down the list in the order that  
22 you have signed up. Ted?

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1                   MR. KATZ:    Yes.    Thank you, Dr.  
2                   Ziemer.    So just to be very quick about this,  
3                   but this is our redaction policy, and this  
4                   relates to -- as I think most of you are aware  
5                   at this point but maybe not all, we take a  
6                   verbatim transcript of every Board meeting,  
7                   and so this regards what we keep and what we  
8                   don't keep in the transcript.

9                   So if you come to the mic and  
10                  present and self-identify yourself, your name  
11                  and your information will stay in the  
12                  transcript and be publicly available. It will  
13                  be on the website, the NIOSH website.

14                 However, if you speak of a third  
15                 party, another party, that information about  
16                 third parties, not yourself, typically will be  
17                 redacted from the transcript to protect that  
18                 person's privacy.

19                 The other thing I should tell you,  
20                 that personal information you give, even  
21                 medical information, typically would be  
22                 retained about yourself.

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1           The other thing I should tell you  
2 then is this policy, if you want to see it in  
3 all of its legal language, should be available  
4 on the back table there. It is also on the  
5 NIOSH website with the agenda for the meeting.

6           Lastly, if there is someone here  
7 who has something they want to address to the  
8 Board or some members of the Board, but does  
9 not want to do that publicly, then please  
10 consult me, and we will see how we can take  
11 care of that need.

12           That covers it. Thank you, Dr.  
13 Ziemer.

14           CHAIRMAN ZIEMER: Okay. Thank you,  
15 Ted. Let's begin then with [Identifying  
16 Information Redacted}. Is [Identifying  
17 Information Redacted} here?

18           PARTICIPANT: Patricia Dominguez of  
19 Senator Bingaman's staff covered that earlier.

20           So [Identifying Information Redacted} won't  
21 be here.

22           CHAIRMAN ZIEMER: Okay. Thank you

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1 very much. I had a feeling that was the case,  
2 but I didn't recall.

3 Antoinette Bonsingore, and she is  
4 with us by phone, I believe. Antoinette?

5 MS. BONSSINGORE: Thank you, Dr.  
6 Ziemer. My name is Antoinette Bonsingore, and  
7 I am the SEC representative for the Linde  
8 Ceramics facility.

9 On behalf of the Linde Ceramics SEC  
10 petitioners, I am requesting that, in light of  
11 the continuing inability of the Linde  
12 petitioners to receive any effective  
13 assistance from NIOSH regarding the  
14 deciphering of the petition evaluation report,  
15 that the Advisory Board authorize SC&A to  
16 review and provide an evaluation of NIOSH's  
17 decision to not recommend SEC status for this  
18 facility.

19 The fundamental absence of due  
20 process is at the core reason why fairness and  
21 equity has evaporated within the  
22 administration of the EEOICPA. Both the dose

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1 reconstruction claims and appeal process and  
2 the SEC petitioning process have become  
3 adversarial in nature, and it was never the  
4 intent of Congress to create an adversarial  
5 system.

6 Any semblance of a claimant-  
7 favorable system cannot be realized without  
8 the basic ability to understand the  
9 administrative procedures as well as the  
10 technical documents provided to dose  
11 reconstruction claimants and to SEC  
12 petitioners.

13 These problems have resulted in a  
14 breakdown within the EEOICPA that demands  
15 immediate attention and redress. NIOSH and  
16 the Department of Labor are denying sickened  
17 workers access to basic fairness due to the  
18 absence of transparency.

19 This is exemplified when there is a  
20 complete lack of any regulations to provide  
21 for accountability within the dose  
22 reconstruction program or the SEC petitioning

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1 process.

2 NIOSH and the Department of Labor  
3 have the discretionary authority to make  
4 decisions which claimants and petitioners are  
5 powerless to understand or to challenge.  
6 Regulations are needed to eliminate the power  
7 to implement the law on an unaccountable and  
8 discretionary basis.

9 The EEOICPA administrative process  
10 is not claimant-favorable under any equitable  
11 definition of that legal requirement.  
12 Recently, two specific issues affecting the  
13 Linde SEC petitioners highlight the problems  
14 associated with this lack of accountability.

15 First, NIOSH has the complete  
16 discretion to decide whether a revised site  
17 profile will be used as the reference point in  
18 the preparation of an SEC petition evaluation  
19 report, even when the original SEC petition  
20 was filed and later qualified for review under  
21 a previously existing site profile.

22 There are no administrative rules

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1 that govern this decision-making process.  
2 Linde petitioners filed their SEC petition  
3 before the current and revised site profile  
4 was issued by NIOSH in November of 2008. The  
5 Linde SEC petition qualified for review in  
6 July of 2008, before the current and revised  
7 site profile was issued.

8 Therefore, even though the  
9 petitioners based their argument on the only  
10 existing site profile available in March of  
11 2008, when the petition was filed, and in July  
12 when the petition qualified for review, now  
13 the Linde petitioners are presented with an  
14 entirely new site profile that their original  
15 petition could not have possibly been based  
16 upon.

17 This clearly alters the playing  
18 field in favor of NIOSH. NIOSH is not living  
19 up to its duty to work with petitioners under  
20 a claimant-favorable decision-making system.  
21 NIOSH should be required to work only within  
22 the confines of existing site profiles and to

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1 evaluate the liability of an SEC petition  
2 within those confines based solely upon when a  
3 petition is submitted and when that petition  
4 qualifies for review.

5 To allow NIOSH the ad hoc authority  
6 to decide these complex issues without  
7 providing any notice to petitioners is unfair,  
8 particularly when petitioners are powerless to  
9 challenge these decisions that directly affect  
10 their basic rights.

11 Furthermore, when petitioners are  
12 time and again provided documents that are so  
13 technical in nature that the only individuals  
14 who are qualified to understand that  
15 information work exclusively for NIOSH, and  
16 those same experts repeatedly refuse to  
17 provide answers to basic questions about  
18 revisions to site profiles and information  
19 contained in petition evaluation reports, then  
20 any semblance of fairness has clearly  
21 disappeared.

22 The fact that NIOSH is not required

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1 to provide answers to these questions or to  
2 work within the confines of site profiles that  
3 actually exist at the time of the  
4 qualification of a petition cannot be allowed  
5 to continue.

6 I realize that this request is  
7 beyond the purview of the Board's authority.  
8 However, the second issue and request for  
9 assistance affecting the ability of the  
10 petitioners to respond to the claims presented  
11 in the petition evaluation report is within  
12 the Board's direct authority.

13 Therefore, I urge this board to act  
14 swiftly on our request to authorize the SC&A  
15 review of the petition evaluation report.  
16 This highly technical document requires the  
17 expertise of a qualified health physicist to  
18 understand.

19 Consequently, this document is  
20 essentially useless to the petitioners without  
21 the basic ability to make sense of it. And  
22 since the average petitioner is generally not

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1 a health physicist, petitioners are once again  
2 clearly at a disadvantage.

3 Unless petitioners are provided  
4 with the tools to understand the arguments set  
5 forth by NIOSH as to why they have decided not  
6 to recommend SEC status, the petitioners  
7 cannot respond to NIOSH in any cogent or  
8 effective manner.

9 Petitioners are effectively  
10 eliminated from the SEC petitioning process  
11 when they are denied the ability to respond to  
12 the arguments that NIOSH presents to this  
13 Board, and when a petitioner is afforded the  
14 opportunity to present arguments before the  
15 Board, they are foreclosed from responding to  
16 NIOSH in any real way.

17 Petitioners once again get the  
18 increasingly short end of the stick. I urge  
19 this Board to refer the petition evaluation  
20 report for the Linde Ceramics SEC petition to  
21 SC&A for immediate review before the scheduled  
22 presentation of this petition before the Board

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1 in May.

2 The Linde petitioners deserve the  
3 right to be provided with and the use of all  
4 the information that NIOSH has at its  
5 disposal.

6 Additionally, since the Board is  
7 authorized to recommend the review of petition  
8 evaluation reports by SC&A, I also urge this  
9 Board to consider instituting a blanket policy  
10 requiring review by SC&A in each and every  
11 instance that NIOSH issues a petition  
12 evaluation report that recommends the denial  
13 of SEC status.

14 The congressional intent of this  
15 legislation was to compensate sickened workers  
16 in a non-adversarial and claimant-favorable  
17 way. However, when the process becomes  
18 adversarial, the spirit and purpose of this  
19 law is violated.

20 The Board has the authority to  
21 institute this blanket policy of SC&A review  
22 of petition evaluation reports. That would

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1 provide the most direct and immediate way to  
2 begin to level the playing field for SEC  
3 petitioners and to begin to dismantle a system  
4 that has become clearly adversarial.

5 I would like to thank the Advisory  
6 Board for this opportunity to address the  
7 Board tonight.

8 CHAIRMAN ZIEMER: Thank you very  
9 much, Antoinette, for those comments. During  
10 our work session later in the week, we will,  
11 among other things, be discussing the Linde  
12 site as well.

13 MS. BONSINGORE: Thank you, Dr.  
14 Ziemer.

15 CHAIRMAN ZIEMER: Next, Dr. Maureen  
16 Merritt.

17 DR. MERRITT: Is this on? Yes. I  
18 am Dr. Maureen Merritt, and I want to thank  
19 the Board, first of all, for allowing me to  
20 speak this evening, and I also would like to  
21 commend Drew Evaskovich for what a great job  
22 he did on that presentation of his SEC.

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1           On behalf of ANWAG, which is the  
2 Alliance of Nuclear Worker Advocacy Groups, of  
3 which I think most of the Board members are  
4 aware -- it is a national coalition of  
5 advocacy groups for nuclear workers, and on  
6 behalf of our local New Mexico Alliance of  
7 Nuclear Worker Advocates, and on behalf of the  
8 National Cold War Patriots nonprofit  
9 organization whose membership is over 1500  
10 strong and growing, I want to voice our  
11 support of this new Los Alamos National Labs  
12 Special Exposure Cohort petition for the  
13 following reasons.

14           The first, most simple and obvious  
15 reason is because the sick nuclear workers of  
16 Los Alamos, and indeed all of the DOE AWE  
17 weapons complexes around the country deserve  
18 under EEOICPA to be spared the lengthy,  
19 grueling and inexact science that is currently  
20 dose reconstruction.

21           We don't believe it was ever  
22 Congress' intent to further prolong our sick

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1 nuclear workers' suffering through this type  
2 of process. We urge the Board to overturn  
3 NIOSH's recommendation to deny this SEC on the  
4 grounds that they have sufficient records to  
5 reconstruct dose for the following reasons.

6 First, we have inadequate bioassay  
7 data over this particular time period of '76  
8 through 2005. B) we have poor data  
9 representation of actual conditions at the  
10 various technical areas. C) we have overuse  
11 of surrogate and co-worker data that is not  
12 relevant or accurate to this specific site.  
13 D) we have misstatement of various key site  
14 facts, i.e., for example, the site profiles  
15 and SEMs upon which NIOSH and ORAU rely to do  
16 their dose reconstructions.

17 Those undergo constant revisions  
18 and, therefore, because they are a living  
19 document, there is no end to it, a finite  
20 point by which you can determine the actual  
21 accuracy.

22 E) sketchy dose records related to

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1 the so-called exotic radioisotopes, and I know  
2 you have heard a lot about the exotics today.

3 F) we have use of binders which are  
4 considered the gold standard of dose but that  
5 are, nevertheless, inaccurate.

6 There is precedent for our concerns  
7 today. Previous deficiencies in NIOSH ORAU  
8 site profiles and SEC evaluation reports of  
9 other sites such as Bethlehem Steel, Fernald,  
10 Hanford, Nevada Test Site, Portsmouth, Rocky  
11 Flats, et al., found upon review by Sanford  
12 Cohen & Associates, have led to thousands of  
13 EEOICPA claims being sent back to NIOSH by DOL  
14 for rework, too date, in fact, nearly 3,000  
15 have been sent back.

16 There are several respected health  
17 physicists who have worked in the DOE AWE  
18 radioactive exposure data arena that refute  
19 the premises upon which ORAU's so-called  
20 accurate dose reconstruction is based.

21 My understanding is that published  
22 comprehensive case profile studies will be

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1       forthcoming to the public soon, and I urge the  
2       Board to keep an eye open for those. I don't  
3       have a specific date of publication, but it is  
4       in the works.

5                        Meanwhile, we respectfully request,  
6       if the Board has not yet had time to review  
7       NIOSH's written denial of this SEC, that you  
8       please defer voting until such time as you  
9       have all the facts at hand. Of course, you  
10      have already commented on that, and my last  
11      request was going to be that you assign a work  
12      group and also assign SC&A -- task them to  
13      review all the material submitted before  
14      making a final decision.

15                      Thank you for your time. Now I do  
16      have a couple of other comments, not related  
17      to the SEC, if I may. How am I doing time-  
18      wise?

19                      CHAIRMAN ZIEMER: You have a couple  
20      minutes yet.

21                      DR. MERRITT: I will try and  
22      summarize this document. I do believe,

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1 actually, the Board may have gotten a copy of  
2 this, but we did send a letter -- and again,  
3 this is on behalf of ANWAG and other  
4 coalitions of advocacy groups around the  
5 country and interested stakeholders.

6 Mr. Elliott is not here today,  
7 unfortunately, but I can still read at least  
8 excerpts from it. Interestingly, you did  
9 already address this. Several of these issues  
10 were addressed earlier today, and I was very  
11 gratified to hear that.

12 Recently, the NIOSH Office of OCAS  
13 posted new policies and procedures which  
14 affect data retrieval of the DOE's documents  
15 and security measures for those documents.  
16 The policies and procedures is designated  
17 specifically as ORAU-T Policy 0003, 010 and  
18 011. ANWAG does appreciate that issues  
19 related to national security must be  
20 protected, but we wonder why has it taken the  
21 office nine years to develop these policies  
22 and procedures.

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1 ANWAG has reviewed the documents  
2 and will relay some of our serious concerns we  
3 have with these. It is our hope that these  
4 concerns will be immediately remedied by your  
5 office.

6 As I say, I did hear discussion  
7 already about them. So I know that they are  
8 probably on your plate.

9 One of the most disconcerting  
10 issues in these documents is a reference to  
11 Sanford Cohen & Associates as NIOSH's  
12 contractor. This designation is not  
13 acceptable.

14 As you are aware, the Advisory  
15 Board awarded a contract to SC&A to audit  
16 NIOSH and its contractor, ORAU, technical  
17 documents and scientific assumptions. Simply  
18 because the funding for the Board and SC&A is  
19 funneled through the Department of Health and  
20 Human Services does not mean that SC&A is  
21 NIOSH's contractor.

22 The Board is supposed to be an

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1 independent advisory board whose members are  
2 appointed by the President. The Board's  
3 contractor, therefore, is answerable only to  
4 the Board and the President, not to NIOSH. I  
5 believe I heard that stated earlier today.

6 Thusly, the policies and procedures  
7 that your office has issued should not be  
8 arbitrarily applied to the Board or SC&A, and  
9 presumably you are going to explore that and  
10 see what the legal justification is, if  
11 anything.

12 The next procedure, OCAS-010,  
13 details steps to retrieve data from DOE for  
14 documents needed to perform dose  
15 reconstructions and Special Exposure Cohort  
16 petition evaluation reports. This procedure  
17 appears to be overly burdensome to SC&A.

18 The explanation for this procedure  
19 was that DOE did not want to pull records  
20 twice. Taken at face value, this explanation  
21 appears logical. However, NIOSH ORAU would  
22 have already pulled the documents required

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1 when they completed the site profiles and  
2 evaluated SECs.

3 So SC&A's records request to DOE,  
4 when tasked by the Board to audit NIOSH ORAU  
5 technical documents or SEC petition evaluation  
6 reports, will not necessarily duplicate the  
7 records pulled by NIOSH ORAU.

8 I believe, and we believe, NIOSH  
9 must be extremely careful not to censor the  
10 Board in any way, and SC&A record requests to  
11 DOE, a possibility that some of us are  
12 concerned has already happened.

13 Now ANWAG agrees that SC&A should  
14 keep NIOSH apprised of the documents they  
15 request, and it is our understanding that they  
16 have done so. We don't see the need, however,  
17 for SC&A as an auditing contractor for an  
18 independent advisory board to go through  
19 NIOSH's point of contact to request documents  
20 from DOE. And of course, there are additional  
21 delays and costs associated with this, what we  
22 consider a rather convoluted procedure at this

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1 point.

2 We have -- I won't go over the  
3 other regulations, because I don't want to go  
4 over the time limit, but I do want to make one  
5 small quote here.

6 The policy posted at your website  
7 on January 30, 2009, was actually in place for  
8 more than four years, but it was only just  
9 recently posted, and it failed to incorporate  
10 President Obama's memorandum to the executive  
11 department and the agencies on the Freedom of  
12 Information Act and the ability to obtain  
13 documents by SEC petitioners and the public.

14 The government should not keep  
15 information confidential merely because public  
16 officials might be embarrassed by disclosure -  
17 - this is quote/unquote -- because errors and  
18 failure might be revealed or because of  
19 speculative or abstract fears. Nondisclosure  
20 should never be based on an effort to protect  
21 the personal interests of government officials  
22 at the expense of those they are supposed to

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1       serve.

2                   In responding to requests under the  
3       FOIA, executive branch agencies should act  
4       promptly and in the spirit of cooperation. Of  
5       course, the previous President, George W.  
6       Bush, in December of 2007 signed an order  
7       which restores the presumption of disclosure  
8       to FOIA requesters.

9                   So in conclusion, we request that  
10       there is a refraining from asserting that the  
11       Board or its contractor, SC&A, are under  
12       NIOSH's control, and a revision of ORAU-T  
13       Policy 003 to reflect the latest law and  
14       Presidential memorandum on FOIA requests.

15                   Thank you very much.

16                   CHAIRMAN ZIEMER:     Thank you for  
17       those comments, Dr. Merritt.     Let's proceed  
18       then with Richard Johnson.

19                   MR. JOHNSON:     My name is Richard  
20       Johnson, and I want to thank you for giving me  
21       the opportunity to speak.

22                   I was employed at Los Alamos

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1 National Laboratory from 1977 to 1999 and  
2 assigned to Engineering-4 of the Engineering  
3 Division.

4 Engineering-4's coverage of LANL  
5 was operations, maintenance and repair and  
6 construction. We had full coverage of LANL.  
7 As such, this required us to be the first  
8 responders for operational dysfunctions of the  
9 facilities at LANL.

10 The laboratory covers 45 square  
11 miles and more than 2500 buildings and  
12 structures. There is 100 miles of steam  
13 mains, 150 miles of roads, many of them  
14 leading to biological, chemical, environmental  
15 or radiological impacted sites.

16 This requires support service  
17 employees to provide first response and  
18 corrective actions. This generally starts  
19 with discovery by the protective force or  
20 other sources, first response by Engineering  
21 area coordinators and/or specialists to  
22 coordinate services of the craftsmen, fire

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1 protection, health monitoring personnel and  
2 others to deal with any failures of equipment  
3 or services that would jeopardize the goals of  
4 LANL or impose dangers to Los Alamos and the  
5 environment.

6 Note all comments are for my time  
7 of service. Also, fire protection was part of  
8 LANL at that point in time, and provided most  
9 of the services of HAZMAT.

10 Exposures at TA-53: my first  
11 assignment was at TA-53. I had more than 800  
12 workdays at TA-53. My area of coverage was  
13 the entire site to assure continuous operation  
14 of all auxiliary equipment required for the  
15 Meson Physics Accelerator and the Weapons  
16 Neutron Research Facility and facility support  
17 areas.

18 I was an Engineering-4  
19 inspector/operator for the TA-53 facilities.  
20 As a result, I was required to perform routine  
21 inspections at two-hour intervals and be a  
22 first responder for equipment or system

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1 failures. On a daily basis, the environment I  
2 worked in produced biological, chemical and  
3 radiological exposures.

4 In 1978 I was exposed to one of the  
5 largest radionuclide releases for DOE  
6 operations in the nation, as a result of an  
7 equipment failure on the accelerator and the  
8 refusal to shut down for equipment repair  
9 during a production run. This went on for an  
10 extended period of time.

11 More than 117,000 curies of  
12 radionuclide was released, as monitored at the  
13 site boundary or perimeter a half-mile away.  
14 The exposure in my work area was directly  
15 under the plume of precipitation at the point  
16 of release from stack FE-3, and the stack  
17 monitoring was shut off due to the high level  
18 of saturation.

19 I was not monitored, due to the  
20 conditions of saturation. I only recall  
21 having my urine checked one time with a wave  
22 of the monitor's wand across the side of a

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1 container.

2 In addition to the area described  
3 above, I was next to the unshielded junction  
4 point where the beam for the accelerator was  
5 routed to the Weapons Neutron Research  
6 facility, releasing high levels of neutrons.  
7 Also, my routine inspections included the WNR  
8 facility.

9 Monitoring was not performed at TA-  
10 53 for neutrons at that point in time. See  
11 the 7/31/07 Los Alamos National Laboratory TBD  
12 revision of Document Number OCAS-18.

13 The lack of monitoring for this  
14 incident, in combination with the lack of  
15 monitoring for neutrons, does not allow for an  
16 accurate way to portray the exposures received  
17 in our required work area.

18 Exposures at TA-54, 1982-1985 I  
19 became the Engineering-4 Area Coordinator, and  
20 had more than 650 days' coverage of all areas  
21 of TA-54. I was required to provide  
22 maintenance and repair operations and

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1 construction to assure the continuous  
2 operation of all site facilities, including  
3 Area G, the hot dump. During this period, I  
4 was a first responder for emergencies and  
5 equipment failures.

6 An incident of note was on February  
7 4, 1985. I responded to a call from the  
8 protective force that water was running out  
9 from under the doors of TA-54-22, the Health  
10 Physics Control Center for TA-54.

11 When I entered the building, the  
12 interior was destroyed from frozen water pipes  
13 above the ceiling. This resulted in the loss  
14 of most of the HSE-1 and HSE-7 records  
15 pertaining to health physics workers'  
16 radiation dosimetry, monitoring personnel, and  
17 most of the instrument and equipment records  
18 were lost as well.

19 As a result, for most of that  
20 worked there prior to that point in time,  
21 there is no accurate way to portray the  
22 exposures we received in our required work

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1 areas.

2 Exposures LANL-wide. In 1985 to  
3 1997, I became an Engineering specialist with  
4 Engineering-4. This gave me coverage of the  
5 entire Laboratory for the specialty programs  
6 covering pumps and all equipment auxiliary to  
7 their service, and steam systems and all  
8 equipment auxiliary to the equipment serviced.

9 When you provide service to 2500-  
10 plus buildings and more than 30,000 pieces of  
11 equipment and systems, you come in contact  
12 with every source of environmental and  
13 personal exposure LANL has to offer.

14 In summation, I believe the  
15 petition being looked at for the inclusion of  
16 the Support Service Employees class should be  
17 added to the Special Exposure Cohort of the  
18 Energy Employees Occupational Illness  
19 Compensation Program Act.

20 The inconsistent system provided  
21 for dose reconstruction does not provide for  
22 accumulative exposures when your service takes

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1 in every site and facility at Los Alamos  
2 Laboratory.

3 Some sites or TAs are only looked  
4 at for incidents, with no recognition of the  
5 daily exposure levels, for lack of  
6 information. And then you have highly  
7 publicized areas that are recognized for  
8 accumulative exposures.

9 With Los Alamos National  
10 Laboratories' history for loss of records,  
11 inconsistent methods of record-keeping, and  
12 its monitoring methods over the years, it  
13 amazes me that any conclusion could be drawn  
14 for individual dose reconstructions for the  
15 Support Services employees.

16 Is a copy of this required?

17 CHAIRMAN ZIEMER: It is not  
18 required, but we would be pleased to have it  
19 for the court reporter, if you would wish to  
20 leave it with us. Thank you very much,  
21 Richard.

22 Let's go ahead now with Joni

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1 Arends.

2 MS. ARENDS: Good evening, members  
3 of the Advisory Board and the audience --  
4 people in the audience.

5 My name is Joni Arends. I am with  
6 Concerned Citizens for Nuclear Safety based in  
7 Santa Fe. CCNS formed in 1988 to address  
8 community concerns about the transportation of  
9 waste from LANL to the waste isolation pilot  
10 plant.

11 CCNS supports the SEC petition for  
12 the mobile employees that travel from  
13 technical area to technical area at Los Alamos  
14 National Laboratory.

15 CCNS has recently been involved in  
16 31 days of negotiations with DOE, LANL, the  
17 New Mexico Environment Department about the  
18 draft RCRA permit for hazardous waste  
19 operations at the Laboratory.

20 So CCNS is bringing 20 years' worth  
21 of experience and knowledge about the  
22 laboratory to the table to address public

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1 concerns, environmental concerns, and public  
2 health concerns.

3 We are very familiar with DOE  
4 patterns and practices regarding data quality,  
5 which requires us to question whether NIOSH  
6 has the data to make the dose reconstructions.

7 As you know, DOE is self-regulating for  
8 radionuclides and, although the dose is  
9 greater for workers, our examples are with  
10 regard to public doses.

11 What I would like to do is give you  
12 some examples from our own experience in terms  
13 of problems with data quality at the  
14 laboratory.

15 So when the rad NESHAP, the  
16 National Emission Standards for Hazard Air  
17 Pollutants, came into effect, the 40 C.F.R. 61  
18 came into effect in the late nineties or late  
19 1980s, LANL knew that they were out of  
20 compliance with the standards, and they didn't  
21 care, and EPA wasn't doing its job.

22 So in 1992 CCNS sued DOE for

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1 violations of the Clean Air Act at LANL,  
2 specifically the rad NESHAPs. As you may  
3 know, the citizens who resulted in three first  
4 of its kind audits of LANL's compliance with  
5 the rad NESHAPs, and all of the audits found  
6 problems with data collection and reporting  
7 concerns.

8 We specifically asked for the  
9 auditors to hire specialists in QA/QC --  
10 quality assurance/quality control. That was  
11 not done, despite many concerns about QA and  
12 QC. The first audit found that LANL was out  
13 of compliance with the rad NESHAPs.

14 So I am going to give you some  
15 examples, and what I would like to do is  
16 submit some written comments based on the  
17 presentation.

18 So one of the big concerns was the  
19 episodic releases from the Lab. As you know,  
20 the regulations allow the Department of Energy  
21 to average the doses over a year period of  
22 time, but one of the outstanding questions was

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1 the dose received by a jogger going past a  
2 facility such as TA-18 when they were  
3 operating the reactors, driving past 54 on a  
4 bicycle or going past an open detonation, an  
5 open burn site, a prescribed burn, and whether  
6 somebody was going to receive their 10-  
7 millirem dose through one exposure, not  
8 averaged over the entire year, because of the  
9 possibility of a Pu-238 particle getting into  
10 somebody's lungs as a result of one of these  
11 releases from the Laboratory, and because you  
12 could get your 10-millirem dose from one  
13 particle of Pu-238.

14 So that was an outstanding issue.  
15 So there is a great need to look at the  
16 environmental doses more carefully.

17 One of the issues that we raised  
18 during the audits was the use of the exotics  
19 at the Laboratory, and the list was much more  
20 extensive than what was presented here today.

21 We suggest that you ask for -- what  
22 we understand is that LANL actually did

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1 emission standards for the exotics, and there  
2 might have been dozens of them. I am thinking  
3 there were 60 to 80 that they actually  
4 calculated in order to comply with Appendix E  
5 of the Subpart H requirements.

6 So I would ask this board to ask  
7 specifically for the work done by Keith  
8 Jacobson with the Meteorology and Air Quality  
9 Group, who actually did those calculations, so  
10 that you have a list of what LANL's concerns  
11 were with regard to the exotics.

12 During the audits, we heard many  
13 anecdotal stories about how workers, at the  
14 direction of facility managers, were told to  
15 take contaminated items, specifically tritium-  
16 contaminated items, to put them in plastic  
17 bags and to take them outside and release the  
18 tritium into the air. This example  
19 demonstrates how exposures were not recorded  
20 at LANL.

21 Another example would be in 2003 or  
22 2004, CCNS witnessed a LANL worker changing

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1 data on the AIRNET radionuclide emission air  
2 quality database without noting why the data  
3 was changed. When asked, they explained that  
4 it was an outlier, that it was an exceptional  
5 value and, therefore, it shouldn't be in the  
6 database, and so they just changed the number  
7 without indicating why the number was changed  
8 in the database, even though there was a  
9 column available for that.

10 Another example is, shortly after a  
11 NEWNET station, which measures gamma emissions  
12 in real time at the Laboratory -- there was a  
13 NEWNET station located at the entrance to TA-  
14 54, which is the low level dump, and the dump  
15 for a lot of other things. There was a  
16 detection of a leak in a transport container  
17 going into TA-54, and after that detection was  
18 talked about in public meetings, the NEWNET  
19 station was removed.

20 Another issue was the calibration  
21 facility at TA-3, that there were very high  
22 levels that were recorded on the NEWNET

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1 station, and finally because of public  
2 concern, the Lab removed that source from TA-  
3 3, because the workers were walking by at  
4 lunchtime and in the morning. You know, it  
5 was readily available near the CMR building.

6 Another issue was that, when we  
7 were discussing the open burning of high  
8 explosives and other contaminants, RCRA  
9 contaminants and other materials used by the  
10 Laboratory, we looked at the 1999 site-wide  
11 environmental impact statement to look at what  
12 kind of worker exposure would result from  
13 prescribed burns and open burning.

14 When we questioned the Laboratory  
15 about -- when we presented that data, kind of  
16 similar to what was presented earlier, we were  
17 told, oh, those numbers are wrong. That is a  
18 common occurrence for us, is that we bring DOE  
19 data forward, we bring LANL data forward, and  
20 then we are told that the data is no good.

21 So probably 95 percent of the time  
22 that we do that, we are told that the data is

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1 no good. I will provide you with specific  
2 examples and the correspondence and the e-  
3 mails, just so that you have more basis to be  
4 able to say, you know, LANL is maybe not  
5 providing this with the correct data.

6 So for these reasons and many more,  
7 I want to let you know that CCNS and a  
8 coalition of groups called Communities for  
9 Clean Water filed a law suit against DOE for  
10 violations of the Clean Water Act at LANL,  
11 specifically focused about storm water  
12 discharges in the L.A. Pueblo Canyon.

13 We are in the process of going  
14 through the scheduling order and the discovery  
15 for that part. But we have been called on to  
16 address these issues at the Laboratory through  
17 the citizen supervisions, because the  
18 regulators aren't doing enough, as far as we  
19 are concerned, in terms of stopping the  
20 migration of contamination.

21 So in conclusion, we are very  
22 concerned about workers who will be conducting

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1 clean-up activities at LANL under the New  
2 Mexico Environment Department/DOE/LANL order  
3 on consent, the recently released individual  
4 storm water permit for LANL which was issued  
5 by the EPA just last week, and also the  
6 renewal of the draft hazardous waste permit,  
7 and possible accelerated clean-up under the  
8 stimulus plan.

9 We must prevent exposure before it  
10 happens. We need to protect our workers, and  
11 we need to ensure that the workers are  
12 properly trained and have the ability to voice  
13 concerns, if there is a dangerous situation.  
14 We can't continue to repeat this process.

15 So, therefore, we urge the Advisory  
16 Board to do more study of this data and the  
17 data quality at LANL. Thank you very much.

18 CHAIRMAN ZIEMER: Thank you, Joni.

19 Next is [Identifying Information  
20 Redacted} -- it looks like [Identifying  
21 Information Redacted} -- and I can't read the  
22 rest of it. [Identifying Information

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1 Redacted}? Any [Identifying Information  
2 Redacted} here that want to speak? Sometimes  
3 people sign this thinking they are signing the  
4 registration roster. So I will skip over that  
5 one then. Knut Ringen is on the list next.

6 MR. RINGEN: Good evening. I am  
7 Knut Ringen. I work with the National  
8 Building Trades, and I am the Science Advisor  
9 for the CPWR, Center for Construction Research  
10 and Development, and you have my disclosures  
11 from previous presentations, and I thank you  
12 for entertaining me once again.

13 I just want to make three quick  
14 points here -- three. The first is with  
15 regard to the LANL petition and NIOSH's  
16 evaluation of it. I believe it to be fatally  
17 flawed and should be rejected for one reason  
18 alone.

19 If you look at it through the  
20 petitioners or in terms of occupational  
21 classes, you will see that the vast majority  
22 of them are construction trades occupations.

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1 NIOSH has agreed after years of discussions  
2 finally that they need to follow a different  
3 model for construction trades workers than for  
4 other workers.

5 Yet in this petition it has not  
6 taken into account this in any way that I can  
7 see, including it is not referenced in it that  
8 NIOSH has an OTIB dealing specifically with  
9 construction workers that certainly should  
10 have been considered.

11 I am a little embarrassed to have  
12 to point that out, because it is such a basic  
13 thing, and if nothing else, it should  
14 certainly lead to an SC&A evaluation of the  
15 petition.

16 The second issue has to do with how  
17 NIOSH deals with SECs in general. Lots of  
18 great points have been made here today. On  
19 the one hand, NIOSH is going out to workers  
20 and saying we want you to file SEC petitions.

21 On the other hand, NIOSH says we can conduct  
22 a dose reconstruction under any circumstances;

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1 we are going to knock down that SEC petition.

2 That is what has happened here. It  
3 has happened at Savannah River, and in both  
4 cases something interesting takes place. NIOSH  
5 will say, you petitioner, have a valid claim  
6 here; but, gee, we can develop a method to  
7 deal with that and, therefore, we are going to  
8 decline the petition.

9 You heard today about the exotic  
10 nuclides, and NIOSH said, oh, yes, that's  
11 right, but no problem; presto, we have OTIB-  
12 62, a cold nuclide extrapolation model that we  
13 can apply and figure out how to give people  
14 dose for these nuclides that they don't have  
15 adequate dose records on.

16 This is leading to enormous  
17 frustration among the workers, and it  
18 certainly isn't what Congress intended. I  
19 know that for a fact, because I worked closely  
20 with Congress on including Amchitka as an SEC  
21 site in the original legislation, and nowhere  
22 then did we think maybe we would use an

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1       extrapolation model or something like that in  
2       the place of dose reconstruction that would be  
3       okay, and Congress didn't either, I can assure  
4       you.

5                   The third issue I want to mention  
6       is our general concern about the program. Dr.  
7       Poston, I was interested to hear you say  
8       earlier today that you were surprised at the  
9       duration that it has taken. We hear this from  
10      our members all over the country.

11                   It is the first time in my history  
12      of just about 40 years with NIOSH that we have  
13      had complaints about NIOSH from workers  
14      everywhere, something that is destroying or  
15      certainly hurting NIOSH's credibility  
16      enormously and causing us a great deal of  
17      difficulty.

18                   In light of the new administration,  
19      Pete Stafford who is the Safety and Health  
20      Director for the building trades, went and met  
21      with Christine Branche, who is the Acting  
22      Director of NIOSH, last week and expressed our

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1 concerns and the concerns of our members, the  
2 frustrations that they express about the  
3 program.

4 She asked that we send a letter  
5 expressing that so that NIOSH could review it  
6 and respond to it. Tomorrow I will give you  
7 that letter. The copy shop was closed  
8 tonight. I will give you that letter, and I  
9 will ask you to include it in the record, and  
10 you will get Christine Branche's response also  
11 for the record. So you will hear both sides  
12 of it.

13 In the conclusions to that, we  
14 asked that NIOSH consider a number of things.  
15 First, an objective review of the operation  
16 and staffing of this program. Maybe it is  
17 time for a change. Maybe it is time for some  
18 new people and new thinking in the operations  
19 here.

20 The second thing is we would like  
21 NIOSH to stop trying to do dose  
22 reconstructions where dose records are

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1 deficient. Give up on this. Accept that, if  
2 the dose records are deficient, refer people  
3 to the SEC.

4 The third thing is stop what we  
5 call the charade of co-worker extrapolations  
6 or extrapolation and other estimates of  
7 missing dose. Simply refer those cases where  
8 that is at issue to the SEC.

9 In addition, we would like NIOSH to  
10 consider replacing ORAU as the contractor for  
11 this with an independent academic based  
12 centers to do the dose reconstructions.

13 We would also like you to establish  
14 and enforce truly credible conflict of  
15 interest policies. NIOSH says that in these  
16 SEC petition evaluations it is not using  
17 anyone with a conflict, and that may be true  
18 under their policy, but it is not true in  
19 reality.

20 In addition, we would like you to  
21 develop protocols to review more clearly  
22 statistically for the various occupational

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1 groups who have come through this program what  
2 the record is of approvals of denials under  
3 the dose reconstruction process.

4 Finally, we ask that NIOSH review  
5 the membership of the Advisory Board, maybe  
6 get some new blood in here. Some of you have  
7 been around for a long time, and God bless you  
8 for your service, but we would like them to  
9 take a look at this, again objectively.

10 Those are our requests to NIOSH,  
11 and I want you to know about them. The  
12 Building Trades and the metal trades together  
13 have also requested hearings in both the  
14 Senate and the House on the oversight of this  
15 program. Thank you.

16 CHAIRMAN ZIEMER: Thank you.  
17 Michael Romeo -- Romero.

18 MR. ROMERO: I wish it was Romeo.  
19 My testimony is going to be short and sweet. A  
20 lot of topics were discussed here by Andrew  
21 and everybody else, but I just want to focus  
22 on one certain area, and it is basically from

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1 the evaluation report, specifically on page  
2 20. You don't have to go to it. I will read  
3 it again.

4 The feasibility of reconstructing  
5 bounding internal radiation doses. This  
6 evaluation concludes that internal dose  
7 reconstruction for members of the proposed  
8 class is feasible based on: (1) using in vitro  
9 and in vivo bioassay data for monitored  
10 workers; and (2) using co-worker data to bound  
11 intakes to unmonitored workers.

12 The other statements in this  
13 evaluation report I would like to challenge  
14 here, and I will do the challenging here  
15 shortly, greater than 75 percent of workers  
16 were monitored from 1976 to 2005, and that  
17 basically NIOSH believes there is good control  
18 of exotic radionuclides.

19 We have heard that topic here  
20 plenty of times tonight, as well as there is  
21 complete hazards analysis performed, and  
22 complete health physics checklists filled out.

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1 That means correctly and cover, if you will,  
2 all the areas where workers have worked.

3 I am going to read to you -- and I  
4 know Andrew went over this a little bit --  
5 some excerpts from the Tiger Team report in  
6 1991. I think this is important, because it  
7 brings out poor monitoring practice that  
8 occurred from '91 and in the past, obviously.

9 I know Andrew mentioned the '97  
10 PAAA report as well. So there is, if you  
11 will, recurrences of these poor monitoring  
12 practices.

13 Basically, what I want to get  
14 across here is that the evaluation report can  
15 say to all of us that they can do a good job  
16 at basically modeling any type of nuclide that  
17 is out there, but it goes back to the premise  
18 of do they know where all the workers were  
19 working -- my father, for example, who is  
20 deceased and passed away of cancer.

21 Just like was mentioned here, a lot  
22 of these workers did not work in one specific

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1 area. They worked in multiple areas. A lot  
2 of workers were first responders. A lot of  
3 workers worked in areas where monitoring  
4 wasn't initially a requirement, and I will  
5 read some of those excerpts.

6 From the Tiger Team report, page 4-  
7 81, finding, DOE 54.11 requires issuing of a  
8 dosimeter to anyone with the potential to  
9 receive greater than 100 millirem annual  
10 effective dose to the whole body, 5 rem to  
11 either the skin or any extremity, or 1.5 rem  
12 to the lens of the eyes. Because the minimum  
13 detectable limit for the LANL whole body  
14 dosimetry is 10 millirem, annual missed dose  
15 as large as 108 millirem is possible with  
16 monthly dosimeter exchanges.

17 That is pretty significant.

18 Page 4-81 of the Tiger Team report,  
19 finding, whole body dosimeters are worn either  
20 directly attached to the outer clothing on a  
21 necklace. When the dosimeter is on a  
22 necklace, the actual position of the dosimeter

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1 can be 1-10 centimeters from the outer  
2 clothing. No studies have been made to show  
3 that the dose measured at the surface of the  
4 body is the same as the dose at a distance of  
5 10 centimeters.

6 This is a pretty common practice.

7 Page 4-183 of the Tiger Team  
8 report, finding, at the firing sites,  
9 including TA-36 and TA-15, LANL personnel are  
10 not evaluated for inclusion in the bioassay  
11 program. Not all personnel at the plutonium  
12 and depleted uranium facilities are evaluated  
13 for participation in the bioassay program to  
14 comply with GOE-5480.11.

15 Page 4-184 of the Tiger Team  
16 report, findings, the detectors of Ludlum 214  
17 fixed instruments -- these are the hand and  
18 monitors when you are exiting a contamination  
19 area -- are interchanged without recalibration  
20 or response testing. The backlog in  
21 calibrating Ludlum 214 hand and foot monitors  
22 resulted in a large number of instruments that

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1 were out of calibration. Hand and foot  
2 monitors that are past the calibration date  
3 are not placed out of service, as required by  
4 LANL AR3-1 procedure, because sufficient  
5 number of replacement instruments are not  
6 available.

7 Page 4-185 of the Tiger Team  
8 report, finding, radiation protection  
9 instruments are not being returned for  
10 calibration and maintenance, as required by  
11 ANSI N323 and Health Physics Measurements  
12 Group procedures.

13 So again, I challenge the  
14 evaluation report in saying that greater than  
15 75 percent of monitored people -- monitored  
16 employees they have data for, because, number  
17 one, the data they have is probably not all  
18 representation for the area they are in or the  
19 type of radionuclides that they were exposed  
20 to; and also that would challenge that they  
21 have complete hazard analysis performed,  
22 because it goes back to the premise of

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1 basically these workers were deployed to  
2 various sites, and it wasn't until later on,  
3 as you read from the Tiger Team report, that  
4 some of these sites, these personnel were not  
5 even in bioassay programs.

6 So from my standpoint, the way I  
7 see it from the last SEC petition that went  
8 all the way to December 31, 1975, did  
9 something miraculous happen after 1975 that  
10 monitoring practices got better, people  
11 started following procedures better, they  
12 developed more procedures? They just woke up  
13 overnight and decided, wow, I think our  
14 workers are getting exposed over here at the  
15 explosive sites? I don't think so.

16 So you guys really need to consider  
17 this. Thank you.

18 CHAIRMAN ZIEMER: Thank you,  
19 Michael. I just want to give everyone a heads  
20 up. We have yet nine additional individuals  
21 to speak. So I just remind you again to be as  
22 terse as you are able to and still make your

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1 points. Wayne Knox is next. Wayne, are you  
2 still here?

3 MR. KNOX: Yes.

4 CHAIRMAN ZIEMER: I hear a voice.  
5 Oh, there he is. Okay.

6 MR. KNOX: Thanks very much. I  
7 want to pass this out right quick. I will  
8 make it very short.

9 I am an operational health  
10 physicist, and I have heard a lot of stories  
11 told tonight about what went on in the real  
12 world, and I fully endorse.

13 We were responsible for getting  
14 work done. We did that work, oftentimes  
15 without regard to all of the elegant models  
16 and without regard to all of the well designed  
17 programs and well worded procedures.

18 In general, I want to support the  
19 fact that the data quality and the validity of  
20 that data is bad. Very simply stated, that  
21 bad data is now inputted into what I consider  
22 to be a bad model, IREP. It is an enigma.

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1           If we were to take a quick look at  
2 what the regulation says we are supposed to do  
3 in terms of calculating the probability of  
4 causation, I presented it on the first page  
5 here. The probability of causation based upon  
6 the regulation is the radiation risk divided  
7 by the sum of the rad risk plus the base risk.

8           CHAIRMAN ZIEMER: Hold on just a  
9 minute. We got somebody on the line that is  
10 interrupting.

11           MR. KATZ: People on the telephone,  
12 would you please mute your phone. Use \*6 if  
13 you don't have a mute button. Thank you.

14           CHAIRMAN ZIEMER: Sorry, Wayne, for  
15 that interruption. Thank you. Go ahead.

16           MR. KNOX: We can look at this  
17 equation and just working within the context  
18 of the regulation say that, well, the cutoff  
19 point of a compensation threshold is the 50  
20 percent, which is the same as one-half. So  
21 all you have to do now is to say that this POC  
22 is equal to one-half. You can solve that

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1 equation, and it turns out that the rad risk  
2 is equal to the base risk, is the cutoff  
3 point.

4 That is, if the rad risk is greater  
5 than the base risk, you win. Otherwise, go  
6 home. It is a very simple process.

7 What it really means -- and I am  
8 not so sure people understand what that means;  
9 that is, the rad risk equal to the base risk.

10 It means that the total risk of cancer is  
11 double. That person has twice the risk of  
12 dying from a particular cancer illness, based  
13 upon what the criterion that has been  
14 established in the regulation.

15 Now I have a question to ask you  
16 and the other people. If I were to tell you  
17 that I would give you 150,000 bucks for your  
18 risk of dying from cancer to be doubled, would  
19 you take me up on that deal? I don't think  
20 anyone would.

21 So number one, I think the  
22 standards are a bit high, even though we say

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1 it is client friendly. It is not very -- by  
2 the way, instead of claimant I use client,  
3 because we are the clients.

4 If you were to next look at the way  
5 NIOSH defines the assigned risk, and we say  
6 that the assigned risk is equivalent roughly  
7 as the probability of causation -- if you look  
8 in the NIOSH documentation, it says that the  
9 excess risk as defined here is solely due to  
10 radiation.

11 It says that the relative risk is  
12 equal to the total risk of exposure divided by  
13 the risk due to background. Now what all of  
14 this means is that, if you take their  
15 definition and put it into the equation for  
16 the assigned risk and set this equal to one-  
17 half, you end up with a tripling effect.

18 That is, you have three times the  
19 risk of dying from cancer if you were to use  
20 that assigned risk model.

21 Now I question that, and I did call  
22 some cognizant officials from NIOSH and NCI

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1 and other people and said, do you really mean  
2 this, because that is not the way we really  
3 defined the relative risk. And they said,  
4 absolutely, we have looked at this; we have  
5 had all of these people evaluate this model  
6 and the equations; they are correct.

7 I went back again and said, are you  
8 sure? Do you understand what you are saying  
9 is a tripling effect? They agreed to look at  
10 it, and they came back to me and said, oops,  
11 you are right. You sort of misinterpreted  
12 what we meant by solely due to radiation; you  
13 misinterpreted it to mean solely due to  
14 radiation, and we didn't mean it like that.  
15 You misinterpreted, and also where we say  
16 total risk of exposure, you misinterpreted  
17 that to mean total risk of exposure when you  
18 should have interpreted it to mean the total  
19 risk of radiation exposure plus the  
20 background.

21 I said, wait, hold it. You told me  
22 that your people had evaluated this now, and I

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1 can't believe that now you are telling me that  
2 perhaps I am right. And I said, yes, okay,  
3 I'll agree that then I am right, and maybe  
4 your model is flawed. Maybe this is why, when  
5 I do the calculation based upon accepted  
6 means, I come up with people passing, and IREP  
7 denies them.

8 I have been pursuing them, trying  
9 to get them to perform a validation and  
10 verification of the IREP system, and we can't  
11 somehow get it done. We need to have a  
12 totally independent validation and  
13 verification of IREP, and we need to have full  
14 disclosure of what is happening here.

15 People get compensation. They get  
16 medical care, if their risk is twice the  
17 normal risk of cancer.

18 I am going to shut up. I have some  
19 other things, but I know we got to go. I will  
20 see you tomorrow, though.

21 CHAIRMAN ZIEMER: Thank you, Wayne.

22 Let's now hear from [Identifying

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1 Information Redacted}. [Identifying  
2 Information Redacted}, are you here?

3 Okay. Steve Biernacki.

4 MR. BIERNACKI: I will submit this,  
5 and I will say a few words.

6 Dr. Ziemer, members of the Board  
7 and fellow workers at Los Alamos. I just want  
8 to share with you my story. Briefly, my name  
9 is Steve Biernacki. I worked at Los Alamos in  
10 '81 and '82. I believe it was in TA-53  
11 mentioned tonight.

12 Ironically, I was one of those  
13 carpenters that they were talking about  
14 earlier, but I worked and built a pump house  
15 right next to a hot area, and it so happened  
16 that it had a sign there that said high  
17 radioactive area. But in those days,  
18 contractors were not given badges, nor was the  
19 inspector there, I might add.

20 All the inspectors had badges, but  
21 they were not on site. So using them as a  
22 model would not be equal to the time spent

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1 adjacent to a high radiation area where you  
2 are actually digging in the dirt adjacent to  
3 that site.

4 I never thought much about it,  
5 didn't even give it a second thought. There  
6 was no emphasis put on radiation at the time,  
7 but 10 years later I went to a doctor and had  
8 been sick. I was normally healthy my whole  
9 life, never sick hardly a day in my life.

10 He said, boy, you've got radiation.  
11 He said, you've got leukemia. I said, well,  
12 what's that? He said, have you ever worked  
13 around radiation? I said, well, I just  
14 happened to work in Los Alamos, but he said,  
15 well, your odds of getting leukemia are one in  
16 100,000 unless you've worked around radiation.

17 Wouldn't have thought anything  
18 about it, but I was one of the fortunate ones.

19 I had a [Identifying Information Redacted]  
20 who had the same type of bone marrow as  
21 myself. Went in, got the bone marrow  
22 transplant, thought the story was over.

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1 Didn't even pursue it.

2 A few years down the road, I came  
3 up with liver cancer, and that was just about  
4 three years ago. Come to find out, I had  
5 carcinoid tumors of the liver, and they had,  
6 in fact, eaten up the heart valve, set up  
7 carcinoid syndrome in the heart valve.

8 The Mayo Clinic told me that, in  
9 fact, I would have to go and get a bypass  
10 surgery and new valves put in before they  
11 could give me a liver transplant. Went up to  
12 the Mayo Clinic in Rochester, Minnesota. They  
13 gave me a new heart valve, a couple of them,  
14 pulmonary and tricuspid.

15 Came back down to the Mayo Clinic  
16 in Phoenix, Arizona, and they gave me half of  
17 my [Identifying Information Redacted] liver.  
18 While they were doing that, they checked me  
19 out. They paid pretty close attention, and  
20 they said, oh, and by the way, we spotted some  
21 spots on your lungs, too, and we want to keep  
22 a close watch on those.

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1                   Now I am one of the 13,000 of the  
2 reports that Laurie said earlier that she got  
3 outside the door. She said, we got those out  
4 the door. I am one of those statistics.

5                   Now not many people here today  
6 focused on that story, but every one of those  
7 13,000 probably has a story similar to that,  
8 but I found out something when I came to this  
9 meeting today.

10                  I found out that some of those are  
11 not as fortunate as I. In fact, those are  
12 their loved ones testifying before you today.  
13 In fact, they didn't make it.

14                  With that said, I know in the  
15 essence of time, I just want to speak for  
16 those 13,000 who got put out the door. In the  
17 last page of my report -- I was going to read  
18 it, like the rest of the people here, but I  
19 just want to say that, on my report, you go  
20 back to the second to the last page; the  
21 report does not state the location of my work  
22 around the radioactive mound in which I

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1 worked.

2 It was not in the pathway of the  
3 pipeline that I had dug. The report does not  
4 mention the radioactive material that was in  
5 the mound or in the other areas marked with  
6 high radiation signage. The report only  
7 states general environment.

8 I don't believe I worked in the  
9 general environment, because the signage I  
10 worked around was marked and had contaminated  
11 soil. I was an unmonitored employee, because  
12 I was a carpenter for a contractor, not  
13 because I was less likely to have routinely  
14 received significant levels of external  
15 radiation.

16 What was the technical area I  
17 worked in? I've tried to go back. I have  
18 tried to go back and show them. It is ironic  
19 about this. I can't get in. I cannot -- you  
20 talk about a transparent process. They used  
21 some words like that, accountability and  
22 transparent.

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1 I can't get in to show people where  
2 that pile was, but I will tell you something.

3 If you go on a flyover on GIS, they've  
4 removed that pile. Now would they remove the  
5 pile if it wasn't radioactive or if it wasn't  
6 causing a problem? I don't think so. I think  
7 they removed it for a reason. I think the  
8 pile was radioactive, and I think it was  
9 removed for safety.

10 I think people have a documentation  
11 of that pile. I cannot get that documentation  
12 to prove that. I cannot show you that  
13 adjacent to that pump station was a mound of  
14 radioactive plutonium or whatever it was.  
15 There is no way for me to find out that  
16 information. I am blocked out. Security gave  
17 a speech here today about that transparency.  
18 It does not exist. I work at a college. I'm  
19 the Director of Physical Plant at a college.  
20 I cannot get in to find out that through any  
21 information act or anything. I have not been  
22 able to even set foot on that property.

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1           If, as construction workers, we  
2 were not required to wear badges, both out in  
3 the woods and in the compound, during  
4 construction, we never submitted our urine  
5 sampling, nasal smears, personal air  
6 monitoring, whole body counts or test counts,  
7 how can my exposure to radiation fields or any  
8 incidental exposure be calculated using  
9 monitored employee dosage?

10           They said to me today, we are going  
11 to create a model that stands beside somebody  
12 who was actually monitored. You cannot do  
13 that, because it is not accurate. It is not a  
14 quality way to measure it.

15           There were no monitored employees  
16 in the construction site except for inspectors  
17 who came maybe once a day, if they came at  
18 all. At no time did I work hand in hand with  
19 any monitored employee on my job site.

20           What is the difference between  
21 typical ambient air samples and breathing in a  
22 mix of radioactive dust particles right beside

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1 a marked dump site? Let me explain that,  
2 because I did ask the questions to these.

3 We basically have in the system  
4 that we have right now -- I don't know if you  
5 understand this, but with Oakland University  
6 of Kentucky you have a subcontractor who is  
7 subbing out to physicists.

8 I have had those conversations.  
9 They no more know about my story or my  
10 workplace than the man in the moon. They are  
11 given a set of documents, and they are given a  
12 process, and I get the same dosage  
13 reconstruction as a secretary who worked in an  
14 office, and ambient air temperature.

15 They didn't tell me where they  
16 monitored the air from. They didn't do  
17 anything like that. So you can see that the  
18 dose reconstruction is very important.

19 I was working in dust clouds and  
20 construction excavation near contaminated  
21 sites, and not in the typical New Mexico air  
22 where there was air sampling on the job, and

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1 there was none. There was never any air  
2 sampling on my project.

3 I want to thank you for taking the  
4 time to listen to my testimony. I pursue this  
5 claim, because I believe that somehow during  
6 my short time I worked at Los Alamos Lab I  
7 encountered a unique blend of radiation, and  
8 it somehow found a home in my body.

9 Nothing else makes sense. My  
10 personal doctor told me my odds of getting  
11 this type of leukemia was one in 100,000, had  
12 I not worked at Los Alamos.

13 My daughter is in med school here  
14 in UNM right here. She is in her fourth year.

15 She tells me that I am in the less than one  
16 percentile for survival, and I have to stay  
17 alive to get her through medical school.  
18 She's got five more years.

19 Please consider my statements and  
20 questions in context with Section 00109,  
21 Petition Dose Reconstruction for less than 250  
22 aggregate work days and the monitoring program

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1 at LANL for the ingestion or inhalation of  
2 radioactive particles in the air due to  
3 resuspension of buried radioactive waste,  
4 ground contamination, and lack of internal  
5 monitoring data for construction workers.

6 Thank you. Appreciate it.

7 CHAIRMAN ZIEMER: Thank you very  
8 much. Our next speaker will be [Identifying  
9 Information Redacted]. [Identifying  
10 Information Redacted]? Is [Identifying  
11 Information Redacted] here yet?

12 Okay. Marcella -- looks like N-a-  
13 g-a-o. Oh, okay, close enough.

14 MS. NOGAR: Thank you very much for  
15 taking the time, Advisory Board, to listen to  
16 us. Marlene and I were asked to come and tell  
17 you about our husbands, their work, and our  
18 claim.

19 Our National Labs are very picky  
20 about who they select to do their research.  
21 Selections are based on honesty, integrity,  
22 intelligence, ability, commitment, and

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1 allegiance to the United States in their  
2 mission to protect its citizens.

3 Scientists like my husband who are  
4 on the cutting edge in their field are sought  
5 out and hired for our nation's National Labs.  
6 They come to Los Alamos National Laboratory,  
7 and they do research. They do what they are  
8 told to do, and they work in the buildings  
9 that they are assigned. They never publicize  
10 or talk openly about their work, even with  
11 their spouses. They have signed an oath that  
12 they will honor until they die.

13 In my case, I learned about my  
14 husband's research when he was given the award  
15 Laboratory Fellow at the age of 44. I learned  
16 even more two years later at his funeral when  
17 many of his colleagues told me about his  
18 contributions to the Lab, his work and his  
19 research.

20 The words they spoke to me of  
21 protactinium, americium, plutonium, uranium  
22 were familiar to me, because I had seen those

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1 words in his lab notebooks, and I had heard  
2 those words in hushed conversations with Dr.  
3 Charles Miller.

4 While I knew that he was performing  
5 experiments using lasers on the above  
6 radioactive materials, I never knew that the  
7 work that he was asked to do was extremely  
8 dangerous or that the experiments that he was  
9 performing using those materials with lasers  
10 would contribute to his death.

11 My husband completed the work for  
12 his PhD in 1976 at the University of Utah. He  
13 completed a National Science Foundation post-  
14 doctoral position at UC-Berkley's Chemistry  
15 Department with research director [Identifying  
16 Information Redacted].

17 In 1977 he accepted an Assistant  
18 Professor of Chemistry position in Lincoln at  
19 the University of Nebraska. In 1980 he was  
20 offered and accepted a staff position with Los  
21 Alamos Scientific Laboratory.

22 One of the first people that my

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1 husband worked with was Dr. Charles Miller.  
2 He was a young post-doc who had recently  
3 graduated from Stanford University. My  
4 husband had been given an assignment, and he  
5 needed a person to work with him. Charlie fit  
6 the bill.

7 Through the years they worked hand  
8 in hand, researching, planning, conducting  
9 experiments and reporting results through  
10 publications. They worked together in the  
11 same lab. What one did, the other did, too.  
12 They worked side by side in the basement of  
13 wing 5 of the Chemical and Metallurgy Research  
14 building, CMR. Later, the CMR building was  
15 completely shut down during the Tiger Team  
16 days, because it was so contaminated, and that  
17 was their lab.

18 Nick and Charlie used ion dye,  
19 argon, yag, carbon dioxide and krypton lasers  
20 to analyze radioactive materials for  
21 experiments that would leak with caustic dyes  
22 that are now considered too dangerous to

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1 health, and are no longer used.

2 They cleaned up the spills, and  
3 they continued working. They analyzed  
4 isotopes and radioactive materials with those  
5 lasers, and they used benzene, DMSO, and many  
6 other chemicals in their lab.

7 Benzene is known to exasperate the  
8 effects of radiation in the body. DMSO is  
9 known to speed the absorption of radiation  
10 into the tissues, bones, nervous system and  
11 brain at a rapid rate.

12 In the early Eighties, no records  
13 were kept of the amount of radiation Charlie  
14 and Nick received while working with lasers  
15 and radioactive materials, but they were  
16 definitely working with it. My husband did  
17 not wear a dosimeter badge, and this is  
18 confirmed through the LASL/LANL medical  
19 records.

20 Nick and Charlie also developed the  
21 methodology and analyzed materials retrieved  
22 from underground nuclear tests at the Nevada

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1 Test Site. There are no records of the  
2 radiation they received doing this work in the  
3 early Eighties.

4 Nick remained as Dr. Miller's  
5 mentor from day one as a post-doctoral  
6 position throughout his position as staff  
7 member at the laboratory.

8 My husband conducted much research  
9 in the following years. He was also a Deputy  
10 Group Leader and was part of the Tiger Team.  
11 He had to seek, identify, report and try to  
12 control workers' exposure to radiation in the  
13 CMR building.

14 My husband was truly a gifted  
15 scientist. I would be more than happy to give  
16 you a list of all his research, including over  
17 100 publications and papers and the large list  
18 of his accomplishments, including being LANL's  
19 youngest Laboratory Fellow. However, I feel  
20 that it is his research and exposure with  
21 radioactive materials and caustic chemicals in  
22 his early years of research that caused his

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1 death.

2 In July of 1994, my husband was  
3 diagnosed with cancer. It was a rare cancer  
4 called Leiomyosarcoma. He died two years  
5 later in August of '96 at the age of 46.

6 In September 2000 Dr. Charles  
7 Miller was diagnosed with a brain tumor. He  
8 went to New York University Medical Center to  
9 have the tumor removed. The Tumor Board at  
10 NYU said he had a glioblastoma brain tumor,  
11 which is caused by radiation. They concluded  
12 that his cancer was caused by radiation from  
13 his work.

14 Charlie died on February 4, 2001,  
15 two weeks after his 47th birthday. The  
16 American Cancer Society lists the cause of  
17 glioblastoma brain tumors as radiation.

18 When the Energy Employees  
19 Compensation Program was initiated by  
20 Congress, I filed a claim under Part B. NIOSH  
21 did a dose reconstruction, and my claim was  
22 denied.

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1 I was told that it was highly  
2 unlikely that Nick's cancer was caused by  
3 radiation that he received from his work. I  
4 was also told that my husband's cancer was not  
5 covered under Part B.

6 My husband's cancer was in the  
7 primary retroperitoneal and portions of the  
8 secondary retroperitoneal, which included the  
9 ascending and descending colon, which is the  
10 large and small intestine, and his ureter.  
11 This is from the UCLA pathology report.

12 I understand that NIOSH is now  
13 reevaluating my husband's case. I do not know  
14 if they have information from the Nevada Test  
15 Site, if they are considering the location of  
16 my husband's cancer, if they have considered  
17 that benzene exacerbates the effects of  
18 radiation to the body or that DMSO rapidly  
19 penetrates radiation to the tissues, bones,  
20 nervous system, and brain.

21 I don't know if they have  
22 considered the fact that the doses my husband

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1 received were big doses in short periods of  
2 time, and they weren't small doses spread over  
3 long periods of time.

4           There is much missing data that was  
5 not considered, even though he would have been  
6 exposed to radiation during those periods.  
7 According to Memorial Sloan-Kettering cancer  
8 researchers, factors that have been associated  
9 with soft tissue sarcomas include prior  
10 exposure to radiation. The Mayo Clinic website  
11 lists radiation exposure associated with  
12 sarcomas. The American Cancer Society lists  
13 ionizing radiation as a risk factor for  
14 sarcomas.

15           I would like to know which current  
16 research and resources NIOSH is using to  
17 determine whether my husband's cancer was  
18 caused by the radioactive materials that he  
19 was using.

20           Has anyone at NIOSH assessed my  
21 husband's classified lab notebooks? Has  
22 anyone read all of his research to understand

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1 what he was doing and, therefore, understand  
2 the amount of ionized radiation he was exposed  
3 to? Do they know how many people in the  
4 United States work with ionized radiation?

5 I think that you will agree that  
6 very few people who are exposed to ionized  
7 radioactive materials of that type -- I'm  
8 sorry.

9 I think that you will agree that  
10 very few people conduct this type of  
11 specialized research and, because there are so  
12 few people who are exposed to ionized  
13 radioactive materials, that type of cancer is  
14 equally small.

15 In 2008 I filed under Part E  
16 Chemical Exposure, and as of this date I have  
17 not received a written reply, despite numerous  
18 calls to the Seattle office. You might find  
19 it interesting that I drove Dr. Miller's  
20 widow, Marlene, to the Espanola office, and we  
21 filed our identical claims. Her claim under  
22 Part E was awarded in December 2008.

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1           Our children were very young when  
2 my husband became ill. They watched him  
3 suffer for two years. He was a wonderful  
4 father, and they have missed him so much.

5           I have lost the love of my life.  
6 It hurts to think that he has missed so much  
7 of their lives. It hurts to think that my  
8 husband's work at LANL caused his death. It  
9 hurts to think that he was selected to work at  
10 LANL because he was very good at what he did.

11           It hurts to think that, even though  
12 our country needed him, and he said yes, NIOSH  
13 and the Energy Employees Occupational Illness  
14 Compensation Program continues to say no.

15           I thank you for your time. Thank  
16 you for the time that you give up from your  
17 families to help us. Thank you for listening.

18           CHAIRMAN ZIEMER: Thank you very  
19 much. Marlene, did you have additional  
20 comments?

21           MS. MILLER: Yes, I do. Thank you.  
22 My husband and best friend, Charles M. Miller,

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1 died at the early age of 47. Then to know  
2 that it was his job that caused the cancer  
3 that killed him and there is nothing I can do  
4 about it. The greatest travesty of all is to  
5 be denied compensation, because NIOSH claims  
6 he did not receive enough radiation to cause  
7 the cancer that the American Cancer Society  
8 defines as a radiation caused brain cancer.

9 Charlie worked at Hanford Reactor  
10 two summers while he was an undergraduate  
11 student at Washington State University  
12 majoring in physical chemistry. No records  
13 were kept as to the work he did at Hanford or  
14 how much radiation he received. However, it  
15 is well known that there had been many  
16 releases from Hanford, and that the Hanford  
17 reactor is of the same design as the Chernobyl  
18 reactor.

19 After Charlie completed his work  
20 for his PhD in 1980 at Stanford University, he  
21 went to Los Alamos and began his career in the  
22 nuclear weapons program with Nicholas Nogar,

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1 an equally bright and highly respected young  
2 scientist.

3 They became best friends and worked  
4 side by side in the contaminated basement of  
5 the Chemical and Metallurgy Research Building,  
6 the CMR building. The CMR building was  
7 completely shut down when the Tiger Team was  
8 at LANL, because of its contamination.

9 Charlie and Nick used lasers with  
10 caustic dyes that are no longer used. They  
11 analyzed isotopes and radioactive materials  
12 using benzene, DMSO, and many other chemicals.  
13 Benzene is known to rapidly increase the  
14 effects of radiation in the body. DMSO is  
15 known to speed the absorption of radiation  
16 into the tissue, bones, nervous system, and  
17 brain at a rapid rate. This information has  
18 been scientifically proven at Livermore  
19 National Laboratory.

20 It was not uncommon for their  
21 lasers to spew caustic dyes all over the room  
22 and on them. Other accidents and spills,

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1 including the radioactive materials occurred.  
2 They cleaned up the spills and continued  
3 working.

4 They did not have dosimeter badges,  
5 and records were not kept of the radiation  
6 they received. Marcella, Nick's wife, reports  
7 of one incident when Nick came home with his  
8 lab coat dissolved to shreds by an explosion.  
9 Charlie was there as well.

10 In addition to numerous experiments  
11 involving benzene, DMSO, chemicals, isotopes  
12 and the whole gamut of radioactive materials,  
13 they developed the methodology and analyzed  
14 materials retrieved from underground nuclear  
15 tests at the Nevada Test Site.

16 There are no records for the  
17 radiation they received doing this work in the  
18 early Eighties. In addition to working at the  
19 CMR building and T-48, they worked at several  
20 other sites doing this type of work at the  
21 Lab.

22 Later Charlie became the lead

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1 diagnostician for the Nuclear Weapons Program  
2 at Los Alamos. He would go to the Nevada Test  
3 Site for the underground tests. He worked  
4 with the Diamond Drillers to retrieve samples  
5 of the test.

6 He would sleep in the shack near  
7 where the drillers were working through the  
8 night so they could get him up to test the  
9 samples they brought to the surface to see if  
10 they contained the necessary materials to be  
11 returned to Los Alamos for further analyses.  
12 Charlie then packaged up this material and  
13 flew it back to Los Alamos on the Ross.

14 Nick died from stomach cancer in  
15 1996 at the age of 46. He left a wife and  
16 three children. At the time Nick was sick,  
17 there were 15 cases of this type of stomach  
18 cancer in the United States, the kind of  
19 cancer that Nick had. There were 15 cases in  
20 the United States. Five of those cases were  
21 in Los Alamos.

22 Charlie was diagnosed with a brain

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1 tumor in September of 2000. We went to NYU  
2 Medical Center to have the tumor removed. The  
3 Tumor Board said that he had a glioblastoma  
4 brain tumor, which is caused by radiation.  
5 They concluded that this cancer was caused by  
6 the radiation from his work.

7 Charlie died on February 4, 2001,  
8 two weeks after his 47th birthday. The  
9 American Cancer Society lists the cause of  
10 glioblastoma brain tumors as radiation.

11 In the early Eighties, no records  
12 were kept of the amount of radiation Charlie  
13 and Nick received, but they were definitely  
14 working with it.

15 After Charlie died, I was asked by  
16 a friend who was a LANL attorney if I thought  
17 Charlie's death was caused by his work, and I  
18 said yes. I was told not to waste my money  
19 with a law suit, because LANL would hire  
20 powerful attorneys, and I wouldn't have a  
21 chance against them.

22 I was told that LANL would never

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1 admit to any responsibility, because there  
2 were too many illnesses and deaths, and it  
3 would cost them too much money. This is what  
4 a Lab attorney told me.

5 When the Energy Employees  
6 Compensation Program was initiated by  
7 Congress, I filed under Part B. NIOSH did a  
8 dose reconstruction, and my claim was denied,  
9 because they said it was only 24 percent  
10 likely that Charlie's cancer was caused by  
11 radiation he received from his work. There  
12 was no consideration taken that he used  
13 benzene or DMSO while working with these  
14 radioactive materials.

15 Then I filed a claim under Part E.  
16 The doctors and staff from the Department of  
17 Labor in Seattle concluded that I should be  
18 awarded compensation under Part E and that my  
19 case under Part B should be reopened.

20 At that time, I learned that NIOSH  
21 obtained only incomplete dose information from  
22 LANL, no dose information from Hanford, and no

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1 dose information from the Nevada Test Site for  
2 this first dose reconstruction.

3 I obtained the dose information  
4 from NTS and forwarded it to NIOSH. There was  
5 no information available from Hanford. After  
6 the second dose reconstruction, NIOSH said it  
7 was now only six percent likely that the  
8 radiation from his work in the DOE complex  
9 caused his cancer.

10 The records showed that Charlie  
11 received more than twice as much radiation at  
12 NTS as was recorded that he received from  
13 LANL, as stated in the NIOSH findings, and the  
14 likelihood of radiation causing his cancer  
15 went from 24 percent down to six percent.

16 So with more than twice the amount  
17 of recorded radiation exposure, NIOSH now  
18 claims that it was four times less likely that  
19 the radiation caused his cancer.

20 There was no consideration for the  
21 fact that this dose data was incomplete.  
22 There was no information from Hanford and

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1 incomplete information from LANL. Although it  
2 is scientifically known, it was not considered  
3 that benzene greatly increases the effects of  
4 radiation to the body or that DMSO rapidly  
5 penetrates radiation to the tissue, bones,  
6 nervous system and brain.

7 It was not considered that the  
8 doses that Charlie received were in big doses  
9 over a short period of time and not small  
10 amounts spread over a long period of time.  
11 The missing data was not considered, even  
12 though he would have been exposed to radiation  
13 during those periods.

14 No two people are exactly the same.  
15 What may be enough radiation in one person to  
16 cause cancer might not cause cancer in  
17 another.

18 I have spoken with people at NIOSH,  
19 and they just aren't willing to consider any  
20 of these other factors. To me, there is no  
21 doubt that Charlie and Nick's cancers were  
22 caused by their work at LANL or in the DOE

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1 complex.

2 They at NIOSH continue to collect  
3 their paychecks while we only grieve the loss  
4 of our best friends and husbands. We lose the  
5 income from their employment and are left to  
6 beg for \$150,000 in compensation.

7 This amount is only a drop in the  
8 bucket to the value of these men's worth.  
9 Charlie and Nick would be making more than  
10 that each year if they were still alive.  
11 Charlie has been dead for eight years now, and  
12 he would only be 55 today.

13 Charlie and Nick were highly  
14 educated young scientists with 10-12 years of  
15 advanced education at some of this country's  
16 best universities, and they were assigned to  
17 do dangerous work in unsafe areas and would be  
18 earning more than \$150,000 annually if they  
19 were alive today.

20 At the time of his death, Charlie  
21 was the Program Manager for the weapons  
22 program. He managed the Weapons Archiving

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1 Program and continued to work in the non-  
2 proliferation of nuclear weapons. Charlie  
3 loved his country. He served it, and he died  
4 for it.

5 NIOSH cannot and does not evaluate  
6 cases justly, because too much data is  
7 missing, and there are too many variables.  
8 NIOSH should be eliminated from this process.

9 Thank you so much.

10 CHAIRMAN ZIEMER: Thank you,  
11 Marlene, and again for Michelle as well.

12 Next, Peggy Vargas.

13 MS. VARGAS: Good evening. My name  
14 is Peggy Sue Vargas. I was employed at Los  
15 Alamos from 1978 to 1996.

16 In 1978 to 1986, I was at Los  
17 Alamos National Lab as a graphics operator and  
18 secretary at TA-3, SM-38 where I mainly worked  
19 in film processing rooms with chemicals, no  
20 ventilation. No breathing protection.

21 What I want to do is stress and  
22 emphasize that I worked at many different

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1 locations for many years without being  
2 monitored. From 1986 to 1994, I was employed  
3 at Los Alamos with the video company, PanAm  
4 and Johnson Controls.

5 My duties included, yes,  
6 secretarial work. However, in this time frame  
7 between 1992 through 1994, while being with  
8 Johnson Controls, I was a security specialist.

9 I performed random drug dog searches  
10 throughout various lab sites. These duties  
11 were performed without being issued TLD badges  
12 or TLD monitoring or protective clothing.

13 Some of these places included TA-3,  
14 Sigma and warehouses, salvage yards, machine  
15 shops, power plants, steam plant, and other  
16 sites that I cannot specifically recall. I  
17 was also out in the field inspecting the  
18 government parking lots for government vehicle  
19 identifications and for other security  
20 matters.

21 In 1994 through 1996, I worked for  
22 a LANL contractor by the name of Volt

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1 Contracting Services as a secretary at tech  
2 sites, which also included TA-35. I handled  
3 paperwork, yes, and files from various  
4 locations within the TA-55, including the  
5 plutonium processing plant. I handled TLD  
6 badges, exchanged and processed them. The  
7 last group that I worked for, which was N&T-9,  
8 through my contractor which was at TA-55 did  
9 process PU-238.

10 In January of 1996 after being  
11 extremely sick, I was diagnosed with AML  
12 leukemia. To this day, I clearly remember  
13 when my doctor called my home on a Saturday  
14 evening to inform me that my lab results from  
15 my blood showed that I was found to have  
16 leukemia at a very aggressive stage, and for  
17 me to go to St. Vincent's Hospital in Santa Fe  
18 and be there by seven in the morning the  
19 following day, and he indicated to me that I  
20 would need to start chemotherapy.

21 Oh, how my heart ached for my two  
22 sons who were only 10 and six at the time, and

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1 for my husband, to think what we faced in the  
2 coming months.

3 After talking with my physician at  
4 the hospital, he indicated that I indeed  
5 needed to start chemotherapy immediately, but  
6 I told him that I was afraid to start chemo  
7 because of what that also could do to me.

8 He said he understood, but that if  
9 I would not start chemotherapy, I would have  
10 at the most three months to live. During this  
11 period, my doctor told us that, even with  
12 treatments, it would be a 50/50 chance of my  
13 survival.

14 My family history shows no history  
15 of leukemia. After 18 months -- I'm sorry.  
16 After 18 harsh treatments of chemotherapy and  
17 11 bone marrow extractions, the leukemia went  
18 into remission stage.

19 To date, as a result of the harsh  
20 chemo, I suffer from chronic fibromyalgia,  
21 along with severe sleep disorder. I am in  
22 constant pain 90-95 percent of the time, and

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1 the pain intensity varies. Even with sleep  
2 medication, I can't get a full night's rest  
3 and sleep.

4 All pain medication that has been  
5 advised by numerous physicians and acupuncture  
6 therapists, which I do alternative medicine --  
7 they have not controlled my pain. Yes, my  
8 life has drastically changed from when I was  
9 employed at Los Alamos to now, but my faith  
10 and love for God will never change. I thank  
11 God that I am still alive here with my  
12 husband, my two sons and my family on what is  
13 my birthday today.

14 Although it is very difficult  
15 living with daily pain, I won't give up.  
16 Please do away with dose reconstruction for  
17 individuals like myself who worked for so many  
18 years throughout the lab without dose  
19 monitoring.

20 How can NIOSH even estimate a dose  
21 for me? My claim also has been denied due to  
22 the dose reconstruction. The dose

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1 reconstruction levels do not meet the minimum  
2 expectable levels.

3 I graciously thank each and every  
4 one of you for your time this evening.

5 CHAIRMAN ZIEMER: And we thank you  
6 and salute your courageous efforts in  
7 combating that disease.

8 I think we may have Dr. McKeel on  
9 the line this evening. Dan McKeel, are you  
10 with us?

11 DR. McKEEL: Yes, sir, I am.

12 CHAIRMAN ZIEMER: Oh, good. Hang  
13 on just a minute. We are going to get the  
14 phone line near to the microphone here. Okay,  
15 Dan, please go ahead.

16 DR. McKEEL: Can you hear me all  
17 right?

18 CHAIRMAN ZIEMER: Very well.

19 DR. McKEEL: All right. I am Dan  
20 McKeel. I am the Texas City Chemicals SEC-  
21 00088 co-petitioner. I would like to note for  
22 the record the following activities and the

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1 relevant timelines pertaining to this  
2 petition.

3 SEC-00088 was submitted to NIOSH on  
4 February 10, '07 and was qualified on August  
5 28, 2007. NIOSH issued their SEC evaluation  
6 report on January 18, '08, stating that it was  
7 feasible to reconstruct all internal and  
8 external doses, including neutron dose.

9 This was despite the fact that  
10 NIOSH admits that it has zero monitoring data  
11 and very little process data on the uranium  
12 extraction operations from phosphate rock that  
13 was done for the AEC at Texas City in 1952 to  
14 1956.

15 Despite this feasibility of dose  
16 reconstruction assertion, NIOSH has completed  
17 only two of 13 Texas City dose  
18 reconstructions, and has done none since  
19 issuing its evaluation report. I wonder why  
20 this is so, given that NIOSH claims it can  
21 dose reconstruction at this site.

22 The Board has tasked the Surrogate

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1 Data work Group to coordinate this SEC and  
2 make a recommendation to the full Board. The  
3 Work Group last convened nine months ago on  
4 6/9/08.

5 SC&A performed a targeted review of  
6 SEC-88 and issued a report dated July 18, '08.  
7 SC&A elected to apply draft Surrogate Data  
8 Work Group criteria, before approval by the  
9 full Board as they were instructed to do, to  
10 the NIOSH evaluation of SEC-88 using Texas  
11 City as a test case.

12 SC&A also applied the draft  
13 criteria to Blockson Chemical, SEC-58. The  
14 full Board has still not approved those draft  
15 surrogate data criteria.

16 Meanwhile on August 21st of '08,  
17 NIOSH issued its own surrogate data criteria  
18 as an 11-page technical report, OCAS-IG-004,  
19 Rev 0. These NIOSH criteria differ from the  
20 Board's surrogate data criteria.

21 To my knowledge, these conflicting  
22 policies have not been resolved nor has there

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1       been any attempt to do so. I am asking that  
2       SC&A should be tasked to review the NIOSH  
3       surrogate data criteria in OCAS-IG-004.

4               The petitioners have been  
5       unsuccessful, despite significant efforts, in  
6       obtaining certain crucial information about  
7       Texas City from the State of Texas agencies  
8       about the design and the floor plan of the  
9       uranium recovery building, including close-up  
10      photographs of the interior, about the  
11      production processes, about the AEC recovery  
12      building and uranium waste permits, about AEC  
13      imposed safety practices at the plant, and  
14      about the exact date the uranium recovery  
15      building was demolished to define the end of  
16      the residual uranium contamination period.

17              In summary, the petitioner for SEC  
18      asks the Board to please consider doing the  
19      following: (a) to finalize its own surrogate  
20      data criteria; (b) to task SC&A to consider  
21      the NIOSH surrogate data criteria; (c) to  
22      compare and resolve the two sets of criteria,

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1 the Board's and NIOSH's; and (d), to reapply  
2 the final criteria to SEC-88 using Texas City  
3 Chemicals as a test case.

4 In addition, I ask the Board to  
5 urge NIOSH and Department of Energy to  
6 increase their efforts to obtain more Recovery  
7 building and uranium process information for  
8 the Texas City Chemicals site.

9 Data capture should include  
10 additional outreach efforts to get these data,  
11 including asking the Department of Labor to  
12 invoke Section 7384w of the Act related to  
13 issuance of subpoenas.

14 Thank you very much, and I  
15 appreciate the Board's time tonight.

16 CHAIRMAN ZIEMER: Thank you, Dr.  
17 McKeel. I want to see if Donna Hand is still  
18 with us. Donna, you may proceed, if you wish.

19 MS. HAND: I will be real short.

20 CHAIRMAN ZIEMER: I'm a little  
21 nervous about all that material you have in  
22 your hand.

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1 MS. HAND: It's just some homework.  
2 I'll give everybody homework.

3 My name is Donna Hand. I am with  
4 the Nuclear Workers of Florida. I am a worker  
5 advocate, and also authorized representative  
6 for several claimants.

7 At Savannah River I had did a  
8 testimony. I told you I would follow up with  
9 a written statement. That is in the very back  
10 of this little program here, is the two  
11 written statements for my testimony then.

12 Again, it will start talking about  
13 this is a request for a procedure and to  
14 clarify the law and the Federal regulations as  
15 pertains to EEOICPA and under the authority of  
16 the Health and Human Services Secretary to  
17 define cancers, what are cancers, and the  
18 required models to be ran for the probability  
19 of causation guidelines.

20 DOL is required to run the  
21 uncertainty distribution of the dose  
22 reconstruction, and they do not use the worst

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1 case scenario. If a constant is put into that  
2 distribution and they did not use the worst  
3 case scenario, then DOL is required by law and  
4 the probability of causation guidelines to run  
5 an uncertainty distribution. That would be a  
6 long normal. This is not being done.

7 DOL is required to run all models  
8 of secondary cancers with unknown primary and  
9 to use the model with the highest percentage.

10 That doesn't mean that they can just  
11 determine that was the only one. They have to  
12 use the one with the highest percentage of all  
13 the secondary or possible secondary cancers.

14 DOL is required to run both models  
15 of prostate cancer and bladder and all male  
16 genitalia, and to use the highest percentage  
17 model, since NIOSH has determined that the  
18 target organ is the bladder.

19 There is a technical bulletin,  
20 information that is in the middle of this  
21 packet that they reduced it to the target  
22 organ to the bladder, because in the testes

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1 you did the shallow dose. Now you are doing  
2 it to the bladder. However, DOL's probability  
3 of causation model is still being run by all  
4 male genitalia.

5 Really, the law requires them to  
6 run both, and whichever one gets the highest  
7 dose, that is the one you are to use.

8 OCAS and DOL and required to use  
9 the claimant information unless refuted by  
10 substantial relevant evidence. The claimants  
11 are given the information to them. Unless  
12 NIOSH and OCAS and Department of Labor can  
13 find substantial evidence to refute this, they  
14 are to accept that evidence.

15 OSHA and DOL are required to use  
16 injection for internal doses when the file of  
17 record shows cuts, scrapes, et cetera. In  
18 fact, they have two guidelines they use. The  
19 internal guidelines mention it as injections.  
20 Then they also have a technical information  
21 bulletin called Wounds. Both of these require  
22 this. But you know, they are denying wounds,

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1 and they will not use it in a dose  
2 reconstruction, because the claimant was not  
3 monitored.

4 The claimant is not going to be  
5 monitored for a cut or a wound such as, for  
6 example, a janitor got cut with classified  
7 waste cans, but because he was not monitored,  
8 they are not going to use that in his dose  
9 reconstruction. He got cut three times, and  
10 they are not going to add it at all, because  
11 he was not monitored by the health physicist.

12 The health physicist is going to  
13 tell this janitor, by the way, I need to  
14 monitor you for this cut because of radiation.  
15 But all along, they have never been monitored?  
16 I don't think so.

17 DOL is required to use the other  
18 ill defined sites model in all injection  
19 claims as well as the model of target organ,  
20 because you do not know, especially when a cut  
21 goes into the pathway of the transfer system,  
22 which is the blood, where is it going to end

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1 up at? Because of that, there is a model  
2 there to run, other ill defined sites, as  
3 determined back in the very beginning of the  
4 program. So why don't DOL run that model as  
5 well?

6 HHS shall determine all cancers and  
7 the types, form of cancer, and not DOL. Part  
8 B has been exclusively to Health and Human  
9 Services Secretary. They are in total  
10 control.

11 Department of Labor is only -- only  
12 to run the probability of causation and to  
13 determine the facts of employment and cancers  
14 and medical evidence.

15 HHS shall determine if review of  
16 the dose reconstruction is required, and not  
17 DOL's health physicist. This review shall be  
18 done by someone that has no connection with  
19 the original dose reconstruction. Due process  
20 shall be granted for every claimant.

21 This was in the Federal Register as  
22 well as 82.27(a) (1) (2), and (b) (1) (2). The

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1 reviews are not being done this way.  
2 Department of Labor is allowing their own  
3 health physicist to determine if a review  
4 needs to be done or not. They have no  
5 authority to do this.

6 OSHA shall follow the procedure of  
7 42 CFR 83, etcetera, in qualifying and  
8 evaluating the said petition. These are two  
9 separate steps. Why then in the Pinellas  
10 plant they said we didn't qualify, but yet  
11 they evaluated. I've got documentation of  
12 that. They are -- you separate the two.

13 Health and Human Services shall --  
14 mandatory, required -- determine the dose  
15 reconstruction in a timely manner in a SEC  
16 petition in a timely manner.

17 If the data for the dose  
18 reconstruction is not available at this time,  
19 OSHA will require -- mandatory -- proceed as  
20 if no data is available to do a dose  
21 reconstruction with sufficient accuracy and  
22 grant the SEC petition.

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1                   Again, this is the Federal  
2 Register, page 22319, Volume 67, Number 85-E.

3                   Health and Human Services shall  
4 determine procedures to cancel SEC petitions  
5 if the data is found later on after the  
6 grantee of a SEC petition, 83.19. So if you  
7 want to cancel it, fine, but don't deny it  
8 when you don't have the information there.

9                   Health and Human Services shall  
10 determine procedures to vacate all implied  
11 bias and irrelevant statements from the dose  
12 reconstruction. The report shall state the  
13 facts that are required, and assume claimant  
14 friendly assumptions.

15                   IN every single dose reconstruction  
16 report I have seen, there has been bias,  
17 prejudicial, ambiguous statements in every  
18 single one of them.

19                   HHS shall have available to the  
20 claimant the information; the calculations of  
21 all doses used in the dose reconstruction, and  
22 this will also state the method, assumptions

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1 and claimant input. This is in 8227(c).

2 HHS determines procedures to handle  
3 and accomplish dose reconstruction for  
4 terminally ill claimants and to define  
5 terminally ill claimants. Right now they do  
6 not have a procedure for terminally ill  
7 claimants.

8 DOL just recently, in fact, just  
9 about in July, I believe, issued a  
10 policy/procedure to handle terminally ill  
11 claimants. NIOSH still doesn't have it.

12 In conclusion, Health and Human  
13 Services has exclusive control over Part B by  
14 the way of the Executive Order that was  
15 issued. Advisory board is required to make  
16 recommendations to the Health and Human  
17 Services Secretary, because that is their  
18 boss. That is who they are under.

19 Advisory board is required to  
20 review OCAS and DOL's duties under Part B of  
21 EEOICPA.

22 I need you to please address these

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1 issues very quickly, because these people are  
2 dying and deserve better.

3 I added two more notes in there  
4 about we need to define what is substantial  
5 and what is significant, and we need to also  
6 be able to access to their procedure  
7 documentation. There is no access to that.

8 This is technical information  
9 bulletin, yes, and guidelines, yes, but their  
10 procedures, no.

11 Case in point, and I would like to  
12 end. We appreciate your help. You are the  
13 only ombudsman that these claimants have. You  
14 are the only one that they can turn to under  
15 this part.

16 If you were a principal and you had  
17 a teacher, and every single one of those  
18 classes that that teacher taught, two-thirds  
19 of their students failed, would you question  
20 the students? Would you question your  
21 policy/procedures, or would you question  
22 something is wrong with that teacher?

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1                   You are the principal.       These  
2 claimants are the students, and this program,  
3 NIOSH and Department of Labor, are the  
4 teachers.

5                   Thank you.

6                   CHAIRMAN ZIEMER:   Thank you very  
7 much, Donna, for that input.

8                   That concludes our public comment  
9 period for this evening. We do have another  
10 public comment period scheduled for tomorrow  
11 evening.

12                   Also, the Board will be in session  
13 beginning at nine o'clock and throughout the  
14 day. All our meetings are fully open. You  
15 are welcome to come back and join us then.

16                   So we will recess until tomorrow  
17 morning.

18                   (Whereupon,       the       above-entitled  
19 matter went off the record at 8:51 p.m.)  
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21  
22

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