

UNITED STATES OF AMERICA  
CENTERS FOR DISEASE CONTROL

+ + + + +

NATIONAL INSTITUTE FOR OCCUPATIONAL  
SAFETY AND HEALTH

+ + + + +

ADVISORY BOARD ON RADIATION AND  
WORKER HEALTH

+ + + + +

69th MEETING

+ + + + +

WEDNESDAY, MAY 19, 2010

+ + + + +

The meeting convened at 8:15 a.m.,  
Eastern Daylight Savings Time, in the Crowne  
Plaza Hotel, 300 3rd Street Niagara Falls, NY,  
James M. Melius, Chairman, presiding.

PRESENT:

JAMES M. MELIUS, Chairman  
HENRY ANDERSON, Member  
JOSIE BEACH, Member  
BRADLEY P. CLAWSON, Member  
R. WILLIAM FIELD, Member  
MICHAEL H. GIBSON, Member  
MARK GRIFFON, Member  
RICHARD LEMEN, Member  
JAMES E. LOCKEY, Member  
WANDA I. MUNN, Member  
JOHN W. POSTON, SR., Member  
ROBERT W. PRESLEY, Member  
DAVID B. RICHARDSON, Member\*  
GENEVIEVE S. ROESSLER, Member

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

PRESENT: (continued)

PHILLIP SCHOFIELD, Member  
 PAUL L. ZIEMER, Member\*  
 TED KATZ, Designated Federal Official

REGISTERED AND/OR PUBLIC COMMENT PARTICIPANTS

ADAMS, NANCY, NIOSH Contractor  
 ALLEN, DAVID, DCAS  
 ALLAN, DONALD  
 BEYERLEIN, TOM, Dayton Daily News\*  
 BONSIGNORE, ANTOINETTE, Linde Petitioner  
 BRADFORD, SHANNON, DCAS  
 BREYER, LAURIE, DCAS  
 BUCHALSKI, IAN  
 BUDREWICZ, VICTORIA  
 BURGOS, ZAIDA, NIOSH Contractor  
 CINELLI, JUDITH  
 CIVILETTO, SAM  
 CORBETT, MEGAN, Congressman Higgins' Office  
 COLUCCI, EUGENE  
 CRUZ, RUBEN, CDC  
 DYSTER, PAUL, Mayor of Niagara Falls  
 EVASKOVICH, ANDREW, LANL Petitioner  
 FITZGERALD, JOE, SC&A  
 FRANCO, TINO, Bethlehem Steel Petitioner  
 FRATELLO, MELISSA, Senator Kirsten  
     Gillibrand's Office  
 GIRARDO, MARY, Hooker Electrochemical  
     Petitioner  
 GLOVER, SAM, DCAS  
 GREELEY, BILL, Congressman Higgins' Office  
 HINNEFELD, STUART, DCAS  
 HOWELL, EMILY, HHS  
 HINNEFELD, STU, DCAS  
 JACQUEZ-ORTIZ, MICHELE, Senator Tom Udall's  
     Office  
 KERN, CATHY  
 KESTON, DOROTHY, University of Rochester  
     Petitioner\*  
 KOHRER, FRED  
 KOTSCH, JEFFREY, DOL  
 REGISTERED AND/OR PUBLIC COMMENT PARTICIPANTS

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

KRIEGER, ROGER B.  
LENIHAN, KATHY, Congresswoman Louise  
Slaughter's Office  
LEWIS, GREG, DOE  
LIN, JENNY, HHS  
LIPSITZ, JOHN  
MACRI, SUZANNE, Congresswoman Louise  
Slaughter's Office  
MAKHIJANI, ARJUN, SC&A  
MARTINO, JOHN  
MAURO, JOHN, SC&A  
MCFEE, MATT, ORAU Team  
MCGOLERICK, ROBERT, HHS  
MENDOLA-HAUG, NANCY  
MEYERS, CODY  
MIDDLEBROOKS, LARRY  
MONTE, LAURA, Senator Schumer's Office  
MORT, DORATHEA  
NOONAN, FRAN  
NOONAN, KAREN MORTENSEN  
NOWICKI, RICK  
OSTROW, STEVE, SC&A  
PRESLEY, LOUISE  
RAMSPOTT, JOHN  
RYKIEL, SANDY  
ROLFES, MARK, DCAS  
RUTHERFORD, LAVON, DCAS  
SARDINA, JOSEPH  
SCREMMIN, P.  
SHAFFER, KATHLEEN  
SWEENEY, THERESA  
SWIFT, JACKIE  
TORNABENE, ELEANOR  
ULSH, BRANT, DCAS  
VENTURA, MARGARET  
VENTURA, SAM  
WADE, LEW, DCAS  
WALKER, JOYCE  
WERNER, JIM  
WHIPPLE, STEVE  
WITRYOL, AMY  
\*Participating via telephone

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

## C-O-N-T-E-N-T-S

AGENDA ITEM	PAGE
Welcome .....	5
NIOSH Program Update and Program Evaluation .....	7
DOL Program Update .....	48
DOE Program Update .....	79
Mound SEC Petition .....	109
University of Rochester Atomic Energy Project SEC Petition .....	169
BWX Technologies (Lynchburg, VA) SEC Petition (83.14) .....	192
Hooker Electrochemical (Niagara Falls, NY) SEC Petition .....	260
Linde Ceramics (Tonawanda NY) Work Group Update .....	292
Public Comment .....	305
Adjourn .....	399

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

P-R-O-C-E-E-D-I-N-G-S

(8:26 a.m.)

WELCOME

CHAIRMAN MELIUS: Why don't we get started. Ted, do you want to give your speech?

MR. KATZ: Sure. I don't have a long speech.

CHAIRMAN MELIUS: The phone speech.

MR. KATZ: Yes, I'll do the phone bit, but first of all let me just say welcome to everyone who is here and welcome to everyone who is on the line on behalf as well of the Secretary of Health and Human Services and the Director of NIOSH, we are happy to be here in western New York and we have a very full agenda.

Let me just note for people on the line, the agenda has two public comment sessions, one at the end of the day today at 4:30, beginning at 4:30, and tomorrow

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 beginning at 6:00 p.m. And let me also note  
2 some of the agenda items may move around a bit  
3 as we get things done sooner than we expect or  
4 they take longer. But the SEC petitions that  
5 are listed on the agenda, the start times for  
6 those are fairly much time-certain, just so  
7 you are aware of that.

8           Okay, and then let me just --  
9 several things to note. For people listening  
10 on the phone, please mute your phones except  
11 when you are addressing the group and to mute  
12 your phone, if you don't have a mute button,  
13 use \*6, and then \*6 again, pressing it again,  
14 will un-mute your phone when you do want to  
15 speak to the group. And please do not put the  
16 call on hold at any point. Hang up and dial  
17 back in. Hold will disrupt the call and the  
18 meeting.

19           And then let me just note also for  
20 the public comment sessions, people listening,  
21 I'm not sure I see any people, local people  
22 here right now, but I'll say it now and repeat

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 it later. There is a sign-in outside if you  
2 wish to address the Board in one of the public  
3 comment sessions, outside on a table, so  
4 please sign in, and for the folks on the line,  
5 we'll just take you as we go after the people  
6 have commented locally.

7 And last thing just to mention for  
8 Board members, we have a lot of SECs. A  
9 number of these, some Board members have  
10 conflicts. Just keep that in mind as we get  
11 to those sessions. And that's it, thank you.

12 CHAIRMAN MELIUS: And we will get  
13 started. Just to note for the record we have  
14 a full complement of our Board members with  
15 Paul Ziemer and David Richardson on the  
16 telephone, and Paul, David, I will try to  
17 remember all the time to recognize you when we  
18 are having discussions and so forth, but feel  
19 free to speak up if I do forget.

20 With that we will start with the  
21 NIOSH program update, Stu Hinnefeld.

22 NIOSH PROGRAM UPDATE AND PROGRAM EVALUATION

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. HINNEFELD:           Good morning,  
2 everyone. I'm here to present our customary  
3 program update status and a little bit about  
4 things that are going on in the program, keep  
5 everybody abreast.

6                   A few news items to cover before  
7 we get into our statistics. Between the last  
8 meeting in February and now, the Office of  
9 Compensation Analysis and Support's name was  
10 changed to the Division of Compensation  
11 Analysis and Support. This essentially  
12 removed our organization from the office of  
13 the director, and gave it division status  
14 similar to other divisions within NIOSH. Up  
15 to this, the Office is a somewhat smaller, I  
16 guess, political designation than a division,  
17 and it just made I believe the Institute's org  
18 chart look a little cleaner not having this  
19 huge office of the Director. That is my own  
20 personal opinion on why they did it.

21                   In the phone call after this  
22 became effective, Dr. Howard congratulated me

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on my elevation to division director, and so I  
2 went back and increased the setting on my  
3 office chair by a couple of inches so I was  
4 elevated, because I have noticed no other  
5 difference associated with this name change,  
6 except that we spent a lot of effort changing  
7 stationery and things like that.

8 Also in March of this year the  
9 Government Accountability Office issued its  
10 latest report about the EEOICPA program. It  
11 addressed the activities of both NIOSH and the  
12 Department of Labor. We mainly read those  
13 things with an eye toward NIOSH in what they  
14 say. They had no recommendations in their  
15 report for NIOSH, so we had no recommendations  
16 to take under advisement and decide what kind  
17 of actions we could take in response.

18 They commented - essentially what  
19 they said was dose reconstructions take a long  
20 time and costs a fair amount of money, but  
21 Congress told NIOSH to do dose  
22 reconstructions, and that's what it takes to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do dose reconstructions; it's a difficult  
2 technical process. So that is essentially  
3 paraphrasing what they said about the NIOSH  
4 part. They did make a few recommendations to  
5 the Department of Labor. I'm not privy to  
6 anything that may follow from those.

7           And finally I want to comment very  
8 quickly about a data review that was done very  
9 -- on a very short turn-around within the last  
10 -- well, actually the data, the documents were  
11 looked at last week on Thursday. We  
12 identified, or our contractor identified  
13 fairly recently, about two or three weeks ago,  
14 a finding aide from the National Archives and  
15 Records Administration facility, that's  
16 essentially a federal records warehouse,  
17 essentially, in College Park, Maryland, there  
18 was a finding aide of some classified  
19 information that included quite a long list of  
20 sites that are covered in our program, and one  
21 of the names on the list was Chapman Valve.  
22 Chapman Valve is on the agenda for this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 meeting, and so we wanted to see what did that  
2 tell us about Chapman Valve before this  
3 meeting. And so with the cooperation of the  
4 Department of Energy and participation by  
5 NARA, we did manage to have one of our  
6 staffers -- one of our dose reconstruction  
7 staffers and one of the staffers from Sanford  
8 Cohen & Associates to get there to see the  
9 documents in the box that were associated with  
10 Chapman Valve. And Joe Fitzgerald, who is  
11 here at the meeting, was one of the people who  
12 attended. Mark Rolfes, who is at the meeting  
13 although I don't know if he is in the room  
14 right now was our staffer who attended. And  
15 they concluded that the information about  
16 Chapman Valve didn't really inform us any more  
17 than we already are: didn't provide any  
18 explanation to that two-percent uranium  
19 sample. It didn't give any more information  
20 about the work that was done there in terms of  
21 the machining of the natural uranium that we  
22 already know about. So there was nothing new

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 in that. So at least we did manage to get  
2 there. And the Department of Energy helped us  
3 out a lot there in getting clearances verified  
4 and over to NARA so that people could go look  
5 at those documents.

6 We will be making additional  
7 reviews back to that. We weren't able, of  
8 course, to look at all the documents we were  
9 interested in from all the sites on that  
10 finding aide during that one-day visit before  
11 this meeting. But we wanted to make sure we  
12 got the Chapman Valve documents reviewed.

13 Now our statistics, these numbers  
14 climb up a little bit every time. We are now  
15 up to almost 32,000 cases -- this is as of  
16 April 30 -- that have been sent to us for dose  
17 reconstruction. Some 88 percent of those have  
18 been returned to DOL either with the completed  
19 dose reconstruction or through -- because they  
20 were pulled by the Department of Labor. Of  
21 those pulled by the Department of Labor, about  
22 2,550 of them were pulled for SEC Classes that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 had been added by our processes. Those were  
2 not the statutory SECs, but SECs that had been  
3 added through the Board's recommendation, and  
4 the Secretary's designation.

5 So that leaves some 3,200 cases  
6 that we still have to do for dose  
7 reconstruction, and then there are about 605  
8 that were administratively closed. That  
9 generally happens when the claimant declines  
10 to sign the OCAS-1 form and return that to us.

11 They can be reopened at any time that the  
12 claimant provides the OCAS-1 or if they  
13 provide us additional information that is  
14 relevant to the dose reconstruction.  
15 Theoretically, that might cause it to be  
16 reopened as well.

17 This is just the same information  
18 about current case status in a pie chart. The  
19 -- it's reassuring I guess to see a big chunk  
20 that is completed, but -- and then some of  
21 these other smaller chunks are also things  
22 that we are essentially completed with,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 anything that's pulled.

2 So now of those 3,266 cases that  
3 are still out for dose reconstruction, several  
4 of them are in the dose reconstruction  
5 process; some of the newer ones, we're still  
6 in case development, getting all the  
7 information together that we need in order to  
8 do the dose reconstruction. And then there  
9 are 555 where the draft dose reconstruction is  
10 in the hands of the claimants. In other  
11 words, we have completed the draft dose  
12 reconstruction, and the claimant now has  
13 received that draft dose reconstruction and  
14 the OCAS-1 form for them to either say, okay I  
15 agree. I have no more information to provide  
16 and send the OCAS-1 back, or for them to say,  
17 no wait, I have more information that might be  
18 relevant to dose reconstruction and we want  
19 you to look at that. So there are some 555 of  
20 those that we expect, a fair portion of those  
21 we expect we are probably done with as well,  
22 expect for the paperwork of sending the --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 getting the form back and then sending the  
2 final dose reconstruction.

3 One of the categories, broad  
4 categories we have of cases are what we call  
5 pending cases, and that means there is some  
6 reason why we need additional information  
7 before we can complete that claim, either  
8 additional research on our part or information  
9 from some other agency.

10 The top five categories of the  
11 pends are listed here. The majority, you see  
12 this is over the half of the cases that are  
13 pending are pending because they are associated  
14 with SECs that have not yet had a final  
15 designation and that would probably include  
16 cases that we are recommending today, or at  
17 this meeting, not necessarily today but at  
18 this meeting, but would include Classes that  
19 we are recommending to the Board during this  
20 meeting.

21 MR. KATZ: Excuse me, there is  
22 someone on the line who doesn't have their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 phone muted, and there is sort of a scrabbling  
2 sound coming through the line. Thank you.  
3 \*6, if you don't have a mute bottom.

4 MR. HINNEFELD: So then we have  
5 COI issue, or close-out interview issues, and  
6 those are instances where the claimant has the  
7 draft dose reconstruction in their hands, they  
8 have the OCAS-1, they say, wait a minute, here  
9 is some additional information we think is  
10 relevant. And so they raise that to us, and  
11 then we have to go investigate that additional  
12 information. Sometimes it's information,  
13 maybe it's additional medical information  
14 which then has to go be verified by the  
15 Department of Labor. There are various  
16 categories that goes into.

17 The category non-SEC, pending DR  
18 methodology, that is for Classes, cases that  
19 are from sites where there is an SEC but these  
20 don't qualify usually because they don't have  
21 one of the listed cancers. And so we have to  
22 determine what it is we can do. We have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reached a determination that we can't do every  
2 bit of the radiation dose; we can't do all the  
3 radiation dose in the reconstruction. But we  
4 want to -- and so once we get to that  
5 conclusion we will bring the recommendation  
6 forward in order to get those SEC Classes  
7 moving. And on occasion we still need to do  
8 some additional research to figure out, well,  
9 what is it we can do. What is the entirety of  
10 the doses we can do in order to do this  
11 partial, to do as much of a partial dose  
12 reconstructions for the non-SEC cancers as we  
13 can?

14 We have a number of cases where we  
15 have made additional data requests to DOE,  
16 something for data beyond just the individual  
17 exposure record that we receive at first  
18 request. And then there are some 24 where a  
19 Technical Basis Document issue is something  
20 where we need to finalize the approach on  
21 some type of dose, for that dose  
22 reconstruction. We need additional research

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on how we can do that.

2 Here is the breakdown of the cases  
3 that have been sent back in terms of their PoC  
4 score, and about 31 percent of the cases where  
5 dose reconstructions have been done have PoC  
6 greater than 50 percent, and a little over  
7 16,000, 16 and a half thousand cases had a PoC  
8 less than 50 percent. So that is about 31  
9 percent success on SEC -- on dose  
10 reconstruction.

11 Recall though that there were some  
12 2,500 cases, 2,550 cases that had been pulled  
13 and returned to DOL for SEC which appeared to  
14 be compensable through SECs. So that actually  
15 makes some 10,000 cases that were sent to us  
16 for dose reconstruction. It looks like they  
17 will have a compensable outcome when you  
18 combine the dose reconstructions above 50  
19 percent and the SEC numbers.

20 This is a chart that we've shown  
21 for a long time. It shows the distribution of  
22 cases according to their Probability of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Causation score. It's skewed a little bit at  
2 the right side because everything greater than  
3 50 percent is lumped together in one large bar  
4 as opposed to all of the others which are just  
5 10-percent intervals of dose reconstruction.  
6 You can see there are quite a large number at  
7 very low dose reconstructions, and then it  
8 kind of, you have a valley until you get up to  
9 the 50, where I said it's sort of artificially  
10 goes back up.

11 For a couple of meetings we  
12 presented a graph that we intended to show the  
13 improving timeliness of cases as the program  
14 has matured, and the original slide we showed  
15 on this was flawed because it was sort of  
16 incomplete. We would run these dose  
17 reconstruction groupings in groups of 5,000.  
18 These numbers across the bottom are the NIOSH  
19 tracking numbers for claims, and those are  
20 assigned chronologically. So the first one  
21 that came in was assigned case number 1, and  
22 we are now assigning cases up close to 32,000,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think, as they come in. And what we  
2 presented before was the average time to  
3 complete a dose reconstruction for each block,  
4 for the 5,000 cases in one through 5,000, and  
5 then for the 5,000 cases in 5,001 to 10,000,  
6 and the number went down. The average dose  
7 reconstruction time went down. It was pointed  
8 out in a couple of meetings that that data was  
9 incomplete because for any dose reconstruction  
10 in any of those populations that was not yet  
11 done, it's not yet included in the average, so  
12 that will have a higher number than what you  
13 have, and so you are representing sort of  
14 artificially low numbers there.

15 So in order to give a complete  
16 view of the dataset, we went back, we decided,  
17 well, let's see how we are doing in completing  
18 our initial drafts within one year of the time  
19 we received the claim, which is of course our  
20 current management objective, which is to get  
21 cases done within a year from when we get  
22 them. And for that reason we dropped off the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 25,001 to 30,000, because at the end of that  
2 period, the claims at the end of that period  
3 are not yet a year old. So again we would  
4 have incomplete data on the dataset. So we  
5 dropped off the last grouping of 5,000. And  
6 this shows the improving timeliness, or the  
7 improving percentage of claims that we are  
8 able to complete in a timely manner. And we  
9 would expect not necessarily for 25,001 to  
10 30,000, but for the next grouping beyond that,  
11 we would expect that number to be very close  
12 to 100 percent of those getting done within  
13 one year.

14 Just a little more statistics.  
15 This is DOE response to requests for exposure  
16 records. We get good service out of the  
17 Department of Energy. We still get about 200  
18 new claims a month, almost. Over the last 12  
19 months we've averaged somewhere around 190 new  
20 claims from DOL a month, people who have newly  
21 filed in the program. We send those, if they  
22 are at a site that has exposure records, we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 send those to DOE. DOE responds very well.  
2 We have a few stragglers. We work  
3 consistently with DOE to try to make sure we  
4 get those cleaned up and back to us.

5 Special Exposure Cohort status:  
6 we've had 171 petitions we have received. But  
7 when this slide was made up on May 6<sup>th</sup> we  
8 didn't have any undergoing qualification  
9 review. I think that might be different today  
10 almost two weeks have gone by, and we may have  
11 gotten a Form BN since then.

12 A hundred and three have been  
13 qualified for evaluation. We have six under  
14 evaluation. I believe this next is eight, I  
15 believe we are presenting eight today, or at  
16 this meeting? Bomber is nodding his head, so  
17 we are presenting eight SEC Evaluation Reports  
18 at this meeting. We have 16 that have been  
19 presented or are under discussion. You all  
20 know that we oftentimes will have technical  
21 discussions about the logic of it following  
22 recommendations, and those go on with the Work

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Groups and the Board's contractor.

2 One petition with the Secretary  
3 awaiting final decision on May 6<sup>th</sup>, I believe  
4 that final decision was sent since May 6<sup>th</sup>,  
5 and that was the Canoga facility which the  
6 Board voted to recommend at their phone call  
7 at the end of March.

8 And then the 61 petitions have  
9 resulted in additions of Classes, 56 Classes.

10 The reason for that is petitions sometimes  
11 come in covering the same time period or a  
12 very similar time period, and we will combine  
13 petitions, and so evaluate them essentially  
14 with two, and with a single class. Five have  
15 been denied; 63 did not qualify; and there are  
16 5 that we did include in the 63 that were  
17 received before the rule became final. I mean  
18 those people were allowed to re-petition once  
19 there were rules for petitioning.

20 Of the 56 Classes that have been  
21 added since May of 2005, they split exactly  
22 equally between 83.13 process and the 83.14

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 process. For anyone who doesn't know, the dot  
2 13 process is a petition received by a  
3 petitioner and interested party on their own,  
4 says, I don't think you can do my dose  
5 reconstruction. The 83.14 process is when we  
6 are researching a site, and we arrive at the  
7 conclusion from our research that we don't  
8 have enough information here to complete all  
9 aspects of the dose, and so we initiate those  
10 largely on our own.

11 And it represents, these come from  
12 40 different sites, and represent over 2,500  
13 people.

14 I spoke a little bit earlier about  
15 our management objective to improve  
16 timeliness. This slide has been up here a few  
17 times. We adopted this almost one year ago,  
18 trying to get to the point where claims would  
19 be done within a year of when they were sent  
20 to us. We had some claims that were getting  
21 pretty old. We issued that objective last  
22 June with the objective of being in place by

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this June, which is of course about two weeks  
2 away. And we originally published the policy  
3 to address initials, in other words when a  
4 case first came to us from the Department of  
5 Labor, and we expanded the population during  
6 the course of the year to say, why don't we  
7 just try to get any case that comes in,  
8 whether it's an initial one, or one that has  
9 come back to us for rework because perhaps the  
10 medical information changed or something.  
11 Let's try to get them all so they are not here  
12 more than a year.

13 Any of them that we don't get  
14 done, the policy calls for us to critically  
15 evaluate the relevant obstacles and write a  
16 memo to the claim file that recommends the  
17 best way to proceed.

18 And there was a lot of work done  
19 in the last year to try to accomplish this.  
20 I'm not 100 percent sure of these items, but I  
21 know there were a lot of 83.14 SEC petitions  
22 that have been prepared in the past year. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think the Board will recognize for about the  
2 last three meetings we have had a very heavy  
3 agenda in terms of SEC petitions; a large part  
4 of that is a result of this effort to finish  
5 up the research for sites that have not yet  
6 been researched, and reach conclusions on  
7 whether dose reconstruction is feasible or  
8 not.

9 We have also a large number of  
10 Technical Basis Documents to revise, to  
11 incorporate the information we needed. As we  
12 completed research there were cases where we  
13 figured out, okay, well, we do have enough  
14 information to do dose reconstruction, and so  
15 we would write the technical document  
16 supporting it, summarizing the research we  
17 made. And with that time period we had an  
18 average of about 70 dose reconstructions per  
19 week for the year. And we had to continue to  
20 qualify and evaluate new 83.13 SEC petitions,  
21 and we received 11 of those since June of last  
22 year. So that work didn't stop, that had to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 continue. And we have provided some support  
2 to the Advisory Board, Subcommittees and Work  
3 Groups, although I think you will recognize  
4 that may have suffered a little bit because of  
5 all the emphasis on these other things.

6 In terms of how we are doing over  
7 time, this is for the initial cases, it shows  
8 the decrease in those numbers. This is the  
9 reworks, and then this is the combined, so  
10 I'll talk about this a little bit.

11 Today we are down to about 450 or  
12 430 on that remaining number, since March  
13 31<sup>st</sup>, so we are down quite a lot more since  
14 then. You all recognize that that is an awful  
15 lot to get done in a few weeks. As a matter  
16 of fact we are not going to get every one of  
17 those done. There are certain categories of  
18 claims that will not be done by the end of  
19 June. For instance, we are presenting today  
20 several 83.14 SEC recommendations in cases  
21 that we have completed our research, we don't  
22 feel the dose reconstruction is feasible, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we are going to bring a recommendation to add  
2 those Classes.

3 Those claims will not be done by  
4 June 1<sup>st</sup>. First of all, the process for  
5 getting them, the process of the SEC takes 2  
6 to 2-1/2 months after the Board's  
7 recommendation before those claims -- before  
8 it's actually effective, and so those won't be  
9 done.

10 And similarly we haven't done the  
11 non-presumptive, the non-SEC cases, because we  
12 don't feel like we have a formal finding that  
13 the dose reconstruction isn't feasible.

14 I think I actually have a couple  
15 of slides that talk about this. Here are some  
16 SEC Classes that we know won't be done. GE  
17 Evendale, which you know we are researching,  
18 we are doing additional research in to try to  
19 define the size of the class. These remaining  
20 five are being presented at this Board meeting  
21 in terms of our recommendation to add -- a  
22 recommendation essentially to add, to amend

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Class Definition that was provided that  
2 was added earlier.

3 And there are a handful of claims  
4 that we cannot complete because we need  
5 additional information from either DOE or DOL.

6 The DOL are questions about employment; the  
7 DOE ones are usually supplementary Requests  
8 for Additional Information. I don't believe  
9 any of those are the initial requests that we  
10 made for the individual exposure records. But  
11 at times we will make supplementary requests  
12 that are more difficult to fulfill, and there  
13 is some number of those.

14 And then there are a handful of  
15 cases where theoretically we could, and in  
16 fact this first claim, this 83.13 petitioners  
17 where feasibility of dose reconstruction is  
18 under consideration. This slide is a couple  
19 of weeks old, and in the meantime, that one  
20 should be scratched off. We are proceeding  
21 with those dose reconstructions, but we are  
22 going to put a modified letter on the dose

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reconstruction. We are going to send them  
2 their standard letter. The purpose of the  
3 modified letter is to reassure that particular  
4 claimant or petitioner that the fact that we  
5 are doing a dose reconstruction and we are  
6 sending a draft dose reconstruction does not  
7 mean that we have decided definitely that  
8 their dose can be reconstructed. Their  
9 petition is still being evaluated; it may in  
10 fact turn out not to be feasible. But we are  
11 giving them an idea of where the dose  
12 reconstruction would come out under the dose  
13 reconstruction process. But don't worry that  
14 this has no effect on the deliberations on  
15 your SEC petition, and we are still open  
16 mindedly approaching those discussions and it  
17 may in fact be true that their petition may be  
18 successful.

19 We have just a few sites, this  
20 amounts to some 20-some odd claims, that use  
21 surrogate data, and we are evaluating our uses  
22 of surrogate data as it pertains to these

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sites against our own criterion IG-004. And  
2 those evaluations aren't yet complete. And so  
3 we have elected not to send these dose  
4 reconstructions yet until we are comfortable  
5 with those uses of surrogate data based on our  
6 own criteria.

7 We recognize the Board is doing  
8 their own deliberation on that. At that time  
9 when we reach a common understanding of  
10 whether surrogate is acceptable and what type  
11 is acceptable, it looks like we may in fact  
12 have some revisiting of our decision. These  
13 decisions are what we can do now with our  
14 criteria. Of course any Board advice will be  
15 taken as it normally is when we receive it,  
16 and may modify work that was done earlier just  
17 as other Board decisions do on occasion, too.

18 And there was one claim that was  
19 returned to us because of unresolved findings  
20 on Site Profile that was not yet resolved. I  
21 believe it's the Savannah River Site Profile.

22 It was, we thought we had completed dose

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reconstruction. The petitioner asked DOL to  
2 reopen it based on the findings in the Site  
3 Profile. They did and returned it to us.  
4 Those findings are not yet resolved, and so  
5 we've not yet gone ahead with the dose  
6 reconstruction.

7 If we were to redo the dose  
8 reconstruction today; we have not made any  
9 changes to the Site Profile, it would be the  
10 same dose reconstruction as the fire one.

11 So there are -- other than those  
12 of claims associated with those categories is  
13 on the order of 300. We really wanted to get  
14 categories it appears we'll be successful in  
15 meeting the June 1<sup>st</sup> target. The total number  
16 done. We recognized probably a few months ago  
17 that we would be able to get all the SEC  
18 Classes recommended -- researched, recommended  
19 by the February meeting which would have been  
20 the meeting where it had to get done for those  
21 cases to get done by June 1<sup>st</sup>. So we were not  
22 able to do that; we recognized that some

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 months ago. But other than these categories  
2 of exclusion for those reasons and for waiting  
3 for data for others we feel like we have at  
4 least done a creditable job of getting those  
5 cases done. All those have a pathway, all  
6 those 300 claims. Their pathway is  
7 determined, when we get the additional  
8 information from the Agency and you finish it,  
9 you get the Board's recommendation one way or  
10 the other.

11 If the Board declines to add  
12 Classes we have recommended, then we would  
13 have to do some sort of I guess additional  
14 research to do the dose reconstruction. But  
15 so be it. That would take a little while. If  
16 the Board agrees with us and recommends those  
17 Classes, those cases will then go according to  
18 the prescribed pathway. So we think that all  
19 those can be done, and their pathway is set,  
20 so the letters to the file will essentially  
21 say that the obstacles remaining, there don't  
22 really seem to be any obstacles remaining.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It's just a matter of process to get through  
2 this, essentially.

3 Okay, that's the end of my slide  
4 show. Does anybody have any questions?

5 Okay, if there are no question --  
6 oh, I'm sorry. I was trying.

7 CHAIRMAN MELIUS: Oh, Wanda.

8 MEMBER MUNN: This is a simple  
9 process question more than anything else.  
10 These status reports for some of us are a  
11 crucial part of accumulation of information  
12 that we maintain for the Board. My current  
13 electronic file does not include that  
14 presentation. I'm assuming that the  
15 presentation will be added to our file for  
16 this meeting?

17 MR. HINNEFELD: So what you are  
18 saying is you didn't get this presentation  
19 electronically?

20 MEMBER MUNN: That is correct, I  
21 did not get it.

22 MR. HINNEFELD: That's news to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 me.

2 MEMBER ZIEMER: Dr. Melius?

3 CHAIRMAN MELIUS: Yes.

4 MEMBER ZIEMER: Paul Ziemer here.

5 Let me just verify the same thing that Wanda  
6 said, because I was looking for the file in  
7 the -- we have a Niagara Falls list of  
8 documents that Zaida provided, and I just  
9 emailed Zaida while we were talking and Zaida  
10 didn't have that available. So I suspect it  
11 can be easily transmitted to all the Board  
12 members.

13 MR. HINNEFELD: We'll make sure  
14 we'll send this to all the Board members.

15 MEMBER ZIEMER: And we may have a  
16 similar issue on the upcoming presentations,  
17 as far as the PowerPoints are concerned.

18 MR. HINNEFELD: None of the  
19 PowerPoints got to the members?

20 CHAIRMAN MELIUS: It's funny  
21 because -- Jim Melius -- it's on the one I  
22 have. I have the following is Stu --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MEMBER ZIEMER: Is it on the O:  
2 drive?

3 CHAIRMAN MELIUS: Not on the O:  
4 drive, on the stick. Okay, I see it. Okay.

5 MEMBER ZIEMER: What is it under?

6 CHAIRMAN MELIUS: Mine is on a  
7 separate file, sorry.

8 MR. KATZ: Nancy is saying, Paul,  
9 it's under NIOSH updates on the O: drive.

10 MEMBER ZIEMER: I am looking at  
11 the Niagara Falls section of the O: drive and  
12 there is nothing called NIOSH updates.

13 MEMBER MUNN: Some of you may  
14 have a later version of Niagara Falls.

15 MR. HINNEFELD: It's not a  
16 problem. We can put it on the O: drive and  
17 that would be no problem in transmitting this  
18 via email. And we may do both, to make sure  
19 all the Board members have it. And I  
20 apologize for it; I thought it was there. I  
21 thought it would be on the stick.

22 MEMBER MUNN: We don't get a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stick.

2 MR. HINNEFELD: You don't get a  
3 stick anymore? It just goes on the O: drive?

4 Okay, I thought it would be there. I thought  
5 it would be wherever it was supposed to be.

6 CHAIRMAN MELIUS: Any other  
7 questions?

8 MR. HINNEFELD: Okay, now one  
9 thing I did not mention was the program review  
10 which is being done of our program by the  
11 Office of the Director, Director of NIOSH, not  
12 my office, and Lew Wade wants to say just a  
13 couple of words about that.

14 DR. WADE: Thank you. Good  
15 morning, Board members. I will be very brief  
16 and give you a brief update on the status of  
17 the 10-year program review. As you know, the  
18 review was going to focus on five topical  
19 areas. Those areas are the quality of science  
20 practiced by the program, the timing and  
21 accomplishment of NIOSH's program tasks, the  
22 SEC activities, the individual dose

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 reconstruction activities, and then the  
2 services provided to claimants and  
3 petitioners.

4 The review will take place in two  
5 phases. The first phase is to focus on data  
6 and facts surrounding those five topical  
7 areas. That phase one review will conclude by  
8 observations and comments by the authors. Let  
9 me briefly remind you of the authors of these  
10 various pieces. The quality of science piece  
11 will be offered by Professor Henry Spitz of  
12 the University of Cincinnati and Doug Daniels  
13 of NIOSH's staff. The timing piece by Nancy  
14 Adams. The SEC piece by Randy Rabinowitz who  
15 is with us here. The dose reconstruction  
16 piece, I'll author. And then the claimant and  
17 petitioner quality of service will be done by  
18 a team of Denise Brock, Nancy Adams and  
19 myself.

20 Once that phase one report is  
21 complete, then there will be a phase two.  
22 That's where John Howard, the NIOSH director,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 and a group of senior NIOSH leaders will look  
2 at those phase one reports, and formulate  
3 thoughts as to modifications of the program,  
4 be they policy, legislative modifications,  
5 again, based upon the findings of fact.

6           What I've shared with you now, I  
7 hope, I know it's in your book, is a  
8 preliminary draft of the phase one report that  
9 deals with individual dose reconstructions.  
10 Again it's dated May 12<sup>th</sup> and should be in  
11 your book.

12           The reason why I've given you that  
13 is really threefold. One is it lays out a  
14 format that we intend to follow in the phase  
15 one reports. Secondly, it uses Board work. I  
16 refer to Board work products in this document,  
17 and therefore thought it appropriate that I  
18 get it to you as quickly as possible.

19           I also wanted to talk to you  
20 briefly about the topics that will be explored  
21 in that document. And let me read them for  
22 you briefly. Again, you should have this in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 your book.

2           The first topic explored in the DR  
3 piece is the Advisory Board's review of  
4 completed dose reconstructions. Secondly, we  
5 are looking at the Advisory Board's review of  
6 Site Profiles and procedures used to  
7 accomplish individual dose reconstructions.  
8 Third, statistics concerning the number and  
9 time to complete individual dose  
10 reconstructions. Fourth, statistics  
11 concerning the number and time to complete  
12 individual dose reconstructions as evaluated  
13 by dose reconstruction types, dose estimation  
14 types. Fifth, statistics concerning the  
15 number, reason for, and time to complete  
16 partial dose reconstructions. Six, the  
17 percent of dose reconstructions that have  
18 resulted in PoCs greater than 50 percent. And  
19 last, individual dose reconstruction  
20 compensation results based on the cancer model  
21 used.

22           Now in the document I've given you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I've written up all but two of those sections.

2 I don't have the data yet to complete the  
3 dose estimation technique used or the  
4 partials. But I wanted to get this to you for  
5 you to look at and consider and comment upon  
6 either as individual Board members, as you  
7 choose, or as a Board as a whole, particularly  
8 since I'm making use of Board work products  
9 here. I think it is important that you have a  
10 number of opportunities to comment upon them.

11 The schedule that I see unfolding  
12 at your August meeting I would intend to have  
13 the complete draft of the phase one report to  
14 you prior to that meeting, so you could look  
15 at it and react to it. Once you have a chance  
16 to react to it and the document is modified,  
17 then John Howard will start his review from a  
18 policy point of view.

19 I will be available on your phone  
20 call on the 14<sup>th</sup> of August -- 14<sup>th</sup> of July, I'm  
21 sorry -- if the Board has any comments that we  
22 would like to make collectively as a Board at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that point.

2 So again, comments by the Board as  
3 you would like, individual comments from Board  
4 members any time you would like. That's all I  
5 really have.

6 CHAIRMAN MELIUS: Questions or  
7 comments for Lew. Josie.

8 MEMBER BEACH: Just a quick  
9 question. You kept saying, it's available in  
10 our book. And I guess I need to know what  
11 book you are referring to.

12 CHAIRMAN MELIUS: It's the O:  
13 drive.

14 MEMBER BEACH: What is it listed  
15 under?

16 MR. KATZ: So it -- apparently  
17 they are trying to sort this out out there. I  
18 don't know exactly what the situation is.

19 MEMBER ZIEMER: This is Ziemer.  
20 I can shed some light on that. This was  
21 distributed by Zaida just a few days ago. The  
22 email is dated May 11<sup>th</sup>. It's under Zaida's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 email address but is from Dr. Wade. And it  
2 has two documents attached, the one document  
3 is entitled, 10 Year Review of the NIOSH  
4 Radiation Dose Evaluation Program, Phase I  
5 Report. And the second document is called 10  
6 Year Review Phase I Dose Reconstruction.  
7 Those are just attachments to the email. And  
8 I'm looking at this distribution. It went to  
9 every Board member and was sent on 5/11.

10 DR. WADE: And there are hard  
11 copies on the table. So when you have an  
12 opportunity take a look at that and comments  
13 as you would like.

14 CHAIRMAN MELIUS: I for one  
15 didn't get that. So I guess we have some  
16 distribution problems here.

17 MEMBER ZIEMER: Dr. Melius,  
18 Ziemer again. I notice used your CDC address  
19 on this. So that sometimes is an issue still.

20 MEMBER RICHARDSON: This is David  
21 Richardson. I had a question about the  
22 dosimetry, dose reconstruction report that you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 shared, this is in response to an area of  
2 focus which is described here as the  
3 appropriateness and consistency of individual  
4 dose reconstructions. Is that right?

5 DR. WADE: Correct.

6 MEMBER RICHARDSON: I mean I just  
7 read the report quickly. But it seemed to me  
8 that there was a lot of information in the  
9 report under the current organization on  
10 headings that were related to the timing of  
11 dose reconstructions, so tables one, two,  
12 three, four, maybe, are kind of -- it seemed  
13 that they are overlapping with some of the  
14 other topics that are in that NIOSH review,  
15 topic two, the timing accomplishment, topic  
16 five, the timing of service provided. And I  
17 was wondering whether that needed to be there,  
18 or whether the focus could be reoriented a  
19 little bit toward issues of consistency of  
20 dose reconstruction. That was the sort of  
21 information I was looking for there.

22 DR. WADE: Thank you. The

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 approach we are taking now is to let each of  
2 the authors assemble their document as  
3 completely and fully as they would like,  
4 realizing that there is likely to be overlaps,  
5 and then deal with those overlaps on the  
6 editing of the full document. So you will  
7 find overlaps in the drafts as we move  
8 forward. Hopefully those edits will -- those  
9 overlaps will be removed through the editing  
10 process.

11 MEMBER RICHARDSON: And one other  
12 question I had was, I don't tend to think  
13 about evaluations of dose reconstruction as  
14 being tied into Probability of Causation  
15 determinations. I think that those are  
16 largely a function of the risk estimate that  
17 you associate with the doses. And I was  
18 wondering how that fit in again to this issue  
19 of the quality of dose reconstruction and its  
20 consistency.

21 DR. WADE: I understand your  
22 point of view. I do think that to track the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue completely it's, in my opinion, worth  
2 looking at what the dose reconstructions bring  
3 about in terms of Probability of Causation and  
4 compensation decision to see if there is  
5 anything in there that piques one's curiosity.

6 But I do understand the boundary you are  
7 building, and at least at this point I'm  
8 inclined to include it in an early draft and  
9 then possibly remove it if appropriate.

10 MEMBER RICHARDSON: Okay.

11 CHAIRMAN MELIUS: Thanks, David.

12 Ted has an O: drive update.

13 MR. KATZ: I just had an update  
14 on the computer-access issue. I think if you  
15 are in the O: drive right now and you go up a  
16 level and then back into it, you will find  
17 documents now, and it's -- I gather what  
18 happened is that there were no controls put on  
19 that O: drive folder. It was put out there  
20 so that any Board member that moved it or did  
21 anything to the folder, it disappeared for  
22 everybody, including -- they had to track it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 down and find where it was. But in the future  
2 they'll lock that down so it can't go  
3 wandering.

4 CHAIRMAN MELIUS: Wanda stole the  
5 folder.

6 (Laughter.)

7 MEMBER MUNN: Never even found  
8 the folder.

9 (Laughter.)

10 MEMBER MUNN: It's there now.

11 CHAIRMAN MELIUS: It's hiding  
12 from you. It heard you coming.

13 MR. KATZ: So all those documents  
14 now should be there for you if you are in the  
15 O: drive.

16 MEMBER MUNN: Thank you.

17 CHAIRMAN MELIUS: Can I suggest  
18 that, since we are just finding the  
19 information Lew was referring to the  
20 documents, let's take a look at them in the  
21 next couple of days. Maybe we can come back  
22 and talk, but maybe the way to go, given the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 timing, would be that we provide individual  
2 comments between now and the July call, and  
3 then we can put on the agenda for the July  
4 call a time to discuss those, and if there are  
5 common comments we want to make as a Board,  
6 that would be helpful. Maybe if you'd copy me  
7 in your comments to Lew then I will try to see  
8 if there are common themes or common issues  
9 that we want to address as a Board. But I  
10 tend to think the individual comments would be  
11 the best way to go. Think about it once you  
12 look at the document, once you find it and  
13 look at it, and then we'll gather information  
14 and then we can decide.

15 Any other comments or questions on  
16 that? If not, we'll move on to DOL program  
17 update.

#### 18 DOL PROGRAM UPDATE

19 MR. KOTSCH: Good morning. I  
20 have to apologize up front. I managed to get  
21 through an entire winter without picking up a  
22 cold or flu, and now this past weekend we had

### **NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 some pretty wild temperature oscillations back  
2 in D.C. and somehow I picked up something.

3 This is the standard update that I  
4 present every time. And there are only a few  
5 people I think that probably haven't seen this  
6 at least five or six times. So we will  
7 proceed semi-quickly through it. This is the  
8 background of the Energy Employees  
9 Occupational Illness Compensation Program Act.

10 There are two pieces to it, or two parts,  
11 Part B, which is the part that is mostly of  
12 interest here because of the NIOSH dose  
13 reconstructions. That became effective on  
14 July 31<sup>st</sup>, 2001. As of May 6<sup>th</sup>, 2010, we've  
15 had filed 70,599 cases or 105,761 claims. As  
16 I always mention, the number of claims is  
17 always higher because cases with survivors  
18 generally will have one or more survivors. So  
19 it's greater than a one-to-one relationship;  
20 31,931 cases have been referred to NIOSH for  
21 dose reconstruction.

22 The other part of the program is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Part E program, the toxic chemical portion  
2 of the program, which was effective for the  
3 Department of Labor on October 28, 2004.  
4 There have been 61,917 cases filed. That's  
5 87,691 claims. And initially when the program  
6 started 25,000 cases were transferred over  
7 from Department of Energy.

8 The overall breakdown as far as  
9 compensation as of again May 6<sup>th</sup> is \$5.7  
10 billion in total compensation, breaking down  
11 to be \$3.29 billion for Part B, \$1.95 billion  
12 for Part E, and \$488 million for medical  
13 benefits that are associated with the awards.

14 And then this is just the  
15 breakdown of the paid cases under the Act.  
16 There have been 43,000, almost 44,000 Part B  
17 and E cases, 40,000 -- almost 500 Part E  
18 payees and roughly 26,500 cases. And roughly  
19 18,500 Part E Payees, and about 17,500 cases.

20 So the breakdown is roughly 40  
21 percent Part E, 60 percent Part B.

22 Again, just quickly, for Part B it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 covers or addresses radiation-induced cancers,  
2 chronic beryllium disease and beryllium  
3 sensitivity; silicosis for the miners at the  
4 Nevada test site and Amchitka in Alaska. And  
5 the supplement for the RECA Section 5 uranium  
6 workers, which the RECA portion is adjudicated  
7 by the Department of Justice. That is  
8 Radiation Exposure Compensation Act.

9           Again this is just the eligibility  
10 under Part B. DOE employees, the feds, the  
11 DOE contractors and subcontractors. The  
12 Atomic Weapons Employers, beryllium vendors,  
13 the survivors that are listed there, and again  
14 the RECA Section 5 uranium workers. Again,  
15 just the presumptive cancers, the SECs, the  
16 four legislative statutory sites that were in  
17 the Act, the three gaseous diffusion plants,  
18 Ft. Smith, Paducah, 825, plus the Amchitka  
19 test site.

20           And the benefits, the \$150,000  
21 lump sum payment; the medical benefits for  
22 covered conditions; and the medical treatment

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and monitoring only for beryllium sensitivity.  
2 CBD and cancers are covered in the upper  
3 part. And the breakdown of the  
4 final decisions as of May 6<sup>th</sup>, 28,214 final  
5 decisions approved; 21,140 final decisions  
6 denied. And the bars to the right on the  
7 right side, the bulk of the denials resulting  
8 from about 14,900 Probability of Causations  
9 less than 50, and about 5,700 where there was  
10 insufficient medical evidence.

11 Part E, just quickly, it's a  
12 federal entitlement program, like Part B, lump  
13 sum payments, up to \$250,000, usually on top  
14 of the Part B payment, if there is a cancer.  
15 Plus medical benefits for the accepted  
16 conditions.

17 Part E is a little bit different.  
18 A couple of the things are, it only applies  
19 to the DOE contractors and subcontractors, not  
20 the AWE folks or the beryllium vendors.  
21 Survivors, there is some differences in the  
22 survivors. For the deceased workers, you can

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compare those. But it does deal in Part E  
2 with any occupational disease from any toxic  
3 exposure. That includes again the Part B  
4 people.

5 It addresses in Part E impairment,  
6 the percentages of award for permanent whole  
7 body impairment is \$2,500 per point. It  
8 addresses in Part E wage loss, and there you  
9 see the distribution of those. Again based on  
10 decreased capacity to work.

11 And just in summary, the Part E  
12 cases, the final decisions, 23,504 approved;  
13 19,394 denied, and again, actually the bulk of  
14 those is 13,342, is medical information  
15 insufficient to support the claim.

16 Getting back to the NIOSH --  
17 referrals to NIOSH, we are indicating as of  
18 May 6<sup>th</sup> 31,931 cases referred to NIOSH for  
19 dose reconstruction. That breaks down to  
20 27,783 cases returned by NIOSH that are  
21 currently at DOL, 24,100 roughly of those had  
22 dose reconstructions, and the rest did not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have dose reconstructions. They were probably  
2 returned for SEC Classes and things like that,  
3 or insufficient information to proceed with  
4 the adjudication.

5 We are showing 4,148 cases at  
6 NIOSH which breaks down to about 2,750 for  
7 initial referrals and about 1,400 for reworks.

8 Cases that generally back to NIOSH  
9 for -- after the initial dose reconstruction  
10 generally for, the biggest reasons are  
11 additional employment or evidence of  
12 additional cancers.

13 As far as the new SEC-related  
14 cases about -- well, not about, 2,887 cases  
15 were withdrawn from NIOSH for review; 2,544  
16 have had final decisions issues; and 2,480 of  
17 those have final approvals; 43 have  
18 recommended but no finals; 91 cases are  
19 pending at Labor; and 209 cases were closed  
20 because of problems with information.

21 Again a quick overview of the  
22 process at DOL, a recommended decision is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rendered at the district-office level; that  
2 goes to the claimant, if it's obviously not a  
3 compensable case, the claimant has the  
4 opportunity to provide objections or  
5 additional information. Then the final  
6 adjudication board within Labor renders a  
7 final decision based on a review of that  
8 information, and renders what's up there as  
9 the final decision or the final approval.

10 Status of the dose reconstruction  
11 is 24,102 have been returned by NIOSH with a  
12 dose reconstruction; 21,540 cases have a dose  
13 reconstruction and a final decision. Again  
14 you see basically the breakdown as far as from  
15 the Labor statistics: 66 percent final  
16 denials; 34 percent final approvals.

17 Part B, cancer cases with final  
18 decisions to accept. There have been 6,872  
19 dose-reconstructed cases that have been  
20 accepted, resulting in \$1 billion in  
21 compensation. There have been 10,684 accepted  
22 SEC cases, which resulted in \$1.6 billion in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compensation. Cases accepted both on SEC  
2 status and Probability of Causation 50 percent  
3 or greater were 386, or \$57.4 million in  
4 compensation. Which totals out for all  
5 accepted SEC and DR cases, dose-reconstructed  
6 cases, 17,942 or \$2.6 billion in compensation.

7 The next series are just some  
8 monthly Part B cases sent to NIOSH, running  
9 about, I guess in the upper 200s. Nationwide  
10 the new Part B cases that the DOL receives  
11 monthly which include obviously the beryllium  
12 and the silicosis as well as the cancer has  
13 ticked up a little bit. I think that may be a  
14 result, as we'll see later, may be a result of  
15 some of the new SEC, say at Hanford or  
16 something, that has prompted some additional  
17 submittals of claims.

18 Last couple of months, 552 in  
19 March, April, 480. Just a quick note about  
20 the top four worksites that are generating  
21 Part B claims or cases for us. Hanford, Y-12,  
22 Savannah River site, Oak Ridge Diffusion

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 plant, K-25. Again there's numbers for those.  
2 Like I said I think we are seeing that uptick  
3 for Hanford I think as a result of the Hanford  
4 Class, the SEC Classes, and the people just  
5 responding to that. Y-12 is pretty much  
6 probably level; these are just normal  
7 fluctuations. Savannah River, those are those  
8 numbers. And K-25.

9           These are just the percentages,  
10 this and the next slide are the percentages of  
11 the new Part B cases. These are the DOE cases  
12 received monthly by the Department of Labor by  
13 percentage. And it usually runs about the low  
14 90s, the split between that and this slide  
15 which is the AWEs, which are generally running  
16 in the upper single digits.

17           And then these, I'm not going to  
18 go through all these, the next few sets of  
19 slides are the information that we provide for  
20 both the SEC Classes that are being presented  
21 at this meeting just as far as background  
22 information goes, and some of the local

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 facilities, I mean facilities that are local  
2 to Niagara Falls-Buffalo area. So that's what  
3 the next few slides are. You see here, Mound,  
4 just a few quick ones, 1,712 cases, both Part  
5 B and E for Mound. There have been 484 cases  
6 returned by NIOSH with a dose reconstruction;  
7 665 final Part B decisions; 246 Part B  
8 approvals; 270 Part E approvals for total  
9 compensation and medical bills paid, \$56.5  
10 million.

11 As you go across, you see  
12 University of Rochester. You see since that  
13 is an AWE it's not affected by or not covered  
14 under Part E, so there's only Part B numbers  
15 there. Same with BWX Technologies, Hooker  
16 Electrochemical.

17 Just a few Linde Ceramics, \$27.4  
18 million in compensation for 144 Part B  
19 approvals and 62 Part E approvals. There is  
20 the St. Louis Airport site, Weldon Spring,  
21 Blockson Chemical, Chapman Valve, again it's  
22 an AWE, so it's only Part B, \$6.8 million in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compensation. Bethlehem Steel, \$61.7 million  
2 in compensation with 406 approvals. LANL,  
3 \$199 million with 855 Part B approvals, 890  
4 Part E approvals. De Soto Avenue, Downey  
5 facility, Bliss & Laughlin, Carborundum, Linde  
6 Air Products, Ashland Oil, Seaway Industrial  
7 Park, Lake Ontario Ordnance, and Electro  
8 Metallurgical. And then just the pie chart of  
9 all the B cases files, the breakdown of those.

10 Six percent ended up with NIOSH, 36 percent  
11 for others includes in our space the  
12 silicosis, the beryllium claims, things like  
13 that.

14 Now Dr. Melius had asked for a bit  
15 of an update or an overview I guess of how we  
16 implement SEC Classes at Labor. And I'll give  
17 you a quick one, and then you can ask any  
18 questions. The process starts with NIOSH  
19 submitting a letter to the Department of  
20 Labor, sharing the draft language for the new  
21 Class Definition. I said a month. It varies,  
22 the time varies, but sometimes we get quite a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 bit of lead time for the ones that are coming  
2 up essentially for scheduled for the next  
3 Monday.

4 And then we review that and we  
5 send it back, send comments back. The easy  
6 ones are the ones that say all employees that  
7 are, whether it's AWE or DOE, at a facility,  
8 those are fairly straightforward, and don't  
9 require a lot of head-scratching to come up  
10 with the fact that we probably don't have a  
11 problem with the Class Definition.

12 But the ones that do have, that  
13 cause us to review them a little more closely  
14 are the ones where there is some type of  
15 restriction based on the Class, whether it's a  
16 particular building is cited, or an area of a  
17 plant like Area 4 at Santa Susana Field  
18 Laboratory or buildings at a particular site,  
19 or in the early days, there were a lot of  
20 monitored or should have been monitored.  
21 Things like that caused us at Labor a little  
22 more, required us to provide a little more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 scrutiny. But what we often did, we'd talk to  
2 the District office that was affected by that  
3 site and say, hey, pull some cases, tell us if  
4 you can really implement that Class because of  
5 employment restrictions or that building  
6 restriction or that monitoring restriction,  
7 and can we actually do that, can we get that  
8 information?

9 The whole intent of this thing is  
10 to improve the consistency and the fairness of  
11 the claims adjudication process; ultimately to  
12 speed the process of determining which cases  
13 can be considered as part of the new SEC  
14 Class. But we do not at any time comment on  
15 whether the new SEC Class is indeed necessary.

16 There's a point on the next slide  
17 which should probably be up here, but at this  
18 point, too, not only is there management and  
19 technical review; there is also review by our  
20 solicitor's office, primarily to the point of  
21 sometimes we get into facilities question as  
22 to whether -- and I can't think of specific

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 examples now. One of them was I think maybe  
2 MIT or something. Anyway, where there was a  
3 discussion of building put in that Class, and  
4 we looked at it from a facility definition  
5 standpoint, had an issue with that, and talked  
6 to NIOSH about that, got that resolved. So  
7 things like that are going on at that point in  
8 the process, trying to first of all make sure  
9 that that definition fits within the facility  
10 definitions that already exist and should  
11 exist, and whether we can actually put people  
12 into that Class. And that is the whole goal  
13 when we review that draft proposal language.

14 Okay, so for this bullet, for  
15 Classes that do not cover all the workers, DOE  
16 strives to describe as many ways as possible  
17 to place the individuals in the covered  
18 buildings or areas or what have you. All  
19 cases, whether they are really an open class,  
20 like all workers, or some kind of restricted  
21 Class where they are defined more by buildings  
22 or something else, they are all done on a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case-by-case basis. You don't always -- you  
2 may not always have all the employment  
3 information you need to determine either the  
4 location or the 250 day requirement or things  
5 like that. So a number of pieces of  
6 information are used. Obviously all the  
7 employment information from the site is  
8 reviewed. We receive information, request and  
9 receive information from the Social Security  
10 Administration. Pay records essentially are  
11 summaries. There may be department  
12 affiliation records that we can look at, or  
13 monitoring records that are often very useful.

14 There may be medical records that give some  
15 indications of the buildings or the time  
16 period that a person has worked in. There may  
17 be security records, access records. And as  
18 always, the claimant has the option of  
19 providing affidavits from other workers,  
20 coworkers, or other individuals that can place  
21 people on sites or in buildings or things like  
22 that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           And DOL includes in the bulletin a  
2 list of records that can be used when  
3 establishing a membership in the SEC class.  
4 But again done on a case-by-case basis, and  
5 that can encompass a wide range of documents  
6 if necessary. Once the HHS letter is  
7 submitted to Congress, that is really the bell  
8 to our procedure folks to move on the final  
9 approval of the bulletin. It goes again  
10 through our management process, and the Energy  
11 Employees Occupational Illness Compensation  
12 Division, the Offices of the Solicitor and  
13 then our current office, the Office of  
14 Workers Compensation Programs.

15           Unlike NIOSH, offices are higher  
16 in our organization than divisions, so.

17           But anyway the DOL goal is to have  
18 the bulletin finalized by the SEC Class  
19 effective date, and in the early days -- well,  
20 maybe even not that early -- but we didn't  
21 always achieve that. But hopefully we will  
22 move close. Nowadays we have lists, NIOSH

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 provides us with lists of cases. We generate  
2 our own lists of what we think are the  
3 effective cases, and we start to share those  
4 with our district offices during this process  
5 so they can start basically queuing up those  
6 cases so that when the gun goes off on the net  
7 effective date, we are now, at least over the  
8 last few times we've done this we have been  
9 pretty good about getting out of the blocks  
10 pretty quick.

11 And the last part, after the Class  
12 is officially effective, DOL is working  
13 through its review of the cases that are in  
14 the SEC Class to determine whether they meet  
15 the requirements of the class, the 250 days,  
16 have the specified cancer, if there are  
17 additional requirements of the Class meet  
18 those.

19 We get into the outreach phase.  
20 If it's a small Class usually we just contact  
21 -- if it's a few people or one person we'll  
22 just contact the claimant by phone and discuss

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Class with them. If it's a larger Class  
2 like the Nevada Test Sites or the Hanfords or  
3 even the Lawrence Livermores which are going  
4 to be coming up, I forget the dates, our  
5 people and often with representatives from  
6 NIOSH will go out and basically do townhall  
7 meetings or meetings with -- if the -- in the  
8 area of the facility to discuss the new SEC  
9 class. Concurrent with that, there are  
10 whatever efforts are made to try to get the  
11 word out through union newsletters or  
12 newspapers or however our outreach program has  
13 decided is the best way to get that  
14 information out.

15 Any questions?

16 CHAIRMAN MELIUS: Questions?

17 Yes, Mark.

18 MEMBER GRIFFON: Just my regular  
19 question, Jeff, on the Rocky Flats review of  
20 the Rutenber Data, I'm hoping that you will  
21 have something to tell us at this point. It's  
22 been several meetings.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. KOTSCH:       Yes, I understand.  
2                   I have something to say but it's not what you  
3                   want to hear, unfortunately. It is still with  
4                   management as far as how they want to handle  
5                   the use of the Ruttenber data, because it  
6                   would be used in conjunction with the  
7                   information that we are already using for that  
8                   class.

9                   MEMBER GRIFFON:     And are you at  
10                  any point going to like report back to us on  
11                  just what you found in your review and why you  
12                  are ending up with a decision -- I guess once  
13                  you have a final decision?

14                  MR. KOTSCH:       Yes, once the  
15                  Department has decided which way they want to  
16                  go with the use of it or how they want to use  
17                  that data, then we'll provide some background  
18                  on the thought process.

19                  MEMBER GRIFFON:     Okay.

20                  CHAIRMAN MELIUS:     Anybody else?  
21                  If not, could you comment on -- we've been  
22                  going through this process recently of re-

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 looking at old Classes. Could you comment on  
2 sort of how this has arisen? Why are we  
3 looking at these old Classes, like some of the  
4 restricted Classes we are now talking about  
5 making them more generalized, and sort of what  
6 would be the rationale for that and the  
7 process for that?

8 MR. KOTSCH: I think those issues  
9 are -- I mean, NIOSH is implementing those  
10 issues. I mean we had -- and I don't know if  
11 LaVon wants to discuss it, but the things that  
12 spring to my mind are the Y-12 class, maybe  
13 Lawrence Livermore where there were some -- I  
14 don't know, do you want to talk, LaVon?

15 MR. RUTHERFORD: Yes, I think  
16 it's more critical from our end that -- in  
17 retrospect after looking at the claims -- I'm  
18 LaVon Rutherford by the way -- in retrospect  
19 after looking at the claims we felt that some  
20 of those claims should have ended up in the  
21 class. And when you look at that situation,  
22 if there is a question as to whether a claim

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 should end up in a class, maybe we haven't  
2 defined it appropriately, so that's why we've  
3 gone back and done that.

4 Lawrence Livermore National Lab,  
5 that's one that we've done. We are getting  
6 ready to do Los Alamos for the same reason.

7 MEMBER GRIFFON: And have you  
8 looked at Rocky Flats?

9 MR. RUTHERFORD: Not yet. That  
10 whole process of reviewing all the Classes is  
11 really going to occur mainly after June 1 to a  
12 period of time, and I'll have a better update.

13 But if you look at the Los Alamos one, we  
14 defined it as technical areas. And ultimately  
15 we went back, and we said, okay here's another  
16 technical area we missed, and we revised that  
17 list, and even in that process of defining all  
18 these technical areas where there was  
19 potential radioactive material we still ended  
20 up with a few claims that came back to us that  
21 we were concerned from our end that they  
22 probably should have been included in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 class. And from -- so it was our approach  
2 that if there are claims that are not being  
3 included in a Class that we felt they should  
4 have been, then we probably did not define the  
5 Class appropriately. And so that's why we are  
6 going back and revising some of this.

7 CHAIRMAN MELIUS: How do we know  
8 that that's a widespread problem? There is  
9 always going to be -- given how complicated  
10 these sites are and given some of the vagaries  
11 of personnel records and how people were  
12 assigned, there's always going to be people  
13 that may not fit. It may be hard for DOL to  
14 administer. So I'm getting two things.  
15 Sometimes it's starting with NIOSH. Sometimes  
16 it's issues of how can DOL administer it based  
17 on the records that are available to DOL. I'm  
18 just trying to understand where these  
19 different -- it may be both in different  
20 situations, but how this applies, how it comes  
21 about.

22 MR. RUTHERFORD: I don't think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there is a widespread problem, first of all.  
2 I think the approach we have with the  
3 Department of Labor, I think we do give that  
4 opportunity to the Department of Labor up  
5 front because of lessons learned early on in  
6 the process to see if they can implement the  
7 class. I think their implementing of the  
8 class, even with Los Alamos and Lawrence  
9 Livermore, the ones that we have changed now,  
10 I think we learned over time that initially  
11 they felt they could implement the Class as  
12 written, and they probably are. But we didn't  
13 actually -- we probably missed some of the  
14 boundaries involved, I should say. And that  
15 is how Class claims ended up coming back to us  
16 that should have been included in the class.

17 CHAIRMAN MELIUS: Then who  
18 determines when you miss the boundaries what  
19 the new boundaries are? It seems like on Los  
20 Alamos you are talking about well there are a  
21 couple of technical areas you missed. And  
22 then you like sort of it becomes a very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 generalized Class that covers everybody.  
2 Hanford became the entire site. The  
3 buildings, the office buildings. And I guess  
4 I'm just trying to understand how that process  
5 comes about. There may be situations where  
6 there aren't adequate personnel records which  
7 DOL would be the one handling those and trying  
8 to make the individual determinations. And  
9 then how does NIOSH make their own  
10 determinations?

11 MR. RUTHERFORD: Well, when we  
12 review and initially define an infeasibility,  
13 we try to put boundaries around that  
14 infeasibility. We put years, and then we have  
15 to look at, okay, where was the exposure  
16 potential for that infeasibility? How  
17 widespread was it? Once we define if it's  
18 limited to a building, then we determine,  
19 okay, are there potentially individuals,  
20 maintenance workers, firefighters, individuals  
21 that would have went into that building, that  
22 would have walked into that building, security

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 guards that need to be defined included in  
2 that class? We try to define if we can limit  
3 that Class to only workers that were in a  
4 specific building, then we have to go to the  
5 Department of Labor and say, okay, we plan on  
6 -- in fact Mound is coming up, it's going to  
7 be a lot of discussion -- we say that our  
8 infeasibility is limited to this building.  
9 Can you identify workers specifically that  
10 worked in this building for 250 days, and can  
11 you administer this Class basically?

12 And then the Department of Labor  
13 reviews that Class Definition, reviews their  
14 information available, employment records and  
15 so on, to determine if they can administer the  
16 class. The difficulty you get into is are  
17 there other workers that were potentially from  
18 our end that may be missed in that process?  
19 So that is a collaboration we have to work  
20 with the Department of Labor and come to an  
21 agreement on that.

22 CHAIRMAN MELIUS: And where does

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DOE fit in? Do you -- DOL interacts with DOE,  
2 that was on one of your slides, Jeff, in terms  
3 of your setting up the Class and so forth.  
4 They apparently at least review the Class  
5 Definition.

6 MR. KOTSCH: I don't know if they  
7 always get the Class Definition. When we  
8 think we are going to have issues with  
9 employment, or putting people in buildings, or  
10 something, we will talk to Greg or somebody at  
11 DOE and try to determine whether we really  
12 have that kind of information available to us  
13 to proceed with putting people in a building  
14 or were they monitored or whatever the issue  
15 is, or can we get employment records or the  
16 completeness of those records.

17 So there is communications -- I  
18 won't say it happens on every class, but  
19 certainly on the ones that we have issues with  
20 or that we think we may have issues with,  
21 where we do talk to the Department of Energy.

22 CHAIRMAN MELIUS: So there is no

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 formal -- they are not formally involved in  
2 any of these?

3 MR. KOTSCH: I know that  
4 sometimes -- it's more like when we are  
5 getting into facilities, like definitions of  
6 things. I know we exchange letters on those  
7 kinds of things. On this process I don't  
8 think it's as formal.

9 CHAIRMAN MELIUS: Okay.

10 MR. KOTSCH: Like I said at the  
11 beginning, when we have issues like that, we  
12 try to sample -- we ask the district office to  
13 try to sample some cases, and that is semi-  
14 random. We'd hope, just to see, kind of get  
15 some general feel for whether that information  
16 exists in the records, or is available in a  
17 record. I suppose sometimes that backfires on  
18 us.

19 MR. HINNEFELD: If I can offer  
20 one thing, when we go through this process of  
21 defining a Class now -- we haven't always done  
22 this -- we are looking for documentary

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 evidence of people in the plants, what is the  
2 document, rather than write a Class where  
3 something has to be generated, or the claimant  
4 has to provide, the burden of proof is based  
5 on the claimant that said they spent 250 days  
6 in that building. So we want to avoid placing  
7 that burden on the claimants to have to  
8 provide additional evidence. We are looking  
9 for some sort of documentary evidence that  
10 defines or includes this Class of people. And  
11 if that exists then we may have a more  
12 restrictive Class Definition. Absent that  
13 kind of evidence that allows you to define it,  
14 we tend now to go to the larger, say we can't  
15 provide evidence of who actually was in that  
16 area or not.

17 CHAIRMAN MELIUS: That's helpful,  
18 Stu. I think there's been two issues where  
19 this has been raised. One is something like  
20 the General Electric site where the Class is  
21 so broad that it raises issues about equity  
22 and so forth given that particular facility.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 And the other way it's coming up is since we  
2 are going back to revising the Classes that  
3 you are doing, so it reflects the  
4 justification for that. We are suddenly --  
5 generally expanding a Class pretty  
6 significantly, and how do we capture what we  
7 are doing in a report. In some of the reports  
8 you do well, and there is documentation. In  
9 others it's less clear why we're doing it.  
10 Los Alamos, at least I found, it's not quite  
11 as clear why you are doing it, making this  
12 change now. And I think that is the other  
13 thing. I'm trying to understand the process  
14 so we sort of understand where it's coming  
15 from and what information to look for without  
16 making more work for DOL necessarily, or  
17 generate more reports or anything like that.

18 MR. HINNEFELD: I personally  
19 don't care how much work we make for DOL. But  
20 the idea is not to put a lot of work on the  
21 claimants, and would document a record.

22 CHAIRMAN MELIUS: And then the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 third is, I guess I'm trying to understand  
2 where DOE could fit in. At our last meeting  
3 when we discussed it, I believe it was Regina  
4 or Pat Worthington jumped in and said that  
5 they thought that there may be a role for them  
6 to be more helpful with this also.

7 MR. HINNEFELD: To the extent  
8 that they may know more about the entirety of  
9 the record set that is available, that would  
10 be I think where they would come in.

11 CHAIRMAN MELIUS: No, when you go  
12 to your field offices, I mean I have visited  
13 your field offices. And you had a few cases  
14 to work from, limited information. And then  
15 you had some staff that were often from the  
16 facility, so they knew the facility. But even  
17 they would not know the records for every  
18 contractor or every employee. These are very  
19 complicated facilities and it's difficult.

20 Paul or David, do you have any  
21 questions?

22 MEMBER RICHARDSON: Yes?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   CHAIRMAN MELIUS:        Yes, hi, any  
2                   questions, David or Paul?

3                   MEMBER RICHARDSON:    No.

4                   CHAIRMAN MELIUS:        Okay.    Well,  
5                   we'll move on.

6                   MEMBER ZIEMER:        This is Ziemer, I  
7                   have no questions.    Sorry, I had the mute in  
8                   the wrong position.

9                   CHAIRMAN MELIUS:        Okay, I just  
10                  don't want to be ignoring you.

11                  MEMBER ZIEMER:        Thank you.

12                  CHAIRMAN MELIUS:        Okay, we'll  
13                  hear from Department of Energy.

14                                DOE PROGRAM UPDATE

15                  MR.    LEWIS:            Good morning,  
16                  everybody.    Again, I'm Greg Lewis.    I'm the  
17                  program manager for the EEOICPA program at the  
18                  Department of Energy.    The EEOICPA program at  
19                  DOE is run out of the Office of Health and  
20                  Safety, and the director of the Office of  
21                  Health and Safety, Dr. Pat Worthington, was  
22                  going to come and present to you today but was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 unable to make it last minute. So here I am.

2 And just to address Dr. Melius'  
3 question from Jeff's presentation, I know we  
4 have had involvement in these types of issues  
5 in terms of whether or not the records are  
6 able to place people in certain buildings or  
7 locations, or they are able to meet the needs  
8 of the various SEC Classes. I know in the  
9 past it's been requested by DOL and NIOSH,  
10 although I believe since the last Board  
11 meeting I think we've been more involved. I  
12 think DOL is sending us every proposed Class  
13 Definition before it goes out and allowing us  
14 to comment. So we have done so on a few, and  
15 we have been involved.

16 And again at DOE our primary role  
17 in the EEOICPA program is to provide records.

18 Our core mandate is to work on behalf of  
19 program claimants to ensure that all available  
20 worker and facility records and data are  
21 provided to DOL, NIOSH and the Advisory Board.

22 So again we provide records.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   We           have           three           primary  
2           responsibilities under the program; we respond  
3           to individual requests for information from  
4           DOL and NIOSH on a per claimant basis. We  
5           also provide support and assistance to DOL,  
6           NIOSH and the Advisory Board on large-scale  
7           records research projects and data retrieval  
8           at DOE sites. And the third responsibility is  
9           to conduct research in coordination with DOL  
10          and NIOSH on issues related to the covered  
11          facility list.

12                   As far as individual claims, we do  
13          about 6,500 employment verifications per year,  
14          about 3,000 dose requests from NIOSH, and  
15          about 6,500 what we call DARs from DOL, and  
16          those are requests for exposure information,  
17          HR, IH, medical information, the various  
18          things that DOL needs to adjudicate these.

19                   In FY 2009 we did just under  
20          16,000 individual records requests, and in FY  
21          2010 we anticipate the number to be about the  
22          same. And again it's somewhat difficult

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because our numbers don't always match up with  
2 the Department of Labor's and NIOSH's and  
3 that's because we do it on a per-site basis,  
4 so I think typically within the DOE world many  
5 of the workers worked at two and three  
6 facilities over their career, and if that is  
7 the case, we still have to do two and three  
8 searches for records, whereas it may just be  
9 one case or one claim. So the numbers don't  
10 quite always match up, but those are the  
11 number of our first requests that we have  
12 completed.

13 The primary role in our program is  
14 taken by the local EEOICPA site point of  
15 contacts. These are the folks at the various  
16 active DOE sites throughout the country that  
17 manage the program at that site. They have a  
18 huge responsibility and are really the  
19 backbone of our ability to provide records.  
20 These folks attend local public meetings, they  
21 set up site visits and tours for the NIOSH and  
22 DOL staff on large-scale records requests.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 They facilitate interviews for these records  
2 research projects. They provide -- locate and  
3 provide subject matter experts that can  
4 interview and talk with the various research  
5 groups. They also provide information to the  
6 current workers, so they conduct some outreach  
7 and work with some of the current workers that  
8 are claimants or may be involved in the  
9 program. And of course then these are the  
10 people that manage the 16,000 records requests  
11 per year. Their response is at the site,  
12 gathering the records from the various active  
13 provisions and responding to DOL and NIOSH  
14 within the 60-day timeframe.

15 So again our -- in addition to the  
16 individual records requests, the most work we  
17 do for large-scale records research is of  
18 course the SEC evaluations. And currently  
19 these are a number of SEC projects that we are  
20 either working on or have recently completed  
21 our supporting NIOSH's efforts. So Hanford,  
22 Mound, Savannah River, Pantex, Weldon Springs,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 BWXT, Los Alamos, Brookhaven, Nevada, Santa  
2 Susannah Area 4, and St. Louis Airport Storage  
3 Site and Linde.

4 I'll go through a few of these.  
5 I'll get more into detail on a few of them,  
6 but if there are questions at the end just  
7 ask. So for Mound we've facilitated meetings  
8 where members of NIOSH and the Advisory Board  
9 have had classified discussions about Mound  
10 activities. We have also had subject matter  
11 experts on our end in to talk to them about  
12 various classification concerns and how they  
13 could articulate their various issues.

14 We have facilitated over 40 worker  
15 interviews, and because Mound is a closure  
16 site and we don't have an active DOE facility  
17 or location for classified interviews, we have  
18 worked with the FBI office in Dayton for use  
19 of their facilities to conduct these  
20 interviews.

21 We have also set up Mound document  
22 review visits at numerous locations. Our NSA

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 service center in Albuquerque and College  
2 Park, Oak Ridge, Pantex, Los Alamos, Denver,  
3 and of course primarily at our Mound View  
4 facility in Dayton that is run by our Office  
5 of Legacy Management.

6 At Pantex we are continuing to  
7 facilitate worker interviews. There is  
8 actually an onsite visit happening this week,  
9 so they are down at Pantex. I think members  
10 of SC&A are down there doing interviews. I  
11 think somewhere around 30 just this week  
12 alone, I believe.

13 We are also working to set up a  
14 second site tour for members of NIOSH, the  
15 Advisory Board and their contractors, while  
16 the SC&A group is down there this week, I  
17 think they were talking with the Pantex folks  
18 about how to set up that tour, what is going  
19 to be on the agenda and the timeframe. So we  
20 will continue to work on that.

21 At Linde we've supported research  
22 for Linde Ceramics documents. Most of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Linde documents are held in the DOE Office of  
2 Legacy Management which handles the records  
3 for the closure sites or former DOE sites. LM  
4 has worked extensively with NIOSH to provide  
5 copies, and we have also supported record  
6 review visits for Linde at various federal  
7 record centers, and additional smaller sources  
8 within the DOE.

9 Hanford, this work is primarily  
10 completed, although I know we do continue to  
11 work with SC&A and NIOSH on various follow-up  
12 actions, but I won't go through all of these,  
13 but these are some of the efforts that we took  
14 for Hanford.

15 Savannah River again we --  
16 thousands of documents and hundreds of  
17 thousands of pages were produced and reviewed  
18 for the research effort.

19 Again at Brookhaven, multiple data  
20 capture visits were supported, hundreds of  
21 boxes of records. We facilitated a site  
22 subject matter experts to talk to and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 interview with the various groups, and that's  
2 similar to the process at most of the sites.

3 As far as document reviews,  
4 recently with the creation of our security  
5 plan and the NIOSH security plan and the  
6 Advisory Board's security plan, we have had a  
7 fair amount of work completing document  
8 reviews for the various source documents  
9 requested, as well as the NIOSH and SC&A and  
10 Board reports that we are reviewing. So we  
11 are committed to provide documents to DOL,  
12 NIOSH and the Advisory Board, but we must do  
13 so in a responsible manner to protect national  
14 security interest.

15 We just make sure to comply with  
16 existing DOE and NIOSH security plans. We  
17 follow those to a T, and if there are any  
18 issues, we can always go back and look at  
19 those security plans to see if they need to be  
20 changed. And our security plan is at that  
21 link, and I believe the NIOSH and Board plans  
22 are on their website as well.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Since March of 2010, so roughly  
2 since the last Board meeting, NIOSH, the  
3 Advisory Board and the contractors have  
4 submitted 74 documents for DOE classification  
5 review.

6           The average turn-around time for  
7 these 74 documents was eight working days, and  
8 as always in certain cases where an expedited  
9 review is necessary we have returned documents  
10 in two to three days, when necessary.

11           And again just to clarify these  
12 are the reviews of documents that come to DOE  
13 headquarters. We also review documents at  
14 the field sites. We have a little bit less  
15 control over the field sites and depending on  
16 their workload, it's not necessarily eight  
17 days, especially because the documents that go  
18 to the DOE field sites are typically source  
19 documents, and where a report can be 50 to 100  
20 pages, a source document can be five, six, 700  
21 pages at times, so those can be more  
22 difficult. But we make every effort to return

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 those documents to NIOSH, and as soon as we  
2 can in the timeframe that meets their needs.

3 And then our third major  
4 responsibility at DOE is to research and  
5 maintain the covered facility database, which  
6 is a database of over 300 facilities covered  
7 under EEOICPA. It includes DOE facilities,  
8 AWEs and beryllium vendors and a full listing  
9 is at that link and we again work closely with  
10 DOL and NIOSH to identify any inconsistencies  
11 or additions that we should be making,  
12 research those and make the change, if  
13 necessary.

14 Our Office of Legacy Management  
15 supports us heavily in this records research.

16 Legacy Management is the group within DOE  
17 that handles the records and management of  
18 closure facilities. So records are one of  
19 their primary roles within DOE. They have  
20 records experts. We currently have five staff  
21 that we work with over there that have an  
22 average of 20 years records management

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 experience within the DOE complex, so they are  
2 very knowledgeable about the history of DOE,  
3 the records history specifically within DOE,  
4 and where to go to locate records when the  
5 various requests come in from NIOSH and DOL.

6           Currently these are just a few of  
7 the sites we are working: GE Vallecitos, and  
8 then I selected a couple of local ones,  
9 Simonds Saw and Steel from Lockport and then  
10 recently we actually completed this one but  
11 for the Carborundum Company in Niagara Falls,  
12 we added a second distinct work location and  
13 time period of the work was changed to 43 to  
14 44 and 59 to 67. I don't know what it was  
15 before, but I believe we added time in that  
16 case based on new information that we located  
17 through our research.

18           We have a number of initiatives  
19 going on. Some of these you may have seen  
20 before, but some of them are new since the  
21 last Board meeting. Again we continue to  
22 emphasize cooperation with NIOSH and DOL with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our various sites. One of the questions that  
2 we had from the Board was, you know, they had  
3 been hearing concerns about workers and being  
4 hesitant to interview because of fear of  
5 retribution or reprisal. And I think we told  
6 you at the last Board meeting we released a  
7 memo from the DOE Deputy Secretary encouraging  
8 workers to participate in these interviews.  
9 We have been continuing to make that memo  
10 available to workers, when they are  
11 interviewing. It's available to site staff  
12 just so they know why and what is going on  
13 with these NIOSH and DOL interviewers that are  
14 coming in and wanting to talk to workers. And  
15 this is also, these memos are available for  
16 NIOSH and DOL to hand to the workers when they  
17 are conducting the interviews as well.

18 We hold routine conference calls  
19 with members of NIOSH, the Board, SC&A, ORAU,  
20 the various contractors, make sure that we  
21 know what their needs are, what they are  
22 working on, and how we can support that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           We have DOE subject matter experts  
2           that can participate and contribute to  
3           Advisory Board, Working Group and conference  
4           calls. I don't know that we always do so, but  
5           certainly if requested or needed we are very  
6           willing to find the right person to  
7           participate.

8           And as I mentioned in the SEC  
9           section we have facilitated secure meetings  
10          and videoconference calls where members of the  
11          Board, NIOSH or DOL are able to discuss  
12          classified information in a secure setting and  
13          have unencumbered discussions.

14          These are two projects here that  
15          we are very proud of that took a tremendous  
16          amount of effort, and have both been recently  
17          completed. The first is a project to revise  
18          the contracting provisions in the acquisition  
19          guide within DOE to ensure that DOE has a  
20          right to access and maintain ownership of  
21          records. It sounds a little confusing, but  
22          basically we are changing our contracting

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 guidance so current contracts and  
2 subcontracts, which are really the part where  
3 we may have been lacking in the past, current  
4 subcontracts will have or should have  
5 provisions in them that allow DOE to maintain  
6 ownership and management of these records when  
7 that subcontract may be finished. I think as  
8 many of you know subcontractors, particularly  
9 historically, it's been very tough for DOE to  
10 provide records. Some times when these  
11 subcontractors, particularly smaller  
12 construction subcontractors, leave the site  
13 when their project is finished, they may leave  
14 the project records behind, but their human  
15 resource records, their worker records, often  
16 they take with them. So particularly for  
17 older companies or older work, this is more  
18 historic work, those companies may have been  
19 bought and sold numerous times. They may not  
20 be in existence, or they may have subsequently  
21 destroyed those records. So this change is,  
22 we feel very important, and will allow DOE to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 maintain control of these records for future  
2 workers and future claimants.

3           And then the second project is the  
4 Los Alamos Medical Center Records project.  
5 This has taken almost two years, but earlier  
6 this fall we finished it up, and we took  
7 possession of the pre-64 records. This is a  
8 project where the medical center at Los  
9 Alamos, in the early days before 1964, was  
10 behind the fence in part of the site. Once  
11 the site opened up it was sold to a private  
12 company and they have retained those pre-64  
13 medical records. We went in and they were  
14 actually contaminated with the various  
15 substances, mold, and potential hantavirus,  
16 things like that. We went in, decontaminated  
17 the records, organized, indexed them, and took  
18 possession of pre-64 records. And now the  
19 Medical Center has the post-64 records, which  
20 of course being a small town with primary  
21 employment at Los Alamos there are many worker  
22 records in those as well. And the Medical

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Center is committed to preserve and provide  
2 the post-64 records to DOL and NIOSH. And  
3 they are already doing so.

4 We've also in the last year or  
5 year and a half or so taken a greater role in  
6 outreach along with DOL, NIOSH and the various  
7 groups. We have initiated what we are calling  
8 the Joint Outreach Task Group, which includes  
9 DOE, DOL, NIOSH, DOL ombudsman and the DOE  
10 former worker medical screening programs.  
11 These are all groups that in some form or  
12 another are trying to reach roughly the same  
13 population, and many were doing individual  
14 outreach efforts. And because of the overlap  
15 of the various programs, we work with those  
16 groups to combine outreach efforts when  
17 possible and to coordinate and improve  
18 outreach. In the last year we held 18  
19 townhall meetings near nine DOE sites, and we  
20 continue to do so. In fact last week we were  
21 at Rocky Flats and held a meeting with the  
22 group. So if anyone wants to see the current

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 schedule it is up on our website at that link.

2           And then the one last effort I  
3 want to talk to you about is the review of the  
4 DOL Site Exposure Matrices database. In 2008  
5 DOL completed the Site Exposure Matrices  
6 database, or what they are calling SEM. It  
7 contains data from all major DOE sites. It is  
8 primarily focused on exposure to toxic  
9 substances, not radiological exposures, and  
10 it's used as a tool by the DOL claims  
11 examiners to adjudicate claims. When it was  
12 created in 2006 through 2008 the DOE site POCs  
13 worked closely with DOL to identify and gather  
14 the records that they needed for that  
15 database. We provided -- similar to the SEC  
16 research projects, we provided access to  
17 hundreds of boxes of records, thousands of  
18 pages of information, as well as site subject  
19 matter experts were available to talk to them,  
20 and provide guidance in terms of historical  
21 work as well as where the records can be  
22 found.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   Recently DOL has requested that  
2 DOE review this database for public release,  
3 and we are working hard to do that. We've  
4 already authorized the release of the SEM  
5 information on 48 of the 116 DOE facilities in  
6 the SEM, as well as all uranium mills, mines  
7 and ore-buying stations. Those were many of  
8 those the closure sites or smaller sites that  
9 could be reviewed at DOE headquarters. Now we  
10 are currently reviewing the remaining 68 sites  
11 and most of those are being reviewed by the  
12 various DOE field sites.

13                   Again we are hoping to have this  
14 review complete by the end of the summer and  
15 as some sites more information than others and  
16 they are more difficult to review and may have  
17 more sensitivities than others, so they may be  
18 staggered when they come out. But as the  
19 various sites are finished, we will be  
20 releasing them so we anticipate that the sites  
21 will be released throughout the summer. And  
22 the current public SEM website can be found

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       there.

2                       And the last thing I want to talk  
3       to you about is the Former Worker Medical  
4       Screening program. The mission of the former  
5       worker program is to offer free medical  
6       screening for former DOE workers. After they  
7       separate from DOE they can get a screening  
8       three years after separation and every three  
9       years thereafter. It's a free screening.  
10      It's tailored to the work that they may have  
11      done at the site, and the things that they may  
12      have been exposed to, although certainly if we  
13      identify or catch anything else we'll make  
14      sure to let them know and refer them to the  
15      right medical care.

16                      Further information to the Former  
17      Worker Program can be found at the link on my  
18      presentation. And the information here is  
19      about the local screening program because  
20      there is not a current local DOE site in this  
21      area. There is no local program. However, we  
22      started the National Supplemental Screening

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Program. It provides medical screening to  
2 workers that aren't in the area of a regional  
3 project, or workers that may have moved out.  
4 So we have contracted with clinics throughout  
5 the country, and can provide screening in all  
6 50 states, including Alaska and Hawaii. And  
7 the local outreach number is on the handout as  
8 well as the website. So questions.

9 CHAIRMAN MELIUS: Brad.

10 MEMBER CLAWSON: It is good to  
11 see you again. I like that eight-days  
12 turnaround on the documents. I think we've  
13 still got a little bit of room there. But I  
14 want to ask you, what are we doing with  
15 certain sites getting documentation released a  
16 little bit faster there? Have we got anything  
17 streamlined? Because we have talked numerous  
18 times, it's too long. It has taken a lot. Is  
19 there anything that we can do to accelerate  
20 that a little bit?

21 MR. LEWIS: Well, I mean I agree.

22 We struggle - the eight days up there is for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DOE headquarters. And I'm right around the  
2 corner from DOE headquarters. We have a great  
3 relationship with the headquarters reviewing  
4 classification staff. We have a special  
5 liaison over there that helps us navigate  
6 through the various problems we run into. So  
7 I think we are very confident with what we do  
8 at headquarters. We agree in the field it can  
9 take a little bit longer. Again I think for  
10 the most part in the field, our field offices  
11 and field sites do review the information in a  
12 reasonable amount of time and get it back to  
13 you. However there are certainly cases where  
14 it slips through in certain sites where we run  
15 into more problems than others. We did have  
16 the DOE-wide classification officers meeting  
17 just about a month ago. I went out to that;  
18 Gina was there. We spoke to those groups and  
19 met with many of them. Met with their  
20 management and tried to emphasize the  
21 importance of this program. We do believe  
22 that some of the sites where we had problems,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 we have some connections now that I think will  
2 solve those problems. But again it is going  
3 to be difficult. I think communication is  
4 important, and one of the things that we have  
5 requested from SC&A and NIOSH is a list of the  
6 various -- I believe SC&A was going to put  
7 together some kind of tracking system of  
8 what's been submitted, to whom, and when  
9 they've received it. Because we don't  
10 necessarily at headquarters always find out  
11 about these issues until something has already  
12 been outstanding for quite some time. So we  
13 are kind of in catch-up mode. So that is one  
14 thing that may help, allowing us to know as  
15 things start to become an issue, not after  
16 they're an issue. But again we take it very  
17 seriously and do everything we can to work  
18 with our field sites to reduce the amount of  
19 time they spend reviewing these documents.

20 MEMBER CLAWSON: I appreciate  
21 that. I really would like to tell you how  
22 much we appreciate your people there at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Germantown. They've been excellent in working  
2 with some of our documentation at Pantex.

3 CHAIRMAN MELIUS: Along those  
4 lines there is -- I guess it's becoming  
5 infamous now -- the set of notes from Pantex  
6 that we have been waiting for for months; has  
7 that gotten released yet? We got it, okay.  
8 Good, excellent. That's good news. You  
9 should have a slide on that.

10 MR. LEWIS: No, and that is  
11 actually a good example, because when that was  
12 raised at the last Board meeting, my office,  
13 we weren't really aware that that was an  
14 issue. And I believe it was released a week  
15 or two after that Board meeting. So once we  
16 realized it was an issue and elevated its  
17 priority. But again we had no idea it was a  
18 problem.

19 CHAIRMAN MELIUS: And I also  
20 would like to thank you for your efforts on  
21 the Site Exposure Matrix, even though that is  
22 mainly a Part E issue. I'm glad that that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information got out there.

2 MR. LEWIS: It's not all out  
3 there yet. But we are working on it.

4 CHAIRMAN MELIUS: I know, but you  
5 have done a good job in a short time period on  
6 that.

7 Any other questions?

8 (No response.)

9 CHAIRMAN MELIUS: Okay. Thank  
10 you.

11 We are running ahead of schedule,  
12 but it won't help anybody. We will try to,  
13 for the rest of the day we are on a fairly  
14 tight schedule because of actually the next  
15 two days with petitions. So we have got to  
16 stay to the schedule, so we really can't start  
17 until around 11:00 again, the time period  
18 there. So we will try to catch up on a few  
19 things, and then we'll take a break. But it  
20 will be longer than the 15 minutes that's  
21 listed.

22 MR. KATZ: So one of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 practices of the Board when a member is absent  
2 for an SEC vote is to collect that vote  
3 subsequent to the Board meeting, and then we  
4 register that at the next Board meeting, how  
5 that vote went. So at the teleconference  
6 March 31<sup>st</sup> the Board voted on Canoga, in  
7 favor, unanimously. Fifteen members were  
8 present to add Canoga to the SEC. Dr. Poston  
9 was absent for that meeting but very shortly  
10 after, on April 2<sup>nd</sup> he contacted me with his  
11 vote in favor, so it was unanimous 16 votes in  
12 favor of that in Canoga, and I think Stu  
13 reported that Canoga has gone forward from HHS  
14 since.

15 CHAIRMAN MELIUS: I have two more  
16 things quickly. Just a reminder, there is a  
17 Work Group that sent out a solicitation. Got  
18 some responses, but just a reminder, if you  
19 can let me know there is a Work Group on,  
20 pending on Portsmouth, Paducah and the Oak  
21 Ridge, really a combined Work Group for Site  
22 Profile. I'm looking for volunteers for it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 We have enough, but just in case somebody  
2 didn't see the information or whatever and  
3 would like to volunteer, just let me know.

4 Second thing on the case reviews,  
5 everyone should have received their assignment  
6 for the case reviews, and I believe SC&A has  
7 started to contact people, although I think  
8 they have only done -- or at least they only  
9 copied me on one group that they contacted, I  
10 think it was Josie, and so Josie and Henry,  
11 they started with A and B, the alphabetical  
12 approach. So which wasn't intended when we  
13 set up the group.

14 Okay, let's start with Ziemer next  
15 time. We'll work it out. And then Mark's  
16 group, I believe your dose reconstruction  
17 group has, in terms of the next round of cases  
18 --

19 MEMBER GRIFFON: We did a pre-  
20 selection of cases, but the notion is that our  
21 usual process is to go through and pre-select  
22 cases, and then NIOSH provides additional

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 details of those cases to allow for a refined  
2 selection of the final set to give to SC&A to  
3 work on. And they -- I mean we just had this  
4 phone call maybe a week ago, so they are not  
5 going to have that information ready for this  
6 meeting. What I proposed was to have it ready  
7 for the phone call Board meeting and then we  
8 could make the final selection at that point.  
9 That's simple.

10 CHAIRMAN MELIUS: We do have the  
11 letter to do?

12 MEMBER GRIFFON: Yes, I have a  
13 letter which I didn't circulate, I'm hoping to  
14 circulate tonight, I forgot to -- it's the  
15 summary report for the Dose Reconstruction  
16 Subcommittee. If you recall we were asked to  
17 follow up on the report that we submitted to  
18 the Secretary on the first 100 case review,  
19 and to follow up on sort of -- so what does  
20 this mean, and can we make any more specific  
21 recommendations to NIOSH in terms of the path  
22 forward and looking at their program.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           It does have some overlap with  
2 some of the items in the report that Lew Wade  
3 is actually assembling. So it might be useful  
4 from that standpoint as well. I have to email  
5 it tonight, so I'll get that around to you,  
6 but I forgot to send it over. It's only, I  
7 think, three pages or so long, and we can  
8 discuss it on Friday.

9           CHAIRMAN MELIUS:           Right, and  
10 while we have a little time, because I will  
11 not be here on Friday; we had a meeting of the  
12 SEC evaluation Work Group in Cincinnati last  
13 week to address the 250 day issue and it was a  
14 very good meeting. We made, I believe,  
15 significant progress on that. We have some  
16 work assignments to do, but I expect that by  
17 our Idaho Board meeting we will have a  
18 proposal for the Board to consider on that.  
19 That is at least our target, and then actually  
20 also specific recommendations on at least two  
21 of the sites that are sort of covered under  
22 that. I'm not sure on the third site whether

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we will be ready or not by that time. It's a  
2 little bit more complicated, but we are moving  
3 along. But the two sites are the Met Lab and  
4 Ames Lab. The third one that we have been  
5 looking at is Nevada Test Site, and that is a  
6 lot more complicated. But we -- I do think  
7 that we have got some agreement on our way to  
8 move forward on that with NIOSH, and I think  
9 we will be able to address that at our next  
10 meeting.

11 Any other administrative matters?

12 Lew?

13 (No response.)

14 CHAIRMAN MELIUS: We will be doing  
15 some tasking for SC&A while we're here, put  
16 that in and so forth. Then some of that will  
17 depend on sort of follow-up to a report,  
18 update from our Procedures Subcommittee. So I  
19 may be calling on you, Wanda, surprise you at  
20 some point.

21 MEMBER MUNN: Don't.

22 CHAIRMAN MELIUS: That's why I'm

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 warning.

2 Why don't we take a break and  
3 reconvene at 11:00.

4 (Whereupon, the above-entitled  
5 matter went off the record at 10:20 a.m. and  
6 resumed at 11:01 a.m.)

7 CHAIRMAN MELIUS: We will get  
8 started. Our first presentation will be Brant  
9 Ulsh will be presenting on the Mound SEC  
10 petition. And Ted, do you want to check the  
11 phones.

12 MR. KATZ: I already did check  
13 the phones.

14 Dr. Richardson, are you with us  
15 now?

16 (No response.)

17 CHAIRMAN MELIUS: Okay, they  
18 should be able to get him. Go ahead, Brant.

19 MOUND SEC PETITION

20 DR. ULSH: All right, thank you.

21 As Dr. Melius indicated I am here to talk  
22 about the Mound SEC petition. This has been a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 long running process, and I'll go through some  
2 of the history of the SEC implications and the  
3 process that we have gone through over the  
4 last couple of years.

5 I'm going to focus pretty tightly  
6 on one topic, and that topic is radon. There  
7 are a number of other issues that are still  
8 before the Working Group under active  
9 consideration, and I won't touch too much if  
10 at all on those. I think the current plan is  
11 to bring those up for discussion between now  
12 and the August Board meeting in Idaho.

13 All right just to give you a very  
14 quick background on the Mound facility, the  
15 initial mission of the Mound facility was work  
16 with polonium-210 production, and that was for  
17 initiators in nuclear weapons. They also had  
18 a very active program in the early '50s, early  
19 and middle '50s, looking at alternatives to  
20 polonium-210, and that dealt with radium-226,  
21 and actinium-227.

22 As I mentioned those were for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 alternatives, and that program formed the  
2 basis of the SEC Class that we recommended a  
3 couple of years ago. And I'll talk a little  
4 more about that as we go on too.

5 Mound also had some small research  
6 programs with uranium and protactinium-231.  
7 They did some work with plutonium, and one of  
8 the bigger programs, in fact the main focus of  
9 Mound in the later years certainly was the  
10 space program. They produced radioisotope  
11 thermal electric generators -- now that is a  
12 mouthful, so you can just say RTGs - and that  
13 involved work, some work with polonium-210 but  
14 mainly with plutonium-238. Mound also did  
15 tritium research beginning in 1957. Now that  
16 was a very extensive program at Mound and long  
17 running. And that is one of the issues that  
18 is currently being deliberated upon by the  
19 Working Group.

20 A little more history of the Mound  
21 Site. It didn't spring into existence from  
22 nothing, it actually was the follow-on to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Monsanto Site, the Dayton Project as it is  
2 also known. That preceded the Mound Site, and  
3 then in about 1949 the work of the Monsanto  
4 Site was transferred over to the Mound  
5 laboratory, which is Miamisburg, Ohio, so  
6 right outside of Dayton, just south.

7           The next bullet here, I don't want  
8 to draw too bright a line here. Production  
9 occurred through 1994, however some D&D work  
10 occurred over the entire history of the Mound  
11 Site, and it's not like in 1994 everything  
12 stopped with production and D&D took over;  
13 it's not like that. It's just that in 1994 I  
14 think the official decision was made to shift  
15 the Mound mission from production to D&D. But  
16 there is some overlap on both ways on that  
17 with D&D and production.

18           D&D was the primary mission from  
19 about 1994 through 2006.

20           Now in terms of the SEC process  
21 that has gone on with the Mound Site, and I  
22 want to clarify here that I am talking about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 83.13 process, so this is a petitioner-  
2 generated process, we received two petitions  
3 in June of 2007, and they were qualified a  
4 couple of months later, and the petitions were  
5 subsequently merged.

6 And as we do with most 83.13s --  
7 in fact all of them -- we spend a few months  
8 evaluating the report -- I'm sorry, the  
9 petitions, and then we issued the NIOSH  
10 Evaluation Report in December of 2007, and  
11 presented that report at the Las Vegas  
12 meeting, I think that was January, 2008. So  
13 right after we issued our report.

14 And the initial findings of that  
15 Evaluation Report we recommended a Class be  
16 added to the SEC based on the radium, actinium  
17 and thorium separations program that occurred  
18 in what was known as the Old Cave of the SW  
19 building. And that is an important facility,  
20 and I'm going to be talking about that at some  
21 length.

22 We concluded that we could not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reconstruct internal doses associated with  
2 that program from 1949 through February 28<sup>th</sup>  
3 of 1959. Now there were a couple of efforts  
4 to decontaminate the facility that was used,  
5 the Old Cave, that was used for this program  
6 that occurred throughout the `50s, but the  
7 final -- I don't even want to say final, but  
8 the last of the major D&D effort was completed  
9 in 1959. And basically that involved  
10 concreting over the entire facility, that  
11 part, that laboratory, and pretty much  
12 abandoning that facility.

13 The problem is that some offices  
14 were built on top of that concreted in  
15 facility, and I'm going to be talking about  
16 that too.

17 Okay, now the radon petition: up  
18 to now I've been talking about an 83.13  
19 process, so that was petitioner generated.  
20 Over the course of considering those 83.13  
21 petitions, the Working Group and NIOSH and  
22 SC&A have discussed one of the topics that has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       come up is radon.   And we have come to the  
2       conclusion that we need to recommend a Class  
3       based on radon.   For administrative reasons we  
4       did that via an 83.14 petition, and that's  
5       what I'm here to present today.

6               So this is the standard language  
7       that you find for an 83.14.   Basically we  
8       concluded that we could not adequately bound  
9       the radon dose for members of this Class.   In  
10      April, so just last month, we embarked on the  
11      83.14 process.   And the petition was submitted  
12      earlier this month.

13              Okay, this is a very simplified  
14      schematic of what we are talking about at the  
15      Mound Site.   I've drawn R and SW buildings.  
16      They are referred as RSW, they are referred to  
17      as two separate buildings but they are not  
18      really.   These buildings were contiguous.  
19      They shared a wall.   There were doorways  
20      between them.   It's basically one structure,  
21      but two buildings were joined together.

22              And I've put in a red box down

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there, SW 19. That is a particular room in  
2 the SW building, and that's the one I told you  
3 where the office space was built right on top  
4 of the Old Cave. The Old Cave again is where  
5 they did the radium-actinium-thorium  
6 separations, formed the basis for the earlier  
7 Class, and during that process from 1949 to  
8 '59, contamination was pretty widespread  
9 through the R/SW building, and we determined  
10 that we couldn't really limit the Class from  
11 '49 to '59, so that covered everybody on site  
12 at that time.

13 I think it's worthwhile before I  
14 leave this slide to talk about these  
15 buildings. As I mentioned there are extensive  
16 tritium operations in these buildings, and  
17 there was work with plutonium in these  
18 buildings. So these aren't -- unless you have  
19 worked in a facility like that you may not  
20 really grasp the implications of that. But  
21 basically this building was operated at  
22 negative pressure. Air was sucked up stacks.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       You certainly don't want to have work in one  
2 room in this building, have that air re-  
3 circulated throughout the building and if  
4 something goes wrong contaminate the entire  
5 facility. So that's important to keep in mind  
6 here.

7               All right, now let's move forward  
8 past the earlier SEC Class from 1959 through  
9 1980. And what you see on the first bullet of  
10 this slide is that I have a 20-year period  
11 from 1959 which was the end of the first  
12 class, up through 1979. And this is the real  
13 problem with the radon issue, and that is that  
14 we have a 20-year period where we don't really  
15 have radon monitoring. And that for me was  
16 kind of the straw that broke the camel's back  
17 on this Class.

18               Now I need to clarify here that  
19 when I say radon, I'm might be speaking in a -  
20 - using the term in a different way than what  
21 you might be used to if you think about radon  
22 in your basement. I'm talking about three

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 different isotopes of radon. Radon-222 is  
2 what you are most familiar with perhaps in  
3 your basement, but there is also radon-220,  
4 which is also known as thoron, and radon-219,  
5 which is actinon. And all three of those  
6 isotopes of radon are radioactive, and they  
7 all three generate a series of daughter  
8 products until they reach a stable species.

9 So what happens here. Well, in  
10 1979 a worker went in for a whole body count  
11 and it turned up high, so they were concerned  
12 that he might have received a plutonium  
13 exposure. So they began to investigate where  
14 he could have been exposed, because he  
15 shouldn't have had any plutonium exposure.  
16 They checked out his office, which was in SW  
17 19. And what they discovered was that -- they  
18 did some measurements near his desk, and they  
19 discovered high levels of radon. Now I want  
20 to clarify here that these early measurements  
21 -- and I'll get more in detail on the next  
22 slide I think -- these early measurements

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first of all used uncalibrated instruments.  
2 They had an estimated calibration factor. But  
3 basically it was sufficient to indicate that  
4 there might be an issue here. Then in July of  
5 1979 they discovered a small hole in the floor  
6 of the office, and cracks along the baseboard,  
7 and they discovered really high concentrations  
8 of radon in the air that was streaming out of  
9 that hole in those cracks.

10 So here is a drawing of SW-19.  
11 And you can see that there are three different  
12 office spaces here. Let me see if I can  
13 figure out how to work this. These squares  
14 right here represent desks. And I've got a  
15 number of radon measurements presented on this  
16 slide, now this is in June and July, so it's  
17 right after that worker showed up with this  
18 high body count. And I want to point out that  
19 all of the numbers on this particular slide  
20 are grab samples. So it's very short term;  
21 take a quick sample, and see what you've got.  
22 They are not time integrated samples on this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 slide.

2                   And what you see here is that  
3 there are some pretty high numbers.  
4 Especially -- well, here is near the worker's  
5 desk, that had the high body count. And you  
6 can see 66 and 80 picocuries per liter. That  
7 is fairly high. Keep in mind that at the time  
8 the regulatory standard for a controlled area  
9 such as the R/SW building is 100 picocuries  
10 per liter. So it's still below the regulatory  
11 standard for that time. But you can see, I've  
12 got in red over here, this little dot, this  
13 represents the hole in the floor that they  
14 found. And they took some measurements right  
15 at the egress at that hole, and they measured  
16 over 700 picocuries per liter, and even over  
17 800 picocuries per liter.

18                   But what you can see here is that  
19 the concentrations first of all that they  
20 measured between where the radon was entering  
21 the room and over here in the breathing zone  
22 where the worker would have been exposed where

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 he worked at his desk, there is about a factor  
2 of 10 roughly decrease, and that is an  
3 important thing to keep in mind. I'll talk  
4 more about that as we go.

5 After this time period, after June  
6 and July of 1979, so the latter part of 1979,  
7 they began to look for the source. Where was  
8 this material coming from? And they  
9 discovered a tunnel, an inaccessible tunnel  
10 that ran underneath SW-19 pretty much down the  
11 hallway here, and this tunnel is about two  
12 feet and some odd inches, and they had to  
13 access it by drilling a hole through a  
14 manhole, sealed manhole cover. And they stuck  
15 a tube down in that tunnel and they measured  
16 what was in there, and let me tell you what  
17 they found.

18 For radon-222 they detected 88,000  
19 picocuries per liter. For radon-220, that's  
20 thoron, they detected 28,000 picocuries per  
21 liter. And for radon-219, this is a whopper,  
22 640,000 picocuries per liter. That's hot.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 That is a lot of radon.

2 So one thing you need to, if you  
3 can do the math quickly in your head, I'll  
4 save you the trouble, 85 percent of that  
5 activity, if you add up the three different  
6 radon isotopes, 85 percent of it is from  
7 actinon. That's the radon-219. Now it's  
8 interesting to note that actinon has about a  
9 four-second half-life. The daughter products  
10 are mostly short lived, if you look at the  
11 longest one, I think there is one in there  
12 that takes up to about 36 minutes. So the  
13 total half-life of actinon and the daughters  
14 is about on the order of 40 minutes.

15 So I think that at least is one  
16 reason that you see this factor of 10 decrease  
17 between the hole and the desk. One is just  
18 the dilution with room air, but the other  
19 thing is, we are talking about 85 percent of  
20 this activity is very very short half-life, so  
21 there is some decay before the air ever gets  
22 out of the tunnel and into the room, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 further decay of those very short lived half-  
2 life species as it spreads out into the room.

3           Okay, now let's move forward a  
4 little bit. They discovered that the tunnel  
5 was the source of what they were measuring  
6 here. And I want to point out here that this  
7 was certainly a source of technically enhanced  
8 radon, but this is layered on top of naturally  
9 occurring radon that occurred throughout the  
10 Mound Site, not just in the R/SW building, but  
11 all over the Mound Site, from a couple of  
12 different processes and phenomena. There was  
13 a coal plant that was near the Mound Site, and  
14 as you might know the emissions from a coal  
15 plant are themselves radioactive, and can lead  
16 to detecting radon. And also -- in fact this  
17 was in an interview that SC&A conducted with  
18 the guy that took all these measurements --  
19 they had a problem with radon especially  
20 during the summer months when the soil was  
21 very dry, and you are operating a building  
22 here at negative pressure, so it's going to be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sucking air in. And so during those summer  
2 months they could get some high radon levels.

3 Now when I say high, I'm not talking about  
4 640,000, but I'm talking high by the standards  
5 of what you might think of in your basement.  
6 And in fact since this building was monitored  
7 for plutonium, and you are measuring alpha  
8 activity in the air, sometimes those monitors  
9 would go off and subsequent investigations  
10 would reveal that radon is probably the  
11 source.

12 So I'm not saying that the radon  
13 was zero at any point in time in this  
14 building. But what I am trying to point out  
15 here is that this is a technically enhanced  
16 source layered on top of natural sources of  
17 radon.

18 So in January of 1980 -- we don't  
19 have the exact date -- they decided to  
20 initiate some remediation of this tunnel, and  
21 tried to knock down some of these radon  
22 concentrations. So what they did is, they ran

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a stack from the tunnel and they installed a  
2 turbine to suck the air from the tunnel, vent  
3 it up a stack through a filter, and out the  
4 stack. And they took some confirmatory  
5 measurements afterwards, and what they found  
6 was that they had significantly knocked down  
7 the radon concentrations. And I have here the  
8 measurements that they took in May of 1980.  
9 Now the 8.2 picocuries per liter that were  
10 measured near the worker's desk, the same  
11 location as before, is a grab sample, but the  
12 15.4 picocuries per liter is not a grab  
13 sample. It's a time integrated sample using a  
14 PERM, type of radon detector. And they  
15 measured in the office next door with the same  
16 instrument. These are again integrated  
17 numbers, not grab samples. And they are on  
18 the same order, eight to 15 picocuries per  
19 liter. And again RCG for a controlled area is  
20 100 picocuries per liter, was at that time.  
21 So they were pretty successful in knocking  
22 that down. And they took further confirmatory

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 samples through the `80s and into the `90s and  
2 the concentrations were again confirmed to be  
3 low.

4 So just to sum up here is a  
5 chronology of what happened with this issue:  
6 '49 to '59 you had the source-term. This is  
7 when they did the radium, actinium, thorium  
8 separation activities. That was the source  
9 for the technically enhanced radon, and we  
10 have an SEC Class that covers that time  
11 period.

12 From 1959 up through June 1979 you  
13 have essentially what is an undetected radon  
14 leak into SW-19, and then in January of 1979,  
15 then the worker turned up with the whole body  
16 county. They did the subsequent  
17 investigation. In January 1980 they  
18 remediated the source of the radon. As I told  
19 you they stacked it. And in March 1980 they  
20 did some confirmatory sampling to confirm that  
21 their remediation was successful.

22 Now March 5<sup>th</sup> is what we propose as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the end date of this 83.14 Class, because that  
2 is when they took the follow-on sampling.  
3 They did a grab sample that I showed you on  
4 the previous slide, and then they a  
5 confirmatory time integrated sampling. So  
6 that is the date that we are proposing that  
7 the Class for this 83.14 be ended.

8 They also recounted that worker  
9 that had the high whole body count, and they  
10 recounted him twice in May of 1980. The first  
11 count, since they measured such drastic  
12 reductions in the room air concentration of  
13 radon, they were a little bit surprised when  
14 they first count they did on this employee was  
15 still high, higher than they expected. There  
16 is some documentation on this where they tried  
17 to consider why this might be. And eventually  
18 they did a second count five days later and it  
19 was much lower, near baseline.

20 So what they concluded just to  
21 quote from that, the report on that incident,  
22 the author said it is my opinion that someone

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 breathing air containing a concentration of  
2 radon decay products at or near the non-  
3 occupation MPC of 1/30<sup>th</sup> of the working level  
4 would produce a lung count which is elevated  
5 and above normal or baseline.

6 He went on to conclude that the  
7 magnitude of this person's lung count is  
8 neither surprising nor alarming. And in fact  
9 they mentioned that especially during the  
10 summer months, in the month of August, workers  
11 would occasionally turn up with high body  
12 counts, and they sent home radon monitoring  
13 kits, and they usually came back positive, and  
14 that explained why they got the results that  
15 they did.

16 So we are proposing a Class, here  
17 is the two-pronged test for an SEC. You all  
18 on the Working Group have seen this before.  
19 The first test is, is it feasible to estimate  
20 the level of radiation doses for the  
21 individuals in this Class. I guess it occurs  
22 to me that I haven't really even told you what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Class we are proposing. I'll get to that in  
2 the next slide. But the answer that we've  
3 come to there is, no it's probably not  
4 feasible to reconstruct the dose for the  
5 people in this Class.

6 And the second test then is there  
7 a reasonable likelihood that such a radiation  
8 dose may have endangered their health? Well,  
9 when you are talking about hundreds of  
10 thousands of picocuries per liter I'd say the  
11 answer is yet to that.

12 Okay, sorry it took me so long to  
13 get to this, but here is the wording of the  
14 recommended Class. I won't read it verbatim  
15 to you, but this is what we have proposed.  
16 Now this might be a little confusing. Because  
17 we are basing it on tritium bioassays. Now  
18 let me walk you through the reasoning that  
19 we've got here. First of all let's start with  
20 that worker. Should that worker ever become a  
21 claimant, and come down with lung cancer, and  
22 not already be paid because he works in - for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 missed dose on plutonium, I can see that I  
2 probably cannot put a reasonable bound on his  
3 dose, nor can I put a reasonable bound on  
4 anyone else that might have worked in that  
5 office over the years. I don't know if there  
6 was anybody, maybe. So that is the dose that  
7 I can't reconstruct. Now we've been working  
8 with the Department of Labor to come up with a  
9 Class that they can administer. And I have to  
10 tell you that we are still working with DOL to  
11 come up with a Class Definition that they can  
12 administer. What we proposed to DOL, since  
13 they said that they can't really administer a  
14 Class, that is limited to one room, just can't  
15 do that. So we proposed, or it was decided  
16 that we would make this all of R/SW building.

17 Now I don't think that everyone in the R/SW  
18 building had an unboundable radon dose, but  
19 it's an academic point at this stage of the  
20 game anyway, because we are proposing all of  
21 R/SW building. So then the question  
22 becomes, how do you put people in R/SW

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building. Well, as I mentioned, they had an  
2 extensive program to work with tritium in this  
3 building. So people who worked in this  
4 building were on the tritium bioassay program.

5 And that's why we are proposing that tritium  
6 bioassay be a marker for someone who had the  
7 potential to work in this building. Now that  
8 net is a little wider than just R/SW, because  
9 they did tritium work certainly in the T  
10 building at the Mound facility, so we'll be  
11 capturing some people from there. And that's  
12 just fine, that's just the price you pay for  
13 making sure you get everybody. Another thing  
14 to consider is, and we heard this in a worker  
15 interview that was conducted with members of  
16 the Working Group, and SC&A and NIOSH and some  
17 former Mound workers. It was certainly the  
18 policy, and it was well known and well posted  
19 that if you went into the R/SW building, the  
20 policy was that you left a tritium bioassay  
21 sample, even if you only went in for only five  
22 minutes. That was the policy. Now the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reality: the workers that we talked to told us  
2 that well, yes, that is the policy and  
3 everyone knew it, but it's not like there were  
4 armed guards standing thee making you give  
5 your sample. It's possible that someone could  
6 have gone into R/SW building for a meeting,  
7 maybe in an old lab, or just gone in for a  
8 meeting, to deliver a letter, whatever, and  
9 not left a sample; that's possible. So that's  
10 fine, but I did -- I talked to them, followed  
11 up with them on that, the workers, that we had  
12 talked to, and it's just not plausible that  
13 someone could have worked for 250 work days in  
14 the R/SW building and not left a single  
15 tritium bioassay sample. That is just not  
16 plausible. In fact the worker -- I talked to  
17 two of the workers that we interviewed. One  
18 of them said that would just be highly  
19 unusual. He said that I would go so far as to  
20 say it couldn't have happened. The other  
21 worker said, no, that's just couldn't have  
22 happened. So we are pretty confident that if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 we use tritium bioassay data as a marker for  
2 potential there, work in that building, that  
3 we will capture the people we want to include  
4 in this Class.

5 So to summarize here is the  
6 feasibility and health endangerment findings.

7 The already established Class from '49 to  
8 '59, that stays in place; there is no change  
9 to that. The change comes in from 1959 to  
10 1980, and what we are saying is that we no  
11 longer have confidence that we can bound the  
12 dose to those three radon isotopes and their  
13 daughters from 1959 through 1980, and we are  
14 recommending the Class that you saw in the  
15 previous slide.

16 For the whole time period we are  
17 saying that we can reconstruct doses with  
18 sufficient accuracy for all the other  
19 radioactive isotopes that were present, and  
20 for external doses.

21 So I think that is my last slide,  
22 so if you had any questions I'd be happy to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 try to answer them.

2 CHAIRMAN MELIUS: Questions?  
3 Bill.

4 MEMBER FIELD: I had a question  
5 about the confirmatory tests that were  
6 performed.

7 DR. ULSH: Yes.

8 MEMBER FIELD: You say they were  
9 integrated?

10 DR. ULSH: Yes.

11 MEMBER FIELD: Can you give us any  
12 more detail? Was it a one-hour integration?  
13 One day? One week?

14 DR. ULSH: I can if you give me  
15 five seconds or so. Okay, seven seconds. Ah,  
16 here are the numbers I'm looking for. From  
17 March 3<sup>rd</sup> through March 11 -- hold on, let me  
18 go back to the slide that showed that, from  
19 March 3<sup>rd</sup> to March 11<sup>th</sup> they placed an RDT-310  
20 PERM, that probably means more to you than it  
21 does to me, beside this person's desk. So  
22 that is a period of what, about a week. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they got the result of 15.4. There it is  
2 right there. And I told you the 8.2 is a grab  
3 sample. From March 14<sup>th</sup>, 1980, through March  
4 27<sup>th</sup>, 1980, they measured this one, 7.7, from  
5 March 27<sup>th</sup> to April 17<sup>th</sup>, 1980, 7.8, and from  
6 April 18<sup>th</sup>, 1980, through May 8<sup>th</sup>, 1980, they  
7 measured a 13.4. And then I'm reading from  
8 the notes of the health physicist who did  
9 this, and he said that another reading was  
10 started on May 8<sup>th</sup>, 1980. Beside this guy's  
11 desk. So I don't have a result for that one.

12 So those are the confirmatory samples. There  
13 were a couple of others up to 1980. I think  
14 they did some more in 1982, and then they did  
15 some more in 1990. Both of those were low.  
16 Now I talked to a number of people, former  
17 Mound workers, who are now on the ORAU Team,  
18 simply because it is easy for me to do that; I  
19 know how to reach out and touch them. They  
20 were here around 1990, late '80s, and some  
21 time between when this was discovered in 1980,  
22 and 1990 when they were there, this office

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 space became unoccupied. In other words, they  
2 moved them. They didn't want people routinely  
3 working in there. I don't know exactly when  
4 in that 10-year time period that happened. I  
5 suspect right after they discovered this, but  
6 I can't say that for certain.

7 Now I don't mean that people never  
8 went in there; that's not the case. They did  
9 on occasion go in to use some of the  
10 facilities that were still there, but it was  
11 on a short term basis. And it's my  
12 understanding that they did radon monitoring  
13 when they did. So that is some more detail on  
14 that.

15 MEMBER FIELD: I just have one  
16 follow-up. Do you know if there was any  
17 thoron monitoring done? After that point?

18 DR. ULSH: I know that they  
19 measured for actinon. They were looking for  
20 radon-219, because they specifically mentioned  
21 that. I would have to go through and look for  
22 the details to see if they were actually

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 looking for radon-220, I'm not certain. But  
2 it was done by the same guy who did these  
3 measurements.

4 MEMBER FIELD: The reason why I  
5 was asking, I don't think the E-PERMs would  
6 measure those. So I just wanted to make sure  
7 that we are not missing some exposures.

8 DR. ULSH: I would have to follow  
9 up on that, I don't know off the top of my  
10 head. But keep in mind that this was all  
11 mixed in together in this tunnel, and so they  
12 stacked it, and you could make the logical  
13 assumption that if the radon and the actinon  
14 is gone, the thoron probably went the same  
15 way.

16 CHAIRMAN MELIUS: Bob.

17 MEMBER PRESLEY: I believe you  
18 have a number of approximately how many people  
19 that this would affect?

20 DR. ULSH: No, actually I wish I  
21 did.

22 MEMBER PRESLEY: You don't? I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 thought you did. I'm sorry.

2 DR. ULSH: This is one of those  
3 things that in the flurry of the lead up to  
4 this meeting it occurred to me I should find  
5 out how many outstanding Mound cases there  
6 are, and then I forgot to do it. But what I  
7 can tell you is that I think there are on the  
8 order of 500 cases from Mound. The problem is  
9 I can't tell you how many we have completed,  
10 and how many are left outstanding. But the  
11 other thing to consider is that this is work  
12 in a plutonium building, so at least the lung  
13 cases, what we found at other sites is that  
14 three-quarters of them are paid on missed dose  
15 anyway. But I can't tell you about the  
16 others.

17 CHAIRMAN MELIUS: Brad.

18 MEMBER CLAWSON: So how many total  
19 samples do we have? Because I was under the  
20 impression that there not that many samples.  
21 How many total samples do we have?

22 DR. ULSH: Do you mean after --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MEMBER CLAWSON: After the initial  
2 sample, after they found the crack and the  
3 hole, how many times did they sample?

4                   DR. ULSH: Well, okay for radon  
5 it looks like one -- five times for radon  
6 before remediation, and six working level  
7 measurements before remediation. Here's after  
8 remediation, we've got five samples there, and  
9 you would have to add to that the samples that  
10 were taken in 1982 and also again in 1990. I  
11 don't know exactly how many samples that round  
12 consistent of.

13                  MEMBER CLAWSON: Was this done by  
14 the same person that found that first crack?

15                  DR. ULSH: Yes.

16                  MEMBER CLAWSON: Because is there  
17 some questions about his instrumentation and  
18 how he did this, but that is kind of beside  
19 the point here.

20                         On your next slide where you kind  
21 of got the Class Definition, "who were  
22 monitored for tritium."

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. ULSH: Yes.

2 MEMBER CLAWSON: Okay, is that  
3 supposed to be should have? Were monitored or  
4 should have been monitored.

5 DR. ULSH: No, it is not supposed  
6 to be that. We purposely did not put that in  
7 --

8 MEMBER CLAWSON: That's what I  
9 want you to explain to me.

10 DR. ULSH: I might need some help  
11 from some other NIOSH folks, because I tend to  
12 get focused on the SEC petitions that are  
13 mine, and don't --

14 MEMBER CLAWSON: Right.

15 DR. ULSH: It's my understanding  
16 that that should have been monitored, has  
17 caused no end of heartache for other  
18 petitions. Am I right on that, Bomber? Yes.

19 So I think we have decided that  
20 that is not something we should put in.

21 MR. RUTHERFORD: Also, and the  
22 thought process is that we are identifying

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this Class from people who were monitored. So  
2 if we feel there are individuals that should  
3 have been monitored, then the Class Definition  
4 wouldn't work as defined.

5 CHAIRMAN MELIUS: Can I follow up  
6 on that?

7 I may have misunderstood but I  
8 thought at some point there were people that  
9 had indicated, the workers in their  
10 interviews, that they had been in that  
11 building and weren't monitored for tritium.  
12 And how sure are we that I think your -- I  
13 think what Brant said was that well, we don't  
14 think they could have been in there for 250  
15 days and not have done -- I think that's what  
16 might have been captured by the should have  
17 been monitored. And I guess my question is,  
18 how confident are we that the people wouldn't  
19 have been in the building for a significant  
20 period of time, and might not have been caught  
21 in the tritium monitoring program?

22 I think the original rationale for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 "should have" is we know that these monitoring  
2 programs were far from -- often far from  
3 complete in terms of capturing all the  
4 different workers that might be included in  
5 them.

6 DR. ULSH: Well, that's based on a  
7 couple of pieces of information. The first is  
8 the written policy, which is very clear in  
9 that anyone, visitor or worker, who went into  
10 this building for any operation whatsoever,  
11 was required to leave a tritium urine sample.

12 Now the next logical question is, okay, now  
13 that is the policy but in terms of  
14 implementation of the policy how rigorously  
15 was that done. And what we heard from the  
16 workers that we talked to, who were there  
17 during the time period of this Class, was that  
18 it wasn't their take, and that's why I said  
19 earlier that a person could have gone in on an  
20 occasional basis. But to meet the  
21 requirements of this Class, 250 working days,  
22 they said that's just not possible; it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       couldn't have happened. Now that is based on  
2       what the workers who were there told us.

3                   CHAIRMAN MELIUS:       But the Class  
4       stretches -- I'll play devil's advocate here -  
5       - the Class schedule is for 21 years.

6                   DR. ULSH:       Yes.

7                   CHAIRMAN MELIUS:       That means  
8       they'd go in there once a week, once every  
9       other week, might not -- that is not frequent,  
10      but it's -- if you work for that long a  
11      period of time, you could accumulate 250 days,  
12      and could you have escaped monitoring?

13                  DR. ULSH:       Without leaving a  
14      single tritium urine sample.

15                  CHAIRMAN MELIUS:    Yes, that's what  
16      I'm saying. Because again you keep using  
17      language that gives me a little heartburn  
18      about, it's far from perfect, or it's not a  
19      perfect -- it wasn't complete. And I'm trying  
20      to understand what the -- I have not read the  
21      worker interviews. I know there were a number  
22      of them. I'm just trying to understand what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the workers actually said. And I don't know  
2 if the Work Group has comments on that.

3 DR. ULSH: I don't have anything  
4 further to add. That's what I've heard. But  
5 I'll let the Working Group speak.

6 MEMBER CLAWSON: I still have a  
7 question on this. Because we were involved in  
8 the same interview, and that person that  
9 pulled those samples for you, or started this,  
10 and his name escaped me, we just referred to  
11 him as Mr. Radon, because that's what he  
12 continued to do, was not a part of the tritium  
13 program.

14 DR. ULSH: Right.

15 MEMBER CLAWSON: He was in and out  
16 of that building, and his comment to us was, I  
17 didn't have to leave a tritium sample, because  
18 I wasn't a part of the program.

19 DR. ULSH: Well, I read the  
20 interview notes that are at least available in  
21 the SRDB, and I didn't see that in there.  
22 Maybe he said and it wasn't captured in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 interview notes.

2 MEMBER CLAWSON: This was when we  
3 went to Mound and interviewed. Because part  
4 of -- here is my issue with this, is, as we  
5 have seen in numerous other sites and  
6 everything else like that, there is a program  
7 status, and this is how it is supposed to  
8 work; it didn't always work that way. And  
9 with this statement that you got right there,  
10 it takes a lot of people out -- and I think  
11 you have got some issues. That is for the  
12 Work Group to discuss and go on from there.  
13 But it's out to us right now. This is part of  
14 the thing; how are you going to be able to do  
15 that?

16 DR. ULSH: Do what?

17 MEMBER CLAWSON: How are you going  
18 to be able to capture the people? You are  
19 saying that there is no way that anyone could  
20 have gone in there for 250 days over 21 year  
21 period and not left a tritium sample. And I  
22 beg to differ on that. I bet there are a lot

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of examples where it could have possibly  
2 happened.

3 DR. ULSH: Okay, well, I'm just  
4 telling you what the workers told us.

5 CHAIRMAN MELIUS: Go ahead,  
6 David.

7 MEMBER RICHARDSON: I've got two  
8 questions, and I'll start with the narrower  
9 one. I read the Class Definition as all  
10 employees, dot, dot, dot who were monitored  
11 for tritium exposure while working at Mound  
12 for a number of work days aggregating at  
13 least 250 work days. It doesn't say who ever  
14 had at least one tritium record and were  
15 employed at the site for 250 days. If I read  
16 it, or if you would read it again, when I read  
17 it it sounds to me like someone implementing  
18 this rule would say that they were monitored  
19 for tritium exposure for a number of work days  
20 aggregating to at least 250, implying that  
21 they would have to have 250 monitored days,  
22 not a single tritium record, and an employment

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 history that spans 250 days.

2 DR. ULSH: No, we worked with DOL  
3 to come up with this. Now let me be careful  
4 when I say that, because DOL has not stated  
5 their official position on this Class. We are  
6 still waiting on that.

7 MEMBER RICHARDSON: But to me as  
8 someone who is reading this text, it doesn't  
9 say a single tritium monitoring record. And  
10 250 days employment. It says, who were  
11 monitored for tritium exposure while working  
12 for a number of days aggregating to at least  
13 250.

14 DR. ULSH: Right, certainly the  
15 intent, and we've received at least verbal  
16 confirmation from DOL that should this Class  
17 goes forward as defined, the way that they  
18 would implement it is, the person would have  
19 to have 250 days employment at the Mound Site,  
20 and they would also have to have at least one  
21 tritium uranalysis sample. Now that doesn't  
22 mean that they have to have 250 days of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 monitoring. Just a single tritium urine  
2 sample is enough to put you in the Class if  
3 you meet all the other conditions.

4 MEMBER RICHARDSON: So why did  
5 they want to have something written that is  
6 different than how they are going to implement  
7 it?

8 DR. ULSH: I don't think they do. MEMBER

9 RICHARDSON: It sounds  
10 like you are saying they are giving you their  
11 word that they are going to implement it in  
12 this way, but it's not written explicitly in  
13 that way.

14 I mean, I don't know, when I pick  
15 this paragraph up, it's one very long  
16 sentence, and my reading of it is that they  
17 are monitored for tritium exposure for -- you  
18 have a bunch of parenthetical things set off  
19 there -- but it's for a number of days  
20 aggregating to at least 250. They aren't two  
21 separate criteria laid out here. It would  
22 have to say, who were monitored for tritium

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 while working at Mound and were employed for  
2 at least 250 days. It's sort of an "and" is  
3 missing. But that is a minor point.

4 The other question I had was, when  
5 I was listening to your presentation you seem  
6 to be laying out a case really for saying that  
7 you feel like there were high levels of radon  
8 but they were limited to measurements taken at  
9 a hole in an office in one area in one  
10 building, and that the levels measured within  
11 the office were you were characterizing as  
12 relatively moderate in that work area, they  
13 were certainly moderate. And that the radon  
14 issue, I mean here it seems like it is  
15 something that you could bound, and why is it  
16 not?

17 DR. ULSH: Well, if I heard your  
18 question correctly, at the very end there you  
19 said why do we feel that we cannot monitor it?

20 Or cannot bound it?

21 MEMBER RICHARDSON: Why can't you  
22 bound it?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. ULSH: I know. I will tell  
2 you that I struggled long and hard with this.

3 But you have got that 20 years, from 1959 to  
4 1979 when there is simply no monitoring data  
5 that we have discovered. Even in 1979 I've  
6 got a little bit of reservation about the  
7 measurements that were taken for a couple of  
8 reasons. First of all they were using an  
9 uncalibrated instrument. Now it's true that  
10 they did have an estimate of the calibration  
11 factor, so that is what it is. But the second  
12 point to bring up is that when they first  
13 started investigating this, the early samples  
14 that they took, and for the people who were in  
15 the room, these early samples -- so I'm  
16 talking about the samples that were collected  
17 in June or July, are by and large grab  
18 samples; in fact completely were grab samples.

19 And also at the time they didn't recognize  
20 that they had to consider these other isotopes  
21 of radon. They were still approaching this as  
22 a radon-222 problem. It was only as they got

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 further into this investigation that the  
2 health physicist did something called the  
3 modified "Zivoglu," or something method. I'm  
4 looking right at Bill Fields, because he knows  
5 what that is, and I don't. But apparently he  
6 used that to determine if there was  
7 interference from other isotopes of radon.  
8 That was his kind of first clue that, hey, we  
9 might have a problem here with thoron and  
10 actinon. So I think that influenced the  
11 sampling strategy in June and July. I'm a  
12 little uncomfortable saying to you that those  
13 measurements could be used to put a bound on  
14 dose when we are talking about doses this high  
15 for those reasons.

16 Now I am much more confident, once  
17 they figured out what they had here, that they  
18 had all three isotopes of radon and their  
19 daughters, and they used calibrated  
20 instruments, I've got a much higher confidence  
21 in those measurements.

22 So really, David, to answer your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question, the thing that tipped me over was  
2 the 20-years where we just don't have  
3 anything.

4 CHAIRMAN MELIUS: Josie.

5 MEMBER BEACH: This is a comment  
6 just on the Class Definition. First of all is  
7 it possible to put language in that defines or  
8 captures special circumstances for those folks  
9 that didn't leave a tritium bioassay which we  
10 have reason to believe could have happened, or  
11 secondly, take the tritium out of the language  
12 and just go with anyone who worked in those  
13 facilities?

14 DR. ULSH: We have had several  
15 iterations of this Class Definition. And at  
16 least one of them had R/SW building in the  
17 definition. But I'm trying to remember  
18 exactly why that was taken out. I think it's  
19 because it was DOL's opinion that they just  
20 lacked the ability to place people in those  
21 buildings. So in other words, this definition  
22 is actually a bit broader, because you could

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have someone who worked in the T building and  
2 left a tritium urinalysis sample, and they'll  
3 be captured. Because we don't -- DOL feels  
4 that they lack the ability to place people in  
5 this building.

6 What was the first part to your  
7 question? Were there two parts?

8 MEMBER BEACH: The first part was  
9 capturing special circumstances. Can you put  
10 language in there, and I know that's broad.

11 DR. ULSH: "Should have been  
12 monitored."

13 MEMBER BEACH: There you go.

14 DR. ULSH: I would entertain any  
15 suggestion you might want to make in terms of  
16 a modification.

17 CHAIRMAN MELIUS: What about,  
18 following up on Josie, what about a sort of  
19 bifurcated definition that would be monitored  
20 for tritium, the one you have now, or working  
21 250 days in the building, and essentially the  
22 burden would be on the records or through

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 affidavits for the claimant to show that they  
2 worked in the building, or missed by the other  
3 definition. Now, sort of the alternative to  
4 that, say someone can't show that they worked  
5 in the building, don't have the tritium, they  
6 come through NIOSH for dose reconstruction,  
7 might you identify them at that point in time.

8 But if we added the definition up front maybe  
9 that makes it easier. I don't know how much  
10 certainty there is about, is the building --  
11 using building as a definition, or location as  
12 a definition, just for some employees, or is  
13 it for any employee, there is just no  
14 documentation that they would have worked in  
15 the building in the personnel records that the  
16 Department of Labor was using?

17 DR. ULSH: No, I think that would  
18 be too strong a characterization. I mean we  
19 could certainly go through the worker files  
20 and in some cases identify that, hey, there is  
21 say for instance an incident report that  
22 occurred in a room in the R/SW building.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Sure, we could do that. But I can't guarantee  
2 you that we could do that in every case.

3 CHAIRMAN MELIUS: Right, so we had  
4 a two-part definition, that one, that covered  
5 the tritium which we think encompasses  
6 everybody or should, maybe not everybody but  
7 most people, and then or the buildings, one or  
8 the other, you've got -- you only get  
9 compensated once. So that would give the  
10 option a little more complicated to  
11 administer, for Department of Labor, but it  
12 might -- it would cover the two groups. That  
13 is a thought. Maybe you have already thought  
14 about it and said no.

15 DR. ULSH: Well, I understand what  
16 you are saying. I understand the concerns  
17 that are being expressed. All I can comment  
18 on is the scientific aspects of dose  
19 reconstructions. In terms of crafting a Class  
20 Definition there are other parties involved in  
21 this, and that is DOL and certainly my  
22 management. So I think I can speak for those

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 other parties and say that we would certainly  
2 entertain any suggestion that the Board would  
3 want to provide to us.

4 CHAIRMAN MELIUS: Henry.

5 MEMBER ANDERSON: Just a quick  
6 question. Do you have any sense of what  
7 activities would have gone on where there  
8 would have just occasional visits? Were there  
9 conference rooms there? The issue over 20  
10 years, you'd only have to be there 20 days,  
11 that's every other month. So to get your 250  
12 days if there was regular use of several  
13 conference rooms, some people may have come  
14 over for meetings. Do we have any sense of  
15 kind of the occasional visits to the building  
16 that might have been regular? Because a whole  
17 group came and it would be aw gee, we aren't  
18 going to -- you won't hear for a couple of  
19 hours.

20 DR. ULSH: To answer your question  
21 directly, off the top of my head I don't know  
22 whether there were conference rooms in this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building. I would assume that there were.  
2 There were certainly laboratories in this  
3 building, and there were certainly maintenance  
4 people who came into this building. But again  
5 they were covered, and they were certainly a  
6 part of the policy. So any examples that I  
7 could give you would be hypothetical. I'm not  
8 aware of any functions that would take you  
9 regularly into this building. I'm sure that  
10 there are. But again the opinion that was  
11 expressed to us by the workers that we talked  
12 to were, people who fit that definition, who  
13 even if it was occasionally but regularly, so  
14 let's say once a month over the years, they  
15 just didn't think it was plausible that  
16 someone could have done that and not left a  
17 single tritium urinalysis sample. One time,  
18 two times, yes maybe; but 250 times.

19 MEMBER ANDERSON: Are you talking  
20 two workers that you talked to? Or how many?

21 DR. ULSH: Well, I talked to the  
22 two workers that were interviewed by NIOSH,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 SC&A and the Working Group. Then I talked to  
2 eight other workers who were there. Now  
3 granted, toward the end of the SEC period. So  
4 the two that I talked to were the ones that  
5 were there for the entire period, the entire  
6 Class period.

7 MEMBER ANDERSON: I was just  
8 trying to kind of back in to expanding this  
9 because there reasonably could be some people  
10 that were missed and there may be -- you could  
11 think in terms of management folks that would  
12 come over for regular meetings but didn't  
13 really work there. Sometimes they slip  
14 through the cracks.

15 DR. ULSH: This is a little  
16 dangerous, because I'm only speaking for NIOSH  
17 now and I'm explicitly not speaking for the  
18 Working Group and SC&A, because I know there  
19 is some disagreement on this issue. From  
20 NIOSH's perspective you have this technically  
21 enhanced radon concentration that occurred in  
22 SW-19. It did not occur -- we don't see any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 evidence that it occurred throughout the R/SW  
2 building. The other areas. That is strictly  
3 from our perspective an administrative  
4 construct to administer the Class.

5 Now, like I said, the other  
6 parties are involved here. The Working Group  
7 and SC&A have expressed some disagreement with  
8 that viewpoint. So just going into the  
9 building from our perspective again doesn't  
10 expose you to radon. If you go into SW-19,  
11 okay, I'll grant you that, there is some  
12 exposure there. Certainly if you went up and  
13 stuck your nose next to the crack in the floor  
14 you are going to get some radon exposure. But  
15 just walking into the building I don't think  
16 so. That's just an administrative construct  
17 from our perspective.

18 CHAIRMAN MELIUS: But I also think  
19 it is -- I mean, you're right, it is  
20 administrative, but it's also, certainly if  
21 you were working in the building your  
22 probability of having been in a room with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 higher exposure is a higher probability. Now  
2 you are right, you may have never gone near  
3 the room, but the chances are, at least based  
4 on the information we have. And I think how  
5 we are struggling with is how do we make that  
6 definition.

7 Phil you had a comment, and then  
8 Josie.

9 MEMBER SCHOFIELD: Do you know if  
10 there is a time clock key station or any seals  
11 that the guard force or security would have  
12 had to go in that building and punch or check  
13 on a regular basis? Because I doubt they  
14 would left a sample when they went in there to  
15 just punch a clock or check a seal?

16 DR. ULSH: No, the answer to your  
17 question is I don't know. If you carried a  
18 time card with you and every time you went in  
19 and punched it or something like that.

20 MEMBER SCHOFIELD: It looks like a  
21 round clock. You go in there and you put in a  
22 key and what it does it makes a mark on a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 piece of paper, tells which key station you  
2 are at and what time. And that normally is --  
3 it's a process takes about 30 seconds. Also  
4 anything, maybe if you had a vault, maybe you  
5 had exterior doors that had to be sealed from  
6 the inside, they would go in and they would  
7 put a seal on this. And I cannot imagine  
8 those people every time they go in to check  
9 that seal or punch that clock would have left  
10 a sample.

11 DR. ULSH: Okay, let me tell you  
12 what I do know and what I don't know to answer  
13 your question. There may very well have been  
14 exactly what you are talking about. I don't  
15 know. I just don't. I can tell you that the  
16 written policy -- I mean I have already said  
17 this a couple of times was, even if you went  
18 in for any reason, you were supposed to leave  
19 a sample. Now there was no physical barrier  
20 there or personnel guarding the entrance to  
21 make sure that you left your sample. And  
22 hence there is this caveat that people could

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have visited occasionally and in contravention  
2 of the policy just didn't want to be bothered  
3 with it, I didn't go a hot area, whatever the  
4 reason might have been, and didn't leave a  
5 sample. I mean we are acknowledging that.

6           Might there have been a cohort, a  
7 smaller cohort of workers, perhaps, I don't  
8 know, maintenance workers that might have been  
9 subjected to the kind of thing that you are  
10 talking about? Could have been, I don't know.  
11 I just don't know.

12           CHAIRMAN MELIUS: Josie.

13           MEMBER BEACH: Thank you.

14           CHAIRMAN MELIUS: Brant, we'll let  
15 you sit down.

16           MEMBER BEACH: First of all, let  
17 me say that the Work Group conducted a  
18 vigorous discussion on this issue. The  
19 presence of radon sources under SW-19 along  
20 with tunnel underlying the foundation of parts  
21 of R/SW buildings permitted radon to seep  
22 into work areas via cracks in the floor over

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 time. Something that was accelerated by the  
2 use of negative pressure fume hoods for  
3 operations. The Evaluation Report originally  
4 indicated that there was sufficient radon data  
5 for dose reconstruction, but it turned out to  
6 be based on more current records from the  
7 1990s and did not reflect on the earlier  
8 years. The few measurements that were taken  
9 in 1979 and 1980 and the SW-19 provided us  
10 with an opportunity now to reach an agreement  
11 to recommend this SEC Class for March 1<sup>st</sup>,  
12 1959, to March 5<sup>th</sup>, 1980. But it does not  
13 necessarily resolve the question of  
14 reconstructability for the later years after  
15 1980 the Work Group needs to reassure itself  
16 that those few measurements in that one room  
17 are bounding after 1980. For radon doses  
18 apparently being experience elsewhere in the  
19 R/SW complex and are in fact bounding even in  
20 SW-19. Given some later indications that  
21 elevated radon may have continued being  
22 experienced there. We will be asking NIOSH

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 and SC&A to continue investigating these  
2 questions over the coming weeks. I will ask  
3 both NIOSH and SC&A to come to the next Work  
4 Group meeting for Mound prepared to address  
5 the post-1980 period for radon. I will also  
6 work with Ted to schedule the next Work Group  
7 meeting, and I'm hoping that for the end of  
8 June time frame or July, and of course that  
9 depends on the action items that are on the  
10 list.

11 I will also be sending out the  
12 action items list to the Work Group with this  
13 additional action for NIOSH and SC&A added to  
14 it. The other reservation as we discussed was  
15 the Class Definition, and I understand we have  
16 had that discussion.

17 CHAIRMAN MELIUS: Thank you,  
18 Josie, thank you for all the work that your  
19 Work Group has done on this. My sense is that  
20 I think from the tenor of the questions and so  
21 forth I think we are satisfied that this  
22 should be added to the Class. I think we are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all still struggling, as is I think NIOSH and  
2 DOL and the Work Group with what should be the  
3 Class Definition for that, and maybe we can  
4 sort of put this off, any final consideration  
5 on this, until some time later in this meeting  
6 to give time for NIOSH and DOL to at least  
7 have some initial discussions on some of the  
8 alternative approaches to dealing with this  
9 Class that we've suggested. But I'm not sure  
10 we are ready go vote on a conclusion, and I  
11 would hate to have us come to a conclusion and  
12 make a recommendation if we haven't -- we  
13 really need to have some consultation on what  
14 should be in the Class Definition. So maybe  
15 they can work on that, and if it's okay with  
16 the Board Members to postpone our final  
17 consideration on that at this meeting; we'll  
18 get back to it at this meeting to try to reach  
19 some conclusion and decision on that; is that  
20 fair?

21 MEMBER BEACH: I guess my only  
22 question about that is, we had a Work Group

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meeting last week, and NIOSH was working on  
2 that Class Definition, and came back with the  
3 same definition that was talked about during  
4 our Work Group meeting. So I wonder if NIOSH  
5 would be ready during this Board meeting to  
6 answer those questions.

7 CHAIRMAN MELIUS: Well, let's  
8 press them to do that, because I think we'd  
9 like to reach a conclusion, and talk, but I'm  
10 understanding that even with the Class  
11 Definition that is in the 83.14 report, DOL  
12 has not fully signed off on that yet, and I  
13 think we talked about some alternatives, and I  
14 guess I'd like to get some feedback from them.  
15 But I think to get some feedback they need  
16 some time, and let's see what we can get to at  
17 this meeting and decide. Is that fair to  
18 everybody?

19 MEMBER ROESSLER: It seems there  
20 are two things under consideration here, and I  
21 just want to have it clear in my mind. First  
22 of all is the definition on how do you define

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what workers would be included, and that's  
2 what you are talking about. But what Josie  
3 just brought up makes me think that there is  
4 even a question about the date, that March  
5 15<sup>th</sup>. Am I right, Josie?

6 MEMBER BEACH: You are correct.  
7 We didn't want to hold up this earlier time  
8 period by looking at the later date book.

9 MEMBER ROESSLER: So if you  
10 resolve, or if it's resolved, the question  
11 about what workers are included, then does  
12 this definition go through? And then your  
13 question is about the later measurements, and  
14 can they be bounded or not. That's another  
15 petition. I would think. I just wanted to be  
16 clear on that.

17 CHAIRMAN MELIUS: It would be most  
18 likely another petition, and I think it would  
19 be further consideration. The alternative is  
20 if we can't reach consensus on agreement at  
21 this meeting is to postpone any consideration  
22 of this until another meeting, and maybe we'd

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have at a last time period when we can address  
2 that more fully. But let's see what we can do  
3 on the earlier time period while we're  
4 gathered here today.

5 MR. KATZ: Just to clarify  
6 something, I don't believe it would require  
7 another petition, because this is an 83.14,  
8 and they have a clause in their Evaluation  
9 Report which allows for an expanded Class to  
10 be considered following the resolution of that  
11 initial 83.14. So I don't think it would  
12 require a new petition.

13 CHAIRMAN MELIUS: Okay, thank you  
14 for that.

15 Let's move on. Rochester I think  
16 we can do relatively quickly, and I think  
17 there might be a petitioner before we do that.

18 MR. KATZ: Yes, I thought we'd get  
19 to a vote, so I didn't address conflicts on  
20 the front end of this. But there were three  
21 Board Members who have conflicts, for Mound:  
22 Mr. Gibson, Mr. Griffon, and Dr. Lockey, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they had all recused themselves from the  
2 discussion which I would have noted if we got  
3 into a vote. Thanks.

4 CHAIRMAN MELIUS: Okay, Rochester.  
5 Laura is not here?

6 UNIVERSITY OF ROCHESTER ATOMIC ENERGY PROJECT  
7 SEC PETITION

8 MR. HINNEFELD: Hello again.  
9 This is Stu Hinnefeld.

10 Dr. Hughes couldn't make it this  
11 trip. She is restricted from traveling until  
12 she has her baby later on this summer. So I'm  
13 here to present briefly an update and we  
14 simply provided to the Advisory Board a week  
15 or so ago an addendum to our Evaluation Report  
16 for the University of Rochester that was  
17 originally presented in October.

18 Just a summary of the history. In  
19 October we presented the 83.13 SEC evaluation  
20 and proposed this Class: All employees of the  
21 Department of Energy, its predecessor agencies  
22 and contractors and subcontractors who worked

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at the University of Rochester Atomic Energy  
2 Project in Rochester, New York for these  
3 dates, September of '43 through October of '71  
4 for a number of days aggregating to 250. So  
5 that was the Class we presented in October.

6 And this is the feasibility table  
7 we presented. We had found that we could not  
8 have sufficient information to reconstruct the  
9 internal doses for any of the period, and then  
10 some of the external doses for other periods.

11 After we presented to the Advisory  
12 Board, the Advisory Board recommended that we  
13 try to look additional places for data capture  
14 to see if we couldn't some internal monitoring  
15 data that was relevant to the claim. And so  
16 specifically what was mentioned was the State  
17 of New York, and maybe if you would contact  
18 the laboratory director, the laboratory  
19 director oftentimes kept these records and  
20 would know where things went.

21 So following on from that, we  
22 started down the trails starting with those

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 two situations, and followed the trail a  
2 number of places, ended up at six different  
3 locations looking for University of Rochester.

4 And what's particularly relevant is the  
5 appendix to the addendum to the SEC Evaluation  
6 Report. That appendix starts on page 11 of  
7 that document, and it lists the documents that  
8 were found during these various data captures.

9 Going down the locations one by  
10 one we started with New York State agencies,  
11 and we were not able to find any additional  
12 information from the New York State agencies.

13 We had previously contacted a number of New  
14 York State agencies, in our original  
15 investigation back in 2007 during our original  
16 research on this, and we had found no more  
17 since October of 2009.

18 We were taken to Hanford by well  
19 Dr. Lockey found information, the collection  
20 of Dr. Newell Stannard who had run the  
21 laboratory at University of Rochester for  
22 awhile, was transferred from Rochester to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Hanford. So we contacted Hanford for a  
2 search, and found quite a lot of hits from  
3 their finding database related to Rochester,  
4 key words, we asked to see some boxes.  
5 Hanford is having trouble finding all 72 boxes  
6 that had some of those hits in them, but we  
7 have found some. Part of the collection  
8 apparently was loaned to Washington State  
9 University, so that then becomes our third  
10 location that we looked for, Hanford did  
11 finally located boxes pertaining University of  
12 Rochester. Dr. Stannard had records about a  
13 lot of places, just because Dr. Stannard's  
14 name was on a record doesn't mean it pertained  
15 to the University of Rochester

16 So I did find some boxes at the  
17 Seattle federal records center, and we went  
18 there and captured some documents from those.

19 Like I said Hanford indicated some  
20 of those documents were loaned to Washington  
21 State University, so we went there. And  
22 specifically to the transuranium and uranium

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 registries. And we found indication there  
2 that some of the documents associated with Dr.  
3 Stannard had been sent to the University of  
4 Tennessee in Knoxville. So we did find  
5 finally at the Washington State Library six  
6 documents relevant to the University of  
7 Rochester, none of which helped us out on  
8 internal monitoring for people working at the  
9 University of Rochester. We went to the  
10 University of Tennessee, found 26 boxes there,  
11 data captured this year. We found again 51  
12 documents relating to Rochester, but not  
13 internal dosimetry that would help us out in  
14 providing reconstruction of this Class. Since  
15 we were at University of Tennessee, I think  
16 there was some sharing of information between  
17 University of Tennessee and the Oak Ridge  
18 operations office vault; that is the DOE  
19 office down there. They have a vault where  
20 they store classified information so we  
21 searched that and found a number of boxes,  
22 found some film badge services that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 University of Rochester had provided to other  
2 sites, because recall back in the early days a  
3 lot of these AECs, they would issue film  
4 badges to their workers; those film badges  
5 were processed by the University of Rochester.

6 We found a limited amount of film badge data  
7 for the University of Rochester, but in our  
8 feasibility issue was with the internal  
9 monitoring data. So we couldn't solve our  
10 issues there.

11 We also discovered a finding aid  
12 for NARA, that's National Archive and Records  
13 Administration, facility in College Park,  
14 Maryland. We were actually looking there in  
15 October when we presented to the Board and at  
16 that time that we were searching there. We  
17 received some documents in November, and we  
18 made additional data capture this year. After  
19 finding a new finding aid and we captured a  
20 number of documents, but again, nothing that  
21 would allow us to do internal dose  
22 reconstructions for the University of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Rochester.

2           So having concluded all that, I  
3 think the actual documents, a description of  
4 the documents found are listed like I said in  
5 the appendix of the evaluation, the addendum  
6 to the Evaluation Report. You can see it's  
7 quite a long list of publications, and a great  
8 deal of animal studies having to do with the  
9 radiobiology of radioactive materials when  
10 administered to animals, so the University of  
11 Rochester was heavily involved in that early  
12 work determining the fate of radioactive  
13 materials that are administered to animals.  
14 Very much of what we found fit into that. We  
15 did not find any information though that would  
16 make it feasible for us to reconstruct  
17 internal doses of the people working at the  
18 University of Rochester.

19           So we -- our addendum to the  
20 Evaluation Report did not change our proposed  
21 Class Definition; did not change our  
22 conclusion about feasibility, and so naturally

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 if we find the dose is infeasible, we always  
2 determine that if we can't bound the dose that  
3 we have to conclude there is a potential for  
4 harm, and so we present that to the Board as  
5 essentially our recommendation again that this  
6 Class be added for those purposes. We were  
7 not able to find additional information,  
8 despite the search over the last six months  
9 roughly to allow us to complete those dose  
10 reconstructions.

11 CHAIRMAN MELIUS: Okay, thank  
12 you, Stu. Do Board Members have questions?  
13 We have talked about it a couple of times  
14 before. If there are no questions, could we  
15 actually -- before I do that, Paul Ziemer or  
16 David Richardson, do you have questions?

17 MEMBER ZIEMER: What was the  
18 question again?

19 CHAIRMAN MELIUS: Do you have  
20 questions.

21 MEMBER ZIEMER: No, I'm clear.

22 CHAIRMAN MELIUS: Dr. Lockey.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MEMBER    LOCKEY:            In    your  
2    definition, I forgot, but what did you say  
3    about graduate students, et cetera.

4                   MR.     HINNEFELD:           Well,    our  
5    definition doesn't say anything about graduate  
6    students.  It says people who worked for the  
7    Department    of    Energy,    its    predecessor  
8    agencies, and contractors.  So if you are  
9    asking an employment question, a verified  
10   employment question of would a graduate  
11   student be included.  And I guess I don't  
12   really know; that would be the Department of  
13   Labor.  We would make no distinction.  The  
14   Department of Labor identifies someone as  
15   having verified employment at the University  
16   of Rochester Atomic Energy Project then it  
17   would make no distinction for us, and in fact  
18   we would not see these claimants.  They  
19   wouldn't even come to us.

20                   MEMBER    LOCKEY:            So anybody who  
21    received funding through the Department of  
22    Energy that funneled through the University of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Rochester would fit into this Class?

2 MR. HINNEFELD: Well, the Class,  
3 the work facility is defined as the University  
4 of Rochester Atomic Energy Project, which was  
5 a specific I think that was a specific  
6 building or set of buildings at the University  
7 of Rochester. So whether or not people who  
8 are funded through the University of Rochester  
9 and did the work, certainly somewhere other  
10 than University of Rochester, I don't see any  
11 possible way they would be included. People  
12 who worked at the University of Rochester and  
13 have a valid claim with the Department of  
14 Labor, by our definition would be included.  
15 It all comes down to whether their employment  
16 was verified by they Department of Labor as  
17 being appropriate coverage.

18 MEMBER LOCKEY: Is there a  
19 building definition in this Class?

20 MR. HINNEFELD: Well, the name of  
21 the facility, which is the name of the covered  
22 facility on the DOE database, it's the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 University of Rochester Atomic Energy Project.

2 That is in our Class Definition. That is the  
3 name of the covered facility certainly on the  
4 database and probably on the Federal Register  
5 that listed the covered facilities.

6 MEMBER LOCKEY: I guess what I'm  
7 trying to get a handle on is we have a covered  
8 facility and a covered project. And there  
9 might have been other people who would  
10 employed through the Department of Energy on  
11 the University of Rochester campus. But if  
12 they walked into this building, and they  
13 accumulate 250 days in this building, are they  
14 included in the Class Definition?

15 MR. HINNEFELD: Well, as always,  
16 if they are included in the Class Definition  
17 is a determination of the Department of Labor.

18 And so I hate to be evasive about your  
19 question, but I don't know that I can answer,  
20 and I don't know that I know all the  
21 employment relationships or arrangements at  
22 the University of Rochester. I don't know

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that a graduate student, if a graduate student  
2 is considered an employee or not. So I  
3 suppose Jeff is prepared to opine on those  
4 questions.

5 CHAIRMAN MELIUS: Do you have  
6 anything to add, Jeff?

7 MR. KOTSCH: Jeff Kotsch, Labor.  
8 I guess the only thing I would say is unless  
9 you would -- you might lose grad students if  
10 they were members of the university who were  
11 not employed by the Department of Energy or  
12 its predecessor agencies or contractors or  
13 subcontractors because they worked on the  
14 project. I don't know if that is a  
15 possibility or not. The way the Class  
16 Definition is written, because there is the  
17 employment portion as well as the facility  
18 portion.

19 MEMBER LOCKEY: Working at a  
20 university, the reason I raise the issue is,  
21 graduate students do a lot of the work, if not  
22 most of the work in the lab. And the PI sits

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in his office and supervises. So it really is  
2 an important issue, which I think somehow has  
3 to be addressed.

4 MR. KOTSCH: I have to admit, I  
5 don't know like if you were on -- I know when  
6 I was in grad school, if you were on a grant  
7 or something that came through that, how that  
8 would show up as far as I was always just an  
9 employee of the university as a grad  
10 assistant. Again, I don't know -- again it  
11 comes down to the situation for those types of  
12 people having to be treated on a case by case  
13 basis, looking at the available information,  
14 trying to determine if they fit into the Class  
15 Definition. From the information that was  
16 presented in the Class Definition.

17 CHAIRMAN MELIUS: Maybe we can ask  
18 for an update on that in a more general sense  
19 so we understand it better. Because it comes  
20 up, it comes up in some of the other  
21 university-affiliated facilities also, and I  
22 think we need to understand it better.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Recognizing that there are limitations on what  
2 you can do given the law and the various  
3 contractual relationships that are out there.

4 Thank you.

5 Josie.

6 MEMBER BEACH: And I just have an  
7 addition. I remember asking that question  
8 specifically the last time this came up at a  
9 Board meeting. There were 799 grad students,  
10 and I believe we were told that they weren't  
11 covered. That is just memory from this last  
12 discussion we had. And I am also concerned  
13 about that.

14 CHAIRMAN MELIUS: I don't remember  
15 799, but Wanda.

16 MEMBER MUNN: My memory of the  
17 language of the law itself is specific about  
18 employees of the Department of Energy. That  
19 being the case there is nothing we can argue  
20 here if there is an issue, then the folks who  
21 were instrumental in writing the original law  
22 need to address the Congress of the United

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 States on this issue. I can't see how it can  
2 be resolved if my memory is correct. My  
3 memory may not be correct; I haven't read the  
4 law in several months.

5 CHAIRMAN MELIUS: Well, there are  
6 other ways of designating facilities if they  
7 meet the definition, so that can be changed.  
8 So it's not just necessarily Congress. But  
9 you are right, there are limitations based on  
10 employment, and what they recognize in the  
11 contracts and those are usually not  
12 straightforward, and they change over time.  
13 Henry.

14 MEMBER ANDERSON: I would have  
15 thought that this project was contracted to  
16 the University of Rochester so that grad  
17 students were employees and could show that  
18 they had worked on a project for the 250 days,  
19 you would think they would be covered because  
20 they are subcontractors.

21 CHAIRMAN MELIUS: Yes. I would  
22 think so. Other questions or comments.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MEMBER ZIEMER: This is Ziemer. I  
2 do have a question, and this may have come up  
3 before, but has it been established that the  
4 quote project, the Atomic Energy Project, was  
5 in fact building specific? And the reason I  
6 ask that is those who work on campuses  
7 recognize that grants that are made to either  
8 a project or a center or whatever the name is  
9 are frequently scattered throughout multiple  
10 buildings. The project is a paper entity, and  
11 may not be building specific. It may include  
12 labs in a number of different places, and then  
13 that opens the door to accessibility by  
14 others, and I suspect on this particular one  
15 it could have certainly been building specific  
16 or location specific. But has that ever been  
17 confirmed.

18                   CHAIRMAN MELIUS: Go ahead, LaVon.

19                   MR. RUTHERFORD: Dr. Ziemer, yes,  
20 we actually did correspond with the Department  
21 of Labor, and it is building specific.

22                   MEMBER ZIEMER: I thought that had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 been asked before, but I couldn't recall if it  
2 had been resolved. Thank you.

3 CHAIRMAN MELIUS: We also may have  
4 the petitioner on the line, if she is  
5 available.

6 MS. KESTON: Yes.

7 CHAIRMAN MELIUS: Do you have any  
8 comments to make?

9 MS. KESTON: That it was a  
10 specific building when I worked there from  
11 September of '43 to June of '45. It was only  
12 in a specific building.

13 CHAIRMAN MELIUS: Okay, thank you.  
14 If there are no further comments, do I hear a  
15 motion?

16 MEMBER PRESLEY: So moved.

17 CHAIRMAN MELIUS: So moved what?

18 MEMBER PRESLEY: That we accept  
19 it.

20 CHAIRMAN MELIUS: Thank you, Bob. MEMBER

21 ANDERSON: Second.

22 CHAIRMAN MELIUS: Second from

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Henry. And Bob if you will accept a friendly  
2 amendment. Let me read the statement.

3 Maybe I should have said, what I  
4 hope to be a friendly amendment.

5 This is our letter and forbear a  
6 little bit.

7 The Advisory Board on Radiation  
8 Worker Health, the Board has evaluated SEC  
9 Petition 00140 concerning workers at the  
10 University of Rochester Atomic Energy Project  
11 on the statutory requirements established by  
12 EEOICPA incorporated 42 CFR Section 83.13.  
13 The Board respectfully recommends a Special  
14 Exposure Cohort be accorded to all employees  
15 of the Department of Energy, its predecessor  
16 agencies, and their contractors or  
17 subcontractors who worked at the University of  
18 Rochester Atomic Energy Project in Rochester,  
19 New York, from September 1<sup>st</sup>, 1943 through  
20 October 30<sup>th</sup>, 1971, for a number of work days  
21 aggregating at least 250 work days occurring  
22 either solely under this employment or in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 combination with workdays within the  
2 parameters established for one or more other  
3 Classes of employees in the SEC.

4 This recommendation is based on  
5 the following factors: the University of  
6 Rochester Atomic Energy Project conducted  
7 research in technical projects related to the  
8 development and production of nuclear weapons.

9 Number two, NIOSH found that there  
10 was insufficient monitoring data or  
11 information on radiological operations at this  
12 facility in order to be able to complete  
13 accurate individual dose reconstructions.

14 Four, the University of Rochester  
15 Atomic Energy Project employees during the  
16 time period in question.

17 The Board concurs with this  
18 conclusion.

19 Three the Board has reviewed  
20 information which confirms the radiation  
21 exposures at the University of Rochester  
22 Atomic Energy Project during the time period

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in question could have been dangerous to the  
2 health of members of this Class.

3 The Board also concurs with this  
4 conclusion. Based on these considerations and  
5 the discussions held at our May 19-21, 2010  
6 Advisory Board Meeting in Niagara Falls, New  
7 York, and our two previous Board meetings, the  
8 Board recommends that this Special Exposure  
9 Cohort petition be granted; enclosed is  
10 documentation from the Board meetings where  
11 the Special Exposure Cohort Class was  
12 discussed. The documentation includes  
13 transcripts of deliberations, copies of the  
14 petition, the NIOSH review thereof, and  
15 related materials. If any of these materials  
16 are unavailable at this time they will follow  
17 shortly.

18 Do you accept that?

19 MEMBER PRESLEY: I accept it.

20 CHAIRMAN MELIUS: Okay. And I  
21 will note for the record, I don't think  
22 counsel has had a chance to review this yet.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So everyone will get another look at it at  
2 some point, but I wanted to at least get it  
3 into the record now.

4 So any further comments or  
5 questions? If not I think I'll ask Ted to  
6 call the roll.

7 MR. KATZ: Okay, we will just do  
8 this alphabetically this time. Dr. Anderson.

9 MEMBER ANDERSON: Yes.

10 MR. KATZ: Ms. Beach.

11 MEMBER BEACH: Yes.

12 MR. KATZ: Mr. Clawson.

13 MEMBER CLAWSON: Yes.

14 MR. KATZ: Dr. Field.

15 MEMBER FIELD: Yes.

16 MR. KATZ: Mr. Gibson.

17 MEMBER GIBSON: Yes.

18 MR. KATZ: Mr. Griffon.

19 MEMBER GRIFFON: Yes.

20 MR. KATZ: Dr. Lemen.

21 MEMBER LEMEN: Yes.

22 MR. KATZ: Dr. Lockey.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MEMBER LOCKEY: Yes.

2 MR. KATZ: Dr. Melius.

3 CHAIRMAN MELIUS: Yes.

4 MR. KATZ: Ms. Munn.

5 MEMBER MUNN: Yes.

6 MR. KATZ: Dr. Poston.

7 MEMBER POSTON: Yes.

8 MR. KATZ: Mr. Presley.

9 MEMBER PRESLEY: Yes.

10 MR. KATZ: Dr. Richardson.

11 MEMBER RICHARDSON: Yes.

12 MR. KATZ: Dr. Roessler.

13 MEMBER ROESSLER: Abstain.

14 MR. KATZ: Mr. Schofield.

15 MEMBER SCHOFIELD: Yes.

16 MR. KATZ: Dr. Ziemer.

17 MEMBER ZIEMER: Yes.

18 MR. KATZ: So we have 15 in favor

19 and one abstention, and the motion passes.

20 CHAIRMAN MELIUS: Okay. Lunch

21 time. Take a break. We are a little bit

22 late. We do have I believe a petitioner that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will be here, so we'll try to start maybe  
2 1:35. That gives an hour and 15 minutes.  
3 Hopefully everyone can make it back by then.  
4 Thank you.

5 (Whereupon, the above-entitled  
6 matter went off the record at 12:24 p.m. and  
7 resumed at 1:46 p.m.)

8 CHAIRMAN MELIUS: We can  
9 reconvene. Ted, you want to check the phones?

10 MR. KATZ: Yes, let me check the  
11 lines and see that we have Dr. Ziemer and Dr.  
12 Richardson?

13 MEMBER ZIEMER: Ziemer is here.

14 MEMBER RICHARDSON: Hi, David  
15 Richardson.

16 MR. KATZ: Great. And for  
17 everybody else on the line, maybe some new  
18 people will have joined us post lunch, we are  
19 starting a little bit late. We had a late  
20 ending of the morning session, and we are  
21 about to get going. So let me note for any  
22 people who may have joined us just freshly now

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this afternoon who are on the call, please  
2 mute your phone. Use the \*6 button if you  
3 don't have a mute button, and that will mute  
4 your phone. Use \*6 again if you want to speak  
5 to the group. And please don't hang up -- I  
6 mean please don't put your call on hold. Hang  
7 up and call back in if you need to leave at  
8 some point.

9 CHAIRMAN MELIUS: And we will  
10 start this afternoon, first order of business  
11 is BWX Technologies. And LaVon, you're up.

12

13 BWX TECHNOLOGIES (LYNCHBURG, VA)

14 SEC PETITION (83.14)

15 MR. RUTHERFORD: Thank you, Dr. Melius.

16 I'm going to talk about BWXT, and our Special  
17 Cohort petition for that facility.

18 We in April 6, 2010, after many  
19 data capture efforts and work we decided that  
20 we could not reconstruct dose for a period of  
21 time at BWXT so we at that time sent a letter  
22 to a claimant indicating to that claimant that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dose reconstruction was not feasible, and we  
2 provided that claimant a form A petition to  
3 submit an SEC petition for that site.

4 On April 14 -- yes.

5 MEMBER PRESLEY: Can we do one  
6 thing, can we designate that as BWXT Virginia?

7 Because there are BWXT sites now all over the  
8 United States in the weapons complex.

9 MR. RUTHERFORD: I actually had  
10 that on my next slide.

11 CHAIRMAN MELIUS: Okay. We will  
12 make sure.

13 MR. RUTHERFORD: Okay. All right,  
14 so on April 14<sup>th</sup>, 2010, we received an 83.14  
15 SEC petition. That petition qualified on that  
16 day. And we after a month or so we issued our  
17 Evaluation Report on May 4<sup>th</sup>, 2010.

18 A little background: as Mr.  
19 Presley indicated, BWXT is located in  
20 Lynchburg, Virginia. It was an Atomic Weapons  
21 Employer for three separate time periods,  
22 which is kind of a little unique: January 1,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 1959 through December 31<sup>st</sup>, 1959; January 1,  
2 1968 through December 31<sup>st</sup>, 1972. And January  
3 1, 1985 through December 31, 2001.

4 So during those three separate  
5 time periods there were different AEC  
6 activities. There were commercial activities  
7 that went on all the way from 1956 all the way  
8 to present.

9 From our interview indication we  
10 have that the workforce ranged from roughly  
11 1,000 employees up to 3,000 employee at that  
12 facility.

13 The facility is actually BWXT is  
14 designed as a single site. However there are  
15 two licensed locations: Naval Nuclear Fuels  
16 Divisions; and the Lynchburg Technology  
17 Center. The Naval Nuclear Fuels Division, the  
18 primary mission is involved in fuel  
19 fabrication using enriched uranium. The LTC  
20 which is -- I'm going to use NNFD and LTC as  
21 acronyms instead of repeating their names --  
22 LTC's work primarily involved reactor

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 research, fuel testing and hot cell work.

2 Our sources of information that we  
3 looked to retrieve data, we looked at our  
4 existing Site Profiles. We have no Site  
5 Profile for BWXT. Technical Information  
6 Bulletins, NIOSH Site Research Database, data  
7 captures, and worker interviews. We did 36  
8 worker interviews. Those were focus  
9 interviews, and I'll talk a little bit about  
10 them shortly.

11 We did data capture efforts with  
12 BWXT, DOE Legacy Management, DOE Germantown,  
13 and NRC, NNSA, the Virginia Department of  
14 Health, Westinghouse Site, the Hematite  
15 actually had some documentation that we  
16 pulled; R.S. Landauer. Landauer did the film  
17 badge for BWXT. And U.S. Transuranium and  
18 Uranium Registries, as well as Washington  
19 State University's DOE OpenNet, Internet  
20 searches, CEDR database, Hanford's DDRS, and  
21 National Academies Press.

22 Existing claims, this is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information as of the 4<sup>th</sup> of the May. We had  
2 78 claims submitted to NIOSH. Of those 78, 62  
3 meet the Class Definition that we are  
4 recommending for the SEC. We have completed  
5 two dose reconstructions within that Class,  
6 and I broke down the claims, internal  
7 dosimetry and external dosimetry, based on the  
8 internal and external monitoring data for  
9 those periods. So we had, you can look at it,  
10 you can see that we had three claims within  
11 internal dosimetry in 1959. We had 39 and 43  
12 for the other two periods. And then the  
13 external dosimetry. I could have actually, it  
14 would have probably been a little more helpful  
15 if I had put in the actual total numbers as  
16 well for that period, but it does give you  
17 some indication. And I'll talk more about the  
18 internal dosimetry shortly and external.

19 Site operations: LTC was in my  
20 mind very much almost like a national lab that  
21 we dealt with. They did research and  
22 development with radioactive materials and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reactors from 1956 to 1984. Unencapsulated  
2 fuel work with uranium and thorium from 1957  
3 to 1984. Reactor operations, there were a  
4 number of reactors, there is a table in the  
5 actual report that lists some of the reactors  
6 that operated and their time periods. Reactor  
7 operations from 1957 to 1983. They did  
8 thorium U-233 fuel research in 1964.  
9 Plutonium fuel research in 1966 through '71.  
10 And then laboratory analysis work for all the  
11 facilities, both the operations going on at  
12 LTC and NNFD occurred at the Lynchburg  
13 Technology Center. And they also had cask  
14 handling, liquid waste disposal, hot cell  
15 work, and storage of highly activated  
16 contaminated materials, and fuel cell  
17 inspections. And that all occurred from 1960  
18 to the present.

19 NNFD, which was -- a lot of people  
20 considered the main plant, did uranium fuel  
21 fabrication from 1956 to present; thorium fuel  
22 fabrication from 1956 to 1963; and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 downblending of highly enriched uranium to  
2 fuel grade enrichments in the later years of  
3 1995 to 2000.

4 Potential radiation source of  
5 exposure, primary radionuclides that were the  
6 source of external and internal exposure was  
7 uranium, typically enriched from 4% to over  
8 90% and thorium-232.

9 The LTC had primary radionuclides  
10 that were of concern were fissile materials  
11 which included enriched uranium, thorium,  
12 plutonium, and U-233; transuranics; irradiated  
13 fuels and materials; and fission and  
14 activation products.

15 I'm going to talk a little bit  
16 about internal monitoring data, first with the  
17 fuel processing facility, NNFD. Uranium  
18 bioassay exists for all time periods.  
19 However, fluorometric analysis was used for  
20 the first operational period. Fluorometric  
21 analysis was used from 1956 I believe, '56 or  
22 '59, up through 1965. So it does cover that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first operational period in 1959. And  
2 fluorometric analysis measures uranium by  
3 mass. Unless we have well-defined enrichment  
4 values this analysis is not really capable of  
5 measuring enriched uranium.

6 There is no bioassay data for  
7 thorium.

8 General area monitoring exists for  
9 uranium and some for thorium, but no breathing  
10 zone data are available. I should say, it  
11 says no breathing zone data are available for  
12 the first two operational periods, with  
13 exception to the 1959 HASL report, the 1959  
14 HASL study actually looked at two different  
15 operations in 1959, some pellet oxide fuel  
16 fabrication for Savannah River, and also some  
17 fuel fabrication for some Navy work. That  
18 1959 study does contain breathing zone data.  
19 However, other than that there is no other  
20 breathing zone data for the first two  
21 operational periods.

22 Internal monitoring data at the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 LTC, we have uranium bioassay exists for all  
2 periods. We have one worker that indicated,  
3 or that we have routine bioassay analysis for  
4 uranium and fission products, that also  
5 includes some bioassay for plutonium and  
6 americium related to a 1969 incident. That is  
7 the only worker that we have that actually has  
8 any plutonium or americium bioassay data.

9 Okay, other than uranium and mixed  
10 fission products, again, bioassay sampling  
11 appeared to be incident specific. The one  
12 individual who we did have uranium -- or  
13 americium and plutonium bioassay was based on  
14 a 1969 incident, and they did continue that  
15 monitoring of that individual over time past  
16 that 1969 incident apparently to watch it  
17 clear.

18 No air sampling data for the first  
19 two operational periods could be directly  
20 attributed to the LTC. All the air data that  
21 we have right now that we have received is  
22 only for the fuel processing facility.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 External monitoring data, we have  
2 film badge data for both NNFD and LTC, again  
3 I've mentioned Landauer did the work for them  
4 for all operational periods. Neutrons from  
5 the records that we have, neutrons were not  
6 assessed at NNFD, because it was felt neutrons  
7 were not a significant exposure source.  
8 Neutron exposures were evaluated at the LTC  
9 during the period when commercial reactors  
10 were operating, which they operated up until  
11 1986.

12 Source-term data, we have no  
13 radioactive material inventory data that would  
14 enable NIOSH to place an upper bound on  
15 potential exposures to the wide array of  
16 commercial and AEC radiological sources that  
17 could have been encountered at BWXT  
18 facilities.

19 Our feasibility of dose  
20 reconstruction, there are insufficient  
21 monitoring and source-term data from which to  
22 draw conclusions regarding potential magnitude

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of internal dose. Again I mentioned  
2 fluorometric analysis is inadequate for  
3 enriched uranium without specific knowledge of  
4 enrichment. We do have a range, we do have  
5 one campaign that we know that ran 5.9 % that  
6 we could tie workers to. However, all the  
7 other ones, we know there was a range of 4-90%  
8 and that would be a significant factor placed  
9 on that -- correction factor placed on a  
10 bioassay.

11 Thorium exposures cannot be  
12 estimated for the 1959 period at NNFD. Only  
13 incident specific personal monitoring is  
14 available for plutonium and americium at LTC  
15 during the first two operations periods, and  
16 we have no breathing zone data for the first  
17 two operational periods.

18 External exposures, NIOSH believes  
19 there are sufficient monitoring and source-  
20 term data from which to draw conclusions  
21 regarding potential magnitude of external  
22 exposures. There are some questions about the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 1959 period and the early period of neutron  
2 exposures since they were operating with  
3 highly enriched uranium. But we believe that  
4 can be reconstructed.

5 Reconstruction of medical dose is  
6 likely feasible using claimant-favorable  
7 assumptions. And we will also use any  
8 personal monitoring data that becomes  
9 available for completing partial dose  
10 reconstructions.

11 We did, as I mentioned earlier, 36  
12 interviews. Our interviews were focused  
13 because we actually as I mentioned earlier,  
14 there are two main plants, at least they would  
15 be defined as two main plants now, which would  
16 be the LTC and the NNFD. During our  
17 operations we recognized that there were  
18 limitations in feasibility for dose  
19 reconstructions, and we looked at different  
20 ways that we could possibly limit the Class.  
21 Can we limit this Class to just the LTC  
22 facilities which are actually -- there are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 four buildings, A, B, C and D, that are  
2 listed. Can we limit it to that? And  
3 separate out and do dose reconstructions for  
4 the NNFD? And vice versa. However,  
5 ultimately we came up with issues with both  
6 facilities. But the worker interviews did  
7 show us that some of the workers, we had  
8 received indications through one of the health  
9 physicists that workers were assigned to  
10 specific buildings and they didn't move back  
11 and forth, and that may be true during the  
12 later period. However we have indications  
13 during some worker interviews that there were  
14 workers that moved from the LTC to NNFD and it  
15 is not apparent in their exposure monitoring  
16 records. And because of that we didn't even  
17 pursue limiting the Class because of that,  
18 even though there were infeasibilities tied to  
19 both facilities.

20 Okay, so our feasibility  
21 determination is that internal dose is not  
22 feasible, and external dose is feasible, for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the period, we have two periods, January 1,  
2 1959, through December 31, 1961, and January  
3 1, 1968 through December 31, 1972. The third  
4 period of 1985 through 2001 we have not  
5 weighed in on that. We are still looking at  
6 that information, so this 83.14 only covers  
7 the first two operational periods.

8 The evidence we reviewed in this  
9 evaluation indicates that some workers in the  
10 Class may have accumulated chronic exposures  
11 through intakes of radionuclides and direct  
12 exposure to reactor materials. And NIOSH is  
13 specifying that health may have been  
14 endangered.

15 Our proposed Class, and I'm not  
16 going to read all of it, but it does cover the  
17 January 1, 1959 through the December 31, 1959,  
18 or from January 1, 1968 through December 31,  
19 1972.

20 And again our recommendation: dose  
21 reconstruction is not feasible for those  
22 periods, and health was endangered.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Questions.

2 CHAIRMAN MELIUS: Questions for  
3 LaVon? Josie?

4 MEMBER BEACH: Hi LaVon, and you  
5 may have mentioned this and I didn't catch it,  
6 but the years 1960 to 1967, I know there was  
7 dose, I know there was still source there; why  
8 aren't those years covered?

9 MR. RUTHERFORD: Those are covered  
10 under the residual -- those are considered  
11 residual contamination years. We have not  
12 weighed in on the residual contamination  
13 period. What we would be doing, ultimately if  
14 we get to a point where we determine the  
15 residual periods we couldn't reconstruct, we  
16 would come back and do another 83.14. So we  
17 haven't weighed in on that in this evaluation.

18 This evaluation only addresses those two  
19 operational periods from 1959, which are  
20 considered -- if you remember from 1959 and  
21 1968 through '72 we have to reconstruct all  
22 exposures, okay? For those residual periods

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of 1960 through 1967 we would only reconstruct  
2 the residual exposure from the AEC activities.

3 The AEC covered activities. And that would  
4 have been the production of the fuel for the  
5 Savannah River reactors in 1959. So we  
6 haven't weighed in on that. There is a  
7 possibility down the line that that could  
8 happen that we could recommend a Class for  
9 that period.

10 MEMBER BEACH: Okay, thank you.

11 CHAIRMAN MELIUS: Just to follow  
12 up on that, what is your process now going  
13 forward?

14 MR. RUTHERFORD: Well, right now  
15 we are still pursuing records through BWXT.

16 CHAIRMAN MELIUS: Okay.

17 MR. RUTHERFORD: And we are  
18 working through them mainly because we feel  
19 the 1985-2001 period we have much more data.  
20 We have a lot, we have a lot more external  
21 monitoring data. Also the analysis techniques  
22 that took place with bioassay had changed. We

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have alpha spec bioassay data. We also have  
2 the enrichments are identified on the bioassay  
3 card. So we have a lot more information  
4 during that period. So but we are pursuing  
5 the thing, the one thing that we are missing  
6 is the understanding of their decision process  
7 when to monitor and when not to monitor, so we  
8 are trying to get that information from them  
9 right now.

10 CHAIRMAN MELIUS: But would you  
11 come back with a Site Profile type of document  
12 or technical document?

13 MR. RUTHERFORD: I think that -- I  
14 don't know that we have made a decision on  
15 that.

16 CHAIRMAN MELIUS: I'm just trying  
17 to follow up on what Josie was asking is, when  
18 would we be considering, we as the Board, or  
19 when --

20 MR. RUTHERFORD: From the 83.14  
21 there would be nothing that would happen, but  
22 from us we have dose reconstructions that have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be completed. So as we get this  
2 information and we feel that we have enough  
3 information to complete the dose  
4 reconstruction, we will either complete the  
5 dose reconstruction with all the information  
6 inside it, or we will move forward with a Site  
7 Profile.

8 CHAIRMAN MELIUS: Okay. Phil.

9 MEMBER SCHOFIELD: On your data,  
10 your '85 through 2001, do you have any in vivo  
11 counts?

12 MR. RUTHERFORD: Whole body  
13 counts? Yes, for the later years we have  
14 whole body counts for the later years. But  
15 that is why we -- we have not weighed in on  
16 the 1985 to 2001 period in this report.

17 MEMBER PRESLEY: LaVon have you  
18 come up on any data on munitions fabrication  
19 up there?

20 MR. RUTHERFORD: No, not any --  
21 no. Not that I can recall. Now I would have  
22 to ask my ORAU counterpart if he noticed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 anything in that. But no.

2 CHAIRMAN MELIUS: Brad.

3 MEMBER CLAWSON: LaVon, I'm  
4 looking at this January 1<sup>st</sup>, 1959 to December,  
5 what if right halfway in the middle we have a  
6 person that starts working there.

7 MR. RUTHERFORD: You are correct.

8 MEMBER CLAWSON: The 250 days is  
9 what -- what is kind of bothering me, because  
10 it goes right into another area that are going  
11 to kind of be held in limbo.

12 MR. RUTHERFORD: I understand, and  
13 that is a problem. I mean when you have a  
14 short operational period of only one year, and  
15 I did not review each claim to see if there  
16 were claims affected by that. I probably  
17 should have; I didn't think about it,  
18 especially since I have had this happen to me  
19 before. But there is definitely a possibility  
20 that that could happen.

21 CHAIRMAN MELIUS: Again, I have a  
22 related question which is, you mentioned

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 incidents. Are there potentially at this site  
2 incidents that were maybe documented that  
3 occurred but there may not be adequate  
4 information on?

5 MR. RUTHERFORD: We are pursuing  
6 that information as well.

7 CHAIRMAN MELIUS: Okay, good.

8 MR. RUTHERFORD: And I know this  
9 isn't a great answer for you, Brad, but one  
10 thing if we did ultimately determine dose  
11 reconstruction wasn't feasible for the  
12 residual periods, that would add on to that.  
13 But we can't -- the problem, the Department of  
14 Labor has defined it as 1959. We do use 1959  
15 as January 1 to December 31<sup>st</sup>. That is about  
16 all we can do.

17 CHAIRMAN MELIUS: Not much else  
18 in 1959. If you find anything let us know.

19 David Richardson or Paul Ziemer.

20 MEMBER ZIEMER: This is Ziemer.  
21 I have a question. Am I on?

22 I'm never sure whether I put it on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       mute or not.   Okay, LaVon I have a question  
2       that relates to the air sampling.   You  
3       mentioned the general air sampling for uranium  
4       and some thorium, and the lack of breathing  
5       zone samples.   Just for clarity on the uranium  
6       air sampling is there information on the  
7       enrichments involved?

8                   MR. RUTHERFORD:       Only for the  
9       1959 study that was done by HASL.

10                   MEMBER ZIEMER:    Okay, and then on  
11       the -- okay that sort of takes care of it  
12       overall.   I guess I'll go ahead and ask the  
13       rest of the question.   Were the operations  
14       there such that the breathing zone samples  
15       would be markedly different than area  
16       monitoring?   There are many places where the  
17       area monitors and the breathing zone samples  
18       are quite similar, simply because they are not  
19       involved things that provide heavy -- things  
20       like grinding and so on that provide heavy  
21       localized air concentrations.

22                   MR. RUTHERFORD:    And actually if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you look at the 1959 sample as an example, if  
2 you use that as indicative of all operations,  
3 then yes there is significant difference  
4 between the breathing zone data and the  
5 general area monitoring.

6 MEMBER ZIEMER: Okay, thank you.

7 CHAIRMAN MELIUS: David?

8 MEMBER RICHARDSON: Yes, I had one  
9 question. Something I'm struggling with.  
10 There are some sites where it's proposed that  
11 dose reconstruction can be carried out despite  
12 the lack of individual monitoring data, or  
13 even general area monitoring data. And yet  
14 here we are in a situation where there is  
15 individual quantitative estimates of intakes  
16 as you are saying, fluorometric analysis of  
17 mass, which takes us part of the way towards  
18 kind of individual dose reconstructions, and  
19 you are saying there is a key piece of  
20 information missing on enrichment of the  
21 material being worked with. But it -- I mean  
22 it seems to me it's a difficult thing for me

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to reconcile. That here we don't feel  
2 comfortable either exploring information about  
3 the source-term, you're saying it's difficult  
4 to locate. But that we can't -- that there is  
5 not enough to work with when there is bioassay  
6 data actually available for workers, and yet  
7 another situation we are comfortable using  
8 surrogate data from other facilities. How do  
9 you reconcile that?

10 MR. RUTHERFORD: I think it's a  
11 great question. If you look at different  
12 operations, different operations we have data,  
13 a lot more data on, I think. When we  
14 typically use surrogate data, especially if  
15 you look TBD-6000 and such, we've taken data  
16 from a number of facilities to derive, or to  
17 come up with what we feel are good surrogate  
18 data numbers. You have a -- I realize that  
19 there are other enrichment facilities out  
20 there, but I think in this process when we  
21 looked at, from the data that we had, we knew  
22 of one enrichment from the 1959 study, but we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 also had indications that enrichments ranged  
2 from 40% to 90% so that was one of our issues.

3 Our other issue was obviously that in 1959  
4 was the thorium work.

5 MEMBER RICHARDSON: But when you  
6 couple this with a few plausible or even  
7 claimant friendly assumptions, and you couple  
8 those with bioassay data, is it not possible  
9 to bound something in a way that maybe more  
10 useful than kind of just stepping back  
11 entirely and saying it's not possible to do  
12 reasonable dose reconstruction, is my  
13 question. Or to take a year, for example,  
14 '59, where you said the work, the AEC-related  
15 work, was making fuel rods for Savannah River,  
16 knowing that, isn't that enough to kind of  
17 give you some bounds on the level of  
18 enrichment that would be used? Not completely  
19 unknown anymore.

20 MR. RUTHERFORD: We know that  
21 one. That one is part of the '59 study, so I  
22 know that one. The problem we have is because

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it is an AWE -- it's an Atomic Weapons  
2 Employer, we have to be able to reconstruct  
3 all exposures from that site. So I can  
4 reconstruct in 1959 the work that was done for  
5 the Savannah River reactor, but it's the  
6 other enrichments that I don't know and that  
7 occurred during that period.

8 MEMBER RICHARDSON: During that  
9 same calendar year?

10 MR. RUTHERFORD: Exactly. And we  
11 have went to BWXT and we've attempted data  
12 captures, over the last three years we have  
13 attempted to get additional information from  
14 BWXT. We are back there again now trying to  
15 get additional information.

16 MEMBER RICHARDSON: But for the  
17 1,000-3,000 workers who were there, some small  
18 fraction of them would have -- or am I right  
19 or wrong, some small fraction of them would  
20 have confirmed internal depositions based on  
21 just the kind of bioassay data?

22 MR. RUTHERFORD: It's not a small

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fraction, no, I won't say that. We have from  
2 the NNFD there are actually a number of  
3 positive urine samples. I didn't actually do  
4 a percentage, but it's not a small sample.

5 MEMBER RICHARDSON: I don't mean a  
6 small number of people, I mean in percentage.

7 But I mean that is besides the point. Okay,  
8 I mean it's just still something that --

9 CHAIRMAN MELIUS: This is Jim  
10 Melius, I think those are good questions,  
11 David, and I think the other way of looking at  
12 that is, NIOSH also needs to be able to place  
13 people within certain operations, so it's not  
14 only what operations you have information on  
15 but how well can you place some people there  
16 and how long they spent and what they did and  
17 so forth.

18 MEMBER RICHARDSON: In the  
19 presence of bioassay data?

20 CHAIRMAN MELIUS: Not in the  
21 bioassay, I'm talking about the operations  
22 side. Yes, you are right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. RUTHERFORD:           One of the  
2 persons we interviewed actually worked at the  
3 NNFD, the fuel processing facility for a  
4 number of years, and actually they worked at  
5 the LTC, the actual technology center for a  
6 number of years, switched over to the NNFD for  
7 a year, I can't remember exactly how much time  
8 it was. And then switched back. The exposure  
9 monitoring records don't show any of that,  
10 they just show exposure monitoring for  
11 uranium. The difficulty is while they were at  
12 LTC they were potentially exposed to a number  
13 of other radionuclides, and if we don't have  
14 information that makes it very difficult for  
15 us to reconstruct the dose. So even if we  
16 come up with, if we take generous methods on -  
17 - because believe me, I asked the same  
18 question, I asked our internal dosimetrist why  
19 can't we just throw a factor on top of it and  
20 assume it's all 90 percent enriched uranium.  
21 And the problem you get is the exposures from  
22 that because of the factor you are throwing on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 top of it are not really plausible, they are  
2 so high.

3 CHAIRMAN MELIUS: Any further  
4 questions?

5 MEMBER ZIEMER: This is Ziemer,  
6 let me just follow up on that. Because I was  
7 having the same thoughts as I listened to  
8 David's question. I assume in a sense you  
9 might bound the uranium based on an assumption  
10 of the high enrichment. Is it the thorium and  
11 the other stuff that really causes the real  
12 problem?

13 MR. RUTHERFORD: Yes, and we --  
14 you know we -- we just have no monitoring data  
15 at all for the thorium. We have a few general  
16 area samples, but we have no breathing zone  
17 data.

18 MEMBER ZIEMER: So in principle  
19 you could probably bound the uranium by making  
20 a sort of worst case assumption.

21 MR. RUTHERFORD: Yes.

22 MEMBER ZIEMER: Because you have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the uranium bioassay but you don't know the  
2 enrichment, is that correct?

3 MR. RUTHERFORD: That's true.

4 MEMBER ZIEMER: Okay, thanks.

5 CHAIRMAN MELIUS: Now Mark  
6 Griffon.

7 MEMBER GRIFFON: I guess I was  
8 going to say the same thing as David and Paul.

9 I mean the more convincing argument to me was  
10 also the thorium. And we have been sort of  
11 down this path with the uranium stuff before.

12 But the question I had is if you determine  
13 '59 was an SEC, and then the next operational  
14 period was an SEC, what do you expect to  
15 learn in the next couple of months about that  
16 residual period in between that is going to  
17 allow you to reconstruct doses if you don't --  
18 if you can't reconstruct before, you can't  
19 reconstruct after, why don't you just roll the  
20 residual period in between now. I can see an  
21 argument made for the later residual period,  
22 but I can't understand how you would have any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -- because we have had models before that back  
2 extrapolated or forward extrapolated.

3 MR. RUTHERFORD: Well, see, the  
4 difference is remembering that the residual  
5 period, the only thing we are required to  
6 reconstruct is the AEC activity. So the AEC  
7 activity was only the uranium portion of it.  
8 Now can we reconstruct the residual period  
9 assuming we take some data that we have the  
10 uranium data that we have and assume a TIB-  
11 0070 approach up to the next period. I don't  
12 know yet, so we couldn't -- if it was the same  
13 -- if we had to cover everything we would  
14 probably be in the same boat we are in now.

15 CHAIRMAN MELIUS: For the  
16 petitioner is not going to be speaking. She  
17 has opted not to. Do we have any other  
18 further questions? Do we have a motion?  
19 Yes, Phil.

20 MEMBER SCHOFIELD: Just one quick  
21 question. I'm kind of going off Mark's  
22 question there. Do you really know what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 occurred between those two time periods, '59  
2 to '68. Was there any demolition that went  
3 on? Was there any processing that you are  
4 aware of that went on?

5 MR. RUTHERFORD: We haven't  
6 completed that review, so I can't really say.  
7 Again, we are looking at that period, but  
8 this is only addressing those two operational  
9 periods right now.

10 CHAIRMAN MELIUS: Phil, that is  
11 why I was asking for the, sort of what is the  
12 next document or next step that we -- how do  
13 we get involved, and what would we be  
14 reviewing at that point in time. And I think  
15 they will be pursuing this, and they will be  
16 coming back to us in some way in the future to  
17 address both that interim and the follow-up  
18 time periods. Yes.

19 MEMBER LEMEN: How long will we  
20 wait to hear back from them?

21 MR. RUTHERFORD: How long do we  
22 wait to hear back? Oh, I'm sorry. I didn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know the question was to me, I didn't hear it.

2 I will get back with the Board on that. I  
3 can give you a time period. I'm not sure when  
4 our data capture efforts are going to be  
5 complete at BWXT, and I'm not sure how long  
6 it's going to take us to evaluate.

7 MEMBER LEMEN: Are we talking  
8 months, years?

9 MR. RUTHERFORD: I should be able  
10 to give you an update at the August meeting.

11 CHAIRMAN MELIUS: Wanda.

12 MEMBER MUNN: I don't have a  
13 question. I'm prepared to make a motion.

14 CHAIRMAN MELIUS: Well, go ahead.

15 MEMBER MUNN: I move that we  
16 accept the NIOSH proposed SEC Class for all  
17 Atomic Weapons Employees who worked at BWXT,  
18 Inc., in Lynchburg, Virginia, during the  
19 periods from January, 1, '59 through December  
20 31, '59, or from January 1, 1968 to December  
21 31, 1972.

22 CHAIRMAN MELIUS: Do we have a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 second for that?

2 MEMBER CLAWSON: Second.

3 CHAIRMAN MELIUS: Second from  
4 Brad. Again, Wanda, I would ask if you would  
5 listen and maybe accept a friendly amendment.

6 MEMBER MUNN: I might.

7 CHAIRMAN MELIUS: I know, that's  
8 why I'm asking.

9 Dear Madam Secretary, the Advisory  
10 Board on Radiation Worker Health, the Board  
11 has evaluated SEC Petition 00169 concerning  
12 workers at BWX Technologies, Inc., in  
13 Lynchburg, Virginia, under the statutory  
14 requirements established by EEOICPA  
15 incorporated in 42 CFR Section 83.14. The  
16 Board respectfully recommends Special Exposure  
17 Cohort SEC status before all Atomic Weapons  
18 Employer employees who worked at BWX  
19 Technologies, Inc., in Lynchburg, Virginia,  
20 from January 1, 1959 through December 31<sup>st</sup>,  
21 1959, or from January 1<sup>st</sup>, 1968 through  
22 December 31<sup>st</sup>, 1972, for a number of work days

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aggregating at least 250 workdays for either  
2 solely under this employment or in combination  
3 with workdays within the parameters  
4 established for one or more other Classes of  
5 employees included in the Special Exposure  
6 Cohort. The recommendation is based on the  
7 following factors: people working at this  
8 facility during the time periods in question  
9 worked on fuel fabrication, uranium recovery  
10 and commercial reactor and laboratory  
11 operations related to nuclear weapons  
12 production. The NIOSH review of available  
13 data found that they lack adequate source-term  
14 process and monitoring data in order to be  
15 able to complete accurate individual dose  
16 reconstructions for internal radiation doses  
17 for employees at this facility during the two  
18 time periods in question. The Board concurs  
19 with this determination, agree that NIOSH  
20 determined that health may have been  
21 endangered for these BWX facility workers.  
22 The Board concurs with this determination.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Based on these considerations and  
2 the discussions held at our May 19<sup>th</sup> through  
3 21<sup>st</sup>, 2010, Advisory Board meeting held in  
4 Niagara Falls, New York, the Board recommends  
5 that this Special Exposure Cohort petition be  
6 granted. Enclosed is documentation from the  
7 Board meeting where this Special Exposure  
8 Cohort Class was discussed. Documentation  
9 includes transcripts of the deliberations,  
10 copies of the petition, the NIOSH review  
11 thereof, and related materials. If any of  
12 these items are unavailable at this time they  
13 will follow shortly.

14           MEMBER MUNN:           That is a  
15 significant amendment, and as a matter of fact  
16 is an order of magnitude greater than the  
17 original motion, but it can be accepted.

18           CHAIRMAN MELIUS:       Orders of  
19 magnitude.

20           And I think Emily has some  
21 clarification. There are a couple of typos in  
22 there.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. HOWELL: I wasn't even going  
2 to mention the typos. Dr. Melius had  
3 previously asked me if we were creating any  
4 sort of a loophole for people who had worked  
5 during both of these covered periods that are  
6 in this Class Definition and needed to combine  
7 work during those periods to get to the 250  
8 day threshold. Normally we have a single  
9 period, and so the aggregating language allows  
10 that. In this instance, since it's a single  
11 Class with two different periods we were just  
12 going to suggest -- we don't know that it  
13 would be a problem. It would be in DOL's  
14 interpretation, but if you put an "and slash  
15 or" that should take care of it.

16 CHAIRMAN MELIUS: Further friendly  
17 amendments? Thank you, Emily, for that.

18 Any further discussion or  
19 questions on that? If not, go ahead Ted.

20 MR. KATZ: Thank you. I will do  
21 the roll call in reverse order. And let me  
22 note at the head of this that Dr. Poston had a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 conflict for this site, he did not participate  
2 in the discussion nor will he participate in  
3 the vote. So beginning with Dr. Ziemer?

4 MEMBER ZIEMER: Yes.

5 MR. KATZ: Mr. Schofield.

6 MEMBER SCHOFIELD: Yes.

7 MR. KATZ: Dr. Roessler.

8 MEMBER ROESSLER: Yes.

9 MR. KATZ: Dr. Richardson.

10 MEMBER RICHARDSON: Yes.

11 MR. KATZ: Mr. Presley.

12 MEMBER PRESLEY: Yes.

13 MR. KATZ: Ms. Munn.

14 MEMBER MUNN: Yes.

15 MR. KATZ: Dr. Melius.

16 CHAIRMAN MELIUS: Yes.

17 MR. KATZ: Dr. Lockey.

18 MEMBER LOCKEY: Yes.

19 MR. KATZ: Dr. Lemen.

20 MEMBER LEMEN: Yes.

21 MR. KATZ: Mr. Griffon.

22 MEMBER GRIFFON: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. KATZ: Mr. Gibson.

2 MEMBER GIBSON: Yes.

3 MR. KATZ: Dr. Field.

4 MEMBER FIELD: Yes.

5 MR. KATZ: Mr. Clawson.

6 MEMBER CLAWSON: Yes.

7 MR. KATZ: Ms. Beach.

8 MEMBER BEACH: Yes.

9 MR. KATZ: Dr. Anderson.

10 MEMBER ANDERSON: Yes.

11 MR. KATZ: So all vote in favor  
12 with one recused, that's 15 members in favor.  
13 The motion passes.

14 CHAIRMAN MELIUS: Very good. Dr.  
15 Poston, you are allowed to join us again.

16 The next item of business on our  
17 agenda is the surrogate data criteria. And  
18 you all should have received a document  
19 labeled final draft criteria for the use of  
20 surrogate data dated May 14<sup>th</sup>, 2010. Just  
21 trying to change the title a little bit to  
22 help people find it. This was the result of,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Surrogate Data Work Group met on May 13<sup>th</sup>,  
2 of -- by conference call, and we discussed a  
3 draft. I will indicate that Dr. Jim Lockey  
4 was unable, he was traveling at the time so he  
5 was unable to participate, but the other  
6 members of the Work Group did. And we have  
7 some further discussions. I had made several  
8 changes based on the discussions that we held  
9 at the last Board meeting. And it included  
10 changes, then we made a couple more  
11 clarifications I would say since that time  
12 based on the Work Group meeting, there have  
13 just been some minor changes since then. The  
14 Work Group Members that were present I think  
15 were in general agreement with this document,  
16 and felt that we should bring it back to the  
17 Board for additional comment or adoption by  
18 the Board.

19 I think the -- actually most of  
20 the changes that have been made since our last  
21 meeting that were designed to clear up the  
22 confusion with some of the wording, and I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think that is that. I think Dr. Richardson,  
2 David, had made some comments on the hierarchy  
3 data, and I think we tried to clarify that. I  
4 think we all had some differences on how we  
5 interpreted what was higher or lower in the  
6 hierarchy, and his comments were helpful as  
7 were others. There were again some  
8 clarifications.

9 I think that the last paragraph I  
10 had also changed around. I think we had used  
11 the words, rarely used, or something like  
12 that, and I think we have clarified that. So  
13 I'll open it up to comments from other Board  
14 members. Yes, Wanda?

15 MEMBER MUNN: There was one  
16 clerical nit in the paragraph one, hierarchy  
17 of data. We did not have a closing paren.

18 CHAIRMAN MELIUS: Jim.

19 MEMBER LOCKEY: Unfortunately I  
20 was on a plane when this was happening, but  
21 under scientific plausibility, when I was  
22 reading that, this last few days, and I looked

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at it again today, when I look at that, Jim, I  
2 guess I thought I would ask you, are the  
3 assumed models scientifically appropriate?  
4 And then are you saying in the next sentence  
5 that these models have to be validated through  
6 actual monitoring data? Or is that more  
7 appropriate to say validated where feasible?  
8 Some of the things you are just not going to  
9 be able to recreate in this day and age.

10 CHAIRMAN MELIUS: No, I think the  
11 -- what we were trying to do with that is  
12 identify issues. So one of the issues that  
13 one would discuss is not -- there is no  
14 absolute criteria that one has to have a  
15 validated model. It's one of the questions  
16 that you would look at in making the  
17 evaluations.

18 MEMBER LOCKEY: I would say that  
19 if you can validate a model by giving actual  
20 data you should do it. But I would propose  
21 putting the word in, validate where feasible.

22 Which means that I can't go back and recreate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exposures that happened in a laboratory  
2 setting in 1945 or 1950; it's just not  
3 feasible under the current circumstances. But  
4 where it is feasible I think that is a good  
5 criteria.

6 CHAIRMAN MELIUS: Actually your  
7 other comments, that Wanda had relayed -- I  
8 think you had left the meeting, the previous  
9 meeting, at some point. I understand now.

10 Any other comments or questions?  
11 Dr. Lemen.

12 MEMBER LEMEN: I know that you  
13 have been considering this for many many  
14 years, and I've just come on the Board. But I  
15 still question, and I understand that this  
16 document has restricted the use of surrogate  
17 data, fairly strongly, but I still question  
18 the use of surrogate data in a compensation  
19 program. And I really have a problem with the  
20 use of it. I think in doing epidemiology,  
21 yes, you might want to use surrogate data; you  
22 might want to make some assumptions about it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But when you are dealing with a compensation  
2 program I don't think it's appropriate. Now I  
3 may be the minority on this Board that feels  
4 that way, but that is my opinion. I feel I  
5 have to express it.

6 CHAIRMAN MELIUS: I think my  
7 response to that is, I think as we have found  
8 on the Board before. Before you joined us,  
9 and with other members in the past, we do have  
10 differences of opinion, and we are not going  
11 to always reach a consensus, particularly on a  
12 general area, because there are lots of  
13 different uses, potential uses of surrogate  
14 data, and lots of different circumstances. As  
15 Jim just mentioned in some cases it may be  
16 feasible to do a test on the plausibility of a  
17 model. In other cases it may not, and I think  
18 we are all going to judge those individually,  
19 and then reach whatever consensus we can on  
20 that. And what I think we've found in trying  
21 to put forward criteria for making these  
22 evaluations, the first thing that is most

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 important is identifying the issues that we  
2 think need to be addressed, that NIOSH should  
3 address in presenting to the Board the  
4 information we are going to need to make an  
5 assessment. And then I think we are going to  
6 make that assessment.

7           So I think we've found it hard and  
8 will continue to find it hard to come up with  
9 absolute criteria. There must be a model.  
10 There must be validation of a model, something  
11 like that. It's going to depend on the  
12 circumstances, how the data is used. We have  
13 also found there is, I think, a criteria, a  
14 continuum, on the use of surrogate data in  
15 this program and the actual use or application  
16 of something we are going to look at. And  
17 frankly I don't think we could agree on  
18 absolute criteria as a Board, and I'm not sure  
19 it's that helpful to have us do it. As long  
20 as we have a framework that hopefully we can  
21 agree on for how it should be considered, what  
22 information we want available to us. That

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would then guide NIOSH and our contractor in  
2 producing documents and information for us  
3 going forward. And I think that's where we  
4 are. And I think we will have to see as we  
5 apply it. Maybe we can refine this as we  
6 apply it. We'll just have to see. I think we  
7 have taken it fairly far in terms of  
8 identifying the issues. But that would be my  
9 comment. Jim, do you have a follow-up?

10 MEMBER LOCKEY: I think that this  
11 document really sets a format to be followed  
12 for surrogate data, and then also the system  
13 does allow, when we are looking at dosimetry,  
14 we are looking at the 99 percent confidence  
15 intervals, which gives you a broad margin of  
16 safety to encompass potential exposure. So I  
17 think when you look at them together, I think  
18 it is friendly, certainly, towards the  
19 claimants. And I think having it outlined --  
20 I think this is a great document, having it  
21 outlined like this is a good roadmap to  
22 follow.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   CHAIRMAN MELIUS:     Henry.

2                   MEMBER ANDERSON:     I just wanted  
3                   to probably underscore what you already said,  
4                   that I really think this is a useful guidance  
5                   document that hopefully answering all these  
6                   questions, NIOSH goes through that in advance,  
7                   so rather than bring proposals to the Board  
8                   and then having us disagree with NIOSH this  
9                   should, I would think, bring it closer to an  
10                  agreement.  But I just want to be sure.  What  
11                  you said is that the guidance, or this  
12                  criteria, is strictly to be used to guide,  
13                  kind of, the discussion, but the decisions  
14                  will be one at a time on the specific site,  
15                  and you can never have something that is  
16                  enough for all the gray zone areas.  So this  
17                  isn't going to eliminate all disagreements,  
18                  but I think it will help people begin to think  
19                  about when to bring surrogate data to the  
20                  Board for use.

21                  CHAIRMAN MELIUS:     And how to  
22                  bring it, I think that as much as anything --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I think it's going to take us some time to  
2 do that. Yes, Dick.

3 MEMBER LEMEN: I just had one  
4 follow-up, and that was, how are we assured  
5 that NIOSH will take this under advice, and  
6 follow these? And the second point is, I'm  
7 not sure I understand, the Type II, exactly  
8 what you are talking about here.

9 CHAIRMAN MELIUS: Let's do number  
10 one first, and I think that NIOSH -- first of  
11 all, why do we think these are helpful, and  
12 how did NIOSH address it. These are  
13 relatively close to the criteria that NIOSH  
14 has developed and published. I can't remember  
15 the number of the document, but something --  
16 IG-004. And that document, like other  
17 documents they have is undergoing change, as  
18 they better understand and apply -- actually  
19 our next discussion of the Hooker  
20 Electrochemical facility, I think they will  
21 have some comments on how they are approaching  
22 surrogate data in that, and that's why we sort

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 of paired up the agenda in this way.

2 Secondly, what this document is  
3 meant to do is to guide the Board on what  
4 issues we are going to be looking for, and  
5 looking at, when we are reviewing the use of  
6 surrogate data, mainly in the Type I  
7 situation, the use of it for a dose  
8 reconstruction or potential use for dose  
9 reconstruction.

10 And so I think as we found in the  
11 past that is helpful for NIOSH; it speeds the  
12 process up. They understand what we are  
13 looking for. Our previous example, this is  
14 with the SEC evaluation which I think is, we  
15 were struggling, were having problems as a  
16 Board, and working with NIOSH on evaluation of  
17 SECs, and that document I think provided a  
18 focus to what is now in the Evaluation  
19 Reports, what issues are addressed. And it  
20 facilitates our decision-making, it  
21 facilitates how NIOSH approaches -- we are not  
22 just saying, well, you forgot this, or you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 didn't do that. Send it back. They know  
2 ahead of time. So we are here to provide  
3 independent advice to the Secretary and to  
4 NIOSH on this program and certain parts of  
5 this program, and I think it helps to have a  
6 document that guides our - how we are going to  
7 approach this particular in this case  
8 surrogate data.

9           Second question, Type I and Type  
10 II, they do go together. I think Type I data  
11 in a simple sense is where the surrogate data  
12 is used directly as the basis for  
13 reconstruction of individual doses or parts of  
14 individual doses. There is Type II in general  
15 where it's used is sort of in supporting  
16 information for part of that dose  
17 reconstruction. The two blend together, and  
18 it's hard, I think the more we've looked at it  
19 -- it may be hard to make that separation, but  
20 primarily we are trying to focus on the Type  
21 I.

22           John Mauro at SC&A has done a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 document, which we all should have received,  
2 where they have gone through, at least Site  
3 Profiles I believe, and documented where it's  
4 used and how it's used, and with some  
5 description, not only Type I, Type II, but  
6 also a description of where it's used in  
7 different Site Profiles, and I think you will  
8 see how it's -- sort of what the range of that  
9 use is. So if that helps to address -- Any  
10 other questions or comments?

11 MEMBER RICHARDSON: This is David  
12 Richardson.

13 CHAIRMAN MELIUS: Sorry, David,  
14 go ahead.

15 MEMBER RICHARDSON: I think this  
16 is a very useful document, and I think it lays  
17 out some good principles. One issue I have  
18 been thinking about relates to something which  
19 isn't quite made explicit here, which is  
20 something we have talked about several times  
21 today, which relates to not so much to the  
22 kind of similarity of exposures or exposure,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 possible exposure conditions, but the variance  
2 in the exposures within a workplace, and the  
3 difference between -- we talked about, for  
4 example, what is the relationship between area  
5 monitoring and breathing zone monitoring?  
6 There are some situations in which exposure  
7 conditions are relatively homogenous in a  
8 workplace, and you might think that is kind of  
9 a representative value, but if you take the  
10 mean, the median, or a percentile, it is going  
11 to give you a good sense of the exposure  
12 conditions for any individual you draw from  
13 that workplace. And then there are -- so that  
14 the variance is relatively small. And it's  
15 well characterized. And then there are places  
16 where you have got real tails on the  
17 exposures. Because the exposure conditions  
18 are -- can be quite variable. And we had this  
19 example at Mound, right, where you wouldn't be  
20 -- for this worker in SW-19 room C, you really  
21 don't feel comfortable saying that you can  
22 reconstruct that person's dose if they come

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 down with lung cancer, because their exposure  
2 is really different. And I started thinking  
3 about that, we had surrogate data for Building  
4 SW, or S/WR at Mound, you might say kind of  
5 the average exposure, the 95<sup>th</sup> percentile,  
6 that doesn't really tell you very much in a  
7 situation where you've got a long tail on the  
8 exposure distribution. So to be claimant  
9 friendly, if that means for any worker you are  
10 going to develop an estimate which is either a  
11 good estimate of their exposure or an  
12 overestimate, but isn't a substantial  
13 underestimate of their true exposure, then you  
14 have to get some idea about is this surrogate  
15 data capturing those tails in a fair way? And  
16 I think that is really hard. And it sort of  
17 made me think is there -- I guess item six  
18 here, aside from plausibility and site  
19 processes, which is something about surrogate  
20 data may be more useful in situations where  
21 there is relatively low variance exposure, as  
22 opposed to situations where the judgment is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that there is a lot of heterogeneity in  
2 exposure. Where somebody in some work  
3 locations really has a potential for peak  
4 exposures, which aren't all captured by the  
5 median or the 95<sup>th</sup> percentile. So there may  
6 be better and worse situations. If exposure  
7 intensities are kind of -- by some process  
8 which is repeatable and fairly consistent with  
9 relatively little variance because of kind of  
10 the process generating the exposure, that may  
11 be easier for us to kind of intuit that where  
12 you could take information from somebody else  
13 who is working with a similar process in a  
14 different location. But when it gets really  
15 complicated, we may want to be a little more  
16 cautious in using surrogate data.

17 CHAIRMAN MELIUS: I think that is  
18 a good point. I think it is more -- my  
19 reaction is, it's also a more general point  
20 about the entire program. I think that is  
21 what we spend a lot of time struggling with in  
22 individual Site Profile reviews is, which is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the best way of characterizing the  
2 distribution of exposures, and therefore,  
3 making the proper assignment of that. The  
4 coworker model comes up all the time, and it  
5 is something important. Your point earlier on  
6 the hierarchy, maybe to think about that, and  
7 these criteria aren't usually absolute by  
8 themselves, but it's sort of the context that  
9 you are dealing with, and how the general  
10 quality of the data, and maybe the  
11 distribution is one part of the quality of the  
12 data, how good the data is, how tightly does  
13 it describe the range of exposures.

14 MEMBER RICHARDSON: And I think  
15 the more, as you can narrow things down to --  
16 an epidemiologist would not like to have  
17 surrogate data for a plant, but maybe for a  
18 job title and a location and a period, you may  
19 feel well, there you have started to bound  
20 how extreme those tails are going to be or  
21 what the variance is going to be, possibly,  
22 maybe not. But to the extent that surrogate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 data can be coupled with other information  
2 that lets you reduce the variance of the two  
3 distributions that you are trying to think  
4 about as being comparable.

5 CHAIRMAN MELIUS: The other  
6 criteria, I thought about at one point, I just  
7 think it's very hard, is well, how much of the  
8 dose for the worker is going to be made up  
9 from the surrogate data, and that is really a  
10 question of the distribution also. The two  
11 are related and so forth, and how do you judge  
12 that if it's a difference between a 49 percent  
13 and putting them over 50 percent it's still an  
14 important component of the dose situation.  
15 But again I think that is also general to the  
16 whole program; it's not just surrogate data.  
17 And for that reason I sort of left it out of  
18 the surrogate data criteria. We have to think  
19 about what you are proposing. Certainly I  
20 think we all agree that it is important, do we  
21 put in surrogate data, how do we put it into  
22 our other ways of evaluating the methods used

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for this program?

2 Anybody else have comments on  
3 that? Dr. Ziemer?

4 MEMBER ZIEMER: This is Ziemer,  
5 I have a comment.

6 CHAIRMAN MELIUS: Go ahead.

7 MEMBER ZIEMER: I think you are  
8 exactly right, Jim, I think we have exactly  
9 the same issue whether it's surrogate data or  
10 real data, in terms of those distributions. I  
11 don't think there is any implication in this  
12 document that the surrogate data implies that  
13 we are taking midpoints or averages or  
14 anything like that. We always have to deal  
15 with that distribution and the tails, whatever  
16 the data distribution is, surrogate or real.  
17 I think the point is well made, but I think  
18 it's broader than just surrogate data.

19 MEMBER RICHARDSON: Yes, I  
20 wouldn't think we would have to deal with the  
21 tails. But my understanding of how you  
22 implement this, or the way it's been

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 implemented, is to propose that there is a  
2 value or a distribution of values, that you  
3 are going to assign. And I believe some of  
4 the proposals have been, well, will be  
5 claimant friendly and rather than say that the  
6 exposures for people where we don't have  
7 information on their actual exposures is going  
8 to be comparable to the facility, and we'll  
9 take the 95<sup>th</sup> percentile of the dose  
10 distribution at that surrogate facility and we  
11 will treat that as the annual dose rate for  
12 workers at the target facility.

13 MEMBER ZIEMER: Yes, and I think  
14 you would have to make the case in each  
15 facility as to why you did it a certain way.

16 MEMBER RICHARDSON: Right, so  
17 that is what I was getting at, the issue of,  
18 this is where the tails become important.  
19 Because you don't have the true data. When  
20 there are measurements made, you also have  
21 tails, but you for an individual you can place  
22 them in the tail or not. But here we are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to have a play a game which is not  
2 necessarily claimant friendly, if they happen  
3 to be one of the true people in the tail and  
4 yet we impute them at some point farther down  
5 the percentiles in the distribution.

6 CHAIRMAN MELIUS: Any other  
7 comments?

8 What I would propose, if people  
9 are agreeable is, with the one change from Dr.  
10 Lockey that we adopt these -- this document  
11 for now. We will continue to work on it, and  
12 David, you and I can -- maybe Paul or others  
13 can think about how we incorporate point  
14 number six. There is no reason we couldn't  
15 add to it, and we may well want to hopefully  
16 change and improve it as we go along. But I  
17 also would like to get some closure at this  
18 point simply so there is a document that NIOSH  
19 and others that are involved in the program  
20 and our contractor can maybe start to utilize  
21 with a little bit more certainty than in the  
22 past in moving forward. So I have a proposal.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MEMBER ZIEMER:     Doesn't this come  
2 as a recommendation from the Work Group?

3                   CHAIRMAN MELIUS:     It is.

4                   MEMBER ZIEMER:           I think that  
5 makes it a motion then.

6                   CHAIRMAN MELIUS:     It's a motion,  
7 thank you, our parliamentarian. That was your  
8 appointment, Paul, remember?

9                   MEMBER ZIEMER:     Thank you.

10                  CHAIRMAN MELIUS:     And grammarian  
11 is it? Do I have a second to that? I think  
12 we need a second?

13                  MEMBER CLAWSON:     I second.

14                  CHAIRMAN     MELIUS:            Further  
15 discussion? All in favor?

16                                    (Chorus of ayes.)

17                  CHAIRMAN MELIUS:     Opposed.

18                                    Why don't we call the vote?

19                  MR. KATZ:            Okay, so just a roll  
20 call vote. Dr. Anderson?

21                  MEMBER ANDERSON: Yes.

22                  MR. KATZ:     Ms. Beach?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MEMBER BEACH: Yes.  
2 MR. KATZ: Mr. Clawson?  
3 MEMBER CLAWSON: Yes.  
4 MR. KATZ: Dr. Field?  
5 MEMBER FIELD: Yes.  
6 MR. KATZ: Mr. Gibson?  
7 MEMBER GIBSON: No.  
8 MR. KATZ: Mr. Griffon?  
9 MEMBER GRIFFON: Yes.  
10 MR. KATZ: Dr. Lemen?  
11 MEMBER LEMEN: No.  
12 MR. KATZ: Dr. Lockey?  
13 MEMBER LOCKEY: Yes.  
14 MR. KATZ: Dr. Melius?  
15 CHAIRMAN MELIUS: Yes.  
16 MR. KATZ: Ms. Munn?  
17 MEMBER MUNN: Yes.  
18 MR. KATZ: Dr. Poston?  
19 MEMBER POSTON: Abstain.  
20 MR. KATZ: Mr. Presley?  
21 MEMBER PRESLEY: Yes.  
22 MR. KATZ: Dr. Richardson?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MEMBER RICHARDSON: Yes.

2 MR. KATZ: Dr. Roessler?

3 MEMBER ROESSLER: Yes.

4 MR. KATZ: Mr. Schofield?

5 MEMBER SCHOFIELD: Yes.

6 MR. KATZ: Dr. Ziemer?

7 MEMBER ZIEMER: Yes.

8 MR. KATZ: So the total is 13 in  
9 favor, two noes, and one abstain. The motion  
10 passes.

11 CHAIRMAN MELIUS: We have until  
12 3:15, but I think some of you may want or  
13 deserve a break since it was put off late  
14 afternoon. What I would like to do, we have  
15 to schedule a February meeting, 2011 meeting.  
16 So Ted, do you want to talk?

17 MR. KATZ: Sure. Okay, very  
18 good. So we are scheduled through November  
19 for meetings. And it would be good at this  
20 point, because some locations are harder than  
21 others to book, well, we might as well while  
22 we are at it schedule a teleconference too,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but why don't we start with the face to face  
2 which will be tougher. The right sort of date  
3 range for the next face to face after November  
4 is February. We've got some constraints,  
5 which makes -- stretches it a little bit  
6 because we have some unavailability already of  
7 staff. So the first good week for the Board  
8 to possibly meet in February would be February  
9 the week of President's Day, which is the  
10 week starting the 22<sup>nd</sup> of February, that is  
11 the Tuesday I guess afterwards, 22<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>,  
12 5<sup>th</sup>, I believe is right, so that is one  
13 possibility. And that would be keeping it  
14 relatively tight in terms of stretching out,  
15 because this is a slightly longer period than  
16 other quarters, already. Otherwise is the  
17 week of February 28<sup>th</sup>, so look on your  
18 calendars for that.

19 CHAIRMAN MELIUS: Anybody have  
20 major conflicts the week of the 21<sup>st</sup>? I guess  
21 the holiday is Monday.

22 MR. KATZ: Right, the 21<sup>st</sup> is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 President's Day.

2 MEMBER MUNN: So you are looking  
3 that far ahead in February because?

4 MR. KATZ: Because some places  
5 are harder to book. And so we get started  
6 actually quite early.

7 MEMBER MUNN: But I am just  
8 wondering why not earlier in February?

9 MR. KATZ: Oh, okay, there are  
10 constraints, people can't do it the week of  
11 February 7<sup>th</sup> or 14<sup>th</sup>. So we really have to  
12 start the end of January, and that leaves no  
13 time between the November meeting and that.

14 MEMBER RICHARDSON: And how many  
15 days is this meeting?

16 MR. KATZ: Three days is what we  
17 planned for. So it could be 22<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>,  
18 5<sup>th</sup>.

19 MEMBER RICHARDSON: Third,  
20 fourth, fifth is best for me, or next week.

21 MR. KATZ: I'm sorry, David, I  
22 couldn't hear what you said.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MEMBER RICHARDSON:    The 23<sup>rd</sup>, 24<sup>th</sup>,  
2                   and 25<sup>th</sup> would be better for me, or else the  
3                   next week.

4                   MR. KATZ:        Thank you.

5                   CHAIRMAN MELIUS:    Let's talk, Jim  
6                   Lockey is waiting to hear back.   Let's talk  
7                   locations.

8                   MR. KATZ:        So I have some ideas,  
9                   but others could certainly have others.  
10                  Savannah River site, so Augusta, we have met  
11                  there for Savannah River site.   That gives a  
12                  good bit of time to get a lot of work done for  
13                  Savannah River site.   So I don't know, it  
14                  might not be bad timing in that respect.   And  
15                  generally we try for February to aim for a  
16                  place where we know weather is not going to  
17                  keep us from there.   And Augusta, we'd be  
18                  pretty safe there, it won't be balmy but it  
19                  won't be terrible probably.

20                  The other possible locations,  
21                  Tennessee, we haven't been there in quite some  
22                  time, in Oak Ridge, but we have quite a bit of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 activity related to Tennessee still to do with  
2 the Board. So that is a possibility, and I  
3 think it's not too hard to get into Oak Ridge  
4 even in the winter. Those are the two best  
5 options actually. And I am open to other  
6 suggestions.

7 MEMBER MUNN: I would prefer Oak  
8 Ridge.

9 CHAIRMAN MELIUS: How about other  
10 locations? Anybody think of something we're  
11 missing? They want some place like Idaho in  
12 August.

13 MEMBER BEACH: It seemed like  
14 there was some talk about Florida?

15 MR. KATZ: There is, Pinellas,  
16 but that's pretty narrow opportunity.

17 CHAIRMAN MELIUS: It's narrow,  
18 and frankly President's Day week in Florida is  
19 tough. There's a lot of --

20 MR. KATZ: Holiday spot.

21 MEMBER CLAWSON: I'd like Oak  
22 Ridge.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MEMBER GRIFFON:       I would expect  
2 we'd be pretty far along on the Savannah River  
3 SEC petition by then. It might make sense to  
4 be there again.

5                   CHAIRMAN MELIUS:       I think in  
6 terms of -- I don't think we have any active  
7 petitions at the Oak Ridge right now.

8                   MEMBER CLAWSON:       It could be  
9 Nashville.

10                  MEMBER ANDERSON:       I'd hold it in  
11 Knoxville. I wouldn't hold it in Oak Ridge,  
12 just in case the weather does turn bad.

13                  CHAIRMAN MELIUS:       Right. But I  
14 think Savannah River --

15                  MR. KATZ:       So is that our first  
16 choice?

17                  CHAIRMAN MELIUS:       First choice,  
18 Savannah River, second choice, Oak Ridge, and  
19 then why don't we take a break and just before  
20 the start we will try to settle the date.

21                  MEMBER LEMEN:       Is Savannah River  
22 Augusta then?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. KATZ:           Yes, it would be  
2 Augusta, I think that is the best location.

3                   MEMBER LEMEN:        That's fine with  
4 me.

5                   CHAIRMAN MELIUS:        Good, let's  
6 take a break.

7                   MR. KATZ:        Dr. Lockey says it's  
8 good for him.

9                   CHAIRMAN MELIUS:        Then plan the  
10 23<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and fifth in Augusta.        And  
11 I will say up front we will try to make it a  
12 2-1/2 day meeting so people will be able to  
13 get out on Friday for everybody.    And the  
14 meeting may start at 5:00 in the morning or  
15 something. We will take a break, come back at  
16 20 after. We will get started. We have a  
17 petitioner.

18                   (Whereupon,        the        above-entitled  
19 matter went off the record at 3:00 p.m. and  
20 resumed at 3:22 p.m.)

21                   CHAIRMAN MELIUS:        If everybody  
22 else could get seated, and quiet down we'll

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 get started. We will discuss Hooker. We have  
2 one more administrative item to do, that is  
3 our Board call, which would be ideally  
4 sometime in January. And we have some people  
5 that aren't available in the latter two weeks  
6 in January, so we are talking about ideally  
7 the week of the 10<sup>th</sup> of January. I suspect  
8 that will be a relatively short call, just  
9 given the post-holidays and then given, I  
10 don't think there will be a lot to update on,  
11 but we should try to at least have it on the  
12 books; we do need it. So I'm just going to  
13 throw out Wednesday, January 12<sup>th</sup>.

14 MEMBER MUNN: Very good.

15 CHAIRMAN MELIUS: Good, okay.  
16 Board call, January 12<sup>th</sup>, 11:00 a.m.

17 MEMBER LEMEN: 11:00 a.m.

18 CHAIRMAN MELIUS: Eastern.  
19 Eastern time.

20 And first presentation now will be  
21 on Hooker Electrochemical. And we have Dave  
22 Allen from NIOSH, and I believe we have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 petitioners here.

2 HOOKER ELECTROCHEMICAL (NIAGARA FALLS, NY)

3 SEC PETITION

4 MR. ALLEN: Most of you have  
5 already met me before, but for those who  
6 haven't, my name is David Allen. I'm a health  
7 physicist with NIOSH, and as Dr. Melius  
8 mentioned I am here to present the Evaluation  
9 Report for the Hooker Electrochemical Special  
10 Exposure Cohort.

11 CHAIRMAN MELIUS: Dave, can you  
12 speak into the mike?

13 MR. ALLEN: A little closer. Is  
14 that better:

15 CHAIRMAN MELIUS: That's better,  
16 yes.

17 MR. ALLEN: Okay, a little  
18 background to start with. Hooker  
19 Electrochemical was classified as an Atomic  
20 Weapons Employer from 1943 to 1948. There is  
21 a residual contamination period that goes from  
22 the end of the contract period until the end

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of 1976. The Hooker primarily produced  
2 chemicals for the Manhattan Engineering  
3 District during World War II and shortly  
4 after. One in particular, P-45, produced a  
5 waste product of concentrated hydrochloric  
6 acid. At some point somebody from the  
7 Manhattan Engineering District realized they  
8 could take that waste product, put it together  
9 with a waste product from an  
10 electrometallurgical, and concentrate a  
11 uranium content in that waste product to  
12 produce a material that could be -- that they  
13 could recover uranium from.

14 So that process was added as a  
15 supplement to the P-45 contract. In order to  
16 perform this operation the equipment was  
17 housed in a building that was built  
18 specifically for this, a small cinder block  
19 building. It was built by a subcontractor and  
20 turned over to Hooker on July 11<sup>th</sup>, 1944. The  
21 P-45 operation including the supplement that  
22 covered the concentrating of mag chloride

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ended by January 15<sup>th</sup> of 1946.

2 The incoming material, the  
3 magnesium fluoride contaminated with uranium,  
4 had a uranium content of approximately .2  
5 percent uranium by mass. The concentration  
6 effort brought it up to between one and two  
7 percent uranium by mass.

8 The petition for Hooker  
9 Electrochemical, the SEC petition, was  
10 submitted March 6<sup>th</sup> of 2009. The proposed  
11 Class at the time was for all the operators  
12 and laborers in the furnace room. The  
13 building that I said housed this equipment did  
14 not have a furnace room. There were other  
15 furnace rooms within Hooker Electrochemical  
16 and other buildings, but this particular  
17 process did not have one. Because of that we  
18 did not qualify the petition for evaluation.  
19 Later the petitioner did revise the Class to  
20 all employees at Hooker Electrochemical, and  
21 based on no radiation monitoring the  
22 petitioner revised the Class on September

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 26<sup>th</sup>, re-qualified it then on October 16<sup>th</sup>, and  
2 the Evaluation Report was issued on May 3<sup>rd</sup>.

3 The proposed Class as I said now  
4 is all employees who worked in any location at  
5 Hooker Electrochemical, during the operational  
6 period and during the residual period, the  
7 Class that NIOSH evaluated is the same.

8 Sources of available information  
9 include Appendix AA to Battelle-TBD-6001 and  
10 that is essentially an appendix that describes  
11 our dose reconstruction methodology for Hooker  
12 Electrochemical. That also points to, and  
13 some of the other information we have, is some  
14 ORAU Technical Information Bulletins; various  
15 documents on the Site Research Database; we  
16 did interview some former employees; and we  
17 have some information in case files within our  
18 Claim Tracking System.

19 As I said the basis for the  
20 petition was an affidavit indicating to the  
21 best of the petitioner's knowledge there was  
22 never any internal or external monitoring at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Hooker Electrochemical. We found nothing to  
2 contradict this. It's pretty consistent with  
3 what we found in the documentation.

4 As I mentioned, the dose  
5 reconstruction methodology, we put together an  
6 appendix for TBD-6001, it's Appendix AA, TBD-  
7 6001 does use surrogate data for internal  
8 dosimetry. Surrogate data for TBD-6001 is  
9 broken up into various tasks or operations.  
10 The operation we chose for Hooker  
11 Electrochemical was scrap recovery.

12 A little more detailed process of  
13 what occurred at Hooker involving radioactive  
14 material was contaminated magnesium fluoride  
15 was received from Electro Metallurgical in 500  
16 pound barrels. The barrels were dumped onto a  
17 conveyor, and the conveyor brought them to a  
18 digestion tank. The waste hydrochloric acid  
19 from the P-45 process was then added to the  
20 digestion tank and delivered with water up to  
21 a pH of 4.0. The tanks were agitated for 20  
22 hours, and then about once every two days the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 liquid was decanted from the tank, and  
2 additional hydrochloric acid and water were  
3 added, and the process started over.

4 What this did is essentially  
5 dissolve some of the mag fluoride leaving  
6 uranium behind and therefore concentrating the  
7 mag fluoride.

8 At the end of the digestion this  
9 slurry was neutralized and then pumped to a  
10 filter press where it was filtered and the  
11 filter was rebarreled and sent back offsite.

12 The scrap recovery process  
13 described in TBD-6001 involves calcining  
14 uranium scrap in a furnace; digesting that  
15 scrap in acid; precipitating the uranium; and  
16 then filtering that precipitate. The  
17 digesting and the filtering are very similar  
18 to what was occurring at Hooker  
19 Electrochemical. The primary airborne causing  
20 operation, though, in the scrap recovery  
21 process was the calcining. And by the  
22 calcining operation I mean also loading and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 unloading the furnace, as well as simply  
2 heating the material.

3 The other steps were not very -  
4 did not cause a great deal of airborne, and it  
5 makes sense that it was either a solution or a  
6 material with a high moisture content. You  
7 don't get a great deal of dust from the rest  
8 of the operation.

9 Comparing the materials that were  
10 at Hooker versus what was in scrap recovery,  
11 the incoming material at Hooker was  
12 approximately .2 percent uranium by weight.  
13 The incoming material for scrap recovery  
14 varied quite a bit. It could be uranium metal  
15 such as metal turnings, et cetera. But it was  
16 also low grade ores and slag, dross and  
17 various other scrap materials that would occur  
18 during the processing of uranium. It was very  
19 precious material, so they always try to  
20 recover uranium from any other waste product.

21 The outgoing material at Hooker  
22 was concentrated to one to two percent uranium

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 by weight, whereas for scrap recovery the  
2 intent of recovering that scrap was to produce  
3 a uranium compound that could then go further  
4 down the stream and be used in the weapons  
5 program. So that was high grade uranium  
6 compounds that was the output of the scrap  
7 recovery process.

8 Because of those reasons it seemed  
9 that the scrap recovery process in TBD-6001  
10 appears to be a comparable match, probably a  
11 favorable or bounding match, to the materials  
12 and the process that occurred at Hooker  
13 Electrochemical.

14 This was labeled alternative to  
15 surrogate data, because if we chose not to use  
16 surrogate data, it does not mean that we could  
17 not estimate the dose at Hooker  
18 Electrochemical. There is a well defined  
19 source-term and a well defined process, and it  
20 is open to the idea of modeling. Any time you  
21 model something you obviously have to rely on  
22 some assumptions, and there are some inherent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       uncertainty associated any time you are  
2       relying on assumptions.

3               When we looked at this at Hooker  
4       Electrochemical we decided that the scrap  
5       recovery was more specific than the model that  
6       might be more generic. It was a reasonable  
7       fit at Hooker, to the operations at Hooker,  
8       therefore we decided that surrogate data was a  
9       more robust analysis than any kind of modeling  
10       we could come up with.

11              And as the last agenda item was  
12       surrogate data, we are aware that the Board is  
13       reviewing the use of surrogate data. We did  
14       evaluate our use of surrogate data in Hooker  
15       based on IG-004, and I believe that comes  
16       reasonably close to your draft items; I'm not  
17       sure about that, how it might have been  
18       changed here recently. But we did evaluate  
19       the use; we did decide that this was a more  
20       scientifically sound model than we were going  
21       to come up with.

22              I have a couple of dose

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reconstruction examples. One being an  
2 employee from 1944-45, the demographics for  
3 this case, a male born in 1927, diagnosed with  
4 lymphoma in 2004. Using Appendix AA, the  
5 external dose for this case would be a little  
6 over 100 millirem. The internal dose a little  
7 over 76 rem. The medical dose from x-rays,  
8 approximately 84 millirem, for a total of over  
9 76 rem.

10 Probability of Causation based on  
11 that dose estimate and the demographics on the  
12 previous slide will result in a Probability of  
13 Causation of 54 percent.

14 The second example is someone that  
15 worked at Hooker Electrochemical longer, over  
16 30 years. Unknown job title, which Appendix  
17 AA does not try to distinguish different job  
18 titles. It puts everybody in the small  
19 operation. The demographics for this case  
20 were male, born in 1917, diagnosed with  
21 prostate cancer in 1993. And the dose in this  
22 case, external, approximately 5-1/2 rem,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 internal, 32 millirem, and medical dose, 25  
2 millirem, for a total of a little over 5-1/2  
3 rem. Probably of Causation with those  
4 demographics and that dose result in a  
5 Probability of Causation of 9.24 percent.

6 The Evaluation Report was prepared  
7 after the petition was qualified, prepared in  
8 accordance with 42 CFR 83. It was issued and  
9 sent to the Board on May 3<sup>rd</sup> of this year.  
10 And as you all know very well the SEC process  
11 is a two prong test. The first test is  
12 whether or not it's feasible to reconstruct  
13 the radiation dose for members of the class,  
14 and the second test is whether the likelihood  
15 of suffering radiation dose endangering the  
16 health of members of the class.

17 What we found in our Evaluation  
18 Report was, we are able to use source-term  
19 data to reconstruct with sufficient accuracy,  
20 they issue those for members of the Class.  
21 Because of that determination, any  
22 determination of a health detriment wasn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 necessary for the SEC process.

2 And the last slide just reiterates  
3 that Evaluation Report concluded that we could  
4 reconstruct all the radiation dose at Hooker  
5 Electrochemical.

6 Any questions.

7 CHAIRMAN MELIUS: Thank you,  
8 Dave. Board Members? Yes, Phil.

9 MEMBER SCHOFIELD: Okay, first  
10 off, I don't like that word likely. That  
11 leaves too much to interpretation. The other  
12 thing is, I want to know how much you know  
13 about the ventilation system there, how much  
14 you know about the size of the batches were,  
15 what kind of equipment they had, the number of  
16 hours per week these people worked, and I mean  
17 these are just basic questions you would need  
18 to be able to have answers to to do any kind  
19 of reconstruction.

20 MR. ALLEN: Yes, and we do have  
21 more detail than what I presented in this  
22 presentation. The drum dumping, the dustiest

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 part of the operation, was done outdoors next  
2 to the building on a concrete pad next to the  
3 railroad spur. The surrogate data we've done  
4 indoors without the aid of ventilation. The  
5 digestion tank, the batch was 10 tons, 40 500-  
6 pound drums. The tanks were wooden vats, 11-  
7 foot diameter, about 11 feet high. I'm not  
8 sure if that answered all your questions or  
9 not. There is more detail that is included in  
10 documentation and in the Appendix AA.

11 CHAIRMAN MELIUS: Other questions  
12 for Dave? Yes, Jim.

13 MEMBER LOCKEY: Hooker  
14 Electrochemical was not a scrap recycling,  
15 right?

16 MR. ALLEN: Excuse me?

17 MEMBER LOCKEY: They didn't do  
18 scrap recycling? Am I reading the slides  
19 right?

20 MR. ALLEN: They did not  
21 specifically do scrap recovery for uranium,  
22 no. This operation you could, some would say

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it's scrap recovery, it's more of a  
2 contaminated material concentrating. But the  
3 data we have for scrap recovery did not come  
4 from Hooker if that is the question.

5 CHAIRMAN MELIUS: As a follow-up  
6 maybe you could describe where that data did  
7 come from.

8 MR. ALLEN: It came from a  
9 publication that I cannot recall the authors  
10 of. It is all listed in TBD-6001, I believe  
11 it came from more than one site, but I'm  
12 afraid I don't recall the sites that it  
13 actually came from right now.

14 CHAIRMAN MELIUS: I'm just trying  
15 to understand the comparability of the sites.  
16 You mentioned for example that the TBD-6001  
17 Appendix, the scrap portion of it, it deals  
18 with, also includes furnace operations. And  
19 so I guess I'm trying to understand, I think  
20 this is what Jim was getting at also, is what  
21 kind of operations are involved in - in  
22 developing that surrogate dose. I think that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is what we are trying to judge and compare.

2 MR. ALLEN: The scrap recovery,  
3 that was described in TBD-6001 in the  
4 reference that it came from was what I listed  
5 on the slide there, and it started with  
6 calcining to burn off any organics or oxidize  
7 any uranium that they could. And then it was  
8 digested in a tank using acid. The biggest  
9 difference there after that point was probably  
10 that the - in that case they were dissolving  
11 the uranium, then it went to another step  
12 where the uranium was precipitated, whereas in  
13 Hooker Electrochemical uranium was never  
14 dissolved. It was left in a magnesium  
15 chloride matrix, and they tried to dissolve  
16 the matrix, both done in a liquid vat, it  
17 doesn't create a great deal of internal dose  
18 generally.

19 CHAIRMAN MELIUS: And my other --  
20 I hate to go down -- be careful going down  
21 this road, but can you speak a little bit more  
22 about why you did not think that a source-term

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 model was useful? And was there any attempt  
2 to do a source-term model that would help us,  
3 might help us - I should say that very  
4 carefully - might help us to be more  
5 comfortable with the surrogate model that you  
6 used?

7 MR. ALLEN: Well, I certainly  
8 never said that a model is not useful. I  
9 think we could do one, and I think it would be  
10 reasonably accurate. Any model does depend on  
11 some assumptions. We explored a few different  
12 models, one being NUREG 14000, and there are  
13 various parameters that you have to  
14 essentially pick a value for, depending on  
15 what you have. And I think we could justify  
16 those parameters. But in this case it seemed  
17 like a closer fit than picking some  
18 assumptions for a model.

19 CHAIRMAN MELIUS: Okay, thanks.  
20 Phil then Henry.

21 MEMBER SCHOFIELD: Okay, on the  
22 internal uptake and internal exposures, how

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are you going to be able to limit these or  
2 know what they were?

3 MR. ALLEN: I'm not sure I  
4 understood the question. We are using  
5 surrogate data from TBD-6001, which is  
6 essentially airborne data, and we are assuming  
7 they are inhaling that concentration of  
8 uranium. Is that the question?

9 MEMBER SCHOFIELD: Yes, I wanted  
10 to know on what basis you were coming up with  
11 internal exposures.

12 CHAIRMAN MELIUS: Henry, then  
13 David Lemen.

14 MEMBER ANDERSON: Is the  
15 surrogate data from the same period of time,  
16 from the early 40s, 43 to 48?

17 MR. ALLEN: It's from the 40s and  
18 early 50s. The reference actually had data  
19 for doing this operation without ventilation  
20 and data for doing it with ventilation which  
21 came after 52, give or take, I don't remember  
22 the exact years. We did not use in TBD-6000

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the data with ventilation; we used the earlier  
2 stuff. That is only without localized  
3 ventilation.

4 MEMBER ANDERSON: And what about  
5 the residual period?

6 MR. ALLEN: The residual period  
7 is modeled based on what the surrogate data we  
8 were using for the operational period.

9 CHAIRMAN MELIUS: Dick.

10 MEMBER LEMEN: Well, you answered  
11 one question that I had, and that was what  
12 Henry asked, what were the dates of the  
13 surrogate data. But I still don't feel in the  
14 Petition Evaluation Report that you have  
15 explained why you picked the scrap recovery  
16 process, and why you went the surrogate data  
17 way, and also how do the measurement  
18 techniques on the surrogate data -- how would  
19 they relate to what would have been taken if  
20 you could have found data in this plant? In  
21 other words, how does the data relate from the  
22 surrogate data to what's really going on in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this plant? Because there are a lot of  
2 different operations, it seems like, that by  
3 just taking one scrap recovery process you are  
4 going to miss a lot. I just don't think you  
5 explained, at least to my understanding.

6 MR. ALLEN: Okay, well for TBD-  
7 6001, the scrap recovery process, the -- as I  
8 mentioned the airborne, the intakes are  
9 dominated by the furnace operation, very much  
10 dominated by the furnace operation. And the  
11 furnace operation involved placing the  
12 material, scrap uranium material, into a  
13 furnace, heating that to oxidize the uranium  
14 and eliminate organics and then unloading it.

15 And it appeared that unloading was probably  
16 the highest airborne-causing operation. Some  
17 of the material, or some of the samples, are  
18 GA samples. Some of the samples are  
19 breathings on the samples. And TBD-6001 puts  
20 it together into a value.

21 CHAIRMAN MELIUS: Henry.

22 MEMBER ANDERSON: Maybe I just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can't find it, but where is the TBD-6001  
2 document? I don't see it on the O: drive.  
3 Maybe it's buried somewhere.

4 MR. ALLEN: It should be.

5 CHAIRMAN MELIUS: I was just  
6 trying to look it up on the DCAS website, and  
7 6000, 6001 are hard to find. They don't fit.  
8 They don't get indexed well.

9 MEMBER ANDERSON: Okay, if you  
10 could show me where it is.

11 CHAIRMAN MELIUS: If I find it.  
12 I'm looking right now.

13 MEMBER ANDERSON: We are starting  
14 to do that here, too.

15 CHAIRMAN MELIUS: Dr. Ziemer or  
16 David Richardson, do you have -- either of you  
17 have questions?

18 MEMBER ZIEMER: No questions at  
19 the moment.

20 CHAIRMAN MELIUS: Okay, David.

21 MEMBER RICHARDSON: Yes, I was  
22 wondering if you could talk a little bit about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the chemistry that goes on with calcining  
2 uranium in a furnace, and I assume you end up  
3 with some variety of uranium oxides, right?

4 MR. ALLEN: Yes, you would end up  
5 with a variety of uranium oxides as well as  
6 some uranium metal itself that might be left  
7 over, not completely oxidized.

8 MEMBER RICHARDSON: And so how  
9 does the nature of the chemical forms of the  
10 uranium that you are getting through the  
11 calcining process that is kind of the starting  
12 point for the TBD-6001 scrap recovery process  
13 differ from the chemical forms of uranium that  
14 would be encountered at the Hooker facility  
15 where they are not doing it?

16 MR. ALLEN: Should be very  
17 similar. The reduction pot linings is what  
18 the contaminated mag fluoride was from. And  
19 in that, process uranium is converted,  
20 essentially uranium tetrachloride is reduced  
21 to uranium metal. The contamination occurs  
22 when the uranium metal is in a liquid form, a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 molten form essentially contaminates the  
2 lining. So you should have small amounts of  
3 uranium metal as well as plenty of oxides  
4 heated around 1,200 degrees.

5 CHAIRMAN MELIUS: Henry, do you  
6 still have questions?

7 MEMBER ANDERSON: Oh, no.

8 CHAIRMAN MELIUS: Mark.

9 MEMBER ANDERSON: I found like 10  
10 references to the Work Group.

11 CHAIRMAN MELIUS: Yes, go ahead.

12 MEMBER GRIFFON: Yes, I just  
13 wanted to follow up on the TBD-6001 Appendix  
14 AA. And actually this goes back to the  
15 appropriateness of the surrogate model, I  
16 guess. Page four in there, it talks about  
17 basically the basis for using the surrogate  
18 model. And it says the dumping operation was  
19 assumed to be similar to the furnace operated  
20 trays. Since that provides the highest air  
21 concentration for scrap recovery. To me that  
22 sort of is not the best rationale for using

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that as a surrogate model. You were saying  
2 that we assumed it's the same because it gave  
3 the highest levels. I don't dispute -- it  
4 goes on to show how high those levels are, and  
5 it's a very dusty operation. I don't dispute  
6 that. But again are we just bounding with a  
7 high value or are they really similar enough  
8 to be used as surrogate? That is sort of my  
9 question there. And I don't even expect an  
10 answer on that one.

11 The one question I did have was,  
12 where was the slag material from the 43 to 48  
13 time period? What companies were funneling  
14 into Hooker at that time?

15 MR. ALLEN: Into Hooker?

16 MEMBER GRIFFON: Yes.

17 MR. ALLEN: All the material for  
18 Hooker came from Electro Met. It was  
19 reduction pot liners.

20 MEMBER GRIFFON: From Electro  
21 Met, so it was all in-house. They weren't  
22 getting anything from other plants at that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 point?

2 MR. ALLEN: All the information  
3 we have is it all came from Electro Met by  
4 rail.

5 MEMBER GRIFFON: I think this may  
6 end up -- and I think we might need further  
7 reviewing and the TBD-6001 Work Group actually  
8 might be a good place to do it.

9 CHAIRMAN MELIUS: We may be  
10 getting there. But first I think if there are  
11 no further questions right now, why don't we  
12 hear from the petitioners.

13 Oh, I'm sorry, Jim.

14 MEMBER LOCKEY: Just so I'm  
15 clear, in the original proposed Class, she  
16 said furnace room, or the petitioner said  
17 furnace room, but there is no furnace room.

18 MR. ALLEN: No furnace room where  
19 they did the magnesium fluoride concentrating,  
20 no.

21 MEMBER LOCKEY: So there is no  
22 calcine?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ALLEN: No.

2 MEMBER LOCKEY: Thank you.

3 CHAIRMAN MELIUS: Okay,  
4 petitioners? Who wants to start for the  
5 petitioners. And if you could identify  
6 yourself and then --

7 MS. GIRARDO: Can you hear me all  
8 right?

9 CHAIRMAN MELIUS: Yes.

10 MS. GIRARDO: I wish I could have  
11 heard him better. I have a hearing problem  
12 and I thought this would be better as far as  
13 the acoustics go, but apparently it wasn't.  
14 And anybody with a mustache and a beard is  
15 dangerous to me. It's very hard to -- you  
16 need to look at the lips and the sound in  
17 order to put the two together. So I feel like  
18 I was kind of outgunned with that.

19 I wanted to thank you for coming  
20 into Niagara Falls. I hope you have a good  
21 time here. I am going to be 75 years old in  
22 June, and of course I was born here in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 city, and my father worked for Hooker  
2 Chemical, and of course, it was Oldbury at  
3 that time, which was a company from England.  
4 And so we have a history with this company.  
5 And I want to say that we disagree with the  
6 evaluation of NIOSH based on use of surrogate  
7 data; I don't think that is fair. And I would  
8 like additional time to prepare a written  
9 statement, because we just got this over-50-  
10 page evaluation, I think it was Thursday or  
11 Friday, and just had the weekend really to  
12 prepare. So I would prefer to have some more  
13 time to write a written statement. And Laurie  
14 Breyer is willing to see that the Advisory  
15 Board gets that.

16 And then I request that Sanford  
17 Cohen & Associates check out this evaluation  
18 to see what they think of it. And I thank you  
19 for your time. And again I say I hope you  
20 enjoy yourself in Niagara Falls. Thank you.

21 CHAIRMAN MELIUS: Thank you.  
22 Anybody else? Okay. Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           We realize that there wasn't a  
2 significant amount of time, but one of the  
3 reasons we came was to be able to gather  
4 information on what -- on the facility, and in  
5 order to help with our evaluation of it. So  
6 you will have time to get additional  
7 information in, so it will be considered.

8           Any Board members have questions  
9 or further comments? We have it, it may be  
10 sort of arcane within the Board, we have this  
11 document, it's called the TBD-6001 that NIOSH  
12 has produced as a guide for a number of  
13 different facilities, the dose reconstruction.

14          And we have a Work Group that is set up of  
15 Board members, a smaller group that will  
16 concentrate on that -- that work on addressing  
17 issues related to TBD-6001. And I would think  
18 that this site we would refer to that Work  
19 Group for follow-up as they are beginning and  
20 doing their review.

21                           Josie?

22                           MEMBER BEACH:           Well, I also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wondered if it didn't fit in the Surrogate  
2 Work Group just because of those issues.

3 CHAIRMAN MELIUS: Well, I think  
4 we are -- we can decide, I don't know what the  
5 work load is for the 6001 Group relative to  
6 the Surrogate Group.

7 MEMBER ANDERSON: We don't know  
8 yet.

9 CHAIRMAN MELIUS: Yes. Yes. And  
10 do that, and so maybe let's start with the  
11 6001 group, and then we can decide. The 6001  
12 Group I think by assumption, both the 6000 and  
13 the 6001 are -- we'll be dealing with  
14 surrogate data issues, and that is part and  
15 parcel of the application of both of those  
16 documents. And so I think we would -- I think  
17 the place to start would be with 6001. I  
18 think if we run into an issue of just the  
19 volume, that's why we split 6000 and 6001,  
20 that we would consider that. Also I don't  
21 know, John Mauro, have you reviewed Appendix  
22 AA yet? What is the status of your review?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. MAURO: We have not. We have  
2 reviewed TBD-6001 and have a number of very  
3 significant comments. So the model I have in  
4 my head is that first, the rock you are trying  
5 to stand on is 6001, the basis for which there  
6 is all this data that has been collected,  
7 sorted and binned. And the degree to which  
8 that was done well and captured the universe  
9 of data that is associated with uranium  
10 processing is sort of the first step in the  
11 process. If it doesn't survive that process  
12 it almost is, well, you can't really go to the  
13 next step. If you don't have a sound 6001,  
14 then you go ahead and use it, then it's almost  
15 like you are not standing on a rock. So I  
16 agree, the first thing is, while you are doing  
17 this you are working 6001 at the same time.  
18 You can't get -- they are hooked together.

19 CHAIRMAN MELIUS: Yes.

20 MEMBER BEACH: And Jim, the ER  
21 also talked about AA, C and D, so are those  
22 three separate appendices to the 6001? I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't know.

2 CHAIRMAN MELIUS: You are going  
3 beyond my --

4 MEMBER ANDERSON: It is in their  
5 references.

6 CHAIRMAN MELIUS: Yes, right, I'm  
7 not familiar with that part of it. I don't  
8 know if someone from NIOSH can help. Dave.

9 MR. ALLEN: There are several  
10 Appendices to 6001 as well as 6000. I believe  
11 this Evaluation Report referenced the Electro  
12 Met, but I'm not positive. I think that is D.

13 MEMBER BEACH: D?

14 MR. ALLEN: Appendix D.

15 MEMBER BEACH: It wasn't in your  
16 listing.

17 MR. ALLEN: I might have that  
18 wrong. But that would be the only other  
19 appendices to TBD-6001 that would be  
20 referencing other sites. Is that your  
21 question, Josie?

22 MEMBER BEACH: That's fine, thank

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you.

2 CHAIRMAN MELIUS: So yes, John,  
3 again, do you want to bring us up to date on  
4 where you are with 6001?

5 DR. MAURO: We have reviewed  
6 Electro Met, delivered our report. I think it  
7 showed up recently. So in effect, I think  
8 there were four or five appendices to TBD-  
9 6001. So we have a situation. We certainly  
10 have to engage TBD-6001 on its own merits, and  
11 in the process of doing that -- now, I believe  
12 Electro Met doesn't depend that heavily on  
13 6001. It stands more on its own data; I  
14 recall it has its own air-sampling data for  
15 example. So there are some significant  
16 differences in terms of the dependencies that  
17 Electro Met uses, which I believe is CC or C,  
18 and it sounds like certainly Hooker depended  
19 very heavily on TBD-6001. So they all sort of  
20 come together.

21 CHAIRMAN MELIUS: We are really  
22 just thinking that in terms of this SEC

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Evaluation, just wanted to make sure that SC&A  
2 had the relevant appendices under review or in  
3 process some way so that we don't get to the  
4 point where well, we still need to do one  
5 more. So if you can take a quick look at this  
6 SEC Evaluation and what is referenced there,  
7 just to make sure that we have got that  
8 covered, or talk to Dave who may be able to  
9 assist in that.

10 So does everyone agree that we  
11 will refer this to the 6001 Work Group? And  
12 I'll just add for the petitioner and other  
13 people who are interested, this Work Group  
14 will be sort of doing the initial review, they  
15 will assign SC&A for any additional work that  
16 is needed. There will also be a communication  
17 to the petitioner and other interested parties  
18 about when they are meeting, what's under  
19 consideration, any timing and any information  
20 that petitioner or other people can provide to  
21 the Work Group will be useful and considered  
22 and there will be an opportunity for you to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 comment and know what's going on. And I  
2 understand, I know you may not -- may have  
3 some trouble hearing some of what I'm saying,  
4 with the beard and mustache. I think Laurie  
5 can help also with that. But we appreciate  
6 you coming here today and taking the time and  
7 be assured that there will be follow-up on  
8 that, so.

9 So what we will do is, we will  
10 have a brief presentation from the Linde  
11 Ceramics Work Group, follow up and do that.  
12 Then we'll take a short break. And then we'll  
13 start the public comment period. And we have  
14 agreed to start the public comment period  
15 focusing on Linde, so that there is some  
16 continuity in terms of follow-up. Okay.

17 LINDE CERAMICS (TONAWANDA NY) WORK GROUP

18 UPDATE

19 MEMBER ROESSLER: While she is  
20 getting ready, we'll check my voice level. I  
21 don't have a mustache, but I want to make sure  
22 you can hear me. And also since we are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 disclosing ages, I turned 75 this past April,  
2 so we are in the same group here.

3           Again, while she is bringing that  
4 up I will mention that my purpose here today  
5 is to bring the Board up to date on the Linde  
6 Work Group activities, and also to, since we  
7 probably have interested people in the  
8 audience, to summarize it in a short period of  
9 time to let you know what the Work Group has  
10 been doing.

11           And I will also tell you that we  
12 will not be taking a vote today. The Work  
13 Group is not prepared to present to the Board  
14 information to take a vote. We still have  
15 some issues that need to be resolved.

16           CHAIRMAN MELIUS: While you are  
17 working on the computer, I actually have one  
18 request for Ted or somebody to take back is,  
19 can we get the TBD-6000/6001 put in the list  
20 of technical documents along with all the  
21 appendices so that they are easier to find.  
22 Separate folders both on the O: drive as well

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as on the DCAS part of the website. Because  
2 it is extremely frustrating to find and then  
3 to try to figure out whether SC&A has issued a  
4 review is even harder. So relative to those,  
5 the other parts, all the other Sites work  
6 well. Just that one, because it's not a site.

7  
8 MR. KATZ: I know, I have similar  
9 difficulty with the website. So we will  
10 follow up.

11 CHAIRMAN MELIUS: Okay.

12 MEMBER ZIEMER: This is Ziemer.  
13 If you do the appendices individually as sites  
14 that will work better, probably.

15 CHAIRMAN MELIUS: But then you  
16 have trouble getting back to the original; at  
17 least that's been my experience.

18 MEMBER ZIEMER: Getting back to  
19 the TBDs?

20 CHAIRMAN MELIUS: Yes.

21 MEMBER ZIEMER: Well, you can  
22 subset the TBDs is the way I do it on my --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but then you sort of have to remember which is  
2 in which.

3 CHAIRMAN MELIUS: Right, so  
4 that's why there ought to be a better way.

5 MEMBER ROESSLER: Okay, thanks to  
6 Dr. Poston. We are ready.

7 First of all, I'd like to point  
8 out the Work Group members on the Linde  
9 project in addition to myself are Josie Beach,  
10 Mike Gibson and Jim Lockey.

11 And the team working with us from  
12 NIOSH, and it's now called DCAS, Chris  
13 Crawford and Jim Neton. Now neither Chris nor  
14 Jim are here today, but Dr. Sam Glover is here  
15 I think somewhere, in case we have any  
16 questions later on.

17 The SC&A team is Steve Ostrow,  
18 John Mauro, and Bill Thurber. And Dr. Ostrow  
19 and Dr. Mauro are here.

20 Just a little background first  
21 just to bring everybody kind of up to date on  
22 it. Linde Ceramics Plant, a division of Linde

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Air Products Corporation, was located in  
2 Tonawanda, New York. And I saw that area as  
3 we came up here in a cab. Linde Ceramics  
4 originally handled uranium products, used as  
5 dyes for ceramic tableware. And when I think  
6 of this I think of my kitchen cupboard where I  
7 have a large collection of Fiestaware. I'm  
8 assuming maybe this is the type of tableware  
9 that was made there.

10 Then because of the capability  
11 they had in 1942, Linde Ceramics contracted  
12 with the Manhattan Engineering District, and  
13 we call them MED, to process uranium ores to  
14 produce uranium oxide, also called yellowcake,  
15 and uranium tetrafluoride, also called green  
16 salt.

17 Okay, again a little background:  
18 in the 1930s, Building 14 was known as the  
19 Tonawanda Laboratory, and that is included in  
20 this study, owned by Union Carbide. They  
21 produced uranium, U-308 as a coloring agent  
22 for ceramic glazes. We already mentioned

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that. And at least 80 tons of U-308 were  
2 produced before this MED period began in 1943.

3 The plant had production years but the years  
4 between, or the time between July 1<sup>st</sup>, 1949,  
5 and July 7<sup>th</sup>, 1954, there was no production.  
6 It was called the decontamination and  
7 decommissioning period.

8 Now there are three petitions of  
9 interest here, actually we are only going to  
10 concentrate on one, but just as a listing, and  
11 I'm not going to read through everything here,  
12 there is SEC-00044. This has been granted to  
13 the workers who worked at the plant between  
14 October 1<sup>st</sup>, 1942, through October 31<sup>st</sup>, 1947.

15 Another petition, 00154, has  
16 qualified for evaluation, but NIOSH has not  
17 issued an Evaluation Report yet for this  
18 period. So we are concentrating right now  
19 under -- on SEC-00107, for the period January  
20 1<sup>st</sup>, 1954, through July 31<sup>st</sup>, 2006, called the  
21 renovation and residual periods.

22 This petition was received on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 March 3<sup>rd</sup>, 2008. It qualified for evaluation  
2 on July 2<sup>nd</sup>, 2008. I have already kind of  
3 alluded to this, but our Work Group has  
4 focused on the petition that has qualified for  
5 evaluation, and again, the period is January  
6 1<sup>st</sup>, 1954 through July 31<sup>st</sup>, 2006.

7           And I'm going to tell you a little  
8 bit about our Work Group meetings, because  
9 there is not going to be time here to tell you  
10 about everything we did at them. But we did  
11 start in March, on March 26<sup>th</sup>, 2007, with our  
12 first meeting. The first set of meetings we  
13 had was to evaluate the Site Profile. And the  
14 way this works is that NIOSH comes to the  
15 meetings and presents the Site Profile. SC&A  
16 has had an opportunity to critique it. So we  
17 spent four meetings going over the critique.  
18 NIOSH made changes and we agreed on June 23<sup>rd</sup>,  
19 2008, that the Site Profile Review was  
20 completed. That doesn't mean that it maybe  
21 wouldn't change in the future. But at that  
22 point it was completed.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           On July 8<sup>th</sup>, I think it was, as I  
2 mentioned before, the SEC petition was  
3 qualified. And in the August teleconference  
4 of the Board our Work Group was assigned the  
5 task of going ahead now to evaluate the  
6 petition. So we promptly met on September  
7 2<sup>nd</sup>, 2009, to do this, and again along with  
8 SC&A, NIOSH, talking about various issues  
9 throughout these Work Group meetings which  
10 were in September, December, and January. We  
11 brought out a lot of issues and discussed  
12 them. Because there seemed to be some  
13 technical information that NIOSH and SC&A had  
14 to resolve, they had a technical call on  
15 February 23<sup>rd</sup>, 2010. The Work Group listened  
16 in but we didn't participate. Then on April  
17 16<sup>th</sup>, 2010, we had our most recent meeting.

18           Now just to summarize a little bit  
19 about what we talked about, the potential  
20 radiation exposures there with regard to  
21 internal -- radon was one consideration  
22 present because of the residual contamination

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 of surfaces by ores. Remember, this is not  
2 the production period but residual  
3 contamination remained.

4 Then during the renovation work in  
5 Building 30 in the 1960s, it's possible that  
6 there were airborne contaminants. And then  
7 also the airborne radioactive contaminants  
8 were evaluated for the residual -- the whole  
9 residual period.

10 With regard to external sources,  
11 gamma or photon or beta exposure from the  
12 residual uranium that contaminated the  
13 surfaces was present. Neutrons are not  
14 considered as a source of exposure to Linde  
15 personnel.

16 And just as a point of  
17 information, I want to remind people that even  
18 though some radiation exposure may have  
19 occurred during this time, and this is what is  
20 being evaluated, I want to remind you that  
21 dosed workers during this period was much less  
22 than during the production period.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   So with our first Work Group  
2 meeting in September where we were assigned to  
3 evaluate the petition, it was then that NIOSH  
4 presented their findings. And this is the  
5 statement from NIOSH. NIOSH found that the  
6 available monitoring records, process  
7 descriptions and source-term data, are  
8 adequate to complete dose reconstructions with  
9 sufficient accuracy and so on. So this is  
10 where we started.

11                   We started then with the  
12 discussions between NIOSH and SC&A to look at  
13 whether this was valid. And again, I can't go  
14 over all of this, but basically what happened  
15 at these Work Group meetings is that -- and  
16 I'm not talking about what the Work Group has  
17 decided, because we have not yet as a group  
18 had any vote. But SC&A accepted the NIOSH  
19 proposal for bounding the dose during the  
20 renovation period and the balance of the  
21 residual period. SC&A also agreed to accept  
22 the NIOSH treatment of radon, in other words,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 bounding radon exposures in the Linde  
2 buildings for this period.

3 I just thought I should put a note  
4 here that through all these discussions,  
5 though, there may be some changes. The dose  
6 estimates are probably going to be increased,  
7 and this may lead to Site Profile revisions.

8 Now, the reason that we are not  
9 yet able to vote today is that there are still  
10 some open issues. This came up primarily at  
11 our last Work Group meeting, and these open  
12 issues, and those of you who participated in  
13 the interviews this morning with SC&A know  
14 that this is what we are concentrating on, the  
15 open issues involve potential utility tunnel  
16 exposures. And this is a little bit hard to  
17 read, but I didn't want to leave out any  
18 detail on here, because this is what we are  
19 dealing with now.

20 The question is, can the tunnel  
21 dose be bound at or below 2.3 MAC, which in  
22 our jargon is Maximum Allowable Concentration,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for the period through 1970. If this is  
2 accepted, then NIOSH must explain why they  
3 feel that these doses wouldn't exceed this  
4 particular level, in other words that they can  
5 really bound with this number. So they must  
6 show that the doses can be bound and the  
7 current open issues are looking at  
8 ventilation, composition of the tunnel walls,  
9 radon from the soil, et cetera.

10 Some other questions came up too  
11 in this discussion about placement and depth  
12 of the injection wells. I have heard that  
13 some of the workers discussed that this  
14 morning with SC&A. The hydrology of the area,  
15 the depth of the tunnels, the location of the  
16 sump pump discharges, and some other issues.  
17 And there is much information apparently  
18 available on this. So NIOSH, SC&A and others  
19 are looking at this.

20 So there is where we stand now; we  
21 have some open issues to resolve.

22 So what is our plan forward? The

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 plan was to have more worker interviews since  
2 we are in the area today. SC&A did conduct  
3 those this morning. NIOSH is going to produce  
4 a more detailed tunnel report. SC&A is going  
5 to review this report. SC&A also has  
6 available other data, is reviewing other  
7 information about the tunnels. Once this is  
8 all put together -- we hope it will be fairly  
9 soon -- the Work Group will meet again. And  
10 then our goal is to make a presentation to the  
11 Board for a vote for the Board meeting in  
12 Idaho Falls in August.

13 That is our plan, and we will see  
14 how that goes. So I think at this point, I  
15 can entertain questions from the Board and any  
16 questions from the public or comments would  
17 come later at the public session.

18 CHAIRMAN MELIUS: Anybody from  
19 the Board have any questions at this point?

20 (No response.)

21 Thank you for a very concise and  
22 good update. That was excellent. And it's a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 little after 4:15. We will take a break and  
2 we will try to start right at 4:30 with our  
3 public commentary. So the Board members and  
4 everyone else can stretch.

5 (Whereupon, the above-entitled  
6 matter went off the record at 4:17 p.m. and  
7 resumed at 4:34 p.m.)

8 CHAIRMAN MELIUS: We are going to  
9 focus on Linde. As I said, we had talked to  
10 the petitioners and that was their preference,  
11 and we agreed, since that -- I think,  
12 actually, the first one, we have a written  
13 statement from one of the petitioners that  
14 couldn't be here, so Ted was going to read  
15 that into the record, so we have it on the  
16 record. And then we will start the public  
17 comment.

18 MR. KATZ: Right. Thank you.  
19 Before -- also, there's a little spiel I have  
20 to give before every public comment session,  
21 generally about the redaction policy at NIOSH,  
22 which is, as many of you may know, all of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Board meetings are transcribed, including the  
2 public comment sessions, verbatim  
3 transcription, so everything said on the  
4 record is captured there. So, as a member of  
5 the public, when you speak, everything you say  
6 will be captured in the public record,  
7 including your name, including any personal  
8 information you might give, but we do redact  
9 from your statements any information you give  
10 about third-parties, other persons, to protect  
11 their privacy. So their names and any  
12 identifying information about those  
13 individuals would be redacted from our  
14 transcripts. And the full redaction policy  
15 should be out on the table, and it's also on  
16 the website for your reference with the agenda  
17 for the meeting. So, just to let you know  
18 that up front.

19 Now, one of the petitioners, Linda  
20 Lux sent in a letter just in advance of the  
21 meeting saying she couldn't be here. That's  
22 one of the Linde petitioners, but that she

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 would like her statement to be read into the  
2 record with her being identified, so I have so  
3 identified her. And let me just read you her  
4 letter, and then we'll hear from the other  
5 Linde persons that are actually here, or might  
6 be on the phone, as well. So, from Linda Lux,  
7 May 17<sup>th</sup>.

8 "To Advisory Board on Radiation  
9 and Worker Health Members. Because it is not  
10 possible to attend this meeting, I would like  
11 to voice my concern in letter form as to why  
12 the Linde site SEC petition should be  
13 approved.

14 I have, for the last eight years,  
15 given NIOSH and DOL every bit of information  
16 available to me regarding the claim for my  
17 deceased father. I have provided unemployment  
18 records, multiple medical records, and two  
19 letters from Dow, Union Carbide's purchasers,  
20 stating my father's dosimeter records have  
21 been destroyed. Unfortunately, much of this  
22 very important information has gone

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 unrecognized, and, obviously, unread by NIOSH.

2 My father worked in the computer  
3 department at Linde, so this puts him in the  
4 category of office worker. Office workers in  
5 the dose reconstruction at Linde receive an  
6 extremely low dose, despite the fact that I  
7 had stated before in the worker outreach  
8 meeting on page 120 of 126, it states that  
9 "eight office and clerical workers all  
10 developed cancer within a short time from one  
11 another."

12 In the dose amount given to office  
13 workers, it would be impossible to qualify for  
14 compensation. In my father's medical records,  
15 he stated to his doctor before this EEOICPA  
16 program ever started, that he worked in  
17 extremely dusty conditions for a two-year time  
18 period. My father passed away from cancer in  
19 1994 at 59 years of age, so I cannot ask him  
20 what time period it was. I believe he was  
21 referring to the 1960s remodeling jobs that  
22 were going on at the Linde site in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building he was working in. I do remember him  
2 coming home from work in that time period with  
3 a lot of dirty dust on his clothes, and an  
4 odor on him.

5 After receiving in 2006 the first  
6 dose reconstruction, I asked the Department of  
7 Labor to read the medical records regarding a  
8 second cancer and some lung brushings that  
9 were done and listed in the medical records.  
10 DOL called me back to say they were going to  
11 send this claim back to NIOSH to redo the  
12 dose, and add a second cancer, but I would  
13 need to get more information for the lung  
14 brushings.

15 I could not retain any further  
16 records from the doctor that did the lung  
17 testing just days before my father passed away  
18 because the doctor had retired and the records  
19 were only kept for 10 years after a patient's  
20 death until they were destroyed. If only  
21 NIOSH had read the records when they were  
22 submitted in 2002 and told me I needed more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 details, I could have received those records  
2 because it would have been in the 10-year time  
3 frame.

4           When I received the redo of the  
5 dose reconstruction just two weeks ago, not  
6 only did my father's dose amount not go up  
7 with a second cancer added but it went down,  
8 way down. I was told the reason was NIOSH has  
9 adjusted the dose amounts to be more  
10 realistic. What I expected from NIOSH, at the  
11 very least, was to receive a dose  
12 reconstruction that included both cancers and  
13 considered radiation as the only risk factor  
14 that matched the cancer my father had, but  
15 what I received was what looks like, to me --  
16 is a manipulated application of numbers to  
17 control the outcome.

18           If a true consideration of my  
19 father's cancer and other petitioner's cancer  
20 was caused by a work location, I would think  
21 it would be important to consider statements  
22 the workers have made at both the worker's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 outreach meetings, and in the medical records,  
2 as well as factors that go along with the  
3 listed cancers.

4 I don't see how it can be said  
5 that "best available science" is used when  
6 comments from workers are not considered. The  
7 Linde site has unique features that also must  
8 be considered, such as toxic chemicals poured  
9 into wells that overflowed with rain, toxic  
10 chemicals that were poured into the drainage  
11 system that also overflowed, toxic chemicals  
12 buried in the ground and poured into nearby  
13 water streams, construction and remodeling  
14 done to buildings during the 1960s and 1970s  
15 that were embedded with toxins while Linde  
16 workers stayed working in the buildings with  
17 no protection.

18 To say a person didn't have enough  
19 exposure to cause a certain cancer is an  
20 untrue statement. Any dose amount is too much  
21 and is enough to cause cancer in some people.

22 Every person's body chemistry is unique and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can handle or fight off different amounts of  
2 toxic substances or radiation before a cancer  
3 sets in. These workers were unaware of the  
4 radiation all around them, including in the  
5 dirt and water outside, so they would not have  
6 acted in a cautious way. To not consider  
7 these facts and not include unique  
8 circumstances to each worker is not a fair or  
9 true dose reconstruction for many of the Linde  
10 workers. It would then not compensate many of  
11 the workers who should be compensated, and  
12 they are who this program was created for.  
13 Sincerely, Linda Lux."

14 CHAIRMAN MELIUS: Okay. We now  
15 want to hear from the Linde petitioners. And,  
16 Antoinette, are -- I'm not sure what order to  
17 go in here. Yes, from there. We need to  
18 activate that mic, I think.

19 MR. KATZ: Try again, Antoinette.

20 MS. BONSIGNORE: Thank you. The  
21 first issue I'd like to raise is regarding the  
22 petition that just qualified for Linde SEC-

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 00154. I received a letter stating that DCAS  
2 will not be able to meet its 180-day deadline  
3 for two reasons, first being that interviews  
4 were conducted today that may affect that  
5 petition. And, secondly, that there were  
6 documents that have been uncovered at the  
7 National Archives that deal with the Linde  
8 tunnels. And I don't know if Mr. Rutherford  
9 is here, but if we could get some  
10 clarification as to what those documents are,  
11 and when they might be made available to the  
12 petitioners?

13 CHAIRMAN MELIUS: Stu, can you  
14 address that?

15 MR. HINNEFELD: Well, LaVon is not  
16 here, but -- and I'm not conversant about what  
17 those documents are exactly. We can provide,  
18 certainly, that information to you during the  
19 week. LaVon will be here tomorrow.

20 MS. BONSIGNORE: Okay. Thank you.  
21 And the second issue deals again with the  
22 180-day deadline for the release of Evaluation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Reports, and, specifically, with respect to  
2 the Linde petition.

3 My question to the Board is why is  
4 DCAS allowed to continually revise ERs as more  
5 information becomes available to them? And,  
6 many times, looking for additional information  
7 that will justify the denial or recommendation  
8 of a denial for the SEC petition. What  
9 permits DCAS to go beyond the 180-day deadline  
10 that is specifically prescribed in the  
11 regulations?

12 CHAIRMAN MELIUS: I don't think we  
13 can speak to that legally. My understanding  
14 is that it's not a binding time period, and I  
15 think there's also, I think in general in this  
16 program, there is the policy as new  
17 information becomes available, and it favors  
18 the claimant, that it is then incorporated  
19 into dose reconstructions. So there's been a  
20 general policy as new information becomes  
21 available to utilize that. I think as a  
22 Board, we have concerns about the timeliness

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of response to these new information and sort  
2 of what the limit is. And I think NIOSH has  
3 concerns about that, also, and are trying to  
4 address it in order to make this more timely,  
5 so it's not an endless process. However, if  
6 information or a new issue comes up, such as  
7 the tunnels or something, then I think it sort  
8 of behooves us to try to allow time for the  
9 gathering of additional information.

10 MS. BONSIGNORE: However, if the  
11 gathering of additional information over an  
12 extended period of time works to the detriment  
13 of the petitioners, if, in fact, the original  
14 ER that was issued was somehow incomplete,  
15 inaccurate, or deficient in some way,  
16 shouldn't that be the Evaluation Report that  
17 the Board actually considers? And if  
18 additional research is conducted thereafter,  
19 that would benefit petitioners or individual  
20 claimants, then that would be fine, but why  
21 are the petitioners penalized when the  
22 original ER would have been, perhaps,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 considered by the Board to not be  
2 satisfactory?

3 CHAIRMAN MELIUS: Again, the 180  
4 days isn't binding, so it's a question of  
5 judgment. I mean, I think we'll take that as  
6 a comment. I don't think we can sort of fully  
7 address it.

8 MS. BONSIGNORE: Okay. All right.  
9 Thank you.

10 CHAIRMAN MELIUS: Thank you.  
11 Okay. [identifying information redacted]. Is  
12 [identifying information redacted] here,  
13 speaking to Linde? I don't always have what -  
14 - okay. Mary Girardo, again. We'll do again,  
15 and see what this -- those people may think  
16 that we're only talking about Linde right now.

17 Sandy Rykiel. Okay. If you'd like to step  
18 to the mic, either this mic here, or you can  
19 use the podium. And I apologize if I  
20 mispronounce anybody's name. With a name like  
21 Melius, I'm used to --

22 MS. RYKIEL: I can go to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 podium?

2 CHAIRMAN MELIUS: You can go to  
3 the podium, whatever is better.

4 MS. RYKIEL: Thank you. I'm here  
5 to speak about my father, William Donovan. He  
6 was an employee at Linde Division in Niagara  
7 Falls. He worked there for 36 years and 29  
8 days. He was a chemical operator from 1942 to  
9 1957 at the cobalt plant. He was an  
10 electrician from 1957 to 1961 in the cobalt  
11 plant. He was an operator of the furnaces,  
12 Operator A and D, and a foreman, and from 1961  
13 to 1965 he was an electrician. From 1965 to  
14 1970 in the Linde Division, mining the metals.  
15 He was a foreman, master mechanic from 1970  
16 to 1978.

17 When I originally filed this  
18 claim, I had heard about it from Roswell Park.

19 My father did have prostate cancer. From my  
20 understanding, prostate cancer is one of your  
21 organs on the list of categories, but yet you  
22 use the bladder as a surrogate organ, as an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 internal surrogate organ. How can you use a  
2 surrogate organ for the prostate? I don't  
3 agree with this surrogate organ. I don't --  
4 can you explain that to me?

5 CHAIRMAN MELIUS: Yes. Stu, do  
6 you want to ---

7 MS. RYKIEL: I understand what a  
8 surrogate organ is; I just don't agree with  
9 the way you're using it.

10 CHAIRMAN MELIUS: No, no. And I  
11 think there's an explanation.

12 MR. HINNEFELD: Yes. I can do it  
13 now, or we can do it later on.

14 CHAIRMAN MELIUS: Well, why don't  
15 you do it now. It's a general question.

16 MR. HINNEFELD: Okay.

17 CHAIRMAN MELIUS: If we can answer  
18 a question quickly, and it does not involve  
19 personal information ---

20 MS. RYKIEL: Yes, that's fine.

21 CHAIRMAN MELIUS: -- we'll try to  
22 do it. If not, we can also do some of these

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in follow-up. I'll also indicate that all  
2 these comments are being recorded, and that  
3 actually the Board -- we actually have a Work  
4 Group that's looking to -- making sure that we  
5 do the follow-up for the comments and that  
6 they're collected and dealt with in terms of  
7 the information being used in sort of our  
8 future efforts on SEC evaluations and dose  
9 reconstruction.

10 MR. HINNEFELD: Okay. In this  
11 context, there are -- a dose reconstruction  
12 relies on data that allows you to convert  
13 certain measured quantities, like the quantity  
14 measured by a film badge to the dose received  
15 by some internal organ, whatever organ you're  
16 interested in. And the International  
17 Commission on Radiological Protection has  
18 published a number of correction factors, in  
19 other words, ways to correct something like a  
20 dosimeter badge to specific organ doses. They  
21 did not publish one for the prostate. So for  
22 an external dose, the method that's chosen for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 dose reconstruction is to choose another organ  
2 in close proximity to the target organ you're  
3 interested in. So the bladder was chosen as  
4 the organ in close proximity to the prostate  
5 as the one where the dose would be,  
6 essentially, the same as it would be for the  
7 prostate from this external source. That's --  
8 I believe we use bladder for the surrogate for  
9 an external.

10 On occasion, you'll have the same  
11 issue with an internal dose where a particular  
12 organ that doesn't concentrate the radioactive  
13 material that's being ingested or inhaled does  
14 not really receive any particular dose, except  
15 from the blood that circulates through that  
16 organ. So its dose would be essentially the  
17 same as any other organ that doesn't  
18 concentrate the radioactive material, but just  
19 it receives the dose from the blood  
20 circulating through that organ. So you would  
21 use, in that case, if your dose model doesn't  
22 include the exact target organ you're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 interested in, you would use some other organ  
2 of that same kind, that didn't concentrate the  
3 material, but just received the dose from the  
4 circulating blood. So that would be -- those  
5 were the two uses where an organ would  
6 referred to as a surrogate organ.

7 MS. RYKIEL: Okay. Well, then  
8 they rated my father at 44.78% for the  
9 prostate. They pay out at 50 percent. He  
10 worked there 36 years and 29 days. He inhaled  
11 it; he was exposed to it; it was on his body.

12 How can -- I don't know how you're coming up  
13 with these formalities. He had prostate  
14 cancer, he had skin lesions removed, he had a  
15 right breast mass removed, he was anorexic, he  
16 had malaise, he was constantly short of  
17 breath, five heart attacks with open heart  
18 surgery with two aneurism repairs. He had  
19 TIAs, he had CVAs, he had congestive heart  
20 failure, and his final thing that took him  
21 down was respiratory arrest from pneumonitis,  
22 which is -- he also had kidney problems,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 decreased kidneys, profuse sweating, increased  
2 blood pressure, diabetes and stroke. He was  
3 exposed to mercury, plutonium, cobalt, and  
4 uranium, as well as radiation and asbestos.  
5 Thirty-six years, and I'm getting denied.

6 CHAIRMAN MELIUS: I mean, I don't  
7 think we can speak to the actual dose  
8 reconstruction. I just would say that the way  
9 that the calculation is done to a great extent  
10 is required -- what's required by law, and is  
11 based on other studies that have been done of  
12 cancer from radiation exposure. And those  
13 other factors -- many of those other factors  
14 that you mentioned are not things that are  
15 taken into account because they're separate  
16 from -- the other illnesses are separate from  
17 the cancer and the radiation.

18 MS. RYKIEL: Okay. Then they  
19 would fall under Part E then. Right?

20 CHAIRMAN MELIUS: Part E, and  
21 that's --

22 MS. RYKIEL: Okay. So when I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 originally started this, and I -- this has  
2 been a long, ongoing, very tedious operation  
3 here. When we first started this, we reported  
4 everything that my father had, heart problems,  
5 and the whole gamut that I just read off to  
6 you. And now when I just spoke to the  
7 Department of Labor, they have no record of  
8 this. They have no record of my father's  
9 medical records. You just told me you  
10 couldn't find his film badge, then you're  
11 telling me that there's not enough evidence.  
12 You're talking 1940s. This is 2010.

13 CHAIRMAN MELIUS: Yes. I mean, we  
14 can't speak to --

15 MS. RYKIEL: How can we -- how do  
16 you expect us to find this information? And I  
17 was told that we are the ones that have to  
18 provide you with the information. The family  
19 has to be the one that provides you with the  
20 information. How can we possibly go back to  
21 the 1940s and get this information when  
22 they're only carrying medical records for 10

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 years? It's impossible. You can't -- Union  
2 Carbide, Linde can't even find my father's  
3 pre-employment, while he was employed, or  
4 post-employment chest x-ray. If they can't  
5 find it, how can I find it?

6 CHAIRMAN MELIUS: No, I think we  
7 recognize that's a problem, but, again, the  
8 Department of Labor is the one that has to  
9 determine what information they will accept  
10 for proof of illness. And it is difficult  
11 because it is such a time period, but that's  
12 not something we can directly address.

13 MS. RYKIEL: All due respect,  
14 though, it sounds like you're passing the  
15 buck.

16 CHAIRMAN MELIUS: Well, yes,  
17 that's true, because the buck --

18 MS. RYKIEL: So you are passing  
19 the buck.

20 CHAIRMAN MELIUS: Yes, the buck is  
21 not here, the buck's with the Department of  
22 Labor.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. RYKIEL: Okay. So then why  
2 are we even -- why are we meeting here then?

3 CHAIRMAN MELIUS: Because we're  
4 meeting to get --

5 MS. RYKIEL: Are you our  
6 advocates?

7 CHAIRMAN MELIUS: Excuse me, let  
8 me finish.

9 MS. RYKIEL: I'm sorry.

10 CHAIRMAN MELIUS: Okay. We're  
11 meeting to gather information and to listen to  
12 concerns. There are certain concerns that can  
13 be addressed through this program. There are  
14 other concerns that have to be addressed  
15 through the Department of Labor.

16 MS. RYKIEL: And what --

17 CHAIRMAN MELIUS: We do not advise  
18 the Department of Labor; we advise NIOSH.

19 MS. RYKIEL: You are Department of  
20 Energy?

21 CHAIRMAN MELIUS: No.

22 MS. RYKIEL: What are you?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   CHAIRMAN MELIUS: We're part of --  
2 we advise the Secretary of Health and Human  
3 Services, which is -- of which NIOSH is the  
4 Agency.

5                   MS. RYKIEL: That does the dose  
6 recalculation.

7                   CHAIRMAN MELIUS: Correct.

8                   MS. RYKIEL: Okay. So, we're back  
9 to the beginning again. They did the dose  
10 recalculation of 44.78%. When you spit all  
11 this information in, did they put in all of  
12 this information and come out with this  
13 outrageous number? I mean, 5.22 percent of 36  
14 years and 29 days? This just doesn't make  
15 sense, you guys.

16                   CHAIRMAN MELIUS: Well, yes --

17                   MS. RYKIEL: There's something  
18 wrong.

19                   CHAIRMAN MELIUS: All I can say  
20 is, we have a program that we don't -- we  
21 can't look at individual cases. We do have a  
22 program that reviews a sample of the cases to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make sure that they are done correctly and  
2 makes corrections to that process.

3 MS. RYKIEL: Yes, but is that  
4 sample that you're using the ones that you've  
5 paid out to?

6 CHAIRMAN MELIUS: No. In fact, we  
7 concentrate on those that are closest to 50  
8 percent, but below 50 percent. We try to get  
9 the ones that are the most --

10 MS. RYKIEL: So then my father  
11 should be in there?

12 CHAIRMAN MELIUS: What?

13 MS. RYKIEL: Then my father should  
14 be in there, with the ones that you're looking  
15 at.

16 CHAIRMAN MELIUS: I can't address  
17 -- be among the sample that would be  
18 evaluated, yes, but I can't --

19 MS. RYKIEL: Sure. I understand  
20 that.

21 CHAIRMAN MELIUS: Yes.

22 MS. RYKIEL: Okay. All right. So

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 now I've been directed to reapply under  
2 everything under Part E, including the  
3 prostate cancer.

4 CHAIRMAN MELIUS: Correct. And  
5 under Part E, the Department of Labor can take  
6 into account other factors, including the  
7 chemical exposures, for example, that your  
8 father may have had that could be related to  
9 the development of the cancer. Under this  
10 program, the Part B program under cancer, we  
11 only are able to address the radiation  
12 exposures.

13 MS. RYKIEL: Okay. But I --

14 CHAIRMAN MELIUS: So you have a  
15 facility like Linde or something where there  
16 were many other exposures that may be involved  
17 in cancer or other diseases, that's something  
18 that's taken care of under Part E.

19 MS. RYKIEL: Okay. And then my  
20 final thing I just wanted to say is I think it  
21 should be taken into consideration that  
22 thyroid disease, MS, and prostate cancer,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we're one of the highest areas in North  
2 America, we are the highest rated areas. And  
3 it's probably because more than likely, I  
4 should use your words -- not your words, but  
5 the assumption, because you hear the word  
6 assumption all the time, with the assumption  
7 that these plants are the ones that did it to  
8 all these men.

9 CHAIRMAN MELIUS: Yes.

10 MS. RYKIEL: So they should be  
11 paying for the prostate.

12 CHAIRMAN MELIUS: Okay. Could  
13 very well be, but I can't -- you know, the  
14 Department of Labor is going to have to make  
15 that determination under their guidelines.

16 MS. RYKIEL: Okay. Thank you very  
17 much for hearing me.

18 CHAIRMAN MELIUS: Well, thank you.  
19 Eleanor Tornabene, I believe. I may -- again,  
20 I apologize for pronunciation if I was wrong.

21 MS. TORNABENE: Hello, I'm Eleanor  
22 Tornabene. I live on Grand Island now. I'm

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here on behalf of my husband, Sam Tornabene.  
2 He worked at Linde in Tonawanda from 1962  
3 until his death in 1993. He died of lymphoma.

4 I guess the -- from early on when he started  
5 at Linde, he carried a radiation detector. At  
6 that point, we should have realized there was  
7 really something wrong with this work area,  
8 but I don't know what happened to that  
9 detector, or who kept track of the information  
10 that they garnered from it.

11 I'm sure that his exposure was on  
12 a constant basis because he worked in the  
13 factory. He started out in janitorial, then  
14 went to maintenance, worked in several areas  
15 in the factory, and he finished his career as  
16 a top grade welder.

17 I think the bottom line here is  
18 that this facility was unsafe. They knew it  
19 was unsafe, and something should have been  
20 done a long time ago. Our initial claim went  
21 to workman's compensation in 1994, and we,  
22 again, had a claim to the federal government

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in 2005. Mr. John Lipsitz is the lawyer who's  
2 taking charge of this case and has been very  
3 persistent and very valuable to us on my  
4 husband's behalf. Thank you.

5 CHAIRMAN MELIUS: Thank you. And  
6 then, John Lipsitz, I believe you signed up.

7 MR. LIPSITZ: Good afternoon. My  
8 name is John Lipsitz, and I'm an attorney in  
9 Buffalo, New York, and I represent Eleanor  
10 Tornabene. And I asked to be able to speak  
11 because I think this case illustrates the  
12 apparent irrationality of the system and why I  
13 have over the past several years gotten so  
14 many calls from so many frustrated claimants  
15 telling me that they were being unfairly  
16 treated. And why I believe the only solution  
17 to this kind of unfair, inconsistent, and,  
18 apparently, irrational system is to grant the  
19 Special Exposure Cohort for the people at  
20 Linde who worked there between 1954 and 2006.

21 Sam Tornabene, as Eleanor pointed  
22 out, worked at Linde. He actually was there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from September 1962 through September 1993.  
2 Specifically, he conducted renovation work in  
3 Building 30 for a six-month period during the  
4 mid-1960s. This is a building which was  
5 identified by a 1976 Department of Energy  
6 radiologic survey as the most contaminated  
7 building at the Linde facility.

8 The renovation work involved,  
9 among other things in Building 30, breaking up  
10 concrete for hours at a time, which exposed  
11 Mr. Tornabene to high levels of airborne  
12 alpha-emitting dust particles. The dust  
13 exposure he was subjected to over at least a  
14 six-month period of time in Building 30 is the  
15 type of radiation exposure which would  
16 increase the probability for the development  
17 of the type of non-Hodgkin's lymphoma he  
18 eventually developed and died from. The  
19 medical evidence in this case does not reveal  
20 or suggest any other competing risk factor for  
21 this gentleman's non-Hodgkin's lymphoma.

22 The renovation work was very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specifically and in great detail described at  
2 a hearing which took place in the New York  
3 State workers compensation court in  
4 approximately -- well, the period from 1994  
5 through 1998. And it's important for you to  
6 appreciate that we were initially seeking  
7 compensation before the enactment of the  
8 Energy Employees bill by going to New York  
9 State workers compensation court. And in that  
10 proceeding, we produced both written reports  
11 and testimony from a well-qualified  
12 pulmonologist in the Buffalo area, who is  
13 board-certified in pulmonology, who testified  
14 that the route of entry for the inhaled alpha-  
15 emitting dust particles was such that it came  
16 into his lungs, migrated to the lymph nodes,  
17 and created the conditions for the development  
18 of non-Hodgkin's lymphoma, which originated in  
19 Mr. Tornabene in lymph nodes that were  
20 proximate to his upper chest cavity.

21 We also heard testimony from Mr.  
22 Tornabene's oncologist, a Harvard-trained

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 medical doctor by the name of [identifying  
2 information redacted], who very clearly  
3 offered his well-considered opinion that the  
4 non-Hodgkin's lymphoma was caused by this  
5 exposure. But, perhaps, in terms of medical,  
6 or rather expert testimony, the most telling  
7 thing is that we had reports and extensive  
8 testimony from a health physicist,  
9 [identifying information redacted], who  
10 testified at length and over a several day  
11 period, and under intense cross-examination,  
12 that this, indeed, was a competent producing  
13 cause of Mr. Tornabene's cancer because the  
14 levels of radioactive dust that he inhaled  
15 were clearly injurious.

16 At the hearing, which, again,  
17 lasted on and off over a period of about four  
18 years, we heard testimony from Mr. Tornabene's  
19 coworkers, including most notably the  
20 testimony of [identifying information  
21 redacted]. Now this is a third-party, so I  
22 suppose his name may be redacted, but he's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here right now, and he's in this room, and he  
2 described, again, at length, under oath, and  
3 under cross-examination, as well, how Samuel  
4 Tornabene and other men working with him  
5 performed renovation work in the 1960s and  
6 1970s, and specifically described with  
7 reference to the floor plan of Building 30 the  
8 heavy pieces of equipment that Mr. Tornabene  
9 had to break off from the floor with the use  
10 of a jackhammer, and then move to another  
11 location and reinstall, giving rise to large  
12 amounts of dust in the air. And, again, these  
13 are the floors that were later studied by site  
14 surveys commissioned by the government,  
15 particularly, I believe it was the Department  
16 of Labor, showing high levels of alpha-  
17 emitting dust particles, both fixed and  
18 removable. And, of course, these were all  
19 liberated by the process of the jackhammer.

20           These workers did this work  
21 without any protection and without any special  
22 work clothing. They would go home with their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regular clothing covered in dust and then have  
2 their clothes washed at home. They performed  
3 many renovation activities of this sort.

4 Now this was the testimony at the  
5 Workers Compensation Board. The employer  
6 produced testimony, as well, from experts,  
7 notably an expert in radiation and illness,  
8 [identifying information redacted], probably  
9 very well known to some of you who, at one  
10 time, worked for the federal government in the  
11 Public Health Service.

12 [identifying information redacted]  
13 took the position that non-Hodgkin's lymphoma  
14 is not caused by exposure to alpha-emitting  
15 dust particles. This was the same position  
16 that was taken by another expert offered by  
17 the employer, a medical doctor from the  
18 University of Rochester. They didn't say that  
19 there was no exposure; they didn't dispute  
20 that the exposure occurred; they didn't  
21 dispute that the exposure was massive. They  
22 just took the position that exposure to alpha-

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 emitting dust particles does not cause non-  
2 Hodgkin's lymphoma.

3 Well, that decision dashed our  
4 hopes, considerably, and several years later  
5 when the government passed the Energy  
6 Employees Act, we gathered our evidence up,  
7 all of the testimony, including the  
8 transcripts of the experts, their reports, the  
9 testimony that [identifying information  
10 redacted] gave, and we submitted that again,  
11 this time with a considerable amount of hope  
12 because non-Hodgkin's lymphoma had been listed  
13 as a radiologic or radiogenic cancer by the  
14 government following the enactment of the  
15 Energy Employees Act.

16 Well, it's instructive to learn  
17 exactly how we've been bounced back and forth  
18 over the past five years. The claim was filed  
19 in 2005. A dose reconstruction determination  
20 was made in 2006. It was -- the claim was --  
21 it was recommended that the claim be denied  
22 because it was less than a 50 percent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 probability, and that was in 2007. We asked  
2 for a hearing, which we had in 2008. The  
3 final adjudication branch in 2008, in October,  
4 issued a final decision denying the claim.  
5 And all of this -- all up to this point, all  
6 we got was 10.24% was the estimated  
7 Probability of Causation, not one articulated  
8 reason, or opinion, or statement, or document  
9 by an individual human being who actually  
10 assessed the facts of this case.

11 We attempted to get the claim --  
12 or the denial reconsidered. We filed a  
13 Request for Reconsideration in November 2008.

14 That was addressed and denied in 2009.  
15 Again, in May of 2009, we requested that the  
16 claim be reopened. A Request to Reopen was  
17 rejected because, according to the District  
18 Director, what we believed to be a revised  
19 Site Profile for Linde that had been issued in  
20 November of 2008, was, in fact, not a revised  
21 Site Profile, didn't really constitute new  
22 evidence, and, therefore, didn't change the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 dose reconstruction method.

2           Then we filed a lawsuit against  
3 the Department of Labor. We filed a very  
4 thick lawsuit against the Department of Labor  
5 in August of 2009, and one month later we got  
6 a letter from the Department of Labor saying  
7 well, we've changed our minds. We're going to  
8 annul the initial decision denying the claim,  
9 the subsequent decision denying  
10 reconsideration, and the subsequent decision  
11 denying your request to have this matter  
12 reopened. So now we'll go back to the drawing  
13 board, and that was last year in September of  
14 2009. To say the least, it is a very  
15 frustrating procedure that we've been going  
16 through.

17           This is a case where the claim was  
18 denied not because there wasn't proof of  
19 exposure, but because the exposure doesn't  
20 cause non-Hodgkin's lymphoma. Well, now we  
21 know that it does cause non-Hodgkin's  
22 lymphoma, but, apparently, it's not enough

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because it doesn't cause non-Hodgkin's  
2 lymphoma in this particular case according to  
3 no one in particular.

4 The government has produced no  
5 experts. It hasn't disputed the exposure.  
6 The cancer is classified as radiogenic, and  
7 this is really just an object lesson in how  
8 the people that have made these applications,  
9 when they follow it to the logical extreme,  
10 when they are persistent and continue to do  
11 it, will be frustrated at one turn after  
12 another.

13 And, in conclusion, I'd just like  
14 to say that when you look at a situation like  
15 this and you say that you're going to use  
16 surrogate data in order to determine whether  
17 to accept or reject a claim with such specific  
18 exposure evidence that you're using data  
19 that's highly irrelevant and not at all  
20 friendly, at least to this particular  
21 claimant. Thank you very much for listening  
22 to this presentation.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN MELIUS: Thank you. Just  
2 one question I had, was this a Subpart E or  
3 Subpart B claim?

4 MR. LIPSITZ: B.

5 CHAIRMAN MELIUS: B. Okay.

6 MR. LIPSITZ: Thank you.

7 CHAIRMAN MELIUS: Thank you.  
8 Nancy Mendola Haug, I believe. Haug, okay.  
9 Sorry.

10 MS. HAUG: Thank you for letting  
11 me speak today. My father, Peter Mendola, his  
12 account number is [identifying information  
13 redacted]. He died of colon cancer in 1977.  
14 He started working at Linde in 1951, four or  
15 five months before I was born. He was a dead  
16 man walking before I even came into this  
17 world, so he had his dose reconstruction, and  
18 we think -- actually, the only people that are  
19 left in my family are my brother and I. My  
20 mother is dead, my sister died of MS, which  
21 is, obviously, one of the things when he  
22 brought home all this dust on his clothes that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 could have been part of the cause. My mother  
2 had a thyroid problem, which could have also  
3 been part of the dust that came home with my  
4 father.

5           You did the dose reconstruction,  
6 and the problem I have with all of this is  
7 Linde poisoned my father, bottom line. He got  
8 poisoned whether he was 26.9, or 29.6%.  
9 Poison is poison, and that's what they did;  
10 they poisoned him while he was there. No one  
11 followed to know exactly what air he was  
12 breathing, what water he was drinking, what  
13 areas he traveled in, and it's good for you  
14 all to sit there and just tell us it doesn't  
15 matter because you did your dose  
16 reconstruction. And the bottom line is he  
17 could have been in areas that were more  
18 exposed, and not exposed. And he was such a  
19 wonderful person, and to have him die that  
20 horrible death, just not right.

21           You couldn't have possibly  
22 monitored all the areas that he went into.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The impact on my family was tremendous when he  
2 died. And then I was told when we went for  
3 the cohort group to be put into E, that if I  
4 was 23 years old, I was 25 when he died, if I  
5 was 23 years old in school, or disabled, I  
6 would have been approved. Well, I was 25  
7 years old, and that doesn't mean the pain of  
8 losing my father was any less than when I was  
9 23. And I still needed him, I still depended  
10 on him. I'm sorry.

11 (Off the record comments.)

12 MS. HAUG: Then I got the letter  
13 indicating that I wasn't approved because I  
14 was 25. And my brother did send one statement  
15 that he would like -- he's out of town and was  
16 unable to make it, and he wanted me to say  
17 that, "No studies large enough or over enough  
18 time have been run to disprove that low-dose  
19 ionizing radiation causes cancer that makes  
20 the possibility that it causes or doesn't  
21 cause it at 50 percent either way, which still  
22 meets the criteria for inclusion." And the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 bottom line is we lost our father because he  
2 worked at Linde, and he had so much life left  
3 to him. And it appears, just to me, okay, I  
4 may be 58 years old now, but it's been a long  
5 time without him. I named my son Peter so I  
6 would say my father's name every day for the  
7 rest of my life because my father's name was  
8 Peter and that's the only way I can keep his  
9 history or love alive.

10 It appears that, you know, you're  
11 all here doing this, and it's like a big  
12 circle. And it's almost like you're waiting  
13 for us all to die off so that you don't have  
14 to compensate us.

15 (Applause.)

16 MS. HAUG: And at this point in my  
17 life, I've lost my husband. I'm a widow, too.

18 That doesn't make any difference, but the  
19 bottom line is, we take care of ourselves. We  
20 can afford to live, and this compensation  
21 actually doesn't mean anything to me. My  
22 father was worth a gazillion dollars to me,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not \$150,000. That's useless. Thank you very  
2 much.

3 CHAIRMAN MELIUS: Okay. Thank  
4 you.

5 (Applause.)

6 CHAIRMAN MELIUS: Karen Mortensen  
7 Noonan.

8 MS. NOONAN: My father, Royal  
9 Mortensen, worked at Linde from 1957 to 1965.  
10 He died at the age of 43. He was an  
11 extremely healthy, active man. He sailed in  
12 the summer. In fact, as a teenager he built a  
13 sailboat with his father. My grandfather  
14 wanted to sail back to his native land of  
15 Denmark. He skied in the winter. He was on  
16 the ski patrol in World War II and delivered  
17 to the troops. I don't remember ever seeing  
18 him sit down. He was always doing additions  
19 to the house. He built our garage. He went  
20 to night school to get his degree as an  
21 engineer. After World War II, he served on  
22 many government projects before working at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Linde. And, yet, even though he died of  
2 spinal cancer, the dosage reconstruction said  
3 it was only 5% of the cause of his death. And  
4 spinal cancer is very rare. It comprises only  
5 2% of all cancers, and its primary cause is  
6 radiation. And, yet, this is the lowest one  
7 I've heard here today, was below 5%.

8 My mother never recovered from his  
9 death. She had three small children. I was  
10 12 at the time, and she made it clear that it  
11 was hard for her. And he brought out the best  
12 in my mother. When he died, my mother  
13 reverted to her family way of being very cold  
14 and hard to live with. Excuse me. She  
15 started this claim 10 years ago, and I had to  
16 take it over at her death five years ago. She  
17 didn't live to be denied. Well, we were  
18 denied several times. And I have to say that  
19 this was very upsetting for her, just to first  
20 even start the claim because she got out the  
21 old pictures of my father working at Linde.  
22 Everything brought back the old memories to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 her. And I, myself, every time we were denied  
2 and I had to reapply or get new documents, I  
3 was always tempted to just let it drop because  
4 it was very depressing and sad to live through  
5 this again. However, every time I'd say to  
6 myself, I have to do it for him. He did so  
7 much for his country, and for you to just deny  
8 that this caused his death, I think, is  
9 unfair. So I hope that you reconsider. Thank  
10 you for listening.

11 CHAIRMAN MELIUS: Thank you very  
12 much. [identifying information redacted].

13 MS. SHAFFER: [identifying  
14 information redacted] is my mother, and I will  
15 --

16 CHAIRMAN MELIUS: That's fine.  
17 Either the podium, or the other mic, whichever  
18 is --

19 MS. SHAFFER: My name is Kathleen  
20 Shaffer, and I'm [identifying information  
21 redacted]'s daughter. My mother has filed  
22 claim on behalf of her stepfather, Jesse

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Hendershot, who worked at Linde from 1945,  
2 July of 1945 until only March of 1946. He  
3 died at age 68 in 1977 of bladder cancer. And  
4 now the surprise here is that in hearing all  
5 the other people whose relatives worked at  
6 Linde, and talk about the dose reconstruction,  
7 and how people had worked there for 30 years  
8 and very long periods, my grandfather worked  
9 there for only a very, very short time; yet,  
10 his bladder cancer was diagnosed, and his dose  
11 reconstruction came back, and I believe it's  
12 26% dose reconstruction, which is the highest  
13 of any that's here. So, obviously, there  
14 seems to be some great discrepancy in terms  
15 of how the dose reconstruction is made because  
16 my mother's claim was denied on the basis that  
17 he worked there for too short of a time. It  
18 didn't meet the time constraints, as well as  
19 it didn't meet the 50% criteria for the dose  
20 reconstruction.

21 So it appears that -- we were told  
22 that they shortened his time frame for his

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 employment, and it was only a number of  
2 months; yet, he was diagnosed with bladder  
3 cancer, one of the covered cancers in the  
4 action. And his cancer was due to working at  
5 Linde. And, again, as another woman had  
6 previously stated, you don't know where the  
7 person was when they worked at Linde, you  
8 don't know the food they ate when they were in  
9 the lunchroom at Linde, could have been  
10 contaminated. You don't know any of that.  
11 And I guarantee that every single one of you  
12 sitting at that table, no matter where you go  
13 to any of these meetings on behalf of any of  
14 these agencies, and any of these families,  
15 that if it was available for you to go and sit  
16 in Building 30, which has been discussed here  
17 about Linde, as it being the most contaminated  
18 of all the buildings, I don't think that any  
19 one of you would sit there for five minutes,  
20 let alone work there for six months or 36  
21 years. And I think that everybody needs to  
22 realize the fact that these families are here

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 on behalf of the efforts that their loved ones  
2 did on behalf of the United States government,  
3 and they need to, again, get away from dose  
4 reconstructions.

5           There isn't any -- it's a crap  
6 shoot. Some people can be exposed to a  
7 cancerous type of thing for five minutes.  
8 Look at all of the claims that have resulted  
9 from rescue workers working at Ground Zero on  
10 9/11. Some people were there one day, some  
11 people were there for months. It doesn't  
12 matter if you were there for five minutes, you  
13 might get a cancer that will kill you. You  
14 can be there 36 years, and get a cancer that  
15 will kill you. It's the stuff that's there;  
16 it's not the dose reconstruction; it's not the  
17 percentages; it's the fact that there were  
18 cancerous conditions in all of those  
19 buildings, and the government needs to do its  
20 job to compensate these workers for the jobs  
21 that they did and the fact that their families  
22 lost these people's lives, as well as the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people themselves who lost their lives, and  
2 their capability, unbeknownst to them that  
3 they were taking any type of risk. Thank you.

4 CHAIRMAN MELIUS: Thank you. Is  
5 there anybody who wishes to speak to Linde,  
6 have I skipped over? There are some people  
7 here that are -- a few people are listed for  
8 Hooker, which we will get to, and some people  
9 that aren't identified. I'm not sure. I just  
10 don't want to miss anybody from -- yes, sir?

11 PARTICIPANT: Bethlehem.

12 CHAIRMAN MELIUS: Okay. We'll get  
13 to you, also. But I just wanted to finish up  
14 on Linde, try to group people together. If  
15 not, I think we'd like to hear from -- I think  
16 Senator Schumer's office has a representative  
17 here. Laura Monte. And she can introduce  
18 herself.

19 MS. MONTE: My name is Laura  
20 Monte, and I'm on Senator Schumer's staff.  
21 And I have a letter that I would like to read  
22 into the record. This is a letter that comes

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from Senator Schumer and Senator Gillibrand.  
2 And this letter goes to the Honorable Kathleen  
3 Sebelius, Secretary of U.S. Department of  
4 Health and Human Services, and Dr. John  
5 Howard, the Director of NIOSH.

6 "Dear Secretary Sebelius and Dr.  
7 Howard, we are writing today on behalf of  
8 sickened nuclear workers and their families  
9 that have been denied a fair hearing regarding  
10 compensation benefits under the EEOICPA.

11 Over the last decade, regulations  
12 that have been implemented by the Department  
13 of Health and Human Services have not  
14 fulfilled the Congressional intent of this  
15 landmark remedial compensation program  
16 representing a claimant favorable paradigm.  
17 To that end, the Linde Ceramic Special  
18 Exposure Cohort Action Group submitted a  
19 petition for rulemaking to the Department of  
20 Health and Human Services on September 28<sup>th</sup>,  
21 2009.

22 This petition outlined suggestions

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for needed reform to the EEOICPA  
2 administrative regulatory framework. The  
3 petition has been coordinated by advocates and  
4 stakeholders on the front lines from workers'  
5 representatives and workers themselves, who  
6 deal with the onerous and bureaucratic burdens  
7 forced upon sickened workers and their  
8 families under the current EEOICPA process.

9 One of the primary issues raised  
10 in this petition deals with the inappropriate  
11 use of surrogate and/or coworker data in this  
12 SEC evaluation process. The SEC program was  
13 designed to avoid the difficult and  
14 technically complex dose reconstruction  
15 program in order to provide sickened nuclear  
16 workers with fair and equitable compensation  
17 under EEOICPA. The use of surrogate -- I'm  
18 sorry, I skipped that line. The use of  
19 surrogate and/or coworker data in the SEC  
20 evaluation process reflects an analytical  
21 framework used by NIOSH that is designed to  
22 grant SEC petitions only as a last resort.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This analytical paradigm unfairly limits the  
2 ability of workers to be granted relief from a  
3 dose reconstruction program that has become a  
4 bureaucratic and technically incomprehensible  
5 nightmare for the lay person.

6 The fundamental inability for  
7 sickened workers to understand the dose  
8 reconstruction program deprives these workers  
9 of their basic right of due process under  
10 EEOICPA. The claimant or petitioner cannot  
11 understand why their claims are being denied  
12 by NIOSH and, ultimately, by the Department of  
13 Labor due to the inherent technical nature of  
14 dose reconstruction reports provided to  
15 claimants. Consequently, even though  
16 claimants are provided with the right to  
17 appeal denied decisions, that right is useless  
18 when someone is functionally precluded from  
19 understanding why their claim was denied in  
20 the first instance.

21 To expect a claimant to be able to  
22 develop in advance an effective appeal is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impossible if they do not understand why the  
2 claim was denied in the first place. This  
3 fundamental absence of due process undermines  
4 the essential purpose of passage of the  
5 EEOICPA. That is why we fully support the  
6 reform agenda outlined by the Linde Ceramics  
7 SEC Action Group.

8 We urge the Department of Health  
9 and Human Services to review and consider  
10 these reform measures without delay within the  
11 10-year EEOICPA review currently underway at  
12 NIOSH. The men and women that have served our  
13 nation and were unknowingly exposed to  
14 radiation at nuclear facilities around the  
15 country deserve to have their claims evaluated  
16 in a fair and equitable manner. Fairness and  
17 equity can only be achieved through clear  
18 implementation of a standard of claimant  
19 favorability. Moreover, fairness and equity  
20 can only be realized when the EEOICPA  
21 regulations are applied in a manner that  
22 reflects the remedial nature of this vital

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compensation program.

2 Thank you for your attention to  
3 this critical request. Sincerely, Charles E.  
4 Schumer, United States Senator, Kirsten E.  
5 Gillibrand, United States Senator."

6 CHAIRMAN MELIUS: Thank you very  
7 much, Laura. And then I believe we also have  
8 Bill Greeley from Congressman Higgins's  
9 office.

10 MR. GREELEY: Good evening. My  
11 name is Bill Greeley, G-R-E-E-L-E-Y, and I'm  
12 here representing Congressman Brian Higgins.  
13 I'd like to welcome the members of the Board  
14 to Western New York. I'm kind of proud to  
15 think that you're here today because I was one  
16 of the people that advocated for a Advisory  
17 Board meeting in Buffalo, and Niagra Falls  
18 naturally is the next best thing.

19 In January of 2005, I began  
20 working for Congressman Higgins after he got  
21 elected. On April 30<sup>th</sup> of 2010, I officially  
22 retired, but I made a commitment to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Lackawanna Action Group that I wouldn't  
2 abandon them, and with the Congressman and his  
3 senior staffer's permission, I would continue  
4 to work on behalf of the members of that  
5 Action Committee. With me today, or this  
6 evening, is the Congressman's District  
7 Director, a young lady by the name of Megan  
8 Corbett. And Megan has been my boss for the  
9 last four and a half years -- or five and a  
10 half years. So, I'd like to, on behalf of my  
11 Congressional colleagues in some of the other  
12 offices, thank you for coming and listening to  
13 these stories on behalf of all the workers  
14 that have come down with such a serious  
15 illness.

16           When I started in 2005, one of the  
17 first calls I received was from a gentleman by  
18 the name of Ed Walker. And most of you know  
19 who Ed Walker was, but Ed was an  
20 uncharacteristic type of guy. He was a  
21 tradesman. He was a bricklayer, worked at  
22 Bethlehem during that period, was a home

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 remodeler, but he was a marvel. Ed could talk  
2 about this program and argue with attorneys,  
3 with doctors, with scientists, and with  
4 elected officials and their staffs. I used to  
5 just marvel at Ed. And Ed and I got to be  
6 very, very good friends. Practically every  
7 Friday afternoon, late in the afternoon when I  
8 was trying to sneak away from work, Ed would  
9 call and give me the week's rundown on  
10 everything that had happened. And I'd like to  
11 think that one of the reasons that you're here  
12 today is out of Ed's legacy. He just was a  
13 wonderful guy. I enjoyed his company very  
14 much, and his wife is a real sweetheart. And  
15 I'm sure that tomorrow you're going to hear  
16 from her.

17           You know, this community a little  
18 over 10 years ago was glued to the television  
19 about a famous murder trial. And I can still  
20 remember the day when a piece of evidence, a  
21 bloody glove, was put on the defendant in the  
22 charge on his hand, and his attorney jumped up

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and said, "If the glove doesn't fit, you must  
2 acquit." Now you're sitting there thinking  
3 why is he bringing this up.

4 Well, I'd like to just point out  
5 that part of this program, when it's using  
6 surrogate data to fill in blanks for  
7 information that doesn't exist at a facility  
8 like Bethlehem is wrong. And just like that  
9 glove, the evidence got thrown out, I'd like  
10 to point out to you that this surrogate data,  
11 which doesn't fit at Bethlehem Steel should be  
12 thrown out, and an SEC has to be approved for  
13 the workers and the claimants at Bethlehem  
14 Steel.

15 (Applause.)

16 MR. GREELEY: Thank you. Now one  
17 of the things that I brought with me was a  
18 statement from the Congressman, and I think  
19 that Mr. Katz has passed it out to everyone.  
20 Brian would have loved to have been here  
21 tonight or tomorrow to address you, but the  
22 House is meeting in session, and there's going

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be votes this evening and tomorrow.

2 One of the things that the  
3 Congressman points out in this is that for the  
4 last five and a half years, he's been an  
5 advocate for the workers at Bethlehem. And if  
6 I could just read some of this, "Local steel  
7 workers and their families have suffered for  
8 decades from the toxic exposure to uranium  
9 dust at the former Bethlehem Steel Plant in  
10 Lackawanna, New York. I wish I could say that  
11 the supervisors at Bethlehem didn't fully know  
12 the risk that the workers in the uranium  
13 rolling facility were being subjected to in  
14 those early days of the Cold War, but, in  
15 fact, huge gaps of monitoring data for the  
16 facility, mean we will never really know  
17 whether proper precautions were carried out,  
18 and carried out at all. In addition, reports  
19 of exposed -- or suggested, there are major  
20 inadequacies in the attempts to use surrogate  
21 data to reconstruct the toxic exposure."

22 One of the things that Brian

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 points out is that the late Ed Walker made  
2 this issue the cause of his later life. He  
3 knew more about the intricacies of these  
4 facilities than most, and he knew, before many  
5 others would admit, that the system set up to  
6 deal with the Bethlehem Steel workers was  
7 flawed and needed to be fixed. That's why he  
8 led the effort for Bethlehem Steel to be  
9 placed as a Special Exposure Cohort. His  
10 memory lives on today in the dozens of local  
11 families who have come to express their  
12 support for fair relief.

13 As you deliberate, the Congressman  
14 says, "I urge you to reflect on their concerns  
15 and the fallacies of the system that they have  
16 been subjected to, and make a favorable  
17 recommendation for their petition."

18 And just before I walk back to my  
19 seat, I'd like to just reiterate, "If the  
20 glove doesn't fit, you must acquit."

21 (Applause.)

22 CHAIRMAN MELIUS: Thank you, Bill.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Thank you for your dedication even after  
2 retirement, so appreciate it. We have some  
3 more people listed. I'm going to go through  
4 them first. I don't know if we have people in  
5 the -- we have two more, also. But let me  
6 start at the top of the list again.  
7 [identifying information redacted]. Is there  
8 a [identifying information redacted] here?  
9 May have just -- sometimes people just sign  
10 the wrong list as they come in, and so forth.

11 Mary Girardo? Okay. This only  
12 has a first initial, so I don't know, someone  
13 from Hooker, P. Scremmen or Scremm. Okay.  
14 Scremmen it was, okay. If you'd like to step  
15 to either mic. That one may be a little bit -  
16 -

17 MS. SCREMMIN: Thank you.  
18 Actually, some of my --

19 CHAIRMAN MELIUS: You need to pull  
20 it -- can you help her?

21 MS. SCREMMIN: Some of my  
22 questions have been answered, and some I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 realize were probably misplaced at a meeting  
2 of NIOSH because I wondered about the Special  
3 Cohort for Lake Ontario Ordnance Works. And  
4 if anyone here knows why that -- to be in the  
5 Special Cohort, the employee had to have 250  
6 days of employment. And, also -- so, what is  
7 the magic about 250 days?

8           Secondly, there was a deadline of  
9 December 31<sup>st</sup>, 1953. Should I address this  
10 question to Department of Labor, or can  
11 someone from NIOSH answer the question?

12           CHAIRMAN MELIUS: Well, I think we  
13 can answer the 250 day question. When the  
14 ordinance was originally passed by Congress  
15 for the Special Exposure Cohorts that were  
16 included in the ordinance, the law, they used  
17 to qualify under the Special -- those Special  
18 Exposure Cohorts had to have worked at least  
19 250 days at the facility, I believe, for three  
20 of those cohorts. So when the regulations  
21 were written, the 250 days was taken into the  
22 regulation for facilities. Unless there was a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 very acute, very high exposure, then there can  
2 be exceptions to that.

3 MS. SCREMMIN: Okay. All right.  
4 Was it just an arbitrary number of days, or  
5 did it have anything to do with the amount of  
6 radiation exposure, or medical problems, or  
7 was it just 250 days, an arbitrary date?

8 CHAIRMAN MELIUS: In some ways,  
9 it's arbitrary.

10 MS. SCREMMIN: Okay.

11 CHAIRMAN MELIUS: It represents  
12 one year of work at a facility.

13 MS. SCREMMIN: Yes.

14 CHAIRMAN MELIUS: And there would  
15 be some -- an opportunity for significant  
16 amount of exposure.

17 MS. SCREMMIN: Okay. So, to be  
18 included, it would be an all or none. The  
19 employee had to have 250 days, or he was --  
20 the employee was not included in that cohort.

21 CHAIRMAN MELIUS: Correct. That  
22 is adjusted for overtime, and people worked

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 weekends, so there's some adjustment can be  
2 made for it, for longer work schedules.

3 MS. SCREMMIN: All right. Why the  
4 end date of December 31<sup>st</sup>, 1953?

5 CHAIRMAN MELIUS: That part I  
6 can't answer directly because I think it has  
7 something to do with operations. But does  
8 anybody -- Stu, are you still here, or someone  
9 to --

10 MR. HINNEFELD: As I recall, our  
11 evaluation indicated that the -- from that  
12 point forward there was sufficient data and  
13 the dose reconstruction was feasible. That's  
14 my recollection, but I'm speaking from memory.

15 CHAIRMAN MELIUS: Yes. Someone  
16 will follow up, and that may still be under  
17 consideration. We just don't recall.

18 MS. SCREMMIN: Second question,  
19 maybe the NIOSH representatives can answer,  
20 what, if any, weight in the decision making,  
21 what, if any, weight was given to smoking in  
22 the employee's history?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   CHAIRMAN     MELIUS:  That     would  
2     depend if it was being done as part of the  
3     Special Exposure Cohort, there would be none  
4     direct.  I mean, that's --

5                   MS. SCREMMIN:  I don't understand.

6                   CHAIRMAN MELIUS:  Yes.     Stu, do  
7     you want to explain the --

8                   MR. HINNEFELD:  If the claimant  
9     smoked and the cancer involved is lung cancer,  
10    there would be some adjustment to the risk  
11    number, and, therefore, the Probability of  
12    Causation outcome as a result of the dose  
13    reconstruction.  For any other cancer, there  
14    would be no effect from smoking.

15                  CHAIRMAN MELIUS:  Right.

16                  MR. HINNEFELD:  For any other  
17    cancer, other than lung cancer.  For lung  
18    cancer, there is -- I'm sorry, she didn't  
19    understand what I said.

20                  CHAIRMAN MELIUS:  Yes.

21                  MR. HINNEFELD:  For lung cancer,  
22    there is an adjustment to the risk in terms of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 how -- essentially, how high the PoC goes per  
2 unit of radiation dose based on the person's  
3 smoking history. And that is based on the  
4 epidemiological evidence that is available for  
5 the occurrence of cancer in exposed  
6 populations.

7 CHAIRMAN MELIUS: Yes. The  
8 science that is used as the basis for the  
9 calculation takes into account -- that into  
10 account.

11 MS. SCREMMIN: Thank you very much  
12 for the opportunity.

13 CHAIRMAN MELIUS: Okay.

14 MS. SCREMMIN: And I will say that  
15 over the past nine years, I have certainly had  
16 a good education in bureaucracy.  
17 Unfortunately, I have not gotten a good  
18 education in radiology or the effects of  
19 radiation. All I have learned is how much I  
20 don't know and how I do not understand any of  
21 the charts that were sent to me. So, I thank  
22 you very, very much.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   CHAIRMAN MELIUS: Well, it's -- we  
2 understand it's complicated, and I will say  
3 that NIOSH is making some efforts to make some  
4 of that information more intelligible and  
5 easier to understand. It is difficult. We  
6 know how frustrating that can be.

7                   Amy Witryol, I believe it is.

8                   MS. WITRYOL: My name is Amy  
9 Witryol, and I live in Lewiston, New York.  
10 And, first of all, I'd like to thank the  
11 speakers that I've heard for very thoughtful  
12 and very intelligent remarks.

13                   Secondly, I'd like to clarify a  
14 comment, I believe by Mr. Greeley. Niagra  
15 Falls is not the second best thing to the City  
16 of Buffalo. We think Niagra Falls is a pretty  
17 darned good place to be, and the best place to  
18 be with those choices. And we also appreciate  
19 the diversity of opinion, perhaps, in that  
20 view, because we love Buffalo, as well.

21                   I'd like to read comments first by  
22 a friend, and then, secondly, add my own

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1        comments.        These        comments        are        from  
2        [identifying        information        redacted],        who  
3        formerly lived in Youngstown, New York, which  
4        is just to the north of here, just beyond  
5        Lewiston, and presently lives in Sheboygan  
6        Falls, Wisconsin.        She's a chemist and  
7        engineer with an enthusiasm for historical  
8        records and, might I add, an excellent  
9        analyst, as well.        And [identifying  
10       information redacted]'s statement is as  
11       follows.

12                        "Please accept the following  
13       information which may be relevant to the  
14       exposure of Hooker employees at the former  
15       Lake Ontario Ordnance work site, known to us  
16       as the LOOW site. Keep in mind that there are  
17       serious gaps in the investigation of  
18       radioactive contamination conducted at this  
19       site by the Atomic Energy Commission, the  
20       Department of Energy, and, currently, the U.S.  
21       Army Corps of Engineers, Buffalo District,  
22       which are not fully addressed in this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submission.

2 In 1953, the U.S. Atomic Energy  
3 Commission contracted with Hooker  
4 Electrochemical Company to construct and  
5 operate a boron-10 isotope separation plant at  
6 the LOOW site. Although boron-10 is non-  
7 radioactive, Hooker workers were working on a  
8 contaminated site and were likely exposed to  
9 excess radioactivity. In addition to boron-10  
10 production, Hooker personnel were also  
11 employed in the cleanup of radioactive  
12 contamination at the LOOW site and the  
13 disposal of nuclear reprocessing waste by  
14 burial and burning.

15 Boron-10 production took place in  
16 the former LOOW power plant known as Building  
17 401, which was found to be contaminated with  
18 radioactivity and now, just this year, is  
19 scheduled for demolition by the Army Corps of  
20 Engineers. Past surveys have identified  
21 significant radioactive contamination in  
22 workers' lockers in Building 401, so the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question of whether workers had the potential  
2 to bring contamination into the building  
3 should also be investigated.

4 The boron-10 plant was operated  
5 from 1953 to 1958 by Hooker. It was placed on  
6 standby for six years, then reactivated and  
7 operated from 1964 to 1971 by the Nuclear  
8 Materials company, NUMEC.

9 The plant was housed in Building  
10 401, which was originally the LOOW power  
11 plant. Between 1952 and 1953, immediately  
12 prior to the construction of the boron-10  
13 plant, Building 401 was used to store nuclear  
14 reprocessing wastes from the separations  
15 process research unit, SPRU, at the Knolls  
16 Atomic Power Laboratory, which we refer to as  
17 KAPL, in Schenectady, New York. The wastes  
18 were highly radioactive, and contaminated  
19 plutonium and mixed fission products were  
20 included in these wastes.

21 An estimate of 408 curies of mixed  
22 fission product waste containing traces of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 plutonium were shipped to the LOOW. The  
2 amount of plutonium waste sent outside of that  
3 contained in the fission product waste has not  
4 been estimated. As part of Hooker's contract  
5 with the Atomic Energy Commission to operate  
6 the boron-10 plant, Hooker was also contracted  
7 to maintain adjacent storage areas on the LOOW  
8 site.

9 In this maintenance capacity, and  
10 as part of a 1953 effort to clean up the site,  
11 Hooker personnel were involved in storing,  
12 handling, and burying radioactive material at  
13 the LOOW. These activities were carried out  
14 under Hooker's contract with the AEC," which  
15 I'll provide to you in a list of documents in  
16 a package I have to provide you with these  
17 comments. "Inadequate storage conditions for  
18 the KAPL Schenectady waste at the LOOW led to  
19 concerns about safety and a desire by the  
20 Atomic Energy Commission to dispose of the  
21 wastes. The AEC enlisted Hooker  
22 Electrochemical to assist in disposal of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 KAPL wastes, and directed KAPL to assist  
2 Hooker in the disposal operations.

3 At the end of 1957, Hooker workers  
4 began preparing over 1,000 drums of KAPL waste  
5 for shipment to Oak Ridge for disposal. The  
6 first shipment of the KAPL waste to Oak Ridge  
7 from LOOW took place in January of 1958.  
8 Hooker Electrochemical personnel were later  
9 directed to burn the combustible KAPL wastes  
10 but encountered problems." Again, as a  
11 reminder, KAPL waste was the nuclear  
12 reprocessing waste from Schenectady, the naval  
13 reactor in Schenectady.

14 "The AEC specified environmental  
15 sampling before and after the burning of KAPL  
16 waste, as well as urine analysis for Hooker  
17 personnel handling the KAPL wastes. The  
18 results of these two monitoring exercises have  
19 not been published. In September 2009, the  
20 U.S. Army Corps of Engineers released a  
21 scoping document to the public requesting  
22 input on any issues associated with the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposed demolition of Building 401 on the  
2 Niagra Falls storage site. The scoping  
3 document failed to address the past potential  
4 exposure of Hooker Electrochemical personnel  
5 and the Nuclear Materials company workers who  
6 worked in contaminated Building 401.

7 Requests for the Army Corps of  
8 Engineers to publish all associated documents  
9 detailing the nature and extent of the  
10 radiological contamination in Building 401  
11 have not been met, and it is concerning that  
12 evidence of radiological contamination, which  
13 may be of value in determining worker exposure  
14 will be lost when Building 401 is demolished."

15 Again, that's scheduled for this fall.

16 "One radiological survey from 1955  
17 has been located, which records americium-241  
18 being present in Building 401. In 2007, the  
19 U.S. Army Corps of Engineers released a  
20 remedial investigation report for the Niagra  
21 Falls storage site which recorded the  
22 detection of plutonium-239 in a Building 401

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 core sample."

2 That includes the comments from  
3 [identifying information redacted], and I have  
4 for you 15 references of documents dating back  
5 to the 1940s in support of these remarks. I  
6 would now like to offer some of my own  
7 remarks.

8 It is very disconcerting that  
9 today when we still have an opportunity to  
10 determine what the radiation exposure is, that  
11 workers going back to the 1940s, `50s, `60s,  
12 and `70s may have been exposed to, but also  
13 with the community living here today may be  
14 exposed to during the demolition of these  
15 facilities. I don't want to take time away  
16 from other people who want to speak tonight to  
17 go into detail about the 7,500 acre former  
18 Defense site that we have located in the towns  
19 of Lewiston and Porter, that in many ways is  
20 very closely tied to the Defense Department  
21 and Department of Energy operations that took  
22 place in Niagra Falls and in Buffalo. We are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 also, for example, the repository of some of  
2 the wastes from the Linde site, as well.

3 But what I will say very simply is  
4 we have multiple state and federal agencies  
5 involved at this site, and should your work,  
6 or referral of this information to any other  
7 board involve soliciting information from a  
8 state or a federal agency, may I urge you to  
9 contact [identifying information redacted] for  
10 the completeness and accuracy of that  
11 information, because having spoken with  
12 citizen advisory boards and restoration  
13 advisory boards all over the United States,  
14 when it comes to contamination from weapons  
15 production, many of these sites are bigger and  
16 badder than what we have, but in talking with  
17 these advisory boards, they tell me that bar  
18 none, when it comes to agency conflicts of  
19 interests, that the Lake Ontario Ordnance Work  
20 site, at both the state and federal level,  
21 because of private and government activities,  
22 has no peers.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So thank you for coming to Niagra  
2 Falls to hold this meeting, and I join others  
3 in wishing you a very pleasant visit, and hope  
4 that this Board honors the sacrifice made by  
5 all of the people who were spoken about today.

6       Thank you.

7           CHAIRMAN MELIUS: Thank you. And  
8 we also appreciate the -- the information is  
9 always helpful. John Martino. Is John here?

10           MR. MARTINO: First of all, I'd  
11 like to thank you for reopening my claim,  
12 which has been laying dormant for three years,  
13 and that of several other people here.

14           I have two points that I want to  
15 make. I had thyroid cancer that -- I had it  
16 operated on, it metastasized the lymph glands  
17 up the side of my face. I had two growths  
18 removed from my right ear, which is not on my  
19 record. My ear is 80 percent shot. I wear a  
20 hearing aide.

21           When I had my cancer diagnosed, I  
22 was in Roswell for 10 days. They came to me,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I didn't go to them and ask these questions.  
2 They asked me where I worked, and I told them  
3 at Hooker Chemical. They tried to get  
4 information back then. They tried. I didn't  
5 ask them to, but they told me it was caused by  
6 radiation. They checked me after my surgeries  
7 every six months for a year, then every year  
8 after that for 10 years. It came back in two  
9 years. That's not on my report.

10 I had to go on to treatments,  
11 knocked it out in another lymph gland, I had  
12 another scar here, another scar there. They  
13 then monitored me for another eight years and  
14 says I'm okay, until they found that I had a  
15 blood cancer called monoclonal gammopathy,  
16 which in my letter here is not covered. But  
17 they checked me every three months. I have an  
18 oncologist, hematologist. I go every three  
19 months, then I go every six months. About  
20 three times I was threatened with chemo, my  
21 numbers, my IgM factors went way up above the  
22 danger point, and he says well, let me wait a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 couple of weeks, we'll take the blood again.  
2 Mine go up and down, up and down. But he says  
3 they keep checking me these past two years.  
4 People think I look pretty good. I lost 18  
5 pounds in the past year and a half.

6 Why I'm saying this is because  
7 administrators and managers are processors of  
8 information. We're like computers. We  
9 process the information given to us, garbage  
10 in, garbage out. We get good information, we  
11 get good results.

12 I worked in maintenance at Hooker  
13 Chemical. I noticed in your literature that  
14 you talked to a couple of yard birds, you  
15 called them, and a couple of engineers. The  
16 maintenance people went in every building that  
17 they have. We crawled on the beams. We  
18 sprayed the dust off of us with air hoses. We  
19 had cloths, we didn't have masks in those  
20 days. They came with masks about five or six  
21 years later, but used to wrap towels around us  
22 because of the dust, and spray our hair, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stamp our feet. We crawled on the beams on  
2 the dust that laid up there in those buildings  
3 for years, and years, and years. God knows  
4 what it was, but that's the information that  
5 I'm saying that maybe you don't have that kind  
6 of information, or what kind of illnesses some  
7 of us have.

8 I used to be a 34, these are 32s,  
9 and they are falling down on me. And my  
10 doctor says, John, what's happening? What's  
11 happening? We've got to check you again. And  
12 they're watching my numbers. I mean, the  
13 doctor here knows what IgA, IgG, and IgMs are.

14 And I keep them, too. I watch them, too.  
15 And when he says that I have to have chemo, I  
16 say what? And that's not even recognized.  
17 And it came from exposure to radiation. It's  
18 in the literature on that disease, too.  
19 That's one of the causes, but that's not  
20 covered.

21 I get around good. It hasn't  
22 stopped me that way, but I know what's coming

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 down the road. But I was very happy, I smiled  
2 when they said they're reopening my claim, but  
3 I got a little bit upset when they said that's  
4 not covered. But the other things I have, I  
5 say geez, I'm glad I had those. Those are  
6 covered. Thank you. Yes, it's funny. I  
7 know, I laugh, too. You have to look at the  
8 good side. I tell my wife, the glass is half  
9 full, it's not half empty. Maybe I'll get  
10 lucky.

11 CHAIRMAN MELIUS: I will tell you  
12 that when the Board here, we are just starting  
13 our review of NIOSH's report, so this is the  
14 first we heard about it was today. We just  
15 got it a week ago when everybody else did, if  
16 you got it when it was released. But one of  
17 the things we do pay attention to, careful  
18 attention to, and are very cognizant of are  
19 the maintenance workers. We understand that  
20 at many, many facilities that the exposure for  
21 maintenance workers is different. You do work  
22 in many different parts of the facility, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 we always want to pay attention to make sure  
2 that's taken into account in whatever --  
3 however this is being evaluated, both the SEC  
4 as well as the dose reconstruction.

5 MR. MARTINO: I ran wires into  
6 manholes there. Where do you think the water  
7 was washed in when they washed the buildings  
8 down, in the manhole, but we pulled cables  
9 down there, we ran wires. We crawled on  
10 beams, and all over the place, and dug holes,  
11 and ran conduit, and stuff.

12 I know, that's the information  
13 that maybe needs looking into. But my claim  
14 is in, but I'm talking for some of the other  
15 guys, construction guys that have their --  
16 aren't recognized in this time around again.  
17 We've all been denied several times. This  
18 gentleman back here has been denied several  
19 times, too, and he's a contractor. And that's  
20 the information that is not getting processed  
21 properly and may be overlooked.

22 CHAIRMAN MELIUS: Yes. We have at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 least one member of this Board who can  
2 probably share stories with you about crawling  
3 around a facility, and so forth, at least more  
4 than one, so it is appreciated.

5 MR. MARTINO: Well, then Mike will  
6 understand what I'm saying.

7 CHAIRMAN MELIUS: Yes.

8 MEMBER GIBSON: Journeyman  
9 electrician, 22 years --

10 MR. MARTINO: There you go.

11 CHAIRMAN MELIUS: Yes.

12 MR. MARTINO: You crawled on many  
13 beams, too, run that conduit, and get that  
14 dust. That's what I'm saying. I'm glad mine  
15 is reopened, and maybe somebody else will get  
16 lucky here. Thank you.

17 CHAIRMAN MELIUS: Thank you. We  
18 have a Donald Allan here from Bethlehem?  
19 Donald.

20 MR. ALLAN: Good afternoon. My  
21 name is Donald Allan. My father's name was  
22 Boyce Allan. He was a steel worker, Bethlehem

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Steel. He started working there in 1952, and  
2 like so many African Americans, he came up  
3 from the south for the American dream. Well,  
4 his dream has turned into a nightmare because  
5 I lost my father. He worked in that plant.  
6 In fact, two summers he had me work there.  
7 I'm glad Bill is here sticking up for the  
8 Lackawanna guys, Bill, we need you, and tell  
9 the Congressman I said thank you very much.

10 You know, he worked at Bethlehem  
11 Steel, and he had me come out there two  
12 summers. And that's when I made up my mind  
13 that the plant wasn't for me because that  
14 plant was short for plantation, trust me. It  
15 was dirty, it was nasty. He went in Gate  
16 Three every day from 1952 until he retired in  
17 1979. He went to Bethlehem Steel every day,  
18 some days he worked double shifts. I remember  
19 him coming home with dirt all over his face,  
20 bringing his clothes home, and my mother  
21 washing them. By the way, my mother is  
22 [identifying information redacted] years old

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 right now, and she has all kind of health  
2 problems because she washed those clothes that  
3 my father brought home.

4 Now, for this, or anybody to say  
5 that Bethlehem Steel is not a part of this,  
6 you need to go and see that plant, you need to  
7 go in there. I've been to every meeting going  
8 back, we've been through two Presidents, two  
9 Presidents. Okay? Clinton went through this,  
10 then Bush, he just, you know -- I'm not even  
11 going to get into that. But we went through  
12 two Presidents, 16 years, two terms, and  
13 nothing was done. People were denied, people  
14 were dying. I think this whole thing is  
15 waiting for everybody to die, but let me tell  
16 you something, we got families. And you know  
17 what, I've told my sons, you keep on this, and  
18 we're going to fight the fight to get this  
19 done, to get their people the right due on  
20 this. You sit here and say the buck don't  
21 stop here. It doesn't stop with you. Well,  
22 whoever the bucks stop with, they should be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 here tonight.

2 This man just got finished telling  
3 you what he's going through. That's a  
4 travesty. And for somebody to say that they  
5 couldn't get in the plant -- one meeting I was  
6 at, this gentleman stood up and said well, we  
7 can't get in Bethlehem Steel to review it.  
8 Don't tell me about the feds because if I  
9 committed a crime in my house, you'd find a  
10 way to get in there, so don't tell me you  
11 can't go in Bethlehem Steel and do the  
12 testing.

13 For you to say, for this  
14 Committee, or anybody else to say that the men  
15 that worked at that plant at Bethlehem Steel  
16 did not suffer, my father was a scrapping big  
17 guy. When my father died, he weighed 148  
18 pounds. Okay?

19 I had to put him in a nursing home  
20 because he could no longer get around. His  
21 lungs were shot. He wasn't a smoker, either.

22 His lungs were shot, his liver. He couldn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 go to the bathroom by himself; he had to wear  
2 a bag.

3 I mean, if you think that plant  
4 didn't do that, if anybody can sit there and  
5 say that Bethlehem Steel didn't harm these  
6 men, and that the lady that got up and said  
7 about Niagra Falls being a good place, I'm  
8 glad you're here, no matter where you were, I  
9 was going to come. But I called some people  
10 to be -- they couldn't get here to Niagra  
11 Falls. I found some people, and I called  
12 them, people had passed away.

13 And that's what I'm saying to you,  
14 I don't know if this is a thing to wait for  
15 everybody to be gone, and then you don't have  
16 to pay anybody. I mean, it's ridiculous. But  
17 I will tell you this, get past the  
18 bureaucracy, get past the government stuff,  
19 and do this with your hearts. Think about the  
20 people and their families and these widows  
21 that are here, and their families, and do the  
22 right thing. And that's all I've got to say.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And, Bill, again, thank the Congressman for  
2 sticking with us, and tell him I said hello.  
3 Thank you, Billy.

4 (Applause.)

5 CHAIRMAN MELIUS: Thank you, Mr.  
6 Allan. Mr. Brooks, Larry Brooks.

7 MR. MIDDLEBROOKS: Yes, it's  
8 Middlebrooks.

9 CHAIRMAN MELIUS: Middlebrooks,  
10 yes.

11 MR. MIDDLEBROOKS: Good evening.  
12 My wife is not here, and I started the ball  
13 with this for my mother-in-law. I did all the  
14 leg work. First, I was told they had no proof  
15 that he worked at Bethlehem Steel, so we got  
16 pay stubs, we had his badge, we had all these  
17 different documents to show that he worked  
18 there. I went out on Route 5, they couldn't  
19 give them me a anything. I had to send to  
20 Pennsylvania. Then they sent me things. Then  
21 we had to prove all these medical things. I  
22 went to Buffalo General, got every document

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that he ever had when he went in there.

2 They sent us, what they look  
3 through to find out if we qualify or not.  
4 Over 50%, over 50%. We talked to a  
5 representative. Oh, you should be getting  
6 your money in 30 days. Thirty days come by,  
7 didn't get anything. Call them again. Oh,  
8 okay, there might be a little delay, 60 days.

9 Call them again, didn't get anything. Next  
10 thing you know, we had a meeting out on  
11 Cheektowaga, Four Seasons Hotel. We was out  
12 there. My brother-in-law, which this is his  
13 grandfather I'm representing, he had a packet  
14 that we passed to Louise Slaughter, Hillary  
15 Clinton, and some other people there that we  
16 gave them to.

17 Louise Slaughter, anyway, they  
18 identified themselves as Louise Slaughter's  
19 office called and said there was a mistake,  
20 that we didn't qualify, although these  
21 professional people told us that we did. Over  
22 50 -- I got the paperwork at home. We still

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have that.

2           And the other thing is, Bethlehem  
3 Steel -- I work in a plant. I work in a plant  
4 right now. I worked there in Republic Steel.  
5 You walk back there, dust is everywhere. I  
6 worked in BOF, dust go everywhere. When  
7 you're pouring that steel, when you in the  
8 cast shop. I work at Dominican Brass now,  
9 same thing, dust go all the way through the  
10 plant. You don't have to be working at one  
11 special area to get that.

12           Now the thing is, also, I remember  
13 we had dead fish. We had to clean up the  
14 lake. We had seagulls there at one time.  
15 Nobody ever identified why they was dead, why  
16 they was out there. We just had to clean it  
17 up. I wonder why.

18           I wonder here now, are you our  
19 opponent, or are you here to help us, because  
20 it seems like every time we give you what you  
21 need, you'll find something in there to say  
22 oh, there it is, no, you're not qualified.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   Cancer is cancer. I don't care,  
2 you know -- that's what they die -- have you  
3 seen these people when the final stages start  
4 coming in, like he said, losing all this  
5 weight, can't make it to the bathroom, can't  
6 take care of themselves. These are men, these  
7 are strong men, and they lost their pride  
8 because they needed help to do certain things.

9                   Now what we need you to do is to  
10 look in there and say oh, there it is, he  
11 qualifies. Find something in there to make  
12 us qualify, instead of finding something in  
13 there to make us not qualify. We need you all  
14 to get on the job. It seems like every time  
15 you all come here, we go through the same  
16 thing. We sit here, we discuss this, you all  
17 bring a group of people, where you can answer  
18 any question it is, if not, you take it back,  
19 you dissect it, you come back with the answer  
20 why we don't qualify.

21                   All of these men and people worked  
22 out there. The City of Lackawanna, you think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that dust didn't go up in the air? They  
2 should even be here. You just pertaining to  
3 the people that worked there. What about the  
4 outside contractors that came there for the  
5 vending machines and different stuff? There's  
6 a whole lot of people that you're missing  
7 here. But still, again, you don't want to  
8 take care of the people that's there. Thank  
9 you for your time.

10 CHAIRMAN MELIUS: Thank you.  
11 Anybody else? We've run through the list. I  
12 don't know if there's anybody else that would  
13 like to comment, or on the phone?

14 MR. BEYERLEIN: Yes, sir. I'm a  
15 reporter from Dayton, Ohio. And I was  
16 wondering if any action had been taken yet on  
17 the Mound SEC petition?

18 CHAIRMAN MELIUS: No, there has  
19 not been any action yet. We're having to  
20 confer. There's some issues about how to  
21 address that. Maybe by tomorrow sometime.

22 MR. BEYERLEIN: Okay. How can I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 learn what the outcome of that is?

2 CHAIRMAN MELIUS: Yes, can you  
3 give us a number where we can contact you, and  
4 then we will make sure that you hear?

5 MR. BEYERLEIN: Certainly.

6 CHAIRMAN MELIUS: Name and number,  
7 I guess.

8 MR. BEYERLEIN: My name is Tom  
9 Beyerlein, spelled B-E-Y-E-R-L-E-I-N.

10 CHAIRMAN MELIUS: Okay.

11 MR. BEYERLEIN: I'm with the  
12 Dayton, Ohio Daily News. And my phone number  
13 is [identifying information redacted] .

14 CHAIRMAN MELIUS: Okay. We'll  
15 make sure somebody contacts you tomorrow and  
16 let's you know what the decision is or where  
17 things stand tomorrow.

18 MR. BEYERLEIN: Very good. Thank  
19 you, sir.

20 CHAIRMAN MELIUS: Thank you.

21 MR. BEYERLEIN: Bye.

22 CHAIRMAN MELIUS: Anybody else on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the phone that wishes to comment? Yes. Okay.

2 Fine. We have someone from the audience. If  
3 you'd get up and -- since we don't have your  
4 name written out, it's important that you  
5 identify yourself for the record.

6 MRS. MORTON: I'm Mrs. Morton from  
7 Niagra Falls, New York. I just want to try to  
8 get something through my head that I don't  
9 understand. My husband died with cancer. He  
10 suffered for months. Okay. Then the  
11 government comes out with this oh, everybody  
12 is going to get all this money. They came  
13 looking for us. We didn't go looking for  
14 them. So I go through all the paperwork.  
15 It'll be what, nine years now? And I get all  
16 the paperwork, and the first thing that  
17 happens well, they lost it. Luckily, I had  
18 enough sense to have copies. Okay. So that  
19 went on and on. And three years ago, I got  
20 denied.

21 Okay. I got my denial letter  
22 today, and this fellow that I know gets his

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 acceptance the day later. He filed in 2004, I  
2 filed in 2001. My husband worked at the  
3 Hooker for 40 years. He worked all over the  
4 place. This fellow also worked in the certain  
5 area with him. He worked there eight months.

6 He got a thing like was up on that board,  
7 that's probably the gentleman they were  
8 talking about, for 76 point something  
9 radiation. My husband got 4.5, 40 years 8  
10 months working in the same area.

11 Now how did the dosimetry come up  
12 with these figures? And I see this gentleman  
13 every day enjoying life, having his coffee,  
14 going on his trips. I'm happy he got it, but  
15 my husband has been dead 20 years. I'm 83,  
16 still working. I just don't see where that  
17 was fair.

18 CHAIRMAN MELIUS: I don't think we  
19 can provide a complete answer to that. I will  
20 say two things, one is it does depend on where  
21 a person worked and the type of exposures they  
22 may have had and what was recorded for their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exposures. But, secondly, that under -- your  
2 husband worked at Hooker?

3 MS. MORTON: Hooker, 40 years.

4 CHAIRMAN MELIUS: Then this is the  
5 first the Board here has been involved in  
6 Hooker, so we will be reviewing the Hooker  
7 site and looking at how these are done and  
8 seeing if everything is being done correctly,  
9 appropriately. And should there be a Special  
10 Exposure Cohort there in response to the  
11 petition that people made.

12 MS. MORTON: I gave up. I was  
13 rejected twice.

14 CHAIRMAN MELIUS: Okay.

15 MS. MORTON: I haven't -- I don't  
16 have the energy to keep fighting this. I  
17 suppose -- the last thing they told me was to  
18 resubmit it. Do you know how many hours and  
19 days and months and years that I spent looking  
20 for this stuff? I mean, I'm not complaining.  
21 I'm healthy. I work every day, but it just --  
22 when he told me that, I just -- I was happy

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for him. I just couldn't figure it out  
2 because they worked in the same areas.

3 CHAIRMAN MELIUS: Yes, I can't  
4 understand that either.

5 MS. MORTON: Eight months, eight  
6 months to 40 years. And they say well, the  
7 dosimetry, and this and that. Well, how do  
8 they figure it?

9 CHAIRMAN MELIUS: Yes.

10 MS. MORTON: Well, thank you very  
11 much. Maybe I should call and reopen it.

12 CHAIRMAN MELIUS: Okay. Well,  
13 think about that.

14 MS. MORTON: Thank you.

15 CHAIRMAN MELIUS: Anybody else  
16 that would like to speak?

17 MR. RAMSPOTT: Dr. Melius?

18 CHAIRMAN MELIUS: Yes.

19 MR. RAMSPOTT: Are you opening  
20 comments to the general public now?

21 CHAIRMAN MELIUS: Yes, we have  
22 been.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. RAMSPOTT: I was trying to be  
2 polite to the local folks. My name is John  
3 Ramspott.

4                   CHAIRMAN MELIUS: Yes.

5                   MR. RAMSPOTT: In St. Louis,  
6 Missouri, and I'm calling regarding the  
7 General Steel Industry site in Granite City,  
8 Illinois. And I'd like to respectfully  
9 request that the Board take under  
10 consideration tasking SC&A with the detailed  
11 review of General Steel Industry's NRC  
12 provided FOIA 2010-0012, and ask the same  
13 thing, that SC&A be tasked to review the  
14 recent White Paper on portable radiography  
15 sources at General Steel Industries prepared  
16 by David Allen, May 2010.

17                   The reason I'm asking that this  
18 happen, the topic did come up in the recent  
19 week or so ago Work Group meeting for General  
20 Steel Industries, and if I understood  
21 correctly, that was going to be possibly  
22 discussed at this meeting, and offered to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 full Board as an option that they be tasked.  
2 We believe there is pertinent new information,  
3 which originally we were told didn't exist,  
4 and it turned up in the form of, I guess,  
5 1,015 pages of new information regarding  
6 source materials, safety procedures,  
7 monitoring at General Steel Industries that,  
8 apparently, [identifying information  
9 redacted]'s FOIA, second or third FOIA request  
10 was successful in obtaining.

11 And after a very brief review that  
12 we've seen by NIOSH, we believe there's  
13 pertinent information that was overlooked that  
14 should be included, and we would look forward  
15 in assisting in that possibility. And I, of  
16 course, appreciate your time. I didn't want  
17 to interfere with what you have ongoing  
18 locally there, but thank you for your time.

19 CHAIRMAN MELIUS: Thank you. And  
20 we'll be hearing from Dr. Ziemer and the Work  
21 Group either tomorrow or on Friday, and  
22 they'll update us on that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   Anybody else on the phone?   Okay.

2           If not, thank you all for coming tonight and  
3   for your comments.   And we'll be adjourning  
4   now,   and   we'll   be   reconvening   tomorrow  
5   morning, I believe at 8:15.

6                   (Whereupon,   the   above-entitled  
7   matter went off the record at 6:19 p.m.)

8

9

10

11

12

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701