

**Ms. Ellison** responded that when a letter is returned, DOL is contacted and those issues are being worked out.

- # **Dr. Paul Ziemer** wondered if claimants experienced confusion about who communications were coming from. **Ms. Ellison** replied that there did not seem to be. **Mr. Larry Elliott** added that, in anticipation of that problem, each letter sent throughout the process introduces the claimant to the next person they may expect communication from. **Mr. Elliott** noted that the issue of dead letters was becoming even more important as dose reconstructions were being finalized, and the matter was being addressed.

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#### OCAS PROGRAM STATUS REPORT

**Mr. David Sundin**  
NIOSH/OCAS

**Mr. Sundin** reported on the number of claims to date. He reminded the Board that both an electronic and a paper file is maintained on claim documents. **Mr. Sundin** included a breakdown on percentage of cases involving AWE and DOE site employees and survivors.

A marked improvement was noted in the responsiveness of DOE points of contact for requests for information. The total percentage for outstanding requests more than 60 days or older is now down to eight percent.

**Mr. Sundin** presented a profile of the types of cancers represented in the claimant population, warning against over-interpretation of that list. Non-melanoma skin cancer predominates.

Announcements were made of the following activities and/or achievements:

- # Initiation of another recruitment effort for physicians to serve on the Physicians Panels under Subtitle D.
- # Four completed site profile documents are now out on the web site. They are Bethlehem Steel, Savannah River Site, Blockson Chemical and Mallinckrodt Technical Basis Document.
- # The residual contamination final report is drafted and in final review.

#### Discussion Points

- # **Dr. Roy DeHart** asked who was doing the medical coding of the cancer types, noting that, as a physician on the Physicians Panel, mis-diagnosis is often seen. **Mr. Sundin** replied that it is DOL's responsibility to ensure the medical record supports the diagnosis, and they do provide the codes. It was pointed out that DOL is amenable to reviewing any apparent errors and making changes where necessary.
- # **Mr. Robert Presley** inquired into availability of the residual contamination report. **Mr. Sundin** indicated it would not be available until it had been released to Congress.
- # **Mr. Michael Gibson** asked for elaboration relative to staffing and development of the site profile teams. **Mr. Sundin** asked if he might defer to **Dr. Jim Neton**, who was presenting on site profile status the following day.
- # **Dr. Paul Ziemer** wondered about the time commitment of a physician serving on the Physicians Panel. **Dr. DeHart** noted that he averaged four to six hours per case, though some required less time. **Mr. Sundin** added that DOE was interested in identifying physicians able to devote as many hours as possible and the latest recruitment announcement emphasized full-time participation was desirable. The time commitment is significant.
- # **Dr. Ziemer** was curious whether there were any projected numbers for future claims. **Mr. Sundin** suggested DOL might have a better answer since they initially develop the cases and are involved with the traveling resource centers in outreach efforts.

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#### DEPARTMENT OF LABOR STATUS REPORT

**Mr. Jeff Kotsch**  
Department of Labor

**Mr. Jeff Kotsch** updated the Board on the number of claims, with a breakout of claim types. Approximately 19,300 cases have gone to final decision, or 53 percent. This represents approximately 24,000 claimants, roughly 10,200 approvals, and 13,700 approvals. This has resulted in compensation payments to 9,143 claimants in the amount of some \$673,991,000. Medical benefits in the amount of \$19,765,000 have been paid as of October 23rd. **Mr. Kotsch** reiterated that the majority of denials were for non-covered medical conditions.

**Mr. Kotsch** commented to the Board on the ability of the DOL to get the claims through the process. He discussed a continuing outreach

program and the number of cases being received at present. Mr. Kotsch indicated he would relate the Board's interest in projected numbers to Mr. Pete Turcic for an answer.

#### Discussion Points

- # Dr. Paul Ziemer inquired whether it was generally felt the major sites had heard about the program, relative to past workers. Mr. Kotsch replied that it was his understanding the information had been pretty thoroughly disseminated. There were some sites where greater numbers of claims had been expected based on the number of workers.
- # Mr. Mark Griffon asked if the DOL had an outreach plan that might be made available to the Board. Mr. Kotsch indicated that he knew a plan existed, and would pass the request on to Mr. Turcic.
- # Mr. Leon Owens commented that he and Mr. Turcic had been present at a recent meeting of the atomic council which is composed of a number of Protocol for Assessing Community Excellence (PACE) locals. A session on outreach efforts was included, with a variety of ideas passed back and forth. Mr. Owens anticipates DOL will use those ideas for an outreach program once they have been compiled, noting there had been participation by the active unions.
- # Dr. Genevieve Roessler asked what was being done relative to outreach directed at retirees who had left the geographic region of their employment. Mr. Kotsch indicated he knew unions were aiding in getting information out through union newsletters.
- # Mr. Owens observed that privatization had created a challenge relative to unions accessing employment records from former DOE sites.
- # Dr. Ziemer asked if the Board might be provided a summary of Mr. Kotsch's presentation since he'd used no handouts and it included a lot of numbers. Mr. Kotsch agreed.

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#### DEPARTMENT OF ENERGY STATUS REPORT

Mr. Tom Rollow, Director  
Office of Worker Advocacy  
Department of Energy

Mr. Tom Rollow began his presentation with an overview of the differences between the Subtitle B portion of the program managed by DOL and the Subtitle D portion managed by DOE. In addition, the DOE

provides records from DOE sites to the DOL and to NIOSH in support of the Subtitle B portion.

The Secretary of the DOE last spring asked Mr. Rollow's office to begin an initiative to process all cases within a 12-month period. This takes resources, and he announced their plan for efforts to accommodate this request. The plan included additional funding and efficiency measures. These will entail batch processing and possibly reworking the Physician Panel makeup.

Noting that the Subtitle D program is not federally funded, but works through state Worker's Compensation, the willing payer issue is a continuing challenge.

#### Discussion Points

- # **Mr. Michael Gibson** inquired if Mr. Rollow could comment on the Department's opinion relative to rumblings that the Senate was looking at ways to move responsibility for the program to another agency. **Mr. Rollow** responded that the original law placed the responsibility for Subtitle D with the DOE and they would carry it out to the best of their ability and complete the job. Should the Congress or the President decide to make a change, the Department would support it 100 percent and work with whatever remedy they chose to put in place.
- # **Mr. Mark Griffon** asked who made a determination that records were too difficult to retrieve if asked for them by NIOSH. **Mr. Rollow** noted that his office funded retrieval of records and generally went very far and deep in doing so. He indicated he would discuss the matter with NIOSH to see if something more could be done to support their efforts.
- # **Dr. Roy DeHart** commented that he'd seen a recent article in his local newspaper which had completely confused the two parts of the program. He expressed a need for public clarification. **Mr. Rollow** replied that it is a complex program, but he has also noted the confusion. The DOE takes care to separate the two in every public gathering, noting that it is a continuing challenge for everyone.
- # **Dr. Paul Ziemer** inquired whether the fees for the Physician Panels came from the NIOSH budget or Mr. Rollow's. **Mr. Rollow** responded that the fees were fixed by law to a certain Federal government pay scale and came from his budget. However, the pay scale is on the low end for what the physicians are accustomed to being paid.

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## PUBLIC COMMENT PERIOD

**Mr. Tom Horgan**  
Office of Senator Christopher Bond

**Mr. Horgan** welcomed the Board to Missouri on behalf of Senator Bond. He pointed out reasons why the program is of great interest to the State of Missouri. **Mr. Horgan** commented on the complexity of the program and the frustration of the Missouri constituency, and offered his opinion that the presence of the Board and NIOSH would be very helpful.

**Ms. Denise Brock**  
United Nuclear Weapons Workers, St. Louis

**Ms. Brock** inquired if she might pose questions to **Mr. Rollow** regarding claimants under the Subtitle D portion of the program. **Dr. Ziemer** indicated she might pose her question, but the answer may have to be deferred.

**Ms. Brock** asked if claimants under Subtitle D were without remedy due to Mallinckrodt's previous private insurance, statute of limitation problems, and Tyco, the entity which purchased Mallinckrodt, had its own issues.

**Dr. Ziemer** noted that her questions were on the record and some response may be allowed, but reminded the public that the comment period was not intended as a question and answer session.

**Ms. Brock** asked if Freedom of Information Act (FOIA) requests for documents and memos related to exposure information were considered under Subpart D. She further inquired how latency periods factored into a Worker's Compensation claim.

Commenting on the need for outreach, **Ms. Brock** indicated only 400 of 3,300 direct Mallinckrodt employees have filed claims. She expressed a further concern that indirect employees were being missed.

Indicating that the Board was interested in the answers to her questions, **Dr. Ziemer** asked if **Mr. Rollow** could respond now or would need to provide them later to both the Board and **Ms. Brock**.

**Mr. Rollow** replied that the willing payer issue was very complex. The law states that the DOE can order its contractors not to contest a

claim in the Worker's Compensation system. The problem is there are now some facilities where DOE is no longer present and has no contractor there. A DOE contractor may have employed subcontractors, whose employees came to the site with their own Worker's Compensation arrangements. DOE has no legal way to order the subcontractor not to contest a claim. Worker's Compensation works differently in each state with its own set of rules.

Mr. Rollow indicated he hadn't understood the question related to FOIA and getting sick later and asked for clarification.

Ms. Brock confirmed she was not so familiar with the Subtitle D portion of the program, and wondered if a claimant who had been denied after review by the Physicians Panel was similar to a dose reconstruction with not enough exposure. She asked if a FOIA request that may provide further information factored into Subtitle D.

Mr. Rollow explained that every applicant under Subtitle D was permitted to submit items for the record. Any information obtained through a FOIA request can be added, and there are several opportunities to do so throughout the process. Applicants get a last look before the package is sent to the Physicians Panel.

Mr. Rollow added that the Physicians Panel denies nothing. They present a finding that it is more likely than not that illness was a result of the claimant's work at DOE, or they don't have that finding. It does not necessarily mean there will be a denial in the state system.

Ms. Clarissa Eaton, Board Member  
United Nuclear Weapons Workers of St. Louis Region

Ms. Eaton addressed her concern regarding missing records. Ms. Eaton expressed her belief that an obligation was owed to the men and women who worked to protect the country.

Ms. Eaton further commented that everyone who had worked at a DOE facility should be included because of residual contamination. She observed that after the Cold War weapons workers, facilities were like a game of hot potato and properties were sold and resold and the cleanup problems were never addressed. She noted that Missouri has now become a state of pollution.

Mr. Bob Tabor  
Fernald Atomic Trades and Labor Council

**Mr. Tabor** described recent outreach efforts at his site. He noted areas in need of improvement for future efforts, possibly through use of overheads. He cited confusion among claimants between Subtitle B and Subtitle D as a problem not eased by the meeting.

**Mr. Tabor** described some claimants having informed him that contractors showed up at Worker's Comp hearings with their attorneys to contest the claim. He expressed the union position as being that if a contractor takes over a site, he takes over the problems and it shouldn't matter who was the contractor at a given time. He asked **Mr. Rollow** for some clarification.

**Mr. Rollow** responded that the order from Congress to the DOE is to not contest claims coming through the Subtitle D program only. The Workers Compensation program tends to be adversarial, with both sides challenged to prove their points. That's just the way the process works. The Federal government has no say in it. The rules are made by the states. DOE is not asking its contractors to roll over on every claim.

**Mr. Rollow** further commented that if there are some overly-adversarial relations, those issues might be raised either with the Department or with local management at those sites.

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#### DOSE RECONSTRUCTION WORKGROUP

**Mr. Mark Griffon,**  
Workgroup Chair

**Mr. Mark Griffon** led the Board in a discussion of the task orders which were presented for Board approval. **Mr. Griffon** detailed the working group's meeting in Cincinnati, noting changes in the draft tasks covered at the previous meeting. Those changes were a result of that meeting with NIOSH staff.

The change **Mr. Griffon** highlighted in the Procedure for Processing Individual Dose Reconstruction Reviews was that it now included a recommendation for establishment of a subcommittee.

Of particular interest in the Site Profile Review task was the number of reviews specified in the Period of Performance.

The Dose Reconstruction Review Tracking task gives responsibility to

the contractor for developing a database system to track cases and give reports back to the Board.

### Discussion Points

- # **Ms. Wanda Munn** inquired as to the anticipated size of the subcommittee. **Dr. Ziemer** recommended it be a minimum of four, possibly five, and would serve as a steering committee.
- # **Dr. Tony Andrade** wondered if the site profile review task would be delayed. The task calls for 12 reviews and only four are complete. **Dr. Jim Neton** explained there were 15 profiles expected to be completed by the end of the year. **Dr. Andrade** asked if they were sites which dealt with only one isotope or had limited operations. **Dr. Neton** replied that was not the case. The site profiles had been scheduled according to the number of claims and covered the majority of sites having complex isotopic work, approaching 80 percent of the claimant population.
- # **Mr. Griffon** wondered what would happen if there were not that many completed site profiles of interest to the Board. **Dr. James Melius** opined that the site profiles were going to be more intertwined with dose reconstructions than originally anticipated and the Board would want to spend time reviewing them.
- # **Dr. Ziemer** pointed out that the review process had to be developed by the contractor, which would come back to the Board for approval.
- # **Dr. Melius** observed the matrix for selecting cases for review may need to change based upon site profiles reviewed.
- # **Ms. Munn** asked what percentage of the total site profiles was the ten to 12 specified in the task. **Dr. Neton** responded that since the number of profiles projected for completion this year was 15, that was the majority, noting they are major sites.
- # **Mr. Griffon** indicated the rationale for the high percentage selected was because of the impact on individual dose reconstructions.
- # **Ms. Munn** questioned if such a large number could be justified if early reviews show the process and results to be reasonable and acceptable. **Dr. Ziemer** noted the Board's job was to audit and find weaknesses, not to validate. The number really serves as a guidance number for the contractor.
- # **Dr. Ziemer** observed that the contractor would probably have to do the tracking for its own purposes, but the task formalizes the requirement to report to the Board.
- # **Dr. Andrade** asked if the same contractor would be doing all three levels of reviews on the individual cases. **Mr. Elliott** answered