

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
CENTERS FOR DISEASE CONTROL AND PREVENTION  
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

WORKING GROUP MEETING

ADVISORY BOARD ON  
RADIATION AND WORKER HEALTH

ROCKY FLATS

The verbatim transcript of the Working  
Group Meeting of the Advisory Board on Radiation and  
Worker Health held telephonically on April 3, 2008.

STEVEN RAY GREEN AND ASSOCIATES  
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-- "uh-huh" represents an affirmative response, and "uh-uh" represents a negative response.

-- "\*" denotes a spelling based on phonetics, without reference available.

-- (inaudible)/ (unintelligible) signifies speaker failure, usually failure to use a microphone.

-- "^" denotes telephonic interruption.

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

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HOLAN, BILL, CONGRESSMAN ED PERLMUTTER  
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MAURO, JOHN, SC&A  
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SHARFI, MUTTY, ORAU  
UDALL, MARK, CONGRESSMAN  
ULSH, BRANT, NIOSH

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

(11:00 a.m.)

WELCOME AND OPENING COMMENTSDR. CHRISTINE BRANCHE, DFO

1  
2  
3           **DR. BRANCHE:** I am Dr. Christine Branche,  
4           the Designated Federal Official for the  
5           Advisory Board on Radiation and Worker Health.  
6           And this is now a meeting of the Rocky Flats  
7           working group. And so I would like to ask all  
8           of the Board members to please identify  
9           themselves. Everyone who's participating from  
10          the Board please acknowledge if you have a  
11          conflict with Rocky Flats. All Board members  
12          please announce yourselves.

13           **MR. GRIFFON:** This is Mark Griffon chairing  
14          the working group, no conflict.

15           **MS. MUNN:** Wanda Munn, working group, no  
16          conflict.

17           **MR. GIBSON:** Mike Gibson, working group, no  
18          conflict.

19           **DR. BRANCHE:** Mr. Presley?

20           (no response)

21           **DR. BRANCHE:** I'll come back to him.

22                   Are there other Board members on the

1 line?

2 (no response)

3 **DR. BRANCHE:** Are there other Board members  
4 on the line?

5 **MR. PRESLEY:** This is Bob Presley. Were you  
6 calling the roll?

7 **DR. BRANCHE:** Yes, I was.

8 **MR. PRESLEY:** Instead of hitting the mute  
9 button, I turned my phone off, so I'm sorry.  
10 I'm here.

11 **DR. BRANCHE:** And do you have a conflict  
12 with Rocky Flats?

13 **MR. PRESLEY:** No, ma'am.

14 **DR. BRANCHE:** Are there any other Board  
15 members?

16 (no response)

17 **DR. BRANCHE:** We do not have a quorum so we  
18 can proceed. Will the NIOSH staff please  
19 identify yourselves and please say if you have  
20 a conflict with Rocky Flats.

21 **MR. ELLIOTT:** This is Larry Elliott, the  
22 Director of OCAS, and I do not have a conflict  
23 with Rocky Flats.

24 **DR. NETON:** This is Jim Neton with OCAS, no  
25 conflict.

1           **DR. ULSH:** Brant Ulsh with OCAS, no  
2 conflict.

3           **DR. BRANCHE:** Will the ORAU staff if you're  
4 on the line please indicate your names and  
5 please say if you have a conflict with Rocky  
6 Flats.

7           **MR. SHARFI:** Mutty Sharfi with the ORAU  
8 team, no conflicts.

9           **DR. BRANCHE:** SC&A staff would you please  
10 indicate your names and please say if you have  
11 a conflict with Rocky Flats.

12           **DR. MAURO:** John Mauro, SC&A, no conflict.

13           **MR. FITZGERALD:** Joe Fitzgerald, SC&A, no  
14 conflict.

15           **DR. BRANCHE:** Thank you, gentlemen.

16                   Are there other federal agency staff,  
17 would you please identify yourselves?

18           **MS. HOWELL:** Emily Howell, HHS, no conflict.

19           **MS. HOMOKI-TITUS:** Liz Homoki-Titus, HHS, no  
20 conflict.

21           **MR. KOTSCH:** Jeff Kotsch, Department of  
22 Labor.

23           **DR. BRANCHE:** Are there any petitioners or  
24 their representatives who are on the line who  
25 would like to announce their names?



1 (no response)

2 **DR. BRANCHE:** Are there any workers or their  
3 representatives who would like to indicate  
4 their names?

5 (no response)

6 **DR. BRANCHE:** Any members of Congress or  
7 their representatives please, would you state  
8 your names?

9 **MS. BOLLER:** Carolyn Boller, Congressman  
10 Udall's office.

11 **MS. ARAMANGST\*:** Pat Aramangst, John  
12 Salazar's office.

13 **MS. EVAH\*:** Beatrice Evah, Senator Salazar's  
14 office.

15 **MR. HOLAN\*:** Bill Holan, Congressman Ed  
16 Perlmutter's office.

17 **MR. KESSLER:** Zane Kessler, Senator Ken  
18 Salazar's office.

19 **MS. GNIRK:** Gail Gnirk, Congressman John  
20 Salazar's office.

21 **DR. BRANCHE:** Okay, we're just about to turn  
22 this over to Mr. Griffon. I know that she  
23 wanted to mute herself, but Ms. Laura Franks  
24 from the Rocky Mountain News is also on the  
25 line.

1                   We would ask that everyone observe  
2 telephone etiquette, and we need to make  
3 certain that our, we can hear each other as  
4 well as making certain that our court reporter  
5 can hear everyone who's speaking. I would ask  
6 then that everyone mute their lines unless  
7 they are speaking.

8                   If you do not have a mute button, then  
9 please dial star six in order to mute your  
10 line. And if you'd like to speak, you can  
11 then use that same star six to unmute and then  
12 speak. It's very important given the number  
13 of callers that we have and given the fact  
14 that this is always an exciting topic that we  
15 observe phone etiquette and that we do mute  
16 our lines.

17                   Mr. Griffon, I'm handing this over to  
18 you as the Chair.

19                   **INTRODUCTION BY CHAIR**

20                   **MR. GRIFFON:** Thank you, Christine.

21                   This is Mark Griffon. I think we  
22 should make sure with so many people, again, I  
23 think you said this Christine, that we all  
24 identify ourselves when we talk today.

25                   This work group call is really an

1 update on where we are at in assessing this  
2 question around mainly the terminology. And I  
3 think my question that I put before the work  
4 group was do we need to in any way clarify our  
5 language. We had written in our  
6 recommendation defining the class as monitored  
7 or should have been monitored for neutrons.

8 And since then several news stories  
9 have come out, and to get to the main point --  
10 we discussed this in the last work group call,  
11 so I don't need to go through everything --  
12 but to get to the main point, there's a  
13 question of whether individuals in other  
14 buildings, not in the quote-unquote neutron  
15 buildings as identified in the NDRP database  
16 had the potential to be exposed to neutrons  
17 and could have been assigned to one building,  
18 say 334, the Maintenance Building, and  
19 actually then occasionally or quite often, who  
20 knows, sent into one of the neutron buildings  
21 to do work where they could have been exposed  
22 to neutrons.

23 And then the question is would they  
24 have been always captured in the NDRP system  
25 or would they have gone unmonitored

1                   potentially. I guess that's sort of the  
2                   question that we raised in the last call. A  
3                   couple tasks we had assigned from the last  
4                   call. One was I was going to try to find past  
5                   transcripts of or excerpts from past  
6                   deliberations where we discussed the issues of  
7                   the completeness of monitoring, and I  
8                   assembled some of that.

9                   The other question was, were there  
10                  individuals that we could identify that may  
11                  exemplify this case. In other words  
12                  individuals that were assigned to other  
13                  buildings and did work in the neutron areas  
14                  where they were not monitored for neutron  
15                  exposures.

16                 And I think NIOSH was going to look  
17                 into that. I think SC&A was also going to  
18                 look into that. I think that that might be a  
19                 work in progress because I'm not sure other  
20                 than a few cases that were identified, one of  
21                 which was in one of the news reports, I'm not  
22                 sure we've made much headway on that. But  
23                 that's sort of background on where we are  
24                 coming into this call, and I guess that's  
25                 where we should start it off.

1           **DR. BRANCHE:** I believe we have a member of  
2 Congress who wants to make a statement.

3           **MR. GRIFFON:** Okay, that would be great.

4           **MS. BOLLER:** Mark, I don't know that Mark is  
5 on the line yet. He was still chairing a  
6 committee and was maybe a little bit late. So  
7 why don't you just proceed.

8           **MR. GRIFFON:** Okay, we can proceed.  
9 Whenever he comes in just let me know, and  
10 we'll give him the floor.

11           **SEC CLASS FOR ROCKY FLATS**

12                         So I put together a document, a Word  
13 document, which was distributed to the work  
14 group. I know it was pretty last minute so  
15 the Privacy review couldn't have been  
16 completed in time, but in that I tried to --  
17 hold on one second. In that I tried to look  
18 for some excerpts where we had discussed the  
19 issue of the completeness of monitoring in the  
20 past work groups and technical phone calls.  
21 And I think a couple things come out of that.

22                         I think one thing that is clear -- and  
23 I should also say Brant, just this morning,  
24 Brant Ulsh sent another document which we had  
25 seen in the past. It's the NDRP Protocol

1           which might help us to shed some light on this  
2           as well. It was 134 pages so I think I found  
3           the area that Brant's focused on, but in the  
4           last 20 minutes I'm not sure I know exactly  
5           what he wanted us to focus on.

6                        But anyway, in my document there's  
7           sort of two issues. If people read the top  
8           paragraph the one question is, and the one  
9           thing we discussed in the work group  
10          deliberations in the past was were the highest  
11          exposed individuals monitored for neutrons.

12                      And then the question, and we  
13          determined as a work group, although I don't  
14          know exactly if NIOSH ever really agreed with  
15          us on this, but we determined that the highest  
16          exposed were not monitored at least in some of  
17          those years that we looked at. And, in fact,  
18          but they were assigned a notional dose which  
19          means that they were assigned a dose.

20                      Now here's where Brant may help  
21          clarify from the NDRP Protocol. But I was of  
22          the understanding that they assigned a dose  
23          based on either their gamma result multiplied  
24          by a neutron-to-gamma ratio or by a nearby  
25          data.

1                   And I may have that wrong in my  
2                   introduction to this question. But that's  
3                   sort of how they had to, they had gaps in  
4                   their records. It wasn't all neutron film  
5                   data. It was sometimes gamma data that they  
6                   had that was multiplied by a building ratio of  
7                   neutron-to-gamma or otherwise substituted with  
8                   nearby data.

9                   Is that right or close, Brant?

10                  **DR. ULSH:** Well, Mark, that is a topic that  
11                  I wanted to talk about, but I can do that  
12                  later.

13                  **MR. GRIFFON:** Okay, okay.

14                  **DR. ULSH:** The nearby method is something I  
15                  want to go into a little bit, but --

16                  **MR. GRIFFON:** It was a little different,  
17                  yeah. I think I picked up on that in the  
18                  document you sent that I may have  
19                  mischaracterized that a little bit.

20                  Anyway, the other part of it is -- and  
21                  I think this is in one of the transcripts,  
22                  actually, one of the technical calls on, I  
23                  believe it's on 4/12, and this really gets to  
24                  the heart of the question.

25                  I think that Roger Falk in his memory

1            basically seemed to remember that in the early  
2            years, and he wasn't sure exactly when this  
3            changed. But in the early years most of these  
4            buildings that I'm defining loosely as the  
5            neutron buildings, the ones listed in the  
6            NDRP, basically had an in-house crew.

7            In other words all their maintenance,  
8            laborers, even janitors, everyone was sort of  
9            self contained and assigned to the one  
10          building. And then he said that later, and he  
11          wasn't sure when in the '60s this might have  
12          occurred, but later that maintenance could  
13          have come out of Building 334, the more  
14          general maintenance building.

15          So then we go back to the primary  
16          question. I'm not sure that any of the  
17          transcripts that I included, I just wanted to  
18          give some background on it. I'm not sure they  
19          get us to any definitive answer, but at least  
20          it provides a little background. So that's  
21          sort of where I'm at with my review of this.

22          And then I would ask Brant if you had  
23          any progress in terms of identifying some of  
24          these cases, the action that was raised from  
25          the last work group.



1           **CONGRESSMAN MARK UDALL**

2                   **CONGRESSMAN UDALL:** Mark, this is  
3           Congressman Udall. How are you today, sir?

4                   **MR. GRIFFON:** I'm great. I'm great.

5                   **CONGRESSMAN UDALL:** Could I weigh in for  
6           just a couple of minutes?

7                   **MR. GRIFFON:** Absolutely, we were notified  
8           you might be joining us, so the floor is  
9           yours.

10                  **CONGRESSMAN UDALL:** Thank you, and I won't  
11           take too much time here, but I did just want  
12           to weigh in on what you all are considering  
13           today and also give a brief historical  
14           perspective, just take me a couple minutes.

15                   I remember in 1999 or 2000 Secretary  
16           Richardson at that time made an announcement  
17           that the federal government was no longer  
18           going to hide behind sovereign immunity. In  
19           other words the concept that the king can do  
20           no wrong. It stems to the common law era of  
21           the British Isles. And there was elation  
22           among many of us, most notably and most  
23           appropriately among the workers at the Flats.

24                   And out of that, of course, began some  
25           progress, but then some twists and turns, and

1 we've traveled down a number of cul-de-sacs.  
2 In the meantime the families and the workers  
3 haven't received their just due. These  
4 workers fought in the cold war. They were no  
5 less heroes than those who fought in the hot  
6 wars of the last century, World War II most  
7 notably.

8 And I've got to tell you, and you all  
9 know the delegation has been weighing in, I'm  
10 just, I'm appalled that we continue to somehow  
11 seem to find ways to stonewall and put up  
12 roadblocks to these deserving workers. And  
13 I'm asking the DOL to reverse its decision and  
14 provide compensation to these veterans.

15 It just seems to me that the DOL which  
16 we in the Congress felt could better provide a  
17 just outcome, and we moved a lot of this  
18 responsibility from the Department of Energy  
19 over to the DOL, it just seems that they're  
20 attempting to deprive compensation to these  
21 workers and their families. And it just seems  
22 like every time you clear a hurdle, you move a  
23 roadblock out of the way, there's another one  
24 put in place.

25 These workers clearly meet the

1 requirements for eligibility. The  
2 Administration has to hold up their end of the  
3 bargain and grant them the benefits that they  
4 deserve. And I'm asking the DOL to reverse  
5 its decision, reverse it quickly, and I'm  
6 waiting for an answer.

7 Let me make one other comment  
8 specifically. This 250-day standard I think  
9 you all were discussing as I got on, and that  
10 seemed to make sense, been reaffirmed by  
11 Secretary Leavitt and others, and then now  
12 we're talking about 250 days in a specific  
13 building at the Flats. And in the end I so  
14 strongly believe -- it makes me angry to not  
15 think we're going to move in this.

16 We've got to err on the side of the  
17 workers not the side of the federal  
18 government. And this will speak volumes of  
19 what kind of a society we have and how we  
20 value the people who literally put their lives  
21 on the line. I live just a few miles from  
22 this site. We worked very hard to clean it up  
23 to ensure the safety and the future of the  
24 people living around Rocky Flats. My gosh, we  
25 have to do the same for the workers who were

1 out there.

2 I appreciate you letting me weigh in  
3 on. I'll listen a little bit more and learn a  
4 little bit more as well, but I appreciate the  
5 chance to be heard, and I certainly have a  
6 role to play here. And I'm going to do  
7 everything I can to push, cajole, urge the  
8 Department of Labor to change its point of  
9 view on this. Thanks again for letting me  
10 weigh in.

11 **MR. GRIFFON:** Thank you very much,  
12 Congressman Udall.

13 **SEC CLASS FOR ROCKY FLATS (cont'd)**

14 So I guess at this point I've given  
15 the background from my perspective. I think  
16 what I really want to come away from this  
17 meeting with is at least my only plan for the  
18 upcoming Advisory Board is to sort of give an  
19 update on where we're at in discussing this  
20 issue. And not because I think we still need  
21 to look at this question of can we find other  
22 cases and have more discussion around that,  
23 but at least just to give an update because I  
24 know we're getting a lot of questions about  
25 this.

1                   But I'm not sure we're going to be in  
2 a position to make any sort of motion at this  
3 upcoming meeting. But having said that I  
4 think my, you know, I've looked at these  
5 transcripts, and I also see, you know, I think  
6 that we just need to examine this issue a  
7 little closer. And I'd be interested in  
8 hearing from NIOSH at this point.

9                   Brant, if you're ready to discuss the  
10 NDRP Protocol a little bit and if you had any  
11 luck in finding individual cases to review.

12                  **MS. MUNN:** Mark, this is Wanda Munn. And I  
13 don't want to interrupt your flow of  
14 information here, but as long as the  
15 congressman may still be on the line, and his  
16 staff is still on the line, it seems really  
17 important for us to try to make sure that all  
18 of the folks who are so deeply interested in  
19 what we're doing here have a clear  
20 understanding of some of the details of what  
21 we're doing. And I think I heard the  
22 congressman say it's his understanding that we  
23 are now expecting people to show that they  
24 have worked for 250 days in one building. And  
25 I think it would be wise for us to try to

1 clear that up. Because the law indicates that  
2 the individual must have worked for 250 days.  
3 I don't believe there has been any effort at  
4 all to indicate that they must be 250 days  
5 always in an exposed area or always in a given  
6 building.

7 **MS. BOLLER:** Wanda, this is Carolyn from  
8 Congressman Udall's office. As we're reading  
9 this the law said 250 days on the site or at  
10 the plant site.

11 **MS. MUNN:** That's correct.

12 **MS. BOLLER:** There is a memo, 8-14, issued  
13 by the Department of Labor on January 23<sup>rd</sup> that  
14 says you've got to work 250 days in a building  
15 in order to be eligible for the SEC issue.

16 **MS. (UNIDENTIFIED):** Again, this is Erin  
17 from Congressman Salazar's office, and as we  
18 understand that, that has actually confined  
19 one of our constituents from Grand Junction,  
20 Colorado from actually receiving compensation  
21 because of that additional red tape which is  
22 the source of our protest letters that the  
23 delegation sent.

24 **MR. GRIFFON:** Well, as you know, that's the  
25 crux of the issue, Wanda, that there's this,

1 DOL is now, I mean, maybe DOL can speak to  
2 this, too. Jeff Kotsch, I think Jeff's on the  
3 line.

4 **DR. BRANCHE:** This is Christine Branche,  
5 just a clarification, and I think that it  
6 would be important for Ms. Munn to have an  
7 opportunity to share her thoughts for everyone  
8 concerned. This is the Advisory Board to  
9 NIOSH, not the one to the Department of Labor.

10 **MR. GRIFFON:** Yeah, there is none to the  
11 Department of Labor. We know that, Christine,  
12 but --

13 **DR. BRANCHE:** Well, I want to make sure that  
14 the members of Congress understand that.

15 **MR. GRIFFON:** Right, right, they do. But I  
16 think Jeff might want to -- and we've had DOL  
17 clarify things for us before. I think it's  
18 important to at least maybe have him speak to  
19 that and clarify.

20 **MR. KOTSCH:** Mark, this is Jeff. The way we  
21 read or the way the bulletin was written, 08-  
22 14, it was intended, at least the way the  
23 current thinking is, is it was intended to be  
24 a measurement of who was monitored or should  
25 have been monitored for neutrons. And that

1 put those people as having been in those  
2 buildings or there's other criteria in there,  
3 but it links off issues of being in those  
4 buildings.

5 **MS. (UNIDENTIFIED):** This is Erin from  
6 Congressman Salazar's office again. We  
7 understand that at this point in time one of  
8 our constituents has been a recommended denial  
9 after signing a waiver which should have been  
10 an open and shut case for the SEC  
11 recommendations as we understood them last  
12 September. So again, the Department of Labor  
13 has again inserted rules that have created a  
14 recommended denial on a case that after all of  
15 our hard work should be a presumptive  
16 approval.

17 **MS. BOLLER:** I have also -- this is Carolyn  
18 in Congressman Udall's office. And, Jeff, I  
19 have the same thing. A gentleman in Thornton  
20 was given a letter in November confirming the  
21 SEC and that they would be receiving the  
22 compensation. In March they're told sorry,  
23 you're not going to get it because you can't,  
24 you can't prove that you worked in the  
25 building for 250 days. So you don't change



1 the damn rules in the middle of the game.

2 **MR. GRIFFON:** This is Mark Griffon again. I  
3 think that's one reason that -- and we're not  
4 in a position, as Christine pointed out, to  
5 advise DOL, but I think one thing that I, one  
6 reason that I thought the work group needed to  
7 reconvene on these issues is that if we feel  
8 that our recommendation needs clarification,  
9 then we might need to write another letter to  
10 the Secretary or at least clarify it.

11 I think where I'm having trouble is  
12 for me monitored or should have been monitored  
13 and if even interpreted this way in several  
14 meetings that we've been at we said based on  
15 current standards which would mean they could  
16 achieve 100 millirem external dose, you know,  
17 have the potential to be exposed to 100  
18 millirem external dose.

19 That doesn't necessarily necessitate  
20 being in a building for 250 days. So I think  
21 that's where we're mixing two criteria here.  
22 And I'm a little concerned about that. I  
23 think we may want some clarification. I think  
24 Wanda's interpretation is correct. That's I  
25 think where we're at here.

1           **MR. PRESLEY:** Mark, this is Bob Presley. I  
2 have the same interpretation as Wanda on this  
3 thing. I have a problem with some of this  
4 stuff.

5           **DR. BRANCHE:** Okay, point of order. You've  
6 asked Mr. Kotsch to reply. Please give him an  
7 opportunity to do so. This is Christine. Ms.  
8 Munn did not have an opportunity to actually  
9 finish her thought. So I think for Robert's  
10 Rule of Order, let the people who've opened  
11 the channels for communication, have an  
12 opportunity to reply.

13           **MR. GRIFFON:** Yes, Christine. This is Mark  
14 Griffon. I apologize if I didn't. I thought  
15 Jeff was finished.

16                     But Jeff, if you had any --

17           **MR. KOTSCH:** Oh, no, I was finished.  
18 Unfortunately, I was finished with that  
19 statement as far as the way the Department of  
20 Labor has interpreted the use of buildings for  
21 the 250 days.

22           **MS. MUNN:** This is Wanda again, and my  
23 concern is simply wanting to clarify for all  
24 of the people who are on the line that our  
25 efforts in this work group are very focused.

1           They're focused specifically on the law as it  
2           applies to us, and we deal specifically with  
3           radiation and radiation doses.

4                       And so that being the case, when the  
5           primary issues seem to be issues that are  
6           bringing concerns that are outside our ability  
7           or our charter to address, we can't do that in  
8           our group. I guess that's what I was trying  
9           to say when I was referring to the statements  
10          that had been made earlier.

11          **MR. GRIFFON:** This is Mark Griffon again. I  
12          guess I made my point. I mean, I am willing  
13          to, my point is just that if we need to  
14          clarify our recommendation, and I don't think  
15          that's outside of our charter --

16          **MS. MUNN:** No.

17          **MR. GRIFFON:** -- and I agree that some  
18          things if they're DOL issues, that is outside  
19          of our charter. But if, we knew this when we  
20          first developed this recommendation, or some  
21          of us had concerns anyway that, you know, we  
22          left the language broad because we didn't have  
23          more information at our fingertips. We didn't  
24          want to limit it. We wanted to let those that  
25          have the additional information make that,

1           implement it correctly.

2                         But if we feel that there's, you know,  
3           if our recommendation is being misinterpreted,  
4           then I think that would be a point. Now I'm  
5           not saying -- I personally feel there might be  
6           a problem there. Others in the work group may  
7           feel differently, but I guess that's the  
8           extent or that's the nature in which I think  
9           we would have an opportunity to weigh in.  
10          Beyond that, I agree, Wanda. It would be out  
11          of our sort of charter.

12                        **MS. BOLLER:** It's Carolyn again. Maybe I'm  
13          confused, and somebody could help me here. It  
14          seems to me that the Board made a decision  
15          based on the evidence that was presented to  
16          them to say that people who worked during this  
17          period of time either should have been or  
18          could have, or were monitored.

19                        The Board made that decision. And it  
20          seems to me that the Board made the decision  
21          based on the facts, and we believe that this  
22          was the right decision that they made for this  
23          particular group of people. And that now  
24          there's being a different interpretation or an  
25          interpretation on what the Board did being

1 made by Department of Labor.

2 And I think, Wanda, this is where it  
3 would be really helpful -- because we agree  
4 with you. It's 250 days on the site, not at a  
5 building. And I think this is where the Board  
6 needs to say, hey, folks, this is what we did.  
7 We made this decision based on this  
8 information, and you're misinterpreting it.

9 **DR. BRANCHE:** This is Christine Branche.  
10 Actually, the Board doesn't have but so many  
11 options available to it. It makes its  
12 recommendations to the Department of Health  
13 and Human Services Secretary who is the person  
14 who renders the decision, not the Board.

15 **MR. GRIFFON:** Correct.

16 **DR. BRANCHE:** And it is the Board that makes  
17 only a recommendation to the HHS Secretary.  
18 And the HHS Secretary, using that and other  
19 information, then renders the decision for the  
20 Department, which is then forwarded to the  
21 Department of Labor.

22 At this juncture this work group has  
23 only a few options available to it because the  
24 recommendation for the Board has already been  
25 made. They can use this as a learning

1 opportunity to help the Board in future  
2 decisions, but the idea of reopening this or  
3 stressing something specific to the Department  
4 of Labor is really not an option --

5 **MR. GRIFFON:** Nobody's --

6 **DR. BRANCHE:** -- I'm trying to make a  
7 clarification so that everybody understands  
8 what the limits of this Board really are.

9 **MS. BOLLER:** I think that we do, but we've ^  
10 the Board that we need to at least -- this is  
11 the first step for us. And most of us on this  
12 call from the congressional offices have  
13 already sent a letter to both Secretary  
14 Leavitt and Secretary Chao regarding this  
15 subject.

16 The issue is then -- and maybe that's  
17 the appropriate piece because the Secretary of  
18 Health and Human Services did, in fact,  
19 support the issue of 250 days on the site  
20 which was the recommendation. It's included  
21 in the orders from the Board or the direction  
22 from the Board to the Secretary. So the  
23 Secretary's already approved it. So maybe  
24 that's where we need to really be, and that's  
25 where we're at with the letter from the

1                   respective members of Congress.

2                   **DR. BRANCHE:** I think that your issue really  
3 is with the Department of Labor. And if  
4 you've written your letter to Secretary Chao  
5 as well as a letter to Secretary Leavitt, then  
6 you've taken your issue to the right people.

7                   **MS. EVAH:** This is Beatrice from Senator  
8 Salazar's office. I have just a quick  
9 clarifying question. Perhaps you can then --  
10 I understand the limitations of the Board, but  
11 perhaps you can try to explain what additional  
12 information DOL may have received, if not from  
13 you then from anybody, to make this sort of  
14 new bulletin, to issue this new bulletin.

15                   **DR. BRANCHE:** I think Mr. Kotsch should  
16 answer that question.

17                   **MS. EVAH:** You know, you had to have relied  
18 on some new information then, and it would be  
19 interesting to hear where that would have come  
20 from.

21                   **MR. KOTSCH:** This is Jeff Kotsch.  
22 Basically, we worked off of the NDPR report.  
23 You know, the report in the protocol and  
24 listings of the buildings in there.

25                   **MR. GRIFFON:** N-D-R-P, right?

1                   **MR. KOTSCH:** I'm sorry. Yeah, I always  
2 invert the lettering.

3                   **MS. EVAH:** NDRP?

4                   **MR. GRIFFON:** This is Mark Griffon again.  
5 Anything more? Jeff, are you done? I'm  
6 sorry.

7                   **MR. KOTSCH:** Yeah.

8                   **MR. GRIFFON:** So was this DOL internally  
9 reviewing that and making their determination?

10                  **MR. KOTSCH:** Well, I mean, we received that  
11 from NIOSH and discussed it with them as far  
12 as, because there was no, you know, that  
13 definition was somewhat open-ended or not very  
14 explicit as to how to determine who should,  
15 you know, who was monitored or should have  
16 been monitored for neutrons.

17                  **MR. GRIFFON:** Right, and I agree with that.

18                                 And my point, Christine, is only that  
19 the only way -- I have no reason, and I don't  
20 think we, anybody, wants to reopen or do we  
21 have the power to reopen the SEC. But I think  
22 we do have an option of at least clarifying  
23 how, when we drafted that language, monitored  
24 or should have been monitored, I don't think  
25 any of us intended that it include 250 days in



1 a single building, for instance.

2 So to the extent we need to clarify  
3 our language in our recommendation, and it's  
4 still up to the Secretary whether they change  
5 anything or not. But I think we do have an  
6 opportunity, and I would say even a  
7 responsibility to do that.

8 **DR. BRANCHE:** You have an option to bring an  
9 issue to your fellow Board members for the  
10 Board uniformly to make a decision about what  
11 information, if there's new information that  
12 comes to light, that clarification can  
13 potentially be sent forward to, as information  
14 from the Board. You cannot, you actually  
15 mentioned it, but, no, you cannot reopen the  
16 SEC. A new petition would have to be put  
17 forward.

18 **MR. GRIFFON:** I agree with that, so that's  
19 all that I'm saying. And certainly, my notion  
20 is to bring at least at this point, at the  
21 Board meeting next week, I was just going to  
22 present a little timeline of what we've done  
23 on discussions in this in an update to the  
24 Board. I'm not even prepared, I don't think  
25 we have any kind of recommendation to make at

1                   this point.

2                   But I think we at least need to bring  
3                   our fellow Board members up to speed on what's  
4                   being discussed. And maybe the Board will say  
5                   this is out of our, you know, there's no need  
6                   to take any further action. I would certainly  
7                   be willing to discuss that with the full  
8                   Board. I think we need to at this point.

9                   **MR. ELLIOTT:** This is Larry Elliott. If I  
10                  could I feel compelled to seek a point of  
11                  clarification on something you just said,  
12                  Mark, and I've heard others say. In a  
13                  directive to Jeff Kotsch the phraseology  
14                  having spent 250 days in one building, I  
15                  think, is inaccurate.

16                  Is that correct, Jeff? It's not in  
17                  one building. It's in any of the buildings  
18                  where neutron exposure would exist or would  
19                  present itself to these workers.

20                  **MR. KOTSCH:** Yeah, this is Jeff. Yeah,  
21                  that's correct, Larry.

22                  **MR. GRIFFON:** So any of the neutron  
23                  buildings. Yeah, you're right, Larry. That's  
24                  correct.

25                  **MR. ELLIOTT:** So I don't want folks on the

1 line to think that it's just, you've got to  
2 get 250 days in one building. That's not the  
3 case.

4 Also, I'd offer that the Board's class  
5 definitions are structured in their language  
6 to say all of these types of workers who were  
7 monitored or should have been monitored for  
8 neutron exposures, that's what the Board felt  
9 we had an inability to reconstruct.

10 And so when DOL takes -- and DOL, this  
11 definition and its structure and language was  
12 vetted with DOL with Pete Turcic at the  
13 meeting where the Board crafted this. And he  
14 said, yes, we can administer that. And we  
15 talked about the NDRP being a useful tool in  
16 administering that for those workers who were  
17 monitored or should have been monitored. That  
18 was the starting point.

19 So I felt I needed to say that because  
20 I think there's a lot of misinterpretation  
21 about this class definition.

22 **MR. GRIFFON:** But, Larry, this is Mark  
23 Griffon again. And that's correct, but also  
24 we clearly indicated that the reason we didn't  
25 want to list a list of buildings in our

1 recommendation was that we weren't prepared to  
2 say it was only the buildings in the NDRP.

3 So that was sort of one of the  
4 outstanding issues, and that's one of the  
5 reasons we left it open was we didn't know all  
6 those ins and outs. We didn't know about this  
7 potential for, you know, maintenance workers  
8 from 334 also working in that building and  
9 whether they would be in the NDRP. And I'm  
10 still not clear on that.

11 So I agree with you that the 250 I've  
12 been saying in a building, and it's in any of  
13 those buildings in the NDRP. But still I  
14 would also say from a technical standpoint, I  
15 don't think that that agrees with our notion  
16 of monitored or should have been monitored.  
17 Should have been monitored says basically you  
18 have the potential to receive 100 millirem of  
19 exposure in any one year. And I don't think  
20 you need 250 days accumulated to receive 100  
21 millirem necessarily. So that's where I'm  
22 stuck.

23 **MR. ELLIOTT:** I understand, and I don't know  
24 if Brant has his reaction to that or not.

25 **DR. ULSH:** No, I don't want to get into the

1 250 day issue.

2 **MS. MUNN:** This is Wanda again. Mark, we  
3 all remember how carefully we attempted to  
4 craft that language so that it would be as  
5 broad as possible and without being limitless.  
6 We worked hard on it, and it may be that those  
7 few simple words which seemed reasonable at  
8 the time can use some improvement.

9 But if that's the focus of our call  
10 today, then it would be helpful for me if we  
11 started down that road very clearly with the  
12 understanding that that's the focus of our  
13 topic today. Because I'm sorry to say I'm  
14 traveling, and I'm time limited today.

15 **MR. GRIFFON:** I apologize, Wanda. We got a  
16 little sidetracked, but there's several people  
17 on the call with several different  
18 perspectives. I mean, yeah, my focus is on  
19 that question of should have been monitored.  
20 How we phrased it versus how it's being  
21 implemented and whether we, as a Board, need  
22 to clarify.

23 And I think to that end I tried to  
24 pull past transcripts. I know Brant has  
25 pulled up the NDRP Protocol. I think we

1 should look further at that and also this  
2 question of cases where it, reviewing cases  
3 where this may or may not have happened.

4 In other words the example I always  
5 use is someone from Building 334, because that  
6 seems like a logical one, the Maintenance  
7 Building, was assigned to that building.  
8 Their work history has that building listed,  
9 but they have either put in their CATI  
10 interview that they worked in these other  
11 buildings, and they're not in the NDRP, or  
12 they had coworkers give affidavits that they  
13 worked in those other buildings, and they're  
14 not in the NDRP.

15 That's the kind of example that if it  
16 were true, that would raise concerns about the  
17 scope of how it's being implemented. So I  
18 guess maybe at this point it's a good time for  
19 Brant to give us an update on what NIOSH has  
20 looked into.

21 **MS. BOLLER:** Mark, can I ask one question  
22 first? It's Carolyn.

23 **MR. GRIFFON:** It's Carolyn? Sure.

24 **MS. BOLLER:** I have a letter in front of me  
25 from the Department of Labor addressed to a

1 particular family. And in the letter dated in  
2 November it basically says you're going to get  
3 benefits. And we're going to send you a  
4 check. And these happened to be survivors of  
5 a deceased worker who did not work in one of  
6 the listed buildings, the so-called neutron  
7 buildings, but was granted benefits and told  
8 that they would be receiving the dollars under  
9 Part B.

10 After the January memo, the Department  
11 of Labor came back and said we don't show that  
12 you worked in any of these neutron buildings.  
13 Now, my question is in November, if, in fact,  
14 the Board's decision and the discussion with  
15 DOL was that it should have only been in those  
16 buildings to begin with, then why was that  
17 approved in November, but then you rewrite a  
18 memo and send it out and then change the rules  
19 after that?

20 Does that make sense? It's kind of a  
21 roundabout way, but if, in fact, the original  
22 theory was to only limit this to those  
23 buildings in which NIOSH had determined there  
24 were neutrons, then it should have been done  
25 from the very beginning, and it was not. It's

1 true in the case I have from our folks in our  
2 district, and it's true in the Grand Junction  
3 case that Erin spoke about.

4 So I'm not sure that that argument  
5 holds water, but I think that I clearly  
6 understand where the Board can and can't go.  
7 I guess what I would want is the Board to  
8 write a letter supporting this 250 days on the  
9 plant site and not in the specific building  
10 if, in fact, they feel comfortable to make  
11 that determination.

12 We're going back to the Secretary of  
13 HHS, and we're going back to DOL. And we will  
14 go further if we have to, but that's kind of  
15 where we're at as we change the rules here.

16 **MS. (UNIDENTIFIED):** Again, Erin with  
17 Congressman Salazar's office. I understand  
18 we're at a point of time constraints and also  
19 the scope of the Board has been emphasized  
20 numerous times today. But from our office we  
21 ask that if there's an opportunity for you to  
22 take some leadership on this issue that you do  
23 so. Because as you all know, we're all quite  
24 familiar with each other. We've all been on  
25 conference calls now for three years, and I



1 think we can all share that. So you can  
2 recognize that those of us on staff as well as  
3 all of you who've worked this issue, we know  
4 each other. We worked for this SEC. We did  
5 not get, the congressional delegation, what we  
6 thought the workers deserved, but what we did  
7 get, we're going to fight to keep. And if you  
8 have an opportunity to assist in what's the  
9 best interest of the workers, we would greatly  
10 appreciate that.

11 **MR. GRIFFON:** Appreciate the comments. I  
12 think I'm not sure we're prepared to recommend  
13 any writing of a letter at this point. I  
14 understand the issue. I think we need to  
15 discuss through it more amongst our work  
16 group, but also I think at this point what I  
17 hope to at least complete today is maybe to  
18 get an update from NIOSH on what you've looked  
19 into so far, maybe clarify some of the  
20 excerpts in the transcripts. I think Brant  
21 did highlight some sections of the NDRP  
22 Protocol which I think he wants to focus on as  
23 far as who was monitored, that sort of thing.

24 And then what I'd like to do at the  
25 upcoming Board meeting, because we only have,

1           you know, we're going to be traveling this  
2           weekend, I want to just give an update of what  
3           we've done. If you remember back, we had a  
4           technical phone call with Margaret Ruttenber  
5           from the University of Colorado which in some  
6           ways, some of her data was used for a news  
7           story that sort of started some of this  
8           discussion.

9                        So I want to track through what we've  
10           talked about and sort of where we're at and  
11           bring it to the Board and say here's where we  
12           are. Some issues may be completely DOL issues  
13           which are out of our charter to cover, but  
14           other issues -- I'd just open it up for  
15           discussion to our full Board rather than,  
16           because I don't think we can make a work group  
17           recommendation at this point.

18                        But Wanda, Bob or Mike, I don't know  
19           if you have any thoughts on that.

20                        (no response)

21                        **MR. GRIFFON:** Assuming I didn't lose the  
22           line, I don't think I heard anybody reply. So  
23           maybe at this point, I mean, all this stuff  
24           came out recently, too. I have the excerpts  
25           that I sent around to the work group. I'm not

1           sure everyone had a lot of time to look  
2           through those and consider them. I only sent  
3           them out a few days ago. Everybody's been  
4           very busy on several different work groups.

5                         Also, Brant sent the NDRP Protocol  
6           just this morning. Maybe, Brant, at this  
7           point if you can just give us an update on  
8           what you've done since the last work group  
9           call. There's only been a few weeks, but what  
10          you've done on looking at cases and explain  
11          what, maybe help us clarify what the NDRP  
12          Protocol, you know, the who was monitored  
13          question.

14                        **MR. PRESLEY:** This is Bob Presley. I'm with  
15          you.

16                        **MR. GRIFFON:** Okay.

17                                 Brant, are you on the line? Can you -  
18          -

19                        **DR. ULSH:** I'm still here, Mark.

20                        **MR. GRIFFON:** Can you give us maybe an  
21          update and then we can, because I think I  
22          agree we're probably not going to get much  
23          further today. Just to get an update, and  
24          then we can probably end the call there and  
25          give an update to the full Board of where

1 we're at and maybe get some direction back  
2 from the full Board whether they want the work  
3 group to pursue anything else, anything  
4 further. I want to bring this back to the  
5 full Board and get direction from the full  
6 Board.

7 **NIOSH UPDATE**

8 **DR. ULSH:** At the last working group call,  
9 as you correctly remember, there were a couple  
10 of action items. You were going to do the  
11 transcripts. And on that call Arjun Makhijani  
12 of SC&A thought that he might have an example  
13 that would be pertinent to our discussion  
14 about someone who may have been monitored or  
15 may not have been monitored for neutrons and  
16 were they not in the NDRP class.

17 Arjun did send me the information on  
18 that case, and I checked and verified with  
19 Mutty Sharfi's help that that individual was,  
20 in fact, included in the NDRP. So that was my  
21 action item, that one particular example. We  
22 have not as of yet --

23 **MR. GRIFFON:** Brant, I'm sorry. This is  
24 Mark. Not to interrupt but we did bring up  
25 the other, I mentioned the other case that was

1 identified by name in the newspaper and asked  
2 that you check that out, too, and I don't know  
3 if you had a, did do that or not.

4 **DR. ULSH:** I can, but I don't know how I  
5 should proceed here in terms of Privacy Act.  
6 I can, I know whether or not that person was  
7 included in the NDRP. Is that something that  
8 I can, I can say that?

9 **DR. BRANCHE:** As long as you don't mention  
10 the name or the ^ you're fine.

11 **DR. ULSH:** Okay, that person was not in the  
12 NDRP. We did not find any indication that  
13 they spent a considerable amount of time in  
14 any of the neutron buildings with the  
15 exception of there was a mention in the CATI -  
16 - and I'm trying to recall this.

17 That's the telephone interview with  
18 the survivor where, and this was a spouse, she  
19 said that he had gone into those buildings,  
20 but there was no specification about where in  
21 the buildings he went or how long he spent  
22 there to my recollection. I also looked  
23 through the associated records that we have,  
24 the dosimetry records, bioassay-type records,  
25 shop history, and there was nothing that

1 indicated that that individual worked in the  
2 neutron buildings.

3 **MR. GRIFFON:** This is Mark Griffon again. I  
4 may have this wrong but -- we have a lot of  
5 static on the line, too -- I may have this  
6 wrong but my recollection of the newspaper  
7 account of this case anyway is that they had  
8 signed affidavits from their supervisor saying  
9 that this individual was in those buildings.

10 **DR. ULSH:** Mark, I think that was --

11 **MR. GRIFFON:** Is that the same case? I may  
12 be confusing things.

13 **DR. ULSH:** Well, again, I'm trying to recall  
14 what the newspaper article said, but I do know  
15 that the basis of the statement in the CATI in  
16 the telephone interview was that the spouse  
17 had talked to some of the other workers, some  
18 of the claimant's coworkers. And they  
19 indicated that, yes, they had gone into those  
20 buildings, ^ indicate how often or how much  
21 time they spent there or anything like, they  
22 didn't give any further details.

23 **MR. GRIFFON:** Okay.

24 **MR. ELLIOTT:** If the affidavits were -- this  
25 is Larry Elliott. If the affidavits were

1 generated based upon a DOL recommended  
2 decision or that part of the process for  
3 determining their eligibility for the class,  
4 we may not have seen those affidavits.

5 **MR. GRIFFON:** Understood. Thank you, Larry.  
6 Yeah, that may be true.

7 **DR. BRANCHE:** Excuse me. If those of you  
8 who are not speaking could please mute your  
9 lines, it would be very helpful for us. We  
10 have a lot of background noise including a  
11 heavy breather. Thank you.

12 **MR. GRIFFON:** Thank you, Christine.

13 Go ahead, Brant. I'm sorry to  
14 interrupt you.

15 **DR. ULSH:** No problem. So I think that goes  
16 to your question about looking into specific  
17 examples. And that's really all I have to  
18 offer about that. If you'd like, Mark, I can  
19 talk to another issue which is related to your  
20 messages, your e-mail messages of yesterday  
21 and the attached transcripts and the NDRP  
22 Protocol that I sent out again this morning.

23 **MR. GRIFFON:** That would be great. A little  
24 refresher for people, yeah.

25 **DR. ULSH:** First of all, this discussion is

1 going to focus on who was or should have been  
2 monitored. It has absolutely nothing to do  
3 with the 250-day question. I'm afraid I don't  
4 have any input to offer there.

5 **MR. GRIFFON:** That's fine.

6 **DR. ULSH:** I think that the root of the  
7 problem here is that there might be some  
8 confusion between neutron monitoring and gamma  
9 monitoring. And I'm looking at the excerpt  
10 that you sent out, Mark. And I'm looking at  
11 the introductory paragraph there that you  
12 wrote, five or six lines down where it says,  
13 "also the notional dose is not only based on  
14 gamma dose multiplied by an NP factor, but" --  
15 and here's the part I want to focus in on, "in  
16 cases where there was no gamma data, a nearby  
17 estimate approach was used."

18 I think there's some confusion here,  
19 and I'd like to try to clear that up. And  
20 that's why I sent out the neutron dose  
21 reconstruction protocol again. And as Mark  
22 mentioned, I did highlight some pertinent,  
23 well, at least what I judge to be pertinent  
24 parts of that document. And I'll just walk  
25 through that briefly if I could.



1                   And I'm looking at one of the sections  
2                   that I've highlighted, and this is on page  
3                   nine. Now, when I'm giving page numbers here,  
4                   I'm talking about the page numbers that appear  
5                   in the document. I'm not talking about PDF  
6                   page nine just to make that easier. And I'm  
7                   looking at Section 5.0 in there which is  
8                   titled "Identification of Affected Workers".

9                   And it says, the second paragraph  
10                  says, "A small portion of the total number of  
11                  neutron worksheets represent the issue of  
12                  neutron dosimeters to a few personnel whose  
13                  home building assignment was a non-plutonium  
14                  production building." And there's a list of  
15                  those, and included in that paragraph, they're  
16                  including it in that list, is Building 34  
17                  which Mark explicitly mentioned earlier, and  
18                  that was the Maintenance Shop.

19                  And it says that these individuals  
20                  primarily worked in non-neutron buildings but  
21                  were routinely issued neutron dosimeters  
22                  because they occasionally performed work  
23                  activities in plutonium production buildings.  
24                  And then there's some examples of the job  
25                  descriptions: guards, radiation monitors,

1 technical researchers and uranium process  
2 operators.

3 So I'm not in any way arguing that  
4 there weren't people from other buildings who  
5 occasionally visited the neutron buildings.  
6 That was clearly identified in the NDRP  
7 Protocol. That's not an issue, and I'm not  
8 trying to deny that. What I'm saying is that  
9 this indicates that they were routinely issued  
10 neutron dosimeters.

11 The next part that I'm looking at is  
12 the next page at the very top. And this goes  
13 to who was included in the NDRP. And starting  
14 with the second line it says, "The rosters on  
15 the beta-gamma worksheets for these buildings  
16 were used to identify workers who would be  
17 assigned a notional neutron dose if they were  
18 not monitored for neutrons." And I'm going to  
19 be emphasizing that statement a couple of  
20 times about whether we're talking about  
21 neutron or gamma monitoring because I think  
22 there's some confusion there.

23 **MR. GRIFFON:** And I think, Brant, you may  
24 want to read that one line before you  
25 highlight it, too, because the beta-gamma

1 sheets seem to be only from Building 21, 22,  
2 23, not 34 in this instance.

3 **DR. ULSH:** Okay, hold on just a second.

4 **MR. GRIFFON:** Am I reading that correctly?

5 **DR. ULSH:** Well, let me start with the  
6 paragraph that we're talking about just to  
7 make sure everyone has the appropriate  
8 context. The second source of names, this is  
9 names of people to be included in the NDRP,  
10 the second source of names was the beta-gamma  
11 worksheets for plutonium-related buildings.  
12 Only the beta-gamma worksheets from the  
13 plutonium-production buildings -- and that is  
14 in parentheses any building with a number  
15 starting with seven -- and Building 91 and 86.  
16 That's the neutron buildings that are in the  
17 NDRP.

18 And the combined worksheets for  
19 Buildings 21, 22 and 23 were entered into the  
20 beta-gamma database. The rosters on the beta-  
21 gamma worksheets for these buildings were used  
22 to identify workers who would be assigned a  
23 notional neutron dose if they were not  
24 monitored for neutrons.

25 So, yes, Mark, you're correct in that

1 Building 34 is not explicitly mentioned here.  
2 But I would refer you to the previous  
3 paragraph where I highlighted it, and it says  
4 that when workers from buildings such as 21,  
5 22, 23, 34, 44, 81 and 86 visited the  
6 plutonium production buildings, they were  
7 routinely issued neutron dosimeters because  
8 they occasionally performed work activities at  
9 plutonium production buildings.

10 **MR. GRIFFON:** Again, I mean, you can  
11 interpret it that way. The question goes  
12 back, to the essential question goes back to I  
13 don't doubt that these people that are on the  
14 neutron worksheets from these other buildings  
15 were monitored for neutrons. The question is  
16 were there some people that didn't get onto  
17 that roster. Was it everyone or did they  
18 capture some but not all. That's the  
19 question.

20 And I mean one thing we talked about  
21 at the last phone call, which that's the  
22 reason I focused on the second paragraph, was  
23 that some people on the call mentioned that,  
24 well, everyone, you know, I can't imagine  
25 people that wouldn't have been monitored for

1 gamma.

2 But the point is if they weren't in  
3 those certain buildings that you listed in  
4 that second paragraph, they wouldn't have even  
5 been considered to adjust gamma for neutron  
6 exposures. So unless they were on that  
7 neutron worksheets, they weren't considered,  
8 if they were from Building 34, they wouldn't  
9 have been considered.

10 **DR. ULSH:** It is certainly possible, Mark,  
11 that someone from another building could have  
12 visited a plutonium building, and if they were  
13 not judged to be a significant risk of neutron  
14 exposure, it's possible that they may not have  
15 been issued neutron dosimetry. I will grant  
16 you that. I have no objection to that. Beta-  
17 gamma though is another story, and if I could  
18 read you some of the other highlights, I think  
19 I can make that a little clearer.

20 **MR. GRIFFON:** Right, I'm not arguing with  
21 the beta-gamma. But if they weren't in the  
22 certain buildings, the beta-gamma is not even,  
23 those worksheets aren't even considered in the  
24 NDRP, right?

25 **DR. ULSH:** The beta-gamma worksheets only

1 from the plutonium production buildings were  
2 the trigger for inclusion in the NDRP but not  
3 from other buildings. You are correct on  
4 that.

5 **MR. GRIFFON:** Okay, go ahead. I'm sorry.

6 **DR. ULSH:** No problem. The next part that I  
7 want to lead you to is on page 20, and I'll  
8 give people a few seconds to find that. It's  
9 Section 11.0, "Notional Neutron Doses".

10 I'm looking at, Mark, your summary  
11 paragraph on your excerpts here, and you're  
12 talking about the nearby technique. And you  
13 mentioned that in cases where there was no  
14 gamma data, a nearby estimate approach was  
15 used. I don't think that that is what is  
16 indicated here. Let me read this one to you,  
17 page 20, Section 11.0:

18 "Notional neutron doses are neutron  
19 doses that are assigned to a worker who was  
20 potentially exposed to neutrons in a  
21 plutonium-related building for a period of  
22 time but was not credited with a neutron dose  
23 in his or her record for that period of time.  
24 The lack of a neutron dose of record for a  
25 period of time may have been the result of the

1 following conditions:" And there's three  
2 bullets, the first two of which are the  
3 important ones.

4 "The worker was not monitored for  
5 neutrons but was potentially exposed." The  
6 second bullet is, "The worker was monitored  
7 for neutrons, but the neutron dose could not  
8 be evaluated." Now, if we look at the very  
9 next page it says that only for the first two  
10 conditions -- those two bullets I just read to  
11 you -- would a notional neutron dose be  
12 assigned.

13 And here's the important part. "The  
14 index to identify the first two conditions is  
15 the presence of a recorded penetrating gamma  
16 dose in a plutonium-related building but no  
17 recorded neutron dose for that period of  
18 time."

19 So, Mark, you're talking about here  
20 how they assign notional neutron dose, and you  
21 said in cases where there was no gamma data  
22 the nearby estimate was used. That is, in  
23 fact, not the case. In order for a notional  
24 dose to be assigned they had to have gamma  
25 monitoring.

1           **MR. GRIFFON:** Yeah, I think I stand  
2 corrected on that, Brant. I think I was  
3 trying to do that from memory, not going back  
4 to the protocol.

5           **DR. ULSH:** I understand. There's a lot of  
6 documentation here.

7           **MR. GRIFFON:** But part of what I think that  
8 maybe clarified me if I'm wrong on this, but I  
9 think they used a neutron-gamma, either a  
10 personal which would have been the nearby,  
11 their previous year neutron-gamma ratio or a  
12 building-wide neutron-gamma ratio and applied  
13 whichever was more conservative I think in  
14 some cases.

15          **DR. ULSH:** Not quite.

16          **MR. GRIFFON:** Not quite? Go ahead, I'll let  
17 you continue then.

18          **DR. ULSH:** Okay, to assign notional neutron  
19 dose that covers gaps in neutron monitoring,  
20 they used a combination of two methods. The  
21 first one is the nearby technique that you  
22 mentioned. And that is taking an average of  
23 the measured neutron dose rates for that  
24 individual for when they have neutron  
25 monitoring, and applying it to that gap in



1 neutron monitoring. That doesn't say anything  
2 about --

3 **MR. GRIFFON:** Not having gamma.

4 **DR. ULSH:** -- right. In fact, to identify  
5 that as a gap, they had to have gamma. That's  
6 a prerequisite.

7 And the second method was the NP ratio  
8 method that you mentioned. They used a  
9 weighted combination of the two.

10 **MR. GRIFFON:** So I had it right except for  
11 the fact that it did ^ necessitate lack of  
12 gamma data, right?

13 **DR. ULSH:** That is correct, Mark. In order  
14 for a period to be identified as a gap, that  
15 is predicated on the presence of gamma  
16 monitoring. So there are not people who, for  
17 instance, came from Building -- I don't know,  
18 let's just say the Administrative Building --  
19 who went into the neutron areas, the  
20 production areas of the neutron buildings.

21 It's possible that, you know, I can't  
22 say that they were all issued neutron  
23 dosimetry, but in order for them to be issued  
24 to be classed with a gap here and assigned  
25 notional neutron dose, that is predicated on

1 the presence of gamma dosimetry. So I think  
2 when we're talking about gaps, we're talking  
3 about gaps in neutron dosimetry. And that's  
4 important because the trigger for entry into  
5 the NDRP is gamma dosimetry, not neutron  
6 dosimetry, but gamma dosimetry.

7 So the point that I'm trying to make  
8 here is that I don't think you can read from  
9 any of the things that you've excerpted here  
10 or certainly from the NDRP Protocol, that  
11 there were people from other buildings who  
12 came in and were not assigned gamma dosimetry.  
13 It's possible that they were assigned neutron,  
14 but not gamma.

15 **MR. GRIFFON:** Well, yeah, but I mean thank  
16 you for the clarification on that one thing.  
17 I still wasn't sure that all the gaps that  
18 people had where they had notional dose  
19 assigned, they also had to have gamma  
20 measuring. So that is a clarification for me.

21 But it still, I don't think it answers  
22 that one question. Your first paragraph  
23 alludes to the fact that, yes, there were some  
24 people came from other buildings such as 34  
25 and into the plutonium buildings and were on

1 neutron worksheets. But the question remains  
2 whether that was 100 percent effective, I  
3 guess. Or they found some worksheets with  
4 other buildings on them, neutron worksheets.

5 So, yes, that certainly was evident  
6 that people from other buildings were in those  
7 buildings working and had some exposure to  
8 neutrons. That doesn't necessarily say that  
9 the policy was 100 percent effective over all  
10 the years that we're looking at. So that  
11 question remains in my mind I guess.

12 **DR. ULSH:** I understand, and I think that's  
13 a valid question to ask.

14 **MR. GRIFFON:** Thank you for that, and I will  
15 -- just to let people know, I will modify my  
16 document to reflect Brant's comments because  
17 that was a misstatement on my part. I was  
18 going by memory, and there is a clarification  
19 I need to make in that front paragraph. So I  
20 will edit that and get that out to everybody.

21 **DR. ULSH:** And, Mark, you raised an  
22 interesting question here, and it's worth  
23 discussing I think. The excerpts that you've  
24 provided here from our discussions with Roger  
25 Falk and also to a more limited extent the

1 NDRP, do bear out what you said there about  
2 the criteria, the monitoring criteria for the  
3 plutonium production buildings. And  
4 basically, it was anyone who was judged to be  
5 at an exposure potential that would be ten  
6 percent of the exposure limit was issued  
7 dosimetry.

8 And it was, we recognize that  
9 dosimetry, the dosimetry dose limits have  
10 changed over the years, and that's why when  
11 the Department of Labor asked for our advice  
12 about who was or should have been monitored,  
13 NIOSH recommended that first of all include  
14 everyone in the NDRP. I mean, that's obvious,  
15 everyone who's listed. But also anyone who  
16 was in a neutron building as listed in the  
17 NDRP, but was not part of the, not explicitly  
18 included in the NDRP.

19 Because can I say with 100 percent  
20 certainty that someone who worked in an  
21 administrative area of the building -- let's  
22 say 771 just for example -- never went into  
23 the production area? No, I can't say that.  
24 Can I say that they didn't have the potential  
25 to receive 100 millirem in a year? That's why

1 we recommended to take a more generous list to  
2 include in the class based on not just  
3 explicitly people who were explicitly included  
4 in the NDRP but anyone else who was in those  
5 buildings. That was the basis based on that  
6 concern.

7 **MR. GRIFFON:** But when you say in those  
8 buildings, Brant, I guess that's the other  
9 question. How does DOL get to that? If  
10 they're not in the NDRP, how do they get to  
11 that? They have work history cards that will  
12 say where they were assigned, like 334, but it  
13 may not, there's no more data available to DOL  
14 anyway where they could determine if they were  
15 sent over to those neutron buildings, is  
16 there? Or am I missing something?

17 **MR. ELLIOTT:** I think Jeff would have to  
18 answer how DOL administers --

19 **MR. GRIFFON:** Okay, okay, I guess we don't  
20 necessarily need to go down that path right  
21 now, but I mean, is there anything else just  
22 focusing on NIOSH's records right now, is  
23 there anything else in the -- you have the job  
24 history cards, right, Brant? In the data  
25 we've looked at each person seems to have a

1 work history card with some indication of what  
2 buildings they worked in. Is that correct?

3 **DR. ULSH:** Yes, in general that's... Mark,  
4 when I approach a case I'm trying to figure  
5 out where a person worked. You're right. The  
6 first place I look is the job history card.  
7 And where we have that it's very informative.  
8 There are job history cards present for  
9 employees of the main contractor, you know,  
10 the main operator of the site, and those are  
11 included as part of the NDRP. So that does  
12 provide a lot of useful information.

13 Some other things that I look at are  
14 the dosimetry records, the urinalysis records,  
15 because on those cards it lists what building  
16 a person worked in that resulted in them  
17 getting that sample. So we look there. I  
18 also look at the telephone interviews which,  
19 as you very well know, are more informative  
20 when we're talking to the actual claimant,  
21 less so when we're talking to a survivor. So  
22 those are some different sources that we can  
23 look at to make that kind of a determination.

24 **MR. GRIFFON:** So we're not in disagreement  
25 there. It's just a question of can we get to

1 an answer on when other people were in those  
2 buildings. And I did highlight the ten  
3 percent rule because -- and you readily stated  
4 that the regulations have changed over the  
5 years so ten percent of that time certainly  
6 would be higher than the 100 millirem that  
7 we're judging it on now. Anything else to  
8 add, Brant, to the discussion at this point?

9 **DR. ULSH:** Well, Mark, the other highlights  
10 really just go to the point that I think I've  
11 already made, and that is about when we talk  
12 about gaps, we're talking about neutron not  
13 gamma. But if I go through the rest of the  
14 highlights, it would just be repeating that.

15 **MR. GRIFFON:** No, that's fine. I agree with  
16 that. I was going, as I said, by memory so  
17 that is fine, but it still doesn't answer that  
18 question of those other, I guess that's where  
19 we are is the remaining question of whether  
20 people could have a work assignment but been  
21 sent to these neutron buildings and missed in  
22 the policy of the time or in the protocols of  
23 the time.

24 **DR. ULSH:** I think we can safely say that  
25 there were people from other buildings who





1           apparently has testimony from coworkers, from  
2           supervisors that they were in these buildings.  
3           And I guess going further than that they're  
4           saying in the building more than 250 days.  
5           The original decision was to, at least my  
6           understanding is the original decision was not  
7           to have him in the SEC.

8                         This is one individual who happens to  
9           have a lot of, the survivor has found several  
10          coworkers that are willing to, you know, that  
11          have memory of this and are willing to put  
12          affidavits out there for him. But the burden  
13          seems to be on the claimant I guess is my  
14          point.

15                        And are all the other claimants going  
16          to have those kind of resources or know people  
17          that knew the person when they worked there  
18          and have a memory of it? So I guess that's  
19          the question.

20                        **DR. ULSH:** Mark, I can't speak to all of  
21          that, but a couple of points of clarification.  
22          I haven't seen the affidavits. I wasn't  
23          specifically looking for them when I looked  
24          through the records, but I haven't seen them.  
25          I'm not saying they don't exist.

1                   **MR. GRIFFON:** I think Larry's probably  
2 correct. It might have gone to DOL as opposed  
3 to NIOSH.

4                   **DR. ULSH:** Well, and a point of  
5 clarification, too, that I'm only going from  
6 what I read in the paper just like you. I  
7 don't recall the newspaper saying anything at  
8 all about the 250-day question. It was silent  
9 on that. It didn't provide any detail about  
10 how often or how extensive their work in those  
11 buildings was.

12                   And now I'm thinking back to the CATI,  
13 the telephone interview, and again, just going  
14 from memory here, she said that she had talked  
15 to some of the coworkers, and that they, I  
16 believe, said that they had visited those  
17 buildings or had been in those buildings. But  
18 it didn't provide any detail about how often  
19 or where in the buildings they went.

20                   **MR. GRIFFON:** Yeah, and I was just trying to  
21 pull one of those stories up, but I can't do  
22 this real-time. I think we need to look at  
23 this, at least look at that one a little  
24 closer if we can. But at this point what my  
25 feeling is from the work group's standpoint to

1 lay out only the sort of timeline of what  
2 we've been discussing without any of our  
3 personal feelings as to which way things  
4 should go.

5 And I will draft something up on  
6 bullet points of what I would present as the  
7 work group. I'll circulate that to my work  
8 group members before presenting it at the  
9 Board meeting. But then I want to just turn  
10 it back to the full Board and say what  
11 direction do we as a Board want to take or  
12 does the Board want the work group to do on  
13 this issue. I think that's where I feel we  
14 should go with this.

15 I don't know if Wanda or Bob or Mike,  
16 you have any feelings on it.

17 **MS. MUNN:** This is Wanda. Can you hear me  
18 okay?

19 **MR. GRIFFON:** Yeah.

20 **MS. MUNN:** I'm on a cell phone, and I'm  
21 never sure. My personal feeling is that we  
22 certainly should revisit the wording that is  
23 of concern here. I have knocked it around in  
24 my own mind several times and have not come to  
25 the conclusion that there are any better words

1           that could provide the flexibility that we  
2           must have for observing what transpires in  
3           these claims and at the same time setting some  
4           limits. I certainly would recommend that  
5           everyone on the work group consider whether  
6           that wording is inappropriate or not. I'm not  
7           convinced that there are better words that  
8           will get us any further down the line towards  
9           specificity than what we already have. It's  
10          worth thinking about and certainly worth  
11          talking about.

12           **MR. GRIFFON:** And I'll commit to, like I  
13          said, circulating within the next two days  
14          some bullet points, and mainly just a timeline  
15          of what calls we have had, what we have  
16          discussed, and any if you could all just send  
17          me comments back in track changes mode, I will  
18          take those from the work group because I want  
19          to just give an update from the work group. I  
20          don't want to, in this update I'm not going to  
21          give my opinion.

22                    I just want to ask maybe the Board  
23                    where we should go with this and what is  
24                    within our charter sort of to delve into as  
25                    opposed to, and maybe the Board says nothing,

1 says that we shouldn't weigh in on this. It's  
2 a DOL issue completely. I just want to bring  
3 this back to the full Board I think at this  
4 point.

5 **MR. PRESLEY:** Mark, I agree with you. This  
6 is Bob Presley.

7 I have one question for Brant. Do we  
8 have any information on what type of a job  
9 that the gentleman in question had?

10 **DR. ULSH:** When you say the gentleman in  
11 question, Bob, were you talking about the one  
12 in the newspaper?

13 **MR. PRESLEY:** Yes.

14 **DR. ULSH:** I don't have that at my  
15 fingertips, but I think I can pull it out of  
16 the records if you'd like.

17 **MR. PRESLEY:** Okay. I mean, that might  
18 help, what job or what assignment this person  
19 had.

20 **DR. ULSH:** Yeah, I'll take a look in his  
21 records again and let you know on that.

22 **MR. PRESLEY:** Thank you, sir.

23 **MR. ELLIOTT:** This is Larry Elliott. I  
24 hesitate to say this, but I think the Rocky  
25 Mountain News stories have been evolving or

1 revolving around two different sets, two  
2 different claims perhaps, the earlier one and  
3 the most recent one. So are we looking at  
4 both of these?

5 **MR. GRIFFON:** That could be what I'm  
6 confusing in my mind, too, Larry. That's why  
7 I said I think I don't want to try to do this  
8 in real-time trying to pull up the stories and  
9 review them while trying to have this  
10 discussion. So there were two mentioned, I  
11 agree.

12 **MR. ELLIOTT:** I think in order to --

13 **MR. GRIFFON:** And we can't have names on  
14 here.

15 **MR. ELLIOTT:** If Brant's taking on an action  
16 item here to look at the job title or the  
17 activity levels of the different worker that's  
18 been reported in the news, we need to make  
19 sure we look at all of those that have been  
20 reported.

21 **DR. ULSH:** Mark, can you call me offline,  
22 off this call and let me know which one?

23 **MR. GRIFFON:** I will, Brant. I will.

24 **DR. BRANCHE:** Mark, before you close, this  
25 is Christine. I just want to clarify that,

1 just so it won't be a surprise to you when it  
2 comes up next week if indeed you go forward  
3 with this in your update before the Board,  
4 your options again are, the Board's options  
5 are few.

6 They can write a letter that clarifies  
7 information for the Secretary. You can talk  
8 about if there's any new data that you think  
9 that NIOSH should consider. You can do that.  
10 And if you can talk about something that helps  
11 you in the guise of the Board learn something  
12 new for future decisions. But they're very,  
13 very narrow parameters that you have available  
14 to you here.

15 **MR. GRIFFON:** Yeah, and I think I'm leaning  
16 toward if we do anything it would be that  
17 letter to clarify. But maybe you're right, a  
18 dialogue of just to learn for our future  
19 recommendations might be useful. But, yeah, I  
20 agree with those parameters, Christine.

21 **DR. BRANCHE:** Whether you agree or not, they  
22 are the ones available to you. Thank you,  
23 Mark.

24 **MR. GRIFFON:** Is there anything else that we  
25 need to discuss today?

1           **MS. BOLLER:** This is Carolyn. Is Jeff still  
2 on the line?

3           **MR. KOTSCH:** Yeah, I'm still here.

4           **MS. BOLLER:** Jeff, is there a way that we  
5 can get from you a list of, not necessarily by  
6 name, but numbers of cases that we are talking  
7 about that would be -- I don't know what the  
8 term would be, but like I've got this case  
9 that I don't think you all have yet, which I  
10 would be glad to send over to Mark or to you  
11 if you don't have one. But how many cases are  
12 we talking about that would be affected by  
13 this requirement that they will have worked in  
14 the building for some period of time?

15           **MR. KOTSCH:** I'm just trying to think. I  
16 don't know how -- I'm just trying to think how  
17 we would put a number on that because we would  
18 have to look at each case individually to  
19 determine that. You know what I'm saying?  
20 We'd have to count ^ anyway. The outside  
21 population is the population of all Rocky  
22 Flats claims that have been denied to date  
23 kind of thing.

24           **MS. BOLLER:** Yeah, is there a way you and I  
25 can talk offline about this? Can you give me



1 a phone number?

2 **MR. KOTSCH:** It's 2-0-2-6-9-3-0-1-8-8. I  
3 can at least pass the information on to people  
4 that can give us the answer.

5 **MR. GRIFFON:** Thank you, Jeff.

6 Thank you, Carolyn.

7 I think we're ready to close today  
8 unless anyone had anything more for today.

9 (no response)

10 **MR. GRIFFON:** Again, I will give bullet  
11 points, a brief presentation for the Board,  
12 and I'll circulate those to work group members  
13 just for your edits.

14 **MS. MUNN:** That will be very appreciated,  
15 Mark, thank you.

16 **MR. GIBSON:** Mark, that'd be good.

17 **MR. GRIFFON:** All right, thank you everyone.  
18 I think we're going to adjourn today.

19 (Whereupon, the working group meeting  
20 concluded at 12:30 p.m.)

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**CERTIFICATE OF COURT REPORTER****STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of April 3, 2008; and it is a true and accurate transcript of the testimony captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 28th day of November, 2008.

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**STEVEN RAY GREEN, CCR, CVR-CM, PNSC****CERTIFIED MERIT COURT REPORTER****CERTIFICATE NUMBER: A-2102**