

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

THIRTIETH MEETING

ADVISORY BOARD ON

RADIATION AND WORKER HEALTH

DAY THREE

The verbatim transcript of the Meeting of the
Advisory Board on Radiation and Worker Health held
at the Crowne Plaza Five Seasons Hotel, Cedar
Rapids, Iowa, on April 27, 2005.

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April 27, 2005

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(in order of appearance)

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P R O C E E D I N G S

(8:15 a.m.)

WELCOME AND OPENING COMMENTS

1
2
3 **DR. ZIEMER:** I'm going to call the assembly to
4 order. This is our third day. I think we all
5 feel like we're sort of on the home stretch, as
6 it were. We -- we are going to continue with
7 our discussions on Mallinckrodt as soon as we
8 clean up the coffee here at the front.

9 (Pause)

10 A couple of reminders -- again, as I always do
11 -- to remind you to register your attendance in
12 the registration book at the entryway. Again
13 I'll remind everyone there are copies of the
14 agenda and related materials on the table in
15 the back.

16 Let me give Lew Wade the mike a moment to see -
17 - Lew, do you have any additional comments this
18 morning?

19 **DR. WADE:** Well, there was just one comment
20 made by a Board member that a petitioner or two
21 asked last night if we could just very briefly
22 review what happens to a petition once it's
23 been approved by the Board. And I thought I
24 would just walk through that in the broadest
25 possible terms and I would ask Liz to correct

1 the mistakes that I made, but as you know, when
2 the Board takes an action there are
3 requirements as to the materials it needs to
4 submit to the Secretary. And by your
5 procedures yesterday you've tasked your
6 Chairman with submitting your recommendation
7 within 21 days.

8 Once that submission is made by the Board to
9 the Secretary, it really goes to the NIOSH
10 director, who prepares a proposed decision for
11 the Secretary. And again I remind you that the
12 NIOSH director, in preparation of that proposed
13 decision, will consider the evaluations of
14 NIOSH, the report and recommendations of the
15 Board, the information presented or submitted
16 to the Board and the deliberations of the
17 Board. That package makes its way to the
18 Secretary and the Secretary makes the final
19 decision.

20 A clock starts -- a 30-day clock starts on the
21 day the Secretary receives your recommendation.
22 He has to send a decision to Congress within 30
23 days. So that clock starts and that will cause
24 a great deal of action to take place within the
25 Executive Branch to prepare the Secretary to

1 see that he makes his decision package
2 available to Congress within 30 days.
3 Liz, anything else that needs to be --

4 **DR. ZIEMER:** Then what happens?

5 **DR. WADE:** And then Congress acts upon that
6 package as it -- as it sees fit.

7 **DR. ZIEMER:** I believe Congress also is
8 mandated to act within -- is it 30 days?

9 **DR. WADE:** Thirty days, yes.

10 **DR. ZIEMER:** Thirty days.

11 **DR. WADE:** And if they don't act, then the
12 proposed decision becomes effective.

13 **MS. MUNN:** Thirty calendar days?

14 **DR. WADE:** Thirty calendar days? I assume.

15 **MS. MUNN:** If they're not in session, that
16 could be an issue.

17 **DR. ZIEMER:** One other item I would add
18 parenthetically, Board members, you are aware
19 and we have the letter which we approved.
20 Please understand that I will have to append to
21 the letter an additional paragraph describing a
22 number of attachments which are required, and
23 you'll understand -- I assume you're
24 comfortable with that. There will be a letter
25 describing that we will attach the minutes of

1 our meeting, which include the testimony of the
2 petitioners, the -- the documents that are
3 delineated in the rule itself, so there will be
4 that additional paragraph.

5 **MALLINCKRODT SPECIAL EXPOSURE COHORT PETITION**

6 **DR. ZIEMER:** Now we're ready to proceed with
7 our deliberations concerning the Mallinckrodt
8 Special Exposure Cohort petition. We begin
9 this morning with NIOSH presentation, and Larry
10 Elliott is going to present that.

11 And Larry, let me just also preface your
12 remarks by reminding the assembly of the action
13 that this Board took in -- at the St. Louis
14 meeting, and I'm reading from the minutes
15 relative to that petition -- (Reading) The
16 Board reserves judgment with respect to
17 Mallinckrodt workers employed during the 1949
18 to 1957 time period until review of newly-
19 located raw data is complete. This material
20 may provide additional pertinent information on
21 monitoring programs and worker exposure for
22 that potential cohort.

23 And there was discussion on that motion and at
24 the end of that discussion there is an
25 indication -- I don't -- I'm looking for it

1 here now, but -- oh, here it is. A second
2 motion made, seconded and approved -- (Reading)
3 It is the intent of the Board to make a final
4 determination on this potential cohort at the
5 next full Advisory Board meeting.

6 So that is the backdrop for where we are today.

7 **PRESENTATION BY NIOSH**

8 **MR. ELLIOTT:** Thank you, Dr. Ziemer. Good
9 morning, ladies and gentlemen of the Board and
10 the audience. I'm here again to shift your
11 focus from the discussion you had yesterday
12 afternoon on the site profile for Mallinckrodt
13 chemical workers to again look at the Special
14 Exposure Cohort petition and our evaluation
15 report of that.

16 As is becoming tradition within this kind of
17 presentation, I will walk you through the
18 petition evaluation process. I know this is
19 probably becoming old hat by now, but I must do
20 this for the record as well as for the benefit
21 of the audience, who may not have heard this
22 type of presentation before. I'll also give an
23 overview and a timeline of this particular
24 petition.

25 I'll again remind the Board, probably

1 unnecessarily at this point, but I'll remind
2 you of your responsibilities and your role
3 within this part of the process.

4 I present also a summary of the petition
5 evaluation report, as well as go into the
6 details of the supplement to that evaluation
7 report that was prepared after the February
8 meeting. And I'll conclude with the class
9 definition and the summary findings.

10 Again, the evaluation process is governed by
11 the statute and by the regulation that's listed
12 on this slide, 83.13(c)(1) and 42 CFR
13 83.13(c)(3). Again, these are the two-pronged
14 tests that must be addressed in evaluating a
15 petition.

16 As well the evaluation process must examine all
17 available data and information obtained. That
18 includes the site profile development,
19 information that is pertinent to this facility
20 that may have been addressed at related
21 facilities, the dose reconstructions that may
22 have been attempted or -- and/or completed with
23 regard to the petition. We are also required
24 by rule to determine the completeness of our
25 data reser-- data search. We have to evaluate

1 the sufficiency of data according to the HP --
2 health physics hierarchy of data that's listed
3 in our dose reconstruction rule. And we
4 evaluate the issues of data reliability that's
5 raised by the petition itself.

6 As well, if we determine that we cannot
7 reconstruct dose, we then have to address the
8 second prong of the test and whether -- that
9 includes whether health was endangered for this
10 particular class.

11 Let me speak for a moment here about -- a
12 little bit about -- in reflection of the
13 discussion on the site profile yesterday
14 afternoon, and I'd like to point out that I
15 think there may have -- may be some confusion
16 about site profiles and their -- their content
17 and context as a living document. And in that
18 light, these documents, from their genesis,
19 have been portrayed as living documents. When
20 we -- it goes back to the need to be timely in
21 our efforts for -- for the claimant population
22 in doing dose reconstruction, as well as
23 evaluating petitions here. And so once we feel
24 that we have assembled enough information to
25 process certain types of claims under our

1 efficiency process, we put that into play and
2 start using those documents, fully recognizing
3 and hopefully trying to make it clear to people
4 that -- with an understanding that as new
5 information comes to light that may inform and
6 enable us to treat other types of cases, we
7 modify those documents.

8 A revision to a site profile we would consider
9 as giving us the ability to move claims through
10 the system. And as new information we make
11 changes to those site profiles. Certainly we,
12 again, appreciate our colleagues from Sanford
13 Cohen & Associates who bring their perspective
14 to this and call our attention to certain
15 things that we feel and they feel we need to
16 address. And once we address those things, we
17 go back and we look at all claims that were
18 processed under our previous site profile
19 revision and evaluate whether the modifications
20 to a newly-revised site profile would affect
21 the outcome of those claims.

22 This is a standard operating procedure within
23 my office. It's called a performance
24 evaluation report and any time that a change
25 occurs in any of these documents we go back and

1 evaluate those claims. If there is a change to
2 a claim, we notify the claimant, we notify the
3 Department of Labor and we work together with
4 both and work through all that.

5 So I just offer that for the consideration of
6 the Board, as well as the audience.

7 Let me speak a little bit about the overview
8 and a timeline for this particular petition.
9 The Mallinckrodt Chemical Works for the
10 Destrehan Street petition was submitted to us
11 on July 21st last year, and the initial
12 definition for that particular class, as we
13 worked it out with the petitioners, were all
14 employees that worked in the uranium division
15 at the Mallinckrodt Destrehan Street facility
16 in St. Louis, Missouri over the time period of
17 1942 to 1957.

18 The submission of this petition met the
19 criteria as outlined in our rule under 42 CFR
20 83.7 through 83.9, and it was qualified on
21 November 24th, 2004. As I said yesterday, we -
22 - we work diligently with the petitioners to
23 make sure that the basis of the petition
24 addresses all of the requirements within our
25 regulatory process.

1 The petitioners were notified by letter, and a
2 notice of that submission -- that it had
3 qualified for evaluation -- was published in
4 the *Federal Register* and put on our web site on
5 December 20th in 2004.
6 NIOSH evaluated this petition using the
7 guidelines in 83.13, and we submitted a summary
8 of findings and a petition evaluation report to
9 the Board and to the petitioners on February
10 2nd, 2005. A summary of the evaluation report
11 and finding was then published in the *Federal*
12 *Register* on February 3rd, 2005.
13 At your February 8th meeting in St. Louis we
14 presented the evaluation reports for
15 Mallinckrodt. This eval-- the evaluation
16 reports -- there were two, if you recall. One
17 report spoke to all DOE, DOE contractors or
18 subcontractors employed by the uranium division
19 of Mallinckrodt during the period from 1942
20 through 1945. The other report covered the
21 same workers and employees for Mallinckrodt
22 through the period of 1946 through 1948, and
23 then the last part of that report covered 1949
24 to 1957. We were, as you recall, seeking --
25 for the latter time period we were seeking

1 advice from the Board concerning the matter of
2 data reliability.

3 During that meeting a number of additional
4 issues concerning access to data, their
5 reliability and various technical matters that
6 pertained to the time period of 1949 to 1957
7 were identified during the presentation that we
8 made to the Board. And in response to those
9 issues and others, we submitted a -- or we
10 developed and submitted a supplemental report
11 to our evaluation report that addresses those
12 issues.

13 The Board sent a recommendation to the
14 Secretary of HHS on March 11th, 2005
15 recommending that a Special Exposure Cohort
16 class be designated according to all --
17 accorded to all DOE contractors or
18 subcontractors who worked at the uranium
19 division at Mallinckrodt Destrehan Street
20 during the period of 1942 to 1948. We -- the
21 Board, based upon a recommendation that we
22 made, combined the '42 to '48 period. It was
23 broken down in '42 to '46, if you recall, and
24 they -- or '42 to '45 and then '46 to '48. The
25 Board reserved judgment with respect to workers

1 employed during the 1949 to 1957 time period
2 until we -- NIOSH -- had completed its
3 supplemental report.

4 On April 6th of 2005 the Director of NIOSH sent
5 a recommended decision to the Secretary of HHS
6 that was consistent with the Board's
7 recommendation.

8 Based upon the considerations of the
9 recommendations, the findings and the
10 deliberations of the Board and the
11 recommendations of the Director of NIOSH, and
12 also the Director of Centers for Disease
13 Control and Prevention, the Secretary of HHS
14 sent his decision to Congress on April 11th,
15 2005 to add the -- this class to the Special
16 Exposure Cohort. The class definition is
17 (reading) The employees of the Department of
18 Energy or DOE contractors or subcontractors
19 employed by the uranium division of
20 Mallinckrodt Chemical Works Destrehan Street
21 facility during the period of 1942 through
22 1948, and who were employed for a number of
23 work days aggregating at least 250 work days,
24 either solely under this employment or in
25 combination with work days within the

1 parameters, excluding aggregate work day
2 requirements, established by other classes or
3 employees included in the Special Exposure
4 Cohort.

5 I'm not going to belabor the Board with this,
6 your roles and responsibilities. I think
7 you're very well familiar with them, but for
8 the audience, the Board's responsibilities are
9 governed by statute and by the Special Exposure
10 Cohort rule that was promulgated last May.

11 The main role of the Board is to consider and
12 advise the Secretary of HHS on whether to add a
13 class. Again, you are to consider the
14 petition, the evaluation reports and all
15 available information, and develop and transmit
16 to the Secretary your recommendation. And in
17 that recommendation, as you know, you must
18 include all of the relevant petitions and any
19 information that is pertinent to that.

20 Lastly, we all are required to adhere to the
21 Privacy Act and control information and prevent
22 unwarranted disclosure of information about the
23 petitioners.

24 And now I'll go into the summary of the Special
25 Exposure Cohort evaluation report that we

1 provided for the class with the time period of
2 1949 to 1957.

3 Beginning in 1949 Mallinckrodt had established
4 an operational program of radiation monitoring
5 of its employees and its work areas, and this
6 was overseen and directed by the Atomic Energy
7 Commission's Health and Safety Laboratory out
8 of New York. Notwithstanding the data
9 reliability concerns that have been raised,
10 there is sufficient information from the
11 various monitoring activities, together with
12 the information on radiological sources and
13 processes, to reconstruct and validate dose
14 estimates.

15 After 1949 there are multiple sources of
16 exposure information, and through Dr. Neton's
17 attempt to illustrate in his example yesterday,
18 we feel that we can use the various data
19 sources to complement each other and evaluate
20 any deficiencies or data gaps that might exist
21 in that dataset for Mallinckrodt.

22 In the SEC petition evaluation report 00012-2,
23 section 7.3, items 2, 3 and 4, you'll find that
24 we address how we might go about doing this.

25 For example, in item 2 we talk about breath

1 radon and the limited number of data and the
2 use of that data with regard to the entry of
3 zeroes in that data. We indicate that
4 urinalysis results are the solution for
5 evaluating that kind of a data gap or that type
6 of limitation in the data.

7 For item 3, lost medical records -- that is an
8 issue that has been raised and one of concern -
9 - NIOSH is -- has documented in its search that
10 it did not indicate any loss of medical
11 records, and thus we cannot confirm that
12 medical records were lost, in fact.

13 With regard to item 4, altered records or
14 conscious cover-up referencing a 1949 dust
15 evaluation which was never finalized, our
16 belief is that the cure for that particular
17 situation is the availability of data from a
18 fully operational health and safety health
19 physics program from 1949 to 1957 that included
20 the oversight of the AEC/HASL.

21 I won't go over -- this is just another slide
22 of some of the data that was presented in the
23 evaluation report, and you saw this yesterday,
24 as well. And Jim I think did a very good job
25 of summarizing the wealth of information that

1 exists in the variety of monitoring data that
2 we have.

3 The purpose of the supplement report was to
4 address a number of issues that were identified
5 but not specifically addressed in the prior
6 NIOSH petition evaluation report. The
7 supplement identifies those issues that were
8 raised at your Board meeting in February in St.
9 Louis, and provides an evaluation of the effect
10 that those issues might have -- might have on
11 the proposed designation of this class from
12 1949 to 1957.

13 I'll summarize the issues that were raised.
14 There were five that are listed here. NIOSH's
15 access to data and reports identified in the
16 1972 Mason letter as being potentially lost or
17 destroyed. Another issue, items raised in the
18 1974 Mont Mason notes presented at the February
19 Board meeting. And third, a summary of the
20 content of the six boxes of the Mallinckrodt
21 data that were unevaluated at the time of the
22 February Board meeting. Four, there was
23 concern as to how to calculate exposure from
24 isotopes other than uranium if urine samples
25 were only counted for uranium. And five, the

1 ability of NIOSH to estimate potential radon --
2 radiation exposures in doses associated with
3 the blowouts that occurred at Mallinckrodt.
4 With regard to issue number one, in the
5 supplemental report we specify that NIOSH has
6 recovered a record transmittal and receipt form
7 from the Federal Records Center in St. Louis
8 which identifies the 22 documents referred to
9 in the Mont Mason letter, and these documents
10 were identified as shelf V2161. In that NIOSH
11 has obtained 21 of the 22 documents, which
12 consist of reports associated with dust studies
13 and other facility surveys.
14 The only document that was not located was
15 entitled "An Annual Report for the Fiscal Year
16 1950 from the New York Operations Office of
17 Health and Safety Division" which was dated
18 November 13th, 1950. This missing document is
19 an annual report and is -- these kinds of
20 reports are very helpful to us in documenting
21 the reason behind a particular action. But the
22 environmental health and safety data that's
23 summarized in these reports are usually found
24 in other types of documents and other types of
25 reports. So we don't feel that just because

1 this one report is missing that it leaves us
2 with a huge data gap. We feel that we can --
3 we can use other information to cover the
4 issues that might be raised from that lost
5 document.

6 This slide explains the effects of the
7 information that's compiled in the supplemental
8 report, and the data that it's obtained from
9 the documents would not increase the estimated
10 doses calculated from the data that's already
11 in the TBD. It probably, if we obtained
12 additional information -- as I said yesterday
13 for Iowa, additional information would tend to
14 provide more precision in our dose estimates
15 and perhaps even drive them down. The newly-
16 obtained data will be fully analyzed and would
17 -- will be included in the next revision.
18 NIOSH has -- has -- does not find that the
19 records have been lost or destroyed. We feel
20 that most of the data from the documents was
21 found in other sources and was already
22 evaluated and -- and most of it is used in Rev.
23 1 of the TBD. Those that are not used or not
24 been incorporated will be incorporated.
25 Item number 2 regarding the 1975 Mont Mason

1 notes as presented in the February Board
2 meeting, and these notes were generated from a
3 trip that Dr. Mason took in 1975 to gather data
4 for an epidemiologic study for Thomas Mancuso.
5 The funding ran out for that study, evidently -
6 - we understand that from other documents --
7 and it reflects -- this particular document
8 reflects an evaluation in progress. It is not
9 a completed evaluation of the data.

10 Although the study was not finished, the site
11 data have been evaluated and the issues that
12 were identified were revisited by other studies
13 and in other epidemiologic reports. These data
14 were reviewed by NIOSH and ORAU for the
15 development of the Mallinckrodt Technical Basis
16 Document.

17 Based on NIOSH's review of the data, NIOSH does
18 not find any issues that would preclude an
19 ability to reconstruct doses for compensation
20 purposes under this program.

21 With regard to item number 3, this issue being
22 the summary of the content of the six boxes,
23 there were six boxes and two of the boxes
24 contained information from Weldon Spring, so
25 they were collapsed into five total boxes. And

1 for box one, Weldon Springs, with == about 75
2 percent of the contents of that box are film
3 badges for 1945 to 1958 for Weldon Springs; 25
4 percent of that are -- that are left are air
5 sampling data, breath analysis and
6 contamination survey results and radon
7 monitoring for Weldon Springs. And I'm sure
8 that our ORAU contractor will be incorporating
9 that information into Weldon Spring's Technical
10 -- site profile, which I hope we see this week,
11 as Dr. Toohey mentioned last night.
12 Box two also contained Weldon Springs
13 information. About 75 percent of its contents
14 are film badge reports for 1957 to 1961; 25
15 percent are bioassay data from 1961 to '65.
16 There is breathing zone air sampling data from
17 '63 to '65, contamination survey reports for
18 1959 and air sampling in the building 301.
19 Box three again contains Weldon Spring's film
20 badge information, and box four contained
21 Mallinckrodt dust studies from plant 4, 6, 6E,
22 7, shotgun lab and K-65. I would just mention
23 that the distribution of the film badge reports
24 from '57 to '61 have appeared -- appear to us
25 to be pretty random in their order in our

1 evaluation of that particular box.
2 Box five, Mallinckrodt and Weldon Springs
3 information. Approximately 25 percent are for
4 the years of 1946 to '49 and they are film
5 badge records for Mallinckrodt; 75 percent of
6 the box is for Weldon Spring's badge records,
7 and approximately half cover 1959 to 1965. The
8 other half of that -- for Weldon Springs are
9 bioassay data from '59 to '65 and area
10 monitoring trends.
11 The initial review of these documents indicates
12 that some of the data are duplicate data that
13 we had previously accounted for and
14 incorporated into our Technical Basis
15 Documents. Some documents provide additional
16 data that will also be addressed in a revision
17 of the Technical Basis Document.
18 With regard to item number 4, how will
19 exposures for isotopes other than uranium be
20 calculated if urine samples were counted for
21 uranium only, the inclusion of other isotopes
22 in claimant-favorable assumptions can be made.
23 We can do this through a -- specifically for
24 source materials in which uranium isotopes were
25 predominant, for source materials in which

1 radium 226 was predominant, and for source
2 material which concentrated thorium. For air
3 samples which measured gross alpha only, there
4 are also general instructions and assumptions
5 to be followed for conducting dose
6 reconstructions, and those are found in our
7 Technical Basis Document.

8 The last issue that's spoken to in the
9 supplemental report, and that was raised at the
10 February meeting, was can NIOSH estimate
11 potential radiation exposures and doses
12 associated with the blowouts. A blowout is an
13 event that occurs during the reduction of
14 uranium tetrafluoride to uranium metal. And
15 the existence of a routine urinalysis program
16 after 1948 allows NIOSH to put an upper limit
17 on doses associated with blowouts or other
18 incidences involving internal exposures. NIOSH
19 can assume uranium excreted by workers on a
20 routine monitoring program is a result of a
21 blowout that occurred immediately after all the
22 workers submitted their previous samples. The
23 resultant dose calculation will provide a
24 maximum plausible estimate of the exposure that
25 was incurred. The calculated dose in -- in a -

1 - all likelihood then would be an overestimate
2 because the urine samples would also include
3 uranium inhaled from routine operations during
4 the work in that plant.

5 To refine these values, NIOSH can also review
6 information provided by Mallinckrodt workers
7 during their interviews. When such incidents
8 are identified, NIOSH would review the Energy
9 employee's bioassay records for sample --
10 incident samples and also look at coworker data
11 in that same regard.

12 The petition evaluation supplemental report
13 addresses the petitioners' concerns regarding
14 reliability and validity of the data. For the
15 years 1949 to 1957, data reliability concerns
16 notwithstanding, NIOSH finds that the radiation
17 dose estimates can be reconstructed and
18 validated for compensation purposes.

19 NIOSH welcomes the advice of the Board on the
20 weight of evidence determinations involving
21 data reliability for this and future petitions.
22 Specifically, we asked you to consider this in
23 your February meeting and we're looking forward
24 to hearing your deliberations on this point at
25 this meeting.

1 In conclusion, the proposed class definition
2 that we offer in our evaluation report is that
3 all DOE, DOE contractors or subcontractors who
4 worked at the uranium division at the
5 Mallinckrodt Destrehan Street facility during
6 the period from 1949 to 1957, we find that for
7 that time period we can do dose reconstruction
8 with sufficient accuracy to achieve either a
9 maximum capping dose or a more precise dose
10 estimate, and therefore we did not have to
11 attend to health endangerment under the Special
12 Exposure Cohort petition. But I would offer
13 that -- and I think we are ready to say that
14 health was certainly endangered to this work
15 force by the type of work that they did and
16 they exposures that they had.
17 Again, I'll remind the Board, for the other two
18 classes which are shown here, '42 to '45, we
19 found it was infeasible to do dose
20 reconstruction with sufficient accuracy, we
21 felt that health was endangered. And for the
22 period of '46 to '48 we also felt it was
23 infeasible -- not feasible to do dose
24 reconstruction, and again that health was
25 endangered for that particular time frame.

1 That concludes my presentation and I'll stand
2 ready to entertain questions.

3 **BOARD DISCUSSION OF MALLINCKRODT SEC PETITION**

4 **DR. ZIEMER:** Yes, thank you, Larry. Let's open
5 the floor for questions. Dr. Melius?

6 **DR. MELIUS:** Got a couple of questions that
7 came up last night that are sort of -- I think
8 are -- think are relevant, though they're not
9 directly related to your presentation. One, is
10 there a petition -- I guess we know from your
11 talk and from what was said last night that for
12 Weldon Springs there's a -- a site profile
13 that's about to go into review with -- at NIOSH
14 coming in from your contractor. And is there
15 also an active -- is there a petition for a
16 Special Exposure Cohort relevant to Weldon
17 Springs?

18 **MR. ELLIOTT:** No, I don't believe we have a
19 Weldon Springs petition at this point in time.

20 **DR. MELIUS:** Okay. In terms of the work force
21 there, I was a little confused by what was --
22 the interchange last night. To what extent is
23 there an overlap between the two facilities?

24 **MR. ELLIOTT:** Well, as you -- as you heard last
25 night, and I think perhaps Denise or somebody

1 else is better able to speak to this, there has
2 been a -- there was a large migration of
3 workers from Destrehan Street to Weldon Springs
4 as they ramped up. I don't know what the
5 specific numbers are, but I think I heard from
6 Denise last night probably 50 percent. I don't
7 know if anybody else in the audience can help
8 us here with that, but...

9 **DR. MELIUS:** So you've not analyzed that
10 overlap or have information that would --

11 **MR. ELLIOTT:** I don't have it at -- at my
12 disposal right now.

13 **DR. MELIUS:** Okay. Another question -- this is
14 related to more what you do with site profiles
15 and -- and your -- your analysis of them. Are
16 you -- when you're doing these site profiles
17 and dealing with them in the context of a
18 Special Exposure Cohort petition, do you go --
19 you're providing sort of a general evaluation.
20 Do you evaluate subgroups at all within that --
21 within the work force in terms of your ability
22 to do dose reconstruction?

23 **MR. ELLIOTT:** Yes. Yes, we do. In fact, I
24 think it's apparent that we do that in this
25 petition, as well as the Iowa petition that we

1 presented to the Board, where we have
2 identified different classes based upon
3 subgroupings -- or -- or events that occurred
4 in that particular facility.

5 **DR. MELIUS:** I understand events. I don't see
6 subgroupings necessarily in terms of --

7 **MR. ELLIOTT:** Well, the radiographers -- the
8 radiographic technicians for Iowa --

9 **DR. MELIUS:** No, stay in Mallinckrodt, please.
10 I don't --

11 **MR. ELLIOTT:** Stay in Mallinckrodt --

12 **DR. MELIUS:** Yes.

13 **MR. ELLIOTT:** We do evaluate the different
14 process and the types of tasks that were
15 employed in a process, the workers that moved
16 through the process. We're very much
17 interested in -- in not only the highest
18 exposed workers, but those workers that were in
19 a lower or moderate-exposed categories and
20 whether or not we have enough data, enough
21 information to evaluate their -- and
22 reconstruct their exposure.

23 **DR. MELIUS:** Yeah, but -- but -- so -- but do
24 you do any sort of a systematic analysis that's
25 in a -- in the form of a report or... I mean -

1 - I mean you're telling me you generally --

2 **MR. ELLIOTT:** Well, yeah, the --

3 **DR. MELIUS:** -- I mean --

4 **MR. ELLIOTT:** -- the analysis is systematic in
5 the sense that we examine the process and all
6 of the information and all the dose data, the -
7 - the programs that were put into effect to
8 provide protection to the work force, who was
9 monitored, who was not monitored. Do -- do we
10 report that specifically in a separate report;
11 no, it's all rolled up into our evaluation
12 summaries. Could we do a better job of that;
13 yes, I suppose we certainly could.

14 **DR. MELIUS:** Okay. That's all my...

15 **DR. ZIEMER:** Okay. Other questions? Yes, Dr.
16 Anderson.

17 **DR. ANDERSON:** Yeah, Larry, we saw yesterday
18 the -- kind of the process you go through in
19 the validation, comparing the different data
20 sources to look for discrepancies or gaps or
21 whatever. And my question is, have you done
22 that -- can you say that -- after having done
23 that, that you have validated the data, or are
24 we still into you -- you believe you have the
25 means to try to do that and you'll do that as

1 if, when you get into it, you can't, then where
2 are we left?

3 **DR. NETON:** Right. Well --

4 **DR. ANDERSON:** I mean you gave the --

5 **DR. NETON:** Yeah.

6 **DR. ANDERSON:** -- the demonstration of when
7 there is a discrepancy, then you're sort of
8 left with well, you either have to believe one
9 or the other, or say ever-- all of it's suspect
10 and then --

11 **DR. NETON:** Yeah.

12 **DR. ANDERSON:** -- then we're sort of into --
13 you go from a lot of data to very suspect data
14 and that's --

15 **DR. NETON:** I think what we're trying to speak
16 to here, though, is we have three -- three
17 levels of data, the source term, the air -- the
18 personal monitoring data and the air data.
19 With those three pieces we can do a comparison,
20 as I suggested. But what we're really saying
21 here with this analysis is that, based on the
22 site profile, we believe that not only can we
23 cap the dose, but in almost all instances we
24 can do much better than that. We believe we
25 have sufficient data to do far better than just

1 capping.

2 Now if the analysis indicates, for instance,
3 that both air data and bioassay data are
4 suspect -- which I -- I don't want to prejudge,
5 but so far my qualitative analysis doesn't
6 indicate that -- then we're left with source
7 term, and certainly then we can use those data
8 to cap, to put upper maximums, which is
9 relevant for the SEC petition evaluation.

10 I think you have to be careful not to confuse
11 the profile that was designed to do better than
12 maximum dose estimates, to do more detailed
13 analyses, with the requirements of the SEC
14 petition, which is can NIOSH cap the dose. And
15 I think we would assert that given the quantity
16 of the monitoring data we have, plus the
17 knowledge of the source term and the detailed,
18 hundreds of pages of descriptions of the
19 processes, that we can certainly cap that dose.

20 **MR. ELLIOTT:** To add to that, I think there are
21 various levels and ways of validation. And
22 just the fact that in our site profile we
23 identify issues relevant to data is calling
24 recognition to that, and that, in and of
25 itself, is some things that we use to look for

1 other data to determine whether or not we need
2 to -- is the -- is the credibility or
3 reliability of the data suitable or unsuitable
4 for use in dose reconstruction, does it prevent
5 us from doing a credible job of dose
6 reconstruction. So we try to bring that to the
7 fore. There are different ways of going
8 through a validation process. Jim's example --
9 maybe it was poorly -- poorly presented or
10 poorly designed yesterday, but it was just an
11 example to illustrate one of those ways. The
12 fact that we raised the blank issue in our
13 report is another way. These things all have
14 to be taken into consideration in validating
15 data.

16 **DR. ANDERSON:** Yeah, I was just trying to step
17 through our task of, you know, how -- how much
18 -- there seems to be a lot of data. The
19 question is -- and that -- I'm not sure it's
20 been resolved. I mean we have a method for --
21 or you presented a method to go through how you
22 would go about validating, but one of the
23 things we have to decide is -- is there valid
24 data --

25 **MR. ELLIOTT:** Is it feasible to even validate,

1 yeah.

2 **DR. ANDERSON:** -- is it feasible to validate,
3 and then when you think in terms of Iowa, if
4 you're left with capping, then is the capping
5 process giving you sufficient accuracy. I mean
6 you've shown you can cap, but the question is
7 how meaningful is that -- that cap, and that --
8 that's why I was trying to sort this out. I
9 mean qualitatively it's -- it's good to hear
10 you've looked at it and it -- it seems, but
11 that's kind of where I'm at at this point.

12 **DR. ZIEMER:** I'd like to pose a question,
13 Larry, or perhaps to Jim. This relates to the
14 missing document from the Health and Safety
15 Lab. I assume there are other annual reports
16 of that type in your data bank or in your
17 collection. Can you characterize the kind of
18 information those reports typically contain? I
19 assume they're not necessarily focused on
20 Mallinckrodt. They would have some sort of
21 summaries from across the complex, or what --
22 what can you tell us? I put you on the spot
23 here, but -- but I -- there are -- there are
24 other such annual reports that you've looked
25 at?

1 **DR. NETON:** Yes, this -- this is the AEC annual
2 report that you're referring to?

3 **DR. ZIEMER:** Well, it's the one -- the missing
4 document that was in -- in the box that was --

5 **DR. NETON:** Right. I think we've summarized in
6 our slide -- maybe Larry -- could you go back
7 to that slide where we talk about what's in
8 there? But in general, these are -- these are
9 broad brush descriptions of the processes, the
10 work force, the general issues that were
11 identified, some summary air sample tables
12 possibly --

13 **DR. ZIEMER:** You would not expect them to
14 contain raw data from Mallinckrodt, necessarily
15 -- or even detailed data from Mallinckrodt.

16 **DR. NETON:** That's correct, these would be
17 upper-tier documents that would rely on more of
18 the raw air sample data, which we believe we
19 have in most cases. So I don't expect that
20 there would be new information that -- that
21 would not exist somewhere else, if that's what
22 you're referring to.

23 **DR. ZIEMER:** Yes, that's -- I wanted to clarify
24 that.

25 **DR. NETON:** Yeah, I'm sorry, I didn't mean to

1 make a --

2 **MR. ELLIOTT:** These kind of reports summari-- I
3 believe you're right, Dr. Ziemer. These kind
4 of reports summarize issues or activities or
5 problems identified across -- across the
6 complex. They're -- they're a roll-up
7 document. There are several other supporting
8 documents specific from a given site that gets
9 rolled up into this general -- general report.

10 **DR. ZIEMER:** What I was kind of getting at, if
11 you're familiar with other reports -- for
12 example, would one expect to find a Mallickrodt
13 section in such a report or would the
14 Mallinckrodt data typically be rolled up
15 statistically with other data, anyway?

16 **MR. ELLIOTT:** I believe the answer to that is
17 yes and no. I think it depends upon the type
18 of incident or the type of issue that's being
19 reported. And if it was critical enough to
20 merit --

21 **DR. ZIEMER:** Special attention.

22 **MR. ELLIOTT:** -- special attention, it would
23 have said Mallinckrodt had this issue going on,
24 be aware of it for the other sites. And in
25 some cases -- and Jim or Stu can correct me if

1 I'm wrong -- there would even be listings of
2 summary data where you may not be able to pick
3 out the Mallinckrodt component of that data.

4 **DR. NETON:** Right, it could be both ways,
5 that's correct.

6 **DR. ZIEMER:** Thank you. Roy DeHart?

7 **DR. DEHART:** In February and again last night
8 and today, the issue of quality and validation
9 of the data has been brought up and discussed.
10 Is there evidence, or perhaps even a
11 suggestion, of issues tied to the quality of
12 the data?

13 **MR. ELLIOTT:** Is there evidence or issues tied
14 to the quality of the data?

15 **DR. DEHART:** Correct. Is -- is the data
16 questioned because of -- of something you have
17 found or something that -- that is missing that
18 would question the quality of that data that
19 you -- you're using.

20 **MR. ELLIOTT:** That's a matter of perspective,
21 of course, but --

22 **DR. NETON:** I think -- could I maybe chime in?

23 **MR. ELLIOTT:** Go ahead.

24 **DR. NETON:** I think you'll find in the 248-page
25 document there's going to be sections that

1 discuss some of the issues that arose over the
2 monitoring practices. I mean this is a
3 standard -- things that happen when you measure
4 samples. I -- I don't believe, I don't think
5 OCAS believes -- I know OCAS does not believe
6 that these issues that are raised rise to the
7 level that would question the ability to use
8 the data for dose reconstructions.

9 **MR. ELLIOTT:** Yeah.

10 **DR. NETON:** For example, I'd like to -- this is
11 a good opportunity possibly for me to address
12 an issue that was brought up last night related
13 to the blank samples. There was a -- it was
14 brought up in the Board discussion and also at
15 the evening session that there was some
16 indication in our profile that blank samples
17 were contaminated, and that's true, and I'd
18 just like to read the relevant two sentences,
19 if I may, that are in that profile that were
20 refer-- being referred to.

21 And I quote (reading) An undated, untitled
22 urinalysis listing found in dose reconstruction
23 project files indicates that closed blank
24 samples were found to have significant levels
25 of uranium in them, indicating contamination in

1 the laboratory. It was suggested that this
2 might explain the high levels of some of the
3 non-blank, parentheses, worker samples. Thus
4 at least some of the early urinalysis samples
5 must be considered to have been potentially
6 contaminated; i.e., some of the uranium content
7 may have come from the laboratory analyzing
8 them.

9 So the issue here is that -- this speaks to the
10 quality control, actually, that they were
11 running what I would call in current parlance a
12 method blank. You run a blank with a -- every
13 so many samples and you want to make sure that
14 you're not reporting erroneously positive
15 results because you may have contamination in
16 the lab. And that appear -- that seems to be
17 what's happened here. So if anything, those
18 blank samples would have -- if there was
19 contamination in the laboratory, would have
20 biased the results for the workers high, not
21 low.

22 So you'll see things like this in here, but
23 again, I've looked through these and I don't
24 believe that any of these rise to the level of
25 really making them unusable for dose

1 reconstruction.

2 **MR. GRIFFON:** Can I just -- Jim, while you're
3 at the mike --

4 **DR. ZIEMER:** Mark?

5 **MR. GRIFFON:** While you're at the mike -- I
6 mean I -- I agr-- I -- I misread that
7 yesterday, and so -- so this may be the case of
8 contaminated equipment in this case on a closed
9 blank. This comes -- from what I understand,
10 this is from one -- one memo --

11 **DR. NETON:** Right, correct.

12 **MR. GRIFFON:** -- and -- and this does speak to
13 my question of feasible to vali-- sort of
14 feasibility, too, feasible to validate. This
15 is one memo about one time period in the lab
16 when they had some high blanks, and -- and they
17 say in that case it would lead to higher --
18 abnormally high -- it almost might be a memo --
19 you know, if you want to be a complete cynic
20 about this, it might be a memo sort of
21 explaining away high results. But anyway,
22 aside from that, it's one memo and -- and my
23 question is do you -- do -- do you have a
24 series of quality control reports from those
25 early lab -- I mean this speaks to being able

1 to go back to the raw data --

2 **DR. NETON:** Right.

3 **MR. GRIFFON:** -- and say okay -- oh, here we
4 have a bunch of low spikes. You know, you
5 might have a situation where all of a sudden
6 for several months they were running spike
7 samples and they were all low, and that would
8 throw your data the other way. So this speaks
9 to my question of the reliability of the data.
10 In this ca-- in this one situation, I agree --

11 **DR. NETON:** Right.

12 **MR. GRIFFON:** -- it would tend to raise your
13 samples higher, but it speaks to the whole
14 question of the reliability and the ability to
15 go back to that source term data, and that's --
16 that's my question, is that feasible in a -- in
17 a timely fashion?

18 **DR. NETON:** Well, if the standard is that for -
19 - 50 years ago we had every sample with every
20 blank and every calibration curve, the answer's
21 no, we're not going to have that.

22 **MR. GRIFFON:** I'm not saying that --

23 **DR. NETON:** But -- but that's what you're
24 suggesting that we need to have, and that's the
25 gold standard. We're not going to be able to

1 produce that. We may have some of it. But I
2 would -- I would suggest that in looking
3 through these records, and having run bioassay
4 laboratories and analyzed tens of thousands of
5 samples in accredited laboratories, the
6 methodology employed here is consistent with
7 good laboratory practice of running blanks,
8 pursuing erroneously high values based on
9 precipitation and -- and calibration standards
10 that you'll see in here. So it gives a good
11 sense that this laboratory was indeed
12 practicing good laboratory practices for what
13 is actually a fairly standard technique. It's
14 been in use for over 50 years for metric
15 analysis of uranium in urine.

16 So I have a comfort level, OCAS has a comfort
17 level with this. We cannot produce every
18 calibration curve in every anal-- you know,
19 reproduce every single result from first
20 principles. That's not going to be possible.

21 **MR. GRIFFON:** No, I -- I'm -- and -- and you're
22 -- you're --

23 **DR. NETON:** And where do you draw the line --

24 **MR. GRIFFON:** -- you're right -- you're right
25 on that. The flip side of that I guess is this

1 paragraph sort of relies on one memo and one
2 instance, and it draws that general conclusion
3 that therefore all results, if they were
4 biased, they could be biased high.

5 **DR. NETON:** Right.

6 **MR. GRIFFON:** So I think that might be stepping
7 the other way. You're relying on one memo -- I
8 -- and I -- I'm wrong -- if I suggested that,
9 I'm wrong. I don't suggest that you could, you
10 know, find all the source data, but I'm saying
11 that that -- maybe more than one quality
12 control report might be useful to get a sense
13 of the -- and maybe you have more, I don't
14 know, but one's referenced here.

15 **DR. NETON:** Yeah, we -- yeah, exactly. We
16 referenced the ones here that appeared
17 relevant. I mean we try to produce these warts
18 and all so that the Board can look at them and
19 eval-- make their own independent evaluation.
20 From my -- from my experience in running
21 laboratories such as this, it's -- it's --
22 contamination's almost always a problem and, if
23 anything, you end up biasing the results high.
24 But that's just been my experience.

25 **MR. ELLIOTT:** I think what we are learning here

1 is that we need to speak to the other source
2 documents as well in the same series, how many
3 did we look at, perhaps. And if this is the
4 only one that raised our awareness and our
5 atten-- draw our attention, that's important
6 for -- for the public and important for this
7 Board to understand, that it's not just one
8 document with this one issue that's brought --
9 and, you know, been brought to attention, that
10 there's a series of documents that we looked
11 at. Maybe we didn't see the whole universe,
12 but what I'm learning from this dialogue is
13 that we need to be a little more comprehensive
14 in our reporting about -- about this kind of an
15 issue. I do know that we looked at more than
16 just this one quality control document.

17 **DR. ZIEMER:** Jim Melius.

18 **DR. MELIUS:** Yeah. First of all I just would
19 concur with Larry's conclusion. Based on that
20 I think it really would be helpful for us to
21 get a better sense of, you know, what's your
22 overall, you know, support for a particular
23 statement or for a particular process or, you
24 know, whatever it may be -- some sort of
25 exposure monitoring system so -- so we

1 understand the depth of that and so forth.
2 My ques-- follow-up question has to do -- sort
3 of a follow-up with what I asked earlier and
4 what Henry -- Henry asked about, and maybe I
5 can ask it more clearly, but as we discovered
6 with Iowa yesterday, there are -- questions
7 come up about sub-- saying -- called subgroups
8 within the cohort or within the -- in the work
9 site based on department, building or job title
10 or whatever, and as to the quality of the data
11 for -- availability of monitoring data for
12 them. And I guess my question specifically for
13 Mallinckrodt is have you gone through a
14 systematic effort to look -- look at the
15 population there and determine whether you have
16 adequate data for, you know, sig-- significant
17 subgroups within the -- the population in order
18 to be able to complete dose reconstructions.

19 **MR. ELLIOTT:** Well, personally I have not gone
20 through the data, Dr. Melius, but --

21 **DR. MELIUS:** No -- no, I'm not asking you --

22 **MR. ELLIOTT:** -- but I -- I believe -- I do
23 believe that -- that the ORAU team and my staff
24 have gone through the Mallinckrodt data to the
25 point that they understand the different job

1 categories, the different tasks that were
2 involved there, and the data that speaks to not
3 only a department but also to those different
4 jobs and tasks and job categories.

5 **DR. ZIEMER:** Jim Neton -- add to this.

6 **DR. NETON:** Maybe I can amplify a little bit on
7 that. We -- we have, as we discussed yesterday
8 and as Larry presented today, monitoring data
9 on the majority of the workers after 1948, so
10 in case -- almost all workers in the later
11 years, so we have that to start with. Now that
12 doesn't mean that that -- those data themselves
13 are going to be able to reconstruct doses for
14 some of the processes such as the filter cake
15 operators and that sort of thing. But we do
16 have air monitoring data to supplement that in
17 many buildings -- in most of the buildings
18 during those time periods. And Dr. Melius, you
19 pointed out yesterday, some of the data the
20 end/N* may be small. That may be true and I've
21 asked for that answer. I'm still waiting --
22 hopefully I'll have that sometime later this
23 morning.

24 But what happens when you do a dose
25 reconstruction is you -- you look at the case

1 under evaluation, and we say is this -- where
2 did this person work, what did they do. You
3 look at -- do they have urine sample data, do
4 you have air monitoring data, and then you --
5 you try to make a determination -- for
6 instance, if the air monitoring data we have --
7 admittedly, if it's sparse -- but if it's
8 enough for that particular case to put that
9 case over 50 percent, then that is sufficient
10 to do a dose reconstruction.
11 Now on the other hand, that end/N* may be
12 small, but at the same time you may say well,
13 let me not just use that one building. Let me
14 take the maximum value in all the buildings in
15 that year and assume the worker inhaled that,
16 and if that value comes out very small, low PC,
17 we have some pretty good confidence that we're
18 forwarding the Department of Labor a dose
19 reconstruction that is useful to them.
20 So you have to take this in context of how the
21 dose reconstruction process works. In that
22 context, though, we have looked at all classes
23 of workers around the building -- around the
24 site and made a determination that as far as we
25 could tell, looking through all these

1 individual scenarios, we can do a dose
2 reconstruction for the workers at Mallinckrodt
3 in this time period.

4 **DR. MELIUS:** Yeah, and -- and just to follow
5 up, is that available in a report? Is that --

6 **DR. NETON:** Well, I think it's -- in general
7 terms, it's in the SEC evaluation report where
8 we -- where we speak to -- we have the process
9 knowledge, we have air monitoring, we have all
10 those pieces of data that allow us to do that
11 type of analysis when we do a dose
12 reconstruction.

13 **DR. MELIUS:** Yeah, but the problem, Jim, and
14 some of it has to do with we're marrying one
15 process that's the site profile --

16 **DR. NETON:** Right.

17 **DR. MELIUS:** -- the individual dose
18 reconstruction process with an SEC, so not sort
19 of faulting you personally or the --

20 **DR. NETON:** No, I understand.

21 **DR. MELIUS:** -- the organization, but the
22 problems -- you make very general statements
23 about this in -- when it's presented, either an
24 overview of the site profile or in the SEC
25 evaluation, and -- and we're trying to look

1 behind that a little bit for the SEC evaluation
2 process and -- and it's hard to do when all we
3 get are general statements. I mean they may be
4 true and they may be fine, but it would be nice
5 to have some document or some documentation
6 that backs that up that's specifically relevant
7 to an SEC evaluation as opposed to the ongoing
8 -- going -- going process, and maybe that's
9 asking too much. But -- but I think it would
10 be -- it would be nice to have and -- and --
11 and the problem is that when we probe behind
12 it, you -- you -- and it may --it may be
13 correct in terms of the site profile process.
14 You know, you -- don't have an answer to that
15 because you've looked at it generally. May--
16 maybe somebody at ORAU has, you know, looked at
17 that who's -- who's done the document and
18 under-- understands the details better, but
19 it's not something that -- that we can see and
20 readily reach conclusions on. It's much the
21 same problem we had with Iowa, though --

22 **DR. NETON:** Right.

23 **DR. MELIUS:** -- fortunately Iowa was, I think,
24 a simpler situation to deal with.

25 **DR. NETON:** Right, but short of having done all

1 the dose reconstructions and demonstrated that
2 we can do every single one, I'm not sure how we
3 could demonstrate that to you other than to
4 provide you these analyses that talk about the
5 quantity of the monitoring data, the quality of
6 it and -- and the process knowledge and source
7 term knowledge that all speak to doing a dose
8 reconstruction with sufficient accuracy. We're
9 trying to flesh out the picture, and I think
10 we've made a very good case that we know the
11 picture very well.

12 **DR. MELIUS:** Well, I --

13 **DR. NETON:** And outside of --

14 **DR. MELIUS:** -- I disagree with that in the
15 sense that -- and I'll give you a specific
16 example, and I know you've already been
17 criticized for this, but the -- this
18 hypothetical example you present isn't helpful.
19 It would have been a lot more helpful -- I'd
20 rather have seen five slides showing specific
21 examples where one would expect or reasonably
22 expect there might be difficulty, you know,
23 because of missing data or the years involved
24 or the department or, you know, sparse data,
25 whatever, that you -- this is how you would --

1 would have done it in those -- in those cases
2 and -- do that, and I don't -- you know,
3 something like that, rather than hypothetical
4 this is how we're going to -- going to do it.
5 And again, that's not sort of appropriate for
6 the site profile, but it is appropriate for SEC
7 evaluation.

8 **DR. NETON:** I don't disagree with you. It
9 would have been better to have that. But
10 again, short of doing that for all 311 cases --

11 **DR. MELIUS:** Well, but --

12 **DR. NETON:** -- it can't be done.

13 **DR. MELIUS:** -- I gave -- tried to give a
14 reasonable number, five, so...

15 **MR. ELLIOTT:** But with -- with that said --
16 with that said, we have the data that we could
17 use to do that.

18 **DR. NETON:** That was the point --

19 **MR. ELLIOTT:** The data exists.

20 **DR. NETON:** -- I was getting at. The data --

21 **MR. ELLIOTT:** That's the point --

22 **DR. NETON:** -- do exist.

23 **MR. ELLIOTT:** -- of the illustration.

24 **DR. NETON:** I agree it would be better to have
25 it done up front. I mean we're not --

1 **DR. ZIEMER:** Let me offer, also, that another
2 report, for example, if it's sorted by job
3 title or whatever, would still be a general
4 report. It's simply another way of cross-
5 cutting what we already have. So aside from
6 individual discrete examples which certainly
7 were helpful when we went through the original
8 process of describing the efficiency process
9 and so on where you took specific cases, that's
10 helpful for illustrating. But whether that --
11 a specific case necessarily says you can do it
12 for all cases, that question is always out
13 there.

14 It seems to me that the information that we're
15 talking about for all these jobs is already
16 contained in what material we have. If -- if -
17 - yes, perhaps if you wanted to look at it a
18 different way and cross-cut it differently,
19 you'd do a different sort on this. But in my
20 mind, the information at least is there.
21 Mike, I think you're next.

22 **MR. GIBSON:** With respect to this information
23 you've found that showed that there was a -- a
24 blank sample with contamination at a -- was
25 there additional information that told you what

1 they did to correct the problem?

2 **DR. NETON:** I have not personally reviewed that
3 memo, so I can't tell you that. But again, if
4 there were -- it was a problem, the indications
5 are that the worker results would have been
6 biased high, so --

7 **MR. GIBSON:** Well --

8 **DR. NETON:** -- I mean that --

9 **MR. GIBSON:** -- I think that depends on what
10 they did with the lab. They also could have
11 very well have increased the minimum detectable
12 activity of the units that read the bioassay
13 samples, which would have masked exposures to
14 employees.

15 **DR. NETON:** But in the way we --

16 **MR. GIBSON:** Is that true?

17 **DR. NETON:** Yeah, a contaminated laboratory
18 would increase the MDA, you're absolutely
19 correct. But in the way we do our work, if --
20 an increased minimum detectable activity would
21 have increased the missed dose that we use for
22 the calculation purposes. The higher -- the
23 higher the minimum detectable activity, the
24 more the missed dose calculation using the
25 internal dose models will be in our -- in our

1 analytical process. But I have not read the
2 memo so I can't speculate as to what they did
3 to correct it is the direct answer to your
4 question.

5 **DR. ZIEMER:** Thank you. Henry, did you have
6 another comment?

7 **DR. ANDERSON:** Just more of a general -- I -- I
8 guess I'm looking as we move forward on these
9 and we look at others that the issue of data
10 validation I think is something you need to
11 think about. And there may be -- you know, you
12 can't do it today, but as you look at others to
13 bring forward to us, I think -- and that's sort
14 of what I think you were referring to. I think
15 there are some issues that are separate from
16 looking at the site profiles that in the SEC
17 petitions it would just give us more to point
18 to if we had that -- some examples or what has
19 been done -- to detail that, I think that'd be
20 helpful.

21 **MR. ELLIOTT:** I agree, I think there are many
22 lessons learned here in these first two SEC
23 efforts that we've brought to you.

24 **DR. ZIEMER:** I saw Dr. Toohey approaching --
25 approaching the mike. Perhaps you have some

1 additional comments on this issue.

2 **DR. TOOHEY:** Well, I have the answer to a
3 question that was asked. We have in the files
4 316 Mallinckrodt cases, 200 Weldon Spring
5 cases. Of those, 110 claimed employment at
6 both sites.

7 **DR. ZIEMER:** Okay, 110 employed both
8 Mallinckrodt and Weldon Springs.

9 **MR. ELLIOTT:** That's our case population now.
10 That doesn't speak to the overall employee
11 population for Mallinckrodt and Weldon Spring.
12 That's just our case population. Right, Dick?

13 **DR. TOOHEY:** That -- that is correct, that's
14 just pulled out of NOCTS, and it's all claims,
15 so it would include some that have already been
16 completed.

17 **MR. ELLIOTT:** I hate to ask another question,
18 but just so we're all clear, we -- you know,
19 the follow-up question to that would be how
20 many of the Mallinckrodt cases worked at other
21 sites besides Weldon Springs, because we
22 probably have a few of those -- a minority, I'm
23 sure, but --

24 **DR. TOOHEY:** Give me about ten minutes and I'll
25 let you know.

1 **DR. MELIUS:** Well, while you're at it, can --
2 just someone tell how many of the Mallinckrodt
3 have been processed already, how many are
4 outstanding?

5 **DR. ZIEMER:** We'll -- we'll get that
6 information. I think Mark is next and then --

7 **DR. MELIUS:** And of those -- of those -- excuse
8 me, of those, how -- how many -- what's the
9 overlap? I mean 'cause I assume there's some -
10 - some of the --

11 **DR. TOOHEY:** Overlap on the sites?

12 **DR. MELIUS:** No, in terms of being processed
13 through the sys-- I assume the 110 haven't been
14 because Mallinckrodt -- 'cause Weldon Springs -
15 - well, I guess you have done some Weldon
16 Springs, so yeah, we'd want to know the
17 overlap, also.

18 **DR. ZIEMER:** Okay. Mark Griffon.

19 **MR. GRIFFON:** Yeah -- yeah, not to be a broken
20 record on this issue, but I -- I think the --
21 the question of the data's there, that -- that
22 raises questions with me and -- and harping on
23 the validation issue, I know I'm harping on it
24 probably, but I -- I -- I think it's important
25 to remember -- you know, one reason NIOSH is

1 involved in all this is that a lot of people in
2 the public, a lot of claimants right now, have
3 concerns or issues with DOE's data, with
4 database data that's been used for previous
5 studies, and -- and you know, one of my fears
6 coming through this whole process has been that
7 we don't want to just regurgitate the same data
8 without independently -- and this is this NIOSH
9 independence -- independently going in and
10 validating it.

11 Now I -- I know that -- that, you know, Jim and
12 Larry indicated it was more than one memo
13 regarding quality. I have to trust them -- you
14 know, 'cause we -- we just haven't had any more
15 depth on that issue, but I think that is --
16 that -- that's why I raise it so often, because
17 this is database data from the CER database
18 used for epidemiological studies. Without
19 going back one step, you know -- you know, it
20 may be very -- it may be perfectly valid, but
21 we -- you know, I think that was one reason
22 that NIOSH was put in this role as -- to sort
23 of have that independent look back to the raw
24 data, at least -- and I'm not saying all raw
25 data, but at least to the extent that you can

1 validate those database data that you're using.
2 The second thing I wanted to point out that --
3 that I -- I am very happy, actually, in this
4 profile and Jim's discussion of -- of -- of --
5 'cause I pushed for this often, this concept of
6 using air sampling and the urinalysis data to
7 sort of check and see if urine intakes sort of
8 are in the same ball park. That kind of a
9 process is a good one, so I do appreciate that
10 effort and there's a lot of data there. I
11 guess the -- the time -- the problem that I'm
12 having is that, you know, where we're at today
13 is, you know, can we -- can -- can I make a
14 judgment on -- on the validity of -- of the
15 data being used, and that's -- that's where I'm
16 sitting here today and it's -- it's different
17 than reviewing the site profile, that we're in
18 a petition evaluation process, so that's what
19 I'm stuck on and I don't know that I have all
20 the facts to answer that, which is making it
21 difficult.

22 **MR. ELLIOTT:** Can I make a comment on Mark's
23 first point? We -- we do take that very
24 seriously, that -- that -- we see that as a --
25 not only a responsibility but an obligation to

1 provide an independent review. And I'd just
2 offer this, Mark, as you -- as I think the
3 Board knows you know, we're not just relying on
4 CER data. Each case that comes in, we go back
5 to DOE and we ask for the original badge or
6 urinalysis data. We don't accept annual
7 summary data. We don't accept roll-up data.
8 We want to see the original badge and
9 urinalysis or whatever source readings that we
10 can get, and we use those. We do not -- you
11 know, we don't trust the -- the roll-up, the
12 cumulative summary, the annual reporting data.
13 That's -- just so you know.

14 **MR. GRIFFON:** (Off microphone) Yeah, and Dick
15 mentioned (unintelligible).

16 **DR. ZIEMER:** Jim Neton?

17 **DR. NETON:** Well, I wasn't going to address
18 what Larry was, but I was going to say that on
19 top of that, though, we have -- we're
20 developing -- you know, we're doing a couple
21 hundred sites at the same time, and -- and it
22 turns out that the Health and Safety Laboratory
23 was -- was intimately involved in many of the
24 AWE or DOE type early operations, and so we are
25 developing some knowledge base about the

1 processes and methodologies that were used.
2 And I can speak directly to the air sampling
3 analysis. That was questioned early on in the
4 Mallinckrodt review. We have gone back and
5 done some very extensive digging into that.
6 AEC -- HASL -- was involved in the air sampling
7 program there, so we're -- we're developing a
8 comfort level with the techniques, the Whatman
9 41 filtration, the correction for self-
10 absorption, the -- you know, the quantity of
11 the air samples through the filters, breathing
12 zone versus general area, so we're developing a
13 very good picture of what was done in those
14 areas. So we have the air sampling data. We
15 believe we have a very good picture of how some
16 of the samples were analyzed.
17 Now -- I see Mark is thumbing through the
18 profile -- I'm sure there's some early
19 indications in the '40's of some ion plate
20 measurements that may or may not be valid, but
21 once you get to the '49 time frame, you're
22 really talking about typical scintillation-type
23 counter measurements, a HASL counter, Cassidy
24 counter some of you may know it by, so we have
25 those data. So again, we can bracket that,

1 bounce that up against the urine data that we
2 have, and even the fluorometric methods were
3 done at some time periods in the '50's at HASL
4 and so we -- we can have some comfort that they
5 were providing guidance from the University of
6 Rochester as well as the Barnes Hospital data.
7 And so, yeah, we're trying to do that to the --
8 as best extent we can.

9 **MR. GRIFFON:** I -- I was scolded so I didn't
10 get to the table I wanted to --

11 **DR. NETON:** I'm sorry, I didn't mean to censor
12 your -- censor --

13 **MR. GRIFFON:** That's okay, I won't -- I won't
14 (unintelligible). This is more of a follow-up
15 'cause -- 'cause Dick Toohey did mention
16 yesterday that a lot of the individual DRs you
17 have their individual data. Do you have any --
18 and probably not at your fingertips, I -- I
19 understand -- any idea of the percentage -- and
20 I guess for '49 to '57 is our time period of
21 interest -- how much of that raw -- the raw
22 records are you getting in these -- in your
23 requests 'cause I think that's important to
24 us...

25 **DR. TOOHEY:** Yeah, off -- off the top of my

1 head, I do not know the answer to that
2 question. What our procedure is, when we get
3 the DOE submittal and it appears to be
4 incomplete -- which may be all the way from
5 monitoring for a lot of years but not for a
6 couple, or no data at all -- then we go to the
7 CER database and search on name, Social
8 Security number, whatever, for data that's in
9 our database to see if the previous
10 epidemiology study captured that data and we
11 can plug it in. But what --

12 **MR. GRIFFON:** I guess that -- that was sort of
13 --

14 **DR. TOOHEY:** -- what fraction of those that
15 represents, I don't know.

16 **MR. GRIFFON:** Okay.

17 **DR. TOOHEY:** My -- my -- I -- I know in general
18 terms what it is, and it's about 20 percent or
19 so where we need to go into another source of
20 monitoring data and attempt to capture it.

21 **MR. GRIFFON:** That's general terms for
22 Mallinckrodt or...

23 **DR. TOOHEY:** No, general terms for --

24 **MR. GRIFFON:** Oh, okay --

25 **DR. TOOHEY:** -- the small -- I'll say the,

1 quote, smaller sites.

2 **MR. ELLIOTT:** Does that include AWEs?

3 **DR. TOOHEY:** Yes. Well --

4 **MR. ELLIOTT:** See, AWEs are a --

5 **DR. TOOHEY:** -- generally AWEs --

6 **MR. ELLIOTT:** -- whole different bag of worms.

7 **DR. TOOHEY:** -- we get no data.

8 **MR. ELLIOTT:** You get no data for AWEs --

9 **DR. TOOHEY:** Exactly.

10 **MR. ELLIOTT:** -- by and large.

11 **DR. TOOHEY:** But what we've then been able to
12 do in data capture trips where we've gone to a
13 health and safety lab or records repositior and
14 found some of this data, we've now scanned that
15 in and entered it and linked it to the
16 claimant.

17 **MR. ELLIOTT:** Let me be clear on what I just
18 said. For AWEs, DOE doesn't help us out. We
19 get no feedback for AWEs from DOE, so we're
20 left on our own devices and the data that we do
21 get for AWEs is, as Dick says, through our own
22 capture efforts, through our own search and
23 retrieval efforts.

24 **MR. GRIFFON:** Well, I -- I guess that's --
25 that's sort of an important question in my

1 mind. If you had, you know, 80 percent of --
2 of the people for this '49 to '55 time period
3 had individual -- along with the CE-- you know,
4 you could -- you could mostly rely on the
5 individual data, and only 20 percent you had to
6 go ba-- you know, that -- I think that would
7 play an important role in this -- in our
8 discussions -- deliberations. I know that -- I
9 know you don't have that answer, but...

10 **MR. ELLIOTT:** We don't stop when we don't get a
11 response from DO-- or when we -- DOE says we
12 don't have it, we go back and we push them
13 again until we are satisfied they can't find
14 it, they don't have it or it's lost.

15 **DR. TOOHEY:** Well, again with the caution, to
16 the best of my knowledge and belief at this
17 point in time, I don't think we have any cases
18 of claim files missing data where we did not
19 have something on that file in the CER
20 database. The CER database I think is more
21 complete than the DOE submittals we're getting,
22 claim by claim.

23 **DR. ZIEMER:** Thank you. Gen Roessler?

24 **DR. ROESSLER:** You've mentioned the HASL
25 laboratories, not only the importance in this

1 project but -- or this site but others, have
2 you had -- I'm trying to do a little mental
3 arithmetic here to think of how old these
4 people would be now who were responsible back
5 at that time, and I think they probably are
6 still around. Have you had access to any of
7 the people who were setting up the procedures?
8 Have you been able to talk to them and ask them
9 any questions with regard to their goals and --
10 **DR. NETON:** Yes, we've -- we attempt, where we
11 can, to do that. And I think I presented some
12 indication at the Bethlehem Steel presentation
13 that we discussed this with Naomi Harley, Dr.
14 Harley, who was -- must have started when she
15 was five years old there because she's still
16 very much young, but she has provided us some -
17 - some input. She actually measured the -- the
18 air samples at many of these early facilities
19 and gave us a pretty good description of the
20 quality control practices of those
21 measurements.
22 We're trying to contact Al Breslin, who some of
23 you may know. He's still living in New Jersey
24 somewhere, but we've not been able to contact -
25 - he was the architect of the early AEC/HASL

1 air sampling program. We have indications of
2 write-ups by him in the '60's speaking to what
3 the process was early on, but we felt it would
4 be better to get it directly from his mouth.
5 Some of you may know Sue Pazanne*. She was not
6 there directly in those time periods, but she
7 is a well-respected radiochemist who has quite
8 a bit of institutional knowledge about past
9 activities at HASL.

10 We have been there. We visited the laboratory.
11 I have sort of a unique situation that when I
12 was at New York University obtaining my
13 doctorate, there was a very excellent
14 collaboration between New York University and
15 the Health and Safety Laboratory in lower
16 Manhattan, so we -- we communicate fairly
17 regularly with those folks.

18 **MR. ELLIOTT:** We actually had Naomi write up a
19 description of the procedures and the practices
20 as she could recall and we presented that doc--
21 I think that's -- that was for Bethlehem Steel,
22 but it's applicable for this situation.

23 **DR. NETON:** Right, and we've also been to the
24 HASL facility twice now for -- for data capture
25 efforts, to collect records and also to look

1 for procedures. Some of the early procedures
2 are actually still available, but not many.

3 **DR. ROESSLER:** I think from my perspective in
4 health physics, HASL has been around for a long
5 time, has a very, very good reputation. I
6 can't say specifically on this site, but a very
7 good reputation for running reputable, credible
8 laboratories.

9 **DR. NETON:** I will have to qualify that,
10 though, and say that HASL does have that
11 reputation, but they did not do all the
12 analyses at Mallinckrodt, just to be -- to be --
13 -- let the record show that. But I would say
14 that one reason we have some comfort is after
15 '49 much of the health physics work at
16 Mallinckrodt was done under the tutelage of the
17 HASL folks, which gives us a little more
18 comfort there.

19 **PETITIONERS**

20 **DR. ZIEMER:** I think we perhaps are ready to
21 move on and hear from the petitioners, and I'd
22 like to thank you, Larry, for your
23 presentation. I'd like to turn the podium over
24 to Denise Brock at this time, representing the
25 petitioners.

1 **MS. BROCK:** I would like to thank the Advisory
2 Board for again affording me time on another
3 busy agenda, and I'd also like to commend the
4 Board on their decision and expeditious
5 recommendations to the Honorable Secretary
6 Leavitt on the SEC petition regarding
7 Mallinckrodt years of 1942 to '48.

8 I'd also like to thank Dr. Lew Wade, Dr. John
9 Howard, the OCAS staff, NIOSH staff, Department
10 of Labor, as well as Senators Bond, Talent,
11 Harkin and Grassley, along with all the members
12 of the Missouri and Iowa Congressional
13 delegation who have been so helpful in this SEC
14 process.

15 I'd also like to state that I wrote this
16 statement a few days before I even came here,
17 and since we were here and we've heard
18 statements from other people in the audience
19 and myself, a lot of this is going to be
20 repetitious, so please excuse me for that, but
21 it's going to be too hard for me to kind of
22 pick and choose through it.

23 I've also interjected some notes, even on
24 notebook paper, so kind of bear with me with
25 some of this.

1 Twenty-seven years ago yesterday while I was at
2 school, my father died in my brother's arms. I
3 remember waiting for the school bus that
4 morning. I yelled goodbye, but my dad didn't
5 answer. And I decided, for whatever reason, I
6 was going to wake him up so I walked back to
7 his room. I didn't really care if I missed the
8 school bus. I was probably actually hoping I
9 would, and I -- I walked back to his room. His
10 oxygen mask was on and the room was cold and
11 kind of damp. It always felt like that, even
12 if the sun would come in through the windows.
13 I always remember that feeling. So I said
14 goodbye to him again out loud and I still
15 didn't get any response. So I leaned down and
16 I shook him and he woke up, startled. And I
17 said bye, Dad, I love you. And for the last
18 time in my life my father looked me in the eyes
19 and said goodbye, my girl, I love you. Several
20 hours later, while I was at school, my brother
21 came to my classroom and told me that my father
22 had died. Sorry.

23 I find it so ironic standing here before you
24 today so many years later asking for justice
25 for my father's coworkers. I've heard that we

1 are all put on this earth for a reason. I
2 don't think I'm here by coincidence. I don't
3 think it was just happenstance that in 2001 I
4 heard about this program. I was blessed. I
5 feel like, for whatever reason, God let this be
6 my purpose, and I just hope my dad can see me
7 and I hope that he's proud.

8 As I stated in my previous statement in St.
9 Louis, my father worked at Mallinckrodt from
10 1945 until 1958. He died at age 52, but not
11 before years of pain and suffering from his
12 radiation-induced cancer. My mother,
13 thankfully, has been compensated under this
14 program. And I'm here today, as I was in St.
15 Louis, not asking you for compensation for my
16 family or for myself, but for those workers and
17 survivors who cannot, for reasons of health or
18 finances or who I've stated before cannot begin
19 to fathom the complexity of this program.

20 I'm here to honor the memory of my father and
21 the coworkers who will unfortunately never see
22 or hear an admission of guilt, nor receive an
23 apology or payment. I'm here to ask the Board
24 to consider my statements, my findings and my
25 pleas in the decision that they must render

1 regarding the remaining years of 1949 to 1957
2 requested in my SEC petition, 00012.

3 And I'm not here to deny that NIOSH has a
4 collection of Mallinckrodt data. I am here to
5 state that what data exists possibly has major
6 credibility issues. I'm also here to say that
7 quantity of data does not necessarily mean
8 quality of data.

9 Mallinckrodt was the first U.S. feed material
10 processor for the United States atomic weapons
11 program for World War II. Their work began in
12 1942 by producing a ton of pure uranium a day.
13 Mallinckrodt remained a prime contractor for
14 processing until 1957 when the last
15 Mallinckrodt plant closed and the last of its
16 employees in those operations were terminated.
17 Mallinckrodt hired at least 3,500 employees,
18 and they were assigned to these secretive
19 operations for a varying length of time, having
20 multiple job titles and descriptions during
21 this time period. The workers at Mallinckrodt
22 who helped build this atomic pile helped win
23 the cold war, and they gave their lives for
24 their country, and they're known to be among
25 the most highly exposed workers to internal and

1 external radiation in the entire history of the
2 United States Atomic Energy Commission.
3 By NIOSH's admission, many of these workers
4 worked long enough at appalling concentrations
5 of alpha-emitting dust to accumulate more than
6 a permissible lifetime inhalation exposure. I
7 would like to restate again for the record that
8 I respectfully disagree with the NIOSH
9 conclusion that it is feasible to estimate dose
10 for this time period.
11 NIOSH's position is that HASL did its own
12 monitoring, and this means that there is
13 verification on the Mallinckrodt data that was
14 not in place prior to 1949. Again I'm
15 unpersuaded that the post-1949 data is any more
16 credible than that of Mallinckrodt's.
17 SC&A's audit report for Rev. 0 notes that there
18 were dramatically different results for
19 monitoring by Mallinckrodt and HASL of the same
20 exposures. HASL data is higher in 15 cases and
21 lower than Mallinckrodt in 12 cases. This is
22 according to the chart in the SC&A audit report
23 Rev. 0. If I understood correctly, NIOSH is
24 actually using the lower on HASL than -- than
25 the higher ones on Mallinckrodt, if I

1 understood that correctly. And on page 77 of
2 Rev. 1 on the TBD, '50 to '54 it says it's
3 unclear who actually did the urinalysis,
4 whether it was Barnes or the AEC. So we cannot
5 answer the question on who has reliable data or
6 whether it's reliable at all. And this does
7 not change the fact that there is evidence to
8 doubt the credibility of any of this data due
9 to the huge liability concerns of all involved.
10 I'd also like to restate from the February
11 meeting that there is no isotope-specific
12 monitoring for raffinates. There was frequent
13 exposure in plant six to these raffinates whose
14 pathways for uptakes are not well understood.
15 And I don't want to go into again -- Richard
16 Miller touched on that yesterday about the lime
17 and the exothermic reaction that happened, so I
18 think you've all heard that I just don't feel
19 the need to go back into all that.
20 But I do think that because of this reason and
21 being no isotopic-specific urinalysis to
22 quantify any raffinate uptakes, and the burden
23 of proof on NIOSH is so high to establish
24 internal dose, that this is the circumstances
25 that Congress created the SEC, at least part of

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it.

As noted above, the TBD does not address internal and external radiation dose from open wounds and burns, which I stated in the past workers have testified to and stated that it was quite prevalent. I was present at an SC&A interview with workers and I did videotape that. The workers discussed these burns, these acid burns and the open wounds, as well as numerous other things and -- I mean it wasn't limited to incidents or occurrences. They talked about a lot of things. I actually have a lot of these tapes and have offered those to NIOSH to share with their staff and the Board. In the SEC petition evaluation report, SEC 00012-2, page 3, NIOSH is seeking the advice of the Board for the time period of 1949 to 1957. It also states that any documentation that raises questions concerning the integrity of data management or reporting at Mallinckrodt helps sustain the lack of credibility accorded by the Mallinckrodt claimant population to the government concerning the employees' radiological exposures at Mallinckrodt and concerning the dose reconstruction program

1 under the EEOICPA.

2 One of the issues brought to the Board's
3 attention by NIOSH at the St. Louis meeting was
4 an August 1975 memo titled "Notes and Summary
5 of Visit by M.E. Mason, August 1975." This,
6 according to NIOSH, disputed a 1972 memo from
7 Mont Mason to Dr. Thomas Mancuso in where Mason
8 states his concerns about the possible
9 destruction of records identified as shelf list
10 V2161. NIOSH further believed that the August
11 1975 memo confirmed the conclusion that these
12 records were not only found, but complete. And
13 even if NIOSH would be in possession of these
14 records, it still does not speak to the
15 credibility nor the completeness.

16 Since that February meeting, after NIOSH told
17 the Board and the petitioners and the public
18 that this particular memo was referencing to
19 the records with the shelf list of V2161 and
20 that they were in possession of such, they've
21 now stated that their initial beliefs were
22 wrong. This information can be found in the
23 supplement to Mallinckrodt SEC Petition
24 Evaluation Reports.

25 This obviously raised another red flag with me.

1 The memo was withheld until NIOSH was compelled
2 at the February meeting to produce it. There
3 was so much commotion over this revelation over
4 this particular memo, and it was trying to
5 discredit the memo that was in my petition.
6 The initial findings of NIOSH were obviously an
7 assumption and have now been changed. NIOSH
8 now claims to have since recovered a records
9 transmittal and receipt form from the Federal
10 Records Center which appears to identify the
11 contents of shelf list V2161. It actually says
12 "appears". What does appears mean, exactly?
13 Is this V2161? I've noticed it says 21, 22,
14 23, 24. I mean if it is, how do we know it's
15 complete? How do I know? How does NIOSH know?
16 How do we know it hasn't been altered or
17 tampered with? And how do we know that NIOSH
18 is not going to come back in a month from now
19 and state that this wasn't it or that there's
20 extra -- extra information or extra data?
21 NIOSH also states in the supplement that
22 because this records inventory form did not
23 include actual exposure or process information
24 of possible relevance to the development of the
25 Mallinckrodt site profile, it was not grouped

1 with other records that were identified as
2 relevant for that purpose. NIOSH also claimed
3 that this memo somehow proves that the latter
4 years of the record/data keeping at
5 Mallinckrodt are above reproach because HASL or
6 the AEC was involved.
7 This document, in my mind, does just the
8 opposite. It confirms my views that there are
9 numerous problems and inconsistencies. It also
10 confirms that there remains much uncertainty
11 about the validity and completeness of data for
12 not just the '42 to '48 time frame, but the
13 remaining years. And as far as the AEC, as I
14 stated at the February meeting, they allowed
15 this operation to continue with unacceptably-
16 high levels and saw it as an opportunity to
17 experiment on worker population and not as a
18 moral outrage.
19 My first thought on this memo is that it's not
20 authored by just one person. The first page
21 speaks about Mason in the third party in three
22 separate statements. The first statements
23 says, and I quote, I can make a study without
24 the AEC NYO documents but they are authentic
25 references above the level of contractor bias

1 or Mason shortcomings, end quote. Number two,
2 I quote, Becher-Mason conflict about usefulness
3 of Mallinckrodt U.U. shortcomings, unquote --
4 I'm sorry, numbers as an indicator of body
5 burden, end quote. Number three, Becher argues
6 that I am contradicting myself in that at
7 Weldon Spring Mason used U.U. values to report
8 exposure to AEC in compliance with regulations
9 of 100 CFR 20.

10 This not only shows that Mason clearly is not
11 the author at the beginning of this memo, but
12 clearly speaks to the contractor bias.

13 NIOSH again is assuming that Mason authored
14 these notes. NIOSH also states in their
15 supplemental issue response that Dr. Mancuso
16 ran out of funding and his study for the
17 Mallinckrodt populations workers (sic) was not
18 completed or released.

19 Dr. Mancuso was terminated. He was
20 blackballed. His findings or conclusions on
21 the studies he did were inconvenient for the
22 AEC. When they hired him I understand that
23 they were so sure that he was going to come
24 back and be government-friendly, they actually
25 referred to it as Mancuso's Folly. When his

1 conclusions were not as they wished, Mason
2 actually had to take his findings and move
3 those to other places. Many years later I
4 believe he was exonerated, but I believe that
5 he had years of problems with the Atomic Energy
6 Commission, and that was due to, again, the
7 conclusions that he had that were inconvenient
8 or not AEC-acceptable.

9 NIOSH states that based on their review of the
10 1975 Mont Mason notes, the context of those
11 notes and the review of the data, NIOSH found
12 no issues that would prevent dose
13 reconstruction. I wonder if I'm reading the
14 same notes, because this memo solidifies and
15 confirms the many uncertainties that exist
16 regarding the Mallinckrodt population and any
17 data which exists.

18 On the first page of the August 1975 memo there
19 are several different opinions on what numbers
20 or data are even useful. On the second page
21 the author states that the broad subject of
22 measurement of internal depositions, the value
23 of urine bioassay in assessing body burden, the
24 relative worth of body gamma counts versus
25 urine and fecal bioassay is as old as the art

1 of health physics, and older in industrial
2 hygiene.

3 On page 77 of Rev. 1, the top paragraph again
4 states it's even unclear who did the urinalysis
5 on Barnes and Mallinckrodt. I also have a 1951
6 memo that was attached in my petition that
7 actually tells Mallinckrodt to stop sending
8 urine samples for a certain time period because
9 the lab was overworked.

10 The 1975 memo also indicates that there are
11 large numbers of these employees whose records
12 did not list them by Social Security number and
13 then later had to be manually cross-matched,
14 still leaving some out. One must account for
15 human error. We have no assurance that there
16 is complete or accurate data for any individual
17 Mallinckrodt employee, and neither does NIOSH.
18 There is serious question as to the credibility
19 and completeness of this entire Mallinckrodt
20 data.

21 My daughter had a call from a worker who told
22 her he was having a difficult time getting his
23 records from Mallinckrodt or the Department of
24 Energy, wanting to see individual records or
25 whatever he had. Come to find out, he found an

1 old badge that he had been assigned, and the
2 badge had his Social Security number on it, but
3 actually had the wrong middle initial. So he
4 remembered talking to his supervisor at
5 Mallinckrodt and they had actually discussed
6 some of his records being mixed up with either
7 his brother's or somebody else's. And we've
8 noticed through other workers a lot of times
9 their records would say, for example, R. Jones
10 -- and maybe that would be Ralph, and then
11 you'd have a Richard Jones. And when you have
12 to cross-match these things, there was concern
13 that perhaps people's Social Security numbers
14 with the name, with the data, were all being
15 confused. And if anybody's interested, my
16 daughter had written something up, has a copy
17 of that gentleman's badge and all the
18 information that was needed and it's actually
19 been notarized.

20 NIOSH provided a summary of what was in the
21 five boxes that they have retrieved. Box one
22 is approximately 75 percent film badge
23 readings, many of which -- according to NIOSH -
24 - are duplicative and already have been
25 addressed in the TBD. Data from '46 to '49 has

1 already been incorporated. They state that
2 some additional documents that support dose
3 reconstruction can be incorporated into the TBD
4 -- can be incorporated -- but that '53 to '58
5 time period is not yet incorporated, which this
6 information is largely specific to particular
7 operations. It can be incorporated into the
8 next revision of the TBD. How many times are
9 we going to revise this? Again, I understand
10 it's a living document, but these workers are
11 dying. They don't have years to wait for this.
12 The remaining 25 percent is air sampling data,
13 breath analysis, et cetera -- but for what
14 years and for whom, and is this already
15 incorporated?

16 Box two and three are insignificant to this
17 petition because it retains Weldon Spring
18 information.

19 Box four is Mallinckrodt dust studies and
20 annual uranium urine results for '48 to '58.
21 To that I must again state garbage in is
22 garbage out. How do we know the credibility of
23 this data? We already know that zeroes were
24 recorded for dust and urine when no tests were
25 even taken. And checking for uranium in the

1 urine does not account for other things such as
2 thorium or plutonium.

3 And as far as the plutonium -- I'm actually
4 looking for something; give me a minute here.

5 (Pause)

6 In Rev. -- it looks like Rev. 0, page 23 of 32,
7 and I'll just take a part of this out of here -
8 - there may have also been trace radiological
9 impurities supplied, uranyl nitrate,
10 hexahydrate, recovered from separations
11 operations at Hanford and sent to either -- to
12 K-65 or Mallinckrodt for processing. SC&A
13 review of Rev. 0, pages 43 to 44. NIOSH has
14 not found any data on these operations. Page
15 29. And I'm wondering if NIOSH has actually
16 investigated that to see if in fact there was
17 plutonium.

18 As I stated, I have several workers that feel
19 that there was plutonium at the Destrehan
20 Street site.

21 Box five is 75 percent Weldon Spring film badge
22 and the remaining 25 percent is film badge for
23 Destrehan during '46 to '49. This is largely
24 not applicable. I already have a cohort from
25 '42 to '48.

1 I'm curious if there's been any detailed
2 discussion or explanation on what is in these
3 boxes. Does NIOSH findings -- are they the
4 same as with the TBD. And I -- I don't know if
5 it's been assessed -- I think Larry may have
6 just discussed this -- and by who or if there's
7 been any individual assessing of this --
8 independent.

9 Back to the August 1974 memo, page 6 continues
10 to talk about disagreements and information not
11 matching. Page 8 of this memo refers to the J
12 factor. In the same paragraph it states, and I
13 quote, other adjusting factors were used in
14 calculations to produce an I index value for
15 each person where I equals 100 was presumed to
16 equate to a potential lung dose of 600 rem from
17 alpha dust.

18 Well, no wonder the company and the AEC had
19 liability concerns. In my petition there is
20 substantiating documentation as to these
21 concerns and in graphic explanation as to
22 allowing these employees to get to levels
23 sometimes in excess of 1,000 rem to the lung.
24 I understand that the annual limit at the time
25 was 15 rem, a standard set by the AEC. But yet

1 by their own admission they allowed these
2 workers to be exposed to over 40 times the set
3 amount before even addressing the problem.
4 In my SEC petition I submitted a memo dated
5 10/3/1972 to Dr. Mancuso from Mont Mason. The
6 third paragraph reads both Mallinckrodt and the
7 AEC were mindful of the sensitive human
8 relation problems and the health department
9 bent over backwards to gain and hold the
10 confidence of rank and file, as well as union
11 representatives.
12 It goes on to refer to a 1949 dust study and
13 subsequent removal of a number of over-exposed
14 workers, and it then reads, and I quote, every
15 action, every statement by management was
16 carefully thought through. Carefully drafted
17 explanations and responses were prepared in
18 advance of announcing the transfer of people.
19 Managers, supervisors, medical staff and health
20 department staff were all coached and
21 coordinated. As part of caution and on the
22 advice of attorney, a formal report was never
23 prepared on this study. Thus there is no
24 document to subpoena, only a list of names and
25 numbers and work sheets. There was no lengthy

1 description of the basis for calculations to be
2 pulled apart by the scientific community, with
3 the possibility that such controversy would
4 undermine confident -- employee confidence in
5 the company's safety measure, end quote.
6 Is not NIOSH and ORAU a scientific community?
7 And are we to believe that after all of the
8 lies, the cover-up, the mishandling of data,
9 the liability concerns, that just because HASL
10 has oversight that the surge of conscience and
11 transparency and honesty just happened all of a
12 sudden for these latter years? This was a
13 joint effort to keep these workers in the dark
14 and to quell any liability issues at that time
15 or in the future. The mind-set of Mallinckrodt
16 and the AEC was horrific.
17 As one reads through the remaining pages of the
18 August 1975 memo that NIOSH has found, it
19 appears repeatedly that the data are much in
20 question. It seems as though the data has been
21 reworked consistently. On page 23 there's
22 reference to either Becher or Mason authoring
23 at least this and the following pages, but I've
24 yet to ascertain which one of those gentlemen
25 actually did that. This entire document

1 illustrates the multi-faceted problems in
2 collecting data, recording it at different
3 times in different ways using different
4 practices, and then trying to keep it all
5 together. It confirms that there are multiple
6 opinions as to the quality and completeness of
7 any of this.

8 I don't want to insult anybody's intelligence
9 by reading aloud from that or to con-- and
10 continue quoting from the memo. I know that
11 you've all probably had an opportunity to read
12 it, and I'm quite sure that everyone has taken
13 note of the numerous issues that I have.
14 I would, though, like to call your attention to
15 a memo of January 31st, 1951 from Eisenbud to
16 W.E. Kelley -- or from Eisenbud to W.E. Kelley
17 states about a year ago you asked if we -- if
18 it would be possible for us to estimate our
19 potential liability among the long-term
20 Mallinckrodt employees. As I explained at that
21 time, you presented a rather knotty problem,
22 one which, in the present state of knowledge,
23 would not be answered even to a first
24 approximation. This memo again was a 1951
25 memo.

1 I understand that SC&A have only been able to
2 do a partial review for Rev. 1, so it's
3 impossible for me as a petitioner to prepare my
4 case and have further quality arguments and
5 reference to a site profile when our auditors
6 haven't been given a chance to complete the
7 work.

8 It puts me at a distinct advantage (sic). I
9 can't not (sic) argue or comment without
10 reading and reviewing these TBD shortcomings.
11 I realize that SC&A did the best they could,
12 but because of this revelation of Iowa's cohort
13 being withdrawn from them and it had to be
14 reviewed again, it put me and my claimants at a
15 disadvantage, as well. It was kind of put on a
16 back burner, and SC&A were -- were trying to
17 look at these at the same time, so it was
18 rather difficult. It put us all kind of under
19 the gun, so it made it really difficult for me.
20 I was finally able to take a look, obviously,
21 at the partial report. But I actually have a
22 to-do list that I want to talk about in a
23 little bit that NIOSH has.

24 I have another concern about the sperry cake
25 and the issue of the dermal contact. I believe

1 that there were no specific numbers in
2 reference to that. We know that dose
3 consequences from exposure raffinates are
4 significant. Routine inhalation of even a
5 milligram quantity of sperry cake, one
6 milligram per month over a few years, has a
7 potential for significant internal radiation
8 dose, notably to the bone surfaces and the
9 lungs. Thorium 227, the main decay product of
10 actinium 227, is a potential concern for the
11 lung dose, as well.

12 Dose from the radionuclides has not been
13 evaluated in any of the documents I've seen,
14 and I don't see anything in Rev. 0 to help
15 answer that, nor -- I don't think there's
16 anything in Rev. 1.

17 I don't really understand a lot about the 95
18 percent confidence level, but I want to know if
19 I understood correctly that workers who were
20 marginally exposed were averaged down. It
21 looked like the time-weighted averages
22 discriminated against them, and that's a
23 concern for me, as well.

24 And I obviously have no background in health
25 physics, but I can read. And I know that Janet

1 Westbrook from the beginning has stated that
2 NIOSH could dose reconstruct the entire
3 population of Mallinckrodt workers. She's
4 opposed this SEC from the beginning. I also
5 know that in Rev. 1 from the beginning she's
6 stating that dose can be performed from '42 to
7 '48, and I guess I just didn't understand that.
8 I understand now that it's been addressed.
9 But something as simple as work hours is
10 incorrect, at least the way I look at it in
11 Rev. 1, it looks as though these workers were
12 working maybe five days a week, maybe six days
13 a week at -- at 40 hours or 44 hours. That is
14 incorrect. My workers have told or the
15 survivors' workers basically state that they
16 worked seven days a week, 40 plus hours. That
17 might be one of the few things that survivors
18 know, but one of the few things. And the
19 workers that are living always state to that
20 fact.
21 I'd like to talk about the splitting of this
22 petition again. I know we brought this up or I
23 brought it up in February, but by breaking this
24 up into these subclasses has serious equity
25 issues. For example, if I have a worker that

1 worked in 1947 and worked his 250 days and he
2 has one of the 22 SEC cancers, he has a
3 coworker that started in 1948, but he's missing
4 that 250-day mark, I would have to go back to
5 these workers and try to explain to them how
6 their coworker was able to have that same
7 cancer and job and be compensated in an
8 expeditious manner, and they're not covered.
9 There just -- it does not seem equitable to me
10 and it's very difficult to have to try to
11 explain it. I don't think there is an
12 explanation.

13 For the record, I would also like to talk about
14 coworker data and survivor claims. I also
15 wanted to state, in reference to that, that
16 when I sent in the original claim for my
17 mother's claim I happened upon something called
18 a Leo Goodman incident report. It's been so
19 long I don't remember exactly what was in that,
20 but there was some information, probably two or
21 three things, in reference to incidents or
22 occurrences at the Mallinckrodt site. I
23 noticed when I was reading through NIOSH's
24 things that they had never heard or found
25 anything in reference to any incident at

1 Mallinckrodt, and I just don't think that's
2 accurate.
3 I've sat through telephone interviews with
4 these survivors -- and granted, they don't know
5 much. You're talking about people that are in
6 their seventies or eighties who have years and
7 years ago heard from a spouse that they were
8 involved in some sort of accident, and that's
9 usually how they refer to it, an accident. So
10 during this telephone interview the NIOSH CATI
11 question is raised to the survivor and claim --
12 you know, claimants in reference to this
13 accident or occurrence. And if by some stroke
14 of luck a survivor can remember their spouse
15 telling them about a situation, they're asked
16 specifics. This is a monumental task for a
17 spouse or a child or even sometimes a
18 grandchild to hurdle. They're asked if the
19 worker ever had chelation therapy. Every
20 claimant I've had asked me what is chelation
21 ther-- I don't know what chelation therapy is.
22 They're expected to know details that they
23 received second or third-hand, or maybe not at
24 all, and sometimes as back (sic) as the 1940's.
25 They were also required to have two witnesses

1 to this accident.

2 Well, you know what, my dad was involved in an
3 accident. He worked there before I was born.
4 My mom was 78 when we filed her claim. She
5 hadn't really remembered the accident, but my
6 sister did. So we had to rely on that memory
7 of -- of my sister triggering my mom.

8 My uncle was also involved in an accident
9 there, and I -- I think I've brought this up
10 before. When my aunt went through her
11 telephone interview, I was with her like I'm
12 with any of the claimants that ask for my help,
13 and I was on the -- the phone, the extension,
14 and she was going through the questions through
15 the interview. Typically everybody we have
16 from NIOSH or ORAU are very polite. They're
17 helpful. They're empathetic. But every once
18 in a while -- you know, when you get that
19 volume of people, you get somebody that's maybe
20 not so nice or has had a bad day.

21 This was horrible, because this woman began to
22 ask my aunt questions about this accident, and
23 she wanted to know if my uncle would -- had
24 chelation therapy and my aunt didn't know what
25 that was. She then asked her about being

1 hospitalized. He was. My aunt didn't have any
2 specifics other than he was -- he was hurt and
3 he was hurt badly, and that he was in a
4 hospital for several days.

5 The lady actually was acting like she was
6 deposing her. This is embarrassing. It's
7 humiliating and my aunt began to cry. She also
8 said well, I don't know -- she tried to finish
9 a statement saying something about I was
10 pregnant at my Grandma's house, and this woman
11 actually said to her oh, let me get this
12 straight, being pregnant somehow affects your
13 memory. This is not -- this is inexcusable.
14 You do not talk to anybody like that, but the--
15 they are -- they're acting like they're
16 deposing these people or like these people are
17 lying.

18 I did make a phone call to Dick Toohey and he's
19 wonderful. He addressed it and took care of
20 it, but I can't be with every one of these
21 survivor claimants. There's lots of them that
22 I'm not able to -- to get with and help. I'm
23 one person, and I can't always do that, and
24 they do become very stressed out. They have no
25 way of knowing these things.

1 And when you talk about coworker data or
2 wanting to talk to coworkers, there haven't
3 been hardly any coworkers in my group that have
4 been talked -- first of all, biggest part of
5 them are deceased. And when you have a
6 situation where all the coworkers are gone, how
7 in God's name are you going to do a dose
8 reconstruction when you have absolutely nothing
9 to go by with a coworker? There's nothing.
10 These survivors don't know that type of
11 information. And if your individual records
12 are missing or not complete, this creates a
13 huge, insurmountable problem. It -- it's
14 unbelievable to me. I -- I think there's all
15 sorts of issues with that.

16 I have some things in my possession -- I
17 actually had my husband make copies of it that
18 he can hand out at -- will hand out at the end
19 of this, and it's just some interesting things
20 that I ended up getting ahold of I'd like to
21 talk to you a little bit about.

22 The first one is an office memorandum from the
23 U.S. government dated 4/12/1956 from W.B.
24 Harris, chief industrial hygiene branch HASL,
25 and I won't go into it word for word, but this

1 memo talks about laundry being a very hot item.
2 And they have hot in parentheses (sic). It's
3 very disturbing to me, talks about the
4 contamination via the laundry and how it was
5 transferred back and forth and -- and different
6 things to that effect.

7 The second one is a letter to Mr. K.J. Caplan,
8 Mallinckrodt, from W.B. Harris, HASL, dated
9 01/12/1951 thanking Mallinckrodt for supplying
10 breath radon levels, but questioning why
11 Mallinckrodt has not started using the
12 respirators.

13 Number three, an October 16, 1951 memo, W.E.
14 Kelley, New York Operation Office, C.L. Karl,
15 area manager, St. Louis, area request for
16 capital improvement project. Plant 7 has
17 incomplete air supply, not properly ventilated,
18 causing health hazards and poor operating
19 conditions, requires air changes within all
20 areas of the plant, but the funds were not even
21 available and didn't know if they would even be
22 able to get that.

23 The fourth, March 28, 1952 to Dr. C.D.
24 Harrington from Mont Mason, health group
25 monthly report. No engineering improvements of

1 any consequence completed during February.
2 Plant 6 showing upward trend, but neither know
3 the cause nor the cure.

4 January 21st, 1954, operations give rise to
5 excessive dust exposures influenced by
6 negligent housekeeping. This was R. Kirk,
7 director production division to W.B. Harris,
8 HASL.

9 May 23rd to Mont Mason from HASL, toxicity of
10 thorium indicative of substantially more
11 thorium in the body than ever reported.

12 May 27th, 1952 to Merrill Eisenbud, Health and
13 Safety Lab, from Ed Kehoe, chief fire and
14 accident branch. I was going to try quoting
15 this. I will have to find it. This has got to
16 do with the ether house and the detached prose
17 in this thing are unbelievable to me. They're
18 actually discussing whether or not this ether
19 house is going to blow up, and if it blows up,
20 this guy's right; if it doesn't blow up, this
21 guy's right. That is the mind-set of these
22 monsters. They're talking about human life.
23 They're talking about somebody's father inside
24 of this building and they could give -- they
25 don't care. I mean it was -- it was a joke.

1 You know, if it blows up, that guy dies, I
2 guess you were right; if it doesn't, oh, well,
3 you know, I lost \$10 bucks. I mean that's --
4 that's the mind-set of these animals.

5 June 3rd, 1954, director C. -- D. -- I'm sorry,
6 D.C. Moore, director of engineering and
7 construction division, W.B. Harris, ether house
8 again, modification, Mallinckrodt indicative of
9 still a hazardous condition in the ether house
10 that if not corrected will result in serious
11 loss.

12 February 27th, 1953, Dr. D.C. Harrington from
13 Mont Mason, dust control for maintenance work
14 in plant 7, still and conclusively a serious
15 dust problem in plant 7, completely closed
16 system for handling dry powders, stating that
17 it is logical that any opening of any part of
18 this system could result in gross spillage. No
19 attempts yet made to convert concentrations to
20 an integrated exposure picture, but obvious
21 additional dust control is needed.

22 The 1951 memo I referred to, W.B. Harris to
23 C.L. Karl, urine samples, requesting that due
24 to unusual workload Mallinckrodt discontinue
25 sending these urine samples until after January

1 1st.

2 And number 11, January 30th, 1951, W.B. Harris
3 from Knowlton Caplan, Mallinckrodt, tributyl
4 phosphate toxicity and hazards more than
5 realized. And I'm sure that obviously doesn't
6 have anything to do with radiation, but I found
7 that interesting.

8 I'd also like to talk about some things that
9 are sort of promissory notes or IOUs. I
10 understand that the TBD has been revised and
11 that it's partially audited by SC&A, and SC&A
12 found some weaknesses or some things that
13 needed to be corrected. Well, again, in
14 February we had this revelation of this 1975
15 memo. We had six boxes that turned into five.
16 My claimants, my workers -- living workers,
17 what are left -- and the survivors were put on
18 hold because there was a possibility that there
19 was going to be some -- something in these
20 boxes or something in this memo that was going
21 to change or be able to help dose
22 reconstruction. There was no thing in there
23 that was going to help. Nothing's changed.
24 There is still assumptions, still -- still
25 guessing. And I don't mean to be mean to

1 anybody at NIOSH or to be pointing a finger at
2 anybody, but I'm looking at this from the side
3 of the workers.

4 Congressional intent was not to do this forever
5 and ever and ever. This SEC -- the petition
6 was put in in July. It's been almost a year.
7 There's something about the 180-day time frame,
8 and I -- I haven't looked into that completely,
9 but I understand that we need to look at what
10 we have already. Nothing's changed since
11 February. Credibility issue is still there.
12 We have no assurance that any of this is
13 complete. We have no independent review or
14 independent assessment of -- of NIOSH's
15 findings or any of this data. It's all
16 guesswork.

17 And we also have this list of things that still
18 need to be done. Number one, need to estimate
19 the 95 percent values for intakes, for air
20 intakes. Number two, you have to deal with the
21 oro-nasal breathing. Three, you have to
22 complete development of surrogate -- surrogate
23 coworker data for external doses. You need to
24 review the boxes of data, '53 to '58. That
25 hasn't been incorporated yet. How to deal with

1 the integrity of this data that's not
2 incorporated but made up by a set of numbers.
3 You have to acknowledge that people had -- had
4 zero entries, no measurements with film badges.
5 We need to revamp and revise all radon data,
6 with that statement in mind, not -- not average
7 doses with uncertainties. You need to put on
8 the table the quality of the data and -- that
9 ha-- has to be fixed. The urinalysis until
10 1954 pertaining to the urinalysis or the
11 methodology. They need to address large
12 particle ingestion. It still hasn't been done.
13 Questions on the specific area of cuts and
14 burns and sperry cake. Film badge still needs
15 to be -- film badge data still needs to be
16 adjusted. A question of geometry, like where
17 the badges are in reference to where the worker
18 is working. I mean this is -- this is a pretty
19 large list, to me. We need -- they need to fix
20 the interview process for the survivors and the
21 coworkers. There needs to be a comparison
22 between the Mallinckrodt and the AEC data and
23 why that Mallinckrodt sometimes is -- if it's
24 higher, why is AC -- AEC being picked. That --
25 that needs to complete the accident

1 methodology. There's just this huge to-do list
2 or promissory notes or things that need to be
3 revised.

4 There's talk about revising an already-revised
5 site profile. The constant revisions are
6 great, I guess, if you're trying to perfect
7 something and you have years. And as Dr.
8 Ziemer stated the other day -- or yesterday,
9 you know, if we had a decade. These workers
10 don't have a decade, you know. They have now.
11 In conclusion, Congress emphasized the need of
12 SECs in the FY 2006 Omnibus Appropriations
13 Report when it urged NIOSH to grant SECs when
14 individual monitoring was not performed, states
15 radiation exposure. The committee strongly
16 encourages NIOSH to expedite decisions on
17 petitions filed under the procedure for
18 designating classes of employees as members of
19 the Special Exposure Cohort, 42 CFR Part 83.
20 It was Congress's intent in passing the EEOICPA
21 of 2000 to provide for timely, uniform and
22 adequate compensation for employees made ill
23 from exposure to radiation, beryllium and
24 silica while employed at DOE nuclear facilities
25 or while employed at beryllium vendors and

1 atomic weapons facilities. The committee urges
2 the Department to recognize that in situations
3 where records documenting internal or external
4 radiation doses received by workers at the
5 specific facility are of poor quality or do not
6 exist that workers should promptly be placed in
7 a Special Exposure Cohort.

8 I ask the Board to consider the amount of
9 uncertainties regarding the integrity of the
10 Mallinckrodt data. I ask you to emphasize
11 (sic) with these ailing workers and survivors,
12 who many have had claims waiting dose
13 reconstruction for years. I ask you to
14 consider the fact that Rev. 1 has not been
15 completely reviewed by the audit board, nor has
16 NIOSH assessed the credibility of the data or
17 independently had that assessed.

18 The August 1975 memo that was brought out at
19 the last minute of the February meetings, and
20 NIOSH's initial findings then, have now been
21 retracted. The six boxes that were brought up
22 at that same meeting are now five boxes which
23 primarily are data that is already in the TBD,
24 or not even pertaining to these years or the
25 facility.

1 These workers were poisoned. They were lied
2 to, experimented on, defeated physically,
3 emotionally and financially, and we're allowing
4 this abuse to continue. I have read the
5 criteria one must meet to have inclusion in the
6 SEC. I've spent years digging up records and
7 memos. I've interviewed and taped numerous
8 workers. I've even tried doing this
9 legislatively. I have jumped through every
10 hoop put in front of me. I feel it's certain
11 that there are issues -- enough credibility
12 issues to state that NIOSH cannot do internal
13 dose reconstruction with sufficient accuracy.
14 I respectfully state that what seems to be
15 getting reconstructed is Congressional intent.
16 There is no scientific evidence that NIOSH can
17 do this dose reconstruction. They haven't
18 assessed the credibility of the data. There
19 are all sorts of issues with needing to do
20 things to correct that TBD.

21 A procedure was set yesterday. The Board voted
22 on the case or data before them, not promises
23 to come up with something better later. Dr.
24 Ziemer again stated yesterday that he wished we
25 had a decade to find this information. Again,

1 I need to restate these workers are dying. The
2 survivors are dying. We need to look at what's
3 already in front of us, not the promises that
4 NIOSH or anybody makes to revise and fulfill
5 the things that they need to do on this list.
6 These workers deserve closure. They deserve
7 acknowledgement and they deserve to be in the
8 Special Exposure Cohort. For the sake of
9 timeliness and equity, I urge the Board to
10 approve my SEC petition for the years of 1949
11 to 1957. I thank you again for your due
12 diligence and your kind attentiveness.

13 I just want to state again that I understand
14 NIOSH feels that they have enough information
15 to do this. I understand that they are willing
16 to correct things or take care of things like
17 maybe the external dose. I think it was like
18 chapter seven, if I remember yesterday, is on
19 hold. I'm urging you to take a look at what we
20 have in front of us now and to see that we have
21 no assurance. When the AEC had these liability
22 concerns and Mallinckrodt had these liability
23 concerns, they did things to protect theirself
24 (sic), not these workers. Their fate lays in
25 my hands and in your hands. They can't

1 continue to go on like this. The emotional
2 roller coaster, besides their limited life
3 span, is just -- it's at its limit. So I thank
4 you again and I hope and pray that you will
5 grant them their SEC.

6 **DR. ZIEMER:** Thank you, Denise. Denise, do you
7 have additional individuals that you wish to
8 have speak in behalf of your petition today? I
9 know you had a number of folks last night, but
10 you do have an opportunity, if you have
11 additional --

12 **MS. BROCK:** I do. I know Dr. Dan McKeel wanted
13 to say something and possibly Tom Horgan.

14 **DR. ZIEMER:** And I think you have something to
15 distribute. Your husband is making some...
16 I want to ask, if I could -- Dan, do we need to
17 take a break or are you wanting to be fairly
18 brief or --

19 **DR. MCKEEL:** (Off microphone) (Unintelligible)
20 very brief.

21 **DR. ZIEMER:** You're brief. Please proceed.
22 Thank you.

23 **DR. MCKEEL:** (Off microphone) I appreciate
24 that.

25 So again good morning to the Board, and it

1 seems to me that we have the core issues well-
2 defined for the Mallinckrodt 1949 to 1957
3 class, and they are data timeliness,
4 sufficiency and accuracy.

5 As was true yesterday for the IAAP, NIOSH holds
6 that they can perform adequate dose
7 reconstructions. Testimony you just heard by
8 Denise Brock and Sanford Cohen Association
9 (sic) have provided to the Board evidence that
10 suggests otherwise, that this is not feasible.
11 With respect to timeliness, I think we -- we
12 have to pay attention to Congressional intent.
13 And we have already heard very strong
14 statements, the strongest possible, from four
15 Senators, Harkin, Grassley, Bond and Talent,
16 and also from two Congressmen, Leach and Akin,
17 that the -- both the Mallinckrodt and the Iowa
18 Ammunition Plant worker claims have not been
19 handled in a manner consistent with
20 Congressional intent.

21 I would note that we've also heard that claims
22 have been submitted by 400 individuals who
23 represent both the Destrehan Street and Weldon
24 Spring facilities manned by Mallinckrodt. But
25 there are also 3,200 to 3,600 total workers, so

1 we can also figure then that only ten to 15
2 percent of those people have even filed claims.
3 And I think it's fair to say Denise has put
4 forth heroic efforts on their behalf to do so.
5 One reason I think is undoubtedly that the
6 daunting nature of the claims processing and
7 numerous bureaucratic snafus that have been
8 well documented by the claimants and survivors
9 themselves.

10 So I think on the timeliness issue it's time to
11 vote this morning.

12 Is there sufficient and accurate data to do
13 dose reconstructions, that's the key question.
14 The class clearly passes the health
15 endangerment test, so we don't have to worry
16 about that. However -- and I think it's clear
17 that they were harmed, and NIOSH acknowledges
18 that.

19 As I mention on page 8 in paragraph G of my
20 written comments, there are many instances --
21 some of them noted in Rev. 1 -- where the
22 safety procedures were violated, even though
23 it's fair to stress that on paper, as of 1948,
24 a much stronger safety program appears to have
25 been instituted at Mallinckrodt Destrehan

1 Street. However, those safety procedures were
2 violated in many different ways.

3 Rev. 1 notes that a room door to the ore room
4 was left open for convenience or negligence, so
5 there was excess dust exposure to the men from
6 that. Conveyor belts stuck and ore still had
7 to be hand-scooped, even in this late period
8 of, quote, automation. We also find out that
9 the Atomic Energy Commission rejected extra
10 shielding around the K-65 raffinates, and these
11 are the ones that resulted from the very
12 enriched K -- the Belgian core (sic)
13 pitchblende.

14 All of those events -- to me, at least -- seem
15 impossible to quantify with the data that's on
16 hand, and I need you to bear that in mind,
17 please.

18 NIOSH claims that they have voluminous data.
19 But the key question is, can they do the
20 reconstructions with what they have given us
21 now. And I think the focus is now.

22 We heard that the CER database data, for
23 example, which is the fall-back reference
24 database if DOE or ORAU does not have data for
25 these people, and we find out that the CER

1 database has not been validated independently
2 by the contractors or by -- by NIOSH.
3 SC&A has listed many to-dos that Denise has
4 well gone through. Some of those involve steps
5 that have to be taken to validate the data.
6 And as stressed by Denise, these are things in
7 the future. They're not here today.
8 Dr. Neton's slide yesterday depicting
9 theoretical ways the air, urine and source
10 radioactivity I'm sure was interesting to all
11 of us as a possible way that these kind of
12 various data could be cross-validated, and I
13 think that's true. However, what the slide
14 showed me was -- and -- and graphically
15 highlighted, I think -- is that he used data
16 that had to be just made up. This has not been
17 done yet with real data, and it needs to be.
18 If I may point out that another major departure
19 occurred that's been brought before you on how
20 NIOSH and SC&A viewed the material in those
21 boxes. NIOSH examined them and they decided
22 that there was nothing in the boxes that should
23 in any way change their ability to do dose
24 reconstructions, and they said the data
25 basically was already captured and so no

1 problem. However, you heard also yesterday
2 that Arjun Makhijani from SC&A showed his slide
3 13 that reported many different things that
4 they felt needed to still be done to even
5 validate the content of those boxes, 1953 to
6 '58 data was not captured.

7 There were other bullet points indicating that
8 further data analysis of job categories, radon
9 assessment and air concentration still needed
10 to be done.

11 So it brings me to my final point. If your
12 mandate, which I think it is, is to be sure
13 that the law is complied with in a timely way
14 and with Congressional intent, which I'm sure
15 we do indeed need to do, I urge the Board to
16 weigh the many data flaws the petitioners have
17 documented and recommend that the MCW 1949 to
18 1957 class be approved as a Special Exposure
19 Cohort. Thank you very much.

20 **DR. ZIEMER:** Thank you very much, Dan. Denise,
21 did you have any others that you wished to have
22 address the assembly on behalf of the
23 petitioners?

24 **MS. BROCK:** I don't think so. This is weird
25 for me 'cause I'm used to about 1,000 people,

1 so this is a little odd.

2 I did forget to mention something, and I just -

3 - I just want it for the record. I ended up

4 getting ahold of a -- the -- what is it called,

5 the professional judgment review, Ken Fleming -

6 - I don't even know who that is, but I -- there

7 was something in here so disturbing -- probably

8 numerous things that were so disturbing to me

9 and I just want it for the record, and I'd like

10 to state something that I -- that I saw in

11 here. The supporting documents provided by the

12 petitioners were attached to the Special

13 Exposure Cohort petition form B received via

14 FAX on July 15th, 2004 and a supplemental FAX

15 that was received later on September 30th. In

16 short, the supporting documents provided for

17 the SEC petition 12 neither, one, support the

18 feasibility of conducting dose reconstruction

19 using maximized exposure assumptions present in

20 the existing TBD, nor do they provide

21 information that indicates that there is a

22 reasonable likelihood that such radiation dose

23 may have endangered the health of members of

24 this proposed class.

25 That is -- that's unbelievable to me. How

1 could anybody -- and they call it a
2 professional judgment -- I don't know who that
3 is. That's unbelievable to me.

4 **DR. ZIEMER:** Denise, perhaps you could identify
5 what -- what is it you're reading from?

6 **MS. BROCK:** It's a profes-- it's professional
7 judgment -- professional judgment. It's a memo
8 and attachment describing professional judgment
9 review of the supporting documents that were
10 submitted by the petitioners of SEC petition
11 00012, and --

12 **DR. ZIEMER:** I think we did --

13 **MS. BROCK:** -- it's signed by a Ken Fleming.

14 **DR. ZIEMER:** -- we did receive that. That was
15 --

16 **MS. BROCK:** And a Dan Stempfley?

17 **DR. ZIEMER:** The Board received a copy of that.
18 I recall it from our last meeting. It was a
19 review by somebody.

20 **MS. BROCK:** This was -- this thing was dripping
21 with contempt and disdain for me -- I mean it
22 was targeted at me. There's a lot of other
23 things in here. To me, I found it offensive,
24 though. I can handle that, but to say these
25 workers were not endangered. I hope that

1 you're not using this person for a professional
2 judgment because I think he even stated that
3 '42 to '48 could be dose reconstructed goes
4 against NIOSH's own findings. I -- that's --

5 **DR. ZIEMER:** Richard, can you identify for us?

6 **DR. TOOHEY:** I would just say that document was
7 part of the petition evaluation process that
8 was prepared by a member of my staff who is a
9 certified health physicist working on the
10 petition evaluation --

11 **DR. ZIEMER:** This is an opinion from someone
12 who reviewed the petition --

13 **DR. TOOHEY:** That is --

14 **DR. ZIEMER:** -- on behalf of ORAU or NIOSH?

15 **DR. TOOHEY:** Well, both. ORAU does a petition
16 review which we then provide to NIOSH for their
17 review and approval.

18 **DR. ZIEMER:** Thank you.

19 **DR. TOOHEY:** I have lots more numbers, if you
20 want them.

21 **DR. ZIEMER:** If you have a lot of them, I think
22 we're going to get them after the break.

23 **DR. TOOHEY:** Okay.

24 **DR. ZIEMER:** Okay, let's take a break. Thank
25 you.

1 (Whereupon, a recess was taken from 10:35 a.m.
2 to 11:00 a.m.)

3 **DR. ZIEMER:** I think we're ready to call the
4 session back to order.

5 (Pause)

6 We're ready to proceed. Leon I think will be
7 back with us momentarily.

8 **BOARD DISCUSSION OF MALLINCKRODT SEC PETITION**

9 Board members, I want to ask if any of you have
10 any questions that you particularly want to
11 address to the petitioners who've just made
12 their presentations. I give you that
13 opportunity at this point. Is there any
14 specific questions for the petitioners? Yes,
15 Rich Espinosa.

16 **MR. ESPINOSA:** On the professional judgment,
17 this is directed toward Denise -- on the
18 professional judgment letter that you received,
19 I'm wondering about the dates that it was
20 issued and the date that it was received.

21 **DR. ZIEMER:** And while she's coming up there,
22 Rich, I believe that was attached to the ma--
23 to our materials when we received from NIOSH
24 their review of the petition. Denise --

25 **MS. BROCK:** I have it here. I need to look

1 through it but I believe that is right. It was
2 attached, so I can look --

3 **DR. ZIEMER:** So as --

4 **MS. BROCK:** -- (unintelligible) copy.

5 **DR. ZIEMER:** As Rich Toohey indicated, that was
6 part of their process where they send out the
7 petition for some independent reviews or
8 review, and that was an opinion that came back,
9 and then was entered into the record on their
10 behalf. Is that correct, Richard?

11 **DR. TOOHEY:** Yes, that is correct. I would
12 also comment that one person's opinion on
13 whether or not health was endangered is totally
14 irrelevant because the definition of health
15 endangerment is 250 days or a major accident.
16 So...

17 **DR. ZIEMER:** Yes. But that -- that document I
18 believe was part of the record that was
19 provided to us because it was part of their
20 review process and -- yes, Tom, did you wish to
21 --

22 **MR. HORGAN:** Yeah, I'd like to address that
23 last comment. I appreciate his candor on that,
24 but when you have a professional judgment on
25 this particular issue, and he is on -- paid

1 member on the staff of ORAU and they're -- and
2 -- you know, how can you say that that is
3 irrelevant? How can you say that one document
4 -- it's just one document and the personal
5 opinion of one of my staffers and it's a
6 professional judgment document? How do we know
7 it's really irrelevant? I mean what if you --
8 is it irrelevant if you're taking a lot of the
9 guidance and recommendations from that opinion?
10 I -- I -- you know, it may be one person, but
11 it is not irrelevant. It is simply not.

12 **DR. ZIEMER:** I think he was talking about the
13 use of the time period -- was it, Rich, the --

14 **DR. TOOHEY:** Well, what I said was irrelevant
15 was in the opinion of anyone on my staff as to
16 whether health was endangered, because that's
17 essentially been defined.

18 **DR. ZIEMER:** Right, so that --

19 **DR. TOOHEY:** Now, let me --

20 **DR. ZIEMER:** -- the fact that he had made a
21 statement in there was --

22 **DR. TOOHEY:** Where I assume Mr. Horgan is
23 coming from, and I understand, he is concerned
24 that because this person thinks health was not
25 endangered, that will color his analysis of the

1 data and his opinion on what exposures might
2 have been, and I can understand that viewpoint.
3 I would also add that we, as health physicists,
4 do have codes of ethics and our personal
5 opinions do not come into play on this. We
6 have to be objective with where the data leads
7 us. And I would also add, as both you and Dr.
8 Roessler know, there are many health physicists
9 really don't subscribe to the linear no-
10 threshold model --

11 **DR. ZIEMER:** Sure.

12 **DR. TOOHEY:** -- and (unintelligible) --

13 **DR. ZIEMER:** And this is one person's opinion.

14 **DR. TOOHEY:** -- any dose is carcinogenic.

15 **DR. ZIEMER:** And obviously this Board is
16 considering many people's --

17 **MR. HORGAN:** And I appreciate that
18 clarification. But then again, you know, it
19 calls into a question, we don't know. What if
20 this one person's opinion -- opinion, you know,
21 that -- it may already be defined that the
22 health is endangered. It could be defined.
23 But what if this person who says -- this person
24 on the ORAU staff gives his opinion and ORAU,
25 in the decision-making, takes some of those

1 recommendations?

2 **DR. ZIEMER:** Well, Tom, the determination has
3 already been made by NIOSH --

4 **MR. HORGAN:** Okay.

5 **DR. ZIEMER:** -- regardless of this opinion.
6 NIOSH has made that determination already and
7 that's what carries weight --

8 **MR. HORGAN:** I will -- I will let it go, but
9 I'm just telling you, on Capitol Hill, it
10 raises some --

11 **DR. ZIEMER:** Well --

12 **MR. HORGAN:** -- more questions and red flags.

13 **DR. ZIEMER:** -- fortunately we're not on
14 Capitol Hill today.

15 **MR. HORGAN:** No, but you may be shortly.

16 **DR. ZIEMER:** We may be shortly, yes. Okay,
17 we'll join you there. Thank you. Denise, did
18 you have any --

19 **MS. BROCK:** I don't have a date on it and I
20 probably -- the only reason I brought it up was
21 because I look at it, not being professional or
22 a scientist or health physicist -- so maybe his
23 -- I -- I -- when I read it, I took it as I
24 read it, that the health was not endangered,
25 and it was offensive to me. If it wasn't meant

1 with that intention, I understand what Dr.
2 Toohey's saying. But if a worker would read
3 that -- and I don't if they could -- they would
4 be crushed. It would just be a horrible thing
5 and it kind of lesses -- lessens their comfort
6 zone or their trust factor with, you know, ORAU
7 or anybody because they're reading it like I
8 did and thinking oh, my God, you know, I have
9 four cancers -- four separate primaries, how
10 can they say that my health was not endangered.

11 **DR. ZIEMER:** Yes, understood.

12 **MS. BROCK:** And -- so that -- you know, that's
13 -- could create a problem, but I understand
14 maybe he could just word it differently. I
15 won't have to kick him now or anything, I
16 guess.

17 **DR. ZIEMER:** Rich, did you have a follow-up on
18 that?

19 **DR. TOOHEY:** Well, let me just reply. I
20 understand completely and I -- there's no place
21 for personal opinions in what we're doing and I
22 will definitely counsel this person.

23 **DR. ZIEMER:** Okay.

24 **DR. TOOHEY:** But you know, where we're going on
25 that, I also want to say that this is not the

1 only person involved in the petition review.
2 So it's one of a number of opinions, and then
3 what we come up with is thoroughly reviewed by
4 NIOSH staff before you ever see it.

5 **DR. ZIEMER:** Yes. Rich, did you have a follow-
6 up on that?

7 **MR. ESPINOSA:** Yeah, my next question may be a
8 little bit out of order, but --

9 **DR. ZIEMER:** Use the -- get a little closer to
10 the mike.

11 **MR. ESPINOSA:** And it's probably a Department
12 of Labor question as well as ORAU/NIOSH
13 question, but with the val-- with the
14 validations of the documents and using coworker
15 data and stuff like that, I'm just wondering
16 how many of the claimants are actually survivor
17 claimants.

18 **DR. TOOHEY:** I don't know the answer to that
19 question for any specific site, but I do know
20 for the whole population of claimants, about
21 half are survivors and half are still-living
22 Energy employees.

23 **DR. ZIEMER:** Dr. Toohey, while you're at the
24 mike, you want to give us the other numbers
25 that you agreed to provide to the Board earlier

1 today?

2 **DR. TOOHEY:** Okay, I hope Ray's ready to copy
3 on these, here we go. Okay, of the
4 Mallinckrodt cases, 316 total, 188 worked only
5 at Mallinckrodt Destrehan Street; 103 worked at
6 Mallinckrodt and Weldon Spring only. That
7 leaves us with 24 who also worked other sites
8 in addition to Mallinckrodt, of which 20 worked
9 at United Nuclear Corp., which I believe was a
10 fuel fabrication plant in Metropolis, Illinois.
11 Is that right?

12 **UNIDENTIFIED:** (Off microphone)
13 (Unintelligible)

14 **DR. TOOHEY:** No.

15 **UNIDENTIFIED:** (Off microphone)
16 (Unintelligible)

17 **DR. TOOHEY:** Oh, the Hematite plant, right.
18 Thank you. Okay. And then there's -- there is
19 just a scattering of a few worked another site
20 or two.

21 **DR. ZIEMER:** Okay.

22 **DR. TOOHEY:** Okay, next set of numbers. Okay,
23 of cases that worked only at Mallinckrodt, of
24 the 188, 40 final dose reconstructions have
25 been submitted to DOL. Three have been pulled

1 and there's 145 active cases awaiting dose
2 reconstruction.
3 For Weldon Spring employment only, there are 86
4 cases, of which 26 final DRs have been
5 submitted to DOL, and there are 60 active cases
6 awaiting dose reconstruction.
7 Now this affects something -- I replied to Mr.
8 Horgan last night when he asked what was the
9 basis on which the -- I believe the 147 Weldon
10 Spring claims were denied. Well, we've only
11 submitted 26 final dose reconstructions to DOL,
12 of which some would have been denied, as I
13 said, on the maximum dose assignment and not
14 getting a probability over 50 percent, some of
15 which have probably been compensated with a
16 minimum dose assignment and becoming
17 compensable, so I would have to hypothesize
18 that the remaining cases that have been denied
19 must have been -- come -- included cases
20 submitted under Subtitle D and now E, and may
21 well also have been denied on the basis of no
22 verification of employment or no verification
23 of medical diagnosis or the other criteria that
24 DOL uses to accept the case for evaluation.
25 Again, that's speculation on my part.

1 **DR. ZIEMER:** Thank you. Okay, Michael.

2 **MR. GIBSON:** To follow up a little bit on
3 Rich's question, does -- does ORAU or NIOSH
4 know at least maybe a rough percentage of how
5 many of this class from '49 to '57 are
6 survivors as opposed to claimants, just a
7 percentage?

8 **DR. TOOHEY:** (Off microphone) (Unintelligible)
9 can find out.

10 **DR. ZIEMER:** He -- he can find out, but
11 apparently does not have that at the
12 fingertips.

13 **MR. GIBSON:** I guess --

14 **DR. ZIEMER:** Would you like that information?

15 **MR. GIBSON:** Well, it is a follow-up to that.
16 I guess I'd just like to -- well -- ask -- and
17 maybe I'd like to ask our contractor their
18 opinion on it, since we've heard from NIOSH and
19 everyone else. On survivor claims -- and this
20 is an aging population -- if they've got to go
21 to coworkers to get interviews and what they've
22 done and stuff, how many of those coworkers are
23 still alive and what are the probabilities that
24 they can get any data to do dose
25 reconstruction? Maybe --

1 **DR. ZIEMER:** I suspect our co-- or our
2 contractor may not know those figures of how
3 many survivors there are.

4 **MR. GIBSON:** I'm just saying an idea of how
5 they would go --

6 **DR. ZIEMER:** Oh, how would they do --

7 **MR. GIBSON:** -- could accu-- accurately...

8 **DR. ZIEMER:** Repeat the question, maybe Arjun
9 can answer it.

10 **MR. GIBSON:** I was just wondering -- if the
11 survivor didn't know what their spouse did as
12 employment so ORAU and NIOSH would have to go
13 to coworkers to find out where they worked so
14 they could try to adequately determine what
15 their dose may have been, most of these
16 coworkers could very well be deceased, too, so
17 what -- how would they go about getting a -- an
18 adequate representation of what they did so
19 they could reconstruct the dose and what do you
20 think about that?

21 **DR. MAKHIJANI:** Yeah, as I understand it, you
22 know, the first -- the first basis of dose
23 reconstruction is the individual's dose record,
24 and so if the -- if the dose record is
25 substantially complete, then -- then the

1 coworker issue doesn't arise. But if there's
2 any need to supplement -- and that's what all
3 the surrogate information is about, a lot of
4 the TBD is about that -- because there are gaps
5 in the data, the bioassay monitoring wasn't
6 frequent enough and so on, or the record may
7 not be complete, then you need to identify
8 coworkers. And I think -- I've looked at the
9 interview process in some detail and, as I
10 mentioned yesterday, I think coworker
11 interviews would be essential -- and close
12 coworkers. That is, people who did work --
13 know the employee and their work history in
14 some detail, because I have some doubts as to
15 whether a lot of the family members, from --
16 from what has been said by the petitioner, by
17 Denise and others, would be able to identify
18 the series of jobs that were held, given the
19 secrecy and lapse of time and so on. So I -- I
20 think -- I think whenever surrogate data is --
21 is needed, either in external or internal, it -
22 - it would be rather difficult to -- to get the
23 data to reconstruct without coworkers. And
24 even with coworkers, if they were identified,
25 it would be rather difficult.

1 Now this is a little bit speculative because we
2 haven't actually audited any coworker
3 interviews. Very, very few have actually been
4 done. We know that.

5 **DR. ZIEMER:** Well, if the actual coworkers can
6 be identified, however, there may be data in
7 the database that -- perhaps Jim could address
8 that, but it seems to me that one might be able
9 to get the coworker data without necessarily
10 interviewing the coworker.

11 **DR. NETON:** That -- that's true, we would
12 certainly attempt that as a first pass, and I
13 agree with Dr. Makhijani that the urinalysis
14 and the TLD moni-- film badge monitoring data
15 is the most appropriate. We -- as we discussed
16 several times now, we have monitoring data for
17 the majority of the workers and job titles for
18 most workers.

19 However, if we find ourselves -- and also
20 Mallinckrodt has pretty much stated that they
21 have monitored people with their security
22 credential using film badges, so anyone who was
23 working in the Manhattan Engineering District
24 area who had a potential for exposure was --
25 was monitored in these years that we're

1 investigating now.

2 However, if we did find ourselves in the
3 situation where we knew nothing, we have the
4 ability to use these 95th percentile
5 distribution values, just as we've done at many
6 other sites, and that would work very much to
7 the advantage of the claimant. We would take -
8 - if we could determine that the person was
9 indeed a process area worker, generate the
10 surrogate exposure distributions for the 95th
11 percentile, select that, assume that they were
12 in the heaviest exposed category and use those
13 data. So in no way would -- we feel in that
14 way we would capture the -- the upper bound of
15 the worker's exposures without having to -- if
16 we -- if we could not rely on any coworker data
17 at all. In fact, that's a -- that's a much
18 quicker process for the claimant to get an
19 answer than to -- you know, the long process of
20 calling six or seven people and -- and
21 following that trail.

22 **MR. GIBSON:** If I could --

23 **DR. ZIEMER:** Mike, follow up?

24 **MR. GIBSON:** -- follow up on that.

25 **DR. ZIEMER:** Sure.

1 **MR. GIBSON:** Let's say I'm a deceased person
2 and I have a spouse that's making a claim. My
3 title's an electrician. What coworker data are
4 you going to get?

5 **DR. NETON:** Well, certainly if we have
6 electrician coworker data we're going to use
7 that, and if we have no idea where you worked,
8 we would use the 95th percentile of the
9 electrician data that were badged and working
10 in the facility.

11 **MR. GIBSON:** Well --

12 **DR. NETON:** And this speaks to the issue of
13 timeliness. I mean it provides --

14 **MR. GIBSON:** I guess --

15 **DR. NETON:** -- the claimant a much more timely
16 --

17 **MR. GIBSON:** My point is, let's say where I
18 worked there -- there was 30 electricians, and
19 it was typically one or two electricians and a
20 couple of pipe fitters and a couple of
21 mechanics working on a job on this end of the
22 line and there may be an electrician or two and
23 a pipe fitter and mechanic working on that end
24 of the line. So if you take -- and then
25 there's 26 other electricians working different

1 areas of the plant, I don't see how you could
2 just group electricians in and say I -- we can
3 take the aggregate data from them and find out
4 what my dose was.

5 **DR. NETON:** Well, we've been doing that. I
6 mean this -- this fits -- typically, worker
7 data fits a distribution -- the [law of
8 transformed distribution]* fits a fairly good
9 straight line, and we go up to the upper end of
10 that line and say we don't know what you were
11 exposed, but we believe that if you were at the
12 highest exposure category, this was your dose,
13 and we would assume that. So we would not
14 assume that you were at the low end of the
15 line, the middle end of the line. You were at
16 the highest end of the line for your entire
17 period -- the period of time where we had no
18 data. We've been doing that fairly
19 consistently for many of these things, and I
20 believe that SC&A has indicated that's an
21 appropriate way to do this when you have no
22 data.

23 We could go to the extent of calling people and
24 trying to find out to potentially lower the
25 dose, 'cause in most cases the interviews with

1 coworkers would -- would more than likely lower
2 the dose because we're already at the upper
3 end, so...

4 **DR. ZIEMER:** Arjun, you want to add to...

5 **DR. MAKHIJANI:** If I could supple-- complement
6 that a little bit, the -- you know, the whole
7 95 percentile issue initially came up in the --
8 in the very specific context of Bethlehem
9 Steel, and then we brought it up here also in a
10 very specific context of how you actually do
11 time-weighting. We've actually not audited the
12 more general question that Dr. Neton has
13 raised, you know, when -- when is it
14 appropriate in terms of job categories to do it
15 one way or another. And the reason I bring it
16 up here is, in contrast to Bethlehem Steel,
17 which was a one -- one type of operation. They
18 were rolling uranium and you knew what the
19 process was and there was one area, one type of
20 material, no complications. Here you have --
21 at Mallinckrodt you have a considerable number
22 of complications in that not only do you have
23 many processes and many forms of uranium,
24 you've got the radionuclides, you know, like
25 radium and thorium, and in various different

1 types of areas you've got raffinate processing.
2 And so I think, especially as we have evidence
3 that workers were moving from one job to
4 another and there are questions -- in a way not
5 that different than Iowa in that what does a
6 job title mean if people are going from one job
7 to the next or -- or doing a variety of things
8 or in particularly hazardous environments. I
9 mean in a place like Mallinckrodt, to -- I'm --
10 I'm not confident and I'd be -- if I remember
11 correctly, we did raise this in -- in our
12 review of Revision 0, although didn't repeat it
13 again here, that -- that the question of -- of
14 job titles and the relation to the real work
15 needs to be investigated at Mallinckrodt
16 because -- because of the complexity of the
17 operation, external dose radiation fields and
18 the materials inhaled and ingested.

19 **DR. ZIEMER:** Jim Neton?

20 **DR. NETON:** I would certainly agree that it
21 needs to be evaluated in the context of the
22 exposure environments, and I assumed that I
23 implied in my response that that was true. We
24 need to take the context of the -- of the
25 picture and how many -- you know, how many

1 samples we have and that sort of thing. But I
2 still maintain that the use of a distribution
3 at the 95th percentile is appropriate. Whether
4 or not it's electricians or ends up, if we have
5 a small number of samples, the entire facility,
6 but it still can be done.

7 **DR. ZIEMER:** Okay. Board members, any -- oh,
8 Richard Toohey, add to that?

9 **DR. TOOHEY:** Yes, I do want to add to that.
10 The other solution to that problem, and I would
11 agree with Mike Gibson, 30 electricians isn't a
12 very large size population to do statistical
13 analysis on. But then what you do is pool all
14 the worker data. And an electrician could
15 receive the 95th percentile dose that all
16 workers receive, including the most highly
17 exposed process workers.

18 **DR. ZIEMER:** Richard?

19 **MR. ESPINOSA:** You know, with what Mike's
20 saying and with what I'm hearing is job titles
21 are one thing and the task that a worker's
22 assigned is another. And eventually it just
23 creates different exposures. One of the things
24 that I'm concerned about on this is the -- I
25 believe there was a statement made from Denise

1 of 150, 151 being moved from one plant to the
2 other and the use of the coworker data being
3 done on that. I -- I can see somebody that
4 only worked three years -- I could see a -- the
5 -- like, for example, the use of a -- an
6 employee working three years and them using
7 that coworker data when in actuality the people
8 that's filing -- the person that's filing the
9 claim may have worked there 15 years. You
10 know, it's just a concern of mine and I'm
11 wondering how it's being addressed.

12 **DR. ZIEMER:** Jim?

13 **DR. NETON:** These coworker data analyses, the
14 surrogate analyses, are time -- time-dependent.
15 I mean they are by year, so --

16 **DR. ZIEMER:** So you would take it year by year
17 --

18 **DR. NETON:** Year by year --

19 **DR. ZIEMER:** -- for all of the years that the
20 person worked.

21 **DR. NETON:** Or if there's insufficient data,
22 aggregate and use the higher value for several
23 years, but it would be, to the extent possible,
24 year by year analysis.

25 **DR. ZIEMER:** Thank you. Other questions? Yes,

1 Mike.

2 **MR. GIBSON:** What... Most of this population
3 or if a majority of this population is deceased
4 and it's -- and a lot of the coworkers are
5 deceased, what would be the possibility of
6 creating like a survivor's cohort? If you
7 can't get re-- if you can't get an adequate
8 dose reconstruction done on these people,
9 rather than depending on -- like this 95
10 percentile when --

11 **DR. ZIEMER:** Well, I think you're asking a
12 legal question, but it seems to me, by default,
13 if you define the cohort and the person's
14 deceased, the survivor is -- becomes the -- the
15 claimant. Maybe I'm misunderstanding the
16 question.

17 **MR. GIBSON:** I guess I'm just suggesting
18 perhaps a -- a lesser cohort that just involves
19 survivors that you cannot get good data on --
20 adequate data.

21 **DR. TOOHEY:** I'm sorry, did you mean --

22 **DR. ZIEMER:** Oh, I -- oh -- oh, I see what he's
23 saying, yeah.

24 **DR. TOOHEY:** I'm -- I'm afraid I don't.

25 **DR. ZIEMER:** If you identify -- it sounds like

1 if you identify a subset for which there is
2 insufficient data, could that be a cohort -- or
3 a class --

4 **MR. GIBSON:** Class in itself.

5 **DR. ZIEMER:** Actually, and maybe someone from
6 NIOSH could answer that. I suspect that
7 technically if one were to find that -- let --
8 let's suppose that you have a facility where
9 there is no Special Exposure Cohort, but in the
10 process of dose reconstruction you find that
11 there's a group -- let's say of electricians --
12 for whom you are unable to reconstruct dose, do
13 you not sort of automatically then say that
14 this would now be identified as a potential
15 Special Exposure Cohort?

16 **MR. ELLIOTT:** Yes, that's exactly right, and
17 that's what -- it goes back to the question
18 that was raised earlier or during my
19 presentation about how diligent are we at
20 looking at different jobs and how do we define
21 the class.

22 **DR. ZIEMER:** Even if someone hadn't petitioned
23 for some group and you found in your process --

24 **MR. ELLIOTT:** Yes.

25 **DR. ZIEMER:** -- you could not reconstruct dose,

1 you are obligated --

2 **MR. ELLIOTT:** That's true, we are obligated --

3 **DR. ZIEMER:** -- to identify that to the Board
4 and to the Secretary and that -- and --

5 **MR. ELLIOTT:** That is correct, that is how --

6 **DR. ZIEMER:** -- to initiate the process.

7 **MR. ELLIOTT:** That is how we would go about
8 identifying a class. I would just add that
9 this presumes that we don't have data for the
10 deceased person. And in this case, for
11 Mallinckrodt, we have a large amount of
12 information and data for -- for the workers, by
13 comparison to the -- to Iowa, where we had, you
14 know, a small amount of the work force
15 monitored. This work force for Mallinckrodt
16 has had a majority of the work force monitored,
17 in one way or another.

18 **DR. ZIEMER:** Dr. Melius, a question or comment?

19 **DR. MELIUS:** Well, I just want to point out,
20 and I don't think we -- necessarily get us off
21 on a separate track here, but we -- for some
22 time we've expressed concerns about the -- the
23 CATI interview and the fact that it's a very
24 general interview and doesn't provide a lot of
25 specific information. And this issue came up

1 again with Iowa where I think, at least to some
2 extent, our decision was based on the
3 information that our contractor had obtained
4 from meeting with and interviewing the workers
5 and -- and this cast questions about some of
6 the approaches that NIOSH was using. And I
7 just think in a general way this issue still
8 needs to be addressed in a better fashion, much
9 as the example Mike brought up that -- as to
10 how do we approach this -- how -- is there a
11 way of improving the data-gathering in a way
12 that -- I mean 'cause it could work in some
13 sense the opposite way, that there may be
14 better information obtained from surviving
15 workers that can be used to obtain, you know,
16 better information that can be used where the
17 workers don't survive and could add to the
18 detail and the ability to do a -- a sound dose
19 reconstruction.

20 **DR. ZIEMER:** Now I want to move us along in the
21 process here, unless there are further
22 questions or discussions of a sort of a general
23 nature. Let me remind you of what sort of our
24 options are here, if we're ready for that --
25 proceed to that point.

1 We basically have before us a recommendation
2 from NIOSH on the handling of this particular
3 petition. The Board could go on record as
4 agreeing with and supporting that position.
5 The Board could go on record as not agreeing or
6 supporting that position. I suppose a third
7 option would be that the Board could in fact
8 instruct NIOSH and our contractor to get yet
9 more information and defer a decision, although
10 you recall that we did indicate our intent to
11 reach closure today, if possible.

12 I -- I probably should also remark, since my
13 casual tenure statement now has become
14 memorialized several times, that it was
15 intended to make a kind of point. I certainly
16 didn't imply that it would necessarily take ten
17 years for the Iowa group, nor -- nor had I
18 intended it to apply to Mallinckrodt. The
19 point was there is a timeliness factor. But I
20 certainly don't want to imply at all that I
21 believe that it will take ten years for us to
22 reach that point for Mallinckrodt. In fact,
23 it's my opinion that we have in fact a very
24 solid dataset, a very extensive amount of data
25 for Mallinckrodt and we have to deal with that

1 and where we are, and if there's any additional
2 information that we need to come to closure on
3 what we have before us.

4 So now Wanda Munn and then Jim. Wanda?

5 **MS. MUNN:** Rather than make a direct motion one
6 way or the other, there are several things that
7 need to be said, I believe, not only to this
8 Board, but to the claimants and to the public
9 generally. I attempted to say some of this
10 yesterday, but in the rush following our
11 decision with respect to the Iowa petitioners,
12 it was impossible to say that. So this is
13 going to be longer than a casual comment. My
14 apologies.

15 Yesterday's vote, for which I gave an
16 affirmative vote, was based -- from my chair --
17 on one factor and one factor alone, and that
18 was common sense. Despite all of the other
19 reasons that were given, it appeared unfair to
20 me that a higher dose assessment -- under the
21 process that was going to have to be used --
22 would be given to early workers, who probably
23 had lower exposure, than to later workers who
24 probably had higher exposure but had badge
25 readings. That was the single item on which my

1 positive vote went forward.

2 In looking at this particular cohort class, as
3 in most others, I believe, NIOSH has made it
4 clear that they can, they will, and they have
5 completed dose reconstructions appropriately
6 for other groups, as well as for this group.
7 We have, over the period of the last couple of
8 years, heard repeated insults to the integrity
9 of individuals, agencies, data reliability, and
10 we probably will continue to hear them. We are
11 dealing in an emotional, dramatic area. That's
12 understandable because we're talking about
13 people's lives, a great deal of pain, a great
14 deal of illness. Nobody can be totally
15 unemotional when you're approaching that kind
16 of situation.

17 But we have also heard repeatedly from
18 petitioners, from elected officials, from
19 staff, enormous misconceptions and incorrect
20 positions with respect to radiation and
21 radiation-induced illnesses. The media has
22 routinely repeated, as have many others at the
23 microphone here, that there are hundreds of
24 workers who were made ill by reason of their
25 work at one facility or another. There is no

1 doubt that there are individuals who have been
2 made ill as a result of their work. A large
3 number of them have actually already been
4 compensated, as we have heard here even this
5 morning, when the argument is being made that
6 inadequate information exists and yet
7 compensation has been given to some of these
8 workers, and fairly so.

9 But for us to say, that in a case where dose
10 reconstruction can be done and we do not allow
11 that to happen, that we are doing the right
12 thing is incorrect. There is no reliable data,
13 to the best of my knowledge, that supports the
14 assertion that the workers at this plant or any
15 other plant have a higher rate of these dreaded
16 diseases than the general population. There is
17 no evidence to that effect. So when we say
18 therefore all people will have to be included -
19 - now it's not completely true, but for the
20 most part it is true. I said reliable studies.
21 When we are placed in the position of saying
22 all the elderly people who, in the general
23 population, are going to have one out of two
24 suffer some type of cancer, and one out of four
25 or five, depending on what year you look at,

1 are going to die from these diseases, then what
2 that tells us is that many of the individuals
3 who have worked on sites who have these types
4 of cancers would have developed them even had
5 they never been on any such site.
6 So to ignore our ability to do dose
7 reconstruction and choose an SEC which
8 incorporates all claimants is saying that we
9 are not being good stewards and we are not
10 following good science. It's only when we
11 cannot have the science that we must do so.
12 When we hear the arguments with respect to
13 these SECs, if you take away all of the chaff
14 and leave only the wheat, there are two points
15 that are made that we are asked to consider.
16 They are dressed up in many different ways, but
17 those two points are always the same. The
18 point is, someone does not believe that we have
19 reliable data because they know someone who
20 lied about something that was related in some
21 way in the past. The other point is that you
22 can't possibly do a dose reconstruction for me
23 because you don't know every place I've been
24 and all I've done.
25 I believe that the process that's been

1 explained to us is very clear. We are never
2 going to have perfect data. No one is ever
3 able to make decisions that are 100 percent
4 accurate in all cases because we will never
5 have perfect data. Even if we have perfect
6 data, we will not always have a body of
7 individuals who will agree that the data is
8 perfect. And so we are called upon to use our
9 judgment, based on imperfect data, to resolve
10 issues that are dramatic, that are
11 heartbreaking, and that are going to be
12 emotional regardless of whether we say yes or
13 no.

14 The experienced professionals who work with us
15 have stated that they have adequate data to
16 perform appropriate worker-favorable dose
17 reconstructions for this site. Remember, we
18 will never have perfect data. Good science,
19 good stewardship, fairness and personal
20 integrity requires us in -- to reject this
21 particular SEC. The claims for that class
22 should be submitted for the standard review and
23 process as dose evaluations are possible,
24 they're feasible, and they'll be heavily based
25 in favor of any claimant from this facility.

1 So I'm prepared, when this Board is ready to
2 accept it, to make a motion that this SEC be
3 rejected.

4 **DR. ZIEMER:** Thank you, Wanda. I interpret
5 that as not being a motion, at least at this
6 time. Dr. Melius?

7 **DR. MELIUS:** Yeah, first to address Wanda's
8 statement, I just would point out that if we
9 reject this petition we will end up with a
10 situation where -- because we've already
11 approved a petition covering earlier years
12 where people working in 1948, for example, for
13 250 days will -- would be compensated, where
14 someone working in 1949 -- starting January
15 1st, 1949 -- again, depending on their
16 individual dose reconstruction, may very well
17 not be. And I think we have to recognize that
18 the way the law's constructed that that
19 situation's bound to occur and one can argue
20 about its fairness and so forth, but I think
21 it's something that we -- we have to address
22 and I don't think it should be something that
23 should necessarily affect our decisions on --
24 on the SEC petitions.
25 Secondly, I don't think Congress ever intended

1 that there be an epidemiological risk
2 evaluation applied to this. We're not asking
3 that the petitioners or NIOSH to prove that
4 there's an excess cancer risk at every one of
5 these facilities. There's lots of reasons
6 that's difficult to do, particularly when it
7 gets down to smaller groups and so forth and I
8 don't think that's a fair way of -- of
9 assessing that -- that. That's not the test
10 that we apply.

11 When I look at this situation, the three
12 possible decisions that Paul outlined, I
13 personally feel uncomfortable with all three.
14 I don't think that NIOSH has necessarily proved
15 its case, that it can conduct dose
16 reconstructions with sufficient accuracy.
17 There's more information I'd like to obtain
18 from them, some more issues I'd like them to
19 address. At the same time I think there are --
20 they have provided a lot of information and
21 there is a lot of data there and it makes it
22 difficult, based on what we have now, to
23 approve the -- approve the petition. The third
24 option of procrastination or delay is also
25 uncomfortable, realizing that the claimants and

1 their survivors have already waited a long
2 time, there's been significant delays.
3 I also feel it's very important, in terms of
4 making a recommendation, in terms of what the
5 Board has already essentially promised to these
6 petitioners. One is that we said we would try
7 to reach a decision at this meeting. At the
8 same time, we said that we would try to reach
9 that decision based on having our contractor do
10 a review of a site profile. For various
11 reasons that were out of the control of the
12 contractor and to some extent out of our
13 control, the contractor was unable to do that.
14 There was not sufficient resources nor time to
15 complete a review of Revision 1 of the site
16 profile, so we're left with an incomplete
17 review. And in fact in the report from the
18 contractor dated April 18th, there's a table in
19 there indicating what they were able to do and
20 what they were not able to complete in time.
21 And I guess my feeling is that -- belief is
22 that the best course for us to take would be to
23 complete that review so that we can fairly and
24 completely address many of the concerns that
25 have been raised by the petitioners, that we

1 can fairly and more completely address our
2 charge in terms of evaluating this petition and
3 evaluating what NIOSH says that it is capable
4 of doing; that we also ask NIOSH to provide us
5 with some further information in this regard,
6 that there's some -- I think particular things
7 that they could do that would help us to reach
8 a decision.

9 And as uncomfortable as that approach may be in
10 terms of further delay, I think it would be the
11 best approach and I'd be intending to offer a
12 motion to that effect.

13 **DR. ZIEMER:** Thank you. Again, for the moment
14 I'm not going to interpret that as a motion.
15 We're getting some sort of intents out of here.
16 Let me go and get a couple of other comments,
17 then we'll come --

18 **MS. MUNN:** I was just going to respond to Jim -
19 -

20 **DR. ZIEMER:** Just a response?

21 **MS. MUNN:** Yes.

22 **DR. ZIEMER:** Go ahead and respond.

23 **MS. MUNN:** Just a very quick one. I agree with
24 him, this was not intended to be an
25 epidemiological study. The only reason I

1 brought the point up is because it's so clearly
2 a misconception in the minds of the public and
3 the media.

4 **DR. ZIEMER:** Thank you. Richard and then Mike.

5 **MR. ESPINOSA:** Me personally, I'm standing on
6 the fence over this issue, also.

7 **DR. ZIEMER:** Get closer to the mike there.

8 **MR. ESPINOSA:** Oh, I'm kind of standing on the
9 fence over this issue, also, and personally I'd
10 kind of rather stand on the fence until we get
11 more information.

12 Also, and in terms of SC&A on the site profile
13 and stuff, it'd be nice to see in our next 20
14 cases of the dose reconstruction that we also
15 have some Mallinckrodt studies.

16 **DR. ZIEMER:** I don't recall if the second 18
17 included Mallinckrodt. We had some in the
18 first 20. I -- I don't recall in the second 18
19 what was on the list, but that list has already
20 been established, Rich, so we -- we can't
21 change what was there.

22 Mike, why don't you go ahead with your comment.

23 **MR. GIBSON:** With all due respect to my
24 colleague, Ms. Munn, I would like to just make
25 the following response, that you know, there is

1 such a thing called the healthy worker syndrome
2 and -- that's -- needs to be thought about.
3 Also, you know, when I went to work at Mound, I
4 was asked if I minded working in radioactive
5 areas, and they said they would take every
6 effort to protect my health and safety. I said
7 I would accept that. And I'm not trying to
8 suggest any class of professionals is without -
9 - without good character, but just like some
10 laborers are without good work ethics, there's
11 some professionals that are without good
12 ethics. And coming from a plant that's had a -
13 - at least four or five Price Anderson fines
14 totaling over a half a million dollars for
15 violations of health and safety practices,
16 specifically bioassay -- falsifying bioassay
17 data, it just makes me want to make sure that
18 the data that's being interpreted for dose
19 reconstruction is good data and it's -- and
20 that's -- a lot of -- some of the folks who
21 worked at that site are now the ones doing
22 these dose reconstructions.

23 **DR. ZIEMER:** Let's see, let's take Leon next.

24 **MR. OWENS:** I don't want this to appear that --
25 that I'm ganging up, either, on colleague, Ms.

1 Munn, but coming from a site where the United
2 States Secretary of Energy admitted, in a
3 public forum such as this, that the government
4 had put workers in harm's way, it's somewhat
5 difficult for me to not understand the workers'
6 point of view.

7 Some of us that sit on this Board have also had
8 the occasion to talk with workers on their
9 deathbed. Some of us also have had the
10 occasion to talk with surviving spouses who are
11 at a loss as to where their husband worked,
12 what their husband did, because of the cloak of
13 secrecy that surrounded that work. I think
14 that the Board owes due diligence to those
15 workers from the standpoint of evaluating the
16 petitions, using the statutory requirements
17 that Congress enacted, to ensure that we
18 provide timely deliberations.

19 Also, coming from a site that is an SEC site,
20 it's a lot different for those individuals at
21 Paducah and at Portsmouth and at Oak Ridge that
22 have one of the 22 specified cancers, they
23 receive an automatic payment. They do not have
24 to go through this process. And so that is a
25 measuring stick, I feel, as we view these other

1 petitions.

2 I think that NIOSH has done a commendable job.
3 They continue to do a commendable job. But at
4 the same time, I feel that our contractor,
5 SC&A, does a very commendable job in reviewing.
6 And I think that the information that's brought
7 back to us by both of these groups needs to be
8 considered.

9 And yes, emotion is always tied into anything,
10 but I think that the Board has, in the last two
11 decisions that were made, tried to not allow
12 the emotion of the moment to dictate the way
13 that the votes are made.

14 **DR. ZIEMER:** Thank you, Leon. Henry Anderson?

15 **DR. ANDERSON:** It's always easy to look forward
16 and look back, and in my experience when one
17 makes a hasty judgment, it's always potentially
18 at risk. And as you move forward, you know,
19 the timeliness of that decision becomes less
20 important. So I guess I would agree. I think
21 we've started a process with the review -- site
22 profile review. I'm assuming whether we act
23 today on the SEC petition or not, we're going
24 to finish that site profile review. There may
25 be things in that that'll be helpful or not.

1 I'm also very intrigued by the ability in this
2 process to look at the various databases and
3 see how well they correlate and use that as a
4 validity of the data assessment. And we heard
5 NIOSH was rushed and I'm sure Jim is regretting
6 that he used a hypothetical rather than the
7 other -- and I think that I would be very
8 interested in, you know, not an exhaustive
9 review of all the cases, but to pick some just
10 to see that in fact the assumption that this
11 will work, does. And you know, I think it
12 probably will, but I think just for
13 completeness' sake, I'd like to have the
14 process work itself out and I think it would be
15 a disservice to the applicants to not go that
16 extra mile to get that added data, even though
17 right now it would look like there's plenty of
18 data and NIOSH has a process in place. So I
19 guess I would -- I would like to see that
20 additional information before we actually do a
21 final judgment on it and -- and there -- at
22 that point there won't be any new information
23 coming in. I think on all of these, the
24 process of getting it to us when things were
25 under rush -- be it Iowa or Mallinckrodt at the

1 last meeting -- is just a warning. We need to
2 be sure that when we get these there is a point
3 in time that stands alone rather than on a
4 rapid process.

5 **DR. ZIEMER:** The Chair is going to add some
6 observations to the discussion before I call
7 for a motion.

8 It appears to me that there indeed is a very
9 extensive amount of data available. And in
10 spite of concerns that -- and certain
11 allegations made, there's no clear evidence
12 that the dataset has been in any substantial
13 way -- or in any way -- doctored or otherwise
14 made invalid. In fact, the -- the magnitude of
15 the data is such that there is that ability to
16 do cross-validation.

17 Our contractor's review has focused on issues
18 which -- which are admittedly unresolved, but
19 do not have to do with the quality of the data
20 as far as its ability to be used for dose
21 reconstruction. It has more to do with how
22 assumptions are made and used and how the
23 validation process might occur. I see nothing
24 from our contractor that would suggest that in
25 fact proper and reliable dose reconstruction

1 cannot be done with the material that we have.
2 There clearly in the past were a number of poor
3 practices at Mallinckrodt, either with or
4 without the consent of management, perhaps with
5 a work force which had not been fully informed
6 of the risks involved -- and certainly we all
7 agree that there are risks. In fact, such poor
8 practices do in fact get reflected in the
9 dataset so that we have the ability to in fact
10 show that workers got such high doses because
11 of these poor practices. So I'm simply saying
12 that in my mind we have a cohort for which
13 valid dose reconstruction can be done.
14 Admittedly there are some open questions, and
15 I'm certainly, as a first step if -- if the
16 assembly here wishes to delay a decision, I
17 think that would be the prior motion to hear if
18 there -- if there's a motion to delay or defer.
19 I don't want to call it to delay. It's to
20 defer for the reasons mentioned. Then if such
21 a motion failed, then we would return to the
22 issue of -- of making the -- making the
23 decision today.
24 So Henry, did you have an additional comment on
25 this?

1 **DR. ANDERSON:** Oh, I'm sorry, no.

2 **DR. ZIEMER:** Okay.

3 **MS. BROCK:** Dr. Ziemer --

4 **DR. ZIEMER:** Yes.

5 **MS. BROCK:** I would like to -- Denise Brock,
6 for the record. I would like to ask that if
7 there is a delay -- due to the delay itself, I
8 would like to know if it would be possible to
9 expedite that. I'd like to know from SC&A how
10 long it would actually take to review this
11 information and I'd like to ask for an
12 emergency meeting to be called and see if we
13 can't do this within 30 days in St. Louis.
14 This is obviously better than a "no", but it's
15 still a delay, so I would like to see if we
16 could expedite this and do this as quickly as
17 possible. I know that SC&A had no opportunity
18 or had little opportunity to look through all
19 this, but I want to know if it's possible that
20 we could do this in a quick manner.

21 **DR. ZIEMER:** Let me address that in somewhat
22 general terms, because John Mauro, who leads
23 the team and who would have to make that
24 decision, I think, Arjun, that would probably
25 be John's call, unless you feel like you're

1 authorized to speak in his behalf on that issue
2 as to what turnaround time might be. But we're
3 talking about a process where there's some
4 interchanges involving the contractor and
5 NIOSH, as well as participation by Board
6 members and so on. It certainly would be the
7 intent -- if there is such a delay, certainly
8 it would be the intent I think of this Board to
9 move forward with -- as expeditiously as
10 possible. Whether or not we can commit to a
11 time today, I do not know. Arjun, do you --

12 **DR. MAKHIJANI:** Do you have a question for me,
13 Dr. Ziemer?

14 **DR. ZIEMER:** Well, the question is what --

15 **DR. MAKHIJANI:** Yeah, right --

16 **DR. ZIEMER:** -- the turnaround time for --

17 **DR. MAKHIJANI:** John did authorize me to speak
18 on Mallinckrodt issues, and I believe
19 communicated that to Dr. Wade --

20 **DR. WADE:** Correct.

21 **DR. MAKHIJANI:** -- before he left. Joe
22 Fitzgerald, deputy director, is here. I think
23 -- you know, I'm -- I'm pretty familiar with
24 Mallinckrodt by now, but I'd like a -- it would
25 depend on the scale of the tasks. If I might

1 suggest --

2 **DR. ZIEMER:** I think we're talking about
3 resolution of the issues --

4 **DR. MAKHIJANI:** Right.

5 **DR. ZIEMER:** -- that have been raised.

6 **DR. MAKHIJANI:** Right. And if -- if I might
7 have a minute or two to caucus with -- with Mr.
8 Fitzgerald and get back to you on that, I'd
9 appreciate that.

10 **DR. WADE:** Certainly.

11 **DR. ZIEMER:** Jim, did you have a comment or a
12 motion?

13 **DR. MELIUS:** My only comment was I -- I think
14 we all agree and would like -- like -- it would
15 be good to be expeditious on this, but I think
16 in some ways we're better off -- you know,
17 let's deal with a motion and see where the
18 Board wants to go with this before we try to
19 get, you know, too specific. Is it 30 days, 45
20 days or --

21 **DR. ZIEMER:** You're suggesting separating this.
22 If we decide to defer the action, then deal
23 with how soon we can do it.

24 **DR. MELIUS:** Yeah.

25 **DR. ZIEMER:** Wanda, did you have a comment

1 first on this?

2 **MS. MUNN:** I just was going to observe that if
3 postponing this decision until such time as the
4 ability of NIOSH to correlate the data will be
5 instrumental in making the Board more convinced
6 that that can be done adequately, then I'm
7 prepared to move that we make such a delay.

8 **DR. ZIEMER:** I don't think we know a priori
9 that NIOSH will be able to do that. I think
10 the intent is to ask that there be a
11 demonstration of whether or not that can be
12 done and the resolution of the issues that were
13 raised by our contractor. Joe Fitzgerald is
14 approaching the mike. Joe?

15 **MR. FITZGERALD:** Yeah, to answer the question,
16 certainly we could accelerate a review and not
17 necessarily do a checklist of all the loose
18 ends that -- you know, that were identified in
19 the report, but with a very clear focus on the
20 implementation question, which I think the
21 Board is wrestling with here, and that would
22 inform I think the kind of decision-making you
23 have to do. So it would be with a very clear
24 focus that we would certainly want to give you
25 ahead of time, but with the recognition that,

1 you know, we would hone in on just those issues
2 that we feel would be important and necessary
3 to finish what we started, but also to be
4 specific to what I think this Board's been
5 discussing certainly over the day. And that
6 would probably, again -- it will take us
7 definitely to probably the first part of June
8 to do a credible job of that.

9 **DR. ZIEMER:** I wonder if NIOSH has any input on
10 this issue, too, before we have a formal
11 motion. Let Larry Elliott speak and then --
12 Larry, go ahead.

13 **MR. ELLIOTT:** I'm not prepared today to commit
14 to any time frame for you. I think you said it
15 best earlier, Dr. Ziemer, that we came to the
16 table with everything that we could at this
17 point in time. We feel that we have adequate
18 information to sufficiently provide a maximum
19 dose reconstruction --

20 **DR. ZIEMER:** I think we're on--

21 **MR. ELLIOTT:** -- or a more precise dose
22 reconstruction.

23 **DR. ZIEMER:** Larry, I think we're only talking
24 about the resolution of the issues with our
25 contractor, 'cause that process involves

1 NIOSH's --

2 **MR. ELLIOTT:** We certainly would work with them
3 and we will do our level best to -- to
4 accommodate this process, but I'm not -- not at
5 a point where I can commit to a time frame in
6 that -- in that regard.

7 **DR. ZIEMER:** Okay. Thank you.

8 **DR. WADE:** Could we have Joe come back to the
9 microphone? Joe?

10 **DR. ZIEMER:** Joe or Arjun.

11 **DR. WADE:** I mean I appreciate your thoughtful
12 response. Am I to assume that at that point in
13 early June you would begin to engage in a
14 dialogue with NIOSH on the materials you
15 prepared, or would that include time for such a
16 dialogue to have taken place?

17 **MR. FITZGERALD:** Well, I think that's something
18 that we would have to discuss 'cause there's a
19 lot of logistical issues as to -- one, what
20 endpoint are we aiming toward? There's a
21 question before the Board as to whether to be
22 another session sort of on this issue, and that
23 would give us a ultimate endpoint which we
24 would back-engineer in terms of what necessary
25 discussions would take place.

1 Now what we did with Iowa I thought was
2 instructive in the sense that, rather than do
3 this thing serially, we had discussions along
4 the way so that, you know, we weren't waiting
5 till the very end to start that process. And I
6 think that served to accelerate what we did for
7 Iowa. So you know, there's a certain method
8 that might help that.

9 But again, I think there's a couple of issues
10 that make a difference. One is scoping this
11 thing so it's very, very clearly focused only
12 on those issues which will certainly arm the
13 Board with information and perspectives it
14 needs, and also a process where, you know, we
15 would accelerate the kind of interaction that
16 would normally take place maybe over months,
17 but try to do that, you know, within a shorter
18 period of time.

19 **DR. WADE:** Thank you.

20 **DR. ZIEMER:** Denise?

21 **MS. BROCK:** And I hope you'll excuse me but I'm
22 just really confused. I'm curious, and this is
23 probably a question for SC&A and NIOSH and the
24 Board. Is SC&A going to work with NIOSH and
25 assess the credibility of this data or -- I

1 guess I'm perplexed, and is this possible?
2 Because my concern here, too, is that -- if I'm
3 understanding correctly -- many of the Board
4 members that I've spoke with and know this case
5 could be gone by the time this actually comes
6 up again. And new people will not
7 automatically know the history of this without
8 having to look at transcripts or what have you.
9 That makes me uncomfortable. And I know it was
10 done for Iowa and I've been put at a distinct
11 disadvantage and my claimants have been put at
12 a distinct advantage (sic) by no fault of their
13 own, and this was because of this automatic
14 thing that popped up at the last minute with
15 Iowa. They were given an SEC, then it was
16 taken away, and then we had to have this re-
17 evaluation of it. I was told in February that
18 this was all going to be addressed by SC&A. We
19 figured the TBD would be -- would be done and
20 be assessed and the comments would have been
21 made, and now this -- we were put on the back
22 burner. And so it's doing an injustice and a
23 disadvantage to my claimants and to me as a
24 petitioner -- SC&A wasn't even able to finish
25 their -- their audit. And so I'm curious as to

1 the length of time -- I mean that they would
2 need to actually -- and I guess maybe Joe
3 answered that -- to look at this data.

4 **DR. ZIEMER:** Yeah. In fact, Denise, that's
5 exactly what we're talking about is to finish
6 the process that they started roughly a month
7 ago, maybe a little longer than that. They --
8 and you've -- you've indicated previously in
9 your comments and in your comments just now
10 that in fact they had not finished that
11 process. You noted it in your comments earlier
12 that it was incomplete. They had a list of --
13 of items in their report that had not been
14 finished, and that is what we're referring to
15 in our discussion. We're not talking about a
16 new process where they are going to validate
17 something.

18 **MS. BROCK:** I see.

19 **DR. ZIEMER:** We're talking about --

20 **MS. BROCK:** Then --

21 **DR. ZIEMER:** -- them completing their review of
22 the document. I think we also talked about
23 perhaps some specific examples as to how
24 validation could in fact be done by NIOSH.
25 That would be my understanding.

1 **MS. BROCK:** Okay, so I guess my confusion here
2 is then why -- respectfully, to Larry, why is
3 there not a -- how do you have to interact if
4 you -- your Rev. 1's already done. I'm not
5 trying to be smart, I really don't know.

6 **DR. ZIEMER:** No --

7 **MS. BROCK:** Rev. 1's done --

8 **DR. ZIEMER:** No, let me answer that --

9 **MS. BROCK:** -- what is it that you need to do?

10 **DR. ZIEMER:** Let me answer that. Our -- the
11 Board's process requires an interaction by our
12 contractor with NIOSH because there are open
13 questions, and these interactions are done with
14 Board members present so that if -- if in fact
15 there's factual accuracy issues or sort of
16 miscommunications, or if our contractor is
17 making assumptions that are not the ones that
18 NIOSH made, we're trying to make sure that
19 we're doing those things -- we're interacting
20 properly. So -- and this is the process we've
21 used on other site profiles, on our dose
22 reconstructions, so we're talking about
23 completing that normal process.

24 **MS. BROCK:** Correct me if I'm wrong, but that
25 process should have already been done --

1 correct? -- if -- if that was what was supposed
2 to have been done, but because Iowa took
3 precedence over Mallinckrodt, that's been put
4 on the back burner. So however much time frame
5 was left here between me getting here and this
6 should have been going on, whenever -- whenever
7 Mallinckrodt got put on the back burner,
8 whenever SC&A started the two of these
9 parallel, I'm not understanding why it's going
10 to take a huge length of time --

11 **DR. ZIEMER:** Well --

12 **MS. BROCK:** -- to do what should have already
13 been done.

14 **DR. ZIEMER:** Yes. We did not specifically put
15 things on the back burner. I think this Board
16 moved as rapidly as it was --

17 **MS. BROCK:** I don't mean the Board.

18 **DR. ZIEMER:** -- what was able and with the
19 material we had, and you know, but it's the
20 Board's -- it's the Board's work that we're
21 talking about here. NIOSH obviously had their
22 platter full, too. I --

23 **MS. BROCK:** I'm not referring to the Board, Dr.
24 Ziemer. I'm referring to something that should
25 have been done that wasn't, through no fault of

1 my claimants and through no fault of the Board,
2 and through no fault of SC&A. For whatever
3 reason, this situation with Iowa arose, and
4 what I'm saying is that due to that situation,
5 the work on Rev. 1 for Mallinckrodt has not
6 been completed. So what I'm asking is I think
7 the delay is great. That's fine. But what I'd
8 like to have done is have it immediately taken
9 care of. It shouldn't take very long. I don't
10 understand what the hold-up is because what I'd
11 like to have done, if it's at all possible, to
12 have this done by June to see if we could get a
13 meeting -- an emergency meeting in St. Louis
14 that would make it comfortable for my claimants
15 again and get this done as expeditiously as
16 possible without removal of certain Board
17 members.

18 **DR. ZIEMER:** I think we can commit to moving as
19 rapidly as we're able to on this. I don't know
20 what you're referring to by removal of Board
21 members. I'm not aware of any Board members
22 being removed. But in any event, I certainly
23 want to commit this Board to trying to move
24 ahead as rapidly as we're able to. Dr. Toohey?

25 **DR. TOOHEY:** I have more answers to previous

1 questions. Of the 188 Mallinckrodt-only cases,
2 131 were submitted by survivors and 57 by the
3 Energy employees, so that's about 70 percent
4 survivor claims. However, I want -- do want to
5 point out that the age of the worker would be
6 correlated with working only at Mallinckrodt.
7 Consequently that's why I think the survivor
8 percentage is higher. The workers who started
9 in the early '50's and were younger would have
10 been the ones who moved on to Weldon Springs.

11 **DR. ZIEMER:** Yeah.

12 **DR. TOOHEY:** Okay. That being said, also Mr.
13 Espinosa asked the question about dose
14 reconstruction reviews under that task for
15 Mallinckrodt cases. I guess from what I know
16 that's probably not going to answer your
17 question, because the completed dose
18 reconstructions for Mallinckrodt will have been
19 one end or the other, minimum dose estimates
20 for compensable answers and maximum dose
21 estimates for non-compensables. So it's not
22 really going to give you a feeling for how we
23 can do best estimates.

24 Going from there, I would also like to mention
25 that there are two different questions involved

1 here in the Board's oversight contractor review
2 of the site profile document. One question is,
3 and it's the typical review of the site profile
4 document, is that site profile adequate to do
5 best-estimate dose reconstructions for the
6 cases who are in the middle of those two
7 extremes. The question for an SEC petition is
8 is that site profile or data adequate to put an
9 upper limit on doses for everyone. And most of
10 what I've seen and heard on the issues that
11 Cohen & Associates have raised address the
12 first question, more best estimates, than the
13 second question of being able to cap the doses.
14 **DR. ZIEMER:** Okay. Thank you. Tom, did you
15 have a question?

16 **MR. HORGAN:** Yeah, thanks. I guess I'm -- I'm
17 kind of confused right now, as well, and I'm
18 sorry about that. I think the one issue that
19 seems to be looming from listening to the
20 dialogue among Board members is this either --
21 whatever term you use, credibility of the data,
22 integrity of the data and -- and quality of the
23 data. That seems to be an issue that -- where
24 a lot of question is. You know, we hear we
25 have a lot of data. The question -- is it

1 accurate, is it reliable, valid.

2 I'm a little -- let me ask a question 'cause I
3 don't know the details of the SC&A contract and
4 everything. Are the contractors allowed -- or
5 have they been tasked, I guess, or asked to
6 examine this integrity of the data issue -- I
7 mean this issue -- or have they been allowed to
8 focus in on that, and have they been asked to
9 examine the integrity of the data issue? Can
10 somebody answer that for me?

11 **DR. ZIEMER:** I'll answer that.

12 **MR. HORGAN:** Arjun, do you know?

13 **DR. ZIEMER:** I'll answer that for you. The
14 task doesn't specifically call for that. It's
15 inherent in what they do.

16 **MR. HORGAN:** Could you elaborate on that for
17 me?

18 **DR. MAKHIJANI:** Dr. Ziemer, as -- as we
19 understood it, the falsification question -- if
20 I might use the more blunt term that was used
21 earlier in the petition and in our last review
22 -- was an SEC question and we noted simply in
23 this context that it was not covered in the
24 revision, and even that mention aroused some
25 comments from the Board as to why was it a

1 bullet point in our review. So we -- we didn't
2 feel that we were asked really to investigate
3 the falsification question.

4 Of course there the quality of data question
5 that are more normal that are covered in the
6 TBD on which we have commented, but at least I
7 have felt in looking at this and in the
8 comments that I've heard since it -- since we
9 don't have a task for SEC petitions, that we
10 would need somewhat of a more explicit
11 authorization from you. And in that same
12 context, I'm a little bit un-- if I might
13 express a little uneasiness, and some
14 confusion, also. The thing that we are doing
15 currently is a TBD review.

16 **DR. ZIEMER:** Right.

17 **DR. MAKHIJANI:** And the thing that you are
18 discussing currently is an SEC petition, and
19 the questions that those two things seek to
20 answer is quite different. I think Dr. Toohey
21 put it very well in that a TBD review doesn't
22 necessarily seek to focus on the question that
23 you are seeking to answer, which is is it
24 possible to use the data to do a maximum. So -
25 - so I would -- I would just suggest that as we

1 -- as we proceed, if SC&A is to be asked to do
2 something with-- within a short period of time
3 or whatever period of time, that there be some
4 clarity in the forum with -- with the
5 petitioner present that -- as to what will be
6 delivered and what it will mean.

7 **DR. ZIEMER:** Right now the review of the TBD
8 has built into it inherently some issues
9 relating to the quality of the information.
10 It's not directly answering the site profile
11 thing.

12 Tom, this is not a public comment period, I --

13 **MR. HORGAN:** Dr. Ziemer, hold on a second.

14 **DR. ZIEMER:** I'm going to return to the Board
15 here, if you would have a seat.
16 Mark Griffon.

17 **MR. GRIFFON:** I just -- I just have to raise a
18 question -- I mean we've heard -- correc-- and
19 I agree that there's a lot of data at this
20 site, lot of information, and -- and the next
21 step is, there-- some people conclude,
22 therefore, that you can do a bounding estimate.
23 I -- I have to -- and I brought this up on the
24 subcommittee phone call, so this is no
25 surprise, but I have to ask a question on page

1 64 of the Rev. 1 it basically says that the
2 site profile authors conclude that the 1948
3 data -- I'm paraphrasing here -- did bound or
4 were representative of the figures of the
5 earlier years. That means '42 through '48, if
6 I'm interpreting this right. There were three
7 new pages added in this section on this whole
8 topic.

9 To me -- and -- and Jim, I know -- I know
10 they've disagreed with me on the subcommittee
11 meeting, but maybe -- maybe I need better
12 clarification on this. To me, that seems to be
13 an inconsistency. On the one hand we have an
14 evaluation report that says NIOSH recommends
15 those -- that class be included, and this says
16 that they can bound.

17 Now we're in a situation where NIOSH is not
18 recommending and I'd like to know what's the --
19 what's the difference in this situation.

20 **DR. ZIEMER:** Jim?

21 **DR. NETON:** I -- I mentioned yesterday that we
22 are going to issue a page change notice to the
23 profile that discusses that issue about
24 bounding, and what that really means in the
25 context of -- of the -- of the SEC cohort

1 moving forward is that that is really a lower
2 bound dose. We -- we acknowledge that we
3 cannot put an upper bound. This is a lower
4 limit that we can place so that we can move
5 dose reconstructions forward for non-
6 presumptive cancers. That's -- that's the
7 intent of that -- that -- we will clarify that
8 with a page change notice.

9 **DR. ZIEMER:** Okay. Jim Melius.

10 **DR. MELIUS:** Larry's got --

11 **DR. ZIEMER:** Yeah, Larry.

12 **MR. ELLIOTT:** I guess I'm compelled to add to
13 that, because I want to recognize that -- that
14 -- here's another lesson learned for us at
15 NIOSH. When we're advancing two documents, one
16 a site profile revision and another an
17 evaluation report for a Special Exposure Cohort
18 petition, we've got to make sure that -- that
19 at some point, before they're presented, that
20 they marry up and they're coordinated. In this
21 instance, that did not happen, and I regret
22 that. And Jim's absolutely right, the
23 intention behind that set of passages on page
24 65 is to try to do our level best to attend to
25 non-presumptive cancers for the -- for the

1 class, for '42 to '48, and that's what we
2 intend there. And I apologize for the
3 confusion that it's presented and this is
4 another lesson learned that we will take full
5 stock of.

6 **DR. ZIEMER:** Okay. Jim Melius.

7 **DR. MELIUS:** And can I just add to that? I
8 think it would be helpful if guidelines were
9 developed, some sort of public document that
10 sort of addresses this in a general sense
11 'cause I think we have to wrestle with it, but
12 that's probably for another discussion, though.
13 I'd like to offer a motion.

14 **DR. ZIEMER:** You may proceed.

15 **DR. MELIUS:** And I've written this out and I
16 think it's pretty straightforward, and I think
17 it addresses a number of the issues that have
18 been raised so far, including some of the
19 questions from members of the public.
20 The Advisory Board on Radiation and Worker
21 Health has evaluated SEC Petition 00012
22 concerning the Mallinckrodt Destrehan Street
23 facility for the years 1949 to 1957 under the
24 statutory requirements established by EEOICPA.
25 Based on the information available to us at

1 this meeting, the Board is unable to reach a
2 decision at this time. Rather, the Board is
3 seeking further information in order to reach a
4 final determination on this petition.

5 The Board has instructed our review contractor
6 to complete their review of Revision 1 of the
7 site profile, with particular attention to
8 issues relevant to this petition. The Board
9 has also asked NIOSH to prepare further
10 analyses relative to their capability to
11 complete dose reconstructions with sufficient
12 accuracy, based on the information currently
13 available to them.

14 As soon as this additional information is
15 available, the Board will meet to complete our
16 review of this petition.

17 The Board recognizes that this action will
18 further delay an already lengthy process, and
19 that this delay poses significant difficulties
20 for the claimants or their survivors. However,
21 the Board must also address the need to have
22 adequate information in order to make a fair
23 and complete evaluation of this petition.

24 **DR. ZIEMER:** That is your motion. Is there a
25 second?

1 **MR. GRIFFON:** Second.

2 **DR. ZIEMER:** Motion is seconded. I'd like to
3 ask the Board members if they would like to
4 have this motion in writing and delay
5 discussion until after lunch. Is that the
6 desire, or would you wish to proceed and have
7 the discussion now? It's -- we are past our
8 lunch hour.

9 **MS. MUNN:** My preference would be for us to
10 discuss it now. I think the discussion that
11 has already foregone this motion is probably
12 adequate for most of us.

13 **DR. ZIEMER:** Let me ask if -- if everybody's
14 comfortable in discussing and acting with only
15 the verbal material, you understand the motion?
16 Okay, are there any who wish to speak to or
17 against the motion? Dr. Roessler.

18 **DR. ROESSLER:** I would like to go on record as
19 saying that I'm going to vote for the motion,
20 but it's not because I have any questions about
21 the data. I personally think that at this
22 point in time NIOSH could do a very valid dose
23 reconstruction for this site. However, I would
24 like to see the Board get the information --
25 each member get the information they need so

1 that we can proceed as a body.

2 **DR. ZIEMER:** Thank you. Any others wish to
3 speak for or against the motion? Yes, Leon.

4 **MR. OWENS:** Dr. Ziemer, I speak in favor of the
5 motion.

6 **DR. ZIEMER:** Thank you. Any others? Are you
7 ready to vote?

8 It appears that we're ready to vote. All in
9 favor of this motion, please say aye.

10 (Affirmative responses)

11 Any opposed, no?

12 (No responses)

13 Any abstentions?

14 (No responses)

15 The motion carries. We will dismiss for lunch.
16 After lunch, if needed, we can entertain
17 specific motions on implementation, although
18 there was a caveat in the end -- or one of the
19 provisions indicated that we would proceed as
20 soon as the material is available, which could
21 include an emergency meeting, if necessary, and
22 -- and I would hope that in fact we could have
23 such a meeting in -- in St. Louis, subject to
24 availability of hotels and so on on fairly
25 short notice.

1 **DR. MELIUS:** When we come back from lunch I
2 think it would be helpful to try to specify
3 certainly what we would be requesting that
4 NIOSH do. I've had some brief discussions with
5 Jim Neton, but I think we need to sort of scope
6 that out a little bit in order to -- at least
7 for NIOSH to be able to reach a timetable on
8 that, be fair to them and make something that's
9 reasonable, and there may be some further
10 information that our contractor may want,
11 though I think that's a little bit more
12 straightforward.

13 **DR. ZIEMER:** The Chair will also -- Tom, I
14 certainly will recognize you now, if you have
15 some comments. Promise that it won't go into
16 our lunch hour too long.

17 **MR. HORGAN:** Let's see, where am I here -- can
18 everybody hear me?

19 **DR. ZIEMER:** I'm sorry to cut you off earlier,
20 but we had to get to the Board's deliberations.

21 **MR. HORGAN:** Sure. Sure, no problem. What I
22 was going to say during the dialogue with the
23 contractor and the Board was the cred-- going
24 back to the credibility of the data issue and
25 whatever term you want to use, like I said. I

1 asked if the contractor had been examined --
2 been tasked or -- to examine the credibility of
3 the data. You asked -- answered for them that
4 it's inherent, or somewhere along those lines
5 in there. I heard from Arjun that that's --
6 they were not specifically tasked to examine --

7 **DR. ZIEMER:** That's correct.

8 **MR. HORGAN:** -- the credibility of the data,
9 and they were specifically not asked to address
10 the -- whatever term you use for falsification,
11 erroneous recording, whatever.

12 All I can say is that's the -- after listening
13 to this dialogue to members of the Board, and
14 it's been great, it's really been informative,
15 that seems to be the over-- a big overriding
16 question, one of -- I think there's two or
17 three issues -- you know, timeliness, this
18 toolbox thing, which I don't understand, and
19 the -- the credibility of the data. I -- I was
20 wondering, has the Board -- I mean as long as
21 this issue is not addressed and as long as the
22 contractor doesn't have a right to address
23 this, rightly or wrongly or whatever, there's
24 going to be a cloud over this process. And I
25 was wondering, has the Board considered giving

1 SC&A a task order to address the falsification
2 or erroneous credibility of the data issue? I
3 think -- I think -- you can have another
4 meeting in a month or another meeting in two,
5 as long as that issue is not addressed I don't
6 think you're going to have any type of closure
7 on this and I would hope you would consider
8 that.

9 **DR. ZIEMER:** Thank you. So noted. Let us
10 recess for lunch. And again, I urge you to
11 come back as rapidly as you can. We'll try to
12 reconvene around 1:30. We do have the ability
13 to compress some of our things this afternoon.
14 They are perhaps less controversial, so -- oh,
15 a comment --

16 **MR. GRIFFON:** Remember to read your matrixes
17 over lunch.

18 **DR. ZIEMER:** Oh, a word from Mark Griffon, read
19 your matrix.

20 **DR. WADE:** You all got your matrix. Thank you.
21 (Whereupon, a recess was taken from 12:25 p.m.
22 to 1:40 p.m.)

23 **DR. ZIEMER:** I'm going to call the session back
24 to order. We're a little bit pressed for time,
25 but in fairly good shape. We have a couple of

1 presentations this afternoon. We have on the
2 schedule NIOSH program update and DOL program
3 update. And I think since Jeff Kotsch is here
4 and ready to go, we're -- can we start with
5 Department of Labor and then -- and then we'll
6 catch NIOSH when Larry gets back, so --

7 **MS. MUNN:** Mr. Chairman?

8 **DR. ZIEMER:** Wanda.

9 **MS. MUNN:** I'd like to request that if it's at
10 all possible we try to keep all of the
11 Mallinckrodt information, all of the activities
12 that we have related to Mallinckrodt on the
13 agenda early rather than leave them till the
14 very tail end. We have several people who
15 might be leaving early and --

16 **DR. ZIEMER:** Yes, do we have some additional
17 Mallinckrodt items?

18 **DR. MELIUS:** I would just like to try to talk
19 to NIOSH a little bit -- I think we need to
20 wait for Larry to come back -- about what
21 specifically we would like them to do in
22 preparation for (unintelligible) --

23 **DR. ZIEMER:** Yes, we can do that. We can delay
24 this just a moment and Larry is now coming in,
25 so --

1 DR. MELIUS: I also have --

2 DR. ZIEMER: -- Jeff, we'll just hold off just
3 a second.

4 DR. MELIUS: I also have an issue related to
5 transparency and classification that I'd like
6 to get addressed --

7 DR. ZIEMER: We don't need to do that before
8 the Mallinckrodt --

9 DR. MELIUS: No, I'm just saying before we lose
10 too many Board members --

11 DR. ZIEMER: Right.

12 DR. MELIUS: -- I think it'd be better if we
13 did it --

14 DR. ZIEMER: Sure. Proceed, Jim.

15 DR. MELIUS: About -- oh.

16 DR. ZIEMER: You wanted to raise the -- or you
17 were going to suggest an approach here for --

18 DR. MELIUS: Larry, this is --

19 DR. ZIEMER: -- a timetable.

20 DR. MELIUS: -- directed at you and Jim Neton
21 and so forth, but in terms of dealing with the
22 Mallinckrodt petition, at least what I'd like
23 to see you do for the next time is, rather than
24 sort of a hypothetical example but with that
25 same approach, look at a number of different

1 groups. And I don't -- it's feasible to do ten
2 or whatever, but try to take a look at -- at
3 what -- how well that approach is going to
4 work, how comprehensive and, you know, will it
5 be -- I guess will it be sufficient for dealing
6 with what may be some of the more difficult
7 groups to deal with in -- among the
8 Mallinckrodt, whether it's some of the earlier
9 years right after '49 or some of the groups for
10 which there's a -- the data is not quite as
11 complete or comprehensive. Again, I think we
12 have to recognize that it's not going to be
13 comprehensive for everybody and there are
14 provisions for dealing with that within the
15 approach you use and so forth, but that we have
16 some examples to present that -- that would
17 look at that, whether it's by department or job
18 title -- some of the ideas that Richard and
19 Mike brought up this morning. And again, we're
20 not looking for you to do the dose
21 reconstructions on everybody, per se, but just
22 sort of be a little bit more convincing that
23 that approach is going to really fill in the
24 gaps and that you will be able to address the
25 sufficient accuracy.

1 **DR. ZIEMER:** Thank you, Jim. What I'd like to
2 do, and we don't have to do this in a formal
3 motion, but this is an idea that Jim has
4 expressed. But before we sort of mandate this
5 to NIOSH, I want to make sure it's the sense of
6 the Board that this is what you would like.
7 Does anyone else wish to speak to that or
8 indicate general agreement or ascent to that
9 idea that addresses the issue that we had
10 discussed. Wanda, did you wish to?

11 **MS. MUNN:** Yes. Generally I agree with what
12 Jim had to request. My personal feeling is
13 that the number he suggested may be
14 unnecessarily large. From my point of view,
15 four or five such examples certainly should
16 serve.

17 **DR. ZIEMER:** I'm not sure you were mandating
18 exactly ten. It's sort of, you know, enough to
19 convince but not so many as to use all the time
20 between now and then.

21 **DR. MELIUS:** Exactly, yeah.

22 **DR. ZIEMER:** A reasonable number, is that what
23 --

24 **DR. MELIUS:** A reasonable number, and I think -
25 -

1 **DR. ZIEMER:** Using judgment on that, perhaps.

2 **DR. MELIUS:** And some care going into the
3 selection so that it's -- you know.

4 **DR. ZIEMER:** Let me ask for others -- general
5 consent that you're agreeable?

6 Let the record show that there is general
7 agreement on the part of the Board for that
8 approach and we look forward to getting that
9 information.

10 I've had a chance to talk a little bit with Lew
11 over the break about the schedule and so on,
12 and Lew, in term-- you have a better feel now
13 for turnaround time for addressing the St.
14 Louis issue in the -- in the next meeting and
15 so on?

16 **DR. WADE:** Yes. I mean I -- I think we all
17 understand the need to proceed with dispatch on
18 this issue, but I also think we understand the
19 need to do this right. Given Joe Fitzgerald's
20 considered comments about the need for SC&A to
21 -- to really be tasked clearly and to look into
22 the issues to depth, and I've talked to Jim
23 Neton over the break about his needs to do what
24 Dr. Melius just asked, it would occur to me
25 that the timing will probably take us to our

1 next regularly-scheduled Board meeting. And I
2 apologize for that, but I think, again, if
3 we've learned any lesson here today it's to do
4 the right things right, but to give us time to
5 do them right. So I think that's probably what
6 it will take us to.

7 **DR. ZIEMER:** All right. We're almost to the
8 end of April here now and our next meeting is
9 in July, so --

10 **DR. MELIUS:** Actually early July, if I remember
11 right.

12 **DR. ZIEMER:** Yes.

13 **DR. ROESSLER:** Could we meet in St. Louis then
14 instead of...

15 **DR. WADE:** I think we -- I mean there's a
16 sentiment to that. Why don't you leave it to
17 us to see about hotels and availability and --
18 before we commit to anything.

19 **DR. ZIEMER:** Our hope is to be able to do that,
20 but we do need to make sure that we're able to.
21 Okay. Thank you --

22 **DR. MELIUS:** Can I just add to that? I mean if
23 I -- this tentative Board agenda that someone
24 passed out --

25 **DR. ZIEMER:** We're going to come back to that,

1 by the way, but --

2 **DR. MELIUS:** Well, but just in terms of
3 location, it also mentions Y-12 and I just
4 think --

5 **DR. ZIEMER:** Right, and there's another --

6 **DR. MELIUS:** -- we need to account --

7 **DR. ZIEMER:** There are other petitions coming
8 down the line --

9 **DR. MELIUS:** Yeah, exactly.

10 **DR. ZIEMER:** -- is the issue, right. Right.

11 **DR. WADE:** So with the wisdom of Solomon, we'll
12 sort that out.

13 **DR. MELIUS:** Helluva bus ride.

14 **DR. ZIEMER:** Yes. Let me ask now, do we have
15 any other issues particularly pertaining to the
16 Mallinckrodt site that we need to address here,
17 for efficiency, so that we don't drag that
18 topic out further?

19 (No responses)

20 Okay. Then I think we're ready to proceed, and
21 maybe we can go back to our original order
22 then. Jeff, with your agreement, we'll let
23 Larry proceed on his report. We had Jeff up at
24 the mike and then we pushed him back down, but
25 Larry, we're I think ready to hear the re-- the

1 NIOSH report.

2 (Pause)

3 Is Larry -- you have a question for Larry,
4 Denise, before he begins his formal
5 presentation?

6 **MS. BROCK:** Not really. I was just curious if
7 -- is there anything else that I need to be
8 here for?

9 **DR. ZIEMER:** That's why I asked the question.
10 I think we have completed our discussions on
11 the Mallinckrodt issue today. I'll kind of
12 promise we won't bring up anything once you
13 have left --

14 **MS. BROCK:** Okay.

15 **DR. ZIEMER:** -- some major issue that could --

16 **MS. BROCK:** Okay, great.

17 **DR. ZIEMER:** We'll -- yes, I --

18 **DR. WADE:** But if one comes up, we will inform
19 you.

20 **DR. ZIEMER:** I think we have completed today.

21 **MS. BROCK:** All right.

22 **DR. ZIEMER:** We thank you for being here.

23 **MS. BROCK:** Well, I wanted to thank everybody
24 on the Board. I appreciate everybody's
25 comments and your time in doing this. I know

1 it was a difficult decision and I greatly
2 appreciate all you've done. Thank you very
3 much.

4 **DR. WADE:** Thank you.

5 **DR. ZIEMER:** Okay, one more thing having to do
6 with Mallinckrodt, Rich Espinosa.

7 **MR. ESPINOSA:** One of the things that I would
8 like to see happen, and I'm asking that the
9 subcommittee of dose reconstruction look into
10 this, is a blind review happen on some
11 Mallinckrodt cases. It's just a suggestion for
12 now.

13 **DR. ZIEMER:** We do have some blind reviews to
14 be scheduled. We have not selected the cases
15 yet, and that certainly can be done. Whether
16 or not that could be done before the next
17 meeting is problematical. That -- is that what
18 you're requesting? It may be that we could.

19 **MR. ESPINOSA:** I'm not too -- I'm not too sure
20 that it would have to be done before the next
21 meeting, but as the next subcommittee meeting
22 adjourns, I'm requesting that the subcommittee
23 look into it and suggest -- and --

24 **DR. ZIEMER:** Select?

25 **MR. ESPINOSA:** -- select some cases --

1 **DR. ZIEMER:** Okay.

2 **MR. ESPINOSA:** -- for a blind review. I just
3 see a lot of good things coming out of a blind
4 review, such as validation of the documents and
5 stuff like that.

6 **DR. ZIEMER:** Yes, okay. Very good. So noted,
7 and if Dr. Wade will help me remember that,
8 we'll make sure that gets on the agenda.

9 **DR. WADE:** I think we both need help in that
10 regard.

11 **DR. ZIEMER:** We both need help.

12 **DR. WADE:** We'll work on it.

13 **DR. ZIEMER:** Okay, thank you. Now Larry will
14 proceed.

15 **NIOSH PROGRAM UPDATE**

16 **MR. ELLIOTT:** Thank you, Dr. Ziemer. It's been
17 a while since I gave you a program status
18 report, but I'm here today to do that and I
19 intend to give you as informative and an
20 illustrative report as some of my staff have in
21 the past, and I hope I can measure up in that
22 regard.

23 With regard to submittals from the Department
24 of Labor for dose reconstruction to NIOSH, you
25 can find that on this slide. I would note for

1 you that this data is current as of the end of
2 March of this year and it's -- this slide
3 shows, in red, those -- excuse me, those cases
4 in blue that we have received from the
5 Department of Labor; cases in green that have
6 been sent out to claimants with their draft
7 dose reconstruction report for their review and
8 sign-off of the OCAS-1 form; and then those
9 cases in red that have then made their way on
10 to the Department of Labor for final
11 adjudication.

12 Things to point out on this slide, we still see
13 a trend of incoming cases from DOL around the
14 200 level mark -- 200 per month. There's a
15 spike there you see in the January time frame,
16 but it averages about 200 a month right now,
17 between 200 and 300.

18 We're somewhat consistent right now in our
19 cases that we're sending out to claimants at
20 about 500 per month, and then those that we
21 send on to DOL range from 475 to 500 a month,
22 as well.

23 This slide gives you a little information about
24 the -- where the cases come from, from which
25 district office, and reflects the larger sites

1 that you might expect. For Jacksonville's
2 district office, Oak Ridge, Savannah River.
3 You can see the Cleveland office handles a lot
4 of AWE sites. It's coming in at about 21
5 percent of the pie chart here, and Seattle next
6 and then Denver bringing up the trail. I think
7 when you see Jeff Kotsch's presentation from
8 Labor, they'll be talking a little bit about a
9 shift that they've made in their district
10 office handling of certain cases for Missouri
11 and -- I'm not sure which other state, but they
12 have made a shift and I'll let Jeff speak to
13 that -- that go to the Denver office from the
14 Seattle office, so there's been a shift in that
15 and he'll speak to that.

16 The cases that we receive from the Department
17 of Labor by quarter are depicted in this
18 particular slide, and as you note -- I hope you
19 note -- this is as of April 18th, last week.
20 And I note for you that in the fifth (sic)
21 quarter of this year, that only reflects cases
22 received up through part of April.

23 This graphic presents -- again, in a different
24 way, portrays the draft dose reconstruction
25 reports that have been sent to claimants. It

1 shows it on a monthly basis. As of April 18th
2 -- again, last week -- we had sent -- or week
3 before last, I guess -- we had sent out 8,537
4 cases. Again, the month of April not being
5 completed yet, that number of 193 doesn't
6 reflect the full month.

7 Draft modifications is portrayed here. And
8 just so you know, draft modifications refer to
9 the changes that occur in a draft dose
10 reconstruction report while it's in the hands
11 of the claimants, before that report has been
12 sent on to the Department of Labor. A DR draft
13 is considered modified when DOL provides NIOSH
14 with new information that would affect the
15 case, such as a new cancer, new employment
16 information or something of that sort, or a
17 change in the survivorship. Modified dose
18 reconstructions are illustrated in blue and
19 represent the draft dose reconstruction reports
20 that have been modified due to the receipt of
21 the new information from Labor. And the
22 modified DRs that are sent back to Labor after
23 they've been changed are shown in red.

24 The final dose reconstruction reports that have
25 been sent to DOL are depicted in this slide on

1 a monthly basis. I'd be pleased to note for
2 you that as of Monday this week, we went over
3 the 8,000 mark. This slide was prepared last
4 week, as of April 18th, and at that point there
5 was 7,851. We have now gone over the 8,000
6 mark back to DOL.

7 With regard to our request for exposure
8 information from the Department of Energy, we
9 have sent 18,543 requests. We have received
10 18,053 responses to those requests. The age of
11 the outstanding requests are shown, those
12 greater than 60 days being 74; 18 for greater
13 than 90 days; 30 requests we've been waiting on
14 for 120 days; and 50 requests we have been
15 waiting on for over 150 days. I can speak -- I
16 know this question's going to come from Dr.
17 Melius, so I'm going to speak to it before he
18 has to ask it. I'm going to save him a little
19 time and it'll save us all a little -- little
20 energy and just give you a quick summary.
21 Albuquerque operations office, particularly
22 with regard to the site for Lawrence Livermore,
23 we have seven requests that are over 60 days
24 past due, and we have one request that's over
25 120 days past due.

1 Amarillo operations office, Pantex being the
2 site, three requests over 60 days.

3 Chicago operations office, that would include
4 Argonne East and Argonne West as the sites in
5 question, five requests over 60 days, two
6 requests over 90 days and four requests over
7 120 days.

8 The General Electric facility in Vallecitos,
9 California, we have 12 requests over 150 days
10 and two that are over 120 days.

11 Let me just run -- Richland operations office --
12 -- this is Hanford and PNNL -- we have 29
13 requests over 60, 13 over 90, 20 over 120, and
14 25 over 150.

15 The remainder are from Savannah River, Fernald,
16 Nevada, Honeywell, and they vary in the dates.
17 We follow up on these on a monthly basis. The
18 numbers do change and we are digging into
19 specifically now what's holding up any case
20 beyond 90 days, and we will be making some
21 determinations as to whether or not there is
22 ever any information that's going to be
23 forthcoming. So we have renewed our vigor in
24 following up on those cases, besides just a 30-
25 day follow-up period.

1 Cases here that are shown are telephone
2 interview statistics. These are the CATIs, the
3 Computer Assisted Telephone Interviews. Cases
4 for which at least one interview has been
5 completed, 18,130. This is -- these numbers
6 are, as you -- as you recall, a case can have
7 more than one survivor and so we interview
8 everybody associated with a case. So these
9 numbers represent actual interviews beyond the
10 -- just the single cases that we have.
11 Interview summary reports that have been sent
12 to claimants, around 24,000 -- or 20 -- close
13 to 25,000, and the number of interviews that
14 have yet to be conducted for the claimants
15 right now, or as of April 18th, were 270.
16 Since January 1st of 2005 we have been
17 conducting between 300 to 400 interviews per
18 month, and you can see that on this slide --
19 shows how -- how the CATI process has -- has, I
20 think, been a very successful aspect of our
21 program, at least in showing some completion
22 here. And these folks that do the Computer
23 Assisted Telephone Interviews are also tasked
24 with doing what is called the closeout
25 interview, and that's not captured in this kind

1 of -- in this slide. These are only the
2 interviews for the dose reconstruction that are
3 shown here. Any closeout interviews --
4 everybody gets a closeout interview to make
5 sure that they understand the report and we can
6 answer any questions that they might have, or
7 encourage them to sign the OCAS-1 or to provide
8 additional information that might better inform
9 the dose reconstruction on their claim.
10 We have -- these statistics are -- basically
11 can be found on our web site in the claim
12 information page and shows the process of
13 handling a claim. And as of April 18th, 2005
14 we had 8,952 cases that were in a pre-dose
15 reconstruction assignment development part of
16 the process where information is being
17 collected, interviews had been done, reports
18 were being exchanged on those interviews with
19 claimants, et cetera.
20 Cases that have been assigned to a DR-ist
21 (sic), a dose reconstructionist, 1,197. We
22 have 477 draft dose reconstruction reports that
23 had been sent to the claimants, were in the
24 hands of the claimants. Again, this is as of
25 April 18th. And we had sent, as of that date,

1 7,851 cases -- completed cases to Department of
2 Labor.
3 This graphic illustrates a cumulative figure of
4 cases received by NIOSH in 1,000-block
5 intervals or increments, with a breakdown of
6 the overall cases by tracking number that have
7 been completed. That's the number indicated on
8 the top. And represented in red, the cases by
9 tracking number that have been completed prior
10 to January 1, 2005 -- that would be these
11 (indicating), and then those that are
12 represented in blue are the cases by tracking
13 number that have been completed since January
14 of 2005. This graphic's intended to give you a
15 perspective on how we're doing with regard to
16 the oldest cases, how we're doing within each
17 one of these 1,000 incremental blocks, how
18 we've done since January 1st of this year.
19 There are pulled cases that are accounted for
20 in these figures. A pulled case has been a
21 case that DOL has retrieved from us for many
22 reasons, perhaps -- the most -- it could be
23 that -- that -- there have been cases sent to
24 us that were CLL, and at this point in time
25 we're -- CLL's the only cancer that's not

1 adjudicated under this program. It could be
2 that -- the most unfortunate and most
3 disturbing, to me, reason would be that the
4 Energy employee or the only survivor of that
5 Energy employee has deceased, and those are not
6 -- those are very few, but I do watch those on
7 a -- on a close -- very close basis. They have
8 my attention.

9 As mentioned at the previous Board meeting, we
10 are focusing on completion of the first 5,000
11 claims. We have been somewhat successful at
12 reaching this goal. Since January 1st, 2005
13 we've completed 120 cases in the 1,000 block,
14 117 cases in the 2,000 block, 81 cases in the
15 3,000 block, 87 cases in the 4,000 block, and
16 103 cases in the 5,000 block.

17 It's our -- we have a concerted effort underway
18 and have set a goal that by June 30th of this
19 year we will have attended to all of the
20 remaining cases in that first 5,000, either
21 through dose reconstruction or assignment to a
22 Special Exposure Cohort class or a -- by
23 completed dose reconstruction it could be
24 actually a dose reconstruction sent to the
25 Department of Labor or one that has been

1 drafted and placed in the hands of the
2 claimants. So ORAU has some incentives to do
3 this and we're working very closely with them
4 to make sure that this goal is achieved. I
5 think it's very important that we attend to
6 this. This is part of our timeliness concern
7 that we're facing.

8 Administratively closed records are shown in
9 this graphic by month, since we first started
10 tracking these. And what happens here is where
11 we have a situation where, for whatever reason,
12 the claimant decides not to sign the OCAS-1
13 form, not to return it to us, has perhaps got
14 to the point of a height of frustration with
15 the program or with us or whatever and they --
16 they've just shut off communications with us.
17 We do go back to them. We try to talk them
18 through the process, try to encourage them to
19 file the OCAS-1. We encourage them to do that.
20 We explain to them that if they have another
21 cancer, if they have additional employment, we
22 could follow up on that together. We explain
23 that the signing of the OCAS-1 is not an
24 agreement that they sign saying they are in
25 full agreement with our dose reconstruction,

1 but it is simply that they have no further
2 information to provide and it allows the case
3 to move forward so that a decision can be
4 proffered from DOL. And as you can see, we're
5 dealing with a few of these but not very many.
6 Reworks. I talked about modifications earlier.
7 Well, reworks are a little bit different breed
8 here. A rework refers to a process that occurs
9 at the final dose reconstruction report stage,
10 meaning that the case has been in the hands of
11 the Department of Labor. And in this
12 situation, something has been identified by the
13 Department of Labor or by the claimant that
14 would require us to go back and revise our dose
15 reconstruction report, redo the reconstruction
16 or add new -- because of new information, add
17 to that report. These -- these revisions can
18 be initiated because of additional employment,
19 additional cancer, new information that the
20 claimant identified after they had signed the
21 OCAS-1 and sent it on to -- and we had sent it
22 on to DOL. So there's a variety of reasons as
23 to why these are -- are kicked back to us from
24 the Department of Labor.
25 We maintain a high level of contact with the

1 claimant population through phone calls and
2 correspondence and e-mails, and that's shown on
3 this slide. Our contractor receives the bulk
4 of the phone calls, and I believe this also
5 includes the CATIs, as well as the -- this
6 150,000 number of phone calls to ORAU includes
7 CATIs and closeout interviews.

8 Pardon me?

9 **DR. WADE:** (Off microphone) (Unintelligible)
10 finish up (unintelligible).

11 **MR. ELLIOTT:** Okay. Pick it up -- pick it up,
12 he says.

13 Last time we had some interest in hearing more
14 about the compensation rates by cancer model,
15 and this slide presents some of the caveats
16 associated with the slides that I'm going to
17 show after this. These results that I'm about
18 to present to you are through April 20th of
19 this year. They're based on claims which NIOSH
20 received notice from the Department of Labor of
21 a compensation decision, so there's a number of
22 claims that won't be included in this that are
23 still at -- are at DOL, but we haven't learned
24 from DOL what the final decision was. These
25 rates may be skewed by the DR efficiency

1 process. The rates may not be predictive of
2 any future results. And unless otherwise
3 noted, the rates reflect claims with only one
4 reported primary cancer. Does not include
5 secondaries or multiples, unless so indicated.
6 As you might expect, lung tops the list here at
7 almost 70 percent. Leukemia's a close second
8 at 67 and 61 and 56, then we see liver and
9 other types of leukemia, endocrine gland and
10 other respiratory.

11 **DR. MELIUS:** Lew, if you and Paul could try not
12 to get your heads together because --

13 **DR. WADE:** We will not get our heads together
14 again.

15 **MR. ELLIOTT:** Thank you. I thought that was
16 just a bump in the road trying to get me to
17 hurry up.

18 But non-melanoma skin is shown here, and
19 several other cancers. I'm not going to go
20 through this. You have it -- have these
21 slides, as well, in your briefing packet and
22 they're on the table for the public. But I
23 think it's indicative of the radiogenicity of
24 the cancer, as we suspected, based upon the
25 scientific knowledge and understanding of

1 cancer causation.

2 Nothing much here I want to say about this
3 slide. You can peruse the numbers as you can.
4 Trying to pick up the pace here, this is --
5 this is where I need to make notice for you
6 that at least one secondary cancer, primary
7 cancer unknown, we see about a 71 percent
8 compensation rate. For cases where we have
9 multiple primary cancers, we show about 42
10 percent.

11 The percent of -- there are -- for those
12 cancers where we have 30 or more claims and we
13 have not seen anything -- any -- any of those
14 claims compensated are listed at the bottom of
15 this slide. I do know that there is one female
16 genitalia that I think Labor has in their hands
17 right now that may be compensable. We have to
18 wait and see what happens with that one, a very
19 high dose.

20 Petitions received, we're moving on to a
21 different topic here, but petitions that we
22 have received, 26 total. We have 20 active in
23 our hands. HHS decision has been made on one,
24 that would be Mallinckrodt for the years '42
25 through '48, as you know. There have been six

1 petitions administratively closed for lack of
2 basis.

3 Our -- briefly, our accomplishments since the
4 last Board meeting, we have exceeded sending
5 8,000 dose reconstruction reports to DOL.
6 We've seen Secretary Leavitt's final decision
7 to add a class of workers for Mallinckrodt.
8 That was sent to Congress on April 11, 2005.
9 We have participated in 33 meetings at 13 sites
10 since March 1st. This is a huge commitment of
11 staff effort. We send not one, but we send
12 several people -- PHA, a public health -- or a
13 health physicist, public health analyst, a
14 communications specialist -- typically to these
15 meetings, and it's been a very resource-
16 intensive effort. But I think it's been very
17 beneficial to us and to the people who show up
18 at those meetings. We can answer questions.
19 You may have seen a different presence here at
20 this meeting for NIOSH. We've had public
21 availability sessions at this meeting where
22 we've asked claimants -- we noticed all of the
23 Iowa claimants that we would be here. I've had
24 mixed results on this -- from why'd you tell me
25 that you were going to be here when you can't

1 tell me that anything's changed, to hey, it's
2 good to see a face associated with my claim.
3 So we're evaluating our presence and our -- how
4 we represent ourselves at these meetings, and I
5 would appreciate hearing any thoughts or
6 comments that the Board members have, on an
7 individual basis, about that.

8 Finally, we would lay claim that 12 Technical
9 Basis Documents have been approved since
10 January, and seven Technical Information
11 Bulletins have been approved.

12 I think that will conclude mine and I'll gladly
13 answer questions, and I'm sorry if I was too
14 quick and I glossed over things that you wanted
15 to hear more about.

16 **DR. ZIEMER:** We'll have time for a couple of
17 questions, and I should tell you why Lew and I
18 had our heads together. We are eliminating
19 Jeff from the program. He's aware of it. You
20 have the Labor report in your document, so that
21 will help us with the time a little bit.

22 Jim, and then Leon.

23 **DR. MELIUS:** Larry, I thought you --

24 **DR. ZIEMER:** Larry already answered your
25 question, Jim.

1 **DR. MELIUS:** Yes, I know, and I was saying he
2 stymied me, but I've got to come up with some
3 new questions or a new way of asking 'cause
4 I'll give you credit, the cases completed by
5 tracking number -- my usual question is how
6 many have you -- what have you done for me
7 lately, and you know, you've got that on there,
8 so that's -- that is helpful.

9 I have a comment and a question. My comment is
10 sort of the half-full, half-empty sort of
11 argument, but if my calculations are right --
12 and they're certainly at least ballpark -- it
13 still leaves you within the first 5,000 with
14 about 2,400 of those first 5,000 to be
15 completed; 3,200 of the next 5,000 to be
16 completed, and so on. And at the completion
17 rate that you're going at now, assuming even no
18 new cases, I believe that's at least two years
19 to catch up with the backlog and presumably
20 with the current rate of increase -- of claims
21 coming in, I think that stretches it out to
22 about three to four years to -- or closer to
23 four years to catch up with the backlog. Now
24 that's assuming no SECs and making lots of
25 other assumptions. So I guess I'd like to have

1 a little bit more information. One, on what
2 you're doing with the backlog to catch up, and
3 secondly, how we're dealing with -- who is that
4 backlog?

5 **MR. ELLIOTT:** Who is that backlog?

6 **DR. MELIUS:** Yeah, what kinds of ca-- I believe
7 in the past I've asked for information on --
8 can you tell us the -- why -- why are we having
9 problems with these? Is it -- what --

10 **MR. ELLIOTT:** Well, since there's two -- over
11 200 sites represented in our caseload, as you
12 know. Several of those are AWE sites. Several
13 -- we have several individual cases where just
14 one or two cases from a given site. We won't
15 have a site profile for those. We're looking
16 at what we can do for those on an individual
17 basis. We have employed an overestimation
18 approach, a new Technical Information Bulletin
19 that provides an overestimation approach, and
20 if the case is compensable, we move it on. If
21 it's not and we have to refine our dose
22 reconstruction or find information to process
23 that case, we do so.

24 I think you're going to -- from this meeting to
25 the next meeting you're going to see a dramatic

1 increase in our rate of production, given some
2 of the things you just alluded to, that SEC
3 classes are going to help us out with reducing
4 our backlog. This overestimation approach that
5 we've approved for the ORAU folks to use is
6 going to help. We're -- we've talked to them
7 about adding staff where we need to add staff
8 to get this work done. There's a variety of
9 efforts underway. Now without, you know, going
10 into greater detail -- that I don't have at my
11 fingertips right now -- I can't -- I can't add
12 any more.

13 **DR. MELIUS:** My recollection is that ORAU was
14 working on some evaluations or reports related
15 to some of this -- these backlog issues --
16 again, specifying who was rep-- who was
17 included in that backlog by type of case or
18 site or something.

19 **MR. ELLIOTT:** That's right.

20 **DR. MELIUS:** Could those be made available to
21 the Board, at least, if you don't have time
22 to...

23 **MR. ELLIOTT:** No, I don't think they're --
24 they're in a shape or form that I'm happy with
25 yet. We're working with the contract-- our

1 contractor to get to a point of understanding
2 on how we're approaching our backlog issue in a
3 variety of ways, and I'm not at a juncture
4 where I'm ready to commit publicly to how --
5 the different approaches that we're applying.
6 We're working on that, and as soon as we have
7 something that I can make publicly available, I
8 will.

9 **DR. MELIUS:** Is there a time frame on that?

10 **MR. ELLIOTT:** I hope we'll be able to say more
11 about that at the next meeting in July.

12 **DR. MELIUS:** I mean I'd just point out -- I
13 mean this -- there's a lot of frustration which
14 we've heard today from Mallinckrodt, and we
15 heard yesterday with Iowa, about the length of
16 time it's taking for cases to be processed
17 through this program. And I mean I think a
18 much more -- I mean I think a plan needs to be
19 developed and it needs to be shared with the
20 public --

21 **MR. ELLIOTT:** I agree --

22 **DR. MELIUS:** -- as soon as possible.

23 **MR. ELLIOTT:** -- I agree 100 percent. But
24 let's keep things in perspective here. Iowa,
25 we -- we sent letters out to the Iowa claimants

1 once we were dealing with the revision to their
2 site profile and indicated that we were no
3 longer processing dose reconstructions until we
4 had a revised site profile. Now that we have a
5 decision -- a recommendation for a class, we're
6 watching what's going to happen with that
7 decision on that class.

8 Mallinckrodt, we have a revised site profile.
9 We are dealing with a petition. We have --
10 have no recommendation. We will go back and
11 start processing claims under Mallinckrodt Rev.
12 1 site profile immediately, and we're going to
13 start moving those claims through as we await
14 this Board's deliberation on -- on
15 Mallinckrodt, and then finally a decision on
16 Mallinckrodt as an SEC, so I'd just offer that.
17 I agree with you 100 percent. We need a cogent
18 plan and we're working toward that end.

19 **DR. MELIUS:** Well, I think we need to re-
20 evaluate the approach entirely. I find it
21 increasingly unacceptable that people are
22 having to wait this long.

23 **DR. ZIEMER:** Leon Owens.

24 **MR. OWENS:** Larry, I had an opportunity to
25 attend three of the DOL outreach meetings in

1 Paducah, and I would like to compliment Mr. Stu
2 Hinnefeld and Ms. Heidi Deep. Particularly --
3 Stu fielded some very tough questions. We had
4 a large -- large group of workers in
5 attendance, and so I do think it adds a lot of
6 benefit, a lot of value to have NIOSH
7 representatives present at those meetings.

8 **MR. ELLIOTT:** I thank you for that, Leon, and
9 it's kind words like that that keep us going
10 with these difficult challenges. I would like
11 to add, though, that the 33 and the 13, the
12 statistics in those outreach meetings, do not
13 include our worker outreach, our worker input.
14 Those are just the town hall meetings that DOL
15 has sponsored. So while we're doing that,
16 we're also going out and doing our own worker
17 outreach. As you know, we spent a session down
18 in Paducah during this time period since the
19 last meeting, so...

20 **DR. ZIEMER:** Thank you. Henry and then Mark.

21 **DR. ANDERSON:** Just quickly, you mentioned the
22 -- we're now going to be getting into some of
23 the site profile updates. What -- what's the
24 process? I think you mentioned you would
25 potentially go back through those that have

1 already been adjudicated to see if it'd make a
2 change? How -- how's that happen? I mean --

3 **MR. ELLIOTT:** Well, we do that --

4 **DR. ANDERSON:** -- that could get to be very
5 onerous.

6 **MR. ELLIOTT:** Oh, it is resource-intensive, as
7 everything we do here in this program. It
8 consumes us. But we have a standard operating
9 procedure, one of those procedures which has
10 been reviewed in task three, which is called
11 program evaluation reporting where if a change
12 is made -- and we've made numerous changes,
13 numerous revisions in site profiles, as you may
14 know. And each time one of those is -- is
15 completed, one of those revisions is completed,
16 we look back through the cases that were dose
17 reconstructed under that particular version,
18 and the evaluation must include whether or not
19 the modification that was made or a change in
20 the site profile that was made would affect the
21 compensability outcome of the case. So if the
22 case was already found compensable, we
23 disregard it.

24 If it's found non-compensable under the prior
25 version, we evaluate the change and whether it

1 would make a difference in the compensability.
2 If it does, we reprocess that dose
3 reconstruction, notify the Department of Labor
4 and the claimant that we're doing so and we
5 send that revised dose reconstruction back.
6 To date, I do not believe -- Jim could correct
7 me if I'm wrong, if he's still in the room, but
8 I do not believe that we have made any changes
9 -- we've not seen any non-compensables turn
10 into compensables based upon revisions that
11 we've made.

12 **DR. ANDERSON:** That was my next question, yeah.
13 Thanks.

14 **DR. ZIEMER:** Mark.

15 **MR. GRIFFON:** Just -- just a quick one, Larry.
16 I -- I think it might have been last meeting
17 you mentioned that -- or it was -- I think the
18 question was raised and you had mentioned that
19 ORAU was doing a report for you on self-
20 identified SEC classes, and I wondered if that
21 was completed yet. And if it is, if the Board
22 can get a --

23 **MR. ELLIOTT:** We -- we -- it's not -- I've sent
24 it back because I wasn't -- I wasn't fully
25 satisfied in how that was developed. I want to

1 see more detail in it and more effort put
2 toward that end, and we're awaiting a revision
3 of that report. I can tell you that some of
4 the -- some of the sites that involve early
5 years we're really focusing our attention on
6 that. I've asked specifically, because I know
7 -- we've got Linde site profile in our hands,
8 and if you've looked at it, you know that it is
9 reserved for the early years, and I'm saying
10 that right there, in my opinion, is a potential
11 class and so we should look at that. We are
12 looking at Linde, we're looking at NUMEC,
13 there's a variety of those sites that have --
14 in the early years where their data is non-
15 existent to very minimal, or the monitoring
16 program was not what we would hope it should
17 have been, we would like to have seen it.

18 **MR. GRIFFON:** That can be -- when it -- when
19 it's completed, it can be provided to the
20 Board?

21 **MR. ELLIOTT:** Yep.

22 **DR. ZIEMER:** Thank you. Okay. Thank you very
23 much, Larry, for the update. I think we're
24 ready to move on. We have one item on our
25 afternoon agenda that may have some substantial

1 discussion, and that's the first 20 dose
2 reconstruction case wrap-up, and we have -- the
3 subcommittee met earlier this week -- was that
4 this week? Monday -- Monday morning, and most
5 of you were actually here for that, but we have
6 the materials that come to us as a
7 recommendation from the subcommittee. I think
8 it would be helpful if the Chair identified to
9 you again what those materials are.

10 **MR. GRIFFON:** Paul, I --

11 **DR. ZIEMER:** Mark, can you help us?

12 **MR. GRIFFON:** -- I was just going to ask, does
13 it make sense -- I know Jim said he had a
14 motion, and then we have a task order for SEC
15 task to consider.

16 **DR. ZIEMER:** We have --

17 **MR. GRIFFON:** And I -- this is going to be a
18 lengthy process, so I'm just afraid that we
19 might lose --

20 **DR. ZIEMER:** Well, it's an issue of what should
21 --

22 **MR. GRIFFON:** -- (unintelligible) numbers --

23 **DR. ZIEMER:** -- go first. Actually the --

24 **MR. GRIFFON:** I know.

25 **DR. ZIEMER:** -- the task order for SEC was --

1 we had a draft of that, I think, in our
2 telephone --

3 **DR. MELIUS:** And we said we would take
4 action...

5 **DR. ZIEMER:** And we would act on it here.
6 Perhaps --

7 **DR. MELIUS:** I have a copy if we need --

8 **DR. ZIEMER:** Perhaps we can act on that quickly
9 since --

10 **DR. WADE:** (Off microphone) (Unintelligible)
11 have it.

12 **DR. ZIEMER:** -- that was developed. We've had
13 that for a month or so. Would you like to do
14 that next? It is the next item.

15 **MR. GRIFFON:** I think tho-- yeah, those two.

16 **DR. MELIUS:** And with -- with the Chair's
17 permission, can I hand out the issue related to
18 --

19 **DR. ZIEMER:** Yes.

20 **DR. MELIUS:** -- transparen-- so these people
21 can glance at it.

22 **SEC PETITION REVIEW TASK ORDER**

23 **DR. ZIEMER:** Okay, let's -- let's get the
24 document before us. It's called Special
25 Exposure Cohort petition review task order.

1 The draft does not have a date on it. I guess,
2 for convenience, put today's date on it.

3 (Pause)

4 This would be task five for our contractor.

5 **MR. GRIFFON:** And we --

6 **DR. ZIEMER:** Jim -- Jim is passing out an item
7 which is a different issue, so that doesn't --
8 this is not part of the item before us here.

9 **MR. GRIFFON:** We had a -- I mean we had a
10 fairly lengthy discussion on this on the
11 previous Advisory Board phone call meeting, and
12 I -- I think -- well, I think we just need to
13 consider it now, and there might be --

14 **DR. ZIEMER:** Sure.

15 **MR. GRIFFON:** -- possible amendments to it that
16 we want to consider, I don't know, but...

17 **DR. ZIEMER:** Does everybody have a copy? I'm
18 actually trying to recall whether this came out
19 of the subcommittee. Lew, can you help me --

20 **MR. GRIFFON:** It was --

21 **DR. WADE:** Yes, it was prepared in -- really
22 during and after our subcommittee meeting in
23 Cincinnati, and then it was placed before the
24 Board on its phone call on -- I think it was
25 April 11th, and there was discussion of the

1 full Board, reserving for this meeting action
2 on the -- on the task.

3 I think there's also the possibility that if
4 this task document is agreeable to the -- to
5 the Board, the Board might instruct me to
6 undertake the independent government cost
7 estimate, which would expedite the matter. But
8 I think first there needs to be an intellectual
9 agreement on this document.

10 **DR. ZIEMER:** I'll interpret the document as
11 coming from the subcommittee. It constitutes a
12 motion, does not require a second. It's open
13 for discussion. Basically what we have before
14 us is a motion to approve a task concerning
15 Special Exposure Cohort petition reviews.
16 Wanda Munn.

17 **MS. MUNN:** I don't know whether my note on this
18 -- the copy that I have -- is something that I
19 made during the time we were discussing it and
20 whether it was something we agreed to, or
21 whether it's just a note that I've made to
22 myself.

23 Item number three, (reading) the contractor
24 will be required to review -- I have inserted
25 "up to" --

1 **DR. ZIEMER:** That's correct, we --

2 **MS. MUNN:** That was a part of our discussion,
3 wasn't it?

4 **DR. ZIEMER:** We basically agreed that we
5 weren't guaranteeing that there would be eight,
6 so the scope would be up to eight. I think we
7 had agreed on that. I don't see that in this,
8 but in paragraph three, without objection, add
9 the words "up to" eight SEC petitions. That
10 scopes an upper limit for purposes of the cost
11 estimate, not guaranteeing to the contractor
12 that there would necessarily be this many
13 petitions. We don't know how many we would
14 need reviewed. Thank you.

15 **MS. MUNN:** And I have --

16 **DR. ZIEMER:** Another?

17 **MS. MUNN:** -- one other issue. Although there
18 is nothing in this particular item which would
19 point to my concern, nevertheless it's a
20 concern I want to raise.

21 When we first began looking at task orders for
22 our contractor, we -- I was under the
23 impression that the contractor was going to be
24 providing -- specifically -- technical,
25 scientific expertise that we were not able to

1 provide here in our own group. And I -- I had
2 no -- at that time, we reviewed some of the
3 credentials of virtually all of the people that
4 was my understanding would be the primary
5 actors in what SC&A would be doing for us.
6 On our last telephone call we had a
7 considerable amount of input from a policy
8 individual that I questioned afterwards and was
9 told that that individual had become a part of
10 our -- our SC&A task force. I was a little
11 taken aback by that because I did not -- I was
12 unaware of the fact that -- that we were
13 providing our -- our contractor with
14 instructions to follow our -- our directive by
15 way of inviting policy makers on the team. I
16 guess -- because we're now in the process of
17 putting together another task, I guess --
18 although I don't see that it's the Board's
19 requirement to review the credentials of every
20 person that our contractor chooses to -- to
21 take on, I do have to question that particular
22 item as -- with respect to credentials.

23 **DR. ZIEMER:** Thank you. This may be an issue
24 we would have to discuss with the contractor in
25 that particular case. Lew, do you have any

1 comments on that or can you shed any light on
2 that?

3 **DR. MELIUS:** I have some comments when --

4 **DR. ZIEMER:** I was not on the phone call. To
5 address this?

6 **DR. MELIUS:** Yeah, my recollection is that --
7 if I'm guessing right at the individual you're
8 referring to -- is that he was listed as a
9 member of the team when we approved the initial
10 contract, and so it was not a surprise to me to
11 see him and hear that he was involved in -- in
12 doing this and was listed in a -- I thought at
13 the time when we approved it -- in an
14 appropriate fashion and in an appropriate role,
15 and -- again, if I'm guessing right at who
16 you're referring to 'cause I was not part of
17 this more recent phone call -- was that he was
18 also -- has a considerable knowledge about the
19 DOE complex and I believe has been -- if he's --
20 - to the extent that he's played a role, and I
21 don't think it's been a major one, has been
22 based on his historical knowledge of
23 information throughout the -- the complex,
24 particularly on specific sites.

25 **DR. ZIEMER:** Not necessarily technical, but

1 information on or knowledge of --

2 **DR. MELIUS:** Availability of technical
3 information. I mean --

4 **DR. ZIEMER:** -- availability of technical
5 information.

6 **DR. MELIUS:** -- the particular individual is
7 fairly knowledgeable technically, but -- again,
8 my sense is he's -- and recollection at the
9 time is he's being used -- was to be used and
10 involved in an appropriate way, given his
11 knowledge and background.

12 **DR. ZIEMER:** Wanda?

13 **MS. MUNN:** If that is in fact the case, then I
14 must have been completely blind at the time
15 that we were -- time I thought I was paying
16 attention. I am not comfortable with that. I
17 am not at all comfortable with individuals
18 other than the technical expertise I clearly
19 understood we were seeking from our contractor.

20 **DR. ZIEMER:** Thank you. And again, that may be
21 an issue we would explore, perhaps with our --
22 with our contractor. Whether or not that
23 impacts directly on this motion, I'm not sure.

24 **DR. MELIUS:** Can I just -- I would hope, given
25 some of our past history, that if we're going

1 to try to deal with issues like that, that we
2 would do it with full involvement of the Board.

3 **DR. ZIEMER:** Thank you. Any other comments on
4 -- on this particular document?

5 **DR. WADE:** Could I ask a clarifying question,
6 Mark, since -- I assume that you're listing
7 here a number of tasks, any or all of which
8 could be engaged, depending upon the Board's
9 wishes. So it's not that all of these things
10 will be done, it's up to the Board as to what
11 would be done. Is that correct?

12 **MR. GRIFFON:** Yeah, I guess we -- I mean we had
13 -- you mentioned on the conference call that we
14 had, and I don't know if we want to amend this
15 to give an option at the discretion of the
16 Board to make a decision as to whether we want
17 a more limited scope for certain reviews or the
18 full scope. And that mi-- you know, that might
19 be something we want to consider.

20 **DR. ZIEMER:** It would seem to me that if we had
21 a task that was sort of encompassing, then we
22 could use that for a particular issue, or
23 portions of the task, could we not? Is it not
24 better to have a broad task under which work
25 can be done rather than a very narrow one that

1 confines you so you cannot do certain things?

2 **DR. MELIUS:** Yeah, my sense was also that
3 number two here would be developing the
4 procedures that were going to be used and very
5 well that one of those procedures would be the
6 option to sort of focus on different --

7 **DR. ZIEMER:** Procedures would --

8 **DR. MELIUS:** -- evaluations as we --

9 **DR. ZIEMER:** -- spell that out.

10 **DR. MELIUS:** -- go --

11 **DR. ZIEMER:** Right.

12 **DR. MELIUS:** -- along, and -- and again, I
13 don't know if we need to include it here, but
14 certainly as we operationalize this that we
15 should take that into account 'cause it may
16 very well be appropriate, and to make these
17 more timely, also, I think.

18 **DR. WADE:** I am comfortable with that. I just
19 wanted to make sure that was the sense of -- of
20 the Board. I think this gives me that
21 flexibility, but I wanted to clarify that
22 sense.

23 **DR. MELIUS:** And as I said on the conference
24 call, I am uncomfortable with trying to do this
25 piecemeal, one question at a time, or two

1 questions, 'cause I think it's just going to
2 tie us up and we're going to lose consistency
3 over time.

4 **DR. ZIEMER:** Thank you. Other comments?

5 (No responses)

6 Okay. Are you ready to vote on this document
7 then? Let us vote.

8 All in favor will say aye?

9 (Affirmative responses)

10 Any opposed, no?

11 (No responses)

12 Any abstentions?

13 (No responses)

14 Motion carries. Thank you.

15 **DR. WADE:** And then a clarification. Do I have
16 the permission of the Board to undertake
17 developing an independent government cost
18 estimate to this task?

19 **DR. ZIEMER:** Any objections to have our...

20 **DR. WADE:** Thank you.

21 **DR. ZIEMER:** Okay. Our official will proceed
22 with that.

23 **DR. MELIUS:** I actually think the sooner we can
24 get this in place, the better -- given the
25 numbers Larry just showed.

1 **MR. GRIFFON:** Just a logistic question. I
2 think you have the most electronic version,
3 minus the "up to" eight ca-- so if you can just
4 -- I don't need to send any revised versions --

5 **DR. WADE:** No, I'm fine with that. Thank you.

6 **DR. ZIEMER:** Okay. We have a proposed motion
7 from Jim Melius. We also have -- which may or
8 may not be a long issue, but I believe the --
9 the case report -- the 20-case wrap-up is
10 really the important issue that we need to
11 address before we lose a quorum.

12 **MR. GRIFFON:** I don't know, I think if we want
13 to -- you want to -- I would -- I would defer
14 to this motion first and then -- I think that
15 makes more sense.

16 **DR. ZIEMER:** Okay. The Chair will recognize
17 Jim for the purpose of making a motion.

18 **DISCUSSION, LEGAL OPINION FROM DOJ**

19 **DR. MELIUS:** Yeah. This motion came out (sic)
20 -- (unintelligible) from our discussions
21 yesterday and -- or maybe it's out lack of
22 discussions or ability to discuss the reported
23 legal opinion from the Department of Justice.
24 And I'm not sure whether we want to task NIOSH
25 with this or whether it would be better to be a

1 letter to the Secretary asking -- 'cause this
2 is a response 'cause at least it's implied to
3 us that the Office of General Counsel for the
4 Department is where -- at least this was
5 communicated for -- this opinion was
6 communicated from, so let -- why don't I read
7 the motion into the record.

8 The Board has serious concerns about the
9 reported Department of Justice legal opinion
10 regarding the handling of classified
11 information as the basis for decisions within
12 the Special Exposure Cohort program. While
13 fully supporting the need for preventing the
14 release of classified information, the Board
15 also recognizes the importance of transparency
16 to the EEOICPA program. Due to the long
17 history of secrecy at DOE nuclear facilities,
18 former workers are very suspicious of secrecy
19 related to any health-related information used
20 as the basis for their claims.

21 The Board respectfully requests the following
22 information: One, who requested this legal
23 opinion and what was the rationale for the
24 request; number two, what agencies were
25 involved in the discussion of this legal

1 opinion and to what extent does this opinion
2 apply to programs in those agencies; number
3 three, requesting a copy of the legal opinion
4 and a presentation by an attorney familiar with
5 the basis for the opinion at our next meeting.
6 The Board believes this information is critical
7 for the Board to properly and fully carry out
8 our responsibilities under EEOICPA.

9 **DR. ZIEMER:** You've heard the motion. Is there
10 a second?

11 **MR. ESPINOSA:** Second.

12 **DR. ZIEMER:** The motion has been seconded.
13 It's open for discussion. Wanda?

14 **MS. MUNN:** I feel I have to repeat the question
15 that I asked yesterday. I don't understand why
16 bullets one and two are of any consequence.
17 Who requested it, why it was requested, doesn't
18 seem to be an issue. The Department of Justice
19 is within its prerogative to do that. Asking
20 for a copy of the legal opinion and an attorney
21 familiar with the basis is, in my view,
22 certainly within our prerogative and we made
23 the statement in the first paragraph that
24 workers are suspicious and that concerns us. I
25 really do not see that bullets one and two are,

1 frankly, germane.

2 **DR. ZIEMER:** Are you making a formal motion to
3 exclude them or are you just raising the
4 question?

5 **MS. MUNN:** I would move that we exclude bullets
6 one and two.

7 **DR. ZIEMER:** Okay. There's a motion to exclude
8 bullets one and two. Is there a second?

9 **DR. DEHART:** I second.

10 **DR. ZIEMER:** And seconded. Now what is open
11 for discussion is the removal of bullets one
12 and two. You may speak in favor of the motion,
13 you may speak in opposition to the motion.
14 Indicate what your -- Roy.

15 **DR. DEHART:** I'm speaking in favor of the
16 motion. I'm not certain that that information
17 has any bearing on the action of the Board.
18 The impact of the legal opinion does, but who
19 may have instituted the inquiry or whether or
20 not it was done solely from the Department of
21 Justice I think is immaterial.

22 I would also ask the question, have we seen the
23 full opinion, so I think that needs to be put
24 in the motion.

25 **DR. ZIEMER:** The motion asks for a copy of the

1 opinion, I believe, yeah.

2 **DR. DEHART:** Yes.

3 **DR. ZIEMER:** Bullet three --

4 **DR. DEHART:** Well, how can we have a concern
5 when we haven't seen the full opinion?

6 **DR. ZIEMER:** We've seen a slide depicting the
7 opinion.

8 **DR. DEHART:** I would put that in there, we have
9 not seen the opinion.

10 **DR. MELIUS:** Well, I tried to address that by
11 saying the reported Department of Justice legal
12 opinion, in the first sentence. That was what
13 I was trying to get at.

14 To speak --

15 **MS. MUNN:** Alleged.

16 **DR. MELIUS:** To speak against the motion to
17 remove --

18 **DR. ZIEMER:** Go ahead.

19 **DR. MELIUS:** -- I'd like to explain -- was -- I
20 thought it would be helpful to understand the
21 context for this opinion, and that would be
22 knowing who requested it, what was the
23 rationale for that request, as well as in
24 bullet two, what other agencies were involved.
25 For example -- and I guess we didn't get to

1 hear this presentation today, but I'm aware
2 that the Department of Labor is developing
3 their regulations regarding Subtitle E, and so
4 issues of classification versus due process and
5 so forth may be something they're wrestling
6 with at the time. That would sort of put this
7 in context and I think help to -- help us to
8 understand what was involved. Also to know how
9 this was being applied, was there a related
10 opinion that was being developed for Department
11 of Labor's program or for some other part of
12 this program, and it would just, I think, more
13 fully inform us about this opinion and be able
14 to understand it better. And that was the
15 rationale for bullets one and two.

16 **DR. ZIEMER:** Henry?

17 **DR. ANDERSON:** Yeah, I guess I'm speaking
18 against. I -- I would agree, I -- I guess what
19 I'd like to know is was this done specifically,
20 narrowly and for our program or what's often --
21 it could be that this is a general opinion
22 related to classified information that then
23 sweeps us up in the late notification as
24 somebody looked at this and said this may
25 impact you, when in fact it was developed for

1 other programs. And that places our issues in
2 context and might then result of a need for a
3 more detailed review or comment on specifically
4 our program. It's for -- if it's for our
5 program and it was apparent nobody here knew
6 about it, that is also important to know. So
7 you know, I think it would be -- the context of
8 it and how broad-sweeping it is -- we may learn
9 that when we get a copy of it, and it may all
10 be in that copy as to who it's being sent to,
11 but I just think it would be helpful to know
12 how specific is it to they reviewed our program
13 versus other issues.

14 **DR. ZIEMER:** Okay. Wanda, do you wish to speak
15 for your motion?

16 **MS. MUNN:** It still doesn't matter whether it's
17 just our program or whether it's the whole wide
18 world. The Department of Justice is within
19 their prerogative to do that. As a matter of
20 fact, it's their responsibility to do that.
21 And so since they're doing it, from our
22 perspective our only concern needs to be how it
23 affects our program.

24 **DR. ZIEMER:** Okay. Others who wish to speak in
25 -- okay, Michael?

1 remain in.

2 We are now back to the original motion with all
3 bullets in place. Now this may pose a dilemma
4 for those who voted against the bullets because
5 they may favor the main motion but be concerned
6 about the bullets. That's the nature of what
7 happens when things are amended or not amended.
8 Sometimes you take the good with the bad.

9 But let me ask if there's any further
10 discussion, in which case we will vote for the
11 main motion as unamended. Are you ready to
12 vote?

13 Okay. All who favor the motion, say aye -- or
14 let me ask for a show of hands. Okay, one,
15 two, three, four, five, six, seven, eight,
16 nine, ten.

17 Opposing? One. And no abstentions? And the
18 motion thereby carries.

19 It appears to the Chair that this should be a
20 request to the Secretary.

21 **DR. MELIUS:** I believe so, yes.

22 **DR. ZIEMER:** And if that's the case -- and I
23 may need some help here.

24 Our normal role is to advise the Chair -- or to
25 advise the Secretary. Lew, is there any

1 problem if we simply -- we are asking the
2 Secretary if this -- if this information can be
3 provided. Is that appropriate or should --
4 should we go through NIOSH on this.

5 **DR. WADE:** I don't think there's any problem
6 with it, in my opinion.

7 **DR. ZIEMER:** Okay. With that added comment,
8 then, the Chair will proceed -- do I have to do
9 this in 21 days? We will -- we will send this
10 forth as soon as possible. Thank you. Mark.

11 **DR. WADE:** Could I take up an issue before
12 Mark, just -- the future schedule?

13 **DR. ZIEMER:** We're going to run out of time.

14 **FUTURE SCHEDULE**

15 **DR. WADE:** It'll take two minutes. But would
16 someone get Cori in the room as I start to do
17 this? I would refer you to this piece of paper
18 you have, a future schedule. The only reason I
19 do it, there is a key decision that needs to be
20 made, triggered by this piece of paper. Very
21 briefly, all I'm trying to do with this is at
22 every meeting to look two meetings out and give
23 you a sense of what might be coming downstream.
24 I think it is terribly important that we
25 coordinate, for example, comments back from

1 your contractor on the TBD as we might be
2 contemplating an SEC petition, for example.
3 And I think there are many things that will
4 come from this.

5 If you'll look at the July meeting, there are
6 some changes already. You've asked that we
7 take some of the task three work and move it
8 from the October meeting to the July meeting,
9 and I'll take that as an instruction from the
10 Board. We need to add the Mallinckrodt SEC
11 work now to the July meeting. You have just
12 asked in your letter to the Secretary for a
13 transparency issue briefing at the July
14 meeting. I am operating on the assumption --
15 Larry, correct me if I'm wrong -- that the IAAP
16 -- IAAP SEC rad workers issue might not have to
17 be worked, given the action with regard to the
18 SEC, or does it still need to be worked?

19 **MR. ELLIOTT:** I think it still needs to be
20 worked up and given to the Board as an
21 evaluation report because the Board took
22 separate action on that. They're awaiting our
23 evaluation report.

24 **DR. WADE:** Okay. Thank you. The only issue
25 that requires work is you'll notice that we

1 would expect to discuss a Y-12 SEC petition in
2 July. The Y-12 site profile review is on your
3 contractor's list. Right now it's late in
4 their scheduling. I would like you to consider
5 elevating it in the scheduling so that they can
6 begin to work on it now, so you would have as
7 much possible benefit of their review as
8 possible when we come together in July. So I
9 ask for the sense of the Board that that would
10 be acceptable to you. If it is -- I've already
11 discussed this with Joe and I think he's ready
12 to proceed. I didn't want to take that action
13 without consulting with the Board.

14 **DR. ZIEMER:** Any -- any comments by the Board
15 members or --

16 **DR. MELIUS:** I think that'd be good.
17 Can I have one other comment -- agenda comment,
18 though?

19 **DR. ZIEMER:** Yes.

20 **DR. MELIUS:** Yeah. The Bethlehem TBD or the
21 review of it and so forth, I believe -- well, I
22 actually know, because of -- I was copied on
23 some correspondence. The Congressional
24 delegation in western New York and our two
25 senators had -- had requested clarification

1 from DOL. I think it's -- the issue is were
2 there additional runs at the -- Bethlehem
3 Steel. And last I heard, which was a couple of
4 weeks ago, was that there had been no response
5 from Department of Labor on that issue. I just
6 think it'd be worth exploring on the part of
7 NIOSH to -- just as a scheduling issue, 'cause
8 potentially the DOL response could change the
9 site profile one way or the other, and I'd hate
10 to have us deal with it, particularly given the
11 long history there, and then have -- suddenly
12 have a -- some change come down from DOL. It
13 may very well be that it doesn't affect it, but
14 --

15 **DR. WADE:** Okay, I understand, and I will take
16 on that action.

17 **DR. ZIEMER:** Okay.

18 **DR. WADE:** Now we have a Board meeting
19 scheduled in early July. Cori, the tentative
20 dates are?

21 **MR. GIBSON:** Sixth, 7th and 8th.

22 **MS. MUNN:** Sixth, 7th and 8th.

23 **DR. WADE:** The 6th, 7th and 8th? We were
24 contemplating meeting in Oak Ridge. We now
25 have this competing need for a St. Louis

1 meeting. I don't know that we can resolve that
2 today. I know, Mr. Presley, you had comments
3 you wanted to --

4 **DR. MELIUS:** Paducah, half way.

5 **MR. PRESLEY:** I've got a real concern. If we
6 meet in Oak Ridge July -- or anywhere else,
7 especially Oak Ridge -- Oak Ridge has -- for
8 the last 20 years we in Oak Ridge, including
9 myself, we get two days holiday. This year it
10 lie-- it goes for a Monday and Tuesday. A lot
11 of people in Oak Ridge are off and take
12 vacation that whole total week, 'cause that
13 gives them nine days. I do not feel like that
14 that would be fair to the people in Oak Ridge
15 if we have a meeting on a holiday weekend.
16 I also do not feel like that it would be fair
17 to people in -- anywhere else if we have a
18 meeting on a holiday weekend. We get enough
19 concerns and bounce-backs about some of the
20 other things that we do, without having
21 meetings on holiday weekends and have to travel
22 on weekends ourselves and things like this.
23 That's my concern.

24 **DR. WADE:** Thank you. I don't know that we're
25 going to be able to work through this right

1 now. I think I -- I understand that concern.
2 If you would leave it to myself and staff to
3 try to work through these issues, realize that
4 there are -- there are definitely competing
5 demands on us and we will try again with the
6 wisdom of Solomon to work through this.

7 **MR. PRESLEY:** With the wisdom of Solomon, if we
8 can work through this, can you do it as early
9 as possible? I hate to get down a week or two
10 before a meeting and then have to start making
11 arrangements. I think that goes for all of us.

12 **DR. WADE:** Understood.

13 **MR. GRIFFON:** Can I --

14 **DR. ZIEMER:** Thank you, Lew. Yes, Mark?

15 **MR. GRIFFON:** Just -- just one question along
16 the lines of our future agenda here, and this
17 is a -- we spoke -- or we questioned Larry
18 earlier on his backlog. This is quickly
19 becoming our backlog. I'm looking at the
20 Savannah River profile on there. We've had
21 that for a while. The task three procedures
22 review, we've had that for a while. And I
23 wonder if we -- I think we committed in -- in
24 the subcommittee meeting to working on the
25 procedures review in between these next two

1 meetings via workgroup, subcommittee, I'm not
2 sure what that process is going to be. But I
3 wonder if we can do the same thing for the
4 Savannah River -- my concern is -- I mean,
5 quite frankly, this week has been a challenge
6 for everyone to get through. And if we load up
7 this meeting again with five -- four or five
8 major items like this, we're not -- it's not
9 going to work, and --

10 **DR. WADE:** Understood. The Sava-- for the
11 record, the Savannah River profile I think
12 we've just received or are about to receive?

13 **UNIDENTIFIED:** (Off microphone) It's been
14 submitted.

15 **DR. WADE:** It's been -- okay. But your --

16 **UNIDENTIFIED:** (Off microphone)

17 (Unintelligible)

18 **DR. WADE:** Okay, your point is well made.
19 Thank you.

20 (Whereupon, several Board members commented,
21 off microphone and simultaneously.)

22 **DR. ZIEMER:** We have it. Yeah, Mike.

23 **MR. GIBSON:** It seemed, you know, here a few
24 months back, a year ago, we met more often than
25 four times a year. And it just seems to me,

1 with -- with the addition of the SEC process,
2 the dose reconstructions and everything else
3 that four times a year is not enough for this
4 Board to meet, and I just wonder why we can't
5 pick up the pace and go back to maybe every six
6 weeks or so like we did before.

7 **DR. WADE:** Certainly.

8 **DR. ZIEMER:** Yeah, we -- actually -- you have
9 four meetings here. We had a meeting in
10 February, and we had one or two telephone
11 meetings plus the subcommittee meeting, so we
12 actually have ended up having about six or more
13 meetings a year right now. A few -- a couple
14 of those didn't involve everybody, but it
15 actually has -- it has seemed to me to be a
16 fairly rigorous pace, but --

17 **MR. GIBSON:** I guess --

18 **DR. ZIEMER:** -- but if we have business we need
19 to conduct, we'll -- we can do that.

20 **MR. GIBSON:** I'm just -- I was just agreeing
21 with Mark that, you know, the pace is picking
22 up and even if we have six a year and it's not
23 enough, you know -- I mean I think it's our
24 duty, that's what we were appointed to do is to
25 do this business. And so, you know, this has

1 been a pretty taxing week...

2 **DR. ZIEMER:** Henry?

3 **DR. ANDERSON:** Yeah, I was going to say that's
4 one thing we may be able to do is the
5 subcommittee meetings, maybe those could be
6 done by phone, and that would give us an extra
7 half-- I mean we've already started -- they
8 were two-day meetings. It's fairly easy to
9 find two days together, but when you move that
10 out to find three days, and then a travel day
11 as well, it starts to get problematic. So I
12 think a two-day is a lot easier to find, and if
13 we're going to do three days, I would rather
14 pick up an extra half-day by doing the
15 subcommittee on an alternative maybe phone
16 schedule issues, and deal with the -- these
17 issues in a close -- by the -- the number two
18 is -- is -- I'd like to get October dates as
19 soon as possible 'cause there's a number of key
20 meetings that are in October already, so before
21 we start to try to get three days and not have
22 them be a Friday, Monday and Tuesday.

23 **DR. ZIEMER:** Right. Right.

24 **MR. ESPINOSA:** I'm in the --

25 **DR. ZIEMER:** Rich.

1 **MR. ESPINOSA:** I'm in the same lines with
2 Henry, just a little bit different. I schedule
3 my agenda -- I schedule my schedule around
4 these meetings, so if I don't know in advance
5 and the meeting changes, like we talked about
6 the July meeting changing, you know, if I have
7 the notification now, I might be able to
8 address it. But if I don't have the
9 information till later, I'm looking at missing
10 a meeting or days of that meeting.

11 **DR. WADE:** I'll commit to trying to put out
12 dates for the July and October meeting the next
13 week.

14 **DR. ZIEMER:** Jim?

15 **DR. MELIUS:** Can I suggest since we're re-
16 looking at this issue that we also re-look at
17 this issue of the subcommittee as a whole, that
18 -- that we may really have to split up into --
19 have more than one subcommittee, and that way
20 it spreads the work out a little bit more
21 clearly and it would also I think make the
22 scheduling of some of these meetings --
23 subcommittee meetings easier -- easier to do.
24 And I don't know whether something -- whether
25 you want to work on, Paul, or whether you want

1 to work on it with a workgroup, but -- but I
2 think for our July meeting I think we should --
3 I think we have a -- we have a sense of what --
4 well, SEC petition reviews are very hard to do
5 other than as a committee, so those are going
6 to have to be (unintelligible). Site profile,
7 dealing with dose reconstruction, some of these
8 other issues, I think that we can -- dose
9 reconstruction reviews, I think we can do
10 better as subcommittees. Again reporting back
11 to the Board, but I think it may be a more
12 efficient process and --

13 **UNIDENTIFIED:** (Off microphone) Workgroups.

14 **DR. ZIEMER:** We can do workgroups, but remember
15 that if it's a sort of regular process, then we
16 get into the subcommittee type action.

17 **DR. MELIUS:** Our charter is up the end of
18 August, and so a July -- make a decision on
19 this at our July meeting and it would be
20 appropriate 'cause we could then amend the
21 charter to deal with the subcommittees, and I -
22 -

23 **DR. ZIEMER:** Well, the subcommittee does not
24 have to meet as a committee of the whole,
25 obviously. For example, there could be a

1 subcommittee meeting between April and July if
2 -- for a group of four or five is all that we
3 need, actually. In fact, that was the original
4 intent. We named everybody to the subcommittee
5 in order that we could choose any four or five
6 who were available at a given time.

7 **DR. MELIUS:** But -- but as you pointed out, you
8 -- you were -- it seems like you feel like
9 you're meeting all the time, and that's because
10 you chair the subcommittee and therefore at
11 every meeting you have to be at. And again, I
12 -- maybe that's not practical and -- not taking
13 away from the amount of effort you're putting
14 into it or anything, but -- but again, let's
15 just --

16 **DR. ZIEMER:** Well, I was --

17 **DR. MELIUS:** -- let's just --

18 **DR. ZIEMER:** -- I was a little protective of
19 the -- of the subcommittee's work during the
20 early days, but they've matured and actually
21 they get along better without me sometimes, but
22 we can certainly do that and -- and think
23 about, for example, having a separate
24 subcommittee for dose reconstruction and a
25 separate one for the site profiles, for

1 example. Right now it's a combined thing, but
2 -- understood. And if necessary, Lew, we
3 certainly can -- I think the ones who are sort
4 of the main ones on that initial subcommittee
5 could meet, with or without the existing Chair,
6 in between our next -- or before our next
7 meeting.

8 **DR. WADE:** Right, I think -- I think we'll push
9 to see a subcommittee meeting before our next
10 meeting, with the task three issues on it at a
11 minimum.

12 **DR. ZIEMER:** Now we've just been avoiding
13 getting to these final 20 cases, Mark, but --

14 **MR. GRIFFON:** I got to do it now?

15 **DR. ZIEMER:** -- the time has come.

16 **MR. GRIFFON:** All the crowd's gone, it wor--
17 no.

18 **DR. ZIEMER:** Let's make sure that we all have
19 the documents.

20 **MR. GRIFFON:** That's what I was going to ask,
21 can we take like a 10-minute -- and I can hand
22 out --

23 **DR. ZIEMER:** Oh, okay, Mark, you --

24 **MR. GRIFFON:** One more delay.

25 **DR. ZIEMER:** Yes, we will take a 10-minute

1 break and then reconvene.

2 (Whereupon, a recess was taken from 3:05 p.m.
3 to 3:15 p.m.)

4 **DR. ZIEMER:** We're ready to resume
5 deliberations. We have already lost one person
6 -- we didn't lose him; he had to leave. Rich
7 Espinosa had to leave. We still have a quorum.
8 Mark is all set to go, but the Chair discovered
9 that there is yet another item, Mark.

10 **REVIEW AND APPROVAL OF DRAFT MINUTES**

11 We actually did not approve the minutes. We
12 have two sets of minutes. The first, the
13 minutes of the subcommittee, of our last
14 meeting. I'd like to ask if there are any
15 additions or corrections to the minutes of the
16 subcommittee.

17 Motion to approve the minutes?

18 **MR. PRESLEY:** So moved.

19 **DR. ZIEMER:** Second?

20 **MR. OWENS:** Second.

21 **DR. ZIEMER:** All in favor, aye?

22 (Affirmative responses)

23 Opposed, no?

24 (No responses)

25 Minutes are approved for the subcommittee.

1 Now the minutes of the Board itself, this is
2 the February meeting in St. Louis. I'm going
3 to first point out a couple of changes. In the
4 Executive Summary, page 6 -- Executive
5 Summaries don't have to have a lot of detail.
6 I'm going to ask that the sentence under
7 Tuesday, February 8th, where Ziemer announces
8 to members of the public to utilize the
9 microphones and so on, I don't think that needs
10 to be in there. If there's no objection, we'll
11 delete that from the Executive Summary.
12 I assume that you all have looked at your
13 places. There's one place where we talk about
14 Mark Griffon's motion, and I'm -- I have a
15 feeling it was a motion, not notion. Mark, you
16 didn't discover that?

17 **MR. GRIFFON:** I have no notion.

18 **DR. ZIEMER:** You have no notions.

19 **MS. MUNN:** Sometimes it's right.

20 **DR. ZIEMER:** On -- there are actually several
21 versions. I'm looking -- in my version it's
22 page 15. It's probably 15 on yours -- broad
23 heading: Site Profile Modifications and
24 Schedule, Status Report. Is that on page 15
25 for you? Go down under Mr. Kenoyer, second

1 paragraph, the 19 site profile cases, last
2 sentence, minor change but change it to read
3 "teams remain intact and are moving ahead" --
4 teams remain intact and are moving ahead --
5 minor grammatical change.
6 On page 16 -- and I need some help on this.
7 This was the issue of holding the vote open.
8 The last sentence is fairly -- that whole
9 paragraph, which is one sentence, is long and
10 convoluted. I would like the Board's
11 permission to break it into pieces and to
12 explain -- by adding some words such as "the
13 vote was held open so that the votes of Dr.
14 Anderson and Dr. Andrade could be obtained,"
15 and then in parentheses -- and here's where I
16 need help -- I was going to add "Dr. Anderson
17 voted for the motion" as we have the vote but
18 then we don't indicate -- the vote was held
19 open, but then what, so we would indicate Dr.
20 Anderson voted for the motion. And then we've
21 got to say something about Dr. Andrade. I was
22 going to say Dr. Andrade -- Andrade's untimely
23 death on February 10th precluded his
24 participation. Does that sound too crass or --
25 **MS. MUNN:** No. No, that's appropriate. That's

1 to clarify.

2 **DR. ZIEMER:** He was unavailable?

3 **MS. MUNN:** No. Demise. Demise, yeah.

4 **DR. ZIEMER:** Is untimely death okay?

5 **MS. MUNN:** Untimely death or demise.

6 **DR. ZIEMER:** Okay.

7 **DR. ROESSLER:** No, untimely death. It's
8 factual and --

9 **DR. ZIEMER:** So I will give Cori words to that
10 effect, but that's agreeable. I want to be
11 sure to show the open vote and close that loop
12 on that one. Okay. Thank you.

13 Without objection, I'll make that change.

14 **UNIDENTIFIED:** (Off microphone) No objections.

15 **UNIDENTIFIED:** (Off microphone)

16 (Unintelligible) give all these to Cori?

17 **DR. ZIEMER:** Yes, I will. On page 17, Board
18 Working -- Board Discussion/Working Sessions.
19 It starts out (reading) Returning to the issue
20 of the SEC evaluation. Dr. Melius, I didn't
21 understand that at all, and I wondered if you
22 did. (Reading) Dr. Melius offered he didn't
23 feel it would have been more helpful than
24 having the site --

25 **DR. MELIUS:** I was just noticing the same

1 thing.

2 **DR. ZIEMER:** Could you help us -- if it's
3 agreeable with the group, we'll ask Dr. Melius
4 to tell us what that means. No, maybe we can
5 work on this afterwards. I don't think the
6 sentence makes much sense, as written. It's
7 not clear to me, at all.

8 **DR. MELIUS:** I'll give you a change.

9 **DR. ZIEMER:** Yes. On page 20, Board
10 Discussion, where it says (reading) Dr. Ziemer
11 cited the Board -- I'm suggesting we just omit
12 the words "the Board to" and just say Dr.
13 Ziemer cited the section. It's the section
14 being cited.
15 There's a spot that -- oh, here it is, page 38.
16 Mr. Griffon, his motion was -- is this a motion
17 or a notion? This is what I was asking about,
18 Mark.

19 **MR. GRIFFON:** I think it is notion, right?
20 Yeah.

21 **DR. ZIEMER:** I wasn't sure whether that was
22 referring to a previous motion that you had
23 made --

24 **MR. GRIFFON:** No.

25 **DR. ZIEMER:** Okay. So it is notion then?

1 **MR. GRIFFON:** Yes.

2 **DR. ZIEMER:** Okay. Very good.

3 **MR. GRIFFON:** Great notion.

4 **DR. ZIEMER:** So the notion will remain. On
5 page 55, the second paragraph from the end, it
6 says (reading) An unidentified member of the
7 audience indicated Congress had been aware dose
8 reconstruction wouldn't happen overnight.

9 I remember that particular part of our meeting
10 and in fact the unidentified member was Tom
11 Horgan, and I think the minutes should so note
12 that, and in fact I pointed that out to Tom and
13 he indeed would like that statement to be
14 attributed to him.

15 **UNIDENTIFIED:** Where is that?

16 **UNIDENTIFIED:** Which one?

17 **DR. ZIEMER:** That's on page 55, at least in the
18 copy I'm looking at. Second to the last
19 paragraph where it refers to an unidentified
20 member of the audience. The unidentified
21 member has now been identified.

22 **MS. MUNN:** Who was it?

23 **DR. ZIEMER:** Tom Horgan from Senator Bond's
24 staff.

25 Are there any other corrections or additions to

1 the minutes?

2 (No responses)

3 Then with those changes, I can have a motion
4 for approval, as amended.

5 **MS. MUNN:** So moved.

6 **DR. ZIEMER:** Second?

7 **MR. PRESLEY:** Second.

8 **DR. ZIEMER:** All in favor, aye?

9 (Affirmative responses)

10 Opposed, no?

11 (No responses)

12 Thank you very much, the minutes are approved.
13 Now we're ready -- does anyone else have
14 anything that we can put in here before we get
15 to Mark?

16 The documents that you need now --

17 **DR. MELIUS:** Quit stalling, Mark, let's get
18 going.

19 **DISCUSSION OF FIRST 20 DOSE RECONSTRUCTION**
20 **REVIEWS**

21 **DR. ZIEMER:** I think the latest version --
22 there should be an April 27th draft. It's a --
23 it's a mark-up draft called individual dose
24 reconstruction case review progress report,
25 first 20 cases. You should also have a summary

1 of findings matrix, cases 1 through 20. And do
2 we need to have the SC&A checklist?

3 **MR. GRIFFON:** Yeah, they -- they actually just
4 gave me a -- a revised checklist, so I don't
5 have copies of that and I should have --

6 **DR. ZIEMER:** Perhaps everybody --

7 **MR. GRIFFON:** It's only two pages.

8 **DR. ZIEMER:** Everyone has their original
9 checklist. You can -- are there many changes
10 in it?

11 **MR. GRIFFON:** Yes, it's -- it's kind of
12 different. Number one they -- they -- they did
13 totals on those deficiencies now.

14 **DR. ZIEMER:** Okay.

15 **MR. GRIFFON:** And the second thing, they made a
16 new column for unknown or uncertain, so it
17 looks a little cleaner.

18 **DR. ZIEMER:** Okay. Are you able to proceed,
19 though, Mark, with what we have at hand and --

20 **MR. GRIFFON:** Yeah, yeah --

21 **DR. ZIEMER:** So let's proceed with --

22 **MR. GRIFFON:** -- let's try this then.

23 **DR. ZIEMER:** -- what we have here.

24 **MR. GRIFFON:** Okay. I guess it makes sense to
25 start off with the text.

1 **DR. ZIEMER:** Yes.

2 **MR. GRIFFON:** The summary report that we
3 discussed in the subcommittee meeting.

4 **DR. ZIEMER:** Yes, and incidentally, the
5 subcommittee approved this document
6 conceptually for the full Board, so this
7 constitutes a motion. It is before us for
8 action.

9 **MR. GRIFFON:** Right.

10 **DR. ZIEMER:** There were some places that needed
11 to be filled in, some numbers and other things
12 like that, but this is for formal action, and
13 most of you have already seen it in
14 subcommittee session. Thank you.

15 **MR. GRIFFON:** Yeah, and -- and there still are
16 some places where numbers need to be filled in,
17 but we've made a lot of progress these last
18 couple of days, and I thank Kathy and Hans
19 Behling from SC&A. They helped me pull some
20 pieces together.

21 The third paragraph -- let's see, actually -- I
22 guess the -- the first changes that really take
23 place in this draft are -- don't occur until
24 the second page, the second paragraph.

25 **MS. MUNN:** The aforementioned SCA?

1 **MR. GRIFFON:** Yeah, and it says (reading) The
2 aforementioned SCA report includes a summary
3 checklist -- I identified that as a checklist
4 now -- with findings in behalf of -- that's the
5 way it reads on -- in the report -- 20 case
6 reviews, instead of the 15. And then I left --
7 I left the numbers in here. I know we had had
8 some discussion about not reporting the
9 numbers, but I -- I tried to include their
10 summary numbers from their checklist, which
11 we're getting copies of right now, and it
12 indicates that a total of 69 identified in the
13 20 cases -- SCA considered the majority of
14 deficiencies, 49 out of 69, to be low level
15 deficiencies, with four scored as medium level
16 deficiencies. The question here is, someone's
17 going to add that up and see that it doesn't
18 equal 69. The rest are unknown, and I wasn't
19 sure exactly how to integrate that into -- into
20 this summary report. I also feel a little
21 uneasy submitting a report to the Secretary
22 where we have 16 unknown that we can't -- you
23 know, unknown ranked findings. That's a little
24 interesting position.

25 **DR. ZIEMER:** Yeah, maybe we can talk a little

1 bit about what that means --

2 **MR. GRIFFON:** Right.

3 **DR. ZIEMER:** -- in terms of unknown. Can you
4 describe that --

5 **MR. GRIFFON:** Well, yeah --

6 **DR. ZIEMER:** -- whole thing?

7 **MR. GRIFFON:** -- if -- I think for the most
8 part, if we look at the matrix, it -- it -- it
9 -- most of these unknowns come on on the AWE
10 cases and -- which are the first one through
11 five in our listing, and the -- if you notice
12 in the last column, the Board action, number
13 six, that means -- and NIOSH's resolution
14 actually is written there so you can see it.
15 These have been deferred to site profile
16 reviews, so you know, SC&A basically said well,
17 since we've deferred discussion on these issues
18 and resolution of these issues, we don't know
19 how significantly it could affect the case at
20 hand, and that -- that's sort of why they
21 ranked it as unknown, I guess.

22 **DR. ZIEMER:** I wonder if -- terminology-wise,
23 if we used words such as "the impact of which
24 has not yet been determined" or something, so
25 that it's clear that it has -- it is yet to be

1 resolved, as opposed to we just don't know.
2 What we need is some wording to that effect, I
3 suppose.

4 **MR. GRIFFON:** Yeah, "yet unresolved" or
5 something to that ef-- I agree with your notion
6 -- notion.

7 **MS. MUNN:** Could that be incorporated in the --

8 **DR. ZIEMER:** Should I make my notion into a
9 motion?

10 What -- do you want to suggest particular words
11 right now or do you just want to ponder that?
12 Maybe -- maybe we can try to solve that. I
13 mean we need something here to act on.

14 **MR. GRIFFON:** Yes, I mean if someone can come
15 up with -- we can insert a sentence right after
16 that, where we talk about the numbers, saying
17 that 16 deficiencies are -- are -- they're --
18 the potential -- the potential significance of
19 16 deficiencies remains to be determined, or --
20 or is -- is as yet undetermined. Or has yet to
21 be resolved, yeah.

22 **DR. ZIEMER:** The potential impact of the other
23 16 deficiencies --

24 **MS. MUNN:** Why don't you just say the remaining
25 deficiencies?

1 DR. ZIEMER: -- has not yet been resolved or --
2 or determined?
3 MS. MUNN: Or still in resolution.
4 DR. ZIEMER: Yes.
5 MR. GRIFFON: Potential impact of the remaining
6 deficiencies --
7 DR. ZIEMER: Of the remaining 16 -- is it 16?
8 MR. GRIFFON: If you want to put -- yeah.
9 MS. MUNN: Of the remaining deficiencies.
10 DR. ZIEMER: How many is it?
11 MR. GRIFFON: It is 16, yeah.
12 DR. ZIEMER: We have 40 --
13 MR. GRIFFON: It is 16.
14 DR. ZIEMER: Of the remaining 16 deficiencies -
15 -
16 MR. GRIFFON: Is yet --
17 DR. ZIEMER: -- is yet or remains to be resol--
18 is yet -- has not yet been resolved? Or not
19 yet been determined?
20 MS. MUNN: I would say are still in resolution.
21 DR. DEHART: (Off microphone) (Unintelligible)
22 which implies --
23 DR. ZIEMER: Or is -- is --
24 MR. GRIFFON: Still in resolution?
25 DR. ZIEMER: Yeah, are still under review?

1 **DR. DEHART:** (Off microphone) Under review,
2 something sounds (unintelligible) --

3 **DR. ZIEMER:** Let's see, potential impact is
4 singular -- is still under review. Right?

5 **MR. GRIFFON:** Is still under review, okay.

6 **DR. ZIEMER:** Potential impact of the remaining
7 16 deficiencies is still under review.

8 **MR. GRIFFON:** Potential -- I said potential
9 significance, otherwise, the same thing.

10 **DR. ZIEMER:** Significance.

11 **MR. GRIFFON:** 'Cause that's the way the
12 checklist is labeled, potential significance.

13 **DR. ZIEMER:** Yes, thank you. Of the remaining
14 -- is still under review. So that will take
15 care of the ambiguity of the unknown.

16 **MR. GRIFFON:** Right. Okay, thank you. Yeah.
17 And then the last sentence, (reading) It is
18 noted by the -- by SC&A that the sum -- and
19 this is an addition in the bottom of the
20 checklist which has just been handed out to --
21 this is just a clarification of how to
22 interpret these numbers, which we discussed in
23 the subcommittee.

24 **DR. ZIEMER:** Yes, right.

25 **MR. GRIFFON:** (Reading) It is noted by SCA that

1 the sum of the deficiencies for these 20 cases
2 should not be used to gauge the impact on
3 individual cases since several low level
4 deficiencies for one individual case may raise
5 the potential significance of (sic) that case.

6 **DR. ZIEMER:** Very good.

7 **MR. GRIFFON:** Is that --

8 **DR. ZIEMER:** Uh-huh.

9 **MR. GRIFFON:** Okay.

10 **DR. ZIEMER:** Let's ask if that is agreeable.
11 Conceptually we agreed that that sentence
12 should be added. Is everybody comfortable with
13 that?

14 Appears to be, okay.

15 **MR. GRIFFON:** The next paragraph, the only -- I
16 just added parenthetically case ranking and
17 site/program-wide ranking in there to better
18 define -- as Wanda pointed out, this -- this --
19 you know, we have SC&A's checklist, then we
20 have our matrix, and it's still going to be a -
21 - may be a bit difficult to walk through, but I
22 tried to better define the Board's names for
23 these things, case ranking and site/program-
24 wide ranking.

25 And then the next paragraph, toward the bottom

1 I -- I did some editing to say (reading) case
2 rankings are the same as those listed in the
3 aforementioned SCA summary checklist.
4 This -- we spent quite a bit of time -- I spent
5 quite a bit of time with Kathy Behling and she
6 really did the grunt (sic) of this work trying
7 to match up the checklist against the matrix.
8 In the future I think -- the -- the good part
9 of this was in the future we're going to have
10 SC&A develop the checklist and matrix so that
11 we won't have this -- this merge issue.
12 Right now, as it stands -- and this -- I don't
13 know if this is going to create confusion, but
14 right now, as it stands, the number of items on
15 the matrix does not equal the 69 mentioned in
16 the checklist, but that's because Kathy pointed
17 out -- and -- and where in the matrix -- like
18 under 1.1 we put in parentheses that G.2 refers
19 -- in the summary of the findings, G.2 refers
20 back to that checklist. We wanted to have some
21 way to tie them together. And what -- what
22 happened here is that in the discussions -- my
23 matrix was developed from the early discussions
24 of all the findings, and I think that when they
25 did the checklist they sometimes rolled two of

1 these findings into one deficiency, so there --
2 there's more of -- more of these in the matrix
3 than there are in the checklist. I think it's
4 like 80 to 69 -- you know, it's slightly
5 different.

6 That won't happen the next time. I think that
7 would be a lot better if it just matches up
8 neatly.

9 **DR. ZIEMER:** Yes.

10 **MR. GRIFFON:** Yeah. Anyway, moving on to that
11 sentence, (reading) Case rankings are the same
12 as those listed in the aforementioned SCA
13 summary matrix -- summary checklist. The
14 site/program-wide ranking considered the
15 broader potential impacts of the findings and
16 resulted in 49 -- I don't know if I need
17 parentheses there -- 49 low level deficiencies,
18 35 -- that number is actually wrong. I just --
19 and this is -- this is what we really have to
20 go through the matrix and -- and discuss these,
21 the site/program rank, low level, medium and
22 high level findings -- 49, 35 and three high
23 level deficiencies. And that -- that number,
24 35, actually has gone down by -- just looking
25 through as I'm editing. Not making apologies,

1 but doing this at 5:30 in the morning, you
2 know, I made some mistakes, so we -- we should
3 go through these and make sure that -- I think
4 it's more like 32 now, something around 32, but
5 I'll -- I'll sum those up again after we go
6 through our discussions of the individual
7 findings, anyway, so...

8 **MS. MUNN:** (Off microphone) So this is the same
9 49 (unintelligible).

10 **DR. ZIEMER:** Did you have a question, Wanda? I
11 -- we -- need to use the mike there.

12 **MS. MUNN:** I don't really know what I'm asking.
13 Is that the same 49 where -- I'm --

14 **MR. GRIFFON:** No, yeah, it -- this --

15 **MS. MUNN:** A different 49.

16 **MR. GRIFFON:** Yes. It's a different 49 'cause
17 the total number of findings on our matrix --
18 it doesn't match up, so to make that happen
19 we'd have to -- we'd have to go back and -- and
20 it might be worth it, just for clarity,
21 although I don't look forward to the -- to the
22 task. It doesn't match up one-to-one, so
23 that's -- might be confusing.

24 **DR. ZIEMER:** Well, as long as we know what --
25 we're using it -- I suppose you're concerned

1 about if it goes forward in some form to the
2 Secretary, that that may raise confusion. We
3 could add a sentence to explain that, I
4 suppose. I'm not sure which would be the
5 better route.

6 **MR. GRIFFON:** Right.

7 **DR. ZIEMER:** To try to match it up one-to-one
8 or simply indicate that there was this -- would
9 you call it an overlap or something of that
10 sort?

11 **MR. GRIFFON:** Yeah. Yeah, I -- you know, I
12 think it's -- it's -- it's an over-- they
13 rolled -- they rolled some of the findings
14 under discussion into one -- one deficiency in
15 their checklist, so that was -- that's how that
16 hap-- that's how it happened.

17 **DR. ZIEMER:** Right.

18 **MR. GRIFFON:** But there's no -- there's no
19 different findings. I should say that. You
20 know, they're all the same set of findings,
21 it's just that sometimes they rolled them into
22 one finding as opposed to keeping them
23 separated out.

24 **DR. ZIEMER:** Yeah.

25 **MR. GRIFFON:** Anyway, I'm -- I'm willing to do

1 it either way you want there, if we want to add
2 some clarification or if we want to go back and
3 make it match, either way. I can work with
4 SC&A on that and -- if we need to.

5 **DR. DEHART:** Mark, I hate to suggest it, but I
6 think -- for clarification for ourself --

7 **MR. GRIFFON:** Yeah, I know, I know.

8 **DR. DEHART:** -- that it's -- that you'll
9 probably need to do that -- or somebody do
10 that.

11 **DR. ZIEMER:** Wouldn't a single sentence,
12 though, rather than have him go back and try to
13 re-do that whole matrix -- you're talking about
14 re-doing the matrix otherwise, are you not?

15 **MR. GRIFFON:** I think I'd have to re -- re-do
16 the matrix anyway.

17 **DR. DEHART:** Yeah.

18 **MR. GRIFFON:** So that -- that -- but that's
19 fine. I think we need to. And like I said,
20 this next -- the next round, with SC&A
21 developing the matrix as they go, this won't
22 happen. You know --

23 **DR. ZIEMER:** It won't happen --

24 **MR. GRIFFON:** -- we won't have this match-up
25 issue, right. So I -- I will -- I will do

1 that. I still think we -- we could step
2 through --

3 **DR. ZIEMER:** Sure, let's --

4 **MR. GRIFFON:** Yeah.

5 **DR. ZIEMER:** -- do that.

6 **MR. GRIFFON:** The next paragraph was also
7 modified. (Reading) SC&A concluded that 19 of
8 20 dose reconstructions reviewed during this
9 initial basic audit were considered to be
10 sufficient for the purposes of determining
11 probability of causation -- parentheses, case 6
12 DR may be -- may not be sufficient -- for the
13 specific cases reviewed; however, concerns were
14 identified which could have a broader impact on
15 the overall dose reconstruction program.
16 That's a little -- that might still need some
17 editing 'cause it's not really a "however"
18 anymore.

19 **MS. MUNN:** (Off microphone) That
20 (unintelligible) be taken out (unintelligible).

21 **MR. GRIFFON:** Yeah.

22 **DR. ZIEMER:** Is there -- it's not clear to me
23 why that one sentence -- Case 6 DR may not be
24 sufficient -- is in parentheses. Isn't that
25 simply the next statement?

1 **MS. MUNN:** Yeah.

2 **DR. MELIUS:** Yeah.

3 **MS. MUNN:** It's a stand-alone sentence.

4 **MR. GRIFFON:** All right.

5 **DR. ZIEMER:** In fact, you might say "However,
6 case 6 -- the case 6 dose reconstruction may
7 not be sufficient." Is that what --

8 **MR. GRIFFON:** Yeah.

9 **DR. ZIEMER:** -- basically what is being said?

10 **MR. GRIFFON:** Yeah, okay.

11 **DR. WADE:** Is there any chance of that being
12 resolved? I mean it would seem to me if -- if
13 we knew that issue, it would be more complete,
14 or will we not know that issue?

15 **DR. ZIEMER:** I think that goes back to -- we
16 may not even need to know that.

17 **DR. MELIUS:** Yeah.

18 **DR. ZIEMER:** That -- that becomes a NIOSH
19 issue, I believe. This is -- this is simply a
20 finding. There's one case where the DR may not
21 have been sufficient. We're not asking that
22 that -- that that be resolved for this report.

23 **MR. GRIFFON:** Right.

24 **DR. ZIEMER:** We're simply reporting it --

25 **MR. GRIFFON:** I think that --

1 **DR. ZIEMER:** It seems to me it goes back to
2 NIOSH. Right here it's just one de-identified
3 case. NIOSH will know what case it is. It's -
4 - the burden on them would be to take action.
5 I don't think the purpose of this is for us to
6 resolve issues on cases individually.
7 Is that the understanding of the group? Yes.
8 Oh, I ended up -- however, Mark -- with two
9 "howevers".

10 **MR. GRIFFON:** Yeah, I was going to say we might
11 want to have that sentence read, after the
12 parentheses with POC -- finish it up to say
13 "for the specific cases reviewed," period.
14 Then say "However, case 6 dose reconstruction
15 may not be sufficient," period.

16 **DR. ZIEMER:** Period.

17 **MR. GRIFFON:** And then "Additionally, concerns
18 were identified which could have a broader
19 impact on the overall dose reconstruction
20 program." That's a little better.

21 **DR. ZIEMER:** Did everybody get that? Doesn't
22 change the concept -- a little bit of
23 wordsmithing. Okay.

24 **MR. GRIFFON:** No.

25 **DR. ZIEMER:** We'll agree that that's

1 acceptable. Proceed.

2 **MR. GRIFFON:** Okay. I actually don't think
3 there were any other -- there was a -- an
4 editorial change somewhere in the last
5 paragraph, but that was -- that was it. Oh --

6 **DR. ZIEMER:** The last paragraph on the
7 conclusions, or that section?

8 **MR. GRIFFON:** The last paragraph on page four,
9 there was just a change editorial to where --

10 **DR. ZIEMER:** Ongoing concerns?

11 **MR. GRIFFON:** Where -- yes, consistency of
12 cases.

13 **DR. ZIEMER:** And the change is just that
14 deletion?

15 **MR. GRIFFON:** Just there are -- "there are"
16 instead of "you have" similar--

17 **DR. ZIEMER:** Oh, yes, that was just an
18 editorial --

19 **MR. GRIFFON:** That's all -- yeah. That was
20 the only other -- I believe the only other
21 changes.

22 **DR. ZIEMER:** Okay, any questions or comments on
23 this -- this --

24 **MR. GRIFFON:** I also -- one thing -- one other
25 thing I should point out, on page two it says

1 insert table with one through 20 and sites,
2 POC, et cetera. Stu Hinnefeld did provide
3 this. I don't know if he handed or --

4 **DR. ZIEMER:** Yes, that was distributed and
5 should be at your place.

6 **MR. GRIFFON:** So we'll probably just ask to get
7 this in electronic form and insert it in there
8 and --

9 **DR. ZIEMER:** Right, so this is Table 1.

10 **MR. GRIFFON:** Right.

11 **DR. ZIEMER:** Which lists the case number, using
12 the pseudo-number 1 through 20, it gives the
13 probability of causation, the IREP cancer
14 model, the location, working years and work
15 decade. Which is what we had when we did the
16 selection, so that gets inserted. Okay?

17 **MR. GRIFFON:** Right.

18 **DR. ZIEMER:** And then attached to this would be
19 the scorecard and the matrix.

20 **MR. GRIFFON:** The checklist and the matrix. I
21 think we were -- did we refer to the Board --
22 or the Board methodology I think we referred
23 to, also, did we not?

24 **DR. DEHART:** You intended to put that in there.

25 **MR. GRIFFON:** I don't know, may...

1 **MR. PRESLEY:** (Off microphone) On -- on Table
2 1, (unintelligible) get that?

3 **MS. MUNN:** Yeah.

4 **MR. PRESLEY:** Third one down, you need to
5 change that from 1040 to 1940.

6 **MR. GRIFFON:** Oh, yeah.

7 **DR. ZIEMER:** Yeah, that was one of our earliest
8 -- earliest work decades.

9 **MR. GRIFFON:** Yeah. We refer to this -- the
10 Board has developed a methodology, attachment
11 2, so this would be this -- this other text.

12 **DR. ZIEMER:** Okay, Attachment 2 will be the
13 methodology previously approved. Right?

14 **MR. GRIFFON:** Did we previously approve that?

15 **DR. ZIEMER:** Did we approve that? I thought we
16 had -- or did we?

17 **DR. DEHART:** I don't think so. We talked about
18 it.

19 **MR. GRIFFON:** I don't know, 'cause we added --
20 I added on these -- these ranking -- or not
21 rankings, but these action -- action numbers,
22 six different actions may be taken, and that's
23 the last column in the matrix now.

24 **DR. ZIEMER:** Right.

25 **MR. GRIFFON:** So we should look at that.

1 similar, though.

2 **DR. ZIEMER:** Right, how -- how have you
3 changed? Do we have the latest copy?

4 **MR. GRIFFON:** Of the matrix?

5 **DR. ZIEMER:** My copy still says there's a 1 to
6 5 ranking system. Do I have --

7 **MR. GRIFFON:** Oh, you have the right copy and I
8 didn't cha-- I changed the matrix, but I didn't
9 change the numbers on there. I have low,
10 medium, high now on the...

11 **DR. ZIEMER:** Okay, so that first paragraph
12 under Ranking the Findings, let's -- let's look
13 at how that should be worded.

14 (Reading) The graded approach should be based
15 on the importance of the identified finding,
16 other cases at the facility or other cases
17 program-wide. Two separate rankings will be
18 assigned, case ranking and site profile --
19 site/program-wide ranking.

20 And then we would say what, a low, medium, high
21 ranking system? Or --

22 **MR. GRIFFON:** Are based on a low, medium, high
23 ranking system? To rank -- two separate
24 rankings will be assigned based on a low,
25 medium, high ranking system -- low, medium,

1 high qualitative ranking system? I don't know.

2 **DR. ZIEMER:** So in parentheses, rather than a 1
3 to 5 ranking system, we would say a low,
4 medium, high ranking system.

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

6 **DR. ZIEMER:** We don't have to explain that;
7 it's self-explanatory then. Is that agreeable?

8 (No responses)

9 And then you would have your bullets saying
10 what the rankings are based on. Any comments
11 on those? They remain the same.

12 (No responses)

13 Anything on the categorization? We have
14 actually now the -- the six categories that
15 Mark has suggested, I think these we need to
16 agree on, that would be used in the summary ma-
17 - matrix. Those are on that second page,
18 options for Board action, 1 through 6.

19 Let me ask if there's any changes or
20 modifications.

21 **MR. GRIFFON:** And -- and number 4 and 5, I
22 should just note that, you know, NIOSH
23 disagreed; Board and NIOSH reach compromise.
24 Sometimes in -- in the -- in the matrix notes
25 you'll see, you know, SC&A and NIOSH are in

1 agreement. I think SC-- you know, it really is
2 the Board -- SC&A on our behalf, I guess, so...

3 **DR. ZIEMER:** Let me make sure I understand
4 number 5. This would be one where NIOSH says
5 that they disagree, and basically the Board
6 says okay, we're not going to do anything about
7 that. In essence, we are accepting the
8 disagreement if we do nothing.

9 **MR. GRIFFON:** That's correct, yeah. Maybe I
10 should say Board accept --

11 **DR. ZIEMER:** I don't know, I'm asking --

12 **MR. GRIFFON:** That was the --

13 **DR. ZIEMER:** -- how you wish to characterize --

14 **MR. GRIFFON:** That was the intent.

15 **DR. ZIEMER:** I think the -- I think the effect
16 is, if we drop the matter, the Board is
17 accepting NIOSH's --

18 **DR. MELIUS:** Yeah.

19 **DR. ZIEMER:** -- disagreement.

20 **MR. GRIFFON:** Right.

21 **DR. MELIUS:** And I apologize 'cause I haven't
22 been involved in the subcommittee meetings so I
23 may misunderstand, but the prior point that you
24 brought up, Paul, regarding SCA and NIOSH --
25 excuse me, SCA and the Board being the same

1 entity, my understanding of the process is that
2 there's a resolution process that goes on
3 between SCA and NIOSH prior to our involvement,
4 and so I guess I'm a little concerned that it
5 sort of somehow implies that the Board has
6 approved of whatever SCA's...

7 **DR. ZIEMER:** This is the final wrap-up --

8 **DR. MELIUS:** So it just applies --

9 **DR. ZIEMER:** -- where --

10 **DR. MELIUS:** -- to the final.

11 **DR. ZIEMER:** -- the final thing that would go
12 in the right-hand column after all of the back-
13 and-forth iterations have occurred, how the
14 Board finally disposes of all issues.

15 **DR. MELIUS:** Okay.

16 **DR. ZIEMER:** For example, if -- if -- where --
17 where it says NIOSH --

18 **DR. MELIUS:** No, I -- I understand that.

19 **DR. ZIEMER:** -- NIOSH agrees, they'd be
20 agreeing with SC&A and accept that that closes
21 it.

22 **DR. MELIUS:** Okay, I may have misunderstood
23 Mark then 'cause I thought he said -- Mark was
24 saying that S-- was implying that the Board and
25 SC&A were equivalent and --

1 I think Mark is suggesting this may be a good
2 starting point, and it enables us to come to
3 closure, at least on this first set of 20.

4 **MS. MUNN:** Sorry.

5 **MR. GRIFFON:** I'm sorry, we had a sidebar.

6 **DR. ZIEMER:** I'm just saying, Mark, it seems to
7 me that once we put these into use, if we find
8 that some of these are not useful or we need
9 others, we can always modify this, but --

10 **MR. GRIFFON:** We can always revise that, right.

11 **DR. ZIEMER:** -- as a start, this seemed --
12 based on your work on the matrix -- seemed to
13 be a useful way to come to closure on the
14 issues that have been identified.

15 **MR. GRIFFON:** Right. I tried.

16 **DR. ZIEMER:** Do I take it by consent then that,
17 with that minor change, these six categories
18 are agreeable?

19 (No responses)

20 Stu?

21 **MR. HINNEFELD:** I didn't want to interrupt, but
22 I was just curious who said --

23 **DR. ZIEMER:** Yes, you did.

24 **MR. HINNEFELD:** I have, okay, sure. Who should
25 we send Table -- the electronic version of

1 Table 1 with the changed date in it?

2 **DR. ZIEMER:** I think get it to Mark so he can
3 insert it. He has the electronic --

4 **MR. GRIFFON:** (Unintelligible) forward it to --
5 yeah.

6 **DR. ZIEMER:** Or Cori? Who?

7 **MR. HINNEFELD:** E-mail's easy, I can send it to
8 everybody.

9 **MR. GRIFFON:** I guess send it to me first and
10 then I'll send the dra--

11 **DR. ZIEMER:** So he can incorporate it, yeah.

12 **MR. GRIFFON:** I'll make these changes and
13 forward the draft to everyone.

14 **MR. HINNEFELD:** Okay.

15 **DR. ZIEMER:** Send it to Mark.

16 **MR. HINNEFELD:** That's fine.

17 **DR. DEHART:** Could I ask that the next time we
18 see it -- it's been a while since I've seen a
19 clean text -- if we could see one without
20 lines.

21 **MR. GRIFFON:** This was for full transparency of
22 the changes I was making along the way, so it
23 makes for difficult reading, I agree.

24 **DR. ZIEMER:** Actually you could send bo-- you
25 could send --

1 **MR. GRIFFON:** Yeah.

2 **DR. ZIEMER:** -- a red ver-- or a mark-out
3 version plus a clean version.

4 **MR. GRIFFON:** Okay, yeah.

5 **DR. ZIEMER:** Yeah. Are we agreeable on this
6 Attachment 2 then?

7 Jim, another comment?

8 **DR. MELIUS:** Not yet.

9 **MR. GRIFFON:** He's thinking of one.

10 **DR. MELIUS:** No, I don't have any right now.

11 **DR. ZIEMER:** All right --

12 **DR. MELIUS:** Or I actually do have a comment.

13 **DR. ZIEMER:** Yeah, go ahead.

14 **DR. MELIUS:** When I read this summary of
15 findings and where this code is put as the
16 Board action, I just -- the heading on the
17 table that are NIOSH resolution, I'm -- I find
18 it a little bit confusing 'cause sometimes it
19 says NIOSH and SC&A agree and sometimes it
20 doesn't, and it's -- it's unclear. I just
21 think, for future -- not to make you go back
22 through and change this -- that we ought to be
23 -- some consistency in the language that we use
24 'cause that's what confused me --

25 **DR. ZIEMER:** Actually I believe we may want

1 both. This -- this tells about the resolution
2 going on with our contractor, but the final
3 column is the Board's handling of everything up
4 to that point. I believe that's the intent.
5 Mark?

6 **MR. GRIFFON:** That is the intent, yeah. Yeah.

7 **DR. ZIEMER:** I believe -- I believe this is
8 intentional that he --

9 **MR. GRIFFON:** So it's probably --

10 **DR. ZIEMER:** -- SC&A and NIO-- that -- that
11 tracks what happens until we finally take a
12 final action, which shows up in the last
13 column.

14 **MR. GRIFFON:** But still there's probably
15 inconsistencies, I would -- I would --

16 **DR. ZIEMER:** But that intent is to have those
17 two entities --

18 **DR. MELIUS:** Okay, then label it more clearly -
19 -

20 **DR. ZIEMER:** -- as you go across, and then the
21 Board action. Okay?

22 **MR. GRIFFON:** Label them more clear-- yeah.

23 **DR. ZIEMER:** Gen Roessler.

24 **DR. ROESSLER:** Since this final column is the
25 most important one, I think a footnote on the

1 bottom of the page on this document would help
2 to put down what number 1, 2, 3, 4 and 5 and 6
3 mean.

4 **MR. GRIFFON:** Yeah, and I --

5 **DR. ROESSLER:** We could footnote everything,
6 but I think it -- that one thing would help.

7 **MR. GRIFFON:** Yeah.

8 **DR. MELIUS:** Well, I would even suggest that
9 we, where necessary, make that column a little
10 bit wider so that if there's -- if we've gone
11 beyond just a simple 1 through 6 in terms of
12 what action the Board has taken, that we sort
13 of write that out a little bit.

14 **MR. GRIFFON:** Maybe I'll spread this onto legal
15 paper and just write out that they -- yeah. We
16 were trying to fit it on one page, too.

17 **DR. ZIEMER:** Dr. Roessler, did you get your
18 comment in?

19 **DR. ROESSLER:** Yes.

20 **DR. ZIEMER:** Are we ready to look at the matrix
21 itself then? And do we have -- oh, we do have
22 the -- we do have the checklist, and that would
23 -- Mark, is there anything else we need to say
24 on the checklist? You've already pretty well
25 explained it. That would be inserted in the

1 packet, too.

2 **MR. GRIFFON:** Yeah, the -- I don't think I got
3 -- did I get...

4 **DR. ZIEMER:** It -- it now has the 69 --

5 **MR. GRIFFON:** Yeah.

6 **DR. ZIEMER:** -- deficiencies, the 49 lows, the
7 four mediums and the unknown --

8 **MR. GRIFFON:** Which we can label --

9 **DR. ZIEMER:** -- which I think we probably are
10 going to call that something else, SC&A folks,
11 un-- not yet resolved or -- yeah. We
12 understand what it is so we're -- we're okay on
13 it. I think we're going to call it something
14 else here. It's not as if we don't know what -
15 -

16 **MR. GRIFFON:** Right.

17 **DR. ZIEMER:** -- the deficiencies are. They're
18 going to be addressed in a different way.

19 **MR. GRIFFON:** The one thing I would ask, and I
20 -- I told SC&A I would -- I would ask this of
21 the Board, this has been revised to include
22 some sections, especially -- I think Section G
23 was revised -- to accommodate the use of the
24 single checklist for DOE and AWE sites, so this
25 is slightly different than the one you've seen

1 before, and they asked if we could review and
2 approve this because they're planning on using
3 it for the next 18 they're already -- you know,
4 so they wanted us to take a close -- closer
5 look --

6 **DR. ZIEMER:** Mark, you've already seen this, so
7 what is your advice to us on that?

8 **MR. GRIFFON:** My -- my advice is -- is that
9 they -- they made some changes to the
10 footnotes, which I think were important,
11 especially the one -- the sum of the
12 deficiencies, which is similar to the language
13 we put in the summary report, that you
14 shouldn't pay attention to those percentages
15 too much, too closely.

16 **DR. ZIEMER:** And then Section G --

17 **MR. GRIFFON:** And I -- I think overall, Section
18 G seemed -- seemed appropriate. I still -- you
19 know, my generic concern -- and we'll get into
20 that when we get into the matrix -- is this
21 unknown column or yet-to-be-determined column.
22 I -- I think -- I'm not sure how we can handle
23 that. But as you'll notice when we look in the
24 matrix, a lot of these key issues that we raise
25 in this review have been deferred --

1 last column, which Jim rightly pointed out is -
2 - is not -- I guess it's really SC&A and
3 NIOSH's resolution, but it was provided by
4 NIOSH and SC&A hasn't reviewed that, I don't
5 believe. So -- so I think --

6 **DR. ZIEMER:** You're talking about --

7 **MR. GRIFFON:** -- we're not clear if that's --

8 **DR. ZIEMER:** -- the column --

9 **MR. GRIFFON:** -- a final resolution --

10 **DR. ZIEMER:** -- called NIOSH resolution?

11 **MR. GRIFFON:** Yes. Yes.

12 **DR. ZIEMER:** So SC&A has not yet seen that and
13 agreed that -- particularly in those cases
14 where it says that they both agree?

15 **MR. GRIFFON:** Right.

16 **DR. MELIUS:** Need to resolve the resolution.

17 **MR. GRIFFON:** We need to resolve the
18 resolution.

19 **DR. ZIEMER:** As far as the -- this Board's
20 action has to be with respect to the last
21 column, and there are a number of items in the
22 list -- for example, if -- if the last column
23 is number 1 -- or is item 1, basically the
24 Board really has to do nothing. I believe
25 that's correct.

1 **MR. GRIFFON:** Right.

2 **DR. ZIEMER:** If the designation is 2, the Board
3 really has to do nothing. I mean we can
4 approve. If it's number 3, we would -- we
5 would have to take a specific action. Likewise
6 for 4. Likewise for 5. And 6, perhaps we
7 would have to agree that that's what's going to
8 happen. So there's a number of these where --

9 **MR. GRIFFON:** Yeah, and --

10 **DR. ZIEMER:** -- we would have to say yes, that
11 is what --

12 **MR. GRIFFON:** I should point out 3 actually --
13 you know, it says "unless the Board recommends
14 action through..." so we may recommend, if it's
15 a 3. I think that's a -- you know.

16 **DR. ZIEMER:** Right, in the absence of action, 3
17 remains, but we would have to look at 3s to
18 determine whether we want to take action.

19 **MR. GRIFFON:** Right.

20 **DR. ZIEMER:** Now my question is, does the Board
21 -- does this require SC&A to actually review
22 this before we take action? I mean we can --
23 we can approve -- we can approve these
24 documents and the matrix as a -- as a -- as a
25 document format-wise and content-wise, with the

1 exception of approving the last column in terms
2 of the actions. Or -- particularly if it
3 requires SC&A to do some review before we
4 finalize.

5 **MR. GRIFFON:** I -- I guess the -- the -- the
6 question on the NIOSH resolution column is that
7 -- and I've pointed out a few that they've --
8 as I was working with them, they found a few
9 where they -- 10.1 is one example where they
10 indicated that -- it says (reading) SC&A
11 concurred with the assigned medical dose in the
12 February, 2005 report.

13 And they -- they indicated to me that they did
14 not agree with that, so I don't want to have a
15 misstatement of facts in this matrix as we move
16 it forward, either, you know.

17 **DR. ZIEMER:** Well, it appears to me, although
18 we're close to closure, there may be another
19 small step --

20 **MR. GRIFFON:** Yeah.

21 **DR. ZIEMER:** -- that has to occur before we are
22 ready to actually close on this. Is that -- am
23 I correct on that?

24 **MR. GRIFFON:** I think it's probably -- yes,
25 yes.

1 **DR. ZIEMER:** Then what I'm going to suggest is
2 a motion that we accept all of the documents
3 and attachments, including the matrix, except
4 for the Board -- well, except for the -- the
5 rankings --

6 **MR. GRIFFON:** I don't know that we can --

7 **DR. ZIEMER:** What -- what I'm trying to say is
8 that we accept the matrix as a vehicle for
9 doing this, but we're not yet agreeing to
10 either the rankings or the Board actions until
11 SC&A has an opportunity to review the NIOSH
12 resolution column. That would be a motion that
13 would seem to me to be in order, if someone
14 would wish to make it.

15 **MR. OWENS:** Dr. Ziemer, I'll make a motion that
16 the Board accept all the documents that we have
17 reviewed and that we accept the matrix in
18 principle, awaiting final resolution of a
19 column -- I guess it's NIOSH resolution --
20 where SC&A would be involved.

21 **DR. ZIEMER:** And our Board action, therefore.

22 **MR. OWENS:** Yes.

23 **MR. PRESLEY:** I'll second that, but I'll ask a
24 question, also. Do we want to make it the last
25 two columns where --

1 did we? In the subcommittee meeting?

2 **DR. ZIEMER:** Not -- not fully and --

3 **MR. GRIFFON:** Right.

4 **DR. ZIEMER:** -- and you can look down through
5 here and there are some 3s in here currently,
6 and you'll see the nature of them. They are --
7 they are valid cases where there's bona fide
8 disagreements between NIOSH and our contractor
9 as to how one might approach things. So --

10 **DR. MELIUS:** Well, I would just -- if we're
11 going to close this out, do we want to put out
12 a -- a document that is sort of our final
13 report where we haven't resolved those 3s?

14 **DR. ZIEMER:** No.

15 **MR. GRIFFON:** No.

16 **DR. ZIEMER:** No, we're only approving this as a
17 -- as an instrument that still remains to have
18 that last step occur before it's closed out.

19 **DR. MELIUS:** Okay. And just --

20 **DR. ZIEMER:** We're approving the text, the
21 types of attachments that would go with this
22 report, the matrix, the form of the matrix, the
23 content --

24 **DR. MELIUS:** Uh-huh.

25 **DR. ZIEMER:** -- with the exception of those

1 last two columns.

2 **DR. MELIUS:** And again, this is a question --
3 does this mean this Board action coding, are we
4 really going to move toward something that
5 would be a 3A and a 3B or something -- 3A where
6 we've taken -- at some point taken a step and
7 recommended to the Secretary that some change
8 be made, or 3B where we did not, or does -- or
9 are we intending to then change the code? I'm
10 just confused by sort of the --

11 **DR. ZIEMER:** Well, I don't know the answer to
12 that. Mark, did -- I don't know if the
13 subcommittee addressed that, per se.

14 **MR. GRIFFON:** We didn't get that far, no. I
15 mean I'm fine with that. That seems like a
16 reasonable approach, to me, that we need to
17 know whether we did or did not send any
18 recommendation to the Secretary on that certain
19 finding, and 3A and 3B is just as good a system
20 as -- you know, does that make sense? But --
21 but that -- but --

22 **DR. ZIEMER:** Well --

23 **MR. GRIFFON:** -- that isn't done until we go
24 through all the findings.

25 **DR. ZIEMER:** I don't know, I -- I can't pre-

1 judge what -- which of -- whether that would be
2 better to break it out right now or just to go
3 through it and if there's a specific action for
4 a -- for a 3 item, we just act on it.

5 **DR. MELIUS:** Uh-huh.

6 **DR. ZIEMER:** It definitely requires some
7 action.

8 **MR. PRESLEY:** This is Bob Presley. I believe
9 you're going to have to act on it and then the
10 final -- you're going to have to change that
11 code to something you can send to the
12 Secretary.

13 **DR. MELIUS:** Exactly.

14 **MR. PRESLEY:** Or if not, you're -- you've still
15 got an open-ended problem.

16 **DR. MELIUS:** Yeah.

17 **DR. ZIEMER:** Okay.

18 **MR. GRIFFON:** All right.

19 **MR. OWENS:** Dr. Ziemer, the motion was just to
20 accept the -- you know, the documents and --
21 and the matrix in principle, and whatever
22 revisions or changes might need to be made
23 before we finalize it, I think we could do
24 that, hopefully.

25 **MR. GRIFFON:** Yeah.

1 **DR. ZIEMER:** Actually if -- if -- in case of a
2 number 3 finding or closure on a report, there
3 -- there will -- the Board would have to take
4 an action. Whether we call it 3A and 3B or
5 not, there would be an action sort of up or
6 down as to whether you go forward.

7 **MR. PRESLEY:** You might want to call it 3-1 or
8 3-6. I mean it's something you'd have to show
9 closure on.

10 **DR. ZIEMER:** Right.

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

12 **DR. ZIEMER:** Yes, Wanda.

13 **MS. MUNN:** Just a question that puzzles me a
14 little, whether -- I assume we want to have as
15 many of the last two columns complete as
16 possible before we send this away. I'm
17 wondering on 12.9 whether that can be one of
18 those that can disappear by putting the
19 response in the resolution column. I can
20 understand not having anything when you have an
21 item that hasn't --

22 **MR. GRIFFON:** Yeah.

23 **MS. MUNN:** -- been discussed, but --

24 **MR. GRIFFON:** Here -- here's another -- another
25 reason for -- that -- that we still need some

1 work on this table. The NIOSH resolution
2 column came to me in one file and SC&A sent me
3 another file that had additional findings that
4 weren't in the matrix that NIOSH was reviewing,
5 and I merged the two. So where you see blank
6 on NIOSH resolution, it's often that they --
7 they hadn't considered that one at all, so they
8 need to re-look at this, as well -- if that
9 made any sense. So -- so this is still not a -
10 - quite ready for prime time, obviously. It
11 needs -- needs to be edited.

12 **DR. ZIEMER:** The motion is not -- will not
13 preclude doing that.

14 **MR. GRIFFON:** Right. Right.

15 **DR. ZIEMER:** In fact it would mandate following
16 up and coming to closure. So there may be some
17 of these that NIOSH also needs to look at. Is
18 that what you're saying?

19 **MR. GRIFFON:** Yes, yes, probably only --
20 probably only four or five that they hadn't --
21 that weren't in the version that they were
22 reviewing. This was in real time, as we know.

23 **DR. ZIEMER:** Yes. Okay.

24 **MR. GRIFFON:** So...

25 **DR. ZIEMER:** Other questions or comments?

1 (No responses)

2 So we will vote on this, and if approved we
3 recognize that we have not yet come to closure
4 on the first 20 case. We're getting closer and
5 closer.

6 **MR. GRIFFON:** Believe it or not.

7 **DR. ZIEMER:** Are we ready to vote? I do want
8 to thank Mark especially for a lot of time and
9 effort put into developing and filling out in
10 the matrix, together with our contractors and -
11 - and NIOSH folks who helped pull this
12 together. It's been a good process for us to
13 develop a methodology for handling our -- our
14 reviews.

15 **MR. GRIFFON:** The only thing I'm comforted by
16 is that I think going forward we have a much
17 cleaner system.

18 **DR. ZIEMER:** Yes.

19 **MR. GRIFFON:** 'Cause I'm not looking forward to
20 editing this matrix to make -- to making the
21 numbers match up. We went through two days of
22 this, Kathy Behling and I --

23 **DR. ZIEMER:** Right.

24 **MR. GRIFFON:** -- and it -- but going forward,
25 it'll be much cleaner with --

1 **DR. ZIEMER:** Yes.

2 **MR. GRIFFON:** -- SC&A filling in the matrix.

3 **DR. ZIEMER:** Very good. Are we ready to vote
4 then?

5 **MS. MUNN:** Yes.

6 **DR. ZIEMER:** Okay, let's vote. All in favor of
7 accepting the document under the terms
8 indicated, please say aye.

9 (Affirmative responses)

10 Any opposed, no?

11 (No responses)

12 Abstentions?

13 (No responses)

14 Thank you very much. The motion carries and we
15 are close to closure on the first 20 dose
16 reconstruction reviews.

17 **PUBLIC COMMENT**

18 We have on our agenda at 4:15 a public comment
19 period. I've received requests from a couple
20 of individuals to address the assembly. First,
21 Delbert Moore -- I believe from Iowa. Is
22 Delbert in the assembly?

23 (No responses)

24 Does not appear to be. Also -- well, this is
25 Dan McKeel, it's -- but he's addressed us

1 already. It says after the -- after Denise and
2 the SEC, which he's already done, so this --
3 this one's already been covered.

4 Were there any other members of the public who
5 had a desire to address the assembly? Please
6 approach the mike and you can identify
7 yourself, please.

8 **MR. RUBY:** Hello, I'm Doug Ruby.

9 **DR. ZIEMER:** Doug.

10 **MR. RUBY:** I'm here representing my dad, John
11 W. Ruby.

12 **DR. ZIEMER:** Uh-huh.

13 **MR. RUBY:** I had a -- quite a lengthy little
14 thing I was going to read, but I noticed in the
15 paper articles that a lot has happened since we
16 came up Sunday to meet with NIOSH, and that you
17 guys apparently have come to some resolution on
18 --

19 **DR. ZIEMER:** Are you -- are you from the Iowa
20 group?

21 **MR. RUBY:** Yes, my father worked at IAAP.

22 **DR. ZIEMER:** Yes, then you may be aware that
23 the Board has -- has made a recommendation to
24 the Secretary to approve --

25 **MR. RUBY:** I just read --

1 **DR. ZIEMER:** -- Special Cohort status --

2 **MR. RUBY:** -- that article two minutes ago, so
3 I'd come up and I had a nice long spiel for
4 y'all, and I would like to say that Silas Mason
5 was the contractor my father worked for and
6 that I don't think that -- we were pretty upset
7 when NIOSH wanted to review the declassified
8 DOE information they told us about Sunday.
9 See, they originally denied my father, and I
10 had to appeal it based on the ground water --
11 it was quite alarming a year ago to find out
12 that NIOSH did not take ground water
13 contamination into consideration on that first
14 dose in construction (sic) at that meeting, and
15 then subsequently they've done the right thing.
16 I just want to thank you guys for, you know,
17 being stand-up on this. You've got to realize
18 that a contractor -- DOE may hire somebody to
19 do something, but back then what did we know
20 about these kind of hazards, you know. And
21 second off, you know, contractors have been
22 known to fudge on the rules, so to speak. And
23 they have some -- some blame in this, but they
24 also were ignorant, as the whole country was,
25 as -- you know, the dangers of working with

1 this kind of stuff. But after eight years of
2 frustration, I just want to thank every one of
3 you guys for being stand-up and doing the right
4 thing.

5 To me, NIOSH was not our friend. But I -- you
6 know, I just felt like they were working
7 against us from the start, but you guys have
8 pretty well shot my statement all to heck, so I
9 guess that's all I wanted to say. Thank you --

10 **DR. ZIEMER:** Okay, thank --

11 **MR. RUBY:** -- very much.

12 **DR. ZIEMER:** -- you for coming, in spite of the
13 change in what you were going to say. I think
14 probably you're more comfortable than you would
15 otherwise have been, so -- but we're glad
16 you're here.

17 Are there any other folks -- yes, please
18 approach the mike.

19 **MS. WILBURN-YOAKUM:** Yes, my name's Linda Anne
20 Wilburn-Yoakum and my father died 29 years ago
21 May 7th this year. This is my mother in the
22 pink. She'll be 92. I've been five years
23 fighting this and I -- I agree with the
24 gentleman. It's been a bad fight. My father
25 also worked for Silas Mason, and records is

1 something that just wasn't -- and the
2 government, also. They just said no, we didn't
3 do anything there. Oh, yes we did. And no, we
4 don't have any records.

5 I've got a couple of questions. I'm sure
6 you've heard lots of crabbing from everybody.
7 You basically approved the (unintelligible)
8 variation on what the radiation levels were
9 going to be. I was unable to make it here
10 Monday and Tuesday. I'm sorry, I know I missed
11 a lot. I did the St. Louis. I just couldn't
12 get my mother and be here.

13 My father's levels are unknown because of
14 records. He was a steam-fitter and a pipe
15 welder. He worked all over the plant. He
16 didn't work on Line 1, he didn't work on Line
17 6. He worked all over the place, and I guess
18 I've -- I've got a couple of questions. Iowa
19 City at the University Hospitals told him two
20 weeks before his death that his death was due
21 to his work, and that was what he did at
22 Burlington in the Armory. It's -- it's -- it's
23 known and accepted that my father had a rate of
24 -- diagnosis of cancer during the period when
25 they said it was. He had the thyroid cancer.

1 He had the bladder. It -- it's not a problem
2 there, but the problem is they say he only had
3 12 and a half percent. Well, who are they
4 gauging these records against and where are
5 they getting their records? What are they made
6 from, other plants, other places? I mean I
7 know you've heard it all.

8 But my biggest question is, I pushed the button
9 on everything I can. Deb McCurran*,
10 Congressman Leach's associate in Ottumwa, has
11 been wonderful the last two years, but it's
12 been very frustrating (sic) for both of us.
13 Now I have -- I have taken and filed, my
14 mother's been denied. We appealed. I told
15 them they had to come here. My mother wasn't
16 well enough to go, so they came here and they
17 said unless you've got new information, Ms.
18 Hill said you're just going to be automatically
19 denied, and we were. So I had to get a request
20 in a certain amount of time to keep her case
21 alive, so to speak. Now where does that put
22 her since they only give him a 12 and a half
23 percent? And I mean like he -- he told us all
24 kinds of things before he died. That was a
25 hush-hush secret you didn't talk about. Had he

1 not been dying, he wouldn't have told us
2 nothing.

3 **DR. ZIEMER:** Perhaps one of the NIOSH people
4 can answer that, but if -- if in fact he was a
5 member of IAAP during the designated time
6 period and if in fact the action that this
7 Board took yesterday proceeds through Congress
8 -- which is the ultimate step -- then I would
9 assume -- and NIOSH, you can help me out here --
10 - I would assume that all of these folks are
11 part of that cohort, are they not?

12 **MS. WILBURN-YOAKUM:** Are they accepted in this
13 even though they've been denied for like --
14 they told us she -- they told her she -- he had
15 to have 50 percent to qualify.

16 **DR. ZIEMER:** I suspect we may have to have one
17 of the individuals look at the dates and so on
18 to confirm that the -- there are some criteria
19 in terms of dates and numbers of working days,
20 but --

21 **MS. WILBURN-YOAKUM:** The dates coincided with
22 the dates.

23 **DR. ZIEMER:** -- that -- I think we can have
24 that done and should be done privately, not in
25 open session, since there are privacy issues.

1 But please be aware that the action already
2 taken earlier this week was to recommend
3 Special Cohort status --

4 **MS. WILBURN-YOAKUM:** I read that.

5 **DR. ZIEMER:** -- for the Iowa group, so that may
6 indeed change your situation.

7 **MS. WILBURN-YOAKUM:** Okay. I thank you for
8 your time. I know the Board has a lot to do.

9 **DR. ZIEMER:** Thank you very much.

10 **MS. WILBURN-YOAKUM:** Appreciate it.

11 **MR. RUBY:** (Off microphone) Can I ask one more
12 question?

13 **DR. ZIEMER:** Yes, please.

14 **MR. RUBY:** This Special Cohort did pass. Okay,
15 the articles in the paper -- my question is
16 related to this. It says that it's going to
17 Mike Leavitt next and they're actually -- the
18 article says they are -- in 60 days they may be
19 sending checks.

20 **DR. ZIEMER:** Well --

21 **MR. RUBY:** Because in 2000 it already went to
22 Congress. It still does have to go to Congress
23 after Mike Leavitt?

24 **DR. ZIEMER:** Keep in mind that this Board is
25 advisory. We -- we have -- we are advising the

1 Secretary of Health and Human Services that
2 this class be added to the Special Exposure
3 Cohort.

4 **MR. RUBY:** Okay.

5 **DR. ZIEMER:** That -- the Secretary of Health
6 and Human Services has yet to take our advice
7 and do something with it.

8 **MR. RUBY:** Right. Now, see, the paper says in
9 2000, though, this -- that it wouldn't have to
10 go to Congress this time because in 2000 they
11 passed something it refers to in the newspaper.
12 Are they incorrect?

13 **DR. ZIEMER:** Well, the initial legislation of
14 course is in place, but Congress has to approve
15 addition of classes. Is that right, Jim --

16 **DR. MELIUS:** Well, I think Congress -- be --
17 correct, Congress has a chance to turn down --

18 **DR. ZIEMER:** Yes, if they don't act on it
19 within 30 days to turn it down, it's --
20 automatically becomes part of the class, so in
21 that sense --

22 **MR. RUBY:** That's all they need.

23 **DR. ZIEMER:** -- yes, they -- they can --
24 Congress can turn it down. If they do not,
25 then it --

1 **MR. RUBY:** Okay. Thank you.

2 **DR. MELIUS:** Essentially the time frame would
3 be 21 days our letter will get up to the
4 Secretary. Secretary has 30 days then to make
5 a recommendation. If the Secretary agrees with
6 our recommendation, then Congress has 30 days
7 to act. If Congress doesn't act to stop it,
8 then DOL would be able to process the...

9 **DR. ZIEMER:** We're -- we're not in a position
10 to say the check is in the mail, but -- other -
11 - other members of the public who wish to
12 address the assembly? Thank you very much.
13 If not, I just want to double-check. We may
14 have some odds and ends here. Lew, help me
15 out. What have we not yet covered?

16 **SC&A, INC. CONTRACT UPDATE STATUS**

17 **DR. WADE:** The only thing that we've not
18 covered at this point, and I don't know that we
19 would do it other than to make mention of it,
20 is that -- you know, the SEC (sic) contract was
21 originally awarded for \$3 million for five
22 years. That was two years ago. We're coming
23 to the expenditure of that \$3 million for the
24 work that's currently on the books. This Board
25 will need to make a decision as to what work it

1 wants SC&A to do next year and will need to
2 build that into an estimate of cost, and then
3 I'll need to proceed to try and secure that
4 money. So at the July meeting we'll need to
5 have a discussion of what you would like to see
6 your contractor do next calendar year.

7 **DR. ZIEMER:** And that would involve identifying
8 perhaps numbers of dose reconstruction cases,
9 numbers of site profile reviews and any
10 assistance with petitions that the Board may
11 wish to identify.

12 **DR. WADE:** Correct.

13 **DR. ZIEMER:** Is that correct? We --

14 **MR. GRIFFON:** Do we have to do a cost estimate
15 at that meeting?

16 **DR. WADE:** No. We have -- we have cost
17 figures. Now just for you to start to think
18 about -- it costs approximately \$200,000 for
19 your contractor to review a site profile and
20 approximately \$350,000 to review 20 dose
21 reconstructions. So with those kinds of
22 multipliers, you can begin to estimate what you
23 would like to see done. I have no figure to
24 offer you in terms of the SEC task.

25 Now it's well possible that these numbers will

1 be high estimates because we are developing --
2 SC&A is developing more efficient procedures,
3 but I only have the numbers available that --
4 that are real at this point. Again, to
5 complete the record on this, it -- those
6 numbers are about twice what was originally
7 estimated when you looked at this contract.
8 But I must quickly point out that the Board has
9 really more than doubled the work of the
10 contractor through its six-step process. So I
11 think all of this is in order.

12 I think you need to think about what you would
13 like to see done and then I have to try and
14 secure the funding for that. That is not a
15 given. I'm very supportive of the process and
16 will work very hard to secure that funding.

17 **MR. PRESLEY:** Lew --

18 **DR. ZIEMER:** Robert?

19 **MR. PRESLEY:** -- Robert Presley. Before our
20 next meeting can you come up with a list of the
21 task that are on the board -- I mean that would
22 be on the books, the possible tasks for us so
23 we will all be playing on a -- on a same sheet
24 of music, and also the ones where you have an
25 estimate for cost, could you please put that in

1 -- estimate for -- per job so that we can look
2 at that before we go to our meetings so we've
3 got some idea of what to talk to before we get
4 there, please?

5 **DR. WADE:** I understand. What I'll try to do
6 is -- I think it's appropriate that I would
7 write to the Board and provide you with this
8 information before the next meeting. That
9 information would be public at the next
10 meeting, obviously.

11 **DR. ZIEMER:** Okay. Wanda?

12 **MS. MUNN:** That was the question I was going to
13 ask, this will be a public meeting?

14 **DR. WADE:** Yes. I think when we discuss
15 numbers at this level, without getting into the
16 details of the labor rates of the contractor, I
17 think we can have these deliberations in
18 public.

19 **MR. PRESLEY:** We can have them.

20 **DR. ZIEMER:** Yeah, I think -- and -- and Lew is
21 sensitive to -- to the level at which you can
22 discuss the numbers. We can't discuss
23 individual hourly rates and those kinds of
24 things, but we can discuss costs of total
25 contracts.

1 Yes, Arjun, did you have a --

2 **DR. MAKHIJANI:** Yes, I had a question --

3 **DR. ZIEMER:** -- comment or question?

4 **DR. MAKHIJANI:** For Dr. Wade or -- or you, Dr.
5 Ziemer, I presume in view of the motion that
6 was passed in regard to the SEC task order that
7 you would be expecting a response from SCA in
8 the form of a proposal and cost estimates by a
9 certain date.

10 **DR. ZIEMER:** Lew is going to touch base with
11 John on that --

12 **DR. WADE:** I'll have to go to the contracting
13 officer and then we'll approach SC&A.

14 **DR. MAKHIJANI:** Okay, fine. Thank you.

15 **DR. ZIEMER:** You don't have to do anything at
16 this point.

17 **DR. MAKHIJANI:** Right, I just -- I just --
18 since I'm not personally familiar with it, I
19 just wanted to be clear about the process.
20 Thank you.

21 **DR. WADE:** I think that's all, Paul.

22 **DR. ZIEMER:** Let me ask if there are any other
23 items to come before the Board today?

24 (No responses)

25 Thank you very much. It seemed a little bit

1 like a marathon --

2 **MR. PRESLEY:** Can I say -- can I say one thing
3 before --

4 **DR. ZIEMER:** You bet.

5 **MR. PRESLEY:** Now that it's all over and
6 deliberations are all over with, Mark and I
7 went to Germantown last week and met with
8 Sanford Cohen & Associates, went through a lot
9 of -- tremendous amount of paperwork up there.
10 I want to thank Sanford & Cohen (sic) for going
11 up there with us, allowing us to look with
12 them, and also thanking -- Larry Elliott's
13 people did a fabulous job on getting that stuff
14 ready for us to look at in a timely manner.
15 They did a very, very good job. I want it on
16 record that they did.

17 **DR. ZIEMER:** Thank you very much. Mark, you
18 want to add to that?

19 **MR. GRIFFON:** Yeah, and I would just add I was
20 impressed that you got the clearances as
21 quickly as you did, so that trip worked out
22 pretty nicely.

23 **DR. WADE:** Yeah, I mean when we last met by
24 phone, or even the last time the subcommittee
25 met, I wasn't sure it would all come together,

1 but it did. And there are many, many people to
2 be thanked for that, but I think good process
3 was followed.

4 **DR. ZIEMER:** Thank you very much. We are
5 adjourned.

6 (Whereupon, the meeting adjourned at 4:35 p.m.)
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C E R T I F I C A T E O F C O U R T R E P O R T E R**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 27, 2005; 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 27th day of May, 2005.

STEVEN RAY GREEN, CCR

CERTIFIED MERIT COURT REPORTER**CERTIFICATE NUMBER: A-2102**