Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

Summary Minutes

Twenty-fifth Meeting of the Advisory Board on Radiation and Worker Health

June 2-3, 2004

Meeting Held at the Hyatt Regency
Buffalo, New York

The Advisory Board on Radiation and Worker Health
National Institute for Occupational Safety and Health
Centers for Disease Control and Prevention

Summary Minutes of the Twenty-fifth Meeting
June 2-3, 2004

The Twenty-fifth Meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Board) was held at the Hyatt Regency Buffalo in Buffalo, New York on June 2 and 3, 2004. The meeting was called by the Centers for Disease Control and Prevention's (CDC's) National Institute for Occupational Safety and Health (NIOSH), the agency charged with administering the ABRWH. These summary minutes, as well as a verbatim transcript certified by a court reporter, are available on the internet on the NIOSH/Office of Compensation Analysis and Support (OCAS) web site located at www.cdc.gov/niosh/ocas. Those present included the following:

ABRWH Members: Dr. Paul Ziemer, Chair; Dr. Antonio Andrade; Dr. Roy DeHart; Mr. Richard Espinosa; Mr. Michael Gibson; Mr. Mark Griffon; Dr. James Melius; Ms. Wanda Munn; Mr. Leon Owens; Mr. Robert Presley; and Dr. Genevieve Roessler.

Designated Federal Official: Mr. Larry Elliott, Executive Secretary.

Federal Agency Attendees:

Contractors: Dr. John Mauro, Mr. Joe Fitzgerald

Public Attendees: See Registration

Department of Health and Human Services:
Mr. Grady Calhoun, Mr. John Condray, Mr. Russ Henshaw, Ms. Cori Homer, Ms. Liz Homoki-Titus, Mr. Ted Katz, Mr. David Naimon, Dr. James Neton.

Department of Labor:
Mr. Jeff Kotsch, Ms. Roberta Mosier, Ms. Annette Prindle

Executive Summary

The Twenty-fifth Meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Board) was held at the Hyatt Regency Buffalo in Buffalo, New York on June 2-3, 2004. All members were in attendance except Dr. Henry Anderson. Others in attendance included staff of various Federal agencies, as well as members of the public. The Summary Minutes of Meetings Twenty-three and Twenty-four were approved with minor changes.

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Wednesday, June 2, 2004

NIOSH Program Status Report

Dr. James Neton presented program statistics as of May 31, 2004. Cases referred from the Department of Labor (DOL) approach 16,500. Information requests to the Department of Energy (DOE) total 15,910 and relate to 14,348 cases, with 15,026 responses on 13,419 cases received. At least one interview has been conducted in 14,359 cases. More than 19,000 draft interview reports have been sent to claimants.

Over 5,000 cases are staged for dose reconstruction, with 1,082 cases assigned to dose reconstructors. Some 3,400 draft dose reconstruction reports have been sent to claimants, 2,900 of which have been returned by the claimant with signed OCAS-1 forms and forwarded to DOL.

Oak Ridge Associated Universities (ORAU) has now received more than 94,000 phone calls. These include questions, scheduling interviews, conducting interviews, et cetera.

Another 20 physicians will be appointed to the physician panels within the next few days.

The Special Exposure Cohort (SEC) rule, 42 CFR 83, was published in the *Federal Register* on May 28th and is on the Office of Compensation Analysis and Support (OCAS) web site.

The Integrated Modules for Bioassay Analysis (IMBA) analysis request feature has been added to the OCAS web site.

Following his presentation, **Dr. Neton** took questions from the Board.

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Department of Labor Status Report

The update was presented by **Ms. Roberta Mosier**. The initial process has been completed for 97

percent of the cases filed, with final decisions issued in 57 percent. There have been 12,139 final decisions for approval and 16,759 final decisions for denial of award.

Bethlehem Steel cases filed total in excess of 1,000. Final decisions have been reached for approval of 192 cases and denial of 634. There have been 186 payments issued totaling in excess of $27 million.

Probability of causation ranges relative to specific cancers were presented for both approved and denied cases from Bethlehem Steel.

Outreach efforts continue with traveling resource centers. DOL will attend the upcoming North American Pipe Trades conference and will have a booth and claim packages available for potential claimants.

Ms. Mosier entertained questions from the Board.

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Report on Access to Information

Mr. Grady Calhoun described the National Institute for Occupational Safety and Health (NIOSH) report in response to the National Defense Authorization Act for Fiscal Year 2004 on ability to obtain information to complete dose reconstructions in a timely and complete manner. They were asked to provide information on matters delaying completion of dose reconstructions within a 150-day time frame.

Time periods are allotted for various steps within the process. If all the time allotted for each step is taken, it totals 228 days.

NIOSH was asked to provide a listing of sites providing adequate information as requested. Seven sites were determined to provide adequate information from a review of all submittals from those facilities. A greater number met the standard based on random sampling. Six sites were listed as not consistently providing adequate information based on a random sampling.

The report concluded that the cooperative efforts of NIOSH, DOE, DOL, the claimants, and other sources of information was allowing the capacity of the program to develop, though not as rapidly as had been desired.

The Board addressed questions to **Mr. Calhoun** following his presentation.

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Ethics and Special Government Employees

The annual ethics training presentation was made by **Mr. John Condray** of the Health and Human Services (HHS) Office of General Counsel. He identified the objectives as providing general familiarity with conflict of interest rules and knowledge of where to go with questions.

Structure included financial disclosure, potential conflicts, resolution, and rules of conduct during and after service as a Special Government Employee (SGE).

Areas in which recusal may be required of a Board member were described. Types of waivers were explained. Criminal statutes were described and restrictions were explained.

Mr. Condray took questions from the Board following his presentation.

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Oak Ridge Associated Universities
Team Dose Reconstruction Project for NIOSH
Claimant Contact

Dr. Richard Toohey updated the Board on claimant contact under the dose reconstruction project for NIOSH, formerly called Computer-Assisted Telephone Interview (CATI). ORAU is doing more than the interviews. They now handle almost all CATI mailings to claimants.

Demographic material from claimants is automatically entered into the NIOSH database. All correspondence is captured in the analysis record. Any information the claimant provides is made a part of their record.

Some claimants still think they have to provide information to do the dose reconstructions. OCAS-1 forms are sometimes not returned when the claimant feels their claim is non-compensable. Those cases are administratively closed.

Quality assurance includes telephone skills training for interviewers. There is random silent monitoring by supervisors. Interviewers may signal a request for monitoring or assistance. Every call that comes in is logged into the NOCTS database in the telephone conversation file.

The CATI report is in the dose reconstruction file. Dose reconstructors are required to review it. Dose reconstruction reports are reviewed by a health physicist reviewer working against a checklist for accuracy of terminology, work processes, grammar, and spelling.

Three of the four written procedures have been completed. The fourth will be out soon and out for OCAS approval.

Dr. Toohey answered questions from the Board.

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Summary of Changes
Special Exposure Cohort Final Rule

Mr. Ted Katz of NIOSH explained the two key requirements for adding a class to the (SEC) are feasibility and health endangerment. Three procedural requirements addressed by the rule are petitions, advice from the Board on addition of a class, and a 180-day period for Congress to consider the decision.

Considerations in developing the final rule included comments from the Board and from public comment. Resolution through the Act or the way in which the final rule accommodates those issues was described.

Certain clarifications had been included addressing the number of petitioners, information requirements and how evidence is considered. Petition requirements have been made broad to reduce the burden on the petitioner.

Mr. Katz entered a dialogue with the Board following his presentation.

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Bethlehem Steel Site Profile Update

Dr. James Neton explained the covered period for Bethlehem Steel was the four years under contract to the Atomic Energy Commission, now DOE -- 1949, 1950, 1951, and 1952.

The exposure model for the site profile did not include the ingestion pathway. The three methods for ingestion of airborne uranium particles were described. NIOSH agreed that should be included and the site profile has been updated.

Cases denied by DOL will be evaluated to see if the change will have any effect on compensability. It is expected it will not.

After all those cases have been reviewed, a program evaluation report will be generated and published on the web site.

Questions were held until **Dr. Neton** made a full presentation the next day.

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Public Comment Period

Public comment was solicited on both days of the meeting. Public input on the first day was in a separate evening session, but two comments were taken before the recess. Comments the first day included the following:

- South Buffalo Railroad was a wholly-owned subsidiary of Bethlehem Steel and not a contractor.
- The DOL district office had received that information and would forward it to the national office.
- Is there expertise within NIOSH for detecting radiation?
- NIOSH should consider an extension of the covered period for Hooker Chemical Co. to account for residual radiation.
- Why have cases from Niagara Falls not been settled?
- A question was raised as to whether labor laws had been violated.
- A request was made for a round table discussion and a site profile for Linde Ceramics.
- Documentation is available showing work had been done beyond the covered period.
- Assumptions used in the Bethlehem Steel site profile were faulty.
- Bethlehem Steel lied about dismantling of its mills.
- A request for access to every page of NIOSH records.
- NIOSH accepted what Bethlehem Steel said without checking it.
- Bethlehem Steel workers had been led to believe they would be compensated if they worked during the covered period.
- The questionnaires may as well be written in Chinese.
- People are still working in a contaminated building; who can investigate.
- What is the total number of pages of government records retrieved for Bethlehem Steel?
- If DOE is only responsible for health effects during the covered period, who's responsible for the effects of residual contamination.
- The government is checking on itself.
- Does the audit contractor have government contracts?

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Thursday, June 3, 2004

Site Profile Status, Use in Dose Reconstructions, and Roll-out

Dr. Neton announced approval of the Fernald site profile. NIOSH may now address the 500 Fernald cases awaiting dose reconstruction. The number of cases referred by DOL for dose reconstruction and covered by site profiles now total in excess of 7,400. This is roughly 45 percent of the cases in-house. The site profiles are not applicable to workers with no monitoring information at all.

Four Atomic Weapons Employer (AWE) site profiles have been issued, including the complex-wide site profile. Eight more are under development. An additional nine sites represent a total of only 130 cases.

Worker outreach programs are moving forward. A meeting is scheduled the next day at Pantex in Amarillo, Texas. Rocky Flats is scheduled later in the month.

Issues raised about the Bethlehem Steel site profile in public comment were answered and explained.

The Savannah River site (SRS) profile is being updated to address construction building trades workers. There is a contract with the Center to Protect Worker Rights to gather information on five sites with medical screening programs. A team of eight people with expertise in working at sites where construction building trades are involved are putting the chapter together.

Dr. Neton answered questions from the Board.

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Privacy Act Review

Ms. Liz Homoki-Titus reminded the Board that the Privacy Act applies to both dose reconstruction reviews and SEC petition reviews. General prohibitions, HHS policy and rules governing SGEs were described.

Civil and criminal penalties for violations are applied. The Department will not defend a violation.

Ms. Homoki-Titus entertained questions from the Board.

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Site Profile Review Update
Sanford Cohen & Associates

Mr. Joe Fitzgerald provided an update on progress in Sanford Cohen & Associates (SC&As) first 60 days. Site profiles have a level of importance in the dose reconstruction process greater than originally envisioned. Their review is a two-phase process. They have completed phase one of the SRS review.

Information has been requested to address phase two. Awaiting receipt of that information, they have begun the phase one review of the Hanford site profile. When the Savannah River information is received, they will complete phase two and present a well-validated report to the Board. In the future two review teams will be working in parallel.

A three-day meeting with NIOSH and ORAU had been informative and helpful. They had gained an understanding of the thinking behind the site profile development.

The Board directed questions to **Mr. Fitzgerald** following his presentation.

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Board Discussion/Working Session
Charter for Subcommittee on Dose Reconstruction

The Board reviewed the revised charter for the Subcommittee on Dose Reconstruction. After considerable discussion, the charter was approved for submission to the Office of Committee Management for its approval.

A Chair and four members of the Subcommittee were named. After discussion the group agreed to meet in Cincinnati as a working group before the August Board meeting.

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Public Comment Period

Public comment was solicited on both days. Public input on the second day included the following.

The Board should send someone to Albany to go through "the files."
The Board was encouraged to visit Bethlehem Steel to help put a building with a site number.
Hope was expressed for continuity of the Board momentum in light of approaching term expiration for some members.
Too many people had the same "misunderstanding" about compensation to believe they had misinterpreted the information they were given.

With all further business to come before the Board requiring action in Executive Session, the public portion of the meeting was adjourned.

End of Executive Summary

The Advisory Board on Radiation and Worker Health
National Institute for Occupational Safety and Health
Centers for Disease Control and Prevention

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ABRWH Members: Dr. Paul Ziemer, Chair; Dr. Antonio Andrade; Dr. Roy DeHart; Mr. Richard Espinosa; Mr. Michael Gibson; Mr. Mark Griffon; Dr. James Melius; Ms. Wanda Munn; Mr. Leon Owens; Mr. Robert Presley; and Dr. Genevieve Roessler.

Designated Federal Official: Mr. Larry Elliott, Executive Secretary.

Federal Agency Attendees:

Department of Health and Human Services:
Mr. Grady Calhoun, Mr. John Condray, Mr. Russ Henshaw, Ms. Cori Homer, Ms. Liz Homoki-Titus, Mr. Ted Katz, Mr. David Naimon, Dr. James Neton.

Department of Labor:
Mr. Jeff Kotsch, Ms. Roberta Mosier, Ms. Annette Prindle

Dr. Paul Ziemer called the meeting to order, welcoming the attendees. He asked that everyone register their attendance and discussed the sign-up sheet for those who wanted to speak during the public comment session.

He introduced some special guests, including Jane Schraeder from Congresswoman Slaughter's office, Thomas Wiesnewski and C. W. Esthoff from Congressman Quinn's office, as well as Cecilia Lima from Senator Hillary Clinton's office.

Mr. Larry Elliott added his welcome on behalf of Secretary Tommy Thompson of the Department of Health and Human Services and Dr. John Howard, director of NIOSH.

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REVIEW AND APPROVAL OF DRAFT MINUTES

The first order of business on the agenda was approval of the minutes for meetings 23 and 24. Meeting 23 was the April 20 and 21 meeting in Richland, Washington. After discussion the Board members indicated they would prefer to delay this action until the following day in order to have time to review the minutes more thoroughly. **Dr. Ziemer** indicated that the 24th meeting was the closed session in Cincinnati when the independent government cost estimate was done and the minutes of that meeting simply state that the Board met. It was a one-line document which he had approved on behalf of the Board.

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NIOSH PROGRAM STATUS REPORT

Dr. James Neton
NIOSH/OCAS

Dr. Neton presented information on program statistics, indicating that two-thirds of the cases being received were from the Seattle and Jacksonville DOL district offices. NIOSH has received approximately 16,500 cases total. NIOSH continues to send out requests for exposure information to the Department of Energy (DOE). **Dr. Neton** explained that the number of requests thus far, 14,348, is lower than the 16,000-plus cases NIOSH has received because NIOSH does not send exposure requests for claims from many of the Atomic Weapons Employer (AWE) establishments. There's no clearinghouse for those facilities and they rely on going to individual records repositories to retrieve that information.

Responses have been received for 13,400 cases from the DOE. **Dr. Neton** noted that a response does not necessarily mean that what is received is complete and sufficient to do dose reconstruction. A

response could simply be a statement that there is no information available.

The age of outstanding requests is tracked by NIOSH and that number is very small considering the number of requests that have been made. NIOSH continues to work diligently with DOE to reduce that backlog.

There are 14,400 cases for which at least one interview has been completed for each case. There have been over 19,000 interviews actually done. Some cases involve multiple claimants and each claimant is interviewed, so those numbers will never exactly balance. The current interview capacity is 200 to 300 per week.

There are somewhat over 5,000 cases staged for dose reconstruction, which means that there has been a response from DOE, DOL information appears to be correct, and a site profile or some mechanism to enable the dose reconstruction process to go forward is in place. That figure equals the number of dose reconstruction contact letters that have been sent to claimants stating that NIOSH is ready to begin and listing the individuals who could potentially be doing their dose reconstruction, asking to be advised of any conflicts of interest they may perceive within that group. Currently 1,082 cases have been assigned, which means they are in process.

There are currently 400 to 500 OCAS-1 forms in the hands of claimants. There have been some 3,400 draft dose reconstruction reports sent out, 2,900 of which have been returned by the claimants with the signed OCAS-1 form and forwarded to DOL. The OCAS-1 forms must be executed and returned before the dose reconstruction report can be sent to the DOL for adjudication.

Dr. Neton again presented statistics on the cases completed by NIOSH tracking number. This is the sequential number assigned to each case received, beginning with number one through the 16,000-plus that have been received. These are divided into blocks of 1,000. ORAU has placed more emphasis on completing those older cases and realigned their process into two teams. Team B is targeting the more difficult claims that would take more than a day or two once the information is in place. Those represent more of the internal dosimetry issues, exposures that make it more complicated to perform the dose reconstruction. **Dr. Neton** noted that for the last three months NIOSH has completed more dose reconstructions than having new cases received from DOL.

Four records were administratively closed in the month of May. That is a situation in which the dose reconstruction has been completed, and for a period of 74 days the claimant has failed to return an executed OCAS-1 form or indicate the existence of any additional information that could be included in his dose reconstruction report. **Dr. Neton** noted that while these cases are termed "closed," they are simply suspended and taken off the tracking list. If a claimant provides additional information or signs the OCAS-1 form, there is a mechanism for the case to be reopened.

The number of reworks or cases returned to NIOSH for reanalysis remains consistent, in the range of six to eight percent. Most are due to additional information from the claimants after the dose reconstruction

has been processed such as a cancer diagnosis that had not been made at the time of the original claim, work history, a variety of things. There was an initial goal of returning those to DOL within 60 days, and that is possible when the adjustments are fairly small. In the case of an additional cancer, which may take a whole different approach to complete the dose reconstruction, the case is almost put back to the beginning of the process and is often difficult to move through in a 60-day window.

Phone calls and e-mails continue to increase somewhat. The number of phone calls to ORAU is now at in excess of 94,000, but this includes all the scheduling for the telephone interviews, as well as the interviews themselves.

Recent accomplishments include publishing of 42 CFR 83, the SEC rule, in the *Federal Register* on May 28th.

Dr. Neton noted that, working with the Congress of Occupational Medicine and other groups to identify additional candidates, more than 200 physicians have been appointed to the physician panels, with approximately 20 more names to be submitted within the next week or so.

Dr. Neton outlined some of the outreach efforts currently underway, including a dose reconstruction workshop in Cincinnati on May 25th and 26th at which health and safety labor representatives from around the country, as well as special interest group people, were invited to go over the dose reconstruction process.

There was a meeting in Buffalo, New York for Bethlehem Steel stakeholders on May 4th.

The Integrated Modules for Bioassay Analysis (IMBA) analysis request feature has been added to the OCAS web site where parties can request, by e-mail or regular mail, an IMBA analysis be done.

Discussion Points:

Dr. James Melius wanted to know the size of the backlog. **Dr. Neton** indicated he didn't have the statistic available, but suspected it was somewhere in the high 15,000s. **Dr. Melius** commented that at the rate they were going, if he understood the numbers correctly, it would take five years to work off that backlog. **Dr. Neton** observed that it was unrealistic to presume there would ever be a zero backlog, and the optimal age of a claim had yet to be defined.

Addressing the first 1,000 claims filed, **Dr. Melius** asked how many of the 700 dose reconstructions remaining to be done were in that status as a result of having no site profile and how many were the more difficult cases. **Dr. Neton** replied he couldn't speak to that with specificity, but felt a large number were due to site profiles. Site profiles now cover about 50 percent of the in-house claimant population, but do not adequately address unmonitored workers.

Dr. Melius inquired then if that meant there were actually three categories, one in which site profiles

haven't been completed, some that have complicated exposure histories but a site profile is available, and a third of difficult cases because there's not personal information on their exposure. He wondered if there were a process to figure out where to apply resources and whether these were people who may be candidates for a SEC. **Dr. Neton** indicated those were good questions, but he didn't have good answers. He observed that the SEC regulation allows NIOSH to say they can't do a dose reconstruction, and they may get there.

Mr. Larry Elliott offered that there were several factors involved in those early cases, one of which is AWEs where maybe there isn't a site profile or exposure model, or they possibly haven't even found information for that particular AWE and are still searching. He added they are concerned with those early cases and ORAU has a screening process which it applies to them.

Mr. Elliott also explained that within OCAS are the public health advisors who have been going through and identifying claims in which the Energy employee is still living so that those interviews may be captured, and then health physicists are looking at the cases to see if they can be moved forward in any way with the tools presently available. With the advent of the SEC rule there is now the added emphasis of looking for cases which cannot be reconstructed.

Dr. Melius suggested an analysis might help to figure out priorities and determine where to apply resources. **Dr. Neton** agreed, noting that some site profiles had problematic areas to be assessed.

Dr. Ziemer asked if there were a pattern developing in the e-mail inquiries. **Ms. Chris Ellison** replied that most follow the phone conversations, some inquire about status of a claim, and some have a program question. Contents of the OCAS inbox runs the gamut, including Congressional inquiries, Freedom of Information Act (FOIA) requests, and Curriculum Vitaes (CVs) for physicians to be nominated to the physician panels.

Mr. Leon Owens asked if a letter of notification is sent when a record is administratively closed. **Dr. Neton** replied both the claimant and DOL were sent a letter saying that action was being taken. **Mr. Owens** queried whether those involved elderly people who may not understand the process or if there is information not adequate from the standpoint of the records. **Dr. Neton** answered it was not an issue of adequacy at all because the dose reconstruction had been completed. He couldn't explain why some people don't sign the OCAS-1 form.

Mr. Elliott added that the 24 administratively closed records indicated on Dr. Neton's slide were cases that likely would have received a denial from the DOL. Two cases which had been included on the slide in an earlier meeting represented compensable cases and those had now been concluded. If the claimant indicates at any point they are searching for additional information or they think there was an additional diagnosis not accounted for in the original claim, they are asked how much time they think they'll need to pursue that and the record is kept open.

Dr. Melius asked the status of IMBA access. **Mr. Elliott** replied he was pleased to have the help desk

on their web site, but suspected the question was directed more toward availability of the program for the Board and its contractor. The issue of the end user's license for both entities is still being addressed with the vendor, but he couldn't say when it will be available.

Commenting that he would anticipate **Dr. Melius**' next question and address the issue of the conflict of interest policy on site profile development, **Mr. Elliott** announced it was still in review and being evaluated. **Dr. Melius** asked if it were not true that more contracts had already been awarded. **Mr. Elliott** replied that more site profiles are under development, yes, noting that the policy being adhered to at ORAU, which NIOSH agrees with and which has been articulated in previous meetings, is that the principal author of a site profile cannot have had expertise in management of a dose monitoring program at that site. **Dr. Neton** added that there were also provisions for organizational conflict of interest, as well.

Dr. Melius observed that the absurdity of not having a policy and yet following a policy and awarding contracts under it does not generate a lot of confidence in the process.

Dr. Melius further inquired into the status of the memo to the DOE through HHS since he hadn't received a copy. **Dr. Ziemer** informed him a copy was in his meeting information packet. **Mr. Elliott** added he didn't know the exact location of the memo, but he would let everybody know when it reached DOE.

Dr. Melius asked for clarification on the matter of Congressional responses discussed at the previous meeting as to whether the Chair could share a draft with Board members prior to sending the letter. **Dr. Ziemer** replied he thought it had been decided they couldn't do that and so they had decided on the content of the letter.

Mr. Mark Griffon inquired, regarding the dose reconstruction statistic in excess of 2,900 final dose reconstruction reports, how many of those would be available for Board review. **Dr. Neton** replied he believed it would at a minimum be the number of cases that had been included in Russ Henshaw's presentation at the last meeting where he described individual cancer statistics. That presentation was based on cases DOL had already adjudicated. He suspected it may be half of the 2,900 number, but wasn't sure.

Mr. Griffon asked about the status of his request at the last meeting for a breakout of all the cases by cancer type by site. **Dr. Neton** indicated that was being worked on, but they were not prepared to share it at this meeting. **Mr. Griffon** commented it had been his hope the Board could make some progress in selecting some cases to initiate the review process.

Dr. Melius wanted to go back to his question on the Congressional letters and indicated that on pages 61 and 62 of the minutes there was a reference to that issue. They passed a motion and then **Mr. Elliott** raised the issue of whether it was appropriate under the Federal Advisory Committee Act (FACA) rules to circulate the letter. **Dr. Melius** said he was asking for FACA clarification because it had been done

on other committees on which he'd served and he wanted to understand the procedure.

Mr. Elliott apologized for letting this matter slip through the cracks and indicated he would have to get a reading on the FACA-related aspect of it. The issue is the public transparency process of coming to a decision and how that's done. **Dr. Ziemer** added he had left the meeting under the impression that it could not be done. **Dr. Melius** reiterated he was just trying to understand for future reference.

Following the Board recess, **Mr. Elliott** announced he had just received some quick information on the FACA-related issue. So long as the Board decided correspondence should be generated, determines the purpose and focus in a public setting, the decision is on the table in front of the public. The letter could be drafted outside the public forum, shared, input received from Board members and the letter could be finalized without doing so in front of the public, so long as there was no stray from the agreed-upon purpose, intent, and focus.

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DEPARTMENT OF LABOR STATUS REPORT

Ms. Roberta Mosier
Department of Labor

Ms. Mosier presented statistics on the number and types of claims received including a breakdown of categories, with cancer remaining the major category. The next largest is non-covered conditions.

Ms. Mosier explained the difference between cases and claims, and then presented information on the overall case status. Over 40,000 cases have been filed with over 23,000 cases receiving a final decision, to date.

The adjudication process was explained step by step, with statistics relating to each of those steps. **Ms. Mosier** noted that the initial process has been completed for 97 percent of the cases received, and final decisions issued in 57 percent. There have been 12,249 final decisions for approval; 16,749 final decisions for denial of claims. There have been 10,944 payments issued. Compensation totals more than $820 million, with medical benefits in excess of $33 million paid.

Ms. Mosier also presented statistics specific to Bethlehem Steel. As of May 24 the number of cases filed was in excess of 1,000. There have been 196 cases recommended for approval and 724 cases recommended for denial. Final decisions have been made for approval of 192 cases and denial of 634. There have been 186 payments issued totaling in excess of $27 million.

Of the 1,000-plus cases filed with the Department of Labor from Bethlehem Steel, 528 have been forwarded to NIOSH for dose reconstruction and 477 of those have been returned from NIOSH, 468 with complete dose reconstructions and nine in which dose reconstruction was not required.

Ms. Mosier then presented some Bethlehem Steel-specific statistics related to approved claims indicating the probability of causation range in a variety of specific cancer types. She gave Bethlehem Steel-specific statistics demonstrating a breakdown of the reasons for denials of claims, the number of Bethlehem Steel cases which had been remanded following recommended decisions and the eventual outcomes of those cases. She then presented a breakdown of cancer type and the probability of causation range of the Bethlehem Steel cancer claims which had been denied.

Addressing statistics from other New York sites, **Ms. Mosier** presented some overall statistics as to approvals, denials. There have been somewhat over 1,000 cases filed; 16 cases have been approved, 455 cases denied, 14 payments have been issued totaling in excess of $2 million. NIOSH has been sent 577 of those cases for dose reconstruction; 42 have been returned with 22 completed dose reconstructions and 20 in which reconstruction was not required.

Ms. Mosier then gave an update on outreach efforts, describing plans for the Ames Laboratory traveling resource center in Ames, Iowa. The Cleveland district office is working with an organization called Children of the Manhattan Project. DOL is participating with NIOSH in a panel discussion in Burlington, Iowa similar to the meeting recently held in Buffalo. Meetings have been held with Cancer Treatment Center of America addressing provider outreach opportunities through their facilities throughout the country. DOL will be attending the meeting of the North American Pipe Trades conference and will have a booth and claim packages there to provide assistance to people with questions.

Discussion Points:

Dr. Ziemer inquired how the success rate of NIOSH-referred claims compared with success rate of claims overall. **Ms. Mosier** replied it varied a lot according to the type of condition and she didn't have the statistic with her.

Mr. Griffon asked if she had the statistics to elaborate on not only the range of probability of causation, but the number of cases in that range for cases that had been referred to NIOSH. **Ms. Mosier** indicated they had the ability to produce that information but she didn't have it with her.

Dr. Melius inquired about other New York State cases referred to NIOSH and asked what sites were involved. **Ms. Mosier** replied that she didn't get specific information, but it was all the sites in New York State, although there were a few sites from which they had received no claims. She noted that the information was available on the web site and would show how many claims had been received from a facility, how many had been approved and denied, et cetera.

Dr. Melius raised the issue of people who had problems with whether they were going to appeal and didn't know what steps to take, and now that NIOSH is making changes to the site profile which may affect some claims, he wondered if there was a way of assuring the information gets communicated to

people. **Ms. Mosier** replied they had made an effort to be responsive; decisions were as transparent as possible, plainly stated, so that individuals understood what DOL was saying. And through the recommended decision and final decision process, claimants have an opportunity to raise objections. Face-to-face meetings are available if desired. DOL has been doing public meetings. Training has been provided to the resource centers so that if a claimant gets a letter from NIOSH they don't understand, they can take their letter to the resource center and somebody will sit with them and explain it.

Dr. Melius wanted to know if the people in the resource centers contact NIOSH to get an update on where things stand with that part of the program. **Ms. Mosier** replied that DOL puts information out to the resource centers, and NIOSH keeps DOL advised. But there is a balance there because nobody wants to get people unnecessarily excited about something that may not have any effect on the eventual outcome of their claim.

Mr. Elliott commented that there was opportunity for everybody to be better coordinated, especially as changes occur in site profiles. The Cleveland district office had been notified of the addition of the ingestion pathway to the Bethlehem Steel site profile and there would be re-evaluations of all the denied claims done under the previous site profile without it. If a particular case were identified that ingestion would have influenced, then NIOSH would go back to the DOL district office in Cleveland and talk to them about how to communicate this to the claimant.

Mr. Richard Espinosa asked if minutes were taken on the May 4th meeting and, if so, if the Board could get a copy of them. **Mr. Elliott** replied there were none.

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REPORT ON ACCESS TO INFORMATION

Mr. Grady Calhoun
NIOSH

Mr. Calhoun advised that NIOSH had been requested to report in response to the National Defense Authorization Act for Fiscal Year 2004, on the ability to obtain information necessary to complete dose reconstructions in a timely, accurate, and complete manner. The report was to include matters that prevented timely completion, the number of claims affected by those matters and the number of claims that have not been able to be completed within 150 days of the time of receipt from Department of Labor. **Mr. Calhoun** noted that the information requested was dynamic in nature. Consequently the report had to be in the form of a snapshot based on what was available as of a specific date, in this case January 15, 2004.

Mr. Calhoun described the types of information required to do a dose reconstruction which was requested from DOL, DOE, or AWEs, and from claimants.

Matters that may cause delay relative to DOL may be incomplete information -- employment period, cancer diagnosis information or incorrect ICD-9 diagnosis codes. This information is evaluated up front and if there are any glaring errors an immediate request can be put out to DOL for clarification or additional information, and they are more than happy to do that. This process has been working smoothly.

What is beyond everybody's control is additional cancer diagnosis during case processing. That sometimes happens between the time the case was submitted and the draft dose reconstruction was completed.

Matters affecting DOE's data sources could be data not existent in a readily-retrievable format. Some DOE facilities had not established a program which allowed retrieval of data on an individual. Some sites were filing by year, and to find information on an individual one had to know how many years that person worked and go through hundreds of boxes to find the information, so that presented some early problems. Perhaps individual exposure records were not located. Some dosimetry data was being supplied in summary form. Relative to AWEs, sometimes those AWEs are no longer in existence, or are no longer associated with DOE so there's little incentive for them to respond in a timely manner.

Information provided by claimants sometimes is inadvertently inaccurate. Elderly claimants may have a hard time remembering. They may not have been aware of exposure hazards. The work was secret and the survivors know very little about what their spouse or parent may have done. Claimants may also provide additional information after the dose reconstruction report is drafted, simply because they had forgotten something such as having worked in another facility, which would mean having to go back and possibly even make another request to another facility. They may not return the OCAS-1 form within 60 days.

Mr. Calhoun provided a timeline of the processing goals from filing of claim by a claimant through to sending the final report to DOL. The graph demonstrated that if the allotted time for each step of the process were taken, it would consume 228 days. While it sometimes gets done in less time, it sometimes takes longer, as well.

NIOSH was also asked to provide a listing of sites providing adequate information as requested. Seven facilities were determined to have provided adequate responses based on review of almost all submittals from those facilities. A great number of sites provide adequate responses based on a random sample of cases.

Some sites had special considerations, however. Those were Mallinckrodt, the Iowa Ordnance Plant, and Shippingport Atomic Power Plant. Records were located in off-site facilities and in those cases they were able to make requests and/or undertake data capture efforts to get as much information as possible.

One request for information has been made relative to the Trinity Nuclear Explosion Site and to date no DOE submittals have been received. **Mr. Calhoun** indicated that information was current as of the time

of his preparation for this presentation, and he has no reason why it has not been received.

Six sites were listed as not consistently providing adequate information based on a random sampling of cases. Those sites are Los Alamos National Laboratory, Los Alamos Medical Center, Pantex Plant, Brookhaven National Laboratory, Stanford Linear Accelerator Facility, and Oak Ridge Hospital. **Mr. Calhoun** described and discussed specific deficiencies relative to each of those locations.

Throughout 2003, the time in which NIOSH worked on the development of 15 site profiles for DOE sites, **Mr. Calhoun** commented that DOE had been very supportive in assisting in that effort and in locating and obtaining site characterization information.

Some delays have been necessary to comply with procedures for assuring national security when information requested is in classified documents.

As of the "snapshot" date of January 15, 2004, NIOSH had received 15,191 cases for dose reconstruction from DOL. **Mr. Calhoun** noted that almost all those cases have been adversely affected by one or more of the matters addressed in the report. A substantial portion of those cases would have likely required more than 150 days for completion, even without the occurrence of any delay, if claimants simply take the time built into the process for their review and response, and for NIOSH to reply.

Mr. Calhoun indicated the report had concluded that NIOSH, with the cooperation of DOL, DOE, the individual claimants, as well as other sources of information, was completing more dose reconstructions and continuing to develop the capacity of the program. The progress of this endeavor, however, has not been as rapid as might have been desired.

Discussion Points:

Dr. Ziemer noted that a recurrent theme through public comment had been the idea that claimants seem to think there's a burden on them to provide information in the telephone interview and that doing the dose reconstruction was dependent on their ability to provide information on dose, location, et cetera. He wondered if a better job being could be done in making clear that dose reconstruction is not dependent on their input. **Mr. Calhoun** replied that he didn't know if they were still getting complaints, but that it had been an issue early on.

Dr. Richard Toohey of Oak Ridge Associated Universities (ORAU) commented that he planned on discussing that in his presentation later in the day, but that as of the now there are relatively few complaints about the interview process. He noted that if the complaint is made in the early stages, ORAU contacts the claimant and makes every effort to explain that the claimant's lack of knowledge isn't going to hurt the dose reconstruction. They're simply trying to gather whatever information may be available. **Dr. Toohey** added that some claimants have worked with advocate groups, who do an excellent job in educating the claimant about what the interview is about, and it has resulted in a drop in

the number of complaints. It's still an issue, but not what it was a year ago.

Dr. Genevieve Roessler commented that the timeline was very helpful and that, bottom line, in most cases it takes close to 240 days to deal with the dose reconstructions. Some of those big chunks of time nobody has control over because part of the time is with the claimant, part of the time is with DOE, part of the time is for the dose reconstruction itself. She noted the latter was the only thing that may be shortened as it goes along. **Mr. Calhoun** noted also that some dose reconstructions can be done in a day and some take much longer, depending on the information. But at best, it's going to be 200-plus days. **Dr. Roessler** indicated she had not realized where the time expenditure was and that so little could be done to shorten it, and she was happy to have the information made available.

Dr. Roy DeHart asked, as a point of clarification, if one of **Mr. Calhoun**'s slides had not indicated that a part of the information they were requesting was the diagnostic X-rays and wondered if he didn't actually mean employer-required surveillance X-rays rather than diagnostic. **Mr. Calhoun** agreed that was indeed what he meant, noting that even if a claimant had broken a leg on the job and had to have an X-ray performed for that purpose, that X-ray was not a part of the dose reconstruction information required.

Dr. Melius indicated he had three questions. First is there an analysis of how long each step actually takes? **Mr. Calhoun** replied there was not an analysis but that all steps were tracked. **Dr. Melius** observed that perhaps if the information from claimants could be a matter of delay, possibly it meant that the correct information was not being elicited and the interview was not adequate to address and pick up on the information, noting that another part of that is that a lot of the information is relying on what other claimants or other informants could provide.

Finally, **Dr. Melius** wanted to know what was being done to resolve the issue with Los Alamos. **Dr. Neton** answered that the issue with Los Alamos had been the bioassay database. There were multiple databases that had to be searched. NIOSH has provided a contract support person to work with Los Alamos to re-engineer the database to a consolidated system. That is moving forward and they hope to start getting information for the internal dose reconstructions fairly soon. **Dr. Melius** asked about the detailed external dosimetry data, to which **Dr. Neton** replied that it had not been as big a problem. Most of the issues had related to low level exposures where in the early days they had requested individual dosimetry data for individuals with more than 100 millirem annual exposure. The problem is that those low level exposures often weren't recorded, so that if the threshold were less than a certain level it wasn't entered in the database. They're having to work around that and it is no longer a big issue at Los Alamos, noting that this "snapshot" was taken in mid-January and these issues have been worked through.

Dr. Melius asked what verification there was for information going into the database if they're not accessing primary data. **Dr. Neton** replied that they're working closely with the site and with people who are very familiar with the databases, noting that NIOSH is simply assisting. They're providing the hands to do the programming, but they're working with people at Los Alamos to verify, for example,

individual urinalysis sample results. **Dr. Melius** commented that it was important that there not be a mistake, that they didn't want to find out NIOSH was using incomplete or incorrect data. **Dr. Neton** answered that he agreed, and also didn't want to leave the impression that the difficulty was with all internal bioassay results from Los Alamos. He noted there were approximately 400 cases from Los Alamos and this particular situation affected approximately 200 of those, primarily the uranium bioassay program, or had to do with the degree of enrichment. NIOSH is aware of the issues and takes them very seriously.

Dr. Ziemer asked if Oak Ridge Hospital, which had appeared on one of **Mr. Calhoun**'s slides, had been a part of the laboratory at one time. **Mr. Robert Presley** offered that Oak Ridge Hospital in the early years was part of the Federal government and had since been turned over to the Methodist church and is now referred to as Methodist Hospital.

Mr. Espinosa inquired if the same were true with Los Alamos Medical Center. **Mr. Calhoun** replied that was indeed the case and that it had been at one time associated with DOE.

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ETHICS AND SPECIAL GOVERNMENT EMPLOYEES

Mr. John Condray
HHS Office of General Counsel

The annual requirement of ethics training for Special Government Employees (SGEs), such as the Board members, was addressed by **Mr. Condray**, who noted that the objectives of the training are to provide the Board with a general familiarity with conflict of interest rules applicable to SGEs, and the knowledge of where to go if there is a question.

He outlined the structure of the ethics program, including financial disclosure, review and identification of potential conflicts, resolution of conflicts, and conduct rules during and after service as a SGE.

Mr. Condray described and elaborated on areas in which recusal or disqualification of a Board member might be required to avoid conflict of interest. He explained and described various waivers -- regulatory, individual, et cetera. He described other criminal statutes applicable to SGEs, such as the bribery statute, certain representational restrictions and post-employment restrictions, elaborating on each and what is prohibited behavior.

Mr. Condray discussed activities for which Board members may receive compensation when undertaken in a personal capacity and how those same activities, as they relate to official duties, may not be compensated. He discussed gifts, misuse of position and Board member impartiality, as well as relationships with foreign governments, participation as an expert witness and lobbying. **Mr. Condray**

also described and discussed ramifications of political activity as it relates to service on the Board.

Mr. Condray concluded that the most important message from all of his information was that if a Board member is not sure about a situation, the wisest thing to do is to check with the Office of General Counsel.

Discussion Points:

Dr. Ziemer addressed an issue with recusal, noting to **Mr. Condray** that an operating rule of the Board is that individuals from particular sites did not vote on matters related to their site, for or against, and wondered if **Mr. Condray**'s advice is that they step out of all proceedings concerning those matters rather than just the vote. **Mr. Condray** replied that if the Board is in a public meeting, the information being discussed is public so the Board member didn't need to actually leave the room. But if the meeting were in closed session, it would be proper to leave the room to be sure the Board member didn't have access to information he shouldn't have access to in order to avoid conflict of interest. He added that it would be hard to imagine a situation where recusal or disqualification wouldn't be appropriate for a Board member affiliated with a particular site.

Dr. Ziemer asked for clarification on whether the recusal included not only voting, but discussion of an issue. **Mr. Condray** reiterated that participation includes providing advice or recommendation, as well as having a part in the specific decision; therefore the discussion would be included.

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OAK RIDGE ASSOCIATED UNIVERSITIES TEAM DOSE RECONSTRUCTION PROJECT FOR NIOSH TASK 4: CLAIMANT CONTACT

Dr. Richard Toohey
Oak Ridge Associated Universities

Dr. Toohey presented an update on the Task 4 Claimant Contact under the team dose reconstruction project for NIOSH. Claimant Contact is actually a renaming of what was originally called Computer-Assisted Telephone Interviews (CATI). That has been renamed because it includes more now than just the interview process. **Dr. Toohey** explained that their responsibilities have increased as time as gone on and they now essentially handle almost all the mailings to the claimants, with the exception of the initial acknowledgement of receipt of the claim from DOL. That letter introduces ORAU and informs the claimant that they are the entity which will be contacting them to schedule the interview.

ORAU conducts the initial interview which then receives a technical review. A report of the interview is mailed to the claimant. The claimant may then comment, either written on the report or by telephone.

Those comments are captured and the report is updated as necessary.

Much of the information from the claimant is demographic material which is automatically entered into the NIOSH database -- address, telephone number, et cetera. If the claimant wants an authorized representative to act in their behalf, represent them in the process, those forms are mailed out by ORAU. Correspondence to schedule the interview is handled by ORAU. If they have attempted to contact the claimant by telephone for scheduling and have been unable to do so, there is further correspondence mailed. Sometimes a claimant declines an interview, in which case a letter is sent out confirming that the interview has been declined and that is also captured in the analysis record.

The dose reconstruction letter is sent to the claimant providing a list of possible dose reconstructors and asking for any objections the claimant may have based on conflict of interest. **Dr. Toohey** noted that of the 6,000 of those letters that have gone out, only two have come back from a claimant saying they would rather not have that person doing their dose reconstruction. Four or five have come back with the claimant specifically requesting the conflict of interest rule be waived because they would prefer somebody who knows the site, somebody from the site, to do their dose reconstruction. In those cases ORAU has to inform them it is better not to do that, but informing the claimant that people knowledgeable about the site contribute to the site profile and the exposure conditions on the site.

Any additional data the claimant sends in, anything they want to add to their file, is received, scanned and made a part of their record.

At the beginning of this year ORAU took over the closeout interview task. This is after the claimant has received the dose reconstruction report and the OCAS-1 form. ORAU calls and asks if they had questions about it. If there's been a delay in return of the form, they ask if there's a problem and explain what the form is. **Dr. Toohey** noted one problem is the claimant is afraid the form is an indication the claimant agrees with the conclusion of the report, in which case it's explained that the form is simply the claimant's acknowledgement that they have nothing more to add. Sometimes they're successful in that explanation and sometimes not.

Staffing for this particular task is 33 people. **Dr. Toohey** noted that two of the interviewers are half-time, so there is actually a total of 32 FTEs. There is a late shift. A couple of people work till 8:00 or 9:00 in the evening eastern time to afford a better opportunity for catching people on the west coast. There are a couple of 800 operators, schedulers, reviewers, clerical staff to handle the mailing, and some supervisors.

Dr. Toohey explained that through the end of May approximately 14,400 claims have received at least one interview. At the moment there are about 1,200 to 1,300 claims awaiting interview. It takes an average of 1.33 interviews per claim or per Energy employee because if there are multiple claimants, each claimant must be interviewed. There are approximately one-third more interviews than cases. ORAU averages about 300 interviews a week and their maximum rose close to 500 in one week, which involved a good bit of overtime.

Since January about 3,300 closeout interviews have been completed. Again, those interviews are done with every claimant. As the backlog of initial interviews is being reduced, interviewers are transitioning over to doing closeout interviews, plus any interviewing or information-gathering necessary for SEC petitions which will be coming in.

The 800-line operators handle 3,000 to 4,000 calls a month, the majority of which are about the status of claims. People also call in changes of address and changes of phone numbers. Children will call in to say the claimant has passed away, and that unfortunately means the survivors will have to refile the claim with DOL.

There is a lot of mail sent out and a copy of every letter to a claimant is entered into their file in the NOCTS database. If NIOSH needs to send out a mass mailing, ORAU can generate that letter and get it in the mail in a relatively short period of time.

As for quality assurance on the process, the first thing is the training of the interviewers, who receive telephone skills training; how to talk to people on the phone, particularly elderly, who form the majority of the claimants and may have hearing difficulties. They get an overview of the Act and what went on at the DOE facilities. Many interviewers have worked at DOE facilities, particularly Mound and Fernald, in the Cincinnati area. They are given the equivalent of general employee radiation training -- an introduction to radiation, protection concepts, et cetera -- to give them the vocabulary so they know what the claimants are saying or referring to. And then before they do interviews there is extensive on-the-job training. Several interviews then are monitored by supervisors where the interviewer will get immediate feedback before they are certified to handle interviews on their own.

People who are not primarily directly involved in doing the interviews also get the telephone skills training and on-the-job training, and everybody on the team gets Privacy Act training.

There is a database maintained on the telephone interviews, with automatic check runs on a daily basis to ensure that a claimant is not called to schedule an interview before the letter has been sent that the phone call is going to be made. An interview is not done unless it's scheduled and is on the calendar. A check is made to see that the initial draft interview report is on its way to the claimant within a week, with the same for any updates provided by the claimant for revision. ORAU tracks to make sure they haven't missed a scheduled interview. A closeout interview will not be done unless there was an initial interview. They ensure no closeout interviews are scheduled until the final report and OCAS-1 form have been sent to the claimant. All those checks are automated.

Other automatic queries are to ensure that correspondence to the claimant is uploaded to the claim file and dates on the correspondence match those in the database. This is creating the analysis record for the claim and which accompanies the claim back to DOL when the dose reconstruction is complete.

Silent monitoring of both initial and closeout interviews is conducted by supervisory staff and randomly

performed. At the opening part of the interview the claimant is informed that the call may be monitored for quality assurance purposes.

The interviewer can also request monitoring. There is a button which the interviewer can use to signal a supervisor to get on the line if a claimant raises an issue the interviewer doesn't know how to handle, or they can instantaneously get a health physicist on the line to help. The health physicist reviewers are assigned blocks of time during which they are required to be available to lend this assistance. Claimants may be upset because of the long time the process has taken, so -- as most people do when they get upset -- they'll say let me talk to your supervisor, and this is part of the reason for having the ability to push a button a get a supervisor on the line.

The monitors' comments are entered into a spreadsheet, so there is immediate feedback to the interviewer via e-mail. Anything that would identify a group trend gets addressed in weekly Task 4 staff meetings and interview sessions. ORAU has put together some reference guides for the interviewers, checklists to make sure they've covered all the bases. The interviewers have dual computer screens with the CATI script on one and the checklist on the other.

Complaint calls normally come in on the 800 number. These are logged in and returned by a supervisor to find out what the issue is, so they're logged and tracked. Every call that comes in is logged into the NOCTS database in the telephone conversation file.

Some of the challenges encountered include contacting claimants. Some have passed away. Some people leave the area or even the country on vacation. Some are incarcerated. People know that a probability of causation of less than 50 percent means they're not likely to be compensable. If that's what their final dose reconstruction report says, they lose interest. There's difficulty convincing the claimant to return the OCAS-1 form. ORAU tries to explain the purpose of the form, but some just refuse to return it and then after 60 days the administrative closeout letter is sent to the claimant.

A minor issue is that in a lot of cases elderly or emotional claimants want a son or daughter to assist in the interview. That can't be done unless the person has been designated as an authorized representative, so ORAU has to send that form out and get it back in. It's not a big problem and there is a way to handle it.

At the moment OCAS is still mailing out the draft dose reconstruction report, although ORAU will probably be taking over that task and getting ready to go on the SEC process.

Every draft dose reconstruction report is reviewed by a health physicist reviewer. They have a checklist they work against for accuracy of terminology and work processes, as well as spelling, grammar, et cetera before that goes out. About one-fourth of the reports come back with comments on them, the majority of which are additions. Oftentimes claimants provide information on additional work history. Unless the claimant was likely to be compensable on the data already received from that first site, then ORAU has to go through the entire process on the second site. Issues can come up in the interview

process which move the whole case back to the verification of employment/diagnosis stage, but there is a process to handle that.

The primary quality control on the draft dose reconstruction report is by the reviewer and then by the interviewee/claimant himself. The CATI report is in the dose reconstruction file which the dose reconstructor references. They are required to review it. There is required verbiage that says the interview information has been reviewed and how it was used. The check against the fact that the interview information has been used is the peer reviewer who reviews the report before it goes to OCAS, and then the OCAS reviewer who approves it before it goes to the claimant. And then of course the claimant's review of the document.

There are four written procedures related to Task 4. Three have been completed. They are the scheduling, performing, and reviewing procedures for the telephone interviews. The fourth is the process review of telephone interviews, which is in draft. That is the checklist used by the reviewers. It went through internal review, and the quality assurance people felt it was a quality procedure and there should be other things in it in order to qualify it as such under their criteria. That's being included and will be out very soon and over to OCAS for approval.

Discussion Points:

Dr. DeHart asked about the possibility of having assistance for older people, if there were any attempt to encourage them to have coworkers there during the interview to help their memory along. **Dr. Toohey** replied he didn't think there was anything like that on the ORAU end. Naturally if the claimant brings it up, they can have anybody they want there while the interview is being conducted, but they can't have anybody actually do the interview for them unless it's an authorized representative.

Dr. Neton added that that actually was not done, but a copy of the questions is sent out in advance so they do have the opportunity to go over the questions and talk to as many people as they feel a need to in order to refresh their memory prior to the interview. **Dr. Toohey** commented that local advocacy groups helped considerably with that particular issue, and noted ORAU is getting very few complaints but the ones they did receive were primarily from survivors, mainly saying they don't know the answers to the questions. They do have the opinion they have to provide the data and their inability to answer the questions will adversely affect the dose reconstruction. ORAU does everything they can to assure them that is not the case.

Dr. DeHart observed it might be worthwhile to suggest that if there are coworkers, advocacy groups, et cetera, maybe the claimant could request their help in going over the questions.

Dr. Melius asked how long the telephone skills training lasted. **Dr. Toohey** replied it was a couple of hours and included role-playing, et cetera. **Dr. Melius** wanted to know about the DOE facility training. **Dr. Toohey** replied it was two to four hours. He would find out exactly and get back to **Dr. Melius** because the training packages are available and commented that if **Dr. Melius** wanted to see the training

materials he could send him a copy.

Dr. Melius' second question is what percentage of the interviews is being monitored. **Dr. Toohey** responded that it was not high, only about one percent.

Dr. Melius' third question is how the information is being recorded when there was a problem. **Dr. Toohey** responded that it was entered into an Excel spreadsheet. **Dr. Melius** inquired as to how it was being dealt with as a part of the system. **Dr. Toohey** replied it was captured in the claims tracking so that if the individual dose reconstructor sees an issue in the interview report and feels they need more information, they can remand it to try to get more information from the claimant. If the health physics review sees what looks like a systemic issue, they will remand it to Task 3, the dose reconstruction research group.

Dr. Melius wanted to know what's being done to capture those when they occur so that there's some sort of review of the overall process to determine to what extent the process might be due to an interviewer not doing their job or the interview not asking the right questions, how many times it was due to the claimant having an inability to remember, doesn't have the information, et cetera. **Dr. Melius** commented he was disturbed that this was left out of **Dr. Toohey**'s presentation if it is occurring. **Dr. Toohey** replied that they were all captured. **Dr. Melius** then asked if there were a report that would illustrate that. **Dr. Toohey** responded he didn't see why not. **Dr. Melius** stated that since **Dr. Toohey** didn't have any details, he wasn't sure what he was asking for, but he would like to see whatever **Dr. Toohey** might have.

Dr. DeHart commented that since there appeared to be quality assurance throughout the whole process **Dr. Toohey** had been describing, he thought perhaps the Board would like to see the data dumps; how many times QA item number one, for example, was being checked and the results of it. **Dr. Toohey** had indicated it was being looked at, but didn't mention whether it was 50 percent of the time, 100 percent of the time, or what. **Dr. Toohey** asked if the Board was asking for some data mining out of the database, and **Dr. DeHart** confirmed that was correct.

Dr. Roessler offered that she could picture the people doing interviews day in and day out possibly getting bored and inquired whether there had been any sort of pattern in that area observed; and if so, what was being done about it. **Dr. Toohey** responded that some people had said they did want to stop doing initial interviews and move on to closeout interviews. Other people have said they wanted to keep doing it. The ineffective interviewers have been culled and the ones who are working enjoy what they're doing and their quality of work remains high, so there hasn't been much slippage noticed.

Dr. Dave Dooley from the MJW Corporation asked if he might add one thing in response to **Dr. Melius**' earlier question, commenting that they actually take about three weeks in the training to get a CATI interviewer up to speed. There is formal training of an hour or two, but it takes about three weeks to get interviewers trained before they're actually doing the interviews, so it is more than a one-hour process.

Mr. Griffon asked if the interview data has been found generally to influence the dose reconstructions. **Dr. Toohey** replied that if it's a survivor claim, there was very little if anything useful gleaned from the interview. The interviews with the employees themselves produce information generally related to incidents the worker was involved in. ORAU gets date, location, type of incident, and then send a supplemental request to the site for an incident report. There have been a number of those where reports have been found and added into the dose reconstruction. **Dr. Toohey** wasn't able to give the percentage, but that was primarily the thing that influences the dose reconstruction.

Mr. Griffon asked if there had been any sort of templates developed for the interviewers to assist them in site-specific terminology because generally the claimants may not know isotopes, but they do know trade names or code names. **Dr. Toohey** replied that they had a complex-wide glossary, but it was not site-specific. It was basically the terminology for familiarization for the interviewers. **Mr. Griffon** asked if that were in any way included with the questionnaire to trigger the claimants' memories, and **Dr. Toohey** answered that it was not.

Mr. Griffon wanted to know if the data were being looked at in an aggregate way, putting questionnaires into a database by site, moving toward the coworker step. **Dr. Toohey** replied that if **Mr. Griffon** were referring to site trends, they were not yet doing that but it was on the agenda. He noted that in discussing coworker data, there were two sets. There are huge volumes of site data gathered for previous epidemiology studies, and then there's dose reconstruction data for claimants from the site. That is now termed the job exposure matrix, which is being built off the completed dose reconstructions, including the interviews. However, with only a couple of thousand final dose reconstructions, ORAU hasn't started looking yet for site trends.

Mr. Griffon asked if there were any kind of classification descriptions done at the beginning of the interview. **Dr. Toohey** replied that they didn't initiate it, but there is a script for the interviewer to follow in the event the claimant says they can't discuss something because it's classified. The script includes informing the claimant that arrangements can be made for a face-to-face interview by a cleared person in a secured facility if the claimant felt that was necessary, and commented there had been dozens of those done.

Mr. Griffon commented that in his experience it has been helpful to have classification people from the sites come in and tell groups being interviewed that classification rules have changed over the years, a lot of things have been declassified and can be discussed. **Dr. Toohey** offered that in the supposedly classified interviews that have been done, those reports were then reviewed by an ADC on site and there have not been any classified data actually provided by a claimant. **Mr. Griffon** noted that his point was to be more proactive, to tell the claimant its okay to talk about most of the stuff. **Dr. Toohey** interjected he didn't care to stick his neck out in that way, but he would be glad to let OCAS arrange it with DOE. **Dr. Toohey** noted a problem with doing that is that it would be site-specific and trying to do it generically doesn't work.
Mr. Presley asked if there is a letter sent out with the OCAS-1 form explaining to the claimant what it is and what to do with it, since a couple of people had commented about claimants not understanding that.

Dr. Neton answered that there is a letter sent out with the OCAS-1 form and the draft dose reconstruction report which explains a signature does not mean the claimant agrees with the report, but simply means they are through providing information.

Dr. Melius inquired about an incident database which is not part of the site profile and indicated he assumed if an incident were discovered during the interview which wasn't part of the site profile, it would get referred into the system. **Dr. Toohey** replied that when they hear about an incident the first thing they do is look to see if they already have the report. If they don't, they ask DOE for it. If DOE can't provide it, then they dig a bit deeper to find out what happened; sometimes they can and sometimes they can't.

Dr. Melius wanted to know what happened if they couldn't find it. He wanted to know if it were still recorded in the database in a way that if another claimant mentioned the same incident they would start to see a pattern. **Dr. Toohey** explained that the fact that the claimant refers to it is captured. They know what they've requested, and if DOE can't provide it and it forms a pattern, it is remanded to dose reconstruction research. He further commented that most of what the workers could provide would not be adequate data to support a dose reconstruction.

Mr. Elliott offered that it should be remembered there is an affidavit approach which could be employed. Once an affidavit is received and the reasonability of it has been verified, it is also added to the incident reporting.

Dr. Melius wanted to comment on **Dr. DeHart**'s question about referring people to advocacy groups and offered that that would be helpful for survivors because they don't have the contacts, and having them referred to somebody would make the interview more worthwhile. **Dr. Toohey** added that they're beginning to see some of that come back from the worker outreach program and they're exploring ways to help get the word out.

Mr. Michael Gibson observed that the incident reports are generated by the contractors, who vigorously try to downplay incidents and the extent of the incidents, and wondered how ORAU was depending on that information in trying to develop a worst-case dose estimate. **Dr. Toohey** explained that once he knew the isotope and something about the characteristics of the incident and the process, he could start making brackets for worst case. He commented that, like every other part, the DOE submittal is only a portion of what has to be considered. They take everything into account and do the best they can.

Dr. Ziemer suggested putting together a list of things the Board would like to review related to the ORAU quality assurance plan. **Dr. Melius** suggested reactivation of the working group on interviews, commenting that he still had his notes and they could probably put together a request that might be more efficient than just trying to develop a list. The workgroup had developed a list of steps and what the QA/QC procedures were that were either in place or planned for each step.

Dr. Antonio Andrade offered his congratulations to **Dr. Toohey** and ORAU on the work that had been

done, noting it appeared they had implemented every suggestion they had come up within the working group, and perhaps more. He commented that now that the data collection process has come together, in general what the Board would like to see are trends, the issues that have been discovered or come to light, and those are what he and **Dr. Melius** would suggest for a future meeting.

Dr. Ziemer suggested that **Dr. Melius**, **Dr. Andrade** and **Ms. Wanda Munn** constitute a working group to develop a report to review what had been looked at before and what ORAU has been working on and do a side-by-side comparison to see if there are things that could be mined from the data.

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SPECIAL PUBLIC COMMENT PERIOD

Dr. Ziemer announced there was one individual member of the public who wished to address the Board, but would not be available for the evening session.

Mr. Fred Stockwell,
Steelworkers Organization of Active Retirees (SOAR)

Mr. Stockwell was a steelworker for 38 years at Bethlehem and indicated that he understood "they" had discounted the South Buffalo Railroad. He wanted it understood that the South Buffalo Railroad is a wholly-owned subsidiary of Bethlehem Steel Corporation and no other railroad could come into the plant. Whatever document he referred to apparently indicated South Buffalo Railroad was a contractor, but that railroad moved the steel in and out of the plant and no other railroad could do anything.

Dr. Ziemer thanked him for his comments and indicated he presumed DOL had the information and was looking into the matter.

Ms. Annette Prindle,
Department of Labor

Ms. Prindle announced that she was the district director of the Cleveland district office of DOL. She indicated she had the information Mr. Stockwell had submitted, had just received the last of it, and would be submitting it to the national office.

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SUMMARY OF CHANGES
SPECIAL EXPOSURE COHORT FINAL RULE

Mr. Ted Katz,

NIOSH

Mr. Katz began by explaining the two key requirements for adding a class to the SEC. The first is a finding that it is not feasible to estimate with sufficient accuracy the radiation dose the class received. Secondly, there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

In addition, the rule addresses three procedural requirements. One, that a petition is needed from the class. Second, that the Board have an opportunity to provide advice on the addition or non-addition of a class. And thirdly, that if a decision is made by HHS to add a class to the cohort, Congress then would have a 180-day period to consider the decision, expedite it, reverse it or whatever. These are all requirements of the Act and are not NIOSH formulations.

NIOSH puts together the procedures for implementing the statutory requirements and establishes the requirements for petitioner eligibility and petition contents, both of which have been made rather broad.

The process begins with the receipt of a petition from a class. The petition is submitted to NIOSH. NIOSH then determines whether the petition meets the basic requirements. NIOSH works with the petitioners in helping them address those requirements. NIOSH then makes a proposed finding as to whether the petition meets those requirements for consideration. If it does, it proceeds to the next step. If it doesn't, the petitioners have an opportunity to request administrative review of the proposed finding.

If the decision is that a petition meets the requirements and deserves evaluation, the next step then is a NIOSH evaluation of the petition according to the two criteria of feasibility and health endangerment. At the end of that process an evaluation report is produced which goes to the Board and the Board then will hold a session to address the petition. Petitioners will be invited to present their views to the Board on the NIOSH evaluation, as well as on their petition. The Board will do its deliberations, considering the information and other information it may deem appropriate, and make a recommendation to the Secretary as to what should become of the petition.

Following Board advice, the director of NIOSH would issue a proposed HHS decision whether to add or not add classes. Petitioners then have the opportunity to seek an administrative review if they receive an adverse result.

At the conclusion of the process or if there is no request for a hearing, the Secretary makes a determination. If the decision is to add classes, that determination goes into a report to Congress. Congress then has 180 days to review the decision or act on it. At the end of the process, NIOSH will report the results. There is of course reporting throughout the process to the petitioners and the Board on various steps along the way.

Mr. Katz described the issue of feasibility as outlined in the second notice of proposed rulemaking. He outlined the Board's advice to Secretary Thompson on the feasibility issue. He described the public

comment on the feasibility issue, and outlined the feasibility portion in final rule and the changes from the second proposed rulemaking, taking into account those issues raised by the Board and through public comment. **Mr. Katz** also outlined the internal procedures that have been established addressing the feasibility portion of the petition consideration.

Moving then to the second test of a petition, the health endangerment issue, **Mr. Katz** outlined the criteria in the second notice of proposed rulemaking addressing health endangerment. He described the Board advice to the Department on that issue, as well as public comment, and the provisions then included in the final rule, taking into account those Board recommendations and public comment.

Mr. Katz also outlined Board comments and public comment on other issues. He then described the resolution either through the Act itself or the way in which the final rule accommodates those issues.

Mr. Katz also described other changes or clarifications in the final rule that had come about as a result of working through the development of the rule. Those included limiting the number of petitioners per petition. **Mr. Katz** explained that contrary to the normal perception of a petition, these determinations are technical, not based on the number of petitioners. Therefore large numbers of petitioners create administrative delays in the process.

There is also a new information requirement which is related to practical problems in implementation. There are now provisions that if there are a number of petitions relating to the same class, they may be combined and treated as one petition. However, if work has already been done in evaluating a petition or a decision has already been made and another petition comes in that is precisely the same as the earlier one, the new petition is required to provide new information not considered earlier in order to be considered on its own.

Mr. Katz described some additional changes or clarifications, including the clarification that evidence provided will be weighed for adequacy and credibility.

How the review of proposed decisions would occur was more fully explained; once NIOSH makes a recommendation or a proposed decision whether or not to add classes, the rule now describes what the process would be by which a petitioner would seek a review of a denied petition. That process is a function of HHS. A panel of three independent people from HHS personnel would do an administrative review which would be considered by the Secretary.

The earlier rule did not clearly allow the Secretary to issue multiple decisions, so that has been clarified, as well as a clarification of protection under the Privacy Act.

Discussion Points:

Dr. Melius asked **Mr. Katz** to review the length of time from the time a petition arrives at NIOSH to time people would get compensated. In the ensuing discussion between **Dr. Melius, Mr. Katz,** and **Dr.**

Ziemer, it was determined that it could easily take a year from filing of a petition to compensation, with **Mr. Katz** noting that the exception might be cases where NIOSH had already found they were unable to do a dose reconstruction. But even at that, there is a 180-day period, six months, for Congress to review once the recommendation had been made by the Secretary of HHS.

Dr. Melius asked what it was in this particular rule that had taken so long, what had been the stumbling point. **Mr. Katz** acknowledged that perhaps he was just slow, but explained that HHS is a very large department and there were a lot of people involved in the development of the rule, and every person has to have his input. In addition, three other departments are involved, and even though the rule seems as if it would be simple, it's actually very complex. **Mr. Katz** commented that in a way the dose reconstruction rule was simpler because the SEC rule is something nobody's ever done before, so it's breaking new ground.

Dr. Melius inquired if people should then be happy that it had taken another year. **Mr. Katz** countered that indeed they should be pleased because it quite easily could have taken five years, but they had pushed very hard and all the people involved pushed very hard to make the rule happen as soon as it could, but it was a very difficult job.

Dr. Melius asked whether the guidelines on feasibility referred to in the rule were available yet. **Mr. Katz** replied he had thought they were on the OCAS web site and would be provided directly to the Board members, but he didn't know whether that had been done yet because the rule had just gone on the web site on Friday, less than a week ago. He indicated the petition forms are on the web site, as well as instructions for completion of those forms. **Dr. Neton** commented he was getting some feedback that the guidelines may not be on the web site yet, but would be there as soon as possible. They are completed, just not yet on the web site.

Dr. Melius then wanted to know if somebody could explain what was in them. **Mr. Katz** replied that they're a step-by-step description of how NIOSH goes about the entire process, from determining they are qualified petitioners to helping petitioners with their submittal and meeting the requirements of a petition. They go through the entire process, step by step, of NIOSH doing the evaluation, how it would go about addressing feasibility and health endangerment.

Dr. Ziemer asked if they could be provided to the Board as soon as possible. **Mr. Katz** apologized and indicated he had just assumed they were on the web site and that they would be provided as soon as possible.

Dr. DeHart asked if anyone had considered the impact over the next few months of how many petitions may be coming in. **Mr. Katz** explained they had some information. A few people had notified them of their intention to petition. **Dr. Neton** added that they had received approximately three potential petitions very early on, and that they were drafting letters to notify those people the SEC rule had been published and to evaluate whether the petitions already received were valid under the construct of the regulation. NIOSH is working with ORAU to develop infrastructure, computer resources to handle the

petitions, which is in place on a rudimentary basis. Some mock petition evaluations have been done to try to flesh out the details as best can be done so early in the process.

Dr. DeHart inquired if there might be an issue of staffing, if it were something that might have to be addressed by the Board. **Dr. Neton** replied that they hoped they had adequate staffing, but they couldn't predict the volume of petitions coming in. A lot of initial effort is going into the qualification phase to determine if more information will be needed to become a valid petition. But until they begin to receive petitions, it cannot be predicted.

Dr. DeHart commented his concern would be there might be a bleeding-off of manpower from the thrust in doing dose reconstructions and consequently slow down that process in order to begin to address the petition drive. **Dr. Neton** offered that NIOSH shared that concern and it was his personal belief that staffing is adequate at the present. They didn't expect thousands of petitions and they're hoping the valid petitions will stay in the fairly low numbers.

Dr. Roessler asked if she had understood **Mr. Katz** to make the comment that NIOSH had identified a number of situations in which they could not do dose reconstructions. **Mr. Katz** responded that what he had said was when they attempted a dose reconstruction and could not complete it, that situation met the requirement with respect to evaluating feasibility.

Dr. Roessler went on to inquire whether there had been any cases identified where dose reconstruction could not be done. **Mr. Katz** explained that the way the effort dealing with dose reconstruction to this point had been organized, it almost avoided that situation because they had been dealing with those dose reconstructions they were able to do. And in the cases where there wasn't monitoring, even the site profiles were not addressing the non-monitoring issues at this point. So the dose reconstructions that were being done were the ones that could be most expeditiously addressed.

Dr. Roessler asked what factors would go into determining that you couldn't do dose reconstruction other than no monitoring. **Dr. Neton** replied that it was a difficult process and that without going through a detailed example of a real life condition, which he was not prepared to do, it was hard to envision. **Mr. Katz** added that in general it was circumstances where you don't have source term and process information. **Dr. Neton** added that some of it is work that they're doing right now with ORAU looking through where those situations exist, but it's too early to comment at this point.

Dr. Melius offered that the chief problem with what has been done is that sufficient accuracy has yet to be defined and it's being done on a case by case basis, which will then throw it back on the Board to make determinations as to the quality of the NIOSH dose reconstructions through the Board's contractor review. Secondly, the qualifications of the SEC petitions, based on some set of arbitrary guidelines which are not available, makes it difficult to address, but it would seem that burden is also on the Board. People making petitions would have to know something about those guidelines because those are what will determine whether they qualify or not.

Mr. Katz explained that petitioners don't need to know that. They need to know what is required for a petition to receive a full evaluation. They're not required to prove their case. They're given information about what the requirements are for submitting a petition, so it doesn't raise any problems for the petitioner. **Mr. Katz** commented he didn't think there was a problem with the Board making determinations about feasibility because, in every case, if you can't estimate maximum doses in the worst case, that's when you determine it's not feasible.

Dr. Melius countered that whether maximum dose really provides a sufficiently accurate dose reconstruction is the question, and if the guidelines don't address that -- and since they aren't available, he can't tell that and that it had him even more confused -- he felt the Board was going to end up having to make that assessment because they're now going to be reviewing both the petitions and the program.

Mr. Katz explained that the Board could in fact have issues about dose reconstructions. If it happens to be relying entirely on source term and process information, there will be clearly laid out the assumptions, the scientific basis for making the maximum estimate. The Board will have the opportunity to scrutinize whatever is questionable about that. In practice, it won't be a mystery as to what to do or what to recommend in those cases.

Dr. Melius retorted that the Board would have to see it on a case-by-case basis. And rather than having a set of guidelines and regulations to follow, they're going to have to be determining it as they go along and there are potential problems and unfairness to claimants. **Dr. Melius** stated that he thought **Mr. Katz** was wrong in that he didn't believe claimants would want to submit petitions without an understanding of whether they qualify. Just because the initial criteria for qualifying as a petitioner is low doesn't mean the chances of success for the petition are going to be high.

Mr. Katz reminded **Dr. Melius** that the rule very clearly specifies the likely circumstances in which feasibility becomes an issue, and commented that petitioners cannot be turned into health physicists in order to take them further into knowing the probability of their success. The burden of what it takes for them to submit a petition has been limited and is low enough that the petitioners are not taxed with an inordinate amount of work in order to submit that petition. From there, the burden is on NIOSH, the Board, and the Secretary. **Dr. Melius** interjected that that was exactly the problem.

Dr. Ziemer offered that the guidelines sounded like they were more of a checklist and **Dr. Melius**' point that the Board may end up looking at them on an individual basis is probably true. The Board had been hoping there would be an easier way to say if you meet certain criteria, it's fairly straightforward. **Mr. Katz** commented that the guidelines reference the parts of the dose reconstruction guidelines addressing technical issues, but added that the Health Physics Society, all the public commenters and the Board and the entire staff have not been able to come up with a litmus test type approach, a simple test that would work. He added that if something as simple as checking a box could have been done, they would have loved that. It was a situation that just could not be done that way. It was going to take judgment.

Dr. Andrade asked to address three matters. Number one, the rule states that NIOSH/OCAS will

provide a report to the Board for its consideration, so that indicates the Board will see every single petition as a part of its job. Two, with the detailed procedures on the web site, if people feel like it will provide them some advantage, then they can read them and seek advice and use them in the petition process. Thirdly, if a report comes down to the Board that says NIOSH has looked at an individual petition and they believe it may qualify, that has no bearing at all on the quality of dose reconstructions done in the past. That does not bring into question the issue of sufficient accuracy. That means simply that they have identified the more complicated cases that are going to come up in the future. There is no connection between sufficient accuracy and ruling on an issue with respect to SEC status.

Mr. Owens inquired if any plans had been made to provide educational assistance to claimants such as workshops, et cetera. **Mr. Katz** replied that as far as he knew, there were no such plans. **Mr. Owens** commented as a follow-up that considering the number of sites involved, there could be considerable concern from the standpoint of resources and wondered when that question would present itself for NIOSH and asked when the Board might be informed of the need for additional resources. **Mr. Katz** responded that it would be recognized and acted on as quickly as possible without requiring the Board to intervene. He also commented that if NIOSH is in a situation where they're being swamped with petitions, the Board would know it because NIOSH would be posting information and informing the Board as it goes along.

Mr. Owens asked whether any projections had been made as to the number of petitions anticipated, noting that with the number of people upset and interested in SEC status, he could surmise there may be a tremendous number of petitions filed. **Mr. Katz** agreed that was entirely possible.

Mr. Griffon commented that the feasibility test seems to be laid out with maximum dose, but sufficient accuracy is not laid out at all. He noted that he had seen some of the examples in the text and offered some examples of his own in contradiction of those, concluding that there's no condition in the SEC rule that requires one to know anything more than a dose of zero to some maximum number, that if a maximum is known, that's good enough and the petition doesn't qualify for SEC. **Dr. Neton** replied that there's no requirement that would put a distribution about the exposures. **Mr. Griffon** countered that there's no requirement to put a maximum dose, either.

Dr. Neton offered that his point exactly was that it couldn't be done. If the maximum potential were known based on the source term, a maximum exposure could then be assigned to each and every claimant. In a situation where there is a time period where there were some very basic monitoring measurements taken, you could feel comfortable putting a maximum dose on that time period. But then there's an earlier period in time where there was no monitoring, but it's known that the exposure potential was at least as great as that monitored period. There's no basis for what it may have been above and beyond that, you have no idea how much greater it could have been, and you can't put a cap on it. NIOSH could not come up with a credible exposure model for that time period, and that's the kind of situation that's being addressed with this regulation. **Dr. Neton** noted that it's an exposure model. For example, what is the maximum air concentration that could have possibly been in that particular facility in a specific period of time. If NIOSH can answer that, they can put a maximum exposure to

each and every claimant in that time period. When there's no monitoring data and there's no reliable way to extrapolate into those time periods, that may be a scenario where NIOSH would possibly say they could not put a cap and would recommend it for SEC.

Dr. Melius asked if that were in the guidelines. **Dr. Neton** replied that it was not exactly in those words, but there are a couple of examples that will be included. **Dr. Melius** asked if it said that in the guidelines, stating that there has to be some positive guidance as to when you don't have sufficient accuracy. **Dr. Neton** responded that he believed that was addressed. **Mr. Katz** pointed out there was no bright line with one item or another.

Dr. Ziemer offered that a recurrent issue is use of the word "accuracy," which he opined was probably not being used accurately. What is being discussed is the ability to make a judgment on probability of causation. If there's sufficient information to make the judgment, it's considered sufficiently accurate to make the determination. He noted that it may be very inaccurate scientifically. But if it's sufficient to make the decision, that may be sufficiently accurate. **Mr. Katz** added that it ensured they were overestimating dose rather than underestimating, resulting in fair treatment when determining probability of causation.

Dr. Melius countered that fairness means two people working side by side will be treated equitably in the process, which is his concern, and having a set of guidelines for doing that is important.

Mr. Espinosa commented that the Act does not allow multiple-facility classes, but asked what about building and construction trades, et cetera. **Mr. Katz** explained a class would petition in each of those facilities. Where they had worked 250 days over the course of working at those facilities, they would be covered even though there isn't one class covering all three facilities. **Mr. Espinosa** said the burden of proof didn't make sense to him, if a site has several areas and one area is designated as an SEC, how to prove their 250 days. **Mr. Katz** offered that this would be more understandable when the internal procedures are read because NIOSH will be working with DOL because they will have to be able to make that operative so that they can make determinations of whether someone is in the class or not based on the information available. **Mr. Espinosa** said that went hand in hand with his question because he didn't see a definition in the rule of site versus facility. **Mr. Katz** explained that the rule relies on the definitions in the Act, it doesn't create its own definitions. It has a footnote explaining that you could have multiple buildings and multiple areas within a site, and they could all be classified as one facility and come in under one petition.

Dr. Melius commented that the Board is going to have to decide sometime soon how it was going to handle the petitions and what kind of help they were going to require from their contractor, which was something they were aware of in the beginning but didn't have the rule to work off of, so they should start thinking about a task order. **Dr. Neton** offered a reminder that the cutoff date for task orders for this fiscal year is coming up very soon.

Mr. Griffon wanted to return to the issue of sufficient accuracy and wanted to follow up on **Dr.**

Ziemer's comment that the upper maximum is actually very inaccurate, but that it would be a claimant-friendly estimate. **Mr. Griffon** indicated his point is that the upper maximum, according to the SEC rule, may be used in the individual dose reconstruction. It may not be used, but they can use a distribution from zero to that upper maximum. If you're getting a different POC when you use the upper maximum dose versus the distribution entered in the individual's dose reconstruction, one that's higher than 50 percent and the other lower than 50 percent, his question is whether that is sufficient accuracy. He added that as he read it, the estimate of the maximum, even if it's the only thing you have, doesn't have to go into the individual's dose reconstruction. **Dr. Neton** explained that it depended on what information may be available. If there's more information to estimate a central tendency of the distribution, that would probably be used.

Mr. Griffon indicated that his point is that if it's so inaccurate, you've got one assumption being made that you think is the worst case but your data is so minimal there's a possibility you may not even be in the ball park -- **Dr. Neton** interrupted to say that was where scientific evaluation comes in. The Board has a contractor to evaluate to determine if NIOSH is on the right track, but there are judgments made. **Mr. Griffon** commented that the Board would want an opportunity to weigh in on the procedures.

Mr. Katz offered that NIOSH intended the Board to have the opportunity to review the procedures, and that is expressed in the rule. The Board could not be given the procedures until the rule was published because they were in the process of the rulemaking and couldn't be provided in advance. All they say in the rule is that consideration of petitions will not be delayed until the Board had completed its review of the procedures. Everything is going to take some time.

Dr. Melius contended that was his point, that he found it difficult that suddenly the burden's on the Board to complete something it's taken NIOSH over three and a half years. It was, in **Dr. Melius**' opinion, a major failing of the program, of NIOSH and HHS that the process had taken so long to get the final SEC rule published.

Dr. Andrade offered that the final rule, as written, was an excellent piece of work. But it appeared to him as though the connection is being missed insofar as the equity of the procedures that go into dose reconstruction versus what is going to be done with respect to potential SECs. He commented that if there is sufficient information on a source term to derive a maximum exposure, all people who have been exposed to that -- barring other differences -- are applied the same exposure. There is equity.

Further comment by **Dr. Andrade** was that when there are more data and those data can be attributed to an individual, it becomes murkier because you can calculate an individual dose that may not be the maximum dose to the person. He offered that unless one has done health physics work, that's a hard concept to comprehend, but the more data, the easier it is to assign a dose that may not be the maximum dose one would assign if the only thing available were source term.

Ms. Munn commented she felt it was necessary to dispute an earlier inference that some individuals might not approach these claimant issues seriously. She stated that no person had ever made jokes about

these matters within her hearing.

Mr. Griffon wanted to return to his point that you may have a couple of datapoints that suggest very low exposures in a class, and one datapoint that suggests a potential for a very high exposure, and then a distribution. But is it sufficiently accurate. This SEC rule says if one can calculate a maximum, it's feasible to estimate a dose. How that gets played out in the individual's dose reconstruction from that point on is a different issue.

Dr. Ziemer observed that unfortunately what is being dealt with is a lot of theoretical or hypothetical cases, and it will have to come down to actual cases. The Board will have an opportunity to look at every one of them and make a determination on the very issues everybody's talking about. In looking at actual cases the Board can then determine to what extent these issues are really problems, and then they'll have to deal with it.

Mr. Griffon disagreed, in that he believed the members of the Board have some real world experience and his point is that the Board may be able to develop some sort of indicators of sufficient accuracy in the guidelines and he thinks the Board should have dialogue with NIOSH on that as a second draft of the guidelines.

Going on to his next point, **Mr. Griffon** commented that there is a section on health endangerment which talks about the 250 days. But there's a condition in the preamble that talks about internal versus external exposures and that for internal exposures it will be assumed all cancers are covered, but not so for external exposures. **Mr. Griffon** asked if he were reading that incorrectly.

Mr. Katz explained that for health endangerment there was no issue with respect to internal/external dose whatsoever. There was nothing in the preamble addressing that. He commented that what **Mr. Griffon** may be thinking of is a discussion in the preamble of when the Board considered the issue of feasibility on a case-specific basis of real scenarios where it would be feasible for some cancers and not for others. The discussion related to those situations involving external exposures where it would be feasible for some cancers and not others. When talking about internal exposures, there would be some amount of dose to other organs, even though it may be very minimal. **Mr. Katz** gave the example that if you can't quantify the total dose to the lung, you couldn't quantify the doses to other sites.

Mr. Griffon apologized, noting he had an older version of the rule, and read the section he was referring to from his document. **Mr. Katz** replied that what **Mr. Griffon** was referring to had been taken out of the rule and was not an issue.

Mr. Gibson asked if NIOSH is saying they specifically will not use the worst-case dose estimate to deny SEC status as they will to apply to a claimant's dose reconstruction. **Mr. Katz** commented that it depends on whether there is other data to do better. If that's the limits of the data, it will be used. **Dr. Neton** added that would be the last piece of data NIOSH would have before they would go to the SEC or say they can't do the dose reconstruction. He explained that in the example he had used, NIOSH would

have to have something to substantiate the air concentration. It would be up to review to determine if NIOSH had sufficient data to make the upper estimate.

Mr. Gibson posed a hypothetical that if someone applied for Special Exposure Cohort status, NIOSH determined a worst-case exposure, said the petition didn't qualify, his question is will that same determination be used in the dose reconstruction for the probability of causation. **Dr. Neton** replied that he didn't think they would do dose reconstructions to demonstrate they could do them in an SEC petition evaluation. They will outline the type of information they believe is available to allow an estimate of doses in that cohort.

Pursuing clarification, **Mr. Gibson** asked if **Dr. Neton** were saying that the estimated dose used to determine whether an individual qualified for SEC status is not necessarily the exposure or dosage that will be assigned to them when their dose reconstruction is done, noting that there was a difference. **Dr. Neton** explained that NIOSH is not going to calculate doses to members of the SEC petition cohort. They're going to describe the information they believe is available to allow them to do the dose reconstruction.

Mr. Gibson continued that apparently NIOSH was trying to take a worst-case scenario to see if they qualify for SEC, but at the same time if they're denied SEC status, that wouldn't be the dosage applied on their dose reconstruction. **Dr. Neton** explained that that would be the worst-case scenario, but that they may be able to do better than that, depending on the information available.

Dr. Andrade commented that apparently what was being misunderstood was that if there isn't enough information available on all the things normally considered on a dose reconstruction, or information is very sketchy, that particular situation would then point directly to a Special Exposure Cohort status. **Mr. Griffon** countered that is not what the rule says and that is the point he had been trying to make, that it's not the way the rule is written. If you can get a maximum, it's feasible and you're through. The question he's grappling with is sufficient accuracy. And as **Dr. Ziemer** had noted, you can get a maximum that is very inaccurate. And just to be cynical, you could put a wide distribution out just to say we don't want to do a Special Exposure Cohort for a particular group.

Dr. Ziemer cautioned that the group was beginning to recycle discussions and that this was an issue that may have to be dealt with further, but there is an evening session for public comment scheduled and so it is necessary to recess until that time.

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Dr. Ziemer announced he was having to postpone **Dr. Neton**'s site profile status report because to do that would require not having the dinner break. **Dr. Melius** asked if **Dr. Neton** could present the Bethlehem Steel portion of the update during the evening session but before public comment. **Dr. Neton** indicated he could do it in ten or 15 minutes.

Dr. Ziemer declared the Board in recess until 7:00 p.m., at which time public comment would be received.

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EVENING SESSION

Dr. Ziemer welcomed the public to the evening public comment session. He introduced the members of the Board and explained the Board's purpose and how it operated, composition of membership, and the responsibilities of the Board as defined in EEOICPA.

Dr. Ziemer explained to the public that the Board could not comment on individual cases, but they were there to hear from the public about their experiences with the program and what they think, what difficulties they might have had and where they think some changes may help, et cetera.

Before beginning public comment, **Dr. Ziemer** introduced **Dr. Neton** to present an update on the Bethlehem Steel site profile.

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BETHLEHEM STEEL SITE PROFILE UPDATE

Dr. James Neton,
NIOSH/OCAS

Dr. Neton explained briefly why Bethlehem Steel is included in the compensation program as an AWE and the exposures during a specific period are being considered. From 1948 to 1952 Bethlehem Steel was under contract with what was then called the Atomic Energy Commission, now DOE.

Dr. Neton described the development of an exposure model for that time period and the assumptions that went into it for inclusion in the site profile. After release of the site profile it was pointed out to NIOSH that the model did not include the ingestion pathway, which NIOSH agreed should be included. It had not been explicitly addressed, although it was considered.

Dr. Neton explained the three methods by which airborne uranium particles could be ingested and indicated that NIOSH will go back and evaluate previously processed cases denied by DOL to see what effect that new analysis may have on the dosimetry calculation, and ultimately DOL would make a re-evaluation and decision as to compensation. **Dr. Neton** noted this is done any time there is a change of this type made in a site profile.

Commenting that they had not completely finished the re-analysis but had looked at a couple of the claims that were pretty high in the probability of causation -- over 40 percent for probability of causation

-- **Dr. Neton** indicated there had been little change in the calculation. He explained that was primarily because the dose assumed from the air concentration model overwhelms the dose that is a result of the additional ingestion pathway. While he was not comfortable saying it will not change any claims that have been processed, **Dr. Neton** noted that the original suspicions that this will not add much dose and would not likely change many claims appear to be well-founded. That is still being reviewed and they will be notifying DOL of any cases they believe it may have affected to be compensable. That will be written up in a program evaluation report and put out on the web site, so it will be available for the general public to view, as well.

Dr. Ziemer requested that any questions from the Board be delayed until the following day, but if any among the general public wished to ask **Dr. Neton** a question on what he had just presented, they were welcome to do so.

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PUBLIC COMMENT PERIOD

Mr. John Kochanski,
Niagara Falls, New York

Mr. Kochanski, survivor of a Carborundum employee, inquired about the expertise available at NIOSH relative to detecting radiation, whether they had scientists from Massachusetts Institute of Technology (MIT) or Harvard, and noted there were a lot of experts who could be consulted.

Dr. Ziemer replied that NIOSH and their contractor, ORAU, have hired many of the top health physicists in the country to work in the program and have many experts, including **Dr. Neton** himself, who is a very well-respected expert in those areas.

Dr. Ziemer indicated they had received a letter containing questions for the NIOSH staff but which the author wished not to have read in the public arena. He commented it had been made available to the staff and they will be addressing her questions. He did want to give the writer the opportunity, however, if she had any additional comments or questions, to participate in the public comment period.

Ms. Elsie Owens

Ms. Owens commented she was wondering about an extension of the time frames. DOL has a cutoff date of 1948 for Hooker Chemical Company and her husband started there in early 1950, but she didn't think any cleanup had been done and a lot of residual contamination had been left. She added that to this date she wasn't sure cleanup had been done.

Mr. Elliott replied that the cutoff date is not decided by NIOSH. That is a decision made jointly between DOL and DOE.

Ms. Owens asked if they didn't know whether anything had been brought up. **Ms. Mosier** replied that the dates used are based on the definition of a covered employee contained in the Act. She acknowledged there had been a number of legislators working on legislation to cover people during a residual contamination period. It had not been passed yet.

Ms. Owens inquired whether there were some reason none of the cases from Niagara Falls had been settled. **Ms. Mosier** replied there are some where there have been decisions made, and those are mostly the ones not eligible because they worked outside the covered period. The rest have been referred to NIOSH for dose reconstruction. Since they didn't have completed site profiles for those locations yet, they haven't been returned to DOL. Once the profiles are finished, DOL will be able to make a decision on those.

Mr. Kochanski wanted to know from **Ms. Mosier** whether any labor laws had been violated and whether the Justice Department had looked into the facts of unnecessary risks to employees. He commented that there are clear-cut laws and if he could be sent a response he would be very interested in knowing.

Mr. Ralph Krieger,
PACE, Albany, New York

Mr. Krieger suggested they would like a round-table discussion and a Linde site profile. He inquired, since the prostate is located near the testicles and the testicles are very susceptible to cancer, which organ would be more susceptible.

Dr. Ziemer replied they would probably need a medical doctor to answer that, but noted that the organ's location is not the determiner of susceptibility.

Mr. Krieger raised the issue of an October 2003, report by Trinity Engineering out of Cincinnati regarding residual radioactive and beryllium contamination at AWE facilities, listing all the sites, and indicating that Linde Ceramics Plant had a potential for significant residual contamination outside the covered period.

He commented that people are still on that site and discussed the fact that few people there ever wore dosimetry badges and it was taking too long for the program to be handled. He made comments related to unfairness of not being made aware of the dangers and being told not to worry about anything.

Dr. Ziemer thanked **Mr. Krieger** for his comments and noted there were a lot of frustrations and the Board was trying to do what it could. Although they're not able to address all the issues, they are trying to address the ones they're responsible for to the best of their ability.

Ms. Linda Burgess, Bethlehem Steel Survivor

Lancaster, New York

Ms. Burgess spoke on behalf of her mother, a survivor claimant. **Ms. Burgess**' father had been a brick layer in the hot gang at Bethlehem Steel from 1948 to 1978, had worked with uranium. Her mother had applied for compensation and had been denied.

Ms. Burgess indicated she had reports showing additional work had taken place beyond the covered period. She said she had documents from National Lead Company of Ohio reporting on the loss of uranium from billets in the rolling process.

Ms. Burgess commented on the assumptions used in the Bethlehem Steel site profile and why she felt those assumptions were incorrect, noting some matters that were not included, and said she felt the focus has been to put together scientific facts to deny compensation. She reminded the Board that the spirit of the law is that compensation be given to those who unknowingly gave their lives for their country, and she truly believed what she referred to as a "matrix" -- presumably the site profile -- and the dose reconstructions are flawed and should be nullified.

Reverend Jerome Livingston,
Bethlehem Steel Action Committee, Buffalo

Rev. Livingston commented on presentations from **Dr. Neton**, **Ms. Mosier,** and **Mr. Calhoun**, and cited information from a report he had from 1985 which stated the ten inch mill had been dismantled and commenting that the mill is still standing and people are working there. He pointed out that if NIOSH is using documents from Bethlehem Steel which are not reliable, it is worthless information.

Mr. Kochanski spoke again, asking if he could have access to every single page of NIOSH records in "so-called" boxes all over the country, in that he is a United States citizen with rights.

Mr. Eugene O'Brien

Mr. O'Brien commented he was amazed that Bethlehem Steel had gotten away with saying the mill referred to earlier had been dismantled, and NIOSH apparently didn't go any further with questioning that. The mill is still there and workers from a new company have taken over the plant and are still working there. The floor has been cleaned up, but the overhead cranes on the second floor and the third floor with 24-inch beams crossing the entire mill have never been checked for uranium dust.

Rev. Livingston wanted to comment additionally that he had a copy of his father-in-law's dose reconstruction report in which the word "assumed" was used 27 times and that the information the Federal government had received from Bethlehem Steel was a lie. While the process of doing the dose reconstruction might be accurate, the information used is faulty. If they're going to be done, they should be done correctly.

Dr. Ziemer indicated the Board shared that belief and everybody is struggling with information and how to evaluate its validity. It's not an issue specific to Bethlehem Steel, and NIOSH is doing its best to ascertain the validity of all information. He noted that sometimes better information comes from people such as those in the audience and the Board and NIOSH can learn some things that perhaps are not in the records. He added that many times what seem to be small pieces of information lead to revelations, but he assured the group NIOSH does want to get to the right answers, it just is not always easy.

Mr. Ed Walker,
Bethlehem Steel Action Group, Claimant

Mr. Walker complimented NIOSH and the Board on the good job they're doing. He had been to Cincinnati for the workshop and was very impressed and received a lot of information from it.

Mr. Walker explained part of the reason people were so upset was the extremely inaccurate information put out in the media. He described the misinformation that had been distributed by television coverage in 2001 indicating anyone with cancer who had worked at the facility during the prescribed time would be compensated. The following spring it was written in the newspaper that a report from the Department of Labor indicated the claimants who had signed up would be getting their awards in two to three months. Ten months later they were notified dose reconstructions would be done.

Mr. Walker commented he wished somebody had told him dose reconstruction wasn't going to show enough exposure to allow compensation; he could have gone home and been happy for the last three years rather than going through the stress of working through the program.

He observed that workers being unaware of what they were working with made it very difficult to answer their own questionnaires. He couldn't answer his. He did note that on the last few pages he listed names of coworkers he knew were still alive. When his claim was denied, he spoke with them and found out no one had ever contacted them. He wondered what the point was in asking for people who could prove what work he had done if they were going to be ignored.

He compared his situation to survivor claimants who don't know what their husbands did, don't know coworkers, can't answer questions and stated he felt the whole process was a joke and he would rather somebody just send him a letter and say we're not going to pay you.

Mr. Walker also described one woman who had been at the meeting on the 4th who said she had been contacted and asked for her checking account number because a deposit was going to be made into her account for her compensation award. Two weeks later nothing had happened and three weeks later she received notice "they had changed their mind" and she's not getting the compensation. He said that woman is living on a $300 a month pension and he feels like the program is bogus. While the Board and NIOSH have worked hard and have the knowledge and the technology, if you don't find out what actually happened, he was despairing that the human side of the situation was devastating.

Dr. Ziemer thanked **Mr. Walker** for his comments and explained the Board had earlier in the day discussed those questionnaires and the concerns they raised with some people. He indicated they are currently trying to address that the form is to elicit any information NIOSH doesn't know about. The staff has site profiles and other information, but the questionnaire is trying to find out if there are other things. It appears the expectation is that you have to provide all the information and that is not actually the case.

Mr. Walker replied that to an 80-year-old woman, the forms may just as well be printed in Chinese.

Mr. O'Brien spoke again to say that Bethlehem Steel had lied and put everybody on the wrong track, and there are people today still in danger. He noted there was supposed to have been a walk-through with some of the NIOSH staff and members of the Board, and wanted to know what good that was going to do and who was going to enforce something. Nobody has checked it and nobody knew who to go to for help.

Mr. Elliott indicated the enforcement of current health standards is a function of DOL Occupational Health and Safety Administration, OSHA, which is an agency within the Department of Labor. The work force currently on site can exercise their right to approach OSHA.

Dr. Ziemer observed that current concerns perhaps have to be raised by the local folks.

Mr. Gibson asked if there were not a single Federal agent in the room who could contact OSHA to tour the plant **Mr. O'Brien** is citing. **Mr. Elliott** replied he was sure **Ms. Mosier** could pass that along to OSHA, and he had intended to offer to **Mr. O'Brien** that another way to approach the situation is through a health hazard evaluation request, which can be done anonymously. But he had confidence that **Ms. Mosier** would take this back and that, within DOL, they will put it in front of the OSHA people. **Mr. Elliott** added that any worker who wanted to talk to him about how to initiate a request could do so after the meeting and he would be happy to walk them through the process.

Mr. Kochanski said the same should go for Carborundum in Niagara Falls and wanted to know how to get a copy of the minutes of today's meeting. **Dr. Ziemer** answered that there was a request book available through which they could be requested, and they will also be on the web site as soon as they're completed.

Mr. Walker spoke again to say that the Buffalo News had published an article saying there were four southern government sites with a special cohort. By simply having cancer and working there, workers were compensated with no questions asked. He wondered why the rules changed when it got to Bethlehem Steel.

Dr. Ziemer replied that this was a legislative issue imposed on everybody and **Mr. Walker** should be speaking to his congresspeople. The Board is required to follow the way Congress wrote the law. **Mr. Walker** countered that it was very troublesome to the people. **Dr. Ziemer** answered that the Board

understood the issue.

Mr. Kevin Espinosa

Mr. Espinosa asked if **Dr. Neton** might clarify the statement in his presentation where he said NIOSH assumed 20 percent of airborne uranium particles per cubic meter settled on food that was eaten. **Dr. Neton** replied that if he had given that impression, that was not what he meant to say. He indicated that in looking through the whole model, the mathematics worked out in a way that they could assume that 20 percent of what was in the air per cubic meter ended up being contamination that was being eaten by touching a surface, by ingesting food, or drink in the area. He explained that there was a long derivation on the web site that describes how they got to the ultimate result.

Mr. Espinosa inquired if there were any idea of how long it took for the particles to settle out. **Dr. Neton** answered that that was also on the web site, but he thought it was .00075 meters per second settling velocity of uranium in the air, and that the assumption is that once it's dispersed it settles continuously throughout the 24-hour period. **Mr. Espinosa** inquired when it was vacuumed. **Dr. Neton** replied that for the purpose of the calculation it was assumed it never was vacuumed. It just settled during the whole operation and there was cleanup done when the operation was complete.

Mr. Espinosa inquired about the particles on the beams that settled later. **Dr. Neton** indicated that was the issue raised by a gentleman earlier, which was part of the motivation for NIOSH to do the tour of the facility, to look at the logistics of where things were in relation to the bar mill to see if the exposure model addressed settling of contamination on the beams. So the plan had been to go there from a perspective of validating the exposure model rather than looking for additional contamination.

Ms. Janice Bartosyek,
Bethlehem Steel Action Group

Ms. Bartosyek agreed with **Mr. Walker** that the way the program had been presented in 2000 or 2001 was blatant government misrepresentation and it had never been presented in a way that it had to be proved that cancer was caused by radiation exposure. She thanked **Mr. Elliott** for the packet of information he had sent her after the May 4th meeting and said she had read everything in it and questioned a circled area on the map next to the lake, asking what it represented. **Mr. Elliott** replied that if she would send him an e-mail, he would try to have an answer for her, but he didn't have one tonight.

She asked if anyone could comment on the fact that Bethlehem Steel had once been listed as a beryllium vendor and later it was said they never had been. **Mr. Elliott** answered that perhaps she was referring to the residual contamination report which included beryllium vendors as well as radiation-exposed AWEs, and that there had been an error inadvertently made in the Bethlehem Steel determination. That had been discussed at the meeting in May, but he was not clear on where she had gotten the information she was asking about. **Ms. Bartosyek** replied it was on one of the government internet sites and she had

printed out the information and reviewed it several times, so she didn't feel she had misinterpreted it.

Ms. Bartosyek asked the total number of pages of government records retrieved for Bethlehem Steel. **Mr. Elliott** replied he didn't have an answer to that question specifically, but he could get it and have it delivered to her.

Ms. Bartosyek said she had compared the information she had been sent to information off one of the internet sites and looked at the dates of the rollings. She noticed there were five not listed previously on NIOSH's site profile and wondered if it had since been added. **Dr. Ziemer** responded that they didn't know the answer to that and perhaps the staff could follow up and get that information to her.

Ms. Elsie Owens spoke again to say the DOE's position is that the contractual relationship with Hooker Electrochemical ended in 1948 and they are not responsible for any damages to employees after that time period. But if the contamination is so difficult or impossible to remove completely, how can they be absolved of responsibility simply because production ceased. She noted that if DOE were not responsible, should not some other entity be accountable for damage inflicted on innocent Americans.

Rev. Livingston commented that from the information he could gather, the government is checking government, and how can they get a true accounting of everything going on because there's a small pool of scientists working in the field.

Dr. Ziemer commented that there are conflict of interest rules they follow which make known the previous associations of people because there is a somewhat restricted group of individuals with expertise, some of whom are on the Board and seated at the table. The best that can be done is to make that information known and try to get honest people, willing to stick their neck out if they have to. **Dr. Ziemer** noted that the fact that people have worked somewhere previously does not necessarily mean they can't do their job.

Mr. David Lawrence,
West Seneca, New York

Mr. Lawrence inquired if there would be a firm hired to participate in the audit function. **Dr. Ziemer** replied that the firm of SC&A had been hired. **Mr. Lawrence** asked if they had or if they received contracts from Federal government agencies. **Dr. Ziemer** answered that he didn't know the answer to that, but he thought they certainly had in the past. **Mr. Lawrence** stated that for the record, he felt that was an issue everyone was concerned about and that "Oak Ridge Associates" regularly receives government contracts from various agencies.

Dr. Ziemer thanked **Mr. Lawrence** for his comments and indicated that while he could not remember the exact wording of the requirement, SC&A is not permitted to have any major DOE contracts during their work with the Board. **Dr. Neton** confirmed that SC&A does not have any DOE contracts, nor will they entertain contractual work with NIOSH on other projects during the five-year performance period

of their contract.

Dr. Ziemer thanked everyone for coming and expressed his appreciation for their time and effort. He invited everyone back to the session in the morning.

With no further comments, the Board officially recessed until the following morning.

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Thursday, June 3, 2004

Dr. Ziemer called the second day of the meeting to order, reminding the Board that the evening before they had heard only a portion of **Dr. Neton**'s presentation on the site profile status. He had limited his remarks to the Bethlehem Steel site profile. **Dr. Ziemer** wanted to complete that portion of the previous day's agenda.

SITE PROFILE STATUS, USE IN DOSE RECONSTRUCTIONS, AND ROLL-OUT

Dr. James Neton,
NIOSH/OCAS

Dr. Neton announced that the Fernald site profile had been approved for use, meaning all six Technical Basis Documents (TBDs) or chapters had been reviewed by OCAS and approved for use in dose reconstruction. Fernald has exactly 500 cases filed at the moment, which the site profile will allow NIOSH to address.

Dr. Neton presented a list of the seven completed site profiles with the number of cases relative to each site. With the completion of Fernald and its 500 cases, this brings the total of cases referred by DOL and covered by site profiles up to in excess of 7,400. **Dr. Neton** explained that represented approximately 45 percent of the number of cases in-house, although he did stress that the site profiles are not necessarily applicable to all cases. He noted in particular that they do not cover workers who have no monitoring information at all.

There are 15 DOE sites for which ORAU has been developing site profiles for some time now. Among those 15, all sites have at least some rough draft of a portion of their profile currently being reviewed. **Dr. Neton** indicated that was a major milestone to have something on paper for each chapter they were trying to finish.

Dr. Neton noted that the additional site profiles under development had not changed since the previous meeting, nor had any of them been completed at this point. The number of cases relative to those sites is smaller than the others, with the largest being less than 400 cases.

There have been four AWE profiles issued. One of those is the complex-wide profile which was issued last November. The other three are Bethlehem Steel, Blockson Chemical, and the TVA Muscle Shoals site. There are eight additional AWE site profiles under development, and an additional nine sites which represent only 130 cases among them. **Dr. Neton** reminded the Board that as they complete the profiles for sites with the greater number of cases, there will have to be a decision made when to stop developing site profiles for those sites with so few cases filed.

Dr. Neton stated that the claims from AWEs which don't have completed site profiles are handled under the complex-wide approach when doing dose reconstructions. This approach is a maximizing approach for AWEs that NIOSH believes had lower level exposures and cases can be completed using some claimant-favorable assumptions to process the cases for cancers where the organ does not concentrate uranium.

The worker outreach program is moving forward and good feedback is coming in. There have been a number of meetings. **Dr. Neton** informed the group that **Mr. Calhoun** had left yesterday afternoon to participate in a worker outreach briefing on the Pantex site profile. That would take place sometime today in Amarillo, Texas. There are other outreach meetings planned, such as Rocky Flats later in the month.

Arrangements are being made to visit the Bethlehem Steel workers. A number of workers at the town hall meeting expressed the desire to tell about their particular exposure scenarios, and NIOSH intends to come back in the near future to meet with them and capture their history of what occurred during the '49 through '52 period.

Dr. Neton indicated he was not going to go over the Bethlehem Steel site profile details he had given the evening before, but he did want to address a few issues that had come up during the public comment session regarding the model. He noted specifically that the covered period is 1949 to 1952 and is a period not set by NIOSH. So if there were rollings in 1955, there was nothing that could be done about it because by law they are limited to the 1949 to 1952 period. If additional rollings were discovered in the data capture efforts, that information would be communicated to DOE and the Department of Labor for consideration to extend the covered employment period. **Dr. Neton** noted that had been done, and in fact a year was added to Bethlehem Steel because some records had been discovered that indicated there were rollings in periods that had not been covered originally.

Dr. Neton explained the exposure model was developed to address the covered exposure period -- 1949, 1950, 1951, and 1952 -- and an extensive search was done for that period. Only 13 documented rollings could be found. In fact, only in 1951 and 1952 could they find that rollings had occurred, and they appeared to occur approximately once a month. All but the first and last were done on the weekend.

Dr. Neton further explained that Simonds Saw and Steel was developing the process in a linear fashion with Bethlehem Steel, and some very large exposures were measured there, large air concentrations.

There was so much concern that the first rolling at Bethlehem Steel had been done in a lead or salt bath to minimize the oxidation of the product and the generation of airborne contamination, and it was in fact successful at doing so. So there were air samples from Bethlehem Steel. NIOSH didn't just use the Simonds Saw measurements.

One of the claimants' records from DOL did have sampling data in it which was processed by Environmental Measurements Lab (EML) in New York. The best estimate obtained from those measurements was that it was approximately two times the maximum allowable air concentration, up to the highest value observed of 70 times MAC. NIOSH was not comfortable that they had received all the air data. In searching the records they found Simonds Saw and Steel had 1,000 times the maximum air concentration value, so that was incorporated into the Bethlehem Steel model as the upper limit. This was more than ten times the highest value seen at Bethlehem Steel.

Dr. Neton commented he was offering this explanation to clarify the apparent confusion yesterday that NIOSH didn't have air monitoring at Bethlehem Steel. The Simonds Saw and Steel was added to be more generous. There was every indication that the air concentrations at Bethlehem Steel were lower than Simonds Saw and Steel.

Another issue addressed was the one of coworker data and the fact that NIOSH had not contacted coworkers whose names had been provided in the completed questionnaire. **Dr. Neton** explained that in this exposure model it was assumed that all 500 claimants had received the same exposure, regardless of whether they were a brick layer or a security guard. It was assumed every worker was at the mill in the highest air concentration value for ten hours a day for 48 rollings. They picked the highest possible person and assigned the same exposure to all people. So there was no need to go back to interview coworkers.

Dr. Neton explained briefly what was being done in updating the Savannah River site (SRS) relative to the building trades. They have identified seven areas they will attempt to address in an additional chapter to the SRS profile, which will more than likely be applicable to a number of sites. They are going through Savannah River and working out the details on this.

NIOSH has been working with the Center to Protect Workers Rights (CPWR). They are involved in the medical worker screening program at SRS and, under contract to NIOSH, have compiled a document evaluating what was done at the site by various trades, their tasks, based on the interviews with the workers, as well as a compendium of incident reports. Approximately 1,800 worker interviews have been done and **Dr. Neton** added this is a very useful document in the development of this new chapter.

Dr. Neton commented that in the development of this chapter the exposure details are not terribly different from what might be expected, but some characteristics were unique. As an example, particle size is a normal consideration, but outside weather conditions play a role, whether a person was doing demolition in a windy environment, shoveling of dirt, et cetera.

OCAS has information obtained through exposure requests from DOE. A large number of construction workers were not monitored, but a large number were, so that information is being compiled to see how useful it may be for the unmonitored portion.

The Health-related Energy Research Branch within NIOSH has compiled a database for its epidemiology studies of these workers, and that database is being utilized.

The existing site profile is going to be used to the extent possible. There are the CATI interviews. But they also plan on interviewing construction workers at the site. At the Hanford meeting **Dr. Neton** indicated he was handed a list -- a page of names -- of construction trades workers who were willing to discuss their exposure situations and they had made contact and are sending people to interview those workers. So as a part of these outreach meetings they are capturing workers' concerns and attempting to address them in the best way possible.

Dr. Neton commented there had been a lot of interest in incident reports, which are valuable pieces of information not contained in the current site profile. At the SRS they are pulling out occurrence reports, recognizing there may be some contractor and DOE bias, for which they will attempt to account.

Other sources include the DOE Radiation and Exposure Management System, the internal DOE reporting mechanism for monitoring workers; Medical Surveillance Program database, peer-reviewed publications. There is a contract with CPWR for five sites which have medical screening programs. Those are Savannah River, Oak Ridge, Nevada Test Site, Amchitka Island, and Hanford. That information has been compiled from all five and will be used to the extent possible.

Dr. Neton apologized that he didn't have a draft chapter to present to the Board, but he was at least able to convey their thinking. A team of eight people from the current site profile teams with expertise in working at sites where construction building trades exist are involved in putting this chapter together. **Dr. Neton** noted that Judson Kenoyer is heading up that effort and they look forward to getting a product out as soon as possible.

Discussion Points:

Mr. Griffon inquired relative to Bethlehem Steel if, when doing individual dose reconstructions, they were using the 1,000 times maximum air concentration exposure or a distribution. **Dr. Neton** answered it was a triangular distribution which was two times the maximum air concentration. He commented it was a bit more complicated than that, but that there were two distributions, a low exposure and a high exposure matrix, which could be reviewed in the document. He indicated that if a person is compensable under the low exposure matrix, then it stops because it's a reasonable estimate. If they're non-compensable, then it's run through the high exposure matrix to make sure they really are non-compensable.

Dr. Neton indicated he would like to address the issue of uncertainty in dose distributions. The issue was raised several times yesterday. He noted that **Dr. Charles Land** had done a lot with the uncertainty

in the risk models, but they never really coupled it to the uncertainty in the dose estimates and that uncertainty spans over three orders of magnitude. **Dr. Neton** added that was going to be a big driver in the overall probability of causation value at the upper end.

Dr. Ziemer asked if it were perhaps something that could be on the agenda for the next meeting. **Dr. Neton** replied he thought it could be and he would be happy to do it, in light of what is being discussed with the SEC and how it all plays out.

Mr. Griffon commented he had played a lot of what-if games, but acknowledged he was sure **Dr. Neton** and his associates have done a lot more. **Dr. Neton** agreed there had been, but it would be nice to formalize it and present it to the Board and the general public.

Mr. Griffon asked if the site profiles considered at all the issue of exposures between trial rollings, which had been mentioned in the public comment. **Dr. Neton** replied they had identified 13 runs starting in 1951 and extending into 1952. They appeared to happen every month. They took the entire 48-month contract period and gave one rolling every month for 48 straight months, so it was done in a very generous manner. **Mr. Griffon** commented he had been under the impression the intakes were only calculated for a two-day period for each rolling. **Dr. Neton** agreed. **Mr. Griffon** clarified his question to be that he was actually inquiring about the 28 days between the rollings. **Dr. Neton** asked if he were inquiring about exposure assigned based on residual contamination, in which case they had not done that. There were several documents used for basing that opinion.

Uranium was a valuable commodity and there was every effort -- contrary to what had been said yesterday, that there was a lot of loss and which he'd like to hear more about since he'd never heard that before -- but there were cleanups after every run. **Dr. Neton** described a survey at the next-to-last rolling in 1952 done by the EML indicating the floor cleanup survey and an after-cleanup survey. Both had results below reasonable contamination levels to the general public by today's standards. They did a number of surveys, including at the shear area, around the floor and general environments of the rolling mill, indicating good control on the general vicinity.

As far as the crane beams that were mentioned yesterday, **Dr. Neton** indicated he couldn't address that. There were two contamination surveys done, one in 1976 and a follow-up in 1980. Both did smears and found no detectible alpha contamination. He could not ascertain from the report whether the crane beams were looked at, so that would remain an open issue.

Mr. Griffon commented that what it had raised was the potential level of airborne and also the losses that were mentioned in public comment yesterday. **Dr. Neton** agreed that issue needed to be followed up on. Whether they were losses or just losses in the production process and they were fine-tuning how much they had to feed in there is not clear.

Dr. Roessler commented that when the Board had its trip and meeting in Hanford, two things of value had been reconfirmed to her. One was the museum and the opportunity to be taken on a tour by people

who had worked at the plant during the years of highest releases. The other was the tour of the whole site the day after the meeting. **Dr. Roessler** observed that it allowed a feeling for what was being done on the site profile by interviewing people or talking to people who knew what was going on, and that it was very valuable. She noted that for her to understand in depth what had taken place at Hanford gave her the reassurance that a total package was being put together. She encouraged those tours continue to be held wherever possible.

Dr. Melius stated that some of the issues from Bethlehem Steel seemed to arise out of the process of having worked backward. They did the site profile and then outreach for the site profile. It would be helpful to do that up front rather than after the fact. Similarly, on the construction workers working group **Dr. Melius** felt it would be helpful if they would do that before the chapter comes out, to get together with a group of people familiar with construction work at sites and labor unions and go through what is being done. **Dr. Melius** offered that perhaps the questions asked in the interviews with construction workers might be different from the standard questionnaire and it might be worthwhile to evaluate that. Additionally, from **Dr. Toohey**'s presentation he questioned to what extent the content of the interviews is useful and under what circumstances. He suggested it might be time to begin looking at those interviews and perhaps there should be a different interview to the extent it's being counter-productive by upsetting people to a greater extent than obtaining useful information. People are becoming confused and for construction workers, maybe for survivors, there ought to be a different questionnaire or different parts of the interview, or perhaps parts should be eliminated. But it would be useful to take a look at the interview process over the longer term. **Dr. Melius**' final suggestion was to do a short presentation explaining the additional database where reports that are not part of the site profiles are kept, how that information is being connected on incidents that come up in individual interviews so that other dose reconstructors have access or are knowledgeable about it, commenting that the approach they have may be perfectly fine.

Dr. Neton commented that that could be done. And while he agreed with a lot of what **Dr. Melius** had said, the difficult thing with construction workers is that they're not always identified by the initial form so that it's obvious the claimant worked in a construction trade. **Dr. Melius** offered that from his experience with workers at Fernald, they did pictures and diagrams of the buildings to refresh memories. **Dr. Neton** replied that was why the CPWR report was so useful because it outlined all the buildings and what was done in them, what tasks and incidents. So where possible, that type information will be used.

Mr. Griffon wondered if perhaps included in the presentation of the incident database might be the newly-established coworker database. **Dr. Neton** answered that there is no real incident database, but that incident reports are interspersed among the general site image database. **Dr. Ziemer** suggested perhaps the issue is really how there is an assurance that they're taken into consideration in a given dose reconstruction. **Dr. Melius** commented that some way of describing that process would be useful in other situations, such as in doing meetings with unions and work groups. It comes up all the time because they're looking for it in the site profiles.

Dr. Neton offered that the coworker data is a different issue, but he would be happy to talk about that,

as well. It was all related to the same thing. How does NIOSH do dose reconstructions for unmonitored workers is what is being discussed, and if you have good monitoring data, the incident reports are not crucial. They're nice, but not essential. If you have no monitoring data, how do you tie that unmonitored person to a monitored worker or exposure scenario and how do you deal with incidents that may have occurred that weren't monitored. NIOSH is working very hard with ORAU to flesh this out and **Dr. Neton** indicated he would be happy to talk about that in the next meeting.

Dr. Ziemer observed that he liked the approach being taken with the construction building trades workers, noting that one area of concern with all the variables is identifying issues of duration of tasks and locations. That has been heard repetitively from individuals, that they've been so many places they couldn't begin to say how long they were there. He wondered if a methodology was beginning to emerge as to how NIOSH will bound that. **Dr. Neton** agreed that, like everything, it's an iterative process and they begin with some worst-case assumptions, possibly the highest exposed coworker -- who could be anything from the highest exposed person on the site to somebody who stood right next to the person, and anywhere in between. **Dr. Neton** explained they start at that extreme, and if they can tie that to the construction worker in relation to where that person was and what the exposure environment was, and they believe it adequately represents or overestimates the potential dose to the trade worker, they will use that. They start there and then work their way down till they get closer and eventually may have to say they just don't know.

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ADMINISTRATIVE AND HOUSEKEEPING

Ms. Cori Homer,
NIOSH

Ms. Homer provided information about the August meeting in Idaho and the tour scheduled during that visit. The Board then determined that probably the earliest they would want to meet following that would be October.

After discussion it was determined that October 18-21 appeared to be amenable to the majority of the Board members. Washington, D.C. was decided on as the primary meeting place, with San Francisco, California as the alternative location. **Ms. Homer** indicated that as soon as she had something confirmed, she would notify the members of the Board.

Dr. Ziemer announced that under the administrative portion of the agenda there was some Privacy Act information to be addressed by **Ms. Liz Homoki-Titus** from the Office of the General Counsel.

PRIVACY ACT REVIEW

Ms. Liz Homoki-Titus,

Office of the General Counsel
Department of Health and Human Services

Ms. Homoki-Titus commented she only intended to present a quick review, a short reminder, and that there will be a presentation at the next Board meeting that would be a full discussion of the Privacy Act. She simply wanted to remind the Board that the Act applies to not only dose reconstruction reviews, but also the SEC petitions to be reviewed.

Reiterating what **Mr. Condray** had explained in depth yesterday, **Ms. Homoki-Titus** requested that any questions please be directed to the Office of the General Counsel.

Presenting general prohibitions of the Act, HHS policy under the Act and rules governing SGEs under the Act, **Ms. Homoki-Titus** cautioned that civil and criminal penalties for violations applied. She added that the Department will not necessarily defend a violation, which could make it even more expensive than just a fine.

Dr. Melius asked whether, when a question comes up relative to either the privacy issue or the ethics issue as presented earlier, the members of the Board should be contacting the counsel's office directly. **Mr. Elliott** offered that there were two answers, depending on what the issue was. If it is regarding ethics, it is acceptable to contact Mr. Condray's office or Ms. Homoki-Titus directly and they would help get an answer, and would keep **Mr. Elliott** informed of the contact. Regarding the Privacy Act, though, if a Board member is dealing with a claimant or hearing individual concerns, that should be referred to OCAS so that the claimant may be assisted with whatever the issue may be. Any question about how to serve as a SGE or a member of the Board with regard to protecting confidential information relative to the Privacy Act may be posed to the legal team and they would keep **Mr. Elliott** informed.

Mr. Elliott commented that annual ethics training is required under both FACA rules and Department policy. Because the Board is about to embark on review of dose reconstructions and SEC petitions, it was felt an update on Privacy Act rules would be in order, as well.

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SITE PROFILE REVIEW UPDATE

Mr. Joe Fitzgerald,
Sanford Cohen & Associates

Mr. Fitzgerald reminded the group that SC&A is a support mechanism for the Board. Their lead is taken from the Board's direction and their priorities are based on that direction. He noted he was aware of the issue raised last night during public comment about SC&A's positioning in terms of conflicts, and wanted to reaffirm that to fulfill their role adequately they do not have any organizational or personal conflicts of interest relative to having contract relationships with DOE, NIOSH, or ORAU.

Mr. Fitzgerald observed that the site profiles have assumed a level of importance in the dose reconstruction process greater than had been envisioned in the early days of the Act and its implementation. In order to support the Board in its evaluation of the scientific validity and quality of dose reconstructions under the Act, in part by review of site profiles, SC&A has set its objectives through the procedures approved by the Board. Their objective then is to conduct evaluations of the site profiles for completeness, technical accuracy, adequacy of data, consistency and compliance with not only the laws and the rules but the procedures which guide the site profiles.

Mr. Fitzgerald explained the methods by which SC&A will perform this evaluation, including a sampling of the site profile chapters or Technical Basis Documents from both generic and site-specific perspectives, and including discussions with NIOSH and ORAU on site profile methodology.

Limitations regarding the reviews were described by **Mr. Fitzgerald**, in that it will not be feasible to ascertain the application of site profile data in actual dose reconstructions other than in a limited fashion. He stressed the site profile reviews are snapshots of the documents at the moment the evaluation is being done. He observed the reviews are not intended to be workups of identified concerns with resolutions offered, but merely sufficiently-validated issues or questions for further review by the Board and/or assessment by NIOSH.

Each review will be accomplished in two phases. Phase one is a preliminary review of site profile documentation in order to identify issues of potential significance for review. The second phase is a more in-depth evaluation of those identified issues in order to evaluate and validate whether they are indeed of some concern. **Mr. Fitzgerald** elaborated on steps involved in each of the two phases.

Mr. Fitzgerald reported that SC&A had completed phase one of the review of the SRS profile. They have requested access to on-site data sources for phase two. Phase one of the Hanford site profile review has been started.

Mr. Fitzgerald reported a very productive meeting with NIOSH and ORAU over a three-day period. This had allowed them to go through the site profile process both generically and specifically, speaking with technical people and site profile authors for the SRS profile. They were able to gain an understanding of the thinking behind site profile development, and to appreciate the balance of the technical accuracy and efficiency issues, as well as a better understanding of how that balance was struck.

As the review team reaches a point where they're waiting for information, as they are on Savannah River, **Mr. Fitzgerald** explained they begin the initial phase of the next review, such as they are doing with Hanford. When the information comes in they will go back and complete phase two and report to the Board with mature and well-validated findings. **Mr. Fitzgerald** commented that they plan to do a single-file review for Savannah River and Hanford. Upon their completion they will employ two site review teams working in parallel thereafter.

Mr. Fitzgerald offered some observations on the review process after the first 60 days, noting that there is an investment of resources necessary for start-up activities in that a start-up process is generally a tough one. In this case it involves orientation of SC&A staff to the site profile process and the completed Technical Basis Documents, meeting with NIOSH and ORAU about the site profile process, and the issue of accommodating access for the review process.

Mr. Fitzgerald observed that reviewing application of the site profile data in actual dose reconstructions will be critical. Timely access to on-site data sources and site experts, particularly in the phase two portion, as well as security clearance, will be very important. Interaction with NIOSH and ORAU will be valuable in order to keep issues in context and to assure factual accuracy.

Discussion Points:

Dr. DeHart inquired if SC&A will be seeking additional site information. **Mr. Fitzgerald** answered that the secondary information referred to on a number of his slides he considers information which is not the prime basis for the models used in the site profiles. It is their intent to seek out site experts and secondary information to validate that the building blocks are sound.

Dr. Roessler asked if SC&A were planning to speak to the same site experts or former workers that NIOSH and ORAU have spoken to, or if they had some means of identifying other experts on their own who might offer additional information or different information. **Mr. Fitzgerald** replied he would lean more toward trying to bring in new information. He commented it had been his experience in the past that what was on paper is not actually what was taking place on the sites. They wanted to speak to individuals who could validate that what is in the primary source documents reflects actual practice at the sites.

Dr. Roessler commented that as they get into the SEC evaluations, dealing with terms like "sufficient accuracy" and "precision," and realizing that her definitions of those terms were not the definitions used now, she would like to have somebody give a little tutorial on exactly what is meant by those terms in this context. **Dr. Ziemer** offered that there is contained within the SEC rule the working definition of what that means in this case, and he was sure it was not the definition she had learned.

Dr. Melius asked if the issues of access are being appropriately resolved. **Dr. Ziemer** replied that there had been a memo sent to the Secretary of Energy through the Secretary of Health and Human Services and was somewhere en route. It had been signed on May 5th and it was on its way. **Mr. Elliott** added he didn't know exactly where it was in the process, but **Tom Rollow** from DOE had made a commitment at the last meeting that he would support the access and sites would be given authority to provide the access as necessary. He commented that once NIOSH is provided the names of those people who need Q clearances reinstated or new clearances, they will get that into play.

Dr. Ziemer also observed that Task 4, the task for conducting individual dose reconstruction reviews,

was awarded for a six-month period and that because of the major role the site profiles play and the availability of completed final dose reconstructions, the task hasn't actually started but the clock is running. Therefore there is a need for a modification of the task to provide for a no-cost extension of the time period and requires action of the Board. He noted modifications of this year's tasks have to be done by June 15th. **Dr. Ziemer** explained the modification could be done in open session and that since the only requirement is for the Board to agree to extend that task, it would be in order to consider a motion for a no-cost extension of Task 4 by six months.

A motion to grant a no-cost extension of the time period to conduct Task 4 by an additional six months was made and seconded. With no discussion required, the motion carried unanimously.

Dr. Ziemer reminded **Dr. John Mauro** of SC&A that one of the deliverables under their original proposal was a conflict of interest plan which is required to be approved by the Board. **Dr. Ziemer** indicated he had been advised that the actual plan has not been submitted for action, and they do need an official conflict of interest plan so that they may act on it at the August meeting. **Dr. Mauro** stated he would provide it in advance of the next meeting.

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BOARD WORKING SESSION

Dr. Ziemer announced one carry-over item from the preceding meeting, which was the charter for the Subcommittee on Dose Reconstruction. The members of the Board were provided with a packet which included the revised draft of the charter reflecting changes discussed and agreed to at the previous meeting. **Dr. Ziemer** reviewed the document with the Board in detail, addressing each item which had been changed or modified.

Dr. Ziemer called for a motion to approve the draft, but **Ms. Homer** asked if she might go through the structure section and offer some suggestions first. She addressed each portion of the document, indicating specific areas in the wording and explaining how it might cause difficulties for the Board and/or the Subcommittee in the future. The Board discussed how the wording could be modified to accommodate those concerns, the first of which was how the Subcommittee was to be selected.

A motion was made and seconded to amend the first paragraph of the proposed charter for the Subcommittee on Dose Reconstruction as follows:

a) In line 3, change "a non-voting government representative" to "the Designated Federal Official".

b) In line 4, after "membership shall" add the words "be selected from the attached roster of Board members."

The motion was passed unanimously.

Moving to the second paragraph, **Ms. Homer** called attention to some possible misinterpretation of how meetings might be called and suggested a revision to clarify that specific issue.

A motion was made and seconded to amend the second paragraph of the proposed charter for the Subcommittee on Dose Reconstruction as follows:

a) At the end of the last sentence add the words "and with the concurrence of the Designated Federal Official."

The motion was passed unanimously.

In paragraph 3, by consent it was agreed to delete the words "When Privacy Act issues are involved,"

Addressing the portion of the charter describing the charge to the Subcommittee, the Board discussed the use of one word versus another in certain instances. Those changes were accepted by consent, requiring no vote, and were as follows:

a) In item 3), delete "approve or disapprove" and inset the words "and recommend for Board Action"

b) In item 4) replace the word "direction" by the word "intent."

Ms. Homer expressed concern about charge number eight relating to review of correspondence to the Board and preparation of a response for **Dr. Ziemer**'s signature. A number of issues were raised and **Ms. Homoki-Titus** offered her observations from a legal perspective. She suggested written procedures approved by the Board to appropriately describe and limit what the Subcommittee could deal with.

Dr. Ziemer stated that in order to have a clear understanding of the Board's wishes on this issue he would call for a motion for changing the word "practices" to "procedures," understanding that they would have to then at some point develop those procedures.

A motion was made and seconded to amend charge number eight of the proposed charter for the Subcommittee on Dose Reconstruction by changing the word "practices" to the word "procedures", and was passed unanimously.

An addition to clarify how to make changes in the Subcommittee's charge was discussed. **Dr. Ziemer** declared the addition a legal issue requiring no vote.

The Chair called for a vote on the motion to approve the charter for the Subcommittee on Dose Reconstruction as amended. It was passed unanimously.

Mr. Elliott apologized for the close examination of the document, but explained what they took to the committee management office had to be very clear in that they would be questioned about what portions

of the charter meant, so this process was helpful to them.

Dr. Ziemer confirmed that they would still have to get approval before the Subcommittee could meet. **Mr. Elliott** commented that was a short process and would be in place before the August meeting. **Ms. Homer** offered that the only thing which may delay approval of the charter is the lack of procedures as specified in charge number eight. **Mr. Elliott** assured the Board that they would do everything they could to get the charter approved without having the procedures in hand, indicating that he would be sure committee management understood the subcommittee was needed to help develop those very procedures.

REVIEW AND APPROVAL OF DRAFT MINUTES

Dr. Ziemer called for substantive corrections or additions to the minutes of the 23rd meeting of the Advisory Board on April 20-21 in Richland, Washington.

> **Motion to approve the Executive Summary and Minutes of the Twenty-third Meeting of the Advisory Board on Radiation and Worker Health, with modifications as discussed, was seconded and passed unanimously.**

Dr. Ziemer called for any further open session items any member of the Board needed to discuss.

Dr. Melius asked if it were **Dr. Ziemer**'s intent to appoint the Subcommittee. **Dr. Ziemer** replied he did, and that under the charter they had just approved and would submit for approval, every member of the Board would be a member of the Subcommittee.

Dr. Roessler asked if that meant all members would have to be present on the day preceding the August Board meeting. **Dr. Ziemer** answered that would not be the case, but he would like to get an indication of who had a particular interest in being on that specific subcommittee for the first meeting.

The Board discussed whether to appoint the Subcommittee members now or wait until the charter had been approved. **Dr. Melius** suggested that in the spirit of doing things in open session, perhaps it would be a good idea to make a decision who were going to be the initial members pending approval of the charter and who would then be at that first meeting. He added there probably should be some discussion of the charge for that working session of the subcommittee and possibly agenda item issues.

The Board discussed the minimum number of members for the Subcommittee under the proposed charter and the need for caution with regard to accidentally establishing a quorum of the full Board. It was determined that the consensus of the Board is to identify an initial subcommittee that could work as a working group prior to the next meeting to develop the procedures required under charge number eight of the charter. **Dr. Ziemer** suggested **Mr. Gibson**, **Dr. Anderson**, **Mr. Griffon** and **Dr. Andrade** be on the subcommittee and that he would like to be on the subcommittee himself initially. Observing that this group is heavy on the health physics side, he asked if the Board would be comfortable with that mix.

Dr. Melius commented that the subcommittee tasks early on will be related to health physics and review procedures, so that might be the best way to establish the group.

Dr. Ziemer announced that those five people, including himself, would serve as a workgroup at the initial meeting, but would become the Subcommittee once the charter is approved. He added he would exercise the Chair's prerogative of chairing the Subcommittee initially, with **Mr. Elliott** attending as the Designated Federal Official, or someone as a technical representative.

Mr. Griffon recommended meeting in Cincinnati before the August meeting so that the workgroup could have access to the database and talk more about the selection process. **Dr. Ziemer** asked how critical that access might be. **Mr. Griffon** explained he had spoken to **Mr. Russ Henshaw** before he left the meeting, and he had agreed to query and pull together some of the material **Mr. Griffon** had requested. **Mr. Elliott** agreed there was merit to meeting in Cincinnati and that **Mr. Henshaw** is working on the parameters that had been discussed with him earlier. He had told **Mr. Elliott** he anticipated it would be prepared and ready by the end of June. As the workgroup sat down and looked at the material, if they had additional queries or variables, they could do that in Cincinnati. Also, a working group didn't have to be a public meeting, so they could come into the NIOSH offices and work right there with NOCTS and look at some final cases, too, if they wanted to examine the content of a dose reconstruction case file.

It was decided that a date for the workgroup meeting could be determined separately. **Dr. Ziemer** noted that not only did they have to check with **Dr. Anderson** about his schedule in order to meet in Cincinnati, they needed to get his agreement to serve on the Subcommittee. **Dr. DeHart** agreed to serve as medical representative backup in the event **Dr. Anderson** were unable to attend the meeting in Cincinnati. **Mr. Elliott** asked that the date be established as soon as possible to avoid staff conflicts.

Mr. Griffon wanted to establish an action item calling for the Board to work with NIOSH or have an opportunity to comment on the procedures for the SEC rule. **Dr. Ziemer** noted that is actually a requirement in the rule itself. **Mr. Elliott** pointed out that the procedures are what they are as approved all the way through OMB. The Board could certainly make comment, however, which would be considered and changes would be made as needed. **Dr. Melius** offered that he thought they were actually referring to the guidelines.

Mr. Elliott explained that there is no such thing as guidelines. They're talking about procedures. "Procedures" and "guidelines" are terms. "Guidelines" is too open to flexibility. "Procedures" are to be followed, and these are administrative procedures or implementing procedures for the SEC.

Dr. Ziemer commented that while the preamble mentioned the approval process, it went on to describe that the procedures have become a part of the document itself. However, the Board wanted to see and have an opportunity to react to them. **Mr. Elliott** apologized for their not being provided at the meeting or on the web site, but there had been some final cleanup to be done to ensure all comments had been

addressed, and it simply didn't get done in time.

PUBLIC COMMENT PERIOD

Noting there was only one request today, **Dr. Ziemer** opened the floor for public comment.

Mr. Ralph Krieger,
PACE

Mr. Krieger commented that it is not a joking matter and the Board is representing the American workers, and theirs is a daunting task which should not be taken lightly. He recommended the Board send some people to Albany to go through "the files" there. He then read into the record a lengthy report to the New York State senate, apparently dating back to 1981.

Ms. Janice Bartosyek,
Bethlehem Steel Action Group

Ms. Bartosyek encouraged the Board to go to Bethlehem Steel and maybe get a view of the bar mill ten, which might help put a building with a site number. She also commented she understood four Board members' terms might be up in August. Now that there is momentum building with the program, she expressed hope that there would be some continuity.

Mr. Ed Walker,
Bethlehem Steel Action Group

Mr. Walker thanked **Mr. Elliott** and **Dr. Neton** for attending the May 4 meeting and inviting him to the workshop in Cincinnati. He commented that the people involved with the program are very sincere and he felt they were truly trying to help. He reminded the Board that the people he works with are in their 70's and 80's. He reiterated that the workers had been unaware of the hazards and the government had kept them unaware for 50 years. He expressed his belief that there are too many people with the same "misunderstanding" to actually accept that their original information that they were going to be compensated was a misinterpretation. He closed by stating they may be old, but they're going to fight as hard and as long as they can to get it justified.

Dr. Ziemer thanked them for their comments and announced the business of the Board in open session was concluded.

With no further business to come before the Board in open session, the public portion of the meeting was adjourned, with the remaining business to be conducted in executive session.

End of Summary Minutes

I hereby confirm these Summary Minutes are accurate, to the best of my knowledge.

Signature on File
Paul L. Ziemer, Ph.D., Chair

_____
Date

ACTION ITEMS
25TH ABRWH MEETING: BUFFALO, NEW YORK

No. 1
By Jim Melius

A work group of the Board was formed to work with NIOSH and ORAU staff to evaluate what QA/QC procedures for the interview process have been implemented by NIOSH/ORAU and determine what reports/data from these QA/QC procedures would be useful for the Board to review. Work group members include Jim Melius (Chair), Tony Andrade and Wanda Munn.

No. 2

DR. ZIEMER: While we're on the subject of our contractor, two things. Number one, task number four, which was the task for conducting individual dose reconstructions, an approved task, that was awarded for a six-month period. And they recognize now that, because of the role the site profiles play in that and also availability of actual final dose reconstructions, the task hasn't actually started. But the clock is going. And if -- if we want to be able to continue this, we need to extend the task. That requires a modification of the task, and we can do that -- a no-cost extension -- but it does require action of this Board. And for modifications of this year's tasks, those have to be done by June 14th.
MR. GRIFFON: Does this require executive session?
DR. ZIEMER: No, this can be done in open session. All that is required is that the Board, by motion, agree to extend that task for -- for example, by six months. So that it would be in order to consider a motion to extend task four by six months -- no-cost extension. That's task four, individual dose reconstruction reviews.
MR. ESPINOSA: So moved.
DR. ZIEMER: And seconded?
MS. MUNN: Second.
DR. ZIEMER: Okay. Wanda, did you have a comment, or were you going to make the motion?
MS. MUNN: No, going to make the motion.
DR. ZIEMER: Is there discussion on extending task four by six months? Cost would remain the same. Are you ready to vote? And this would put in motion the necessary wheels to get that underway.
All in favor say aye.
(Affirmative responses)
DR. ZIEMER: And any opposed say no.
(No responses)
DR. ZIEMER: And any abstentions?
(No responses)

DR. ZIEMER: Motion carries and we will instruct staff -- I guess Martha will handle this?
MR. ELLIOTT: Yes, and we'll put it into the procurement hands as soon as I'm back in the office tomorrow. Whenever Martha's back in the office, it'll happen.

No. 3

ADVISORY BOARD ON RADIATION AND WORKER HEALTH
Subcommittee for Dose Reconstruction and Site Profile Reviews

Structure:

The Subcommittee for Dose Reconstruction and Site Profile Reviews (hereinafter referred to as the "Subcommittee") will consist of a minimum of a chair, plus three members of the ABRWH (hereinafter referred to as the "Board") and the Designated Federal Official. The membership shall be selected from the attached roster of Board members and shall reflect an appropriate balance of Board perspectives. Members will be appointed or replaced from time to time as deemed necessary by the Board Chair. Conflict of interest requirements shall apply to all Board members in conducting Subcommittee activities.

It is anticipated that the Subcommittee may meet twelve times per year, with additional meetings on an as-needed basis. Meetings may be called by the Board Chair or the Subcommittee Chair, and with the concurrence of the Designated Federal Official, either at their own volition or upon request of a Subcommittee member.

The Subcommittee is subject to FACA requirements including open meetings and appropriate announcements in the Federal Register. The Subcommittee may meet in closed session, in accordance with the same FACA procedures that apply to the Board itself. The Subcommittee will report findings back to the full Board for consideration and appropriate action.

Charges:

The Subcommittee is authorized through this charter to perform the following tasks related to dose reconstruction and site profile reviews.

1)Serve as a point of contact between the Board's audit contractor and the Board.
2)Track audit contractor performance with respect to Board initiatives and scheduled deliverables.
3)Review and recommend for Board action audit contractor procedures (including revisions) related to dose reconstruction and site profile reviews as appropriate.
4)Clarify Board intent regarding technical scope of tasks assigned to the audit contractor.
5)Select cases for individual dose reconstruction review consistent with Board procedures, taking into consideration conflict of interest matters.
6)Assign cases for individual reviews to Board "review panels" (taking into account Board members' conflict of interest standing, and ensuring a balance of scientific, medical and worker perspectives).

7)Compile the review panels' recommendations/findings (including dose reconstruction review summary reports and site profile review reports) for submission to the Board.
8)Review correspondence to the Board related to site profiles and dose reconstruction reviews and prepare responses for the Board Chair's signature in accordance with Board procedures.

Changes in Subcommittee Responsibilities:

The Board may at any time add to, limit, or remove any of the charges noted above. Such changes would be made in writing and submitted for appropriate approval.