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

convenes the

FIRST PUBLIC MEETING ON

PROPOSED SPECIAL EXPOSURE COHORT PROCEDURES

The verbatim transcript of the Town Hall Meeting held at the Buffalo Niagara Marriott, Amherst, New York, at 7:00 p.m. on July 23, 2002.

NANCY LEE & ASSOCIATES
Certified Verbatim Reporters
P. O. Box 451196
Atlanta, Georgia 31145-9196
(404) 315-8305

P R O C E E D I N G S

DR. NETON: Good evening, ladies and gentlemen. I think it's time to get started. I'd encourage everyone to move up if you are sitting in the back. There's plenty of room here this evening for all.

Welcome to this public meeting on the Department of Health and Human Services proposed rule that outlines the procedures for considering petitions for adding classes of workers to the Special Exposure Cohort. If you haven't done so yet, sometime during the meeting or before you leave we'd ask that you register at the table on the right, to the right of the door at the back of the room. If you would please do that we would appreciate it.

My name is Jim Neton, and I will serve as the moderator this evening for this meeting. I am an employee of the National Institute for Occupational Safety and Health -- NIOSH -- and I'm the Health Science Administrator for the Office of Compensation Analysis and Support in NIOSH. Our office is based out of Cincinnati, Ohio.

With me this evening is Ted Katz, to my left

here, who will be providing a presentation a little later to present an overview of the proposed rule for you.

The purpose of our meeting is to provide NIOSH the opportunity to present and discuss the procedures outlined in the proposed rule that was published on June 25th in the *Federal Register.* As you likely know, the proposed procedures, as I mentioned, will be used by NIOSH to consider petitions for classes of workers to be added to the Special Exposure Cohort.

During the meeting we welcome questions and comments on the rule. All comments made during the meeting will be recorded and considered in the finalization of the rule itself. Transcripts of the meeting will be available for viewing on our web site. We anticipate that those transcripts will be available within about a couple of weeks. We also encourage written comments on the proposed rule. These can be submitted to the regulatory docket via means described in the fact sheets that are provided at the back table.

If you haven't been back there yet, there is a fact sheet on the town meeting. There's also

some other information on the, I think, copy of the *Federal Register* notice, a copy of the overheads that Ted will be presenting this evening, as well as a couple of other additional fact sheets that may be of interest to those in attendance this evening.

Now I would like to briefly go over the format of our meeting this evening. As I mentioned earlier, after my introductory remarks Ted will provide an overview presentation of the Special Exposure Cohort rule. And then at the conclusion of Ted's prepared remarks we'll have a question and answer session to answer any questions or comments you may have on the presentation itself, and then we will follow that by an open comment period.

We ask that you queue up during the question and answer and comment periods at the microphones that are located in the aisles, and identify yourself before you speak for the record, and your affiliation.

After the meeting concludes, NIOSH staff will be available to answer -- briefly available for a short time to answer any questions that people may have after the meeting is over, which is

scheduled to be completed by 9:00 o’clock this evening.

Are there any questions or comments before we get started? No?

Yes.

MR. TOBIAS: My name is Francis Tobias. I filed a claim based on my father's exposure at Bethlehem Steel and subsequent death after that.

I think there may be some confusion as to the purpose of this meeting. I know there are some other people that are here for the same reasons I am, but is this just for a Special Cohort?

DR. NETON: That's correct.

MR. TOBIAS: Because there are a lot of other questions that we came to get answered. Now are we going to be able to get those questions answered in addition?

DR. NETON: Given the time available, we'll do the best we can to answer those questions. But the purpose of the meeting, though, is to discuss the Special Exposure Cohort.

MR. TOBIAS: But why was -- can you tell me why there wasn’t better publicity on this meeting?

DR. NETON: Well, it was publicized through

the local media, the radio stations –-

MR. TOBIAS: Oh, it was?

DR. NETON: Yeah, the newspapers, television stations. I really don’t have a sense for how well it got out. I’m sensing, from talking to a few people before the meeting, that it did not get well publicized, and I’m really not certain why. We'll certainly check into that and find out what occurred.

MR. TOBIAS: How long is your presentation, can you tell me?

DR. NETON: Ted's presentation?

MR. KATZ: Yes, I’m going to try to keep my presentation to under half an hour.

MR. TOBIAS: Okay.

MR. KATZ: If you want to signal to me that I’m going too slowly I'll try to speed it up even more, but I think there still will be really plenty of time for you. We will stay on beyond the 9:00 o’clock to hear you, so –-

MR. TOBIAS: Okay, thank you.

DR. NETON: Just as a point of clarification, where NIOSH fits into all of this, the Department of Health and Human Services is tasked with doing the dose reconstructions for the workers. The

Department of Labor administers the overall program. Within the Department of Health and Human Services there is the Centers for Disease Control and Prevention, of which NIOSH is a part. NIOSH has the lead role in the Department of Health and Human Services in issuing the rules, regulations, and doing the dose reconstructions for the Energy Employees Occupational Illness Compensation Program Act.

So I guess with that I'll turn the presentation over to Ted to provide the overview of the Special Exposure Cohort.

MR. KATZ: Okay, so thank you, thank you for coming. And I'll be walking you through these procedures at a pretty extensive level, I think, because I expect not all of you have read them. Maybe none of you have read them, I don't know. And even if you have read them, I think this may help you understand certain things that may not be that clear in reading the procedures. I know regulations aren’t that much fun to read, but we'll do the best we can.

And then afterwards, after I present, we'll spend some time where you can get clarification from me on things I said or things you read in

the rule. And then we'll move on from there to getting your comments on the rule, any recommendations you have for things that can be improved before we issue this rule as an effective law.

Now let me just -- a little background. I don't know -- this may be redundant for many of you -- but to talk about what is the cohort, the Special Exposure Cohort? It was actually established -- it exists already -- it was established under the Energy Employees Occupational Illness Compensation Program Act.

I'm going to from now on pronounce that EEOICPA, because it is a ton of words to spit out otherwise. Under EEOICPA I'm going to talk about the cohort, instead of spelling out the whole name when I talk to you about this.

The Congress established this cohort in writing this law and put four groups into the cohort initially. Three of those groups are certain employees of the gaseous diffusion plants of the Department of Energy, and the fourth group are employees of a nuclear test site in Amchitka, Alaska. So that established the cohort.

And if you are in this cohort, if you are an

employee in this cohort and you have one of 22 what are called specified cancers, then you can apply for compensation with the Department of Labor, and if you meet certain other basic conditions you would be compensated. The important point to make here is what's different for cancer claimants who are in the cohort is the Department of Labor, in their case, does not have to determine whether or not their cancer was at least as likely as not caused by radiation, as it does for all other cancer claims under EEOICPA. So that's what makes this group special or different.

Now what is the purpose of the proposed rule? Well, the administration and Congress realized that there may be other circumstances where employees will not be able to have dose reconstructions individually and have a determination as to whether their cancer was at least as likely as not caused by radiation. And in those cases those individuals would need a remedy as well. And we're talking about cases in particular where there is really a dearth of information on what their radiation exposures were.

So the President was assigned by EEOICPA to add classes of employees to the cohort, and he was required to develop procedures for doing this. This was then delegated -- because the President doesn't do this kind of work generally -- was delegated to the Secretary of Health and Human Services, and has fallen to us. As Jim explained, we are part of the Department of Health and Human Services under the Centers for Disease Control.

The reason that this has come to us as a responsibility is because we do, and have done for a decade or so, health research on Energy employees, and so we know a lot about Department of Energy facilities, their operations, their record systems and so on, and about the health of Energy employees. So this is why this came to us.

Now EEOICPA not only said, President, do this and develop procedures for this; but it set out some basic requirements. Most importantly, it set out some criteria for when you could add a class to the cohort. And there are two of them, and they are listed here.

The first criteria is that you can only add a

class if NIOSH can't do dose reconstructions for individuals with sufficient accuracy; and secondly, even if you can't do those, you still need to find that it's reasonably likely that the radiation doses endangered the health of that class, that group of workers that you are wanting to add. So those are the requirements that were established by the law.

The law also required certain procedures to be involved in this process of adding classes to the cohorts. It required the classes petition to be added to the cohort.

It also required that HHS obtain the advice of the Advisory Board on Radiation and Worker Health. Now this is an Advisory Board that's appointed by the President. It's standing; it exists now. It advises the Secretary of HHS on a variety of duties, but one very important function of this Board is to advise us on Special Exposure Cohort petitions. And the Board consists of physicians who are expert about radiation and health physicists, scientists who are -- as well as people who worked in the DOE complex, so worker representatives.

One other requirement that's important that

was set out by EEOICPA is that Congress was given a 180-day review period. So the Secretary of HHS will make decisions as to whether to add a class to the cohort, but after the Secretary of HHS makes that decision Congress basically said we want 180 days to consider those decisions, positive decisions to add a class to the cohort, before that becomes effective. That was a requirement of Congress.

So let me just tell you a little bit about what guided our thinking going into this, and then I'll walk you through the procedures themselves. But first of all, of course, we considered the requirements of EEOICPA. That's the law. Those are conditions under which we have to do these procedures, develop these procedures.

Our goal is really simply to have fair, openly decided decisions. And so we've set out a procedure that we think is open, and we hope is fair, and we will work with you, of course, to ensure that that is the case before these are finalized.

And the last point I just want to make is that the decisions to add a class to the cohort

are really, in a sense, grave decisions, and we view them as grave decisions. They have important consequences because if you add a class to the cohort, members of that class then can only be compensated for the 22 cancers that are specified cancers as allowed by EEOICPA, allowed by the law; and if you have a different cancer you cannot be compensated under this program -- for example, if you have prostate cancer or skin cancer.

So when we make decisions to add a class to the cohort it's a grave decision. It's an important decision. It has real implications for some members of that class, in all likelihood, because some members of a class are likely to have skin cancer or prostate cancer.

So here I'm going to walk you through the procedures now. Who can petition, was the first question we had to answer with these procedures. And we left it about as wide open as it could possibly be, I think. We didn't do as you would require in a class action suit, when you talk about a class where you would have to organize all the individuals in the class and sign them up, in effect, to bring suit. In this case just

one or more covered employees and/or their survivors can file on behalf of a class. And likewise, we allowed unions to file on behalf of a class.

And how do you petition? Basically, decide whether you can meet the petition requirements, complete and submit a petition format. We're going to have a form that's going to be available over the Internet. You can complete it electronically or in paper form, but either way. And we will be providing assistance.

Let me talk to you now about the petition requirements. The most important point about the petition requirements is they differ very substantially based on whether or not you have already submitted a claim for a cancer, and NIOSH has been unable to complete a dose reconstruction because the records simply aren't there to do an adequate dose reconstruction. So that's one group of people, and the requirements for that group are one thing. And then there are requirements for anyone who hasn't already done that, hasn't already attempted to get a dose reconstruction from NIOSH.

But if we've attempted to do a dose

reconstruction and we were unable to complete a dose reconstruction, we will encourage you to petition for a class, and we will provide you with the information to do it. And it's really very simple. You will indicate on the petition form that NIOSH was unable to complete a dose reconstruction. You will provide otherwise -- contact, and a variety of other information. You have an opportunity to provide additional information if you want. But really that's all you have to do, indicate we couldn't do a dose reconstruction. That petition, then, rests in our hands. There's no other requirements; very simple.

Now let me talk about the situation where no one in the class has attempted to get a dose reconstruction. And perhaps -- as I point out at the bottom, you see at the bottom of this slide -- it may be a case where no one in the class even has incurred a cancer yet. Then there are different requirements for what you would have to do to petition.

You'll have to define the class -- what facility are we talking about, what sort of job titles, duties, period of employment, and so on.

You'll have to document the reasons to believe that there was a health endangering radiation exposure. And there are a variety of ways. The form that we provide will pull this out of you, the details that you have to provide.

And thirdly, you'll have to document reasons to believe doses couldn't be estimated, do dose reconstructions with sufficient accuracy. And again, the form will pull this out of you, the details that you have to provide in this case.

And then the question becomes will you meet the requirements, will your petition be evaluated? Again, going back, if you attempted to have a dose reconstruction, if we attempted to do a dose reconstruction and we couldn't do a dose reconstruction, your petition will be evaluated. That's already a done deal. There's nothing, no question about that. It will receive a full evaluation from NIOSH, the Board, and HHS, and a decision will be rendered.

For other petitions, if no one has attempted to have a dose reconstruction, HHS will decide whether or not you meet the requirements. You'll be informed as to whether you don't meet the requirements and why, what's lacking in the

petition. And you'll have 30 days to revise the petition, and NIOSH will be available to guide you through that process. And then HHS will make final decisions on whether to evaluate those petitions, and it will do it with the advice of this Board that I told you about.

Now how do we go about evaluating the petition? We've already made the hurdle. You meet the requirements. The petition meets the requirements. We're going to evaluate the petition. NIOSH, it will be on NIOSH's back, not on petitioner's back, to obtain the full information records from DOE and other sources that we would require to evaluate the petition. And we will be coming to you, of course, the petitioner, as one source of information. But we will be going to DOE, to the AWEs, to our sources from having done health research in this area, from all possible sources to evaluate the petition.

And we will determine whether the dose reconstructions are feasible, because that's the first issue. We have to find, in effect, that we can't do dose reconstructions for the petition to be granted. And secondly, we will determine

whether potential radiation dose levels, what the potential radiation dose levels were and whether they were likely to have endangered health. And then we will report these results to petitioners and the Board.

And now I'll get into more detail about how we go about this, how we determine potential radiation dose levels. This is a case where we are talking about, in some of these cases, the petitions that are going to be successful are cases where we can't do individual dose reconstructions, we don't have that level of detail on people's exposures.

But we will get information on the radiation sources potentially present, on their possible quantities, on their possible characteristics of employee exposures and use of radiation protection. Much of this information will come from workers themselves and managers in the programs, as well as whatever information is available from the records. And we continue to find records, more and more records that nobody knew existed. So we will have some success there.

And then NIOSH technical staff will judge

whether the radiation doses could have reached the level determined likely to endanger health, as specified in the rule. I'll now explain what that means. How do we determine what level of radiation is reasonably likely to endanger health? That is what the law requires us to do. NIOSH will determine the minimum dose of radiation reasonably likely to cause specified cancers.

So we have gone from the law said “endangered health,” and we have gone specifically to we are going to determine what level of radiation is reasonably likely to cause specified cancers. Why are we doing that? We’re doing that because you can only be compensated under EEOICPA if you’re part of the Special Exposure Cohort for specified cancers. No other health condition will be compensated as part of the Special Exposure Cohort. And also, we have a way of determining likelihood that a cancer is caused.

And one important point to make about this is that that dose -- there is no one dose we’re talking about here. The dose will differ, likely, for each class. And it differs for a number of reasons, because it depends on the

source and type of radiation; it depends on the types of cancer that are related to the types of radiation that was incurred; it depends on the characteristics of the class and other factors. So there are a variety of things that affect what that level might be.

NIOSH technical staff will calculate minimum dose using factors that are favorable for the petition. This is very important. There are a lot of factors, as you realize. Here we are talking about a level of generality in terms of our information on radiation doses. So there are lots of suppositions, assumptions that have to be made. And what we are saying is we are going to be making assumptions that are very favorable to the petition being granted.

A key example to give you here is we are going to be using the types of cancers among the specified cancers that are related to the exposure that are most readily caused, caused at the lowest doses, to formulate our benchmark, your hurdle that you have to rise to, to be granted the petition.

What happens after NIOSH does all this work, evaluation work?

You would like to ask a question now?

MR. TOBIAS: Can I ask a question?

MR. KATZ: Yes, yes, go ahead.

MR. TOBIAS: I'm just wondering whether your comments about the dose reconstruction, is it again specific to the Special Cohort group, or is it general to all the groups? I think it's very important to --

MR. KATZ: Can you just help me understand the question a little better?

MR. TOBIAS: Well, you talk about you're going to assign some dose reconstruction numbers from somewhere. You're going to get these --

MR. KATZ: Estimate doses, yes.

MR. TOBIAS: But is it only for the Special Cohort group --

MR. KATZ: No, no, we --

MR. TOBIAS: -- or atomic energy plants, or Department of Defense plants also?

MR. KATZ: Absolutely.

MR: TOBIAS: Okay.

MR. KATZ: Absolutely.

MR. TOBIAS: Oh, all right. Thank you.

MR. KATZ: So it's not just for people who work for the Department of Energy, but for all

the AWEs as well.

MR. TOBIAS: Thank you.

MR. KATZ: That's right.

Yes, I'm sorry?

DR. NETON: Could --

MR. KATZ: Oh, can you please --

DR. NETON: Speak into the microphone and identify yourself for the record, please.

MR. KATZ: Use the microphone and identify yourself, just because we need this for the records. Thank you.

MR. RAUCH: Your previous -- Jim Rauch. I'm with FACTS, For A Clean Tonawanda Site.

COURT REPORTER: I'm sorry, sir, could you say that again?

MR. RAUCH: Jim Rauch, R-A-U-C-H. I'm with For A Clean Tonawanda Site, a citizens group formed around the Manhattan Project site in Tonawanda, New York.

The previous slide showed minimum doses likely to cause specified cancers. What dose conversion factors are you using? Are you using BEIR V, VI, ICRP? What's your --

MR. KATZ: So the doses are estimated using a risk estimation program that we're using also for

the dose reconstruction program called NIOSH's Interactive RadioEpidemiologic Program. And it's a program that was fundamentally developed by the National Cancer Institute, and then elaborated by NIOSH to address the particular exposures and circumstances of Department of Energy workers versus atomic veterans, which is what it was originally developed for.

MR. SEBASTIAN: What do you mean by atomic veterans?

MR. KATZ: I'm sorry. Atomic veterans are a group of Department of Defense veterans who were exposed to nuclear weapons blasts.

MR. SEBASTIAN: Oh, you're talking about people who worked for the federal government?

MR. KATZ: They worked for the Department of Defense, as a matter of fact, so they're veterans, they're certified veterans.

MR. SEBASTIAN: What about the private contractors that were involved in the Manhattan Project?

MR. KATZ: So, the --

MR. SEBASTIAN: What about those employees, like this gentleman is saying here, the private contractors like Union Carbide?

MR. KATZ: Right. Those contractors, those individuals are covered under this law that we're talking about, EEOICPA.

MR. SEBASTIAN: I'm not -- no, I understand the law, because OCAW, which is my international union, helped to enact the law. We understand the law. But you put restrictions on it by saying they had to work under the Manhattan Project, haven't you?

MR. KATZ: Oh, let me just explain. The Department of Health and Human Services has a limited role in this all, which is –

MR. SEBASTIAN: Well, all right --

MR. KATZ: -- to do dose –

MR. SEBASTIAN: -- I'll object, but you can't answer that question then, can you?

MR. KATZ: Well, I don't know the details of what you're talking about, that's absolutely true.

MR. SEBASTIAN: Well, here's the details, if you want it, a real simple one. The date from 1940 to -50, if you were not in that area you're not entitled to it. That's what you're saying, that's what your people, the Department of Energy workers making the rule, the Department of Labor

is saying. Because one of our employees was denied that claim because he didn't work, apparently, on the Manhattan Project itself --

MR. KATZ. I see.

MR. SEBASTIAN: -- although he worked on a contaminated site. So we need to know before you get into the technicalities who is involved in this, because we understood that the law was written that it wasn't going to include -- it was going to include the people that worked for the private contractor not on the Manhattan Project but in that contaminated site. Now I see Union Carbide isn't even on your list here.

MR. KATZ: They are on the list.

MR. SEBASTIAN: Not unless you put out --

MR. KATZ: They are on the Ohio, the list for the Ohio meeting that's coming up.

MR. SEBASTIAN: What about here? What about here in Tonawanda?

DR. NETON: I believe that's in the fact sheet, the update that -- there's an update at the back. I believe it lists the facilities that are covered.

MR. SEBASTIAN: Then why are you denying somebody a claim without going into the dose

reconstruction or anything at all, without going into their cancers --

MR. KATZ: Right.

MR. SEBASTIAN: -– only because from 1940 to 1950, if you don’t meet that criteria you're denied that.

MR. KATZ: That sounds like a case -- the Department of Labor, of course, makes these decisions and is running this program, but –-

MR. SEBASTIAN: You can’t answer that, am I correct, then?

MR. KATZ: But -- no, no. But what I was going to say is that in the past -- EEOICPA was passed in 2000, and in the following year they made a number of amendments because they found a number of problems, sort of like the problem it sounds like you're describing. There were a number of problems that they did fix the next year in Congress. Because the Department of Labor cannot on its own sort of go beyond the bounds of the law, the parameters that the law sets it, right? And this specifically sounds like it may be another circumstance where EEOICPA, the law –

MR. SEBASTIAN: The only circumstance -- you

have to understand, the people that worked on the Manhattan Project are mostly all expired. We're talking about the people that worked on those contaminated sites.

MR. KATZ: Right.

MR. SEBASTIAN: Bethlehem Steel, Simonds, and all the rest of them --

MR. KATZ: I understand.

MR. SEBASTIAN: -- including Union Carbide, afterwards were on a contaminated site. What we need to know is why the law excludes them, because you're saying it does.

MR. KATZ: And I'm not saying it does --

DR. NETON: If I might --

MR. KATZ: -- because I don't even know the –

MR. SEBASTIAN: No, no.

DR. NETON: If I may –

MR. KATZ: No, no, no, because I don't know the details.

DR. NETON: If I might interject. I think we're getting off the subject of Ted's presentation. We can have time for this later.

MR. SEBASTIAN: Well, I'm not accusing.

DR. NETON: Yeah.

MR. SEBASTIAN: I understand it.

DR. NETON: Yeah.

MR. SEBASTIAN: What I'm saying is that when you talk about technicalities, there's a lot of people here, including myself, that want to know before you get into the technicalities if you can answer these questions.

DR. NETON: Right.

MR. SEBASTIAN: And I guess you can't.

MR. KATZ: And it sounds like I can't. I cannot answer some of these questions.

MR. SEBASTIAN: I understand it, you're not --

DR. NETON: Well, yeah, I think --

MR. SEBASTIAN: -- you can't answer those questions.

DR. NETON: -- once we get through Ted's prepared remarks, I think we can take some time later to discuss these other areas.

MR. SEBASTIAN: Will you be able to answer those questions with any authority?

DR. NETON: I'm not exactly sure what you're saying here, but --

MR. SEBASTIAN: Well, that's easy.

DR. NETON: -- I think --

MR. SEBASTIAN: It's easy. I'm asking you

why are you putting a date of 1940 to 1950, and saying anybody that's not there that didn't work in Union Carbide from 1940 to 1950 is denied a claim no matter what.

DR. NETON: I think that there is a residual contamination study that NIOSH was tasked by Congress to evaluate, and that we are actively evaluating sites such as that to determine if there was --

MR. SEBASTIAN: You still don't answer my -- look, I don't mean to be abrasive, but you didn't answer the question about the date.

MR. KATZ: No, but --

DR. NETON: I think the date was set by the Department of Energy early on in the process determining of when there was radioactive material at the site and when there was an active contract with the Department of Energy.

MR. SEBASTIAN: That's what I'm saying --

DR. NETON: We're --

MR. SEBASTIAN: -- active contract. I understand --

DR. NETON: But listen me out. We're actively right now investigating those sites to determine if those dates should be extended.

MR. SEBASTIAN: Thank you. I appreciate it.

DR. NETON: We are in that process right now. So --

MR. SEBASTIAN: Okay.

DR. NETON: Okay.

MR. KATZ: So we're doing that –-

MR. SEBASTIAN: I apologize for –-

MR. KATZ: –- and we will be reporting to Congress on that. And then it will be Congress with this information that will be able to change the law that will change -- or the Department of Energy. But that's how that will get fixed, those kind of problems, we hope.

COURT REPORTER: Mr. Katz, could I please have the gentleman's name for the record?

DR. NETON: Yes.

MR. KATZ: I'm sorry, could you just tell me your name, and I'll repeat into the mike.

MR. SEBASTIAN: I'm a former Union Carbide employee. My name is Joe Sebastian. I'm an international rep, retired and semi-retired, working for PACE International, which was formerly OCAW.

And I don't mean to inject in your program that it's not a valuable one. All I mean is that

our people here are very concerned about some of the things that are coming out about dates. It really, really is a --

MR. KATZ: And that's understandable.

MR. SEBASTIAN: Yes. It makes it absolutely unnecessary for us to be here if that date stands.

MR. KATZ: And that's why Congress tasked us to do this study about residual contamination, exactly to address that kind of problem.

MR. SEBASTIAN: Thank you very much.

MR. KATZ: So hopefully we'll serve you well there, too.

MR. SEBASTIAN: Okay. Thank you.

MR. KATZ: Okay, I'm not quite sure where I was. I think I finished with what NIOSH will do to evaluate, and it will prepare a report that will be presented to the Board.

What will happen next is this Advisory Board that I told you about will take up the report that we produced. And they may read the report and the facts that we found and say, you've got more work to do, NIOSH, go back and dig more, whatever. But we'll go through a process with the Board, and that will be a public meeting

which petitioners can participate in. And as a result of that, the Board will come to decisions and give advice to the Secretary of Health and Human Services.

MR. SEBASTIAN: There's one last question -- I appreciate that. Here's one last question.

MR. KATZ: Sure.

MR. SEBASTIAN: If in case you were to be able to change that date, let's say, with your intervention, which we hope --

MR. KATZ: Right.

MR. SEBASTIAN: What would happen again to a claim that was denied? Or should he then -- we are asking this procedurally now -- a claim that has been denied because of the date, should we then put in a petition for a -- what do we call it, for a review or something?

MR. KATZ: Well, my guess is if someone submitted a claim and he was denied based on the date, and the date gets changed as a result of what we're doing here, I would think the Department of Labor would reactivate that claim, because they have the right to at any time reactivate a claim based on new information or changing facts.

MR. SEBASTIAN: Or would it be beneficial to the employee to put that appeal in? They have an appeal process, I understand. Should they –-

MR. KATZ: But they won't even need to appeal it at that point. If the date is changed, Department of Labor, in all likelihood -–

MR. SEBASTIAN: You wouldn’t need to appeal.

MR. KATZ: -- is going to reopen the claim and reconsider it as if it was just submitted.

MR. SEBASTIAN: Okay.

MR. KATZ: That’s what I’m betting. I’m not from the Department of Labor, but that’s in all likelihood how they would operate. They wouldn’t require you to resubmit the claim.

Okay, so at the end of this process of working with the Board, the Board will give advice to the Secretary of Health and Human Services as to whether a class or classes should be added, and what that decision is based on.

And an important point to make to you at this point -- and you will see it in this slide -- we say, definition of class or classes and whether it should be added. The reason that it’s said that way is because after we do a bunch of research about a group of employees, a petition,

we may learn that in fact there is more than one, even though the petition was submitted thinking -- petitioner submitted thinking there's this one class, it may in fact be larger than the class the petitioner realized.

We also may find out that there are really subgroups within that petition, that some classes we have records for, some class, some parts of the class we don't have records on or records for, in which case we would divide, in effect, the petition into separate classes. So we may build a class. It may be larger than what was petitioned for, or it may be divided into separate classes. There's any number of possibilities.

MR. KRIEGER: I'm failing to understand "class." What are you talking about?

MR. KATZ: By "class" I'm meaning a group of workers who are similarly exposed and have a similar situation in terms of the records that are available to be able to estimate their doses.

MR. KRIEGER: Specific jobs that they did, or overall --

MR. KATZ: So it could --

MR. KRIEGER: -- because some of these plants

like Union Carbide and Bethlehem Steel, Simonds Saw, and some of these other sites in western -- I've got a whole page full of them.

MR. KATZ: Yes.

MR. KRIEGER: Those sites are all contaminated, the whole site.

MR. KATZ: Yes, so let me explain.

MR. KRIEGER: Every piece of land out there has got some –-

MR. KATZ: Right. So it could be –-

MR. KRIEGER: –- the last I heard –-

MR. KATZ: -- it could be –-

COURT REPORTER. I'm sorry, gentlemen, I'm sorry.

DR. NETON: Excuse me, yeah –-

MR. KATZ: I'm sorry.

DR. NETON: Could you please state your name?

MR. KRIEGER: But -- my name -- she's got it. Ralph Krieger.

DR. NETON: Okay, thank you.

MR. KRIEGER: These sites were -- we're not talking about defined little areas. We're talking plants that were operational, people were moving all over those plants.

MR. KATZ: Right.

MR. KRIEGER: You're talking dose reconstruction. That’s got my goat so bad, I can’t tell you how much I rolled my dupper (phonetic) on that one. I don't know how you're going to do that.

The Linde site, UF4, green salt, brown oxides, black oxides, orange cake which was dumped off in the yard, yellow cake was dumped off in the yard. These areas were all worked in by the workers. They were set-down areas. The ground was contaminated because they dug wells on Linde and injected into the wells. Now Battelle has already been there. They’ve already done their research. They found it in the ground water and they found it on the surface dirt.

Now how are you going to do a dose reconstruction when the guys at like Linde and other plants were moving around those plants, different jobs over long periods of time? We’re talking long, fifty years of this stuff laying there, and these guys coming to work for forty hours a week on the average, and being exposed to the ionizing radiation. Not alpha, beta, but gamma. Gamma. How are you going to show gamma?

MR. KATZ: So let me just answer you very

quickly –-

MR. KRIEGER: I just want, I just --

MR. KATZ: Yes. You've raised the question, now let me explain.

A petition may be a petition for an entire site. We haven't said that a petition could only be for one group of workers. It could be for an entire site.

MR. SEBASTIAN: Can a union petition for an entire site?

MR. KATZ: Of course, a union or an individual worker or a survivor can petition. It can be for an entire site. Whatever it is, it is. There's no limitation on what --

MR. KRIEGER: I -- let me finish. I've got a letter from Congressman Phelps (phonetic) that deals with this issue.

MR. KATZ: But there's no limitation in terms of the scale of the petition, okay, and there's no -- and we understand that workers moved, moved around the site, and so on. That may be a very good reason to include all sorts of classes of workers within a single petition.

MR. KRIEGER: They're over there cleaning it up –-

COURT REPORTER. I'm sorry, Mr. Krieger?

MR. KRIEGER: They started in 1994.

COURT REPORTER. I'm sorry, I didn't hear Mr. Krieger.

MR. SEBASTIAN: He said they're still cleaning it up.

MR. KATZ: Right, that's right. They are still cleaning the site.

MR. KRIEGER: Still cleaning it up.

MR. KATZ: Okay, so –-

MR. KRIEGER: Go ahead.

MR. TOBIAS: Can I --

DR. NETON: One more question, but I think we just need to finish the --

MR. TOBIAS: Francis Tobias, ex Bethlehem Steel worker, and a union representative and management representative both over forty years' time.

I still feel -- my original question this evening was about what groups this concerns. You very clearly said it was the Special Cohort group. I'm saying -- Ralph knows better than me; I've talked to him and he's a very good guy, very helpful, he knows better than me -- my understanding is the people that are here

represent special plants and contractors under Department of Energy groups, not the Special Cohort groups.

MR. KATZ: No.

MR. TOBIAS: Is that right? Am I confused?

MR. KATZ: No, here's -- yeah, I think I understand the confusion.

MR. TOBIAS: Okay.

MR. KATZ: The law established certain groups to be part of Special Exposure Cohort in the beginning, but what we're talking about here is procedures to add to that group. And they can be added from all these groups that you're talking about.

MR. TOBIAS: Oh.

MR. KATZ: These can all be added to the –-

MR. TOBIAS: Oh, I –-

MR. KATZ: -- Special Exposure Cohort.

MR. TOBIAS: I guess you could have told me that. That was my question originally.

MR. KATZ: Well, I –-

MR. TOBIAS: I was going to get up and leave, because you said only Special Cohort group. We don't represent Special Cohort groups.

MR. KATZ: Well, you may in the future,

right, because –-

MR. TOBIAS: No --

MR. KATZ: –- we may be adding classes of workers that you represent to the Special Exposure Cohort.

MR. TOBIAS: I don't –

MR. KATZ: That's what –-

MR. TOBIAS: -- maybe. Okay.

MR. KATZ: -- that's what this is about, actually.

MR. TOBIAS: Well, maybe I'm a little confused.

MR. KATZ: This is about making decisions as to whether we need to add this class –

MR. TOBIAS: Yeah, that's --

MR. KATZ: -- that class --

MR. TOBIAS: Like Bethlehem Steel could become –

MR. KATZ: Exactly –-

MR. TOBIAS: That could become a Special Cohort –-

MR. KATZ: Union Carbide –-

COURT REPORTER: I'm sorry, gentlemen, but one at a time.

MR. TOBIAS: Oh, yes.

DR. NETON: Yes, one, please, at a time.

MR. KATZ: I'm sorry.

MR. TOBIAS: Am I made to understand that Bethlehem Steel or Simonds Saw or any other, Linde, could become a Special Cohort group?

MR. SEBASTIAN: As a site.

MR. KATZ: They could become an additional class within the Special Exposure Cohort, that's exactly true.

MR. TOBIAS: Yes.

MR. KATZ: And that's exactly what these procedures are for --

MR. TOBIAS: Even though –-

MR. KATZ: -– for making decisions about that.

MR. TOBIAS: I'm sorry, even though originally they were all identified under what, the Department of Energy?

DR. NETON: That's correct.

MR. TOBIAS: Right?

DR. NETON: Right.

MR. KATZ: Exactly right.

MR. TOBIAS: Okay, thank you.

MR. KATZ: I'm sorry that wasn't clear at the outset.

MR. TOBIAS: Okay.

MR. RAUCH: You know, I just -- I'm Jim Rauch, again -- I just have a comment on this business of dates.

Ralph Krieger just pointed out the sites still being cleaned up some sixty years later. That clean-up, by the way, is being undertaken by the Army Corps of Engineers, which is part of the U.S. Army, which is responsible, the direct responsible party for the contamination in the first place.

As far as the dates go, 1940 to 1950 contract years, 1996 and -7 are listed in the reply to a letter of one of the claimants. 1996 and 1997 were years when the Department of Energy was still conducting clean-up before Congress had transferred the program, FUSRAP program, to Army Corps of Engineers. They were doing interim clean-up actions before a record of decision was issued.

These, in our opinion, were illegal actions, first of all. Secondly, these clean-up activities by DOE are now listed as covered, but since Army Corps is on the site doing continuing clean-up, any activities of people that are

contracted by Army Corps are not covered. This is the trouble with this kind of bureaucracy. It's simply somebody wrote down DOE, okay.

The other thing is we're always told when DOE or Army Corps comes in and cleans up these sites that they're protecting the people so they won't be exposed. Whether that means the lead-protective clothing, whatever, badges, whatever to ensure that doses are kept de minimus, okay, why aren't '96 and '97 being covered? It seems to me like some bureaucrat down in Washington just said DOE contractor. Well, DOE was doing clean-up at Linde in 1996, 1997.

DR. NETON: Let me –

MR. RAUCH: Do you actually expect 1996, 1997, to have claimants for two years from contractor, DOE contractors that are cleaning up the site? Do you honestly, Dr. Katz?

MR. KATZ: Again, this is really completely out of my sort of domain. To –-

MR. RAUCH: Will you acknowledge the idiotic bureaucracy of this type of stuff?

DR. NETON: Well, I can answer part of that question. Those dates are being re-evaluated. It was recognized six or eight months ago that

the dates needed to be re-evaluated and re-established based on more firm criteria, such as the presence of contamination, not just the existence of a contract period with the Department of Energy. So those are being re-evaluated.

MR. RAUCH: I would point out that when the press reports ‘96 and ‘97 are covered dates to the public, the public is going to be concerned that those people that were working on those clean-ups were not protected. Were they or were they not protected?

DR. NETON: I don't think really that’s the issue. The reason that those ‘96, ‘97 dates are covered, to my understanding, is that the Department of Energy was on those sites, so it became a DOE facility by the definition in the Act itself. Therefore, if it is a DOE facility it’s automatically covered. It’s not covered because there was an endangerment to health, necessarily. It’s covered because it fits the definition of a DOE facility. So those interim dates now are being re-evaluated, and they may be added. I’m not saying they are, but there is a re-analysis being done for those sites.

MR. RAUCH: Can we assume that -- I'm addressing Dr. Katz -- can we assume that -- would you assume that the activities being conducted by Army Corps now, the workers are protected as well as the Department of Energy?

DR. NETON: We're not here to make that judgment, really. I –

MR. RAUCH: Well, you've opened a can of worms by putting those dates down.

DR. NETON: Well –

MR. RAUCH: Some bureaucrat wrote down DOE dates, '96, '97.

DR. NETON: That was in accordance with the requirements of a definition of a DOE facility within the Act.

I think we are really getting way off. If we could let Ted finish about three or four slides –

MR. RAUCH: Well, this is the silliness of this type of legislation, that really isn't getting the help to the people that need it.

MR. SEBASTIAN: Just let me comment on your answers.

MR. KATZ: Can you use the mike, please?

MR. SEBASTIAN: I'm sorry, okay. Just let me -- I want to read this, or have you read it. I

think it's better if you read it, because you'll see what we're facing. Just read the last paragraph here to the public out here, and see what we're faced with. You'll understand why we're hollering.

MR. KATZ: Okay, what am I reading, first of all?

MR. SEBASTIAN: Read the last paragraph on the --

MR. KATZ: No, but let me explain --

MR. SEBASTIAN: Explain.

MR. KATZ: Let me explain –

MR. SEBASTIAN: Right here.

MR. KATZ: Is this a claim? Is that what I'm reading?

MR. SEBASTIAN: Yes, this is a claim. The individual we're talking about with dates --

MR. KATZ: Okay --

MR. SEBASTIAN: -- forty to fifty, were set.

MR. KATZ: So this is --

MR. SEBASTIAN: But not only that, look at what you're saying and what they are saying. He didn't work on the project. That's why you answered that incorrectly. It just amazes me. We get the --

MR. KATZ: I'm not -- do you want to help me here in which part --

MR. SEBASTIAN: Read the last paragraph.

MR. KATZ: The last paragraph.

(Reading) Roger J. Curtis is not entitled to compensation.

Is that what I'm supposed to be reading?

MR. SEBASTIAN: Let me read it.

MR. KATZ: Just point to the paragraph and I'll read it. I don't know which is --

MR. SEBASTIAN: I'm talking about this paragraph here.

(Reading) In order to receive benefits --

MR. KATZ: Benefits. Let me read this, because then it will be recorded.

(Reading) In order to receive benefits under EEOICPA, a claimant must show that --

COURT REPORTER. I'm sorry, a little bit slower, please.

MR. KATZ: I'm sorry.

(Reading) In order to receive benefits under EEOICPA, a claimant must show that he/she was employed by a facility at a time when the facility was under contract to the Department of Energy for the purpose of providing goods and

services in connection with the production of nuclear weapons.

MR. SEBASTIAN: All right.

MR. KATZ: And that's –

MR. SEBASTIAN: See what our problem is?

MR. KATZ: -- what this discussion was just about –

MR. SEBASTIAN: Right.

MR. KATZ: -- I think.

MR. KRIEGER: See what our problem is?

MR. KATZ: No, I do understand, and --

DR. NETON: I believe we answered that question, that those facilities, those covered dates --

MR. SEBASTIAN: All right. Well, those are the concern of everybody here.

DR. NETON: But those covered dates are undergoing a re-evaluation at this time.

I really think we need to finish up the formal presentation, and then we can get more into the questions. Otherwise I don't think we're going to --

MR. RAUCH: Okay, I'll just say the clean-up is not production of nuclear weapons.

MR. KATZ: But this is --

MR. RAUCH: So whoever figured 1996 and 1997 as eligible years was incorrect. That was not production of nuclear weapons.

DR. NETON: It doesn't matter.

MR. RAUCH: It was clean-up --

DR. NETON: Clean-up facilities are also covered. Even current day facilities under clean-up are covered. Any facility that's operated under Department of Energy jurisdiction is covered, even to this day.

MR. RAUCH: Department of Energy owns the Lake Ontario ordinance work site. It's being cleaned up by U.S. Army Corps of Engineers. It's their problem.

DR. NETON: That I'm not certain.

MR. SEBASTIAN: You've just gone on record --

MR. RAUCH: Well, I'll tell you something. DOE is legally liable here for these sites, legally liable. The Army Corps, you know the Army Corps of Engineers initially contaminated these sites. DOE is legally liable for these sites. DOE is a renegade outfit. They've operated illegally all along, and they show no inkling of change.

MR. FIGIEL: One more question, please.

DR. NETON: One more question, then I really believe that we need to finish this.

MR. KATZ: Can you tell us who you are first, before you --

MR. FIGIEL: Yes, my name is John Figiel. We have a claim, and the claim number is 2935. And I don't know the current status of our claim, if I should file for SEC cohort petition. So it's like I'm stuck between a rock and a hard place. I don't know if I should or if I shouldn't, because I don't know the status of the claim.

MR. KATZ: But then I would understand it to be still being adjudicated by the Department of Labor, is that correct? They haven't given you a decision?

MR. FIGIEL: I haven't had any --

MR. KATZ: That's right, in which case --

MR. FIGIEL: -- communiqués on it, or anything. I'm following it through the web site and the claim numbers, and I understand that the claim will be sent back to Cincinnati probably this week because of the numbers of claims.

MR. KATZ: Right. So what's happening in cases like yours is –

MR. FIGIEL: I surmise that the dose

reconstruction would be difficult.

MR. KATZ: And that's entirely possible. What we will do is attempt to do a dose reconstruction. That's the next step in the process for you. And if, as I explained earlier, if we are unable to do a dose reconstruction for you, that would be the time when we will let you know that you indeed should file a petition.

MR. FIGIEL: So there's no deadline on filing a petition, are you saying that?

MR. KATZ: There's no limitation for you on filing a petition, that's right. You can file a petition at any time into the future. But what I'm saying is that when we determine whether we can do a dose reconstruction or not for you, that would be the time for you then to make a decision about that. Because if we can do a dose reconstruction, then you wouldn't file to be part of the Special Exposure Cohort.

Is that clear to you?

MR. FIGIEL: I don't know when that, any --

MR. KATZ: So you will, in other words, you will get on ––

MR. FIGIEL: -- communication –

COURT REPORTER. I'm sorry, I'm sorry.

MR. KATZ: I'm sorry.

MR. FIGIEL: I don't know when we would get any information that we are in that position –

MR. KATZ: Right.

MR. FIGIEL: -- and then for me to make our next move to file a claim under Special Cohort.

MR. KATZ: I'm sorry, so let me explain that. You will be -- there's a process for doing a dose reconstruction. You will be getting information from NIOSH on how that works, and a major element of that process is for us to conduct a technical interview with you about your work. So you will have an interview with us so we can learn as much as we can from you about your circumstances of exposure and so on. We'll be collecting, and we'll probably -- we will be collecting data from the Department of Energy related to your claim and so on, and we'll be attempting to do a dose reconstruction. And at the end of that process, if we cannot do a dose reconstruction you will be notified of that. If we do successfully complete a dose reconstruction you'll be notified about that as well. You'll get a complete report in either case. So you will know ––

MR. FIGIEL: So you're saying ––

MR. KATZ: You will know when the situation arises, if it does, that we can't do a dose reconstruction, because we will notify you. And then at that point, if we can't do a dose reconstruction we will encourage you to file a petition. So you will get that guidance.

MR. FIGIEL: I understand your answer. But there seems to be such a log jam in Cincinnati on phone interviews to get more information to try to clear up dose reconstructions.

MR. KATZ: Yes.

MR. FIGIEL: There's a huge log jam there.

MR. KATZ: That's true.

MR. FIGIEL: Can you answer?

MR. KATZ: Let --

MR. FIGIEL: Why is that?

MR. KATZ: Let me explain that. Yes, I'll be glad to.

Right now we are doing the dose reconstructions just using in-house staff, health physicists in-house, which is extremely limiting. The volume of claims we're talking about here is -- for any kind of dose reconstruction program -- is totally unprecedented in this country, in the world for that matter.

And we can’t do it with our little staff we have in-house, which is why we’re contracting to get external help to do these dose reconstructions. And we’re at the very end of that contractual process of putting out a contract, at which point we'll have a large amount of help to be able to deal with these claims on a timely basis.

But you're absolutely right, at this point we’re dealing with just a trickle compared to the -- we have 5,000 claims in-house about right now, and again, like I said, a handful of people to do dose reconstructions. So you can imagine the problem there. But that’s why we’ve been working very hard to get a contract out to be able to get help on this.

Okay, let me -- why don’t I continue on a little bit, at least, and then you can ask more questions.

The next step in the process, after the Board advises HHS as to whether to add a class to the cohort or more or deny, HHS will come up with a recommended decision. And it will notify the petitioners of the decision, and if it’s an adverse decision for the petitioners the

petitioners will have thirty days to contest the recommendation of the Secretary of HHS. And after that is resolved, those cases, HHS will report final decisions to petitioners, and if they're positive to Congress.

Congress then has 180 days to expedite or reverse the decision. Congress, as I mentioned earlier, built in this period, this window, in which they would have an opportunity to review our decisions to add a class to the cohort.

MR. SEBASTIAN: I just –-

MR. KATZ: And let me just -- let me just complete the thought, though, please.

MR. SEBASTIAN: I was thinking about number three, report the final decision. You say that's a final decision, but Congress can overrule it?

MR. KATZ: That's exactly true. This is a little strange, but this is how Congress wrote the law, in effect. So Congress said that despite the fact that the President -- or now it has been delegated to the Secretary of HHS -- gets to make these final decisions, Congress wants an opportunity to review those decisions.

And so they can do two things. They can move it along, which I think is a more likely scenario

for Congress if you consider the circumstances. It's more likely that if they have the opportunity they would expedite the decision so it would become effective sooner than 180 days. People have cancer, and 180 days is a long time. But they obviously have the right, because they wrote it into the law giving themselves the right, to reverse a decision that the Secretary makes to add a class to the cohort.

MR. SEBASTIAN: Yeah, I --

MR. KATZ: That's the law –-

MR. SEBASTIAN: I understand.

MR. KATZ: That's just the law.

And then once that 180 days expires, assuming Congress hasn't acted earlier to expedite it or to reverse it, then HHS would work to get the word out to all members it can notify about the results, all members of the class, that the class was added.

Now the Rule also includes a provision for cancelling a cohort addition down the road. And this provision is included in the rule to deal with the circumstance where we unearth a bunch of records that allow us to do dose reconstructions for individuals at a site. So at that point, if

we did unearth that information, we'd go through a process much like considering the petition, that would be open to the public and so on.

And at the end of that line, if we determine that these records will work for doing dose reconstructions, then from that point on that class, or part of that class, whatever the reality might be, would be removed from the Special Exposure Cohort. They would be treated as other cancer claimants under EEOICPA, and they would receive dose reconstructions.

Now when is this petition process going to be in place? When are you going to be able to petition? It's unlikely that you'll be able to petition before January of 2003. What has to happen between now and then is we need public comments on the proposed rule that we put out. Because it is not an effective rule we can't operate by it. And we will then have to rewrite the rule based on what we learn from this, from the public. And then it needs to be approved through all levels, as you can imagine, of government. And at that point it will be published, then, and we will be able to receive petitions.

Just a couple of final points. I have the sense that these are perhaps unnecessary in this case for this group here, but if you have a cancer, someone has a cancer, is a survivor of an employee who had a cancer, they should be filing a claim with DOL now. They shouldn't be awaiting these procedures as a regular cancer claimant. And as I have explained, the advantages, you file a claim now, we'll attempt to do a dose reconstruction. If we can't do a dose reconstruction that already makes your case for your petition, and then there's really no more work for you to do in terms of petitioning at that point. So it makes a lot of sense to file your claim now, and not await these procedures.

And the last point is that we would like your comments on this, on these procedures.

Thank you. Thank you for listening to me. And now we'll just carry on with questions.

COURT REPORTER: Just before we carry on with questions, if I may, just for one second.

MR. KATZ: Again, can you just identify yourself each time you speak.

MR. TOBIAS: Yes. My name is Francis Tobias. I asked some questions before, and I thank you

for your presentation. I think after we cleared the air a little bit, everybody understood a little better where you were going.

I did have some questions that I had written down, and you touched on some of them. I think maybe I'll clear the air. You might understand it, like we represent people from Bethlehem Steel. If you cannot do the dose reconstruction for whatever reason, we automatically fall into the Special Cohort group?

MR. KATZ: If we cannot do the dose reconstructions, we automatically consider your petition. We will encourage you to petition, and you'll get a full evaluation. And if you remember the two requirements for a petition to actually be approved, one of those requirements is that we can't do a dose reconstruction --

MR. TOBIAS: Right.

MR. KATZ: So you know you've already met that first hurdle. And the only question about that will be if an individual tried to get a dose reconstruction and couldn't get a dose reconstruction, the only question will be how many other individuals within that work site facility, whatever, are in the same shoes as that

individual? So that is something that will have to be resolved. But that will guarantee that we will evaluate that petition. There's really -- that's the important point to make.

MR. TOBIAS: Thank you. And I have four or five questions. I don't want to hold anybody else up, but I'll make them quick.

Where will they -- to do the dose reconstruction, where are you going to get this information? If you're first required to do it, where is it going to come from?

MR. KATZ: So –-

MR. TOBIAS: Bethlehem Steel, or –-

MR. KATZ: Yes. It's going to come from Bethlehem Steel in this case, if it's Bethlehem Steel. It's going to come from the Department of Energy, which had contracts with Bethlehem Steel, which will have information in it. And DOE will have other information, potentially –

MR. TOBIAS: Okay.

MR. KATZ: -- about what operated there. It will come from workers who worked at Bethlehem Steel and can tell us about the conditions of work, and so on. It will come from all possible sources.

MR. TOBIAS: Right.

MR. KATZ: If anyone had done a health study, that might serve as a source as well.

MR. TOBIAS: Thank you.

MR. KRIEGER: If I can interrupt this gentleman --

MR. KATZ: Could you –

MR. KRIEGER: -- for just one second?

MR. KATZ: But can you please use the mike, just --

MR. KRIEGER: If I --

MR. TOBIAS: Go ahead, Ralph.

MR. KATZ: It's just very important for the recording that you use the mike and identify yourself each time you speak.

MR. KRIEGER: If I can interrupt the gentleman for one second. I was at a meeting with NIOSH, and -- not NIOSH, but the DOL, and Bethlehem Steel people were there. One of the things that they brought up that was most interesting was not only did the work that sent over there and done on weekends, and then cleaned up so nobody would know what was going on because it was a top secret project. But years after that, as these plants around this area got tore

down, that steel and material that was contaminated, nobody back then was checking it. That went to the steel mills.

COURT REPORTER: I'm sorry, that went to –

MR. KRIEGER: How much of that material, or was there any monitoring ever done about the scrap material that was going in there and being melted down in the blast furnaces that was left over from these other plants? Thank you.

DR. NETON: Steel mills.

MR. KATZ: I'm sorry, the piece you missed is that the steel went to the steel mills from these facilities, is what he said.

MR. KRIEGER: Yes, it was.

MR. TOBIAS: Okay, thank you, Ralph.

MR. KATZ: Yes.

MR. TOBIAS: My next question is has a contract -- I think you did say you're finally getting some scientists to help you, and if you are, are they under contract? Is this work being started?

MR. KATZ: This contract is -- we're in the final stages of awarding the contract right now. So we're --

DR. NETON: I can address that. We have

received the best and final offers from the bidders who are still in the competitive range, and we are in the process of evaluating them right now. We hope to have that evaluation process done in the next several weeks, and then we would undergo contract negotiations. I'm not certain exactly how long those negotiations might take.

MR. TOBIAS: Oh, boy. Okay, thank you.

My next question is the phone interviews that we all keep hearing about, and I don't know, but have they started? If not, when will they start? For instance, when can I expect a phone interview, that kind of thing? Can you comment on that?

DR. NETON: Yeah, we've done a number of phone interviews. I believe we have probably done somewhere round 130 thus far. We're doing them based on -- as we obtain enough sufficient information to proceed with the dose reconstruction. We believe it's important or helpful to have the dose information in hand for the health physicist to review it prior to the phone call, so that we can do some checking. So that has been our criteria thus far.

MR. TOBIAS: Can you explain a little about the format of that phone interview?

DR. NETON: The format elicits some fairly detailed responses to what types of exposure the claimant had worked with in his employment, what radioactive materials were present, the presence of protected measures, equipment, monitoring devices, bioassay sampling, that sort of thing.

Prior to the interview being conducted we do send out a letter that includes a synopsis of the questions that will be asked so that the person can prepare.

MR. TOBIAS: Okay.

DR. NETON: And I believe we at least allow, like to allow several weeks for the claimant to review that and refresh their mind, and then we schedule a phone call at their convenience.

MR. TOBIAS: Well, thank you, thank you. Your answers are very helpful.

In relation to that phone call or the follow-up -- or the prior letter, can statements from eye witnesses, maybe like in our case somebody that worked in 1949 or -50, just as a witness to the conditions that took place at that time, can they be part of that phone interview?

DR. NETON: Oh, yes, that's actually part of the interview process.

MR. TOBIAS: Oh, okay.

DR. NETON: One of the last questions is can you provide us names of co-workers –

MR. TOBIAS: Oh.

DR. NETON: -- who can help fill in gaps in the information. In particular, that's important to us in cases of where there are survivors, and particularly the spouses are pretty unaware –-

MR. TOBIAS: So I –-

DR. NETON: -- typically unaware.

MR. TOBIAS: So I should wait, then, until the call comes, or the letter, before I -- I have a guy that is a witness.

DR. NETON: Yes.

MR. TOBIAS: Should I get a signed statement, affidavit or –-

DR. NETON: No, no. No affidavit is required.

MR. TOBIAS: Okay.

DR. NETON: I have been reminded that the interview question format is on our web site, if you have availability to the web.

MR. TOBIAS: Oh, okay.

DR. NETON: The OCAS web site. So you don't need to wait --

MR. TOBIAS: Right.

DR. NETON: -- for our letter to start looking up those questions.

MR. TOBIAS: Oh, thank you. I think I'm almost done.

Oh, one final question, I think. The original Act, has this been changed -- or Ralph, maybe you have some information on this too -- to include some questions about smoking? I heard this from someone -- I don't know who -- and I was surprised, because I attended all the meetings, and I've never heard this before. But can you comment on that?

MR. KATZ: Yes. Yes, the original Act actually addresses smoking. It wasn't changed to. That was in the original Act passed in 2000. And what it said was in effect that you were to consider other factors, such as smoking, in determining probability of causation for cancer claims.

MR. TOBIAS: Is that in the questionnaire, the questionnaire that is on the web site?

DR. NETON: No, smoking history is not

collected by NIOSH. That would be collected by the Department of Labor.

MR. TOBIAS: Oh.

DR. NETON: It's only relevant for claims that are filed for lung cancer. No other organ sites are affected by the smoking history --

MR. TOBIAS: Okay.

DR. NETON: -- profile.

MR. TOBIAS: Well, thank you very much.

MR. SEBASTIAN: I have a question. We got a compensation case in New York State that we lost because the type of cancer that the individual had that we claimed was caused from the nuclear fallout was not considered the type of cancer that you would get from this in New York State now. However, your statute now makes that type of cancer a possibility that we get that now. So that claim from Compensation that was denied -- unjustly, as a matter of fact -- but that wouldn't have anything to do with your claim here, would it? If this individual's wife were to put in a claim under the federal program?

DR. NETON: No. The person, I believe, if they worked at a covered facility --

MR. SEBASTIAN: We're talking about lymphoma

cancer, I'll just tell you what it is, okay.

DR. NETON: A lymphoma, yeah, I believe it would be covered. Well, it's a covered cancer, providing the person had worked at a covered facility.

MR. SEBASTIAN: Well, I understand everything else. But I was just wondering if that claim from compensation in New York State, denial, would interfere here?

MR. KATZ: No. So the claim from New York will not affect the claim at all, the federal claim that they would be filing.

Moreover, I just would just note for you that there is this additional part of EEOICPA, this law, that requires the Department of Energy to provide a worker advocacy program for claims to state workers compensation programs. And you can get more information from the Department of Energy, but what they have done is set up -- and actually HHS appointed physician panels to help determine whether claims, those claims for state workers compensation programs, whether those illnesses arose from exposure to toxic substances at the work site, radiation sources being included. So --

DR. NETON: But not cancer.

MR. KATZ: So -- yes, no, cancer claims as well. Yeah. So in a case like that, they may be able to go back to the state, having gone through this Department of Energy worker advocacy program and gotten a determination from a physician panel about their cancer, they may be able to go back to the state and file again for New York for compensation, separate from this federal program. This is a state program, but the Department of Energy -- it was established under the same law, and the Department of Energy operates it. It has a new office to operate this program.

MR. SEBASTIAN: Thank you.

MR. GALUS: Hi, I'm Tim Galus. My father was an employee at Union Carbide. He died in 1979, after 38 years at Linde, of lung cancer. I've got four questions here.

One is regarding the original sites that are in the cohort right now, the gaseous diffusion plants, what was special about those sites that got them into this cohort right away that doesn't include Linde and places like that that we're talking about now?

MR. KATZ: So the answer to that question is

Congress decided that those sites would be part of the cohort.

MR. GALUS: I see.

MR. KATZ: So it's very hard for me to answer you in terms of exactly what thinking Congress went through, because there's really not much of a legislative record on how they made those decisions. But this was a Congressional decision, which is very different from what an executive agency, part of the administration, can do in adding groups to the cohort.

MR. GALUS: Because we don't know of any generic dose reconstructions or work that was done at these sites?

MR. KATZ: Well, and --

DR. NETON: I think at the three gaseous diffusion plants there was the presence of residual contamination in the uranium, things like plutonium and neptunium in the uranium, that was determined to have been unmonitored in that work force, so that it would have been difficult to reconstruct their doses because they were not monitored for that. I believe that was the driving force behind that originally. Now how that all played out in the Act, in adding the

SEC, I'm not sure. And Amchitka Island, I really don't know the history behind that.

MR. GALUS: Okay, well the problem I have with that is what you just described is the sites we're here talking about right now. We know there's residual radiation present at these sites, but yet we're not in this cohort yet.

Now my next question was I know through one -- there's one path to start a petition to get into the cohort, and that's after we hear from NIOSH that a dose reconstruction cannot be done. How long before NIOSH decides that they can't do this dose reconstruction?

DR. NETON: That's quite variable, depending upon the level of detailed information that we can find. We are just scratching the surface right now, identifying Atomic Weapons Employers data. As you can imagine, it was kept by private companies, not by the Department of Energy contractors, so that it is more difficult to come by. But I can't give you a definitive answer on that right now.

MR. GALUS: I understand about the thirty days to appeal the petition, I understand about the 180 days before Congress. What I'm trying to

do is get a handle on what's a realistic estimate of when these people can actually expect to receive an reward.

DR. NETON: Well, awards have been -- well, NIOSH does not make awards. We do dose reconstructions. But we have forwarded completed dose reconstructions over to the Department of Labor already, so claims are moving through the system, admittedly slowly at this time because our technical staff is limited. But as we bring on board this contractor, which will substantially increase our ability to process these claims -- we have required our contractor to bid as if they could perform 8,000 dose reconstructions in the next calendar year. We have about fifty five, almost six thousand claims in-house right now. So we hope to eliminate the backlog fairly quickly.

MR. GALUS: Well, I'm guessing, though, that we're out into a year and a half, then, for some of these claims. My father was diagnosed with lung cancer in May, and he was dead seven months later. Someone who wanted to file a claim now wouldn't be alive long enough to collect. That's what it looks like.

MR. KATZ: Yes, this is an extremely disturbing, as you can imagine, situation to us as well, which is that the start-up requirements for this program are large. It's an extremely complex, difficult program. We have the records retrieval business and so on. So we find this very disturbing ourselves, on the other end of the stick here.

MR. GALUS: I've got two more questions. You mentioned cancellation of a cohort in the event that records are found where you decide you can do dose reconstructions. Is that a retroactive change? Say claims are awarded, and then you discover the radiation wasn't as bad as you thought it was. Do these people give their money back?

MR. KATZ: Do they give them back their money back? The Department of Labor -- this is sort of way out of our field for how that gets handled, and I'm not even certain how much the Department of Labor has considered how to address those circumstances. But it would certainly affect prospectively from the point we cancel the class, or part of the class, as being part of the cohort. From that point forward, the rest of the

people who hadn't filed claims already and been compensated, they would then be regular cancer claimants under EEOICPA.

MR. GALUS: Okay, well I suspect my last question, then, is probably outside the scope of what you are here to talk about, but I'd like to ask it anyway.

We did receive a letter from the Department of Labor asking for smoking history, and they only asked for three categories: Non-smoker, former smoker, or current smoker. Do you know how those criteria are going to be used in conjunction with the dose reconstructions? If he's a current smoker or former smoker, is he automatically denied?

MR. KATZ: I'm sorry, did he die of lung cancer?

MR. GALUS: Yes, sir.

MR. KATZ: So what that means, how that will be used is the smoking will be used in determining the probability that his lung cancer was caused by his radiation exposures. As to whether the fact he was a smoker, whether that knocks him out of being compensated depends on how much radiation he was exposed to, though.

MR. GALUS: He was there 38 years, cutting –

MR. KATZ: Right.

MR. GALUS: A long time.

MR. KATZ: No, but -- just the point I'm making is it depends on the radiation dose. The smoking affects the probability of causation, but it's not the sole determinant. It's just one element that's considered within determining probability of causation.

MR. GALUS: Okay.

MR. KRIEGER: Will the gentleman yield the floor for a second?

MR. GALUS: That was my last question. I'll yield to --

MR. KRIEGER: On the issue of smoking, it's amazing. It's absolutely amazing that the government comes up with this smoking issue. Do you know what was in the World War II C-rations that was issued to every serviceman? Cigarettes. Do you know what the Red Cross did during the war, all the wars, basically? What did they do? They issued cigarettes to those people. And now we're dealing with, a lot of these places, with second-hand smoke, which is now coming up with an issue that non-smokers it didn't make any

difference, because they were getting second-hand smoke. Smoking is not an issue here.

The issue is clear, absolutely clear-cut. The site was contaminated with nuclear material, and that's what we're dealing with. We're not dealing with mouses running around floors or anything else. We're dealing with fissionable material that was not contained, that is out in the atmosphere, out in the workplace, and the workers being exposed to it without being monitored. That's the issue. Let's not cloud it with the smoking issue. That really gets my goat.

DR. NETON: I just would like to mention one thing. We've discussed several things related to the Department of Labor this evening, and I do want to point out for the record that the Department of Labor had a representative scheduled to be here to help address some of these questions this evening, but their plane was grounded in Washington, and couldn't make it in time for the meeting. So just so we are aware of that.

MR. TOBIAS: Francis Tobias, once again. About the claims, what claims are being paid,

have any been paid to the Department of Energy workers?

DR. NETON: I'm not aware specifically how the payments have been made, but --

MR. TOBIAS: Well, I mean in that category. There's four categories, right, or five?

MR. KATZ: You mean the claims for Special Exposure Cohort members, current? Special Exposure Cohort members?

MR. KRIEGER: Oh, those, yeah.

MR. KATZ: Is that the four groups you're talking about?

MR. TOBIAS: No, I'm talking about the $150,000 dollar payment.

MR. KATZ: Yes. No, the --

MR. TOBIAS: Did any of those -- now there's different groups, Atomic Energy Workers, Department of -- how many groups are there?

MR. KATZ: Yes, right. A large number of claims have been paid, yes.

MR. TOBIAS: In what groups?

DR. NETON: Special Exposure Cohorts.

MR. KATZ: To Special Exposure Cohort.

MR. TOBIAS: Okay.

MR. KATZ: To people who were covered under

RECA, which is the Radiation Exposure Compensation Act.

MR. TOBIAS: Okay.

MR. KATZ: This is people who were doing –-

MR. TOBIAS: Right.

MR. KATZ: -- uranium mining and milling.

MR. TOBIAS: Okay.

MR. KATZ: And they were already compensated, but this law allowed them to get an additional $50,000 dollars to have parity between people from -- Atomic veterans, in effect -- not atomic -- uranium miners and millers, and these groups under EEOICPA. People with beryllium disease have been compensated. I don’t know all the details, and I don't know the numbers. That’s something the Department of Labor person would have, would have told you about if she had made it here.

MR. TOBIAS: Okay. Because I know our plants are covered under Department of Energy facilities. And that was my question, was there any payments made to employees from those, that particular group?

**DR. NETON: We have completed dose reconstructions and forwarded them to the

Department of Labor for Department of Energy facilities, and --

MR. TOBIAS: Oh, I see.

DR. NETON: And we don't make the final determination, but I suspect that some of those claims would have been compensated.

MR. TOBIAS: Okay. I --

DR. NETON: We don't have knowledge of how the --

MR. TOBIAS: Yes. A follow-up question; I appreciate your answer.

Was the dose reconstruction made for some plants, or all plants? You said you did some dose reconstructions and forwarded that to DOE.

DR. NETON: Right. These are for individuals, individual claimants.

MR. TOBIAS: Oh, for –

DR. NETON: Yeah. We have not done anything with the Special Exposure Cohort.

MR. TOBIAS: Individual claimants under the Department of Energy --

DR. NETON: Energy facilities.

MR. TOBIAS: -- facilities.

DR. NETON: That's correct.

MR. TOBIAS: Okay.

DR. NETON: No Atomic Weapons Employer facilities yet, thus far, have completed dose reconstructions.

MR. TOBIAS: Okay. Thank you.

MR. RAUCH: All right, Jim Rauch. I'm with a citizens group called FACTS, For A Clean Tonawanda Site, which formed in 1994 by Linde workers --

MR. KATZ: Excuse me, the recorder is just having a hard time understanding exactly what you said as to your affiliation. If you could repeat it again.

MR. RAUCH: FACTS, For A Clean Tonawanda Site, a citizen group was formed in 1994 around the clean-up of the Manhattan Project site in Tonawanda, New York.

I'm going to speak mostly to the Linde site, but I'd like to just comment, because there are people here from Bethlehem. I'm a pharmacist, and I've been dealing with nuclear issues since the eighties -- the Niagara Falls storage site in Lewiston, New York, West Valley site, and the Tonawanda site mainly. I'm quite experienced in this area.

I'm appalled by the lies the government has

come forward with repeatedly, and specifically the Department of Energy. That was why I made the inflammatory earlier remarks. There's very little credibility here with the Department of Energy, very little credibility with the federal government in general. I, myself, see these agencies working hand in hand to really frustrate legitimate claims.

With regard to Bethlehem, I was approached by a woman whose father died there, and she sought information from eight federal agencies on his exposure. She sent me some of the data that he obtained. That data showed -- it was air monitoring data -- that showed exposure to uranium at levels 300 times the 1992 standard for exposure in the United States. She wanted my opinion on whether to -- was it worth bothering filing a claim or not. She had been given the runaround by getting information from these agencies. Now it has been glibly stated that you'll get this information from the contractor.

Well, our experience has been just the opposite. You have to go to federal court to get information that the departments have, the Department of Energy has, and won't give to the

public. We had to go to federal court to get the contracts, the Manhattan Project contracts, between the Linde Air Products Company and the Manhattan Project, Army Corps of Engineers, the federal government contracts from the forties.

We were lied to by the Department of Energy representatives. They were representing -- that were representatives for site clean-up that said the Department of Energy had no title to that material that was contaminating the site, residual contamination. The contracts state clearly that the title remains with the federal government.

So all this while, while we are going through clean-up decisions over here in Tonawanda, Department of Energy employees, Ronald Kirk, site manager, lied to the public repeatedly and said that they had no title to the material until they cleaned it up. They are legally liable for this material. They have been from day one.

The contracts retained title in the U.S.A. because they thought there might be some value to the material. Granted the emphasis at that time was all on producing nuclear weapons. Everything else was secondary, and therefore the devastation

wrought on the worker communities was horrible at some of these facilities, absolutely horrible. The public still doesn't know, and largely wouldn't know without the work of a reporter at *U.S.A. Today.*

UNIDENTIFIED: Mike Easton (phonetic).

MR. RAUCH: Okay. This is the state of affairs we have here. It's deplorable. Congress really doesn't give a damn, okay. They react to pressure. That'S why Paducah got it. They react to pressure. When the workers learned there that they hadn't been monitored for plutonium, neptunium, there was an uproar. The way Congress dealt with it was they included them in the Act.

The same thing happened with these formerly utilized sites, when the Congress passed UMTRCA in 1978. The worst ones in the west got enumerated, 22 sites are going to be cleaned up, okay. The rest were going to be added to over a period of a year. They gave the Secretary of Energy a period of a year to add them. No others were added. Linde should have been added, as well as 46 other what's called FUSRAP site, Formerly Utilized Site Remedial Action Program sites. They should have been added but they

weren't. Why? Unless you yell and scream, nothing happens in this country. The government knows damn well what they did to these people. They know, but they're not going to do anything about it until they're forced to, pure and simple.

That takes care of the comment on Bethlehem. I recommended that she file a claim. I don't know what has happened. My recommendation was to get legal help, get her own consultant, her own health physicist, to work this stuff up. My comment earlier to Dr. Katz about what are the guidelines, really didn't answer the question because there's a lot of controversy over what doses do cause cancer. And they've come down repeatedly with re-assessment, have come down over the years.

There's independent scientists like John Gofman (phonetic) who believe the doses are ten -- the official doses are ten times higher than they should be for causation. Okay. That's why I asked the question. It's glib to say we're going to pick the cancers that are going to be most beneficial to the claimant. But still, you are not answering the specific question I asked.

It’s what is your dose of causation, and what is the basis for that?

MR. KATZ: Let me respond to that, then. I did respond to it in a general way, but perhaps you don’t recall.

We have a risk-assessment program that is exactly intended to make those estimates on a case-by-case basis as to the probability of causation. This is something, the probability of causation for each case, the probability that the dose or doses incurred by an individual caused that individual’s cancer.

Now that risk-assessment program is, as required by the law, based on certain parameters that are extremely claimant favorable. And I don't know if you're familiar with it or whether this would make sense to you, but the determination is made on what is called -- and this is going to sound like Greek to some people, I’m sure -- but the upper 99 percent credibility limit for the probability of causation.

MR. RAUCH: Probability limit?

MR. KATZ: Upper 99 percent credibility limit --

MR. RAUCH: Credibility limit.

MR. KATZ: -– of the probability of causation determination, which is, just to sort of try to explain that very briefly, means that you're taking -- well, there is really no simple way to explain this. But you're taking -- probability of causation is a statistical determination. You're doing an estimate. And if you were, say, to have 100 estimates of what the dose -- what the probability of causation was, 100 estimates, you're taking the highest, basically the highest estimate of causation and using that to determine probability of causation.

Let me explain that a little better, maybe. You have 100 guesses as to what the probability of causation was. One guess is that it was 12 percent, 12 percent likely that the cancer was caused by radiation. Another guess is 13 percent, and that goes up all the way from 12 percent to, say, 60 percent, 100 different guesses. What we have basically said -- and Congress required this -- we’re going to make our determinations based on that highest guess.

MR. RAUCH: My point, you're missing my point. The point is that if that 12 or 60 percent was based on a dose that’s one-tenth the

dose that independent health physicists recommend, then that isn't the most favourable. Do you understand what I am saying?

DR. NETON: Yeah, I hear what you are saying. But I think –-

MR. RAUCH: Well, you're talking about statistical probability.

DR. NETON: Right. I think that if you -- the program, the risk program that Ted is referring to, is on our web site. And I would encourage people to go out there and run their own little calculations if they have access to the web.

But all the uncertainty with the risk models is included in this program, so that we allow for a wide -- these risks are not precisely known, so it allows for a wide distribution of these risks. And you run the calculation, like Ted says, and we actually run it several thousand times and developed a range of possibilities based on the science that we know. And we do account for the fact that there are those that say the risk is more, it's more risky or less risky. All those are in there. And then we take the upper end of all those estimates and use that to determine if

–-

MR. RAUCH: I'm speaking about the radiation dose of causation. There's a range there, for –-

DR. NETON: Well, the dose also is input as a range. For example, we are not constrained to put in a single number for the dose. If we don't know what the dose is but we know it's between one and ten, we can say that, and it will sample all of those things.

MR. RAUCH: No, but in evaluating that, what I'm saying is your standard for evaluation is what? When I mentioned BEIR -–

DR. NETON: There is no single value. It's a risk model that's based on probabilities. There is no single risk value in this model. This model samples the science as we know it, and given the uncertainty about those risk values, it's tried to be a very fair –-

MR. RAUCH: When you are doing dose reconstruction you go to a site -- I'm directing this to Dr. Katz -- for example, Linde. You go to a site, and you gather its environmental data, soil concentrations. You gather data off the structure, what the surface contamination is. You gather in picocuries per gram.

COURT REPORTER. I'm sorry, you gather?

MR. RAUCH: You gather in picocuries, P-I-C-O, capital C-U-R-I-E-S. Picocuries per gram. You gather all this information. You then have to develop a dose conversion factor for different routes of exposure.

Okay, say you got uranium at 238 thousand picocuries per gram on the beams of a building that people are working in, okay. You extrapolate out that airborne contamination to ingestion by an airborne route. Or say they're carrying it into the workplace and they're getting it on their food, it's on their hands. They're eating. They weren't warned, okay. It's on their hands, they're ingesting it, okay.

What I'm asking you is what dose conversion factors are you using?

DR. NETON: Okay, I know you've addressed this to Ted, but I'm actually the health physicist responsible for leading all these dose reconstruction efforts within NIOSH. So unless Ted wants to --

MR. KATZ: No.

MR. RAUCH: I'm sorry.

DR. NETON: That's okay. We are using -- and

again, this might get more complicated than people want to -- but we are using the ICRP most current models. We are using the ICRP 66 lung model, and the most recent metabolic models that are available that predict the dose to the worker. In addition to that –-

MR. RAUCH: I just would say I asked that specifically, whether it was ICRP, and I didn't get the response.

DR. NETON: I'm sorry, I probably didn't hear that.

In addition to that, we are also allowing for the fact that the different types of radiation are more efficient at causing cancer than others. We have taken the ICRP radiation weighting factors and actually developed our own distributions about them, allowing for the fact that we know that those aren't certain. So we've actually done a lot to modify that and be more claimant favorable in that area. So there are a number of things that we have done to do this.

MR. RAUCH: Okay. I have a number of comments, so if there are other people that have to leave, just go right ahead.

DR. NETON: Yes, it might be best if we

rotated a few, just so we allow time.

MR. GALUS: I would like to ask one question. Tim Galus again. My father worked at Linde from 1941 to 1978, so that's basically nine of the ten Atomic Weapons Employee years -- and I think the DOE years are uncertain -- but it's nine of the ten Atomic Weapons.

When you do your dose reconstruction, are you only going to consider his exposure during those nine years, or will it be for the entire 38 years that he worked at the site?

DR. NETON: It will be for the entire time period he worked at the site, up to the date of diagnosis.

MR. GALUS: Okay, so --

DR. NETON: So, yeah, all exposure is covered. As long as you are considered to be in the covered work -- employed in the covered period, then your dose is estimated all the way up until your date of diagnosis, no matter what the covered period is.

MR. FIGIEL: John Figiel again. I was on your web site, the NIOSH web site, and I found a terminology that -- if you could explain it to me, the terminology is default values in

compensation. Is there another avenue that we're going to see later on --

DR. NETON: Okay, I'm not --

MR. FIGIEL: -- as opposed -- the lump sum was one hundred and fifty. Is there going to be -- will that be broken down at another time and place?

DR. NETON: No, no. There is only one lump sum, $150,000 dollars.

I believe the default values that you read are referring to the default values that we may use in doing dose reconstructions. If we don't know, for example, the particle size that was in the air, there are certain default values in these ICRP models that I just referred to state are appropriate to use or suitable to use for an industrial environment, so we would pick those values. And where we don't know any better, we will actually pick the most conservative, claimant favorable default values.

If we don't know -- if the material was -- if we have to pick between a material that's very insoluble or very soluble in the lung and we don't know any better, we will pick the most insoluble material because that would deliver the

largest dose to the lung, if the lung was the organ that developed cancer. If it were some other organ we would look at that and run all possible models, and err on the side of being claimant favorable.

MR. RAUCH: Jim Rauch continuing here.

I wonder, commenting on this petitioning for a Special Exposure Cohort status, that happens after a dose reconstruction cannot be accomplished, okay. Now I wonder if other people see the irrationality here. If you can't do dose reconstruction, then the wording is if you petition for Special Cohort is if a determination is made you are likely endangered. I know you've explained that, you've explained likely endangered. But presumably you need some information to determine likely endangered. What is that information?

MR. KATZ: So you still need some information about, for example, the source term, what people were exposed to.

MR. RAUCH: We asked for that in 1993 from DOE. What is the source term at Linde? What is the source term in curies at Linde? Well, we don't have to tell you that, because we're doing

clean-up. That isn't the issue here in the record of decision of an EIS. We're doing clean-up; that is immaterial. Well, it isn't immaterial now, is it, for the workers?

MR. KATZ: It's not, it's not immaterial. That's correct. And that's the sort of information we expect to be getting from the Department of Energy.

MR. RAUCH: Good luck to you. You're going to need a lot more luck than we, who've been at it ten years. I'll tell you that. I'll tell you that.

I think myself -- this is my own opinion, myself -- and you as a professional, or both of you as professionals, should be squirming a lot, because you're working for an employer that has no ethics. None, zilch, nada. How does it feel? It's a rhetorical question. This is pure politics. Special cohort, likely endangered, pure politics. That's all it is, pure politics.

You have to have information to determine likely endangered. You can't determine it without information. You failed to be able to do a dose reconstruction. What level of information is necessary to do a dose reconstruction? At

what point do you determine you can't do a dose reconstruction? What do you need, specifically speaking? In generalities, but be as specific as possible. Do you need the data from DOE on the rafters? Do you need the sump data at Linde? Do you need the injection well data? The millions of gallons and the curies in the ground? Do you need people on Two Mile Creek Road there, they're watering their garden from contaminated aquifer. Do you need that data?

DR. NETON: The answer is, in general, we need all of that information at some point. But each case will be very specific, depending on the type of cancer and the potential for radiation exposure. I can imagine very different scenarios for someone who is actually running a lathe, grinding uranium or lathing uranium, versus someone who was maybe engaged in more administrative activities not in the production area. You would require possibly a different level of information to accomplish those dose reconstructions. Also for the cancer type, the dose reconstruction, the amount of information is variable.

MR. RAUCH: Which one requires more? I'm not

clear what you're saying. The administrative white-collar worker, or the lathe operator?

DR. NETON: Well, they require different types.

MR. RAUCH: Well, how different?

DR. NETON: Well, the airborne concentrations, I suspect, would be more known in the worker grinding on the lathe. The white-collar worker would require a different set. Possibly environmental data would be all that would be required, if we knew that there was no airborne activity present in the administrative areas above or below a certain level. We could use the default value and say, assume that it's below a certain level. We wouldn't have to go back and reconstruct as precisely, possibly.

It also has to do with the latency period of the cancer. There are requirements, as the cancer for leukemias, if the cancer occurs well after exposure, the probability of causation diminishes; versus solid tumors, the probability of causation increases. So one needs to look at all these factors to determine how --

MR. RAUCH: We should stay with the lathe operator a little bit longer.

DR. NETON: Okay.

MR. RAUCH: Explain to me, if the air monitor is not in the corner where he's operating, is that what you're trying to say?

DR. NETON: Right.

MR. RAUCH: That you're going to say that he's not eligible?

DR. NETON: No, no. Not at all. We would take --

MR. RAUCH: Are you going to exercise a Draconian reduction in his exposure?

DR. NETON: Well, we would do our best to estimate or extrapolate the air concentration in the work area based on air monitoring data. That is the best we can do. Now --

MR. RAUCH: This is sort of reminiscent of this woman's problem with Bethlehem.

DR. NETON: Right. Again, I don't want to get into real specifics with dose reconstructions, but in a particular case, for example if the material is extremely insoluble uranium -- and maybe we're getting too technical; I'll just go on this one example, though -- if it's very insoluble uranium and it's judged that it never or very slowly leaves the lung, and

someone develops a cancer outside the lung region, for example prostrate cancer, where uranium was known not to concentrate, one does not need to be as precise because the dose to the prostate gland might be very small, even given fairly large exposures to uranium, because it never left the lung. So we make adjustments on how much information and how far we refine this process.

MR. RAUCH: And on the other side of the coin, if you didn't have that information you'd err on the side of the claimant insofar as potential exposure?

DR. NETON: Right. If we didn't know if it was soluble or insoluble we would assume in that case that it was soluble, and we would calculate the dose to the prostate gland based on the solubility --

MR. RAUCH: And of course, this is all the government's word we have to trust, because most people are not going to to know, unless they go through like we have, whether the compounds were soluble or insoluble uranium compounds.

DR. NETON: Right, and --

MR. RAUCH: So it's going to be their faith

in the government who has been lying to them all along.

DR. NETON: I will say the dose -- each dose reconstruction report that is generated will describe in some detail all the default parameters that were used, why we chose them –

MR. RAUCH: This is a government that fed plutonium to unsuspecting people, okay. Why should people believe them? I recommend that everybody here that files a claim get an attorney, okay, and take this -- if you have a long record of exposure you get yourself an attorney, and you make this thing work for you. It’s the only way you're going to get anywhere. And there’s a lot of attorneys out there pro bono that will take this stuff on, more and more, and if you can get a class together all the better. Get a class together and really go after them, because that’s what you need to do. It’s sad, but it’s true. I'll continue with my other comments.

Mr. Galus earlier talked about smoking and being questioned on criteria there. Earlier Dr. Katz said at least as likely. Could you explain when you say at least as likely, specially that

reference to smoking by a worker here, but at least as likely to have been caused by cancer or -- to have been caused by radiation induced causation, or some other environmental cause of the same cancer. Is that like a 51 percent chance?

MR. KATZ: That means 50 percent chance, but then as I noted, that is using the upper 99 percent credibility limit. So in reality, that might be a 12 percent chance because you're giving all the uncertainty, in effect, to the benefit of the claimant, all the uncertainty about that probability of causation.

MR. RAUCH: I'm not sure of that. That's your comment. I'm not sure, at all sure of that, unless --

MR. KATZ: Well, but that's just a plain statistical --

MR. RAUCH: -- unless we know what these specific guidelines are. The actual implementation of this dose reconstruction is really where the rubber meets the road on this. That's where it really -- and people have got to get up to speed on that or get their own health physicists.

Can you talk about that a little bit? You spoke of guidelines earlier to determine if a dose reconstruction is possible. Speak to me a little bit about specifics relative to Linde.

DR. NETON: Well, if there is no monitoring information but only a very scant knowledge of the source term -- I mean within an order of magnitude, say, for example -- we can establish that the source term was some level. And it appears that that source term was sufficient to have potentially endangered the health, or had been as likely as not -- could have as likely as not been the cause of the cancer in that class.

MR. RAUCH: So at Linde, a hundred curies or a thousand curies could be the source term?

DR. NETON: It could be.

MR. RAUCH: Okay.

DR. NETON: That's your example. But I'm saying it could be an order of magnitude. But if it's sufficient magnitude to, if generated in the most claimant-favorable scenario, which would be a large airborne release of that material that we couldn't establish actually occurred or not -- I mean, we just don't know, but it could have happened -- then that would be a case where we

couldn't do a dose reconstruction; we would just be guessing. But at least the conditions were such that the exposure could have been large enough to have generated a probability of causation.

MR. RAUCH: The problem is, sir, at these sites the nature of the release is not a large airborne release. It's not a one-time occurrence. It occurs through many routes over a period of years.

DR. NETON: That's correct, and each of these routes would be evaluated. For example, the --

MR. RAUCH: That is not a simple task.

DR. NETON: Well, we -- I agree. That's not simple. Certain pathway --

MR. RAUCH: You know what Congress has ordered here? Congress has ordered the impossible. Basically they're trying to correct, they're trying to make repayments to injured workers and their families, while all the while lying to these people and telling the community and the workers that it's safe, and lying to the public that's trying to get the site cleaned to a safe level. By the way, Linde's level of clean-up that the Army Corps in its infinite wisdom

decided upon finally --

COURT REPORTER. I'm sorry, sir, that the Army Corps –

MR. RAUCH: The Army Corps of Engineers in its infinite wisdom decided on finally was ten to fifty times the recommended clean-up level that the Department of Energy had requested for that site. So this is really not a clean-up, according to the record of decision. This is what the *USA Today* article said: 600 picocuries surface per gram, 3,021 picocuries subsurface is going to be left behind under the record of decision at Linde. Army Corps says, trust us, we're going to clean it up so it's safe. But that's what the law, that's what the record of decision says: 3,021 picocuries per gram can be left six inches below the surface on that site. That's their clean-up level.

Sites everywhere else in the Nuclear Regulatory Commission clean-up level is 10 picocuries per gram for natural uranium. That's the clean-up. All these decay chain members, therefore, are five picocuries per gram -- five for thorium, five for radium, okay. That's what the legal clean-up should be at Praxair's owned

Linde site now.

Praxair, who I don't believe is here tonight, has the legal authority to go ahead and sue the federal government to get clean-up to 10 picocuries per gram. Have they done it? No. They're getting government contracts. The whole thing is the money here, folks. The government doesn't want to pay money, but they don't want to have unhappy voters either.

DR. NETON: We're running short on time. Is there anyone --

MR. RAUCH: Thank you, I've had my say, I guess. But I would just recommend that people get attorneys, get their own expert witness, expert health physicists.

DR. NETON: I think we can entertain several, a couple more questions, maybe, and then we will wrap it up.

MR. KRIEGER: My name is Ralph Krieger, Vice-President, Amalgamated Groups, Local 1-00277, former President, Local 8215 OCAW.

The report that was supposed to be issued by NIOSH compensation program is Section 3151 of the Defense Authorization Act 2000. That, from what I understand, was supposed to be out by June this

year, as to the last I've heard that report has not. And that report is, as it reads here:

(Reading) Finally, the provision would require the National Institute for Occupational Safety and Health to conduct a study in coordination with the Defense Department, DOE, the Department of Labor, to determine whether there is sufficient residue contamination at beryllium vendors or Atomic Weapons Employers facilities that have caused or substantially contributed to cancers or beryllium illness covered -- illness of covered employees.

The interim report was due 180 days after the enactment of the Act, and the final report is due one year after that date. You have failed to do that, have you not? Yes or no? It's a yes or no answer.

MR. KATZ: I'm going to answer the question the way I please, but the residual contamination report, this is the report that Jim has been discussing. And it is completed, the interim report, which is required to be done within 180 days. It is hung up in clearances going through upper levels, but it will be delivered to Congress shortly.

MR. KRIEGER: I don't know. I –

MR. KATZ: But it is completed.

MR. KRIEGER: I talked to Senator –-

MR. KATZ: We did complete the work.

MR. KRIEGER: -- Clinton’s office. And they tried to get the interim report, and your agency refused to give it to them.

DR. NETON: Yes, that –-

MR. KRIEGER: You don’t have to answer that. That’s a fact. So basically your report is not finished.

Now we’ve had a lot of discussion on the different cancers. I’ve got only two pages out of a very large article or law, part of the law, and it says under Section (c):

(Reading) Individuals designated as part of the Special Cohort by the Secretary of Health and Human Services, in accordance with Section 3513, 21 specified cancers, the term “specified cancer” means the following:

a) Leukemia, other than chronic lymphatic leukemia.

b) Multiple myeloma.

c) Non-Hodgkin’s lymphoma.

d) Cancer of bladder, bone, brain, breast,

male and female; cervix; digestive system, including the esophagus, the stomach, and small intestines, bile duct, colon, rectum, and other digestive organs; gall bladder; kidney; larynx; I can't pronounce the other one, but it's for the throat; or other respiratory organs. Liver, lung, male genitalia, nasal organs, nervous system, ovaries, pancreas. Wouldn't you know, prostate. Your report.

And tonight I heard here that the prostate wasn't even on your list, and it's not on your list.

DR. NETON: I'm sorry, I was misunderstood. Prostate is a covered cancer under the Act. I was -- in that context I was doing a specific example about what level of dose reconstruction we would perform based on the type of material a person inhaled, and how it was distributed in the body.

MR. KRIEGER: In your vast experience on prostate cancer, have there ever been any studies ever done of nuclear plant workers -- I'm talking like Oak Ridge, Savannah River, other locations that are severely contaminated, severely contaminated by highly -- Rocky Flats, just to

name a few. Is there any study done that they have found a heavy metal in the prostate?

DR. NETON: Not to my knowledge.

MR. KRIEGER: No. So in order to get prostate cancer it would have to be basically by gamma radiation, would it not?

DR. NETON: I think that would be the more likely route of –- yes, to receive a dose to the prostate gland, yes.

MR. KRIEGER: Okay.

DR. NETON: I'm not saying that's impossible, but I'm saying that it would be more likely to be more heavily irradiated by external exposure than internal exposure from a heavy metal.

MR. KRIEGER: Yeah. And the other ones are the salivary glands, thyroid, uterine, urinary tract or urinary organs, and uterus.

Now that's your report on one of your articles. I'll give it to you. You may have it. It's a very lengthy report, of course. I'm going to ask a number of questions that probably would be provoking or confrontational, and I really don't want to get into that.

But one thing that was interesting that Mr. Rauch was bringing up, we are really going into

what I would call protracted, very lengthy process here. And the bottom line is to make sure the worker doesn't get paid. That's the bottom line. Yeah, the workers got paid. We know who got paid. And that's fine.

But the bottom line is to see did other locations -- because we all know how many locations there are, don't we, because that was in the *USA* report. There's 550-some-odd sites throughout the United States that were left contaminated to various degrees to whatever they were working with.

Now the interesting fact that Jim had brought up, I think when I last looked there was like over five hundred and some odd million dollars so far this last year or so that was dedicated to the cost of this program. Is your cost here tonight, your people being here tonight, is that coming out of that money? Or is it coming out of a separate fund?

MR. KATZ: Our cost of being here today is coming -- Jim, since Jim is an employee of this program, his cost comes out of the source funds we get to administer EEOICPA, absolutely. Other individuals are here as parts of -- other parts

of NIOSH are coming out of NIOSH general funds. In any event, this all is coming from the U.S. Treasury. It's all coming from the same place.

MR. KRIEGER: So, but the answer to the question is, is the money that you're spending today to be here at all these different locations explaining this program, and all the monies you're going to expend trying to prove these different locations and individuals, is going to come out of that money that was actually earmarked for the employee and their families?

MR. KATZ: And the answer is --

MR. KRIEGER: Is it not? Yes or no?

MR. KATZ: No.

MR. KRIEGER: It's not?

MR. KATZ: No. It's all --

MR. KRIEGER: There's another fund, then, right?

MR. KATZ: This is all coming from the U.S. Treasury. There is no limitation on the funds to compensate employees under this program.

MR. KRIEGER: Oh, there is a limitation. Congress put a limitation on it. They only allotted $500,000 for -- I think this -- I don't know what it is for this year, but it's five

hundred some odd million for this year or last year.

MR. KATZ: Let me –-

MR. KRIEGER: I don't remember which one it was.

MR. KATZ: Let me explain. This is -- may I explain?

MR. KRIEGER: Yes.

MR. KATZ: This is actually mandatory funding this program, which means it’s treated just like Social Security. The checks go out regardless. There do not have to be funds appropriated to pay claims for this. The Treasury writes the checks regardless of the number of claims that have to be paid.

MR. KRIEGER: But the American taxpayers, which are you and I, and everyone sitting in this room, are paying that bill.

MR. KATZ: Absolutely.

MR. KRIEGER: What is the cost effectiveness of that? With you spending all this money and all this time to prove a point, to prove whether they had the radiation, or if radiation did cause the cancer. Take an individual, and you do that. I’m just going to take one individual. And you

have to go a site, say, Bethlehem Steel. What would be the estimated cost for one individual for your department to do the entire research that is necessary for them to get the $150,000 dollars?

MR. KATZ: I can't give you a figure for that. That will differ so dramatically case by case. But when we are getting information we will actually be getting information -- in most circumstances we'll be getting information that will serve our dose reconstructions for large numbers of people, not for just individuals. So the work we do for an individual claim, to do a dose reconstruction for an individual claim, will serve us for other -- the co-workers at that site, and so on. That information we collect will be useful for many other claims. So --

MR. KRIEGER: But technically speaking, you said that before, if I heard you correctly, that each individual, each site and each individual -- you mentioned a machinist, for example, versus a white-collar worker in the office. There's going to be a difference there. You can't use that same criteria, so you're going to have to have a different criteria. So for each one of those

cases, in order to be correct, has to be done on an individual basis.

MR. KATZ: That –-

MR. KRIEGER: You can't go, well, the machinist was over here, he was doing that. And let me say, how are you going to deal with the nuclear pile that was sitting out in the north parking lot blowing all over the place –-

MR. KATZ: Well –-

MR. KRIEGER: -- 365 days a year, where people worked in that parking lot? And there were white-collar people that went in there. Now how are you going to do -- how do we know how much was coming off that pile? We don't know how much was coming off that pile. We don't know what was there. Was it a white-collar worker?

But now, say myself now. White-collar worker was there. I worked at Linde. I worked in maintenance. I worked in Building 30. I cut the roof leaders down in Building 30 while the people were still in the building. Roof leaders are the drains off the roof. They were rotten. They were five inch pipes. I cut them down. I put them on a cart. I was going to scrap them. You know what I was told? No, not until the

technician comes over with the geiger counter and reads it. I was told to put them behind a building and leave them. They finally end up on a nuclear pile. The DOE finally took them out. But I cut them down.

Now how are you going to do my dose reconstruction on that pipe? I'm not sick yet. I've got black marks on my lungs, but I'm not sick yet. But I'm just saying, how are you going to do those dose reconstructions? The time spent down there -- and God forbid, I'm not faulting you. Don't say that. I'm not faulting you.

One thing I do not -- because Tommy and myself went to Washington, D.C. We were part of the people who lobbied down there, okay. I don't want to see people getting this -- a program that doesn't do nothing, do nothing, because the people who worked this program or worked on these sites were veterans, and they worked for the government. They fought for the government. And I don't want to see anybody get a free ride on that over their bodies. That wouldn't be right, either.

But again, there's an expense here that I keep seeing going out there that the American

taxpayers are going to be paying. And we need to get a simpler method here and a better method.

Now in closing, because I know everybody wants to leave, I'm going to give you a copy of something. It's the *Buffalo Evening News,* August 6th, 1995. It is the front page of the *Buffalo Evening News,* Monday, August 6th, 1945. The first bomb, which it tells you didn't work all the way –

COURT REPORTER: I'm sorry, sir, I can't hear you, I'm sorry.

MR. KRIEGER: Tells you it didn't work all the way. There's an interesting -- I highlighted it in yellow for you -- a young doctor who went to Nagasaki, and here's a quote:

"It is much worse than just a physical blast." -- that's a quote -- said Dr. Fred Snell -- S-N-E-L-L -- of Eden, New York. He's a biophysicist, Professor Emeritus, from the University of Buffalo. He was a young doctor at that time. "Radiation paralyzes the immune system." That's where he saw most of the deaths, was the immune system breaking down.

So I would urge you in fiscal responsibility, before you start looking at everybody ripping

everything off here, to kind of cut down. Because when you use physicists and other chemists and other people like that, that's money. Not that they shouldn't be employed, but I'm not employed. They got rid of me over at Linde. Can't imagine why, a nice guy like me. But anyway, I'm going to give it to you. And I don't know if the good doctor is still alive today or not, but that was his observation from ground zero.

I thank the audience for staying. There is a lot more that I'd like to go through and beat you up on, but the main issue here is the cost-effectiveness of the program. And when Tommy and I went to Washington and lobbied, it was basically pretty relative. It was that if you could show that you worked on the site and the site was still contaminated -- I don't know how you're going to do Linde, because they're over there cleaning it up, except they can't -- well, you can't clean up the wells. They're going to stay there forever. It was very, very basic. You're complicating it to the point of infinity. Not only that, but you are frustrating many older people who I deal with who call me up whose

mothers, whose fathers died of cancer there. And the thing is so complicated for them because they can't get the information. Linde's one of the fortunate plants around that it still has that, and they still have some union members that know what the heck was going on there, because my father was President for thirty years there. And he worked, or was in the Manhattan Project, because he was President of the union, had to go in there because it was -- he's the only one who had security clearance, along with Butch Wall. So he was there. He had the plant operations. He knew what was going on.

But a word of advice. I'm getting short here on patience. And if I do that, I'm going to bring the hammer down on you real hard. And I will do that, because you are taking money away from the American taxpayers, and you are taking money away from people who actually deserve it. I have a veteran that's wearing a bag now who fought in the Pacific campaign. He was a marine. And he's suffering terrible. And I don't know how long he's going to last, and that's not right.

DR. NETON: Okay, thank you for those

comments. We've pretty much run out of time here, we've used up our allotted time for –

MR. RAUCH: Excuse me, I have one more comment to make.

DR. NETON: Okay, this is the last --

MR. RAUCH: This is a specific comment on the proposed rule.

DR. NETON: It needs to be fairly quick. We're over our time.

MR. RAUCH: With regard to Special Cohort at the gaseous diffusion plants, there's been a description of this standard as a bright line standard of proof, and that is the standard that's been employed there is if they worked at a site for more than 250 days and were employed in job categories which monitored or should have been monitored with dosimetry badges for radiation exposure.

I think this is sort of what Ralph is getting at. Here we have a designated group for which doses are not known, and they're being included. A lot of these plants that operate, for example, the ceramics plant at Linde, operated under production constraints. They were to produce uranium dioxide as fast as they could, okay. The

monitoring that was done was minimal, absolutely minimal, as far as we can determine. At places like Harshaw, where there was some monitoring done, the exposures were terrible.

DR. NETON: We need to wrap it up here.

MR. RAUCH: So my point is a rational point, that let's stop the politics, okay. And let's provide awards to the exposed workers at these sites during the covered period under the war -- under the Act and their survivors, and their survivors, their grandchildren; and let's expand the program to cover people like Ralph and Tom, who worked in these facilities that weren't monitored.

By the way, I should point out as a matter, a point of law, that under UMTRCA Linde was not included as a designated site because it had -- the material was licensed by the State of New York.

DR. NETON: Okay, I think --

MR. RAUCH: That license was terminated illegally in 1996, okay. In other words, because there was supposedly control being exercised over that site -- let me just finish, sir, because it's a very important legal point that any

attorneys that may want to pick up on this may want to follow. Because that site had a license from the State of New York Department of Labor, that was the excuse. A licence is supposedly control of the material so that people, workers and the public, is not adversely affected. That's the sole purpose of a license. Sole purpose of a license. That's the legal reason for having a license.

Because that facility had a license in 1978 when UMTRCA was passed, the Uranium Mill Tailings Radiation Control Act, the Linde site was not designated for clean-up because they felt there was adequate control by the license. We went to the Department of Labor. The Department of Labor told us that that license was just for record keeping purposes. We've interviewed a number of workers. The workers told us that the people weren't monitored. The buildings were not adequately signed, according to New York Code 38, and yet supposedly there was a license.

Well, in 1996 the Department of Labor, State of New York, in its infinite wisdom, decided to just terminate that license for that FUSRAP uranium material -- terminated it without meeting

the decommissioning standards of their own code rule. Okay, they terminated it. This is for your own information, Dr. Katz. They terminated that license, illegally terminated it, and said that because DOE was cleaning it up now they didn't have to continue to license.

This is the kind of government you have, people. The license was to control the material and protect the workers. It didn't. In that non-contracted period from 1950 all the way up through the nineties, people were exposed there. We don't know what their exposure was. We know the site is heavily contaminated.

Thank you.

DR. NETON: Okay, thank you. Thank you for those comments.

We are definitely out of time now, so we need to conclude our formal meeting here. I would encourage anyone that wants to stick around, NIOSH staff will be available for answering any questions for a brief period of time after this meeting is over.

Again, we thank you for coming here tonight. We appreciate you taking the time to provide us comments and input on this proposed rule. That

concludes the meeting. I thank you for coming, and everyone have a safe drive home.

- - -