

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.

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P R O C E E D I N G S

1
2 DR. NETON: Good evening, ladies and
3 gentlemen. I think it's time to get started.
4 I'd encourage everyone to move up if you are
5 sitting in the back. There's plenty of room here
6 this evening for all.

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

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

25 With me this evening is Ted Katz, to my left

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

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

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

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

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

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

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

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

1 scheduled to be completed by 9:00 o'clock this
2 evening.

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

5 Yes.

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

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

13 DR. NETON: That's correct.

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

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

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

25 DR. NETON: Well, it was publicized through

1 the local media, the radio stations --

2 MR. TOBIAS: Oh, it was?

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

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

12 DR. NETON: Ted's presentation?

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

15 MR. TOBIAS: Okay.

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

21 MR. TOBIAS: Okay, thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The first criteria is that you can only add a

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

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

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

25 One other requirement that's important that

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

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

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

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

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

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

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

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

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

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

25 But if we've attempted to do a dose

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And then NIOSH technical staff will judge

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

10 So we have gone from the law said "endangered
11 health," and we have gone specifically to we are
12 going to determine what level of radiation is
13 reasonably likely to cause specified cancers.
14 Why are we doing that? We're doing that because
15 you can only be compensated under EEOICPA if
16 you're part of the Special Exposure Cohort for
17 specified cancers. No other health condition
18 will be compensated as part of the Special
19 Exposure Cohort. And also, we have a way of
20 determining likelihood that a cancer is caused.

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

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

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

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

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

1 You would like to ask a question now?

2 MR. TOBIAS: Can I ask a question?

3 MR. KATZ: Yes, yes, go ahead.

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

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

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

14 MR. KATZ: Estimate doses, yes.

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

17 MR. KATZ: No, no, we --

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

20 MR. KATZ: Absolutely.

21 MR: TOBIAS: Okay.

22 MR. KATZ: Absolutely.

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

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

1 the AWEs as well.

2 MR. TOBIAS: Thank you.

3 MR. KATZ: That's right.

4 Yes, I'm sorry?

5 DR. NETON: Could --

6 MR. KATZ: Oh, can you please --

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

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

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

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

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

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

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

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

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

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

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

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

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

22 MR. KATZ: So, the --

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

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

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

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

13 MR. SEBASTIAN: Well, all right --

14 MR. KATZ: -- to do dose -

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

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

20 MR. SEBASTIAN: Well, here's the details, if
21 you want it, a real simple one. The date from
22 1940 to -50, if you were not in that area you're
23 not entitled to it. That's what you're saying,
24 that's what your people, the Department of Energy
25 workers making the rule, the Department of Labor

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

4 MR. KATZ. I see.

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

14 MR. KATZ: They are on the list.

15 MR. SEBASTIAN: Not unless you put out --

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

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

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

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

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

3 MR. KATZ: Right.

4 MR. SEBASTIAN: -- only because from 1940 to
5 1950, if you don't meet that criteria you're
6 denied that.

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

10 MR. SEBASTIAN: You can't answer that, am I
11 correct, then?

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

25 MR. SEBASTIAN: The only circumstance -- you

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

5 MR. KATZ: Right.

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

8 MR. KATZ: I understand.

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

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

14 DR. NETON: If I might --

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

16 MR. SEBASTIAN: No, no.

17 DR. NETON: If I may -

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

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

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

24 DR. NETON: Yeah.

25 MR. SEBASTIAN: I understand it.

1 DR. NETON: Yeah.

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

7 DR. NETON: Right.

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

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

11 MR. SEBASTIAN: I understand it, you're not
12 --

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

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

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

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

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

23 MR. SEBASTIAN: Well, that's easy.

24 DR. NETON: -- I think --

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

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

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

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

13 MR. KATZ: No, but --

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

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

20 DR. NETON: We're --

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

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

1 MR. SEBASTIAN: Thank you. I appreciate it.

2 DR. NETON: We are in that process right now.

3 So --

4 MR. SEBASTIAN: Okay.

5 DR. NETON: Okay.

6 MR. KATZ: So we're doing that --

7 MR. SEBASTIAN: I apologize for --

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

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

16 DR. NETON: Yes.

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

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

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

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

4 MR. KATZ: And that's understandable.

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

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

11 MR. SEBASTIAN: Thank you very much.

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

14 MR. SEBASTIAN: Okay. Thank you.

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

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

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

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

7 MR. KATZ: Sure.

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

11 MR. KATZ: Right.

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

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

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

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

7 MR. SEBASTIAN: You wouldn't need to appeal.

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

10 MR. SEBASTIAN: Okay.

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

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

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

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

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

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

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

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

24 MR. KATZ: So it could --

25 MR. KRIEGER: -- because some of these plants

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

4 MR. KATZ: Yes.

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

7 MR. KATZ: Yes, so let me explain.

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

10 MR. KATZ: Right. So it could be --

11 MR. KRIEGER: -- the last I heard --

12 MR. KATZ: -- it could be --

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

15 DR. NETON: Excuse me, yeah --

16 MR. KATZ: I'm sorry.

17 DR. NETON: Could you please state your name?

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

20 DR. NETON: Okay, thank you.

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

25 MR. KATZ: Right.

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

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

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

25 MR. KATZ: So let me just answer you very

1 quickly --

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

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

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

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

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

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

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

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

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

2 MR. KRIEGER: They started in 1994.

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

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

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

9 MR. KRIEGER: Still cleaning it up.

10 MR. KATZ: Okay, so --

11 MR. KRIEGER: Go ahead.

12 MR. TOBIAS: Can I --

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

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

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

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

4 MR. KATZ: No.

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

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

8 MR. TOBIAS: Okay.

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

15 MR. TOBIAS: Oh.

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

17 MR. TOBIAS: Oh, I --

18 MR. KATZ: -- Special Exposure Cohort.

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

21 MR. KATZ: Well, I --

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

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

1 right, because --

2 MR. TOBIAS: No --

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

6 MR. TOBIAS: I don't -

7 MR. KATZ: That's what --

8 MR. TOBIAS: -- maybe. Okay.

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

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

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

15 MR. TOBIAS: Yeah, that's --

16 MR. KATZ: -- that class --

17 MR. TOBIAS: Like Bethlehem Steel could become
18 -

19 MR. KATZ: Exactly --

20 MR. TOBIAS: That could become a Special
21 Cohort --

22 MR. KATZ: Union Carbide --

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

25 MR. TOBIAS: Oh, yes.

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

2 MR. KATZ: I'm sorry.

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

6 MR. SEBASTIAN: As a site.

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

10 MR. TOBIAS: Yes.

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

13 MR. TOBIAS: Even though --

14 MR. KATZ: -- for making decisions about
15 that.

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

19 DR. NETON: That's correct.

20 MR. TOBIAS: Right?

21 DR. NETON: Right.

22 MR. KATZ: Exactly right.

23 MR. TOBIAS: Okay, thank you.

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

1 MR. TOBIAS: Okay.

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

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

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

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

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

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

14 DR. NETON: Let me -

15 MR. RAUCH: Do you actually expect 1996,
16 1997, to have claimants for two years from
17 contractor, DOE contractors that are cleaning up
18 the site? Do you honestly, Dr. Katz?

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

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

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

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

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

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

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

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

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

10 DR. NETON: Well -

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

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

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

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

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

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

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

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

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

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

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

11 MR. SEBASTIAN: Explain.

12 MR. KATZ: Let me explain -

13 MR. SEBASTIAN: Right here.

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

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

18 MR. KATZ: Okay --

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

20 MR. KATZ: So this is --

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

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

3 MR. SEBASTIAN: Read the last paragraph.

4 MR. KATZ: The last paragraph.

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

7 Is that what I'm supposed to be reading?

8 MR. SEBASTIAN: Let me read it.

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

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

13 (Reading) In order to receive benefits --

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

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

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

20 MR. KATZ: I'm sorry.

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

1 services in connection with the production of
2 nuclear weapons.

3 MR. SEBASTIAN: All right.

4 MR. KATZ: And that's -

5 MR. SEBASTIAN: See what our problem is?

6 MR. KATZ: -- what this discussion was just
7 about -

8 MR. SEBASTIAN: Right.

9 MR. KATZ: -- I think.

10 MR. KRIEGER: See what our problem is?

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

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

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

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

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

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

25 MR. KATZ: But this is --

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

4 DR. NETON: It doesn't matter.

5 MR. RAUCH: It was clean-up --

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

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

15 DR. NETON: That I'm not certain.

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

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

25 MR. FIGIEL: One more question, please.

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

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

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

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

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

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

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

23 MR. KATZ: Right. So what's happening in
24 cases like yours is -

25 MR. FIGIEL: I surmise that the dose

1 reconstruction would be difficult.

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

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

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

20 Is that clear to you?

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

22 MR. KATZ: So you will, in other words, you
23 will get on --

24 MR. FIGIEL: -- communication -

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

1 MR. KATZ: I'm sorry.

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

4 MR. KATZ: Right.

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

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

25 MR. FIGIEL: So you're saying --

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

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

11 MR. KATZ: Yes.

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

13 MR. KATZ: That's true.

14 MR. FIGIEL: Can you answer?

15 MR. KATZ: Let --

16 MR. FIGIEL: Why is that?

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

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

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

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

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

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

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

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

11 MR. SEBASTIAN: I just --

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

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

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

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

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

10 MR. SEBASTIAN: Yeah, I --

11 MR. KATZ: That's the law --

12 MR. SEBASTIAN: I understand.

13 MR. KATZ: That's just the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. TOBIAS: Right.

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

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

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

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

12 MR. KATZ: So --

13 MR. TOBIAS: Bethlehem Steel, or --

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

20 MR. TOBIAS: Okay.

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

1 MR. TOBIAS: Right.

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

4 MR. TOBIAS: Thank you.

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

7 MR. KATZ: Could you -

8 MR. KRIEGER: -- for just one second?

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

11 MR. KRIEGER: If I --

12 MR. TOBIAS: Go ahead, Ralph.

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

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

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

4 COURT REPORTER: I'm sorry, that went to -

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

10 DR. NETON: Steel mills.

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

14 MR. KRIEGER: Yes, it was.

15 MR. TOBIAS: Okay, thank you, Ralph.

16 MR. KATZ: Yes.

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

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

25 DR. NETON: I can address that. We have

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

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

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

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

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

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

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

13 MR. TOBIAS: Okay.

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

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

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

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

3 MR. TOBIAS: Oh, okay.

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

6 MR. TOBIAS: Oh.

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

11 MR. TOBIAS: So I --

12 DR. NETON: -- typically unaware.

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

16 DR. NETON: Yes.

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

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

21 MR. TOBIAS: Okay.

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

25 MR. TOBIAS: Oh, okay.

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

3 MR. TOBIAS: Right.

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

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

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

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

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

25 DR. NETON: No, smoking history is not

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

3 MR. TOBIAS: Oh.

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

7 MR. TOBIAS: Okay.

8 DR. NETON: -- profile.

9 MR. TOBIAS: Well, thank you very much.

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

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

25 MR. SEBASTIAN: We're talking about lymphoma

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

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

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

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

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

1 DR. NETON: But not cancer.

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

14 MR. SEBASTIAN: Thank you.

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

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

25 MR. KATZ: So the answer to that question is

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

3 MR. GALUS: I see.

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

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

15 MR. KATZ: Well, and --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. GALUS: Yes, sir.

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

1 MR. GALUS: He was there 38 years, cutting -

2 MR. KATZ: Right.

3 MR. GALUS: A long time.

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

10 MR. GALUS: Okay.

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

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

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

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

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

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

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

1 have any been paid to the Department of Energy
2 workers?

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

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

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

10 MR. KRIEGER: Oh, those, yeah.

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

13 MR. TOBIAS: No, I'm talking about the
14 \$150,000 dollar payment.

15 MR. KATZ: Yes. No, the --

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

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

21 MR. TOBIAS: In what groups?

22 DR. NETON: Special Exposure Cohorts.

23 MR. KATZ: To Special Exposure Cohort.

24 MR. TOBIAS: Okay.

25 MR. KATZ: To people who were covered under

1 RECA, which is the Radiation Exposure
2 Compensation Act.

3 MR. TOBIAS: Okay.

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

5 MR. TOBIAS: Right.

6 MR. KATZ: -- uranium mining and milling.

7 MR. TOBIAS: Okay.

8 MR. KATZ: And they were already compensated,
9 but this law allowed them to get an additional
10 \$50,000 dollars to have parity between people
11 from -- Atomic veterans, in effect -- not atomic
12 -- uranium miners and millers, and these groups
13 under EEOICPA. People with beryllium disease
14 have been compensated. I don't know all the
15 details, and I don't know the numbers. That's
16 something the Department of Labor person would
17 have, would have told you about if she had made
18 it here.

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

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

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

3 MR. TOBIAS: Oh, I see.

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

7 MR. TOBIAS: Okay. I --

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

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

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

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

17 MR. TOBIAS: Oh, for -

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

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

22 DR. NETON: Energy facilities.

23 MR. TOBIAS: -- facilities.

24 DR. NETON: That's correct.

25 MR. TOBIAS: Okay.

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

4 MR. TOBIAS: Okay. Thank you.

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

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

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

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

25 I'm appalled by the lies the government has

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

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

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

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

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

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

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

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

6 UNIDENTIFIED: Mike Easton (phonetic).

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

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

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

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

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

1 It's what is your dose of causation, and what is
2 the basis for that?

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

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

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

22 MR. RAUCH: Probability limit?

23 MR. KATZ: Upper 99 percent credibility limit

24 --

25 MR. RAUCH: Credibility limit.

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

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

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

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

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

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

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

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

1 --

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

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

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

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

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

1 COURT REPORTER. I'm sorry, you gather?

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

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

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

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

23 MR. KATZ: No.

24 MR. RAUCH: I'm sorry.

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

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

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

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

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

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

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

1 rotated a few, just so we allow time.

2 MR. GALUS: I would like to ask one question.
3 Tim Galus again. My father worked at Linde from
4 1941 to 1978, so that's basically nine of the ten
5 Atomic Weapons Employee years -- and I think the
6 DOE years are uncertain -- but it's nine of the
7 ten Atomic Weapons.

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

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

15 MR. GALUS: Okay, so --

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

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

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

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

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

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

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

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

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

6 MR. RAUCH: Jim Rauch continuing here.

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

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

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

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

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

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

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

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

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

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

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

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

3 DR. NETON: Well, they require different
4 types.

5 MR. RAUCH: Well, how different?

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

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

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

1 DR. NETON: Okay.

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

5 DR. NETON: Right.

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

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

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

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

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

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

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

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

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

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

24 DR. NETON: Right, and --

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

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

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

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

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

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

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

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

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

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

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

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

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

16 DR. NETON: It could be.

17 MR. RAUCH: Okay.

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

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

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

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

13 MR. RAUCH: That is not a simple task.

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

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

1 decided upon finally --

2 COURT REPORTER. I'm sorry, sir, that the
3 Army Corps -

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

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

1 Linde site now.

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

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

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

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

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

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

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

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

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

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

1 MR. KRIEGER: I don't know. I -

2 MR. KATZ: But it is completed.

3 MR. KRIEGER: I talked to Senator --

4 MR. KATZ: We did complete the work.

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

8 DR. NETON: Yes, that --

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

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

16 (Reading) Individuals designated as part of
17 the Special Cohort by the Secretary of Health and
18 Human Services, in accordance with Section 3513,
19 21 specified cancers, the term "specified cancer"
20 means the following:

21 a) Leukemia, other than chronic lymphatic
22 leukemia.

23 b) Multiple myeloma.

24 c) Non-Hodgkin's lymphoma.

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

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

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

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

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

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

3 DR. NETON: Not to my knowledge.

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

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

10 MR. KRIEGER: Okay.

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

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

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

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

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

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

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

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

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

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

12 MR. KATZ: And the answer is --

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

14 MR. KATZ: No.

15 MR. KRIEGER: It's not?

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

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

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

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

1 hundred some odd million for this year or last
2 year.

3 MR. KATZ: Let me --

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

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

8 MR. KRIEGER: Yes.

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

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

19 MR. KATZ: Absolutely.

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

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

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

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

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

3 MR. KATZ: That --

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

9 MR. KATZ: Well --

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

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

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

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

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

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

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

3 Now in closing, because I know everybody
4 wants to leave, I'm going to give you a copy of
5 something. It's the *Buffalo Evening News*, August
6 6th, 1995. It is the front page of the *Buffalo*
7 *Evening News*, Monday, August 6th, 1945. The first
8 bomb, which it tells you didn't work all the way
9 -

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

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

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

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

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

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

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

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

25 DR. NETON: Okay, thank you for those

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

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

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

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

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

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

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

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

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

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

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

20 DR. NETON: Okay, I think --

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

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

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

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

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

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

14 Thank you.

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

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

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

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

- - -