U.S. DEPARTMENT OF ENERGY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH
Office of Worker Health and Safety (EH-5)

CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM
Notice of Proposed Rulemaking (NOPR)
Docket Number EH-RM-98-BRYLM

PUBLIC HEARING AGENDA
February 3, 1999, Morning Session - Oak Ridge, TN

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MR. JONES: Good morning and welcome. I am Rick Jones, Director of the Office of Workers Protection Programs and Hazards Management EH-52 within the Office of Worker Health and Safety. On behalf of the Department of Energy, I would like to thank you for taking the time to participate in this public hearing concerning the proposed Chronic Beryllium Disease Prevention Program (CDBPP), particularly those of you who have come from some distance.

The purpose of this hearing is to receive oral testimony from the public on DOE's Notice of Proposed Rulemaking, NOPR. Your comments are not only appreciated, they are essential to the process.

The publishing of the NOPR that is the subject of today's public hearing has been preceded by two years of information gathering and data analysis by the Department. In 1996, the Department surveyed its contractors to characterize the extent of beryllium usage, the types of tasks involving beryllium usage, the controls in place for each task, and the estimated exposure levels associated with each task. To supplement the data obtained from the 1996 survey, the Department published a Federal Register notice on December 30th, 1996 requesting
scientific data, information, and views relevant to a DOE beryllium health standard. The survey and Federal Register notice were followed by two

Beryllium Public Forums held in Albuquerque, New Mexico and Oak Ridge, Tennessee January 1997. While the Department moved forward with its rulemaking process, an Interim Chronic Beryllium Disease Prevention Program was issued on July 15, 1997, as DOE Notice 440.1 to direct immediate action for the protection of workers while rulemaking efforts continued. The Interim Notice established a CBDPP that enhanced and supplemented worker protection programs already required by current worker safety and health orders with provisions that are designed to manage and control beryllium exposure hazards in the DOE work place. Because of the complexity and significance of issues regarding the development of a DOE health standard for beryllium, a Beryllium Rule Advisory Committee or BRAC was established in June 1997 to advise the Department on issues pertinent to the proposed rulemaking activity. DOE also used the BRAC recommendations and the lessons learned in the implementation of DOE Notice 440.1 to develop this NOPR.

The objectives of the NOPR are to 1)
minimize the number of workers exposed to beryllium; 2) minimize the levels of beryllium exposure and the potential for beryllium exposure; 3) establish medical surveillance protocols to ensure early detection of chronic beryllium disease; and 4) assist affected workers who are dealing with beryllium health effects. In addition, the Department intends to collect and analyze exposure and health data as a part of its ongoing beryllium-related research efforts to ensure the protection of workers' health. DOE will consider amendments to its regulations as additional information and feedback are collected.

If you have not read the Federal Register notice from December 3, 1998, I urge you to do so. Copies are available at the registration desk in the back.

The comments received here today and those submitted during the written comment period, which ends March 9, will assist the Department in the rulemaking process. All written comments must be received by this date to ensure consideration by the Department of Energy. The address for sending in comments is: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health,

As the Presiding Official for this hearing, I would like to set forth the guidelines for conducting the hearing and providing other pertinent information. In approximately fourteen days, a transcript of this hearing will be available for inspection and copying at the Department of Energy's Freedom of Information Reading Room in Washington, DC as well as at the DOE Oak Ridge and Rocky Flats Public Reading Rooms. The addresses are specified in the Federal Register notice and are also available at the registration desk. The transcript will also be placed on the Environment, Safety and Health's Chronic Beryllium Disease Prevention Program's Internet web page which can be accessed at: http://tis.eh.doe.gov/be/. In addition, anyone wishing to purchase a copy of the transcript may make their own arrangements with the transcribing reporter.

This will not be an evidentiary or judicial type of hearing. It will be conducted in accordance with Section 553 of the Administrative Procedures Act, 5 USC section 553 and section 501 of the DOE Organization Act, 42 USC section 7191. To provide
the Department with as much pertinent information
and as many views as can reasonably be obtained, and
to enable interested persons to express their views,
the hearing will be conducted in accordance with the
following procedures: speakers will be called to
testify in the order indicated on the agenda;
speakers have been allotted ten minutes for their
verbal statement; anyone may make an unscheduled
oral statement after all scheduled speakers have
delivered their statements. To do so, please submit
your name to the registration desk in the back
before the conclusion of the last scheduled speaker;
and at the conclusion of all presentations,
scheduled and unscheduled speakers will be given the
opportunity to make a rebuttal or clarifying
statement. Again to do so, please submit your name
to the registration desk in the back.

Questions for the speakers will be asked
only by the members of the DOE panel conducting the
hearing.

As I explained, the purpose of this hearing
is to receive testimony from the public on the DOE's
Notice of Proposed Rulemaking. It is not the
purpose of this hearing to discuss individual
lawsuits that have been filed in court, or claims
that have been filed under the Federal Tort Claims Act. This panel will therefore not discuss litigation or claims. Instead, I urge all speakers to provide this panel with their comments, opinions and pertinent information about the proposed rule.

As mentioned before earlier, the close of the comment period is March 9, 1999. All written comments received will be available for public inspection at the DOE Freedom of Information Reading Room in Washington, D.C. which can be reached at area code (202) 586-3142. Ten copies of the comments are requested. If you have any questions concerning the submission of written comments, please see Andi Kasarsky at the registration desk. She can be reached at area code (202) 586-3012.

Any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit to the Washington, D.C. written comments address a total of four copies, one complete copy with the confidential material included and three copies without the confidential information. In accordance with the procedures established at 10 CFR 1004.11, the Department of Energy shall make its own determination as to whether or not the information
will be exempt from public disclosure.

In keeping with the regulations of this facility, there will be no smoking in this room. I would also ask you to please take note of the four exits, two in the front, two in the back. Also note that restrooms, drinking fountain and pay phones are located out at the rear exits and to the left.

We appreciate the time and effort you have taken in preparing your statements and are pleased to receive your comments and opinions. I would now like to introduce the other members of the panel. Joining me today to my left is Jacqueline Rogers, who is an industrial hygienist from the Office of Occupational Safety and Health Policy EH-51 within the Office of Worker Health and Safety. Also joining me today is Dr. George Gebus, Director of the Office of Occupational Medicine and Medical Surveillance EH-61 within the Office of Health Studies. I would also like to acknowledge the presence of managers, first line supervisors and safety and health professionals from the local DOE office, the Y12 Plant and Bechtel Jacobs.

This introduction has been lengthy, but I hope useful. Now it is time to move on to the reason why we are all here - to listen to your comments on
the Notice of Proposed Rulemaking.

I would like to call our first speaker on the agenda. For the record, I would ask that each speaker please state his or her name and whom they are representing before making their statement. I would like to thank you all very much and I would like to go ahead and call the first speaker. There has been a change in the order of speakers. Mr. Foster and Mr. McDonald have changed places on the agenda so I would like to call Mr. Gary Foster to the podium.

MR. FOSTER: Good morning. I'm Gary Foster and I've been diagnosed with berylliosis, which occurred from my exposure to beryllium at Y12 Plant hear in Oak Ridge.

This morning I'm going to limit my comments to only four of the proposed sections of 10 CFR 850, as published in the Federal Register on December 3rd, 1998. I plan to present these and other more extensive written comments later. The four proposed sections I wanted to address this morning are:

850.22 850.23, 850.33 and 850.34.

In regard to these four sections, I'm asking that the DOE insert language into 10 CFR 850 which will accomplish the following:
Provide us with a place of employment that is free of this recognized hazard...beryllium contamination.

Mandate that each of us will have the opportunity to be followed by the most experienced and knowledgeable physician of our choice.

Provide those who are diagnosed with berylliosis and sensitized true medical removal protection by adopting language which will protect our jobs, benefits, seniority, and stability with wording at least as protective as 29 CFR 1910.1028.

1) In proposed section 10CFR 850.22, we find that despite the DOE's knowledge of the toxicity and hazards associated with beryllium exposure and the knowledge of cases of berylliosis diagnosed in workers who had beryllium exposures far below two micrograms per cubic meter, the DOE has failed to recognize and use medical and scientific knowledge in proposing effective change in this beryllium rule. This rule fails to provide for the health and safety of DOE and DOE contractor employees who may come in contact with beryllium contamination. The DOE points out in the Federal Register on page 66955, "There is scientific evidence (presented in the Health Effects discussion
of this NOPR, Section IV) that suggests that the current exposure limit does not such sufficiently protect worker health."

In July 1994, the DOE issued a Health Hazard Alert which stated, and I quote, "Two recently conducted studies designed to test how well a new blood test (called lymphocyte proliferation test) could detect CBD, found CBD in craft workers and white collar workers thought to only have had occasional, low level exposure to beryllium. These results suggest that compliance with current exposure limits for beryllium are not sufficient for protecting workers against CBD."

There also exists the information on the neighborhood cases in Lorain, Ohio from the late 1940's in which the Atomic Energy Commission (AEC) found that levels of exposure in the range of one-tenth of microgram per cubic meter was associated with berylliosis (see your reference 4, Federal Register page 66968).

That there is scientific evidence that beryllium exposure is hazardous at any level above zero and for short durations of exposures is all the information that is needed for this exercise. For the DOE to continue to retain the OSHA PEL of two
micrograms per cubic meter and in proposed section
850.23, to adopt an action level where any exposure
is allowed, is counter to DOE 440.1A, 4a. (1) which
states, and I quote, "DOE elements shall implement a
written worker protection program which provides a
place of employment free from recognized hazards
which are causing or likely to cause death or
serious physical harm to their employees."

The DOE definition of a hazard can also be
found in DOE manual 411.1-1 and is stated as:
Hazard: a source of danger (i.e., material, energy
source, or operation) with the potential to cause
illness, injury or death to personnel or damage to
an operation or to the environment (without regard
for the likelihood or credibility of accident
scenarios or consequence mitigation).

A beryllium hazard is recognized by the DOE
and has been shown to exist by the Department's own
studies as indicated in this NOPR (Pages Federal
Register 66943-66947). There is nothing in DOE
440.1A that states that this section 4a (1) applies
to everyone except beryllium workers. There is
nothing to argue and the course of action can be no
clearer. Provide us with a place of employment that
is free of this recognized hazard...beryllium
contamination. It doesn't matter what the OSHA does or does not do. The DOE is self-regulating and is responsible for its contractor employee health and safety. A hazard has been recognized and now it must be abated. The action level of five-tenths of a microgram per cubic meter as found in proposed section 850.23, does not satisfy this requirement of DOE 440.1A and therefore the action level must be set at any detectible level of contamination. DOE line management is responsible for adherence with DOE 440.1A, and this rule must reflect that language.

2) In proposed section 850.33, there are some inadequacies of the Medical Surveillance Program. A change in section 850.33(d) must include all workers exposed above detectible levels, not the proposed action level of five-tenths a microgram per cubic meter. The DOE acknowledges that personnel who are incidentally exposed are at risk (Federal Register page 66946) and to exclude them from the process is both immoral, unethical and quite frankly makes no sense. It appears that most of Y12's machinists would not have been eligible for medical surveillance under the guidelines of the proposed section 850.33. Support workers definitely would
not fall under the definition. I am one of those that in all likelihood would not have been under medical surveillance.

One major inadequacy of the proposed sections 850.22 (i) and (j), that I am currently facing in my life, is although the preceding sections identify those of us who eventually contract berylliosis, it does absolutely nothing to provide us with adequate health care after the diagnosis. We are dumped onto the existing Workman's Compensation system, which is woefully inadequate for a disease such as berylliosis. In particular, those of us from Y12 are geographically separated from the centers of expertise in regard to berylliosis. Because of this, we are receiving inadequate treatment and monitoring. As you are well aware, there are only two true centers of expertise in this country where a berylliosis patient can expect to be treated by experts in the field of beryllium-related diseases. These two centers are the National Jewish Center in Denver and The Hospital of the University of Pennsylvania. Those of us who have been diagnosed with berylliosis, and those who are sensitized to beryllium deserve to be followed by the experts in
the field of beryllium-related diseases. We must be able to chose between the two centers; and since DOE is responsible for our condition, the DOE must provide us with the quality care that we deserve. To dump us on the local medical pulmonologist community is not providing us with quality care. Although my pulmonologist diagnosed the first case of berylliosis from Y12, he has twice stated to me: "I don't really know what to do with you guys."

The basic reason for the entire program that has identified us was that we could be identified early so medical intervention might attempt to slow the progress of berylliosis. If we do not receive the same regimen of testing as offered by the experts then all the data gathered on us will be useless. To waste our experience is akin to the mistakes made for the first forty plus years of this disease when there was inconsistent data entered into the Beryllium Case Registry. These inconsistencies allowed investigators to develop conclusions which were counter to the facts. If the data gathering had been uniform and complete for the first thirty years, I might not be here in front of you today. Let's not allow the same mistakes in 1999. Mandate that each of us will have the
opportunity to be followed by the most experienced and knowledgeable physician. Don't waste our experience.

3) Proposed sections 850.34(a),(3) and 850.34(b) are completely unacceptable. These are the medical removal plan and the medical removal protection plan.

Those of us with berylliosis are only in this position because of the historical and continued insistence of the DOE to perform work with beryllium. The DOE and its predecessors have known for over fifty years that some percentage of individuals exposed even to minute amounts of beryllium would become stricken with berylliosis.

Berylliosis does not generally present those affected with a quick death. Essentially the majority of us will slowly smother to death. Apparently we will experience good days and bad days, but the general course of this disease is downward sloping, as the DOE has recognized on page 66943 of the Federal Register. Those of us still working will need the stability of our jobs and benefits we have accrued...more in two years from now than we do today. Two years from now we will need them even more than ever.
In proposed sections 850.34(a),(3) and 850.34(b) the DOE is avoiding its liability which it incurred because the Department failed in its responsibility to protect the health and safety of its contractor employees. These proposed sections do nothing to force the Department to accept its responsibility to protect the health and safety of its contractor employees. These sections do nothing for the employee, in the event of the failure of the DOE to accept its responsibility, to protect the health and safety of contractor employees. An accurate read on these proposed sections is simply two years and you are out. This is the way the contractors are going to read these proposed sections. Being responsible means that in the case of fault, one incurs a penalty. The only penalty incurred with these proposed sections is approved by the affected employee. This penalty is the loss of meaningful employment, benefits and stability at a time when these things will be most needed.

As an alternative to proposed sections 850.34(a),(3) and 850.34(b) I ask that the DOE adopt language that is at least as protective of the affected personnel as is found in 29 CFR 1910.1028,(i),(8),(v), which is the OSHA Standard
for benzene. Section (v) states: whenever an employee is removed permanently from benzene exposure based on a physician's recommendation pursuant to paragraph (i)(8)(iii) of this section, the employee shall be given the opportunity to transfer to another physician which is available or later becomes available for which the employee is qualified, or can be trained for in a short period, and where benzene exposures are as low as possible but in no event higher than the action level. The employer shall assure that such employee suffers no reduction in current wage rate, seniority or other benefits as a result of the transfer.

Obviously in regard to beryllium, any transfer must be to a job which is free from beryllium exposure, because of the immunological reaction to beryllium exhibited by those of who are diagnosed and those who are sensitized. The contractors will only do what the DOE tells them to do under this rule. If the DOE tells the contractor to put us out on the street in two years, that is exactly what they will do. If the DOE promulgates a rule that offers real medical removal protection benefits, then the contractor will be obligated to find us meaningful employment which is free from the
recognized hazard of beryllium contamination. Only then will the employees feel free to make an informed choice as to whether they want to be tested or not. Proposed sections 850.34(a),(3) and 850.34(b) would effectively reduce those volunteering to be tested to the group of people who are already retired or separated from employment and those who are within two years of retirement. The rest of the population would not take the risk of losing their jobs, and therefore their livelihood, and they would forego testing.

Once again, there are at least three things that must be changed in proposed 10 CFR 850. The DOE must: provide us with a place of employment that is free of this recognized hazard...beryllium contamination. Mandate that each of us will have the opportunity to be followed by the most experienced and knowledgeable physician of our choice. Provide those of us who are diagnosed with berylliosis and sensitized true medical removal protection by adopting language which will protect our jobs, benefits, seniority, and stability with wording at least as protective as 29 CFR 1910.1028

Thank you.

MR. JONES: Thank you, Mr. Foster, for your
insightful comments. Does the panel have any questions? Thank you very much. Our second speaker today, scheduled speaker is Glenn Bell. Is Mr. Bell in the room? Would Mr. McDonald be prepared to present his comments at this time? If you could, please state your name, and the organization which you represent.

MR. MCDONALD: If I appear and sound nervous it's because I am. I have never addressed anybody from Washington, D.C. before. I can't even get in touch with my own Congressman up there. My name is Jesse McDonald. I'm speaking for myself. I'm a maintenance supervisor at the Y12 Lockheed Martin Plant and have been there for almost -- four months from today would have been thirty-one years. And I hope to confine my comments to the medical surveillance section. It mainly will fall somewhere in between 850.33 and dot 34. My focal point or my main point is to suggest that the LPT be made mandatory for former and active beryllium workers with certain conditions attached. And I hope to offer five points or reasons that will support my position. Number one is my situation that occurred last year. Number two is present medical surveillance policy at the plant. And number three
is what other government agencies do other than DOE.

And number four is information from the Jewish Medical Center. And number five is statistics from your own 10 CFR 850 and overview section Roman numeral IV-E.

About my own self, last year I was told that under the new policies, beryllium policy, I was told to get myself qualified to be an active worker. Since I'm unsupervised, what I did was took the classroom training and then I was told to get my medical surveillance which consisted of an x-ray which tested normal and I was given a breathing test which tested normal. Then I was asked if I wanted to take the LPT test which is optional. I took the LPT test. The results came back abnormal. So the first LPT came back abnormal. So I was asked to take a second LPT test. It also came back abnormal. I was then immediately restricted from working with, on or around beryllium. I was sent to Vanderbilt University in Nashville for further testing. The final diagnosis was the oh, we got some good news and some bad news. It kind of reminds me of the guy who was feeling bad and he said doctor, I'm sick. He says something is wrong with me. The doctor said come here and we will give you an examination. So he
took a blood test, an x-ray. He said when I get my results back, I will call you back in and let you know what went on. So in a few days, the doctor called him back in. He said I've got some good news and bad news for you. He said what's the good news? The good news is you've got two days to live. He said what can be the bad news? He said I should have told you yesterday. So here I am faced with this good news bad news deal. When I got this report back, I was so afraid of it that I sat on it for a month. And the day that I came to work was the day that Dr. Newman was here from the Jewish Medical Center. He had a seminar that he talked to the beryllium support people. So I asked him to look at this thing and explain to me what it meant. What he looked at was the good news, that the biopsy showed that I had no lung damage. My breathing tests were normal. The not so good news that reconfirmed that my LPT showed that I was sensitive and the lavage test, where they use a saline solution to flush your lungs out with, it was also positive, so I had two positive tests. Now what did this mean? It means that neither the x-ray or the breathing test detected my sensitivity. And incidentally, the diagnosis was that I was sensitive. I probably had
the early stages of chronic berylliosis. And what this means is that neither the x-ray or the breathing test detected the sensitivity or the early changes of chronic beryllium and had I not voluntarily taken the LPT test, I would have never known. It was detected only by an abnormal LPT test. That's one point that would support my theory that LPT should be made mandatory. One is the present policy. So I asked the medical doctor, why don't you make everybody take this and they said it's not mandatory. We can't make everybody take it. But at the plant, we have peoples -- we do have mandatory medical surveillance. Peoples in our protective forces out there have to undergo certain medical, mandatory medical; it's not an option. Peoples in the health service have to undergo mandatory and it's not an option. Entrance into many of the radiological areas out there require that I be in a medical surveillance program. That is mandatory. It is not an option. So that's supports point two. Number three is what other government agencies do. And I think you all are just as powerful as the NTSB I hope. You don't deal with public transportation. When you're dealing with public transportation and you're flying an airplane
and you are involved in a crash and you survive, they will take a mandatory blood test. And if you're driving a train and have an accident, they will take a mandatory blood test. If you're driving an eighteen wheeler and have an accident, you will take a mandatory blood test so the NTSB has the authority to impose certain medical surveillance on people and I can't see why it can't be done on the LPT. So that's three more points. And then I want to read to you some information I collected off a web site from the Jewish Medical Center on the subject of LPT testing. It says any screening for CBD should begin with LPT for sensitivity detection and x-rays. The LPT can detect abnormalities earlier than a breathing test and x-ray. The LPT identifies beryllium sensitivity and full CBD earlier and better than any other clinical test presently available. In every work force studied to date, the LPT has identified beryllium sensitivity and CBD that had been missed by conventional screening efforts such as x-rays and breathing tests and further more they go on and say the LPT is cheaper than x-rays. And they go on to say that the LPT is the cornerstone of beryllium medical screening in industry and is the most definitive
test for detecting sensitivity and early signs of CBD. So that's four points there to support my argument that the LPT should be mandatory. Then I want to look at your 10 CFR 850. It's in the overview section Roman numeral IV-E. In there you stated that there were seventy-nine cases of CBD that you looked at at Rocky Flats. Seventy-three were detected by abnormal LPTs that showed normal x-rays or breathing tests. That's the strongest argument that I can give you that the LPT should be mandatory as part of your medical screening tests. You don't have to add it up. It comes up to ninety-two point four percent of the cases that they x-rayed and the breathing tests did not pick up. And I think that the information I have presented to you here supports that, including my situation, what other government agencies do and the information of the National Jewish Medical Center and the deal with the Rocky Flats that is stated in your 10 CFR. So this clearly shows beyond any refutable doubt that the LPT is far superior to the x-ray and breathing test in detecting sensitivity and CBD and therefore should be made mandatory for CBD screening in addition to the x-ray and breathing test. After making and LPT mandatory, workers should be told
that a positive -- to get around the argument that my speaker before me said, fear of losing your job, you all talked about this, we can get around this by telling people we're going to make the LPT mandatory, but if the test comes back positive or negative, you have the opportunity to not let it affect your place of employment by signing a consent form and on the 850-34(a), you stated that if it was voluntary, they could sign a consent form to be taken out of that area. And 850-34(a)(2), they would also be given an opportunity to sign a consent form to stay in that area if they come up with two LPTs, so if you implemented the two items in 850-34(a) and 850-34(a)(2), that would eliminate the fear of someone losing their job. Make the test mandatory, but tell them up front you have the option to seek further testing and I think you will get a lot more participation this way and the company will not have to go out of their way. They can include the LPT in their normal annual physical examination at no charge and as Grandma Pile says, Gomer says if you are going to have something bad to say, say something good. And some additional comments I have. I support the idea in the overview there of using certified industrial technicians to
perform surveillances and monitoring. I think that's a very good idea. It shouldn't be someone that just completed two years out of Roane State and ran around with somebody else out there for three weeks and then go out there and is monitoring. Also I support the sign posts and ideas in 850-51 which go much further than what Lockheed Martin has done. In there, it tells you that it can affect your lungs and it tells you that it is a cause of -- cancer causing agent. We do not go that far at Y12. And I also support the argument in the medical community for lower the exposure limit which my predecessor talked about quite a bit there. Have I confused you or do you understand my points that I tried to make?

MR. JONES: Thank you, Mr. McDonald, for your meaningful comments. Does the panel have any questions?

MR. MCDONALD: I Thank you for this opportunity to speak and I can tell my grandson I met someone from D.C.

MR. JONES: Thank you very much. We appreciate that. Has Mr. Bell shown up yet?

MR. MACDONALD: He's out with CBD problems. He had trouble breathing the other day and he had to leave work. He couldn't breathe.
MR. JONES: Do we have any other speakers signed up at this time? Is there any one else that would like to speak at this time concerning our Chronic Beryllium Disease Prevention Program Notice of Proposed Rulemaking? Okay. Then I've got basically nine-forty a.m. I would like to adjourn this public hearing at this time until we get an additional speaker signed up. This is to go on til one o'clock. At that time, we will adjourn at one o'clock. We will reconvene tonight at six o'clock to go from six to nine to give the opportunity for folks who couldn't make it this morning to come this evening and make comments. So if no one would like to make any other statements, I would like to adjourn at this time and we'll reconvene between now and one o'clock if we get any additional speakers signed up, otherwise we will reconvene at six o'clock this evening. Thank you all very much for your participation and interest and we will see you later.

(Whereupon, the hearing was adjourned.)

MR. JONES: We're going to reconvene for just a couple of minutes. I would like to reconvene the hearing. Let the record show it's ten-thirty and we're reconvening the Department of Energy's Chronic
Beryllium Disease Prevention Program and Notice of Proposed Rulemaking public hearing. We have the opportunity -- Glenn Bell had requested the opportunity to make a presentation. He's unable to make it. Mr. Gary Foster has his written presentation and would like to read it into the record.

MR. FOSTER: I'm going to read this as if I were Glenn Bell and I appreciate you giving me the opportunity to do this. Good morning. I am Glenn Bell, a machinist at Y12 since 1968, diagnosed with symptomatic CBD in '93. Ongoing related-CBD related problems have prevented a thorough presentation of comments as I had intended but I offer the following and will follow-up with a written submission of details as soon as possible.

Since my diagnosis in '93, there has been some positive change in the education and protection areas of beryllium hazards. CFR 850 offers an even better chance to continue this trend, but in its present form, it needs a tune-up, which I will address in my written comments. Basically I am concerned that offering rather than requiring medical evaluations for Be workers. I am concerned of the licensed physician with specialized knowledge
of beryllium references in 850. Such specialists are very scarce. Dr. Newman's recent visit to Oak Ridge has opened the door to improve this, but it is something that must be done given the orphan disease status of beryllium disease and sensitization. Special consideration for subcontractor and remediation has to be implemented. Some of these workers haven't a clue what they are working with. I would like to see more dedication from our own site personnel to worker protection. A recent comment was made on the proposal to implement a non-detectable limit impractical and too costly. If Marilyn Miller had been your wife, mother or sister, and Glenn had an overhead with her picture, we've got like a few handouts with her picture on oxygen, if she had been your wife, mother or sister, would impractical and costly have been an issue. And now her son has been diagnosed with CBD. If this is a picture of him at some point down the road. The recent meetings we attended on INEEL accident and fatality pointed to some deficiencies due to cutbacks, lack of Integrated Safety Management, and consolidation and reduction of resources. We need to evaluate the risk versus benefit to assure that this does not happen with the beryllium issues. ORO has over
eighty cases of CBD/sensitization, with less than a fifty percent response rate from eligible workers and former workers. I feel many of these cases occurred because of production or liability was put ahead of worker safety. We have a chance to ensure this does not happen again. Let's not lose it this time. Glenn Bell.

MR. JONES: Thank you, very much, Mr. Foster. I appreciate that very much. No questions from the panel? Very good. Is there anyone else that would would like to speak? Okay. I would like to once again then adjourn the public hearings and we will be available until one o'clock. We will officially adjourn at that time to reconvene at that time at six p.m. Thank you very much for being here.

(Whereupon, the hearing was adjourned.)

MR. JONES: At twelve forty-five, there were no further speakers so we adjourned the morning session and we will reconvene at six.

(Whereupon, the hearing was adjourned.)
STATE OF TENNESSEE:

COUNTY OF KNOX:

I, Kimberly A. Watts, Court Reporter and Notary Public at Large, do hereby certify that I reported in machine
shorthand the above testimony, and that the foregoing pages, numbered 1 through 32, were typed under my personal
supervision and constitutes a true and accurate record of the proceedings.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of
any attorney or counsel, nor financially interested in the action.

Witness my hand and official seal this the 15th
day of February, 1999.

______________________________
KIMBERLY A. WATTS
Notary Public at Large
U.S. DEPARTMENT OF ENERGY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH
Office of Worker Health and Safety (EH-5)

CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM
Notice of Proposed Rulemaking (NOPR)
Docket Number EH-RM-98-BRYLM

PUBLIC HEARING AGENDA
February 3, 1999, Evening Session - Oak Ridge, TN

WATTS-BOYD REPORTING AGENCY
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C. Rick Jones  Presiding Official for the Hearing
Director, Office of Worker Protection
Programs and Hazards Management (EH-52)
Office of Environment, Safety and Health

Jacqueline Rogers  Industrial Hygienist
Office of Occupational Safety and Health Policy (EH-51)
Office of Environment, Safety and Health

George Gebus  Director, Office of Occupational Medicine and Medical Surveillance (EH-61)
Office of Environment, Safety and Health
MR. JONES: Good morning and welcome. I am Rick Jones, Director of the Office of Workers Protection Programs and Hazards Management EH-52 within the Office of Worker Health and Safety. On behalf of the Department of Energy, I would like to thank you for taking the time to participate in this public hearing concerning the proposed Chronic Beryllium Disease Prevention Program (CDBPP), particularly those of you who have come from some distance.

The purpose of this hearing is to receive oral testimony from the public on DOE's Notice of Proposed Rulemaking, NOPR. Your comments are not only appreciated, they are essential to the process.

The publishing of the NOPR that is the subject of today's public hearing has been preceded by two years of information gathering and data analysis by the Department. In 1996, the Department surveyed its contractors to characterize the extent of beryllium usage, the types of tasks involving beryllium usage, the controls in place for each task, and the estimated exposure levels associated with each task. To supplement the data obtained from the 1996 survey, the Department published a Federal Register notice on December 30th, 1996 requesting
scientific data, information, and views relevant to a DOE beryllium health standard. The survey and Federal Register notice were followed by two Beryllium Public Forums held in Albuquerque, New Mexico and Oak Ridge, Tennessee January 1997. While the Department moved forward with its rulemaking process, an Interim Chronic Beryllium Disease Prevention Program was issued on July 15, 1997, as DOE Notice 440.1 to direct immediate action for the protection of workers while rulemaking efforts continued. The Interim Notice established a CBDPP that enhanced and supplemented worker protection programs already required by current worker safety and health orders with provisions that are designed to manage and control beryllium exposure hazards in the DOE work place. Because of the complexity and significance of issues regarding the development of a DOE health standard for beryllium, a Beryllium Rule Advisory Committee or BRAC was established in June 1997 to advise the Department on issues pertinent to the proposed rulemaking activity. DOE also used the BRAC recommendations and the lessons learned in the implementation of DOE Notice 440.1 to develop this NOPR.

The objectives of the NOPR are to 1)
minimize the number of workers exposed to beryllium;  
2) minimize the levels of beryllium exposure and the  
potential for beryllium exposure; 3) establish  
medical surveillance protocols to ensure early  
detection of chronic beryllium disease; and 4)  
assist affected workers who are dealing with  
beryllium health effects. In addition, the  
Department intends to collect and analyze exposure  
and health data as a part of its ongoing  
beryllium-related research efforts to ensure the  
protection of workers' health. DOE will consider  
amendments to its regulations as additional  
information and feedback are collected.  

If you have not read the Federal Register  
notice from December 3, 1998, I urge you to do so.  
Copies are available at the registration desk in the  
back.  

The comments received here today and those  
submitted during the written comment period, which  
ends March 9, will assist the Department in the  
rulemaking process. All written comments must be  
received by this date to ensure consideration by the  
Department of Energy. The address for sending in  
comments is: Jacqueline D. Rogers, U.S. Department  
of Energy, Office of Environment, Safety and Health,
As the Presiding Official for this hearing, I would like to set forth the guidelines for conducting the hearing and providing other pertinent information. In approximately fourteen days, a transcript of this hearing will be available for inspection and copying at the Department of Energy's Freedom of Information Reading Room in Washington, DC as well as at the DOE Oak Ridge and Rocky Flats Public Reading Rooms. The addresses are specified in the Federal Register notice and are also available at the registration desk. The transcript will also be placed on the Environment, Safety and Health's Chronic Beryllium Disease Prevention Program's Internet web page which can be accessed at: http://tis.eh.doe.gov/be/. In addition, anyone wishing to purchase a copy of the transcript may make their own arrangements with the transcribing reporter.

This will not be an evidentiary or judicial type of hearing. It will be conducted in accordance with Section 553 of the Administrative Procedures Act, 5 USC section 553 and section 501 of the DOE Organization Act, 42 USC section 7191. To provide
the Department with as much pertinent information
and as many views as can reasonably be obtained, and
to enable interested persons to express their views,
the hearing will be conducted in accordance with the
following procedures: speakers will be called to
testify in the order indicated on the agenda;
speakers have been allotted ten minutes for their
verbal statement; anyone may make an unscheduled
oral statement after all scheduled speakers have
delivered their statements. To do so, please submit
your name to the registration desk in the back
before the conclusion of the last scheduled speaker;
and at the conclusion of all presentations,
scheduled and unscheduled speakers will be given the
opportunity to make a rebuttal or clarifying
statement. Again to do so, please submit your name
to the registration desk in the back.

Questions for the speakers will be asked
only by the members of the DOE panel conducting the
hearing.

As I explained, the purpose of this hearing
is to receive testimony from the public on the DOE's
Notice of Proposed Rulemaking. It is not the
purpose of this hearing to discuss individual
lawsuits that have been filed in court, or claims
that have been filed under the Federal Tort Claims
Act. This panel will therefore not discuss
litigation or claims. Instead, I urge all speakers
to provide this panel with their comments, opinions
and pertinent information about the proposed rule.

As mentioned before earlier, the close of
the comment period is March 9, 1999. All written
comments received will be available for public
inspection at the DOE Freedom of Information Reading
Room in Washington, D.C. which can be reached at
area code (202) 586-3142. Ten copies of the
comments are requested. If you have any questions
concerning the submission of written comments,
please see Andi Kasarsky at the registration desk.
She can be reached at area code (202) 586-3012.

Any person submitting information which he
or she believes to be confidential and exempt by law
from public disclosure should submit to the
Washington, D.C. written comments address a total of
four copies, one complete copy with the confidential
material included and three copies without the
confidential information. In accordance with the
procedures established at 10 CFR 1004.11, the
Department of Energy shall make its own
determination as to whether or not the information
will be exempt from public disclosure.

In keeping with the regulations of this facility, there will be no smoking in this room. I would also ask you to please take note of the four exits, two in the front, two in the back. Also note that restrooms, drinking fountain and pay phones are located out at the rear exits and to the left.

We appreciate the time and effort you have taken in preparing your statements and are pleased to receive your comments and opinions. I would now like to introduce the other members of the panel. Joining me today to my left is Jacqueline Rogers, who is an industrial hygienist from the Office of Occupational Safety and Health Policy EH-51 within the Office of Worker Health and Safety. Also joining me today is Dr. George Gebus, Director of the Office of Occupational Medicine and Medical Surveillance EH-61 within the Office of Health Studies. I would also like to acknowledge the presence of managers, first line supervisors and safety and health professionals from the local DOE office, the Y12 Plant and Bechtel Jacobs.

This introduction has been lengthy, but I hope useful. Now it is time to move on to the reason why we are all here - to listen to your comments on
the Notice of Proposed Rulemaking. We would like to
call our first speaker on the agenda, and for the
record I ask that each speaker please state their
name and who they represent before making their
statement. According to the latest agenda, we have
one speaker this evening, Mr. Joe Moore, and I would
ask Mr. Moore to come down to the podium and make
your presentation please.

MR. MOORE: My name is Joe Moore and I'm
with Y12, Oak Ridge Plant. I'm a maintenance
supervisor up there. I got a few concerns I just
wanted to share with you here. In fact I've been
restricted from the beryllium work area but I also
notice that I'm still an asbestos supervisor also.
It seems like to me if you're restricted from one
area, you should be also restricted from another
area. It was just a concern that I had there and I
wanted to express. Also, I think we need some kind
of form or a web site which it was just mentioned
that we do have that, but still I don't believe the
information is getting to all of the people that has
been affected by the beryllium because I know I
talked to a couple of people after I left here this
morning and they was wondering how could they get
their statements in so it seems like we need to
maybe do a better job communicating or getting the message out to the rest of the personnel. And also if we have so much uncertainty regarding the existing PEL, I feel we need to just go with the full dress out until we get more data to find out, you know, what the PEL that's needed because the main thing we want to do is protect the individual worker so we want to give them the best protection they have. I noticed in the RAD program that if they suspect any kind of airborne or whatever, it is full dress out so we could probably take that same program and move in the other direction. I believe the mandatory medical surveillance would help find more data also and help more people identify beryllium concerns earlier. I think that's something we need to look at because a lot of people like I said might not want to participate but if they have been affected, I think for their family and for that purpose, they need to be somehow -- at least get some kind of test ran on them. You might not go the full works. I know I haven't been down to the Vanderbilt place but after talking to some people today, I feel I will probably go down and get checked out further. I think also there should be some kind of form of permanent insurance provided
for those that have been affected because it'll be
hard to get insurance if you have got that on your
medical record after you leave the plant so I think
some kind of permanent insurance should be provided.
And I don't know what kind of data for the next
generation, however that works, I don't know if the
offspring will be affected or not, but I guess
that's some concerns I have here. And then I want
to know I guess how will they be accommodated was
another concern for the next generation. And I guess
the last thing I did want to share was the message
about the public hearing today. I don't feel that
the information got out to the public very well
because I know it was yesterday when I really got
the message that they were having a discussion here
and I still didn't know it was a public hearing. I
just thought it was just going to be an information
session that was going to be here today so it's a
breakdown in communication somewhere and we've got
to somehow heal that process. So I don't know what
it would take, but it sounds like to me we need to
do a better job here. And I still haven't had time,
I guess to read all of that Federal Register yet but
I'm going to go back and read it and see if there's
a way I can get that information in before March 9th
so I will probably still maybe have a few more
concerns but that's the things I have on my mind
here.

MR. JONES: Thank you, Mr. Moore. Does the
panel have any questions for clarity?

MS. ROGERS: If the DOE considers producing
a form for providing worker comments to the web
site, what is the best way to get that information
to you?

MR. MOORE: If it gets down to the front
line supervisor, I will make sure my guys get it, so
if it comes down to the front line supervision, my
guys will get that information I'm sure so that's
one way I know of getting it down to them and we've
got an E-mail system too in the plant so maybe that
might get some of those that are may be not in the,
I guess the hourly ranks, that that affects, and
then you've got the required reader program so we've
got several ways I guess to get the message out.

MR. JONES: The beryllium support group
would be another alternative potentially to get the
word out.

MR. MOORE: Right.

MR. JONES: Thank you, sir. Appreciate
that very much. Do we have any other speakers
signed up? Would anybody at this time like to
provide any additional comments?

MR. FOSTER: Rick, Gary Foster. I would
like to.

MR. JONES: Again, just introduce yourself
and who you represent.

MR. FOSTER: I'm Gary Foster and I
represent myself. I've been diagnosed with
berylliosis and I would like to I guess add possibly
to the communication issues, and we do have several
avenues of communicating this sort of thing at the
Y12 plant. Possibly we're just not utilizing them.
I think the required reading, like Joe mentioned,
would have been quite useful. We could have done
that between December 3rd and now for sure. And
everybody doesn't have access to E-mail within the
plant and of course not everyone has internet
access. And the people at the beryllium support
group knew about this and we were possibly insulated
and didn't get the message out good ourself
throughout the hourly ranks or you know, even the
salary ranks. So my view, and I brought this up at
BRAC, is that as as it filters down through the
different levels of management, each manager passes
on what he thinks the next lower tier needs and by
the time it gets down to us at the shop floor, a lot of times it doesn't even make it that far. Obviously it doesn't even make it to the front line supervisors, but we've got to do a better job in communicating down to the shop floor, I think, the notices. I think people don't understand the rulemaking process, but this is the time to tell the DOE what they feel is wrong with 850. I just wanted to add to that. Thank you.

MR. JONES: Thank you, Mr. Foster. Appreciate that. Anyone else at this time like to make a statement? Okay, that being the case then, I would like to adjourn the public hearing at this time until we get additional speakers identified and we will stay adjourned until we get additional speakers or until nine o'clock when the hearing is scheduled to officially adjourn, so thank you all very much for your attendance and your insightful comments and the hearing is adjourned at this time.

(Whereupon, the hearing was adjourned.)

MR. JONES: Before we adjourn the meeting, is there any one else that would like to make any presentation? That being the case, we would like to officially adjourn the DOE Chronic Beryllium Disease Prevention Program Notice of Proposed Rulemaking.
I would like to thank everyone for their cooperation and attendance. We will be in Denver next week on Tuesday and Washington next Thursday for those who are interested. Thank you very much. Have a nice evening and a safe trip home.

(Whereupon, the hearing was adjourned.)
STATE OF TENNESSEE:

COUNTY OF KNOX:

    I, Kimberly A. Watts, Court Reporter and Notary Public at Large, do hereby certify that I reported in machine shorthand the above testimony, and that the foregoing pages, numbered 1 through 16, were typed under my personal supervision and constitutes a true and accurate record of the proceedings.

    I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel, nor financially interested in the action.

    Witness my hand and official seal this the 15th day of February, 1999.

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KIMBERLY A. WATTS
Notary Public at Large