Crawford Opinion	S.37	Is there a meaningful difference?
Exposure at a rate significantly greater than the general population.	The person was ***exposed to a toxic substance*** as a result of tortious conduct by the owner or operator, or persons under the control of the owner or operator, who released the toxic substance. §7202(a)(1).	No. The use of the word "significantly greater" in the context of Judge Crawford's decision does not meaningfully distinguish it from the S.37 exposure test. The purpose of the "significantly greater" language stems from case law where plaintiffs sought to prove exposure to the defendant's toxic chemicals by comparing plaintiffs' exposure to an apparent regional or background level. Courts that have adopted the "significantly greater" or similar language have also recognized that plaintiffs can obtain medical monitoring with proof of exposure to the defendant's toxic substance even when their exposure is below that of the general population. See In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 771 n.36 (3d Cir. 1994) ("to the extent that the plaintiffs can demonstrate that their exposure stemmed from the ***defendants' PCBs***, they will have presented evidence sufficient to survive summary judgment ***even if their exposure was within background levels—so long as this exposure was sufficient to result in their illnesses***.") (emphasis added). Under §7201(a), plaintiffs need to prove the *defendant* tortiously exposed them at levels that warrant monitoring. S.37 therefore satisfies the purpose of the "significantly greater" language in Judge Crawford's test and is also universally applicable no matter what proof future plaintiffs offer on exposure.
To a proven hazardous substance	S.37 defines "***toxic substance***" to include those for which "exposure to the substance is shown by expert testimony to increase the risk of developing a latent disease." §7201(12)(a)(vi)	No.
As the result of tortious conduct of the defendant	The person was exposed to a toxic substance as a ***result of tortious conduct*** by the owner or operator, or persons under the control of the owner or operator, who released the toxic substance. §7202(a)(1).	No.

Crawford Opinion	S.37	Is there a meaningful difference?
As a proximate result of the exposure, plaintiffs have suffered an increased risk of contracting a ***serious*** disease	As a proximate result of the tortious exposure, the person has a greater risk of contracting a latent disease. §7202(a)(2).	No. Including the term "serious" does not meaningfully change the test. I've identified only one appellate that defines "serious disease" — "an illness that **in its ordinary course may result in significant impairment or death**." *Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 979 (Utah 1993) (emphasis added). However, the court did not define "significant impairment" and therefore offers little additional guidance. Under §7202(a)(3), plaintiffs need to prove through expert testimony that testing is reasonably necessary. Defendants can offer expert testimony that diagnostic testing is not reasonably necessary because the disease is not "serious" enough to warrant it.
The increased risk makes it medically necessary for the plaintiffs to undergo periodic medical examination different from that prescribed for the general population in the absence of exposure	Diagnostic testing is reasonably necessary. Testing is reasonably necessary if, shown by expert testimony, a physician would prescribe diagnostic testing because the person's increased risk of contracting the disease due to the exposure makes it reasonably necessary to undergo diagnostic testing different from what would normally be prescribed in the absence of the exposure. §7202(a)(3).	No.
Monitoring procedures exist which are reasonable in cost and safe for use	Medical tests or procedures exist to detect latent disease.	S.37 does not explicitly require consideration of the cost of monitoring procedures or their safety. Issues of safety and cost can be addressed in determining whether a "physician would prescribe diagnostic testing." Notably as to cost, Judge Crawford's opinion favorably cites Bower v. Westinghouse Elec. Corp., 522 S.E.2d 424 (W.Va. 1999). In that case, the West Virginia Supreme Court held that "factors such as financial cost and the frequency of testing should not be given significant weight." Id. at 433.