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TITLE V TASK FORCE  
DALLAS, TEXAS  
NOVEMBER 15, 2004

1 U.S. ENVIRONMENTAL PROTECTION AGENCY

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3 Mr. Steve Hitte, Office of Air Quality Planning and  
Standards

4 Ms. Carol Holmes, Office of Enforcement and Compliance  
Assurance

5 Mr. Michael Ling, Office of Air Quality Planning and  
Standards

6 Mr. Ray Vogel, Office of Air Quality Planning and  
Standards

7 Ms. Callie Videtich, Region 8

8

TASK FORCE MEMBERS

9

Ms. Shannon Broome, Air Permitting Forum

10 Ms. Lauren Freeman, Utility Air Regulatory Group

11 Mr. Steve Hagle, Texas Commission on Environmental  
Quality

Mr. Bob Hodanbosi, Ohio Environmental Protection Agency

12 Ms. Shelley Kaderly, Nebraska Department of  
Environmental Quality

13 Ms. Marcie Keever, Our Children's Earth

Mr. Bob Morehouse, ExxonMobil

14 Ms. Verena Owen, Lake County Conservation Alliance

Mr. Bob Palzer, Sierra Club

15 Mr. Bernie Paul, Eli Lilly

Ms. Keri Powell, New York Public Interest Research

16 Group

Mr. Adan Schwartz, Bay Area Air Quality Management

17 District

Mr. Don van der Vaart, North Carolina Department of

18 Environment and Natural Resources

Mr. David Golden, Eastman Chemical

19 Ms. Kelly Haragan, Environmental Integrity Project

Mr. Mike Wood, Weyerhaeuser

20

21 EC/R INCORPORATED

22 Mr. Graham Fitzsimons

Ms. Shannon Cox

23

24

25

1	LIST OF SPEAKERS	
2	NAME	GROUP
3	Marian Feinberg	For a Better Bronx
4	Michael Boyd	Californians for Renewable Energy, Inc. (CARE)
5	Robert Hall	Nevada Environmental Coalition, Inc.
6	David Frederick	Frederick Law (TX)
7	Robert Ukeiley	GA Center of Law in the Public Interest
8	Gary Abraham	Concerned Citizens of Cattaraugus County (NY)
9	Sharon Genasci	Northwest District Association Health & Environment Committee
10	Scott Gollwitzer	Appalachian Voices (NC)
11	Avram Friedman	Executive Director of the Canary Coalition
12	Merrijane Yerger	Clean Up LA
13	John Wilson	Galveston-Houston Association for Smog Prevention (GHASP)
14	Alexandra Gorman	Women's Voices for the Earth
15	Kathy Van Dame	Wasatch Clean Air Coalition (UT)
16	Melissa Scanlan	Midwest Environmental Advocates, Inc.
17	John Suttles	Tulane Environmental Law Clinic
18	David Monk	Oregon Toxics Alliance
19	Swati Prakash	W. Harlem Environmental Action
20	Jane Williams	California Communities Against Toxics (CA)
21	Reed Zars	Citizen attorney
22	Deborah Masters	Community Board 1 (Brooklyn) and Neighbors Against Garbage (NY)
23		
24		
25		

1                   MR. VOGEL: This is the EPA Title V Task  
2 Force conference call. My name is Ray Vogel. I will  
3 be moderating the call until someone else shows up to  
4 do that. And do we have any callers on the line? And  
5 I apologize for the delay in getting the line open.

6                   Well, for the purpose of the court  
7 reporter, let's go around the room and introduce  
8 ourselves. And like I said, I'm Ray Vogel with the  
9 U.S. EPA in North Carolina.

10                  MS. KADERLY: Shelley Kaderly, State of  
11 Nebraska.

12                  MS. KEEVER: Marcie Kever with Our  
13 Children's Earth.

14                  MS. BROOME: Shannon Broome, Air  
15 Permitting Forum.

16                  MR. HAGLE: Steve Hagle, Texas Commission  
17 on Environmental Quality.

18                  MR. GOLDEN: David Golden, Eastman  
19 Chemical Company.

20                  MS. HARAGAN: Kelly Haragan,  
21 Environmental Integrity Project.

22                  MS. HOLMES: Carol Holmes, EPA.

23                  MR. MOREHOUSE: Bob Morehouse,  
24 ExxonMobil.

25                  MS. FREEMAN: Lauren Freeman for the

1 Utility Air Regulatory Group.

2 MR. HODANBOSI: Bob Hodanbosi, Ohio EPA.

3 MS. POWELL: Keri Powell for the New York  
4 Public Interest Research Group.

5 MR. FITZSIMONS: Graham Fitzsimons with  
6 EC/R, Incorporated, EPA support contract.

7 MS. COX: Shannon Cox, also with EC/R,  
8 Incorporated.

9 MR. PALZER: Bob Palzer representing the  
10 Sierra Club.

11 MR. SCHWARTZ: Adan Schwartz with the San  
12 Francisco Bay Area Air Quality Management District.

13 MS. OWEN: Verena Owen, Lake County  
14 Conservation Alliance.

15 MR. WOOD: Mike Wood, Weyerhaeuser  
16 Company.

17 MR. VOGEL: This is Ray again. I'll note  
18 that there are several people absent here and I'll say  
19 their names too. Michael Ling from the U.S. EPA, looks  
20 like Bernie Paul is not here, Eli Lilly. Steve Hitte  
21 is not here from the EPA. Bill Harnett from the EPA.  
22 John Higgins from the New York Department of  
23 Environmental Conservation and Don van der Vaart from  
24 the North Carolina Department of Environment and  
25 Natural Resources. Also Padmini Singh from the U.S.

1 EPA and Richard Van Frank from Improving Kids'  
2 Environment. Callie Videtich with the U.S. EPA Region  
3 8. Hope I covered everybody. Do we have the first  
4 caller? I apologize. The caller had called in before  
5 that we had the line opened up. So I hope that they  
6 will now call back in and we will be going on here.

7 UNIDENTIFIED SPEAKER: (Inaudible)

8 MR. VOGEL: I'm sorry. We're having a  
9 very hard time hearing you. Bear with us a second. We  
10 will try to -- hello? We can barely understand your  
11 voice, please. Excuse me. We are having technical  
12 difficulties. Please bear with us.

13 We have a hard time understanding your  
14 voice on the speaker system here in the room. Please  
15 stay on the line. We will figure out the problem and  
16 get back to you very soon. This is the Title V  
17 conference call. We are having problems. Until we get  
18 that fixed, please try to stay on the line until we can  
19 get a phone that allows us to hear the callers.

20 UNIDENTIFIED SPEAKER: Okay.

21 MR. VOGEL: This is Ray Vogel again. We  
22 are having a difficult time hearing anyone calling in.  
23 We are attempting to fix this problem. And we hope to  
24 get it fixed soon. But in the meantime please stay on  
25 the line so we can start hearing your presentation when

1 we get the communication problem fixed. We can't hear  
2 you here because we were having some technical  
3 difficulties. If you can just hang on. Can you hear  
4 me?

5 This is Ray Vogel. This is the Title V  
6 Task Force. I believe we can hear you now. Thank you  
7 very much for your patience. People are extremely  
8 relieved in the room that we now can go on. So let me  
9 ask who we have on the line, or maybe I should ask more  
10 directly, do we have Marian Feinberg?

11 MS. FEINBERG: Yes.

12 MR. VOGEL: And Elizabeth Rosemeyer?

13 MS. FEINBERG: What happened was going to  
14 come on the mic, we were cut off. It said the leader  
15 had disconnected so I actually just called back in  
16 right, you know, like 30 seconds before your voice came  
17 on so maybe she hasn't --

18 MR. VOGEL: Well, I think what we will do  
19 is if folks could bear with us, Marian, could you go  
20 ahead and make your presentation? But before you do  
21 that, I would like to tell you and everybody on the  
22 line that this conversation is being taped for  
23 transcript purposes for audio and also written  
24 testimony is being recorded, so please go ahead and  
25 make introduction and continue with the presentation.

1                   MS. FEINBERG: Hi, good morning. Thank  
2 you for the opportunity to testify today. My name is  
3 Marian Feinberg. I'm the (inaudible) for an  
4 organization called For a Better Bronx. We used to be  
5 with -- the name of the organization used to be called  
6 South Bronx Clean Air Coalition.

7                   Title V is a program that represented a  
8 real advance in our air regulations in terms of the  
9 single clear and consolidated place where air emission  
10 requirements can be found and enforced. Requirement to  
11 reporting and monitoring sufficient to ensure  
12 compliance are also embedded in the program. And  
13 public participation is supported. Our community  
14 values these advances and the promise of Title V while  
15 at the same time being profoundly disappointed in its  
16 reality here as the program is practiced in New York  
17 State.

18                   We are also disappointed that EPA has  
19 failed to assert its authority to ensure that state  
20 program fulfills its purpose. It is after all a  
21 program of the Clean Air Act. In the Bronx my  
22 organization at one time South Bronx Clean Air  
23 Coalition has participated in the Title V permit  
24 process for two different projects. Once for a plant  
25 NYOFCO, which stands for New York Organic Fertilizer

1 Company that pelletizes two-thirds of the sewage sludge  
2 produced in New York City. And the other around two  
3 New York power plants called (inaudible) which consist  
4 of four generators.

5                   What's our opinion of some of the  
6 deficits in the way New York State carries out its  
7 program. Our problems with the program fall into two  
8 categories. The first category is community  
9 participation. New York State not only fails in the  
10 spirit of Title V but also fails to follow its own  
11 environmental justice guidelines which by the way were  
12 set up on order of EPA.

13                   One of those problems by communities that  
14 want to participate in the Title V process. One,  
15 failure to do adequate notification to community-based  
16 organizations, state institutions, et cetera, in the  
17 vicinity of a facility. That a comment period is open.

18                   Often community-based organizations and  
19 churches in our community do not find out about a  
20 comment period until the last minute or even after a  
21 deadline. Although I personally have helped organize  
22 the public outcry for a Title V hearing on the NYOFCO  
23 plant two years ago and had testified at that hearing,  
24 even I didn't receive notification that a comment  
25 period had now opened just this past fall for permit

1 revisions.

2                   Second, failure to respond to community  
3 requests for a Title V hearing. The New York State DEC  
4 responds to requests for public hearing by saying well,  
5 we'll see if there's sufficient interest. They have  
6 never made public nor perhaps do they even have any  
7 objective criteria for what constitutes sufficient  
8 interest.

9                   Thus, community groups with scarce human  
10 and financial resources go into a frenzy of activity  
11 trying to get better community members, elected  
12 officials to the DEC asking for such a hearing.  
13 Sometimes they say yes, other times no. The time and  
14 resources spent on getting DEC to agree to a hearing  
15 would be better spent analyzing the permit, educating  
16 community members about the permit and the Title V  
17 process and preparing comments.

18                   Three, failure to take community comments  
19 seriously. It is very painful to be at a hearing and  
20 hear community members, you know, pouring out their  
21 hearts about how pollution in the different plants has  
22 affected their family's health and then to see that the  
23 DEC has not responded.

24                   DEC also failed to respond to even  
25 technical comments generated by the community.

1 (Inaudible) participation process presents the illusion  
2 of democracy without its content. A number of  
3 community representatives have said we would be better  
4 off picketing the hearing than talking at it. That is  
5 a sad commentary on the ways these things are  
6 conducted.

7                   The other area is about content of these  
8 permits and how it is looked at in New York State.  
9 One, in the facilities that we have, you know,  
10 participated in the process for, the failures of these  
11 facilities to carry out the mandates of the original  
12 permits has not been taken into account when setting  
13 conditions for the Title V permit.

14                   For example, failure to include  
15 sufficient monitoring and record keeping to ensure  
16 compliance where taking note of a facility's failure in  
17 its regard emission permit -- I'm sorry -- I just got  
18 lost here -- that the DEC often fails to include  
19 sufficient monitoring and record-keeping to ensure  
20 compliance but take note of when a facility has failed  
21 in this regard in their initial permit and that's the  
22 DEC instead of setting stricter standards enforcing  
23 them through Title V fail to do so.

24                   For example, the NYOFCO facility that I  
25 mentioned have failed to conduct many stack tests that

1 have been required under their original permit. And  
2 the New York power authority plants have seriously  
3 exceeded emissions limits of the original permit, yet  
4 Title V does not take these exceedances into account  
5 when setting conditions.

6 Failure to -- another failure of the is  
7 the failure to take note of background community health  
8 have when setting limits is as has long been fought for  
9 by the environmental justice community. In the case of  
10 power plants the DEC has actually violated as was  
11 judged by court, their own SEQRA standards which stands  
12 from State Environmental Quality Review Act, with state  
13 in terms of where power plants were cited and the fact  
14 that they did not do any analysis of PM2.5 which is  
15 long recognized as, you know, a major culprit in  
16 asthma, for example, which is very high in this  
17 community.

18 Just to comment on something that  
19 happened with EPA itself, our community (inaudible)  
20 community organizations before making these comments.  
21 When the NYOFCA permit was approved, the Title V permit  
22 was approved two years ago, the community, you know,  
23 gave an appeal to EPA and the EPA just responded over  
24 two years later, just responded now.

25 And we don't understand why that took so

1 long. And so -- and we would really -- you know, we  
2 don't understand whether it's a lack of (inaudible),  
3 whether EPA is understaffed, what it is -- not  
4 sufficient communication going on back and forth.

5                   So one recommendation that we have that  
6 EPA take more authority and shorten its response time.  
7 Two, we request that it be said in terms of Title V to  
8 establish a fund for community groups either on the  
9 state level or the national level so that groups can  
10 access scientific and legal technical assistance.

11                   It's very hard for, you know, community  
12 residents to get together sufficient funds to hire  
13 their own engineer, hire their own lawyer where the  
14 state has engineers and lawyers and the facility has  
15 engineers and lawyers. So we're really at a  
16 disadvantage in preparing certain technical comments.

17                   And we would like to see public health  
18 criteria used in analysis and setting of permit limits.  
19 We would like to make sure that the past failures of  
20 emission limits or monitoring taken into account, some  
21 permit conditions. We want to see these permits  
22 actually enforced and not just on paper. And we would  
23 like very much to have public hearings be made  
24 mandatory following a simple request as is done in many  
25 other states but not in New York. That's my testimony.

1                   MR. VOGEL: Thank you. Questions from  
2 the panel. Keri Powell.

3                   MS. POWELL: Hi, Marian. Can you hear me  
4 now?

5                   MS. FEINBERG: Yeah.

6                   MS. POWELL: Thank you so much for your  
7 testimony. I just wanted a little bit of clarification  
8 on when you talked about NYOFCO not having performed  
9 the stack tests required under its original permit. I  
10 guess you're referring to a construction permit.

11                   MS. FEINBERG: I also NYOFCO facility  
12 that was one of those facilities that is operated  
13 before Title V before New York started to get to have  
14 Title V permits issued. So after it had been operating  
15 for, let me see -- it had been operating for eight  
16 years. So it's really substantial information that was  
17 available on the past performance both in terms of  
18 emissions and their effects on the community and in  
19 terms of technical things in permit like not doing  
20 their stack tests.

21                   MS. POWELL: What I just wanted some  
22 clarification on was -- you said that you didn't feel  
23 that the Title V permit adequately addressed NYOFCO's  
24 failure to perform the stack tests that were already  
25 required. And I just wanted to understand better, what

1 did the Title V permit do about that and what did you  
2 think that it should have done?

3 MS. FEINBERG: I don't know if I'm really  
4 quite prepared to answer that. I think that there  
5 really has to be both -- you know, if I think that  
6 there's going to have to be more monitoring of the --  
7 by the state of more when they do this and more  
8 penalties when they don't fulfill their mandates under  
9 the permit.

10 I think that the Title V permits still  
11 gave them a lot of leeway in terms of how long it gave  
12 them to do new stack tests and still didn't have it  
13 completely worked out to issue reports on what they  
14 were going to do to control certain kinds of emissions.  
15 They even under this Title V permit the conditions have  
16 not been very forcefully enforced by the state and  
17 those conditions were very weak.

18 MS. POWELL: Thanks, Marian.

19 MS. FEINBERG: I'm sorry I can't be more  
20 technical about it, but it's a little beyond me.

21 MR. VOGEL: Adan Schwartz.

22 MR. SCHWARTZ: This is Adan Schwartz of  
23 the Bay Area Air District. Can you hear me?

24 MS. FEINBERG: Yes, I can.

25 MR. SCHWARTZ: You commented on a failure

1 to notify about the beginning of the comment period.  
2 Do you have suggestions for how that could have been  
3 done better from your perspective?

4 MS. FEINBERG: There was actually, you  
5 know, the DEC because it had (inaudible) that's the New  
6 York State Department of Conservation Agency. The DEC  
7 has failed to really set up an environmental justice  
8 program and the EPA kind of pushed them to do that  
9 several years ago.

10 There were hearings held all over the  
11 state and one of the major things that people testified  
12 on is this issue about community notification. And  
13 there were recommendations that were raised at that  
14 time and were sort of included in -- one of the things  
15 really has to do with -- at least in New York City -- I  
16 don't know what the rest of the country is like, but in  
17 New York City there's readily available lists from  
18 community boards and from programs from city officials  
19 lists of community-based organizations, lists of  
20 state-based institutions, et cetera.

21 And it really needs to be broad  
22 notification to the institutions that really the  
23 information conduits in the community. Posting  
24 something in some obscure place on the DEC web site  
25 does not constitute public notification. And the DEC,

1 you know, I mean at least to notify people who  
2 testified at prior hearings at the same facility, that  
3 would be nice. That would be an advance to where --  
4 you know, to where we are now. They don't seem to take  
5 this question seriously at all. The information,  
6 public information you know the whole idea of an  
7 informed citizenry is totally essential to the issue of  
8 democracy and totally essential to the issue of really  
9 allowing public comment.

10 MR. VOGEL: Bob Palzer.

11 MR. PALZER: I'm Bob Palzer of the Sierra  
12 Club. You were saying that you not only don't get good  
13 notice, but when you are able to get notice, you don't  
14 have the technical resources to be able to respond, and  
15 when you do respond, your input isn't taken seriously.

16 Do you have any suggestions on how that  
17 could be improved on things that could be done within  
18 the program to be able to get the notification in time,  
19 have the resources to make meaningful comments and to  
20 get them actually implemented?

21 MS. FEINBERG: Well, in terms of the  
22 resources, like I said, we really feel that this is on  
23 the basis of talking with several organizations that we  
24 really would like to see a -- you know, a TA fund set  
25 up to be able at least to cover -- I mean, even if

1 someone wants to donate some labor time and the people  
2 need -- there's still some resources to cover their  
3 expenses for getting organizations technical  
4 assistance.

5                   So the technical assistance funding would  
6 be helpful, but some of the other things really have to  
7 do with -- I mean, in our experience giving the state  
8 of New York the latitude to do their own thing has not  
9 resulted in the state doing so.

10                   So then we're left with a situation of  
11 really asking for there to be mandates and part of the  
12 Title V program and saying, well, if we're giving this  
13 power to the state to do this, then the state has to  
14 fulfill these mandates. And one of them really needs  
15 to be a broad public notification in sufficient time  
16 and starting with some of the things that the state  
17 does in order to evade public participation.

18                   For example, you know, in one situation  
19 where they persistently set up public hearings five  
20 days, ten days before Christmas, for example, when --  
21 and the fact that community members still come out 150  
22 or 200 people to respond to something even at that time  
23 is a real tribute to the level of interest.

24                   And one might wonder if it weren't five  
25 days before Christmas how many people might have been

1 able to come out. So we feel like sometimes it's not  
2 only carelessness but deliberate in terms of trying to  
3 keep down the numbers of people who can come out or who  
4 can comment.

5 In terms of taking people seriously, what  
6 can you do? I mean, it's like what can you say, I  
7 mean, other than to say that every comment that is made  
8 needs to be responded to because when you give them a  
9 choice, they don't.

10 MR. VOGEL: Thank you. In the interest  
11 of time, we have about two minutes left for questions.  
12 Go with Shannon Broome and if there is time left,  
13 Verena.

14 MS. BROOME: Marian, can you hear me? My  
15 name is Shannon Broome and I'm with the Air Permitting  
16 Forum. I know you're really busy, but I was hoping --  
17 and rather than ask you in two minutes to say  
18 everything, if you could give us examples because if  
19 we're going to be effective in making any  
20 recommendations at all, you know, we could make  
21 generalizations and say, oh, these guys aren't  
22 responding, but if we could say, here's an example of a  
23 situation, this comment was made, they made absolutely  
24 no response. This comment was made and they just blew  
25 it off with a hand gesture and said see you later. You

1 know, anything that would be where you could just even  
2 send in the permit with a big X and a copy of what you  
3 submitted would be helpful to us, and we'll do the work  
4 of looking at it.

5 MS. FEINBERG: Okay. I would be happy  
6 to -- yeah, because I can't do it offhand. I really  
7 have to go back and pick things out that I think would  
8 be effective.

9 MS. BROOME: Thank you.

10 MS. FEINBERG: So how do I send that in?

11 MS. BROOME: Ray will tell you later.

12 MR. VOGEL: You can send that to my  
13 e-mail, Vogel.Ray@EPA.Gov. We are asking for comments  
14 by March of this year, but, you know, the sooner the  
15 better -- next year, I'm sorry. Soon as you can get it  
16 to us, the better the Task Force will be able to digest  
17 it. Verena, do you have a short question?

18 MS. OWEN: As a matter of fact, I have a  
19 yes or no question. Hi, Marian, this is Verena Owen,  
20 Lake County Conservation Alliance. I was doing a bit  
21 of nodding while you were talking.

22 MS. FEINBERG: Hi.

23 MS. OWEN: I'm from Illinois. I have a  
24 quick question. Does the DEC have a designated  
25 community relations officer that works with

1 communities?

2 MS. FEINBERG: Does the EPA here in  
3 Region 2?

4 MS. OWEN: Does DEC?

5 MS. FEINBERG: Does DEC? There is a  
6 person who (inaudible) this person doesn't (inaudible)  
7 there's a person that does it in our area who I see is  
8 often (inaudible) but she -- you know, she's a hard row  
9 to hoe.

10 MS. OWEN: Pardon me? I didn't hear the  
11 last part.

12 MS. FEINBERG: She's often very helpful.  
13 There is a person. She's also very helpful but it  
14 is --

15 MS. OWEN: You would like to see more?

16 MS. FEINBERG: Right, right. And she  
17 is -- her job is very difficult.

18 MS. OWEN: Thank you.

19 MS. FEINBERG: Okay.

20 MR. VOGEL: Thank you, Marian. Do we  
21 have Elizabeth Rosemeyer on the phone? Michael Boyd?

22 MS. MASTERS: I'm on the phone.

23 MR. VOGEL: I'm sorry, who are you?

24 MS. MASTERS: Deborah Masters.

25 MR. VOGEL: Deborah, I have you down at

1 5:20 this afternoon.

2 MS. MASTERS: Ray changed it to 8:40.

3 MR. VOGEL: Well, I am Ray and  
4 unfortunately maybe I didn't send you the e-mail or you  
5 didn't get the e-mail.

6 MS. MASTERS: I was at 5:20 and just last  
7 week you wrote to me and said could I do 8:40 so you  
8 didn't have a gap in the schedule, and I wrote back and  
9 said yes and here I am.

10 MR. VOGEL: I'm sorry for that, but we do  
11 have everyone in at -- we have already taken the 8:40  
12 speaker, and now we're moving on to the 9:00 and 9:20.

13 MS. MASTERS: Should I call back at 5:20?

14 MR. VOGEL: If you wouldn't mind, thank  
15 you very much. 5:20 central time. Who do we have?

16 MR. BOYD: This is Mike Boyd.

17 MR. VOGEL: Michael, thank you for your  
18 patience. We are running late, but we will now be  
19 ready for your presentation. Let me remind you that we  
20 are taping this for audio transcripts and recording on  
21 written transcripts. You have ten minutes for your  
22 presentations, and then we'll allow ten minutes for  
23 questions.

24 MR. BOYD: Certainly that's sufficient  
25 time for what I need to say. My name is Mike Boyd and

1 I'm president of the Californians for Renewable Energy,  
2 CARE, and the nature of Title V permits that I was  
3 involved in for a facility called Los Medanos Energy  
4 Center located in Pittsburg, California. It's a 550  
5 megawatt gas fired combined cycle power plant.

6 My organization was involved in the  
7 initial permit issued by an agency called the  
8 California Energy Commission. I sent a couple of  
9 e-mails including attachments to you, Ray, and the  
10 other persons listed on the e-mail list. And basically  
11 that's what I'm taking this from and I have pretty much  
12 written it down already.

13 I am forwarding e-mail along with four  
14 attachments which included CARE's requests for  
15 supplemental environmental projects. The Los Medanos  
16 energy permit issued November 9th this year and the  
17 response of the Bay Area Air Quality Management  
18 District, BAAQMD, the U.S. EPA to our comments and I  
19 forwarded that to the U.S. review Task Force.

20 The U.S. -- I also included the U.S. EPA  
21 office bill of rights and the coordination and review  
22 section of the civil rights division of the U.S.  
23 Department of Justice. Californians for Renewable  
24 Energy, CARE, complained under Title VI of the Civil  
25 Rights Act of 1964 and executive order 12898 against

1 the approval of the Los Medanos Energy Center. And  
2 another facility nearby is called the Delta Energy  
3 Center. Violations by the California Energy  
4 Commission, the California Air Resources Board, and  
5 BAAQMD with the U.S. EPA on April 17, 2000, File Number  
6 2R00-R9.

7 We were told by the U.S. EPA office of  
8 civil rights had accepted CARE's complaint for  
9 investigation only to CARB and BAAQMD and not the CEC  
10 as they are the recipients of EPA funding. Since this  
11 time we've become aware that the CEC is not exempt from  
12 investigation but instead the investigating agency -- a  
13 guy named Sebastian Lock, who is the staff attorney at  
14 the coordination and review section of the civil rights  
15 division of the U.S. Department of Justice.

16 CARE's participation in the  
17 aforementioned parties alternative dispute settlement  
18 process funded by the U.S. EPA through monthly meetings  
19 from June through December of 2002. Left unresolved  
20 was communication to be offered up for Pittsburg  
21 community communicated these two plants' impact on air  
22 emissions locally. This is in addition complaint  
23 against BAAQMD permitting Calpine's continued operation  
24 of this facility with 66 each notices of violations  
25 still listed as pending. I note based on the response

1 that I provided to our comments on the Title V permits  
2 this remains unresolved as the BAAQMD does not produce  
3 the NOV records despite BAAQMD'S assurances to do so.

4 On March 21st, 2004, CARE requested  
5 BAAQMD to settle the U.S. EPA Title VI complaints  
6 through supplemental and environmental projects. And  
7 we assumed that this permit is a response to our  
8 request to BAAQMD to settle the Title VI complaint  
9 supplemental and environmental projects.

10 We also assume that this permit issued  
11 through BAAQMD final response to our request over a  
12 year old the records in BAAQMD's possession on NOV  
13 herein cited as lawful request California -- record  
14 that -- which I note on November 2nd was made part of  
15 the state constitution by 83 percent approval, Prop 59.

16 I also attached and I -- this was  
17 directed specifically to the performance review Task  
18 Force. I attached to draft Title V permit and public  
19 comment period on Los Medanos Energy Center Title V  
20 permit. Remanded back to BAAQMD by U.S. EPA  
21 Administrator in response to successful appeal by CARE  
22 of the original BAAQMD Title V permit issued for the  
23 facility.

24 This provides evidence that the new Title  
25 V permit process under view by Task Force performed as

1 planned and that BAAQMD reopened the permit for public  
2 comment. The major flaw in the U.S. EPA Title V permit  
3 is that a lack of active enforcement by U.S. EPA  
4 through a corrective action program to recognize that  
5 once the public decides to actively participate in a  
6 project Title V permit for review process, the air  
7 district must be transparent as regards to Title V  
8 permit applicant's prior performance and conditions  
9 required in its original permit.

10 BAAQMD's response to comment admitted  
11 failing to provide CARE information on over a dozen  
12 notices of violation on the project Los Medanos  
13 conformance to the conditions and further denied our  
14 request for a public hearing lawfully requested on this  
15 permit.

16 BAAQMD invited public comment and  
17 requests for public hearing is shown in the document  
18 that I attached. It said, quote, The district invites  
19 written comment on issued identified in EPA's order as  
20 well as any proposed changes. All comments must be  
21 received by September 20th, 2004, and the public may  
22 also request a public hearing for this reopening of the  
23 permit.

24 In issuing its November 9th permit  
25 without the lawfully requested public hearing and

1 without providing CARE the lawfully requested  
2 enforcement on NOV's relevant to the applicant's  
3 performance to its original Title V permit conditions  
4 of operation, the district exposes a failure in the  
5 U.S. EPA Title V program by failing to provide CARE as  
6 a representative to the public an opportunity to  
7 meaningful, informed public participation in the Title  
8 V permit.

9                   A scientist like myself, typical process  
10 control needs to be implemented on U.S. EPA Title V  
11 program to determine the root cause of this failure  
12 when the U.S. EPA administrator rules in favor of an  
13 appellate and against the local agency that it's  
14 reluctant to comply with the administrator's directive,  
15 what remedy is there for the appellate to ensure full  
16 compliance with the order?

17                   Put another way, is this just one rogue  
18 district or is the entire Title V program flawed by  
19 design? This is relevant to the Task Force rule in  
20 evaluating performance of the Title V program as  
21 originally planned to give the public an opportunity to  
22 meaningful and informed public participation in the  
23 Title V permit. Thank you.

24                   MR. VOGEL: Thank you, Michael. Ray  
25 Vogel again. Could I ask you if you have something

1 that you're reading from, could you e-mail it in?

2 MR. BOYD: Yeah, I already sent it. You  
3 received -- this was sent -- I sent you a copy on the  
4 12th and then this looks like the 13th probably.

5 MR. VOGEL: It should be in my e-mail  
6 when I get back then.

7 MR. BOYD: I can resend everything if you  
8 want.

9 MR. VOGEL: No, that won't be necessary.

10 MR. BOYD: Yeah. Just get back to me if  
11 there's something that you didn't get. I would be  
12 happy to resend it.

13 MR. VOGEL: Now we have questions from  
14 the panel. Marcie Kever.

15 MS. KEEVER: Hi, Mike. It's Marcie  
16 Kever from Our Children's Earth. I had a question  
17 about -- you talked about notices of violation. And I  
18 think there's a list of them in the e-mail that you  
19 sent to us. You were never given the information on  
20 those notices of violation; is that correct?

21 MR. BOYD: That is correct.

22 MS. KEEVER: And the reason for never  
23 receiving any information besides -- I think you have a  
24 list and that's all.

25 MR. BOYD: Part of the law enforcement

1 investigation, that's what they were protecting under.

2 MR. VOGEL: Shelley Kaderly.

3 MS. KADERLY: Shelley Kaderly with the  
4 State of Nebraska. I was wondering whether you were  
5 provided a reason why you were denied a request for  
6 public hearing.

7 MR. BOYD: Yes. It's in my response.  
8 Basically they said that the information I was seeking  
9 wasn't relevant, that the NOV wasn't relevant to the --  
10 to my comment basically, that it wasn't relevant to  
11 the -- that I could have still -- they still provided  
12 me -- they claim they still provided me enough  
13 information to provide both meaningful and informed  
14 participation, my position being that they provided me  
15 an opportunity for maybe meaningful at a stretch, but  
16 they didn't give me informed participation because they  
17 didn't provide me the records.

18 MS. KADERLY: Were you provided a written  
19 response to your request?

20 MR. BOYD: Certainly. It was a one-page  
21 response basically saying that it was part of a law  
22 enforcement investigation, and they couldn't give me  
23 the investigation. They would make that information  
24 available to me as soon as it was available. And I  
25 provided copies of that as attachments in my e-mail

1 that I sent around.

2 MR. VOGEL: Kelly Haragan.

3 MS. HARAGAN: Hi, this is Kelly Haragan  
4 with the Environmental Integrity Project. In EPA's  
5 response to your petition, it sounds like they granted  
6 your petition and agreed with you; is that right?

7 MR. BOYD: Well, basically Title V what's  
8 called positive action in our petition in which one was  
9 accepted was they hadn't provided a statement of basis  
10 in the original Title V permit.

11 MS. HARAGAN: Did EPA say anything about  
12 their failure to provide you access to those NOV's?

13 MR. BOYD: No. At that time when we  
14 filed it, that wasn't an issue. That became an issue  
15 later. CARE was trying to get those records because we  
16 were participating before the California Energy  
17 Commission on other projects with the same power  
18 company, Calpine Corporation, who was applying for  
19 numerous gas fired power plants throughout the state of  
20 California, particularly in low income communities.

21 MS. HARAGAN: So the state's position is  
22 still that they won't give you those NOV's until they  
23 resolve any kind of enforcement action they're going to  
24 take?

25 MR. BOYD: Correct. They wouldn't

1 provide it to me until they settled the penalty for  
2 which they were going to charge Calpine for its NOV's.  
3 Now, we were proposing they adopt a supplemental  
4 environmental program which was about five million  
5 dollars in actual reductions through, like, school bus  
6 retrofit and garbage truck retrofit. Silver Tower, our  
7 school district -- school district along with the  
8 original complainant in the civil rights complaint back  
9 in 2000 that we --

10 MS. HARAGAN: So, I mean, they're  
11 withholding everything about those NOV's from you, even  
12 emissions data?

13 MR. BOYD: Correct. They would not give  
14 us what -- they wouldn't give us more than that one  
15 page that I sent you which basically was a list of all  
16 the notices of violation.

17 MS. HARAGAN: Okay. Thank you.

18 MR. BOYD: Now, they did provide it to  
19 another group, Golden Gate University, which I think  
20 Ms. Keever was part of. And she was able to get some  
21 of those records outside of the process we were  
22 involved in which was the California Public Records Act  
23 project.

24 MS. HARAGAN: So do you have those -- do  
25 you have the NOV's now?

1                   MR. BOYD: Do I have them? No, I don't  
2 have all the information on NOV's, no. We never got all  
3 the information we needed. They didn't (inaudible)  
4 involve -- we would get, like, a copy of the actual  
5 notice but none of the details on how they -- they  
6 didn't -- claiming that the violations were corrected  
7 immediately after they occurred, but they didn't  
8 provide the information so that we could assert that  
9 that actually happened, is what the problem is.

10                   MS. HARAGAN: Okay. Thanks.

11                   MR. VOGEL: Question from Adan Schwartz.

12                   MR. SCHWARTZ: Hi, Michael. I may know  
13 the answer to this but I'm going to ask you anyway just  
14 to get it on record. First of all, you may want to  
15 check with Bob Sarby because I think he does now have  
16 the complete enforcement files, but that's now and I  
17 know you're talking about --

18                   MR. BOYD: I spoke to Bob on Saturday,  
19 and we haven't got anything yet. We have been  
20 requesting it. And the lady at the district in charge  
21 has been unavailable for about the last week.

22                   MR. SCHWARTZ: Well, in any case, you're  
23 talking about the period when you were reviewing the  
24 permit which is, you know, that's not now to focus on  
25 when you really wanted the information and didn't have

1 it. And I just wondered if you could say more about  
2 the kinds of information that you were seeking  
3 regarding these violations and how that would have been  
4 useful to you or --

5 MR. BOYD: Well, we were seeking specific  
6 information about what exactly they had violated, what  
7 limits they had exceeded, what basically the violations  
8 were permit condition. And information that provided  
9 us wasn't sufficient for us to determine the actual  
10 cause of the notice of violation.

11 And so that's why we were seeking details  
12 on what the air district did to correct it to make sure  
13 that, in fact, the violations didn't occur. And since  
14 there were so many violations, it appeared to us that  
15 the same thing was being violated. It's not like there  
16 were 66 violations that were all different each time of  
17 a different condition of operations. It was what we --  
18 we were seeking to show was that, in fact, these guys  
19 were continuously in violation of their operating  
20 permits and that the conditions that were imposed on  
21 them weren't sufficient to mitigate their impact on the  
22 surrounding community. And that's what we were looking  
23 for, and basically we couldn't make a decision on  
24 whether or not that was the case because we weren't  
25 given sufficient information to do so.

1 MR. VOGEL: Thanks, Mike.

2 MR. BOYD: Sure.

3 MR. VOGEL: There will be no more  
4 questions from the panel. Thank you, Michael. I'm  
5 sorry, there's one question from Marcie Keever.

6 MS. KEEVER: Mike, I just wanted to ask,  
7 when you asked for a public hearing, was that on the  
8 renewal of the Los Medanos Title V permit?

9 MR. BOYD: What we stated was that we  
10 couldn't really provide on the new permit. We couldn't  
11 provide any meaningful comment because we didn't have  
12 the information we were seeking on NOV's and, therefore,  
13 we asked for a public hearing so that we could, you  
14 know, have an opportunity for the public to be heard on  
15 the basis of -- we were doing that with the hope, of  
16 course, that the district would be forthcoming with  
17 this information and so that they would be useful for  
18 us to have a permit hearing.

19 And since Adan has mentioned, it seems to  
20 be their intent to provide the information. That makes  
21 it even more useful to have a public hearing because  
22 now we have some new information on which to provide --  
23 you know, participate meaningfully and be informed.

24 MR. VOGEL: Thank you, Michael.

25 MR. BOYD: Thank you, bye.

1                   MR. VOGEL: In the interest of time let  
2 me propose to the Task Force that we have -- we had a  
3 break scheduled from 9:40 to 10:00. We're almost at  
4 10:00. The next speaker and series of speakers are due  
5 the up at 10:00 going to noon. Could I propose that we  
6 work through our break to get back on time, and if  
7 folks want to take a break, then they can do it on  
8 their own.

9                   SPEAKER: If we do that, can we commit to  
10 breaking for lunch?

11                   MR. VOGEL: Yes, I think we can do that.  
12 Do we have Sharon Genasci on the line?

13                   Robert, would you like to do your  
14 testimony now?

15                   MR. HALL: Can you hear me loud and  
16 clear? I've got a fairly good speaker phone. Other  
17 people do not and when you run into that, you might ask  
18 them to pick up the telephone.

19                   MR. VOGEL: Go ahead, please.

20                   MR. HALL: I used to be an airline pilot,  
21 pardon me for that technical information.

22                   MR. VOGEL: As long as we don't have too  
23 much turbulence.

24                   MR. HALL: That's when the radios weren't  
25 very good.

1                   This is Robert Hall. I'm with the Nevada  
2 Environmental Coalition, Incorporated. I'm calling  
3 from Las Vegas, Nevada, otherwise known as Sin City.  
4 My comments are basically this. We have an  
5 extraordinary situation out here in Nevada and in the  
6 west with Region 9. Region 9 is apparently somewhat  
7 different than some of the other regions in the way  
8 they operate. Basically my one sentence summary of  
9 Region 9 is if you don't like it, sue them. That's the  
10 option with Region 9. And we do regularly, we sue them  
11 regularly. Might recall a case, Hall versus EPA in  
12 1999, 2001 where we knocked out the PM10 plan here  
13 because of gross lack of credibility in the plan.

14                   But that brings up the first question,  
15 and that is that Title V does not operate by itself.  
16 It's part of the Clean Air Act. But frankly, you would  
17 never know it. The reason I say that is the southern  
18 Nevada area, the Las Vegas non-attainment area has  
19 never had a finally approved pollution specific SIP  
20 since 1979. They recently approved PM10 and a CO SIP,  
21 but that's subject to judicial review at the ninth  
22 circuit.

23                   And every time this has happened, either  
24 the EPA has withdrawn the plans or the Courts have  
25 vacated and remanded the plan. So we're not clear as

1 to how Title V fits into the Clean Air Act when there  
2 is no SIP. And that's our situation. And that's been  
3 the situation since 1979.

4                   Incredibly, to avoid sanctions, Clark  
5 County, which is the Las Vegas area, withdrew all of  
6 its plans -- PM10 plans forever. In other words,  
7 apparently, according to what the language of the  
8 document is, they even withdrew the '79 approved SIP.  
9 So it's chaotic out here. And what's happening is that  
10 they are going ahead anyway and permitting under Title  
11 V without complying with any of the other requirements  
12 of the Clean Air Act, which I find rather astounding.  
13 But that's what's happening.

14                   And I notice that there was a question by  
15 a previous speaker, Title V is flawed by design. I  
16 would say that that's certainly a flaw. In other  
17 words, if they don't have a proper SIP in place,  
18 finally approved, and that's another flaw in the  
19 system.

20                   EPA will approve a SIP and then put it  
21 into effect in 30 days. They will publish it  
22 immediately and put it into effect in 30 days, but the  
23 Courts give you 60 days to file for judicial review, so  
24 then you've got the judicial review ongoing.

25                   It takes a couple of years. And in the

1 case of our situation, we had to send letters out to  
2 everyone and tell them, by the way, all the money you  
3 collected, would you please pay it back, which came as  
4 a complete shock to them. So it couldn't be more of a  
5 mess out here as far as Title V or anything else goes.

6 Title V, we have the same problems  
7 everyone else has. If you make comments, they simply  
8 ignore them. In our case we had about seven years of  
9 comments on Title V problems before and after Title V  
10 went into effect, and they never answered one of them.

11 The number of total -- well, new source  
12 review and Title V was 33 pounds of comments was  
13 excruciatingly detailed complaints about specific sites  
14 and they simply ignored them. They didn't even send a  
15 one page letter back saying we've received it and we're  
16 not going to do anything about it.

17 So what we did then is when they came up  
18 with the PM10 plan and the CO plan proposals, the  
19 latest ones, we shipped this 33 pounds back to them and  
20 refiled them as a part of the SIP submittals, which  
21 came as a shock to them. So we're in a real battle out  
22 here.

23 This permit shield in Title V really  
24 enables them to do dastardly things. In other words,  
25 if we find out later they didn't tell the truth in the

1 application, the permit shield protects them.  
2 Regarding the comments on NOVs, we are not bumps on a  
3 log and we should be a part of that process.

4           The fact that they put a clamp on  
5 everything, we can't talk about it. It's a -- it's in  
6 the -- you know, it's in process and we can't tell you  
7 until the end. Most of the time you have to pull teeth  
8 to get the final decision. They say they're under no  
9 obligation to send those out. We have gone to court on  
10 some of the settlements.

11           We do have enough cooperation with the  
12 U.S. Attorney here where we do get copies of the  
13 documents that go before the Court for final approval,  
14 and we have intervened in those, and so far down the  
15 line that it's worthless.

16           The situation in the Ninth Circuit Court  
17 of Appeals isn't very good because they're overworked  
18 and underpaid, they think, I think. And you get about  
19 five minutes on extremely complex matters. And it's  
20 very difficult to get anything out of them that makes  
21 any sense. In fact, because they defer to the  
22 government and the government credibility out here is  
23 about zero, you wind up with bad law.

24           Let's see, we have a couple of other  
25 things. In the interest of saying your comments are

1 not relevant. Anything they don't like is not  
2 relevant. That's the truth. I'll let it go with that  
3 at the moment. If anyone has any questions, I'll try  
4 to elaborate. Thank you.

5 MR. VOGEL: Thank you. Bob Morehouse.

6 MR. MOREHOUSE: Thank you, Bob. This is  
7 Bob Morehouse. Question on public hearings. Have you  
8 requested public hearings and what has been the  
9 response?

10 MR. HALL: We from time to time both on  
11 this and Title V have requested hearings. It's a waste  
12 of time. Our comments are documented. When I say  
13 they're excruciatingly documented, we have a group of  
14 people that are technical experts that either worked  
15 for the agencies or they worked for sources of air  
16 pollution or something like that where they have the  
17 technical experience. We put those in single-spaced  
18 documents that total 20, 40, sometimes 60 pages of  
19 single-spaced detailed as to why that site should not  
20 be permitted and we don't even get a reply.

21 MR. MOREHOUSE: Your comment about the  
22 request for public hearing being a waste of time, is  
23 that because you're not granted one?

24 MR. HALL: Just go over what's already on  
25 your paper.

1 MR. MOREHOUSE: So you are granted --

2 MR. HALL: Written comments and there's  
3 not much else you can do.

4 MR. MOREHOUSE: So you have had public  
5 hearings?

6 MR. HALL: We have had some public  
7 hearings and -- well, first, let me put it this way. I  
8 shouldn't say public hearings. We've requested  
9 hearings and then we go into a room. Those hearings  
10 are not published. No one else knows about them. They  
11 have never published, to the best of my knowledge,  
12 publicly published the hearing was ongoing, and that's  
13 at the county level.

14 Here in Nevada, Clark County stands in  
15 the same status as the state in the sense that they  
16 handle their own Title V program. I don't see how you  
17 can go ahead with a Title V program without a SIP.  
18 That stuns me.

19 MR. VOGEL: Thank you. Shelley Kaderly.

20 MS. KADERLY: Shelley Kaderly with the  
21 State of Nebraska. You may have just clarified my  
22 question. I'm trying to understand who -- when you  
23 refer to they, I'm just trying to understand who the  
24 they is that you're dealing with. So you deal with  
25 Clark County in the State of Nevada as well as the

1 State of Nevada and the U.S. EPA Region 7 -- or Region  
2 9, rather?

3 MR. HALL: Right. Clark County is the --  
4 Las Vegas was the tail that wags the dog. The state is  
5 really a small operation compared to Clark County.  
6 Clark County is better staffed, better paid and so  
7 forth than the state's operation. So the state  
8 basically rubber stamps everything and sends it up to  
9 EPA.

10 The thing we find with EPA is the  
11 political person that's put in as the head of Region 9  
12 is basically a Californian, and California has  
13 tremendous political power and that person's job is to  
14 deal with the political powers that they want to do.  
15 It's not surprising. It's the way things work.

16 But the professional staff, they're  
17 seizing underneath. There's no question about that.

18 MR. VOGEL: Thank you. Kelly Haragan.

19 MS. HARAGAN: This is Kelly Haragan with  
20 the Environmental Integrity Project. I thought you  
21 mentioned something about having trouble getting  
22 information and specifically NOV's. Could you elaborate  
23 on that?

24 MR. HALL: Well, first of all, we never  
25 know an NOV is ongoing sometimes -- most of the time,

1 and if we make a complaint -- there have been NOVs that  
2 have resulted from our complaints, but we don't know  
3 that. In other words, the time that -- well, actually  
4 the Kerr-McGee fiasco out here, that one we believe we  
5 had something to do with but we don't know that.

6                   There was a 100 million dollar fine  
7 brought against Kerr-McGee, but the details -- and we  
8 still don't know today what's happened on that. If you  
9 call them, well, it's ongoing. Okay, well, when is it  
10 going to finish? Well, we don't know.

11                   MS. HARAGAN: So your issue is more  
12 finding out what they're doing to follow up on  
13 violations. Have you had trouble getting information  
14 that you need to write your comments?

15                   MR. HALL: There's no question that we  
16 don't get any information from EPA. We get our  
17 information from sources that are very knowledgeable,  
18 but we don't get it from EPA. They don't give us  
19 anything.

20                   In fact, a lot of the things that are  
21 posted on electronic bulletin boards about comments or  
22 ongoing litigation or anything like that in any other  
23 region doesn't appear on Region 9's board. The victory  
24 we got in Hall versus EPA, they never told anybody  
25 about it. They just ignored it for three years until

1 another suit came along.

2 MS. HARAGAN: So do you think it would be  
3 helpful to have more information available on the web?

4 MR. HALL: Well, it should be a  
5 requirement as to what is posted. In other words, you  
6 can't pick and choose, and that's what they're doing.  
7 I mean, can you imagine having a SIP vacated and  
8 remanded and you don't tell anybody about it? You just  
9 keep operating as business as usual. That's what  
10 happens.

11 MS. HARAGAN: Thanks.

12 MR. VOGEL: Carol Holmes.

13 MS. HOLMES: Hi, this is Carol Holmes at  
14 EPA. I just wondered if you had any specific  
15 recommendations on how to make Title V work better that  
16 you could give us.

17 MR. HALL: It should be the first  
18 paragraph that says without a SIP you don't have a  
19 program because you don't know -- what are you  
20 measuring against? In other words, if the person  
21 exceeds any standard, if you don't have a SIP, you  
22 don't know what that means.

23 In fact, that's the problem with the  
24 Clean Air Act and the Administrative Procedures Act, is  
25 that you can find every piece of information in these

1 documents that they put out except how much is too  
2 much. You'll never see that.

3 MR. VOGEL: Don van der Vaart.

4 MR. VAN DER VAART: My name is Don. I'm  
5 with North Carolina Division of Air Quality. And I had  
6 a question about the comments you made about a permit  
7 shield. Have you had an instance where or a court case  
8 or whatever, administrative process where the permit  
9 shield actually did defend someone who had submitted  
10 incorrect information or is that what you are worried  
11 about?

12 MR. HALL: Well, first of all, we've got  
13 a department of air quality management here that has a  
14 number of people on staff that used to be consultants  
15 to these sources of air pollution. I can't think of  
16 anything worse than that. And beyond that, once they  
17 are permitted, they've got a shield. It's -- then the  
18 only thing you can do is go to court.

19 MR. VAN DER VAART: You haven't actually  
20 had a case where --

21 MR. HALL: We've had several cases. One  
22 of them was Kerr-McGee. Another one was Tenet. These  
23 things -- we run into these things all the time. Once  
24 they've got a permit, we've got a problem.

25 Incidentally, I am not a licensed

1 attorney. When I go to court I have to go to court in  
2 my own name only. And there's nobody else here.

3 Sierra Club has been somewhat active here  
4 mostly in urging mass transit. They got a decision out  
5 of the U.S. District Court on U.S. 95 on the widening  
6 of U.S. 95, but by and large we haven't had too much  
7 assistance from the Sierra Club here on these  
8 individual site situations, in fact, none to speak of,  
9 and there isn't anybody else there.

10 MR. VOGEL: Question from Bob Palzer.

11 MR. PALZER: This is Bob Palzer. I'm  
12 representing the Sierra Club. Sorry you're having  
13 difficulty finding people in that region to help you,  
14 but I want to -- and you can contact me. I can see if  
15 I can find somebody who's locally, who has a presence  
16 in the area.

17 MR. HALL: We talked to the people all  
18 the time. That's not the issue. The issue is, again,  
19 if you're not going to court here, you're not doing  
20 anything because they just ignore everything else.

21 MR. PALZER: I understand that. But  
22 that's not what I want to deal with right now. I would  
23 like you to elaborate a little more, and I want to make  
24 sure I understood correctly, but it was my sense that  
25 when you do get hearings, that these are not, in fact,

1 public hearings open to the general public, open to the  
2 media, and issues that are matters of record; is that  
3 correct?

4 MR. HALL: Yes and no. When the county  
5 commissioners approve it, you can go down there and  
6 speak before that, but it's too late then. Everything  
7 is set in stone. After you submit your comments, which  
8 they do publish notices in the paper in the legal  
9 section, you submit your comments and if you request a  
10 hearing, that is not noted. That's correct. They say  
11 because you commented, you can have a hearing. But no  
12 one else knows it's happening.

13 MR. PALZER: So these are exclusionary  
14 only to -- the only response is to the person  
15 requesting a hearing?

16 MR. HALL: That's the way it operates.

17 MR. PALZER: That's incredible.

18 MR. HALL: Well, hearings -- let me take  
19 a step back. This doesn't directly have anything to do  
20 with Title V, but it will illustrate what's happening  
21 here. What's happened with the BLM here since 1970  
22 when NEPA was first enacted, is that they've never  
23 complied with it under any circumstances whatsoever.

24 And I said that before the Ninth Circuit  
25 Court of Appeals, which I don't take lightly if it

1 isn't true, which it is. So the answer is that what  
2 they do is they've got a whole room full of thousands  
3 of little EAs and they take all of their activities and  
4 parse them down into little EAs and nothing ever is  
5 added up. And that's how they do it.

6                   And they're doing that with Title V and  
7 everything else around here. This little piece isn't  
8 important and that little piece isn't important. And  
9 if you ask them about the EAs which are never noticed  
10 to the public -- people think EA has to be noticed to  
11 the public. That's not true. The regulation clearly  
12 states it does not have to be noticed. These federal  
13 agencies have whole rooms full of these things and they  
14 say, well, you can come down and look through our  
15 drawers if you want to.

16                   MR. VOGEL: I think it's about time to  
17 move on to another speaker. If we have somebody on the  
18 line.

19                   MR. FREDERICK: This is Dave Frederick.  
20 I think I'm here for the 10:20 slot.

21                   MR. VOGEL: Thank you, David. Please go  
22 ahead and speak -- let me remind everyone on the line  
23 that we are recording this for audio transcript and  
24 also written transcript. Go ahead, Dave.

25                   MR. FREDERICK: Thank you. My name is

1 David Frederick. I'm a lawyer down in Texas and I  
2 represent various, I don't know, labor unions,  
3 environmental associations, Sierra Club periodically,  
4 concerned with issues of air issues in Texas, and  
5 therefore, we've had some experience with the Title V  
6 program.

7                   And I guess my overarching thought about  
8 it in Texas is -- and I don't know the extent to which  
9 this is a problem elsewhere in the country -- there's  
10 some positive things about the program to which I will  
11 turn in a moment, but the things that I'm most often  
12 frustrated about by the program is the State of Texas'  
13 penchant for incorporating by reference the various  
14 underlying permit provisions to which the Title V  
15 operator is subject.

16                   So, for example, here in the not too  
17 distant past we commented on behalf of a labor union  
18 and an Indian tribe on a Title V permit for a carbon  
19 black facility in Texas. And when one looked at the  
20 applicable requirement summaries that the State of  
21 Texas has provided, TCQ had provided, it would state  
22 that there was one emission unit, which was a flare,  
23 but it was given an emission unit number and then said  
24 what's the emission limitation?

25                   Well, the emission limitation is PSD.

1 And then what's the standard? Well, the standard is  
2 the PSD standard that's set out in this underlying  
3 permit, and it cites just the permit, doesn't tell you  
4 what the standard is. Then there's a textual  
5 description of what his limitation is. That textual  
6 description is also simply a statement of the permit  
7 number with no textual description at all.

8                   If you want to know what the monitoring  
9 is -- that is required of this particular source under  
10 that particular PSD permit, you don't know because it  
11 just says the PSD permit number, same thing for record  
12 keeping requirements.

13                   Well, one can potentially go back and  
14 find -- one who wants to comment can potentially go  
15 back and find the underlying PSD permit, but one may  
16 well not be able to find, for example, application  
17 materials that were submitted in order to get the PSD  
18 permit. One can find it. It's not like it's just  
19 ultimately impossible to do, but it's become a heavier  
20 and heavier burden for one who wants to comment on this  
21 draft federal operating permit.

22                   State of Texas does that a lot. We used  
23 to say that it drafts permits and send them out for  
24 comment basically simply referencing the  
25 underlying -- in this case NSR permit. And the

1 commenter is really at a -- it's almost impossible with  
2 anything like what most people would consider to be a  
3 reasonable use of time to comment on such a permit.

4           It's also -- in fact, the way that the  
5 final permit ends up being written, it's almost  
6 impossible for anybody who might inspect an  
7 investigator's report, in our case for TCEQ, that's out  
8 in the field to determine whether or not this person  
9 complaint with the Title V permit or not because you've  
10 got the underlying NSR permit and you might in some  
11 cases have to look back to the application materials  
12 that were submitted along with the -- along with the  
13 application for the underlying -- so that I think  
14 something positive that EPA could do for the Title V  
15 program is type and I would say eliminate, but  
16 eliminate may be too strong of a word, but much narrow  
17 the instances in which a Title V permit may set out  
18 limitations simply by referencing some other permit.

19           So that's one thing. I think the other  
20 thing at least in Texas -- I don't know how broadly  
21 this is a problem with the Title V program NSR permit  
22 is that in Texas we have these permits by rule which  
23 are, of course, I think, common to most programs.

24           Ours, however, were not prior to sometime  
25 in early 1990 published anywhere. They were kept on

1 sheets of paper at our agency. And they're quite a  
2 number of them. There might be, say, as many as 125 of  
3 these permits by rule that apply to relatively small  
4 sources but nonetheless been submitted as part of the  
5 SIP and they are, therefore, applicable to requirements  
6 oftentimes for a major facility.

7                   These things might have come out in five  
8 or six generations. We might have had one, a version  
9 from '85, another version from '89, another version  
10 from '93, another version from '97 and so forth. Well,  
11 the draft permit that TCEQ issues, and ultimately the  
12 final permit, may list one or two of the permits by  
13 rule in a table which is the same table that's got the  
14 listing for the other applicable requirements.

15                   There may be a listing, again, not of the  
16 individual requirements of the permit by rule but,  
17 rather, just of the number of the permit by rule or the  
18 number of permit by rule and the date. These things  
19 may be listed in this table of applicable requirements.

20                   But then TCEQ, because it isn't sure  
21 which permit by rule might apply to a facility and  
22 apparently is not forcing applicants to identify the  
23 universe of permits by rule that the applicant claims  
24 apply or that is on which the applicant relies is the  
25 exclusive list of permits by rule that apply to that

1 facility, TCEQ includes this additional couple of  
2 pages.

3                   And the permit I'm looking at, anyway,  
4 for this particular carbon black facility that says,  
5 Additional permits by rule in effect prior to a certain  
6 date potentially apply to this operating permit, and  
7 then follows three or four pages of every permit by  
8 rule of that could conceivably apply to anybody.

9                   For example, for this carbon black  
10 facility we've got listed permits by rule that might  
11 apply, potentially apply for semiconducting  
12 manufacturing, for portable Roth pressures, for uranium  
13 recovery facilities. Well, I know the system and so  
14 I'm not going to go bother to find out whether any of  
15 those particular permits by rule that are listed as  
16 potentially applicable do apply. I feel fairly  
17 confident that semiconductor manufacturing permits by  
18 rule do not apply to my carbon black manufacturer.

19                   On the other hand, there are some in  
20 here, quite a number of them, a permit by rule for  
21 boilers, heaters, and other combustion devices. And  
22 there are listed in here six versions of this  
23 particular permit by rule that might apply to my  
24 facility.

25                   Well, you know, this is really not

1 feasible. I mean, once you look at each one of those  
2 six or seven things, maybe it does apply, maybe it  
3 doesn't apply, there's something called organic and  
4 inorganic liquid loading and unloading permits by rule.  
5 There are three permits by rule and each one of those  
6 permits by rule has associated within them in the  
7 neighborhood of five different versions which  
8 apparently may apply to some source at the facility.

9                   This type of failure to force the permit  
10 applicant to identify the limitations to which the  
11 applicant believes the facility is subject, and I guess  
12 really stated another way, to define universe of --  
13 define by exclusion the universe of restrictions to  
14 which that that applicant is never going to claim do  
15 apply to this facility.

16                   That doesn't seem to be happening. So  
17 it's a variation of the incorporation by reference  
18 problem, but it's a failure ultimately to be very  
19 specific about -- to be sort of specific about the  
20 limitations that apply to a particular permit. So  
21 something positive EPA could do would be to narrow the  
22 ability of states to defer decision-making as to  
23 exactly what are the requirements that apply to a  
24 particular source.

25                   The third thing and I think the last

1 criticism I would level the program in Texas is that  
2 this matter of prompt reporting of deviations, in Texas  
3 prompt reporting of deviation is defined to be six  
4 months after the deviation has occurred.

5                   And there's some exceptions to this  
6 depending on the exact character of the deviation, but  
7 the fallback is, if you don't fall into one of the  
8 exceptions, then -- which would call for a shorter  
9 reporting period, then the fallback position is that  
10 you have to report in six months.

11                   Well, six months is just not prompt in  
12 almost anybody's mind. And there's some unfortunate  
13 Fifth Circuit case law to support TCQ's ability to  
14 impose the six-month deadline as opposed to some  
15 shorter deadline and continue to refer to it as prompt.

16                   But that's something EPA could cure. EPA  
17 could just by fiat -- well, by regulation pass comments  
18 on it and so forth, but in the end address the question  
19 under what -- are there any circumstances in which six  
20 month deviation reporting could possibly be considered  
21 prompt.

22                   Positive things we've seen down here. I  
23 have been fairly happy, actually, with TCQ's  
24 responsiveness to criticisms of the monitoring that is  
25 included in permits. We have had success with pointing

1 out that some particular -- there was no monitoring for  
2 some particular restriction on -- on an applicable  
3 requirement that didn't have any monitoring associated  
4 with it or that had inadequate monitoring associated  
5 with it. And in both those instances TCEQ has come  
6 forward with a requirement for some additional  
7 monitoring.

8                   Now, you know, in individual instances I  
9 might claim or protest that the monitoring -- TCEQ is  
10 now requiring the new monitoring is inadequate, but it  
11 is nonetheless undeniably a step forward from the  
12 situation that existed prior to our having commented on  
13 the inadequacy of the monitoring and prior to TCQ's  
14 having required a greater level of monitoring.

15                   In one particular instance -- for  
16 example, we had an opacity requirement that was  
17 monitored once a year and we said this is not really  
18 monitoring. You're never assured compliance by  
19 monitoring opacity once a year.

20                   And TCEQ came back and said, oh, sure,  
21 you're right about that. We now have to monitor every  
22 three months. Well, you know, my personal opinion is  
23 that monitoring once every three months does not ensure  
24 that the opacity requirement is being met, but I have  
25 to admit that it's four times better than once a year.

1                   I think an exception -- so that's a  
2 positive thing we see down here and EPA should do what  
3 it can to encourage states to be more aggressive on  
4 requiring monitoring. And my impression from the rule  
5 change that occurred the first part of this year, I  
6 believe it is, when EPA declined to set up a particular  
7 section of this regulation as justification for  
8 imposing new monitoring, I thought that was a step  
9 backwards, actually. I understand complicated so --

10                   MR. VOGEL: David, you need to draw your  
11 presentation to a close.

12                   MR. FREDERICK: I'm sorry about that.  
13 The other positive things -- I will skip to the last  
14 positive thing that's happened down that. We are  
15 actually aware of one very significant case where the  
16 compliant certification has forced lower level of  
17 source employees to really be sure that what they would  
18 certify is something that they believe to be factually  
19 true. And in this one instance the employee, a  
20 long-time employee finally just said, you know, I don't  
21 think this is true, I can't certify to it, brought it  
22 to the attention of management, management didn't  
23 respond the way we believe it should have, but  
24 nonetheless, the employee's unwillingness to falsely  
25 certify, as he saw it, compliance has led to a fair

1 amount of analysis at the source, analysis by the  
2 agency.

3                   It has had a positive effect of forcing  
4 people to determine whether or not, in fact, source was  
5 in compliance. So down here we see some negative  
6 things I mentioned, but we also do see some positive  
7 stuff about the program.

8                   MR. VOGEL: Thank you. Do we have  
9 questions from the panel? Kelly.

10                   MS. HARAGAN: Hi, David, this is Kelly.

11                   MR. FREDERICK: Hi, Kelly. I recognize  
12 your voice.

13                   MS. HARAGAN: I had a question about you  
14 talked mostly about incorporation by reference as it  
15 related to permits and permits by rule. What do you  
16 think about incorporation by reference for like federal  
17 regulations or state rules?

18                   MR. FREDERICK: I mean, I'm not a fan of  
19 it really. I think it adds another step in the process  
20 that somebody is reviewing a draft permit must go  
21 through or an inspector must go through when trying to  
22 determine exactly what the underlying requirement is.  
23 Still, I think those are less of a problem because the  
24 underlying source material is so much easier found.  
25 It's so much easier to find than a state regulation or

1 a federal regulation than it is to find, you know, a  
2 particular permit by rule that was published in 1987  
3 but never published in any sort of rule books or codes  
4 or that it is defined in application that was made for  
5 a PSD permit in 1980, you know.

6 MS. HARAGAN: Okay, thanks.

7 MR. VOGEL: Steve Hagle.

8 MR. HAGLE: Hi, David.

9 Mr. Frederick: Good afternoon, or  
10 morning I guess it still.

11 MR. HAGLE: This is Steve Hagle from  
12 Texas. David, the permits by rule that you mentioned  
13 in the permits that were just listed, I mean, part of  
14 our discussions with Kelly and others in Texas was to  
15 eliminate that process to actually require facilities  
16 to identify specific permits by rule in their  
17 applications and in the permit, and so I'm wondering  
18 how old the permit that you're referring to is.

19 MR. FREDERICK: These were some comments  
20 we made towards the end of 2002 or early 2003, so we're  
21 going on now -- those comments are going, let's say  
22 they're two years old.

23 MR. HAGLE: Okay. Thank you.

24 MR. VOGEL: Mike Wood.

25 MR. FREDERICK: I'm glad to hear that

1 that is the process, that that is sort of the new  
2 direction here.

3 MR. WOOD: Hello, David. This is Mike  
4 Wood with Weyerhaeuser Company.

5 MR. FREDERICK: Good morning.

6 MR. WOOD: Good morning. I wanted  
7 some -- I would like to hear your suggestion for how  
8 those NSR permit requirements could be incorporated  
9 into the Title V.

10 MR. FREDERICK: Well, I have an off the  
11 top of my head suggestion that might or might not prove  
12 to be feasible, but then I also just have seems like  
13 conceptually the fundamental way they could be  
14 incorporated is for the permit writer to take from the  
15 NSR permit whatever the limitation is and reproduce it  
16 in the Title V permit, so that whatever the limitation  
17 was is in the NSR permit and the permit writer has at  
18 least as easy access, and frankly, easier access to  
19 that than would the public or the inspector, and just  
20 lift that out and reproduce it in the Title V permit.

21 Having said that, there -- it might be  
22 possible -- because Texas is a big state, we've got a  
23 bunch of these permits to do. I don't really know how  
24 uniform or how many of the NSR requirements for  
25 refineries, let's say. You got a bunch of refinery

1 source for NSR permits, I don't know if the particular  
2 restriction included in those permits are sufficiently  
3 standard that it would make sense to have a set of  
4 regulations that set out, okay, this is standard NSR  
5 permit term number 42 and it provides such and such  
6 with such and such kind of monitoring, so that there is  
7 force.

8                   People doing Title V permits could  
9 incorporate by reference that requirement by saying  
10 standard NSR provision 42 applies to this site or to  
11 this source. That may be a level of work that is  
12 coming up with this table, if you will, of standard NSR  
13 provisions may be so -- it may not be worth the work.  
14 There may not be enough facilities covered by a  
15 particular single provision to make it worthwhile to  
16 have a statement of it in regulation. But that's the  
17 only shortcut I see off the top of my head, to actually  
18 taking the underlying NSR permit and extracting from it  
19 whatever the limitation is and reproducing that  
20 limitation in Title V permit.

21                   MR. VOGEL: Verena Owen.

22                   MS. OWEN: Hi, this Verena Owen from the  
23 Lake County Conservation Alliance in Illinois. I am  
24 not familiar with a table of applicable requirements.  
25 Actually kind of sounds like a good idea to me. Does

1 that include a listing of all underlying NSR permits?

2 MR. FREDERICK: It does. Well, it  
3 should, yes. I mean, you -- my experience with it, at  
4 least in Texas, is that it's pretty good about telling  
5 you what the number of the NSR permit is.

6 MS. OWEN: I totally agree because in  
7 Illinois that would have certainly been very helpful to  
8 have a listing of underlying permits. Is this table  
9 part of the statement of basis?

10 MR. FREDERICK: I couldn't swear that it  
11 is. Whenever I get a statement of basis, I get with it  
12 a draft permit, and it certainly -- of course, it is a  
13 part of the draft permit so. . .

14 MS. OWEN: So does the state of basis --  
15 my question goes more does the statement of basis kind  
16 of individualize the listing of all these permits by  
17 rule in the table of applicable requirements at all?  
18 Does it refer to it?

19 MR. FREDERICK: Steve is still on the  
20 line from Texas. He could probably answer that  
21 question for you better than I can.

22 MS. OWEN: Let's ask him then.

23 MR. FREDERICK: My impression is that the  
24 statements of basis could be made more specific to the  
25 individual permit to which they apply, but I am

1 sensitive to the difficulty of writing statements of  
2 basis in a state where you've got as many Title V  
3 permits as Texas has.

4 MS. OWEN: Thanks. Steve is sitting  
5 right across from me at the table. Let's ask him.

6 MR. HAGLE: And, David, I can't answer  
7 that question. I can't remember whether -- I don't  
8 think the table is actually referenced in the statement  
9 of basis, but I think there is a listing of NSR permits  
10 and the applicability in the statement of basis, but I  
11 can find that out and certainly provide that to you. I  
12 can't remember about the statement of basis.

13 MS. HARAGAN: The decision trees are  
14 basically what make up the statement of basis now,  
15 which we could show you. It's pretty difficult to  
16 figure out.

17 MR. VOGEL: We have time for one  
18 question. Don van der Vaart.

19 MR. VAN DER VAART: Just real quickly,  
20 David, just to sum up both your likes and your  
21 dislikes. Did I get a -- would it be fair to say that  
22 you're looking for a permit that you could look at just  
23 look -- by just looking at the permit, decide whether  
24 the facility is in compliance or not compliance and  
25 anything that gets in that way gets in the way, is that

1 what you're beef is?

2 MR. FREDERICK: I think we should try to  
3 move as close to that objective, that goal as possible.  
4 And I think there's movement we can still make in that  
5 direction. I am willing off the top of my head to  
6 think that the question that Kelly Haragan asked  
7 earlier about would you need to really list the  
8 limitations in the permit if they were also codified in  
9 either a state or federal regulation. And maybe you  
10 don't need to do that, and maybe that's something we  
11 could leave out of the permit, even though that did  
12 require an extra step for review of the facilities.

13 But you got -- I mean, I don't want to be  
14 absolute on your question to me made it sound, but I do  
15 think we do need to move further in that direction than  
16 we are right now.

17 MR. VAN DER VAART: Would you want, for  
18 example, whatever requirements may be that are  
19 referenced, would you still want the permit to list  
20 what the monitoring results should be, you know, that  
21 stem from that so that they view that just as the  
22 authority and then here's the take home lesson, you've  
23 got to do this monitoring and it's got to say this? Is  
24 that the kind of thing you're looking for?

25 MR. FREDERICK: No, I don't think what

1 the monitoring was so that you had -- to take the  
2 opacity example, that you have to monitor using method  
3 9 every day or every month or something like that.

4 MR. VOGEL: Thank you, David.

5 MR. FREDERICK: Pleasure to be here.  
6 Sorry I spoke a little too long.

7 MR. VOGEL: Is Sharon Genasci on the  
8 line? Do we have Robert Ukeiley?

9 MR. UKEILEY: Yes.

10 MR. VOGEL: Okay, Robert, go ahead.  
11 You'll have ten minutes for presentation and ten  
12 minutes for questions and answers. I'll remind you  
13 that we are recording this for audio and written  
14 transcript.

15 MR. UKEILEY: Thanks. My name is Robert  
16 Ukeiley. I'm an attorney in private practice in  
17 Kentucky. I've been doing Clean Air Act litigation for  
18 ten years in a bunch of different states, have kind of  
19 alternated between private practice representing  
20 nonprofits and actually working for nonprofit public  
21 interest law firms, but all my work has obviously been  
22 on the side of community and environmental groups.

23 I guess I just want to start out with a  
24 general statement that in general I find that Title V  
25 permits are a very useful tool. I remember working on

1 an enforcement action against municipal solid waste  
2 incinerator in, I guess, 1996 in Colorado and literally  
3 spending days just trying to determine what the  
4 applicable requirements were for the facility.

5           And I think that Title V permits, you  
6 know, to a large degree do what they're intended to do,  
7 which is tell the public and the permittee and the  
8 regulatory agencies what the requirements are that have  
9 to be. I think that there clearly is a lot of room for  
10 improvement. So I'm going to talk about some of the  
11 areas that I think there's room for improvement.

12           I think that the issue of states and  
13 local authorities not having issued the initial Title V  
14 permits remains an unfortunate issue. And I think that  
15 that, you know, has dragged on way too long. EPA has  
16 gone through different iterations on that of getting  
17 commitment letters and things like that, but -- and  
18 there have been lawsuits about trying to get the states  
19 to finalize the first round of permits, but yet some  
20 states still haven't done that.

21           I think that it's unfair from a state to  
22 state or state to local authority point of view, that  
23 some sources have their Title V permits and some don't.  
24 I really think that that playing field needs to be  
25 levelled and that EPA has to, you know, either

1 requiring the states to issue the permits or start  
2 issuing part 71 permits or taking away programs, but  
3 that definitely has to end.

4 I also think that, you know, in the  
5 states that I've seen that there needs to be a little  
6 more prioritization of efforts in terms of the size of  
7 the source. I guess in theory all Title V permits are  
8 created equally, but that doesn't work out to be the  
9 reality. And I just have been disappointed to see  
10 state and local agencies fail to put enough effort into  
11 Title V permits for sources that in general, you know,  
12 have exponential amounts more air pollution than  
13 smaller sources.

14 You know, I guess mainly -- in my  
15 experience it's mainly in the coal fired power plants,  
16 that their emissions are, you know, just substantially  
17 larger than most any other source in the whole state,  
18 and yet it doesn't seem like the state agencies put  
19 significantly more effort into those.

20 That's not uniformly true, although  
21 sometimes the states put more effort into them solely  
22 in a reactionary kind of way. Like, for example, in  
23 Ohio I know that the electric industry that has coal  
24 fired power plants entered into a dial-up process with  
25 the state, but that's not necessarily what I'm talking

1 about. I'm talking about putting more effort into it  
2 to -- the state put more effort into it to ensure that  
3 the permit comes out right.

4                   For example, one of the big issues is the  
5 applicability of new source review to coal fired power  
6 plants, and that takes a significant amount of effort  
7 for a state to determine whether new source review is  
8 an applicable requirement. But if you consider the  
9 amount of pollution that's at stake, it seems that that  
10 effort would be a logical prioritization of efforts,  
11 but we really -- I just don't see evidence of that.

12                   I also think that there needs to be  
13 significant improvement in monitoring that's included  
14 in Title V permits. I guess I'll give a specific  
15 example. There's a Title V permit for a coal fired  
16 power plant in Georgia called Plant Wadsley by Georgia  
17 Power, and the permit contains an exception for startup  
18 and shutdown, which is illegal but nonetheless -- put  
19 that aside for a second. And then the problem is that  
20 -- well, I guess I should talk about this.

21                   The problem is that the SIP has a  
22 provision that EPA generally agrees it's illegal and  
23 yet they take the position that they can't address that  
24 during the Title V permitting process. That if there's  
25 an illegal provision in the SIP, it has to be put in

1 the Title V permit. We -- kind of a strange approach  
2 to acknowledge that something is illegal and yet claim  
3 that they're bound to include it in a Title V permit.

4           But anyway, setting that aside for a  
5 second, the permit contains the provision that  
6 generally exempts the source from violations of SIP  
7 emission standards during startup and shutdown. And  
8 then it defines startup as this period lasting from the  
9 time the first oil fire is established in the boiler  
10 until the time that the mill flash burner performance  
11 and secondary air temperature are adequate to maintain  
12 an existing gas temperature above the sulfuric acid due  
13 point.

14           And so I am involved in enforcement  
15 action against this facility, and during the litigation  
16 it came out that the facility doesn't monitor for these  
17 parameters at all, nor does the Title V permit require  
18 it to monitor. But the mill flash burner performance,  
19 the facility doesn't monitor at all for that, and  
20 obviously it doesn't monitor, it doesn't report. It's  
21 not even clear what mill flash burner performance  
22 specifically means. It's not defined in the permit.

23           Similarly, the facility doesn't monitor  
24 the secondary air temperature and they don't monitor to  
25 determine what the sulfuric acid due point is, which

1 actually -- you know, in general one could predict what  
2 it is, but it is subject to variability.

3                   So this provision was put into a Title V  
4 permit without any analysis of whether it's enforceable  
5 at all, and that just -- it just seems like mistakes  
6 like that shouldn't happen for a facility that  
7 constitutes such a significant portion of overall air  
8 emissions in a total thing.

9                   You know, there are other examples, like  
10 I'm also working on enforcement action against a  
11 facility in Ohio, a steward station which is owned by  
12 Dayton Power & Light, and it has a similar provision,  
13 but in that it defines startup as lasting from the  
14 first oil fire until the exit gas temperature is 250  
15 degrees, and then the permit requires them to monitor  
16 at the gas temperature.

17                   MR. VOGEL: Excuse me, you have about one  
18 minute left.

19                   MR. UKEILEY: Okay, thanks. It's a very,  
20 you know, simple thing. You can go and look at their  
21 monitoring of exit gas temperature to determine whether  
22 the facility actually was in startup or not. So I just  
23 think in general that more emphasis needs to be placed  
24 on looking at the monitoring requirements, especially  
25 for large sources of pollution, because distinctly what

1 happens in the Wadsley permit, which doesn't have to be  
2 there because other states have a better approach,  
3 doesn't happen. I guess I will seize the 30 seconds  
4 left. I would be happy to answer any questions.

5 MR. VOGEL: Carol Holmes.

6 MS. HOLMES: Hi, this is Carol Holmes at  
7 EPA. I have, I think, two questions, but maybe one.  
8 When you talk about the Georgia SIP provision and EPA  
9 saying that the SIP provision is illegal, has the  
10 region actually done a SIP call? I mean, what is the  
11 basis for your statement that -- the reason that the  
12 SIP provision is illegal?

13 MR. UKEILEY: No, they haven't, and  
14 that's the disappointment. In response to one of our  
15 Title V petitions pointing out that the SIP provision  
16 is inconsistent with EPA's position on startup,  
17 shutdown, malfunction, the response said that they  
18 agreed that the provision was inconsistent but that  
19 they cannot address that in a Title V proceeding and so  
20 -- and they mention that we do have the right to  
21 petition for a SIP call. But that was a disappointing  
22 response in that it seems that EPA should have taken  
23 the initiative on that.

24 MS. HOLMES: Did y'all position for a SIP  
25 call afterwards?

1                   MR. UKEILEY: No, we didn't because of  
2 limited resources.

3                   MS. HOLMES: I can appreciate that. I  
4 have one other question, if I could, Ray, or do we need  
5 to move on?

6                   MR. VOGEL: Go ahead.

7                   MS. HOLMES: A quick question. The  
8 example you gave of a permit -- and I had a little bit  
9 of a hard time following it -- the Georgia power plant,  
10 did you comment on the inadequate monitoring or lack of  
11 definition of startup?

12                  MR. UKEILEY: No. The permit was issued  
13 before I was working in Georgia, so no one commented on  
14 it.

15                  MS. HOLMES: Okay. Thank you.

16                  MR. VOGEL: Adan Schwartz.

17                  MR. SCHWARTZ: Hi, Robert. So you were  
18 saying there's a power plant permit that has a  
19 definition of startup and shutdown, and it sounded like  
20 you were saying that it's clearly defined but there is  
21 a monitoring in the permit to track whether the  
22 definition is being met. But would you agree that the  
23 power plant has -- if it wanted to show that it was in  
24 startup or in shutdown, that it would have a burden of  
25 proof of demonstrating that and so that it would have

1 to somehow have the information to support that? And  
2 if you agree with that or if you disagree you can say  
3 why, but if you agree with that, then isn't it  
4 essentially -- would it still be necessary to have that  
5 monitoring specified in the Title V agreement?

6 MR. UKEILEY: It's certainly our position  
7 that it is the burden of the facility to prove that,  
8 and we currently are litigating that issue. I think  
9 that, you know, hoping that the judge follows the law,  
10 but it's hard -- sometimes it's hard to convince a  
11 judge that the defendant has the burden to prove  
12 something. You know, they generally think of things in  
13 terms of plaintiffs have the burden.

14 If the permit had been clearer and said,  
15 you know, the permittee has the burden of proving, then  
16 that would help. But I guess it's unfair -- so in a  
17 perfect world this permit provision doesn't provide any  
18 problems for plaintiffs or the public because the  
19 permittee does have the burden and they're not going to  
20 be able to meet their burden because they don't monitor  
21 these parameters. But I guess in doing enforcement  
22 actions, it's pretty clear that it's far from a perfect  
23 world.

24 MR. SCHWARTZ: That was going to be a  
25 follow-up question. If you thought it would be helpful

1 if the permit at least specified that the burden has to  
2 be carried by the facility, and I think you just  
3 answered that yes, that would be helpful.

4 MR. UKEILEY: Yes.

5 MR. VOGEL: Kelly Haragan.

6 MS. HARAGAN: Hi, Robert. This is Kelly.  
7 I had a question, and you might not able to answer this  
8 here, you might want to provide information, but I was  
9 wondering if you in reviewing permits and commenting on  
10 permits, if you've encountered instances where there  
11 was monitoring that was more than once but that you  
12 thought was inadequate, and if you could describe any  
13 of those examples?

14 MR. UKEILEY: Sure. Well, one example I  
15 worked on recently is Plant Paradise, which is the TVA  
16 facility in Kentucky, and they had -- they, like all  
17 other coal fired power plants, have COMs because  
18 they're required to and have been required to since,  
19 you know, 1972 or whenever that provision went in.

20 They have a requirement to do method 9  
21 testing. And I can't remember exactly the specificity.  
22 But David was saying before, I really think that with  
23 such a big source of pollution -- you know, at one  
24 point Plant Paradise was one percent of the sulfur  
25 dioxide emissions from stationary sources in the whole

1 country. And with such a big source, you know,  
2 monitoring for opacity every three months really isn't  
3 that useful. It doesn't tell you that much about  
4 what's going on in between those three month periods.

5                   And it also -- you know, there could be  
6 some situations where it's inherent that that kind of  
7 monitoring cannot find a problem. Like let's say that  
8 when it rains the coal pile gets wet and there's more  
9 moisture -- I'm just making this up as an example --  
10 and then that decreases the performance of the ESPs  
11 because they get wet and more, you know, particulate  
12 matter comes down and opacity goes up, but that when it  
13 rains they never take method 9 tests because you can't  
14 take method 9 tests when it's raining.

15                   And so there's periodic monitoring which  
16 is more frequently than once but that has inherent  
17 limitations on it that -- I just think there needs to  
18 be a better approach.

19                   MR. VOGEL: Don van der Vaart.

20                   MR. VAN DER VAART: Robert, to get back  
21 to this burden of proof issue.

22                   MR. UKEILEY: I'm having a hard time  
23 hearing.

24                   MR. VAN DER VAART: Sorry. To get back  
25 to this burden of proof issue, you know, at some point,

1 I mean, we have to recognize that the permit is of some  
2 value because if we just go on with this burden of  
3 proof, then some could argue why do I need to monitor  
4 at all.

5 In your case, my understanding was that  
6 you didn't feel the permit was definitive enough in  
7 terms of defining when startup ended and that what you  
8 really wanted was a better definition of startup and  
9 then monitoring pursuant to that definition.

10 Do you see -- do you agree with that or  
11 would you just --

12 MR. UKEILEY: I agree that that's what I  
13 think that the permit should have. It should have a  
14 clear -- exactly. It should have a clearer definition  
15 of when startup ends and monitoring to determine the  
16 definition provided in the permit.

17 MR. VAN DER VAART: Do you -- what do you  
18 think about the issue of just throwing up our hands and  
19 saying, well, at the end of day we can still force the  
20 permittee to bear the burden, would their opinion of  
21 that -- would the facilities' opinion of that not be,  
22 well, why do I even have this permit?

23 In other words, can there be some value  
24 attached to the permit that you would agree with, as  
25 long as it was definitive and well written and the

1 monitoring was pursuant to the definitive nature that  
2 we just discussed?

3 MR. UKEILEY: I'm not sure I'm totally  
4 understanding your question.

5 MR. VAN DER VAART: I guess what I'm  
6 saying is, is does the monitoring have value or does  
7 ultimately do you believe that the monitoring is only a  
8 secondary importance because we can always dump the  
9 entire burden of proof back on the facility outside of  
10 that monitoring, or would you rather have the  
11 monitoring be definitive so that everybody can look to  
12 it and decide what the compliance status is?

13 MR. UKEILEY: I would rather have the  
14 monitoring be definitive.

15 MR. VAN DER VAART: Thanks.

16 MR. VOGEL: Bob Palzer.

17 MR. PALZER: Hi, Robert. You're talking  
18 about the Paradise plant and the -- of course, these  
19 facilities are in startup and shutdown mode, and you  
20 were referring to using the visual method 9 for opacity  
21 reading quarterly. Does this facility have continuous  
22 emissions monitoring.

23 MR. UKEILEY: It does. All large power  
24 plants have to have COMs.

25 MR. PALZER: Is there an attempt based on

1 that monitoring to determine compliance, because that's  
2 actually -- if you could make a proper relationship on  
3 the -- on this oxygen that you're measuring, you should  
4 be able to get some indication of what the particulate  
5 matter is to help solve the problem of the difficulty  
6 doing the visual monitoring.

7 MR. UKEILEY: Well, and that's what we  
8 commented, that the COMs should be used as the  
9 monitoring method rather than method 9. And it -- you  
10 know, sometimes it almost gets absurd like they have  
11 the COMs, why wouldn't you -- why wouldn't you use that  
12 as a monitoring method, but for whatever reason the  
13 agency chose not to.

14 MR. PALZER: If it's any consolation, we  
15 have the same problem on the sources that I look at,  
16 and I agree with you. It seems to be rather strange  
17 when you've got a method that can be used continually  
18 or almost continually as compared with one that has  
19 very limited application, seems strange.

20 MR. VOGEL: Don't see any more questions.  
21 Thank you very much, Robert.

22 MR. UKEILEY: Okay. Thank you.

23 MR. VOGEL: Do we have any other speakers  
24 prepared to talk? Sharon Genasci? Gary Abraham.

25 I'm sorry, would you like to go ahead,

1 please. Let me remind you that we are taping this for  
2 audio transcript as well as written transcript is being  
3 reported. You have ten minutes for your presentation,  
4 ten minutes for questions and answers. Go ahead.

5 MR. ABRAHAM: My name is Gary Abraham.  
6 I'm a private practitioner and attorney. I represent  
7 citizens. I've been doing this for about three years  
8 limited to Title V concerns with plants.

9 I think the Title V program is important  
10 to ensure uniform criteria between states and federal  
11 rules where they are applicable. And then helped  
12 interaction between citizens enforcement and Title V  
13 petitioning in one case I can speak about, and I  
14 brought a citizen suit against a landfill for Clean Air  
15 Act violations. And you may appreciate the Clean Air  
16 Act is so complicated that when you get before a  
17 district or a judge and there is a pending EPA or state  
18 based Title V permit, judges are very reluctant to  
19 speak to the law until the agency has acted.

20 And in that case our citizen suit was  
21 held up because we did have comments pending and  
22 ultimately a petition brought to the EPA requesting our  
23 objection to the Title V permitting for that facility.  
24 And as it turns out, the region agrees with most of my  
25 issues and was able to bring that response to my

1 position back into federal court and the case  
2 immediately settled once the other side saw that I was  
3 going to win on those legal issues.

4                   So in many cases I think the Title V  
5 program is relatively new and it's applicability of  
6 landfills is even worrisome. States are unsure about  
7 how it applies and what the level of detailed  
8 monitoring and so forth, some of the things that have  
9 been talked about here, what those requirements are.

10                   Very important to have a comprehensive  
11 program like this that allows for an opportunity to lay  
12 out all those things and to provide some recourse for  
13 citizens against a state agency that is not familiar  
14 with the rules that apply so that you can go back to  
15 the EPA. And I think that the -- I suspect the  
16 interaction between the enforcement function and the  
17 Title V permitting and petitioning process, as in the  
18 case I explained and described, perhaps lightened the  
19 EPA's load. In that case they didn't have to do any  
20 enforcement. The enforcement was done by citizens and  
21 it was done successfully on account of the ability to  
22 piggyback on the Title V determination.

23                   I have a number of points I could talk  
24 about, but I would really rather field questions, if  
25 you have any, about my particular experience.

1                   MR. LING: Thank you very much. Ray  
2 stepped out of the room. This is Michael Ling. I also  
3 work at EPA and I will turn over the first question to  
4 Carol Holmes.

5                   MS. HOLMES: Hi, this is Carol Holmes in  
6 the EPA enforcement office. How are you? I was  
7 calling -- so what I am trying to understand about your  
8 case, your petition asking EPA to object to the permit  
9 was based on the same violations that you were  
10 enforcing in the citizen suit; is that correct? Hello?

11                   MR. LING: Gary, are you still on the  
12 line? Is anyone else on the line?

13                   MR. HALL: This is Bob Hall. I'm just  
14 monitoring so the line is still open.

15                   MR. LING: Thank you, Bob. Now we know  
16 the line is still open.

17                   Is Gary Abraham back?

18                   MR. ABRAHAM: Hello, this is Gary  
19 Abraham.

20                   MR. LING: Thank you. I think we had a  
21 question from Carol Holmes. Would you repeat your  
22 questions, please?

23                   MS. HOLMES: Sure. This is Carol Holmes  
24 at EPA.

25                   MR. ABRAHAM: Hi.

1 MS. HOLMES: Hi. I was just trying to  
2 verify that your petition to EPA asking them to object  
3 to the permit, was it based on the same violations that  
4 you alleged in your citizen suit?

5 MR. ABRAHAM: Yes.

6 MS. HOLMES: So you found it very helpful  
7 to have basically EPA's opinion on the issue in order  
8 to help the district court understand the Clean Air Act  
9 and the allegations; is that correct?

10 MR. ABRAHAM: That's exactly right, and  
11 essentially got a legal opinion from the EPA.

12 MS. HOLMES: So what do you think would  
13 have -- what's your opinion on whether or not -- what  
14 do you think would have happened if EPA had not granted  
15 your petition in a timely manner, therefore, you  
16 wouldn't have had it before you had to go to trial?

17 MR. ABRAHAM: Well, the case certainly  
18 would have languished, but in that case there were  
19 three neighbors direct -- very close adjacent to the  
20 landfill who were chronically sick from exposure to  
21 landfill gas. And one of the questions was whether the  
22 emissions of estimation was accurate based on the  
23 proper default values and so forth. Settlement, among  
24 other things, bought them out and the landfill moved  
25 away and got rid of the health risk. So it would have

1 affected their lives definitely adversely.

2 MS. HOLMES: Did the district court  
3 actually stay your case pending EPA's responding to the  
4 petition?

5 MR. ABRAHAM: No, it did not.

6 MS. HOLMES: Okay. Thank you very much.

7 MR. LING: Adan Schwartz.

8 MR. SCHWARTZ: Hi, Gary. I was just  
9 trying to get a sense of what some of these issues were  
10 that the EPA responded to and that were the subject of  
11 your suit. So you mentioned one was proper emissions  
12 estimates. Are there any others that you think are  
13 worth mentioning?

14 MR. ABRAHAM: Well, the emissions  
15 estimate is interesting because landfills aren't  
16 smokestack industries and it's difficult to estimate  
17 the emissions. There are two methods for which EPA has  
18 provided a program called the LandGEM program to  
19 estimate emissions depending on whether the landfill is  
20 a co-disposal landfill or not. That is whether the  
21 landfill is co-disposed industrial or hazardous waste  
22 in the past.

23 The consequence of co-disposing waste in  
24 that sense increases the benzene, xylene, and toluene  
25 estimated emissions. In this case this is a old

1 landfill, and I think it's 1958, before RCRA prohibited  
2 hazardous waste co-disposal. And they were getting the  
3 benefit by the state agency of the nonco-disposal  
4 default value.

5 I made comments and have other cases  
6 regarding landfills in which this issue is really still  
7 undecided and does a landfill become a co-disposal  
8 landfill and that can potentially can become a major  
9 source and not otherwise have been -- when it disposes  
10 industrial sewage sludge or substantial quantities of  
11 sewage sludge from municipal power plant sewer plants  
12 or other kind of nonmunicipal solid waste. And whether  
13 landfills are co-disposal because they're not in  
14 subtitle C plus D or whether they are co-disposal  
15 because they are subtitle D and they dispose of lots of  
16 nonmunicipal solid waste streams that are permissible  
17 under subtitle D, that remains an open question.

18 But in this case it wasn't -- it was  
19 easier to determine apparently because of the clear  
20 history of co-disposing hazardous waste. I don't know  
21 if that answers your question.

22 Some other issues that have come up with  
23 the landfill and gas and energy plant located on site  
24 are under common control for purposes of Title V and so  
25 much as -- or complicate the emissions. That was

1 another landfill case I had where EPA determined that  
2 they were under common control because they were  
3 adjacent to one another. They were under a contract.  
4 The landfill gas and energy plant provided the only  
5 control device for the landfill gas. So this was --  
6 I -- probably a fairly easy call because without so  
7 determining it would be too easy for a landfill to take  
8 its gas control operations off permit, as it were, or  
9 separately permit them and avoid major source  
10 determination.

11 MR. VOGEL: Marcie Keever.

12 MS. KEEVER: Hi, Gary. I just had a  
13 question about how long -- I don't know how many Title  
14 V petitions you've filed, but I'm wondering how long it  
15 takes you to get a decision on Title V petitions.

16 MR. ABRAHAM: Well, it's taken too long  
17 and in one case I did file a delay lawsuit to -- that  
18 was the case of the one where I brought the enforcement  
19 action and there was an interaction between the Title V  
20 determination and the outcome of the enforcement suit.  
21 And I did that obviously because I needed that legal  
22 opinion for the main action. But it has been taking at  
23 least six months to get an answer from the EPA.

24 It's been difficult also until  
25 recently -- I think this has been changed in New York

1 where I am -- to find out when the petition is due  
2 because the state agency will submit their proposed  
3 permit to the EPA and there won't be any notice of  
4 that.

5                   Region 2 has recently put up on its web  
6 site a table showing when it received the Title V  
7 proposed permits and when the citizens petition is due,  
8 so that's been very helpful.

9                   MR. VOGEL: Carol Holmes.

10                   MS. HOLMES: Hi, I'm sorry, I had one  
11 follow-up question. Did you file your citizen suit  
12 before you filed your petition with the EPA or did you  
13 file your petition first and then file the citizen  
14 suit?

15                   MR. ABRAHAM: No, the suit was filed  
16 before the petition. The Title V renewal came up in  
17 the middle of the lawsuit.

18                   MR. VOGEL: Being no further questions,  
19 thank you, Gary, for your testimony.

20                   MR. ABRAHAM: Thank you very much.

21                   MR. VOGEL: Do we have Scott Gollwitzer  
22 on the phone? Do we have Sharon Genasci? Do we have  
23 anyone else who would like to testify before lunch?  
24 Well, let's take a break here until 11:40 and we'll try  
25 to get Scott on the line and take his presentations and

1 then we'll break for lunch.

2 (Recess taken)

3 MR. VOGEL: This is Ray Vogel with the  
4 EPA. We are -- Title V Task Force is here in the room  
5 and we have been waiting for Scott to show up. Also  
6 thank you for showing up, Sharon. I think we would  
7 like to go ahead and take Scott's testimony and then --  
8 Sharon, could we ask that you call back in? Maybe we  
9 have two options here. One is to go ahead and take  
10 your testimony but that will put us short on lunch.  
11 The other option is to -- I think we have one objection  
12 on that -- I'm just talking about options here. The  
13 other option is to go ask Sharon if you could come back  
14 after this evening, say at 5:40.

15 MS. GENASCI: 5:40?

16 MR. VOGEL: Yes, central time.

17 MS. GENASCI: Yeah, I probably can do  
18 that. So at the very end? And that's the only other  
19 option, otherwise you miss your lunch? Is that it?

20 MR. VOGEL: Let me get a sense of the  
21 Task Force here. Would you rather stay and get Sharon  
22 now during lunch.

23 UNIDENTIFIED SPEAKER: Ray, if -- it's  
24 five minutes early now. If we start now, let's just  
25 see if we can --

1 MS. OWEN: That would have been my  
2 suggestion too. Let's see if we can fit her in. I  
3 would rather hear her and be a little short on lunch  
4 than not hear her at all.

5 MS. GENASCI: So you want me to go now?  
6 I don't mind going earlier because I'm on here early.

7 MR. VOGEL: Yes, let's have you go now  
8 and then we'll go on with Scott later on. Scott, can  
9 you hang on, please?

10 MR. GOLLWITZER: Sure.

11 MR. VOGEL: Sharon, please go ahead. We  
12 are recording for audio and written transcripts. And  
13 you'll have ten minutes for your presentation, followed  
14 by questions and answers.

15 MS. GENASCI: Okay. Well, I'm Sharon  
16 Genasci. I represent -- I'm the chairman of Northwest  
17 District Health and Environment Committee in Portland,  
18 Oregon. We're a residential neighborhood estate  
19 located right next a very large industrial area.

20 We have a Title V foundry on the edge of  
21 the neighborhood built in 1913. We began monitoring  
22 our neighborhood there in 1997 to try to discover the  
23 source and what was the composition of these horrible  
24 industrial smells we were getting.

25 We used bucket monitors initially and we

1 worked with a Dr. Robert Anderson, he's a scientist,  
2 and we found initially 70 toxic compounds. Then we  
3 continued to monitor up until -- well, actually, we're  
4 not monitoring at the moment, but we've been monitoring  
5 every year since for various things. For a couple of  
6 years we looked particularly at the heavy black dust  
7 that we found on people's porches and looked at the  
8 composition of that, and we found a whole suite of very  
9 heavy -- toxic heavy metals, high concentrations of  
10 lead, including chrome VI and various other things that  
11 we didn't want to have in the neighborhood. And we  
12 noticed that these metals fell off as we moved away  
13 from the foundry.

14                   So we thought it pretty clearly pointed  
15 to a red hot spot. We began using odor survey forms so  
16 we could find out where in the neighborhood these odors  
17 were coming from, what were -- how much of a problem  
18 was it for the neighbors and we were still looking for  
19 sources in the beginning. And then we graduated now to  
20 a web site, and it's [www.Portlandair.Com](http://www.Portlandair.Com). And this  
21 works quite well. People call in. I mean, they go in  
22 on their computers and they -- the copies go to the  
23 DEQ, to me, and to the company.

24                   Overall we value Title V. We've been  
25 through two hearings, two Title V hearings with the

1 foundry. The most important thing for us has been the  
2 public hearing requirement. This has given us a chance  
3 to really get public awareness in the whole  
4 neighborhood. And also we feel that there's a very  
5 strong right to know need for the neighborhood.

6                   The people who suffer from this kind of  
7 pollution need to know what it is they're breathing and  
8 they can go to the hearings. And we have had excellent  
9 expert testimony there as well as the neighbors.

10                   What we feel is lacking in the current  
11 Title V regulations is we have to ask the question has  
12 there been an actual reduction in air pollution in our  
13 neighborhood. And we would like to say a qualified  
14 some, yes, but much more is needed as new plants are  
15 continually be permitted to come into the area and the  
16 foundry fugitive emissions continue as before as seen  
17 in a number of complaints that we continue to receive.

18                   We feel the neighbors who are most  
19 affected by pollution should be involved in a Title V  
20 permitting process much earlier. We were not allowed  
21 to permit -- to participate in the drafting of the  
22 permit in either of the last permit processes we went  
23 through, while the company was invited in and, in fact,  
24 had a big hand in drafting the permit. And we think  
25 this is an example of how the process favors industry.

1                    Besides working closely with industry and  
2     drafting the permit, the permit language regarding the  
3     cost of reducing pollution takes industries' cost into  
4     effect without considering the public health cost of  
5     living near pollution. We have heard many children  
6     being born and growing up with heavy dust on their  
7     porches that contain lead and other toxic metals.

8                    Title V does not provide for enforcement  
9     tools such as DEQ monitoring on the plant. Without  
10    sufficient information about what is actually emitted,  
11    any regulations on a Title V become rather moot.

12                   What were some of the resulting permit  
13    changes following public testimony at the Title V  
14    hearing? Well, the foundry was forced to put on extra  
15    air bags, a pressure gauge on the bag house to signal  
16    when a bag was not functioning properly, and they  
17    raised their stack to try to reduce the impact odor on  
18    the surrounding residents. The amount of allowable  
19    rate emissions was reduced from half a ton to 200  
20    pounds a year. We had asked the DEQ not to permit lead  
21    emissions in our lead hot spot area. But the point is  
22    moot because the DEQ does not monitor for lead  
23    emissions from the plant on a regular basis.

24                   Concerning the odor, after raising the  
25    stack and shifting some production to a second plant

1 located further into the industrial area, the strong  
2 odor shifted to other parts of the neighborhood from  
3 whom we had not previously received complaints. And  
4 complaints are continuing at the present moment from  
5 residents who live close to the plant.

6                   That's the end of my testimony there. So  
7 if you have any questions, I would be happy to answer  
8 them. I'll just stick to the problem because the plant  
9 was built in 1913. It's nonunion plant and it's just  
10 been grandfathered in here, and they play a very active  
11 role in the community, giving donations to various good  
12 causes, and so on. So they -- they are playing a  
13 pretty strong political role in the state, I mean a  
14 powerful role as a good neighbor in the state from an  
15 economic point of view. It's just the local neighbors  
16 that are having a problem.

17                   MR. VOGEL: Okay. We have questions from  
18 Bob Palzer.

19                   MS. GENASCI: Oh, Bob Palzer.

20                   MR. PALZER: Hi, Sharon. One of the  
21 problems you used to have with that facility -- I'm  
22 curious if it still continues -- is the threat of  
23 closing down and eliminating decent paying jobs.

24                   MS. GENASCI: They're always saying that  
25 and they actually already have a plant in China and,

1 you know, they're going to go. I mean, it's just a  
2 question of when. It has nothing to do with us. But,  
3 of course, that is a threat that they imply that, you  
4 know, you make a fuss, then we're going to pull out.

5 I don't think that neighbors of this kind  
6 of industrial facility -- I just think we have to  
7 insist that facilities that are built near residential  
8 areas are clean. You know, the public health issues  
9 are too strong. I mean, it's just an amazing  
10 imposition on the neighbors. People can't work out in  
11 the gardens in the summer. When it's very hot, we have  
12 to keep our windows closed. It's just unacceptable.

13 MR. VOGEL: Mike Wood.

14 MR. WOOD: Hi, Sharon. I have a question  
15 about how you would participate in drafting the permit.  
16 What do you envision doing? Would you review the  
17 application and suggest language or are you talking  
18 about just reviewing early drafts the agency has  
19 prepared?

20 MS. GENASCI: Well, I think that --  
21 that's a really good question. The neighbors' point of  
22 view is just not there in the permit, and I think  
23 that -- one of the things that we suggested some years  
24 ago was that an independent audit person be allowed  
25 into the plant -- because it is very old -- to go

1 through and see how things could be tightened up.  
2 Neighbors have always been wanting to work with this  
3 facility. And, you know, they're not antagonists, but  
4 they don't want to close it down at all. But I think  
5 that the language -- we would have worked with the  
6 language.

7                   We did actually go through that process  
8 in a workshop with the DEQ here to help write a rule, a  
9 nuisance rule, and we were thinking about the company  
10 in that. So we've been through that with the DEQ  
11 before. I think we could have contributed a lot. And  
12 several years ago we probably would have had that gauge  
13 put on the bag house and certain things done that are  
14 now done all these years later.

15                   But, you know, it's hard to say  
16 specifically what we would do until we were in that  
17 situation. It's just if we're not even at the table,  
18 then obviously we can't contribute anything.

19                   MR. WOOD: Does the agency publish a  
20 notice that they've received an application?

21                   MS. GENASCI: We're notified when there's  
22 going to be a hearing. And in this case the hearing  
23 was delayed for well over a year just by -- you know, I  
24 think they were very nervous about getting together  
25 with the neighbors.

1                   We have got very powerful neighborhood  
2 group, very knowledgeable neighborhood group. People  
3 have really learned a lot over these last years by  
4 monitoring our own air and working with scientists and  
5 engineers and various people who work with us. Did I  
6 answer your question?

7                   MR. WOOD: Yes. Thank you.

8                   MR. VOGEL: Question from Steve Hagle.

9                   MS. GENASCI: Yes.

10                  MR. HAGLE: Hi, Sharon. My name is Steve  
11 Hagle. I'm with the Texas Commission on Environmental  
12 Quality. You mentioned something about that costs were  
13 considered for the industry but not costs of the  
14 citizens.

15                  MS. GENASCI: Right.

16                  MR. HAGLE: What costs were those? Was  
17 that part of the Title V process or was that part of  
18 the new source review process?

19                  MS. GENASCI: The language of the permit,  
20 several places said that, for example, certain things,  
21 you know, that are taken into consideration in deciding  
22 whether or not a particular control technology is going  
23 to be used and it depends in part on cost to the  
24 company. I'm trying to think of the exact language,  
25 something like, you know, depending on how expensive it

1 is basically, use my own words. But in considering  
2 those costs they're not thinking at all about public  
3 health costs.

4                   We have a high incidence of cancer here  
5 in the neighborhood. We don't know how high because  
6 nobody has really studied this neighborhood for that.  
7 We also are -- you know, we realize how difficult it is  
8 in this kind of situation to prove that any particular  
9 illness is a result of any particular pollution because  
10 in a case like ours we have so many sources here. This  
11 is our main source because it's just right on the edge  
12 of the neighborhood and it's the main one that the  
13 neighbors are complaining about. But we do have a lot  
14 of sources. We do have a lot of brain tumors here.

15                   In my particular case, I live on a block  
16 where people died from brain tumors on either side of  
17 me in the last three years. And we've counted like up  
18 to seven brain tumors in this neighborhood just  
19 informally. But it's very difficult for us to put a  
20 figure on public health. But when I say that, I think  
21 that the health of the public and the cost to this  
22 community of these illnesses needs to be considered,  
23 particularly when we've been thinking about the  
24 children who are born here and grow up in this  
25 neighborhood with lead on their porches.

1                   MR. HAGLE: I was just trying to  
2 understand whether the cost that -- the cost  
3 information that you mentioned was a part of the Title  
4 V permitting process or was that some other  
5 underlying --

6                   MS. GENASCI: No, it's part of that  
7 language in the permit, yeah, right, so it would be  
8 part of the Title V permit.

9                   MR. VOGEL: Kelly Haragan.

10                  MS. HARAGAN: Hi, this is Kelly Haragan  
11 with the Environmental Integrity Project. I just had a  
12 question about the changes that you got to the permit,  
13 the extra high pressure gauges. Were those -- did the  
14 state make those changes in response to your comments?

15                  MS. GENASCI: Yes, they did.

16                  MS. HARAGAN: So you didn't have to  
17 petition EPA, the state went ahead and changed the  
18 permit?

19                  MS. GENASCI: Yes, they did. They put  
20 the special conditions that were placed on the permit  
21 after the hearing.

22                  We had, for example, a neurologist  
23 testify about the manganese causing Parkinson's like  
24 symptoms and, you know, an oncologist talked about the  
25 various compounds that we have that cause cancer.

1 MS. HARAGAN: Thanks a lot.

2 MS. GENASCI: They did respond to that.

3 MR. VOGEL: Thank you, Sharon. Thank you  
4 for being with us today.

5 MS. GENASCI: Thank you very much.

6 MR. VOGEL: Now we'll go with Scott  
7 Gollwitzer.

8 MS. GENASCI: Can I stay on and listen to  
9 it?

10 MR. VOGEL: You certainly can.

11 MR. GOLLWITZER: Thank you. My name is  
12 Scott Gollwitzer. Is there a court reporter?

13 MR. VOGEL: Yes, there is, and your voice  
14 is being recorded for audio transcript as well.

15 MR. GOLLWITZER: For the court reporter's  
16 benefit I'll spell my last name. G-o-l-l-w-i-t-z-e-r.  
17 I'm the staff attorney and clean air campaign  
18 coordinator with Appalachian Voices. We're a regional  
19 nonprofit organization based in Boone, North Carolina  
20 committed to protecting and restoring the ecological  
21 integrity, economic vitality and cultural heritage of  
22 the southern and central Appalachian Mountains.

23 We accomplish these goals through four  
24 primary campaigns. The first is defending public  
25 lands; second, promoting sustainable forestry; third,

1 ending mountain top removal coal mining; and the fourth  
2 is eliminating pollution.

3           Before getting to the substance of my  
4 comment, I'd like to thank the Task Force for allowing  
5 me to testify today and for allowing me to leave my  
6 suit and tie in the closet this morning.

7           And now some background of why  
8 Appalachian Voices is providing testimony today. After  
9 working to pass our Clean Smokestacks Act in North  
10 Carolina during the summer of 2002, Appalachian Voices  
11 quickly realized that reducing emissions from our 14  
12 grandfathered coal fired power plants would prove  
13 meaningless without an effort to force North Carolina's  
14 other polluters to comply with the Clean Air Act.

15           Beginning the spring of 2003 we embarked  
16 on an ambitious campaign which we call North Carolina  
17 Stack Watch. The intent of this campaign is to promote  
18 three fundamental purposes of Title V, and those were  
19 described by John Walke in his testimony as:  
20 Compilation of permit requirements, increasing public  
21 participation and compliance enhancement.

22           When we launched our Stack Watch campaign  
23 we had three goals in mind of our own. The first one  
24 was to review and comment on every Title V permit  
25 proposed to be issued in North Carolina. The second

1 was to appeal poor permitting decisions through  
2 administrative or judicial avenues, and the third was  
3 to assist people living in the shadows of polluters to  
4 use Title V as a mechanism to enhance pollution control  
5 compliance.

6                   Due to our unique conceptualization of  
7 the permit program, we feel that Title V is an  
8 important tool for improving air quality and that it  
9 should be maintained and improved to achieve its  
10 purposes. After nearly 18 months of implementing our  
11 Stack Watch campaign, I'm happy to announce that we  
12 commented on roughly 95 percent of the draft permits  
13 put out by the Division of Air Quality, DAQ. This  
14 despite the fact that at the time we launched this  
15 campaign we were unaware that DAQ was preparing to  
16 issue all remaining initial permits by the end '03.

17                   As Mr. Van Der Vaart can no doubt attest,  
18 we were extremely busy during the last quarter of 2003  
19 trying to keep up with DAQ's equally feverish pace.

20                   MS. VOGEL: Scott, speaking of pace, you  
21 could slow your pace down from talking a bit so we can  
22 understand you better, please.

23                   MR. GOLLWITZER: Oh, sorry.

24                   During the 18 months since the inception  
25 of our Stack Watch campaign, we developed an empathetic

1 understanding of the two principal obstacles preventing  
2 DAQ and EPA from fully meeting the objective of Title  
3 V. Those obstacles, as we see them, are insufficient  
4 funding and lack of personnel. Likewise, the same  
5 obstacles have impeded our ability to fully realize the  
6 goals of our own Stack Watch campaign.

7                   However, we do believe that with the  
8 appropriate recommendations from this Task Force,  
9 coupled with full implementation of those  
10 recommendations, we will be able to achieve our goals  
11 in the not too distant future.

12                   That being said, let me back up just for  
13 a second. Without debating the wisdom of Congress's  
14 choices in developing Title V, Appalachian Voices  
15 understand that Title V sought to equitably distribute  
16 the rights and responsibilities of the permit program.  
17 That division would be between the federal government,  
18 state regulatory agencies, the public, and polluters  
19 who refuse to internalize the cost of production and  
20 clean-up in the prices of their products. In essence,  
21 Title V has created a partnership among these  
22 stakeholders to achieve one fundamental purpose. That  
23 would be improving air quality.

24                   Although in a perfect world Appalachian  
25 Voices would not need a Stack Watch campaign. We plan

1 to continue on behalf our members to fully participate  
2 in this partnership to improve the air we all breathe.

3           If I may, I would like to quickly give  
4 you a list of areas that might be improved in order to  
5 make the aforementioned partnership more effective.  
6 Please bear in mind that although our Title V  
7 experience is limited to North Carolina, much of these  
8 suggested reforms can and should be made in other  
9 states as well.

10           First I would like to commend DAQ for  
11 doing an admiral job in providing interested parties  
12 electronic notification of draft permits. Specifically  
13 they provided a copy of the draft permit and the permit  
14 application review at the same time they provide notice  
15 that the permit is open for public comment. Although  
16 this is a great start, DAQ can really help the public  
17 in fulfilling its partnership role by providing copies  
18 of the application and any other relevant supporting  
19 materials at the same time a notice in posted.

20           We understand that this request places a  
21 slight burden on DAQ. Yet that burden is de minimis  
22 when compared to the onerous burden placed on the  
23 public when they are forced to travel to a regional  
24 office or a headquarters to obtain these documents in a  
25 timely manner. If DAQ cannot or is unwilling to

1 accommodate the public's needs in meeting this Title V  
2 partnership by providing the documents at the time  
3 public notice is given, perhaps the public comment  
4 period could be extended to 90 days.

5                   For those on the panel who may be  
6 grimacing at this suggestion and its concomitant delay,  
7 I encourage you as Title V partners to meet us halfway  
8 by supporting our request that the relevant underlying  
9 documents be provided electronically and simultaneously  
10 with the permit notification.

11                   Secondly, it would be useful if DAQ would  
12 take time to provide written comments or responses to  
13 our public comments. Again, at first blush this may  
14 seem to place an undue burden on DAQ. However, we  
15 believe that the public participation process would  
16 ultimately be streamlined. Our experience to date has  
17 forced us to waste our limited resources making the  
18 same comments on the same issues over and over and over  
19 again. Theoretically, this process results in DAQ  
20 having to wade through our comments over and over and  
21 over again as well.

22                   Written responses to the extent that they  
23 contain reasonable legally justified explanations of  
24 DAQ's actions would alleviate much of this duplicative  
25 work for both the agencies and organizations such as

1   ours and would no doubt benefit polluters by expediting  
2   the permit review comment process. Providing written  
3   responses should not place an extraordinary burden on  
4   DAQ as permitting authorities are already required to  
5   provide explanations to a sister state when they submit  
6   recommendations rejected by the permitting authority.  
7   And that's citation is 42 U.S.C. 7661d.

8                   Third, DAQ should make every effort to  
9   cast the widest net possible in terms of soliciting  
10  public comment. This could be accomplished by broadly  
11  defining the affected community. Although no bright  
12  line has been established for defining the extent of an  
13  affected community, the Clean Air Act provides some  
14  congressional guidance. For instance, section 7661d  
15  requires that the permitting authority submit proposed  
16  permits to states lying within 50 miles of the  
17  polluter. Hence, at a minimum, DAQ should provide  
18  public notice in all communities lying within a 50-mile  
19  radius of a polluter.

20                   In casting this wider public net, the  
21  public will be well served if DAQ would enlist the help  
22  of radio and TV stations that regularly run public  
23  service announcements. Likewise, where appropriate,  
24  public notice should be announced through non-English  
25  speaking media outlets.

1                   The public benefit associated with  
2 casting this wider public notice net cannot be  
3 overstated. Our experience to date demonstrates that  
4 if each county within 50 miles of a particular polluter  
5 were included as part of the affected community, DAQ  
6 would be better equipped to achieve the spirit of Title  
7 V's environmental justice considerations.

8                   In fact, when one calculates the number  
9 of low income African-American and Latin -- excuse me,  
10 Latino-American residents within this broader affected  
11 community in North Carolina, one invariably finds a  
12 disproportionate number of one or more of these subsets  
13 of North Carolina's population residing within the  
14 shadows of the polluter's facility.

15                   I would like to mention another less  
16 obvious benefit of casting this wider net. If one  
17 considers the fact that many polluters are large  
18 employers within the immediate vicinity of their  
19 facility, there's little doubt that many residents are  
20 intimidated for fear of losing their job or an  
21 opportunity to get one to speak out against any  
22 polluter. These fears, whether real or imagined, have  
23 a chilling effect on the public's willingness to engage  
24 in the Title V process.

25                   Casting a wider public notice net will

1 not only alleviate this chilling effect, but would go a  
2 long way to ensure -- and I'm quoting EPA here -- that  
3 no group of people, including racial, ethnic or  
4 socioeconomic groups should bear a disproportionate  
5 share of the negative environmental consequences  
6 resulting from industrial, municipal, and commercial  
7 operations or the execution of federal, state, local,  
8 and tribal programs and policies.

9 I know time is running short so I've five  
10 quick points to make in addition to the ones I've  
11 already made. First, permits need to include some sort  
12 of monitoring record keeping and reporting requirements  
13 for each and every standard or limitation listed in the  
14 permit. In North Carolina, almost every permit  
15 includes some emission limit or standard without any  
16 monitoring, record keeping, or reporting requirement.  
17 Without such requirement, the public is unable to  
18 fulfill its role as private attorneys general.

19 Second, we need more public hearings in  
20 North Carolina. In North Carolina, the public notice  
21 net is cast in very narrow geographic range. The  
22 circumstance generally results in no one, other than  
23 our organization, requesting a public hearing. This  
24 allows the director of DAQ to impermissibly use a  
25 critical mass standard to determining whether to hold a

1 public hearing. DAQ's track record during our Stack  
2 Watch campaign is abysmal. Between May 13, 2003 and  
3 September 16, 2004, 76 out of roughly 80 requests for  
4 public hearings were summarily denied.

5 Better public notice protocols as  
6 outlined above will help eliminate the director's use  
7 of this critical mass standard. If DAQ refuses to  
8 approve the public notification protocols, at a minimum  
9 they should periodically check the public's pulse by  
10 holding some public hearings on permits for large  
11 facilities and heavily populated areas.

12 Third wrap-up point relates to how  
13 detailed the permits should be in laying out relevant  
14 legal standards. I saw a lot of this discussed in the  
15 transcripts thus far. Personally I would be happy with  
16 some middle ground where a standard might be briefly  
17 described and reference via citation. However, my  
18 personal preferences do not trump the Clean Air Act's  
19 public participation requirements.

20 Many people do not have the resources to  
21 adequately access the laws and regulations if they're  
22 simply referenced. As such, it is incumbent upon  
23 permitting authorities to include verbatim the laws and  
24 regulations in a permit. Whether it be in the body or  
25 as an attachment is something this Task Force can

1 grabble with and come up with a recommendation.

2           Fourth, I would like to see agencies  
3 accept comments submitted by multiple parties as if  
4 each were submitted individually. Based on experience  
5 with other agencies I've worked with, there's a growing  
6 trend emerging whereby agencies are treating sign-on  
7 comments as a single unit without considering the  
8 number of groups and/or individuals these groups  
9 represent as a mandate for what the public expects.

10           The summary dismissal is an affront to  
11 the public's sensibilities and is unfair insofar as  
12 other agencies are reportedly receiving comments from  
13 trade associations and treating those as if each of the  
14 represented polluters submitted the comments on their  
15 own behalf. As such, I would encourage you to treat  
16 any group comments submitted by an environmental or  
17 public health organization in terms of the coalition as  
18 you would treat those comments submitted by the  
19 American Chemistry Counsel on behalf of its 136  
20 members.

21           Finally, I would like to make clear that  
22 although I appreciate the work and dedication of the  
23 individuals on this Task Force, I must object to the  
24 composition of the panel and the dubious explanation  
25 provided by the hearing officer on June 25th. Unless

1 this imbalance is immediately corrected, the legitimacy  
2 of the Task Force and its recommendations will be  
3 greeted with a great of skepticism by clean air  
4 advocates.

5 In conclusion, I'd like to stress that we  
6 firmly believe in Title V and it will be an incredibly  
7 useful tool in meeting the three objectives outlined  
8 before, compilation, increase public participation, and  
9 enhanced enforcement.

10 Appalachian Voices will, to the fullest  
11 extent possible, continue to exercise its rights and  
12 meet its responsibilities to improve the nation's air  
13 quality under Title V, and we urge our partners to do  
14 the same. Thank you.

15 MR. VOGEL: Thank you, Scott. Sounds  
16 like you had something in writing there you were  
17 reading from. Could you send that to me?

18 MR. GOLLWITZER: I am submitting more  
19 fully developed comments by the March deadline.

20 MR. VOGEL: Would it be possible for you  
21 to send it to me by e-mail before the March deadline?

22 MR. GOLLWITZER: I can send you what I've  
23 got thus far.

24 MR. VOGEL: Thank you. Do we have  
25 questions from the panel?

1 MR. VOGEL: Adan Schwartz.

2 MR. SCHWARTZ: Adan Schwartz with the Bay  
3 Area Air District. You mentioned that you would like  
4 to see relevant underlying documents made available at  
5 the time the draft permit is noticed, and I was  
6 wondering if you had in mind sort of a generic list of  
7 what categories of information or types of documents  
8 would be -- should be made available. Obviously the  
9 application is one, and you mentioned that, but in  
10 addition to that.

11 MR. GOLLWITZER: I would recommend  
12 notices of violations and how those notices of  
13 violations were corrected, if at all, or addressed, and  
14 perhaps any complaints that citizens in the local area  
15 may have filed against a particular facility, whether  
16 or not an NOV was issued afterwards. And I would be  
17 happy to flesh that out more in some written comments  
18 by the March deadline.

19 MR. SCHWARTZ: Thanks. That would be  
20 useful.

21 MR. VOGEL: Bob Palzer.

22 MR. PALZER: Two things. Bob Palzer,  
23 Sierra Club. Two things I would like to check on. One  
24 is your concern about the composition of the committee.  
25 Is that based on the initial composition of having four

1 environmentalists and six members from industry and six  
2 regulators?

3 MR. GOLLWITZER: That is correct. If the  
4 composition has changed since the transcripts I've  
5 read, I'd be happy to rescind that comment.

6 MR. PALZER: You might want to do that  
7 because, in fact, we are at full strength. Six, six,  
8 and six.

9 MR. GOLLWITZER: Okay. I would be happy  
10 to rescind that.

11 MR. PALZER: I would like to let you know  
12 something that we do in the state of Oregon and see  
13 what you think how it would satisfy your request for  
14 making it easier to be able to get a hearing held when  
15 you have issues even though you don't have this, what  
16 you call, critical mass.

17 In our state whenever there's a request  
18 by ten individuals or an organization representing ten  
19 individuals, the state is obligated to grant a hearing.  
20 What do you think of that idea?

21 MR. GOLLWITZER: I'd probably defer any  
22 particular answer at this time, although I do like the  
23 idea. I think that would go at least in one direction  
24 to kill this critical mass standard that is currently  
25 being used by the North Carolina Division of Air

1 Quality. And I would certainly be happy to address  
2 that as well in my written comments.

3 MR. PALZER: Well, do you have any other  
4 suggestions of ways to fight your critical mass issue?

5 MR. GOLLWITZER: None that I would be  
6 willing to share right now. Again, I would be happy to  
7 flesh that out.

8 MR. PALZER: Thanks.

9 MR. VOGEL: Verena Owen.

10 MS. OWEN: Hi, I'm Verena Owen. I'm with  
11 the Lake County Conservation Alliance in Illinois. I  
12 have a question. When you prepare for a permit review,  
13 what other documents do you try to get and have you  
14 ever encountered any problems receiving them, like  
15 enforcement issues or notice of violations?

16 MR. GOLLWITZER: Let's be candid. Again,  
17 I will remind you all that we as well have personnel  
18 and funding problems. I do a lot more than just air  
19 permits. It's really difficult for me to spend my time  
20 and resources doing every permit as well as I should be  
21 doing them.

22 The division of air quality, I generally  
23 go to the headquarters to get information and the files  
24 there are accessible and I can at that time get the  
25 documents I'm looking for. However, headquarters is

1 four and a half hours away. Sometimes four or five  
2 permits are up at once or they come out one day after  
3 another. So it's really hard to go there in a concise  
4 manner and get everything I am looking for in 30 days.  
5 Does that answer your question?

6 MS. OWEN: Yes, it does, kind of. Can I  
7 ask one follow-up, please? Do you have to pay for  
8 copies when you go to headquarters -- and, actually,  
9 it's two questions -- and has the agency ever offered  
10 to have a public repository of information in the  
11 location of the permit?

12 MR. GOLLWITZER: First, yes, there is a  
13 charge, it's relatively reasonable. I haven't had too  
14 many problems with that.

15 MS. OWEN: Could you share how much that  
16 is?

17 MR. GOLLWITZER: In terms of  
18 repositories, the regional offices within which the  
19 polluter lies also has copies or should have copies of  
20 the relevant documents. Again, North Carolina is a  
21 very large state. I live on the western end of the  
22 state and it can take me eight hours to get to the  
23 eastern side of the state to get to a regional office.  
24 Again, we do see a problem with our having to travel  
25 and our ability to get to some of these offices to get

1 the underlying documentation.

2 20 years ago that's the way things would  
3 work. However, with today's scanning abilities and  
4 electronic communication abilities, I think the burden  
5 on the Division of Air Quality would be diminimous in  
6 terms of scanning and providing those documents, and  
7 that cost can also be passed on to the polluters under  
8 Title V.

9 MR. VOGEL: Keri Powell.

10 MS. POWELL: Hey, Scott, can you hear me?

11 MR. GOLLWITZER: Barely.

12 MS. POWELL: Now can you hear me?

13 MR. GOLLWITZER: Yeah.

14 MS. POWELL: I just wanted to know from  
15 the comments that you filed so far on permits, do you  
16 feel like you've made any significant improvements in  
17 those permits; and if so, can you describe some of  
18 those successes?

19 MR. GOLLWITZER: I have yet -- and,  
20 again, it's based on our own resources -- to see any  
21 significant changes in permits. By the same token, I  
22 must admit it's really tough to review a proposed  
23 permit after we've submitted draft comments. Again,  
24 it's one of the reasons why we would like to see  
25 written responses to our comments.

1                   If, in fact, the DAQ took the time to  
2 file a written response to my comments, I could read  
3 that much quicker than looking at a proposed permit and  
4 comparing the proposed to the draft and going back to  
5 my comments to see how everything fit into that puzzle.

6                   MS. POWELL: So how do you know if  
7 there's no written response to your comment --

8                   MR. GOLLWITZER: That's the answer I have  
9 at this time.

10                  MS. POWELL: How do you know that the  
11 permit has actually been forwarded to EPA as a proposed  
12 permit?

13                  MR. GOLLWITZER: Oh, interesting. The  
14 Division of Air Quality recently has begun sending the  
15 electronic copies of the proposals. And that was a  
16 problem initially, and actually our comments might have  
17 spurred them to start doing that, so that might be a  
18 success from our comments addressed.

19                  MS. POWELL: Sofar as you have filed a  
20 petition to EPA to object to any of the permits?

21                  MR. GOLLWITZER: We have not. Again, I  
22 empathize with the permitting authorities in terms of  
23 personnel resources.

24                  MS. POWELL: Thanks, Scott.

25                  MR. VOGEL: Thank you, Scott, for taking

1 the time to be with us today.

2 MR. GOLLWITZER: Thank you all for having  
3 me.

4 MR. VOGEL: You're welcome. We are now  
5 going to take a break until 1:00.

6 (Recess taken)

7 MR. VOGEL: Okay. I think we are ready  
8 for you to make your presentation. You'll have ten  
9 minutes for your presentation and ten minutes for  
10 questions. Let me say that we are recording this for  
11 audio and written transcripts.

12 MR. GOLLWITZER: Ray, by way of  
13 disclosure, this is Scott Gollwitzer listening in on my  
14 colleague.

15 MR. VOGEL: That's fine, Scott.

16 Go ahead, Avram.

17 MR. FRIEDMAN: Thank you. First I would  
18 like to thank the Task Force for giving me the  
19 opportunity to speak on the merits and the problems on  
20 the Title V permitting process. I am not an attorney,  
21 but I do speak as a representative of the Canary  
22 Coalition, a broad-based grassroots clean air advocacy  
23 coalition that includes members of the business  
24 community, local government officials, members of the  
25 religious community, academic community, the medical

1 community, organizations and people from all walks of  
2 life and socioeconomic backgrounds, originating and  
3 mostly centered in western North Carolina but now has  
4 members in 21 states.

5                   The idea of the Title V process is a good  
6 one that can potential serve the public well combining  
7 all federal, state, and local air quality regulations  
8 into one process. Under one application and permit  
9 theoretically simplifies the process not only for the  
10 relevant industries and regulatory agencies but also  
11 for watchdog organizations and individuals who are  
12 monitoring the status of polluting industries.

13                   However, simplification is a relative  
14 term. I have personally forced myself to read through  
15 several Title V permits for utility owned coal burning  
16 power plants in North Carolina, admittedly with only  
17 limited success in comprehension. It's understandable  
18 that essentially a technical process requires an  
19 intensely technical and complex evaluation and review.  
20 But since the overall purpose of the permitting process  
21 is to protect the general public from harm, there needs  
22 to be some parallel documentation produced that allows  
23 the layman to understand what is happening in a local  
24 manufacturing facility, what pollutants are being  
25 released into the local environment, and what potential

1 health and safety risks and environmental damage are  
2 posed by the operation of the plant.

3           An element I found lacking in all the  
4 permits I reviewed was a total cost evaluation of the  
5 operation of the facility. By total cost, I mean a  
6 balance sheet that estimates the total economic benefit  
7 of operating a facility such as jobs created and  
8 economic ripple effect throughout the community versus  
9 the economic costs of operating a facility, including  
10 health care costs, loss of productivity in the labor  
11 force within the community due to respiratory and other  
12 ailments caused by the facility's operation, and  
13 environmental damage caused by operation of the  
14 facility in its airborne emissions.

15           Since the Title V process has eliminated  
16 all but one administering agency and one review  
17 process, the likelihood of this type of analysis is  
18 greatly diminished unless it's included within the  
19 process itself. This is important information of which  
20 a community should be made aware.

21           Aside from the documentation of the  
22 permit itself, the administration of the Title V  
23 process is deeply flawed in North Carolina in several  
24 ways. Although in the past it was promised by the  
25 state agency that public hearings would be part of the

1 review process of all Title V permits for utility owned  
2 coal burning power plants, the DAQ has not followed  
3 through.

4                   Public hearings were denied for the Buck  
5 Steam Station, the Allen Steam Station, the Cliffside  
6 Steam Station, the Riverbend Steam Station and others  
7 citing, quote, lack of significant public interest,  
8 unquote, despite written requests by multiple  
9 organizations who represent thousands of affected  
10 citizens throughout the state.

11                   When the first four power plant Title V  
12 permits came up for review in 2002, the DAQ did grant  
13 two hearings that combined permits of two plants at  
14 each. The hearing for the Belluse Creek and Dan River  
15 facilities were held in Rockingham Community College.  
16 The hearing for the Roxboro and Mayo plants were in  
17 Roxboro Community College.

18                   For those of you who may not be familiar  
19 with the geography of North Carolina, these are remote  
20 sparsely populated regions that are, to say the least,  
21 inconvenient to get to, especially on a weekday or  
22 working night. The hearings were minimally publicized  
23 beforehand in the local newspapers of the hearing venue  
24 despite the fact that the emissions from these plants  
25 affect hundreds of thousands of people in large urban

1 areas downwind of the facilities. Speakers who  
2 traveled up to four hours to be heard were granted  
3 three minutes to comment on the content of both 40-odd  
4 page documents.

5                   Experiencing this set of circumstances  
6 can only leave the impression that the hearings are  
7 viewed by DAQ officials as a mere formality rather than  
8 as a meaningful part of the decision-making process.  
9 Important issues were raised of great public concern to  
10 the public. For instance, it was brought to light that  
11 the Roxboro and Mayo Power plants were being licensed  
12 to incinerate toxic wastes such as used oils, solvents,  
13 ethylene glycol, waste ammonia citric acid boiler  
14 cleaning solution, and coal fly ash mixture from the  
15 nearby Cogentrics plant if there was no follow up to  
16 comments or any indication that comments had influenced  
17 either the terms of a particular permit or general  
18 policy by the DAQ.

19                   There's a prevailing and sinking feeling  
20 that participants have wasted valuable time in  
21 researching the issues, preparing a statement, and  
22 traveling long distances to deliver them, that written  
23 comments will be filed and forgotten to no avail, that  
24 the public's interest is not being served. There's a  
25 prevailing sense that there are close and inappropriate

1 ties between industrial representatives and DAQ  
2 officials and that industrial concerns will prevail  
3 every time over health and environmental concerns.

4           Take, for instance, the administrator who  
5 is currently in charge of the Title V process for the  
6 DAQ in North Carolina. I don't know Donald van der  
7 Vaart personally, who sits on this Task Force. I'm  
8 sure that he's a good, kind man and a capable  
9 individual who would never consider beating his wife or  
10 dragging a dog from a leash attached to the back of his  
11 car. But the fact is, he worked in an administrative  
12 capacity with Progress Energy as the manager of  
13 environmental services for CP&L's just prior to landing  
14 a job in the DAQ's administration. This type of  
15 revolving door policy can only be viewed as a conflict  
16 of interest and counterproductive to the achievement of  
17 the goals of a regulatory agency.

18           The industry should not have one of its  
19 own as the principal official responsible for  
20 administering its own regulation. By definition,  
21 regulatory agencies and the industries they're supposed  
22 to be regulating should have an adversarial  
23 relationship or the process is meaningless. Private  
24 industries have their own priorities that are focused  
25 on maximizing profits for shareholders. But government

1 agencies are supposed to have as their priorities the  
2 interests of the public at large, in this case public  
3 health and the environment, which often comes into  
4 conflict with the pure profit motive of industries.

5           In North Carolina this adversarial  
6 relationship is not what it needs to be. And as we all  
7 know, this same inappropriate relationship between  
8 industry and the agency that is supposed to be  
9 regulating the industry is becoming more and more the  
10 norm on the federal level as well. One has to ask who  
11 is left to safeguard the public's interest?

12           I'd have to say that the make-up of this  
13 Task Force certainly doesn't inspire confidence in the  
14 fact that the public's interest is adequately  
15 represented. Six representatives from community-based  
16 groups are overwhelmed by six industrial  
17 representatives and six regulatory agency  
18 representatives, at least some of who we know have  
19 recent industrial ties.

20           If balance is the objective, it has not  
21 been achieved. It's questionable whether balance  
22 should even be an issue within a regulatory agency.  
23 There are plenty of advocates for industry within the  
24 private sector and within government. There's the  
25 Chamber of Commerce, various industrial associations,

1 the governor and state legislatures who are politically  
2 indebted to industrial interests for campaign  
3 contributions. There's no shortage of advocates for  
4 industrial concerns, but the role of a regulatory  
5 agency or task force, again, is to guard public health  
6 and safety in the face of all this monetary influence  
7 from other places.

8                   The role of the EPA, DAQ, Title V process  
9 is to advocate for public health, to advocate for the  
10 environment. Having regulatory agencies set up for  
11 that sole purpose is the balance, but today that  
12 balance doesn't exist.

13                   The Title V permits that I have reviewed  
14 entrust all emission monitoring and record keeping to  
15 the industry itself. This strikes me as an inadequate  
16 system to protect public health. Not that all  
17 industries are dishonest and would willingly harm the  
18 people of a community by intentionally falsifying  
19 records and breaking the law, but if we could assume  
20 that all polluting industries had only the public  
21 welfare in mind, we wouldn't need regulations or  
22 regulatory agencies at all to begin with.

23                   But these safeguards were found necessary  
24 as the industrial revolution evolved because it quickly  
25 became apparent that very often industrialists lost

1 sight of the need to protect the public as they focused  
2 primarily on their bottom line and profits and  
3 financial losses. It's necessary to institute a policy  
4 of unscheduled and irregular inspections of all  
5 polluting facilities by the regulatory agency and for  
6 the agency to have a role in the monitoring and record  
7 keeping of emissions.

8 MR. VOGEL: You have about one minute  
9 left.

10 MR. FRIEDMAN: In summation, the Title V  
11 process can potentially be a worthwhile tool for  
12 simplifying the administration of air quality rules and  
13 regulations. But as in all tasks, its success depends  
14 on who is doing the administering. Thank you.

15 MR. VOGEL: Thank you. Are there  
16 questions from the Task Force? Adan Schwartz.

17 MR. SCHWARTZ: Hi, Avram. This is Adan  
18 Schwartz. I'm with the Bay Area Air District. You  
19 mentioned a couple of public hearings that were granted  
20 and that did occur, and I could be mistaken, but it  
21 sounded like they were held in the community near where  
22 the facility was.

23 MR. FRIEDMAN: That's correct.

24 MR. SCHWARTZ: And I was wondering  
25 what -- yet you sounded critical of that, and I

1 wondered what exactly was wrong with that and what  
2 other -- what you would propose instead as far as a  
3 location for a public hearing.

4 MR. FRIEDMAN: Well, I think for anything  
5 that pollutes to the extent of a coal burning power  
6 plant that's owned by a public utility, you have to  
7 look downwind and look at the major urban areas that  
8 are affected by the emissions. For instance,  
9 Winston-Salem, Greensboro, Raleigh or Durham would have  
10 been a much more appropriate place for those hearings  
11 to be held.

12 MR. VOGEL: Other questions? With no  
13 other questions, I would like to thank you for coming  
14 on the phone to testify for us today.

15 MR. FRIEDMAN: Thank you very much.

16 MR. VOGEL: Do we have Merrijane Yerger  
17 on the line?

18 MS. YERGER: Yes, I'm here.

19 MR. VOGEL: We're ready for you now. Let  
20 me remind you that we're taking -- we doing ten minutes  
21 for your testimony and then ten minutes for questions  
22 and answers. Also, we are recording this for audio  
23 transcripts as well as a written transcript.

24 MS. YERGER: Okay.

25 MR. VOGEL: Go ahead, please.

1 MS. YERGER: I'm not really -- I don't  
2 have a presentation prepared as what I just heard, it  
3 seems, but I'm in a grassroots movement against Entergy  
4 Louisiana in 1998, '99. And we petitioned the  
5 administration, EPA, at that time to review and  
6 intervene and do an investigation in regard to the  
7 Monroe plant. I'm in Monroe, Louisiana.

8 We started -- they have been mothballed  
9 for 11 years and the plant is right across the street  
10 from my house. And we got a ruling from Carol Browner  
11 at that time. The process that we went through was  
12 quite an eye-opening experience and I found early on,  
13 in like a matter of maybe a 24-hour, 72-hour period,  
14 that I was not going to get any results that would be  
15 advantageous to not having this power plant restart  
16 through our Louisiana DEQ.

17 We have a lot of, if you will, brick  
18 walls that we ran against in the process. So I  
19 immediately -- pardon me -- I called the EPA and I  
20 started -- I got a couple of names from a few people of  
21 attorneys and folks that could help us out and I got  
22 very good advice, but initially I worked with EPA  
23 headquarters and Region 6 after they sort of heard  
24 about it.

25 As it turned out, when we had our public

1 hearing on this issue, we had the greatest turnout I  
2 believe the EPA said they had ever seen. We had over  
3 just about 200, 250 people show up. And it was right  
4 here in the neighborhood at a high school, and it can  
5 house that many people.

6                   The process during that time, like I  
7 said, on a state level was extremely difficult. It was  
8 hard to work with them. They wouldn't give us any  
9 information. They were very vague and ambiguous, and I  
10 sort of had to pound and stomp really hard to get any  
11 results at the state level, and it wasn't until they  
12 found out that EPA headquarters was involved.

13                   In the meantime, what's happened is they  
14 got a consent order to operate just in the summers  
15 basically, and all they did mostly was tweak their  
16 instruments and they really did use it to generate.  
17 And as we found out, it was all a part of a strategy.  
18 When Entergy was going to be bought, they were being  
19 quoted by Florida Power & Light. And they wanted to  
20 sort of dust off all their old plants that weren't in  
21 operation and get them back on the asset side.

22                   Since then, in just this year, the plant  
23 has had two outstanding blowups. The transformers, the  
24 maintenance on the plants hasn't been carried forward  
25 even when they got their consent to operate. They

1 still didn't do maintenance on it. So as I'm told now,  
2 the latest is that it's highly probable and unlikely  
3 that they will renew their permit when it comes up I  
4 think this summer, coming summer.

5                   So that's pretty much, you know, my  
6 experience, and I continue to watch this plant but, you  
7 know, our state is a tough state to operate in.  
8 Entergy's pretty much got its fingers everywhere, but  
9 they have -- once they found that this wasn't going to  
10 be, you know, a viable plant to operate, they opened a  
11 new one just north of us about 20 miles about a year  
12 after this episode went on, which they knew they were  
13 going to do all along, but what occurred was, it could  
14 have gone through a lot of angst and anxiety and it  
15 opened EPA's eyes, I believe, and I've been told, to  
16 the problems we have at the local and the state level  
17 with the permit review process.

18                   And you have to fight real hard to get  
19 them to do it right, at least the way it should be  
20 done. And that's unfortunate, because I believe and I  
21 found from this the process works very well for the  
22 power companies as well as the individuals who may be  
23 challenging that. So that's pretty much, you know,  
24 what my experience has been what I have to offer about  
25 that. And if anyone has any questions, I'll be happy

1 to answer them.

2 MR. VOGEL: Thank you. Do we have any  
3 questions from the Task Force? Verena Owen.

4 MS. OWEN: Hi, I'm Verena Owen. I'm with  
5 the Lake County Conservation Alliance. I very much  
6 understand how hard it is for grassroots people to work  
7 on these issues. I have a question. You said that the  
8 permit may come up this summer. What would you need to  
9 be involved in this permitting process? If you had a  
10 wish list, what would be on top of your list?

11 MS. YERGER: Well, we wouldn't want it  
12 renewed and, you know, there will be letters sent  
13 requesting that, that it not -- that this permit on  
14 this particular plant not be -- just not be renewed at  
15 all. I mean, what's happened with this plant is our  
16 little area, it was built in 1898 for heaven sakes, and  
17 they've kept it on. We're a little, small town, about  
18 50,000 people. And as the residential area grew, it  
19 grew around this plant. So it really is in a place  
20 that it's no longer practical.

21 And so it is definitely our hope and our  
22 wish that when the permit is up again, they do not --  
23 that they do not renew it. They haven't been operating  
24 the plant in the last two years anyway, but it  
25 continues to have problems. And so I think after these

1 last two -- the first time it blew, it blew the  
2 transformers that sit right outside the building. One  
3 of them was an old one. It didn't get replaced at the  
4 time that they did some modifications on the plant, and  
5 it really -- it really shook the town because fire went  
6 across the street and it's a very public street here  
7 that we live on.

8                   People -- a lady and her children had  
9 just finished jogging by with her babies in the buggy.  
10 So I think they've come to really appreciate and  
11 realize this is not the best place for a plant to be  
12 operating.

13                   MS. OWEN: Thank you.

14                   MR. VOGEL: Carol Holmes.

15                   MS. HOLMES: Hi, this is Carol Holmes at  
16 EPA. I thought with that facility, that they actually  
17 said in the order they got from EPA that they -- or  
18 somewhere that they were going to shut down within five  
19 years. Is that the one I'm thinking of?

20                   MS. YERGER: Well, I don't remember that  
21 being in the consent order. That was always what I was  
22 told when we first took it on, that, you know, why  
23 don't you just lay back and don't worry about it, it  
24 will be three to five years, it's not going to be  
25 operational anyway.

1                   So, yeah, yeah, I think all these things  
2 about that plant that they predicted from the very  
3 get-go, which, of course, they knew from the beginning,  
4 it's converging now at this time. And I think what  
5 precipitated a real focus on it are these last two  
6 incidents that they've had. And the transformer that  
7 blew that was out there, it -- I mean, PCB went  
8 everywhere. They had a HazMat crew out there cleaning  
9 up 48 hours around the clock, so it's -- you're right,  
10 it's supposed -- I just would be really surprised if it  
11 was -- that permit was renewed.

12                   And I will be really mad, really  
13 disappointed, but I just -- you know, I don't think  
14 it's -- it wasn't like in the beginning. And it was  
15 just really too bad to see how DEQ handled it all along  
16 because they knew, they knew what the plan was from the  
17 get-go.

18                   MR. VOGEL: Question from Bob Palzer.

19                   BOB PALZER: Hi, I'm Bob Palzer with the  
20 Sierra Club. You expressed that you didn't envision  
21 you would get much support from the state and were able  
22 to elicit support from the EPA and made the state more  
23 responsive. Could you elaborate a little bit more on  
24 how you got involved, how you got EPA to be involved  
25 and what they were able to do to help you.

1 MS. YERGER: I think on my part it's just  
2 a lot of naivete and I was very naive and I just was  
3 bold enough not to know any better, and I just got the  
4 number of EPA, someone, and I dialed in. And I worked  
5 that from the top down, and I told the story and  
6 fortunately I connected -- it was like maybe the  
7 morning of the -- Entergy had invited the neighborhood  
8 to come and let's talk. This is before the public  
9 hearing business got started. And they were going to  
10 try to mitigate any problems and let everybody know  
11 what they were going to do and they were going to be  
12 good neighbors and this, that, and the other.

13 And someone -- I didn't know anything  
14 about it, so I got a number from someone who -- and got  
15 through to someone at Region 6, and he said, Well, you  
16 know, your state has five criteria that all these  
17 facilities have to meet. And I said, Well, what are  
18 they? He said, Well, you'll have to go back. And I  
19 really fought him on that. I said, If you know them, I  
20 have to meet with them today and I really want to know.  
21 I pressed him on that, and he did give them to me. In  
22 fact, he dictated them to me because I didn't have time  
23 to find them anywhere else. I had to go to the  
24 meeting.

25 And it was very interesting, when I got

1 to the meeting and asked them those five questions, had  
2 they met those, they let -- the permit was on -- you  
3 know, available to the public at the library. And  
4 someone went that night after that meeting and pulled  
5 the permit because they hadn't done some of the things  
6 and they thought they could get by with it, I suppose.

7                   And from that point on I really worked  
8 with this individual and then they -- someone else put  
9 me on to someone at headquarters. And this happened to  
10 be a power plant that came -- it was one of those times  
11 that everything came together. It was right -- they  
12 needed the issue to come up on the table for the new  
13 source review, all the things that were going on, and  
14 you had air division, and then you had the enforcement,  
15 and it was a real battle, I understand, at headquarters  
16 over this, so get -- whether this was going to get  
17 reviewed by the Browner in time, this, that, and the  
18 other.

19                   So it worked to our advantage. When  
20 you're in a state like Louisiana, I know there are a  
21 few others around that have a difficult time with their  
22 state agencies. I really held EPA in highest esteem  
23 and I remember everybody saying, what, you're crazy,  
24 and I said, no, they're actually really helping us.  
25 And I learned a lot. I mean, I got some very good

1 advice and I got pointed in directions I needed to. I  
2 had to do a lot of my own footwork and research, but I  
3 think I was the one and only first individual from a  
4 grassroots standpoint that showed up at Region 6.

5 I asked for a telephone, a desk, and a  
6 fax machine and the file, and they gave it to me and I  
7 sat there and we worked. We worked together. It was a  
8 real partnership at that point. And they kept saying,  
9 well, what would we take if -- you know, working on the  
10 consent side. I will say this, it was pretty humorous,  
11 they wanted to give us some wetlands. I said, well, we  
12 don't need any more wetlands, we got (inaudible) but  
13 that's pretty much where -- how it worked.

14 MR. VOGEL: Another question from Keri  
15 Powell.

16 MS. YERGER: Hi, Keri.

17 MS. POWELL: Hi, Merrijane. Can you hear  
18 me?

19 MS. YERGER: Yes.

20 MS. POWELL: Merrijane, just taking a  
21 step back from your experience with Entergy  
22 specifically, are there lessons learned from that  
23 experience that sort of lead to recommendations for how  
24 you think the Title V program could be implemented more  
25 effectively?

1 MS. YERGER: You know, it's hard for me  
2 to answer right now because I've been away from the  
3 process since -- I haven't tracked it as close as I did  
4 right during that period when I was working with it and  
5 I left and went away to school. So I don't -- I've  
6 lost touch, to be honest with you, and we've had a  
7 change in governor and new people have been appointed,  
8 I understand, and -- to various positions.

9 I think the -- on the -- the worst thing  
10 I hear about any of this is it doesn't matter what we  
11 may offer in terms of having a better process. There's  
12 no enforcement to back it up, so there's no real key to  
13 it, and it's pretty discouraging from that standpoint.

14 But I'm sorry, I don't have anything  
15 because I've been away and most of the -- we only had  
16 one or two other occurrences with power plant issues up  
17 here and that was right at that time. And I don't  
18 know -- I don't know where we are at DEQ with any  
19 improvements.

20 MR. VOGEL: Question from Marcie Keever.

21 MS. KEEVER: Hi, Merrijane, it's Marcie  
22 Keever from Our Children's Earth. You mentioned  
23 facility -- I think you said that it's either shut down  
24 or not operating right now and they're continuing to  
25 move ahead with the Title V renewal; is that correct?

1 MS. YERGER: That's my understanding.  
2 There's no -- the lights aren't on, no one's home.  
3 It's not operating at all.

4 MS. KEEVER: Thanks. Okay, thanks.

5 MS. YERGER: I've been told by someone  
6 with Entergy that it's highly unlikely that that  
7 will -- permit will be renewed.

8 MS. KEEVER: By the DEQ?

9 MS. YERGER: Uh-huh.

10 MS. KEEVER: Okay. So they --

11 MS. YERGER: I just don't think they're  
12 going to pursue it because these last two explosions  
13 that have occurred this year, and I think it just  
14 really has come home to them that this is not a  
15 practical, viable plant that should be in operation.

16 MR. VOGEL: No further questions. Thank  
17 you very much.

18 Do we have John Wilson on the line? Do  
19 we have anyone else on the line that would like to make  
20 a presentation? We'll wait here a few minutes for John  
21 Wilson to show up.

22 MR. WILSON: Hello, this is John Wilson.  
23 Are you there?

24 MR. VOGEL: Yes. This is Ray Vogel at  
25 EPA. How are you?

1                   MR. WILSON: Hi. I'm sorry, I had some  
2 problems making the phone features work. I'm muted out  
3 and it wouldn't take my unmute command.

4                   MR. VOGEL: I'm glad you were able to  
5 join us. We will just go ahead with the presentation.  
6 We're allowing ten minutes for presentation and ten  
7 minutes for questions and answers. We are recording  
8 this for audio and written transcripts, just to let you  
9 know. So go ahead, please.

10                  MR. WILSON: Great. Please interrupt me  
11 if you're having any trouble hearing me. I'm having to  
12 use a cell phone because our offices are in transition  
13 and our phone service is down.

14                  MR. VOGEL: You're coming in loud and  
15 clear.

16                  MR. WILSON: Pardon?

17                  MR. VOGEL: You're coming in loud and  
18 clear.

19                  MR. WILSON: Okay, good, good. Your  
20 voice is getting a little slip, that's probably from  
21 the cell phone.

22                  I work for a small nonprofit in Houston  
23 which is home to the nation's largest chemical  
24 production and refinery complex. We work on regional  
25 issues. We're not a big -- we don't get often involved

1 in plant specific, I don't know, confrontations or  
2 whatever. We tend to work on sort of the cumulative  
3 effects of this large industrial pollution complex on  
4 the Houston region.

5                   From my personal perspective, I think of  
6 Title V in a few different roles, and I know that it  
7 plays many others beyond this, but I just wanted to  
8 kind of give you my perspective on what I would like to  
9 see it accomplishing.

10                   First, I sort of see it as a mechanism  
11 for identifying mistakes or gaps in the regulatory  
12 permitting process. So as a particular facility goes  
13 through the operating permit process, it's something  
14 that's been -- slipped through the cracks, for whatever  
15 reason, particularly in a facility that might have  
16 many, many different permits and permit renewals in its  
17 history, that those kind of mistakes get caught. So  
18 that's one purpose I see for it in the context that we  
19 work.

20                   Second, I think that the process should  
21 also identify any situations where there might be some  
22 glaring loopholes, some units that are simply excluded  
23 from what might otherwise be considered a consistent  
24 level of pollution control or monitoring or some other  
25 level of responsibility.

1                   Third, that the public is presented with  
2 what I would consider to be an approachable, and I  
3 don't mean an understandable, but at least an  
4 approachable framework for determining whether a  
5 pollution source is being held to sufficient standards  
6 and whether the plant is meeting those standards. And  
7 I think that it's in the latter case where in Texas we  
8 have the greatest work on it.

9                   I also want to mention a couple of other  
10 sort of relevant issues. First is the lack of correct  
11 or consistent rules governing startup, shutdown, upset  
12 and maintenance processes are very relevant to Title V  
13 because they help really set the framework in which  
14 compliance is determined and emission reports are  
15 generated.

16                   I spend an awful lot of time looking at  
17 emissions inventory data and annual emission reports,  
18 various things like that from companies. And the  
19 definitions and the presence or absence of rules  
20 governing those particular procedures are critical to  
21 how one makes sense of annual emission reports and  
22 emission statements.

23                   Another issue that we've come across in  
24 Title V is relevant to it but it's not directly a part  
25 of Title V, is the basis for permit emission rates both

1 routine and during emission rates -- excuse me, both  
2 routine emissions and also the emission rates that are  
3 permitted during emissions events.

4 I think that AP 42 factors and other  
5 emission rate factors are incorrectly applied widely,  
6 at least in Texas and I'm sure probably in many other  
7 states, and the use of these emission factors as a  
8 basis for permitting is something that really needs to  
9 be addressed. So that's kind of my big picture set of  
10 issues that I think that might be applicable statewide.

11 One issue that's really relevant in Texas  
12 is incorporation by reference. I know that I'm dealing  
13 with a national audience here, so I would urge you all  
14 to take a look at a Texas permit to understand just how  
15 heavily incorporation by reference is used. It's not a  
16 matter of one or two citations in a couple of places.  
17 Incorporation by reference is basically what a Title V  
18 permit is in Texas.

19 I was training a new staff member and we  
20 were -- I was trying to show her how to look up  
21 monitoring requirements using a Title V permit that I  
22 happened to have lying around. There wasn't a single  
23 monitoring requirement directly described in the entire  
24 Title V permit, and this was a 60 or 70-page document.  
25 Every single monitoring requirement was by reference.

1                   So for the public to approach a Title V  
2 permit and basically get a sense of confidence that  
3 there are monitoring requirements in there and that the  
4 company and the state are taking this seriously, just  
5 that formatting issue alone makes that an implausible  
6 outcome.

7                   In contrast, I looked at some other  
8 states that actually have really good summaries in this  
9 respect, and the only permits I've looked at in those  
10 other states were for comparably complex facilities,  
11 chemical production plants and refineries. For  
12 instance, in California there's very long but at least  
13 coherently organized tables that set out the equipment  
14 that is present at a facility and the requirements for  
15 maintaining and monitoring that facility.

16                   There's also some states that have really  
17 much higher level summaries. Illinois, I think, has a  
18 table called significant emission units at this source.  
19 It gives a description and a date of construction,  
20 emission control, equipment description for each unit,  
21 and then they've got a table that has the emission  
22 limitations and the control requirements clearly  
23 spelled out for each emission unit. You can't find  
24 this stuff in a Texas Title V permit. It's entirely  
25 the permit. And all of these informations are

1 basically presented by reference.

2                   So in order to actually read a Texas  
3 Title V permit and understand it, you need to have a  
4 copy of every single original permit that's referenced  
5 in the Title V operating permit and many of the  
6 original permit applications themselves in order to  
7 have an opportunity to learn about the applicable  
8 requirements for many facilities in Texas.

9                   As another example of how, in effect,  
10 useless a Title V permit is that does incorporation by  
11 reference, there's a recent project that was done by a  
12 consultant who usually works for industry but in this  
13 case was doing a project under a state funded grant,  
14 and their task was to figure out what all of the permit  
15 limits were on a whole -- a lot of units at a number of  
16 different chemical plants and refineries.

17                   This is the kind of thing you would  
18 expect probably if you were a national EPA person that  
19 they would pull out all the Title V permits and copy  
20 the stuff down and be done with it. But actually, I  
21 don't see any evidence in their final report that they  
22 looked at a single Title V permit. They went and  
23 gathered all of the original permits, the permit  
24 applications and other sources in order to figure out  
25 what were the applicable permit limits and emission

1 limits for those units at all those facilities they  
2 looked at. So it turned out to be a very expensive  
3 project to get information that should have been  
4 readily available on the permit.

5 Kind of my final comment is that as an  
6 organization, GHASP has found that organizing any  
7 effort to review and comment on a Title V permit is  
8 really hopeless -- I'm hearing a lot of background  
9 noise. Hello?

10 MR. VOGEL: Yes, you're still on.

11 MR. WILSON: I'm still on, okay. There  
12 was just an awful lot of background noise there. I  
13 don't know what that was.

14 So we had a really challenging and  
15 sounded very discouraging to get involved in monitoring  
16 compliance certifications and comment on Title V  
17 permits because these permits are so difficult to  
18 approach. If we spent the time to basically rewrite  
19 the Title V permits for ourselves and understand what  
20 all the terms were in them, it might be practical. But  
21 in our mind that's the work that the state is supposed  
22 to do in issuing that permit.

23 Finally, I wanted to comment sort of on  
24 the broader issue of monitoring. We -- based on our  
25 research, we feel that monitoring is definitely

1 insufficient at chemical production plants and  
2 refineries in Texas and probably in many other places  
3 in the country. These plants, however, are heavily  
4 concentrated on the Texas and Louisiana Gulf Coast and  
5 will not have come to as much attention elsewhere in  
6 the country in contrast to, say, power plants and other  
7 facilities that are more widely spread across the  
8 country.

9                   We did a report on cooling tower leaks,  
10 for instance, and we gathered the -- the state went in  
11 and did surprise inspections and actually monitored  
12 cooling tower water, found that 14 of 53 of the cooling  
13 towers they monitored were leaking and the emission  
14 rates were roughly three times what one would expect  
15 based on the methods that they were using to report  
16 their emissions to the state. So as a result, there  
17 was a huge gap between what the companies were  
18 reporting as emissions and what was actually going on,  
19 and there was just simply no monitoring required in the  
20 permits or by rules to bridge that gap between  
21 purported emission rates and actual emission rates.

22                   Texas does have some new monitoring  
23 requirements partly as a result of those findings, but  
24 they only apply to four so-called highly reactive  
25 VOC's. And many of those cooling tower systems in the

1 Houston area and all of the cooling tower systems  
2 across the state outside of the Houston area will be  
3 left without any special monitoring requirements and  
4 are mostly likely out of compliance with what one would  
5 expect their monitoring situation to be.

6                   And then kind of one quick comment is an  
7 issue we've been concerned about and haven't found any  
8 relevant information one way or the other on is  
9 monitoring of what I would consider the medium length  
10 pipelines. These are the pipelines connecting one  
11 chemical plant or refinery to another within an  
12 industrial complex.

13                   My hunch is that we're relying on AP 42  
14 for emission inventories for these and that there's no  
15 active or continuous monitoring programs underway for  
16 these. I've never heard of any EPA or state  
17 investigation of these types of facilities. And we're  
18 very curious to know whether there might be any issues  
19 with their operation.

20                   So I appreciate your interest and having  
21 me participate in this hearing and happy to answer any  
22 questions.

23                   MR. VOGEL: Thank you. Any questions  
24 from the Task Force? Shelley Kaderly.

25                   MS. KADERLY: Shelley Kaderly with the

1 State of Nebraska. You mentioned that a concern that  
2 you have is using emission factors as a basis of  
3 emission rates, and I was wondering if you would  
4 provide some examples of where you believe that  
5 emission factors are not acceptable as establishing  
6 basis of emission rates and if there are any times when  
7 you believe emission factors would be acceptable for  
8 establishing emission rates.

9 MR. WILSON: Are you referring to  
10 emission rates within permits or emission rates for  
11 issue in inventory reporting purposes?

12 MS. KADERLY: I'm talking in terms of in  
13 establishing emission rates for the permit.

14 MR. WILSON: Well, I think that the -- I  
15 mean, the method for establishing an emission rate in a  
16 permit varies based on the level of control that's  
17 being required.

18 And my understanding is that EPA has a  
19 pretty strong policy against the use of AP 42 emission  
20 factors as the basis for a permitted emission limit. A  
21 lot of times the AP 42 emission factors are based on  
22 very outdated or scanty research and they're just  
23 simply -- they may be the only available number to a  
24 permit writer, but that doesn't mean they are a good  
25 number. Might as well just call up your local

1 environmental group and ask them for a number. I think  
2 that would be a better method. But -- so I'm pretty  
3 skeptical of using emission factors that are developed  
4 in the way that AP 42 factors are developed as a  
5 permitted -- as a basis for issuing a permit.

6 I think that you can develop a standard  
7 rate for a certain kind of unit that is based on the  
8 concept that this is what you should permit this type  
9 of unit at, and that in a sense would be an emission  
10 factor, but it would be developed in an entirely  
11 different way in a sense that you would expect that  
12 well-operated facilities can always meet this  
13 requirement and that poorly-operated facilities won't.  
14 I think that's very different than what AP 42 is, which  
15 is more of sort of an average performance of  
16 facilities, and I don't think that's appropriate. Does  
17 that answer your question?

18 MS. KADERLY: It takes a while to get the  
19 microphone back over to me. Actually, AP 42, each  
20 emission factor has different ratings all the way from  
21 A to, I believe, E or F, and it can -- each factor can  
22 vary based on one point -- one point -- from one data  
23 point to many points and can have very -- very -- it  
24 can be very reliable to very unreliable. So I guess I  
25 was trying to get a better feel for what your

1 experience was with the different types of facilities  
2 that you had out -- that you had dealt with and whether  
3 there were essentially any AP 42 factors that might  
4 have been acceptable because --

5 MR. WILSON: Okay. I think I understand  
6 where you're coming from now. And first of all, even  
7 though I'm familiar with the rating system that you're  
8 describing and -- but I still think that the AP 42  
9 factors are generally supposed to represent kind of a  
10 midpoint rather than a performance standard that should  
11 be attained, and I think that that's just a completely  
12 different concept.

13 It's sort of saying -- it's like if  
14 you're grading in a school and saying here's the  
15 average performance of fifth graders, therefore, we're  
16 going to pass everyone who exceeds it and fail everyone  
17 who doesn't. And I don't think that -- it's just not  
18 the right approach to generating a performance  
19 standard.

20 But the other thing I would say is that  
21 we have generally tended to focus on units in the  
22 region that are, first, there's a lot of them because  
23 of our regional perspective. And so we're looking at  
24 cooling towers and flares and other types of units  
25 within chemical plants and refineries that are -- that

1 there's many of. So we haven't looked at every single  
2 kind of unit in the region and every single kind of  
3 emission factor. Second, we tended to focus on ones  
4 where there's already some reason to suspect that  
5 there's a problem with the emission factors.

6 So there could be AP 42 emission factors  
7 that one can borrow and use and not make too much of an  
8 error. And, you know, I couldn't say that  
9 categorically that would be a -- that would result in  
10 bad outcomes all the time, but I know it's not what the  
11 AP 42 system was originally intended to be designed  
12 for, if that makes sense.

13 MR. VOGEL: Thank you. Kelly Haragan.

14 MS. HARAGAN: Hi, John.

15 MR. WILSON: Hi, Kelly.

16 MS. HARAGAN: I have a couple questions  
17 for you. When you were talking about the problems with  
18 incorporation by reference, do you have a problem with  
19 incorporating the -- like a federal regs and a state  
20 regs by reference as well as the permits or is your  
21 problem mainly with the permits?

22 MR. WILSON: Actually, in the case of the  
23 permit I was describing earlier, almost every single  
24 monitoring requirement was a state regulation. So the  
25 monitoring requirements table basically is a long list

1 of Texas statutory citations. And furthermore, when  
2 you look up a lot of those statutory citations, there's  
3 a lot of -- a lot of flexibility sometimes in those  
4 statutory requirements that one could understand how to  
5 apply them if you knew a lot about the unit in  
6 question, but if you're a member of the public, even,  
7 say, an engineer, a chemical engineer but maybe you  
8 haven't worked on this particular kind of unit, you  
9 still probably couldn't figure out what the exact  
10 monitoring requirements were for that facility, if that  
11 makes sense.

12                   And it's been a little while since I've  
13 done one of these detailed look-throughs mostly because  
14 it's been such an exercise in frustration that we found  
15 that if -- if somebody has designed the system to  
16 basically deter us from getting involved in it, they've  
17 done a pretty good job.

18                   MS. HARAGAN: So you would like to see  
19 something more like, I think you said Illinois, where  
20 they have a table that actually lists everything,  
21 spells out the requirements in a table?

22                   MR. WILSON: Yeah, I think so. I think  
23 that's what Illinois has. I'm not looking at it  
24 exactly right now, but that was one of the ones that I  
25 liked a lot better than Texas when I did my review of

1 all the different states that I could find similar  
2 permits at from.

3 MS. HARAGAN: Thanks.

4 MR. VOGEL: Adan Schwartz.

5 MR. SCHWARTZ: Hi, Adan Schwartz of the  
6 Bay Area Air District. You're the second speaker today  
7 who's mentioned the Texas practice of incorporating  
8 permits by reference, and so my understanding of it is  
9 the draft permit gets issued and the public comment  
10 period starts and you look at it and all you see is  
11 references to other documents, and then I suppose if  
12 you want to know what is in those documents you have to  
13 go find them.

14 I was wondering if you could speak to how  
15 difficult or easy that is to do logistically. Can you  
16 go to a regional office? Is it all in Austin? Do you  
17 have to do a FOIA request for it? So if you could  
18 speak to that.

19 MR. WILSON: Well, most of the  
20 information we can either get in the -- from on-line,  
21 for instance, the permit -- excuse me, the regulatory  
22 requirement, or the permits we can get down at the  
23 regional TCEQ office. But if we have to go to the  
24 permit applications, those are often only located in  
25 Austin. And the reason I say often is sometimes the

1 permittee happens to copy the regional office on their  
2 permit application and so it may or may not end up in  
3 the files there. I've found that that's very  
4 inconsistent when I've looked for those, and we haven't  
5 looked for them that often. Does that answer your  
6 question?

7 MR. SCHWARTZ: I suppose it does. Under  
8 what circumstances do you have to go look at the  
9 application? Is it because the permit itself  
10 references something in there?

11 MR. WILSON: Yeah. A lot of times the  
12 permit -- in an unusual circumstance the permit's  
13 applicant may say -- may basically propose a monitoring  
14 approach or some kind of a control strategy in their  
15 permit application, and for whatever reason the state  
16 doesn't end up writing all of that into the permit.  
17 Then the permit applicant basically still has -- you  
18 know, that was a submission to the state and so it's  
19 binding on them, but it's not written up in the permit  
20 for some reason.

21 I really don't understand why they don't  
22 write it up in the permit. Kelly Haragan might be able  
23 to explain that better than me, but it's kind of a fact  
24 that they don't sometimes.

25 MS. HARAGAN: Just to give you a little

1 bit, there's a rule in Texas that says the references  
2 in the application are incorporated into the permit.  
3 So that's why sometimes you have to go back to the  
4 application, and I think Texas is trying to put more in  
5 the permits now, but the old ones often do that.

6 MR. WILSON: Of course the facilities  
7 that we're often most interested in in the units and  
8 all that are often the old ones. I mean, the newer  
9 ones often have better rules in place or whatever the  
10 circumstances might be, and what we're trying to do is  
11 figure out what's going on in this facility, why are we  
12 seeing such high butadiene readings and that monitor  
13 300 yards downwind from the fenceline. And the answer  
14 is not going to be at the brand new facility that's  
15 just been permitted under the latest loopholes. It's  
16 going to be at a facility that's been around five, ten,  
17 15 years.

18 MR. VOGEL: Time for one question. Bob  
19 Palzer.

20 MR. PALZER: Hi. You mentioned that  
21 certainly you don't have a lot of faith in the AP 42  
22 numbers and that you look a lot at specific emissions  
23 inventories and you don't feel that those factors are  
24 appropriate to what is coming out from the sources. Is  
25 your concern just because there is an inappropriate

1 factor or that in addition to that there's so much  
2 variations day-to-day, upset mode or those sort of  
3 things that makes any one factor may not be appropriate  
4 for the emissions coming out from any particular unit  
5 within the facility?

6 MR. WILSON: Boy, that's a huge question.  
7 The answer is yes in a sense to all of your  
8 projections. We're concerned about the variability of  
9 the emissions from these facilities. We're concerned  
10 about the fact that many permits may have been issued  
11 with limits that were too high, too low or just -- in  
12 many cases just simply completely unenforceable because  
13 no one has thought through the monitoring requirements  
14 in a way that leads to an enforceable situation.

15 When we did our report of the cooling  
16 tower emission, I mentioned that there were 14 leaks  
17 found out of the 53 cooling towers. There was not a  
18 single violation or enforcement action issued for any  
19 of those 14 cooling towers. A few of them were  
20 grandfathered. Many of the permits were written in  
21 such a way that the leaks that were found couldn't be  
22 enforced against the permit. The leaks were  
23 essentially allowed by the permits at a unlimited rate  
24 under the circumstances under which the state had done  
25 its investigation. And then in a few cases there was

1 also some evidence problems on the state side and they  
2 never went back to gather additional evidence.

3                   So the question you're raising is -- I  
4 mean, particularly in chemical production plants and  
5 refineries where the emission rates were so variable,  
6 there's so many different processes going on, it is  
7 very difficult to establish a clear beginning to end  
8 regulatory structure. But it's also that much more  
9 important to have one in those circumstances because of  
10 the consequences of that prevailing, and that's what  
11 we're seeing in the Houston region right now, is we had  
12 entirely incorrect assumptions about what the vast  
13 majority of the chemical plants and refineries in the  
14 Houston region were emitting. And as a result, we've  
15 got somewhere around six times more VOC's in the air  
16 from these plants than we thought. And no one knows,  
17 really, where to go to control them.

18                   We're beginning to get some ideas and  
19 some strategies, but this is stuff that, you know, I  
20 think most other people take for granted, that you  
21 generally know where your pollution is coming from and  
22 the question is, you know, fighting over who's going to  
23 control it. And here in the Houston region we just  
24 don't know where a lot of the stuff is coming from.

25                   MR. VOGEL: Thank you. Next up is Jane

1 Williams. Is Jane Williams on the line? We'll wait a  
2 few minutes to see if she shows up.

3 MR. HITTE: Mr. Chairman, may I ask a  
4 question? Steve Hitte. If we don't have time to do  
5 this now, do it later.

6 Am I correct that this IBR issue came to  
7 you all's attention and you have fixed that such that  
8 permits issued today don't have all the IBR issues  
9 we're hearing about, or am I wrong?

10 MR. HAGLE: Hagle for permits. We do  
11 just incorporate the NSR permits by reference, we still  
12 do. For some of the state and federal regulations we  
13 do that, just a reference, like a high level citation  
14 where we have not developed our tools that will get you  
15 down to the specific standard and the mark for  
16 reporting testing requirements that go with that  
17 standard. So it's a mixed bag.

18 (Recess taken)

19 MR. VOGEL: My name is Ray Vogel with the  
20 EPA. This is the Title V Task Force. We are taking  
21 testimony today from environmental advocates. We're  
22 giving ten minutes for the presentation and ten minutes  
23 for questions and answers. We are recording this for  
24 audio and written transcripts. So if you are ready.

25 MS. GORMAN: Yeah.

1 MR. VOGEL: Go ahead, please.

2 MS. GORMAN: Hi, my name is Alexandra  
3 Gorman and I'm with Women's Voices for the Earth out of  
4 Missoula, Montana. Just to give you a sense of who I  
5 am, I've got a master's in science in environmental  
6 studies from the University of Montana. I've been  
7 working for the last four years with Women's Voices for  
8 the Earth here in Missoula. We're an environmental  
9 justice organization focusing on toxic chemicals and  
10 just their disproportional affects on women and  
11 children's health.

12 For the last two years I've been the  
13 director of science and research here at -- and our  
14 acronym is WE. Part of my job is doing regional  
15 watchdog activity on polluting industry, mostly in  
16 Montana but some up in Idaho as well. I've  
17 participated in two EPA citizens trainings on Title V,  
18 one was in Chicago, which I was a (inaudible) and then  
19 one was an advanced Title V in Denver, which is the  
20 Region 8 Title V training. So I've commented on  
21 several Title V permits and I'm pretty familiar with  
22 the Title V program overall.

23 So I guess I've had overall good  
24 experience with the Title V program. I think Title V  
25 program permits, as they're written in Montana anyway,

1 are pretty straight forward. The format is really  
2 helpful to understanding the facility for the most  
3 part. So I'm happy with the way they're written. I  
4 think they're much better, particularly than  
5 preconstruction permits that are written over the  
6 previous permitting options. I think the Title V are  
7 much more clearly laid out and easier to understand.

8 I feel the same way about the Title V  
9 reporting, the compliance reporting, annual reports and  
10 semiannual reports. They're also much clearer and it's  
11 very nice to be able to have a permit and be able to  
12 match things up term for term to be able to determine  
13 compliance of a facility. So I think that part of the  
14 program is certainly working quite well.

15 As an activist I also really appreciate  
16 the compliance certification requirements of Title V.  
17 I was speaking with the DQ, Department of Environmental  
18 Quality, staff person just the other day who was saying  
19 it was kind of a waste of paper having all these  
20 certification requirements, particularly for general  
21 facility requirements. And she said, well, of course  
22 they're going to say that, pay their fees on time and  
23 they get their forms in and et cetera.

24 But from my point of view I was actually  
25 very happy to see that paperwork in there. I think it

1 does help with accountability, particularly for  
2 facilities that are bad actors for the -- probably  
3 there's other facilities out there where it's probably  
4 not as necessary facilities, but in the case of  
5 environmental facilities, it's nice to know that the  
6 environmental manager has to sign off that these things  
7 have been done and then the head of the facility has to  
8 sign off as well.

9 MR. VOGEL: Could I ask you to slow down  
10 a bit, please.

11 MS. GORMAN: Sure, sorry. I grew up in  
12 New York City.

13 Yeah, a greater accountability anyway  
14 between the environmental manager, who is probably  
15 filling out most of the forms and the head of the  
16 facility, who has to do the final sign-off on the  
17 compliance certification. So I definitely appreciate  
18 that part of Title V.

19 Here in Montana public access is very  
20 good. We've got some really good open records laws on  
21 the books. So I haven't had any problem accessing  
22 permits or accessing permit applications for the  
23 statement of basis or anything like that. It's also  
24 very amenable to public hearings on Title V permits.  
25 We've requested those a few times in the past and they

1 have always granted those. So that has been -- not  
2 been a problem in my experience with Title V.

3 I have missed like a permit comment  
4 period or two. One of the problems we do have in  
5 Montana, since it's a fairly rural state, and the  
6 public comment notice, you know, requirements are to  
7 run in the local paper and sometimes the local paper  
8 serves only a very small audience. So I work and live  
9 in Missoula. There are often papers, they're not  
10 on-line, and I can't actually purchase them in  
11 Missoula, so I sometimes I miss those public notices.

12 The DEQ is getting a lot better about  
13 putting things on the web. If there's any suggestion I  
14 do have for Title V, it's to put as many of these  
15 things on the web as possible and it's been really,  
16 really useful. DEQ has been ramping up their web site  
17 over the last few years and they're putting more  
18 permits on line for public comment notices and things.  
19 Although it's not consistent across the board, but that  
20 seems to be improving and that is definitely helpful  
21 from an activist's point of view.

22 I have had a couple issues with the Title  
23 V program. It certainly has improved since it began  
24 here in Montana. I remember having a conversation with  
25 a woman from DEQ at the beginning of the Title V

1 program and her impression of the program was that it  
2 was just a whole thing of paperwork and it was taking  
3 the existing permit and putting it into a different  
4 format, and she didn't see any use other than it was  
5 this tremendous amount of time to reformat the permits.  
6 I don't know if that's the feeling anymore at DEQ. I  
7 certainly hope not. And I've see many more benefits  
8 than just the reformatting of the original permits.

9 I have heard from a different DEQ person  
10 of comments he's received that the reformatting permits  
11 actually been helpful in improving the permits, so  
12 that's a good thing to hear.

13 One of the first permits I looked at was  
14 Smurfit-Stone Container, a paper mill here in Missoula.  
15 It's one of the more complicated permits that's written  
16 in Montana. It's probably one of the facilities that  
17 probably has the most monitoring requirements in the  
18 state. And when they first did their Title V permit,  
19 one thing we did noticed in the comments is that it had  
20 an incomplete list of emitting units. So we were  
21 finding things, you know, equipment that was being  
22 referred to in the preconstruction permits that was  
23 not, in fact, listed in the Title V permit.

24 So that was one thing we would be able to  
25 clarify in our comments. And now that we have a

1 complete Title V permit, it makes it so much easier to  
2 understand that facility, understand what's going on  
3 there. And I think it was essentially useful both to  
4 the facility managers and to the DEQ to have that -- to  
5 some way be forced to have that whole list together.

6 In another permit I also worked on a  
7 permit for Rocky Mountain Laboratory, an N.I.H.  
8 facility in Hamilton, Montana, and we were able to  
9 clarify some of the definitions in the permit and  
10 closed up some potential loopholes there. They've got  
11 a medical waste incinerator and they were allowed to  
12 burn, quote, unquote, general refuse, but we got them  
13 to actually define what general refuse means in terms  
14 of -- because they're very specific about what medical  
15 waste you can burn but not what general refuse meant.  
16 So that was also very helpful to be able to clarify  
17 that in the permit.

18 We've had some issues over the years,  
19 we've had some comments going back and forth between  
20 activists and the DEQ on vague language that keeps  
21 seeming to show up in title permits. One thing that  
22 keeps coming back, instead of testing as required by  
23 the department which, you know, I've been to these  
24 Title V trainings, I've been told by EPA that this is  
25 unacceptable language for Title V, yet the Montana

1 Department of Environmental Quality still maintains  
2 that that's okay.

3 I can give you two examples where we find  
4 the problem. In one case there's a facility, the  
5 Thompson River, it's a coal plant, they have a limit in  
6 their permit for VOC's; however, there's no monitoring  
7 or reporting required to determine compliance with that  
8 limit. It's not mentioned in the Title V. And the  
9 response of DEQ was that, well, we have testing as  
10 required by the department, you know, to determine  
11 compliance with that, and we didn't think that was  
12 practically enforceable. And that's just one example.  
13 We do think there's a problem with that term.

14 The other problem was discovered  
15 recently, again with Smurfit-Stone, which is a very  
16 large paper mill in Missoula, there's a number of  
17 particularly opacity requirements on different pieces  
18 of equipment where the testing frequency is simply as  
19 required by the department. When I went through their  
20 compliance reporting, semiannual reports and the annual  
21 reports over the whole last year, anywhere where it  
22 said as required by the department, it had never  
23 actually been required by the department. So it seems  
24 as though the DEQ is putting that in there to comply  
25 with Title V to ensure that there is some sort of

1 monitoring required, but the monitoring isn't -- in a  
2 practical sense, they're never actually requiring them  
3 to monitor.

4 I did ask the DEQ about that and they  
5 said, well, unless there's a problem we probably won't  
6 require it. Of course, it's very difficult to  
7 determine if there's a problem if there's no monitoring  
8 going on. So we thought that was an issue that needs  
9 to be dealt with.

10 There's another thing that happens in the  
11 Montana program that's been an issue, and that is  
12 figuring out when exactly to refer to a statute and  
13 when to actually quote a statute in a Title V permit.  
14 There doesn't seem to be a great amount of consistency  
15 and maybe that's something that the Title V program  
16 could implement.

17 One example is a Rocky Mountain Labs  
18 permit. They are required by the statute for medical  
19 waste incinerators to have some sims on the stack on  
20 the emission monitors, and that statute is referenced  
21 in the permit, however, the permit didn't actually  
22 mention that -- doesn't actually define what the  
23 monitors are, what the limits are, how often they have  
24 to report the results of these monitors. And it was  
25 actually something that this particular facility had

1    been fined for.  It's the only reason that I knew they  
2    had these sims.  There was a paper saying they had been  
3    fined for not complying with that part of the law, but  
4    it was not spelled out in the permit.  And, again, the  
5    DEQ was going back saying, well, it's in the statute,  
6    we reference the statute, so therefore, we don't need  
7    to put everything in the statute in the permit.

8                    So I understand there have been Title V  
9    permits which have 42 pages of statute just copied in  
10   there, and that's not necessarily helpful, but I think  
11   there needs to be some sort of clarification if there's  
12   specific equipment required by the statute, it seems  
13   useful to put that in the permit for us to better  
14   understand the facility.  I think that's probably my  
15   ten minutes but. . .

16                   MR. VOGEL:  Thank you.  Questions?  Carol  
17   Holmes.

18                   MS. HOLMES:  Hello, this is Carol Holmes  
19   at EPA.  I was curious, how would the state know  
20   whether or not there was a problem to know whether or  
21   not they needed to require testing?  Did they explain  
22   that to you?

23                   MS. GORMAN:  No, they didn't explain that  
24   to me.  That was exactly the concern that I had, and I  
25   don't know whether it would be anecdotal or whether if

1 it was a big enough problem for them to report  
2 something else that they would know, but particularly  
3 with opacity I'm not exactly sure if there's not a  
4 requirement to test for it, how they would be notified  
5 if there was a problem.

6 MR. VOGEL: Keri Powell.

7 MS. POWELL: Hi, Alexandra.

8 MS. GORMAN: Hi.

9 MS. POWELL: I just had a question about  
10 public notice. Does Montana maintain a mailing list to  
11 notify interested members of the public?

12 MS. GORMAN: They don't maintain a list.  
13 There's no Title V list for all Title V permits, but it  
14 seems to vary by department in DEQ. There's some  
15 departments for certain type of permits where they do  
16 keep those main lists for certain industry areas, but  
17 there's no consistency. So sometimes, you know, with  
18 certain permit writers I have to write them and tell  
19 them, okay, anything that happens with this facility,  
20 please let me know, and that sometimes gets me on the  
21 list, sometimes it doesn't, but there doesn't seem to  
22 be any consistency there.

23 MS. POWELL: So you don't have the  
24 ability to sign up to just get notices on everything?

25 MS. GORMAN: That's right.

1 MS. POWELL: Do you think that would be  
2 helpful or do you have other recommendations  
3 specifically for how notice should be done to  
4 effectively notify people that draft permits are  
5 available?

6 MS. GORMAN: Yeah. I think a mailing  
7 list would be helpful other -- you know -- I mean, it's  
8 sort of -- I'm certain an e-mail would be totally  
9 sufficient just to let me know. They do have a web  
10 site where you can look at what's up currently for  
11 public comment, although, I notice that not everyone in  
12 the department is posting things on time and not  
13 everything gets posted. So if there was some sort of  
14 requirement to make sure that that happened more  
15 regularly than just checking on the web site, you can  
16 find out when things were happening.

17 MR. VOGEL: Adan Schwartz.

18 MR. SCHWARTZ: Hi, this is Adan Schwartz  
19 with the Bay Area Air District. You mentioned that  
20 you've been reviewing semiannual reports and compliance  
21 certifications submitted pursuant to Title V. I don't  
22 know what the case is in Montana, but nationally  
23 there's been some variations on the formats of these  
24 documents as they've been submitted. For instance,  
25 sometimes you'll see what's called exceptions reports

1 where a facility will say I am in compliance with  
2 everything except for the following. Other times it's  
3 line by line, you know, checking off each line in the  
4 permit as to whether they are in compliance or not.

5                   So I was wondering as a citizen reviewing  
6 these, whether you've seen some formats that you like  
7 better than others or that are more accessible or  
8 useful to you.

9                   MS. GORMAN: Well, I can say I've only  
10 looked at them for one facility. I've looked at a  
11 couple different reports for one facility, so I don't  
12 know if it changes by facility or whether that's a  
13 standard for the whole state. But the one that I  
14 looked at it did go line for line and you could match  
15 it up with the permit and refer to the number in the  
16 permit where that term was, so it was very easy to go  
17 through. And even when -- I mean, there were certain  
18 permit terms where they would just say there was no  
19 monitoring in this, whatever, semiannual period,  
20 because this piece of machinery was not in operation.  
21 So even if it was not in operation, they would still  
22 fill it out and say, you know, they were in compliance  
23 because it was not operating.

24                   So I thought that was actually very  
25 useful. So I haven't seen one where they just point

1 out the other things. I think it is useful to have it  
2 be the line by line because then you can actually see  
3 they have stack test data or monitoring data. You can  
4 actually say they're saying they're in compliance and  
5 you can see the numbers and match them up to the  
6 limits, and I thought that was useful.

7 MR. VOGEL: Marcie Kever.

8 MS. KEEVER: Hi, Alexandra, I'm Marcie  
9 Kever with Our Children's Earth. I was wondering, you  
10 said you actually had an easy time or a relatively easy  
11 time getting documents from your agency, and we've  
12 heard some other people today talk about having to  
13 travel a long way to get documents from their agency  
14 and that it was kind of prohibitive for them to review  
15 those documents. I guess I'm just wondering if you can  
16 further describe the process that you have gone through  
17 to get documents and how far away are they or is it  
18 pretty easy for you to get documents from your agency.

19 MS. GORMAN: Yeah. And, yes, it  
20 definitely is pretty easy. More and more often the  
21 draft permits and final permits are on-line. That's  
22 certainly the way I prefer to get the permits. I find  
23 it much easier having a digital copy where you can word  
24 search and look through things more easily, especially  
25 with a bigger permits. Sometimes it's a matter of just

1 going on-line and downloading the permit.

2           The permit applications generally are not  
3 on-line because they are larger documents. And when I  
4 have requested those, it's just a matter of calling the  
5 permit writer. The DEQ, the main office is in Helena,  
6 which is about an hour and a half from Missoula, but if  
7 I call them they will put it in the mail. And it kind  
8 of varies as to whether or not they charge me for  
9 copying. It seems to vary by the person. I'm not  
10 exactly sure what their policy is. Sometimes I get  
11 charged and sometimes I don't, but it's not --  
12 generally not an exorbitant fee.

13           With the compliance reporting, there is a  
14 local person here in Missoula who does compliance for  
15 DEQ and her office is about two blocks away. So I can  
16 -- she's very happy to just let me come into her office  
17 and she'll pull files out for me and let me review them  
18 there or make copies. So, yeah, it's been very easy,  
19 but as much as you can encourage states to put things  
20 on-line, that seems to be the best way to access.

21           MR. VOGEL: Steve Hitte.

22           MR. HITTE: This is Steve Hitte with U.S.  
23 EPA. You commented that you found the permitting  
24 format in Montana to be very good, well laid out. If  
25 it's at all possible, could you elaborate more on what

1 it is that Montana does? What does their permit look  
2 like?

3 MS. GORMAN: Sure, yeah. One of the  
4 things that I like about the permit is they're laid  
5 out -- they put a nice table of contents in the front  
6 that talks about each different section, and then under  
7 permit conditions it's broken out by each emitting unit  
8 and sometimes they get grouped if they're very similar  
9 or have the same location or same, you know, basic  
10 operation. But on the front of each section of for one  
11 particular admitting unit, for example, there's a table  
12 that's right up front that lists which conditions apply  
13 to this -- apply to the admitting unit, what the  
14 pollutant or parameter is, what the limit is, what the  
15 compliance demonstration frequency is, and what the  
16 recorded requirements are as far as time. So there's a  
17 very nice table that lays it out kind of in shorthand  
18 that's followed by the further narrative that explains  
19 it in more detail.

20 So it's very easy to kind of go through  
21 and find the admitting unit you're looking for and take  
22 a look -- for example, when you're comparing compliance  
23 reports, it's very easy to find, okay, the limit there  
24 is 20 percent or point whatever and you can compare it  
25 to the numbers on the compliance reporting that come

1 back. So that's -- the table is what I have found was  
2 useful.

3 MR. VOGEL: Thank you. Just a quick  
4 follow-up. Would that be true for any permit, the  
5 simplest to the more complex industry, it would all be  
6 that way?

7 MS. GORMAN: Yeah. It will be a smaller  
8 permit and sometimes it's only one or two tables,  
9 depending on the number of admitting units, but it  
10 seems to be a standard format throughout the state.

11 MR. VOGEL: Keri, did you have a  
12 question?

13 MS. POWELL: Alexandra, did you ever  
14 petition EPA to object to permits based upon the  
15 testing as required by the department conditions?

16 MS. GORMAN: You know, we haven't. We  
17 haven't actually petitioned the EPA. We did send a  
18 letter to the DEQ that was signed on by a number of  
19 other organizations expressing our interest in getting  
20 rid of this, and we got a response from them, so they  
21 have considered it and I think maybe they've limited  
22 their use of the as required by the department, but  
23 they're still holding that, you know, that's a useful  
24 term for them, but we haven't taken it further to EPA.

25 MS. POWELL: Thank you.

1                   MR. VOGEL: No further questions? Thank  
2 you Alexandra for spending some time today with us.

3                   MS. GORMAN: Thanks very much. I really  
4 appreciate the opportunity.

5                   MR. VOGEL: You're welcome. Is there  
6 anyone else who is on the line? We will now take a  
7 break until our next speaker is scheduled at 3:20.

8                   (Recess taken)

9                   MR. VOGEL: Kathy, what we have been  
10 doing is allotting for questions -- I mean ten minutes  
11 for presentation and then ten minutes for questions and  
12 answers from the Task Force. We are taping this for  
13 audio transcripts and preparing a written transcript as  
14 well. So whenever you're ready, you can go ahead.

15                   MS. VAN DAME: My name is Kathy Van Dame.  
16 I'm from Salt Lake City, Utah. I'm with the Wasatch  
17 Clean Air Coalition and I have been reviewing Title V  
18 permits in Utah. I took some of the trainings that's  
19 offered by EPA and I think that they were very helpful.

20                   I don't really have a lot to say except  
21 for really to support the Title V program. I really  
22 appreciate the increased amount of -- or the formality  
23 of the requirements for public notification. I also  
24 think that the increased monitoring record keeping and  
25 reporting requirements are an asset to the environment,

1 and I believe that the whole process raises the level  
2 of all of the permits in the state, even the ones that  
3 aren't Title V permits. The engineers that are  
4 reviewing the permits even the -- for the minor sources  
5 have gotten more careful, I believe, about the way that  
6 it is that they do their permitting.

7 I also think that there's a benefit to  
8 the environment in the fact that more sources are  
9 encouraged -- or in order to avoid the Title V program,  
10 they try and figure out ways to remain minor sources or  
11 synthetic minors. I believe that that does reduce the  
12 amount of emissions into the environment.

13 One of the things that I personally find  
14 a little bit difficult is that there is just an  
15 incredible maze of rules to navigate as individuals,  
16 particularly a citizen without legal training, is  
17 trying to figure out for their own to verify exactly  
18 what requirements do apply to various categories of  
19 sources. That's it.

20 MR. VOGEL: Thank you. We'll see if  
21 there are questions from the Task Force.

22 MR. VOGEL: Kelly Haragan.

23 MS. HARAGAN: Hi Kathy. This is Kelly  
24 Haragan.

25 MS. VAN DAME: Hello Kelly. Your name is

1 familiar. Do I know you?

2 MS. HARAGAN: You do know me, at least  
3 through e-mail.

4 MS. VAN DAME: Okay.

5 MS. HARAGAN: I had a question about you  
6 said it was still difficult to work through the maze of  
7 regulations and figure out what applies to the  
8 facility. Is that because of the way the permits are  
9 written; and if so, can you think of a way that would  
10 be more helpful for the permits to be written?

11 MS. VAN DAME: It's not the way that the  
12 permits are written, as long as the permits actually  
13 reference specific rules in a way that I can find them.  
14 But, for instance, 40 CFR 60 and 40 CFR 61 and 40 CFR  
15 63 really present, you know, a maze of really  
16 interlocking things. And you may find several  
17 different sizes of, for instance, electric generating  
18 units, and so then you're going through trying to  
19 apply, you know, that matrix to whatever it is that you  
20 perceive simply as a matter to verify whether or not  
21 the work that's been done by the engineers is that you  
22 agree with.

23 Another difficulty that I have is that I  
24 can download easily off the Internet many of the  
25 sections out of 60, except for like DC and DB and the

1 ones with the -- anyway, some of them I have a great  
2 deal of difficulty downloading. Sometimes I can find  
3 somebody in EPA that can send me a federal register  
4 reference or something like that so that I can get  
5 access to something that I don't have, but it  
6 just -- just navigating that is, for me, personally  
7 difficult.

8 MS. HARAGAN: So do the Utah permits  
9 reference the specific sections like the federal rules?

10 MS. VAN DAME: Yes, they do. Not always  
11 are the references accurate. It happens occasionally  
12 that there's a transposition or something like that.  
13 And one of the things that I frequently do, not all the  
14 time do I take the time, is to track down all the  
15 references, and I find some in error, but sometimes it  
16 really is quite difficult to track down a subpart that  
17 I don't happen to have on file right now.

18 And so, you know, it may take a fair  
19 amount of fishing around and asking folks that I've  
20 made contacts with to help me locate whatever part it  
21 is. And because of the complexity of the way that they  
22 are, it really isn't necessarily that if someone misses  
23 something that they're subject to that I'm going to  
24 find it, because it -- I asked one of the folks in Utah  
25 that is in charge of the MACT standards and asked if

1 there are some sort of index that I can -- like a book  
2 has an index that I can go through and look at a  
3 specific type of industry or, you know, some section.  
4 And there just isn't even really an alphabetical index  
5 even if I could figure out what is the exact correct  
6 name to call that process.

7 MS. HARAGAN: Thanks.

8 MR. VOGEL: Other questions? Thank you,  
9 Kathy, for taking the time to testify for us today.

10 MS. VAN DAME: You're welcome. I hope  
11 that whoever it is is next is lined up so they can get  
12 started and not let you guys sit down without anything  
13 to do.

14 MR. VOGEL: Thank you very much.

15 Do we have anyone else on the line?  
16 We'll wait for our next people to show up at 3:40.

17 (Recess taken)

18 MR. VOGEL: This is Ray Vogel.

19 MS. SCANLAN: This is Melissa Scanlan.

20 MR. VOGEL: Thank you for joining us  
21 today, Melissa. We are allowing ten minutes for your  
22 presentation, if you want to go that long, and ten  
23 minutes for questions at the end. We're also recording  
24 this for audio transcripts and written transcripts. So  
25 go ahead, please.

1                   MS. SCANLAN: All right, great. I called  
2 in a couple times and couldn't hear anyone, so I  
3 thought there was a technical problem, but it sounds  
4 like everything is working?

5                   MR. VOGEL: Yes, it is now. Thank you.

6                   MS. SCANLAN: Okay. Well, thank you.  
7 I'm Melissa Scanlan. I'm the founder and executive  
8 director of Midwest Environmental Advocates, and I  
9 wanted to speak with you today because I have a  
10 background with the Title V operating permit program as  
11 the director of Midwest Environmental Advocates. I  
12 have commented on Title V permits and I've also been  
13 involved in citizen enforcement of Title V permits.  
14 And we were one of the petitioners who went to the EPA  
15 seeking and obtaining a notice of deficiency for  
16 Wisconsin's Title V program.

17                   The Title V program has great potential  
18 and has already added to our ability to protect public  
19 health by reducing air pollution. However, there are  
20 also institutional impediments to fully implementing  
21 Title V.

22                   I know Bruce Nilles of the Sierra Club  
23 has testified already about the notice of deficiency  
24 that the EPA did of Wisconsin and the problem with  
25 Wisconsin fees not covering the actual cost of running

1 an effective program. So I'm not going to cover that  
2 again today, but I'll focus on the problems with  
3 placing useful monitoring requirements in Title V  
4 permits and the institutional problems that we're  
5 seeing with compliance and enforcement.

6                   First I want to talk about the benefits  
7 of the Title V program. We, along with the Sierra  
8 Club, spent about a year investigating Wisconsin's  
9 Title V program, and we looked at the data and  
10 interviewed key staff in Wisconsin's Department of  
11 Natural Resources prior to deciding to send our  
12 petition to the EPA requesting a notice of deficiency.  
13 And in the course of our interviews with the managerial  
14 level staff at the Wisconsin DNR, we were told about  
15 the benefits that the state regulators have been seeing  
16 with the Title V.

17                   When the permit writers started working  
18 on Title V permit applications, they were consistently  
19 finding compliance problems at the major sources. And  
20 so they were using the Title V permit issuance as a  
21 mechanism to go over all the emission sources at a  
22 facility and the compliance history, they were finding  
23 NSR violations and permit limit violations, and they  
24 have been able to use the Title V permit as a way to  
25 get facilities back into compliance or on a compliant

1 schedule that ultimately reduces air pollution. So we  
2 see that as a really positive aspect of the program.

3           From a community activist perspective,  
4 there are also significant benefits from this program.  
5 I have helped several community groups comment on Title  
6 V permits, and it's been a good process to educate the  
7 public about what's really going on with the facility  
8 in their neighborhood.

9           In La Crosse, Wisconsin, just as one  
10 example, over 50 people showed up to testify on a Title  
11 V permit for the French Island incinerator, which is a  
12 municipal waste incinerator. The Title V permit and  
13 the hearing process definitely helps make the  
14 regulations, which are very complicated, make the  
15 regulations clearer and more transparent for the  
16 general public.

17           It's also much easier to understand  
18 whether a facility is violating its permit terms  
19 because the Title V permit puts all the terms in one  
20 place and requires that compliance certification and  
21 regular reporting.

22           Going back to the French Island  
23 incinerator example, the facility -- that facility had  
24 been violating its state only permit for the better  
25 part of the 1990's and there had been no enforcement

1 action. They were forced to get a Title V permit only  
2 about five years after they had applied for it, when I  
3 discovered based on information they put into their  
4 Title V permit application that they had falsely  
5 claimed to be a small municipal solid waste incinerator  
6 falling under one set of regulations, when, in fact,  
7 they were a large municipal solid waste incinerator  
8 falling under another more stringent set of  
9 regulations.

10                   So we were able to use the information  
11 that we gathered from public records, specifically from  
12 the Title V permit application, and convince the EPA to  
13 reclassify the facility as large. That ultimately  
14 required better control technologies to meet the  
15 emissions limits. So we were able to use the Title V  
16 permit process to reduce toxic air pollution from this  
17 facility and approve public health.

18                   So those are some of the benefits that I  
19 have personally seen with the Title V program in terms  
20 of getting us closer to the goals of the Clean Air Act  
21 and actually helping reduce pollution from major  
22 sources of air pollution in this country.

23                   I want to talk now briefly about the  
24 problems that I have been seeing with the Title V  
25 program. One problem I have seen with these permits,

1 the Title V permits, is that they do not always contain  
2 monitoring requirements that can be used to determine  
3 compliance with the permit terms. And I'm looking at  
4 this from a legal perspective. I am a lawyer and our  
5 organization is -- it's a public interest law firm. So  
6 we're looking at the enforceability of these permits  
7 and what's required in terms of monitoring. This is a  
8 problem with the permit writers in Wisconsin and it's a  
9 problem with the EPA's review.

10                   There are things that should be caught  
11 and corrected by the regulators before the ink gets dry  
12 on the permit that are just not being caught. One  
13 example that arose when we were trying to enforce a  
14 Title V permit for a paper company, Procter & Gamble,  
15 and we knew from the Title V required compliance  
16 reports that the facility was chronically violating a  
17 monitoring requirement in its Title V permit.

18                   The monitoring requirement was to keep  
19 the pressure drop at a set level of inches of water  
20 over a control device, and that monitoring requirement  
21 was put in the permit instead of a stack test for  
22 particulate matter. But when we investigated whether a  
23 pressure drop beyond the range required would result in  
24 excess particulate matter emissions, we found that the  
25 permit writer had not documented any connection between

1 what the company was required to monitor and the actual  
2 emissions coming out of the stack, nor had the EPA  
3 picked up on the problem during its review of the Title  
4 V permit.

5                   So this put us in a position where the  
6 company was then arguing that their lack of compliance  
7 with the monitoring requirement could not be used to  
8 allege a violation of the particulate matter emissions  
9 limit. In essence, we had a Title V permit that had a  
10 monitoring requirement that was not very useful in  
11 showing compliance with the emissions limit. This was  
12 just sloppy work by regulators and it's a disservice to  
13 the public. It's not a problem with Title V as it's  
14 written, but it's an institutional problem with its  
15 implementation that really needs to be corrected.

16                   Another implementation problem is with  
17 compliance and enforcement generally. And I use that  
18 as a heading but will be a number of subheadings under  
19 that. After we petitioned the EPA to issue a notice of  
20 deficiency to Wisconsin, key state legislators called  
21 for an audit of the state program. The joint  
22 legislative audit committee issued their audit findings  
23 in February of 2004. And the important findings in the  
24 audit related to -- as they relate to compliance  
25 enforcement were many. I'm just going to give you the

1 highlights or the lowlights, as it may be with  
2 Wisconsin's program.

3           Between fiscal year 1994 and fiscal year  
4 2002 there was a 41.3 percent decline in the number of  
5 facilities that Wisconsin's DNR inspects annually, and  
6 these are the facilities for air permitting purposes.  
7 173 facilities had never been inspected. Ten percent  
8 of the major facilities under Title V and almost 20  
9 percent of the synthetic minors had never been  
10 inspected as of June 30th, 2003, which was the end  
11 point for the audit, for the data that the audit was  
12 analyzing.

13           That percentage, ten percent for majors  
14 and 20 percent for synthetic minors, was spread over  
15 the state but it varied by region of the state, and  
16 there were almost 36 percent of synthetic minors that  
17 had never been inspected in the northern region of  
18 Wisconsin. So clearly some regions are worse than  
19 others.

20           Obviously the DNR has not in the past and  
21 will not this year meet the EPA's goal of inspecting  
22 all majors every two years and all synthetic minors  
23 every five years. EPA is definitely letting things  
24 slide a bit in Wisconsin, which we're not happy about.  
25 The EPA approved an alternative strategy that allows

1 the DNR to inspect all federally permitted facilities  
2 on a five-year cycle instead of the two-year cycle,  
3 except for the top 100 facilities that must be  
4 inspected every two years. And in a discussion I had  
5 recently with a DNR manager who's involved with this  
6 program, he told me that the DNR will not even meet the  
7 two-year deadline for the top 100 facilities.

8                   But the beauty of Title V is that even  
9 without an inspection there is a required annual  
10 compliance report, but that is only useful if  
11 regulators ensure that the compliance reports are  
12 submitted. And this air audit that was done in  
13 Wisconsin showed that for Wisconsin only 67 percent of  
14 the required compliance reports were actually submitted  
15 to the DNR within 60 days of their due date.

16                   There's a DNR policy that requires the  
17 notice of violation for failing to submit a compliance  
18 report, but again, things look good on paper, then you  
19 get to the actual implementation. The audit found that  
20 the DNR makes no effort to ensure that facilities  
21 issuing late reports are given these notices of  
22 violation.

23                   The last point I want to make about  
24 enforcement and compliance is that in December of '98  
25 the EPA issued a policy directing state and local

1 agencies to identify high priority violators and issue  
2 a notice of violation within 60 days and resolve the  
3 case within 270 days. And the audit on Wisconsin's air  
4 program reported that the DNR here has only met the  
5 deadline for issuing a notice of violation in about 61  
6 percent of its cases, and worse, has only resolved the  
7 cases within the required 270-day deadline in 37  
8 percent of its cases.

9                   So there are a lot of areas for  
10 improvement in Wisconsin's compliance, inspection, and  
11 enforcement of the Title V permits. And the EPA really  
12 needs to be using its oversight function, which is even  
13 greater now that Wisconsin is operating under the  
14 notice of deficiency, to ensure that the DNR remedies  
15 its lack of compliance and enforcement. Without  
16 effective implementation, the goals of the Title V  
17 program will definitely not be met.

18                   So in closing, I definitely believe that  
19 the Title V program provides an important mechanism to  
20 bring all permit requirements under one umbrella for a  
21 transparent system that could be very useful in  
22 ensuring reductions in air pollution. However, there  
23 are institutional problems that the EPA needs to  
24 address, and the EPA should be reviewing these permits  
25 to ensure that they are monitoring requirements that

1 can be used to determine compliance. And the EPA  
2 should also require the DNR in Wisconsin and other  
3 state agencies to meet its responsibilities to inspect  
4 facilities and ensure that annual compliance reports  
5 are sent to the agency in a timely manner.

6 I just urge the EPA to work harder to  
7 implement the program so we can reach the goals of  
8 cleaner air for all people. Thank you for your time  
9 and I'm available to answer any questions you may have.

10 MR. VOGEL: All right. Thank you. Bob  
11 Palzer.

12 MR. PALZER: I'm Bob Palzer. I'm  
13 representing the Sierra Club and I'm a Wisconsin native  
14 but I live elsewhere. You certainly have clearly  
15 pointed out that the monitoring and inspection is not  
16 up to what it should be. Is that because of a shortage  
17 of personnel, a lack of budget? The Title V permit  
18 current program is supposed to be self-funding and you  
19 should be able to have enough fees to do this. Would  
20 this be part of the problem?

21 MS. SCANLAN: I think that's definitely  
22 part of the problem. The reason I'm didn't address  
23 that in my testimony is because Bruce Nilles from the  
24 Sierra Club I know had previously talked about the  
25 fees. That's part of why we petitioned the EPA

1 requesting a notice of deficiency, is that we did not  
2 believe that the state had the fees to cover the cost  
3 of implementing this program. And that was part of the  
4 reason why the EPA did issue a notice of deficiency,  
5 was that they did not see the documentation from the  
6 state that proved that it had enough money to  
7 adequately run the program.

8                   Wisconsin has taken the fees off of the  
9 consumer price index adjustment, and so they're not  
10 automatically adjusted anywhere. They're at a set  
11 level. And we definitely believe that the fees are  
12 part of this -- the problem.

13                   MR. VOGEL: Carol Holmes.

14                   MS. HOLMES: Hello, this is Carol Holmes  
15 from EPA. I have a question about the example you gave  
16 on the pressure drop parameter that was measured but  
17 not correlated to the emission -- the particulate  
18 matter mass emission limit. Was that a new monitoring  
19 requirement that was added as part of the Title V  
20 process or was that the monitoring that was the  
21 underlying, for instance, NSR permit that got carried  
22 into the Title V permit?

23                   MS. SCANLAN: I don't know what the  
24 origins of that monitoring requirement were. Does make  
25 a difference for you?

1                   MS. HOLMES: I honestly don't know. I  
2 mean, if it existed before, it may have been harder to  
3 cast, and if they created it actually in the Title V  
4 process because they may not have known there was no  
5 correlation if they were carrying it over from another  
6 permit.

7                   MS. SCANLAN: I'm not sure what the  
8 origin of that permit term was, but with Title V's  
9 requirement that there be monitoring to ensure  
10 compliance, if you saw -- as a regulator if you saw a  
11 monitoring requirement that was supposed to be in lieu  
12 of stack test, I think that would be a first question  
13 to ask, is what's the correlation and whether or not  
14 this requirement is going to be enough. And if it did  
15 come from the underlying NSR permit, Title V would give  
16 the regulator the option to include in additional  
17 requirement or additional information to make the  
18 appropriate link between the two pieces, the monitoring  
19 requirement and the emission limit.

20                   MS. HOLMES: Thank you.

21                   MR. VOGEL: Shannon Broome.

22                   MS. BROOME: Hi. I'm going to go back to  
23 what Carol was asking about, if that's okay. Do you  
24 know if there were any stack testing requirements in  
25 the permit or had there been a stack test previously?

1 MS. SCANLAN: For particulate matter?

2 MS. BROOME: Yes.

3 MS. SCANLAN: Or for any other --

4 MS. BROOME: Yeah, for particular, which  
5 would be what the pressure drop is related to be.

6 MS. SCANLAN: I don't believe that there  
7 were any stack tests required for particulate matter.  
8 The only thing required was the pressure drop.

9 MS. BROOME: I guess I'm -- are you  
10 familiar with the compliance assurance monitoring rule  
11 which basically says that if a unit use established  
12 parameters that are based on the unit operating  
13 consistent with good air pollution control practices,  
14 assuming that if the control device is working, then  
15 it's meeting the standard, and the pressure drop is  
16 just an indicator of whether the control device is  
17 working or not as opposed to direct correlation. Title  
18 V doesn't require direct correlation.

19 Was there any language like that that --  
20 maybe if you could give us just more information on it,  
21 it would be helpful.

22 MS. SCANLAN: My understanding is that  
23 the compliance assurance monitoring the CAM rule only  
24 applies to certain facilities, the large facilities,  
25 and it has to be clearly identified that that's what

1 they're doing. That was not part of this because I did  
2 have a discussion with the permit writer about this.

3 MS. BROOME: I guess my point is that  
4 compliance assurance monitoring is the standard for the  
5 biggest units, and clearly there's not a more stringent  
6 standard for smaller, less polluting units. So the  
7 question is whether they were using that kind of  
8 concept, not whether the rule applied. Do you see what  
9 I mean?

10 MS. SCANLAN: Yes.

11 MS. BROOME: So it would be  
12 interesting -- I've seen permits that use that kind of  
13 approach, so it would make sense to me that it didn't  
14 correlate, but that doesn't mean it can be an  
15 enforcement action for not complying with good air  
16 pollution control practices or something like that. Do  
17 you know what I mean? So I was just wondering if you  
18 saw anything in the permit to that effect.

19 MS. SCANLAN: I don't think they were  
20 using -- they weren't using CAM and I'm not sure what  
21 the -- if they were using the concept because you would  
22 have to get into the mind of the permit writer. There  
23 was nothing documented about that in my review of the  
24 file. But are you saying -- are you suggesting that  
25 under CAM there does not need to be a correlation

1 between the monitoring requirement and the stack  
2 emissions coming out of the stack?

3 MS. BROOME: That's right.

4 MS. SCANLAN: So if they're violating the  
5 monitoring requirement they are not necessarily  
6 violating their emission limits?

7 MS. BROOME: Well, the requirement is to  
8 monitor, not to comply with the range. If you go  
9 outside the range, you're supposed to take steps to get  
10 it back into the range. And if you frequently go  
11 outside the range, then you're supposed to either  
12 change your range, justify that through a stack test  
13 or -- I mean, there's a whole series of things in the  
14 rule.

15 MS. SCANLAN: But going outside the range  
16 does not necessarily mean that they're violating their  
17 emission limit?

18 MS. BROOME: Right.

19 MS. SCANLAN: Is that what you're saying?

20 MS. BROOME: Right. Because you can't  
21 always correlate pressure drop to particulate because  
22 the stack test is done under specified operating  
23 conditions that may not be the same as operation.

24 MS. SCANLAN: Well, if you have to have a  
25 monitoring requirement that shows compliance with

1 permit terms, then it doesn't seem like if the CAM is  
2 the way you're describing it, it doesn't seem like that  
3 would be consistent with Title V if you have no way of  
4 demonstrating whether or not the facility is complying  
5 with their PM limit.

6 MS. BROOME: Yes -- well, CAM provides  
7 that the control device is operating as intended and  
8 the D.C. Circuit said that it does meet Title V's  
9 requirement. So we could go on and on about it, but I  
10 just think that it would be helpful to see what this  
11 individual permit test and you could look at it.

12 MR. VOGEL: Take two more questions.  
13 Keri Powell.

14 MS. POWELL: Hi, Melissa.

15 MS. SCANLAN: Hi, Keri.

16 MS. POWELL: I'm going to move on to a  
17 somewhat less contentious topic, which is you mentioned  
18 that you found the public hearing to be helpful in  
19 clarifying for the public how the regulations applied  
20 to the incinerator, the French Island incinerator. And  
21 we've had some people testify that hearings were  
22 incredibly frustrating for the public because they  
23 would drive a long way, testify for three minutes, get  
24 no response to their comments and not actually learn  
25 anything from the experience.

1                   So I just wanted to know if there was --  
2   if maybe you could describe the public hearing  
3   experience in Wisconsin and what it is that you think  
4   made it particularly valuable.

5                   MS. SCANLAN: Yeah. I think that's a  
6   good question. I think it was that we actually played  
7   a bridge role there. I think the public hearing by  
8   itself with people just showing up probably would not  
9   have been too informative because you are just  
10  listening to the three-minute testimony. But we were  
11  able to use the Title V permit as an educational tool  
12  with the community prior to the hearing to show them  
13  what the permit limits were, and then they were able to  
14  use that to inform their testimony and it led to a  
15  large turnout at the hearing.

16                  So I think it's the combination of having  
17  the Title V process available but also having nonprofit  
18  serving as that intermediary bridge role to help use  
19  Title V as a way to educate people about what the  
20  permit terms are and what that means for public health  
21  in the community.

22                  MS. POWELL: So, Melissa, are you saying  
23  that you had meetings ahead of the public --

24                  MS. SCANLAN: We did. We had a meeting  
25  before the hearing so that we could go over in detail

1 and answer people's questions about the Title V permit,  
2 which doesn't happen -- I mean, that definitely doesn't  
3 happen in a public hearing setting where you have to  
4 have your testimony set already.

5 MS. POWELL: So was that pre-meeting sort  
6 of the same night as the hearing or in advance of the  
7 hearing?

8 MS. SCANLAN: It was, I believe, a week  
9 in advance of the hearing, but people felt like they  
10 then had, I think, a meaningful opportunity to comment  
11 at the hearing. And it's, again, the combination of  
12 nonprofit working with the Title V program and  
13 utilizing the tools that it offers as the ability to  
14 see all of the information about a facility in one  
15 place and have the opportunity for a public hearing so  
16 that people can come out and express their viewpoints.

17 MS. POWELL: Thanks.

18 MR. VOGEL: Another question. Don van  
19 der Vaart.

20 MR. VAN DER VAART: Yes, I just wanted to  
21 ask you a question about that same pressure drop. That  
22 emission source was not subject to CAM, and that's what  
23 I understood you to say?

24 MS. SCANLAN: That's right.

25 MR. VAN DER VAART: And I agree with you,

1 that if you're not subject to CAM you certainly have an  
2 obligation -- the permit has an obligation to define  
3 monitoring to assure compliance. And if pressure drop  
4 isn't going to do it, you can certainly ask for more  
5 clear monitoring, for example, particulate emission  
6 monitoring or any other methodology that you would feel  
7 comfortable with.

8                   So either they make a correlation that  
9 they agree with or the facility -- the permittee could  
10 then be subject to some more stringent level of  
11 monitoring. So we would -- North Carolina certainly  
12 would agree with your position on part 70 monitoring.

13                   MS. SCANLAN: I'm glad to hear that.

14                   MR. VAN DER VAART: That was just a  
15 comment.

16                   MR. VOGEL: Thank you, Melissa. It's  
17 been very entertaining.

18                   Do we have another speaker on, please?

19                   MR. SUTTLES: Yes, this is John Suttles.

20                   MR. VOGEL: Okay, John. Thank you.  
21 We're allotting ten minutes for presentation, ten  
22 minutes for questions. We are also taping this for  
23 audio transcript as well as written transcript. So you  
24 may go ahead, please.

25                   MR. SUTTLES: If I start speaking fast

1 towards the end, it's that I bit off more than I can  
2 chew in ten minutes.

3                   First, let me reaffirm that Title V is  
4 vitally important to protecting public health in  
5 Louisiana. We represent client groups that have  
6 thousands of members, and on their behalf I would like  
7 to reaffirm that the program should be maintained and,  
8 in fact, strengthened to assure greater and more  
9 meaningful public participation, better monitoring by  
10 sources to ensure compliance with all applicable Clean  
11 Air Act requirements.

12                   To illustrate the importance of a Title V  
13 program in Louisiana I would like to discuss three  
14 points. First I would like to briefly discuss public  
15 health issues in Louisiana as they relate to the Title  
16 V program. Two, I would like to discuss the importance  
17 of strong and accurate monitoring requirements to  
18 ensure compliance with the fundamental mandate of the  
19 Clean Air Act healthful air quality. And three, I'd  
20 like to discuss the importance of public participation  
21 in the permitting process and how it can be  
22 strengthened.

23                   As for Louisiana public health, for the  
24 14th time in 15 years Louisiana ranks as the least  
25 healthy state in the nation. The United Health

1 Foundation's annual report finds that Louisianans  
2 suffer from a high rate of premature death, infant  
3 mortality, and cancer death. And it's no coincidence  
4 that Louisiana is also one of the most industrialized  
5 states in the nation. Louisiana is the second largest  
6 refinery of petroleum. It has the ninth highest rate  
7 of toxic air emissions per person, the 15th highest  
8 rate of toxic air emissions per square mile, and the  
9 14th highest rate of total toxic air emission.

10                   Many of these toxics are also classified  
11 as volatile organic compounds, which contribute to the  
12 formation of ozone. There's a five parish area around  
13 Baton Rouge, Louisiana that has never met minimum  
14 federal standards required to protect people from ozone  
15 pollution. The Baton Rouge area has missed every  
16 attainment milestone and deadline, and most recently it  
17 missed the November 1999 attainment date and was bumped  
18 up to a severe non-attainment classification.

19                   This year for the second year in a row  
20 Baton Rouge has experienced ozone exceedences in late  
21 September and October assuring that Baton Rouge will  
22 not meet the November 2005 deadline. At the same time,  
23 the Louisiana Department of Environmental Quality  
24 reported that the 2000 annual average level of a  
25 particular VOC that is also a toxic air pollutant, 1, 3

1 butadiene, exceeds health protection standards in the  
2 Baton Rouge area by nearly 200 percent.

3                   This all brings me to the importance of  
4 effective monitoring requirements to assure that the  
5 goals of the Clean Air Act are met. Although the  
6 Department of Environmental Quality has determined that  
7 Baton Rouge's ozone problem is due to industrial  
8 emissions of volatile organic compound, as are the  
9 excessive levels of one three butadiene, current site  
10 specific monitoring under the Title V program is not  
11 adequate to identify the emission sources responsible  
12 for these problems.

13                   Therefore, the Louisiana governor  
14 recently directed the Department of Environmental  
15 Quality to issue administrative orders to 16 facilities  
16 requiring them to install fence-line monitors around the  
17 perimeter to help determine what pollutants these  
18 facilities actually emit and in what quantity. Why?  
19 Because the current programs -- under the current  
20 programs facilities are not performing sufficient  
21 monitoring to accurately show what they're emitting or  
22 in what amounts.

23                   A recent ExxonMobil settlement agreement  
24 illustrates one important aspect of this monitoring  
25 problem, the failure to monitor fugitive emissions. In

1 a 2003 agreement ExxonMobil Chemical Company in Baton  
2 Rouge, Louisiana settled claims that included failure  
3 to monitor and report fugitive emissions from literally  
4 thousands of valves of pipeline connections in hundreds  
5 of pumps. Emissions from these fugitive sources  
6 account for a significant portion of the overall  
7 pollution burden for people in Baton Rouge area, and  
8 yet they're not being appropriately monitored and  
9 there's not adequate reporting.

10 As a result of these types of monitoring  
11 problems, air quality in the Baton Rouge non-attainment  
12 area continues to violate minimum health protection  
13 standards. Regulators know that the violations result  
14 from industrial emission, but they cannot determine who  
15 is responsible for the accepted emissions of VOCs, many  
16 of which are also toxic air pollutants, such as one three  
17 butadiene.

18 Because in Louisiana many communities at  
19 risk are located along the fence lines of some of the  
20 largest petrochemical refineries, public access to  
21 information and participation in the process are  
22 vitally important. However, the needs of the public  
23 are not adequately protected under the current program  
24 as administered in Louisiana.

25 Brings me to my next point, public

1 participation. Public participation promotes four  
2 important purposes: One, members of the public have a  
3 right to know what's going on in their communities and  
4 how it affects their health. Two, public input results  
5 in more expected air permit. Three, an informed and  
6 involved public enhances enforcement and, of course,  
7 accountability. And fourth, public participation  
8 improves cleaner air act compliance. As administered  
9 in Louisiana, however, public participation needs  
10 improvement.

11 In an August 2002 report, EPA's office of  
12 inspector generals found that, quote, the Louisiana  
13 Department of Environmental Quality's records were  
14 often unorganizing, incomplete, missing, or  
15 inaccessible. And as result, LDEQ issued multiple  
16 permits to facilities without providing the public with  
17 complete information.

18 Here again I will offer ExxonMobil as one  
19 example of the types of participation problems people  
20 in Louisiana face. As of 2002 the ExxonMobil facility  
21 had received 13 Title V permits and 42 permit  
22 applications were pending. That's a total of 55  
23 separate permits for one single facility. But none of  
24 the 15 issued or 42 pending permits referred to would  
25 provide information on the emission from the other 59

1 permits.

2                   As a result, a citizen may never realize  
3 by looking at a permit or proposed permit that there  
4 are 54 other permits that covers the same facility.  
5 Therefore, people have no reasonable way to assess the  
6 potential exposures from the facility and the public  
7 cannot reasonably determine facility-wide Clean Air Act  
8 compliance, such as whether facility-wide pollution  
9 increases due to changes or modifications that might  
10 require new source review and the amount of any  
11 offsetting reductions that may be required.

12                   In a related problem permit documents  
13 need to be clearer so the public can determine, one,  
14 how an individual permit relates to the facility's  
15 total number of permits and pollution emissions, and  
16 two, technical processes need to be more clearly  
17 explained and go further to inform the public as to  
18 what effect the processes will have on nearby  
19 communities.

20                   Finally, regulatory agencies must respect  
21 citizens' right to public hearings. In Louisiana there  
22 are many people affected by air pollution who lack the  
23 formal education and training to provide meaningful  
24 written comments, yet they're deeply concerned about  
25 their health, their family's health and the well-being

1 of their community. Nevertheless, regulatory agencies  
2 often refuse to hold public hearings by stating that  
3 the Clean Air Act merely requires an opportunity to  
4 request a hearing, it does not guarantee a right to a  
5 public hearing. To be effective in Louisiana, however,  
6 regulators must -- they cannot take such a dismissive  
7 approach to public involvement in permitting decisions.

8                   Just in conclusion, I'd like to say in  
9 light of the public health crisis in Louisiana, the  
10 prevalence and concentration of the petrochemical  
11 industry in the state and the persistence of air  
12 pollution problems faced by Louisiana residents, the  
13 Title V program must be maintained and should be  
14 strengthened to provide better public outreach, ensure  
15 more accurate monitoring of pollution emission, and  
16 better public input and involvement in Title V  
17 permitting and enforcement of the Clean Air Act.

18                   I think I made it within my ten, didn't  
19 I?

20                   MR. VOGEL: A minute to spare, I believe.  
21 Do we have any questions from the Task Force? Kelly  
22 Haragan.

23                   MS. HARAGAN: Hi, John. This is Kelly  
24 Haragan.

25                   MR. SUTTLES: Hi, Kelly.

1                   MS. HARAGAN: Hi. I had a question  
2 about -- it sounds like Louisiana issues multiple  
3 permits to single facilities, and I know some other  
4 states do that too, and I was wondering if you think it  
5 would be better to have one permit per facility or if  
6 you like having multiple permits.

7                   MR. SUTTLES: I'd be hard-pressed to make  
8 a blanket statement across the board because it could  
9 become so complicated that the agency might not get the  
10 permit out and it might be with 30 days to comment,  
11 which is typically what we're given, people might not  
12 have a chance to really raise all the comments that  
13 need to be raised.

14                   At the very minimum, however, if there  
15 are multiple permits pertaining to a single facility,  
16 there needs to be some way to cross-reference and  
17 identify those other permits. Otherwise it appears to  
18 be public that when ExxonMobil goes out to get a permit  
19 for an ethylene unit, that that is the Exxon facility,  
20 and they don't know that there are 54 other permits out  
21 there. That's definitely a problem. Whether or not it  
22 would be feasible to have every facility apply for a  
23 single permit that covered the facility, I'm not sure  
24 I'm prepared to say that, but there at least needs to  
25 be some way to identify the other permits that pertain

1 to that facility.

2 MS. HARAGAN: Okay. Thanks.

3 MR. VOGEL: David Golden.

4 MR. GOLDEN: Thanks, John. This is David  
5 Golden with Eastman. Kelly got most of my question,  
6 but just to follow up, if -- on the multiple permit  
7 issue, if there was sufficient documentation so that  
8 the reviewing public could understand the number of  
9 permits that are applicable, you don't necessarily find  
10 it an issue if there are multiple permits. Am I  
11 understanding you correctly?

12 MR. SUTTLES: As long as there's a way  
13 for the public when they look at a single permit that  
14 is for a particular unit of a larger facility, I think  
15 as long as the public understands that's the case, that  
16 there are other permits that have been issued or are  
17 pending and at least a thumbnail of what they involve  
18 in terms of the amount of emissions, any kind of recent  
19 pollution increases so that they can evaluate new  
20 source review requirements, I think that would be  
21 adequate.

22 But as it is now, you have no way of  
23 knowing -- and to the public it looks as though a  
24 single permit pertains to the entire facility and  
25 that's it, and they're actually quite confused when

1 ExxonMobil applies for a permit and then several months  
2 later ExxonMobil -- well, actually there might be  
3 several permits pending at one time and they just don't  
4 know what it's commenting on or what it pertains to.

5 MR. GOLDEN: Does Louisiana have any sort  
6 of web site that helps the reviewing public figure all  
7 that out or how did you figure all that out, other than  
8 being really good?

9 MR. SUTTLES: That's only going to get  
10 you so far. Well, commenting on the permit for  
11 ExxonMobil, and ExxonMobil coming up, and having  
12 experts who have dealt with facilities for long periods  
13 who say, you know, explain this all to me, and the  
14 public generally does not have access to experts. A  
15 lot of the public in Louisiana does not -- and  
16 especially the people who are most acutely affected,  
17 those who are fenceline communities, they don't have  
18 access to the Internet, many of them.

19 You know, Louisiana is also an  
20 impoverished state and there are a lot of people who  
21 don't have the resources that might be available in  
22 some other locals. And, again, typically it's the  
23 people who are most directly and immediately affected  
24 by it.

25 There is a web site and you can see that,

1 for instance, Exxon might have several pending permits  
2 at a time, but once those are issued they go off the  
3 web site. And if you're looking for pending permits,  
4 you wouldn't necessarily have a way to know that. From  
5 my experience, I learned it from experts.

6 MR. GOLDEN: Thanks.

7 MR. VOGEL: Shelley Kaderly.

8 MS. KADERLY: Shelley Kaderly, State of  
9 Nebraska. Maybe just a little bit of a follow-up on  
10 David's question there. I was wondering how you got  
11 notice of the permits that you were reviewing.

12 MR. SUTTLES: Well, of course, there are  
13 public notice requirements and sometimes the public  
14 will come to us with a permit that's been noticed in  
15 their local official journal, which, by the way, is not  
16 a terribly effective method. I don't know how many  
17 people even know what their official journal is. But  
18 sometimes the public will come to us having seen a  
19 permit that's been proposed.

20 You can also, in Louisiana, you can ask  
21 the Department of Environmental Quality to send you  
22 public notices either for any permit they're  
23 considering or permits in a particular area or permits  
24 that pertain to a particular medium. So we typically  
25 get them from the Department of Environmental Quality.

1 Sometimes we will -- that's got been a perfect  
2 technique. Sometimes we don't get a notice for one  
3 reason or another, but we check the web site  
4 periodically. So between those two methods we hope to  
5 catch most or all of the permits that are proposed.

6 MR. VOGEL: Keri Powell.

7 MS. POWELL: Hi, John.

8 MR. SUTTLES: Hi Keri.

9 MS. POWELL: You said that Louisiana has  
10 denied requests for public hearings and I wondered what  
11 kind of standard Louisiana is applying in deciding  
12 whether a hearing is warranted.

13 MR. SUTTLES: Well, I'm not sure. I can  
14 give you a fairly recent example of one that really  
15 rankled a lot of members of a community group that  
16 represents about 2,000 people.

17 ExxonMobil had applied for what they call  
18 a Clean Air Act commitment permit that was 14 Title V  
19 sources -- there were 12 Title V sources they were  
20 rolling into a single permit and they announced that  
21 there was going to be a town hall informational  
22 meeting. And at the meeting they were specifically  
23 asked -- DEQ was present and Exxon's PR department was  
24 present -- and they were specifically asked do you  
25 propose this in lieu of a public hearing, because we

1 would object if you do. We don't have the information  
2 we need to make adequate comments and we're not  
3 prepared to participate in a public hearing at this  
4 time. We're just seeing these permits for the first  
5 time. We were assured that was not the case.

6 We filed written comments on behalf of  
7 one of our member groups, and the members -- some of  
8 the individual members and the group itself requested a  
9 public hearing. It was denied, and one of the reasons  
10 for the denial was that there had been this town hall  
11 meeting. So it's hard to say -- that was under the  
12 prior administration. And the current administration  
13 seems to be trying harder to engage the public a bit  
14 more. But I can't say what standard the old  
15 administration operated under. But it shouldn't be --  
16 this type of thing should not be at the whim of an  
17 administration. There should be more of a consistent  
18 rule that the public can have some faith be applied  
19 across the board.

20 MR. VOGEL: Michael Ling.

21 MR. LING: Hi, this is Michael Ling with  
22 EPA. You talked a little bit about the fugitive  
23 emissions not being monitored or reported. I just  
24 wanted to clarify that. Is your concern that the  
25 underlying standards don't require the measurement and

1 reporting of quantities of fugitive emissions or is  
2 your concern that in Louisiana you're not able to tell  
3 whether the facilities are in compliance with the  
4 various work practice and other standards for the  
5 control of fugitive emissions?

6 MR. SUTTLES: Yes, it's the latter. We  
7 have a lot of leaky plants here and they're not  
8 monitoring and reporting them. And those standards  
9 definitely need to be enforced and strengthened, if  
10 anything.

11 MR. VOGEL: Adan Schwartz.

12 MR. SCHWARTZ: Mike Ling may have asked  
13 the question I was going to ask, I'm not sure, but  
14 you -- again, the example you gave was of fenceline  
15 monitoring being imposed to better sense of fugitive  
16 emissions, and it wasn't clear from the way you  
17 described it whether that was being done pursuant to  
18 Title V or for some other reason.

19 MR. SUTTLES: The requirements -- there  
20 were requirements in the operating permit and they  
21 simply were not being done. So, I mean, it wasn't  
22 present in the permit.

23 MR. VOGEL: One more question. Bob  
24 Palzer.

25 MR. PALZER: Hi. This is Bob Palzer of

1 the Sierra Club.

2 MR. SUTTLES: Hi, Bob.

3 MR. PALZER: Pursuing the fugitive aspect  
4 from a slightly different standpoint, several years ago  
5 I was down and did a tour in the area upstream of New  
6 Orleans along the Mississippi River and was amazed to  
7 see that the sugarcane was growing in immediate  
8 proximity to significant chemical plants and have since  
9 not eaten brown sugar, and I just wonder if you wanted  
10 to -- just slightly off the Title V source, but since  
11 the drinking water for the City of New Orleans comes  
12 from the Mississippi River, people living in that area  
13 and, in fact, all of us eat some of the crops from that  
14 region and there are EJ communities there, can you  
15 speak a little bit more about the EJ aspect and maybe  
16 the broader thing of land use as it relates to citing  
17 and pollution.

18 MR. SUTTLES: Sure. What you observed is  
19 actually not an accident, really, the way that the  
20 economy of this part of the Louisiana evolved. Before  
21 the Civil War -- by the way, as far as the sugarcane  
22 goes, I suppose it wouldn't reassure you to know that  
23 those crops are also -- a lot of them are fertilized  
24 with sewage sludge, but that's slightly off topic too.

25 Before the Civil War, the Mississippi

1 River was populated with plantations, and then after  
2 the Civil War, with -- when the slaves were free, they  
3 set up communities next door to the plantations in  
4 which they worked. Around the 30s and 40s and 50s  
5 large petrochemical refiners came in and they saw a  
6 large swathes of land held by single landowners that  
7 had access to railheads and also were on the river.  
8 And so they bought them up and turned them into  
9 petrochemical refineries.

10                   So now what you have is the decedents of  
11 the freed slaves from these plantations living in the  
12 communities that were established by forbearers 140  
13 plus years ago living now next -- not next to  
14 plantations, but next to petrochemical refineries, and  
15 many of them are sandwiched in between petrochemical  
16 refineries and town -- the community of Allison is a  
17 prime example.

18                   The pollution burden that these people  
19 experience is far and above anything that anyone else  
20 in the country experiences. There were studies done,  
21 and I can't remember precise numbers, but it would be  
22 like smoking several packs of cigarettes a day. So, I  
23 mean, it is -- EJ can -- virtually every permit in what  
24 is known as the chemical corridor along the Mississippi  
25 River, from Baton Rouge to New Orleans, involve an EJ

1 issue. You just can't escape it.

2 MR. VOGEL: That's all the questions that  
3 we have. Thank you very much.

4 MR. SUTTLES: My pleasure. Thank you.

5 MR. VOGEL: Do we have another speaker?

6 MR. MONK: Yes, David Monk here.

7 MR. VOGEL: Okay, David. Let me remind  
8 you that we have ten minutes for your presentation, ten  
9 minutes for questions. We are also taking audio  
10 transcripts, audio recording, and preparing a written  
11 transcript of this proceeding. So go ahead, please.

12 MR. MONK: Can you hear me all right? My  
13 apologies.

14 MR. VOGEL: Yes, I can hear you.

15 MR. MONK: My name a David Monk. I'm the  
16 executive director of Oregon Toxic Alliance. I am in  
17 an organization asked by many fenceline communities to  
18 help in the Title V permits and determine whether the  
19 facilities that they're concerned with are in  
20 compliance with their permits.

21 I am not by any means an expert on a lot  
22 of the issues with regards to air emissions. I try to  
23 analyze those permits as best I can with the help of an  
24 advisory group of scientists here and provide support  
25 to those communities to challenging the renewal of the

1 permit or modification being requested.

2                   So essentially my experience with the  
3 Title V permit is that in the half a dozen renewal or  
4 new Title V permit or modification permits that I've  
5 helped in, I found that this is under the state of  
6 Oregon and this is under Oregon Department of  
7 Environmental Quality, that there is of little concerns  
8 of the community members is taken into consideration.

9                   And what I mean by that is, for example,  
10 there's a facility I think you heard from Sharon  
11 Genasci from the Northwest Environmental -- Northwest  
12 District Environmental Committee, Northwest (inaudible)  
13 Portland and perhaps a discussion was about Epsco, an  
14 older facility. Their fugitive emissions, the BQ --  
15 the neighbors have done quite a bit of testing around  
16 that facility and find very high levels of lead, high  
17 levels of benzene, some other heavy metals that really  
18 aren't accounted for in the permit.

19                   And I believe the fugitive emissions are  
20 not -- this, again, is a very old facility -- fugitive  
21 emissions are not adequately recorded nor understood,  
22 and I think they are in large part responsible for some  
23 of these high levels of these various heavy metals,  
24 benzene (inaudible) quality neighbors have detected.

25                   So it seems that Title V is not

1 adequately addressing the impacts to those communities  
2 in close proximity to industrial areas or specific  
3 facilities. I'm concerned that public health is not  
4 being protected due to Title V program by virtue of  
5 that lacking in the process.

6                   Let's see, the only other thing I would  
7 like to say is that the Oregon Department of  
8 Environmental Quality is currently going to the  
9 legislature in our next session here next year, and  
10 we'll be asking our state legislature to change  
11 language to allow many of the Title V maybe not to  
12 report to the state program and the rationale being  
13 that that information is in large part reported to the  
14 federal government to the EPA.

15                   And so it's -- I think Oregon is probably  
16 down near the very bottom in terms of inspection and  
17 confirming compliance with Title V permits.

18                   And so I would highly recommend that  
19 whatever change to the program you all endeavor to  
20 make, that you look at the many states like Oregon  
21 which aren't -- I don't feel are adequately doing their  
22 job. They're delegated authority work under EPA, and  
23 consequently the Title V program as it exists is very  
24 important to those of us in Oregon who are trying to  
25 confirm that these facilities are in compliance. That

1 would be the extent of any opening comments I have.

2 MR. VOGEL: Okay. Thank you. Do we have  
3 questions from the Task Force? Callie Videtich.

4 MS. VIDETICH: Hi, David. My name is  
5 Callie Videtich. I'm Region 8 in Denver.

6 MR. MONK: Hi Callie.

7 MS. VIDETICH: Hi. Did we hear you say  
8 that compliance certs go directly to EPA and not the  
9 states or did I not hear you correctly?

10 MR. MONK: No, no. They would go through  
11 DQ, it's just that I've been a part of the -- oh, DQ  
12 convened an advisory group, a hazardous waste working  
13 group, and they invited EPA to attend one of the  
14 meetings and I discovered that I think next to  
15 Louisiana, Oregon performs the fewest inspections of  
16 any other state in the country. And I was very pleased  
17 to hear the EPA officials say this just wasn't  
18 sufficient and the funding that the state DQ received  
19 might be addressed accordingly.

20 So, no, the state is certainly doing that  
21 in determining compliance but in such a limited manner  
22 that at this point I don't feel it's sufficient. Did  
23 that answer your question?

24 MS. VIDETICH: Sure.

25 MR. VOGEL: Other questions? Shelley

1 Kaderly.

2 MS. KADERLY: I just wanted to clarify to  
3 follow up on that. Did you say that that was hazardous  
4 waste or --

5 MR. MONK: Yes, it was hazardous waste  
6 working, correct, that was convened by the Department  
7 of Environmental Quality. And many of the larger Title  
8 V permittees were invited and attended this series of  
9 about a year long working group.

10 MS. KADERLY: So it was kind of a  
11 multimedia working group then?

12 MR. MONK: Yeah. The intent was to --  
13 there were three environmental groups of which I  
14 represent Oregon Toxic Alliance, and then there were  
15 probably, I would say, 15 to 20 business  
16 representatives, and it was a working group to advise  
17 the Department on Environmental Quality on how they  
18 might adjust the reporting requirements, whether the  
19 current reporting requirements were overly onerous or  
20 whether that information was of value to the  
21 environmental community and basically to advise them on  
22 this legislative action that they will be taking here  
23 next year to make sure that there wasn't significant  
24 opposition from the business communities is my sense of  
25 why they convened the group.

1 MR. VOGEL: Bob Palzer.

2 MR. PALZER: Hi, David.

3 MR. MONK: Hi, Bob.

4 MR. PALZER: Do you have any  
5 recommendations how the inspection frequency in Oregon  
6 can be increased or improved?

7 MR. MONK: Well, it's always -- it's  
8 stated that it's a matter of funding, and so I would  
9 recommend that, and of course this is very specific to  
10 the Oregon Department of Environmental Quality, that  
11 their funding be allocated in a way that ensures that  
12 the delegated authority that DQ has for those  
13 fundamental requirements under that delegated authority  
14 are met first and foremost. I think the DQ spends much  
15 too much of its money doing other program work that is  
16 over and above that and fails to adequately address  
17 that those fundamental requirements of delegated  
18 authority.

19 So I would just say that obviously if  
20 they got more funding from the federal government that  
21 would help, but I think it's a matter of how they spend  
22 the money they do have.

23 MR. VOGEL: Thank you. Is there no more  
24 questions?

25 MR. MONK: I thank you all. I guess if I

1 might just make a closing statement, is that possible?

2 MR. VOGEL: Certainly, go ahead.

3 MR. MONK: Great. Thank you. So I guess  
4 the reasoning for accepting this testimony is to --  
5 from my understanding is to assess how Title V program  
6 is working, how it might be improved and perhaps what  
7 the benefits of the program, what they should be or  
8 essentially that, and I'll speak to those as briefly as  
9 I can.

10 I think the -- having -- compiling all  
11 this information under one permit I think is useful and  
12 helpful to citizens and environmental groups trying to  
13 assess compliance for these facilities, so I think the  
14 Title V program is a good program in that sense.

15 Some of it is -- and I think you've  
16 probably heard that not always is that information  
17 readily available on-line or those -- and then some  
18 folks are not even -- don't get on-line and don't have  
19 access to that information, and to be able to go into a  
20 local DQ office and wade through that material is  
21 difficult. So I realize there are no easy answers  
22 there, but more timely information needs to be put  
23 on-line I think would help those of us who do a lot of  
24 our research that way.

25 I think the federal regulations, the more

1 signs I see the federal regulations are, in my  
2 estimation, not sufficient to protect public health.  
3 You have a lot of communities -- I was in Louisville  
4 last year around Rubbertown, and the people who live  
5 near that industrial area are being impacted in  
6 phenomenally dangerous ways and their health is  
7 suffering as a result.

8                   So I think some Title V should somehow  
9 take into consideration those cumulative affects of  
10 having these multiple facilities with sometimes being  
11 compliant, sometimes not, and what that might be to the  
12 fenceline communities around that.

13                   As far as how the program might be  
14 improved, clearly improving monitoring would help. I  
15 think we often feel that -- and many of the people  
16 approach us for assistance really don't feel like the  
17 monitoring is adequately reporting what the emissions  
18 are, and I think this example of the ESCO facility, the  
19 Foundry in northwest Portland seems to highlight that  
20 quite well.

21                   So it's -- I think some perimeter  
22 monitoring, some fenceline monitoring from the  
23 delegated authority I think would help immensely to  
24 confirm what the company is reporting. Then again,  
25 notifying -- notification of violations I think is

1 critical. I think it's important that community  
2 members know whether the facility is in compliance, and  
3 if not, based on what emission is -- are they out of  
4 compliance and what the timeline is for rectifying that  
5 problem.

6                   Let's see, I guess that covers most of  
7 what I was hoping to say. I just wanted to impress  
8 upon you all that the fenceline communities are the  
9 folks that I work with most and I really feel from them  
10 that the current system doesn't sufficiently protect  
11 their health and well-being, and I realize there are  
12 many issues with regards to that to improve that  
13 system, but I hope that, if nothing else, the Title V  
14 program will be improved and will continue on for many  
15 years to come. Thank you very much.

16                   MR. VOGEL: Thank you. Thank you for  
17 spending the time with us today.

18                   MR. MONK: Sure.

19                   MR. VOGEL: Do we have another speaker on  
20 the line? Anyone else on the line? We'll wait a  
21 little bit for the next speaker.

22                   (Recess taken)

23                   MR. VOGEL: My name is Ray Vogel with the  
24 EPA. I would like to just say we have 20 minutes  
25 altogether for you, ten minutes of it will be

1 presentation, ten minutes for questions and answers.  
2 We're also doing an audio transcript and a written  
3 transcript of this proceeding. So if you would like,  
4 please go ahead.

5 MS. PRAKASH: Okay, great. Well, my name  
6 is Swati Prakash and I'm the environmental health  
7 director for We Act For Environment Justice, also known  
8 as West Harlem Environmental Action, and we are a  
9 grassroots nonprofit organization dedicated to  
10 community power to fight environmental racism and  
11 improve environmental health, protection, and policy in  
12 communities of color.

13 We were formed in 1988 out of community  
14 struggles against noxious emission from the North River  
15 Sewage Treatment Facility, which is built on the west  
16 side of Manhattan and processes up to 170 million  
17 gallons of waste water every day, and when it first  
18 began operating was doing so with almost no air  
19 pollution control technology. And so community  
20 struggles around that culminated in a lawsuit, a 55  
21 million dollar settlement to upgrade the air pollution  
22 control equipment on that facility and installed air  
23 monitors in the community. And we were borne out of  
24 those struggles and have worked since then to protect  
25 and promote environmental health for residents in its

1 community.

2                   And it's Title V permit for that facility  
3 formerly -- formally called the North River Waste Water  
4 Control Pollution Plant that I form the basis of my  
5 comments today. I just want to say as a caveat that I  
6 submitted those comments in June of 2002 and don't sort  
7 of to advocacy on these sort of issues as much as I  
8 would like to have time to do, and so from the  
9 follow-up after those comments were submitted are a  
10 little bit hazy to me, as well as my memory, but I'm  
11 going to do my best.

12                   Just to start off with I wanted to say  
13 that I think that the Title V program is a great  
14 program of the EPA and of the Clean Air Act, provided a  
15 good opportunity for effective communities to get all  
16 their information in one place and to weigh in in just  
17 one process. And it's a good opportunity to help  
18 individuals who are affected by the operations of a  
19 polluting facility to have the right to know what that  
20 facility is doing and be assured that it's complying  
21 with the law.

22                   And from an environmental justice  
23 perspective, in particular, and that's the perspective  
24 I'm speaking from, which are the idea that communities  
25 of color are burdened with -- are often burdened with

1 multiple stationary sources of air pollution. We have  
2 very few resources to act as watchdogs of those  
3 facilities or of the agencies that are supposed to be  
4 regulating them.

5                   So the Title V permitting program allows  
6 us to learn what the air quality rules are that apply  
7 to the facilities that are located in our communities  
8 and determine if they're in compliance. And in  
9 particular, I like the monitoring -- I like that the  
10 monitoring requirement for the facility to ensure  
11 compliance are written directly into the permit because  
12 having access to that data and knowing that this  
13 monitoring is taking place is one of the few tools that  
14 many under-resourced community groups have.

15                   With that said, I think that there's  
16 still some way to go before the vision and ideals of  
17 transparency and ease and community participation,  
18 which is what Title V embodies, are completely  
19 realized. From my limited experience, I think the  
20 major stumbling points have been around community  
21 notification of the permitting process, technical  
22 support for community residents, community groups to  
23 decipher the permit, the draft permits and the  
24 statement of basis, and a strong commitment  
25 in -- at least the permit that I looked at, to

1 monitoring requirements.

2                   So I was just going to talk a little bit  
3 about my experience weighing in on the Title V process.  
4 Y'all can still hear me, right?

5                   MR. VOGEL: Yes, we can.

6                   MS. PRAKASH: So this is in reference to  
7 the Title V permits for the North River Waste Water  
8 Pollution Control Plant, and April 27th of 2001 the  
9 nearest New York State DEC issued a notice of complete  
10 application for the draft Title V permit for that  
11 facility, which the draft permit was noted in the May  
12 2, 2001 edition of the New York State DEC's  
13 Environmental News Bulletin. I actually was not aware  
14 of the Title V program at the time and I didn't make  
15 comments during that draft period. It wasn't until I  
16 went through the Title V training cosponsored by EPA  
17 Region 2 and the Earth Day Coalition in November of  
18 2001 that I knew to be on the lookout for a revised  
19 permit for North River.

20                   And so in May of 2002, I think about --  
21 somehow it came to my attention that a revised permit  
22 had been issued. But I could not find notice of the  
23 issuance anywhere on the DEC web site, which is the  
24 first place that I went to to find information about  
25 the revised permit. And there was no notice of hearing

1 published in the DEC's environmental news bulletin for  
2 the revised permit.

3                   So the only thing I could find on the  
4 DEC's web site was a draft permit dated April 27, 2001.  
5 So after I made several phone calls to everybody that I  
6 knew in the DEC, I got help from Michelle Moore, who is  
7 the environmental justice coordinator for DEC Region 2,  
8 and she faxed me on May 31st, 2002, a notice of revised  
9 draft air permit and legislative public hearing which  
10 was to take place on June 4, 2002. And that also  
11 listed June 7th as the last day for public comments to  
12 be received by the DEC.

13                   However, Ms. Moore still didn't have --  
14 she didn't have a copy of the actual revised permit to  
15 send me. There was just no copy of the revised permit  
16 to be found. So I made my comments on the older  
17 permit. As of June 4th, the date of the public  
18 hearing, the date on the DEC web site still read May  
19 2001. And I -- you know, I think it was a problem that  
20 the web site wasn't updated and that a lot of the  
21 individuals who provided public comment at the June 4th  
22 hearing were commenting on an outdated draft.

23                   The revised permit did go up on the DEC  
24 web site the day after the hearing and there was a  
25 considerable difference between the first draft and the

1 revised draft. And the DEC did agree to extend the  
2 public comment period until June 14th, but I wasn't  
3 totally confident that they would honor that extension,  
4 so I just, between June 5th and June 7th, consulted a  
5 lot of my engineering friends and got a great deal of  
6 help as well from Tracey Peel from New York Public  
7 Research Group.

8                   And from my background, I have a master's  
9 degree in environmental health with a specialty in  
10 science and engineering, which I really relied on  
11 because very little in the permit itself I think is  
12 comprehensible to the nonspecialized person or just  
13 someone who doesn't have some sort of engineering and  
14 technical background.

15                   So I sent fairly detailed technical  
16 comments on June 7th by fax. What happened is that I  
17 never received a written response or an acknowledgment  
18 of receipt for those comments. And then several months  
19 later when the DEC did send its general responses to  
20 public comments on that revised permit, on the revised  
21 draft permit, I didn't see any of my specific comments  
22 addressed in those general responses, although I did  
23 see specific comments of other organizations, including  
24 NYPIRG addressed, which led me to wonder whether my  
25 comments -- my written comments, not the oral comments,

1 I provided on June 4th had been received or read at  
2 all, and I still actually, to be honest, don't know to  
3 this day if they were ever received.

4 My next set of comments just have to do  
5 with the permit itself, which I will try to go through  
6 quickly. I can submit -- I am going to be submitting  
7 testimony to you too, which goes into more detail. I'm  
8 just trying to hit the major points here.

9 The first has to do with the statement of  
10 basis laid out in the draft permit which was  
11 inadequate. The relevant regulations weren't properly  
12 referenced and -- let's see, while the permit review  
13 report did summarize relevant regulations under the  
14 applicability discussion, the summaries didn't list the  
15 actual emissions limitations or the other regulatory  
16 requirements with enough specificity for a public  
17 comment to be able to determine if the proposed action  
18 played out in the permit would lead to compliant.

19 The second issue has to do with the  
20 format of the draft permits, which just, I think, was  
21 unnecessarily obscure and difficult to follow. The  
22 technical language aside, I think just the format and  
23 the organization of the permit was very difficult to  
24 follow. And as an example, you know, just the  
25 difference between a federally enforceable condition

1 and a federal applicable requirement was not clear.  
2 So, you know, the consequences having such an obscure  
3 format is -- it discarded effective review from  
4 effective impacted community residents, especially the  
5 lay public.

6                   And then finally, there is several -- a  
7 great deal of technical concern about whether the  
8 correct regulations were being referenced and whether  
9 the appropriate pollution control technologies were  
10 being suggested as the way to comply with the certain  
11 state regulations, which I can include all those  
12 specifics if you all want that in my comments to you.

13                   And let me see here, I was concerned they  
14 actually -- one of the monitoring requirements that the  
15 facility had been complying with up until that point in  
16 the permit was proposed to be discontinued after 24  
17 months, and that was replacing a continuous opacity  
18 monitor with visual monitoring inspection. And so  
19 that -- I gave my comment that I felt like given the  
20 fact that is a facility which has so much community  
21 struggles around it and had initially been operating  
22 with very poor complaint, it's very important to have  
23 the hard data from a machine as opposed to from a human  
24 being looking and getting a judgment about whether  
25 opacity had been exceeded. And specifically the

1 opacity requirements in the previous four years of this  
2 facility had been violated several times.

3           So just in closing, because I see I'm  
4 running out of time here, I guess I'll just close by  
5 saying I think that the Title V permitting process can  
6 be -- for all of its benefits in terms of public  
7 participation and accessibility can be a double-edged  
8 sword partially because of the permit shield created by  
9 the process, which my admittedly lay understanding of  
10 that permit shield is that it protects the facility  
11 from legal liability.

12           It turns out that a permit has been  
13 written incorrectly or inaccurately, as long as they're  
14 compliant with the permit, even if they're not  
15 complying with the letter the law, they're shielded  
16 from legal liability, and that's a clause that concerns  
17 me because after seeing all of the things in the permit  
18 that I looked at, that just didn't seem right to me.  
19 It seems like those issues aren't addressed and then  
20 the window of opportunity to weigh in and point out the  
21 problems when the permit closes, then one pool of the  
22 community residents often have to resort to build our  
23 power and ensure that compliance is met is the legal  
24 process unfortunately.

25           And so to take that away by creating a

1 permit shield is something that concerns me that it can  
2 negatively impact, in particular communities of color  
3 but, really, all communities that are posting polluting  
4 sources that are subject to Title V requirements.

5                   And then the last topic, if there's a way  
6 to create some sort of technical assistance so that the  
7 ideal public participation is really met in that  
8 information is provided in a way that it's really not  
9 just acceptable as, you know, looking on a web page  
10 would technically be accessibility, but actually  
11 understandable to the average resident. The real  
12 intricate details about what the regulations means,  
13 what -- whether -- what the pollution control  
14 technologies that are being referenced do and how  
15 likely it is that there's a match between those two  
16 things, I think that's become the key to really  
17 ensuring the success of the spirit of Title V as well  
18 as the actual letter of how it's written. So with  
19 that, I'll close.

20                   MR. VOGEL: Thank you. Questions?  
21 Shannon Broome.

22                   MS. BROOME: Hi, my name is Shannon  
23 Broome, and I was just wanting to clarify a question  
24 that I had on something you said about the format of  
25 the New York permits. Were you talking about how they

1 have that -- it's got that really condensed list and  
2 then it says compliant certification and it kind of  
3 seems like it's not in English. Is that what you mean?  
4 I think I know what you're talking about, but I just  
5 want to make sure I understand what you think is the  
6 format problem and if it's the same format problem that  
7 I see.

8 MS. PRAKASH: There's two -- one is, yes,  
9 the plain English, not even -- I mean, not even talking  
10 about technical language, but really more like -- these  
11 are the relevant regulations that apply to this  
12 facility and these are the way in which the facility  
13 proposes to meet those regulations. I mean, just sort  
14 of an overview perhaps of what was included in the  
15 permit would have been, I think, a helpful thing. Let  
16 me look at what I see specifically.

17 And then there was also language in terms  
18 of things like what's the distinction between a  
19 condition and an item.

20 MS. BROOME: Yeah, I know.

21 MS. PRAKASH: Okay. Conditions were  
22 listed in correct order and certain conditions were  
23 listed in -- they were out of order when they were  
24 listed.

25 MS. BROOME: Or that whole listing at the

1 front of the permit that you have no idea what it  
2 means, where it's just the unit after unit after unit,  
3 okay, why is this here.

4 MS. PRAKASH: Right.

5 MS. BROOME: Okay, we have the same  
6 problem. Thanks.

7 MR. VOGEL: Bob Palzer.

8 MR. PALZER: Hi, this is Bob Palzer of  
9 the Sierra Club. When you explained that the facility  
10 you were looking at at four years of monitoring data  
11 with CAMS and there were numerous violations and then  
12 ultimately the permit was written without those  
13 requirements, was there any rationale given for why  
14 that was done?

15 MS. PRAKASH: I'm looking at my notes.  
16 They didn't reference the violations, obviously they  
17 wouldn't reference that in the permit, but they just  
18 said that they felt that a daily visual inspection  
19 would be sufficient. I can look up -- let's see.  
20 Yeah, they just said that they thought it would be  
21 sufficient to ensure compliance.

22 MR. PALZER: Seems pretty lame to me  
23 because obviously a visual method that can only be done  
24 under limited circumstances at a facility when you had  
25 a operating system which showed violations, seems

1 they're disconnecting.

2 MS. PRAKASH: I may have to get back to  
3 you in writing too because there's also some details in  
4 here about switching the COM system from one type of  
5 engine to another, from pump engines to blower engines.  
6 So I need to follow to see if this was essentially  
7 creating a whole new monitoring system for a different  
8 set of engines or whether -- my understanding was that  
9 they were going to discontinue the operation of what  
10 was operating at the time, the COM, and replace it with  
11 daily visual inspection.

12 MR. PALZER: So when you have a chance to  
13 review that, will you send that in to us?

14 MS. PRAKASH: Sure.

15 MR. PALZER: Thanks.

16 MR. VOGEL: Verena Owen.

17 MS. OWEN: Hi, this is Verena Owen. I'm  
18 with the Lake County Conservation Alliance. I have two  
19 quick questions. Do you recall if the permit comment  
20 period extension was given in writing or was this some  
21 kind of formal announcement?

22 MS. PRAKASH: It was definitely not a  
23 formal announcement. In fact, the way I found out  
24 about it was I was working -- I don't know if -- did  
25 Tracy Peel testify today? She was my connection at

1 NYPIRGs, and she was helping me a lot to figure out  
2 what was happening. But she told me that she  
3 communicated with a DEC attorney, a Lisa Wilkinson, who  
4 agreed to do an extension until June 14th but that the  
5 DEC wanted to see from the environmental groups an  
6 agreement in writing to this extension period.

7                   So I believe -- which seems backward to  
8 me -- but I believe that a few different environmental  
9 groups signed on to that, but from what I recall, I  
10 went ahead and sent my comments by the 7th, because the  
11 whole thing -- I didn't see anything in writing by the  
12 7th, so I didn't want to take the chance.

13                   MS. OWEN: I'm sorry, I'm not sure I  
14 understood. The DEC wanted environmental groups to  
15 have some kind of commitment to the permit comment?

16                   MS. PRAKASH: I guess agree that we felt  
17 that the -- she wants a letter or letters from all of  
18 us environmental groups agreeing to the extension.  
19 That's what this e-mail from Tracey Peel says to me.  
20 So I think that -- I guess she wanted in writing that  
21 we thought the 14th was sufficient. So there may have  
22 been something ultimately in writing, but I don't have  
23 that in my file.

24                   MS. OWEN: Okay. When you said that  
25 you're not sure that your comments were considered, do

1 you believe the DEC has kind of a relevancy threshold  
2 to public comments and feels that certain comments do  
3 not require a response?

4 MS. PRAKASH: A lot of my comments  
5 overlapped with -- the technical comments overlapped  
6 with NYPIRG's, and those were responded to. Now, I  
7 have not been able to put my hands on the DEC's  
8 response in the past week, so I can't go through that  
9 and tell you right now, but I do remember looking  
10 through and thinking, well, a lot of comments that were  
11 very similar to mine were addressed, but some of the  
12 comments that I had made that were not made by NYPIRG  
13 were not addressed. So I couldn't tell if they thought  
14 that they addressed them by -- if normal practice to  
15 sort of take the most detailed comments and respond to  
16 those or if they really just never got my fax.

17 MS. OWEN: Thank you.

18 MR. VOGEL: Keri Powell.

19 MS. POWELL: Hi Swati, this is Keri. I'm  
20 sorry I can't help you more on what happened with that  
21 permit proceeding, but as you know, I wasn't at NYPIRG  
22 when that started happening. Tracey didn't testify  
23 because she's actually not with NYPIRG anymore.

24 MS. PRAKASH: Oh, okay.

25 MS. POWELL: So I had a question for you

1 about community notification. You mentioned that is  
2 one of your key concerns and I wanted to know if you  
3 had some ideas about what would be effective  
4 notification for the availability of draft permits and  
5 public hearings.

6 MS. PRAKASH: Yeah. I think that e-mail  
7 alert -- I don't know if environmental news bulletin  
8 has -- I don't know how -- I don't know the details of  
9 how this would work, but there are a lot of groups that  
10 are lucky enough to have staff like we have. A lot of  
11 us do use e-mail on a fairly regular basis, and it's  
12 just one step. There could be some sort of alert for  
13 any time a Title V draft permit is issued. Because  
14 right now what we have to do -- there's two ways that  
15 there's notification. One is you have to sort of check  
16 the environmental news bulletin on a regular basis,  
17 which is not so practical, and then the second is that  
18 they do send hard copies to the local community boards,  
19 which is one, I think, good way to conduct community  
20 notification, but I would say it's not sufficient.

21 So there's e-mail list and then -- if  
22 there's a way to expand the number of organizations  
23 that receive hard copy, just letters even of  
24 notification directing people to either a web site, an  
25 updated and accurate web site, or to the physical

1 location of the permit, that would be helpful.

2           The permit -- I believe revised permits  
3 were sent to -- they were with one local DEC office,  
4 they were with one local community organization, and it  
5 was with the community board. But if you're not sort  
6 of physically near those areas, it's hard, I think, to  
7 stop by and read the copies in-house. That's just sort  
8 of off the top of my head response.

9           MS. POWELL: Just to let you know, Swati,  
10 I think that DEC maintains a mailing list that you can  
11 sign up for, so you might want to get on that.

12           So you think if they were effectively  
13 maintaining a mailing list or e-mailing notification,  
14 that that would be enough?

15           MS. PRAKASH: You know, there's a whole  
16 spectrum of community notification. There's the sort  
17 of Cadillac version and then there's the, okay, we can  
18 live with this version. And I think that good hard  
19 copy mailing list, good electronic mailing list,  
20 updated web sites and -- would be probably just as a  
21 threshold of adequate, yeah. And then there's the next  
22 batch of things, which would be -- the way I was  
23 notified ultimately was through a phone call from  
24 folks, which I realize is not that practical, but  
25 that's another, I think, resource for groups that

1 really are not on-line regularly.

2                   And then finally, public libraries  
3 actually -- although they're severely underfunded -- do  
4 serve as a source of information for many communities.  
5 That's another realm that I think shouldn't be  
6 underestimated.

7                   MR. VOGEL: Thank you very much, Swati,  
8 for spending time with us today.

9                   Do we have another speaker?

10                  MS. WILLIAMS: Hi, this is Jane Williams.

11                  MR. VOGEL: Yes, we were looking for you  
12 earlier.

13                  MS. WILLIAMS: I've been hearing a lot of  
14 really wonderful testimony while waiting to speak, so  
15 I'm glad that the Title V advisory committee is getting  
16 the benefit of all this experience.

17                  MR. VOGEL: If you're ready to talk with  
18 us, I think we can go ahead. Let's first ask if Reed  
19 Zars is on?

20                  MR. ZARS: Yes, I am on.

21                  MR. VOGEL: Who else do we have on?  
22 Anybody else on the line?

23                  MS. WILLIAMS: This is Jane Williams. I  
24 am the executive director of California Communities  
25 Against Toxics, which is statewide network of over 70

1 community-based predominately environmental justice  
2 groups in California. We've commented and been  
3 involved in a number of Title V permits predominantly  
4 in California. As well, I chair the Sierra Club  
5 National Air Toxics Task Force, which has also reviewed  
6 some Title V permits in other states as well, largely  
7 on incinerators and other major combustion projects.

8                   Rather than repeat the testimony of my  
9 very able colleagues that came before me, you know, on  
10 things like public notification, which is largely  
11 inadequate in most instances, and the responding -- how  
12 the agency responds to comments and both public  
13 hearings, I think you've probably heard a lot of  
14 testimony about the inadequacies of those in many state  
15 programs. And that is -- California's program is  
16 included in that.

17                   But what I specifically want to talk  
18 about today is the issue of startup, shutdown, and  
19 malfunction. Now, I heard some of the previous  
20 testifiers talk about fugitive emission, and it's  
21 important to distinguish startup, shutdown, and  
22 malfunctioning emission from fugitive emissions,  
23 although sometimes they're closely related.

24                   We have tried very hard and many of the  
25 Title V permits that we've commented on to deal with

1 some of these issues regarding both fugitive emissions  
2 and startup and shutdown and malfunction emissions and  
3 try to get conditions both into operating permits and  
4 in the Title V permits and in the preconstruction  
5 permits to deal with this. And it's been very, very  
6 challenging. We also dealt with this issue in some of  
7 the rules, the mass rules especially at the federal  
8 level.

9                   And I think what we've seen with large  
10 combustion facilities is that the emissions that are  
11 occurring during startup, shutdown and malfunction can  
12 actually dwarf the other emissions. They're already  
13 permitted at the facility. And so poorly run  
14 facilities in states that lack enforcement, you can  
15 have emissions for startup, shutdown and malfunction  
16 that neither receive the actual permitted emissions.

17                   And the other thing that is very -- of  
18 great concern to us on this issue of startup, shutdown  
19 and malfunction is the fact that numerous studies have  
20 shown that during the startup, shutdown, malfunction  
21 event you actually can get enhanced emissions of  
22 products of incomplete combustion, things like dioxins,  
23 furans, and polychlorinate as well as polyaromatic  
24 hydrocarbons that are the kind of very nasty toxic air  
25 contaminants that we are very concerned about from a

1 public health perspective.

2                   And so trying to deal with the issue of  
3 limiting the ability of a facility to operate in its  
4 malfunction mode in the Title V context has been very  
5 challenging. Our efforts to try to get enhanced  
6 monitoring of startup, shutdown, malfunction events or  
7 to try to limit the percent during the time that a  
8 facility can maintain its permit, still be in its  
9 permitted mode and engage startup, shutdown and  
10 malfunction event hasn't -- has been largely  
11 unsuccessful in California at least and in other states  
12 as well.

13                   So this remains a serious jailbreak from  
14 the Clean Air Act in the fact that for many of these  
15 facilities there are no limitations. And, in fact, a  
16 lot of times we see -- these are issues or when the  
17 inspector goes out and looks at a facility, I've seen a  
18 couple times -- what's actually happened is the  
19 inspectors said, well, you can just file an incident  
20 report under your startup, shutdown and malfunction  
21 provision and then you would actually be in compliance  
22 with the law.

23                   So to the extent that startup, shutdown  
24 and malfunction provision and these upset reports are  
25 used to essentially avoid compliance with the

1 continuous compliant requirements of the Clean Air Act,  
2 it becomes a very, very difficult enforcement issue in  
3 the Title V context.

4                   And Eric Schaffer actually at the  
5 Environmental Integrity Project recently did a report  
6 on this issue of startup, shutdown and malfunction. I  
7 know that Kelly was very involved with that. And I  
8 think that report points out very clearly, even in very  
9 limited sectors where we looked at this closely, say in  
10 refineries, we've also looked at it at chemical  
11 manufacturers, as well as hazardous waste incinerators  
12 and other types of incinerators.

13                   When you look at the contribution,  
14 especially to the hazardous air pollutant emission from  
15 these facilities, this issue of sort of shutdown and  
16 malfunction is a very significant public health  
17 problem. And with that, I would request questions or  
18 comments or discussion on my comments.

19                   MR. VOGEL: Thank you very much.  
20 Questions from the Task Force. Bob Morehouse.

21                   MR. MOREHOUSE: Jane, this is Bob  
22 Morehouse. You made a comment about looking for  
23 additional terms related -- for Title V contracts  
24 related to fugitive emissions. Can you explain a  
25 little bit more what the issue is.

1 MS. WILLIAMS: There's a significant  
2 difference between fugitive emissions, which are mainly  
3 leaks from valves and pipes and things like that, which  
4 can actually be very significant overall contributors  
5 to emissions, especially at large industrial  
6 facilities, and what are called startup, shutdown and  
7 malfunction events. And they're two separate and  
8 distinct types of emissions, and the startup, shutdown  
9 and malfunction events often have elevated and  
10 increased amounts of hazardous pollutant emission  
11 because they're -- essentially what's happening during  
12 a startup, shutdown and malfunction event is that  
13 combustion unit is operating outside its optimal  
14 performance limit.

15 MR. MOREHOUSE: Let me clarify because I  
16 know there are different types of emissions. I thought  
17 you were indicating on fugitive emissions, that there  
18 was some issues that you wanted to get into Title V  
19 permit specific.

20 MS. WILLIAMS: No, I'm saying that I  
21 thought that David had covered those. He had  
22 specifically mentioned issues of fugitive. And so I  
23 wasn't going to comment on the issue of fugitive  
24 because it seemed like it was covered in previous  
25 testimony.

1 MR. MOREHOUSE: Okay.

2 MR. VOGEL: Adan Schwartz.

3 MR. SCHWARTZ: Hi, Adan Schwartz with the  
4 Bay Area Air District. Talking about startup,  
5 shutdowns and malfunction provisions, and we're  
6 discussing this in generality so it may be difficult  
7 for that reason, but in general these provisions are  
8 written into the applicable requirements themselves  
9 such as new source performance standards or standards  
10 you find the SIP. And as I think you know, the main  
11 job of the Title V permit is just to -- it's mainly to  
12 incorporate those requirements that come from  
13 elsewhere.

14 And so I'm wondering how you have  
15 approached this in commenting on Title V permits? Are  
16 you essentially urging that the requirements themselves  
17 be rewritten or are you commenting that Title V somehow  
18 requires that these be addressed when they're being  
19 incorporated?

20 MS. WILLIAMS: Well, as you know, it's  
21 predominantly the general provisions that apply on SSM  
22 event, and I guess what we see is that there usually  
23 are no specific requirements on somehow limiting SSM  
24 event either in pre-construction permits or operating  
25 permits or in the regulations themselves. And so when

1 you look at trying to deal with the public health  
2 impacts of SSM events in a Title V context, you know,  
3 you're question to me kind of gets to the point that  
4 we're treading in very unstable waters.

5                   But clearly it was not meant by the  
6 crafters and architects of the Clean Air Act that it --  
7 you would just simply get out of compliance by claiming  
8 that you had an upset condition. But yet we see that  
9 happening over and over. So what we've tried to do is  
10 clarify what are upset conditions, and what we've tried  
11 to do both in federal rules and the Title V context is  
12 to place some limit on the amount of time that a  
13 facility can claim its operating startup, shutdown and  
14 malfunction and avoid compliance essentially with those  
15 Title V and other rules.

16                   MR. SCHWARTZ: So it sounds like you're  
17 saying you're not urging wholesale revision of these  
18 requirements, at least not in a Title V context, but  
19 you are urging more definition to some of these terms  
20 so there's more clarity as to how they should be  
21 applied. Is that fair?

22                   MS. WILLIAMS: Yes.

23                   MR. SCHWARTZ: Thanks.

24                   MS. WILLIAMS: I think in the Title V  
25 context they can't -- as you know, you're trying to

1 implement the federal regulations that are in place,  
2 but certainly in the context of when we're working on  
3 the MACT standards, we've been trying to say that,  
4 well, how do you draw the line between what is an upset  
5 condition, what startup, shutdown and malfunction upset  
6 and what is a violation and trying to clarify that and  
7 even put some sort of restriction.

8                   We often use the example of a permit that  
9 was actually written in Region 9 where there was permit  
10 requirements placed upon a combustion unit that says  
11 that it can only operate under startup, shutdown and  
12 malfunction mode a certain percent of the time per  
13 month, and that if it exceeded that, the facility had  
14 to be shut down and they had to go back and amend their  
15 startup, shutdown malfunction plan.

16                   Often the plans are just reference in the  
17 Title V permit. They're not even included in the  
18 permit, much less is the public made aware of the  
19 conditions of the startup, shutdown and malfunction  
20 plan. It will just simply say there's a plan referred  
21 to it and that the requirements of that plan are  
22 included in the Title V permit.

23                   And then there was also an issue earlier  
24 in the Bush administration where you were able to make  
25 changes to the plan without public comment, and that

1 obviously is not -- we're going to rely upon a startup,  
2 shutdown and malfunction plan to show that we're in  
3 continued compliance with the Clean Air Act, but you  
4 can make changes to the plan anytime you want without  
5 oversight by the public. So that's all very  
6 problematic.

7 MR. VOGEL: This is Ray Vogel. Let me  
8 ask a follow-up question on Adan's question, which is  
9 you think that there's a stronger need to clarify the  
10 startup, shutdown, malfunction provisions in state  
11 rules as well as federal rules. Are there problems in  
12 more state rules or federal rules or vice versa?

13 MS. WILLIAMS: Yes, I definitely would  
14 agree with that. I think that the lack of clarity --  
15 again, it eviscerates the enforceability of the Title V  
16 permit when a facility could just pull out its startup,  
17 shutdown and malfunction plan and say, well, see here,  
18 it was included by reference in the Title V permit and  
19 we're in compliance with it.

20 MR. VOGEL: Just to be clear, are you  
21 saying the problems exist both in the state rules and  
22 the federal rules?

23 MS. WILLIAMS: I think -- you're right,  
24 because the state rules come from the general  
25 provisions. I think the general provisions are vague.

1 I think that the state rules implemented in SIP become  
2 even vaguer, and then when the startup, shutdown,  
3 malfunction plans are just referenced in the Title V  
4 permit, it essentially eviscerates the public's ability  
5 or the citizens surrounding the facility's ability to  
6 effectively enforce against a facility that is out of  
7 compliance with the plan or out of compliance with what  
8 should be a reasonable plan.

9 MR. VOGEL: Okay. Thank you. Another  
10 question from Bob Palzer.

11 MR. PALZER: Hi, Jane.

12 MS. WILLIAMS: Hi, Bob.

13 MR. PALZER: Following up on the startup,  
14 shutdown and malfunction mode, I'd like you to take a  
15 crack at how that could also impact SIP planning if  
16 what you say is correct, that you have instances where  
17 you may have more emissions from a source during those  
18 periods when you're in upset mode or start -- you know,  
19 startup or shutdown as to -- well, if you could just  
20 comment on if you think that is a serious problem and  
21 follow up on your attempts to deal with this without  
22 success in terms of, you know, solving this kind of  
23 problem.

24 MS. WILLIAMS: Okay. First of all, Bob  
25 knows very well that I'm not so much a criteria

1 pollutant person as an air toxics person, but I'll  
2 certainly take a crack at answering the question.

3 I think it's very clear that during the  
4 startup, shutdown and malfunction event, not only do  
5 air toxic emissions rise dramatically, but also  
6 depending on the type of facility, it can be nox or CO  
7 or other types of criteria pollutants that indicate  
8 that inefficient combustion and non-threatening  
9 combustion is taking place.

10 And if you look -- some facilities are  
11 clearly -- completely noncompliant. One of the  
12 facilities that we worked on in the Midwest was  
13 operating its facility in startup, shutdown and  
14 malfunction mode 25 percent of the time. And, of  
15 course, emissions are not measured at those facilities  
16 during those SSM events. You know, what we have is,  
17 you know, special study cases and special reports where  
18 you challenge a facility and then you try to figure out  
19 what its emissions are.

20 But what we found -- just to give you one  
21 example, emissions from medical waste incinerators  
22 during startup, shutdown and malfunction events  
23 emissions of dioxin rose 50 times. So you can see that  
24 a facility that where the emissions are rising 50 times  
25 and is being operated 25 percent of the time in SSM



1 the fees to run the program.

2 MS. WILLIAMS: I don't know, I'm not for  
3 sure if you want to get me started on that since I've  
4 been fighting with Barry Wallersby because he told me  
5 he had to take four million dollars out of his general  
6 fund to fund the Title V program which, of course, he  
7 doesn't like in the first place.

8 MR. PALZER: We've had a number of people  
9 commenting --

10 MS. WILLIAMS: Why are you doing that,  
11 it's supposed to be funded by fees on the polluters.  
12 That just another example of how Title V can be a  
13 program gone awry on the fee issue.

14 Now, they don't include the -- I'm not  
15 aware of any program either in on of that states I've  
16 worked in or in the many different air quality  
17 districts in California where they take into account  
18 emissions during startup, shutdown and malfunction and  
19 the fee setting. The fee setting, again, is more based  
20 on potential to emit or in some air districts or  
21 districts on actual emission.

22 MR. VOGEL: Thank you very much. It's  
23 time to move on to the next speaker. I do appreciate  
24 your taking time on this, Jane, today.

25 MS. WILLIAMS: Okay, thank you very much.

1 MR. VOGEL: Mr. Zars.

2 MR. ZARS: I'm at several disadvantages,  
3 one being that I haven't been in on the call today, so  
4 I have not heard all the other testimony except for  
5 about the last hour. So some of what I have to say I  
6 imagine will be redundant, and I apologize for that.

7 I was going to try to limit my comments  
8 to four specific areas, monitoring exceptions like  
9 startup, shutdown, deviations, and compliance  
10 certification. Quickly, though, a bit of background.  
11 I'm a fellow practitioner. I do a lot of citizen suits  
12 for environmental groups enforcing Clean Air Act, Clean  
13 Water Act, the standard environmental statutes. And  
14 the consequence I think working with the Clean Air Act  
15 field I have done a fair bit of work with citizens on  
16 their efforts to comment on -- review and comment on  
17 Title V permits.

18 And then I participated in a number of  
19 petitions to EPA objecting to its permit seeking EPA's  
20 veto of state permits that have resulted in a number of  
21 orders over the years, some here and where I am in  
22 Wyoming, some in other states. And I have worked on  
23 Title V permits from around the country, mostly here in  
24 the West, but also in what I call TVA land in the  
25 Southeast.

1                   Anyway, before I get on those four  
2 subject matters, I was going to say my impression that  
3 even though the Title V program was -- I thought meant  
4 to be very citizen focused and friendly and -- it's  
5 very hard for those of us who are basically marinated  
6 in the regs and the law for years to even understand a  
7 lot of these permits and the background documents and  
8 these various things called deviation reports that are  
9 just very hard to figure out and read as someone that  
10 spends all your time at it.

11                   So my comments are sort of in that vain  
12 to try to make these Title V permits, drafts and the  
13 finals, both the draft and commenting on them, and  
14 finals to use to evaluate compliance accessible and  
15 open to citizens where you don't need tons of expertise  
16 to understand what the devil is going on.

17                   The principal hope with the Title V  
18 program was that there would be all the requirements in  
19 one document in a method to determine whether this  
20 source -- this air pollution source is in compliance.  
21 The fundamental problem I found on a number of Title V  
22 permits -- I imagine you've heard about this before --  
23 is that a bit of failure to either identify the method  
24 of determining compliance or a failure of sufficient  
25 monitoring to establish compliance, and I could speak

1 about a number of different permits but focused on  
2 several on opacity requirements where even though a  
3 source like a coal fired power plant will have  
4 continuous opacity monitors. Those are used to  
5 determine compliance -- it's by Method 9, so-called  
6 calibrated eyeball method -- that is far inferior to  
7 basically state of the art opacity monitors, and yet  
8 the countless, I think, Title V permits are still  
9 allowing sources to get away with a Method 9 reading  
10 maybe once a year, once a quarter. We've objected.

11           The last one I think that I'm familiar  
12 with that I did was a saw mill, it was found to be  
13 insufficient to just have a reading I think even once a  
14 week. And so that was helpful, but it's not assuring  
15 continuous compliance. I'll move on.

16           The previous speaker talked about  
17 exceptions and startup, shutdown, malfunction. I agree  
18 with her in part and I also agree with the questioners  
19 there that part of your problem is the underlying  
20 regulation. There are many that are, I think, very  
21 outdated now but do set out almost a blanket startup,  
22 shutdown, malfunction. I have been in involved in  
23 litigation over those for years.

24           I think what is very important that all  
25 Title V permits should have, and I haven't seen one yet

1 that says this clearly, to the extent that there are  
2 exceptions, they are listed in the permit. So it's not  
3 just the limits, but the exceptions to those permits,  
4 and then a very clear statement that us lawyers are  
5 used to seeing about no other exception shall be  
6 allowed or implied.

7                   That's always the way I interpreted Title  
8 V permits, but every time you go out and push on  
9 enforcing one of these permits, with no exception I  
10 would say over the last five years that I have been  
11 enforcing these, the company will come back and claim  
12 others that were supposedly intended or were somehow  
13 found another underlying regulation. And I think  
14 that's just sort of hide the ball game that the Title V  
15 program was meant to eliminate. And it happened to a  
16 large degree, and I've never found a Title V permit I  
17 could say, look, no, no, you may have startup,  
18 shutdown, malfunction, but you don't have load change  
19 or you don't have bad fuel quality or high ash hopper  
20 or some other excuse, I'm not going to take it, it's  
21 not there. So I think that would really help on the  
22 citizen enforcement side.

23                   Sort of related to that is another issue,  
24 which is the so-called deviation and deviation reports  
25 where -- again, I haven't read every Title V permit

1 obviously, but I've not seen one that says you shall  
2 report all deviations within this certain period of  
3 time; and if you haven't, you've waived your right to  
4 claim any. And deviations is the umbrella term that  
5 covers everything.

6                   Now, I don't know if this has come  
7 before, but it certainly has in my cases where people  
8 claim, well, that really wasn't deviation, that was a  
9 startup or shutdown and those are automatically  
10 exceptions and we don't have to report anything. But  
11 it's, again, a very difficult game for citizens to play  
12 if you are trying to review the compliance of a  
13 facility to determine whether it is or isn't violating  
14 the law and you don't have a requirement to say, okay,  
15 here's the limit and then you're required to tell us  
16 every time you have a viable or a legal excuse to that  
17 limit. If you haven't, you've waived your right to it.  
18 Then I can just go down a list, like you can with a  
19 DMR, the water instance, and say this is a violation,  
20 this a violation, this is a violation, because they  
21 haven't even raised -- raised a defense, they're  
22 forever waived it. And I can see whether this is an  
23 enforceable matter or not.

24                   The same thing to a different degree is  
25 true with the compliance certifications where I'm sure

1 you all are aware you're getting these squirrely  
2 reports that just talk about whether something is --  
3 what are the terms -- in periodic compliance or  
4 frequent or -- the term is missing me right now, but  
5 it's very difficult to determine from those if they do  
6 not say yes, we're in compliance, but no, we're, you  
7 know, in partial compliance. When were you not in  
8 compliance?

9                   Most of the reports, the deviation  
10 reports are not listed or attached to those. They are  
11 often, perhaps, some other quarterly or annual report  
12 and are themselves regularly deficient. So it's just  
13 very hard ultimately for citizens to come down, look at  
14 a document, determine what the law is, pick up the  
15 compliance reports to determine whether a source is in  
16 compliance or not.

17                   Let's see if I've covered everything I  
18 meant to here. Another sort of point on trying to make  
19 the Title V permits a bit more clearer or open or  
20 available to a lay people is to explain in the permit  
21 why, for example, an emergency defense may be  
22 available.

23                   As I understand it, emergency defense is  
24 only available against a technology-based limit, but  
25 often you'll just see a Title V permit that just has

1 emergency and it lists the statutory and regulatory  
2 language, and does it apply, does it not, to which  
3 emission in here, which ones are technology based,  
4 which ones are SIP or health based or ambient based?  
5 You don't know. There's no description. There isn't  
6 even a statement in there that says this only applies  
7 to the technology base or the technology based emission  
8 points on this facility are X, Y, and Z, to which this  
9 defense applies.

10                   That would be very helpful. Here's one  
11 other example. A permit shield provision you'll just  
12 see statements, okay, we're shielding the source from  
13 the following provisions, and it doesn't say, well,  
14 really the law here is that we have to write an  
15 exception specifically from the law for this permit  
16 shield to apply, and it's not like, well, just  
17 everything in this permit is a shield unless we state  
18 otherwise. In other words, kind of restating what the  
19 law -- what the Title V law is and the regulations are  
20 for lay people when they are reading the document to  
21 understand what the underlying law or regulations are.

22                   MR. VOGEL: Thank you very much.

23                   MR. ZARS: That's it. Thanks.

24                   MR. VOGEL: Do we have questions from  
25 anybody on the Task Force? I don't see any questions.

1 Hang on a second. Adan Schwartz.

2 MR. SCHWARTZ: Well, since Reed is a  
3 citizen enforcement attorney who does both NPDS and  
4 Title V and since Title V was supposed to bring the  
5 Clean Air Act -- make the Clean Air Act more citizen  
6 enforceable, I just thought I would ask Reed if he had  
7 an opinion about the extent to which Title V has  
8 succeeded in that so far. Was that question clear  
9 enough, Reed?

10 MR. ZARS: Yes, it's very clear. I was  
11 just rolling around percentages in my mind about the  
12 extent to which it's succeeded. I'm sorry, I'm a bit  
13 pessimistic about this. Maybe 50 percent. I mean,  
14 it's not like the Clean Air Act -- there's Clean Water  
15 Act cases where you just take the DMR and match it up  
16 against the permit limit and enforce, we're free of  
17 problems. And the cases -- case books are full of  
18 companies still finding ways around, like with the tax  
19 law or anything else. But it is far more difficult, I  
20 think, to bring these air cases even under a pretty  
21 respectable Title V permit for some of the reasons I  
22 stated.

23 The exceptions are not as well set forth  
24 and the compliance methods are not as clear, and I've  
25 had even judges, and certainly defendants, but even

1 judges tell me, well, that's the Clean Water Act you're  
2 referring to and you're using all these cases to  
3 explain to us Clean Water Act, but we're on to the  
4 Clean Air Act and these permits are insane. And  
5 sometimes it's true, they are not written as clearly.

6 Here's probably the best example They'll  
7 say the DMRs -- and there's a lot of case law on  
8 this -- the DMRs are dispositive evidence of proving a  
9 violation. It's not as clear at all under the Clean  
10 Air Act. You just -- I don't know if you can find a  
11 case.

12 I mean, we're all crawling around on any  
13 credible evidence rule or this is sufficient evidence,  
14 like the Sierra Club, the Public Service Company case.  
15 But I don't know if I can find a Clean Air Act case  
16 that says, yeah, that's monitoring evidence, that was  
17 meant to be dispositive just like it is as a DMR, we  
18 got you dead to rights. I'd say that's the principal,  
19 sort of failing so far.

20 MR. VOGEL: Steve Hitte.

21 MR. HITTE: Steve Hitte with U.S. EPA.  
22 I'll admit I'm still struggling with the startup,  
23 shutdown, malfunction issue that you and other people  
24 that have testified, but be that as it may, let me ask  
25 you this question. Recognizing you're talking to the

1 Title V Task Force, what suggestions do you have to  
2 this Task Force to fix this issue?

3 MR. ZARS: Well, you're asking a lawyer  
4 who has a fair amount of respect for the law, even if  
5 it's wrong, and I -- within those bounds, and not to  
6 get too radical, I could see that within the  
7 definitions of startup, shutdown and malfunction -- for  
8 example, let's look at the NSPS.

9 Well, the startup is defined as the  
10 putting into operation of an affected facility, I  
11 think, or something like that, and even with that very  
12 limited definition, one could through the Title V  
13 program require a source to describe what it was doing  
14 during that time and demonstrate why all of that  
15 period -- and I agree with the woman before me where  
16 you can get hours or you can get days of alleged  
17 startup. Why all that time is necessary to put that  
18 facility into operation?

19 Same thing with a shutdown. You have a  
20 very dry definition, you know, the cessation of the  
21 operation of an affected facility. I think that's  
22 almost verbatim out of the NSPS. Well, explain all of  
23 the times -- all of the periods of time and why it was  
24 necessary to cease the operation of that facility.

25 That would -- not messing around with

1 anything, I'm not putting a time limit on it, not  
2 rewriting any regulation, I'm just asking you to fully  
3 justify your characterization of that startup or that  
4 shutdown. I think that would be very helpful.

5                   For malfunction is probably the -- we'd  
6 have a real mine field here or a gold mine because  
7 there are requirements, qualitative requirements to  
8 establish what a malfunction is, and you shall clearly  
9 state and provide the reasons for or justification why  
10 this is a malfunction, why it's out of your control,  
11 did it meet all the elements of being an unanticipated  
12 event. So it meets all of the requirements of the  
13 malfunction defense. That would be a huge boost  
14 forward.

15                   So those are sort of off the top of my  
16 head ways in which I think within your Title V purview  
17 and within the law you could still get much better  
18 report and much better ability of citizens to analyze  
19 the validity of those claims.

20                   MR. HITTE: That's been helpful. I would  
21 say that your answer enters into a debate of whether if  
22 we did what you suggested, that you're now asking Title  
23 V to fix underlying problems and rules of which Title V  
24 is not set up to do that.

25                   MR. ZARS: Well, I was trying to tread

1 carefully there because I think you have a better  
2 argument to me if you said -- if I said, well, you  
3 know, hey, just limit all these startups to five hours,  
4 and I've had it. Well, you know, I don't see that in  
5 the regulations.

6 And if your aim is just to be putting in  
7 the only required due or obligated to do is put in the  
8 applicable limits, then I see that might be going too  
9 far. But to require better reporting and better  
10 justification, I don't know if that's sort of rewriting  
11 the regulations or going beyond the scope or intent of  
12 the Title V requirement.

13 MR. VOGEL: Okay. Thank you very much.  
14 I appreciate your taking the time to be with us today.

15 MR. ZARS: Okay, well, thank you.

16 MR. VOGEL: We are expecting one more  
17 speaker, Deborah Master.

18 MS. MASTERS: Yes, I'm here.

19 MR. VOGEL: Thank you.

20 MS. MASTERS: Should I just go ahead?

21 MS. VOGEL: Are there any other speakers  
22 on the line?

23 Deborah, go ahead, please.

24 MS. MASTERS: I have to say that there's  
25 a gigantic fire in the Brooklyn Navy Yard next to me,

1 so I'm having a little bit of trouble speaking, so if  
2 you could bear with me.

3 My name is Deborah Masters. I'm chair of  
4 the Brooklyn Community Board 1 Environmental Committee  
5 and I'm the pollution prevention coordinator for NAG,  
6 which stands for Neighbors Against Garbage. I was also  
7 the first director of the Watchperson project here. I  
8 live in Greenpoint -- live and work in  
9 Greenpoint/Williamsburg of Brooklyn, New York.

10 The physical document for the Title V  
11 application in New York State has too much heavy black  
12 writing and lines on the page, which makes it really  
13 difficult to read it. We would -- the community would  
14 prefer a much simpler page layout that read from left  
15 to right that was a normal typeface, not everything in  
16 big bold, big black writing.

17 I'm going to go through specific examples  
18 of Title V in our community. One permit we look at is  
19 the Newtown Creek Sewage Treatment Plant. This  
20 facility exists in Greenpoint/Williamsburg's heaviest  
21 industrial zoning area. And environmental justice  
22 community begins two blocks from this site and wraps  
23 around the entire M3 district, a zoning area.

24 Newtown Creek Sewage Treatment Plant is  
25 the largest sewage treatment plant on the East Coast

1 and handles much of the heaviest industrial influent in  
2 New York City. It is undergoing reconstruction to meet  
3 secondary treatment levels.

4                   The Title V permit is actually really  
5 good for this plant. It says that each of the plant's  
6 emission sources, including mobile sources during  
7 construction. However, it does not record the levels  
8 of industrial influent. New York City DEP air  
9 monitoring, shows that at least 25,000 tons per year of  
10 VOC's evaporate during the aeration process from this  
11 plant. This is a major air emission.

12                   The NCMC or the Newtown Creek monitoring  
13 committee is a committee of volunteers, has been  
14 meeting for 12 years. We succeeded in getting the  
15 aeration tanks covered in the plant's upgrade as a  
16 mitigation. The upgrade won't be completed until 2012.

17                   This victory saw no support from DEC or  
18 EPA despite NAPA report recommendations that in quotes,  
19 "EPA's permit writers should identify ways to mitigate  
20 or reduce emissions and other environmental and public  
21 health impacts of proposed facilities such as required  
22 pollution prevention and implementing environmental  
23 management systems." This seems an instance where an  
24 EJ community could have received EPA support in the  
25 Title V permit or during mitigation negotiations.

1                   Another Title V permit, Diamond Asphalt,  
2 we call this company DAC. The company proposes to  
3 reopen adjacent to the sewage treatment plant, also in  
4 the heaviest industry area two blocks from an EJ  
5 community. It will produce one-third of New York  
6 City's asphalt.

7                   DEC did not attend the public information  
8 meeting. There was no transcript. 35 community  
9 members made educated statements based on a careful  
10 reading of the air permit. Ten politicians or their  
11 representatives also asked educated questions and made  
12 informed statements. Yet we were not granted a public  
13 hearing. From my experience, the high level of  
14 comments we provided merited an issues conference, not  
15 just a public hearing. Permit documents could not be  
16 located in the library until the day before this  
17 meeting.

18                   Using particulate matter emissions data  
19 provided by Diamond Asphalt in their permit  
20 application, an engineer working with the community  
21 found that PM2.5 impacts would require DAC to develop  
22 an EIS. DEC neg'd at this application and denied  
23 further PM2.5 analysis or mitigation.

24                   The EPA standard for GEP was also waived  
25 in this application despite the heavy background load

1 and adjacent Nature Walk that New York City DEP spent  
2 millions on as a mitigation to the sewage treatment  
3 plant rebuild and nearby residents because of the cost.  
4 Neither the adjacent Nature Walk nor tall engineering  
5 building at the sewage treatment plant were reflected  
6 in sensitive receptor placement in the original model.  
7 The engineering building is tall enough to create  
8 downwash and pocketing on the Nature Walk. DEC's reply  
9 was that if GEP stack height is not feasible,  
10 documented justification for the proposed stack height  
11 must be presented. DEC sites the bag house as  
12 effectively removing all PM2.5, VOC's, carbon monoxide,  
13 SOx. EPA did not weigh in on this conversation.

14                   The Title V was a rush. The city needs  
15 this asphalt. Too many decisions of this sort are  
16 political in New York City. Neither the community  
17 process nor the Environmental Justice Policy were  
18 adequate or thorough.

19                   NYPA, New York Power authority, a 45  
20 megawatt turbine which is located one block from a  
21 lower school with 1,100 mostly Hispanic children with  
22 high asthma levels and adjacent to the communities only  
23 park. The plant's original application came under  
24 SEQRA, State Environmental Quality Review Act. When  
25 emissions went over limits, the facility made a Title V

1 application, which permits it's exceedences. It's  
2 equipment malfunctions result in many startups and  
3 shutdowns contributing to intensive bursts of ammonia  
4 particulate matter and VOC's to the community. The  
5 Title V permit should provide more monitoring and  
6 inspections to meet these problematic conditions.

7                   None of the applications in our area  
8 acknowledge the Greenpoint/Williamsburg community as  
9 high risk despite the community's four power plants, 22  
10 toxic release inventories, 220 right to know  
11 facilities, the Newtown Creek Sewage Treatment Plant,  
12 the Mobile Oil spill, one half of New York City's  
13 transfer station activity, and one quarter of the  
14 city's bulk petroleum storage with its historic leaks,  
15 all within 4.8 square miles.

16                   Many major sources in our community are  
17 shown to be just below the threshold for particulate  
18 matter and VOC over threshold for NOx and SO2.  
19 Cumulative risk assessment should be conducted by EPA  
20 for each Title V application.

21                   Recent air monitoring in Williamsburg  
22 adjacent to the Brooklyn Navy Yard show the highest  
23 levels of diesel particulate in New York City in  
24 city-wide monitoring by CBNS of Queens College and NYU.  
25 Mitigation in areas such as ours should not be offset

1 by emissions credits from upstate New York. Emissions  
2 problems here are very local.

3 MR. VOGEL: Can I ask you to try to sum  
4 up, please?

5 MS. MASTERS: I'm sorry?

6 MR. VOGEL: Can I ask you to sum up,  
7 please?

8 MS. MASTER: Yeah, I'm doing that. I'll  
9 talk fast.

10 In an EJ community that has a high  
11 background load, the Title V permit and it's  
12 administrators should account for the existing  
13 environmental burden by conducting cumulative risk  
14 assessments and should analyze exposures to actual or  
15 potential amounts of multiple pollutants. More  
16 frequent inspections and comprehensive monitoring  
17 should be written into these permits. In an area with  
18 high asthma rates PM2.5 problems must be mitigated  
19 through local pollution prevention projects.

20 In New York City, five EJ communities  
21 assume most of the environmental burden because of the  
22 industrial zoning there. It seems that that DEC looks  
23 at each new siting in terms of its incremental  
24 increase, which does not satisfy the Clean Air Act. We  
25 would like a much greater EPA presence in Region 2 in

1 Title V permitting.

2 MR. VOGEL: Thank you very much. Are  
3 there any questions from the Task Force? I don't see  
4 any.

5 Deborah, could I ask if you have a  
6 written -- it sounds like you were reading from  
7 something written.

8 MS. MASTERS: Yes, I was. And I actually  
9 have a public notice thing that I didn't get to, so  
10 I'll send you the whole thing.

11 MR. VOGEL: Yes, please send it to -- you  
12 could send to me at my e-mail, Vogel.Ray@EPA.Gov.

13 MS. MASTERS: My e-mail is not working at  
14 the moment. Can I fax it to you.

15 MR. VOGEL: Fax it to -- number is  
16 919-541-5509.

17 MS. MASTERS: Okay, thank you.

18 MR. VOGEL: Thank you, and thank you for  
19 being here today to present your testimony.

20 MS. MASTERS: Okay, thank you. Bye.

21 MR. VOGEL: Is there anyone else on the  
22 line? All right. Well, with that, I would like to say  
23 thank you to all the speakers and thank the Task Force  
24 for being here today. That concludes our proceedings  
25 today.

1 THE STATE OF TEXAS )

2 COUNTY OF DALLAS )

3

4 I, Tracey D. Smith, Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above and foregoing contains a true  
7 and correct transcription of all proceedings requested  
8 in writing to be included in the transcript, all of  
9 which occurred before me and were reported by me.

10

11 Given under my hand and official seal of  
12 office this the 14th day of December, 2004.

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