

1 TITLE V TASK FORCE PUBLIC MEETING
2 CHICAGO, ILLINOIS

3 TRANSCRIPT OF PROCEEDINGS had in the
4 above-entitled cause on the 14th day of September,
5 A.D., 2004, at 8:00 a.m.

6 PRESENT:

- 7 U.S. ENVIRONMENTAL PROTECTION AGENCY
- 8 -Office of Air Quality Planning and Standards
- 9 Bill Harnett - Chair
- 10 Steve Hitte
- 11 Michael Ling
- 12 Ray Vogel
- 13 -Office of Enforcement and Compliance Assurance
- 14 Carol Holmes
- 15 -Office of General Counsel
- 16 Padmini Singh
- 17 -Region 8
- 18 Callie Videtich

19 TASK FORCE MEMBERS

- 20 -Shannon Broome, Air Permitting Forum
- 21 -Lauren Freeman, Utility Air Regulatory Group
- 22 -Steve Hagle, Texas Commission on
- 23 Environmental Quality
- 24 -John Higgins, New York Department of
- Environmental Conservation
- Bob Hodanbosi, Ohio Environmental Protection
- Agency
- Shelley Kaderly, Nebraska Department of
- Environmental Quality
- Marcie Keever, Our Children's Earth
- Bob Morehouse, ExxonMobil
- Verena Owen, Lake County Conservation Alliance
- Bob Palzer, Sierra Club
- Bernie Paul, Eli Lilly
- Keri Powell, New York Public Interest
- Research Group
- Adan Schwartz, Bay Area Air Quality
- Management District
- Don van der Vaart, North Carolina Department
- of Environment and Natural Resources
- Richard Van Frank, Improving Kids' Environment
- David Golden, Eastman Chemical
- Kelly Haragan, Environmental Integrity Project
- Mike Wood, Weyerhaeuser

1 EC/R INCORPORATED
 -Graham Fitzsimons
 2 -Shannon Cox

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1 MR. HARNETT: I want to thank everyone for
2 coming here today, and I want to thank, again, the
3 task force for volunteering to do this effort with
4 us. We're here today because the Clean Air Act
5 advisory committee, which provides advice to EPA
6 about its clean air programs, created this task
7 force to look at the implementation of the Title V
8 program. And now that we're 10 years down the
9 road -- actually closer to 14 -- how has it been
10 actually proceeding, and what is going right out
11 there, and what problems are being encountered out
12 there.

13 Now that we have tremendous experience,
14 we felt this was a good time to actually take a
15 look at the issue.

16 We were charged by them with two
17 particular questions, which is just how well is it
18 performing and what are the elements that are
19 working well or poorly, as it were?

20 They've asked this task force to create
21 a report to answer these questions based on the
22 information we both gather today and in any
23 subsequent types of public meetings or in phone
24 conversations. We are also going to collect

1 information in written comments through next March
2 as well.

3 The guidance they gave us is the report
4 should reflect the perspective of all the
5 different stakeholder groups, both the permitting
6 agencies, the industry getting permits, and the
7 public participating in the permitting process.
8 And that it should also reflect to the maximum
9 degree possible the real world experiences people
10 have been encountering with the program.

11 It's critical for the speakers today
12 that the more real examples we can have, the more
13 useful it is to you or to us, rather. The report
14 is supposed to describe the information exactly
15 about what's working well and any other kind of
16 beneficial outcomes that are coming with the
17 program. And it may also, in the end, make
18 recommendations about how to improve the program
19 overall.

20 I'm optimistic that everything we will
21 be getting both today and throughout the process
22 is going to be very helpful in deciding how to
23 move forward as an agency in the overall Title V
24 program.

1 In a moment we'll go around up front
2 here and introduce ourselves and give you a
3 feeling for who all of us are and what our
4 backgrounds are. Our goal overall today is to
5 ensure everyone with information relative to the
6 mission will have a chance to be heard. We've set
7 up the meeting with that in mind.

8 We have also structured enough time for
9 both presentation and questions. It's become
10 obvious in our first meeting of this sort that the
11 questions that we did have of different speakers
12 was extremely valuable. So we will be limiting
13 speakers to no more than 15 minutes of direct talk
14 themselves, and then there will be additional time
15 for questions with them. We will be constraining
16 the whole time to a half hour per speaker for the
17 ones that have signed up today. We do have some
18 additional slots for those who haven't signed up
19 who are interested, and they can do that outside,
20 and we'll keep that updated as the day goes on.

21 We would like each person to introduce
22 themselves and give some background so we
23 understand a bit what their sort of basic
24 experience is with Title V before making the

1 presentation. It's helpful to us in understanding
2 things.

3 Overall, we're keeping a transcript of
4 this meeting and all the other ones that we hold,
5 so we do have a court reporter, and the whole
6 meeting will be recorded. For that purpose, with
7 the people around the table, just a reminder that
8 when you're going to ask a question, that we need
9 to get a microphone to you so that you can speak
10 into that. That will help both the court reporter
11 and the recording of it.

12 To the degree the speakers can, it's
13 useful if you could sit directly across from me.
14 We will give you support on managing your
15 materials, if you have a presentation. But it is
16 a useful thing if you're sort of sitting and
17 working with us in a sense. But if you wish to
18 use the podium, that's available as well.

19 I will give you warnings when you have
20 two minutes left of your time. I will also give
21 all of us a warning when we're running out of the
22 30 minutes each time.

23 There tentatively will be one more
24 meeting of this type that we're planning, probably

1 in the early part of next year, and we'll put out
2 a public notice on it. Tentatively we're going
3 out West, it looks like San Francisco, for the
4 last of our public meetings.

5 For today, just some logistics. We will
6 be breaking for lunch at 12:30 to 1:30. We will
7 also break at the end of the day at 5:15 and take
8 a two-hour break for dinner and come back for an
9 evening session beginning at 7:15 this evening.

10 And at this point I would like everybody
11 to introduce themselves. I'm Bill Harnett. I'm
12 with the EPA's Office of Air and Radiation. I
13 manage the division that has the new source review
14 permitting program and the Title V permitting
15 program in it.

16 MR. GOLDEN: I'm David Golden with Eastman
17 Chemical Company. I'm a lawyer with Eastman, used
18 to be outside counsel as well, and have worked on
19 about 45 Title V permits in a dozen states.

20 MR. HAGLE: I'm Steve Hagle. I'm with the
21 Texas Commission on Environmental Quality, the air
22 permits division. I've worked since about 1987 in
23 air permits, both new source review and Title V.

24 MS. HARAGAN: I'm Kelly Haragan. I'm with

1 the Environmental Integrity Project in D.C. Prior
2 to that I was a public citizen in Texas, and
3 that's where most of my Title V experience is.

4 MS. HOLMES: I'm Carol Holmes. I'm in the
5 air enforcement division of EPA, and I've been
6 doing permitting since before I came to the agency
7 about eight years ago.

8 MS. SINGH: I'm Padmini Singh, and I work in
9 the Office of General Counsel at EPA and work on
10 Title V issues.

11 MR. HODANBOSI: I'm Bob Hodanbosi with Ohio
12 EPA. I will not put on the record how many years
13 I've been doing air permits; just many. Also, I
14 am chair of the STAPPA permitting committee.

15 MR. WOOD: I'm Mike Wood with Weyerhaeuser
16 Company. I'm an environmental affairs manager in
17 the Midsouth region of the United States. I
18 support our facilities in Arkansas, Oklahoma, and
19 Texas. I hope to provide a perspective of air
20 permitting to the task force, from a forest
21 products and paper manufacturing perspective, as
22 well as from a general industry perspective in the
23 Midsouth.

24 MS. POWELL: I'm Keri Powell, representing

1 the New York Public Interest Research Group. I've
2 filed comments on dozens of permits and petitions
3 with EPA and have also helped instruct citizens on
4 how to participate in the process at training
5 conferences across the country.

6 MR. HITTE: My name is Steve Hitte. I work
7 for the U.S. Environmental Protection Agency with
8 Mr. Harnett. My principal function is to manage
9 first-line supervisor of the Title V program.

10 MS. BROOME: Good morning. My name is
11 Shannon Broome. I'm with the Air Permitting
12 Forum, which is an industry group. I too have
13 filed comments on dozens and dozens of permits,
14 and done permit appeals, and that's basically what
15 I do all day long.

16 MR. VOGEL: I'm Ray Vogel with the EPA in
17 North Carolina. I helped develop the 1992
18 regulations for Part 70. I'm also here just
19 helping to support the task force, whatever
20 capacity they desire.

21 MS. VIDETICH: My name is Callie Videtich,
22 with EPA Region 8 in Denver. I manage in part the
23 permitting program in Region 8.

24 MR. SCHWARTZ: Adan Schwartz; I'm an attorney

1 with San Francisco Bay Area Air Quality Management
2 District. In the early '90s I helped Ray help
3 draft the Part 70 regulations, and then I was
4 later in the '90s in Region 10 Seattle, with EPA.
5 Now I'm working actually writing -- helping write
6 Title V permits in the Bay Area.

7 MR. VAN FRANK: I'm Richard M. Van Frank.
8 I'm president of Improving Kids' Environment in
9 Indianapolis, Indiana. I previously served on the
10 Indiana State Air Pollution Control Board and have
11 been involved in air issues for a number of years.

12 MR. VAN DER VAART: I'm Don van der Vaart.
13 I'm the head of major source permitting in North
14 Carolina. Prior to coming to the state, I worked
15 both for oil industry and utilities.

16 MR. PAUL: I'm Bernie Paul with Eli Lilly in
17 Indianapolis. I've been working on air permitting
18 issues for about 18 years, both with a local
19 agency and for Eli Lilly. In the '60s and '70s, I
20 was a little kid riding my bike, playing baseball,
21 and did stuff like that.

22 MS. OWEN: I'm Verena Owen with the Lake
23 County Conservation Alliance in Illinois. We are
24 an umbrella organization for small grass-roots

1 organizations. So we have done Title V work both
2 on our own behalf and with other groups on
3 countless permits and a variety of sources.

4 MR. MOREHOUSE: I'm Bob Morehouse,
5 ExxonMobil, responsible for a team that does --
6 involved in regulatory development and compliance
7 support.

8 MR. LING: I'm Michael Ling. I've been
9 involved in air permitting since 1992, almost all
10 of that with EPA, and I'm currently on the staff
11 of Bill Harnett at the Office of Air Quality
12 Planning and Standards.

13 MS. KEEVER: I'm Marcie Kever. I'm with Our
14 Children's Earth, and we've commented on, like
15 Keri said, dozens of Title V permits in the Bay
16 Area in San Francisco. Prior to that, actually,
17 my work was on behalf of OCE with the
18 Environmental Law and Justice Clinic at Golden
19 Gate University and have filed a number of
20 petitions and helped citizens comment on Title V
21 permits in the Bay Area and across the country.

22 MS. KADERLY: I'm Shelley Kaderly. I'm the
23 division administrator for the State of Nebraska
24 Air Quality Program. I've -- when I first started

1 working in the air program, my first job was in
2 permitting. I was one of the engineers hired out
3 of the Title V fund that we got in the state, and
4 so I've been working in some area of Title V
5 permitting for the last 10 years or so.

6 MR. HIGGINS: I'm John Higgins. I'm the
7 assistant director of the division of air
8 resources in New York State Department of
9 Environmental Conservation. I started doing air
10 pollution work back when Lyndon Johnson was
11 president.

12 MR. PALZER: I'm Bob Palzer. I'm the senior
13 policy analyst for the Sierra Club air committee.
14 I've been working on air issues for several
15 decades and have commented on Title V permits in
16 many states and given advice to others on the
17 program that live in southern Oregon.

18 MS. FREEMAN: Thank you. I'm Lauren Freeman.
19 I'm with the law firm of Hunton & Williams in
20 Washington, D.C., and I'm here representing the
21 Utility Air Regulatory Group, which is a group of
22 40 or 60 individual utilities, as well as several
23 trade organizations focusing on utility issues. I
24 counsel the group on Title V issues, participate

1 in rule-makings and work with individual utilities
2 on Title V issues.

3 MR. HARNETT: Two other simple things. One
4 is, the rest rooms for the facility are located
5 through the back, are up the stairs and off to the
6 left.

7 One final reminder for the task force
8 members is that they need to raise their cards in
9 order to tell who would like to question a
10 particular person who's making the presentation.

11 At this point I'd like to welcome the
12 first person up who is on our agenda, which is
13 Steve Murawski, I believe.

14 MR. MURAWSKI: Yes.

15 Good morning everybody. My name is
16 Steven Murawski. I work with Gardner, Carton &
17 Douglas, in a law firm based out of Chicago.

18 I really appreciate the opportunity to
19 be the first speaker of today's task force
20 inquiry. I think it's really important that the
21 EPA and state agencies understand exactly the
22 different perspectives that come to Title V
23 permitting.

24 The way that I have approached this

1 presentation is I've tried to take a very almost
2 nuts-and-bolts practical approach to both the
3 comments that are positive and also the issues
4 that I've seen during Title V permitting and
5 enforcement and appeals, and also maybe some
6 suggestions that are an outgrowth of my former
7 life as an agency attorney at EPA.

8 Just an introduction of what I'm going
9 to present, perspective and experience in response
10 to Mr. Harnett's request to talk about exactly
11 where we're coming from and how we've come to
12 develop our comments.

13 I'll talk about the positive aspects of
14 the Title V program, and even though there are
15 only two slides, there are many more. But what I
16 was trying to do is talk more about the issues and
17 recommendations and focus on those, and that's the
18 last part.

19 My experience, I was a former regional
20 counsel for Region 5. I also, since that time,
21 have joined Gardner, Carton & Douglas, and in both
22 capacities have really focused on Clean Air Act
23 compliance counseling and enforcement.

24 Where I've seen it, I've seen it in

1 initial applications, permit modifications,
2 renewal applications, enforcement. And one thing
3 I didn't say up here, but it does exist, is
4 appeals that we've had to do more frequently
5 lately.

6 Now, for the positive aspects of Title V
7 process, again, only two slides, but there are
8 many more. I really want to start off by saying
9 state agencies are really doing a lot of work, and
10 I do appreciate it, and despite the comments
11 later, I recognize all their efforts;
12 short-staffed, underfunded, but they're really
13 doing the best they can. I understand that, but
14 these comments are despite that.

15 Most states have clear Title V
16 permitting rules in there -- either in statute or
17 regulation that mirror the federal rules, which
18 makes it easy if you're bridging a number of
19 jurisdictions when you're looking at Title V
20 permits, so that's very helpful.

21 What's also helpful is that I see a
22 number of states now have application forms which
23 make a lot of the analysis really easy,
24 especially, for instance, for CAM plans,

1 development. I see, for instance, Illinois has a
2 CAM plan form, which really focuses on answering
3 questions. By the end of the form, you know
4 whether or not you need one. Those things are
5 very helpful to companies.

6 And then finally, states are
7 increasingly providing access to their rules,
8 their policies, and also the ability to apply
9 on-line through the Internet. And I think that is
10 great because it's a cost-saving measure. So, you
11 know, in essence even the environmentalists in the
12 room will agree that that's a great option, saving
13 on paper there.

14 In general, I think the permit engineers
15 who work on the Title V permits are really helpful
16 and willing to work with companies to develop the
17 best permits. Sometimes it doesn't happen on the
18 initial permit issuance, and, you know, it takes
19 about six months of shakeout to get the provisions
20 that don't work. But overall I've seen that most
21 state agencies and most permit engineers are
22 really willing to work with the companies to
23 develop worthwhile permits.

24 For the final section, issues and

1 recommendations, I've really broke it down to four
2 major categories; permit processing, regulatory
3 citations and permit requirements, any kind of
4 additional guidance which fell out of those two,
5 and then training.

6 Regarding permit processing, the
7 recommendation -- the first recommendation would
8 be that Title V forms, permits, and policies
9 should be uniform throughout all of the
10 jurisdictions. It's very frustrating to -- in
11 some ways to assist folks who have a Title V
12 permit that's five pages versus a Title V permit
13 that might be 300 pages.

14 And what I think might be worthwhile is
15 if this task force consider a couple of states
16 that have marquis Title V programs and permits
17 that are easy to read, easily understandable, and
18 really satisfy all of the U.S. EPA's goals of the
19 Title V program, and offer those to all the states
20 as templates. I really think that that would be
21 worthwhile and really would help companies such as
22 ones that I represent that have a number of
23 facilities in multiple jurisdictions.

24 And also, allow agency guidance to

1 really be -- to really cross over into multiple
2 jurisdictions rather than maybe focusing on one or
3 two jurisdictions that have Title V permits that
4 respond to that particular guidance.

5 The next, obviously it's funding. I
6 recognize funding is an issue, but really, state
7 permit programs should be adequately staffed to
8 timely process permits. I won't go into that
9 because obviously there has been a lot of
10 litigation on that issue.

11 But in response to that I would say that
12 an idea is to allow facilities to really write
13 their own permits using a state or federal
14 template, and offer that to the state as a
15 starting point to negotiate a final Title V
16 permit. I think that it would save a lot of state
17 resources or federal resources, if they're writing
18 the permit, to allow the facility to really -- who
19 knows the facility very well, to offer to do the
20 first draft of a Title V permit. I know a lot of
21 clients who would be willing to do that, and I
22 think that that would satisfy some of the concerns
23 with understaffing and timely processing of
24 permits.

1 Another issue is that the knowledge of
2 the permit engineer really shows in a first draft
3 of a permit, and I recognize that some engineers
4 might be starting out their careers for the first
5 time writing their first Title V permit, but a
6 recommendation I have is that if a permit engineer
7 is writing a Title V permit for a larger facility
8 or even small facilities, maybe they should reach
9 out to that facility and see whether or not the
10 facility would be willing to give them a tour or
11 some other kind of incorporation into
12 understanding how the business works so that a
13 very well thought out Title V could be written.

14 And a related comment would be to have
15 permit engineers sort of specialize in different
16 industries; for instance, petrochemical
17 manufacturing, steel manufacturing, things like
18 that. So that way when they're writing permits,
19 it will be easier for them to understand the types
20 of units that they're regulating.

21 Another recommendation would be to allow
22 as a matter of course the Title V permittees to
23 review the pre-public comment permit so that you
24 can talk about minor administrative errors that

1 could be corrected immediately prior to public
2 comment. You can offer the ability of the Title V
3 permittee to update stale applications. And I
4 know that there is affirmative obligation to
5 update applications, but from a practical
6 standpoint, many states will say, "Don't send us
7 updated application materials. We're not going to
8 process your material for a long time. Wait until
9 we're ready to do it." So this would offer an
10 opportunity to update those stale applications.

11 Then I guess the third thing is it would
12 limit the number of modifications that are
13 requested in the public comment period between the
14 draft permit and the final permit issuance. So it
15 would -- you would have a similar permit in draft
16 form and final form that the facility could live
17 with, absent other comments from the outside
18 community that might impact that permit.

19 There are a number of industries that
20 have unique permitting situations, and the
21 recommendation here really is to have states reach
22 out to the U.S. EPA during the permit process
23 before the public comment period. If there is
24 going to be complex terms and conditions imposed

1 upon the facility, or if the state is unsure of
2 exactly how to regulate certain units, the
3 recommendation really would be to have the state
4 reach out during the drafting of the permit to the
5 U.S. EPA region so that you can resolve those
6 issues and avoid objections to the permit.

7 And then just for permit modification
8 processing, just many of the states have time
9 limits. The recommendation would be to follow
10 those time limits. I realize the number of states
11 have resource constraints, and they're still
12 issuing some initial Title V permits, but updates
13 of those permits are really important to many of
14 the permittees. And as a second suggestion --
15 this is probably pie in the sky -- maybe offer a
16 way to have expedited processing for significant
17 permit modifications under limited circumstances
18 for projects that are time-sensitive because some
19 projects need to be accomplished quickly to take
20 advantage of the economy, et cetera.

21 One thing I've noticed, and this is an
22 isolated incident, but really there was nothing
23 out there that discussed the objection process
24 that -- there was one document out there, but it

1 wasn't really clear on the objection process after
2 the U.S. EPA continues to disagree with the state
3 changes to a permit. And the only request here
4 would be to maybe issue some sort of guidance
5 document or statement on exactly what that process
6 would be after -- you know, throughout the
7 objection process, outside of the statutory
8 language, which I think is a little bit unclear.

9 Next, going on to regulatory citations
10 and permit requirements, regarding regulatory
11 citations, there are a couple of states in their
12 Title V permits that will include the entire
13 regulation, if a source is subject to NESHAP
14 standards. I saw a permit that was over 500 pages
15 because it had three subparts of a NESHAP standard
16 verbatim in the Title V permit, as part of the
17 Title V permit.

18 I just think that from a permitting
19 standpoint, that's really unnecessary. And
20 secondly, if a NESHAP standard changes, you would
21 have to get a permit update or, you know,
22 obviously if the permit contains a condition in
23 there that says it automatically updates if the
24 law changes, but still I think it's really

1 unnecessary and clouds up the real meat of the
2 permit, and so that's something that should be
3 discouraged.

4 Another issue is that certain permits
5 will include the entire language of a particular
6 regulation, even though there are options for
7 compliance. And I'll give you an example.

8 Say a NESHAP standard provision has
9 three options to demonstrate compliance with that
10 particular provision. I'll see Title V permits
11 with all three provisions in there without
12 guidance on the permittee must comply with one of
13 those. So in essence, every year there is a
14 permit violation because they're not meeting two
15 of those options. And the suggestion really is
16 when the permit is being written, either put in
17 the compliance option chosen by the facility or
18 just cite the regulation. That's really the
19 simplest way to overcome this issue, because it
20 does become more of an issue when you're doing the
21 compliance certification and the client is calling
22 you up and saying, "I haven't done this." Well,
23 then there is noncompliance. So that's the
24 problem.

1 And then avoid paraphrasing regulations.
2 I see these mostly in inspection authority, and I
3 don't know if it's purposeful or not, but really
4 the authority should be the authority granted by
5 statute and regulations, and sometimes
6 paraphrasing can cloud exactly what the
7 regulations will require.

8 I see that I have only two minutes. At
9 this time I'd like to incorporate all of my
10 comments into the record if possible, because I'm
11 not going to finish. I offer anybody, if they
12 want additional information on any of the comments
13 that I've provided, to please contact me. Contact
14 information, Ray Vogel has it.

15 Now, the U.S. EPA has recently confirmed
16 that monitoring requirements should only be those
17 required by law, but we still see permit
18 provisions that include additional monitoring,
19 outside what I believe is statutory or existing
20 statutory to legal or regulatory authority, and
21 this is just a responsive slide to that.

22 The additional thing I'd like to tell
23 the states is that each additional monitoring
24 requirement can be very costly, and so it might

1 not be a big deal to change something from once
2 per day to once per shift, but when you're talking
3 about hundreds and hundreds of monitoring points,
4 that is a significant cost increase. So in
5 essence, keep with the regulations when you impose
6 monitoring requirements, if at all possible.

7 Also, short-term emission limits; this
8 is a consistent problem with many Title V permits,
9 and what happens is an annual emission limit will
10 be divided by 12, and then that will be the
11 monthly limit. And really, for some businesses
12 that will never work because there are a number of
13 clients I have that have seasonal production. So
14 when they get their Title V and they have an
15 emission limit that limits their monthly
16 production in their biggest months, they can't --
17 basically it's curtailing their production, but on
18 an annual basis, they will easily meet annual
19 emission limits.

20 So in essence, the recommendation here
21 would be to contact the facility, really
22 understand the business a little bit, and develop
23 limits based on those understandings. Thank you.

24 MR. HARNETT: And we will consider your full

1 set of comments for the record.

2 Questions? Shannon?

3 MS. BROOME: Thanks for coming today. Just
4 one question on your last point. I don't think
5 you probably got to finish. Have you been
6 challenging or have your clients been
7 challenging -- it sounds like that would be a new
8 substantive requirement, to take a 12-month limit
9 and impose an absolute monthly limit, as opposed
10 to making it a roll or something like that. Or
11 are they saying just monitor it? What's actually
12 happening, and are people challenging it if they
13 view it as a new substantive limit?

14 MR. MURAWSKI: If these facilities'
15 production cannot meet that limit, then we have
16 been challenging it. If we've been offered the
17 opportunity to do -- to conduct pre-permit -- or
18 pre-public comment review, we explain the
19 situation and tell them that monthly production
20 doesn't work like that. And normally states will
21 be responsive to that. But occasionally we won't
22 get the opportunity to -- to comment on a
23 pre-public comment permit and will be forced to
24 submit comments during a public comment period and

1 cross our fingers that the provision will be
2 changed in the final permit when it's issued.

3 MS. BROOME: Thank you very much.

4 MR. HARNETT: Kelly?

5 MS. HARAGAN: You suggested that we kind of
6 gather good examples of permits from different
7 states, and I was wondering if you had permits in
8 mind that you thought were good, and if you could
9 give us kind of a list of things that you look for
10 in a permit when you're determining whether it's a
11 good permit or not.

12 MR. MURAWSKI: Well, I think my favorite
13 permit is Illinois's permit. Maybe it's because I
14 see a lot of them. But what Illinois has done
15 with their permits and their forms is they've
16 really made them very clear.

17 And the reason why I like Illinois's
18 permits is they've sectioned off the different
19 areas of regulated items. For instance, you have
20 your general regulations in the forefront of the
21 permit; you have your insignificant activities
22 independently regulated as part of the permit,
23 including the conditions that may or may not apply
24 to those units, even though they're insignificant

1 activities; you have the reporting requirements
2 toward the end that are general; and then within
3 the sections, each section is exactly the same as
4 far as how it regulates the unit.

5 And I think that Illinois is a great
6 example of a good permit, although some of the
7 permits that they've written in the past when they
8 were experimenting are not as good, but I think
9 that they have the form really well.

10 Another benefit that they do is at the
11 end of the permit, they include an attachment
12 which really lays out how to amend your permit
13 when you need it; administrative modification,
14 minor modification, or significant modification,
15 and I think that that's really beneficial.

16 And they include a recommended
17 certification statement, which is a little bit
18 over the top, but still it helps out as a base for
19 certification that is required with each document.

20 MR. HARNETT: Shelley Kaderly?

21 MS. KADERLY: I had a question regarding some
22 of your permit program issues and recommendations.

23 I was wondering whether you had any data
24 or information that would kind of help show how,

1 if a regulated entity were to prepare the initial
2 draft of the permit, how that would save time.
3 Because we've tried that in our state, and we
4 haven't found that it really has saved a
5 significant amount of time or resources because
6 there is still a lot of work to review the
7 application and the draft that you do have.

8 MR. MURAWSKI: Yeah, I don't have -- I mean,
9 I don't have any data on that.

10 MR. LING: Or an example?

11 MR. MURAWSKI: No, I don't because it's not
12 done, and that's why I'm recommending it. But the
13 reason why your state agency might not have
14 benefited from it is because the Title V permit
15 program in most states is still growing. I think
16 that a lot of the people who review Title V
17 permits, from my experience, there is a lot of
18 turnover in those permit review positions. And so
19 you end up getting people who either don't
20 understand the industry or who are writing their
21 first Title V permit involved in complicated Title
22 V permitting. And so they're learning as they go.
23 I mean, when they're done with their second or
24 third one, then they're experts.

1 MS. KADERLY: We also utilize contractor
2 assistance to help us for the last three years as
3 well. So in our particular case, our staffing
4 levels have been pretty static. But that's why
5 I'm wondering if you had any bigger information
6 to --

7 MR. MURAWSKI: No. It was really an
8 intuitive recommendation.

9 MS. KADERLY: Thank you.

10 MR. HARNETT: Carol Holmes?

11 MS. HOLMES: I just had a request. First of
12 all, thank you for coming, and I'm sure this
13 information you've given will be very helpful.

14 But I think it would be even more
15 helpful if you could give us actual examples of
16 some of the things that you've cited about,
17 especially when you're talking about the
18 regulatory citations, how there they were done
19 wrong or how the synthetic minor limits were set
20 incorrectly, because we have been chastised in the
21 past for relying on anecdotal information and not
22 specifics. If you could give us actual permits
23 for permit research, or the permit terms that you
24 think are wrong.

1 MR. MURAWSKI: I'd have to follow up the
2 meeting with actual permits.

3 MS. HOLMES: Right, yes.

4 MR. MURAWSKI: Because I sort of wrote this
5 yesterday. But really, each example and each
6 recommendation that I came up with in this
7 presentation has a basis in fact.

8 MS. HOLMES: Right. If you could just
9 provide those, that would be helpful, for us to
10 see the actual permits.

11 MR. MURAWSKI: Okay. I would certainly be
12 able to do that.

13 MS. HOLMES: Thank you.

14 MR. MURAWSKI: Obviously except for my
15 example to you.

16 MR. HARNETT: Bob Palzer?

17 MR. PALZER: Let's see if this is working.
18 Can you hear me okay?

19 MR. MURAWSKI: Yes.

20 MR. PALZER: In regards to your point about
21 not having short-term limits that are necessarily
22 taking the annual limit and dividing it by 12 for
23 a monthly limit, or presumably by 365 and coming
24 up with a daily limit, how do you square that with

1 a lot of the air standards are, in fact,
2 short-term limits, and that if you've got a number
3 of sources that show cyclical variability or upset
4 conditions or this sort of thing occurring at a
5 time when because of meteorological conditions or
6 other conditions, you are going to have an
7 exceedance of air standards?

8 MR. MURAWSKI: My comment really was on
9 short-term limits that are imposed outside of the
10 SIP emission limits that may already be imposed or
11 any kind of other limits that are already legally
12 required. These are over and above the SIP limits
13 or any other short-term limits that might have to
14 be complied with by a permittee.

15 Because in essence, the way that I view
16 the limits that I discussed is that they're really
17 recordkeeping requirements rather than emission
18 limits, and they're being treated as emission
19 limits. If you are meeting the SIP requirements,
20 if you are meeting NESHAP standards, if you are
21 meeting in any other NSPS standard that imposes
22 short-term limits, that additional limits based
23 on, you know, dividing by 12 really are
24 unnecessary. Those are more recordkeeping

1 requirements than limitations, and they're being
2 treated as limitations.

3 MR. PALZER: But, in fact, in real practice,
4 in Oregon, for example, when there weren't
5 originally short-term limits in the permits, you
6 had a number of sources that you couldn't enforce
7 an emissions limit because it wasn't in the
8 permit, and yet it was a combination of multiple
9 sources emitting at their maximum potential that
10 would create a condition where you were either
11 exceeding the standards or coming very close to
12 it.

13 So I don't see where you can necessarily
14 just put this in a SIP without having individual
15 entities being able to be contributing to whatever
16 you need to, to prevent an area going from
17 compliance to noncompliance.

18 MR. MURAWSKI: I don't disagree with you. I
19 think that there are certain circumstances where
20 short-term limits are absolutely required. What
21 I'm saying is that if those limits are imposed,
22 they should be responsive to how the business
23 produces its products.

24 So say, for instance, if you have a

1 seasonal manufacturer of certain goods where
2 production is only in summertime, and you impose
3 an equal monthly limitation on that production,
4 then really you're not recognizing their seasonal
5 production because they don't have any production
6 during the fall and winter, and, in fact, you
7 are -- you are taking away their ability to
8 produce products, and at the same time they are
9 not -- as long as they're not having emissions
10 above any other imposed emission levels.

11 MR. PALZER: So you're just going for a
12 reality. If you've got a seasonal operation that
13 only emits during a season, you'd like to see
14 those emissions or those limits apply toward
15 production cycles?

16 MR. MURAWSKI: Absolutely.

17 MR. PALZER: I understand. I still have the
18 other concern.

19 MR. HARNETT: Don van der Vaart?

20 MR. VAN DER VAART: When I was in school, it
21 was always a question of do you read the book or
22 do you listen to the professor first, and whoever
23 got second was always the one I liked because I
24 finally understand it then. Listening to you, it

1 kind of confirms everything we've seen. Some
2 things we do, some things we need to look at.

3 I had one question which seems a little
4 silly, but trust me, I just want to hear it. I've
5 read ahead a little.

6 It's your belief that Title V, under the
7 certification, requires you to certify both
8 periods of noncompliance and compliance?

9 MR. MURAWSKI: That's correct.

10 MR. VAN DER VAART: That's all.

11 MR. HARNETT: Mike Wood?

12 MR. WOOD: Hi Steve. You mentioned
13 electronic applications. Do you have an example
14 of someone who is accepting electronic
15 applications, and are those in lieu of paper
16 applications?

17 MR. MURAWSKI: I think you have the option of
18 submitting applications in electronic form or in
19 paper form, and if I'm not mistaken, it's Ohio EPA
20 might take applications -- that's right -- which
21 is very helpful. They're still long if you print
22 them out, but they're very helpful to submit the
23 information.

24 And then what's more helpful is that

1 when you go back to do your renewal application,
2 all the information is still there, and so you
3 just change what you need. Or if you have to
4 modify specific pages that you've created before,
5 you can do it on-line. It's really helpful.

6 MR. WOOD: Are those applications made
7 available to the public electronically?

8 MR. MURAWSKI: I believe they are. Region 5
9 has a link to all their states, and I believe they
10 have a link to Ohio EPA, who has electronic forms.
11 But I think most applications are available
12 on-line.

13 MR. WOOD: Thank you.

14 MR. HARNETT: Adan Schwartz?

15 MR. SCHWARTZ: I have two questions, if
16 that's allowed.

17 Going back to the short-term limits
18 discussion, you mentioned that these are -- the
19 short-term limits are being created as the
20 title -- with the issuance of the Title V permit.
21 If you can generalize, are permitting authorities
22 explaining that this is being done in fulfillment
23 of a Title V requirement, or instead is it being
24 done just contemporaneously with Title V issuance,

1 but in fulfillment of some other requirement
2 like EPA's practical enforceability guidance or
3 something like that?

4 MR. MURAWSKI: Most of the time that we've
5 seen these limits, they go without explanation,
6 but there are a number of states that incorporate
7 Title I construction permits directly verbatim
8 into the Title V permit. And occasionally what
9 will happen with those historical construction or
10 operating permit is that it will -- they'll change
11 slightly and increase monitoring provisions or
12 increase emission levels where they didn't have
13 them before, and that's really where we see the
14 difference.

15 And from the standpoint of reviewing a
16 Title V permit, it seems to be a new substantive
17 requirement; it creates an emission limit.

18 MR. SCHWARTZ: So it sounds like you're
19 saying they are doing it because they believe it
20 is required by Title V? Do I understand you?

21 MR. MURAWSKI: I don't know if they
22 believe it's a requirement of Title V. They just
23 do it.

24 MR. HARNETT: I think we should let someone

1 else have a question.

2 MR. SCHWARTZ: Okay, that's fine.

3 MR. HARNETT: Richard Van Frank, please?

4 MR. VAN FRANK: Under enforcement, you say
5 enforcement based on intermittent compliance,
6 identify an annual compliance certification should
7 be limited to special circumstances; actual harm
8 to human health or to the environment.

9 How would you define actual harm to
10 human health and to the environment? As acute or
11 chronic, cancer, noncancer, respiratory? It just
12 seems to me this would be a very difficult area to
13 get into.

14 MR. MURAWSKI: You're absolutely right, and I
15 don't have a definition.

16 The point that I'm trying to make -- and
17 this is on a slide I didn't present. The point
18 I'm trying to make with that particular slide is
19 that we're in a climate right now where audit
20 reporting is encouraged, and audit reporting has
21 been a great tool because companies can conduct
22 audit reports and really clean house and make sure
23 that everything is working right.

24 And the compliance certification process

1 I see as Title V program is similar to that, and
2 it has that type of theme because every year
3 you're looking at your business, you're looking at
4 your requirements, you're making sure that
5 everything was done, and even minuscule things
6 like sending -- and I'm saying miniscule. I'm
7 going to get skewered. But the regulation in
8 Title V permit is down to an insignificant unit.
9 And so it's really, really small. And you're able
10 to review that every year.

11 And all I'm suggesting with this slide
12 is that the state agencies and the federal
13 government should be looking at the compliance --
14 the annual compliance certifications as sort of an
15 annual audit with its blessing, and that
16 enforcement, if based on the compliance
17 certification, should really be limited to unique
18 circumstances.

19 MR. HARNETT: We're going to have to move on
20 to the next speaker here, but thank you very much
21 for coming and bringing your comments today.

22 If I could ask John Metzger to join us
23 up here. John, I'm not sure if you were here at
24 the beginning, but if you could take a few seconds

1 to introduce yourself and your experience with
2 Title V before going in. You will be limited to
3 15 minutes. I'll give you a two-minute warning
4 when it comes up.

5 And for the task force here, I'm using
6 full names or trying to for the benefit of the
7 court reporter, just so we get -- she knows who is
8 asking questions.

9 Thank you.

10 MR. METZGER: Thank you. Thanks, Bill. I
11 was here this morning.

12 My name is John Metzger. I'm with the
13 3M Company in St. Paul, Minnesota. I'm with the
14 corporate environmental operations group there. I
15 have broad responsibility across all of 3M's U.S.
16 manufacturing operations for, I guess I would
17 call, all things air regulations related, whether
18 it be Title V operating permits, MACT standards,
19 so on and so forth.

20 I've been directly involved with every
21 one of the 31 operating permits that have been
22 issued to 3M manufacturing facilities, and I'm
23 also currently involved with the 15 additional
24 Title V permits that are tied up by various

1 permitting authorities across the country.

2 We will be submitting separate written
3 comments within the next couple of weeks. I
4 wanted to focus on a couple points here.
5 Obviously in the interest of time, again, we'll
6 have more to -- more to say in a couple weeks in
7 writing.

8 As a general matter, we support the
9 Title V operating permit program and believe that
10 it is a workable basis for establishing the
11 obligations of a manufacturing facility under its
12 applicable air pollution rules and establishing
13 these in a manner which is understandable to both
14 the permittee and also to the general public. We
15 appreciate the efforts of this team.

16 We think it's -- it is very welcome,
17 but -- and we especially appreciate the efforts
18 that have been expended by any number of the
19 permitting authorities across the country,
20 generally in the face of limited budgets, efforts
21 to improve their Title V operating permit programs
22 to realize their full potential.

23 We believe, however, that there is much
24 work that needs to be done in order for the

1 Title V operating permit program to deliver fully
2 on what we believe is its promise for capturing
3 all applicable requirements for a facility, but
4 also doing this in a way which does not create
5 needless impediments to efficient manufacturing
6 and related economic activity.

7 So first, we believe that EPA should
8 encourage permitting authorities, possibly through
9 rule-making, to write flexible Title V permits for
10 performance track members. We're at a time
11 obviously of just utterly unprecedented global
12 competition, and we believe that being able to
13 make rapid manufacturing changes is crucial to the
14 viability of any number of industries, and
15 including the continuation of benefits that attend
16 those industries, such as jobs and tax revenues
17 and so forth.

18 So as such, 3M has participated with EPA
19 and several state permitting authorities in a
20 number of pilot projects designed to provide
21 greater flexibility to manufacturing facilities
22 through Title V operating permits and with no
23 reduction in protection to the environment.

24 An important feature of the flexible

1 permits that -- of these type of flexible permits
2 have been incentives for meeting emission
3 standards through the use of pollution prevention
4 techniques. Some of the flexible permits have
5 accomplished direct alignment of P2, pollution
6 prevention, and business interests; that is,
7 creating permit terms wherein as the business
8 prospers, the emissions per unit of product made
9 are very likely to decrease.

10 And direct alignment of P2 and business
11 interests tends to be a natural fit for industries
12 that participate in these rapidly changing and
13 highly competitive global markets. Such
14 industries are typically driven continuously by
15 the marketplace to reduce the resource content of
16 their products. Reductions in raw materials, in
17 scrap, or in energy usage all reduce resulting
18 emissions from making a unit of the product.
19 Often such changes also significantly reduce the
20 total quantity of emissions, not just the
21 emissions per unit of product; such as, for
22 example, in the case where, say, a coating
23 operation is reformulated from using organic
24 solvent to using water-based or low VOC solvent.

1 In 2001 EPA's Office of Air Quality
2 Planning and Standards in partnership with EPA's
3 Office of Policy, Economics, and Innovation
4 conducted its flexible permit implementation
5 review, a formal review which was supported by
6 EPA's Office of Policy Analysis and Review, Office
7 of General Counsel, and EPA's Office of
8 Enforcement and Compliance Assurance -- OECA.

9 Six flexible permits issued since 1993
10 were considered in depth by this team, including
11 by performing site visits and detailed interviews
12 with the permitting authority, the permittee, and
13 other stakeholders.

14 In a memorandum of transmittal of
15 December of 2002, Mr. Robert Brenner, deputy
16 assistant administrator, Office of Air and
17 Radiation, reported very positive findings of this
18 study, and I quote:

19 "We are very pleased with the positive
20 findings that arose out of this effort. Namely,
21 the report has produced clear, objective evidence
22 that flexible permits assure compliance with all
23 applicable requirements, can produce valuable
24 benefits to all parties, including in many cases

1 significant emission reductions, and are
2 considered to be fully enforceable."

3 In response to the comments that EPA
4 received on draft White Paper #3, which included
5 techniques for writing flexible permits, and in
6 part based on the -- on the pilot projects, it is
7 our understanding that rule-making is in the
8 works. And 3M strongly supports this effort and
9 believes it to be part and parcel to an overall
10 resolution of a number of longstanding issues with
11 the Title V operating permit program.

12 Lastly on this point, 3M believes
13 strongly that access to flexible permits should be
14 restricted to companies or manufacturing
15 facilities who have a demonstrated commitment to
16 the environment -- a track record, that is -- and
17 an ability to operate under such permits. In
18 particular, we believe that an appropriate measure
19 of this is membership in EPA's performance track
20 program.

21 Secondly, the permitting authorities
22 must not place permit holders in needless or
23 unavoidable compliance jeopardy through poorly
24 written permit terms. This is what I call the

1 other side of the compliance certifications. We
2 think it's an important feature of Title V
3 operating permit program to having the annual
4 compliance certification.

5 We generally support this aspect of
6 these permits because it assures that all permit
7 holders will be meeting their requirements. It
8 also helps to assure that companies -- that other
9 companies will not receive a competitive advantage
10 by not meeting their requirements, and we think
11 that in some cases this may have been the case
12 prior to Title V operating permits.

13 But the Title V compliance
14 certifications also create an important obligation
15 for the permitting authorities, we believe;
16 ambiguous permit terms or terms which contradict
17 terms elsewhere in the permit are terms which have
18 no direct basis in any applicable rule or which
19 cannot even be met as a practical matter. All of
20 this can unintentionally create compliance
21 jeopardy for the permit holder through the
22 mechanism of the compliance certification.

23 So the very existence of the compliance
24 certification virtually obligates, we believe, the

1 permitting authority to write permits that are
2 very well written, absent of the characteristics
3 -- some of the characteristics that I just
4 mentioned. Unfortunately, we've seen the opposite
5 in too many cases.

6 Two common sources of ambiguity that I
7 want to speak to further here are -- one are the
8 general conditions that often appear in Title V
9 operating permits, and the other one is how
10 MACT standards are written into Title V operating
11 permits. In a number of instances, we found
12 general conditions of Title V permits to contain
13 terms which seemed to come from an earlier
14 regulatory era or seemed to be artifacts from
15 previous state permitting programs.

16 One example of such are that we have run
17 into a number of cases of general conditions which
18 require that all deviations of the permit be
19 reported within some very short period of time,
20 usually something 24 hours or less, a condition
21 that was quite likely very appropriate for
22 purposes of a single construction permit or
23 operating permit focusing on a single piece of
24 equipment. But we believe that much of what is

1 required by such a term is, first of all,
2 unworkable because for one thing, the term
3 deviation is usually not defined. What does it
4 mean that any deviation whatsoever needs to be
5 reported within 24 hours?

6 In a number of cases, we've had
7 situations where permitting authorities, we have
8 begun to actually follow exactly what was
9 requested, and that because of the very detailed
10 nature of the permits, that very nominal
11 departures were being reported within 24 hours
12 several times a week. Permitting authority
13 responded by saying, "Please, please don't call
14 us. Include this information as otherwise
15 required by the permit in the semiannual
16 monitoring report, as well as in the -- as well as
17 in the annual compliance certification."

18 That said, I'm not discounting the need
19 for certain types of departures to be reported
20 within very short order to permitting authority,
21 but I'm referring to a case of a very broad
22 statement of this sort.

23 Now, we've had permitting authorities in
24 these types of cases be very reluctant to revise

1 these sorts of conditions. They have -- in some
2 cases, they've, we believe, have dismissed what we
3 believe is the seriousness of how some of these
4 requirements are structured. Sometimes it's said,
5 "Jeez, everybody's permit in the state is going to
6 have this. Why should yours be different?" Or
7 they have said in some cases that if they were to
8 change even a single word of the general
9 conditions, that would have to be done only by
10 some sort of elaborate rule-making exercise within
11 the agency.

12 But we believe that these -- all
13 requirements must be met in the permit, and,
14 again, with the compliance certifications believe
15 that puts a very key obligation on not only the
16 permittee, but also puts a key obligation on the
17 permit writers also.

18 Next and lastly is that the -- we
19 believe the detailed terms of applicable MACT
20 standards should not be delineated in a Title V
21 operating permit. Some of this speaks to the
22 points that the previous speaker made. We believe
23 that MACT standards, in all of their complexity,
24 can be especially fertile ground for terms

1 creeping into a permit which put a -- a facility
2 in unintended legal jeopardy, "unintended" meaning
3 that the permit authority has gotten something
4 wrong in the permit through the transcription of
5 all the material from a MACT standard into the
6 permit.

7 Again, we're not saying that it's
8 intentional. We're saying that it is a reflection
9 of the complexity of these MACT standards, that we
10 don't believe that it makes sense to try and
11 replicate them, either verbatim or in any sort of
12 detailed way within a Title V operating permit.

13 One example I'd like to cite is the
14 paper and other web coating MACT found at 40 CFR
15 63, subpart 4(j). It applies to many 3M
16 manufacturing facilities. The MACT has been
17 written by EPA to encourage and reward the use of
18 pollution prevention to reduce HAP emissions, and
19 that's an approach we think that is appropriate
20 and also fits very nicely with how we've attempted
21 to approach these things over more than 20 years.

22 The rule provides four compliance
23 options, several of which rely in some way on
24 pollution prevention. And the rule also allows

1 that the permittee, or actually, pardon me, the
2 affected source be able to switch between these
3 options from one month to the next.

4 We've had a number of instances where a
5 permitting authority has come to us as part of the
6 Title V permitting process and said, "Which of the
7 four options will you be following, so that we can
8 write this into your permit?"

9 Well, that is a fundamental
10 misunderstanding of how the rule is written -- how
11 the rule is written, which has also been affirmed
12 by OECA in a number of cases, and we believe that
13 it is not -- that it is a measure, again, of the
14 complexity of these rules. That how can a
15 permitting authority possibly be expert on all the
16 many MACTs that are out there, and to a point
17 where these can be written into Title V operating
18 permits in a way that there are no errors or
19 nothing of that sort.

20 I would also add that 3M is aware in a
21 different instance where a permitting authority
22 hired a contractor to write a template for permit
23 language for a certain MACT standard. The
24 intention was that they would be able to take that

1 template and pick and choose and fit according to
2 the circumstances of the permittee.

3 In this case it was interesting. What
4 the contractor came back with was actually
5 verbatim language, minus the citations, with the
6 artificial citations that would fit the permitting
7 authorities program.

8 So, again, we strongly recommend that
9 Title V -- or that MACT standards be cited in
10 permits, and nothing more than the highest-level
11 requirements be worked into the Title V permit.

12 That's all I have. Thank you very much
13 for the chance to speak.

14 MR. HARNETT: Okay, David Golden?

15 MR. GOLDEN: John, thanks for coming here
16 this morning. We appreciate your taking the time.

17 Quick question about deviations. You
18 mentioned some of the difficulty in deviation
19 reporting; the states not necessarily wanting to
20 get them all.

21 Are you running into -- you know, in
22 many permits deviations are not the same as
23 violations of a substantive standards. It's just
24 where you set your monitoring, and you set your

1 monitoring before there would be a violation. So
2 if you go above it, it's a deviation, but you're
3 still within the pound per hour ton per your
4 limit. Are those some of the things you're
5 running into as far as the ones that the states
6 are saying don't phone us quite so quickly?

7 MR. METZGER: That's right. But that's at
8 odds with what their general provision may say.
9 And I don't want to focus too much on general
10 provisions. This is a much broader matter. But
11 in this case that's a matter of where the general
12 provisions says very specifically that all
13 deviations, all departures, no definition of that
14 term, must be reported.

15 We take it seriously that every
16 condition of the permit has to be met, and we work
17 closely with the permitting authorities to be
18 certain that those conditions are written in such
19 a way that they are not creating jeopardy for our
20 company, which was not ever intended to have been
21 created on the part of the permitting authority.
22 But in a case, like with those general conditions,
23 where the response is that, "Well, we just can't
24 change them. That's just the way it is," that we

1 believe that that's a case that is not acceptable,
2 that's -- it is necessary that they be changed.

3 MR. GOLDEN: So the general provision has a
4 one-size-fits-all provision of prompt for
5 deviation reporting purposes.

6 MR. METZGER: That's correct.

7 MR. GOLDEN: Thanks.

8 MR. HARNETT: Keri Powell?

9 MS. POWELL: My question also goes to the
10 prompt reporting comment. You said that you
11 actually viewed some types of deviations that are
12 important as being worthy of a pretty quick
13 report. I was just curious about what types of
14 deviations you consider to be in that important
15 category and how quickly you think that those
16 kinds of deviations should be reported?

17 MR. METZGER: Well, what I had in mind were
18 mainly any sort of deviation of a permit, or apart
19 from the permit itself, any type of condition
20 which could put the public health or environment
21 at immediate risk. And for those types of things,
22 we believe that it is appropriate to report as
23 soon as it becomes known.

24 For most other things, in terms of

1 various monitoring, recordkeeping, and that type
2 of thing, we believe that what the Title V
3 operating permit program has in mind is that those
4 are things -- as David mentioned, that these are
5 things which are possibly departures or deviation
6 from terms of the permit but don't necessarily
7 represent -- might not rise to a level of being a
8 violation of permit.

9 Another thing, Keri, that I would
10 suggest that should be reported on a short-term,
11 maybe not quite as quickly as something putting
12 the public health or environment at risk, would be
13 any exceedance of an emission standard and where
14 the emission limit is exceeded.

15 MR. HARNETT: Don van der Vaart?

16 MR. VAN DER VAART: I would echo what Dave
17 said. It's great to have you come all the way
18 here and help us out. We like the 3M facility we
19 have in North Carolina.

20 But the one question I've got, very
21 simple; you do believe that the certification
22 requires both certification of noncompliance and
23 compliance?

24 MR. METZGER: Absolutely.

1 MR. VAN DER VAART: Thanks very much.

2 MR. METZGER: Absolutely. And we think that
3 we would like to see there be more uniformity
4 around this from permitting authority to
5 permitting authority. In some cases we see very
6 great detail guidance or requirements on the part
7 of the permitting authority as to how this is to
8 be done. In other cases they're totally silent.
9 We think that more uniformity would be helpful.

10 MR. HARNETT: Bernie Paul?

11 MR. PAUL: I'm going to jump on that
12 deviations bandwagon, too.

13 If I understood your statement, you
14 mentioned that in many cases you have three
15 different times in which you're reporting
16 deviations, or sort of this notion of a
17 contemporaneous or prompt report of deviation;
18 then there is one on a semiannual or quarterly
19 report, and then the annual compliance
20 certification.

21 Have you evaluated what the cost of that
22 multiple or duplicative reporting of the same
23 incident is to your facilities, or is that
24 something that you could provide to the task force

1 as we -- when you submit your written comments?

2 MR. METZGER: I don't know that I could
3 provide that. We don't -- we don't track that,
4 and I think that in most cases where this exists,
5 that the permitting authorities have responded,
6 sometimes in writing to us, that, jeez, even
7 though you're -- even though a requirement says to
8 report everything totally, that they may clarify
9 it by written -- by letter or something of that
10 sort saying that, "Well, by 'deviation' we don't
11 really mean these types of things." We find that
12 uncomfortable because, again, we take the words
13 very seriously and think the term should be well
14 defined.

15 But Bernie, to your point, as far as the
16 cost of that sort of thing, there certainly is a
17 cost. We don't track it, and it would be -- I'm
18 afraid it would be a bit difficult for us to get
19 to at this point.

20 MR. HARNETT: Carol Holmes?

21 MS. HOLMES: Hi. I'm going to talk about the
22 same issue, but from another perspective.

23 I think you said that these -- part of
24 your concern was that these exist in construction

1 permits and really don't have anything to do with
2 the way things are being operated now. I'm just
3 trying to parse through the issue.

4 I think Title V program gets blamed for
5 uncovering problems that may actually exist
6 outside of Title V, because part of what you do in
7 Title V is look at everything that applies to the
8 source and pull it together. It sounds to me like
9 that's a problem with the fact that the
10 construction permit hasn't expired, been replaced
11 by an operating permit, so you have overlapping or
12 duplicative requirements because you have two
13 types of permits, not the problem -- it's not a
14 problem of Title V. It's a problem that exists
15 that Title V happened to uncover when you looked
16 at everything else. Is that kind of what you're
17 saying?

18 MR. METZGER: Well, I think it's both.
19 Because to the extent that the Title V operating
20 permit program is one which is going to be
21 bringing forward conditions which are ambiguously
22 stated, which arguably are a total disconnect with
23 the operations because perhaps a permit engineer
24 has made a mistake -- I don't blame a permit

1 engineer for making a mistake. We all make
2 mistakes. But what I am referring to is that with
3 compliance certifications now, it is an entirely
4 new ball game.

5 So whatever the reason for information
6 or requirements which are not a fit for the
7 facility, it still is an obligation to certify
8 compliance against those.

9 MS. HOLMES: But can't you fix those by going
10 back to the underlying applicable requirement and
11 having the mistake corrected, and then you won't
12 have to worry about it in the Title V compliance
13 information.

14 MR. METZGER: With one permitting authority,
15 we had about 15 construction permits which had an
16 error of that sort in it, and it was said that the
17 only way that it could be remedied was to go back
18 and reopen all 15 of those construction permits,
19 going through a full process, including individual
20 public notice on each one of those. There is not
21 enough money; there is not enough money to go
22 through a process like that, which would probably
23 take several years anyway.

24 We believe in some of the tenets brought

1 forward, I believe either White Paper #1 or 2, I
2 believe it's in one saying that the Title V
3 operating permit program should provide a good
4 opportunity for redressing things which are either
5 badly written conditions, mistakes, or things of
6 those sort. Certainly there are different
7 understandings as far as what type of legal
8 regulatory mechanism must be followed in order to
9 pull that off.

10 To the extent that these things are
11 pulled forward, it really, at the point that it's
12 in the Title V permit, it's almost like it doesn't
13 matter what the reason is for being poor
14 information. It still has -- it still has to be
15 certified against, so it takes on -- the
16 certifications are great, but it also then causes
17 the information in the permit to take on a life of
18 its own, independent of pretty much where this
19 information is going.

20 Enforcement inspector generally is not
21 going to be terribly interested in whether or not
22 a permit term is a mismatch for a facility because
23 an error had been made in a permit that was
24 brought forward into the Title V.

1 MS. HOLMES: Right. And this is my last
2 comment. But from the enforcement office, that
3 would be my perspective with or without Title V.
4 I mean, if there is a problem in another line
5 permit that you need to get fixed and not hope
6 that nobody notices it, you know, if you didn't
7 have Title V. But I understand. But I understand
8 what you're saying about the compliance
9 certification adds a layer to this.

10 MR. METZGER: Well, under previous
11 circumstances, sometimes it was understood by the
12 company and the agency that there is a problem
13 here, that this is something that has not -- an
14 error has been made, and that would be resolved
15 perhaps by exchanging letters or something of that
16 sort. It's saying that in a perfect world this
17 thing would be open, it would be changed. The
18 permitting authority is acknowledging that they
19 made a mistake. I'm not picking on permitting
20 authorities. We make our own mistakes.

21 MS. HOLMES: I understand.

22 MR. METZGER: But at the same time that,
23 however, you were not doing a certification
24 against that document every year, as you are with

1 a Title V operating permit.

2 MS. HOLMES: Okay, thank you.

3 MR. METZGER: So we are much more skittish,
4 in fact, about any off-permit understandings or
5 anything of that sort. We don't believe they're
6 appropriate. We think that the words of the
7 permit should get it right.

8 MS. HOLMES: Thank you.

9 MR. HARNETT: John Higgins?

10 MR. HIGGINS: Could you give me a specific
11 example of what you mean when you talk about a
12 flexible Title V permit?

13 MR. METZGER: Well, by flexible Title V
14 operating permit, I have mainly in mind the pilots
15 that have been performed under the P4 program,
16 pollution prevention and permitting program by
17 EPA, and we've been involved in several of those.

18 In a nutshell what those have involved
19 is -- are preapproved projects whereby various
20 changes to the manufacturing facility which could
21 reasonably occur during the term of the permit,
22 that those configurations of the manufacturing
23 facility are approved in advance, as part of
24 issuance of the Title V permit, and it includes,

1 then, the entire list of all requirements that
2 would attend those.

3 In some ways it's like changing the
4 order of some of these things, rather than coming
5 in with a -- with an application for the change in

6 manufacturing operation two years from now and
7 having all the obligations sorted through and put
8 into the permit, rather than doing that two years
9 from now, it is done at the time that the permit
10 is issued up-front, knowing that it's not
11 guaranteed but there is a very high likelihood
12 that a change of that sort is going to be
13 occurring at the facility within the next five
14 years.

15 There is all sorts of safeguards that
16 are included in that in the way of notifications
17 and so forth, and we also say, again, that we
18 believe it's very important that such permits be
19 issued only to facilities which have a proven
20 track record and a demonstrated ability to
21 administer such a permit.

22 We find these to be invaluable because,
23 again, the -- the time to market is just -- is
24 absolutely critical, absolutely critical. Not in

1 every industry, but it is certainly in a very
2 large number of the ones in which we compete.

3 MR. HARNETT: Shannon Broome?

4 MS. BROOME: Thanks.

5 Mr. Metzger, I just have a quick
6 follow-up on the compliance certification comment
7 you made.

8 If you have a situation where you're not
9 sure what your compliance status is -- for
10 example, an incinerator where there is indicator
11 monitoring of a temperature that was during a
12 performance test, but you drop a few degrees --
13 you were not suggesting that you're required to
14 certify noncompliance unless that temperature
15 limit is a requirement; correct?

16 MR. METZGER: That is correct. I mean, we
17 think that in a lot of cases there's not good
18 definition around these terms of deviation,
19 noncompliance, violation, and so forth. And even
20 in cases we've seen where attempts have been made
21 to clarify that, that it's -- has often remained
22 confusing.

23 In our compliance certifications, we try
24 to approach those from the standpoint of maximum

1 disclosure of information. So that in some cases
2 we will believe that something does not
3 represent -- I mean, you fill in whatever term you
4 like; violation, noncompliance, deviation,
5 excursion, whatever. But in any case we want to
6 make sure that if any sort of departure whatsoever
7 from the permit has occurred, that as a minimum
8 that that information is reported in the permit.
9 And, of course, we'll take a position in our
10 submittal as far as what we believe is a
11 significance and how we're attending to that and
12 so forth.

13 MS. BROOME: Or if you don't know, you may
14 just say you don't know. And you're not
15 suggesting that you should be forced to
16 characterize that as noncompliance.

17 MR. METZGER: Oh, absolutely not.

18 MS. BROOME: Right. Thank you.

19 MR. HARNETT: One last question. Kelly
20 Haragan?

21 MS. HARAGAN: I also had a question about the
22 compliance certification. I know you said they're
23 valuable. I'm curious about the type of
24 certification you're used to filling out, if it's

1 a generic certification, where you just list
2 noncompliance, or if it's actually a list of all
3 your requirements where you have to certify each
4 one. And if it's the more generic form, do your
5 companies go ahead and develop their own lists
6 when they're determining how to certify?

7 MR. METZGER: We operate in about 35 states,
8 and I see everything from total silence on what
9 these things should look like; in some of those
10 cases, we see submittals which consist of, like,
11 one paragraph saying that we're meeting everything
12 we're supposed to meet. You know, I hereby
13 certify this and so forth. All the way to the
14 point of every single obligation in the permit
15 being listed out with the requirement to state,
16 you know, were you in continuous or noncontinuous
17 compliance or, you know, whatnot.

18 We think that -- we believe that that
19 goes a bit too far, that that turns into an
20 exercise for both the company and also for the
21 permitting authorities that is just more
22 resource-intensive than what is justified by what
23 is going on. We think that line-by-line
24 certification of certain key things, such as the

1 emissions standards and whatnot, would be
2 appropriate.

3 That said, I still recognize our need to
4 be in compliance at all times with every term of
5 the permit and think that whether this is line by
6 line or is stated in a much broader way, that in
7 either case the -- in either case the effect
8 should be the same.

9 Let me add that in those circumstances
10 where we are in states where we are required to
11 submit just a broad statement, it generally
12 amounts to, you know, identifying those things
13 which were not met. That for all of our Title V
14 operating permits, we capture every individual
15 requirement of that permit, including the generic
16 requirements and so forth into a database and
17 analyze those individually so that we have a basis
18 for being able to demonstrate to ourselves and
19 then ultimately to an inspector or anybody else
20 that we are in compliance with a permit, and
21 that -- not just that we're in compliance, but
22 also we believe there is a need to have a mastery
23 of the permit as well.

24 MS. HARAGAN: Thanks.

1 MR. HARNETT: Thank you very much for coming
2 here today and testifying.

3 The next person coming or speaking today
4 will be Bruce Nilles of the Sierra Club.

5 Bruce, if you weren't here at the
6 beginning, we just ask that you give a little
7 background of yourself and with Title V prior to
8 getting into your presentation. I'll give you --
9 you have 15 minutes for your presentation, and
10 I'll give you a two-minute warning sign when you
11 get through the first 13.

12 MR. NILLES: Thank you.

13 MR. HARNETT: Go right ahead.

14 MR. NILLES: Thank you. Again, my name is
15 Bruce Nilles, and I'm a senior Midwest
16 representative for the Sierra Club.

17 I work on primarily clean air issues in
18 Illinois and Wisconsin. My experience working
19 with Title V goes back about three, four years
20 now. Back in 2000 I was one of the lead counsels
21 challenging EPA's approval of the California's
22 Title V program, which had a blanket exemption for
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20 now. Back in 2000 I was one of the lead counsels
21 challenging EPA's approval of the California's
22 Title V program, which had a blanket exemption for
23 all agricultural sources, regardless of the size.

24 Since then doing a lot of work in

1 Wisconsin and Illinois; spent about 12 months
2 reviewing the details of the program in Wisconsin
3 and Illinois, which then led to us petitioning
4 U.S. EPA to take action to fix those programs
5 because there is fundamental flaws with the way
6 that program is being implemented, despite its
7 promise.

8 I personally reviewed and commented on
9 dozens of Title V permits.

10 Most recently, as of yesterday we joined
11 with our allies here in Illinois to sue EPA for
12 its refusal to answer a petition we had filed
13 regarding five coal-burning power plants in the
14 greater Chicago area.

15 So I thank you for the opportunity to be
16 here. It's an honor to sort of talk about a
17 program that is a fundamental keystone of ensuring
18 compliance with the Clean Air Act and sort of
19 underscoring why this program is so very
20 important.

21 In the greater Chicago area, there are
22 about 8 million people who live in an area that
23 violates regularly ozone and fine particle
24 standards. About 500,000 of those are asthmatics.

1 We are in an asthmatic epidemic around the
2 country. We are ground zero here in Chicago.
3 More people die of asthma attacks in Chicago than
4 any other place in the country.

5 We are making progress on clean air, but
6 obviously a keystone part of that is the Title V
7 program to make sure existing sources are doing
8 their fair share and actually complying with the
9 laws enacted by Congress and rules adopted by EPA.

10 My testimony, folks, is on two points.
11 One is that the program has tremendous promise and
12 there is some great success stories about why this
13 program, achieving what Congress intended when it
14 enacted Title V in 1990. But also to point out
15 some of the shortcomings and why, despite the
16 promise, today we are still seeing a large number
17 of sources without permits and some very serious
18 ongoing compliance issues.

19 Some of that responsibility obviously
20 rests with the states, but at the end of the day
21 Congress made very clear that there is one person
22 with the back-stop responsibility, and that's U.S.
23 EPA. So much of my comments will focus on what
24 U.S. EPA has not done, with the one bright light

1 of what it has done to begin to rectify some of
2 the very serious problems in the state of
3 Wisconsin.

4 In terms of benefits, about once a week
5 I receive a call from typically one of our Sierra
6 Club members -- we have 26,000 members here in
7 Illinois; 12,000 in Wisconsin -- concerned about
8 something going on in the neighborhood relating to
9 clean air, whether it's some previously unseen
10 smoke, whether it's some noxious smells, and they
11 want to know what's coming out of that smokestack
12 at the end of their driveway or down at the other
13 end of town, and the very first place I will send
14 them is take a look at the Title V permit, if one
15 has been issued.

16 It is a tremendous source of information
17 for residents and citizens who know nothing about
18 clean air laws. It is a place where they can go
19 and work out what exactly is going on down there,
20 how many emission units are there, what is coming
21 out of those emission units, are they in
22 compliance, and a whole range of information that
23 is fundamental to educate and let people know what
24 is going on in their community.

1 It's an extraordinarily useful
2 information for citizens to be empowered to do
3 something about ongoing compliance problems. For
4 the past year I've been working with residents in
5 the city of Evanston, just north of here, who have
6 been very concerned about a medical waste
7 incinerator. Illinois has more medical waste
8 incinerators remaining than any other state except
9 for Florida. We have 12. One of them is in the
10 middle of a residential neighborhood right next to
11 a school. No one knew it was there. For years
12 that hospital has been operating its incinerator.

13 When those neighbors started digging to
14 what is going on, they found, looking at quarterly
15 compliance reports and looking at the annual
16 certifications, that that facility not only was
17 emitting a lot of dioxin and mercury right into
18 their neighborhood, but they were regularly
19 violating their requirements. They were regularly
20 using the bypass stack, which we all know means
21 that there was no pollution control when they were
22 burning large amounts of plastics and large
23 amounts of dioxin and mercury forming, causing --
24 releasing materials.

1 Last night those residents succeeded in
2 persuading the city counsel to shut down the
3 Evanston incinerator. They persuaded the city
4 counsel on an 8 to 1 vote that there is no place
5 in a residential neighborhood for an incinerator.
6 And it all started with the information they
7 obtained through the Title V program.

8 So I think it highlights how this
9 program works. It identifies and educates and
10 empowers people to actually do something about the
11 very serious air pollution problems that continue
12 throughout this country.

13 There are many other benefits of the
14 program. Obviously it's a critical enforcement
15 tool when the regulators are unwilling or unable
16 to enforce the law. It provides a federally
17 enforceable permit for citizens to take action to
18 protect themselves and their communities.

19 So in sum, there is tremendous benefits
20 that Title V offers to residents and citizens
21 around the United States. But now let's turn to
22 sort of some of the very serious shortcomings and
23 the problems facing that program.

24 There is no dispute that Congress made

1 clear that that the entity who has responsibility
2 make sure this program is working is U.S. EPA.
3 Despite that grant of power, the agency, with the
4 one exception of Wisconsin, has repeatedly ducked
5 tough questions when the states have let their
6 programs languish or are failing to enforce
7 fundamental components of the program.

8 If we look here in Region 5 -- which
9 includes the states of Illinois, Indiana,
10 Michigan, Minnesota, Ohio, and Wisconsin -- here
11 we are six, seven years after Congress said all
12 the permits should be issued, and we have only
13 86 percent of permits issued. There are over 400
14 major sources of air pollution in the Great Lakes
15 Basin that don't have their Title V operating
16 permits. There are also additional hundreds and
17 hundreds of FESOPs that are sitting at the states
18 that have not been acted on.

19 So we're focusing just on those
20 application for Title V permits. There are over
21 400 have not been issued. In Illinois part of
22 those permits have not been issued involve 22
23 coal-burning power plants, unequivocally the
24 largest sources of sulfur dioxide, nitrogen oxide,

1 and mercury in the state.

2 How did this situation get so bad? How
3 come the permits aren't even in place? When we
4 dug into what was going on in Wisconsin, I
5 mentioned back in 2002 we spent a significant
6 amount of time looking at why was this program not
7 working; what was going wrong.

8 What we found was consistently that
9 industry realized that for the most part it
10 couldn't change the statute. It couldn't get a
11 consensus to change the statutes. It couldn't get
12 a consensus to change EPA rulings. But what they
13 were extraordinarily effective at was making sure
14 that the state agencies with the front-line
15 responsibility didn't have the resources to do the
16 job.

17 Now, the cynical side of me said, "How
18 bad was it?" And what we compiled was a series of
19 legislative actions pushed by industry in the
20 state of Wisconsin that consistently denied the
21 agency increasing permit fees so it had the
22 resources to do its job. They even cut fees
23 twice, including eliminating the Consumer Price
24 Index, which, as you all know, to make sure that

1 the fees are in fact at a sufficient level and
2 increase every year to increase with inflation.

3 So in Wisconsin when they got EPA
4 approval for the program, they estimated they
5 needed 200 staff to write the permits, to enforce
6 the permits, to conduct regular inspections.
7 Today there are 88 staff. There is just not any
8 resources to do the fundamental requirements that
9 Title V requires. All the streamlining in the
10 world won't fix that dysfunction.

11 As I mentioned, and as I'm sure you all
12 know, the way Title V is supposed to be funded is
13 through permit fees. Congress said this is not
14 for taxpayers to be responsible for. If a company
15 wants to put out air pollution, it has to be
16 responsible for providing enough resources to
17 administer that program.

18 So based on this finding that there was
19 fundamentally a lack of resources, we petitioned
20 EPA in December of 2002 to take action and order
21 the State of Wisconsin to fix its program. The
22 first thing that happened was that the nonpartisan
23 legislative audit bureau in Wisconsin, at the
24 request of legislators who were saying, "What the

1 heck is going on here?" commissioned a study.
2 They issued a 104-page report -- and I'll leave
3 one here for this committee -- that did a very
4 thorough and sort of reexamination of our
5 investigation and had some highly critical
6 conclusions.

7 The number of inspections in the state
8 of Wisconsin between 1995 and 2002 declined by
9 41 percent. In 1995, 470 major sources of air
10 pollution were being inspected every year 470.
11 Today there is less than 250 being inspected every
12 year.

13 They also found out that 15 percent of
14 the air pollution sources, including 10 percent of
15 major sources in the state, have never, ever, in
16 the entire history of the program, had an
17 inspector on site. So there hasn't ever been an
18 inspector who could show up and make sure when
19 they say they have five emission units, there are,
20 in fact, five emission units. By any stretch and
21 any assessment, that program is severely broken.

22 To its credit, and this is the one
23 bright light, is on March 4th, 2004, earlier this
24 year, Region 5 did issue the state a notice of

1 deficiency, and it cited a whole range of serious
2 defects with the program, including that they have
3 failed to demonstrate they have the resources to
4 actually administer the program.

5 There is a whole range of other problems
6 that I won't get in. They were using non-Title V
7 resources to supplement the Title V program.
8 There was a whole lot of accounting stuff that
9 made no sense and was much of it illegal, a series
10 of other very serious problems that EPA identified
11 as part of its assessment that were wrong with the
12 program. So it's clear that that program is now
13 under the sanctions clock and has 18 months to
14 correct those problems or the state faces the
15 sanctions by the Clean Air Act, including loss of
16 highway funds.

17 An interesting thing to note is that the
18 industry still doesn't believe something is going
19 to happen. They're still running around saying,
20 "We don't need more fees," and they're still
21 telling the legislature, the overwhelmingly
22 friendly legislature, "Don't need an increase in
23 fees because EPA won't possibly take away our
24 highway funds," which we're trying to assure them

1 that it's a nondiscretionary obligation.

2 Four months after we completed our
3 investigation into Wisconsin, we did the same
4 thing in Illinois. Many of the very same problems
5 we identified in Wisconsin were also present in
6 Illinois. Same serious problem; they're not
7 issuing permits on any kind of reasonable
8 schedule. As I mentioned, the 22 coal-burning
9 power plants in Illinois still don't have their
10 Title V permits. This is a particular concern,
11 because six of them are either in or surrounding
12 Chicago.

13 We know from a series of studies,
14 Harvard study, that those are causing direct,
15 identifiable, quantifiable health effects today in
16 Illinois. We also know they are regularly
17 violating their opacity standard. Of course, one
18 of the critical parts of Title V is that they
19 include a compliance schedule to bring an end to
20 ongoing violations. In the absence of those Title
21 V permits, there is no compliance schedule, and
22 those facilities for the last 18 months, which is
23 what we have data for, continue to violate their
24 opacity standard, which obviously means more fine

1 particle pollution in the greater Chicago area.

2 Illinois -- let me just finish up in
3 Illinois. In response to our petition, the state,
4 to its credit, and in part the new governor,
5 responded by increasing permit fees from 10 to
6 \$16 million, a decent improvement. We know it
7 gets us closer to where we need to be. That was
8 about what they estimated in 1995 they needed. So
9 the increase from 10 to \$16 million is certainly a
10 significant down payment to begin to get the staff
11 to be able to actually write permits and conduct
12 regular inspections on the schedule that EPA
13 requires.

14 So in conclusion, on the sort of -- the
15 good news is Wisconsin is under a clock. The
16 state agencies and the governor's office appear to
17 be taking it very seriously, despite what industry
18 is saying. It clearly, by EPA issuing a notice of
19 deficiency, it seems that we've hit rock bottom.
20 The situation is not going to get any worse. The
21 state realizes it can't continue to cut permit
22 fees, and it has to do something to fix this
23 problem and is taking some steps to remedy the
24 situation, including talking about does it need to

1 increase permit fees and how much. It's obvious
2 that it generated a tremendous amount of attention
3 from the legislative audit bureau.

4 So in summation of the point about
5 Wisconsin, when EPA does use its enforcement
6 discretion, when EPA does use its enforcement
7 obligations and obligations to remedy states'
8 Title V programs, it works. We are beginning to
9 see some quantifiable improvements in Wisconsin
10 and underscore that the problems we found in
11 Wisconsin we don't believe are unique in
12 Wisconsin. We know that many of those same
13 problems are going on in Illinois. Many of the
14 same problems are going on in Minnesota, where
15 they're commingling funds. These are things EPA
16 must address, and we believe has an obligation to
17 address.

18 Couple of other quick points. There is
19 this crazy situation where when a new source has
20 issued a construction permit in Wisconsin and
21 Illinois, the Title V permit doesn't get issued
22 until 18 months later. To give you an example,
23 about 50 miles south of here they want to build a
24 giant, new coal-burning power plant in the

1 nonattainment area. When they issued the
2 construction permit, the state said, "We're not
3 going to issue the Title V permit until at least a
4 year after operation begins."

5 Now, from a sort of coordination
6 standpoint and a citizen appeal standpoint, we
7 appealed the PSD permit, the underlying
8 construction permit to the environmental appeals
9 board. We haven't appealed the LAER determination
10 or the MACT determination. We're waiting until
11 the Title V permit gets issued.

12 Well, the way that the state has
13 constructed that Title V issuance timetable, we're
14 going to be petitioning EPA after that facility is
15 operating. And if we're right that the MACT
16 case-by-case determination is wrong, and if we're
17 right that the LAER determination is wrong, then
18 EPA is going to be in the situation of telling a
19 source that is now existing that they have to go
20 back and undertake costly retrofits.

21 It doesn't have to be that way. We
22 could issue the Title V permit and the
23 construction permit at the same time, resolve all
24 the questions about are, in fact, they in

1 compliance with the Clean Air Act, and get all of
2 that taken care of before a single shovel is put
3 in the ground. So we believe that's what the
4 Clean Air Act requires, despite the EPA's
5 regulations allowing states to issue permits after
6 the construction permit is issued.

7 Additional logical standpoint, and the
8 certainty from a business perspective, it's hard
9 to imagine that businesses like the uncertainty
10 that we are keeping in our back pocket, an appeal
11 of the Title V permit a year after the
12 construction permit is issued.

13 The final point I wanted to make was
14 Title V works. We have many examples in
15 Wisconsin, Illinois, where it is making a real
16 difference. They are clearly some very serious
17 defects, but these are all within U.S. EPA's
18 powers to fix that we have seen. The big one is
19 resources and just consistent U.S. EPA oversight,
20 which with the one exception of Wisconsin, has
21 been noticeably absent.

22 Thank you.

23 MR. HARNETT: Don van der Vaart?

24 MR. VAN DER VAART: Please stay busy up here

1 in the Midwest.

2 One question I did have, and you really
3 didn't touch on it, but the compliance
4 certification. I presume you believe you need to
5 certify both compliance and noncompliance. Do you
6 think Title V obligates the permit to contain
7 methods for determining compliance so that they
8 can make that certification?

9 MR. NILLES: Absolutely. As we read Title V,
10 it says the whole purpose is to take the
11 underlying construction Title I obligations and
12 wrap around the monitoring reporting and
13 recordkeeping obligations so that you can
14 actually, at the end of the stay, in short,
15 continue its compliance.

16 And how else do we tell the citizens
17 that we have any certainty that that smokestack at
18 the end of their driveway is meeting its clean air
19 obligations, unless we have that information.

20 MR. HARNETT: Richard Van Frank?

21 MR. VAN FRANK: Do you know of any instance
22 where a facility has been shut down once the
23 construction permit has been issued, the facility
24 is built, and then the Title V permit is

1 impossible to issue because they can't meet the
2 requirements? Do you know of any instance where a
3 facility has not been allowed to operate?

4 MR. NILLES: I am not --

5 MR. VAN FRANK: Thank you.

6 MR. NILLES: (Continuing) -- yet.

7 MR. HARNETT: Lauren Freeman?

8 MS. FREEMAN: Thank you.

9 One of the issues this task force talked
10 about at our last meeting was sort of a cost
11 benefit discussion about what Title V adds to the
12 process on reporting and compliance and
13 information for the public. And I think this task
14 force appreciates very much that these permits are
15 important and that states are behind and that is
16 something that needs to be corrected.

17 But we talked about last time the fact
18 that underlying regulations like opacity
19 regulations, MACTs, NSPS, SIPs all have
20 requirements to record and report, by and large,
21 data. So if there is an excess emissions, it's
22 being reported. It's not as if these are, you
23 know, secret emissions in the absence of a Title V
24 permit. Is that your understanding as well?

1 MR. NILLES: My understanding is it's sort of
2 a haphazard. What Title V is supposed to require
3 is to the extent they are not consistent across
4 every NSPS, PSD obligation, underlying
5 requirement, that Title V will make sure that we
6 have a floor, a minimum requirement of monitoring,
7 reporting, and recordkeeping.

8 MS. FREEMAN: So what you're looking for from
9 getting the Title V permits from these sources is
10 more consistency in the way these data are
11 reported, so --

12 MR. NILLES: We're looking for a minimum
13 floor so that we can assure that they're in
14 continuous compliance.

15 MS. FREEMAN: What else would you see Title V
16 adding to these sources?

17 MR. NILLES: I gave the example of making
18 sure they're on a compliance schedule. We have
19 coal plants that you can see from here that are
20 not complying with their opacity requirements
21 today. They don't have Title V permits. If they
22 had Title V permits with a compliance schedule, we
23 could be taking some action to fix them.

24 MS. FREEMAN: So then your assumption is that

1 these sources would be certifying noncompliance,
2 that they agree that it's noncompliance. That's
3 what you're saying.

4 MR. NILLES: No. I would say that the state
5 has a mandatory duty to include a compliance
6 schedule when there is ongoing noncompliance
7 before a permit is issued.

8 The Clean Air Act says if you're not in
9 compliance when the Title V permit is being
10 issued, the state is required to include a
11 compliance schedule.

12 MS. FREEMAN: Okay. Then the assumption then
13 is that they're in noncompliance, which is
14 something that they may not agree with. You'd
15 have to agree with that.

16 MR. NILLES: This is not regarding industry
17 interpretation. This is what the state has a
18 mandatory duty, if they're in possession of
19 quarterly reports, to show ongoing violations of
20 each unit that they have to do something about.

21 MS. FREEMAN: Thank you.

22 MR. HARNETT: Bob Palzer?

23 MR. PALZER: Hello. I don't know if you were
24 here when Steve Muraswski gave his presentation

1 earlier this morning.

2 MR. NILLES: I don't believe so.

3 MR. PALZER: Well, one of the points that he
4 made, and I was going to ask a follow-up question,
5 but I asked another one instead, but I thought I
6 might ask you, he was recommending that the EPA
7 and the state agencies should have a pre-public
8 comment review by the prospective permittee before
9 the permit is issued. That is to, you know, to
10 avoid problems that you have down the line later.

11 My question to you is, do you feel that
12 it would be helpful for the public to be involved
13 in a process before a public hearing occurs,
14 rather than getting a permit that's been
15 negotiated between the permittee and the
16 regulatory agencies?

17 MR. NILLES: I think some additional
18 safeguards to avoid sort of the situation where
19 you have a public hearing, and it's sort of a fait
20 accompli. That here is the permit, and you
21 basically take it. Because we've seen multiple
22 instances here in Illinois where the agency and
23 the company show up at a hearing or right before a
24 hearing and say, "Here is the draft permit," and

1 we raise very serious concerns, like where is the
2 underlying Title I obligations, and they're forced
3 to rescind the entire permit and start over.

4 So from a resource perspective, there
5 may be a lot of value in soliciting public input
6 at an early stage, avoiding the scenario like
7 we've seen in multiple permits in East St. Louis,
8 where the permits come out, allegedly the
9 by-product of a negotiation between the state and
10 the industry, we point out serious defects, and
11 they're back to the drawing board for another
12 six months or more.

13 MR. PALZER: Thank you.

14 MR. HARNETT: Shannon Broome?

15 MS. BROOME: I just had a question on the
16 last thing that you said. I was confused by your
17 statement that you were challenging the
18 construction permit but not the substantive
19 requirements of the construction permit?

20 MR. NILLES: Are you talking about the coal
21 plant just south of here?

22 MS. BROOME: Yeah. You said you weren't
23 challenging the MACT or the LAER --

24 MR. NILLES: We weren't?

1 MS. BROOME: (Continuing) -- and then if you
2 don't like what's the MACT or the LAER, why
3 wouldn't you raise that?

4 MR. NILLES: I'm sorry. We appealed the
5 PSD I permit to the environmental appeals board.

6 MS. BROOME: Right.

7 MR. NILLES: They only hear PSD issues. They
8 will not hear MACT and NSR nonattainment issues.

9 MS. BROOME: Right. But a construction
10 permit was issued with those in it?

11 MR. NILLES: Correct.

12 MS. BROOME: You didn't appeal those because
13 there is no appeal process for construction
14 permits in the state of Illinois?

15 MR. NILLES: There is some very serious
16 questions about whether there is that process, but
17 we do know that Title V affords what we believe is
18 the more important appeal process, which is for
19 EPA to determine does this permit comply with the
20 case-by-case MACT determination and does the
21 nonattainment NSR obligation also meet the
22 requirements of the Clear Air Act.

23 MS. BROOME: Or you may have forgone your
24 right to appeal that by not appealing the

1 construction permits.

2 MR. NILLES: Have you read the Illinois
3 rules?

4 MS. BROOME: Yes.

5 MR. NILLES: Then you would agree that we
6 have an appeal right?

7 MS. BROOME: I haven't looked at that
8 particular issue.

9 MR. NILLES: Okay.

10 MS. BROOME: But I know there is an appeal
11 process. I said you may have. You took a risk.
12 Interesting.

13 MR. HARNETT: Adan Schwartz?

14 MR. SCHWARTZ: That's what I was curious
15 about.

16 MR. HARNETT: Shelley Kaderly?

17 MS. KADERLY: I just wanted to say that I
18 appreciate you bringing to us some specific
19 examples of issues that you have seen in a couple
20 of the states. And while you were doing your
21 investigations in the states of Wisconsin and
22 Illinois, did you sit down and visit with the
23 permitting authorities at all to identify any
24 things that they were encountering or that they

1 saw were impediments to getting their other Title
2 V's done?

3 MR. NILLES: Absolutely. In fact, the day
4 that we announced our petition to U.S. EPA, the
5 head of the air program, Lloyd Eagan, stood up
6 beside us and said, "They're right. We don't have
7 the resources to do our job."

8 MS. KADERLY: Were there any other issues
9 that they identified as being impediments to their
10 program? Sometimes we hear that some states are
11 having difficulty getting information back from
12 the permittee, that there may be other things that
13 are going on. I was wondering if there were any
14 other things identified, other than the resources,
15 as being an issue.

16 MR. NILLES: That was the big one. I mean,
17 that was the one that they have been asking.
18 They've been asking for six years for a fee
19 increase.

20 MS. KADERLY: I know. I talked with Lloyd,
21 and it's been a frustrating process for them,
22 yeah.

23 Okay, thank you.

24 MR. HARNETT: Do you know, in that case, has

1 the agency directly requested of the legislature a
2 fee increase?

3 MR. NILLES: They did in 1996, 1998, and
4 2000. In 2002 they didn't for the very first
5 time, and this year there is a new budget process
6 in the state of Wisconsin. The agency doesn't get
7 to ask for money. The governor's staff decides
8 who will get what money. So it's not clear
9 exactly how they will sort of transmit that
10 request. The governor's office is very much
11 involved. They realize that the clock is ticking
12 and their highway funds are on the line. So the
13 agency, as I understand it, continues to say it
14 orally, but there is no formal transmittal process
15 anymore in the state.

16 MS. KADERLY: Could I ask another follow-up
17 on that?

18 MR. HARNETT: Yes.

19 MS. KADERLY: I was wondering whether you had
20 looked at the Jobs Creation Act of 2003 that
21 Wisconsin has and whether that factors into
22 Wisconsin's ability to get the resources needed
23 to --

24 MR. NILLES: The jobs creation bill, we have

1 our views, but let me quote the attorney general,
2 Peg Lautenschlager. She says, "It's 98 pages of
3 alleged job creation bill. Two pages actually
4 deal with jobs. 96 pages deal with environmental
5 rollbacks."

6 It's not a jobs creation bill. It is a
7 full-on assault. EPA, to its credit, has
8 identified Region 5; to its credit has said, "Wait
9 a minute. You can't eliminate permitting
10 requirements for major sources." I mean, there is
11 a bunch of really -- industry got greedy. I mean,
12 if they'd sat down and looked at what can they
13 possibly do under the Clean Air Act, they would
14 have realized they couldn't ask for what they
15 wanted and what they got in the jobs creation
16 bill.

17 So right now the agency is trying to
18 work out, Well, is there a way to issue rules
19 implementing the jobs creation bill that actually
20 does comport with the Clean Air Act. We would
21 submit it's not possible, but we will see. And
22 thankfully the Clean Air Act preempts whatever the
23 state does.

24 MR. HARNETT: Thank you for coming here today

1 and providing that information. And if you had
2 materials, you can drop them off either with
3 Graham or Shannon outside.

4 MR. NILLES: Thank you.

5 MR. HARNETT: We'll be taking a 15-minute
6 break right now and start up shortly after 11:00.

7 (Recess.)

8 MR. HARNETT: I'd like to welcome our next
9 speaker, which will be Bill Wilson of the
10 Environmental Integrity Project.

11 If you could go right ahead, and I'll
12 give you a two-minute warning when we get to the
13 end of your first 15 minutes.

14 MR. WILSON: Thank you. Good morning. It's
15 a pleasure to be here, and I appreciate the
16 opportunity to talk to you all.

17 I just want to give a little idea of my
18 background. I'm an engineer in Texas. I've got
19 19 years' experience. I started in '85 with the
20 Texas Commission on Environmental Quality, used to
21 be the Texas Water Commission back then; worked as
22 a RCRA permit writer, went on to be an
23 environmental manager at Portland Cement Plant
24 just south of Dallas, and that permit operated our

1 Permit No. 1.

2 And then for the last five years, I've
3 been an air quality engineer for American Electric
4 Power. Until May of this year, I handled seven
5 power plants with 17 units and 4100 megawatts
6 capacity. I handled all of recordkeeping and
7 reporting, permitting under Title V, as well as
8 state permits. I've got a B.B.A., a B.S., an M.S.

9 What I see as the benefits of Title V is
10 that it incorporates these NSR operations, which
11 for the facilities I handled didn't happen until
12 late 2003. That requires the certification,
13 compliance for all the air permits, and these
14 facilities have many permits at each facility. So
15 it requires a more comprehensive look at the whole
16 compliance issue.

17 What I see as a problem is still ahead;
18 reliance on factors and estimates and models, and
19 there is a lack of oversight by the agencies.
20 Many reports are submitted, there is several
21 agencies involved, and there is very little
22 coordination.

23 Some examples are the Welsh Power Plant
24 operated by AEP in East Texas. It has a name

1 plate capacity of 512 megawatts net, but it's
2 reporting to the DOE that it actually operates at
3 528 net megawatts. The heat input is listed in
4 the NSR permit, which was incorporated in November
5 of 2003, and there is data, coal input data and
6 SIMS data showing that Welsh operates 30 percent
7 over its maximum heat input.

8 Based on my understanding of EPA's
9 routine maintenance, repair, and replacement final
10 rule in October 2003, that triggers -- you cannot
11 exceed heat input without triggering in NSR.

12 There was a Title V compliance
13 certification due on May 7th. I discussed the
14 heat input and other deviations with the TCEQ both
15 in Austin and the regional office. The TCEQ
16 advised that exceedance of the heat input must be
17 reported as a deviation. The company deliberately
18 refused to report this, as well as other
19 deviations from the Title V permit on the annual
20 certification. They submitted a false
21 certification on May 7th, and they terminated my
22 employment on May 7th.

23 Same thing is at Pirkey Power Plant.
24 That's a lignite-fired plant. The original PSD

1 application indicated 640 net megawatts. They're
2 reporting to DOE that they're operating at 660 net
3 megawatts. They're actually operating higher than
4 that. Those increases are due to a change in
5 method of operation by operating at over pressure.
6 This leads to frequent start-up, shutdown
7 malfunctions, and increased emissions by operating
8 above the original designed levels.

9 Overreliance on estimates and factors
10 instead of valid stack tests, an example at Welsh
11 is the CO limits. The original application was
12 316 pounds per hour. The original permit limit
13 was 700 tons per year. There was no stack testing
14 for 22 years.

15 In 2000, stack tests were performed.
16 The actual emissions were over 11,000 pounds an
17 hour, and the yearly emissions were 18,000 tons
18 per year. That means that the emissions were
19 underreported and fees were underpaid for over
20 20 years.

21 Same thing with Welsh particulate
22 matter. Welsh is a three-unit plant. There is
23 three coal-fired units. There were original tests
24 shortly after construction in the '70s, and no

1 other tests that I'm aware of. There were four
2 tests done in the '70s; three out of four measured
3 only front-out emissions. There were no tests
4 while SIP-blowing, there were no tests while
5 load-ramping, yet COMS data record frequent
6 opacity events during those periods.

7 So the testing is not following EPA's
8 national stack test guidance issued in February
9 2004. They are not measuring emissions at the
10 worst-case conditions. So again they're
11 underreported. And what is concerning to me is
12 that management knows this. This is from an
13 e-mail dated April 13th, 2000, and I've included
14 this e-mail in the materials submitted today.

15 The engineer says, "We have several
16 limits on the new Welsh air permit that are not
17 reasonable. CO is one. Pound per NMBTU
18 particulate is another. We are breaking these
19 limits today. The 28 PPM of CO is unreasonable.
20 The pound per NMBTU of particulate is
21 unreasonable. I did bring this fact up last year,
22 and we decided to do nothing about it."

23 Same thing with Pirkey VOC emissions.
24 The original PSD application estimate was 5 pounds

1 an hour. Initial compliance testing in 1985 was
2 135 pounds an hour. The company was allowed to
3 retest in '86, and the average was 30.72 pounds.
4 The state set the limit at 46.9 tons per year,
5 using the lowest of five runs during that '86
6 test. Why did they do that?

7 This is from a letter written by the
8 TCEQ staff:

9 "Therefore it's my understanding that
10 Mr. Crocker based the annual emission rate on the
11 lowest test result to be on the conservative side
12 and to assist the company to avoid public notice
13 and PSD review."

14 If they had used the emissions from the
15 '85 test, they would have reported 475 tons per
16 year.

17 So this was the response from the
18 company to the TCEQ:

19 "Although we have some reservations
20 about these limitations due to the fact that a
21 stack emissions VOC test taken at reduced load
22 indicated an emission rate higher than that
23 proposed, you have advised that we will not be
24 required to test for VOC emissions in the future."

1 So it appears that the company and the
2 TCEQ both knew that the procedure and the test
3 results, the limits were not being set properly.

4 Then every year from 1990 to 1997, a
5 SWEPCO engineer reported violations to the TCEQ.
6 Their permit limit, again, was 46.9. In 1990 they
7 reported a hundred; in 1991, 97.5; '92, 107; '93,
8 121, et cetera. There was no response from the
9 TCEQ.

10 These examples indicate a hostile
11 attitude towards environmental compliance by
12 industry. That's been my experience for the
13 ten years that I've worked for industry. They
14 show a lack of monitoring and oversight by the
15 agencies. And I think that results from, again,
16 the lack of resources, high turnover,
17 inexperienced staff, which, again, comes from
18 political pressure.

19 I think one possible solution would be
20 to require that companies systematically address
21 their environmental management. I know that the
22 practice of American Electric Power is to
23 compartmentalize this information so it's not
24 widely known. They try to limit who knows of

1 violations so it can easily be covered up and
2 swept under the rugs.

3 I think that there is a need for
4 additional monitoring and testing of emissions,
5 and I think there is a need for independent audits
6 that would be most effective, if there was already
7 an environmental management system in place, and
8 sufficient monitoring to judge against that
9 system.

10 This is the best analogy I can think of.
11 It's programs like a three-legged stool with two
12 legs. There is management failures at both the
13 state and industry, and the public input is
14 needed. There is a need for monitoring data and a
15 systematic approach, and if you had both those in
16 place, the public would have the tools it needs to
17 be that third leg of the stool.

18 Thanks for the chance to talk today.

19 MR. HARNETT: Kelly? Kelly Haragan.

20 MS. HARAGAN: Could you kind of go over what
21 you think are the most important tools out of the
22 Title V program that would help improve compliance
23 at facilities?

24 MR. WILSON: Well, I think there has to be

1 monitoring data. Clearly there is a lack of stack
2 testing. There is a lack of oversight as to how
3 those stack tests are done. There is a lack of
4 review by the state of reports that are being sent
5 in. So there is a need to enhance those
6 provisions in the permit that would allow hard
7 data and evidence about the status of compliance.

8 MR. HARNETT: Bob Morehouse?

9 MR. MOREHOUSE: Yes.

10 You expressed concerns with monitoring
11 and frequency. Would it be your view that those
12 would be best addressed through a regulatory
13 comment process, administrative process, such as
14 revisiting underlying requirements, or on a
15 permit-by-permit basis?

16 MR. WILSON: I'd recommend a permit-by-permit
17 basis.

18 MR. MOREHOUSE: Even though that would lead
19 to inconsistency across the state?

20 MR. WILSON: I think each facility has to be
21 considered. Type of industries need to be
22 considered, and there is not a one-size-fits-all.

23 MR. HARNETT: Shelley Kaderly?

24 MS. KADERLY: Question on the stack testing

1 element.

2 For the company that you worked for,
3 what would have been your recommendation on how
4 frequent those stack tests should have been
5 conducted during the Title V permit term? Once a
6 permit term? Once a year? How often?

7 MR. WILSON: Well, for example, with
8 particulates, I know that there is Triboelectric
9 meters that are available to measure particulates
10 continuously, and I would have recommended that.

11 MS. KADERLY: So the more frequent, the
12 better.

13 MR. WILSON: Well, continuous monitoring is
14 better than infrequent monitoring.

15 MS. KADERLY: Thank you.

16 MR. HARNETT: Verena Owen?

17 MS. OWEN: Thank you.

18 I think your example, at least from my
19 perspective, was kind of the example that
20 environmentalist's nightmares are made out of.

21 When you said that you think the
22 situation could have been remedied -- and I hope
23 it has. You didn't talk about that -- no.

24 By increased public input and public

1 participation, what kind of tools do you think the
2 public would need to address this?

3 MR. WILSON: Well, I think you need to have
4 sufficient monitoring stack testing data and
5 compare that against this system that's in place.
6 There is no system of environmental management at
7 the largest electric utility in America.

8 MS. OWEN: Can I have a follow-up question?

9 Can you give me a little bit of
10 understanding what you would consider the
11 environmental management system?

12 MR. WILSON: Well, there is an international
13 standard, ISO 14001, that talks about how to
14 establish a management system. That's what I
15 would recommend. That companies develop systems
16 that meet that international standard, ISO 14001.

17 MS. OWEN: Thank you.

18 MR. HARNETT: Don van der Vaart?

19 MR. VAN DER VAART: I wasn't sure whether I
20 missed something. Have these facilities gotten
21 their Title V permit, and did they certify
22 compliance, or are you referring to periods of
23 time prior to their Title V permit?

24 MR. WILSON: No, these facilities all have

1 Title V permits, and they certify compliance
2 falsely.

3 MR. HARNETT: Kelly Haragan?

4 MS. HARAGAN: I'm sorry. I left that up.

5 MR. HARNETT: Okay. Thank you very much.

6 The next speaker is Scott Evans of Clean
7 Air Energy -- or Engineering, rather.

8 MR. EVANS: Good morning. Thank you.

9 I do have a -- some PowerPoint
10 presentation here. I don't know if it's ready or
11 not. I can go ahead without it, if you're not.

12 MS. COX: It will just take one second.

13 MR. HARNETT: Sure. Go right ahead.

14 MR. EVANS: While she's doing that, I'll just
15 give you a little information about myself.

16 My name is Scott Evans. I work for
17 Clean Air Engineering, and we do a lot of things
18 related to air quality; testing and measurement.
19 I'm involved with the consulting side. We do a
20 lot of work with Title V. Early on we did a lot
21 of work with the actual permit process. Now most
22 of my time is spent with implementation of Title
23 V.

24 We work in all 50 states, so I've had an

1 opportunity to see different state programs in
2 operation, as well as different industries, and
3 sometimes we even work for environmental
4 organizations. So anything involving air quality
5 is what we're involved in. I've been doing this
6 for about 20 years or so.

7 Are we set, or should I --

8 MS. COX: One minute.

9 MR. HARNETT: That's fine. We won't count
10 this time against you.

11 MR. EVANS: Oh, that's all right. You can
12 just cut me off whenever you want to.

13 MR. GOLDEN: He says that now.

14 MR. HARNETT: We'll see later.

15 MR. EVANS: These slides, by the way, will
16 not add anything to the written record really.
17 They're more for the benefit of those in the room.
18 So I will provide some written material within the
19 next couple of weeks.

20 MS. COX: This one?

21 MR. EVANS: Yes. There we go. Okay.

22 When the Title V program first -- I've
23 been involved with this since the early '90s, when
24 Title V and enhanced monitoring and all that

1 discussion was going on. The program came in with
2 a lot of promise, and we all had very high
3 expectations for Title V, some of which were met,
4 and some of which I think we still need to work
5 on. I'm going to just briefly touch both of those
6 topics today. I'll start with a few of the things
7 that work and a few of the things that don't work.

8 I had a chance to review some of the
9 testimony from the earlier hearing that you held,
10 as well as some this morning, and I think
11 sometimes when you listen to some of the critics
12 of Title V, it may look a lot like this next
13 slide, but that is not what Title V is about, and
14 I don't think that's certainly what's going on.
15 So let me talk first about some of the things that
16 are working in the program.

17 For me, having to review a lot of Title
18 V permits and actually working in permitting
19 before the Title V program, also, I think one of
20 the great success stories has, in fact, been
21 consolidation. I know there are certainly issues
22 with incorporation by reference. My personal
23 belief on that is that state and federal
24 regulations should be incorporated by reference

1 and preexisting permits should not. It's simply
2 too difficult, as I think other people have
3 brought out, to track down if you have five, six,
4 seven, eight, ten, twelve preexisting permits,
5 even to locate them can be a difficult situation.

6 Ideally the situation would be to
7 incorporate the state requirements and a
8 state-only portion of the permit, although, again,
9 that's a little problematic that we've had in
10 working with some of the states, to get state-only
11 requirements listed in the permit as state-only
12 requirements. I think it's the inclination of
13 some of the regulators to push as much over on the
14 federal side as possible.

15 But certainly it makes review much
16 easier now than it has been in the past. But we
17 all want to make sure the Title V permit doesn't
18 just become a table of contents for preexisting
19 permits that may or may not be accessible to
20 review.

21 One of the things that it's really done
22 is to focus attention on air emissions. I think
23 much more so than previously. Because of federal
24 involvement in the Title V program, I think there

1 is a much greater awareness at the plant level and
2 a much greater awareness at the management level
3 that there are these issues.

4 I mean, I've been involved in a lot of
5 training programs for plant personnel on Title V
6 obligations, and that kind of thing just didn't
7 happen prior to Title V. You saw very little
8 effort on the part of many facilities, not all,
9 but many to really educate their staffs on what
10 their obligations under the air program are, and I
11 think that's much more prevalent now than it has
12 been in the past.

13 This has been another issue here. This
14 issue of continuous compliance, which is
15 contentious. It's certainly the focus of a lot of
16 attention on facilities now. I think there is a
17 general understanding that at least it's EPA's
18 expectation that compliance be continuous.

19 And from a practical standpoint, in the
20 past compliance, I think, was viewed as an event.
21 It would happen once a year, once per permit term,
22 and as long as that event was concluded
23 successfully, then the assumption was that the
24 plant was in compliance. Then if other things

1 happened in between the five or, you know,
2 one year or five years, whenever the stack test
3 was, that didn't really count as compliance.
4 Compliance was your annual stack test or your
5 once-every-year stack test.

6 Today it's, I think, quite a bit
7 different. Compliance is not viewed as a discrete
8 event that happens at a certain time when the
9 stack testing folks show up. It is something that
10 occurs all the time, and it's a mode of operation
11 of the facility, rather than a discrete event.
12 And that, I think, has been a remarkable change in
13 the decade or so since we started with Title V. I
14 think that has had a mind-set, kind of a paradigm
15 shift in thinking about some of these issues.

16 One of my pictures didn't come out.

17 Upper management involvement certainly
18 is another -- another really key component here.
19 The fact that it's a plant manager or a vice
20 president of EH&S that has to sign these puts a
21 lot more attention on air issues than there had
22 been in the past, without a doubt. I've talked to
23 many, many more VPs and plant managers after Title
24 V than I ever did before, because in the past it

1 was always, you know, it's the environmental guy
2 that handles that, and he'll answer all your
3 questions.

4 This is kind of related to the last one.
5 The effective way to implement Title V, and the
6 way that I think it's being done at facilities
7 that are doing well in meeting their Title V
8 commitments, it integrates compliance with
9 day-to-day operations. Compliance is not
10 something that's handled by the environmental
11 department and it's separate from what goes on day
12 to day at the plant. I think, at least in the
13 clients that I'm working with, compliance is seen
14 as an obligation of the people that run the plant
15 on a day-to-day basis far more than it had been in
16 the past.

17 I don't want to characterize all
18 industry as not complying before Title V and
19 complying now. I'm talking about general trends.
20 I see much more integration of compliance with
21 operations than I had in the past, and, again, I
22 believe that's an absolutely key component to
23 cost-effective compliance with Title V
24 obligations.

1 A couple of areas of concern here. One
2 of the primary issues that I deal with all the
3 time is the tendency of permit writers and
4 agencies to add additional requirements at the --
5 during the permit writing process. And I
6 certainly understand the inclination to do that,
7 but in some respects that's not what Title V was
8 supposed to be about.

9 Title V was about aggregating existing
10 requirements into a single location. While that
11 is being done, there is a lot of additional, both
12 requirements and emission limits, that are added
13 to the permit, and a lot of times without --
14 without adequate opportunity for discussion. It
15 seems to be that that's just what's expected in a
16 Title V permit.

17 One of the key things -- go to the next
18 slide here, because the two of these two are
19 related here -- actually, it's not, but I'll get
20 that in a minute.

21 One of the key additions that I see over
22 and over again is the conversion of limits from
23 maybe ton per year or pound per million BTU or
24 process weight times the limitations to a

1 pound-per-hour limitation. In some states it's
2 actually required, it's part of the Title V permit
3 application, that you actually have to state your
4 emissions in pounds per hour, and those become
5 enforceable commitments when that permit becomes
6 finalized. That in many cases these are new
7 limits that did not exist under any previous
8 permit.

9 The question then becomes for some of
10 these sources, how do you determine what these
11 emissions are in a pound-per-hour basis? For some
12 sources it may be easy. For other sources it may
13 be almost impossible to come up with some kind of
14 pound-per-hour estimate. But yet those become
15 part of the permit under this process, and that is
16 very, very, very common.

17 The second is the addition of new
18 monitoring. I'm going to talk a lot more about an
19 aspect of this in a little bit, but this goes with
20 the new requirements. Very often new kinds of
21 monitoring are added. Even when there is existing
22 monitoring that takes place, additional
23 requirements are added.

24 Now, certainly in the case when there is

1 no monitoring, there is some ability of the EPA to
2 go in under the periodic monitoring provisions and
3 require some additional monitoring, but what we've
4 seen is that that happens far more often than
5 under those limited circumstances.

6 This is where I want to spend a little
7 bit of time here. I know this came up in some of
8 the previous testimony here. The focus on
9 monitoring as being definitive; the definitive
10 determination of compliance. I hear that a lot.
11 I hear that monitoring must be a definitive. And
12 there is no question that monitoring is extremely
13 important and an absolutely critical component of
14 compliance, but I did not believe that it was the
15 intent of Congress, and I do not believe that it
16 is the intent or written in the Clean Air Act or
17 the EPA regulations, that monitoring is the sole
18 determination of compliance.

19 If that were the case, we would not need
20 compliance certifications. The reason we have a
21 structure set up under Title V the way we do is so
22 source owners and operators can look at all of the
23 data that is available, which includes monitoring,
24 which includes proper operation of the source,

1 which includes repair, maintenance, and inspection
2 regimes at these facilities. All of that
3 information together is considered by the source,
4 and a compliance determination is made and
5 certified by the source.

6 We hear a lot of talk about the intent
7 of Congress, and I don't know how many of you have
8 read the Senate report that accompanied the Clean
9 Air Act, but if you haven't read that document, I
10 would encourage you to do it because Congress
11 really very specifically provided that in many
12 cases means other than monitoring, including
13 recordkeeping, including inspections, including
14 other things are perfectly valid determinations of
15 compliance. That you don't necessarily have to
16 have a continuous emission monitor strapped onto
17 every 2-inch process vent in order to be sure or
18 reasonably sure -- and it's important to know that
19 Congress used the term "reasonable assurance of
20 compliance," not an absolute assurance of
21 compliance -- that those are perfectly acceptable
22 and well within the intent of Congress. So I
23 would certainly encourage you to take a look at
24 that document, if you haven't.

1 I want to make sure I'm covering all
2 these things here.

3 Some of the discussion revolved, I know,
4 in the past on this committee around the CAM
5 proposal and whether it, in fact, was namby-pamby
6 or not -- I don't know if we said that -- but my
7 belief is that the CAM ruling or the CAM rule, I
8 think, really captures the essence of what the
9 Title V program is all about and what Congress
10 intended for Title V monitoring. I know Peter
11 Westlin, when we put that rule together, talked a
12 lot about reasonable assurance of compliance.

13 And what's really important, and it's
14 not anywhere in the rule, but he used this
15 language a lot, is for source owners to be as
16 aware of the operation of their pollution control
17 devices and what they're emitting as they are
18 about operating their process. That you don't --
19 you don't treat your pollution control device like
20 the redheaded stepchild out on the side of the
21 plant somewhere. That you put as much care and
22 attention and effort into that as you do to your
23 reaction vessels and the things that you use to
24 make money every day.

1 I think that's a reasonable approach to
2 take. That these are pieces of process equipment
3 just like everything else. If you put that focus
4 in on those, then you can achieve a reasonable
5 assurance of compliance.

6 A good example is baghouses for
7 particulate control. In most cases there is no
8 need to put continuous monitoring on a properly
9 operating baghouse. Certainly you can put a bag
10 leak detector on something, but when a baghouse is
11 operating properly and it's designed properly and
12 you know that you're in compliance when it is
13 designed properly, as long as you continue to
14 assure that that baghouse is operating properly,
15 you do some inspections, you don't see any
16 particulate coming off of that, you have a
17 reasonable assurance that that's in compliance.

18 But you have no SIMS on there. You have
19 no opacity monitor on there 24 hours a day, which
20 is kind of a waste of money if you have five
21 years' history, for example, of absolutely no
22 emissions coming off of this source because the
23 baghouse is operating properly. To invest the
24 money and effort to maintain a continuous emission

1 monitor on a source like that doesn't always seem
2 to make a lot of sense.

3 Another key thing I think needs to be
4 brought up, in some of the previous testimony
5 people have talked about the absolute accuracy of
6 monitoring. We want to improve the absolute
7 accuracy of monitoring. And I think it's
8 important to recognize that the way that the
9 permit program is set up, emission limits are
10 established to protect human health at a certain
11 level, whatever level that is. And of course you
12 can agree or disagree on where those limits are
13 set. But after those limits are set, the
14 obligation of a source is not necessarily to
15 quantify down to the last cubic nanometer what
16 those emissions are, but simply to report whether
17 they are above or below the line that you set.

18 The discussion should be -- if you're
19 going to have a discussion, the discussion should
20 be on where you set that line, not necessarily on
21 exactly to the nth degree what those emissions
22 are. If you're operating at 20 percent down --
23 here is your limit way up here, and you're
24 operating way down here (indicating) with an

1 80 percent compliance margin, it really doesn't
2 make a lot of difference whether your monitoring
3 is plus or minus 2 percent, plus or minus
4 5 percent, or plus or minus 10 percent. You can
5 say with very reasonable assurance that you are in
6 compliance.

7 And that's important because it provides
8 flexibility for sources to choose among different
9 kinds of monitoring; not necessarily the most
10 expensive, the most incredibly accurate
11 monitoring, but monitoring that assures
12 compliance. And that's what the important thing
13 is, are you above or below the line.

14 I think I have one last slide, and
15 hopefully I can squeeze in these last two minutes
16 here. We'll skip this one for now, get to the
17 very last one; one more.

18 Just a thought here. This is data from
19 an actual facility, and I wanted to -- there was
20 some discussion earlier on insignificant sources,
21 and I wanted just to show you, this is baghouses
22 at a particular facility that we looked at here.
23 And you can see the relative size of these
24 different units. I guess I just wanted to show

1 you the typical profile of a source. You have
2 very, very, very many small -- you can call them
3 insignificant -- small units that contribute a
4 relatively small percentage of the plant

5 emissions. In this case you have 70 percent of
6 the sources contributing 25 percent of the
7 emissions.

8 On the other side of that, you've got
9 only 30 percent of the sources that are accounting
10 for 75 percent of the emissions. From an
11 environmental standpoint, from a cost-
12 effectiveness standpoint, it makes sense to spend
13 the time, the effort on the 75 percent of those
14 plant emissions. I'm not saying you ignore the
15 other ones, but we're talking about not
16 necessarily applying exactly the same criteria to
17 the 30 percent of the sources as you are to the
18 70 percent of the sources.

19 You can get a reasonable assurance of
20 compliance overall. Focus the effort on where the
21 emissions are, not necessarily on each little
22 2-inch process vent or each little baghouse that's
23 on top of a silo somewhere, and I think you can
24 get a reasonable assurance of compliance under

1 Title V. I believe that's the last one.

2 MR. HARNETT: Okay. Verena Owen?

3 MS. OWEN: Thanks for coming out here today
4 and talking to us. We appreciate it.

5 I have, I think, two clarifying
6 questions. When you started talking about the
7 concerns, you talked about conversion of limits to
8 pounds per hours, and then you said from other
9 standouts, and then you added that did not exist
10 prior. So I can't in my mind understand what --
11 by a conversion would then happen if nothing
12 existed prior to the conversion.

13 MR. EVANS: The pound-per-hour limit did not
14 exist. That's substantially a different standard
15 than if you had a ton-per-year limit. What we've
16 seen -- I think someone brought this up earlier --
17 a lot of times in that conversation they simply
18 took that ton-per-year limit and divided it by 12
19 or 8,760 or whatever number they needed to get,
20 and that is a severely more restrictive limitation
21 than ton-per-year limit.

22 A ton-per-year limit is like an annual
23 average. You can agree or disagree on what the
24 averaging link should be, but there should -- if

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2 MR. HARNETT: Okay. Verena Owen?

3 MS. OWEN: Thanks for coming out here today
4 and talking to us. We appreciate it.

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18 took that ton-per-year limit and divided it by 12
19 or 8,760 or whatever number they needed to get,
20 and that is a severely more restrictive limitation
21 than ton-per-year limit.

22 A ton-per-year limit is like an annual
23 average. You can agree or disagree on what the
24 averaging link should be, but there should -- if

1 it's done correctly, even assuming that a
2 conversion should take place at all, the
3 pound-per-hour limit should be much higher than
4 the annual limit to allow for hourly fluctuations
5 in a process that would get smoothed out in an
6 annual average, and very often that is not done.

7 But in some cases those ton-per-year
8 limits were, in fact, created out of thin air.
9 There was absolutely nothing there previously but
10 because of the Title V permit form, the
11 application form that needed to be filled in, and
12 there was no previous limit on that.

13 MS. OWEN: You might have answered my next
14 question already. Because before you talked about
15 that, you said that you are concerned about
16 additional requirements that are added to a Title
17 V permit, and I was going to ask you for some
18 examples.

19 MR. EVANS: Some examples might be a
20 scrubber, for example. If a scrubber was there
21 that was not put there for compliance purposes,
22 suddenly there are monitoring requirements on that
23 scrubber.

24 Another example is the use of process

1 data. I can think of one example where an oxygen
2 analyzer was used, for example, as an indicator of
3 whether the process was working normally. And it
4 was a process indicator to show whether the
5 process was in an upset state or not. But that
6 got turned around, and the O2 analyzer, in effect,
7 became almost like a surrogate nox analyzer. And
8 a violation of that O2 analyzer, which was never
9 intended to be used for compliance, became, in
10 fact, a compliance indicator. So those are a
11 couple things I can think of recently.

12 MS. OWEN: Thank you.

13 MR. HARNETT: Don van der Vaart?

14 MR. VAN DER VAART: Yeah. I guess my
15 question was, when you said that monitoring should
16 not be the sole per basis of your plant
17 certification, I totally agree that Congress did
18 not -- I mean, explicitly made the point that the
19 monitoring that was required to assure compliance
20 didn't need to be continuous monitoring.

21 MR. EVANS: Right, right.

22 MR. VAN DER VAART: Should be reasonable.

23 My question is, do you mean that the
24 permit -- is your point there that the Title V

1 permit should not have to define compliance?
2 Notwithstanding monitoring. I mean, it can be,
3 you know, O&M; it can be, you know, material
4 balances; it can be -- but are you saying that you
5 didn't think the Title V permit was supposed to
6 define class, or just that the monitoring
7 shouldn't be the --

8 MR. EVANS: No, I think Title V does need to
9 define compliance. I'm saying that monitoring is
10 one way to indicate compliance. O&M might be
11 another way. Limitations on VOCs and process
12 materials might be another way.

13 I think when people don't talk about,
14 "We need more monitoring data," it sounds like we
15 need to put a continuous emission monitor on every
16 source in the facility to really be sure that we
17 know they're complying, and I really don't believe
18 that's the case.

19 MR. HARNETT: Michael Ling.

20 MR. LING: You mentioned very early in your
21 testimony that you thought that the regulations,
22 state and federal regulations, are best done by
23 incorporation by reference. I'm wondering if you
24 could describe how your experience led you to that

1 conclusion. And also, if you could just talk a
2 little more about how you see incorporation by
3 reference working, since it means different things
4 to different people.

5 MR. EVANS: Well, my experience has been in
6 dealing with these enormous permits that do
7 nothing more than essentially copy pages and pages
8 and pages out of the Federal Register, which are
9 really not necessary.

10 There is certainly an issue in
11 incorporation by reference of the level of detail
12 you need. Actually, it is a complicated problem,
13 because when we go in and work with a facility to
14 determine compliance, essentially that's what we
15 do. If there is a reference in their permit that
16 says they have to comply with the refinery MACT,
17 then we have to go through the refinery MACT line
18 by line, paragraph by paragraph, and pick out the
19 sections that apply to this particular facility,
20 because depending on what kind of refinery it is,
21 there may be sections that they must comply with
22 and sections that they don't need to comply with,
23 or there may be options that they choose from for
24 different compliance methods.

1 So it's almost a case by case for
2 facilities. So I'm not sure -- you certainly
3 could do the legwork up-front. And, you know, I
4 have a table of references possibly that say these
5 sections would apply to this facility, but I think
6 even just a broad reference to the refinery MACT,
7 for example, would be better than reproducing --
8 putting the entire rule in there does absolutely
9 nothing. You might as well incorporate it by
10 reference because you get the same level of
11 information, if you have 50 pages versus one
12 citation. I don't know if that helped.

13 MR. HARNETT: Richard Van Frank.

14 MR. VAN FRANK: You mentioned the necessity
15 of new requirements and new monitoring. Isn't
16 actually the case many of the times that these
17 requirements are there because you're dealing with
18 very old permits that are outdated, and this is
19 the only way to get a Title V permit written is to
20 include the monitoring and up-to-date
21 requirements?

22 MR. EVANS: If there is no monitoring because
23 it's an old permit, then there are provisions
24 under Title V, and particularly the periodic

1 monitoring, to add some of those new requirements.
2 I guess that's not where I have my chief concern.

3 My chief concern is where there is
4 already monitoring required under an old permit or
5 under a regulation to -- there is a tendency to
6 want to enhance that monitoring even further
7 beyond what there is in the regulation, and those
8 are issues that we struggle with all the time.
9 Sometimes it may be appropriate, but a lot of
10 times it may not be.

11 MR. VAN FRANK: Well, if I may ask a question
12 of an example, in many instances the opacity was
13 go out and look at the stack once per shift. I
14 don't believe in most cases now, especially for
15 smoky facilities, that's adequate. You really
16 need continuous opacity monitoring.

17 So would you include that in there as an
18 unnecessary new requirement?

19 MR. EVANS: I guess my thoughts on monitoring
20 are very, very, very site-specific; even the type
21 of monitoring.

22 If the facility is operating very, very
23 close to an emission limit, where there is a
24 substantial opportunity for noncompliance there, I

1 think there is a higher degree of monitoring that
2 may be necessary, especially if it's a large
3 source that's operating very close to that limit.

4 However, you mentioned smoky facilities.
5 Obviously if a facility is smoky, chances are
6 maybe it's not complying with those opacity
7 limitations, then absolutely they have to do
8 something about that.

9 But if you've got a baghouse on a lime
10 silo somewhere that has potential emissions only
11 when they're loading lime, which is twice a week,
12 and they've operated this baghouse for five years
13 and never seen a wisp of particulate from this, on
14 that kind of source it doesn't make a lot of sense
15 to put out a continuous monitor.

16 MR. HARNETT: Shannon Broome?

17 MS. BROOME: Hi. Just a quick question,
18 following up on some of the stuff you were saying
19 about the O2 analyzer and that they somehow
20 converted that into a measurement of the nox
21 emissions.

22 As I understood what you were saying,
23 for this permit -- and I don't want you to name
24 the company or anything, but it sounded like they

1 were saying, "Okay, if you have a number on your O2
2 analyzer that's below or above X" -- I'm not sure
3 what the relative direction would be.

4 MR. EVANS: It's 3 percent in this case.

5 MS. BROOME: Okay. That you would have a
6 violation of your permit? They were saying that?

7 MR. EVANS: Yeah, absolutely. I guess that's
8 indicative of a larger problem of taking parameter
9 monitoring and treating it as, in effect,
10 surrogate direct monitoring.

11 MS. BROOME: So in your response to
12 Mr. van der Vaart's question, you were not
13 intending to say that it was appropriate to define
14 compliance with a tool like an O2 monitor?

15 MR. EVANS: Oh, no. No, no, no.

16 MS. BROOME: You were not trying to say that?
17 That wasn't what you meant by denied compliance?

18 MR. EVANS: No.

19 MS. BROOME: Because I think that that was
20 where his question was leading.

21 His card's up. I'll let him respond.

22 MR. EVANS: Do you want to respond before
23 I --

24 MR. VAN DER VAART: Yeah. I mean, the

1 question that I've got, I totally agree that if
2 you're not happy with an oxygen monitor being used
3 to define your nox emissions to the point of
4 determining compliance, I don't think anybody
5 would argue that that's inappropriate. I think
6 the question that comes up --

7 MR. EVANS: The state did in this case.

8 MR. VAN DER VAART: But what they should come
9 back and say, "Okay, look, we don't like that, but
10 what can we do?"

11 So here is the question. The question
12 is it's not whether oxygen monitoring is the right
13 answer. The question is, "Look, we both know that
14 we need to define compliance. How do you want to
15 do it?"

16 MR. EVANS: And actually, we did come up with
17 a solution there. I think it involves talking and
18 education on both sides. And one of the things I
19 can't stress enough for folks going through this
20 is to talk to your permit writers and the state
21 agency people a lot.

22 But it actually had to -- we had to come
23 to an understanding of what parameter monitoring
24 was all about. And parameter monitoring is not a

1 substitute for a direct determination of
2 compliance. Parameter monitoring is intended to
3 determine whether or not a process is operating
4 within its normal parameters, and that makes the
5 assumption that you've defined that while you're
6 operating within those normal parameters, that you
7 are in compliance.

8 And the parameter monitor is just to
9 check to say, "Yeah, the process is operating that
10 same way, so we can be reasonably certain that
11 we're still in compliance." It's not intended to
12 mean if you're 3.1 O2, then you've violated your
13 nox, your nox requirements. That's the problem.

14 MS. BROOME: So you would not suggest that
15 the parameters should be enforceable.

16 MR. EVANS: I would not suggest -- not --

17 MS. BROOME: Limits. That you violate your
18 permit if you exceed a parameter. You're not
19 suggesting that, right?

20 MR. EVANS: Let me qualify it a little bit.
21 If you had very strong correlation data
22 correlating that parameter with your direct
23 emissions --

24 MS. BROOME: But only that.

1 MR. EVANS: (Continuing) -- then I would say
2 that's fair. In the absence of any kind of
3 correlation like that, then it's not reasonable to
4 say that this parameter means that you are out of
5 compliance with the underlying standard. It
6 raises questions is all it does. It says, well,
7 we need to look at this. Something is going on
8 here where this parameter is being --

9 MS. BROOME: But you wouldn't say that the
10 parameter was enforceable. Then the emission
11 limit is what you just said.

12 MR. EVANS: I believe the -- yeah.

13 MS. BROOME: Okay.

14 MR. EVANS: The emission limits are what --

15 MS. BROOME: Okay.

16 MR. EVANS: Are you exceeding that emission
17 limit --

18 MS. BROOME: I just wanted to make sure --

19 MR. EVANS: Yes, that's the bottom line.

20 MS. BROOME: (Continuing) -- how you were
21 treating this. Thanks.

22 MR. HARNETT: Keri Powell.

23 MS. POWELL: Thank you for your testimony,
24 Mr. Evans.

1 MR. EVANS: Sure.

2 MS. POWELL: I would love to get to talk with
3 you a while on your views on monitoring, but I'm
4 just going to ask you to clarify one area where
5 I'm a little confused by your testimony.

6 On the one hand, you mentioned concern
7 about the addition of monitoring, where a source
8 is already engaging in some kind of monitoring.
9 But on the other hand, you described circumstances
10 where a source might be operating at a level that
11 is very close to their emission limit, and then
12 you sort of said, "Well, something needs to be
13 done in that case."

14 So my question for you is, over the
15 course of your work, have you come across
16 circumstances where a source is undertaking some
17 kind of monitoring, but you personally don't think
18 that that monitoring is sufficient to give a
19 reasonable assurance of their compliance? And if
20 you have, how do you think that problem is best
21 dealt with?

22 MR. EVANS: Sure. I mean, it happens a lot.
23 How it's dealt with, I think, changes from point
24 to point. Some of it has to do with the

1 monitoring that's available. There is a tendency,
2 I guess, to rely on things like EPA reference
3 methods, for example. But in the case of low nox,
4 you deal with facilities where the compliance
5 limit may be 1.5 parts per million nox. You can
6 do that kind of monitoring, but you're measuring
7 noise.

8 Anytime we're measuring -- if the
9 difference between compliance is between 1.5 and
10 1.6, and we measure 1.6, it doesn't tell us
11 anything. The monitoring itself is simply not
12 accurate enough to measure to that level. That
13 may create a problem that is very difficult. How
14 do you take those measurements -- whenever you're
15 dealing with very low measurements or recently
16 with hazardous air pollutants, the monitoring
17 methods simply may not be there, be there with an
18 adequate degree of reliability to provide that.

19 If they are, it may simply be a matter
20 of doing something like coming up with a
21 site-specific emission factor. If you're
22 depending on, say, an AP 42 factor, a generic
23 emission factor to determine compliance, and we
24 decide that's for whatever reason not adequate --

1 maybe you've taken a handheld analyzer, you do a
2 stack test, whatever, you find -- you verify that
3 and say, "We're going to adjust this a little bit
4 one way or another," and that will provide more
5 reliability than the method that we were using in
6 the past.

7 So you may have to change monitoring
8 methods or monitor maybe two parameters instead of
9 one. There are different ways to approach that.
10 Monitoring, at least in my experience, is an
11 extremely site-specific activity, and especially
12 now with the low emission sources and the HAPs.

13 MS. POWELL: If I can just follow up. So
14 what do you do in a circumstance -- like, you're
15 saying monitoring is site-specific, and in my
16 experience as an advocate, I would agree with
17 that, that it is very difficult to have a
18 one-size-fits-all monitoring regime.

19 So the question is, if you have a
20 circumstance where a state implementation plan has
21 some kind of monitoring in it, but that monitoring
22 really doesn't look like it's adequate to assure
23 compliance -- like maybe you have a once-per-year
24 method 9 test, where you're just looking at the

1 smokestack and reading it, and perhaps you have a
2 facility where you think that's really not good
3 enough, what's your position on how the Title V
4 permit should deal with that? Should additional
5 monitoring be added or not?

6 MR. EVANS: I think there is a difference
7 between what the source does to ensure they're in
8 compliance and what the official compliance test
9 is.

10 You can certainly do a stack test once a
11 year and claim that you're in compliance, but I
12 don't believe you can do that in isolation. I
13 think one of the things you have to do, if you're
14 doing an annual stack test or annual method 5, is
15 you have to characterize how that source was
16 operating during that time.

17 And during the year, then, if the source
18 was operating in the same way, I think that that
19 test could be a reasonable determination of
20 compliance.

21 If it wasn't, if you come up with a
22 situation during the year, you've done your method
23 9 at the end of the year, you've done your stack
24 test, but you had a major change in the source,

1 something happened, there is a question raised
2 about compliance. This is where with the
3 compliance certification, you certify continuous
4 or intermittent compliance.

5 Sometimes you know you're out of
6 compliance. There is no doubt. You can see the
7 fact you're out of compliance. Other times I
8 believe there are periods of uncertainty, where
9 the best data available to you will not allow you
10 to make a strong determination were you in, were
11 you out. You're in an uncertain area, and I think
12 that that needs to be recognized. It shouldn't
13 stand necessarily. I think you have to examine
14 that and say, "How can we avoid these kind of
15 fuzzy periods in the future? Do we have to
16 improve or monitoring or whatever?" That may be
17 the case.

18 But I think it all has to do with
19 operating the source in the same way, under the
20 same conditions as occurred when your compliance
21 test was done. I think that could go a long way
22 toward assuring compliance, when you have those
23 big gaps between tests.

24 MS. POWELL: Thank you.

1 MR. EVANS: I don't know if that happened.

2 MR. HARNETT: Thank you.

3 Just for everyone, we're running a
4 little long on this speaker, but there seems to be
5 substantial interest still, and we have some
6 additional time before lunch. If everyone is
7 comfortable, I will continue the questioning --
8 including Mr. Evans, I will continue the
9 questioning for --

10 MR. EVANS: I've got nothing else to do.

11 MR. HARNETT: (Continuing) -- a while longer
12 so we can accommodate all those that have
13 questions. Is that --

14 MS. OWEN: Bill?

15 MR. HARNETT: (Continuing) -- okay?

16 MS. OWEN: Bill, could you just ask if there
17 is somebody in the audience who is a walk-in and
18 would like to speak before we continue?

19 MR. HARNETT: I had checked at the break, and
20 there were none.

21 Are there any new walk-ins?

22 MS. OWEN: Thank you.

23 MR. HARNETT: All right.

24 Then next, Steve Hagle.

1 MR. HAGLE: Thanks. I wanted to go back to
2 your discussion about adding short-term permit
3 limits and short-term emission limits into Title V
4 permits. I want to ask you the same question that
5 the other speaker that mentioned this got asked,
6 and that is, did the permitting authority express
7 the reason why those are getting added or why -- I
8 know you said they were on the forms. I mean,
9 what authority did they have to ask --

10 MR. EVANS: This happens so frequently.
11 There is, I guess, different reasons. In some of
12 the states, the permit writers simply said it was
13 not within their discretionary ability to
14 eliminate those requirements, that they were told
15 that every single unit on the Title V permit had
16 to have a pound-per-hour emission limit associated
17 with it, and that was the word that was passed
18 down. You start pushing them on what their
19 statutory regulatory authority is for that, and
20 they say, "Well, that's not my concern. I just
21 write permits." So you have to take that to a
22 different level to get some of those answers, I
23 think.

24 I believe in some cases there is no

1 statutory regulatory authority to create some of
2 these new limits.

3 MR. LING: Could it be fee calculations?

4 MR. EVANS: Some of it is based on fee
5 calculations, which if you had to come up with an
6 estimate on the basis for fee calculations, that's
7 fine, but I think there's a difference between an
8 estimate for fee calculation and an enforceable
9 limitation. For a fee calculation, if you want to
10 be safe, sure, you could just overestimate or
11 whatever on your fees.

12 MR. HAGLE: But aren't fee calculations based
13 on annual numbers?

14 UNIDENTIFIED SPEAKER: Ton per year, right.

15 MR. EVANS: Usually ton per year, I think so,
16 and usually not on pound per hour.

17 MR. HARNETT: Okay. Lauren Freeman?

18 MS. FREEMAN: Good morning.

19 MR. EVANS: Good morning.

20 MS. FREEMAN: I had a question for you about
21 CAM. You mentioned -- talked a lot of about
22 monitoring and the adequacy of monitoring and the
23 need in some cases to specify monitoring through
24 Title V. You mentioned periodic monitoring is one

1 obvious one, and CAM, which my understanding is,
2 is one of the major tools intended to address
3 monitoring through Title V.

4 Whether you had any comments on your
5 experience in implementing CAM and the adequacy of
6 that in dealing with -- I think some of the
7 examples we heard today were you might not have a
8 direct measurement method but still need to
9 monitor the control device. I just wondered if
10 you had any more specific comments on how that is
11 going.

12 MR. EVANS: Personally I think it's going
13 very well with CAM. It needs to be implemented
14 properly, and I think that was anticipated when
15 Peter put in the requirement for CAM plans, so
16 that somebody would have a chance to review that.

17 Parameter monitoring is always tricky,
18 and it's always pretty site-specific. But if it's
19 done properly, I think it can provide that
20 reasonable assurance of compliance that we're
21 looking for. And certainly looking at parameters
22 as a surrogate for direct emissions, the question
23 that always comes up, I guess, is what's the
24 cor- -- that's what people are always asking;

1 what's the correlation? When do we make that
2 determination a violation of the parameter is a
3 violation of the underlying emission standard.
4 And how much information is necessary when you're
5 putting that together.

6 And those are some of the things, I
7 think, that are still being worked out in that
8 program. If there is any fuzziness in CAM, that's
9 where it's at.

10 But in most of the cases I've been
11 involved in, the margins of compliance are such
12 that I've been very comfortable that the parameter
13 monitoring that's been done at those facilities
14 does provide, in fact, a reasonable assurance of
15 compliance, and it works very well.

16 I think it's -- just one other issue on
17 CAM. I think it's interesting to know -- we keep
18 hearing this NRDC lawsuit that happened regarding
19 the CAM decision a while ago. I think that court
20 made a couple of very key statements about the CAM
21 program.

22 Number one being that CAM complies with
23 the Clean Air Act's enhanced monitoring program.
24 That court saw CAM as enhanced monitoring, which

1 is supposed to be a level of superior, better
2 monitoring than what is normally found, and the
3 court recognized that CAM meets that requirement.

4 And they also said that it enhances
5 monitoring by requiring each major source to
6 design a site-specific monitoring system
7 sufficient to provide a reasonable assurance of
8 compliance with emission standards. I think,
9 again, the use of that word "reasonable" is
10 important.

11 They also stated that it permits owners
12 to certify compliance within the degree of
13 certainty that CAM provides. And this is, I
14 think, really important here when certifying
15 compliance.

16 All monitoring, even if it's a
17 continuous emission monitor, contains some
18 uncertainty, some error, some degree of
19 uncertainty, even if it's very small. I think you
20 need to recognize these various uncertainties when
21 you're certifying compliance. If you have a
22 continuous monitor that you have on for the acid
23 rain program, for example, your uncertainty is
24 going to be very small and maybe not even

1 recognized, but it's there.

2 When you are certifying compliance with
3 CAM, it's important to recognize that that also
4 provides limits. We're not saying that we are
5 100 percent certain that we are in compliance.
6 You can never, ever, under any circumstances, say
7 you are a hundred percent certain. The key is
8 that given all the information that's there,
9 including the CAM monitoring, can we reasonably
10 certify compliance. And in most of the cases or
11 all the cases I've been involved with CAM, that
12 definitely has been the case.

13 MR. HARNETT: Marcie Keverer?

14 MS. KEEVER: I'm actually just wondering if
15 you could provide us with more examples -- the
16 first thing you mentioned was just that
17 consolidation has made review much easier for your
18 clients.

19 MR. EVANS: Oh, yeah.

20 MS. KEEVER: I'm really interested in
21 examples, because I know I'm definitely seeing
22 some and want to hear it from your perspective.

23 MR. EVANS: In the past you had a situation
24 where you had sometimes as many as 20 or 30 state

1 recognized, but it's there.

2 When you are certifying compliance with
3 CAM, it's important to recognize that that also
4 provides limits. We're not saying that we are
5 100 percent certain that we are in compliance.
6 You can never, ever, under any circumstances, say
7 you are a hundred percent certain. The key is
8 that given all the information that's there,
9 including the CAM monitoring, can we reasonably
10 certify compliance. And in most of the cases or
11 all the cases I've been involved with CAM, that
12 definitely has been the case.

13 MR. HARNETT: Marcie Keverer?

14 MS. KEEVER: I'm actually just wondering if
15 you could provide us with more examples -- the
16 first thing you mentioned was just that
17 consolidation has made review much easier for your
18 clients.

19 MR. EVANS: Oh, yeah.

20 MS. KEEVER: I'm really interested in
21 examples, because I know I'm definitely seeing
22 some and want to hear it from your perspective.

23 MR. EVANS: In the past you had a situation
24 where you had sometimes as many as 20 or 30 state

1 permits all issued at different points in time,
2 all with different expiration dates, and some of
3 which might be in the file, some of which, you
4 know, "The guy that was here two years ago kept
5 all that stuff at his desk, and he's no longer
6 here, so we have to dig that up."

7 Quite frankly, a lot of times in the
8 past we could never even find some of the
9 information that supposedly was in the permit.
10 The instances of those kinds of things has just
11 gone way down because of Title V.

12 Even if it's a thousand-page Title V
13 permit, I would rather have a thousand pages all
14 nice and neat and in front of me so I can page
15 through it, than, you know, the 200 pages of
16 scattered documents that all expire at different
17 times. You're never sure whether you actually
18 have everything that you need. So it's been, I
19 think, very successful in that regard.

20 MR. HARNETT: Carol Holmes?

21 MS. HOLMES: Hi. Thank you for coming.

22 I have two; one quick, one maybe
23 not-so-quick question.

24 One is follow-up to what Steve was

1 saying. If you -- if your clients, I guess, are
2 getting permits that they think have extra terms,
3 these pound per hours which derive from nothing,
4 as far as you or the permit writer could tell
5 you -- and I'm not suggesting this, because I know
6 Padmini is already busy enough. Do you guys ever
7 petition us to review the permit as being
8 erroneous?

9 MR. EVANS: We certainly do that as an
10 absolutely last resort. The first thing we do is
11 an attempt to talk to the permit writer. In some
12 cases there is very little discretion, and it
13 really depends on how far the source wants to push
14 it.

15 I think we have suggested to a couple of
16 permit authorities that we would do that, and some
17 of the terms have been either modified or
18 withdrawn.

19 In other cases, I think it was clear to
20 us that it would be a very difficult fight because
21 of the way that the state permit for the state
22 Title V program is issued, that it probably would
23 require some type of regulatory or statutory
24 change in order to get those out of there.

1 I think the programs themselves
2 sometimes almost mandate that. So I don't believe
3 we've ever challenged, but we've come close to
4 challenging, and we've -- either sometimes we've
5 backed off or sometimes the state has backed off,
6 depending on what the circumstances are.

7 MS. HOLMES: Then I had another question for
8 you, if we have a few minutes.

9 MR. EVANS: Yes.

10 MS. HOLMES: I wanted to know your thoughts
11 on an issue I'm sure is going to make Shannon's
12 hair stand on end, but it involves the parametric
13 monitoring issue.

14 MR. EVANS: One of my favorite topics.

15 MS. HOLMES: Exactly.

16 If you had a sense, you could use
17 whatever temperature accommodation with respect to
18 time, as long as you know what you -- you would
19 have to stay in a certain temperature parameter or
20 time retention parameter. But I understand for
21 expense and convenience sometimes what you want to
22 do is set up the parameters that you monitor
23 instead.

24 So let's say we know that as long as you

1 stay between 800 and 900 degrees -- well, that's
2 too low -- 1,500 and 1,600 degree and three-second
3 retention time, that there is no way you're going
4 to be busting your emission limit.

5 My problem is when you go below that by,
6 say, 50 degrees, I have no idea what your
7 emissions are. I had the burden of proving the
8 case, but you have all the information. So in my
9 mind that's setting up some kind of presumption
10 that when you're outside the parameter, you have
11 to rebut and show that "well, I was using four
12 seconds for that day," or, "I was at 50 percent
13 capacity," or something. It helps out because
14 then all I know is you're outside of the parameter
15 that we know is compliance, but I can't prove
16 noncompliance because I don't have the information
17 because the only thing we tested was within that
18 parameter range.

19 MR. EVANS: Certainly one of the things when
20 we're developing parameter ranges with our
21 clients, I really encourage them to push their
22 process as close to noncompliance as possible.
23 One of the problems we have with doing that is --
24 and this has come up on more than one occasion --

1 they would like to push their process all the way
2 to noncompliance when they're doing a parameter to
3 really see where that line is; you know, "At what
4 point do we cross over?" But they're afraid if
5 they do, they'll have to report that, and then
6 they'll get fined.

7 So they're very leery about pushing
8 their process to that point. Because they would
9 like to know, too. I mean, in many cases they
10 would like to know, "At what point am I, in fact,
11 out of compliance?" But they won't quite go to
12 that limit in a lot of cases because of fear of
13 having to report a noncompliance.

14 In some cases, like an oxidizer, a
15 thermal catalytic oxidizer, the engineering
16 calculations for that are reasonably simple. If
17 you know what's going in and you know what it
18 takes to destroy those particular compounds, I
19 think you could probably come up with a reasonable
20 idea of whether or not you're in compliance below
21 those limits.

22 It gets fuzzier with more complex
23 processes and complex parameters; the O₂ and nox,
24 nox seems like a simple thing, but there are so

1 many factors that go into the relationship between
2 oxygen and nox formation that it turns out to be
3 an extremely site-specific issue.

4 So if you are a little bit under on your
5 nox, and you don't have that data, you don't have
6 a clue as to whether you're in or out. I don't
7 think, without that data, you'd be able to make a
8 definitive determination in some cases as to
9 whether you're in or out.

10 MR. HARNETT: Shelley Kaderly?

11 MS. KADERLY: Actually, Carol asked both my
12 questions. Thank you.

13 MR. EVANS: Did I answer your question okay?
14 I don't know.

15 MS. HOLMES: Well, I just wanted to know what
16 your thoughts were, so sure.

17 MR. EVANS: Okay. You got them.

18 MS. HOLMES: I wasn't looking for a
19 definitive yes or no.

20 MR. HARNETT: Keri Powell?

21 MS. POWELL: You mentioned how you thought
22 nox standards should be handled. One of the
23 options that you provided was that there would
24 just be a broad incorporation by reference of the

1 entire MACT.

2 As an advocate, that's pretty
3 frustrating, because the MACT has all, choose your
4 own adventure which way you go on issuing
5 compliance -- I mean, on complying with that rule.
6 So I think advocates are at even more of a
7 disadvantage than the source, because we don't
8 have all the knowledge of the source to know what
9 they're supposed to do.

10 I would guess that it would cause the
11 same problems for the source --

12 MR. EVANS: Oh, it does, it does.

13 MS. POWELL: (Continuing) -- that it leaves
14 it ambiguous as to what they're supposed to. So
15 why do you think that would be a good approach?

16 MR. EVANS: Well, I think that incorporating
17 by reference is equally frustrating than throwing
18 the whole MACT standard in there. I don't think
19 it gives you any more level of detail of
20 information.

21 Ultimately, if a source is going to
22 comply, they need to go through that process of
23 going through that MACT line by line so they've
24 got that information in there.

1 You know, whether that becomes part of
2 the Title V permit -- sometimes they don't
3 actually go through that process until after the
4 Title V permit is issued for the first time.
5 Maybe on renewal some of those permit terms can go
6 in there.

7 The problem is, in a MACT standard, if
8 they have options, which a lot of MACT standards
9 have, you know, pick from Option A, B, C, or D,
10 they may want to retain the flexibility at some
11 point of going to another option in the future.
12 If Option A is hard-coded into that permit, then
13 that tends to limit their flexibility to choose
14 that in the past.

15 Now, you can do things with operating
16 scenarios or some maybe list some of the flexible
17 permitting kind of things, but the reluctance to
18 go too far is that it may tend to limit
19 flexibility. In situations where there are no
20 options and it's clear this is what you have to
21 do, then I don't think there is any problem with
22 that. Because they need to know that, too.

23 MS. POWELL: Have you seen a good permit that
24 laid out the MACT polls and actually did the

1 operational flexibility, and explained --

2 MR. EVANS: I've seen very few good permits.

3 MS. POWELL: I think it would be really
4 helpful to have an example of one that actually
5 does spell out what the source has to do.

6 MR. EVANS: As far as the MACT standard, like
7 complicated MACT standards, something like the
8 refinery MACT or SOCOMI MACT or anything, I have
9 never seen a good permit that I think meets that
10 balances. Either they've gone to one extreme or
11 the other. Either they put in the entire MACT or
12 refinery SOCOMI standard, or they've just
13 incorporated it by reference.

14 The problem is it's a huge amount of
15 work to do that. That's why I'm thinking maybe on
16 renewal, when the source has gone through that
17 exercise, it may take, you know, months to do
18 that, then maybe some of those things could be
19 incorporated in the renewal kind of permit.

20 It's frustrating though; for me, too,
21 because I need to know. When I go into a source,
22 I need to know what are you complying with here?
23 Exactly what are you doing here? Sometimes that's
24 a very complicated process to pull that out.

1 MR. HARNETT: Shannon Broome.

2 MS. BROOME: I'm going to go back to your
3 slide up here that I've been sitting here staring
4 at, and I was wondering -- there has been a lot of
5 discussion about the slowness in issuing initial
6 Title V permits. You look at the numbers, and
7 have you found that -- and this relates to your
8 point about negotiating the monitoring -- that the
9 discussions on the monitoring on these small units
10 have delayed kind of the process in getting the
11 initial permits out, kept people from moving to
12 the next one because they're sitting there saying,
13 "Well, on this small emission unit, should we look
14 at this every day or every shift or every month,"
15 or has that played in at all?

16 MR. EVANS: I think it has a little bit. I'm
17 not sure it's significant though. I think what
18 has tended to be the case in a lot of the ones
19 we're involved with is they'll come up with a
20 model for an industry, and then they'll try to
21 just rubber-stamp that model on all the other
22 ones. Most of the delays have been in trying to
23 get them away from that model that they have in
24 their head about how that permit should be written

1 and say, "Well, it's fine you did that for the
2 site down the road, but we operate a little bit
3 differently here, and we would like to get these
4 things changed." That takes the most amount of
5 time.

6 Some of that does involve issues of
7 monitoring with those small sources without a
8 doubt. I just don't think that's the main reason
9 why there have been delays.

10 MS. BROOME: Okay. Thank you very much.

11 MR. EVANS: Sure.

12 MR. HARNETT: Don van der Vaart.

13 MR. VAN DER VAART: Thanks so much, Bill.

14 This is great. I want to pick up what
15 Carol was saying. Remember that Carol's question
16 was, Gee, we have this temperature that we're
17 trying to stay above, whatever it is, say
18 1500 degrees, and what does poor Carol do when
19 there are instances when you drop below. That's
20 great.

21 Now, I've got a time machine, and I want
22 everybody to step into the time machine with me,
23 and we're going to go back into time, and we'll
24 get out, guess where, when we issued the permit.

1 Here is the question.

2 Don't you agree that this whole issue of
3 what are we going to do when we drop below 1500
4 should have been addressed at the time of the
5 permit issuance? In keeping with the requirement
6 that the Title V permit should have a monitoring
7 strategy that determines compliance, isn't that
8 the time when we get together and say, Look, what
9 do you think really will determine? What would
10 you be happy with, and what would we be happy with?

11 And that's the point where we define
12 that temperature. And that temperature may be
13 1300 degrees. But the question is, once we get
14 that right, that's not really -- then we go back
15 into the present, and we shouldn't be too
16 concerned. At that point you have to live and die
17 with that decision.

18 In other words, we shouldn't have issued
19 the permit in the first place, if we are -- if we
20 together weren't satisfied that we could live with
21 that limit.

22 MR. EVANS: Two parts to that. The first is
23 how much you do ahead of time. And I absolutely
24 agree with you. The biggest problem that we

1 found -- and I said early on that I spent most of
2 my time with Title V implementation. The biggest
3 problem that I have is trying to find out how to
4 help facilities comply with Title V permits that
5 were poorly negotiated and poorly written and they
6 only look at it afterward and say, "Oh, my. We
7 have to do this? I don't know if we can do this."

8 The time to talk about these issues is
9 before the application is done, and certainly
10 during technical review, when you sit down and go
11 through those terms. And so many times that was
12 not done, and that just creates bad permits and
13 bad time on both sides of the aisle.

14 The other part of that is, once you have
15 those limits in there, should they be rock solid?
16 I guess my answer to that is, in the case of a
17 thermal oxidizer, that's a pretty straightforward
18 example. I talked about the fact that, you know,
19 high correlation. I think in that case there is
20 pretty high correlation between that temperature
21 and that destruction efficiency, and you can make
22 a case that when you're dropping below, that you
23 can -- I think it's fairly easy to make a
24 determination.

1 For a lot of parameter monitoring, like
2 the nox, for example, you can put that in the
3 permit, but there is still no information to know
4 if you're dropping or you're raising above -- from
5 3. -- to 33.1, that that means that you're out of
6 compliance.

7 MR. VAN DER VAART: Right, but I'll just come
8 back and say that if that's the case, we need to
9 go back in my time machine and fix those, too.

10 My point is, is I don't think the permit
11 should ever go out until we're all satisfied that
12 we really are doing a good job.

13 MR. EVANS: To quantify, if we're looking at
14 their chart up here, if we wanted to do that for
15 every single one of those 70 percent of the
16 sources --

17 MR. VAN DER VAART: But the difference is on
18 those 70 percent of point sources, the parameters
19 that we ask you to use are going to be so forgiving
20 that you all will agree that, yeah, the problem --

21 MR. EVANS: That would be the hope.

22 MR. VAN DER VAART: Sure.

23 And one last question is, have you ever
24 argued against reference test methods.

1 MR. EVANS: Oh, sure. All the time. To me
2 there is nothing sacred about reference test
3 method. Most of them or some of them are just not
4 appropriate for certain situations. Low nox is
5 one example.

6 MR. HARNETT: Lauren Freeman.

7 MS. FREEMAN: I'm glad Don asked that
8 question, because listening to Carol's question,
9 which sounded to me getting very close to CAM, if
10 that's a control device parameter, wouldn't CAM
11 require -- I mean, I know this issue -- probably
12 remember we struggled with in CAM, what you do if
13 you go outside a parameter and you don't know
14 whether you're in compliance or out of compliance
15 with emission limit. All you know is your control
16 device is not within parameter.

17 MR. EVANS: Right.

18 MS. FREEMAN: CAM has a requirement to insert
19 a permit term, doesn't it, an enforceable permit
20 term to investigate and correct, and if that
21 happens a lot, you get equipped.

22 So I guess I'm wondering -- in your
23 experience I know CAM is just really getting off
24 the ground. There probably aren't a lot of

1 permits issued now with enforceable CAM plants
2 that's happening now. Whether you've seen CAM
3 plants implemented, and whether those terms are
4 getting put in appropriately to have enforceable
5 requirements.

6 MR. EVANS: We've prepared CAM plans. Again,
7 it's been so new, we actually haven't seen them in
8 operation for extended periods of time. But we've
9 had a lot of experience with non-CAM parameter-
10 type monitoring. When you do sit down and you
11 come up with -- whether it's a CAM plan or whether
12 you try to come up with an approach for parameter
13 monitoring, it's certainly the intention that you
14 want to characterize the normal operation of that
15 source. Sometimes -- most of the time, I think,
16 you can do that pretty well.

17 But occasionally when you do that, and
18 then you get into an operational mode, and you
19 have -- especially if you haven't exercised your
20 process to its limits, you find that you made some
21 poor assumptions about how that operates, and you
22 may have to go back and revisit that.

23 The way that should be addressed and is
24 addressed in CAM is that you treat that as a

1 corrective action. You say, "Well, this is the
2 way we thought this was going to work. Now we're
3 one year into it. We see that we've made some
4 problems. We want to adjust this a little bit.
5 We should eliminate this problem in the future,"
6 and that's the approach taken. Whether that's
7 going to work for CAM, it's a little too early to
8 find out.

9 I guess to me it's not about digging a
10 source for every single little, okay, if you're
11 two seconds off here or one second off here, are
12 you showing continuous improvement in your ability
13 to certify compliance with your emissions. Is it
14 getting better, and are you working hard at making
15 it a little bit better through CAM, through
16 parameter monitoring, whatever. If that's the
17 case, I would argue that's a good thing.

18 MR. HARNETT: Thank you very much for your
19 time and for coming here today.

20 We will now take our lunch break and
21 return here at 1:30. So if everyone could be on
22 time, we'll try and get started right at 1:30.
23 Thank you.

24 (Lunch recess.)

1 A F T E R N O O N S E S S I O N

2 MR. HARNETT: I'd like to welcome everyone
3 back.

4 If we could have the first speaker of
5 the afternoon, Steve Meyers from General Electric.

6 MR. MEYERS: Thank you, Bill.

7 Good afternoon. I'm Steve Meyers. I'm
8 counsel and air program lead for GE. I'm glad I'm
9 the only GE person here because I'm going to break
10 two fundamental rules of GE speechmaking; I'm
11 going to read from a prepared text, and I don't
12 have any visuals.

13 We're glad to have this opportunity to
14 address the task force because we have a
15 significant interest in the program and believe it
16 can be improved if all the stakeholders work
17 together. We've always participated in EPA's
18 efforts to shape and reform the program. GE is a
19 member of NEDA and the Air Permitting Forum and
20 has participated in other industry groups that
21 focus on air, regulatory, and legislative issues.

22 I've been doing air work for about 10,
23 12 years, but my comments today really reflect the
24 input from dozens of GE employees who deal with

1 the Title V program on a day-to-day basis, from
2 application to final permit and beyond to
3 compliance certification. I hope that our
4 perspective is one that you will find useful in
5 the task force's work.

6 I think we have a somewhat unique
7 perspective on the program because of our business
8 diversity. We manufacture a great array of
9 products and perform countless wide-ranging
10 services. Some people think of GE as a financial
11 services company, many others just think of light
12 bulbs and dishwashers, but our Title V base
13 encompasses numerous industries from high-tech
14 medical devices to efficient electric-generating
15 equipment to high-grade thermoplastics to more
16 traditional manufacturing like glass and -- for
17 the light bulbs, motors, appliances, and the like.
18 And we just added a theme park and movie studio to
19 our repertoire.

20 On the financial side, GE's businesses
21 invest in companies that engage in a wide range of
22 operations, like aviation, power generation, and
23 more. We have some big facilities. We also have
24 some very small ones.

1 From a geographic standpoint, we operate
2 Title V facilities in some 15 states, and we
3 therefore deal with both local and state agencies
4 in numerous EPA regions. We have a total of 41
5 Title V sites.

6 Although GE is concerned about many
7 aspects of the Title V program as currently
8 implemented throughout the country today, I intend
9 to focus on one discrete issue, and that is the
10 manner in which state agencies are incorporating
11 MACT standards and other regulations into Title V
12 permits.

13 The problems that we're encountering
14 really come in three forms. In one form the
15 permit writer redrafts a rule such as a MACT
16 standard and customizes it for each unit of the
17 facility. We certainly heard some testimony about
18 that earlier today. In these cases, the permit
19 writer paraphrases the rule requirements to sort
20 of translate their applicability to the source.

21 And we're concerned not only with the
22 time that it takes to ensure that the translation
23 is accurate and does not diminish or add to the
24 legal burden, but also with the potential that it

1 creates for competing applicable requirements and
2 subsequent certification problems. We call that
3 the translation approach.

4 In the second form, the state either
5 attaches a complete copy of the MACT Federal
6 Register entry in all its glory or restates the
7 MACT word for word. We call this the full
8 employment for Georgia-Pacific approach.

9 While this approach is preferable to the
10 translation approach, it's wholly unnecessary,
11 adds nothing from an environmental perspective,
12 and increases the burdens on sources and
13 permitting authorities, not to mention the size of
14 the permits.

15 The third form of concerns relates to
16 the limited flexibility. And it can occur either
17 through -- in the translation approach or the full
18 employment for Georgia-Pacific approach. We're
19 seeing permitting authorities that require a
20 source to choose among compliance or other options
21 offered in a MACT and then mandate a permit
22 revision to deviate from those choices.

23 This occurs notwithstanding the fact
24 that the MACT will specify how changes are to be

1 handled, including the appropriate notifications,
2 adding another layer to a process that has already
3 been approved through notice and comment
4 rule-making.

5 What's interesting to us is that
6 regardless of the approach being taken in a
7 particular state, we're told that EPA requires it.
8 And this happens even though there are states that
9 are using the citation-based approach that allows
10 facilities the flexibility to MACT standards as
11 promulgated.

12 So focusing on the translation approach,
13 what's wrong with reducing complex rules like MACT
14 standards to summaries that are customized to fit
15 one source only? Well, several things.

16 It imposes a tremendous workload on both
17 the permit writer and the facility. Translating a
18 MACT for a complicated facility in the context of
19 a Title V permit is a large task. One of GE's air
20 permit engineers estimates that he's spending
21 twice as much time on his Title V permit than
22 would be needed if the state used a citation-based
23 approach.

24 It also creates a strong potential for

1 unintentional variation from the regulatory
2 standards. And we've found numerous errors as a
3 result of this approach, leaving out some
4 requirements, including others that don't apply,
5 and simply misstating requirements for a
6 particular unit. I'll give you some examples
7 later in my speech.

8 A slight change in wording could change
9 the meaning of a defined term, obviously. And we
10 all know the regulations like MACT standards are
11 often painstakingly and some would say painfully
12 drafted to ensure each word's meaning is clear.
13 Translating or paraphrasing creates the
14 possibility of changing the meaning of the rules.
15 We think the rule-making process is when issues of
16 what a standard means are to be handled, not
17 during the permitting process. And a permit
18 writer who is not steeped in the lore of
19 particular MACT may not know when he or she is
20 crossing the line and actually changing the
21 standard.

22 I guess it goes without saying that the
23 translation approach slows the permit issuance
24 process. Much of the negotiating that goes on

1 between a permit writer and a permittee could be
2 eliminated if rules were incorporated by reference
3 rather than rewritten.

4 Moreover, I think permit appeals could
5 be avoided in many cases, as could the need to do
6 subsequent revisions of the permit when the errors
7 are ultimately caught. It can limit operational
8 flexibility because it may take away compliance
9 alternatives that are built directly into
10 regulations, such as MACT standards.

11 Title V was never intended to constrain
12 changes that are allowed by the underlying
13 standard, yet that is occasionally the result of
14 the translation approach. It also creates
15 operational burdens, such as retraining plant
16 personnel on individual permit requirements that
17 may vary from rules in which the person had
18 already have been trained.

19 Some say that paraphrasing and
20 translating the rules is preferable because it
21 helps the permittee, the public, and enforcement
22 officials understand in one document that requires
23 that are applicable to a source. We disagree that
24 this is true or that it's a reasonable goal for

1 Title V. I think translating the MACT standards
2 into lay terms is not the purpose of Title V and
3 maybe ought to be handled through some other
4 process. Title V permits are legal, enforceable
5 documents to which the permittee must certify
6 compliance and for which the public, the state,
7 and the EPA hold us accountable. So it's got to
8 be accurate.

9 We think that Title V ought to concern
10 itself with being the place where all applicable
11 requirements are cataloged and the education of
12 inspectors and others might be a good idea, but
13 the Title V permit should not be the course
14 material. Maybe we could create a separate,
15 publicly available inspection guideline. The
16 consequences, many of them unintended, of trying
17 to accomplish educational goals and a legally
18 binding document are many and significant.

19 I'll give you a couple of examples of
20 the mischief that can be made from one of our
21 facilities in Indiana, and these are just a few of
22 the many examples that I got from our plants
23 across the country.

24 Here is an example where a -- there

1 could be a change in a current requirement. One
2 narrative summary of a section of the HON MACT
3 excludes the 63.104(a) exemptions and requires
4 monitoring of each heat exchange system, which
5 goes beyond the applicability of 63.104(a) that
6 limits monitoring to systems used to cool process
7 equipment and do not meet the exceptions.

8 Another proposes striking the portion of
9 63.132(a) that specifies the compliance state,
10 which is important when considering new or changed
11 wastewater streams. An example where there are
12 changes limiting flexibility, one narrative
13 summary of a section of the HON MACT proposes to
14 strike words in 63.113(a)(2) that allow
15 determining compliance by alternative measuring
16 techniques, either using OHAP or TOC in 63.116.
17 And another proposes striking the provision in
18 63.150(f)(iii) that allows demonstration that full
19 or partial credits or debits should be assigned.

20 We've also found some instances where
21 narrative customization errors create administrative
22 burdens or oversights. One narrative summary of a
23 provision does not incorporate the recordkeeping
24 provisions in 63.117(a)(8).

1 And I could go on, but you can see this
2 approach not only requires the permit writers and
3 plant personnel alike to spend countless
4 unproductive hours, but it also creates the risk
5 of confusion and substantive mistakes.

6 As evidenced by John Paul's testimony at
7 the task force meeting in Washington, this issue
8 is also cropping up in Ohio. I was talking about
9 Indiana permit terms, but we've seen various
10 approaches by the states, possibly because there
11 is some confusion as to what's required or what is
12 appropriate. At the end we need to be spending
13 more time on ensuring compliance instead of
14 figuring out how to indicate in the permit what we
15 all agree is required.

16 With respect to the repetition of the
17 entire MACT in the permit, I don't think much
18 needs to be said about this. It's redundant. We
19 just don't need to attach entire Federal Register
20 notices to the permit. Nothing is really gained
21 by that.

22 Under a citation-based approach, a
23 permit would, for each emission unit section, cite
24 to the relevant portions of the MACT standard.

1 We're not suggesting that the permit only cite to
2 the subpart level. More detailed citations could
3 be appropriate, provided they preserve the
4 flexibility that is included within the MACT.

5 My final point does go to this
6 operational flexibility. EPA and the members of
7 this task force are aware that MACT standards are
8 carefully negotiated with particular compliance
9 and other options for sources due to the
10 flexibility needed for that particular category.
11 The EPA staff is also particularly precise in
12 spelling out how changes from one of these options
13 to another are to occur and the notifications and
14 other submittals and testing that might need to be
15 accomplished.

16 EPA issues those procedures after notice
17 and comment rule-making. In any approach that is
18 adopted for incorporating MACTs, these options
19 must be preserved, rather than adding another
20 layer with a required Title V permit revision.

21 We are constantly seeing refreshes --
22 maybe constantly is a strong word. We are seeing
23 requests from permitting authorities to limit our
24 compliance options, notwithstanding the work that

1 we have done to ensure that flexibility is
2 provided in the MACT.

3 So we ask that the task force include in
4 its final report a recommendation that MACT
5 standards be incorporated using a citation-based
6 approach that provides the same flexibility with
7 respect to compliance options, as --

8 MR. HARNETT: You have two minutes.

9 MR. MEYERS: Thanks, Bill.

10 (Continuing) -- within the promulgated
11 rules. In the interim, EPA regional offices
12 should provide consistent guidance to the states
13 clarifying that neither translating nor
14 word-for-word repetition of the MACT is required
15 and that the federal Title V rule mandates states
16 to include the compliance options afforded by
17 applicable requirements. Any other conclusion
18 would be to suggest that MACT standards, as
19 promulgated, are not enforceable.

20 Thank you for your time and attention.

21 MR. HARNETT: Thank you. And Richard Van
22 Frank?

23 MR. VAN FRANK: With the problem you cited in
24 Indiana, was that in the technical support

1 document or the actual permit?

2 MR. MEYERS: The actual draft permit.

3 MR. VAN FRANK: Thank you.

4 MR. HARNETT: Steve Hagle?

5 MR. HAGLE: I tend to agree with you, Steve,
6 about the flexibility.

7 One of the things that I wanted to
8 comment on is where some of the permitting
9 authorities may have come up with that, as we had
10 however many years ago this discussion about Title
11 III, Title V interphase, and one of the things
12 that EPA was telling its states was that if you
13 change a compliance method, you did have to do a
14 Title V revision, if you hadn't built that into
15 the permit.

16 So one of the things that I hope we can
17 come up with is what is the appropriate level of
18 citations? We're getting beat up in Texas because
19 we're getting some pretty detailed citations into
20 our permit, but I'm wondering what your thoughts
21 are on how deep into the MACT or any standard
22 those citations should go?

23 I know you said not limiting -- not
24 limiting flexibility, but some of those

1 flexibility limitations are pretty -- are way up
2 there in the level of detail in the MACT, and, you
3 know, I know some of the environmental groups
4 have -- would like to be able to comment on how
5 sources are going to comply with a particular
6 standard. So I'm trying to figure out where you
7 all think that balance should be.

8 MR. MEYERS: Well, I guess to the first point
9 you made, I think that the various different
10 compliance options are specified within the MACT
11 standards, and so a citation to the MACT standard
12 would preserve those various different compliance
13 options. That would be our position anyway.

14 As to the specificity with which the
15 citation should be made, I guess it's going to
16 vary a bit from provision to provision. I guess
17 my point was that it needn't necessarily be as
18 high as Section A. It could be more detailed than
19 that, although we certainly wouldn't -- we
20 wouldn't comment negatively on a permit that came
21 back with the highest-level citation. I
22 understand that some -- that that may not be the
23 preference of some other stakeholders, and so
24 there may be, I think, some middle ground.

1 MR. HAGLE: I want to follow up one quick
2 thing. Like the aerospace MACT, I think there is
3 one provision in that, there are nine different
4 options for compliance.

5 Do you think that you as a company
6 should be required to say, "Okay, we may use these
7 five, and these five are the ones we want in our
8 permit," or do you want something higher than
9 that?

10 MR. MEYERS: I don't think it's a problem --
11 I wouldn't have a problem with the company
12 providing information to help the agency, but I
13 think it ought to be outside of the permit. I
14 don't think the company ought to be limited by
15 what it thinks it's going to do, if the rule
16 provides for much greater flexibility.

17 I understand that, you know, nine is a
18 lot, but those are the nine that were agreed upon
19 and were included in the rule. But I don't have a
20 problem with a communications process that, you
21 know, provides this kind of information to the
22 agency, outside of the legally binding document.

23 MR. HARNETT: Kelly Haragan?

24 MS. HARAGAN: I had a question about maybe

1 using a combination approach to what you're
2 suggesting, which is what Texas was doing -- I
3 don't know if they're still doing -- in the
4 permit.

5 They have a citation, and I think the
6 real issue is the level of detail, where you get
7 the citation down to. But then they also include
8 a short narrative description, but the permit says
9 that's not enforceable. The citation is what's
10 enforceable. It's just there for the people who
11 are using the permit. Like if the public is
12 looking through it, then they can narrow down,
13 "This is what I was looking for."

14 MR. MEYERS: I think that would be preferable
15 to translating the MACT standards within the
16 certifiable portions of the permit. I mean, we
17 would probably get into arguments over that
18 anyway, because that's just the nature of the way
19 things go.

20 MS. HARAGAN: Right.

21 MR. MEYERS: But I do think that would be a
22 preferable approach.

23 MS. HARAGAN: Okay, thanks.

24 MR. HARNETT: Adan Schwartz?

1 MR. SCHWARTZ: That's what the District Bay
2 Area does, by the way, also. At least in some
3 places we paraphrase, but we make it very clear
4 that you have to look at the regulation for what
5 is binding.

6 My question is, I've heard some people
7 say that regarding putting multiple compliance
8 options in the permit, that doing so is what Part
9 70 had in mind when it talks about alternative
10 operating scenarios. I don't know if that's right
11 or not, but let's assume for a moment that it is.

12 The consequence of that would be when
13 you switch from one to another, you'd have to give
14 notice, and there would have to be contemporaneous
15 recordkeeping. So my question is, do you think
16 that would be burdensome if that was all that's
17 required, or alternatively do you think that's
18 redundant with the MACT standards already required
19 in terms of notice of recordkeeping?

20 MR. MEYERS: I think the MACT standards do
21 provide that that very thing that you are looking
22 for, that notification -- and if anyone would care
23 to look, they would find it in a file. And I
24 don't think that -- I think the rules themselves

1 are the provision of the alternating scenarios.
2 They provide for alternate scenarios. And so
3 specifying differently, I think, is not required
4 by the rules.

5 MR. HARNETT: Bob Palzer.

6 MR. PALZER: I'm done.

7 MR. HARNETT: Then Don van der Vaart?

8 MR. VAN DER VAART: I've got to agree with
9 Adan. With the way we handle this in North
10 Carolina is we give you all the options, and then
11 we just ask you to keep a log when you go from one
12 to the next.

13 I think a lot of what you're concerned
14 with is not only the fact that the rules
15 themselves are much more complicated than any of
16 the SIP or NSPS standards, but as anywhere, you've
17 got permit engineers that are making mistakes.
18 And so I wouldn't -- I'm not hearing from you a
19 failing of the Part 70 program per se, but the
20 inability to successfully implement it.

21 But now here is my question, totally
22 different.

23 What does GE think about -- does GE
24 typically ask for a permit shield in their

1 permits? It's optional in the Clean Air Act. In
2 some states it's actually mandatory. But do you
3 all ask for it typically, or how do you all --

4 MR. MEYERS: When it's available, absolutely.

5 MR. HARNETT: John Higgins?

6 MR. HIGGINS: Steve, could you repeat the
7 last two sentences of your presentation? I'm not
8 sure I heard them properly.

9 MR. MEYERS: I think it was thank you very
10 much, and --

11 MR. HIGGINS: What did you mean by that?

12 I thought I heard you say something was
13 not enforceable, and I don't think I heard
14 everything you said.

15 MR. MEYERS: Well, I was -- the point was
16 to -- right. The point was the word for word, the
17 MACT has to be incorporated as promulgated, which
18 preserves the various different compliance
19 options. Any other conclusion would be to suggest
20 that the MACT standards themselves were not
21 enforceable. The point was the MACT standards
22 have to be -- you have this flexibility in the --
23 in the rule, and if you don't -- if you don't
24 preserve that flexibility in the Title V permit,

1 then you're suggesting that the MACT itself is
2 somehow not enforceable or is not a final -- is
3 not the final binding provision.

4 MR. HIGGINS: Okay. In the instance where
5 you have a MACT with multiple opportunities to do
6 this, that, and the other thing, how does General
7 Electric propose to keep the regulators and the
8 interested public up to speed on exactly what you
9 are doing at any moment in time?

10 MR. MEYERS: I would just say as the MACT
11 standards require. And most of the MACT
12 standards, understanding this concern on the part
13 of the regulators and the public to be informed,
14 require notice and recordkeeping on these various
15 different scenarios, and I would say that's the
16 place to address that concern, is within the MACT
17 standards themselves. I think they adequately do,
18 John.

19 MR. HARNETT: Michael Ling?

20 MR. LING: I'm just wondering if you would
21 say that there is something special about MACT
22 standards, which is why you focused this talk on
23 MACT standards, or whether this approach of
24 incorporation by reference could apply to any

1 applicable requirement.

2 MR. MEYERS: Absolutely. I think we focused
3 on MACT standards because they are so complex and
4 because we're having so much difficulty with
5 the -- with the permits that include MACT
6 standards, getting them to a reasonable, final
7 resolution.

8 All of what I've said absolutely applies
9 to any kind of standard or rule; an incorporation
10 by reference would simplify the process for
11 standards other than MACTs. We focused on MACT
12 standards because they're as complex as they get.

13 MR. HARNETT: Keri Powell?

14 MS. POWELL: Just for clarification, you were
15 talking about the tremendous workload that goes
16 into creating a customized MACT, and I guess my
17 immediate reaction to that was, well, I mean, at
18 some point somebody has to go through and figure
19 out exactly how the MACT applies to each facility.
20 So, I mean, isn't some amount of that work, work
21 that has to happen anyway?

22 MR. MEYERS: I certainly agree that we, the
23 permittee, have to go through and figure out how
24 the standard applies to our facility, and so that

1 will go on.

2 The additional work that goes into
3 back-and-forth revisions and negotiating with the
4 agency over what the MACT standard -- how it
5 should be included in the permit is what I was
6 referring to as the burden. And that, itself, is
7 a remarkably large burden.

8 MS. POWELL: I mean, does that involve -- I
9 realize that there would be some conflicts, or
10 exactly what word you used to express how the rule
11 applies.

12 But also I'm guessing that there might
13 be some dispute over how the rule does apply to
14 the facility. I mean, do you find that coming up?

15 MR. MEYERS: Not as much. We do, and that's
16 to be expected, and we negotiate and come to a
17 resolution. That does happen.

18 MS. POWELL: So just one last follow-up.
19 Part of Congress's intent in requiring the Title V
20 program was that so if there were any differences
21 between how the permitting authority reviews the
22 rules of applicability and how the public and the
23 source view it, all of that will be resolved in
24 the permitting process, rather than further down

1 the line when there is an enforcement action and
2 you're in district court arguing about it.

3 So if you just moved to an incorporation
4 by reference approach that sort of put all this
5 off somewhere down the line, how does that conform
6 to Congress's intent?

7 MR. MEYERS: Well, I think very little of
8 the -- first of all, not disputing with you that
9 that was Congress's intent, I think very little of
10 what we're encountering is actually beneficial to
11 that ultimate goal.

12 The problems that we're seeing are, I
13 think, not indicative of -- the conversations that
14 we're having don't necessarily indicate a
15 difference in opinion between the way the
16 permittee and the agency view applicability. That
17 is a very small percentage of it. It's permit
18 writers not understanding the rules, and frankly
19 it's just not the permittee's responsibility to
20 educate the permit writer. And I think much of
21 what we're talking about is wasted energy or
22 energy that might be better applied outside of
23 this process. I don't think that goal is
24 furthered by trying to translate MACT standards in

1 the permit.

2 MR. HARNETT: David Golden?

3 MR. GOLDEN: Kind of playing along that
4 point, we run into the same thing, and I'm curious
5 if you've seen root cause on that? Do you find
6 that in the state -- your permit writer, do you
7 find them mostly familiar with MACT, or do you
8 find them that you're pretty much the only MACT
9 source and so you kind of got to get them up to
10 speed on your four or five MACT standards, then
11 they transfer and you get a new one, and you've
12 got to get them back up to speed? Is turnover --
13 does it play into this?

14 MR. MEYERS: Some of it does, yeah. I think
15 it's asking a lot of a state agency to have, you
16 know, permit writers who are also MACT standard
17 experts in 15 to 20 different MACT standards. I
18 mean, I agree with you there.

19 MR. GOLDEN: I know someone testified a
20 little earlier today on that issue. You know,
21 there is a lot of MACT out there, and it would
22 seem hard to make -- you know, usually the
23 permittee is pretty expert at knowing what is
24 applicable. Do you see a solution to that of how

1 states can do a better job of allocating resources
2 so you develop more MACT expertise?

3 MR. MEYERS: I think probably so, but I think
4 the best thing to do is probably -- you'd like to
5 have permit writers who know as much about various
6 different facilities and industries as possible.
7 I don't know if that's possible.

8 I think you avoid significant issues
9 like this by incorporating the MACT standard
10 through a citation-based approach. I think there
11 are probably other things we can do. But I guess
12 I'm not sure I am qualified to opine on how the
13 state agencies ought to go about training and
14 allocating their resources.

15 MR. HARNETT: One more question; Shannon
16 Broome?

17 MS. BROOME: Steve, is it accurate to say
18 that for your MACTs, the ones that you're dealing
19 with, either at facility you were talking about or
20 any other one, that there is a notification to the
21 state -- not to the state, to EPA and the state,
22 or if the state's delegated, whatever, regarding
23 how you're going to comply with the MACT and that
24 that's publicly available?

1 MR. MEYERS: I believe so, and I thought I
2 made that clear earlier.

3 There are notification provisions in the
4 MACTs that we're dealing with that I'm aware of.
5 So that there is that -- some of that information
6 that's available and required to be provided.

7 MS. BROOME: So if there was a dispute about
8 how that MACT applied between you and the agency,
9 be it EPA, region, or state, that would surface?

10 MR. MEYERS: With respect to those options,
11 yes.

12 MR. HARNETT: Thank you very much for your
13 time.

14 The next person is Anne Slaughter
15 Andrews, from the CASE Coalition.

16 MS. ANDREWS: My name is Anne Slaughter
17 Andrews, and I'm here today on behalf of the CASE
18 Coalition, which is an Indiana-based coalition of
19 about a dozen leading industrial and manufacturing
20 companies, each with significant operations in
21 Indiana.

22 Our members produce such goods as steel,
23 chemicals, pharmaceuticals, automotive, and
24 aerospace parts. Our members operate facilities

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19 about a dozen leading industrial and manufacturing
20 companies, each with significant operations in
21 Indiana.

22 Our members produce such goods as steel,
23 chemicals, pharmaceuticals, automotive, and
24 aerospace parts. Our members operate facilities

1 ranging from relatively small operations with four
2 to five major emission units to much more complex
3 manufacturing facilities.

4 Many of these facilities have operated
5 under Title V permit conditions for several years
6 now, and we believe we have a great deal of
7 experience to bring to this task force for its
8 consideration.

9 The coalition intends to submit written
10 comments on a number of issues during the public
11 comment period, but today we'd like to focus our
12 testimony on two significant issues that many of
13 our members are facing in Indiana. One is the
14 frequency and the manner of gap-filling monitoring
15 that's being incorporated into Title V permits,
16 and the second is the manner in which the NESHAP
17 and other requirements are being incorporated into
18 Title V permits.

19 In assessing what works and what doesn't
20 work under the Title V program, as it has been
21 implemented to date, the prospective provided
22 today by the coalition is to offer you a pragmatic
23 on-the-view ground of the program by companies
24 that have worked cooperatively with the State of

1 Indiana over the years on numerous Clean Air Act
2 programs, including this one, and we continue to
3 work with IDEM, which is the state implementing
4 agency in Indiana, even on the issues that we are
5 raising with you today.

6 The first concern we'd like to address
7 is the imposition of gap-filling monitoring that
8 goes well beyond what's needed to reasonably
9 assure compliance and leads to burdensome, costly
10 requirements in the permit, inconsistent with the
11 requirements that U.S. EPA has deemed satisfactory
12 in other states. And I think that I can best
13 convey our concerns with several examples on how
14 this impacts a facility day to day, year to year.

15 Across the state, we're seeing permits
16 with the requirement to conduct checks of
17 equipment and visible emissions on a per-shift
18 basis. Now, many of the permit writers tell us
19 that this should not be a big deal. Take a look
20 at the meter of the stacks, see what is happening,
21 check a box.

22 But the problem is that when you're
23 talking about most of these large industrial
24 facilities, just taking a look is much more than

1 that. You have to schedule for the look, record
2 the look, report the look, and certify the look.
3 When you require this on several emission units
4 spread over a large facility, all of a sudden you
5 have very significant costs, and as our examples
6 will show, typically with little or no
7 environmental benefit, as these units that are
8 having these requirements imposed on them are
9 usually well controlled with reliable equipment
10 which have not had any historically experienced
11 performance problems.

12 Example 1 we have is an aluminum
13 crushing unit with emissions vented to a dust
14 collector that was subject to a general opacity
15 limit and a process rate limit for particulate
16 emissions. The state included in the permit a
17 once-per-shift visible emissions reading and a
18 once-per-shift pressure drop reading with
19 associated recordkeeping requirements. The cost
20 for the once-per-shift visible emission
21 observations and pressure drop recording would be
22 \$21,900 a year, which would be over a hundred
23 thousand dollars for a five-year permit term, and
24 this was for one unit. And this cost does not

1 include the cost to maintain the data, review it,
2 and report it.

3 And then putting this perspective -- the
4 cost in perspective, you have to keep in mind that
5 this unit did not have any history of
6 noncompliance. It had a dust collector that was
7 required to be operated, and it's proven to be a
8 reliable control device. And at the same time,
9 this unit was also subject to a preventative
10 maintenance plan requirement; an operations,
11 maintenance, and monitoring plan requirement; and
12 a quarterly baghouse inspection.

13 Example 2; in another instance perhaps
14 more telling, I think, of the systematic approach
15 that concerns us in Indiana, the original permit
16 holder had a permit that required once-per-day
17 visible emission observations. Once per day.
18 After five years of no visible emissions, the
19 source sought its renewal and requested and
20 expected that IDEM would reduce the frequency of
21 the monitoring requirement, consistent with the
22 factual data they gathered. To the contrary,
23 because the state had taken on a policy of visible
24 emission monitoring once per shift, the state

1 issued the permit increasing the visible emission
2 observation requirement to once per shift.

3 Clearly the state's approach is out of
4 balance. And unfortunately, these examples are
5 not isolated circumstances. Indiana has taken
6 approach where they have piled on monitoring
7 requirements, and on top of those requirements,
8 added a frequency of monitoring of once a shift
9 that is not only extremely costly to the
10 permittees but to the states as well. And they're
11 doing this typically and systematically with no
12 apparent analysis regarding the need for or the
13 benefit from this type of monitoring and without
14 regard to the cost to the facility.

15 We would urge the task force to make
16 recommendations to both U.S. EPA and the states to
17 acknowledge consistency in the approach to
18 gap-filling monitoring requirements, and
19 particularly with regard to this once-per-shift
20 frequency situation, that U.S. EPA and the states
21 would take into account the significant costs of
22 these monitoring requirements and ensure that
23 before such requirements are imposed, there is a
24 technically valid basis and a sufficient

1 environmental benefit.

2 Our second concern is the manner in
3 which the NESHAP requirements are being
4 incorporated into the Title V permits in our
5 state. As I mentioned, the coalition works
6 cooperatively with IDEM regarding program
7 implementation issues, and indeed the coalition
8 initiated discussions with IDEM regarding the
9 process for NESHAP incorporation over
10 two-and-a-half years ago.

11 We initiated these discussions because
12 our concern with IDEM's approach, which they took
13 on in the interest of clarity, of customizing the
14 NESHAP requirements for a facility, and then
15 including those customized conditions in
16 paraphrased narrative terms was one that we
17 thought had significant problems. Our position,
18 then, and based on our own experience since then,
19 is that states must incorporate the NESHAP
20 requirements by using citations to the applicable
21 standards in the Title V permits.

22 There is no required approach on how to
23 set forth the NESHAP requirements in a Title V
24 permit. However, as a coalition we strongly

1 believe there is a standard that must be met, and
2 that standard is that the applicable regulations
3 must be set forth in the permit in a manner that
4 ensures absolute accuracy and completeness.

5 Judged by this standard, how would a
6 state's approach like Indiana's of customizing and
7 paraphrasing the NESHAP requirements measure up?
8 Even exercising the best of intent, which we
9 certainly give to the State of Indiana, the
10 likelihood is high that a customized narrative
11 version of the NESHAP requirements will be
12 inaccurate or incomplete. Why? The NESHAPs are
13 lengthy and complicated because the requirements
14 and obligations are many and complex.

15 Individual permit writers, most of whom
16 have little experience with complex air
17 regulations, cannot reasonably be expected to
18 avoid the confusion, inaccuracies, and
19 incompleteness when they attempt to reduce and
20 rewrite in the Title V permit the NESHAP
21 requirements that were crafted by regulatory
22 experts at U.S. EPA, who invested significant time
23 evaluating a particular industry and drafting the
24 NESHAP regulatory language.

1 As we all know, the final language in a
2 NESHAP is the result of public hearings, public
3 comments, responses to the same, complex
4 negotiations, and sometimes litigation. Changing
5 a word in the process of paraphrasing or
6 explaining the NESHAP can have significant
7 consequences, perhaps to make it more stringent or
8 less.

9 The experience in Indiana bears out our
10 concern, and the instances of incomplete and
11 inaccurate NESHAP conditions in Title V permits
12 are commonplace, and since we've had some
13 examples, I won't go further with that.

14 This approach, though, and another of
15 the concerns we have is it creates a needless cost
16 and delay in the program. Even if we put aside
17 the concerns with accuracy, this customization
18 narrative approach involves spending significant
19 time and dedicated resources by both the state and
20 the permittee.

21 In one example, we had one source with
22 only one unit affected by NESHAP, who spent months
23 working through the requirements with the state,
24 correcting numerous errors along the way, and with

1 all of this effort, there was still requirements
2 in the final permit that did not apply to the unit
3 and required a modification. If the permit had
4 cited to the relevant sections of the NESHAP, the
5 problem would have been avoided.

6 In another example, a source had a Title
7 V permit item include the specific NESHAP pressure
8 drop range of plus or minus one inch instead of
9 incorporating the citation to the NESHAP
10 requirements. Following the issuance of the
11 permit, the NESHAP pressure drop was modified to
12 plus or minus two inches. Now that permittee is
13 going to have to go back to the state, and the
14 state is going to have to expend precious
15 resources to modify that permit to reflect the
16 current NESHAP.

17 Even if it were possible for the state
18 to rewrite through customizing and paraphrasing a
19 NESHAP requirement into the Title V permit that
20 was accurate and complete, including all the
21 flexibility and regulatory context that the
22 standard requires, it could only be accomplished
23 by utilizing a significant amount of the state's
24 time and dedicated resources. And after assuming

1 all these risks and delays, what would the final
2 permit look like? If this permit were to meet our
3 standard of accuracy and completeness, this
4 customized NESHAP requirement would look very
5 similar to the original regulation.

6 In addition to this overwhelming stress
7 and cost to the system, the cost and burdens on
8 the permittee are also significant. And I think
9 we've heard from the testimony from General
10 Electric some of those costs to the permittee.

11 In summary, then, the common interests
12 of the state, the permittee, and the public in
13 clear, accurate, and complete inclusion of the
14 applicable NESHAP requirements in the Title V
15 permits is best served by using the citation-based
16 approach, and we would urge this task force to
17 recommend in its final report that U.S. EPA
18 explain to states that the citation-based approach
19 is the right approach, and further we would urge
20 the U.S. staff here today to clarify this point
21 with states now, before the issuance of the task
22 force report to remedy this problem, so the states
23 and the permittees can work quickly to get these
24 final permits issued.

1 I thank you for your attention and hope
2 our comments have been helpful.

3 MR. HARNETT: Thank you.

4 Bob Morehouse?

5 MR. MOREHOUSE: I put my card up early
6 because I felt ignored earlier. I didn't have a
7 question at the time, but I knew I was going to
8 have one. I'm learning the system. It's taken a
9 while.

10 Anne, you mentioned -- you were talking
11 about added visible emission requirements. Are
12 you finding that they're even being added for
13 things like natural gas-fired equipment, which
14 best case is clean-burning equipment?

15 MS. ANDREW: Most of the things that I can
16 recall that have been raised to my attention are
17 baghouses. But I have -- I will say that it's
18 been done on a very systematic basis, so I
19 wouldn't find it surprising that that may be the
20 case.

21 MR. HARNETT: Shelley Kaderly?

22 MS. KADERLY: I was wondering whether, on
23 these gap-filling monitoring requirements that you
24 mentioned, and even on the NESHAP and

1 incorporation of paraphrased language, whether the
2 entity raised comments during the public comment
3 period on concerns over those things being put
4 into the permit?

5 MS. ANDREW: I can assure you, many times,
6 from firsthand experience, that we've met
7 informally with the state permit writers, we've
8 worked with them throughout the permit writing
9 process, we've raised comments, we've gone back to
10 the state after the comment period when they've
11 issued the response to comments and realized that
12 there is a lack of understanding or perhaps a lack
13 of time on their part to give full consideration
14 to our concerns, and we have used every
15 opportunity, formal and informal, to raise this to
16 the state's attention.

17 Because one of the things that we've
18 found in Indiana is that statistics have shown
19 that there is a significant cost to the state for
20 every permit appeal. It takes the state twice as
21 much of their resources to deal with these issues
22 on appeal than it does through formal or informal
23 negotiations before the permits issue. And so we,
24 both because it is in the company's best

1 interests, but it's also in the state's best
2 interests, we've done everything we can to address
3 and resolve these prior to the permit issuance.

4 One of the reasons why we're here today
5 is because we feel strongly that these things do
6 need to be resolved and there needs to be a
7 systematic resolution.

8 MS. KADERLY: What was been their response on
9 the gap-filling measures for the visible
10 emissions, as an example, for baghouses? It
11 sounds like that from what you described that they
12 are being consistent in how they're applying this
13 requirement across the board. So I'm just
14 wondering what their response is to you when you
15 raise that as a comment.

16 MS. ANDREW: I think their response, as --
17 well, let me put it in context first. Because I
18 think one of the things we struggle with -- and
19 again, as I offered at the beginning, this is an
20 on-the-ground pragmatic review.

21 When the companies that we represent are
22 filing their comments and working with the state,
23 oftentimes their comments are being responded to
24 by a permit writer. It's not being responded to

1 by some of the senior people in the program. And
2 those permit writers are all extraordinarily
3 overworked, and they are being told to move these
4 things forward. So we often find that they cut
5 and paste responses from one permit to another,
6 and as I said, we credit them with using their
7 best of intentions, but we appreciate that they're
8 working under a very stressful situation as well.

9 So I will say that I don't want to
10 suggest that some of the responses that we're
11 getting are the state's final answer, or perhaps
12 even some of their responses that you might get
13 from speaking at a final negotiation with some of
14 the senior policymakers at the state, but the
15 responses that are coming out in the response to
16 comments, as a public record, in response to the
17 once a shift and the types of examples I gave, the
18 responses that we will get is that it's not that
19 much trouble, so we don't understand why you're
20 complaining, and don't you have to assure
21 compliance? And this is an appropriate approach.

22 In other words, it's nonresponsive to
23 our concerns that this is an out-of-balance
24 approach from a cost environmental benefit

1 standpoint, and asking them to understand the
2 questions that we've raised and the data we've
3 provided them.

4 MR. HARNETT: Richard Van Frank?

5 MR. VAN FRANK: I don't entirely understand
6 your objections to the recording of pressure drop
7 and a visual inspection of the baghouse emissions
8 once per shift. Baghouses do fail.

9 How would you propose the operation of
10 the baghouse be monitored if you eliminate those
11 inspections?

12 MS. ANDREW: Well, one of the things that I
13 think is important to keep in mind is that in most
14 instances that the concern we have is where the
15 monitoring frequency is in the context of other
16 monitoring requirements and programs, where there
17 are preventative maintenance plans and there may
18 be other quarterly baghouse inspections and a
19 number of other programs that are layered on.

20 And at the same time I want to say our
21 concern is that we're not trying to scuttle out
22 from under an appropriate monitoring program. Our
23 concern is that this monitoring program is not
24 balanced against a cost-effective approach for

1 assuring compliance.

2 And, in fact, if one would look at --
3 just as an example, if the state were to go
4 through a rule-making in order to impose this kind
5 of monitoring, they would be required under the
6 statutory authority to consider an environmental
7 cost benefit, and they would have to be required
8 to consider this with what's the margin of
9 compliance, the potential variability of
10 emissions, how reliable this situation is, and all
11 of those things, and that, in a sense, is simply
12 what we're asking.

13 MR. HARNETT: Adan Schwartz?

14 MR. SCHWARTZ: My question really dovetails
15 on the discussion you had with Shelley Kaderly.

16 You're describing situations where
17 monitoring was imposed with what you're calling
18 woefully -- well, let's call it woefully
19 inadequate justification. It would seem to me
20 that -- and you're appealing those is what I'm
21 understanding. If they are being appealed, it
22 would seem to me that the decision, if the
23 adjudicatory body is doing its job, the agency
24 would be losing at least the majority of those

1 appeals. And I know at my agency, if we lost a
2 couple of appeals, we change our policy to stop
3 that from happening.

4 So I'm wondering if you have any
5 thoughts as to why that administrative sort of
6 corrective process isn't correcting what you see
7 as being wrong.

8 MS. ANDREW: I can offer at least my
9 speculation on that.

10 One is that the State of Indiana, which
11 I think may be similar to other states, began --
12 if you remember the slide we saw with the
13 70 percent of the sources with 25 percent of the
14 emissions, the State of Indiana began issuing
15 permits with the 70 percent. They are just now
16 getting to the larger, more sophisticated sources.
17 And I think that this issue is of much greater
18 significance to these folks because they
19 understand the monitoring programs, they have
20 sophisticated monitoring programs, and a once per
21 shift on a site that has numerous emission units
22 is a much more significant cost. So I think we
23 are entering a stage where perhaps there is a
24 different consideration given to some of these

1 monitoring requirements.

2 And I will say at the same time, I think
3 it's been in the last year, I think, that the
4 majority -- that the number of permits that the
5 state has issued, the number of appeals that has
6 gone up has been significant. And, in fact, the
7 state is now, as I was told yesterday by one of
8 the state's lawyers, in a modest crisis because so
9 many of the most recent permits have been
10 appealed.

11 So I think we are about to see the
12 beginnings of the process you described unfold,
13 except if I can recall from my previous comment,
14 the cost to the state of engaging their lawyers,
15 their permit writers, and their senior staff
16 people in resolving on a case-by-case basis all of
17 these appeals, is a very costly and
18 resource-draining approach to moving this program
19 forward.

20 And so we would like to work with the
21 state in trying to come up with a process that
22 preserves their resources for things that are
23 perhaps much more environmentally beneficial, and
24 try to move this forward.

1 MR. HARNETT: Keri Powell?

2 MS. POWELL: If I can just ask first a
3 clarifying question, and then the question that I
4 have.

5 The clarifying question is at one point
6 you mentioned an example of where a permit
7 included what I think you meant was a portion of
8 the MACT rule that wasn't applicable to the plant?
9 Is that what you were saying? You gave an example
10 and you said you had one permit where requirements
11 that weren't applicable ended up in the permit.
12 Did I misunderstand that?

13 MS. ANDREW: I know Steve Meyers from GE
14 mentioned that, but I -- let me just go back
15 through and see.

16 MS. POWELL: There was a portion where you
17 had explained that you thought the MACT standards
18 should be set forth --

19 MS. ANDREW: Yes, you're right.

20 MS. POWELL: (Continuing) -- in the permit
21 accurately and completely, and there were examples
22 of where the permits included some things that
23 weren't applicable and other times when they left
24 out things that were.

1 MS. ANDREW: Correct.

2 You know, the example that I cited was
3 very simple. Simply to say that there is an
4 example where one of our coalition members had
5 worked closely with the state in order to try to
6 make sure that it was accurate. And after all the
7 efforts of both the state and the permittee, they
8 still found that there were things that were not
9 included in the permit that were part of the MACT.

10 MS. POWELL: So there wasn't an example of
11 something that was included in the permit from the
12 MACT that wasn't actually applicable.

13 MS. ANDREW: I didn't mention that.

14 MS. BROOME: Anne, I think you did. I think
15 you talked about the labeling requirement for that
16 one unit that was included.

17 MS. ANDREW: You know, if I read from my
18 notes --

19 MS. BROOME: And you said a modification was
20 required; remember?

21 Is that what you're talking about, what
22 she said about requiring a modification?

23 MS. POWELL: In any case, I'll just go --
24 this is sort of helping me understand what's

1 happening when the permitting authority is going
2 through the MACT and deciding what goes in the
3 permit.

4 Am I correct that there are some
5 portions -- like, if you have a general MACT
6 standard for a particular source category, that
7 there may be some portions of that rule that
8 aren't applicable to a particular plant, or is the
9 whole thing always applicable?

10 MS. ANDREW: Well, I think part of it depends
11 on the complexity of the MACT itself. There may
12 be some portions of a MACT that, for example,
13 there are some MACTs where if you have a certain
14 type of process or certain type of unit, there are
15 certain provisions, and if you have a different
16 kind of unit, it would be different portions would
17 be applicable.

18 MS. POWELL: Okay. So I guess what my
19 concern is, is that if we were to move to the
20 alternative that you're suggesting, where you just
21 have a sort of broad citation to the MACT
22 standard, and then you don't have all of these
23 problems, I still don't understand how members of
24 the public are supposed to know what portions of

1 the rule apply to your plant because -- I mean, if
2 there are things that depend upon the certain
3 characteristics of the plant, the members of the
4 public aren't really in a position of being able
5 to make that assessment on their own. So how do
6 you propose that the permit would clarify how the
7 rules applies to the particular plant?

8 MS. ANDREW: Well, one thing I said is
9 because I think it's important as we work through
10 these problems -- and as I said, this is the
11 approach we've taken with the State of Indiana --
12 in trying to be very specific and not trying to
13 generalize, because I think oftentimes we come up
14 with false impressions or false assumptions and, I
15 think, sometimes bad results when we generalize.

16 But one -- so I don't know for exact --
17 without having a specific example, but I do think
18 there are, I guess, two thoughts I would offer in
19 response. One is it would be nice to think that
20 there is a golden way here, that there is really
21 some magic answer that, you know, we seem to be
22 eluding. I think we have various ways we can
23 approach this, which I think Mr. Meyers from
24 General Electric laid out.

1 There is a limited number of options,
2 and I think the goal is to choose the path that
3 provides the best result, not a perfect result.
4 And I do think that the incorporation of the
5 NESHAP by citation is the best result. And it may
6 not be a perfect result.

7 But I also think to the extent there are
8 concerns with the public wanting to understand
9 better what is applicable, I think there are a
10 number of different ways where that particular
11 concern could be considered and could be
12 addressed. But to address them in a legally
13 enforceable document is probably not a good place
14 to resolve those concerns. They can be addressed
15 in the technical support document with further
16 discussion. They could be discussed in a number
17 of off-permit approaches.

18 And I know that the coalition members
19 have considered and discussed and certainly
20 willing to consider those kinds of approaches.
21 But I think it's very important to understand that
22 the Title V permit is viewed as a legal document,
23 and that's not a place where we would think it
24 would be appropriate to do that.

1 MR. HARNETT: Don van der Vaart.

2 MR. VAN DER VAART: I already have my cynical
3 hat on. I totally agree with Keri on this one, in
4 the sense -- on the MACT issue, sorry, we found
5 that typically -- I mean, I know that there are --
6 and we sometimes use specific citations, but
7 sometimes we try to paraphrase. What we found is
8 that the only people that don't benefit from us
9 discussing it in a paraphrased sense are the
10 in-house or the out-house attorneys who want to
11 leave that flexibility open for down-the-line
12 enforcement actions.

13 The folks on the ground in the plants
14 don't have any more understanding of those MACT
15 rules than some of my engineers. But after
16 discussing it with us and putting it in the
17 permit, they benefit, and I think we benefit.

18 Now, that's not to say we didn't do it
19 incorrectly or they didn't agree to something they
20 shouldn't have, but I just think there is a
21 valuable educational process that occurs when
22 everybody tries to integrate those
23 very-difficult-to-follow MACT standards.

24 Having said that, though, and I'll bring

1 in the gap-filling issue, too, if you've got a
2 particulate emission rate, at least in one place
3 the EPA said that the averaging time for
4 monitoring should be consistent with the MACTs for
5 that pollutant. I know there is some conflicting
6 guidance out there, but in their proposed Part 70
7 rules themselves they stated that it should be
8 consistent with the averaging time of the MACTs.
9 So you shouldn't be looking at a particulate
10 standard anything more than once every 24 hours.

11 Where I'm leading to this is all the
12 industries -- I don't know who you work for, but
13 all the industries in our state aren't nearly as
14 concerned about our resources. And they have been
15 adjudicating and -- their permits, and they have
16 been extremely successful in using the petition
17 process. And when I say "petition process," I
18 mean prior to going to actual hearing. They've
19 been using that process very successfully in
20 correcting mistakes that we've made.

21 So while it may be somewhat expensive,
22 it's been really great. I mean, I'm sad that
23 we're making mistakes, but it's been a great
24 opportunity for industry to come in and say,

1 "Look, you guys don't even know what the standards
2 are saying." And we listen in the context -- and
3 it does get bumped up to the next-level manager.

4 So, I mean, I would freely use the
5 adjudicatory process, and I would disregard any --
6 I mean, how can that compare with the costs of
7 \$21,000 looking at a baghouse three times a day.
8 Let's get it right the first time and then move
9 on.

10 MS. ANDREW: Were those questions?

11 MR. VAN DER VAART: Yeah, I guess my question
12 is why aren't you adjudicating like crazy?

13 MS. ANDREW: One thing I'd like to make
14 clear, at least underline if I haven't made clear,
15 I don't want to imply in any fashion that by
16 taking the approach of incorporation of the NESHAP
17 through a citation basis that we think that a
18 valuable dialogue in order to clarify in the minds
19 of the permittee, to the extent they aren't clear,
20 and the inspectors who really are the people on a
21 day-to-day basis need to understand how that MACT
22 should be implemented and what the compliance
23 concerns are is a very valuable discussion. And I
24 don't think that what we're proposing in any

1 fashion is contrary to that.

2 In fact, frankly, I think it is more
3 supportive of that than the other approach.
4 Because at least in our state, and maybe we're not
5 the typical state, but in our state spending a lot
6 of time so that the permit writers can understand
7 an incredibly complex MACT isn't in the end going
8 to be a very wise investment of either the
9 permittee or the state's time. Because once those
10 permittees complete that, they may never see that
11 MACT again.

12 MR. VAN DER VAART: Right. But don't you
13 want that understanding -- that understanding
14 you're talking about, don't you want that when you
15 finally hammer it out in the permit?

16 MS. ANDREW: Well, but what I guess I'm
17 saying, having that dialogue and making sure
18 everyone is on the same page is a very good thing.
19 But I think that in the end what has to happen is
20 that the MACT -- in the Title V permit, the
21 applicable requirements have to be clear,
22 accurate, and complete, and that's what has to be
23 our standard.

24 And the best approach to accomplish that

1 is to do it by citation. If you want to include
2 unenforceable paraphrasing in the permit, if you
3 want to include it in the technical support
4 document, if you want to develop a guidance
5 between the permittee and the inspectors that they
6 would use for inspection purposes, all of those
7 may be very -- I mean, actually, they are very
8 valuable discussions to have. But there is a
9 difference between that and what is in the permit,
10 and that's, I guess, what we're advocating.

11 Let me just say that the next meeting we
12 have where we're talking about the frequencies of
13 the once per shift, I'm going to make sure we
14 suggest to the state that the approach, we've been
15 encouraged to pursue litigation by North Carolina.

16 MR. HARNETT: I'll take one more question.
17 Bob Morehouse?

18 MR. MOREHOUSE: Yes, I just wanted to clarify
19 a couple items I think that have kind of come up a
20 few times. And one is that how does the public
21 know about the MACT standards and how it's
22 impacting a site. And we ought not forget the
23 fact that the MACT standard, being very detailed,
24 has a notice-of-compliance standard. There is an

1 initial notification that basically you're
2 indicating the emission unit subject to the MACT.
3 You've got information with regards to tests that
4 you've run on your control devices, et cetera.
5 And typically each MACT has a long litany of those
6 requirements.

7 Sources are then also obligated to
8 update that periodically. So that information is
9 readily available today. And so I don't want to
10 leave folks with the impression that by not
11 putting all that detail in that folks lose
12 something. I think it's already there.

13 And the other is maybe the concern that
14 by not having the detailed standards in there,
15 does that create a problem in terms of the source
16 knowing what the requirements are. And I think at
17 least my experience in the companies that I have
18 talked to, is a way companies implement the MACTs,
19 no matter how it reads in the Title V permit, they
20 typically would take all of those MACT standard
21 requirements and break them down, depending on who
22 is responsible in a particular site and make sure
23 for every permit term everybody knows what the
24 method of compliance is, who the individual is

1 that's responsible on that site. So that, you
2 know, when it becomes certification time you can
3 point to someone who is a clear owner of that
4 individual requirement.

5 And the people in the plants who do know
6 the MACT rules, the way they work this is that
7 kind of a mechanism. I don't think the people in
8 the plant run and look at the Title V permit per
9 se. They look at how the environmental experts
10 rake that into the detailed requirement.

11 So at least that's been my experience,
12 and I think it's kind of worth sharing those
13 two points with this group.

14 That was not a question.

15 MS. ANDREW: Then I won't give an answer.

16 MR. HARNETT: Thank you very much for your
17 time.

18 The next speaker will be Kathy Andria of
19 the American Bottom Conservancy.

20 MS. ANDRIA: Good afternoon. Thank you very
21 much for having this hearing, thank you for the
22 task force, and thank you for including
23 grass-roots representation on the task force. We
24 very much appreciate that.

1 that's responsible on that site. So that, you
2 know, when it becomes certification time you can
3 point to someone who is a clear owner of that
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6 the MACT rules, the way they work this is that
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10 rake that into the detailed requirement.

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12 and I think it's kind of worth sharing those
13 two points with this group.

14 That was not a question.

15 MS. ANDREWS: Then I won't give an answer.

16 MR. HARNETT: Thank you very much for your
17 time.

18 The next speaker will be Kathy Andria of
19 the American Bottom Conservancy.

20 MS. ANDRIA: Good afternoon. Thank you very
21 much for having this hearing, thank you for the
22 task force, and thank you for including
23 grass-roots representation on the task force. We
24 very much appreciate that.

1 My name is Kathy Andria. I'm with
2 American Bottom Conservancy. We're a
3 not-for-profit organization in the metro East St.
4 Louis area, working to protect the people,
5 resources, and communities of the American Bottom
6 floodplain.

7 We started out working to protect land,
8 working on wetlands issues, and we found ourselves
9 four years ago with a lot air quality issues that
10 we needed to do. So the majority of our time the
11 last few years has been devoted to air issues, and
12 we have been flooded with a slew of Title V's.

13 We are nonattainment for ozone. We have
14 been nonattainment for one hour. We are
15 nonattainment for eight-hour ozone. We have been
16 designated to be nonattainment for fine
17 particulates. We have a number of Superfund
18 sites, a lot of CERCLA sites, a lot of
19 contamination.

20 Our asthma rates are incredible among
21 the youngsters. We have high rates of cancer,
22 heart disease, and lung disease. We have high
23 lead levels in children, and we have people
24 fishing in mercury-laden waters where the fish

1 tissue samples have proven to be high in mercury.
2 And these people are -- a lot of them are doing
3 subsistence fishing; or a lot of their fishing,
4 that's their protein source. That's why we are
5 involved in air.

6 Our organization has appealed an air
7 permit in the Missouri Supreme Court. We
8 intervened in EPA's suit against the Baldwin Power
9 Plant charging new source review violations, and
10 we thoroughly support our upstate organizations
11 who filed against EPA on the Title V coal-fired
12 power plants. Apparently EPA ruled my very
13 inadequate petition that it didn't rise to the
14 level of making it to be legal.

15 East St. Louis has traditionally been
16 dumping grounds for a lot of things. You probably
17 know all about the history. It's where St. Louis
18 dumps their pollution and their dead bodies.

19 We've got half a million people in
20 Illinois on our side of the Mississippi River.
21 It's a valley. It holds -- we have temperature
22 inversions, and it holds the pollution.

23 First of all, I have no technical
24 background, so please, when you give me an

1 acronym, you might have to spell it out because I
2 don't have them all. My background is journalism.
3 I know how to do research, I know how to ask
4 questions, and I know how to write.

5 I've been working with other
6 volunteers -- I am not compensated. I paid for my
7 own way. None of us who are working on this are
8 compensated. I'm working with a young mother of a
9 three-year-old and another mother of a
10 five-year-old who has asthma.

11 In the last two years, we have reviewed
12 13 Title V's, not including a medical waste
13 incinerator that I thought was shut down, so I
14 didn't give it a second thought. I learned in the
15 paper today that it's still operating. And the
16 biggest polluter in the county, because I was
17 intimidated. I hadn't done a Title V before.
18 We've done a chemical plant, steel mills, foundry,
19 a petroleum tank farm, a hazardous waste
20 incinerator, coal-fired power plant, natural
21 gas-fired power plant and a few other kinds of
22 things.

23 U.S. EPA gave Illinois to December 1st,
24 2003, to finish their Title. Typically they did

1 Chicago and northern Illinois first. We always
2 get the last. So we had seven in three days.

3 You asked two questions; how well is it
4 working, and what are the elements that are
5 working? I'd like to add a question, to why is it
6 important? It's important because of the things I
7 told you about where we live. And we take it very
8 seriously.

9 You asked for successes. We've made a
10 number -- made a difference in -- one big
11 difference we've made is Illinois EPA now takes us
12 seriously. We've been granted public hearings for
13 Title V permits, and the hearing officer has
14 respect for the public and asks for questions,
15 invites comment, is helpful when we don't know
16 what we're talking about, helping to guide us to
17 ask better questions. It's very helpful to have
18 the permittee there so that we can start a
19 dialogue and learn, ask questions, and get our
20 questions answered.

21 We view the public hearing as the most
22 important opportunity to ask questions because
23 when we ask questions in a public comment and
24 written form, we never get any answers. In

1 several cases they've extended the public comment
2 period, which we very much needed, given that we
3 had so many within a short time.

4 We have met with Title V permit writers.
5 IEPA made them available to us for all the ones we
6 were working with for a total of four hour
7 sessions, which was extremely helpful. Illinois
8 EPA has withdrawn bad permits that we pointed out,
9 and they've rewritten others.

10 We also met with Region 5 Title V staff,
11 and we hoped that they would help us to get better
12 permits. Unfortunately, for the most part that
13 has not happened. They are looking into a
14 hazardous waste incinerator, Title V, that has
15 been noncompliant for a long time.

16 The Illinois EPA FOIA policy is very
17 good. They provide not-for-profits free copying
18 and make the material available to us. There is a
19 lot of time that's involved to the public in
20 reviewing Title V permits because we take it
21 seriously. We first read the permit. We look to
22 see what we need. We FOIA the material. We have
23 to drive all the way to Springfield to look at the
24 material, to request the different things that we

1 need.

2 We then have to drive all the way back,
3 prepare for the public hearing, prepare questions,
4 listen to the questions, wait for the transcript,
5 wait for the answers -- which for the most part
6 never come that we are promised to have something
7 that they say, "We'll get back to you" -- and then
8 write our comments. And somewhere down the line
9 here we forget that we have to look to see what
10 changes, if any, are made.

11 Finally -- this is a wonderful success
12 that I view -- we got a copy of a permit with the
13 tracking changes, and we could finally see that
14 there were changes. Now, a couple were our
15 suggestions, that we got reporting and
16 recordkeeping and testing added, at least in
17 words, to the permit, but also we noticed that
18 they changed the Title I emission limits. So that
19 hadn't gone through the public process. We didn't
20 have an opportunity to comment.

21 But in my reading of it, and I just saw
22 it in the last two days, it went from talking
23 about pounds per hour, the annual emission limits
24 seemed to go down to either monthly or pounds per

1 hour, and I thought, "Gee, you know, that's okay.
2 You're talking about operational flexibility. But
3 if you're a child who has asthma who lives in that
4 neighborhood, it's not acceptable."

5 There is never a CAM plan. We have an
6 awful lot of Title V's that are not in compliance,
7 and the agency has simply put them on hold.
8 Citizens need help especially in environmental
9 justice communities for enhanced outreach.

10 My organization is not funded. I am not
11 paid. We don't have the money, the time, since
12 we're reading these permits and trying to whiplash
13 back and forth to what this means, what this is
14 referring to. We need help with that.

15 We know that the states don't have the
16 resources. We know EPA doesn't have the
17 resources. So it's up to whoever needs to do it
18 to raise the fees to cover the costs of the
19 program. It's a cost industry, but there is a
20 cost associated, a very high cost, with the
21 children and their healthcare costs, with people
22 in increased healthcare costs and illnesses and in
23 lives.

24 We ask what isn't working? We need a

1 compliance schedule. We need monitoring and
2 recordkeeping. We need reporting requirements
3 written into the permit. We very much need better
4 EPA oversight. If a company doesn't meet its
5 Title I obligations, it needs to be shut down.
6 That's what -- we're hoping that EPA will look at
7 the hazardous waste incinerator that we're dealing
8 with.

9 You should not allow unpermitted plant
10 start-up. For over a year we've got a plant that
11 was shut down, that went bankrupt, the equipment
12 was sold, and suddenly it arises as a new plant,
13 and they have a Title V, and it's very, very
14 confusing. And it shouldn't be up to citizens to
15 try and figure out this mess and bring this all to
16 the attention. We're trying very hard, but it's
17 hard.

18 I listened with alarm when Scott Evans
19 earlier said they can't even locate existing
20 permits. Hello. How can the public know what is
21 required of a company if nobody knows what the
22 existing permits that they're required to operate
23 under. And we have found in Illinois EPA that we
24 don't find all the existing permits. Sometimes

1 there is equipment that seems to be lost.
2 Sometimes it's not there. It's really very
3 confusing.

4 We would very much like to see
5 applications on the Web site. We'd like to see
6 the existing permits on the Web site. We'd like
7 to see EPA's Title V comments back to the agency
8 on the Web site. And we had one -- one actual
9 construction permit which was mostly blacked out
10 for ConocoPhillips. We had a Title V for Solutia,
11 which was 600 pages, much of it blacked out due to
12 so-called trade secrets. We think that's an
13 extreme problem for citizens. How can we know
14 what they're supposedly asking to do if we don't
15 know what it is? How can we enforce it? There is
16 a lot of vague language.

17 We would also ask a question to you.
18 How do we get IEPA to finish their Title V's?
19 They seem to have plenty of time to do
20 construction permits.

21 We had a bad permit for Granite City
22 Steel Plant, which is now U.S. Steel, which was a
23 hundred pages long, with 400 cross references
24 stapled to it. They withdrew that permit.

1 And we ask for a statement of basis.

2 My two-minute mark has come up. I
3 wanted to ask a -- answer a couple of your
4 questions.

5 Yes, you asked resulting in permits that
6 clearly compile all of a source's applicable
7 requirements into a single document? No.

8 Have they triggered actions that result
9 in better compliance with the AAA? I think the
10 record is still out on that.

11 Improved citizen participation? You
12 bet. That's why are working. Because we feel
13 responsibility for this, and we're trying our best
14 to do it.

15 Insured self-funding adequate to run
16 effective programs? No.

17 Resulting in better air quality? Again,
18 it's still out, but we don't see it yet. The
19 better air quality is due to the weather, we
20 believe, not to better Title V.

21 Mr. Muraswski this morning said
22 something about allowing facilities to write their
23 own permits. Unfortunately we think they already
24 do in a lot of cases.

1 And he also said that he thought that
2 the permit engineers should visit the facilities.
3 We absolutely agree. But they should also visit
4 the communities in which the facilities are
5 located.

6 I think I'll stop. It's probably my
7 time.

8 MR. HARNETT: Okay.

9 Shelley Kaderly?

10 MS. KADERLY: Thank you very much for coming
11 to us today, especially on your own dime. We
12 really appreciate you being here and providing
13 your perspective.

14 I wanted to ask you a little bit about
15 Illinois's FOIA process. You said that they've
16 got a very good one. And I was wondering if you
17 could kind of describe a little bit about what a
18 typical FOIA process would look like for you. How
19 long does it take for them to respond? Do they
20 have to respond to you within a certain time
21 frame? How easy is it to get in and get access to
22 the documents? That kind of thing.

23 MS. ANDRIA: It varies. It's not the same
24 across the board. We might be able to FOIA

1 something and get whatever it is sent within a day
2 or two, if it's available. If it takes a search
3 to get all the records together, it could take
4 longer. I think, you know, it's gone up to a
5 couple of weeks. We have to fit into a time
6 frame.

7 They've got, I think, two rooms. They
8 put you in a room. You have a copier that you can
9 copy, and you're supposed to be able to make so
10 many copies free. They have all of the records
11 stacked up. You have a FOIA officer that is
12 assigned to air and to you, and she's very helpful
13 in getting the documents.

14 Unfortunately, not all of the documents
15 are there. It's not the FOIA officer's place.
16 Something might be in another division, and it's
17 like, "It's not my table," kind of thing. So
18 it's -- you know, it varies.

19 MS. KADERLY: How do you know when a permit
20 is out on public notice?

21 MS. ANDRIA: We are on a list now. Before we
22 had to count on seeing something in a local paper
23 -- and that's another thing. I wish there were
24 some way of making uniform what is a paper of

1 record. Things go into a community, and if it's a
2 little town that it's that newspaper that gets it,
3 I mean, there is not a wall around there. The
4 next community over doesn't get that paper, but
5 they're breathing that air. So I think there
6 needs to be better enhanced outreach on that.

7 But we are notified and get sent
8 notifications.

9 MS. KADERLY: And just one other quick
10 question. When they hold hearings, do they hold
11 hearings in your area, where the facility may be
12 located, or are they held in Springfield? I
13 wasn't quite sure.

14 MS. ANDRIA: For the most part they're in our
15 area. One interesting one, we've got a pool of
16 gasoline petroleum products under the Hartford
17 area from the refineries, and there was a public
18 hearing that was scheduled to be there, and it had
19 to be moved because they said the building could
20 explode that night. So we've got challenges to
21 that.

22 Then they had one that they combined two
23 power plants. One was in a southern Illinois
24 community, one was up in the Alton area, and they

1 held it in between, halfway in between, which was
2 totally unacceptable because neither community --
3 I mean, it was a wide area. I mean, it made
4 sense, I guess, but it was not convenient to the
5 community participants.

6 MS. KADERLY: Okay, thank you.

7 MR. HARNETT: Verena Owen?

8 MS. OWEN: Thank you.

9 I think I have more a comment than a
10 question. Thank you so much for coming to address
11 us. I think, and I hope, that your comments
12 remind a lot of people in the room who we are
13 working for. So thanks.

14 MR. HARNETT: Bob Morehouse?

15 MR. MOREHOUSE: Kathy, when you get a permit
16 to review, a draft permit, what are the two or
17 three most important things you're looking for?

18 MS. ANDRIA: What are the sources. What are
19 the emission limits. What's their record of
20 compliance. What I know about the plant and its
21 history. I go on ECHO. I start doing, you know,
22 to see what it is that is on the Web site;
23 scorecard, different kinds of things, the EPA.

24 I start with those before I start going

1 through correcting the grammar and the typos and
2 then start looking at the regs.

3 MR. MOREHOUSE: Is your concern whether or
4 not the appropriate applicable regulations have
5 been assigned to that site, or -- when you look at
6 the emission sources, what would you do with that
7 information?

8 MS. ANDRIA: Well, you look at that -- I
9 mean, we look at that, but you also look at the
10 existing permits, and it's very hard to see. It
11 seems like sometimes there is a disconnect between
12 what it's saying and what it's -- what the
13 existing permits are, and sometimes we don't even
14 find the existing permits.

15 MR. HARNETT: Dick van der Vaart?

16 MR. VAN DER VAART: Where did you get that?

17 MR. HARNETT: I don't know.

18 MR. VAN DER VAART: I think it's great you
19 came down here. The one thing, I wanted to follow
20 up on what Bob Morehouse said, because it's
21 interesting to hear somebody like a journalist try
22 to look at these incredibly complicated pollutant
23 permits.

24 Again, where Bob is saying what are you

1 looking for, would you like to look at a permit,
2 once it's issued, let's say, and it's out there,
3 would you like to be able to look at that permit
4 and determine whether the source is out of
5 compliance at all?

6 MS. ANDRIA: Well, frankly I would like not
7 to have to look at another permit ever.

8 MR. VAN DER VAART: You and me both.

9 MS. ANDRIA: But I would like for there to be
10 a real Title V permit that said everything that
11 was supposed to be complied with, everything that
12 was required of the source, and I would think the
13 source wants that, too, so that we would know what
14 it is.

15 I mean, we've gotten permits that said
16 if such and such is a such and such located in
17 Chicago and everything, and well, it's in East St.
18 Louis. Why would they say that?

19 There are so many things that are
20 just -- I guess, because of resources, things just
21 get gobbledygooked up, and I would like to see
22 things be very clear, and that's what the industry
23 seems to be asking also.

24 And I want to be able to -- people who

1 are not me, who are not technical -- I mean who
2 are technical, to go and to be able to look and to
3 see.

4 MR. VAN DER VAART: Well, I think industry
5 does want -- I think everybody wants that. But in
6 terms of being able to look at the permit, I know
7 that sometimes it's a daunting task. Would you
8 like to be able to look at the compliance
9 certification and see whether or not they're --
10 whether they're in compliance or whether there
11 were periods of noncompliance.

12 MS. ANDRIA: I would very much like to do
13 that. We're already seeing a whole bunch of
14 things. I mean, we've got people who are saying
15 they're in compliance and people at -- who at
16 hearings are saying they're in compliance when
17 it's very clear that they're not.

18 So I am very interested to see them sign
19 their own names to something saying, "I am in
20 compliance. My company is in compliance, and I am
21 responsible," because then we have something to go
22 after them for.

23 MR. HARNETT: Kelly Haragan?

24 MS. HARAGAN: I have a question about the

1 trade secrets, or I guess a couple questions.

2 Are they actually withholding portions
3 of permits as trade secret?

4 MS. ANDRIA: Most of a permit.

5 MS. HARAGAN: They just black out and won't
6 let you see the actual permit?

7 MS. ANDRIA: That's correct.

8 MS. HARAGAN: That's outrageous.

9 And are there other things like that
10 that you don't think should be withheld as trade
11 secret that are being withheld?

12 MS. ANDRIA: Well, not knowing what is being
13 withheld is hard to see from a reading. I had a
14 chemical engineer look at the Solutia permit, and
15 as she read it, she said, "I don't believe this is
16 trade secret. It's old, dirty chemistry."

17 So I do not know. I cannot judge. But
18 it just totally violates the spirit of Title V to
19 have half or more of a permit blacked out.

20 MS. HARAGAN: I agree.

21 MR. HARNETT: Bob Palzer?

22 MR. PALZER: Thank you very much for coming
23 here. I particularly appreciate with you not
24 having a technical or scientific background, of

1 wading through this material.

2 Have you found the agencies that you
3 worked with, whether it be the local agencies or
4 EPA, to provide information to make it easier for
5 a person with your background to understand what's
6 going on?

7 MS. ANDRIA: The Illinois EPA, there are a
8 couple of people down in our local office that
9 have been helpful and met with citizens, and they
10 have offered to do some Title V training.

11 I did take the Title V training offered
12 by EPA in 2000 and took the new source review
13 training, but many citizens aren't able to do
14 that. Many are so intimidated, and many are
15 fearful of speaking out in the environmental
16 justice communities, the black communities.
17 They're just really fearful. And in some of the
18 white communities, there is real intimidation for
19 people because the companies -- the towns are
20 company towns, like Hartford, the contaminated
21 petroleum site. A lot of the people will come to
22 me or call me and ask me to do such and such, to
23 look into this, but they are so fearful of
24 speaking out because they fear retribution.

1 MR. PALZER: And what kind of recourse do you
2 have? I can understand it's got to be a
3 tremendous hurdle. Do you have any suggestions on
4 how people in a community could give testimony
5 with impunity against reparation against them?

6 MS. ANDRIA: You mean like they do in
7 Congress, and have them behind a black box? I
8 don't think so. I don't know.

9 I think it would be helpful if some part
10 of the Title V money could go into a fund that
11 citizens could apply for resources to fund their
12 own technical person to advise them. I think --
13 and then the technical person could go and
14 represent them. That way individual people could
15 be culpable to either the company or the city.

16 MR. PALZER: Thank you.

17 MR. HARNETT: Lauren Freeman?

18 MS. FREEMAN: Thank you.

19 I don't know if you had a chance to sit
20 through some of the earlier discussions about the
21 MACT -- the maximum achievable control
22 technology -- for hazardous air pollutant
23 standards and the conundrum as to how to deal with
24 those. There are sometimes hundreds of pages of

1 regulations, can't put the whole thing in the
2 permit, struggling with the amount of detail and
3 monitoring and recordkeeping and reporting.

4 So I don't expect you to solve that
5 problem for us, but if you had a copy of a permit,
6 I wonder if you've seen a permit that has the
7 right amount of detail to inform the public about
8 those things. You said monitoring, recordkeeping,
9 reporting should be in the permit. That would be
10 very helpful, to see from your perspective what
11 the right amount of detail is.

12 MS. ANDRIA: Not seen one yet.

13 MS. FREEMAN: Okay.

14 MR. HARNETT: Steve Hitte.

15 MR. HITTE: I, too, would like to thank you
16 for coming.

17 You made a statement that you would like
18 to see "EPA oversight." If you got that
19 oversight, can you describe to me what would be
20 success in your eyes?

21 MS. ANDRIA: I would like EPA to actually --
22 I know that they have many permits to review and
23 limited staff to do it, but I really would like
24 for them to look at the permits, the comments, the

1 aid to the community, the changes, tracking
2 changes to see what's slipped in. I hate to use
3 that term, but that's the way I see it. And look
4 at the operating permits to see if that's what's
5 really happening.

6 I wish they would also, at the same
7 time, look at the records of compliance, of what
8 is happening with the industry. I think that this
9 section enforcement isn't looking -- the Title V
10 is not looking there. I mean, there is all these
11 little divisions, and there is not -- it's like
12 the air is mixing up there where we're breathing.
13 But there is all these petitions between the state
14 and each of the different divisions.

15 It's like when air is depositing -- air
16 emissions are depositing mercury. It's not an air
17 problem. It's not a water problem. It's not a
18 land problem. Everybody keeps passing the buck on
19 these things. And there has got to be some way of
20 looking at it as a cumulative whole. There are
21 synergistic effects that are not being taken into
22 account, and there is so much that is happening,
23 and the people living in these communities are
24 truly suffering.

1 MR. HARNETT: Verena, did you have another?

2 No --

3 MS. OWEN: I --

4 MR. HARNETT: Go right ahead.

5 MS. OWEN: Listening to you, I noticed that
6 you were talking about that when you review a
7 permit, especially environmental justice area that
8 might have a disproportionate share of pollution
9 already, that you go beyond just permit review and
10 go into compliance issues and probably public
11 complaints and probably review the emergent
12 response file.

13 Would it be helpful for you, in your
14 work, if there was a document that was maybe
15 outside the permit that would address that, as an
16 accompanying document?

17 MS. ANDRIA: I need for you to explain what
18 you mean, a document outside.

19 MS. OWEN: I was talking about a statement of
20 basis that would basically go into the details
21 that might not be appropriate in the permit but
22 should be addressed in Title V review; a listing
23 of Title I permits, a compliance history, some
24 kind of notice that the sources of compliance --

1 MS. ANDRIA: Absolutely. I mean, that should
2 be very basic to the process. I mean, we've been
3 asking for that. You've been asking for that.
4 We've not gotten it in Illinois. They keep doing
5 little -- an intro kind of thing, which doesn't
6 give much information, but, I mean, it would be
7 very helpful to the public. And I think it would
8 be helpful to everyone to be able to look at
9 something in a snap and see why it's being issued,
10 a permit, what the history is, what the whole
11 basis for giving the permit is.

12 MR. HARNETT: Thank you very much for coming
13 here today to talk to us.

14 MS. ANDRIA: Thank you. Thank you for being
15 kind in your questions.

16 MR. HARNETT: Our next speaker is Faith Bugel
17 of the Environmental Law Policy Center.

18 I'll warn you at a two-minute mark.

19 MS. BUGEL: Okay. I don't think I should go
20 that long, but we'll see.

21 First of all, thank you for having me
22 here today and providing us an opportunity for
23 comment.

24 Again, my name is Faith Bugel. I work

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22 here today and providing us an opportunity for
23 comment.

24 Again, my name is Faith Bugel. I work

1 for Environmental Law and Policy Center, which is
2 a legal and public interest organization located
3 here in Chicago, and we work throughout the
4 Midwest.

5 I would like to start by giving you a
6 little bit of my background and how I ended up
7 involved in the Title V process. As I said, I
8 work for Environmental Law and Policy Center, and
9 a year ago I had my first community to comment on
10 a Title V permit. So that's the basis today --
11 we're going off of one experience with Title V
12 permits, which I think is more than enough.

13 I am an attorney. I have six years of
14 experience, solely in the environmental law field.
15 So I guess I am one of those technical people, but
16 with that background, this was still an
17 overwhelming process.

18 I also had the resources of an
19 environmental organization dedicated to working on
20 issues of this sort, and I had the support of a
21 legal intern, and I guess I had about 90 days, and
22 I used every single one in drafting comments on a
23 Title V permit.

24 So my first comment would be, in the

1 face of my experience and the resources I had at
2 my disposal, and the fact that I'm supposed to be
3 a technical person, an attorney with six years'
4 experience, I think the objectives of this program
5 are ideal. That this should be a program that
6 allows for citizen involvement, allows for public
7 participation, and that these permits should be a
8 place where all requirements are consolidated, and
9 citizens should be able to sit down and read one
10 of these permits and review and provide comments.

11 But my experience -- and those goals
12 aren't necessarily consistent, because I'm not a
13 citizen; I am an attorney. I've had environmental
14 law experience, and this still was overwhelming
15 for me. So, you know, to start with I'd like to
16 say don't get rid of this program. This is
17 critical. This is an opportunity.

18 But I would like to say the improvement
19 that needs to be made is this program somehow
20 needs to be made more accessible for the citizens.
21 And these permits need to be somehow made less
22 complicated so that the citizens really can sit
23 down and read them and comment upon them and don't
24 need to resort to using people like me.

1 What I would say is that I see the
2 problem is at the state level. And, you know,
3 before I start pointing fingers at the state, I
4 know the state agencies get so much heat, and they
5 are underresourced. And trying to implement these
6 programs, they're short on staff and they're short
7 on time and they're short on resources. And in
8 the face of those shortages, I think they do a
9 hero's job as well. But I also think that we have
10 these goals at the federal level, and then we have
11 the states implementing them, and somehow there is
12 a miscommunication between those goals and what,
13 in fact, happens on the ground.

14 And my personal experience was with the
15 start-up, shutdown, malfunction provisions, which
16 at the state level here in Illinois are not
17 consistent with U.S. EPA guidance, and they are
18 not consistent with the goals of the program.

19 The permit must be consistent with U.S.
20 EPA's guidance. I think that's basic. U.S. EPA
21 writes this guidance for a reason. There are
22 lengthy memos laying out the requirements for
23 start-up, shutdown, and malfunction, and then what
24 has happened in Illinois is a very boiled-down,

1 limited provision instead.

2 First of all, automatic exemptions for
3 excess emissions during start-up, shutdown, and
4 malfunction are prohibited, especially during
5 start-up and shutdown because those are
6 foreseeable events in the normal operation of a
7 source, and those events should be accounted for
8 and carefully planned for, and therefore
9 violations at that time should be eliminated.

10 I understand U.S. EPA in its guidance
11 gives discretion, but this discretion is limited
12 to the context of enforcement actions. States may
13 have the discretion to take -- to refrain from
14 taking enforcement actions. They have the
15 discretion to excuse a source from penalties in
16 the context of an enforcement action and also have
17 the discretion to provide an affirmative defense
18 in an enforcement action.

19 However, states may not excuse or
20 otherwise authorize excess emissions that would
21 otherwise be violations of applicable limitations
22 and requirements.

23 Now we have 35 IAC Section 201.262,
24 which lays out Illinois requirements regarding

1 malfunction, breakdown and start-up. And bear
2 with me while I read this, because it is short,
3 and that's part of the problem:

4 "Permission shall not be granted to
5 allow continued operation during a malfunction or
6 breakdown, unless" -- and I emphasize -- "unless
7 the applicant submits proof to the Agency that:
8 Such continued operation is necessary to prevent
9 injury to persons or severe damage to equipment;
10 or that such continued operation is required to
11 provide essential services; provided, however,
12 that continued operation solely for the economic
13 benefit of the owner or operator shall not be a
14 sufficient reason for granting of permission.
15 Permission shall not be granted to allow violation
16 of the standards or limitations of Subchapter c of
17 this chapter during startup unless applicant has
18 affirmatively demonstrated that all reasonable
19 efforts have been made to minimize startup
20 emissions, duration of individual startups, and
21 frequency of startups."

22 EPA guidance on this issue -- and I'm
23 saying this from memory, but EPA guidance on this
24 issue is multiple pages long, at least like five

1 to nine pages. That paragraph that I read to you
2 is this long (indicating), not even a quarter of a
3 page.

4 So right there you see the inconsistency
5 in the detail provided in Illinois's regulation
6 and the EPA guidance, just in terms of length and
7 detail.

8 Second, the inconsistency I'll point out
9 to you is that this indicates that permission can
10 be granted. By laying out a situation where
11 permission can't be granted, it's implied that
12 there are situations where permission can be
13 granted to allow violations. EPA guidance says
14 that the state may not authorize or excuse
15 violations.

16 Also, this specifically does not limit
17 state discretion to the context of enforcement
18 actions. While it uses those magic words,
19 affirmative defense, that affirmative defense by
20 EPA guidance is only allowed in enforcement
21 actions, and here there is no mention of
22 enforcement actions.

23 In addition, consistent with this
24 provision, the state has issued draft Title V

1 permits that are also explicitly contrary to the
2 U.S. EPA guidance. Now, I realize I'm getting
3 into the realm of the requirements that the Title
4 V permit be consistent with the state
5 implementation plan, which it is, and the
6 requirement that the Title V permits be consistent
7 with U.S. EPA regulations and guidance. And
8 again, this is where the problem lies. We've
9 ended up with a state implementation plan that's
10 not consistent with U.S. EPA objectives, and as a
11 commenter on a permit, I then get told, "Well, but
12 this is consistent with our SIP."

13 And I'm saying, looking at EPA guidance,
14 saying, "That can't be possible because this SIP
15 shouldn't be allowed." So I am left without
16 recourse, even though I've identified something
17 that is a problem. So, allow me, then, to comment
18 on these permits that we then saw.

19 In Title V permits drafted for the
20 Midwest Generation facilities here in Illinois,
21 there was a condition that authorized continued
22 operation in violation of applicable requirements,
23 just on its face inconsistent with U.S. EPA
24 guidance. The language does not provide just

1 affirmative defense, it's not limited just to
2 enforcement actions, but it specifically
3 authorizes continued operation, and I'm quoting
4 this, "in violation of applicable requirements and
5 applicable standards."

6 More specifically, regarding start-ups,
7 shutdowns, and malfunctions, U.S. EPA policy has
8 five conditions; that they be unavoidable or
9 necessary to prevent loss of life, personal
10 injury, or severe property damage; that they be
11 consistent with good practice for minimizing
12 emissions; that they minimize the impact of excess
13 emissions on ambient air quality; that emission
14 monitoring systems be kept in operation; and that
15 the permittee notify the agency.

16 However, the condition I just read to
17 you is everything that was contained in the permit
18 on start-up, shutdown, and malfunction, and none
19 of these other conditions were required. For the
20 affirmative defense to be available, there needs
21 to be proof that the emissions were short,
22 infrequent, and could not have been prevented and
23 were not part of a recurring pattern. Again,
24 these requirements were not included in the

1 permit.

2 As far as malfunction and breakdowns,
3 again, EPA guidance requires that this be
4 consistent with good practice for minimizing
5 emissions: Repairs be made in an expeditious
6 fashion; excess emissions be minimized; all
7 possible steps be taken to minimize the impact of
8 excess emissions on ambient air quality; and for
9 the affirmative defense to be available, that the
10 malfunction be a sudden and unavoidable breakdown,
11 that it did not stem from any activity that could
12 have been foreseen or avoided, that it could not
13 have been avoided by better operating and
14 maintenance practices, and that that excess
15 emissions were not part of a recurring pattern.
16 Again, all of these conditions in U.S. EPA
17 guidance are not contained in the permit or in
18 this state implementation plan.

19 Finally, regarding both start-ups and
20 malfunctions, the permittee's actions need to be
21 documented in a properly signed, contemporaneous
22 operating log, something else that was omitted
23 from the permit.

24 In sum, I'd like to say that U.S. EPA

1 has done its job and provided sufficient guidance
2 on the content, process, and structure of both the
3 state implementation plan and the Title V permits.
4 However, the permit program could be improved by
5 assuring that state SIPs and state Title V
6 proposed and issued permits are consistent with
7 that guidance.

8 MR. HARNETT: Thank you.

9 Shannon Broome?

10 MS. BROOME: Hi. Good afternoon. Thanks for
11 coming.

12 The provision you read was from the SIP?

13 MS. BUGEL: Yes.

14 MS. BROOME: I just wanted to be sure I
15 understood that. So that was different than the
16 affirmative defense in the Title V program for
17 emergencies? That wasn't the emergency defense
18 provision.

19 MS. BUGEL: No, it was not.

20 MS. BROOME: I didn't hear it, so I just
21 want -- I mean, I heard it, but I don't remember
22 it word for word. Did it say that no penalty
23 could be, or did it simply say that the state
24 could grant permission for continued operation?

1 MS. BUGEL: It simply says the state can
2 grant permission for continued operation.

3 MS. BROOME: So would you agree that if
4 shutting down my unit during a malfunction would
5 cause the unit to explode and release dangerous
6 gases to the local community, that that would be
7 an appropriate situation to continue operation
8 until could you bring it down safely?

9 MS. BUGEL: Yes, I would.

10 MS. BROOME: And would you agree that if you
11 had a bunch of molten glass in a furnace, and
12 shutting it down would cause the glass to solidify
13 such that you would have to spend \$30 million to
14 make a new furnace, and your ESP was down, that
15 that would be a situation where it might be
16 reasonable to allow somebody to continue to bring
17 it down in a more graduated fashion, or if they
18 could solve the problem within an hour, to get it
19 down in -- I mean, I've had this situation.
20 That's why I'm asking.

21 But I didn't mean that to read that you
22 couldn't get fined for it or you wouldn't have to
23 certify noncompliance. I kind of viewed that more
24 as like a safety and not causing irreparable

1 damage to a really expensive piece of equipment
2 provision, and maybe I was reading it wrong or
3 hearing it wrong. I haven't read that particular
4 one. But I just viewed it less -- as giving less
5 to the source than I think you were viewing it.

6 MS. BUGEL: I think you and I agree on
7 several points. First of all, U.S. EPA guidance
8 says that severe property damage is something that
9 you can take --

10 MS. BROOME: And I haven't studied that
11 guidance, so I'm not --

12 MS. BUGEL: And the state also says severe
13 property damage is a consideration. I agree that
14 that's a consideration. That, you know, the
15 example that you pointed out is the kind of severe
16 property damage that both the state and the U.S.
17 EPA consider as a situation where shutdown is not
18 necessarily required, where penalties can be
19 excused.

20 My issue with the state SIP and the
21 permits we've seen is not what's in them, but
22 what's missing from them.

23 MS. BROOME: Okay.

24 MS. BUGEL: And what's missing from them is

1 what is laid out in U.S. EPA guidance where it
2 says violations may not be excused, but in the
3 context of an enforcement action, the state has
4 the discretion to not assess penalties, to allow
5 for an affirmative defense in the situation you're
6 talking about, or in the context of -- or may
7 actually -- I want to -- may refrain from taking
8 enforcement action.

9 But what's missing from our SIP is that
10 the SIP and the permits themselves, the way it is
11 phrased, makes it sound like there is -- that they
12 give the state permission to excuse a violation,
13 and that is specifically what is disallowed.

14 MS. BROOME: I guess I needed to study the
15 provision because I didn't hear it as excusing the
16 violation. I heard it as granting -- saying,
17 "Look, if you've got this situation, you better
18 call us to get permission to continue to operate,
19 and it better be under these particular
20 circumstances. We may still come back and fine
21 you" -- enforcement is another situation entirely,
22 and maybe I'm just hearing it wrong, but --

23 MS. BUGEL: But that's what I would like to
24 see, is a SIP that lays out, look, you know, here

1 is the situation where, yeah, if there is property
2 damage or risk to life, go ahead. You know, we
3 will give permission for you to keep operating,
4 but it's still a violation, and we reserve the
5 right to still take enforcement action.

6 MS. BROOME: It would be interesting to kind
7 of go in and talk to the agency that wrote that
8 and see what they think it means, too, because I
9 think that's worth discussion.

10 MS. BUGEL: And isn't that the problem,
11 though, that here are a bunch of experts sitting
12 around, and we can't figure out what it means.

13 MS. BROOME: Well, I didn't read it, so I
14 can't say I can't figure it out.

15 MR. HARNETT: Bob Morehouse.

16 MR. MOREHOUSE: Yes.

17 Faith, you made a comment earlier
18 that -- you made a comment earlier that you'd like
19 to see the permits much less complicated.

20 Can you give us a couple of ideas on
21 what you are thinking about by "less complicated"?
22 The challenge is, of course, we're dealing with
23 complex rules.

24 MS. BUGEL: And that is the challenge,

1 because these are very complex rules.

2 One of things that I've heard over
3 again, and one of the challenges I faced in
4 reviewing this permit, which is, oh, gosh,
5 hundreds of pages -- 111, 12, 13, something like
6 that long, was that in every condition there is a
7 reference to a regulation or a requirement, and
8 there are, you know, ten conditions on a page
9 sometimes.

10 So as I sat down to read this, I would
11 read my condition, and then go reference the
12 regulations, which then reference something else,
13 and it's like this never-ending spider web, where
14 everything is all interconnected in a way that you
15 just can't figure out how. That's when I had to
16 enlist an intern to work through me condition by
17 condition and print out every regulation that's
18 referenced, and then she ended up printing out a
19 stack that was this thick (indicating).

20 One of the things that I think would
21 make these easier to read is if things could
22 somehow be organized, not on a -- on a
23 unit-by-unit basis, with the monitoring
24 requirements, reporting requirements, and, you

1 know -- what am I missing? Monitoring, reporting,
2 recordkeeping requirements all together, instead
3 of in this complicated way where monitoring
4 requirements are here -- you know, just in a way
5 where it intuitively makes more sense, and things
6 are grouped together so that you can read all the
7 requirements pertaining to one unit right there.

8 MR. HARNETT: Bob Palzer?

9 MR. PALZER: Thank you for coming.

10 I'm particularly interested in the
11 amount of time you've spent on dealing with the
12 issue of upsets, shutdowns, malfunctions, because
13 in a number of industrial processes these are
14 commonplace. I mean, they're just part of doing
15 business.

16 Certain operations are pretty much
17 consistent, and the upset or the breakdown or
18 malfunction is kind of an unusual occurrence or
19 may not have much of an effect in terms of the
20 amount of emissions that are occurring, you know,
21 from this unit over a period of time. In some
22 cases it's very significant, and this can, if
23 you -- if you don't take into account the
24 emissions that are occurring during these unique

1 events, you can have an emission inventory that is
2 quite different in actuality than what is assumed
3 in putting together a SIP.

4 Have you considered how that might play
5 into the situation you're describing; namely, that
6 the agency you're talking about, Illinois, isn't
7 following the general protocol that EPA requires?

8 MS. BUGEL: You know, I think you've touched
9 on something, and as you were mentioning this,
10 this, I think, gets to the heart of the problem.
11 What we've got is a situation where start-up,
12 shutdown, malfunction, breakdown are viewed more
13 leniently as an exception, and emissions during
14 those situations are permitted or authorized as
15 the exception.

16 Yet what does that leave? It leaves
17 normal operation. Well, I should hope that a
18 facility is operated, planned for, and created in
19 a way that during normal operation we're not going
20 to have a bunch of excess emissions, and in that
21 way the exceptions end up swallowing the rule.

22 Does that answer your question, or do
23 you want to repeat your question again?

24 MR. PALZER: Well, you're being responsive,

1 and I didn't ask the question in the clearest
2 possible way. I guess what I'm trying to do is
3 share with you a concern of some of these events
4 are very significant in terms of emissions and not
5 necessarily uncommon, and because the state agency
6 or in the rules these events are allowed to occur,
7 it's reasonable to consider them to occur because
8 some of these processes, there is no way of
9 avoiding them.

10 But emissions are still coming out, and
11 very commonly you don't take into account these
12 higher-than-usual emissions in coming up with an
13 emissions inventory, which is used then as the
14 basis of coming up with a SIP to be able to make
15 sure you meet the standards. And I see that as a
16 conundrum, and I was just wanting to know if you
17 had any insight of how one would get around that.

18 MS. BUGEL: And I agree that that is a big
19 concern because, you know, as I said, normal
20 operations are not the times when emissions occur.
21 They occur during start-up, shutdown, and
22 malfunction. So yeah, it's a very real conundrum,
23 and I think the bottom line is emissions during
24 these events need to not be authorized, excused,

1 but need to be accounted for and considered and
2 addressed.

3 MR. HARNETT: Lauren Freeman?

4 MS. FREEMAN: Let me just start by saying
5 that I share your frustration. I find it very
6 understandable because these permits aren't
7 necessarily easy even for people like us who do it
8 every day.

9 The one issue you highlighted, the
10 start-up, shutdown, malfunction, I think you may
11 have pointed to a -- maybe a different issue
12 that's not necessarily a Title V issue. Every
13 state has got its own start-up, shutdown,
14 malfunction provision that varies state to state.
15 Some are fairly recent. Some are not so recent.
16 There are individual start-up, shutdown,
17 malfunction provisions and federal regulations, so
18 there is a lot of variability out there. There's
19 not one model.

20 I think the EPA guidance that you were
21 referring to was actually clarified, again, in
22 2000 -- December of 2000. I may have the date
23 wrong.

24 There is a document describes the

1 relationship of that guidance to SIPs, and I think
2 that when you look through that, where you come
3 out is that the problem is with the SIP, and
4 unfortunately we find that a lot. People
5 identified something during the Title V process,
6 they want to fix it, and unfortunately the fix may
7 be you have to go back to the SIP.

8 And so I'm not sure there is a question
9 in there. I mean, that's just the way things are
10 unfortunately, because Title V really isn't
11 designed to fix every problem in a SIP.

12 I mean, maybe a question is, is there a
13 way to get people involved in SIP processes,
14 rather than trying to tackle this through Title V,
15 because it's not really the appropriate --

16 MS. BUGEL: Yeah, and I think that would be
17 helpful, to get people involved in this process.

18 MR. HARNETT: David Golden?

19 MR. GOLDEN: Thank you very much for coming
20 today.

21 I would echo what Lauren said. I've
22 been doing this about 12 years, and it's
23 impressive you can get up to speed in 90 days. It
24 makes me feel like I've been very slow on this if

1 you did it all in 90 days. That's why a lot of
2 the lawyers have what's called an ABA practice;
3 anything but air. It makes your head spin. I
4 think a lot of that is complex in the Clean Air
5 Act. As Lauren said, Title V doesn't really
6 necessarily cause this, but it certainly
7 highlights it. I do have a question though.

8 Several times you mentioned EPA guidance
9 requires X or Y, and then what permit terms and
10 conditions you are seeing is inconsistent with
11 what EPA guidance requires. I was curious as to
12 your view -- is it your view that EPA guidance has
13 the full force and effect of law?

14 MS. BUGEL: No, it's not. I understand that
15 about EPA guidance. It's guidance, not law.

16 MR. GOLDEN: What does a state or permittee
17 do where maybe every once in a while EPA will come
18 out with guidance that might be inconsistent with
19 other guidance, and so you have kind of a battle
20 of guidance versus law. I think Title V is
21 something that highlights it, but it doesn't
22 necessarily cause it per se. It just illustrates
23 the conundrum.

24 If you got to run the world for a day or

1 two, how would you solve of that?

2 MS. BUGEL: If I got to run the world, I'd be
3 in Malibu right now.

4 You know, I think -- I think that's part
5 of the problem; is there a way that U.S. EPA could
6 provide something -- you know, how do you -- it's
7 back to the question. What do you do about a SIP
8 that, as Lauren points out, that's lacking in a
9 certain area and inconsistent with guidance, but
10 guidance is just guidance.

11 Is there a way to work with the states
12 to get them to improve their SIPs, when there are
13 developments at the guidance level? What's the
14 guidance there for, if it's just guidance and
15 inconsistent and not really worth anything?

16 I believe the guidance is worth
17 something, and the states need to find a way to
18 respond to it that will not create an
19 ever-changing and inconsistent program.

20 As much as that answer is worth, maybe I
21 shouldn't be running the world.

22 MR. HARNETT: Mr. van der Vaart?

23 MR. VAN DER VAART: The memo -- just to
24 follow up on what Lauren said, the whole issue,

1 and of course there is a 150-page treaty that just
2 came out by Eric Schaeffer, who was actually the
3 author of the last memo that went back to the
4 Bennett & Bennett, and Herman, and then him. And
5 yeah, there are, like, 22 SIPs that are
6 inconsistent with it.

7 Now, coming from North Carolina, the
8 fact that a SIP is inconsistent with federal
9 guidance isn't necessarily a bad thing. We lost
10 that back in 1865, and so we still have issues.

11 But where this really plays out now, and
12 you're absolutely right, is in Title V, because we
13 have a certain number of companies, one utility,
14 who says, "We don't have excess emissions.
15 They're malfunctions." And so in other words
16 they've used it to define their compliance status.

17 And I guess my point is, is that even in
18 those states that have SIPs that you think are
19 inconsistent with these guidance memos, I think
20 you've looked to find that they're not even
21 following the rules themselves. In other words,
22 they're not even going through the steps to get to
23 the point they can certify compliance because I've
24 got a malfunction.

1 So the guidance isn't all that terrible.
2 I know you've got this issue of the violation
3 versus just the enforcement exemption, but you
4 also need to look at I don't think they're even
5 following the rules that are there.

6 MR. HARNETT: Kelly Haragan?

7 MS. HARAGAN: I just wanted to, as the person
8 who wrote that 150 pages rather than Eric
9 Schaeffer --

10 MR. VAN DER VAART: Oh. He's still at it, is
11 he?

12 MS. HARAGAN: Yeah, I spent several months on
13 that.

14 I want to raise the fact I do think it
15 is a problem in Illinois, and it is a problem in
16 lots of other states. While Illinois's provision
17 is vague -- that is a huge problem -- there is
18 other states where it's flat-out clearly illegal,
19 too.

20 I think to just realize there is this
21 big problem and say, "Well, we've discovered it
22 through Title V. It's been brought to the
23 forefront. It's not a Title V issue. It's a SIP
24 issue," that defeats the purpose of Title V.

1 Title V is supposed to raise these
2 issues so we can address them, not to just push
3 them to the sideline. So I think it is a really
4 important issue, and thanks for raising it.

5 MS. BUGEL: Thank you.

6 MR. HARNETT: Keri Powell?

7 MS. POWELL: Hi, Faith. Thanks so much for
8 coming out here to give your presentation. I
9 really enjoyed it.

10 I just wanted to know whether you raised
11 your concerns about the SIP with U.S. EPA, and if
12 so, how they responded? And how you think that
13 U.S. EPA should handle a situation where someone
14 raises in a petition an issue that U.S. EPA feels
15 is a SIP issue and not a Title V permit issue?

16 MS. BUGEL: Well, how we responded was by
17 filing suit against U.S. EPA yesterday. So
18 honestly, we -- I raised these issues in comments
19 to Illinois EPA. Illinois EPA's response was
20 basically it's -- you know, it's -- our permit is
21 consistent with our SIP.

22 So then we did petition U.S. EPA, and
23 because U.S. EPA is overwhelmed with petitions
24 like mine, they were not able to respond within

1 the deadline, and we've now gone to court to ask
2 for a response. We've yet to see what that
3 response is.

4 And that highlights another problem with
5 the program. The permits that I commented on were
6 draft permits a year and three or four months ago.
7 We have yet to see a final permit. And this
8 process has ultimately resulted in us having to
9 file suit. And that's another -- the delay
10 inherent in the program is another part of the
11 problem, is that we, you know, we had a draft
12 permit over a year ago, and we understand that
13 we're nowhere near a final permit yet.

14 MR. HARNETT: Thank you very much for coming,
15 and then we're taking a break now. We'll be back
16 at 4:00 o'clock.

17 (Recess.)

18 MR. HARNETT: The next speaker is Keith
19 Harley of the Chicago Environmental Law Clinic.

20 MR. HARLEY: Hello. Just as an initial
21 matter, I just wanted to say a special hello to
22 Bob and to Dick, who were on a federal advisory
23 committee with me five years ago on the industrial
24 combustion coordinated rule-making, and I haven't

1 the deadline, and we've now gone to court to ask
2 for a response. We've yet to see what that
3 response is.

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5 the program. The permits that I commented on were
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20 MR. HARLEY: Hello. Just as an initial
21 matter, I just wanted to say a special hello to
22 Bob and to Dick, who were on a federal advisory
23 committee with me five years ago on the industrial
24 combustion coordinated rule-making, and I haven't

1 seen them since, but for some reason all of a
2 sudden that just seems like we never left.

3 I'm the director of the Chicago
4 Environmental Law Clinic, which is a partnership
5 between the Chicago Legal Clinic, where I'm an
6 attorney, and Chicago-Kent College of Law, where I
7 teach environmental law. I've represented citizen
8 organizations in Title V permit proceedings for
9 coal plants, peaker plants, and other industrial
10 facilities.

11 In some cases our involvement has been
12 limited to submitting written comments and
13 participating in public hearings. In other cases
14 we've petitioned the administrator and filed
15 citizen suits based on the administrator's failure
16 to respond to our petitions in a timely fashion.
17 In some cases we've developed detailed
18 environmental justice, analyses, and requests.

19 In addition, my office generated the
20 Illinois petition that helped lead to U.S. EPA
21 establishing a schedule for Illinois EPA to issue
22 the first round of Title V permits. We're now
23 monitoring Illinois EPA's schedule for issuing
24 renewals -- that was really boring.

1 I thought I would tell you a story
2 actually, and it was based on something that was
3 triggered in my mind by what Kathy said, when she
4 was reviewing a permit, a Title V permit, and she
5 noticed a small error, but it's a very telling
6 thing. What she noticed was that even though it
7 was for a facility downstate, East St. Louis
8 perhaps, it mentioned Chicago.

9 I think that one of the most important
10 things that I've realized in representing people
11 in Title V permit proceedings and in FOIA'ing for
12 all of the records and reviewing all the records
13 is that the process works beautifully and smoothly
14 and without a hitch, and you would not be here in
15 most cases because there is a permit application
16 and there is a permit macro.

17 The permit writer basically cuts and
18 pastes from the application into the permit macro,
19 issues it in draft form. If there are no public
20 comments, it goes out, it's issued, and everybody
21 is happy. The water is untouched. It's a smooth
22 process.

23 But what happens, and that story is that
24 is the permit macro story. That is how the

1 process as a practical matter works. The permit
2 engineer never visits the facility. If the permit
3 application is complete, there is oftentimes, I
4 find in FOIA'ing for the records, very little
5 meaningful give-and-take even between the permit
6 applicant and the agency issuing the permit.

7 The role the members of the public play,
8 I find -- and it is very disruptive and
9 unsettling, but it's so critically important -- is
10 that when they get involved in the process,
11 suddenly that juggernaut, that process that is put
12 into place -- application, draft permit, notice,
13 final permit -- grinds to a halt to deal with
14 those community concerns.

15 I want to give you an example -- and I'm
16 going to come back to it a couple times in my
17 remarks -- we reviewed the permit application that
18 was put in by a large industrial facility for its
19 Title V permit, and the rote compliance
20 certification was signed by a responsible
21 official. I went and I met with the group that I
22 represented in that case, and one of the women, I
23 think she may actually be testifying this evening,
24 Ellen Rendulich from the Citizens Against Ruining

1 the Environment group who lived on a bluff
2 overlooking the industrial facility said, "I don't
3 know how this facility can be in compliance
4 because it's constantly putting out black smoke."

5 And so we FOIA'ed for the records, and
6 we got back the excess emission reports from this
7 facility, and do you know that consistently on a
8 quarterly basis, like clockwork, ten days after
9 the quarter they would be submitting reports
10 certified under penalties of perjury to the
11 Illinois EPA detailing hundreds of excess
12 emissions from their facility.

13 And yet somehow there was a compliance
14 certification in the application. The permit
15 itself identified no outstanding compliance
16 issues. The only compliance issues that were
17 addressed in the permit application -- in the
18 draft permit were on a going-forward basis; no
19 compliance schedule.

20 And this is -- it's that juggernaut.
21 It's that application macro, get the thing out the
22 door, as opposed to let's take a look to see if
23 there are excess emission reports within this
24 agency that we should be considering, sitting in

1 had to do this work, who stood up and did it. But
2 I'll tell you how these members of the public are
3 treated. When they do their homework, when they
4 stand up in these permit hearings, when they
5 develop written comments, and then when they try
6 to go forward and say to U.S. EPA and to its state
7 permitting counterparts, "Do your job," do you
8 know how they're treated? They are treated like
9 dirt in my experience.

10 Their concerns are dismissed. The
11 responsiveness summaries are oftentimes an effort
12 to avoid as opposed to actually substantively
13 respond to these concerns. They go to U.S. EPA
14 during U.S. EPA's 45-day review period and get
15 nothing. They petition the administrator of the
16 U.S. EPA and get no response, nothing; no response
17 whatsoever. They file a 60-day "notice of intent
18 to sue" letter against U.S. EPA administrator,
19 "Please listen to this concern." They get no
20 response.

21 Yesterday we filed two citizen suits
22 against the administrator of the U.S. EPA, and
23 those cases that I started off with, those are the
24 cases. Please pay attention to these situations,

1 where citizens who could be sitting at home
2 watching TV had decided that they care enough
3 about their community to get involved in a
4 situation, to do the kind of things Kathy is
5 talking about; to go to Springfield to copy
6 documents -- I've done that many times.

7 It's no fun -- try to read through this
8 stuff, try to master it, like Faith was talking
9 about; come forward with a reasoned point of view
10 that is four-square, right down the middle of the
11 road in terms of what Title V is doing, and here
12 is your reward; no one will pay attention to you.
13 You will have to fight, fight in order to try and
14 get those concerns heard.

15 So how do we help these members of the
16 public? How do we help these courageous people
17 who only want to play by the rules in the Title V
18 process? I have some very specific
19 recommendations. In Illinois we're very lucky
20 that we have draft permits, notices, and project
21 summary documents that are posted on-line. Get
22 more information on-line. Get more information
23 on-line.

24 We know that whenever we see a notice,

1 that our next step is we need to get the
2 application. That's everything. We need to get
3 the application and related materials.

4 To the extent that the application can
5 be posted on-line and these related materials can
6 be posted on-line, it should be done. It should
7 be done. If it is not practical to do that, or
8 even if it is practical to do it, it is always an
9 excellent idea for state permitting agencies to
10 create local repositories where all the documents
11 that could be obtained by FOIA anyway could be
12 placed in a local library or a local school where
13 it would be accessible to members of the public.

14 There is nothing that infuriates members
15 of the public more than feeling there is
16 hide-and-seek with the information that they need
17 in order to be meaningful participants in this
18 process. And yet oftentimes that does occur.

19 So demystify the whole process of
20 information, and information availability, and it
21 can't just be the draft permit. It can't just be
22 the notice. It can't just be the project summary.
23 Everything that is in that file that is not
24 otherwise exempt should be available to members of

1 the public as easily as possible.

2 The second thing is -- I think you've
3 heard this before, so I'm not going to hit this
4 one too hard -- but if information is relevant to
5 facility performance, that should be linked
6 through the on-line page where draft documents are
7 available. Members of the public should be
8 notified about the availability of this
9 information on enviro facts. There should be
10 links that people could click on to get this kind
11 of information. TRI data, AIRS/AFS data, ECHO
12 compliance data, and also very good demographic
13 data as well, if people are interested in new J
14 concerns.

15 In addition, it would also be very
16 helpful for other kinds of permit data,
17 construction permits, all the other stuff that has
18 been issued that is now being integrated into the
19 Title V permit. If that information could also be
20 freely available to members of the public, either
21 through a computer hookup or at a place where they
22 can see it and understand, have access to it.

23 I have a question for you. One thing I
24 do whenever we're dealing with new sources is I

1 take a look at the draft permit and immediately go
2 to technology transfer network and look at the
3 BACT/RACT/LAER clearinghouse, and I'll compare
4 permitting choices that have been made all across
5 the country on NSR to what is being proposed in
6 this draft permit, and I can very quickly develop
7 a point of view as to whether or not this is, in
8 fact, BACT or LAER.

9 There is an inventory of permitting
10 decisions from all across the country. Does such
11 a thing exist for Title V? Is there a national
12 inventory of Title V permits issued for facilities
13 that are in the same SIC code, that are in the
14 same business, where you could actually see best
15 permitting practices that are being done in
16 different states. So that when I have a
17 coal-burning power plant, and I'm trying to
18 develop meaningful comments about what best
19 practices might be that have already been
20 established by another agency as best practices in
21 that state, where I could actually point to
22 language and say, "This would be better." Is
23 there anything like that out there that's
24 available at this point? I think this would be

1 useful to everyone; be useful to permit writers,
2 to members of the public, be useful to EPA.

3 Finally, I would like this committee --
4 in fact, I will a make a formal request, for
5 whatever that is worth, to make a request to EPA,
6 U.S. EPA, as to what it needs at this point in
7 order to fulfill its legal mandate to do
8 meaningful 45-day review when it receives a
9 proposed permit and what it needs to do in order
10 to respond to petitions in a timely fashion. Not
11 according to my notion of it, but what's actually
12 constructed into the law; the administrator shall
13 grant or deny a petition within 60 days. It
14 doesn't happen. There is no meaningful review
15 within 45 days. There is no granting or denying
16 petition within 60 days or 180 days or 240 days.

17 This committee could perform a very
18 useful function for all of us out there, including
19 regulated entities which would like to see their
20 permits issued, to resolve these issues in a
21 timely fashion, to go back to U.S. EPA and say,
22 "You aren't doing this. What do you need in order
23 to change your ways to meet the legal mandate?"
24 Let them tell us, and let them tell Congress as

1 well.

2 I have three other points that I would
3 like to make very quickly about what the
4 priorities of Title V, I think, should be on a
5 going-forward basis. I've identified three of
6 them.

7 One of the issues is that the promise of
8 Title V to actually provide a summing up of the
9 compliance status of a facility and a schedule by
10 which regulated facilities can come into
11 compliance, that opportunity in Title V is largely
12 being squandered. And the reason it's largely
13 being squandered is because I don't believe
14 that -- one of the comments I heard just sitting
15 in the back of the room about permit engineers not
16 going out and visiting facilities, it goes quite
17 beyond that. Permit engineers not consulting with
18 enforcement people within their own agency or
19 within U.S. EPA, draft permits being issued, and
20 comments from members of the public about
21 compliance issues not being given adequate
22 attention or leading to inspections of facilities.

23 I would love to see more established
24 protocol, a recommendation of this committee that

1 would create best practices for how to deal with
2 compliance issues. Now, I think it would be in
3 our first set of permit renewals under Title V, so
4 that that requirement has real meaning.

5 Second is MACT compliance. I heard
6 someone say before that there is a permit issue
7 that you have these MACT regulations hundreds of
8 pages long. Do you want to have all of that
9 incorporated into a Title V permit?

10 Our struggle is actually much different,
11 and that is because the MACT requirements in
12 Illinois and in other states are actually being
13 rolled out. As Title V permits come up for
14 renewal, we're finding that the opportunity to
15 actually determine whether or not these are major
16 sources subject to MACT standards is slipping
17 through regulators' fingers. They're not really
18 taking a hard look at these facilities to
19 determine whether or not they actually should be
20 subject to these MACT standards.

21 I could give you specific examples of
22 where we've seen applications which are ambiguous
23 and where we've seen Illinois EPA accept the easy
24 way out, allowing facilities not to avoid MACT

1 regulation, but I don't have time to do that.

2 MR. HARNETT: You need to bring it to an end.

3 MR. HARLEY: Now?

4 MR. HARNETT: Yes.

5 MR. HARLEY: Okay.

6 MR. HARNETT: Thank you. I'm sorry. We're
7 just pressed for time here.

8 MR. HARLEY: No, no. I understand. I only
9 had one more point I wanted to make.

10 MR. HARNETT: You should really submit more
11 to us in writing.

12 Richard Van Frank?

13 MR. VAN FRANK: Have you encountered
14 situations where an application is out of date,
15 like filed in 1992 and has never been updated?
16 And if so, what would you do about an application
17 of that type?

18 MR. HARLEY: This is a big problem.

19 Because of the delay in Illinois and in
20 other states -- I don't want to single out
21 Illinois EPA too much, mostly because I have to
22 work with them every day, but I don't think
23 they're any better or worse than anybody.

24 But this is a very, very big issue that

1 communities struggle with, that oftentimes they
2 are dealing with applications that are from 1996,
3 for example, and that because of the delay in
4 issuing the permits, permit renewals, you can be
5 dealing with 19- -- 2002, 2003 before you get to
6 the public hearing. And while occasionally when
7 we FOIA records, we will see that Illinois EPA has
8 attempted to bridge the gap. More often than not
9 people go into a public hearing without knowing
10 too much about what the actual present status of
11 the facility is. It makes it very, very difficult
12 for members of the public to participate
13 meaningfully in the proceeding, which is what they
14 really want.

15 MR. VAN FRANK: This is not a renewal. This
16 is the original permit.

17 MR. HARLEY: In the cases that we've dealt
18 with in Illinois up to now, we're dealing almost
19 entirely with the original permits. We've only
20 just started with renewals.

21 MR. HARNETT: Verena Owen?

22 MS. OWEN: I'm curious, what was your last
23 point?

24 MR. HARLEY: I think another issue that state

1 regulators wrestle with, U.S. EPA wrestles with,
2 communities wrestle with, where it would be
3 helpful to get some clear guidance is on the issue
4 of NSR compliance in the Title V permitting
5 context. This is a compliance issue, but we have
6 seen situations -- I mentioned one of them when I
7 started -- where people have come into Title V
8 permit hearings with information that suggests
9 that there may have been a major modification,
10 that there appears to have been a significant
11 increase in emissions facility usage, but there
12 was never any NSR review for that facility.

13 We've gotten very, very different
14 responses from state permitting agency, from U.S.
15 EPA as to whether or not that is germane in the
16 Title V permitting process.

17 From our point of view, it is. It is
18 because you cannot establish the relevant emission
19 standards unless you know whether or not this
20 should be permitted as a new or existing source.
21 We also think it's relevant as a compliance issue
22 as well.

23 But that point of view is far from
24 settled. And it would be very, very helpful to

1 know -- have a point of view obviously, about how
2 U.S. EPA views evidence of NSR issues or NSR
3 problems at facility, and they would be operating
4 under the old standard in all the cases we've
5 dealt with up to now, as how that fits into the
6 Title V process. Maybe that could be something
7 that this group could ask U.S. EPA to clarify.

8 MR. HARNETT: David Golden?

9 MR. GOLDEN: Keith, thank you for taking the
10 time today to come and talk to us.

11 It sounds like you've had a lot of
12 opportunity to review a number of Title V permits.
13 My question is -- and this is just a gut, you
14 know. I won't ask you for data.

15 But if you were to categorize the issues
16 or problems that you see in the Title V permits
17 that you've reviewed into one of two buckets, one
18 is just the execution or implementation of Title
19 V, maybe the reg is fine, but it's just the water
20 is not getting to the end of the row, so to speak,
21 it's just not getting done, versus something
22 structural with Title V that needs to be fixed.

23 Do you have a gut of what percentage of
24 problems do you see are execution or

1 implementation versus structural with Title V?

2 MR. HARLEY: I think implementation is where
3 we find most of the issues that we're raising.
4 The promise of Title V -- I have conversations
5 with clients in the Title V context that almost
6 always evolve into, "Yes, this is what the law
7 says, but that's just not how it's working.
8 That's just not how it works."

9 It may say that a compliance schedule
10 should be included as part of this permit, but
11 it's just not there. Or we should have received a
12 response from the administrator within 60 days,
13 but it's nowhere in sight.

14 So that I would say implementation is
15 where I tend to see most of the problem.

16 Do you agree with that, by the way? Can
17 I ask you a question?

18 MR. GOLDEN: Yeah. You mean a second
19 question?

20 Yeah, that's where I see it; execution
21 is everything.

22 MR. HARNETT: Shelley Kaderly?

23 MS. KADERLY: I wanted to answer a couple of
24 your questions. First of all, on your question of

1 NSR compliance, in my state, as we were going
2 through the Title V's, we came across so many
3 situations where equipment went in or changes had
4 been made without the proper construction permits,
5 and that actually, I think, resulted in some of
6 the delay in our ability in getting all of our
7 permits done, because we were trying to go back
8 and fix all of those problems before we got the
9 Title V's issued. So I think it is a germane
10 issue.

11 Also, I just wanted to echo that I agree
12 with you on your comments about involving the
13 compliance and enforcement staff in the Title V
14 process. One of the things that we do is our
15 inspectors review the permits before they do a QA
16 review on them before they go out for public
17 comment, and there are many times that they've
18 been able to identify situations where the permit
19 engineer missed something or didn't identify the
20 equipment properly or didn't identify
21 recordkeeping or monitoring or something properly.

22 And they also ensure that we've got
23 enforceable conditions. So I do think that's a
24 valuable part. It does extend our permitting

1 process, but I do think it's a value-added element
2 to our program.

3 MR. HARLEY: What state are you from?

4 MS. KADERLY: Nebraska.

5 MR. HARNETT: Bob Palzer?

6 MR. PALZER: Thanks, Keith, for coming, and
7 giving what I thought was a very excellent
8 overview of somebody who obviously has spent a lot
9 of time on this issue.

10 I liked all of your suggestions, but I
11 guess the one that I find most appealing is your
12 suggestion to try to take lessons, learn from the
13 Title V process, and apply it to something like
14 the BACT/LAER clearinghouse. I would be real
15 curious what -- we can't do this now -- as to what
16 the other committee members feel about this.

17 But is there any more you would like to
18 say about how you might go about doing that that
19 you could say in a few moments, or is that
20 something we should just hold off till later?

21 MR. HARLEY: I am not sure how -- I think
22 everyone around this table knows this, but the
23 technology transfer network is maintained by the
24 Office of Air Quality Planning and Standards in

1 Research Triangle Park. If you go to the quality
2 transfer network, it's basically the warehouse of
3 information that U.S. EPA uses to develop and
4 maintain its Clean Air Act programs.

5 If you tab down, you come back to the
6 BACT/RACT/LAER clearinghouse, you put in a SIC
7 code or an industrial sector code, and it actually
8 spits out the permitting decisions that have been
9 made, including the emission standards that are
10 appropriate. Gives you permit numbers so you can
11 then obtain permits related to other facilities in
12 that same category. It's a very strong tool for
13 everyone. I think it's on there for permit
14 writers, quite frankly, more than members of the
15 public.

16 But if you really want to have
17 meaningful, germane, targeted involvement by
18 members of the public, if you've given them a tool
19 like that, then when they see start-up, shutdown,
20 malfunction provisions in a permit that they're
21 concerned about, or they're wondering about
22 compliance schedule issues, they don't have to try
23 to generate that out of whole cloth. They could
24 actually say, "In Nebraska they have generated

1 permits that have these provisions, and these are
2 the kinds of provisions that we think are relevant
3 for this type of facility in this state as well."

4 I think that has the effect of moving
5 permits forward as well, because permit writers
6 are actually seeing what one another are doing.

7 MR. HARNETT: Steve Hitte?

8 MR. HITTE: I just want to understand what
9 you're saying. So to effectuate that
10 recommendation, are you saying you would like EPA
11 to have some ability so the public can have access
12 to all 20,000 permits that have been issued? Is
13 that -- is it as simple as that? Which isn't
14 simple, by the way.

15 MR. HARLEY: I know. I'm not sure how the
16 BACT/RACT/LAER clearinghouse came into existence.

17 MR. HITTE: There is only three or four
18 hundred of those issued a year, so I just want to
19 make sure I understand the volume of your
20 questioning.

21 MR. HARLEY: There go back -- these go back
22 many, many years. Are those posted -- maybe
23 someone would know this better than I, but I
24 believe that those might be posted by the permit

1 writers themselves.

2 MS. KADERLY: They're supposed to be. We're
3 supposed to be doing that, yeah.

4 MR. HITTE: Right. Right, that's all others.

5 I just wanted to say, are you saying
6 you'd like to see EPA house a Web site that would
7 have all of the Title V permits issues?

8 MR. HARLEY: Yeah, I think that that would be
9 a wonderful idea.

10 MR. HARNETT: Keri Powell.

11 MS. POWELL: Hi, Keith. Thank you for
12 coming.

13 You spoke a lot about the need to
14 utilize the compliance schedule aspect of Title V
15 more effectively.

16 Have you ever seen a permit that is
17 using the compliance schedule requirement in a way
18 that you think is effective?

19 MR. HARLEY: No.

20 MR. HARNETT: Thank you very much for your
21 time.

22 MR. HARLEY: Thank you.

23 MR. HARNETT: Appreciate you coming in.

24 The next speaker is Dale Kaline from

1 writers themselves.

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3 supposed to be doing that, yeah.

4 MR. HITTE: Right. Right, that's all others.

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6 you'd like to see EPA house a Web site that would
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10 MR. HARNETT: Keri Powell.

11 MS. POWELL: Hi, Keith. Thank you for
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14 utilize the compliance schedule aspect of Title V
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17 using the compliance schedule requirement in a way
18 that you think is effective?

19 MR. HARLEY: No.

20 MR. HARNETT: Thank you very much for your
21 time.

22 MR. HARLEY: Thank you.

23 MR. HARNETT: Appreciate you coming in.

24 The next speaker is Dale Kalina from

1 RR Donnelley.

2 MR. KALINA: Good afternoon. My name is Dale
3 Kalina. I'm with RR Donnelley Company. I've got
4 about 19 years' experience in the printing
5 industry, working primarily on issues dealing with
6 air and air permitting for our facilities across
7 the country.

8 I've also been fairly heavily involved
9 in a lot of industry efforts, including the EPS
10 commonsense initiative, the P4 program, some MACT
11 development on NESHAPS that affect our industry.

12 Our company has approximately 40 FESOP
13 and Title V facilities out of roughly 70
14 manufacturing operations, and these FESOP, Title V
15 facilities are located in approximately 15 states
16 across the U.S.

17 After sitting in the audience for the
18 better part of the day, without the ability to
19 throw in my two cents worth, I felt the need to
20 sign in as a walk-in, and so my thoughts may be a
21 little disorganized. They were kind of scribbled
22 at lunchtime, and hopefully I can read my
23 handwriting. So please bear with me.

24 Looking at the sheet that was handed out

1 with some of the questions, how is Title V
2 working, et cetera, I guess from our company's
3 perspective, it is working generally okay. All of
4 our permits, the initial permits at least, for all
5 of our facilities have been issued with varying
6 degrees of effort on our part and on agency's
7 parts, as well as quality and content of those
8 permits.

9 I think the key point is -- for everyone
10 on this is that we are all still learning how to
11 work the process. There was a huge focus eight or
12 nine years ago, whenever the programs rolled out,
13 in various states on putting together an
14 application and what did an application require,
15 what was the content? All the -- was it going to
16 be the monster that -- you know, the 6 three-ring
17 binders that everybody anticipated, or was there a
18 good way to do something smarter than that.

19 Then came the permits and developing the
20 compliance programs, documentation of checks and
21 balances that were necessary there.

22 Now we've got into permit modifications.
23 We've got the permits. How do we make the changes
24 that we need to do as new processes are brought in

1 on-line, as new equipment is brought into place.

2 Moving into the renewal process, getting
3 into the CAM requirements, all those sorts of
4 things, it has been an evolution and quite an
5 education, not only for us in the industry but
6 also for the agencies, and obviously based on some
7 of the comments and testimony today, for the
8 general public as well.

9 Where is Title V working well? There
10 are a number of areas where I think we've seen a
11 lot of benefit of the Title V program. We've seen
12 a generally good consolidation of the terms and
13 conditions. I think having all of the
14 requirements in a single document has been a huge
15 help for our understanding of what we need to do,
16 and there has been some streamlining of
17 conditions, although in my opinion not enough.

18 But a lot of the gray areas that I think
19 were included in old construction permits and old
20 operating permits that were just kind of
21 conditions that were out there that nobody paid
22 attention to have received -- either have been
23 clarified, removed, or at least received the
24 appropriate attention that they require.

1 I think that it's resulted in a better
2 understanding of our compliance requirements, and
3 also by the agencies of what they are expecting of
4 us, and hopefully to the public as well.

5 The awareness level within our
6 organization, I think, has increased incredibly in
7 terms of what the compliance requirements for air
8 permits need to be. This, as someone commented
9 earlier today, used to be the job of the
10 environmental person who got no respect, got no
11 support, and had to do all the work. That has
12 changed significantly.

13 Senior management in our facilities are
14 very aware of what the requirements are. They're
15 very concerned that we're meeting those
16 requirements. They are asking the tough questions
17 of their employees to make sure that the
18 compliance certifications that they are signing
19 off on, on a regular basis are true -- truly
20 represent what's going on in the facility.

21 And it's brought the anticipated focus
22 on our ongoing compliance. So that people are
23 certainly much more aware that if they're changing
24 processes, if new equipment is coming in, there

1 are protocols that need to be followed, and I
2 think that's been a huge help in our operations.

3 It's also resulted in much better
4 documentation of compliance. It used to be, you
5 know, with -- if there was a stack test required
6 every so often and maybe a report, emissions
7 report due once a year, whatever, those things
8 would get done. But in terms of maintenance, in
9 terms of documentation, of other operating
10 parameters, monitoring requirements, et cetera, I
11 think it is really, again, heightened that
12 awareness and made our operations perform better
13 and has put that focus on demonstrating
14 compliance, both internally to our understanding
15 the requirements and demonstrating that
16 internally, but also documenting that on an
17 external basis.

18 Another area I think that has worked
19 well is the availability of information. This
20 kind of piggybacks on some of the conversation we
21 just had.

22 Region 5, I think, has done a great job
23 of posting the Title V permits, FESOP permits, and
24 a lot of construction and other permits on their

1 Web site for the states in Region 5. It's a big
2 help, I think, in getting that access information
3 out to the public, but also looking at what's
4 happening, how other states are dealing with
5 similar issues I think is helpful to us as we
6 approach dates and strategies, and hopefully
7 they're sharing this information.

8 What's working poorly? One of the
9 things that has hit us significantly and certainly
10 in recent times is permit processing time lines
11 for new construction. I do not believe that a lot
12 of agencies had anticipated how new construction
13 permits would be issued and rolled into Title V
14 permits in a timely and effective way, and we've
15 seen a shifting landscape in a number of states in
16 terms of what hoops we have to jump through, what
17 the public comment requirements are for
18 construction, and how that all happens.

19 Obviously, for a lot of organizations,
20 getting a quick approval of the authority to
21 construct a source is very, very important, with
22 long lead times for installation of equipment, and
23 making sure that there is still an effective way
24 for construction permits, for authorization to

1 construct new sources or modify sources is vital,
2 and if that gets dragged down, as resources are
3 pulled away to dealing with Title V issues or
4 whatever, that's a situation that it creates
5 significant problems for industry.

6 Another area is some permits, not all,
7 have a lot of inflexibility built into this. We
8 heard a little bit this morning about flexible
9 permits, and -- my mantra is more let's not make
10 them more inflexible than they need to be. The
11 changing of emission limitations, for example, is
12 one thing where flexibility has been taken out of
13 existing permits as Title V has rolled around.

14 The what I call the staple approach in
15 permits is an issue, where facilities spent weeks
16 and months of time preparing a, you know, a
17 perfect application only to find out that the
18 Title V permit that they were issued, or basically
19 their old permit stapled together with a few
20 general provisions tacked onto the front or back
21 with some additional monitoring and reporting
22 requirements. A lot of wasted effort on a lot of
23 people's parts.

24 And finally, a lot of pushback that we

1 get from the states is that, "Well, we understand
2 what your issues are. We'd like to help you, but
3 people in Region X will not agree to this, people
4 in RTP will not agree to this, legal will not
5 agree to this," whomever, and so a lot of the
6 issues really hinge on this phantom person, who --
7 who nixes every innovative idea that's put forth.

8 Applicability issues in permits have
9 been a concern. One that's come up for us a lot
10 recently is CAM applicability, and this is yet to
11 be resolved, where there are NESHAPs regulating
12 volatile organic hazardous air pollutants, where
13 there has been a mixed response in terms of
14 whether those are appropriate CAM -- whether they
15 supersede the CAM applicability requirements for
16 VOC sources.

17 Other issues are unreasonable
18 monitoring, as was touched on a little before; the
19 per shift visible emissions is one of my
20 favorites. In Indiana we had a facility that had
21 a permit with once-per-shift visible emissions
22 will be conducted on a variety of sources. We
23 went back to the state and said, "Well, in the
24 winter months in Indiana, the third shift has no

1 daylight hours, and also when it rains or snows or
2 whatever, doing visible emissions is a problem."

3 The response was, "Well, you know, we
4 understand that you will not be required to do it
5 under those conditions," and yet we have a permit
6 that says once-per-shift visible emissions shall
7 be conducted. Again, it creates compliance
8 certification issues.

9 Some general points on Title V.
10 Monitoring has been touched on a lot. There has
11 been some overkill, I think, in monitoring.
12 Proposals that have been put forth where process
13 monitors have been -- have been deemed to be
14 compliance assurance monitors. We have tried very
15 hard to build in sort of a Plan B approach to
16 this. So that if our primary monitoring approach
17 should fail us for some reason, for example, if
18 we've got a temperature recording and monitoring
19 provision, should the monitor fail, we've got
20 something built -- we've tried to build into the
21 permit some alternative monitoring proposal so
22 that in situations where the primary monitor
23 fails, we've already got preapproval. And if we
24 conduct the Plan B monitoring, we do not have a

1 deviation or a permit violation. We've had some
2 success in dealing with that.

3 By supplementing things with interlocks,
4 manual recording, other areas, we've had some --
5 some effectiveness there.

6 One area that is a very confusing area
7 that I personally find is modifications of Title V
8 permits. What constitutes if I were to be a ten
9 change versus a minor permit modification versus a
10 significant permit modification?

11 We have posed the same project to
12 different people, that is at a given agency, and
13 got three different responses. Had some people
14 tell us that it's an operational flexibility
15 issue; others that it's a minor modification;
16 others that it's a significant modification.

17 I don't think it's understood at all, or
18 by very few people, in terms of what can fall into
19 what category. State of Indiana basically says
20 that any change it has in new recordkeeping
21 requirement is a significant permit modification,
22 regardless of the size of the project apparently.
23 So there is a lot of confusion, a lot of
24 interpretation of those various issues.

1 Timing, as I mentioned earlier, is a
2 huge issue on getting these permit revisions. And
3 if new projects could not be approved in a
4 relatively expeditious fashion, that creates
5 significant problems on businesses.

6 Just kind of a side note, we've had some
7 situations where we have requested permit
8 modifications and have only discovered that the
9 permits have been modified by seeing them posted
10 on the Region 5 Web site. The agency did not
11 bother to send us a revised copy of the permit,
12 which makes compliance certifications a bit of an
13 issue as well.

14 Deviations; I think we've been fairly
15 effective in terms of defining what requires
16 prompt and what doesn't require prompt
17 notification. And basically, you know,
18 recordkeeping issues, et cetera, we've -- I think
19 we've done a decent job of defining.

20 A question was asked earlier about
21 temperature monitoring on an oxidizer, for
22 example. We've tried where possible to build into
23 the permit some definition of what type of
24 temperature excursion would trigger that, how long

1 you have to be below that temperature to trigger
2 it, as opposed to every time you get a 15-second
3 dip below the required temperature, is that
4 something that you need to report.

5 Incorporation by reference has been
6 talked a lot about. I guess I'm kind of -- having
7 heard the discussion, it looks like the citation
8 approach would be beneficial, the most beneficial.
9 We've seen both extremes. Just citing a
10 regulation I find to be an unsatisfactory -- just
11 the general regulation, comply with subpart X,
12 doesn't help us a lot because we've still got to
13 do the deeper dive to determine what that
14 requirement is, and for compliance certifications
15 do all that homework.

16 But on the other hand, there is
17 obviously no point in cutting and pasting the
18 entire regulation. So citing the applicable
19 requirements of a MACT or an NSPS requirement I
20 think makes a lot of sense.

21 I guess in the interest of time, my
22 final comment really is in regards to the timing
23 issue, and my belief is that there is a need for
24 more general permits, more permit by rule

1 approaches, or more template approaches that could
2 be used as a standard for those facilities who
3 wish to take that approach, not only for speed of
4 issuance hopefully, but also a consistent sort of
5 defined and understandable requirements that are
6 transparent to the agency and to the applicant, so
7 that they can obtain what they need, again, if the
8 shoe fits.

9 With that, I will conclude my comments.
10 Thank you very much.

11 MR. HARNETT: Thank you.

12 Michael Ling.

13 MR. LING: Hi. I appreciate your comments in
14 reacting to some of the issues we already heard
15 today.

16 My question was about your statement,
17 the first issue that you identified was that Title
18 V is causing delays in permitting for new
19 construction, and I just wanted to ask you to
20 clarify. Are you saying that it's Title V that's
21 adding requirements or adding delays over and
22 above the delays that would be otherwise present
23 in the construction permitting program? Or was it
24 more the shifting of resources that you talked

1 about?

2 MR. KALINA: I think it's a combination of
3 the two. We've had some states that have gone to
4 a single approach, where the new construction
5 permit is also a revised Title V operating permit,
6 and the state of Kentucky comes to mind as one of
7 those. They originally did that. They have since
8 changed that approach a little bit. But in that
9 case, rather than a simple construction permit
10 that would then modify the Title V operating
11 permit with the appropriate public comment period,
12 they rolled that into a single process, which in
13 my mind slowed the issuance of the construction
14 permit by at least 45 to 60 days.

15 They have since now got to an approach
16 where once the draft permit is issued, that
17 construction can begin, and then there is still
18 the public comment period before operation, which
19 is -- which is a better approach.

20 But there again, some of it -- it's a
21 learning curve that I think the agencies are going
22 through as well, just how to deal with these
23 issues.

24 MR. HARNETT: Bob Palzer?

1 MR. PALZER: Thank you very much for coming.

2 It was very good overview.

3 Your company, as a lot of other
4 companies, deal with facilities in lots of
5 different states and different regions.

6 If I missed it, have you noticed
7 differences between different regions, and are
8 there lessons learned as to what sort of things
9 work better for you in certain places, and are
10 more problematic in others?

11 MR. KALINA: Well, I guess the first -- to
12 answer the first part of your question, I -- I see
13 very little consistency between any two states or
14 any two regions that we deal with. Every state
15 has a somewhat different approach. Some of them
16 have been -- have been historically good states to
17 work with and continue to be cooperative,
18 responsive. Others have been very slow and
19 continue to be very slow and perhaps are even
20 slower now than they were before. And even within
21 a given region, the differences are significant.

22 I think a lot of it is -- a lot of it is
23 a resource issue. I do believe that a number of
24 states are having an extremely difficult time

1 administering the Title V program and all of their
2 environmental programs due to turnover, due to
3 inexperienced staff, and the inability to retain
4 staff. I don't know how many different permit
5 engineers we have worked with for a given facility
6 in one state, where every time we go in with a
7 different application, the whole education process
8 starts over again.

9 It's frustrating at times. You know,
10 obviously you get a new permit engineer who wants
11 to do a good job, and we obviously want them to do
12 a good job, but I think a lot of times they're
13 thrown into the deep end of the pool and are, you
14 know, learning as they go along, and without some
15 experience under their belt, obviously the quality
16 of the work may suffer, the amount of review time
17 may suffer, the workload on a lot of these permit
18 engineers has got to be incredible as well.

19 Also -- this is one of my favorite
20 stories, totally off topic, but the State of
21 Kentucky a year and a half or so ago decided that
22 they were going to improve their permit issuing
23 process, so they pulled all their permit engineers
24 off issuing permits and put them on some sort of

1 permit improvement team for several months, so
2 that they created this huge backlog for themselves
3 by trying to improve their process.

4 They're in a very tough position
5 obviously. They feel that industry is breathing
6 down their neck, that the regions are breathing
7 down their neck, and the community organizations
8 and environmental justice organizations are doing
9 the same. So they feel they're getting it from
10 all directions, and obviously they're overworked
11 and in many cases I think very much underpaid. So
12 it's a tough situation for them.

13 But no -- I think there are some
14 programs that work well. I don't know how -- I'm
15 not -- don't have enough intimate knowledge of how
16 the programs are organized to understand why
17 they're working better than others, but there are
18 some that work very effectively, and there are
19 others that, you know, if you can get a permit
20 modification done in nine months, you feel like
21 you've had a huge success, which unfortunately for
22 a lot of businesses could mean the failure of a
23 project, with those kind of time lines.

24 MR. PALZER: Thank You.

1 MR. HARNETT: Don van der Vaart.

2 MR. VAN DER VAART: Let me get a little more
3 specific. Dr. Palzer is always in the abstract.
4 I'm an engineer.

5 How many days public notice and how many
6 days EPA review go along with a significant
7 modification? Do you remember that? Is it --

8 MR. KALINA: It's 30 day public, 45 --

9 MR. VAN DER VAART: Yeah, I got it. We're on
10 the same wavelength.

11 Let me ask you in your various -- this
12 is great to have somebody here that's got
13 facilities in different regions.

14 Do all of your significant modifications
15 go through a sequential 30-day and then 45-day, or
16 are there some --

17 MR. KALINA: Generally simultaneous --

18 MR. VAN DER VAART: OH.

19 MR. KALINA: (Continuing) -- that the 30 and
20 45-day start at the same time.

21 MR. VAN DER VAART: Interesting. So you
22 would say at least in some places you get
23 parallel, let's call it parallel processing.

24 MR. KALINA: Correct.

1 MR. VAN DER VAART:

2 Okay, Steve, I think you and I need to
3 talk.

4 MR. HARNETT: Richard Van Frank?

5 MR. VAN FRANK: How often have you
6 encountered ghost written permits, meaning there
7 is a state permit writer who claims to have
8 written the permit, but in reality the permit has
9 been written by a consultant someplace else in the
10 world?

11 MR. KALINA: I don't know of any -- well,
12 if -- if they are well ghost written, I guess I
13 wouldn't know.

14 The only instance that I am aware of is
15 in Indiana, where they have contracted with an
16 organization in New Jersey to work on permits for
17 them, and they have outsourced a fair number of
18 those permits, I assume just because of resource
19 constraints.

20 But in terms of other states, I do not
21 know for a fact, and in fact generally -- well,
22 actually I do know that we just got a Title V in
23 Mississippi that was developed by an outside firm.
24 So there are at least a couple states that are

1 doing it.

2 MR. VAN FRANK: Well, do you feel there are
3 quality problems with those permits, or would you
4 rather not say?

5 MR. KALINA: To be honest, we've had in-house
6 permits issued in Indiana and we've had the
7 contractor-issued permits. And I would say the
8 level of quality is comparable between the two,
9 without saying whether that's high or low.

10 MR. VAN FRANK: Okay, thank you.

11 MR. HARNETT: Bob Morehouse?

12 MR. MOREHOUSE: You commented, Dale, on the
13 challenges with changing permit engineers and the
14 education process.

15 Do you have any sites that have multiple
16 Title V permits? And if so, have they had
17 different permit engineers and challenges that
18 creates with different views, different engineers,
19 one site?

20 MR. KALINA: We do not have any facility that
21 has more than one Title V facility for the
22 property. We do have a -- three facilities in one
23 geographic location in Pennsylvania that have all
24 been handled by a single permit engineer, which I

1 have found to be incredibly helpful, especially as
2 that engineer -- that person has had more
3 experience.

4 Also, those -- kind of getting back to
5 some of the other points -- in that situation and
6 in several others, Ohio being another case in
7 point that I can think of, where the permit
8 engineer also comes out and does a routine
9 inspection of the facility, and those type of
10 situations I find to be incredibly more beneficial
11 than if you just got a permit writer who sits at a
12 desk and never has seen an operation and only
13 knows that there is -- there is a bunch of regs
14 that he has to work into a permit somewhere,
15 without knowing really what's going on.

16 On the flip side of that, we do have --
17 in several states we do have multiple facilities
18 with Title V permits, where they've been handled
19 by different permit engineers, and there are some
20 but not -- I wouldn't say significant differences
21 in how they've been approached.

22 It does appear that there is some --
23 there is some inconsistency, but I think in
24 general the approach that has been taken has been

1 pretty decent across the board on those
2 facilities. So I'm not seeing huge differences
3 within a state.

4 Where it does get much more complicated
5 are states like Ohio and Pennsylvania, where
6 you've got regional offices or district offices,
7 where within a given state you may get very
8 different approaches to the same type of facility,
9 depending on which region you're located in, even
10 though you're playing by the same set of rules.

11 MR. HARNETT: Keri Powell.

12 MS. POWELL: I'd just like for you to discuss
13 a little bit further your ideas about making
14 significant modifications quicker, and to be more
15 specific, I mean, you've said that in general the
16 EPA review and the public review takes about
17 45 days.

18 Can you tell me generally how long from
19 start to finish it takes the overall process to be
20 done, the amount of time that you think would be
21 reasonable for the process to take, and what your
22 ideas are for streamlining it?

23 MR. KALINA: Well, I need a soapbox for this
24 one.

1 The time frames, unfortunately, are all
2 over the map. There have been a few states where
3 processing can be extremely quick, and I will say
4 that the Illinois EPA has been one agency that has
5 been extremely responsive by and large. Where a
6 complete application can be acted upon, and a
7 permit issued for public comment, if one is
8 necessary, oftentimes in less than 30 days.

9 On the flip side of that, there are
10 other agencies where if you get any response
11 within six to nine months, you feel fortunate.

12 In addition to that, even though the
13 comment periods may only be 30 to 45 days, we have
14 had delays -- and this may sound trivial, unless
15 you're -- you've got the backhoe out there waiting
16 to start moving dirt around to do the
17 installation -- where it has taken a week to
18 ten days for the public notice to get out of the
19 agency to be published in the newspaper to begin
20 the 30-day public comment period. We've had
21 instances where once the comment period has been
22 closed with no comments, it's taken two to
23 three weeks for the final permit to be issued.
24 And those types of delays are the absolute

1 frustrating ones.

2 You know, it's one thing to have a
3 complicated application and take some time to work
4 through and get the permit issued, but to have
5 delays of weeks or a month or more just through
6 administrative bureaucracy is terribly
7 frustrating.

8 There are a few programs that I think
9 have worked very well. As I mentioned, some
10 general permits are permit-by-rule-type approaches
11 for kind of generic sources. You know, a small
12 boiler or something like that. I think has a lot
13 of merit that if you meet certain criteria, the
14 conditions are pretty much established, and it's a
15 fairly simple process as long as you're not
16 triggering some more significant concerns.

17 Indiana, for all of its warts, does have
18 an interim construction permit process that allows
19 a facility with a fairly expedited approach to
20 begin construction of a source, but still requires
21 that the operating permit be modified or issued
22 before operation can begin, and there is some risk
23 to the source in going through that process.

24 But at that, at least for a long-term

1 project that may take several weeks or months of
2 construction, it gets -- allows the facility to
3 begin the process, which I think has a lot of
4 merit.

5 As I mentioned, there are some other
6 states now that, and the example of Kentucky that
7 I gave, that at least, again, allows the
8 construction of the source but not the operation
9 until the permit has been modified. That's helped
10 to streamline that process somewhat.

11 But, you know, if -- in a perfect world,
12 you know, if we could get a -- from the receipt of
13 a complete application to the issuance of a
14 permit, if we could do that in 90 to 120 days, I
15 think by and large that would make a lot of the
16 issues go away. If we could begin construction in
17 a time frame shorter than that, that obviously
18 would be a huge benefit because there is the
19 urgency to make changes that is very huge, and I
20 don't think we can emphasize that enough.

21 But obviously if there is a requirement
22 for a public comment period, making sure that that
23 can be moved through the system in a timely
24 fashion, without cutting corners, without

1 neglecting those requirements is obviously
2 something else that would be helpful. So anything
3 that can be done to eliminate that administrative
4 time that it delays without adding any value would
5 be very important.

6 MR. HARNETT: I'm going to have to cut off
7 questions here at this point. Thank you very much
8 for coming here.

9 I'm sorry. We're going to stick very
10 hard to our schedule because we've really taxed
11 our court reporter today with a very long day, and
12 we still have two speakers to go before the dinner
13 hour.

14 The next speaker is Brian Urbaszewski of
15 the American Lung Association in Chicago.

16 MR. URBASZEWSKI: I'll try to be brief. I
17 realize it's been a very long day for everybody.
18 A lot of what I would cover has probably already
19 been touched on by two people who testified
20 earlier today; namely, Keith Harley and Faith
21 Bugel. So I'll try and keep it plain.

22 My experience with the Title V program
23 is relatively brief. I've only been involved in
24 an effort regarding Title V -- several Title V

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18 A lot of what I would cover has probably already
19 been touched on by two people who testified
20 earlier today; namely, Keith Harley and Faith
21 Bugel. So I'll try and keep it plain.

22 My experience with the Title V program
23 is relatively brief. I've only been involved in
24 an effort regarding Title V -- several Title V

1 permits for about a year and a half. I work as
2 the director of environmental health for the local
3 lung association affiliate, I work on educational
4 issues, prevention and treatment of lung disease,
5 and working to advocate for good policies, good
6 legislation, both locally and state, federally.

7 But we've become very concerned about
8 some of the older power plants and what comes out
9 of them in Illinois and have gotten involved in
10 using the Title V process to try and drive any
11 possible cleanup that we can get out of those
12 sources of air pollution which are leading to our
13 problems in the greater Chicago area.

14 In general, I think the Title V program
15 is great. It's very useful in setting up a
16 process where you consolidate information, you get
17 a history, you get the requirements for the
18 facilities that they're supposed to follow, and it
19 sets up monitoring requirements so the public can
20 bring them to light for overworked state and
21 Environmental Protection Agency staff to enforce,
22 or if necessary do it themselves.

23 Problems lie in the fact that in many
24 places such as Illinois, the process of actually

1 getting the permits enacted has been kind of long
2 and torturous at best. As it stands today, many
3 of the larger sources of pollution in Illinois --
4 namely, our older coal-fire power plants still --
5 don't have Title V permits, years after all these
6 permits were supposed to be done. It's
7 particularly frustrating that Illinois was one of
8 the earlier states to get its permit program
9 approved by U.S. EPA.

10 These are the sources that my
11 organization has focused its energies on, in the
12 hope that we can get the greatest public health
13 benefits, the greatest emissions reductions at a
14 limited number of facilities, and therefore reap
15 the greatest, probably, health benefits.

16 However, as you would expect, it's a bit
17 difficult to judge a program before you've gotten
18 through the process of actually getting a good
19 Title V permit and then have the opportunity to
20 use the permit to see if we can monitor, catch
21 problems, and promote enforcement. So it's been
22 sort of a frustrating endeavor for us so far, as
23 well as some of the smaller local groups who are
24 concerned with emissions from huge industrial

1 facilities in their neighborhoods that emit
2 thousands of tons of air pollution every year, and
3 probably are a little more intimidated by this
4 type of forum.

5 I think a lot of this has to do with
6 resource issues. I respect the Illinois EPA, and
7 I think they're doing a fairly good job. But in
8 the past they've been trying to do too much with
9 too little. They didn't have enough permit
10 engineers to crank through the Title V permits in
11 the time they were supposed to, and we actually,
12 with several other environmental groups, had to
13 threaten to take the issue to the U.S. EPA to try
14 and get the permit program remanded back to the
15 federal agency, and that helped us get permit fee
16 increases raised at the state level.

17 It essentially helped make the case for
18 the Illinois EPA that, look, if you don't raise --
19 if the legislature isn't going to raise the permit
20 fees to cover the program to hire the people we
21 need to do the work, it's going to go back to the
22 federal government, and then you won't have any
23 local control. That worked there.

24 And I know there is an effort going on

1 in Wisconsin where it was even worse than in
2 Illinois, and U.S. EPA is sort of staying the
3 course and saying, "Look, you need to have
4 adequate resources to run the program, to hire the
5 people to do the work, otherwise you're going to
6 forfeit -- the state is going to forfeit that
7 ability to do so." And I hope that they continue
8 to move that forward so that that permit program
9 in Wisconsin does get the funds it needs to do the
10 right work.

11 I'd also like to say that once the
12 Title V permit fees are actually collected at a
13 level that are deemed adequate to support the
14 program, that the funds are actually used there to
15 run that program, which I have my doubts of in
16 some states.

17 However, we forge forward in using the
18 process set up in the Clean Air Act amendments.
19 We've disagreed on several fronts that the
20 Illinois EPA regarding what needed to go in a
21 permit, which I'm sure Keith and Faith -- they
22 gave you in great detail.

23 One example is our request for more
24 specific permit language, to be able to determine

1 what is or is not a violation of permit
2 conditions, language that's vague and says that
3 the source should use proper maintenance protocols
4 or reasonable care doesn't define or limit terms
5 in a way that allow for serious -- that doesn't
6 define or limit terms in a way that allow serious
7 violations to occur is essentially utterly useless
8 to the public. If you can't prove it's a
9 violation or not, you can't -- you can't do
10 anything about it.

11 The public needs a clear opportunity to
12 figure out if a source is or is not complying with
13 applicable requirements, and U.S. EPA needs to
14 assure that the states are producing and
15 finalizing enforceable permits that have these
16 clear limits, clear distinctions, so that they're
17 understandable by members of the public.

18 We've also found that U.S. EPA is kind
19 of lax in responding to the public; shame on them.
20 We've also -- we've been frustrated by the lack of
21 action to address the concerns we presented to
22 Illinois, which were, in our view, largely ignored
23 and not addressed and not fixed in the permits
24 Illinois put forward.

1 We then petitioned the administrator and
2 asked to have our legal concerns addressed in
3 order to get an enforceable permit, and after not
4 receiving an answer in the legal time frame, I
5 think it's 60 days, we gave a -- waited a little
6 while longer, then give a 60-day notice intent to
7 sue the administrator, then we waited another
8 60 days, and this past Monday we were forced to
9 sue the administrator to get an answer out of him.
10 We still don't have our Title V permits for those
11 facilities.

12 This is a failure on U.S. EPA's part in
13 the truest sense of the word. It really ought to
14 be embarrassing to the agency. How is the public
15 supposed to have faith in the process if they're
16 ignored? I mean, they complained to the state.
17 The state ignores them. They complain to the
18 federal government, who's supposed to act as the
19 referee or umpire in this effort, and they never
20 get a response. I just find that kind of
21 mind-boggling.

22 The Title V process has definitely shown
23 a light on the shortcomings on several Title V
24 facilities, such as the older power plants. It's

1 allowed us to get more information to figure out
2 more of what's going on in these facilities. It's
3 probably also been helpful in making the maze of
4 regulations and requirements a little more compact
5 and comprehensive.

6 Ultimately we hope that the Title V
7 process will result in compliance schedules for
8 the problems that we've identified, if we ever get
9 an answer, and that eventually at the end of this
10 process we'll get something that is a good permit
11 that ensures that all the provisions are being met
12 and the public's health is being protected, which
13 is what the Title V permit is supposed to be.
14 It's what it's supposed to do.

15 From my advantage point, citizens and
16 groups interested in permits for Title V sources
17 in Illinois have taken advantage of the public
18 participation provisions, and I believe that the
19 state Environmental Protection Agency, the
20 Illinois EPA, has been reasonably good in
21 accommodating these requests and holding these
22 hearings, and I would leave it there.

23 This is my window into one
24 organization's efforts to get involved in the

1 system, to try and make the permit better, to work
2 with others, to craft language that we thought
3 ought to be in this permit, and this is where we
4 are now, which is still unfortunately without a
5 permit.

6 So I'd be happy to try and answer any
7 questions folks have.

8 MR. HARNETT: Steve, you can have -- Steve
9 Hagle.

10 MR. HAGLE: Thanks.

11 Brian, I've heard a couple of speakers
12 now say that they've, I assume, responded to the
13 public notice for permits and have said that they
14 have not gotten any response from the permitting
15 agency, and I'm trying to figure out, is that --
16 is it truly no response, or just what you do not
17 believe is an adequate response?

18 MR. URBASZEWSKI: It's not an adequate
19 response from the state, but from the federal,
20 nothing. I mean, we asked them back in -- I
21 believe it was March. It may have even been
22 earlier. Forgive me if I don't remember the
23 dates, but it was early this spring that we asked
24 for a call from U.S. EPA on whether the state was,

1 you know, making the right legal decisions on the
2 permit, and we've heard nothing from the federal
3 government.

4 MR. HAGLE: Okay.

5 MR. HARNETT: Bernie Paul.

6 MR. PAUL: Did I understand you correctly to
7 say that the Title V permit should be the document
8 that defines the method for determining compliance
9 with the requirements in the permit?

10 MR. URBASZEWSKI: It's supposed to provide
11 enough information so that we know whether a
12 violation is occurring or not. And because of the
13 vague language that's been put in the bill,
14 whether using appropriate safety protocols or
15 whatever, I have no idea what that means. I mean,
16 I can't tell if they're breaking -- if they're
17 violating their permit or not.

18 And that's the meat of the issue that we
19 brought up in discussions with the state. And
20 it's just -- it's not clear. That's the problem.
21 If it's not clear, you don't know if they're doing
22 something or not doing something.

23 MR. PAUL: How do you reconcile that concern
24 with the credible evidence rule that basically

1 says that there is all kinds of information that
2 can be used to determine compliance or
3 noncompliance?

4 MR. URBASZEWSKI: The question is beyond me.

5 MR. PAUL: Okay.

6 MR. VAN DER VAART: Me, too.

7 MR. URBASZEWSKI: I'd love to answer it if I
8 could.

9 Again, I don't pretend to offer myself
10 as an expert on the intricacies of permitting.
11 All I can offer is the Title V permits had to be
12 released for these largest sources of pollution in
13 Illinois, and of course they weren't released
14 until 2003 for public hearings and stuff, even
15 though these date back to, like -- some of these
16 applications date back to places like 1995, and we
17 thought, well, we should be getting involved in
18 this and making sure that those permits are as
19 good as they can possibly be.

20 And I got a lot of help in doing that
21 from a lot of people with a lot better legal
22 advice and permit advice, and I could just say
23 that it's frustratingly slow. But we do hold the
24 ultimate hope that the process will play out the

1 way it's laid out in the law, and we'll get
2 something good at the end.

3 MR. HARNETT: Shannon Broome?

4 MS. BROOME: Two yes or noes.

5 Is the one that you -- the permitting
6 you're referring to, is it something like operate
7 in accordance with good air pollution control
8 provisions for minimizing emissions?

9 MR. URBASZEWSKI: That would be --

10 MS. BROOME: That sounds like it?

11 MR. URBASZEWSKI: Sounds like that.

12 MS. BROOME: All right.

13 And the second one, and I don't mean to
14 suggest that you should do this, but have you
15 called anybody at Region 5, or have you --

16 MR. URBASZEWSKI: Yes.

17 MS. BROOME: I thought you might have, but
18 you shouldn't have to. So I don't want you to
19 think I'm saying you have to make a phone call,
20 but I was just wondering if you have.

21 MR. URBASZEWSKI: I haven't been personally
22 involved, because I have a lot of help on this. I
23 have people that are helping me shepherd this
24 through the process because I have never done this

1 before.

2 MS. BROOME: Right. Right.

3 MR. URBASZEWSKI: And they have been in
4 contact with people at Region 5. What seems to be
5 going on is that the state is waiting for the feds
6 to tell them to do something, and the feds are
7 assuming that the state is doing something;
8 therefore, nobody does anything. So there seems
9 to be a definite lack of communication between
10 state and the federal agencies.

11 One thing I wanted to add to the --
12 slightly different, but I know Keith told me he
13 used me as an example for the Fisk Power Plant,
14 which is only a few miles west and south of here,
15 just southwest of downtown Chicago, where I found
16 that it appears there was something like a 55,
17 \$60 million investment that went into the local
18 power plant to replace a major piece of the power
19 plant called a steam chest, which I view as like a
20 distribution system for steam, so it goes from the
21 boiler to the turbines. That happened in the
22 mid-1990s.

23 I found it just by looking on the Web
24 and finding an engineering firm that was crowing

1 about the great project they had done and
2 providing all the details of what they replaced
3 and how long it took and how they put the power
4 plant -- they did it while it was down for two or
5 three months.

6 And I thought, well, jeez, that looks
7 like something that would trigger new source
8 review, not knowing that much about new source
9 review, but it passed my personal test, and other
10 people I talked to who have more engineering
11 background saying, "Well, yeah, that looks like
12 that's a major modification. That's not routine.
13 They're replacing something that's been in the
14 plant for 45 years."

15 I provided that as part of the
16 information we provided to the state on that Title
17 V at the public hearing. No real response on
18 that. And that kind of worries me.

19 People were talking before about how new
20 source review issues relate to this, and I would
21 think that if there is major parts being replaced
22 at a power plant that allow that power plant to
23 work harder, longer, last longer, that that
24 doesn't seem very kosher, and the Title V permit

1 process would be one way to address that.

2 MR. HARNETT: I'm going to use my prerogative
3 here because I haven't much today.

4 But on this issue, because it's come up
5 once before, where there is the potential of a
6 violation of law, but it has not gone the route of
7 due process yet, is it really appropriate to be
8 resolving it in the issuance of an operating
9 permit, which isn't a mechanism for resolving? Is
10 the allegation you are sort of alleging here, and
11 the company should have a chance to respond to
12 it --

13 MR. URBASZEWSKI: Sure.

14 MR. HARNETT: (Continuing) -- shouldn't that
15 be happening in a separate venue from trying to
16 get an operating permit out?

17 MR. URBASZEWSKI: Well, it's my understanding
18 when you get a Title V permit, you are deemed at
19 that moment to be in compliance with all laws that
20 affect your facility; correct? Otherwise there
21 are compliance schedules that are put in the
22 Title V to address things that aren't quite right;
23 correct?

24 MR. HARNETT: If I could just put it into a

1 more personal note. If you feel you've been
2 unfairly given a speeding ticket that would cost
3 you your driver's license, would you want your
4 license suspended prior to you getting a chance in
5 court to make your case?

6 The reason I raise this is there's a
7 question of just is this an adjudication in the
8 Title V to prove facts? Is that -- because that's
9 what the issue at hand is.

10 MR. URBASZEWSKI: I'm not a lawyer, but it
11 would seem that if you are swearing when you get
12 your Title V permit that yes, we haven't replaced
13 any major parts that would trigger NSR, and there
14 is evidence to the contrary, that the state would
15 say, "Wait a minute. We have to resolve this, and
16 we have to figure out whether this is a new source
17 review violation or not before we give you your
18 Title V permit."

19 In my view the state said, "We don't
20 want to deal with it."

21 We're still trying to get an answer out
22 of the federal government, which we're having to
23 sue to do so.

24 So I don't know what the real answer is

1 yet. And maybe the courts will compel the
2 administrator to answer our questions on that.

3 MR. HARNETT: Okay.

4 Verena Owen?

5 MS. OWEN: I'm sorry. I completely forgot
6 what my question was.

7 MR. HARNETT: That's all right.

8 MS. OWEN: No, it wasn't credible evidence.
9 But I want to make a comment.

10 First I -- sorry -- I want to thank you,
11 Brian, and your organization. I think you're kind
12 of a nontraditional permit review organization,
13 but I do appreciate all the work you did, and you
14 obviously think that there is value to this
15 program, and it will -- that you're concerned with
16 public health hopefully will increase public
17 health and welfare.

18 I think maybe you could add a little bit
19 of all the work you did with Little Village
20 Environmental Justice Community, with the covering
21 the Fisk permit, and maybe finish the story what
22 happened to the Web site with the engineering
23 firm.

24 MR. URBASZEWSKI: Oh. We work with a lot of

1 smaller groups that are neighborhood-based
2 organizations basically, some concerned about
3 their local power plant or their local refinery or
4 whatever. And I honestly don't have a lot of
5 resources. I have myself, and I'm trying to cover
6 what's going on legislative and policy-wise,
7 regulation-wise at the state, local, and national
8 level. I don't have a lot of time to get into the
9 guts of Title V permits, which is often what you
10 have to do. But I would really like to see more
11 local organizations realize that they can do this,
12 because a lot of them don't. A lot of them, they
13 just don't know where to go.

14 I think there needs to be some better
15 outreach there, say, for Title V trainings. What
16 does it actually mean? What is a Title V permit?
17 What can it do? Why should I go to a training?

18 If you can get the word out to folks
19 that, you know, this is useful information that
20 will allow you to keep tabs on your own local
21 sources of pollution, that has great attraction to
22 a lot of folks.

23 As far as the information that I
24 provided to the state, you can't find it on the

1 Web anymore. The company -- mysteriously
2 disappeared from the company's Web site, which
3 makes me all the more suspicious that something is
4 fishy there. If it wasn't a problem, why did it
5 disappear? I leave that for what it is.

6 MR. HARNETT: All right. Thank you very
7 much.

8 MR. URBASZEWSKI: Thank you for letting me
9 have the time.

10 MR. HARNETT: Then the last speaker for this
11 session will be Maureen Headington of Stand Up and
12 Save Lives.

13 MS. HEADINGTON: I thank you for hearing me,
14 knowing especially that you've been working such a
15 long day.

16 I had attempted to be a sign-on. As it
17 turned out, I'm a walk-in, but I'm very grateful
18 that you're giving me this opportunity.

19 You've probably not heard of my
20 organization, Stand Up/Save Lives. I'm the only
21 person in it actually, but I'm a grass-root
22 activist and former veteran of the Chicago Public
23 Schools inner city for 20 years. My work in
24 environmental areas began with a move to the

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20 organization, Stand Up/Save Lives. I'm the only
21 person in it actually, but I'm a grass-root
22 activist and former veteran of the Chicago Public
23 Schools inner city for 20 years. My work in
24 environmental areas began with a move to the

1 suburbs of Chicago, and I was born and raised in
2 Chicago.

3 When I discovered that -- right after we
4 put in the English garden, a toxic waste
5 incinerator was being sited three miles from my
6 home and necessitated that I start doing research
7 on what ramifications that had for me and my
8 family. And my first -- my initial thought was,
9 and I didn't know anyone in environmental
10 sectors -- call someone in California, because
11 California is ahead of the game when it comes to
12 environmental laws.

13 And I called one person there who said,
14 "Mo, you have to stop it."

15 I said, "How do I do that?"

16 She said, "You'll just have to figure it
17 out." She said, "Try calling Greenpeace and see
18 if they can get you going."

19 And I didn't know what to do, except
20 that I felt we had to stop this horrendous thing
21 from coming in. And I then hit the research. And
22 at that time I wasn't terribly computer-literate.
23 So especially if you don't have the availability
24 of a computer or the knowledge of how to use one,

1 I just started calling all over the place and
2 gathering data.

3 And actually my husband, who is a
4 healthcare attorney, ended up shutting down his
5 law practice on a Friday at noon, and we stayed in
6 and wrote for three solid days and footnoted
7 everything that we put into the letter that I sent
8 to my own community because I thought, "Where do
9 you start but with your own community."

10 I live in a community, Burr Ridge,
11 Illinois, in the western suburbs, 10,000 people,
12 and I made it my mission to send this letter to
13 every home and business in Burr Ridge and got the
14 3,600 postage stamps and stamped -- collated and
15 stamped and spent the money for the new garage
16 that I wanted on -- towards that, on this mailing.

17 And it threw me into this world of
18 environmental issues, where there is just so much
19 -- too much for a person to comprehend; certainly
20 someone who doesn't have the scientific
21 background. I do not have that. So I have
22 learned by the seat of my pants.

23 But what I was successful in was meeting
24 up with others who were similarly minded,

1 grass-root activists who felt that they had to try
2 to do something to save their communities, and it
3 prompted something.

4 If you're not from Illinois, you might
5 not have known of it, but the Illinois Retail Rate
6 Law was one of the things that is most egregious
7 when you talk about tax incentives to go to
8 polluters. Not only are we getting the poison,
9 but the taxpayers of Illinois were going to pay
10 for their own poison by giving -- if you're
11 willing to build an incinerator in Illinois, come
12 here, we'll give you 15 to \$20 million guaranteed
13 every year for the next 20 years.

14 The burner near my home was to be
15 burning railroad ties and utility poles brought in
16 from all over this countries, things soaked in
17 creosote 24/7, and we're paying for our own
18 poison.

19 So it led me down a path that -- I'm not
20 sure if I'm honored or not. I have met some of
21 the most incredibly wonderful people doing
22 environmental work. I leave the science to the
23 scientists and the lawyering to the lawyers.

24 I had the privilege of listening to

1 Keith Harley -- he's one of our best; Bruce
2 Nilles; I caught a bit of what Faith Bugel said;
3 and I hope that I'm not going to be reiterating
4 things that you've perhaps heard throughout the
5 day.

6 But I thought that as long as we're
7 ending with me, maybe I'll just give you some of
8 the ramblings of an environmental activist, some
9 of the frustrations. I'm not sure whether what
10 I'm saying is totally relevant to what you people
11 do in terms of Title V. Title V is something
12 pretty new to me, but in my most recent project
13 it's coming up, and I know it's something that it
14 is involved.

15 But I also want to mention some of these
16 things from the standpoint of perhaps bringing
17 your attention to things that may become Title V
18 issues or something to give you some fodder for
19 some thought.

20 By the way, we were successful. It was
21 written up in an East Coast paper that it was the
22 largest anti-incinerator campaign that this nation
23 had ever seen. And it was a matter of getting 73
24 Illinois legislators who were supporting this

1 legislation to back down and vote the right way.
2 And to my way of thinking there is only one thing
3 more important than the campaign contributions
4 that these people are getting.

5 And it seems that these problems, from
6 back when I did this seven or so years ago,
7 they're the same problems. It might be a
8 different venue, but it's the same problems that
9 keep surfacing. We're living in a world of
10 campaign contributions, and what does the public
11 have to have any kind of balance to what -- the
12 insanity that is going on here? The shoe has been
13 put on the other foot. Now we have to prove the
14 harm. The onus is taken off the industry to prove
15 that what they're doing is even safe.

16 So we get into these situations where
17 you're pitted against each other. And when logic
18 tells you that these things do not make sense,
19 that at a certain point the public is on overload
20 and the assault is too great, and we are losing
21 lives, more lives than we've lost in Afghanistan
22 and Iraq to date, and we're losing more lives in
23 Illinois every single year that our problems are
24 not addressed here, I think the latest data was

1 1,356 every year because of power plant pollution.

2 So certainly if we don't do something --
3 I'm not trying to give myself a pat on the back.
4 And probably when I stop doing this, hopefully
5 there are others that will pick it up. I'm not
6 sure why private citizens -- I had to quit my job
7 to fight the incinerators. I was not paid to do
8 it, and I spent my own dollars doing it, and I've
9 quit my job a second time on the project I'm
10 working on right now. I don't feel I should have
11 to do that.

12 And yet when I got the lay of the land,
13 my feelings -- and I'm sure that I represent much
14 of the public in this because I deal with the
15 public -- is that there is this false sense of
16 security that we are being taken care of by these
17 entities called Environmental Protection Agencies,
18 whether they're state or whether they're federal,
19 we're being protected. "Oh, well, we have an
20 EPA."

21 And it's been my experience that more
22 often than not the EPA is there to protect
23 industries' interests than the public's interest,
24 and that whether -- not that -- I've met some

1 wonderful people from both IEPA and federal, and
2 quite frankly, Illinois EPA, in my estimation, is
3 no great shakes, overall. I'm not citing any
4 individual, but in terms of what bang Illinois
5 taxpayers get for our buck, what protections we
6 get, they're very, very minimal.

7 And where I have my most fun is going to
8 campaign for political reform to see who got what
9 when, because the campaigning contributions, when
10 it came to utility dereg coming down in this
11 state, every single legislator was taken care of.
12 Now, how do you begin to fight this thing?

13 So from my perspective, the way you
14 fight it is to bring forward a public mandate,
15 much in the way it happened with the incinerators.
16 But it was very, very difficult, a very hard thing
17 to pull off. I know Verena was involved in some
18 of that, were you not, with the Retail Rate Law?

19 MS. OWEN: No, I was not.

20 MS. HEADINGTON: Oh, you were not. I'm
21 mistaken, then, in that.

22 But individual citizens having to rise
23 up when it should have been perhaps the IEPA, I
24 don't know if any of it fell on the bailiwick of

1 whatever kind of permits. Except that there is --
2 there are permits that allow people to pollute and
3 take advantage and accept campaign contributions
4 to turn their head and let public health take a
5 back seat to corporate greed. And that happens
6 again and again in Illinois.

7 I turn to the federal government because
8 to me they have always been the ones that are
9 there. No matter what happens here, we've got
10 that. And recently, with what is going on
11 politically -- and I have to be nonpartisan in my
12 work because I work with people on both sides
13 trying to create something for the better.

14 But what I'm seeing, whether it's new
15 source review or -- some of the things I get
16 through the grapevine just because I know so many
17 people that the folks from Region 5 who were
18 openly available to us in the past, there has been
19 a kind of lid put on their accessibility to
20 activists. They have to get permission, and it
21 has to be known what they're giving us, what
22 they're telling us, that they're talking with us.
23 Which I hear this, and it kind of gives me shivers
24 thinking that -- the direction that things are

1 going in.

2 I don't want to ramble here, but I want
3 to touch on just a few of the things that -- not
4 hearsay, but direct things that I've experienced
5 that you might think about.

6 With the incinerator law, one
7 incinerator got away from us. We killed a law
8 that -- the permits that the other 34 had already
9 gotten. We had good lawyers, and yet the permits
10 in Illinois were given out like candy. There were
11 some we felt like, "Oh, we've got them here";
12 never happened. They just kept giving and giving
13 and giving.

14 But because this public mandate grew so
15 huge, elected officials starting thinking, "Gee,
16 I'm not going to have a seat unless I vote right."
17 So we were able to turn that around.

18 But one incinerator got away. And I
19 can't tell you how many, through FOIA, how many
20 problems there were at that facility. One of the
21 explosions or fires necessitated 22 different
22 municipal fire departments to put it out.

23 I had residents -- because by this time
24 I was doing radio, I was doing some TV work, I

1 spoke before city councils and village boards, and
2 I'd get calls from strangers, "Can you help me? I
3 just got off the phone with Illinois EPA
4 complaining about the smells and the soot and the
5 things that -- in my community near to Robbins,
6 and they told me, 'It's a new facility. Give us a
7 year. If it's not better, call us back.'"

8 What do you tell people who have
9 children, who live and breathe in these areas?
10 Give industry an opportunity to get it right?

11 There were so many exceedances at that
12 place it was a joke. It finally shut down.

13 But what's taken my attention up now is
14 I am working on the coal plant issue. I have been
15 for the last six years, and my work landed me on
16 the board of the Illinois Environmental Council.
17 I served on that board as a director for six
18 years, as their vice president for three before I
19 left them a couple years ago.

20 But I wasn't funded to do the clean air
21 work. I did it out of my own pocketbook. I
22 decided I don't have to be on IEC in order to do
23 this. So I've been doing a campaign of public
24 education and going town to town, village to

1 village, county boards, doing presentations,
2 updating people on the need for getting something
3 done on these old coal-fired power plants. And
4 I'm happy to say that I got my 101st resolution
5 representing over 8 million people in the state of
6 Illinois, metro Chicago, who are mandating an end
7 to the grandfathering of these power plants.

8 There was a law passed back in spring of
9 2001. Industry wrote the law. We were told that
10 by the governor. When the governor, former
11 Governor Ryan, held a clean air summit in Decatur,
12 I went down there for the overnight to be prepared
13 so that I'd get my three minutes or so to speak.
14 It was a fascinating day. The environmentalists
15 were outnumbered 10 to 1 by industry; there were 5
16 of us, 50 of them. When I asked why I didn't see
17 anyone with an M.D. after his name for a clean air
18 summit, because it seems that the bastion of clean
19 air -- of anything health should be doctors, the
20 Illinois EPA responded, "Well, we tried to get a
21 neutral doctor, and we couldn't find one."

22 I mean, so when you respond to someone
23 from the public, even though I'm not a scientist,
24 what does that tell you about this kind of a --

1 what you're going into?

2 When I relate this before everyone at
3 this hearing or summit, I was told by an industry
4 person outright, "Well, we could have gotten a
5 doctor to say anything we would have wanted him
6 to."

7 So I think we're up against an awful
8 lot, and I'm just going to kind of, in the minute
9 or two I have left, tell you I have concerns about
10 the TRI index.

11 I think that self-reporting is highly
12 suspicious. I saw something in the AP wire
13 stating that in actuality what we're getting in
14 the way of pollution is probably two to three
15 times or more what is being reported.

16 I don't know if anybody talked about the
17 FOIA'ed information on these coal plants that had
18 been done on the ones owned by Midwest Gen, but
19 they might have, listening to some of the comments
20 here. But Title V permit applications, including
21 compliance certification and draft permits, did
22 not include schedules to remedy noncompliance.

23 For an 18-month period, from January '02
24 to June '03, there were 4,311 exceedances of the

1 grandfathered relaxed federal Clean Air Act that
2 these power plants have to live by. And so the
3 company responded, well, a certain number of these
4 were on start-up and malfunction. That still left
5 over 2,000 that weren't.

6 So we are being inundated. We need
7 help. I'm not sure where the help is going to
8 come from, if it's going to come from Title V
9 people. I don't care where it comes from. I'm
10 hoping it comes from some of you, because
11 Illinois, as one of our attorney -- when I went to
12 Washington, D.C. -- and I don't mean this as an
13 affront to the gentleman from North Carolina, but
14 I made an appointment with a wonderful
15 environmental attorney looking for help outside
16 this state. I walked in the door, and his words
17 to me were, "Mo Headington of Illinois. Illinois
18 EPA, worst in the nation." He said, "Wait a
19 minute. I take it back. North Carolina beats you
20 by a hair." That was about six years ago. I
21 don't know if it's still true.

22 If anyone is interested in any of my
23 further meanderings, feel free to give me a call.
24 I do have a card.

1 TITLE V TASK FORCE PUBLIC MEETING
2 CHICAGO, ILLINOIS

3 TRANSCRIPT OF PROCEEDINGS had in the
4 above-entitled cause on the 15th day of September, A.D.
5 2004, at 8:00 a.m.

6 US. ENVIRONMENTAL PROTECTION AGENCY

7 -Office of Air Quality Planning and Standards
8 Bill Harnett - Chair
9 Steve Hitte
10 Michael Ling
11 Ray Vogel
12 -Office of Enforcement and Compliance Assurance
13 Carol Holmes
14 -Office of General Counsel
15 Padmini Singh
16 -Region 8
17 Callie Videtich

18 TASK FORCE MEMBERS

19 -Shannon Broome, Air Permitting Forum
20 -Lauren Freeman, Utility Air Regulatory Group
21 -Steve Hagle, Texas Commission on
22 Environmental Quality
23 -John Higgins, New York Department of
24 Environmental Conservation
-Shelley Kaderly, Nebraska Department of
Environmental Quality
-Marcie Keever, Our Children's Earth
-Bob Morehouse, ExxonMobil
-Verena Owen, Lake County Conservation Alliance
-Bob Palzer, Sierra Club
-Bernie Paul, Eli Lilly
-Keri Powell, New York Public Interest
Research Group
-Adan Schwartz, Bay Area Air Quality
Management District
-Don van der Vaart, North Carolina Department
of Environment and Natural Resources
-Richard Van Frank, Improving Kids' Environment
-David Golden, Eastman Chemical
-Kelly Haragan, Environmental Integrity Project
-Mike Wood, Weyerhaeuser

24

1 EC/R INCORPORATED
-Graham Fitzsimons
2 -Shannon Cox

3 REPORTED BY:
4 MS. CATHERINE A. RAJCAN, CSR, RDR, CRR, CCP

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1 MR. HARNETT: We're going to go ahead and get
2 started here.

3 I'd like to thank again everybody for coming
4 today. I especially again want to thank the task force
5 members in agreeing to participate in volunteering for
6 this project. Just a few words of explanation to the
7 rest.

8 The Clean Air Act Advisory Committee, which is
9 a committee set up of outside parties which provides
10 advice to EPA on the Clean Air Act programs and how to
11 implement them, created this task force to look at the
12 implementation of the Title V program or the operating
13 permit program under the Clean Air Act.

14 They felt, and we agree, that it was a good
15 time to take a look at how has this program gone now
16 that it's had over 13 years of operation out at the
17 state level. How has -- how are the -- we are close to
18 issuance of all the initial permits; and it was felt
19 now is a good time to see how is this program working
20 for everybody.

21 They tasked the task force with answering two
22 particular questions; which is, how well is the program
23 performing, and what elements of the program are
24 working well or poorly. And they've asked them to

1 prepare a report for the committee that answers those
2 questions and additional information items.

3 And so what they did suggest too is that the
4 report should reflect the perspectives of all the

5 stakeholder groups that are represented on the task
6 force as well as to the maximum extent possible the
7 real-world experience both of the stakeholders that are
8 part of the task force as well as those that speak to
9 us in the course of doing these public meetings; and
10 also that it describe information about how things are
11 working well and leading to beneficial outcomes as well
12 as any reported problems with the programs.

13 And then there can also be in that final report
14 recommendations for improving it based on the data
15 collection that goes on here.

16 We have held one public meeting previously in
17 Washington, D.C. This is the second one. There was an
18 all-day session yesterday. We will hold one more in
19 San Francisco; and then we will hold additional more, I
20 would say, electronic kinds of meetings using the
21 telephone to allow people who can't afford to travel to
22 participate and give us direct, sort of, verbal
23 testimony.

24 And then we'll also -- we also have opened up a

1 public record that people can submit comments into.
2 And that will remain open till next March so people can
3 be providing us more detailed comments or separately.

4 Today we will be here from 8:00 a.m. until
5 noon, and we will finish no later than noon today.

6 We have some speakers who've signed up.

7 From our perspective we think at EPA this is a
8 very important step that we need to go through in terms
9 of trying to understand what's actually happening out
10 there and whether or not -- and to the degree speakers
11 can address this as they talk -- whether or not the
12 issues, the things that are working well and the things
13 that may not be working well, are they things
14 associated with the rules that EPA has written based on
15 the Clean Air Act, or are they things associated with
16 the implementation of the program by individual
17 permitting authorities?

18 So the more clarity we could have on the
19 difference between the two, the more it will be helpful
20 to try and understand how to address things going
21 forward.

22 And finally, what I'd like to do now is just
23 give an opportunity for the task force members to
24 introduce themselves and who they represent.

1 I am Bill Hartnett, I'm with the U.S. EPA's
2 Office of Air and Radiation.

3 MS. FREEMAN: Lauren Freeman from the law firm of
4 Hunton & Williams in Washington, D.C., and I'm here
5 representing the Utility Regulatory Group.

6 MR. GOLDEN: David Golden with Eastman Chemical
7 Company.

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

10 MR. HAGLE: I'm Steve Hagle with the Texas
11 Commission on Environmental Quality.

12 MS. SINGH: Padmini Singh with the Office of
13 General Counsel at U.S. EPA.

14 MS. HARAGAN: Kelly Haragan with the Environmental
15 Integrity Project.

16 MR. HIGGINS: John Higgins from the New York State
17 Environmental Conservation Department.

18 MR. HITTE: I'm Steve Hitte, U.S. EPA.

19 MS. KADERLY:
20 Shelley Kaderly with Nebraska Department of
21 Environmental Quality.

22 MS. KEEVER: Marcie Kever with Our Children's
23 Earth.

24 MR. LING: Michael Ling with U.S. EPA.

1 MR. MOREHOUSE: Bob Morehouse, ExxonMobil.

2 MS. OWEN: Verena Owen, Conservation Alliance of
3 Illinois.

4 MR. FITZSIMONS: Graham Fitzsimons with EC/R,
5 Incorporated. We're an EPA support contractor.

6 MR. VAN DER VAART: Don van der Vaart, Division of
7 Air Quality.

8 MR. VAN FRANK: Richard Van Frank with Improving
9 Kids Environment in Indianapolis, Indiana.

10 MS. VIDETICH: Callie Videtich, EPA Region 8 in
11 Denver.

12 MR. WOOD: Mike Wood, Weyerhaeuser Company.

13 MR. VOGEL: Ray Vogel with U.S. EPA.

14 MS. HOLMES: Carol Holmes with the Air Enforcement
15 Division of U.S. EPA.

16 MS. BROOME: Shannon Broome with the Air Permitting
17 Forum; and I'm out of California.

18 MR. HARNETT: And one last bit of housekeeping for
19 the purposes of our speakers. We are keeping both a --
20 we are taping the session, and we have a court reporter
21 who's also taking it down. And we will be providing a
22 transcript of all of this on our Web site after the
23 meeting.

24 At this time I'd like to welcome the first

1 speaker this morning, Bob Hermanson of the American
2 Chemistry Council.

3 If you could join us at the table, actually,
4 we'll manage your slides for you.

5 Do you have a presentation?

6 BOB HERMANSON: No, I actually have no written
7 materials; and I'll explain why in just a few moments.

8 MR. HARNETT: That's fine. We actually prefer you
9 to just sit with us, and then you'll have 15 minutes
10 for your talk, I'll give you a two-minute warning; and
11 then we will have a period of questioning after you're
12 done.

13 Thank you.

14 BOB HERMANSON: Thank you. As Bill said, my name
15 is Bob Hermanson; I'm with BP America here in
16 Chicago -- actually, in the western suburbs. But I'm
17 here today representing the American Chemistry Council.

18 Pardon me. The American Chemistry Council, for
19 those of you who don't know, is the trade association
20 of the leading companies and the business -- what we
21 call the business of chemistry and transformation of
22 raw materials into useful consumer industrial and
23 commercial products.

24 It's a \$460 billion enterprise across the

1 United States and a key element of the U.S. economy and
2 accounts -- more importantly, accounts for one dollar
3 out of every ten of U.S. exports.

4 And finally, it's the largest single sector
5 R and D participant in the entire United States
6 economy.

7 Pardon me: The kids went back to school last
8 week, and I got the first cold.

9 ACC members include -- there's 136 of them.
10 They include many of the larger and well-known
11 companies and many more smaller and less well-known
12 companies. ACC, the trade association, catalyzes
13 industry improvement of environmental performance
14 through such programs as responsible care and the --
15 the other programs they have.

16 Now, the members of ACC, Chemistry Council, are
17 extremely concerned about Title V. Most of our members
18 have in the past dealt with Title V programs and
19 continue to do so. And the association, the council
20 itself, both as ACC and as its former incarnation as
21 the Chemical Manufacturer's Association, has been a
22 participant in the regulatory process both in the
23 national and in the state levels.

24 Particular concern of the ACC membership is

1 permit flexibility. Flexibility is critical to
2 members' abilities to adjust to business cycles and to
3 take advantage of new product opportunities.

4 Am I in the wrong spot here?

5 ADAN SCHWARTZ: You can sit.

6 BOB HERMANSON: What I wanted to tell you today,
7 the reason my presentation will be so short and there's
8 actually no written materials is that ACC has just
9 begun a process of gathering information from the
10 member companies. And this will take some time. It's
11 not simply a matter of throwing some questions down on
12 a piece of paper, collecting the answers and totaling
13 up the yeses and nos, and giving you a 21 percent this
14 and, you know, 15 percent that kind of thing.

15 So we're sort of feeling our way along and
16 trying to discover what is the most -- what are the
17 most important issues and how to elicit useful
18 information.

19 Now, we expect that that will take some time;
20 but at the end of our effort we will compile and submit
21 written comments to you, and perhaps even speak at one
22 of your public hearings. But we expect it will take us
23 a couple months to get somewhere useable on that.

24 But what I did want to give you today was give

1 you kind of a preliminary look at some of the issues
2 which have popped out from the first round of
3 questioning.

4 So what are some of our initial concerns?

5 Well, you've probably heard a lot of these
6 before, but let me reiterate what the members of ACC
7 think.

8 First of all, the Title V process continues to
9 be costly. Second, the issuance of permits and the
10 issuance of permit modifications takes way too much
11 time. And third, the permits often include extra terms
12 and may occasionally delete otherwise allowable
13 regulatory options such as additional monitoring
14 requirements and additional compliance options.

15 All these things add up to matters of
16 significant concern.

17 Let me cycle around to cost first.

18 The first thing members report, at least in the
19 preliminary round, is that the costs to develop -- the
20 direct costs to develop the permits from inception all
21 the way through the issuance of the final permit, these
22 costs range from about \$20,000 to we have a reported
23 high of \$300,000. This includes both internal company
24 costs and external contractor costs but does not

1 include the permit fees associated with the permit.

2 And we note that the EPA's original estimate in
3 the final rule in '92 called for an average cost of
4 about \$15,000 per permit.

5 Second, on time. Some members report that the
6 initial permit took well over five years to -- to be
7 issued. And in fact, some permits have not -- some
8 final permits have not yet been issued.

9 Personally from my company I have five plants
10 that I'm responsible for; only one of them has an
11 actual final permit. This is going on eight years
12 after the permit applications were brought in.

13 I have two in sort of the final stages of
14 development of a permit and two more where the permit
15 is kind of out somewhere in the future.

16 As far as permit modifications are concerned,
17 it's not unusual for members to report a few months to
18 a year for a minor modification to be issued and a few
19 months to several years for a major modification to be
20 issued.

21 And we find that the state agencies are often
22 bunching smaller permit modification applications for
23 issuance all at once, issuance and processing all at
24 once.

1 Now, as I mentioned to you earlier, time and
2 flexibility is important to us. If something takes
3 five years, you're talking the better part of two
4 business cycles for the chemistry industry.

5 It's important for us to be able to respond to
6 changes in the business climate a lot quicker than
7 every five years.

8 Moving on to permit terms, the biggest concern
9 reported to date is that additional nonregulatory
10 monitoring terms have been added to the final permit.
11 The one that comes up most often is opacity. And
12 another one that comes up is that permits are often
13 adding or substituting perimetric monitoring terms for
14 direct monitoring terms.

15 Another thing about permit terms is that the
16 permit authority often commits errors in restating
17 regulatory obligations as permit terms.

18 Now, some of this is due to paraphrasing of
19 this underlying standards, and some of this seems to be
20 merely a function of the state use of boilerplate
21 terminology.

22 And then another thing, as I mentioned earlier,
23 the loss of regulatory options in the final permit is
24 also a matter of concern. Sometimes an underlying

1 standard will offer two, three or four compliance
2 options to be electable at any time or to be switchable
3 at any time, but the final permit is issued with only
4 one of those in there requiring a permit modification
5 in order to be changed to the other regulatory option.

6 Those were the major concerns of the members
7 that have surfaced to date. And a couple other points
8 that people have tried to make, first is that there's
9 significant differences in the process and the
10 paperwork requirement across the various permitting
11 jurisdictions.

12 Now, that's not a concern to the individual
13 relationship between the facility and the permit
14 authority, but it is from perspective of companywide
15 economies of scale; and it makes them highly
16 infeasible.

17 The second thing is that these long delays that
18 we've experienced in issuing permits have led to an
19 interesting phenomenon within the companies and within
20 the contractors we've hired, and that's that the people
21 who have worked on the original permits have long since
22 disappeared into other jobs.

23 If we had to do it all over again today, or if
24 we just had to go through a renewal process, we would

1 have to retrain everybody to come up with these terms.

2 Now, maybe that won't be a problem in the
3 future. Maybe with a more rapid turnover cycle it will
4 be better for us.

5 But for now we're kind of -- we've kind of lost
6 all the expertise we developed in the mid '90s in
7 developing the applications.

8 Now, I did want to end my comments with two
9 thoughts. One is that maybe there is a better way --
10 and we're trying to noodle around with some ideas on
11 that to see if we couldn't come up with a better way,
12 you know, hindsight being 20/20 and all -- and the
13 second is there are some benefits we've derived
14 directly from going through this process.

15 In terms of a better way, what we've seen, what
16 members have seen from the process to date suggest that
17 perhaps a better way to approach this would be to have
18 each of the individual sources compile a list of his or
19 her -- his regulatory obligations -- and this might
20 have cost a lot less money and been a lot more accurate
21 than having the states do it themselves -- then in the
22 future compliance certification could have been done
23 against this list rather than against a permit and we
24 could have bypassed the step of negotiating permit

1 terms and compliance options.

2 I don't know where this is going to lead us;
3 we're going to try and think about this some more and
4 see if we can't come up with a more firm proposal. But
5 the idea of having the permittee do more of the work is
6 sort of central to our idea.

7 And as I suggested, there are some benefits we
8 have seen from participating in this process. One is
9 the obvious: We've taken a hard look at all of our
10 regulatory obligations, we put them all down on one
11 piece of paper -- well, one stack of paper. And so we
12 have them all in one location at least.

13 There are also considerable synergies in the
14 Title V process with some of the other initiatives
15 we've had in the past few years like ISO 14001
16 certifications and the more recent Sarbanes-Oxley
17 management assurance process. So having all this stuff
18 in one place simplifies those tasks.

19 And then finally, the cost pressures the
20 business has been in under the last several years, what
21 with rising gas prices and the like, have encouraged us
22 to develop creative information technology solution to
23 our information management problems.

24 We now have computer programs that do a lot of

1 this stuff and spreadsheets and the like. The only
2 problem we have there of course is over the course of
3 five or seven years you've gone on to a new generation
4 of rating systems and hardware; but that's kind of a
5 problem we think we might be able to see our way
6 around.

7 That's all I have for you today. As I said,
8 when we finish our process of soliciting information
9 from the members, we will compile written comments and
10 send them to you.

11 I don't know when this will be, but I
12 anticipate it will be a couple, few months from now;
13 well before the end of your process.

14 Thank you for your time and attention. And
15 I'll entertain any questions you have.

16 MR. HARNETT: Thank you. And Don van der Vaart?

17 MR. VAN DER VAART: Thanks a lot for your comments.

18 There's one thing that I think is -- we've
19 heard a lot -- I've heard a lot -- is the -- the
20 relationship between the construction requirements and
21 the -- getting on top of the operating permit. We've
22 had people complain that the Title V permit program
23 wasn't meant to be a preconstruction program.

24 And so they've pushed, and in our state -- and

1 I think in some other states -- they have used the
2 state construction process to allow certain
3 modifications to go forward with a requirement that the
4 Title V permit gets amended downstream.

5 You -- you pointed out that, you know, you were
6 having these long delays for projects.

7 Have you not seen any states give you that --
8 at least in some occasions -- options to get a
9 construction permit, sometimes even an operating permit
10 before the folding it into the Title V; or has it
11 always been you got to have your Title V permit
12 modified before you can even construct?

13 BOB HERMANSON: My understanding of that issue --
14 again, we're talking about members and pretty much all
15 of the permitted jurisdictions across the
16 United States -- that we have not had a significant
17 problem along the lines you've indicated; that in fact,
18 most of the members are applying for preconstruction
19 permits with the expectation that those will be rolled
20 into the Title V permit as amendments or at -- in the
21 original issuance.

22 So to date, again, from what I have seen in the
23 member input so far, that has not been a problem.

24 MR. VAN DER VAART: I mean once you get your

1 Title V.

2 BOB HERMANSON: Well, that's another question. The
3 members' expectation was that the process associated
4 with preconstruction permits was going to be
5 essentially equivalent to that required for Title V
6 permit issuance. So that once a preconstruction permit
7 was issued, it could be incorporated into the Title V
8 permit as, frankly, an administrative-type amendment,
9 or at very worst a minor-type amendment, both of which
10 would not take any kind of time at all to undertake and
11 complete.

12 But in fact, they are showing some delay in the
13 states for issuances of even of minor permit amendment.

14 MR. VAN DER VAART: What I'm saying is, though, in
15 other words, they're saying you can't go ahead until
16 you get your Title V -- until you have gone through the
17 Part 70 process, is that --

18 BOB HERMANSON: I have no information on that
19 specifically. That's a good thing to note, though.

20 MR. HARNETT: Shelley Kaderly?

21 MS. KADERLY: We've heard several folks bring up
22 the issue of turnover at state agencies as being an
23 issue of concern. And I was wondering -- well, quite
24 frankly, our agency does experience some turnover; but

1 we also see turnover at the facilities that we go out
2 and inspect. And sometimes every time we go out
3 there's a new person that we're dealing with and
4 there's an education process there that we have to go
5 through with facilities.

6 I'm wondering what the answer is, what are some
7 recommendations for dealing with the staff turnover
8 issue, taking into consideration that it's not real
9 popular to increase government, that it's difficult to
10 increase salaries at government agencies and so forth.

11 What -- what recommendations can you offer to
12 state and local permitting authorities to deal with
13 this turnover issue?

14 BOB HERMANSON: I think I mentioned that one of the
15 problems we've experienced is related to that in that
16 the loss of expertise. I am hoping that as the process
17 becomes more institutionalized and faster, -- frankly,
18 faster -- that we will not lose the expertise on our
19 side of the equation as -- as thoroughly as we seem to
20 have done so far.

21 Now, I don't know if that answers your question
22 or not.

23 But I expect that we might find a more -- a
24 continuation of a more reasonable level of expertise in

1 our -- on our side of the fence if this process were to
2 be a little more timely.

3 Other than that I'm afraid I don't know what
4 the answer to that would be.

5 MR. HARNETT: Michael Ling?

6 MR. LING: Thanks. I appreciate the preview of
7 your testimony and look forward to hearing more
8 information from you when you come to the next meeting
9 or file your comments in writing.

10 And along those lines, you talked about one
11 year for a minor mod, and sometimes several years for a
12 major mod.

13 I would say that's probably something that's
14 not working well. And what I would like to try to
15 understand when you provide the more detailed
16 information is maybe just pick a couple of those where
17 it's taken several years to process a minor mod and
18 help the task force understand where the delays are
19 coming so that we can break it into parts and try to
20 figure out how those delays can be addressed.

21 BOB HERMANSON: I'll communicate that request
22 along. I think that's a reasonable thing to look into.

23 MR. HARNETT: Richard van Frank?

24 MR. VAN FRANK: I believe you mentioned that you --

1 that you thought the facility should be able to compile
2 essentially their own list of regulatory requirements
3 and base a permit on that.

4 How would you propose that that approach be
5 validated?

6 Because some people are going to cheat; and
7 there has to be some mechanism there to validate what
8 has -- what the industry -- what the particular
9 facility has -- has developed to make sure it's
10 correct.

11 BOB HERMANSON: Good question. I don't know how it
12 would work from the other side. What I suggested was
13 that I think the members feel there would have been
14 a -- would have been a faster process with fewer
15 substantive errors in permit terms had they done it
16 themselves.

17 Now, the verification of course is an issue,
18 you know, cross-checking the term -- the compiled list
19 of requirements against the regulation as an issue I
20 guess for states and local permitting authorities to
21 deal with.

22 Pardon me.

23 I merely suggested that the process as we
24 experienced it has led to considerable number of errors

1 and that that might have been minimized by us doing the
2 work in the first place.

3 MR. HARNETT: Mike wood?

4 MR. WOOD: Thanks for coming today. I think you
5 represented a constituency that brings a unique
6 perspective to this group.

7 But you mentioned the cost of Title V
8 permitting. And I wonder if you have any idea how that
9 cost might be broken out, how much might be attributed
10 to determining applicable requirements as opposed to
11 determining compliance.

12 I know my company spent a lot of money once we
13 determined the applicable requirements, we then spent a
14 lot of money determining whether we were in compliance.

15 I was just curious how much --

16 BOB HERMANSON: I'm sorry; I have no information on
17 that breakout.

18 MR. WOOD: Is that something you can --

19 BOB HERMANSON: I can communicate it along, yeah.

20 MR. WOOD: Thanks.

21 MR. HARNETT: John Higgins?

22 Bob Morehouse.

23 MR. MOREHOUSE: Let me add one or two comments
24 since we're -- I'm not really hard -- let me add one or

1 two comments to what Bob was saying since we're a
2 member of the chemistry council and I provided some
3 input.

4 On the question that Richard had about
5 applicable requirements and having the company prepare
6 them, the issue there is if a company put together that
7 entire list of requirements, it would still go through
8 the regular Title V process. They'd still work with
9 the permit engineer. There'd still be the
10 public-participation process.

11 What it would do is -- and the desire would be
12 probably to do that with sort of a standard template
13 provided by, you know, an agency.

14 And what that avoids is the ongoing issue we
15 have where there's a permit engineer -- we talked about
16 yesterday -- hasn't visited a site, writes a number
17 of -- makes some translations, makes them long -- we
18 spend an inordinate amount of time correcting things
19 that we actually thought we submitted them correctly in
20 the first place.

21 There still is the give and take with the
22 permit engineer on applicable requirements and all
23 that, but it would cut out an awful lot of the sort of
24 customized standard terms and conditions which vary

1 significantly from state to state, and would make it a
2 more uniform program.

3 So that was what some of the council members
4 were thinking with that idea as an approach to take.

5 MR. HARNETT: Ray Vogel?

6 MR. VOGEL: I'd like to follow up on the cost
7 figures. I think you indicated that the cost for your
8 member companies compiling and the application, all the
9 policy application, internal as well as your external
10 contractors, ranged about from 20,000 to 300,000; and
11 then -- and cited the average figure that EPA had
12 developed back in the '92 rule of 15,000.

13 Just wondering in comparing those two numbers
14 is -- you know, the 15,000 was of course the average,
15 national average.

16 Do you think your member companies are larger
17 than or -- than the national average, or about the same
18 as the national average?

19 BOB HERMANSON: You know, I realize that range of
20 cost I presented is not a particularly useful number,
21 and that's why we haven't gone into it in any more
22 detail. The number presented in the EPA preamble to
23 the final rule in '92 did talk about aggregated costs
24 across 34,000 different sources.

1 So yeah, presenting comparison of our range
2 with the overall average is -- is not particularly
3 useful at this point. On the other hand, I just wanted
4 to point out that some of the costs can go way higher
5 than what the -- what we originally anticipated as --
6 as the cost of this program. And I think members
7 are -- are expressing some dismay at -- at the amount
8 of money that they've had to spend on this.

9 I will also point out that a little later in
10 the preamble EPA points out that to the extent they may
11 have underestimated things, the cost could range up to
12 a billion dollars higher. So that sort of blows
13 that -- that \$526 million number they had right out of
14 the water.

15 We will probably be able to develop more useful
16 cost-type information over the next several months as
17 we -- as we look at it a little bit harder. Right now
18 we just -- like I say, we're just sort of asking people
19 their impressions and an idea. And the idea is to try
20 to be able to ask more probing and useful questions as
21 the process goes on.

22 MR. HARNETT: Shelley Kaderly.

23 MS. KADERLY: A question on these errors and stuff
24 that you see. Something that would be helpful too for

1 me to understand is whether these errors ended up in
2 the final permit or whether it was something that was
3 discovered during the -- the draft or proposal stage
4 and got corrected during the -- during the public
5 comment period.

6 Because it -- that would be useful to know is
7 whether they were first identified in the public
8 comment period and then still hadn't gotten taken care
9 of.

10 BOB HERMANSON: We don't -- I don't have specific
11 information on that, but my recollection of the process
12 is -- is -- is that it was discovered before the final
13 permit -- typically errors are discovered before the
14 final permit is issued.

15 MS. KADERLY: I think having some information on
16 some examples of that would be -- would be helpful.
17 And if there are any responses to those perceived
18 errors from the permitting authorities.

19 MR. HARNETT: John Higgins?

20 MR. HIGGINS: Good morning.

21 I'd be curious to hear your members' assessment
22 of how common it was to find instances of inadvertent
23 noncompliance to -- maybe in requirements they didn't
24 realize existed before they went through the Title V

1 examination process to produce their initial
2 applications.

3 I know in New York we found a reasonable amount
4 of -- of the applicants had found instances where they
5 just hadn't realized and we hadn't realized they were
6 doing -- doing things they shouldn't have been or not
7 doing things they should have been.

8 And I'd be curious to -- to see what your
9 membership found along those lines.

10 BOB HERMANSON: I can communicate that request
11 along to the members.

12 MR. HARNETT: Steve Hitte?

13 MR. HITTE: Good morning.

14 I'd like to sort of echo what I've heard from
15 Michael Ling and Shelley when you provide additional
16 information about providing examples. I definitely got
17 this feeling your membership covers many, many -- I
18 don't know if it's tens, hundreds or thousands of Title
19 V sources, but it sounds like the range varies from
20 they don't have the permit to they have their permit.

21 So when you provide your information, be clear
22 whether that experience is based on the issued permit
23 or the source that hasn't gotten their permit yet.
24 That would be extremely I think helpful to us.

1 BOB HERMANSON: Again, I can communicate that along
2 to the members. The -- you are correct; we range from
3 simple little -- I mean, literally, you know,
4 family-owned chemical companies all the way up to the
5 -- the Exxon, Mobils and BPs and Dows. And the range
6 of operations, the scope, the breadth of the scope
7 is -- is breath-taking; little operations to
8 multi-billion-dollar physical plants.

9 So you're looking for more concrete examples; I
10 can communicate that along.

11 MR. HARNETT: Shannon Broome?

12 MS. BROOME: Good morning, and thanks for coming
13 today.

14 Not to add one more thing to the request of
15 stuff to provide, but after everybody spoke yesterday,
16 we were talking a lot about MACT. And one of the big
17 questions was trying to get a handle on which types of
18 compliance options exist in MACTs that people want to
19 preserve that flexibility and need the -- the quick
20 timing for.

21 And if you'd just -- not put a lot of work,
22 just something -- one or two simple examples from MACT
23 standards since you guys have the absolute most
24 experience with MACT standards, with compliance

1 options; saying this is the type of compliance options
2 that exist, and they're really important for us to
3 preserve, and why the -- you know, that there's a quick
4 turn-around, or there isn't, or what -- you know,
5 whatever it is.

6 But you mentioned the need to preserve the
7 flexibility of compliance options. And I look at who
8 has the most experience in the country with
9 implementing a MACT standard, and it's -- it's you
10 guys.

11 BOB HERMANSON: You're right.

12 SHANNON BROOME: We would love that. Thanks.

13 BOB HERMANSON: Yeah; the MACT reports have this
14 organic niche, the polymers and resins all the way down
15 to the OLD rule and engines and boilers and heaters;
16 are fairly complicated. Especially the recent ones, at
17 the very least, contain an option if you're in
18 compliance with another MACT rule, you don't have to
19 comply with that rule.

20 And so the permutations involved, especially
21 over time, are interesting, and the benefits are not
22 clearly known in a lot of the cases. But the potential
23 for benefit is known; and therefore the option is worth
24 preserving; at least the viewpoints of the membership.

1 But I'll communicate the desire for simple
2 examples along --

3 MS. BROOME: Or just like from a part of a MACT.
4 You don't have to give us the whole kind of options.

5 Here's one little thing that is important to
6 somebody so we can -- people just don't have a real
7 feel for it. It's --

8 BOB HERMANSON: Yeah. As far as the Title V
9 process is concerned, the terms relating to MACT in
10 permit, in final permits, have been as simple as source
11 will comply with, you know, 40 CFR 63, blah-blah-blah,
12 period, you know, to incorporation of the entire text
13 of the MACT regulation, to paraphrasing the MACT
14 regulation.

15 In some states where the program has been
16 delegated, the states have rewritten the MACT rules to
17 super -- essentially supersede the federal MACT rules,
18 so they incorporate by reference to their own rule.
19 And it's difficult to come up with a uniform assessment
20 of what's happening across all the permitting
21 jurisdictions. But there are some interesting
22 examples.

23 MR. HARNETT: Thank you very much. And good luck
24 with all your homework assignments; and we look forward

1 to seeing the results.

2 BOB HERMANSON: Thank you.

3 MR. HARNETT: And Don, if you want to move over or
4 get the card over, that would be useful.

5 Our next speaker is Ann Alexander of the
6 Illinois Attorney General's office.

7 We welcome you. You have 15 minutes for your
8 presentation, and then there will be a period of
9 questioning after.

10 I will warn you at a two-minute mark; so feel
11 free and go right ahead.

12 ANN ALEXANDER: Good morning. I would like to
13 start out by saying that the Attorney General very
14 strongly supports the Title V program in principle. We
15 believe that properly implemented it can bring the
16 compliance status of major facilities into full view
17 and facilitate their achieving compliance; and it also
18 provides an essential tool for public involvement: It
19 takes complex and disparate Clean Air Act requirements
20 and makes them accessible in one document, and requires
21 monitoring to ensure that the public is apprised of
22 compliance on an ongoing basis.

23 We think those are all extremely important
24 principles and worth defending.

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20 and makes them accessible in one document, and requires
21 monitoring to ensure that the public is apprised of
22 compliance on an ongoing basis.

23 We think those are all extremely important
24 principles and worth defending.

1 Our concern is that we do not believe that the
2 program's potential is being met here in Illinois. And
3 there are two reasons for that. The first is that
4 severe delays in issuing the Title V permits to some of
5 the worst polluting facilities have -- I would have to
6 say -- gotten out of hand.

7 These facilities that I'm referring mostly to,
8 the largest coal plants in the state, have been
9 pending -- the permits have been pending for nine
10 years. They're at the proposed permit stage.

11 That's one problem.

12 And I think the other what I would characterize
13 as a more serious problem is that the Illinois
14 Environmental Protection Agency has not fully
15 implemented the compliance assurance aspects of Title V
16 despite a lot of evidence of ongoing noncompliance on
17 the part of the applicant facilities.

18 Touching on the first issue regarding timing,
19 we do recognize that tremendous progress has been made
20 in Illinois; a lot of these permits have been issued.
21 We support that.

22 In fact, I would say the vast bulk have been
23 issued.

24 But the problem is the ones -- the permits that

1 have not been issued are for very heavily polluting
2 facilities: They're the coal plants in Illinois.

3 And during the nine years that these permit
4 applications have been pending, the public has been
5 hampered in its ability to assess the compliance status
6 of these facilities.

7 So we -- we think that in and of itself is a
8 significant problem.

9 But as I said, I think the more significant
10 problem is the compliance assurance issue. Essentially
11 IEPA, as I will explain in more detail, has essentially
12 declined to use the full authority that's vested in it
13 by Title V to assess and assure compliance on the part
14 of the applicant facilities.

15 To begin with, we believe it could really
16 hardly be plainer as a legal matter that IEPA has both
17 the right and the obligation to assess compliance and
18 assure compliance in the context of Title V with
19 respect to all applicable Clean Air Act requirements.
20 That really is all over the statute in regulations.

21 Both the federal and the state regulations
22 state that the permitting authority shall have
23 authority to, quote, assure compliance by all sources
24 required to have a permit under this subchapter with

1 each applicable standard, regulation or requirement of
2 the Clean Air Act.

3 And in order to implement that authority these
4 regulations, both federal and state, say that a permit
5 application is not complete unless it contains
6 information, quote, sufficient to evaluate the subject
7 source and its application to determine all applicable
8 requirements under the Clean Air Act in its
9 regulations.

10 Now, to the extent in this application process,
11 once they receive a complete application as thus
12 defined, there is any ongoing noncompliance with any
13 requirement of the Clean Air Act, the applicant is
14 required to submit, again as part of a complete
15 application, a schedule of compliance for sources that
16 are not in compliance with all applicable requirements
17 at the time of permit issuance.

18 All of this -- the emphasis on the
19 comprehensive nature of Title V, and specifically the
20 comprehensive nature of compliance assurance -- is
21 entirely consistent with the legislative history of
22 Title V, which makes clear that all compliance issues
23 should be addressed in the permit.

24 So as far as we're concerned, there's really no

1 doubt about this. I do have written remarks. So I
2 have provided citations -- not that you all probably
3 don't have them all for this.

4 But we think that's important groundwork for
5 the fact that the -- this comprehensive nature of Title
6 V clearly encompasses, we believe, the NSR and NSPS
7 programs, which of course are applicable requirements
8 under the Clean Air Act, to the extent the facility has
9 performed modifications that trigger those
10 requirements.

11 Notwithstanding that, IEPA has specifically
12 declined to address the NSR and NSPS requirements in
13 the Title V permitting process.

14 Essentially what they have done in these
15 Title V permits for the coal facilities that we've
16 looked at is take at face value these applicants'
17 blanket representation that they were in compliance.
18 The applicants said they were; that was taken,
19 essentially put in the permit with the statement that
20 NSR and NSPS did not comply.

21 We believe that at minimum what the agency
22 should have done in this context rather than just
23 taking the representations at face value should have
24 been to first request a list of capital projects that

1 were performed at the applicant's facilities under --
2 during the relevant time period; and secondly, request
3 information concerning the cost and the purpose and the
4 timing of these projects, whatever is necessary to
5 determine whether the projects constituted major
6 modifications that triggered the NSR and NSPS programs.

7 It has really been very clear since the 7th
8 Circuit decision in WEPCO what type of information is
9 relevant to an NSR applicability determination. We
10 believe there's no reason that that information should
11 not have been requested in the Title V permitting
12 process, and a lot of reasons that it should.

13 Now, to the extent any major modifications were
14 found to have occurred based on such information that
15 IEPA should have requested, the agency should have
16 required a compliance plan for meeting the NSR and NSPS
17 more stringent standards.

18 I would provide an example of, you know, what
19 the practical consequences have been of this failure to
20 essentially look at the -- use or take advantage of the
21 compliance assurance function within the Title V
22 program.

23 U.S. EPA Region 5 here has been actively
24 seeking for quite a long period of time information

1 from Midwest Generation through Section 114 regarding
2 the applicability of NSR and NSPS. Now, what there --
3 what they're seeking has not -- they have not been
4 entirely successful in retrieving it, essentially due
5 to the vagaries of the Section 114 process.

6 They have essentially thus far failed to obtain
7 a complete set of the necessary information to
8 determine whether there have been violations on the
9 part of these midwest generation facilities.

10 This circumstance highlights and really makes
11 it all the more important that IEPA fulfill its
12 obligation under the Title V program to request this
13 information; and it really makes it all the more
14 damaging that it has failed to do so.

15 Simply put, enforcement is not an efficient way
16 to gather data on NSR compliance, and the Title V
17 program is.

18 I would mention also in addition to the NSR,
19 NSPS violations which are obviously -- which are sort
20 of front and center in what we have been looking at,
21 there do appear to be other noncompliance issues that
22 have not been addressed by IEPA in the Title V process.
23 Specifically, we've learned through inspection of
24 documents that there have been years of ongoing opacity

1 violations by some of these coal-fired plant permit
2 applicants, yet none of the proposed permits address
3 those violations either.

4 We are mindful in all of this of the fact that
5 evaluation of NSR and NSPS applicability is resource
6 intensive. We're mindful of the fact that IEPA's
7 resources are limited.

8 However, the agency has specifically taken the
9 position at one time or another that it's not legally
10 required to address the NSR and NSPS requirements in
11 the context of the compliance assurance portions of the
12 Title V program. And we believe that's simply wrong on
13 the law.

14 It really needs to be made clear to permitting
15 agencies that their obligation in the Title V process
16 to address all requirements actually means all
17 requirements.

18 Once that is clear, steps should be taken to
19 ensure that these agencies have the resources that they
20 need to carry out their legal obligation.

21 In particular, we believe it would be helpful
22 if first the regions would collaborate more closely
23 with the state permitting authorities to ensure that
24 their efforts to gather necessary information are

1 working in tandem; and secondly, the state authorities
2 should receive, to the extent possible, whatever
3 technical assistance they may need in addressing the
4 complexities of the NSR and NSPS programs.

5 That concludes my remarks. If you have any
6 questions?

7 MR. HARNETT: Thank you. Don van der Vaart?

8 MR. VAN DER VAART: Thanks a lot.

9 That's -- you all are working hard on
10 utilities.

11 Let me ask you a question about that.

12 First of all, just in -- in -- to set the
13 stage, you believe that the Title V permit should
14 define both compliance and noncompliance.

15 Did I -- did I hear that right?

16 ANN ALEXANDER: Well, essentially -- the Title V
17 program essentially as we read it requires that they
18 collect information on compliance. And to the extent
19 there is noncompliance, that must be addressed in a
20 compliance plan.

21 MR. VAN DER VAART: Or once they get their permit
22 in the certification.

23 ANN ALEXANDER: Yes.

24 MR. VAN DER VAART: Okay. Now, the thing as far as

1 the NSA and NSPS questions, is the agency proposing a
2 permit -- I presume they haven't actually issued the
3 permit yet?

4 ANN ALEXANDER: It's a proposed permit.

5 MR. VAN DER VAART: Are they proposing in the app.
6 Permit an applicable shield, saying they are not
7 subject to NSR and NSPS, or are they not including any
8 permits to show compliance for those?

9 ANN ALEXANDER: What they have is a specific
10 statement saying NSR and NSPS do not apply to these
11 facilities. There's no explanation of what goes behind
12 that. It's essentially based on the company's
13 representation; but it's expressed.

14 MR. VAN DER VAART: That's a shield under the
15 504(f) too.

16 ANN ALEXANDER: Uh-huh.

17 MR. VAN DER VAART: And that hasn't gone through
18 Region 5 yet.

19 ANN ALEXANDER: Well, actually there is -- you
20 might have heard about this yesterday perhaps, but
21 there's a lawsuit pending because Region 5 did not
22 object; they were petitioned to object; they did not.
23 And essentially a 60-day notice was filed, and as of
24 two days ago suit was filed by environmental groups

1 concerning that.

2 MR. VAN DER VAART: Had Section 114 letters gone to
3 these utilities prior to the drafting of these permits?

4 ANN ALEXANDER: I don't know the exact timing on
5 drafting. The per -- as I mentioned, the permit
6 applications were back in 1995. So some stage of the
7 drafting may have happened then.

8 The 114s were all from the last two years.

9 MR. VAN DER VAART: Right. But the 114 letters had
10 gone out to these utilities before the proposed permit
11 went down to Region 5 for approval?

12 ANN ALEXANDER: Yes.

13 MR. VAN DER VAART: Oh.

14 MR. HARNETT: Adan Schwartz?

15 MR. SCHWARTZ: Hi. I'm a lawyer with a Title V
16 permitting agency as a client, and I can relate to not
17 being always happy with the way they're doing things.
18 It seems to be your situation.

19 But -- is this on?

20 THE AUDIO TECHNICIAN: It is.

21 MR. SCHWARTZ: My question goes to one of your
22 statements, the statement that enforcement authorities
23 are not as effective as Title V authorities to gather
24 information about NSR violations. I think I -- if I

1 fairly restated that.

2 I've usually had a different point of view on
3 that. So I'm going to ask you to expand on that
4 statement.

5 But first I want to make the observation
6 that -- and this does tend to be fact-specific, so
7 generalizations are hazardous. But the problem I have
8 seen is that when you -- for instance, when you want to
9 put a compliance schedule in a Title V permit based on
10 a perceived violation, you essentially have to put your
11 case together in the record to support that permit
12 issuance. And -- because you're going to be defending
13 that when they appeal it.

14 And that can take a lot of work as well.

15 And it also tends to hold up issuance of the
16 Title V permit.

17 And so what you're doing is you're holding up
18 the issuance of this permit, which is going to be a
19 useful compliance tool for at least for other reasons,
20 and you're holding it up to try to resolve this
21 violation.

22 And so there's -- you know, there's a cost
23 benefit to be examined there.

24 But anyway, if you could expand on your

1 thoughts about enforcement authorities versus Title V
2 authorities.

3 ANN ALEXANDER: Well, I mean, let me just say that
4 my remarks about the effectiveness are based on
5 observations of what's been happening in Illinois and
6 in Region 5, which is that it just has not been smooth
7 or efficient or effective to gather the necessary
8 information through 114. Whether or not that's
9 universal or whether or not it has to be, I think, you
10 know, is arguable. That would certainly be open for
11 discussion.

12 I think what's important to bring it back to is
13 that this -- this is the law. The law does require
14 that all applicable requirements be incorporated into
15 the permit.

16 And our concern beyond the fact that that's the
17 law and we need it -- believe it needs to be complied
18 with, is there is emerging evidence or statements, I
19 should say, in recent court decisions that it may even
20 be problematic if a compliance schedule has not been
21 imposed in the context of Title V permitting, if then
22 enforcement is prosecuted independently.

23 We believe that -- what really should happen is
24 that these tracks should be going in tandem. I'm not

1 suggesting that, you know, the regions no longer send
2 out 114 requests, I'm suggesting that this is not
3 sufficient and that both things should be happening.

4 And yes, it may create some delays, but we
5 don't think that essentially these important compliance
6 assurance requirements should be sacrificed on the
7 altar of speed.

8 I mean, notwithstanding our frustration with
9 the pace of this permitting, we think that that
10 requirement is central enough that it just has to
11 happen.

12 MR. HARNETT: Bernie Paul?

13 MR. PAUL: Do you know how long the process has
14 been involved with the 114 letters and the gathering
15 the information to establish the enforcement cases?

16 And let me get some context about that.

17 Let's just say that process has taken five
18 years to accomplish and you've gotten so far in the
19 process.

20 Would you expect that that same
21 information-gathering process necessary to create the
22 right conditions in the Title V permit so that, you
23 know, you and the source will ultimately agree what the
24 right act determination is and so forth -- how long do

1 you expect that would take in implementing that Title
2 V, and how would you resolve that with your desire to
3 get the permits out more quickly?

4 ANN ALEXANDER: Well, I think to a large extent
5 that really depends on the aggressiveness with which
6 the agencies, both federal and state, pursue these.

7 In this case the title -- I'm sorry -- the 114
8 information process has been in place -- I'm not
9 positive, I'm estimating about two years.

10 It's nowhere near complete.

11 The agent -- the utility has not been providing
12 the necessary information, so it's hard to estimate how
13 long it's going to go on.

14 That having been said, I -- well, I mean, as I
15 just said, I think that there are ways to make that
16 process move faster.

17 I think that, you know, with these tools in
18 hand, 114 and the NS -- and the Title V process working
19 in tandem, you would hope that these could be resolved
20 not instantaneously but not after nine years of delay
21 either.

22 MR. PAUL: Just to follow up -- and you suggest it
23 could be then perhaps more expeditiously through Title
24 V.

1 Does that process assure the source of the same
2 due process that they would be entitled to in an
3 enforcement action?

4 I'm concerned that when you say that the Title
5 V process could be -- can expedite more quickly, the
6 source may not be entitled to the same senses and
7 opportunities to present their case which they were in
8 enforcement action.

9 And so that's something that I'd like to hear
10 your views on.

11 ANN ALEXANDER: Okay. Well, I think -- I mean, you
12 can also break this down into two parts. The first
13 part is the information gathering. That is an
14 independent requirement within the Title V program.

15 There really is no difference for due process
16 purposes whether the information is gathered in the
17 context of 114 or whether it's gathered in the context
18 of the -- of the compliance assurance process of
19 Title V.

20 Once that happens, I think that the question
21 really is not a lack of due process in either context
22 but what the avenue for challenge would be. An
23 enforcement action it's more direct, but there would
24 still be opportunities if necessary to challenge the

1 permit.

2 Arguably the advantage of the Title V process
3 is that there is more opportunity for dialogue with the
4 permitted agency rather than coming at them after the
5 fact. You know, essentially to present them with
6 what's happened, hold the discussion, work it out in
7 the context of the permit.

8 It's a more naturally cooperative process.

9 MR. HARNETT: Richard Van Frank?

10 MR. VAN FRANK: Bob Palzer's had his card up.

11 MR. HARNETT: I'll get to everybody.

12 MR. VAN FRANK: Okay.

13 You mentioned that there's been a nine-year
14 period and there's still no permit.

15 Do you know whether the permit applications
16 have been updated during that nine-year period?

17 And the reason I ask this question is that the
18 permit is supposed to be based upon the application.
19 And the public cannot go in there and comment on the
20 permit very well if the application does not -- if the
21 permit does not really reflect what is in the
22 application.

23 ANN ALEXANDER: That one I'm -- I can only say I
24 have not seen updates to the application. I do not

1 know that they have not happened.

2 MR. HARNETT: Bob Palzer.

3 MR. PALZER: You mentioned your concern with the
4 long timeline getting some of these major facilities
5 permitted. And that's been a general theme both from
6 some of the sources in the length of time it takes to
7 get the permit as well as with the, you know, members
8 of the public who are concerned that sources aren't
9 regulated.

10 Can you suggest any specific ways that this
11 process could be expedited?

12 ANN ALEXANDER: It's a difficult question to
13 answer, because I recognize that to some degree it is
14 based on resources. And I also have to confess that
15 since I don't work at IEPA, I would almost hesitate to
16 offer too many proposals as to how they should adjust
17 their process.

18 My statement is really kind of more general
19 along the lines of nine years is a very long time. And
20 I have to believe that there are ways that this could
21 be moved along faster, although it may well provide --
22 it may well require that more resources be provided to
23 the agency.

24 I mean, as I mentioned in my remarks, I'm well

1 aware and I hear from them very often that they feel
2 that they lack the staff time to carry out what we're
3 asking them to do.

4 MR. HARNETT: Lauren Freeman?

5 MR. PALZER: Actually, could I do a follow up in.

6 MR. HARNETT: Sure.

7 MR. PALZER: This also seems to be a generic
8 problem, and that is that many of these agencies don't
9 seem to have the funds to be able to carry on the
10 program, yet it is a requirement that the Title V
11 program is supposed to gather enough in fees to be able
12 to support the program.

13 Any suggestions along those lines as to what
14 could be done?

15 ANN ALEXANDER: Well, I -- I mean, I think the
16 question of appropriate funding sources is a difficult
17 one.

18 I mean, you've just mentioned one option, which
19 is fees. And honestly, I hesitate to answer that
20 because I have not studied carefully the fee structure
21 of the Title V program. I think that it's important
22 that all options be considered in terms of how more
23 resources can come to the agency.

24 And it's entirely possible that we're not

1 merely talking about funds. It seems to me that a
2 closer working relationship between the regions and the
3 state permitting authorities could also facilitate the
4 process; perhaps not so much with an injection of funds
5 but simply with the resource expertise that I believe
6 sometimes the regions can offer in these situations.

7 And more specifically, it -- it enables them
8 not to reinvent the wheel in the sense that if the
9 region is in fact putting out a 114 request and they
10 have information and they have already begun to look at
11 this question, then that information should be shared
12 collaboratively with the state agency so that they can
13 perhaps take it from there in their
14 information-gathering rather than having to look at the
15 problem from scratch.

16 MR. HARNETT: Lauren Freeman?

17 MS. FREEMAN: I just wanted to get back for a bit
18 on this due-process question.

19 You cited a number of regulations about
20 compliance assurance. And I'm aware of the regulation
21 that would require a compliance plan if a responsible
22 official certified noncompliance. No question there,
23 no dispute about it.

24 But can you cite specifically a regulation or

1 something in the Clean Air Act that would impose a
2 requirement or even the authority to adjudicate a
3 disputed allegation of noncompliance in a Title V
4 permitting process?

5 Or to issue a permit without an adjudication.

6 ANN ALEXANDER: Well, to some extent I think that
7 putting the question that way would essentially make --
8 I mean, what I understand the -- that you're positing
9 is that if there is a dispute regarding noncompliance,
10 then essentially there is, arguably, no longer
11 authority on the part of the permitting agency to
12 certify that.

13 What I -- I would respond that I think
14 essentially what that creates really is an exception
15 that swallows the rule. Because in that situation the
16 regulated entity is pretty much always going to argue
17 that there's controversy over compliance.

18 It's not difficult to find a hook to argue:
19 Yes, we really are in compliance. That would then put
20 these in dispute and essentially leave the agency
21 without authority to determine -- you know, to
22 essentially put noncompliance in the compliance plan or
23 to address it in that way.

24 Essentially we believe it's clear that just

1 given the nature -- well, for example, of the NSR
2 program, but I also mentioned opacity as well -- there
3 are certain requirements that the regulated entities
4 must adhere to. If those requirements have not been
5 met, if there is evidence of noncompliance, the agency
6 is allowed to judge that. They do that all the time in
7 the enforcement context.

8 And yes, there are avenues by which that can be
9 challenged in the enforcement context, and there are
10 avenues that can be appealed in the appeal process; but
11 we don't believe the agency's hands are tied merely by
12 the fact that a controversy has been raised regarding
13 compliance.

14 MS. FREEMAN: Just follow up. I hear you making
15 some policy arguments about what you believe Title V
16 ought to do, but can you cite something that actually
17 suggests that Title V was meant to trump 113 and the
18 procedures that are there to establish violations?

19 ANN ALEXANDER: Well, I believe that what I have
20 cited -- and I -- the citations, as I mentioned, are in
21 my written remarks -- is really very clear. It says
22 that any time there is noncompliance, that
23 noncompliance shall be addressed in a compliance plan.

24 Now, I think what you're arguing is that

1 essentially it's not noncompliance in the sense that
2 you can deal with it in the compliance plan to the
3 extent that there is a controversy. What I'm saying is
4 that's an exception that I don't believe that there is
5 any evidence for anywhere.

6 I think that it's very clear on the face of it
7 that if there's noncompliance, if the agency determines
8 that there is, that that goes into the compliance plan.

9 And I guess I would turn the question around to
10 you and ask for any evidence to the effect that -- that
11 simply raising a controversy, a permitting authority
12 challenging the compliance status essentially wipes out
13 that authority.

14 MS. FREEMAN: Well, I mean, there are procedures.
15 You issue an NOV, you file a District Court complaint.

16 I mean, there are procedures that you use to pursue
17 alleged violations and to adjudicate it.

18 ANN ALEXANDER: And this is a different set of
19 authority. That's one set, and this is a different
20 set.

21 That is really very clear in the regulations.
22 It says to the extent that there are violations that
23 are determined through the permit application process,
24 then those violations need to be addressed in Title V.

1 It's there in the regs, it's there in the
2 statute, it's there in the legislative history.

3 MS. FREEMAN: So you would have all appeals of the
4 agency's determinations of violations through Title V
5 go through the state court permit appeal process?

6 That's what you think the Clean Air Act
7 contemplates?

8 ANN ALEXANDER: Yeah; I mean, there -- there are
9 ways in which these could ultimately -- yeah; I mean,
10 whatever the permit appeal process is in the state
11 court, that's where they should go.

12 MR. HARNETT: We're going to probably run a little
13 long with this questioner, but we're ahead of schedule.
14 So that's why I allowed the exchange to continue there.

15 Shannon Broome?

16 MS. BROOME: So I -- I just want to understand:
17 Has there been a determination of noncompliance?

18 ANN ALEXANDER: No; because they don't have the
19 information sufficient.

20 MS. BROOME: So there's been no determination of
21 noncompliance. And that's part of your concern
22 with -- Illinois EPA has not made one.

23 ANN ALEXANDER: Well, no, it's beyond that. What
24 they've done is they've made a determination of

1 compliance without any information.

2 MS. BROOME: Okay. So let's -- okay. So there's
3 been no determination of noncompliance.

4 And without any formal determination of
5 noncompliance, you would agree that there's no basis
6 for a compliance schedule; right?

7 ANN ALEXANDER: Well --

8 MS. BROOME: Without a determination.

9 ANN ALEXANDER: There's no basis because they
10 haven't looked for a basis. The company said we're in
11 compliance, and they said we believe you.

12 MS. BROOME: Let's take your premise and assume
13 that they were to put a compliance schedule in the
14 permit.

15 Are you aware that permit terms are not stayed
16 and so that they might put in that you have to install
17 the BACT or LAER or whatever, and a company could be
18 forced to be installing these controls while it was in
19 the appeal process on the permit, and that that would
20 be a different approach than has typically been taken
21 under any kind of enforcement regime?

22 ANN ALEXANDER: Well, I think it's an argument for
23 expediting the permit -- the appeal process. But
24 again, I come back to the fact that the

1 requirements -- that it really is required to be
2 encompassed in Title V. And our concern is that
3 enforcement might even be jeopardized if it's not put
4 in there.

5 MS. BROOME: How so?

6 ANN ALEXANDER: Well, what I'm saying is there have
7 been suggestions in Court decisions that it could be
8 problematic if a requirement is not put in the Title V
9 permit.

10 MS. BROOME: Okay. I would just submit to you that
11 the regulations are absolutely clear that there is no
12 permit shield for things that occurred prior to the
13 issuance of the Title V permit. So there would be no
14 shield. There just wouldn't be.

15 And --

16 ANN ALEXANDER: I hope the Courts are wrong.

17 MS. BROOME: I would be interested to understand
18 how the Title V permit process could be read to
19 supplant the enforcement system that's been in place
20 for 20 years.

21 ANN ALEXANDER: And I don't think it's a question
22 of supplanting the enforcement system. It is really --
23 the law is clear that they can work in tandem and that
24 this is one way in which information is supposed to be

1 gathered.

2 It's -- that the language really is very clear
3 that they're supposed to gather information on
4 compliance with all applicable requirements. And to
5 the extent noncompliance turns up, it's got to go in
6 the permit.

7 Now, I think we can argue about the
8 policy/procedural complications of that requirement,
9 but it just doesn't change the fact that it's a
10 requirement.

11 MR. HARNETT: John Higgins?

12 MR. HIGGINS: Thanks.

13 I'd like to offer a couple observations and ask
14 a question.

15 New York we're quite fortunate that the DEC and
16 the attorney general's office kind of are on the same
17 page. Because we sue all you guys all the time.

18 But anyway, when we were starting to do our
19 Title V program, we had what we perceive as NSR issues
20 with several of the utilities. And we had to ask
21 ourselves the question what's the best way to proceed.

22 And in New York we -- the accused has
23 significant rights in negotiating the settlement to an
24 NOV.

1 And I originally thought it would be a really
2 cool idea to put a compliance plan in their Title V
3 permit and say have a nice day.

4 Well, both our lawyers and the attorney
5 general's lawyers said nice try, but that's not going
6 to work. And what we chose to do is in the body of the
7 permit language reserve our rights to carry out
8 enforcement for past violations. And we have been in
9 negotiation with several utilities for years now on
10 opacity violations and PSD violations; and we're almost
11 at the end of the road.

12 But we preserved our rights to prosecute, for
13 lack of a better word, and issue the Title V permit
14 kind of concurrently. So the utilities were the guys
15 we did first because we thought they were -- you know,
16 they have the biggest tonnage coming out. And that was
17 our choice.

18 I'm not sure why Illinois EPA's decided
19 otherwise. And I had a question if only I could
20 remember -- Oh. Now I remember.

21 Do you have any authority under Illinois state
22 law to either sue your sister agency or in some other
23 way force them to proceed along the lines that you
24 would prefer they proceed?

1 ANN ALEXANDER: We would ultimately have that
2 authority. We hope it does not come to that. But that
3 would be a possibility.

4 You know, I would also remark that while I
5 think -- you know, we -- we could perhaps differ
6 regarding the approach I'm proposing and what you've
7 done, I think what you're describing that the New York
8 DEC has done is a far cry from what Illinois IEPA did.
9 Because essentially EPA just made the blanket statement
10 they're in compliance. And that's what we really have
11 the most significant problem with.

12 Had they reserved right, I don't think that we
13 would like it as well as what we're proposing, but at
14 least there would have been some recognition that the
15 appropriate investigation has not been done.

16 MR. HARNETT: Kelly Haragan?

17 MS. HARAGAN: I just wanted to ask another question
18 to kind of clarify on this due-process issue and see if
19 you agree that there's -- there's kind of two separate
20 issues here.

21 One is the agency's obligation to issue a
22 permit that assures compliance with all of the core
23 requirements, and that that's why they need to have
24 provisions in that permit to assure that going forward

1 the source is in compliance with all requirements
2 including new source review and NSPS; and that agencies
3 do that all the time, they make decisions what to put
4 in a permit, and all the time industry disagrees with
5 it, and that's resolved through the permit process.

6 But that's a separate issue from determining
7 liability for past violations; which if that's going to
8 happen, that still goes forward through a separate
9 track which has the due process rights it always has.

10 I just don't see this as being very different
11 from -- there are bigger issues and bigger expenses
12 with companies; but the agency issues permits all the
13 time that industry disputes what's in it, and that's a
14 part of the appeal process.

15 ANN ALEXANDER: I think what you're saying is
16 basically true. The complication of course when you're
17 dealing with the NSR program is you just want to get
18 your terms straight: What's a past violation, what's an
19 ongoing violation. In the NSR context, the failure of
20 a permitted entity to do something in, you know, 1980
21 is an ongoing violation.

22 So I would not call that a past violation.

23 But, yeah, to some extent if you're dealing
24 with -- you know, if they had an opacity violation in

1 1980 and it ended, that's -- you know, that's a
2 slightly different procedural situation.

3 MR. HARNETT: Bernie Paul.

4 MR. PAUL: I'm thinking about what is the most
5 effective and efficient way to handle this issue. And
6 if I understand what you've posited, or your -- the
7 approach that's got to be taken, I'd like to hear your
8 views on whether or not you think this scenario would
9 actually play out.

10 The state determines that the source is not in
11 compliance with NSR and puts a compliance plan in the
12 Title V permit. And the source doesn't agree that they
13 were not in compliance, and so they appeal the process.
14 And that takes a couple of years to resolve, if that
15 long.

16 And ultimately the Court says, we agree there's
17 a controversy over whether or not this was an actual
18 noncompliance situation, so this should be handled
19 through enforcement action first.

20 How does that -- do you think that that
21 scenario is likely?

22 And do you think that that adds to the
23 efficiency of the program giving Title V permits out?

24 ANN ALEXANDER: I think the scenario is likely only

1 to the extent I -- you know, I think the courts are
2 sometimes wrong. I'm not saying a court wouldn't do
3 that, but what I think is the more appropriate
4 scenario, and what genuinely is the more likely
5 scenario is that a court would evaluate what the agency
6 has done, and as courts always do in these situations
7 where they're evaluating an administrative decision,
8 they would determine based on whatever standard of
9 review was in place whether the agency's decision was
10 appropriate.

11 And if they looked at it and said the agency's
12 decision was an abuse of discretion or arbitrary and
13 capricious, or whatever it is that applies, then they
14 would send it back to the agency. Otherwise they would
15 affirm the decision.

16 I -- I don't think it's likely that they would
17 turn it over to a completely different division of the
18 agency and say you have to divide it -- decide it this
19 way. I don't think the courts generally interfere in
20 agencies' processes to that degree.

21 MR. PAUL: And so do you think that that permit
22 appeal process provides the source with the same
23 opportunities to contest the -- the noncompliance claim
24 of the state?

1 ANN ALEXANDER: Essentially. I mean, it's a
2 different path to take it up. And they -- you know, I
3 can't argue that the permitting -- the permitted
4 authority might not have preferences as to which avenue
5 of challenge they take; either more direct route from
6 enforcement, or a more -- or the permit appeal route.

7 But sure, it's simply a different way to take
8 it up.

9 MR. PAUL: My -- and here's my due-process concern.
10 And that is that the appeal of the Title V permit in
11 reviewing the body, whether it's an administrative law
12 judge or court, is basically going to look at whether
13 or not the state abused its discretion or was arbitrary
14 or capricious, those types of standards which are
15 highly deferential to the agency's opinion.

16 The determination of compliance or
17 noncompliance is really -- I think in a civil action
18 it's the more likely than not standard that that
19 actually occurred.

20 So to me -- I'm not a lawyer, I'm I just play
21 one on TV -- I see this approach as reducing the
22 sources's due-process rights.

23 ANN ALEXANDER: First of all, the standards I do
24 not believe are different. Essentially courts do defer

1 to agency determinations; and we believe that's as it
2 should be in the sense that agencies tend to know more
3 about matters of, say, new source review than a court
4 does.

5 That having been said, the -- assuming
6 hypothetically that in one forum there would be a
7 slightly different standard of review that applies,
8 that is not a due-process issue. One does not look at
9 a standard of review and say, well, the Court is
10 scrutinizing this less closely, therefore 14th
11 Amendment due process has been violated.

12 The 14th amendment just doesn't go to issues
13 like that.

14 MR. HARNETT: I'm going to freeze it at the current
15 card setup. And I have one question before I go to
16 Adan.

17 I'm -- hypothetically, I'm assuming Illinois
18 EPA did not send letters on capital projects to any of
19 its other Title V sources and yet has issued final
20 permits.

21 Is it your interpretation that those sources,
22 now that they've been given a Title V permit that says
23 they were in compliance with all provisions, that they
24 are now absolved of any previous actions by the

1 Illinois EPA?

2 ANN ALEXANDER: I -- I think, unfortunately, that
3 would be a fair reading of it. I don't know that
4 that's actually the approach that IEPA is going to
5 take. That has not been made clear in our discussions
6 with them.

7 I don't think -- I mean, I think it's a legal
8 matter. One would hope, again, with the caveat that
9 you don't know exactly what courts are going to do, I
10 think that the correct approach would be, yes, you
11 could continue enforcement against these entities.

12 However, I think that this creates a danger
13 that there are going to be hurdles to that.

14 I would also mention that the permits are
15 proposed, they're not actually final, the ones where
16 this finding has been made of compliance.

17 MR. HARNETT: Adan?

18 ADAN SCHWARTZ: This is going to be more of a
19 comment than a question, although feel free to respond.

20 First of all, I agree with you on two things;
21 one is that I think Title V authorities who deal with
22 noncompliance and enforcement authorities who deal with
23 noncompliance are intended to exist in tandem, and
24 neither displaces the other.

1 The second thing I agree with you on is I agree
2 it's problematic if Illinois is making findings of
3 compliance and issuing these permits if there's any
4 question about that.

5 At my agency we routinely get comments directly
6 to us from the public -- Marcie Kever knows this very
7 well, because she's written some of them -- making
8 allegations of noncompliance with NSR; and we
9 usually -- whether we agree -- putting aside whether we
10 agree with any specific allegations, we usually take
11 two positions. One is that we're not obliged to go out
12 and find facts and resolve those before we issue a
13 Title V permit. The law aside, from a policy
14 standpoint that would tie us up horrendously.

15 And the other is we're very careful to preserve
16 our enforcement rights so that -- so that hopefully the
17 Title V permit isn't going to hamper us later.

18 And the last thing I want to say is I think
19 there are important generic issues raised by what
20 you've brought to us today, and so I wanted to thank
21 you for -- for coming here and heightening our
22 sensitivity to these issues.

23 ANN ALEXANDER: Thank you. And I guess my response
24 would be similar to - it was to the gentleman from

1 New York, DEC, which is, while I think we might
2 disagree on exactly what the appropriate execution is,
3 I think what you're doing is a significant step beyond
4 what Illinois EPA is doing.

5 MR. HARNETT: Thank you very much for both coming
6 in and putting up for -- with some extended
7 questioning.

8 It's been very helpful to us.

9 ANN ALEXANDER: Would you like a written copy of
10 this?

11 MR. HARNETT: If you could leave it with Graham
12 right at the corner, that would be good.

13 Our next speaker is Susan Zingle of the Lake
14 County Conservation Alliance.

15 SUSAN ZINGLE: Good morning.

16 MR. HARNETT: Good morning. You will have 15
17 minutes for your presentation or talk part of it, and
18 as you get 2 minutes left, I will give you a warning.

19 SUSAN ZINGLE: Okay. Thank you so much. I will
20 caution you, I have nowhere near as technical as the
21 prior witness; but I bring a very interesting
22 perspective, and that is one of the public who's been
23 dealing with this for about the last four years.

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20 caution you, I have nowhere near as technical as the
21 prior witness; but I bring a very interesting
22 perspective, and that is one of the public who's been
23 dealing with this for about the last four years.

24 Lake County Conservation Alliance is a

1 grassroots environmental group in, not surprisingly,
2 Lake County, Illinois. We have been around for about
3 ten years, and we -- we look at a number of
4 environmental issues including transportation, land
5 use, open space, water, air quality, and so forth.

6 Our interest in -- in permitting began when
7 Illinois deregulated its electric generating industry,
8 and we had natural gas-fired peaker plants literally
9 coming up on every street corner, as the EPA said, just
10 like McDonald's. There was just -- at one point there
11 were 96 applications for construction permits
12 outstanding.

13 And there were just communities and
14 neighborhoods all over the -- particularly the
15 Chicagoland area that were just confused and outraged
16 and didn't understand what was going on.

17 So we started attending hearings and over the
18 course of time became much more educated.

19 Well, once you get past the construction
20 permit, down the road comes the operating permit. And
21 we did attend the beginning training in St. Louis
22 followed by the advanced training in North Carolina.
23 So we do have some -- although I'm still -- consider
24 myself a layperson, I do have an understanding of the

1 basic tenets of what goes on in a permit.

2 We are fortunate to have a fairly good working
3 relationship with individuals at the IEPA; we actually
4 had a retirement party for one of the hearing officers;
5 the permit writers laugh when they see us pull into the
6 parking lot for a hearing. We know before we even go
7 in what we're all going to be saying.

8 But that individualized good personal
9 relationship doesn't seem to transfer into a good
10 institutional relationship. There is still an
11 institutional mindset, as far as I can see, that wants
12 to be obtuse, that wants to block information, that
13 wants to make this difficult.

14 If I can understand this, it's not difficult.

15 There is a benefit to both of industry and the
16 public in having a good, clear, understandable permit.

17 If I can't understand what's in a permit, how
18 can a 27-something-year-old engineer sitting at a power
19 plant that's got to fill out the forms understand what
20 he's doing or how it could work out?

21 If he looks up and see yellow smoke when he's
22 supposed to see white, or it's more opaque than it's
23 supposed to be, the only thing that's ever going to
24 happen is he's never going to look up again, because

1 he's not going to know what to do with that information
2 or what the impact of that is.

3 We would like to -- we would like to work to
4 resolve some of those things.

5 I think one of the most important issues for
6 any person that wants to read a permit is what in
7 Illinois they call a project summary, or I think more
8 officially is the statement of basis.

9 What is going on here?

10 How many turbines, how many generators, how
11 many megawatts, how is it fired?

12 Can it burn oil; does it burn gas; does it burn
13 garbage; does it burn coal?

14 What is going on here?

15 Most of the time we can't tell.

16 It may say that it's a generator, but it won't
17 say how many megawatts or won't give you any details on
18 what the fuel is.

19 They have a very rote format, and they plug in
20 the name of the plant, and they plug in the location;
21 and that's it.

22 And by the way, I am on the mailing list, so I
23 get every single public notice considering air issues
24 that the IEPA sends out. Believe me, I know what they

1 say.

2 So I would like to see, first of all, the
3 factual information, the listing of permit, the
4 attainment status, the construction and permitting
5 history. Is there a compliance history; has it been
6 inspected; are there other violations; should the
7 neighborhood be concerned about this?

8 And any corrective actions that may have been
9 taken. Because that is exactly what the public is
10 interested in. But the IEPA doesn't provide it.

11 Having all the requirements in one document as
12 opposed to a whole laundry list of old state operating
13 permits certainly has got to be an advantage to
14 everybody.

15 You'd lose the opportunity for conflicting
16 permits, for contradictory permits. And it's -- or for
17 losing a permit.

18 How do you know how many are out there?

19 I chase NPDES permits too, and they do it
20 fragmented, and you never know if you've got them all.

21 One permit in one place, even though it may
22 become massive, I think is a good thing.

23 We think on the whole that the IEPA agrees with
24 us. At -- at a hearing for the Title V permit for an

1 Aurora gas-fired peaker plant, he -- Jim Ross, who was
2 acting manager of the permit section, stated:

3 Now, these Title V permits are very detailed in
4 scope as compared to the previous state operating
5 permits. They have considerably more conditions and
6 requirements than were found in our previous permits.
7 Industry might not like that, but it's very reassuring
8 to the public.

9 But at a different hearing, Mr. McCluskey,
10 who's vice president of technical services for Midwest
11 Generation said:

12 We fully support this process and the
13 implementation of the Title V process as a means to
14 further -- to improve air quality within our
15 community and provide additional community as well as
16 regulatory oversight of our operations.

17 So if industry agrees and the EPA agrees, what
18 are we fussing about?

19 Some practical things that would make it easier
20 for us all, the FOIA process. If -- if we had more
21 information upfront, we would have to FOIA less; which
22 would save everybody time.

23 One of my first experiences with a permit --
24 and again, it was a construction permit, but I think

1 the process is the same -- the FOIA would have cost me
2 \$150 and could not have been delivered until after the
3 close of public comment.

4 And all I was asking for was the application.

5 It shouldn't be that hard.

6 So then I had to go to the public hearing and
7 have a hissy fit and have the hearing officer extend
8 the length of public comment until I could get my FOIA
9 fulfilled. But then the people at the hearing didn't
10 hear my comments as a result of getting that
11 information.

12 So the whole process came unglued.

13 If it -- if it -- the background information to
14 the permit is important. Make one more copy and put it
15 at the library.

16 Put it on a CD. Put it on the Internet. Don't
17 make me FOIA it.

18 What is -- unless there's something in there
19 that you don't want me to see, which is always -- I
20 have been doing this work now for ten years; that's
21 a -- paranoia is my first reaction. And it only makes
22 me dig further.

23 The cost of the FOIAs is prohibitive. And I
24 don't think necessarily benefits the EPA. I will tell

1 you the standard that I refer to is Kinko's. They're
2 open 24 hours a day, 7 days a week. They pick up, they
3 deliver, they do it while you stand there. And they do
4 it for 7 cents a page.

5 So if the EPA's got to charge me a quarter a
6 page, or God forbid 50 cents a page, it's obviously
7 deliberately obstructive. You're not supposed to be
8 making a profit on this. I don't mind maybe helping
9 you recoup your costs, but I do mind having it become
10 fiscally impossible for us to do this; particularly
11 while at the same time the EPA was not charging fees to
12 the industry for all these construction permits that we
13 were all running around working on.

14 So the industry gets a big free ride, but I
15 have to pay for my FOIAs. There's something wrong
16 here.

17 Another -- another suggestion on the FOIAs
18 would be they'll tell us, well, if you don't want to do
19 that, you can come to the office and read it.

20 I live in Wadsworth, Illinois, up by the
21 Wisconsin border. Springfield is a good solid four
22 hours away. And then I have to get there just during
23 business hours, which means I have to leave my entire
24 day's work to go down there to read a file and -- and

1 to pick those pages that I want copied.

2 I've done it. I've done it on more than one
3 occasion, sometimes driving down and back in the same
4 day. But it -- it leads to a confrontational attitude
5 that you really don't want me in that kind of mood when
6 I'm coming to the public hearing.

7 You know?

8 Let's all be nice here.

9 Okay. Public notice is -- is a lot the same.
10 People are very concerned about what goes on near them;
11 and they are inherently suspicious of something that --
12 that -- a big plant that may make noise or may emit
13 things near them. So the newspaper ads as opposed to
14 the legal notices are a very good thing. And the
15 bigger they can be, the better.

16 But there's been a new trick coming on where
17 they'll list several projects in one notice. And I
18 think that that is confusing and unfair; because you
19 may read the top line and not realize that your project
20 is farther down the list. Each one deserves its own
21 notice and its own explanation of what's going on
22 there.

23 I think the IEPA still may be a little
24 concerned about the intensity of public comment. When

1 all those speak peaker plants were going on, they were
2 contentious, and we went to hearings that routinely had
3 3- and 400 angry people. And the hearings routinely
4 went on until eleven o'clock or midnight.

5 Well, so now it comes time for the Title V
6 permit, all those people had to sign in to get into
7 that hearing.

8 As a follow-up, did the EPA go back to those
9 people and say, okay, this plant's been running now for
10 a couple years and we've got its Title V permit, why
11 don't you come to the hearing and let's talk about it?

12 No. They did not. Do they go -- do they get a
13 GIS map or go to the tax assessor's office and look at
14 the PIN numbers and get those properties that are

15 closest to the plant?

16 No.

17 One of the things that they did during the
18 construction permit phase, they would schedule the
19 hearings on the night that the village board meets.

20 So local officials who need to know what's
21 going on or may have questions to ask are denied that
22 opportunity.

23 We raised all kinds of grief. And when they
24 did the Title V permits, they did it again.

1 They have scheduled hearings on religious
2 holidays. So the church across the street has 400 cars
3 in the parking lot, and two or three of us are sitting
4 over at the Title V hearing.

5 Those people want to know. They should be both
6 places.

7 And at some point -- those kinds of things have
8 happened often enough that it's -- it's not an
9 accident. At the very least they are just simply
10 refusing to look at the outside elements if not
11 deliberately scheduling around them.

12 Scheduling in meeting rooms that don't have air
13 conditioning in the middle of August. Ah, come on, you
14 know. What does it take?

15 And these are the people that I like.

16 You should see when I'm angry.

17 We need a dedicated community relations
18 officer. I can understand that an engineer or a permit
19 writer who -- whose head -- first of all, he's an
20 engineer, he's a technical person, and his head is into
21 chemicals and percentages and standards -- isn't going
22 to necessarily want to deal with an angry citizen. Nor
23 should he have to.

24 But the community relations officer needs to

1 remember who he serves; that it is his job to serve the
2 community and, difficult as it is, bridge that gap
3 between the technical people and the laypeople, who
4 have every right to know what's going on.

5 The one thing I will praise the EPA on, that
6 they are generous with their public hearings. During
7 the peaker-plant process they just made a blanket
8 decision that they were going to have hearings on all
9 of them. And although that's dwindled somewhat now
10 that the crisis is over, normally if we want a hearing,
11 we get one without any kind of fuss. And I would
12 encourage everybody else it take that model.

13 Jim Ross, who was an acting permit manager,
14 said:

15 And now some comments on tonight's hearing. We
16 are here to provide you with information and, perhaps
17 more importantly, to listen to your comments and
18 concerns. Your comments can and do often affect the
19 content of the permit or even the final action that is
20 to be taken on the application. So please make your
21 concerns known to us.

22 That's exactly right. Couldn't have said it
23 better.

24 Now all we have to do is make sure that they

1 mean it.

2 Some technical things that have come up with
3 Title V permits that did impact us, one is
4 streamlining.

5 I am all for streamlining.

6 Let's make everything as quick and easy as we
7 can. But let's identify what we took out. Let's not
8 use streamlining as an excuse to gut regulations out of
9 existing permits and make us proofread every single
10 line of every single permit to find what was changed.

11 We're not sure that the monitoring in the Title
12 Vs are adequate. And one -- for one example, the
13 Illinois EPA shall consider the use of other coal as
14 base fuel if acceptable monitoring data has been
15 submitted by the permittee or a compliance stack test is
16 submitted to show particulate matter compliance.

17 We don't know how or where that federal
18 requirement is covered in the Title V permit.

19 We have concerns with people, we have plants
20 that burn both oil and gas, and we would like to know
21 -- and in the bigger coal-fired plants it's just
22 amazing what comes out of there.

23 We want to know -- we had a real difficulty
24 with cluster permitting. There were so many peaker

1 plants that came together, but they came out over time.
2 When it came time to do their Title V permits, they
3 issued them all within a two-week period.

4 So they had been writing permits over a period
5 of months, which we never saw. And they all came out
6 in a lump. All following the same format. So that if
7 we had concerns or questions, we could get a hearing on
8 one, but the others went through wrong, in my opinion.

9 And there wasn't a thing we could do.

10 Is that deliberate?

11 Yes, of course it's deliberate. It makes me
12 angry.

13 Same thing with Title V permits. They issued
14 several for major sources in a narrow geographical area
15 within a couple of days.

16 We can't read them all: They're complicated.
17 And the public isn't going to go to that many hearings
18 in a short period of time. And yet they deserve -- if
19 you've got industrial area, we have got a coal plant,
20 we have a sludge incinerator, we have peaker plants, we
21 have domestic plants, we have all of that. Don't lock
22 us out of being able to talk about them all.

23 Concurrent permitting. We're not sure how many
24 states do it. But it seems to mean that the public

1 comment period in the 45-day EPA review period start at
2 the same time.

3 So if we catch something, we only have a very
4 small window to let the EPA know, and by the time we're
5 done, nobody knows which version of which permit the
6 regulations are in that we're talking about.

7 I understand that that process may be approved,
8 but we strongly discourage it.

9 We had an argument in the past with the EPA
10 over missing Title V permits. And well before I was
11 involved there was a consent decree signed that the
12 Illinois EPA would catch up to date on all its Title V
13 permits by a certain date. But it didn't say "all," it
14 said there's this many outstanding and there's this
15 many yet to go, so by this date, you'll have them all
16 done.

17 Well, stupid us, we didn't specify that it had
18 to be the old ones first. So they took all these new,
19 actually easier to do, cleaner peaker plant permits and
20 counted them as part of their total in the Title V
21 update. And so the old coal-fired power plants that
22 didn't have Title Vs back then, still don't. But
23 technically they've agreed they've complied with the
24 consent decree.

1 That's dirty pool. Don't make us chase you.

2 We also notice that the tend -- the tendency is
3 to support industry. Which in a way I can understand.

4 But they were talking about money earlier.
5 During the peaker-plant craze they had 96 applications,
6 and they were issuing construction permits like one or
7 two a week.

8 Because the plants cannot begin to operate --
9 they can't even break ground without a construction
10 permit. So God forbid let's not delay industry, let's
11 get those shovels in the ground.

12 They can, however, continue to operate without
13 an operating permit, as oxymoronic as that sounds.

14 And so the Title Vs were put off because the
15 plants were running. It was fine with the EPA. The
16 fact that there was no compliance mechanism out there,
17 how do you prove that they're emitting the wrong stuff
18 if they don't have a permit?

19 The other thing for this is they can charge
20 fees for the Title V permit, they cannot for the
21 construction permits. So they did all of this on the
22 back of the taxpayers. And I resent that too.

23 And I had one or two more things, but that's
24 fine. Thank you.

1 MR. HARNETT: Shannon Broome?

2 MS. BROOME: Thanks for coming today.

3 SUSAN ZINGLE: Thank you.

4 MS. BROOME: So I -- I was interested -- I've done
5 a little bit of permitting in Illinois. And -- and I
6 share some of your concerns; although I don't have the
7 depth of experience that you do.

8 But have you looked at any of the other state
9 Web sites and seen, you know -- you mentioned as CD or
10 Internet access. And I was just wondering if you had
11 seen like Indiana's Web site and thought that would be
12 really helpful to you or --

13 SUSAN ZINGLE: We had seen Indiana's Web site. I
14 was also looking even at citing regulations and things
15 in other states at the time.

16 And there are individual -- I would have to go
17 back and actually -- which I'm happy to do for you,
18 make a list of those things that we thought were
19 helpful.

20 One of the things that Illinois does well is
21 they do have a permit database on the Internet. So I
22 don't have to call and FOIA a copy of the permit, I can
23 go on line and look at it.

24 MS. BROOME: You can get that.

1 SUSAN ZINGLE: I can get that fairly easily; and
2 it's got to save the EPA time.

3 The down side is they don't necessarily put
4 every permit out there. So if you're concerned about
5 permits overall and you want to scroll down the list,
6 and you think it's all okay, there may be permits out
7 there that are not on the Internet which you don't know
8 about.

9 Which becomes -- when you get to a Title V or
10 you're doing an air modeling and you want to know
11 what's surrounding you within the ten miles, you may
12 not be able to find them all.

13 MS. BROOME: And this is more of a comment of
14 agreement on -- that your comment about how brief the
15 descriptions are. And in Illinois they actually are
16 remarkably brief compared to other states. Other
17 states don't have three pages on it, but they do
18 provide, you know, it burns oil and gas, it's --
19 however many hours of watts, or the capacity of the
20 reactor or whatever.

21 SUSAN ZINGLE: Right.

22 MS. BROOME: You know already, but I'm just saying
23 that I -- I think maybe some other state models might
24 be something that we could recommend to try and spread

1 best practices there.

2 SUSAN ZINGLE: And there's a question of whether it
3 even meets the regulations requiring a statement of
4 basis if all you have is a project summary which says
5 the plant's on East Harrison Street in Rockford; is
6 that really complying with the law.

7 MR. HARNETT: Kelly Haragan?

8 MS. HARAGAN: I had a question about something I've
9 experienced trying to get documents from an agency.
10 And I don't know if it's a common problem. I want to
11 see if you had encountered it.

12 When I'm at a distance from, you know, where
13 the documents are located and I'm trying to get things
14 mailed to me rather than going and looking through the
15 files, I'm sometimes told that the agency won't go
16 through the file and pull the document I'm looking for,
17 that my option is either to copy the whole file or to
18 travel and look through the file.

19 And I was wondering if you ever get that
20 response, or if they'll actually go through and pull
21 what you're looking for.

22 SUSAN ZINGLE: I've never had that particular
23 situation. And again, it comes down to good working
24 relationships. The young lady at the FOIA department

1 at IEPA has turned herself inside out, including coming
2 in early in the morning and meeting me in the parking
3 lot because I had meetings and I had to have
4 information; and she was willing to come in early and
5 hand it to me.

6 It goes back to the institutional idea. Even
7 when I read through the whole permit and -- there were
8 events and there were conversations between the agency
9 and the -- and the industry; and I realize when I get
10 home, gee, there was stuff missing. So it's not a
11 matter that they won't give it to me, they just don't
12 put it in the file in the first place, and then they
13 deny it exists.

14 And then when we start to escalate and it
15 starts to get tense and they start to threaten, oh,
16 then magically they find it, but maybe we can't have it
17 because it's a trade secrets.

18 Well, excuse me; what trade secrets exist these
19 days about peaker plants?

20 How complicated is a natural gas simple cycle
21 turbine?

22 There are no trade secrets.

23 So they started denying things like what
24 turbine is it; is it a GE mainframe?

1 Now all of a sudden they won't tell us.

2 Is it an aero-derivative?

3 They won't tell us. And we have to dig into
4 the detail to start to find that stuff out.

5 You know, stop wasting everybody's time. I'm
6 going to get the information; give it to me the first
7 time I ask.

8 MR. HARNETT: Bernie Paul?

9 MR. PAUL: Thank you for your comments. I think
10 they are very helpful, and the constructive way you
11 presented them is helpful too.

12 I have two questions. One deals with your
13 concern about the concurrent permit review, the
14 overlapping public comment period, and the EPA 45-day
15 review period.

16 I'm familiar with this in a couple other
17 jurisdictions, and it's my understanding that if there
18 are any public comments received, whether from the
19 source or from the general public, that that sort of
20 presses the pause button on the EPA 45-day review
21 period, and that pause button isn't pressed again to
22 restart it until the agency has addressed those
23 comments.

24 Is that how the process works in Illinois?

1 SUSAN ZINGLE: I'm -- I think Verena would like to
2 answer that.

3 MS. OWEN: I think I can answer that in ways and
4 even Susan can.

5 It is now. In the beginning there was still
6 another deadline or IEPA was showing a deadline to make
7 sure the number of permits they agree to issuing we had
8 straight concurrent permitting.

9 Now we have a gentleman's agreement -- and it's
10 all it is; there's nothing in writing -- that the
11 minute they get a public comment, we will have sequence
12 permitting.

13 But this is only since beginning of this year.
14 In the past, yes, we had concurrent permitting.

15 MR. PAUL: I know in Indiana they have the
16 Memorandum of Understanding between the IDEM and U.S.
17 EPA that put that in effect. So I think that Illinois
18 had a similar document.

19 The other question I have for you, you made a
20 comment about the source being able to construct with
21 its construction permit and then being able to operate
22 without operating permit. And you had some concerns
23 about that.

24 Do the construction permits that the sources

1 are issued contain operating requirements that once
2 they are put into motion or they begin emitting, that
3 they have to meet emission limits and other operating
4 standards?

5 SUSAN ZINGLE: Well, they do. They do. They'll
6 have a total limit on the amount of emissions that come
7 out or a total limit on hours, or they will have some
8 of that. But there's a lot more reality to an
9 operating permit about who can challenge and what has
10 to be reported.

11 The Title V permits are much more detailed, and
12 the Title V permits come after the testing. The
13 construction permit is written on estimates. Which I
14 don't even -- don't want to go into that.

15 But it's pure natural gas, it's pretty easy.
16 But when it's a sludge incinerator and you don't even
17 know what's in the sludge, that's a little bit
18 trickier.

19 MR. PAUL: I guess my question is did the
20 construction permits that are issued contain all the
21 applicable requirements?

22 Again, in my experience in different -- a few
23 different jurisdictions, every construction permit we
24 get looks like a Title V permit except it has --

1 SUSAN ZINGLE: Not in Illinois. Not in Illinois.
2 The construction permits -- we've had instances
3 where -- where I live up north, we're right at the
4 Wisconsin border. And a simple cycle natural-gas-fired
5 plant that was built in Wisconsin had 119-page permit.

6 So the next time a source wanted to build a
7 peaker plant, they came over the border into
8 Wisconsin -- or into Illinois, and they built a plant
9 that burns both natural gas and oil, and I think the
10 permit was maybe 10 pages.

11 No; they are very, very high level. Very high
12 level.

13 Enough to agree that maybe the plant could be
14 built, that it's likely to be able to meet the
15 standards, but not -- but I wouldn't go to the bank on
16 it.

17 And I think there's -- there's legal
18 ramifications about who can enforce it and how it can
19 be enforced from just a construction permit versus an
20 actual final operating permit.

21 MR. HARNETT: Bob Palzer?

22 MR. PALZER: Thank you very much for coming. You
23 made a lot of excellent points; and certainly had a
24 number of experiences that I've had over the years.

1 One of the items that is of great concern to me
2 that you mentioned -- and I'm not sure you're going to
3 have a -- a suggested fix, but I think that some of the
4 committee should look at -- and that is what
5 information is truly proprietary information that there
6 is a justified reason for that not being made available
7 as compared to information that is withheld that really
8 rightfully should be there so that not only -- well,
9 that the public can give the oversight that helps in
10 the permitting process.

11 Do you have -- want to make any comment?

12 I -- you don't -- you may not have an answer.
13 But it is a concern that I have.

14 SUSAN ZINGLE: I -- I don't. I mean, I have a
15 business background. And some of the -- some of the
16 businesses I was in were regulated, but not by the EPA;
17 it was more FTC, SEC, different kinds of regulation.

18 But there was nothing we could hold back. I
19 mean, when I worked in advertising, if the FTC wanted
20 to know what we had it on sale and what prices we had
21 on sale for and how long we had it on sale, we told
22 them. And if we had future plans, and they wanted to
23 know that too, we told them; because we weren't allowed
24 to say no.

1 And -- and with that -- maybe that knowledge
2 would have benefitted another retailer?

3 That was just too bad. They were in the
4 business of protecting the public from scams.

5 And I don't know why some of that doesn't take
6 place here.

7 I don't know what is really truly cutting edge
8 or what new ideas a source may have that truly gives it
9 a competitive advantage that would not want to share.

10 And I wouldn't necessarily want to violate
11 that, but I think they hide behind competitive analysis
12 or trade secrets when they just don't want us to know
13 something.

14 And a long run, it's to their detriment. The
15 more suspicious people get, the harder it is for them
16 to locate their plants.

17 MR. HARNETT: Steve Hagle?

18 MR. HAGLE: Hi, Susan. Thank you for coming.

19 SUSAN ZINGLE: Sure.

20 MR. HAGLE: I'm interested in your thoughts on
21 adequate notice, public notice.

22 One of the things that has come up in our state
23 is -- I mean, we do -- in Texas we do a newspaper
24 notice elsewhere in the paper, some other section of

1 the paper; and it's just a very short notice, a little
2 blurb. And it directs people to the legal section
3 where we have a long explanation of the processes that
4 people can go through, and what the facility is
5 emitting, and all of that kind of information.

6 And that's -- in some of the major cities like
7 Houston and Dallas that's a pretty expensive. Now for
8 the Dows and Exxons of the world, that may be okay.
9 But we do have some smaller Title V sites, and we're
10 talking 3- to 4,000 dollars for that notice, especially
11 the piece elsewhere in the newspaper.

12 And so -- and what we found is we really don't
13 get a lot of comments or responses to the notice.

14 The other thing that we do in Texas is require
15 them to put signs up around the facility.

16 SUSAN ZINGLE: That's a good idea.

17 MR. HAGLE: And those signs don't contain hardly
18 any information except they're going to build X, Y, Z
19 here at the site. And that's where I feel like we get
20 more comments from the public, especially the local
21 public.

22 And the other thing that I wanted to know
23 about -- I mean, New York has an environmental notice
24 bulletin that gets sent out for -- updated every week

1 that's up on the Web site. It's very good, explains
2 what type of facility's being built and -- I mean,
3 what's your thoughts on the best way to do that?

4 SUSAN ZINGLE: If the law requires public notice in
5 the newspapers, then -- then I still think it's
6 valuable. I think a lot goes in to how it's worded.

7 If it is so technical and it talks about Title
8 V or CAAPP, people still don't know what that is. Get
9 it down to the level that someone reading the newspaper
10 say this is a power plant, and this is your chance to
11 talk about what it emits, and is it complying, and come
12 to the hearing. Market it a little bit instead of just
13 narrowly complying with the technical language in the
14 law.

15 I think -- I hadn't even thought about signs at
16 the site. That's a wonderful idea. And we do that
17 here with development permits; why wouldn't we do it
18 with Title V or construction permits as well?

19 The follow-up on -- on post cards aren't cheap
20 exactly; but you know in advance when that hearing's
21 going to be. You could mail bulk. And you could mail
22 to a certain radius around that plant and have
23 something go right into their homes.

24 But again, put it in layman's English; what

1 this means to you as a citizen. Not the technical EPA
2 Title V language that nobody but people that have taken
3 the course know what it means.

4 MR. HARNETT: Don van der Vaart?

5 MR. VAN DER VAART: Let me just -- from a state
6 resource standpoint I wanted to try to follow up on
7 what Steve said.

8 You're saying that you are not -- are you ready
9 to have the notification done purely through the
10 Internet or e-mails yet, or do you still think that the
11 newspapers have do be done?

12 SUSAN ZINGLE: I think the newspapers have to be
13 done. Because there's the -- the freaks like me that
14 need to get a life and do this all the time. The av-
15 -- this is meant to benefit the average person in the
16 neighborhood; and they're not going to go to an
17 Internet to look to see if there's a hearing on a
18 permit that they don't even know exists.

19 You have to get it in front of their face, and
20 you have to get it in terms that they can understand.

21 MR. HARNETT: And I have just one request for you:
22 If you could provide us additional details from your
23 experience on the kinds of documents that you think
24 ought to be more readily available --

1 SUSAN ZINGLE: Sure.

2 MR. HARNETT: -- when you're getting -- when the
3 Title V comments are going out there. And also some
4 information on just the charges that you're facing per
5 page for copying and FOIA.

6 And I'm assuming by what you were alluding to
7 too is that all of the plants you were interested in
8 were more local to your area where you live, but all of
9 the files, you would have had to go to Springfield to
10 get them.

11 SUSAN ZINGLE: Right.

12 MR. HARNETT: Okay. If you could give some idea of
13 timing of FOIA responses and things of that nature,
14 just some practical information on how hard is it to
15 get information would be useful.

16 MS. KADERLY: Could I add something as far as what
17 the agency charges for FOIAs and all that?

18 Have some understanding of whether the agency
19 has flexibility or whether those charges are mandated
20 by their laws. Sometimes some states have -- they
21 don't have much flexibility in what they're able to
22 charge or not.

23 MR. HARNETT: She may not be the right one to ask
24 that of.

1 MS. KADERLY: If you know.

2 SUSAN ZINGLE: I don't know; but they never use
3 that excuse, they never said, call your senator,
4 because we're forced to do this.

5 So at some point their fees are approved by the
6 legislature; but something like that I believe the
7 legislature simply rubber stamps whatever the EPA
8 wants.

9 That's a very good point. I will look into it.

10 MR. HARNETT: Bob, did you have something to add?

11 MR. PALZER: I will give you an example of a state
12 that does make an accommodation for needs of the public
13 to get information; and specifically, any data that's
14 requested of the Department of Environmental Quality
15 can be obtained at no charge by a qualifying nonprofit
16 organization that seeks a fee waiver. And I think
17 that's a wonderful way to get information that
18 otherwise would be prohibitive.

19 SUSAN ZINGLE: We do have that provision here, and
20 I have used it. But sometimes it's denied; because
21 they didn't like the wording in the letter; or because
22 they know what I'm digging for and they don't want me
23 to have it, or -- or because they didn't realize they
24 were supposed to do it.

1 So I've had it go both ways. Sometimes if --
2 if the timing is short, if I've only got a 30-day
3 public notice period, I'm not going to get into I'm a
4 not-for-profit and I can have this for free and have an
5 exchange of letters with an attorney. It's like I need
6 it right now; here's -- send it; here's my check, send
7 it.

8 MR. HARNETT: Thank you very much for taking the
9 time today and coming to talk to us.

10 And we'll take a 15-minute break and come back
11 at 10 after 10:00.

12 (A recess was had.)

13 MR. HARNETT: Okay. We're going to go ahead with
14 our next speaker, who is Carey Hamilton of the Ogden
15 Dunes Environment Council.

16 CAREY HAMILTON: This is where I sit?

17 MR. HARNETT: Yep. You will have 15 minutes to
18 speak, and I'll give you a warning at a two-minute
19 mark.

20 CAREY HAMILTON: Probably won't need to.

21 Is this -- you guys can hear me?

22 MR. HARNETT: Yep.

23 CAREY HAMILTON: Okay. Today I'm representing the
24 town of Ogden Dunes, Indiana, a community of 1300

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22 MR. HARNETT: Yep.

23 CAREY HAMILTON: Okay. Today I'm representing the
24 town of Ogden Dunes, Indiana, a community of 1300

1 residents situated along the Lake Michigan shoreline in
2 the Indiana Dunes directly east of the Burnes Harbor
3 industrial complex. This complex contains an
4 integrated steel mill, two finishing mills, several
5 steel subsidiary companies, in addition to the NIPSCO
6 coal-powered generating station, and industries within
7 the Port of Indiana.

8 Due to the ever-shifting wind patterns off Lake
9 Michigan, our community suffers significant air
10 problems on a regular basis. In the past year the
11 town's environmental advisory committee -- truly just
12 formed in the past year -- has learned a great deal
13 about pollution sources in our vicinity and to the
14 extent possibly about the Title V process.

15 I will mention our specific Title V concerns
16 with one emitter in the Burns Harbor complex as well as
17 our community's general concerns with the Title V
18 program. And you will quickly notice I'm not a Title V
19 expert, but I hope this information is helpful to your
20 committee.

21 AMROX, the American Iron Oxide Company, a
22 hydrochloric acid recycling facility located within a
23 mile of our community and adjacent to US Steel, has
24 been in operation for approximately four years with no

1 permits because they said they would have zero
2 emissions before they opened.

3 During the past four years U.S. EPA has found
4 AMROX to be in violation of standards two out of two
5 times inspected. AMROX continues to operate during
6 very protracted negotiations with EPA. In the meantime
7 AMROX has applied for Title V permit from IDEM, which
8 is in turn waiting from hear from EPA to make a
9 determination.

10 In AMROX's response to the draft permit, AMROX
11 states that they have installed MACT standards and
12 that, quote, maximum achievable control technology
13 cannot achieve the NESHAPs for hydrochloric acid and
14 chlorine, end quote.

15 They go on to say that the NESHAP standards
16 were not properly promulgated by the U.S. EPA.

17 It seems clear from this comment that AMROX
18 would like to continue to operate out of compliance and
19 to receive a Title V permit regardless.

20 However, since the AMROX-U.S. EPA negotiations
21 have continued for almost a year and these negotiations
22 are confidential, our community is left in the dark,
23 and sometimes literally in a haze of dangerous chlorine
24 emissions.

1 Having said all that, it is important to state
2 that as our community becomes more aware of the
3 cumulative impact of having five major toxic air
4 polluters in such close proximity, we feel that even if
5 all sources are in compliance with the current Clean
6 Air Act regulations, we still suffer significant health
7 risks.

8 It seems that the Clean Air Act permitting
9 process does not account for cumulative impacts or hot
10 spots when trying to protect public health. Certainly
11 in our community with hundreds of thousands of pounds
12 of toxic air pollutants discharged annually within 1/2
13 to 3 or 4 miles east of our homes and even more toxic
14 sources 6 plus miles to the west, these concerns are
15 very real.

16 Our community recently noted that the State of
17 Kentucky has started a public process to try to address
18 toxic air pollution hot spots. As quoted from a recent
19 Louisville Courier-Journal article, quote, saying
20 Kentucky has several hot spots of toxic air pollution,
21 the governor's top environmental regulator announced
22 yesterday evening the formation of a work group to look
23 into the problem...the panel will assess the extent of
24 elevated levels of toxic air in the state's

1 industrialized areas and population centers, end quote.

2 It seems that the Title V process does not
3 account for this very real and serious air quality
4 issue.

5 We would like to see the U.S. EPA address these
6 concerns.

7 Finally on that note, I should mention that
8 there are over half a million residents in Lake and
9 Porter Counties in northwest Indiana with much more
10 than our share of companies listed on the Toxic Release
11 Inventory. Certainly our region falls within anyone's
12 definition of an air pollution hot spot.

13 Additionally, according to Charlotte Reed of
14 Save the Dunes Council, in the 14 years since the Title
15 V program began, none of the largest permits have been
16 public noticed in our region. After expressing
17 interest in the Title V process to both IDEM and EPA at
18 a meeting in our community last November, one or more
19 Title V permits in Burnes Harbor have gone through the
20 public comment phase without our town being noticed via
21 mail or e-mail. Citizens clearly need more help
22 through the process.

23 In addition, the permits themselves are
24 complicated and do not show actual limits, as far as we

1 can tell.

2 As a concerned citizen who has done a great
3 deal of research over the past year, I still do not
4 have a sense of how to ensure, for our community's
5 sake, that permits are being complied with on an
6 ongoing basis.

7 And a thought I had on the drive up here this
8 morning that I've written in: I remembered from
9 reviewing the draft permit from AMROX last winter that
10 there were repeated uses of vague language such as
11 "when feasible" or "in a reasonable amount of time"
12 when discussing enforceable requirements in the permit.
13 Such questionable language should never be allowed in a
14 permit.

15 That's what common sense tells me and the folks
16 in our town who looked at that. So I wanted to add
17 that comment.

18 That should have been in here, but I didn't
19 think about it until today.

20 Another problem for our community is that the
21 large emitters in Burns Harbor are not within our
22 municipal jurisdiction, although Ogden Dunes certainly
23 receives a great deal of the potential negative health
24 impacts from air pollution generated at this industrial

1 complex. We have little recourse at the local level to
2 address these concerns.

3 Finally, on a recent tour of Precoat Metals, a
4 steel coil painting company also adjacent to U.S.
5 Steel, members of our committee became concerned with
6 how the Title V permit actually applies. Precoat,
7 simply stated, burns its VOC emissions to a certain
8 level that brings them into compliance.

9 However, during our tour, the three members of
10 our town -- one of whom is the former CEO of Bethlehem
11 Steel -- who were present were not convinced that
12 proper controls were in place to control emissions that
13 may escape when blips such as temporary power loss
14 occur. And if such an event occurred and significant
15 emissions escaped, what is the consequence to Precoat?

16 We were not comfortable that there are real
17 consequences in such situations. And we have had
18 instances where residents have complained of physical
19 ailments that doctors have told us coincide with the
20 VOC contact.

21 I hope these comments are helpful and that our
22 overall concerns are heard, primarily that cumulative
23 impacts of multiple sources in close proximity need to
24 be addressed, and that the program is too complex for

1 effective community involvement.

2 Thank you for this opportunity to speak.

3 MR. HARNETT: Varena Owen?

4 MS. OWEN: Hi.

5 CAREY HAMILTON: Hi.

6 MS. OWEN: Thank you so much for coming. It's fun
7 for me to meet with a formerly unknown kindred spirit.
8 Makes me feel less lonely out there.

9 When you said -- could you elaborate a little
10 bit about your comments that there was no public notice
11 for the permits for your major sources?

12 CAREY HAMILTON: I thought that might come up.

13 Unfortunately, Charlotte Reed is the main air
14 quality advocate in our region -- she works for Save
15 the Dunes Council -- and she conveyed that over the
16 phone.

17 Other than that, from my personal experience
18 she has told me that both U.S. Steel and I believe one
19 or two other facilities in Burns Harbor have been up
20 for public notice since our whole involvement began
21 last November and that we kind of missed the boat; that
22 our community wasn't formed.

23 We did meet with, as I mentioned, EPA and IDEM
24 last November, and many residents from our community

1 came out and expressed interest in this process. And
2 we talked a lot about the permitting process, kind of
3 beginning the education.

4 And after that you would think we would have --
5 sharing phone numbers and e-mails and all of that. But
6 we weren't contacted.

7 So we -- you know, I would hope, understanding
8 that this process is supposed to really get to the
9 public input, that that would have happened.

10 MR. HARNETT: Bernie Paul?

11 MR. PAUL: Are you aware that in Indiana you can
12 request to be put on mailing lists so that you get
13 public notice?

14 CAREY HAMILTON: You know, I thought I had. We
15 actually had a public hearing on AMROX as Title V
16 permit back in February. And in that process, becoming
17 the main contact for our town, I thought that had a
18 happened for me in talking directly with IDEM staff;
19 and it didn't.

20 MR. PAUL: Okay. The real question that I have was
21 you talked about interest in dealing with the toxic hot
22 spot issue that your community faced.

23 Now, I wonder if you thought it would be an
24 acceptable approach to use some other forum other than

1 the Title V permitting process to deal with those
2 issues.

3 From my perspective, Title V isn't really
4 equipped as a process to deal with those types of
5 issues; but there are many other ways that those types
6 of concerns could be addressed with the agency.

7 Is that something that you think would be
8 acceptable?

9 CAREY HAMILTON: Possibly, yeah. I mean, in
10 thinking about this, it does seem that if the process
11 to allow -- to permit pollution doesn't account for
12 areas as opposed to just specific property sources.
13 You know, it seemed to make sense that Title V might in
14 the future take that into account.

15 But just having EPA address it is really what
16 we want.

17 So yes, I guess the answer is yes.

18 MR. HARNETT: Lauren Freeman?

19 MS. FREEMAN: Hi.

20 You mentioned that you've seen permit terms or
21 conditions that use words that are not clear or could
22 be interpreted differently: Infeasible, reasonable.

23 Do you know are those things that the
24 permitting authority is adding in the permit, or are

1 those things that come from regulations and other
2 permits that have to be incorporated?

3 CAREY HAMILTON: That's a very good question.

4 We -- I made those comments, you know, with the permit
5 in front of me back to IDEM in February, and haven't
6 really thought about it till driving in this morning.

7 You know, and they didn't -- at the hearing
8 when we talked to IDEM, they didn't address that.

9 So I don't know. I can't answer that question,
10 I guess.

11 MR. HARNETT: Richard van Frank?

12 MR. VAN FRANK: Have you had -- well, what has been
13 your experience in getting copies of the permit and the
14 permit application, either getting copies or being able
15 to view them at some place?

16 CAREY HAMILTON: Well, I mean, as I mentioned
17 earlier, I guess I was disappointed that we hadn't
18 heard that some permits were already up for review.

19 I guess once we -- like with AMROX, since we
20 realized they were coming up and they were definitely
21 an issue for us, call -- I actually used to work for
22 IDEM, not at all in the regulatory sense, so I have
23 contacts there that I could call; and it was a little
24 easier for me.

1 Not a great answer, I don't think.

2 MR. VAN FRANK: If I could ask one more brief one.

3 When you've requested information from IDEM, as
4 you recently said you did, have you gotten replies; and
5 if so, how long did it take to get a reply?

6 And was the reply germane to the question?

7 CAREY HAMILTON: Well, specifically from the
8 permitting department we've gotten pretty good
9 responses, yes. Other departments, no.

10 MR. HARNETT: David Golden?

11 MR. GOLDEN: Thank you very much for -- for driving
12 up and taking the time. I know you have probably a
13 number of important things to do today. Appreciate
14 your taking the time to do this.

15 One quick question about this facility that
16 went from apparently a zero emissions facility to a
17 Title V facility.

18 CAREY HAMILTON: They were built in 2000. Sorry.

19 MR. GOLDEN: I'm curious as to what was their
20 certification of compliance status in their Title V
21 permit application?

22 Did they certify full compliance, or something
23 less than?

24 CAREY HAMILTON: I'm not quite sure what you mean.

1 MR. GOLDEN: In a Title V permit application you
2 have to indicate compliance status. And I'm just
3 curious as to whether they indicated they were in full
4 compliance.

5 CAREY HAMILTON: Well, no. They said that because
6 the NESHAP standards were not promulgated correctly by
7 EPA that they would not be in compliance even though
8 they had max standards in place.

9 MR. GOLDEN: So it sounds like some sort of caveat
10 to their compliance state?

11 CAREY HAMILTON: Yeah.

12 MR. GOLDEN: Thanks.

13 MR. HARNETT: Verena Owen?

14 MR. LING: Bill always calls on me last.

15 CAREY HAMILTON: Do you guys secretly signal to
16 Mr. HARNETT, or does everybody get called on?

17 MR. HARNETT: Everybody eventually gets called on.

18 CAREY HAMILTON: Okay.

19 MS. OWEN: I have two questions that are somewhat
20 related and somewhat not.

21 When you said when you FOIA information that
22 you don't usually encounter problems on the permitting
23 side of your agency, in my experience it is difficult
24 for somebody doing a thorough permit review to

1 understand that they might have to access different
2 parts of the permit agency.

3 You probably look at the emergency response
4 section or the compliance section or whatever reporting
5 is done.

6 What is your experience in kind of this
7 integrated approach to permit review?

8 Did you encounter problem with reviewing
9 information at request?

10 CAREY HAMILTON: No, we didn't; but we probably
11 haven't asked as many questions as we should have at
12 this point.

13 MS. OWEN: Okay. You said that you feel that
14 citizens need help. And I -- I -- it sounds like a
15 reasonable request, especially since permitting
16 agencies are supposed to have some responsibility to
17 ensure meaningful public participation.

18 What -- if you could have three things like
19 magic, what would you think would be most helpful for
20 you to...

21 CAREY HAMILTON: I think the person -- I just
22 caught the last few minutes of the testimony before me.
23 And I don't know who it was, but the woman mentioned
24 very simple, clear ads in papers. I think in our

1 community that would be very helpful.

2 And not -- she referenced using technical EPA
3 terms. And instead if you said AMROX, you know, public
4 comment now. You know, with then more detail. Folks
5 would go, oh, AMROX, we've read about them in the
6 paper, we know that they're a concern for our
7 community; you know, and they'd pay more attention.

8 Also just, gosh, better use of the e-mail. I
9 mean -- everyone in IDEM I think has my e-mail, and I
10 don't get these notices.

11 So -- and other folks on my committee who
12 regularly deal with -- there are a couple of folks who
13 very regularly deal with IDEM's different offices.
14 We've got a regional office and folks down state.

15 And none of us are getting notice of these
16 things in our community.

17 MS. OWEN: Thank you.

18 MR. HARNETT: Bob Morehouse?

19 MR. MOREHOUSE: We've heard a number of people
20 comment in the last couple days about the challenges of
21 participating in the whole public process with permits.

22 Are there resources available say in Indiana
23 that basically train people in how to participate in
24 the process?

1 I know sometimes there's training sessions that
2 educate, you know, folks who are not familiar with
3 this.

4 Is there a Web site available in Indiana that
5 kind of helps people; or is this sort of word of mouth?

6 CAREY HAMILTON: No, there is some information on
7 the Web, both IDEM and EPA. And I recently tried to
8 get myself to a Title V -- I don't remember the exact
9 title, but it was a -- I think public involvement
10 training, like two days in one day or something. But I
11 couldn't get to it, and then I read later that it was
12 cancelled.

13 You know, but I kind of sought that out myself.
14 I think I've actually found that -- I every once in a
15 while check out the IDEM calendar, and it was listed on
16 the calendar. So that wasn't noticed to me very well.

17 MR. MOREHOUSE: Who sponsors the training?

18 CAREY HAMILTON: I think that's IDEM; I'm not --
19 yeah.

20 MR. VAN FRANK: Could I make a comment on that,
21 Mr. Chairman?

22 MR. HARNETT: Go right ahead, Richard Van Frank.

23 MR. VAN FRANK: IDEM had a training session several
24 years ago, and it was based on the material that Keri

1 Powell developed for NYPIRG, and it was reasonably well
2 attended. I don't think they've repeated it since
3 then. But that part, as far as I know, is the only
4 attempt at Indiana to do training.

5 They have a citizen's guidebook which is
6 essentially a joke as far as getting any useful
7 information out of it. It's a -- essentially a
8 learn-by-doing process. And I have been doing it a
9 long time, but I still have a lot to learn.

10 They don't make it easy. And that's one of the
11 reasons I ask about the -- getting available
12 information. What is really needed is an ombudsperson
13 to help the citizens to go through this process.

14 CAREY HAMILTON: I want to second that. I've
15 downloaded that citizens guide to the permitting
16 process, whatever it's called, and it wasn't real
17 helpful to me either.

18 MR. HARNETT: Verena Owen.

19 MS. OWEN: Thank you.

20 First of all, consider yourself lucky to have
21 anything like a citizen's guidebook available in
22 Indiana. Illinois doesn't have anything.

23 I offered to write one. They kind of didn't go
24 that -- take that well.

1 And since we have Steve Hitte here -- I
2 graduated from U.S. EPA sponsored workshop; so are you
3 taking requests?

4 MR. HITTE: My office, which is with Mr. HARNETT,
5 does still take an active interest in outreaching and
6 educating both the citizens on Title V as well as
7 environmental justice communities as well as tribes who
8 are all sort of in the same boat as not knowing as much
9 as the states.

10 We are still doing all fronts; not as much
11 classroom training just because of the cost. But the
12 materials that we have developed in the past, which is
13 the training you're referring to I think, we have tried
14 to train the trainer so the states can do it. I don't
15 police -- I shouldn't say police -- I don't follow it
16 as frequently as the states offer it.

17 Equally we are trying to get up to speed with
18 current technology and developing a Web course on Title
19 V training so people can take it from, you know, the
20 comforts of their own home.

21 But yes, we still -- the door is still open to
22 have training when there is a large interest and we
23 have the money to do that.

24 MR. HARNETT: The other comment on that is that we

1 can give you a contact name in the regional office here
2 who has provided training in the different states
3 previously. And I'm sure she's -- be willing to come
4 back to Indiana.

5 CAREY HAMILTON: Okay. That would be helpful.

6 MR. HARNETT: Thank you very much.

7 MS. HARAGAN: Can I add one more thing?

8 MR. HARNETT: Sure. Go right ahead.

9 MS. HARAGAN: I just wanted to suggest one more
10 thing that would be helpful.

11 Each of the citizen trainings that were held
12 around the country, there was a manual developed that's
13 a pretty hefty manual, and it's state specific.

14 If EPA could make those available on line, scan
15 them in or something, I think that would be useful, at
16 least in the locations where you held the training.
17 Because it is more state-specific, which is much more
18 helpful than, you know, little more general approach.

19 MR. HITTE: I'll follow up.

20 CAREY HAMILTON: Thank you.

21 MR. HARNETT: We've hit the point again where we
22 have no speakers. And we do not anticipate right now
23 any additional ones, so I would suggest that between
24 now and noon we could go back to our other discussions.

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21 MR. HARNETT: We've hit the point again where we
22 have no speakers. And we do not anticipate right now
23 any additional ones, so I would suggest that between
24 now and noon we could go back to our other discussions.

1 If someone does show up, we'll go back on the
2 record and take -- and give them a chance to give us
3 input.

4 So for this point on we won't do taping and
5 won't take transcription any longer.

6 (WHEREUPON, a recess was had.)

7 MR. HARNETT: We have another person who would like
8 to speak with us. We have one more speaker, Ellen
9 Rendulich -- I hope I'm saying that right; if I'm not,
10 you can pronounce it for me -- who is a representative
11 of Citizens Against Ruining the Environment.

12 ELLEN RENDULICH: My name is Ellen Rendulich; I'm
13 with the Citizens Concerning the Environment, the care
14 organization out of Lockport, Will County.

15 Unfortunately, we got here too late to speak.
16 We're just apologizing. We had been on the schedule
17 last night to speak at seven o'clock, and unfortunately
18 a lot things came up and no one was able to make it.

19 So we tried to come this morning to fill in.

20 MR. HARNETT: You're welcome to give your full
21 presentation.

22 ELLEN RENDULICH: The problem is that one of the
23 other members that's here, we have to get her back by
24 noon. It took us so long, and we were lost. We got on

1 the wrong L and went too far, and we had to turn
2 around. And we have been traveling since eight o'clock
3 this morning; and now we just get to turn around.

4 But I thought I should apologize for going on
5 the schedule and not being here yesterday and also
6 trying -- I wanted you to know that we are concerned
7 and we will submit some comments in writing.

8 And that's all.

9 MR. HARNETT: We also may be providing the
10 opportunity -- and we'll get in touch with you -- for
11 somewhat of a phone conference type of hearing, so that
12 you could participate potentially on that.

13 ELLEN RENDULICH: That will be great; and hopefully
14 then I will have a voice too.

15 MR. HARNETT: Thank you very much for coming by.

16 Thank you. We're back off the transcription
17 and the tape. Thanks.

18 (WHEREUPON, a recess was had.)

19 MR. HARNETT: We're adjourned. Thank you everyone.

20 WHICH WERE ALL THE PROCEEDINGS
21 HAD IN THE FOREGOING CAUSE ON THIS DATE.

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