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TITLE V TASK FORCE
DALLAS, TEXAS
NOVEMBER 15, 2004

1 U.S. ENVIRONMENTAL PROTECTION AGENCY

2

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

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

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

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

7 Ms. Callie Videtich, Region 8

8

TASK FORCE MEMBERS

9

Ms. Shannon Broome, Air Permitting Forum

10 Ms. Lauren Freeman, Utility Air Regulatory Group

11 Mr. Steve Hagle, Texas Commission on Environmental
Quality

Mr. Bob Hodanbosi, Ohio Environmental Protection Agency

12 Ms. Shelley Kaderly, Nebraska Department of
Environmental Quality

13 Ms. Marcie Keever, Our Children's Earth

Mr. Bob Morehouse, ExxonMobil

14 Ms. Verena Owen, Lake County Conservation Alliance

Mr. Bob Palzer, Sierra Club

15 Mr. Bernie Paul, Eli Lilly

Ms. Keri Powell, New York Public Interest Research

16 Group

Mr. Adan Schwartz, Bay Area Air Quality Management

17 District

Mr. Don van der Vaart, North Carolina Department of

18 Environment and Natural Resources

Mr. David Golden, Eastman Chemical

19 Ms. Kelly Haragan, Environmental Integrity Project

Mr. Mike Wood, Weyerhaeuser

20

21 EC/R INCORPORATED

22 Mr. Graham Fitzsimons

Ms. Shannon Cox

23

24

25

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

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

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

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

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

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

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

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

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

22 MS. HOLMES: Carol Holmes, EPA.

23 MR. MOREHOUSE: Bob Morehouse,
24 ExxonMobil.

25 MS. FREEMAN: Lauren Freeman for the

1 Utility Air Regulatory Group.

2 MR. HODANBOSI: Bob Hodanbosi, Ohio EPA.

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

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

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

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

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

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

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

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

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

7 UNIDENTIFIED SPEAKER: (Inaudible)

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

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

20 UNIDENTIFIED SPEAKER: Okay.

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

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

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

11 MS. FEINBERG: Yes.

12 MR. VOGEL: And Elizabeth Rosemeyer?

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

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

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

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

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

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

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

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

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

1 revisions.

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

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

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

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

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

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

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

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

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

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

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

25 And we don't understand why that took so

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

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

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

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

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

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

5 MS. FEINBERG: Yeah.

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

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

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

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

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

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

18 MS. POWELL: Thanks, Marian.

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

21 MR. VOGEL: Adan Schwartz.

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

24 MS. FEINBERG: Yes, I can.

25 MR. SCHWARTZ: You commented on a failure

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

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

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

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

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

10 MR. VOGEL: Bob Palzer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 MS. BROOME: Thank you.

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

11 MS. BROOME: Ray will tell you later.

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

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

22 MS. FEINBERG: Hi.

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

1 communities?

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

4 MS. OWEN: Does DEC?

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

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

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

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

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

18 MS. OWEN: Thank you.

19 MS. FEINBERG: Okay.

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

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

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

24 MS. MASTERS: Deborah Masters.

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

1 5:20 this afternoon.

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

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

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

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

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

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

16 MR. BOYD: This is Mike Boyd.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. BOYD: That is correct.

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

25 MR. BOYD: Part of the law enforcement

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

2 MR. VOGEL: Shelley Kaderly.

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

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

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

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

1 that I sent around.

2 MR. VOGEL: Kelly Haragan.

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

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

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

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

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

25 MR. BOYD: Correct. They wouldn't

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

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

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

17 MS. HARAGAN: Okay. Thank you.

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

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

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

10 MS. HARAGAN: Okay. Thanks.

11 MR. VOGEL: Question from Adan Schwartz.

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

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

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

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

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

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

1 MR. VOGEL: Thanks, Mike.

2 MR. BOYD: Sure.

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

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

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

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

24 MR. VOGEL: Thank you, Michael.

25 MR. BOYD: Thank you, bye.

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

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

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

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

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

19 MR. VOGEL: Go ahead, please.

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

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

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