

1 MS. HARAGAN: Thanks a lot.

2 MS. GENASCI: They did respond to that.

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

5 MS. GENASCI: Thank you very much.

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

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

10 MR. VOGEL: You certainly can.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. GOLLWITZER: Oh, sorry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Casting a wider public notice net will

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

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

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

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

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

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

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

1 grabble with and come up with a recommendation.

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

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

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

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

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

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

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

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

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

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

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

1 MR. VOGEL: Adan Schwartz.

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

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

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

21 MR. VOGEL: Bob Palzer.

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

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

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

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

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

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

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

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

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

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

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

8 MR. PALZER: Thanks.

9 MR. VOGEL: Verena Owen.

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

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

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

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

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

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

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

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

1 the underlying documentation.

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

9 MR. VOGEL: Keri Powell.

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

11 MR. GOLLWITZER: Barely.

12 MS. POWELL: Now can you hear me?

13 MR. GOLLWITZER: Yeah.

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

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

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

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

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

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

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

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

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

24 MS. POWELL: Thanks, Scott.

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

1 the time to be with us today.

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

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

6 (Recess taken)

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

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

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

16 Go ahead, Avram.

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