

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

4 MS. KEEVER: Thanks. Okay, thanks.

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

8 MS. KEEVER: By the DEQ?

9 MS. YERGER: Uh-huh.

10 MS. KEEVER: Okay. So they --

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

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

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

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

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

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

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

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

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

16                  MR. WILSON: Pardon?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 basically presented by reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                   MS. KADERLY: Shelley Kaderly with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 MR. VOGEL: Thank you. Kelly Haragan.

14 MS. HARAGAN: Hi, John.

15 MR. WILSON: Hi, Kelly.

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

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

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

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

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

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

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

3 MS. HARAGAN: Thanks.

4 MR. VOGEL: Adan Schwartz.

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

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

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

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

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

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

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

25 MS. HARAGAN: Just to give you a little

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

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

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

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

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

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

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

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

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

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

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