

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

7 MS. HARAGAN: Thanks.

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

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

14 MR. VOGEL: Thank you very much.

15 Do we have anyone else on the line?

16 We'll wait for our next people to show up at 3:40.

17 (Recess taken)

18 MR. VOGEL: This is Ray Vogel.

19 MS. SCANLAN: This is Melissa Scanlan.

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

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

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

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

17 The Title V program has great potential
18 and has already added to our ability to protect public
19 health by reducing air pollution. However, there are
20 also institutional impediments to fully implementing
21 Title V.

22 I know Bruce Nilles of the Sierra Club
23 has testified already about the notice of deficiency
24 that the EPA did of Wisconsin and the problem with
25 Wisconsin fees not covering the actual cost of running

1 an effective program. So I'm not going to cover that
2 again today, but I'll focus on the problems with
3 placing useful monitoring requirements in Title V
4 permits and the institutional problems that we're
5 seeing with compliance and enforcement.

6 First I want to talk about the benefits
7 of the Title V program. We, along with the Sierra
8 Club, spent about a year investigating Wisconsin's
9 Title V program, and we looked at the data and
10 interviewed key staff in Wisconsin's Department of
11 Natural Resources prior to deciding to send our
12 petition to the EPA requesting a notice of deficiency.
13 And in the course of our interviews with the managerial
14 level staff at the Wisconsin DNR, we were told about
15 the benefits that the state regulators have been seeing
16 with the Title V.

17 When the permit writers started working
18 on Title V permit applications, they were consistently
19 finding compliance problems at the major sources. And
20 so they were using the Title V permit issuance as a
21 mechanism to go over all the emission sources at a
22 facility and the compliance history, they were finding
23 NSR violations and permit limit violations, and they
24 have been able to use the Title V permit as a way to
25 get facilities back into compliance or on a compliant

1 schedule that ultimately reduces air pollution. So we
2 see that as a really positive aspect of the program.

3 From a community activist perspective,
4 there are also significant benefits from this program.
5 I have helped several community groups comment on Title
6 V permits, and it's been a good process to educate the
7 public about what's really going on with the facility
8 in their neighborhood.

9 In La Crosse, Wisconsin, just as one
10 example, over 50 people showed up to testify on a Title
11 V permit for the French Island incinerator, which is a
12 municipal waste incinerator. The Title V permit and
13 the hearing process definitely helps make the
14 regulations, which are very complicated, make the
15 regulations clearer and more transparent for the
16 general public.

17 It's also much easier to understand
18 whether a facility is violating its permit terms
19 because the Title V permit puts all the terms in one
20 place and requires that compliance certification and
21 regular reporting.

22 Going back to the French Island
23 incinerator example, the facility -- that facility had
24 been violating its state only permit for the better
25 part of the 1990's and there had been no enforcement

1 action. They were forced to get a Title V permit only
2 about five years after they had applied for it, when I
3 discovered based on information they put into their
4 Title V permit application that they had falsely
5 claimed to be a small municipal solid waste incinerator
6 falling under one set of regulations, when, in fact,
7 they were a large municipal solid waste incinerator
8 falling under another more stringent set of
9 regulations.

10 So we were able to use the information
11 that we gathered from public records, specifically from
12 the Title V permit application, and convince the EPA to
13 reclassify the facility as large. That ultimately
14 required better control technologies to meet the
15 emissions limits. So we were able to use the Title V
16 permit process to reduce toxic air pollution from this
17 facility and approve public health.

18 So those are some of the benefits that I
19 have personally seen with the Title V program in terms
20 of getting us closer to the goals of the Clean Air Act
21 and actually helping reduce pollution from major
22 sources of air pollution in this country.

23 I want to talk now briefly about the
24 problems that I have been seeing with the Title V
25 program. One problem I have seen with these permits,

1 the Title V permits, is that they do not always contain
2 monitoring requirements that can be used to determine
3 compliance with the permit terms. And I'm looking at
4 this from a legal perspective. I am a lawyer and our
5 organization is -- it's a public interest law firm. So
6 we're looking at the enforceability of these permits
7 and what's required in terms of monitoring. This is a
8 problem with the permit writers in Wisconsin and it's a
9 problem with the EPA's review.

10 There are things that should be caught
11 and corrected by the regulators before the ink gets dry
12 on the permit that are just not being caught. One
13 example that arose when we were trying to enforce a
14 Title V permit for a paper company, Procter & Gamble,
15 and we knew from the Title V required compliance
16 reports that the facility was chronically violating a
17 monitoring requirement in its Title V permit.

18 The monitoring requirement was to keep
19 the pressure drop at a set level of inches of water
20 over a control device, and that monitoring requirement
21 was put in the permit instead of a stack test for
22 particulate matter. But when we investigated whether a
23 pressure drop beyond the range required would result in
24 excess particulate matter emissions, we found that the
25 permit writer had not documented any connection between

1 what the company was required to monitor and the actual
2 emissions coming out of the stack, nor had the EPA
3 picked up on the problem during its review of the Title
4 V permit.

5 So this put us in a position where the
6 company was then arguing that their lack of compliance
7 with the monitoring requirement could not be used to
8 allege a violation of the particulate matter emissions
9 limit. In essence, we had a Title V permit that had a
10 monitoring requirement that was not very useful in
11 showing compliance with the emissions limit. This was
12 just sloppy work by regulators and it's a disservice to
13 the public. It's not a problem with Title V as it's
14 written, but it's an institutional problem with its
15 implementation that really needs to be corrected.

16 Another implementation problem is with
17 compliance and enforcement generally. And I use that
18 as a heading but will be a number of subheadings under
19 that. After we petitioned the EPA to issue a notice of
20 deficiency to Wisconsin, key state legislators called
21 for an audit of the state program. The joint
22 legislative audit committee issued their audit findings
23 in February of 2004. And the important findings in the
24 audit related to -- as they relate to compliance
25 enforcement were many. I'm just going to give you the

1 highlights or the lowlights, as it may be with
2 Wisconsin's program.

3 Between fiscal year 1994 and fiscal year
4 2002 there was a 41.3 percent decline in the number of
5 facilities that Wisconsin's DNR inspects annually, and
6 these are the facilities for air permitting purposes.
7 173 facilities had never been inspected. Ten percent
8 of the major facilities under Title V and almost 20
9 percent of the synthetic minors had never been
10 inspected as of June 30th, 2003, which was the end
11 point for the audit, for the data that the audit was
12 analyzing.

13 That percentage, ten percent for majors
14 and 20 percent for synthetic minors, was spread over
15 the state but it varied by region of the state, and
16 there were almost 36 percent of synthetic minors that
17 had never been inspected in the northern region of
18 Wisconsin. So clearly some regions are worse than
19 others.

20 Obviously the DNR has not in the past and
21 will not this year meet the EPA's goal of inspecting
22 all majors every two years and all synthetic minors
23 every five years. EPA is definitely letting things
24 slide a bit in Wisconsin, which we're not happy about.
25 The EPA approved an alternative strategy that allows

1 the DNR to inspect all federally permitted facilities
2 on a five-year cycle instead of the two-year cycle,
3 except for the top 100 facilities that must be
4 inspected every two years. And in a discussion I had
5 recently with a DNR manager who's involved with this
6 program, he told me that the DNR will not even meet the
7 two-year deadline for the top 100 facilities.

8 But the beauty of Title V is that even
9 without an inspection there is a required annual
10 compliance report, but that is only useful if
11 regulators ensure that the compliance reports are
12 submitted. And this air audit that was done in
13 Wisconsin showed that for Wisconsin only 67 percent of
14 the required compliance reports were actually submitted
15 to the DNR within 60 days of their due date.

16 There's a DNR policy that requires the
17 notice of violation for failing to submit a compliance
18 report, but again, things look good on paper, then you
19 get to the actual implementation. The audit found that
20 the DNR makes no effort to ensure that facilities
21 issuing late reports are given these notices of
22 violation.

23 The last point I want to make about
24 enforcement and compliance is that in December of '98
25 the EPA issued a policy directing state and local

1 agencies to identify high priority violators and issue
2 a notice of violation within 60 days and resolve the
3 case within 270 days. And the audit on Wisconsin's air
4 program reported that the DNR here has only met the
5 deadline for issuing a notice of violation in about 61
6 percent of its cases, and worse, has only resolved the
7 cases within the required 270-day deadline in 37
8 percent of its cases.

9 So there are a lot of areas for
10 improvement in Wisconsin's compliance, inspection, and
11 enforcement of the Title V permits. And the EPA really
12 needs to be using its oversight function, which is even
13 greater now that Wisconsin is operating under the
14 notice of deficiency, to ensure that the DNR remedies
15 its lack of compliance and enforcement. Without
16 effective implementation, the goals of the Title V
17 program will definitely not be met.

18 So in closing, I definitely believe that
19 the Title V program provides an important mechanism to
20 bring all permit requirements under one umbrella for a
21 transparent system that could be very useful in
22 ensuring reductions in air pollution. However, there
23 are institutional problems that the EPA needs to
24 address, and the EPA should be reviewing these permits
25 to ensure that they are monitoring requirements that

1 can be used to determine compliance. And the EPA
2 should also require the DNR in Wisconsin and other
3 state agencies to meet its responsibilities to inspect
4 facilities and ensure that annual compliance reports
5 are sent to the agency in a timely manner.

6 I just urge the EPA to work harder to
7 implement the program so we can reach the goals of
8 cleaner air for all people. Thank you for your time
9 and I'm available to answer any questions you may have.

10 MR. VOGEL: All right. Thank you. Bob
11 Palzer.

12 MR. PALZER: I'm Bob Palzer. I'm
13 representing the Sierra Club and I'm a Wisconsin native
14 but I live elsewhere. You certainly have clearly
15 pointed out that the monitoring and inspection is not
16 up to what it should be. Is that because of a shortage
17 of personnel, a lack of budget? The Title V permit
18 current program is supposed to be self-funding and you
19 should be able to have enough fees to do this. Would
20 this be part of the problem?

21 MS. SCANLAN: I think that's definitely
22 part of the problem. The reason I'm didn't address
23 that in my testimony is because Bruce Nilles from the
24 Sierra Club I know had previously talked about the
25 fees. That's part of why we petitioned the EPA

1 requesting a notice of deficiency, is that we did not
2 believe that the state had the fees to cover the cost
3 of implementing this program. And that was part of the
4 reason why the EPA did issue a notice of deficiency,
5 was that they did not see the documentation from the
6 state that proved that it had enough money to
7 adequately run the program.

8 Wisconsin has taken the fees off of the
9 consumer price index adjustment, and so they're not
10 automatically adjusted anywhere. They're at a set
11 level. And we definitely believe that the fees are
12 part of this -- the problem.

13 MR. VOGEL: Carol Holmes.

14 MS. HOLMES: Hello, this is Carol Holmes
15 from EPA. I have a question about the example you gave
16 on the pressure drop parameter that was measured but
17 not correlated to the emission -- the particulate
18 matter mass emission limit. Was that a new monitoring
19 requirement that was added as part of the Title V
20 process or was that the monitoring that was the
21 underlying, for instance, NSR permit that got carried
22 into the Title V permit?

23 MS. SCANLAN: I don't know what the
24 origins of that monitoring requirement were. Does make
25 a difference for you?

1 MS. HOLMES: I honestly don't know. I
2 mean, if it existed before, it may have been harder to
3 cast, and if they created it actually in the Title V
4 process because they may not have known there was no
5 correlation if they were carrying it over from another
6 permit.

7 MS. SCANLAN: I'm not sure what the
8 origin of that permit term was, but with Title V's
9 requirement that there be monitoring to ensure
10 compliance, if you saw -- as a regulator if you saw a
11 monitoring requirement that was supposed to be in lieu
12 of stack test, I think that would be a first question
13 to ask, is what's the correlation and whether or not
14 this requirement is going to be enough. And if it did
15 come from the underlying NSR permit, Title V would give
16 the regulator the option to include in additional
17 requirement or additional information to make the
18 appropriate link between the two pieces, the monitoring
19 requirement and the emission limit.

20 MS. HOLMES: Thank you.

21 MR. VOGEL: Shannon Broome.

22 MS. BROOME: Hi. I'm going to go back to
23 what Carol was asking about, if that's okay. Do you
24 know if there were any stack testing requirements in
25 the permit or had there been a stack test previously?

1 MS. SCANLAN: For particulate matter?

2 MS. BROOME: Yes.

3 MS. SCANLAN: Or for any other --

4 MS. BROOME: Yeah, for particular, which
5 would be what the pressure drop is related to be.

6 MS. SCANLAN: I don't believe that there
7 were any stack tests required for particulate matter.
8 The only thing required was the pressure drop.

9 MS. BROOME: I guess I'm -- are you
10 familiar with the compliance assurance monitoring rule
11 which basically says that if a unit use established
12 parameters that are based on the unit operating
13 consistent with good air pollution control practices,
14 assuming that if the control device is working, then
15 it's meeting the standard, and the pressure drop is
16 just an indicator of whether the control device is
17 working or not as opposed to direct correlation. Title
18 V doesn't require direct correlation.

19 Was there any language like that that --
20 maybe if you could give us just more information on it,
21 it would be helpful.

22 MS. SCANLAN: My understanding is that
23 the compliance assurance monitoring the CAM rule only
24 applies to certain facilities, the large facilities,
25 and it has to be clearly identified that that's what

1 they're doing. That was not part of this because I did
2 have a discussion with the permit writer about this.

3 MS. BROOME: I guess my point is that
4 compliance assurance monitoring is the standard for the
5 biggest units, and clearly there's not a more stringent
6 standard for smaller, less polluting units. So the
7 question is whether they were using that kind of
8 concept, not whether the rule applied. Do you see what
9 I mean?

10 MS. SCANLAN: Yes.

11 MS. BROOME: So it would be
12 interesting -- I've seen permits that use that kind of
13 approach, so it would make sense to me that it didn't
14 correlate, but that doesn't mean it can be an
15 enforcement action for not complying with good air
16 pollution control practices or something like that. Do
17 you know what I mean? So I was just wondering if you
18 saw anything in the permit to that effect.

19 MS. SCANLAN: I don't think they were
20 using -- they weren't using CAM and I'm not sure what
21 the -- if they were using the concept because you would
22 have to get into the mind of the permit writer. There
23 was nothing documented about that in my review of the
24 file. But are you saying -- are you suggesting that
25 under CAM there does not need to be a correlation

1 between the monitoring requirement and the stack
2 emissions coming out of the stack?

3 MS. BROOME: That's right.

4 MS. SCANLAN: So if they're violating the
5 monitoring requirement they are not necessarily
6 violating their emission limits?

7 MS. BROOME: Well, the requirement is to
8 monitor, not to comply with the range. If you go
9 outside the range, you're supposed to take steps to get
10 it back into the range. And if you frequently go
11 outside the range, then you're supposed to either
12 change your range, justify that through a stack test
13 or -- I mean, there's a whole series of things in the
14 rule.

15 MS. SCANLAN: But going outside the range
16 does not necessarily mean that they're violating their
17 emission limit?

18 MS. BROOME: Right.

19 MS. SCANLAN: Is that what you're saying?

20 MS. BROOME: Right. Because you can't
21 always correlate pressure drop to particulate because
22 the stack test is done under specified operating
23 conditions that may not be the same as operation.

24 MS. SCANLAN: Well, if you have to have a
25 monitoring requirement that shows compliance with

1 permit terms, then it doesn't seem like if the CAM is
2 the way you're describing it, it doesn't seem like that
3 would be consistent with Title V if you have no way of
4 demonstrating whether or not the facility is complying
5 with their PM limit.

6 MS. BROOME: Yes -- well, CAM provides
7 that the control device is operating as intended and
8 the D.C. Circuit said that it does meet Title V's
9 requirement. So we could go on and on about it, but I
10 just think that it would be helpful to see what this
11 individual permit test and you could look at it.

12 MR. VOGEL: Take two more questions.
13 Keri Powell.

14 MS. POWELL: Hi, Melissa.

15 MS. SCANLAN: Hi, Keri.

16 MS. POWELL: I'm going to move on to a
17 somewhat less contentious topic, which is you mentioned
18 that you found the public hearing to be helpful in
19 clarifying for the public how the regulations applied
20 to the incinerator, the French Island incinerator. And
21 we've had some people testify that hearings were
22 incredibly frustrating for the public because they
23 would drive a long way, testify for three minutes, get
24 no response to their comments and not actually learn
25 anything from the experience.

1 So I just wanted to know if there was --
2 if maybe you could describe the public hearing
3 experience in Wisconsin and what it is that you think
4 made it particularly valuable.

5 MS. SCANLAN: Yeah. I think that's a
6 good question. I think it was that we actually played
7 a bridge role there. I think the public hearing by
8 itself with people just showing up probably would not
9 have been too informative because you are just
10 listening to the three-minute testimony. But we were
11 able to use the Title V permit as an educational tool
12 with the community prior to the hearing to show them
13 what the permit limits were, and then they were able to
14 use that to inform their testimony and it led to a
15 large turnout at the hearing.

16 So I think it's the combination of having
17 the Title V process available but also having nonprofit
18 serving as that intermediary bridge role to help use
19 Title V as a way to educate people about what the
20 permit terms are and what that means for public health
21 in the community.

22 MS. POWELL: So, Melissa, are you saying
23 that you had meetings ahead of the public --

24 MS. SCANLAN: We did. We had a meeting
25 before the hearing so that we could go over in detail

1 and answer people's questions about the Title V permit,
2 which doesn't happen -- I mean, that definitely doesn't
3 happen in a public hearing setting where you have to
4 have your testimony set already.

5 MS. POWELL: So was that pre-meeting sort
6 of the same night as the hearing or in advance of the
7 hearing?

8 MS. SCANLAN: It was, I believe, a week
9 in advance of the hearing, but people felt like they
10 then had, I think, a meaningful opportunity to comment
11 at the hearing. And it's, again, the combination of
12 nonprofit working with the Title V program and
13 utilizing the tools that it offers as the ability to
14 see all of the information about a facility in one
15 place and have the opportunity for a public hearing so
16 that people can come out and express their viewpoints.

17 MS. POWELL: Thanks.

18 MR. VOGEL: Another question. Don van
19 der Vaart.

20 MR. VAN DER VAART: Yes, I just wanted to
21 ask you a question about that same pressure drop. That
22 emission source was not subject to CAM, and that's what
23 I understood you to say?

24 MS. SCANLAN: That's right.

25 MR. VAN DER VAART: And I agree with you,

1 that if you're not subject to CAM you certainly have an
2 obligation -- the permit has an obligation to define
3 monitoring to assure compliance. And if pressure drop
4 isn't going to do it, you can certainly ask for more
5 clear monitoring, for example, particulate emission
6 monitoring or any other methodology that you would feel
7 comfortable with.

8 So either they make a correlation that
9 they agree with or the facility -- the permittee could
10 then be subject to some more stringent level of
11 monitoring. So we would -- North Carolina certainly
12 would agree with your position on part 70 monitoring.

13 MS. SCANLAN: I'm glad to hear that.

14 MR. VAN DER VAART: That was just a
15 comment.

16 MR. VOGEL: Thank you, Melissa. It's
17 been very entertaining.

18 Do we have another speaker on, please?

19 MR. SUTTLES: Yes, this is John Suttles.

20 MR. VOGEL: Okay, John. Thank you.
21 We're allotting ten minutes for presentation, ten
22 minutes for questions. We are also taping this for
23 audio transcript as well as written transcript. So you
24 may go ahead, please.

25 MR. SUTTLES: If I start speaking fast