

1 critical. I think it's important that community
2 members know whether the facility is in compliance, and
3 if not, based on what emission is -- are they out of
4 compliance and what the timeline is for rectifying that
5 problem.

6 Let's see, I guess that covers most of
7 what I was hoping to say. I just wanted to impress
8 upon you all that the fenceline communities are the
9 folks that I work with most and I really feel from them
10 that the current system doesn't sufficiently protect
11 their health and well-being, and I realize there are
12 many issues with regards to that to improve that
13 system, but I hope that, if nothing else, the Title V
14 program will be improved and will continue on for many
15 years to come. Thank you very much.

16 MR. VOGEL: Thank you. Thank you for
17 spending the time with us today.

18 MR. MONK: Sure.

19 MR. VOGEL: Do we have another speaker on
20 the line? Anyone else on the line? We'll wait a
21 little bit for the next speaker.

22 (Recess taken)

23 MR. VOGEL: My name is Ray Vogel with the
24 EPA. I would like to just say we have 20 minutes
25 altogether for you, ten minutes of it will be

1 presentation, ten minutes for questions and answers.
2 We're also doing an audio transcript and a written
3 transcript of this proceeding. So if you would like,
4 please go ahead.

5 MS. PRAKASH: Okay, great. Well, my name
6 is Swati Prakash and I'm the environmental health
7 director for We Act For Environment Justice, also known
8 as West Harlem Environmental Action, and we are a
9 grassroots nonprofit organization dedicated to
10 community power to fight environmental racism and
11 improve environmental health, protection, and policy in
12 communities of color.

13 We were formed in 1988 out of community
14 struggles against noxious emission from the North River
15 Sewage Treatment Facility, which is built on the west
16 side of Manhattan and processes up to 170 million
17 gallons of waste water every day, and when it first
18 began operating was doing so with almost no air
19 pollution control technology. And so community
20 struggles around that culminated in a lawsuit, a 55
21 million dollar settlement to upgrade the air pollution
22 control equipment on that facility and installed air
23 monitors in the community. And we were borne out of
24 those struggles and have worked since then to protect
25 and promote environmental health for residents in its

1 community.

2 And it's Title V permit for that facility
3 formerly -- formally called the North River Waste Water
4 Control Pollution Plant that I form the basis of my
5 comments today. I just want to say as a caveat that I
6 submitted those comments in June of 2002 and don't sort
7 of to advocacy on these sort of issues as much as I
8 would like to have time to do, and so from the
9 follow-up after those comments were submitted are a
10 little bit hazy to me, as well as my memory, but I'm
11 going to do my best.

12 Just to start off with I wanted to say
13 that I think that the Title V program is a great
14 program of the EPA and of the Clean Air Act, provided a
15 good opportunity for effective communities to get all
16 their information in one place and to weigh in in just
17 one process. And it's a good opportunity to help
18 individuals who are affected by the operations of a
19 polluting facility to have the right to know what that
20 facility is doing and be assured that it's complying
21 with the law.

22 And from an environmental justice
23 perspective, in particular, and that's the perspective
24 I'm speaking from, which are the idea that communities
25 of color are burdened with -- are often burdened with

1 multiple stationary sources of air pollution. We have
2 very few resources to act as watchdogs of those
3 facilities or of the agencies that are supposed to be
4 regulating them.

5 So the Title V permitting program allows
6 us to learn what the air quality rules are that apply
7 to the facilities that are located in our communities
8 and determine if they're in compliance. And in
9 particular, I like the monitoring -- I like that the
10 monitoring requirement for the facility to ensure
11 compliance are written directly into the permit because
12 having access to that data and knowing that this
13 monitoring is taking place is one of the few tools that
14 many under-resourced community groups have.

15 With that said, I think that there's
16 still some way to go before the vision and ideals of
17 transparency and ease and community participation,
18 which is what Title V embodies, are completely
19 realized. From my limited experience, I think the
20 major stumbling points have been around community
21 notification of the permitting process, technical
22 support for community residents, community groups to
23 decipher the permit, the draft permits and the
24 statement of basis, and a strong commitment
25 in -- at least the permit that I looked at, to

1 monitoring requirements.

2 So I was just going to talk a little bit
3 about my experience weighing in on the Title V process.
4 Y'all can still hear me, right?

5 MR. VOGEL: Yes, we can.

6 MS. PRAKASH: So this is in reference to
7 the Title V permits for the North River Waste Water
8 Pollution Control Plant, and April 27th of 2001 the
9 nearest New York State DEC issued a notice of complete
10 application for the draft Title V permit for that
11 facility, which the draft permit was noted in the May
12 2, 2001 edition of the New York State DEC's
13 Environmental News Bulletin. I actually was not aware
14 of the Title V program at the time and I didn't make
15 comments during that draft period. It wasn't until I
16 went through the Title V training cosponsored by EPA
17 Region 2 and the Earth Day Coalition in November of
18 2001 that I knew to be on the lookout for a revised
19 permit for North River.

20 And so in May of 2002, I think about --
21 somehow it came to my attention that a revised permit
22 had been issued. But I could not find notice of the
23 issuance anywhere on the DEC web site, which is the
24 first place that I went to to find information about
25 the revised permit. And there was no notice of hearing

1 published in the DEC's environmental news bulletin for
2 the revised permit.

3 So the only thing I could find on the
4 DEC's web site was a draft permit dated April 27, 2001.
5 So after I made several phone calls to everybody that I
6 knew in the DEC, I got help from Michelle Moore, who is
7 the environmental justice coordinator for DEC Region 2,
8 and she faxed me on May 31st, 2002, a notice of revised
9 draft air permit and legislative public hearing which
10 was to take place on June 4, 2002. And that also
11 listed June 7th as the last day for public comments to
12 be received by the DEC.

13 However, Ms. Moore still didn't have --
14 she didn't have a copy of the actual revised permit to
15 send me. There was just no copy of the revised permit
16 to be found. So I made my comments on the older
17 permit. As of June 4th, the date of the public
18 hearing, the date on the DEC web site still read May
19 2001. And I -- you know, I think it was a problem that
20 the web site wasn't updated and that a lot of the
21 individuals who provided public comment at the June 4th
22 hearing were commenting on an outdated draft.

23 The revised permit did go up on the DEC
24 web site the day after the hearing and there was a
25 considerable difference between the first draft and the

1 revised draft. And the DEC did agree to extend the
2 public comment period until June 14th, but I wasn't
3 totally confident that they would honor that extension,
4 so I just, between June 5th and June 7th, consulted a
5 lot of my engineering friends and got a great deal of
6 help as well from Tracey Peel from New York Public
7 Research Group.

8 And from my background, I have a master's
9 degree in environmental health with a specialty in
10 science and engineering, which I really relied on
11 because very little in the permit itself I think is
12 comprehensible to the nonspecialized person or just
13 someone who doesn't have some sort of engineering and
14 technical background.

15 So I sent fairly detailed technical
16 comments on June 7th by fax. What happened is that I
17 never received a written response or an acknowledgment
18 of receipt for those comments. And then several months
19 later when the DEC did send its general responses to
20 public comments on that revised permit, on the revised
21 draft permit, I didn't see any of my specific comments
22 addressed in those general responses, although I did
23 see specific comments of other organizations, including
24 NYPIRG addressed, which led me to wonder whether my
25 comments -- my written comments, not the oral comments,

1 I provided on June 4th had been received or read at
2 all, and I still actually, to be honest, don't know to
3 this day if they were ever received.

4 My next set of comments just have to do
5 with the permit itself, which I will try to go through
6 quickly. I can submit -- I am going to be submitting
7 testimony to you too, which goes into more detail. I'm
8 just trying to hit the major points here.

9 The first has to do with the statement of
10 basis laid out in the draft permit which was
11 inadequate. The relevant regulations weren't properly
12 referenced and -- let's see, while the permit review
13 report did summarize relevant regulations under the
14 applicability discussion, the summaries didn't list the
15 actual emissions limitations or the other regulatory
16 requirements with enough specificity for a public
17 comment to be able to determine if the proposed action
18 played out in the permit would lead to compliant.

19 The second issue has to do with the
20 format of the draft permits, which just, I think, was
21 unnecessarily obscure and difficult to follow. The
22 technical language aside, I think just the format and
23 the organization of the permit was very difficult to
24 follow. And as an example, you know, just the
25 difference between a federally enforceable condition

1 and a federal applicable requirement was not clear.
2 So, you know, the consequences having such an obscure
3 format is -- it discarded effective review from
4 effective impacted community residents, especially the
5 lay public.

6 And then finally, there is several -- a
7 great deal of technical concern about whether the
8 correct regulations were being referenced and whether
9 the appropriate pollution control technologies were
10 being suggested as the way to comply with the certain
11 state regulations, which I can include all those
12 specifics if you all want that in my comments to you.

13 And let me see here, I was concerned they
14 actually -- one of the monitoring requirements that the
15 facility had been complying with up until that point in
16 the permit was proposed to be discontinued after 24
17 months, and that was replacing a continuous opacity
18 monitor with visual monitoring inspection. And so
19 that -- I gave my comment that I felt like given the
20 fact that is a facility which has so much community
21 struggles around it and had initially been operating
22 with very poor complaint, it's very important to have
23 the hard data from a machine as opposed to from a human
24 being looking and getting a judgment about whether
25 opacity had been exceeded. And specifically the

1 opacity requirements in the previous four years of this
2 facility had been violated several times.

3 So just in closing, because I see I'm
4 running out of time here, I guess I'll just close by
5 saying I think that the Title V permitting process can
6 be -- for all of its benefits in terms of public
7 participation and accessibility can be a double-edged
8 sword partially because of the permit shield created by
9 the process, which my admittedly lay understanding of
10 that permit shield is that it protects the facility
11 from legal liability.

12 It turns out that a permit has been
13 written incorrectly or inaccurately, as long as they're
14 compliant with the permit, even if they're not
15 complying with the letter the law, they're shielded
16 from legal liability, and that's a clause that concerns
17 me because after seeing all of the things in the permit
18 that I looked at, that just didn't seem right to me.
19 It seems like those issues aren't addressed and then
20 the window of opportunity to weigh in and point out the
21 problems when the permit closes, then one pool of the
22 community residents often have to resort to build our
23 power and ensure that compliance is met is the legal
24 process unfortunately.

25 And so to take that away by creating a

1 permit shield is something that concerns me that it can
2 negatively impact, in particular communities of color
3 but, really, all communities that are posting polluting
4 sources that are subject to Title V requirements.

5 And then the last topic, if there's a way
6 to create some sort of technical assistance so that the
7 ideal public participation is really met in that
8 information is provided in a way that it's really not
9 just acceptable as, you know, looking on a web page
10 would technically be accessibility, but actually
11 understandable to the average resident. The real
12 intricate details about what the regulations means,
13 what -- whether -- what the pollution control
14 technologies that are being referenced do and how
15 likely it is that there's a match between those two
16 things, I think that's become the key to really
17 ensuring the success of the spirit of Title V as well
18 as the actual letter of how it's written. So with
19 that, I'll close.

20 MR. VOGEL: Thank you. Questions?
21 Shannon Broome.

22 MS. BROOME: Hi, my name is Shannon
23 Broome, and I was just wanting to clarify a question
24 that I had on something you said about the format of
25 the New York permits. Were you talking about how they

1 have that -- it's got that really condensed list and
2 then it says compliant certification and it kind of
3 seems like it's not in English. Is that what you mean?
4 I think I know what you're talking about, but I just
5 want to make sure I understand what you think is the
6 format problem and if it's the same format problem that
7 I see.

8 MS. PRAKASH: There's two -- one is, yes,
9 the plain English, not even -- I mean, not even talking
10 about technical language, but really more like -- these
11 are the relevant regulations that apply to this
12 facility and these are the way in which the facility
13 proposes to meet those regulations. I mean, just sort
14 of an overview perhaps of what was included in the
15 permit would have been, I think, a helpful thing. Let
16 me look at what I see specifically.

17 And then there was also language in terms
18 of things like what's the distinction between a
19 condition and an item.

20 MS. BROOME: Yeah, I know.

21 MS. PRAKASH: Okay. Conditions were
22 listed in correct order and certain conditions were
23 listed in -- they were out of order when they were
24 listed.

25 MS. BROOME: Or that whole listing at the

1 front of the permit that you have no idea what it
2 means, where it's just the unit after unit after unit,
3 okay, why is this here.

4 MS. PRAKASH: Right.

5 MS. BROOME: Okay, we have the same
6 problem. Thanks.

7 MR. VOGEL: Bob Palzer.

8 MR. PALZER: Hi, this is Bob Palzer of
9 the Sierra Club. When you explained that the facility
10 you were looking at at four years of monitoring data
11 with CAMS and there were numerous violations and then
12 ultimately the permit was written without those
13 requirements, was there any rationale given for why
14 that was done?

15 MS. PRAKASH: I'm looking at my notes.
16 They didn't reference the violations, obviously they
17 wouldn't reference that in the permit, but they just
18 said that they felt that a daily visual inspection
19 would be sufficient. I can look up -- let's see.
20 Yeah, they just said that they thought it would be
21 sufficient to ensure compliance.

22 MR. PALZER: Seems pretty lame to me
23 because obviously a visual method that can only be done
24 under limited circumstances at a facility when you had
25 a operating system which showed violations, seems

1 they're disconnecting.

2 MS. PRAKASH: I may have to get back to
3 you in writing too because there's also some details in
4 here about switching the COM system from one type of
5 engine to another, from pump engines to blower engines.
6 So I need to follow to see if this was essentially
7 creating a whole new monitoring system for a different
8 set of engines or whether -- my understanding was that
9 they were going to discontinue the operation of what
10 was operating at the time, the COM, and replace it with
11 daily visual inspection.

12 MR. PALZER: So when you have a chance to
13 review that, will you send that in to us?

14 MS. PRAKASH: Sure.

15 MR. PALZER: Thanks.

16 MR. VOGEL: Verena Owen.

17 MS. OWEN: Hi, this is Verena Owen. I'm
18 with the Lake County Conservation Alliance. I have two
19 quick questions. Do you recall if the permit comment
20 period extension was given in writing or was this some
21 kind of formal announcement?

22 MS. PRAKASH: It was definitely not a
23 formal announcement. In fact, the way I found out
24 about it was I was working -- I don't know if -- did
25 Tracy Peel testify today? She was my connection at

1 NYPIRGs, and she was helping me a lot to figure out
2 what was happening. But she told me that she
3 communicated with a DEC attorney, a Lisa Wilkinson, who
4 agreed to do an extension until June 14th but that the
5 DEC wanted to see from the environmental groups an
6 agreement in writing to this extension period.

7 So I believe -- which seems backward to
8 me -- but I believe that a few different environmental
9 groups signed on to that, but from what I recall, I
10 went ahead and sent my comments by the 7th, because the
11 whole thing -- I didn't see anything in writing by the
12 7th, so I didn't want to take the chance.

13 MS. OWEN: I'm sorry, I'm not sure I
14 understood. The DEC wanted environmental groups to
15 have some kind of commitment to the permit comment?

16 MS. PRAKASH: I guess agree that we felt
17 that the -- she wants a letter or letters from all of
18 us environmental groups agreeing to the extension.
19 That's what this e-mail from Tracey Peel says to me.
20 So I think that -- I guess she wanted in writing that
21 we thought the 14th was sufficient. So there may have
22 been something ultimately in writing, but I don't have
23 that in my file.

24 MS. OWEN: Okay. When you said that
25 you're not sure that your comments were considered, do

1 you believe the DEC has kind of a relevancy threshold
2 to public comments and feels that certain comments do
3 not require a response?

4 MS. PRAKASH: A lot of my comments
5 overlapped with -- the technical comments overlapped
6 with NYPIRG's, and those were responded to. Now, I
7 have not been able to put my hands on the DEC's
8 response in the past week, so I can't go through that
9 and tell you right now, but I do remember looking
10 through and thinking, well, a lot of comments that were
11 very similar to mine were addressed, but some of the
12 comments that I had made that were not made by NYPIRG
13 were not addressed. So I couldn't tell if they thought
14 that they addressed them by -- if normal practice to
15 sort of take the most detailed comments and respond to
16 those or if they really just never got my fax.

17 MS. OWEN: Thank you.

18 MR. VOGEL: Keri Powell.

19 MS. POWELL: Hi Swati, this is Keri. I'm
20 sorry I can't help you more on what happened with that
21 permit proceeding, but as you know, I wasn't at NYPIRG
22 when that started happening. Tracey didn't testify
23 because she's actually not with NYPIRG anymore.

24 MS. PRAKASH: Oh, okay.

25 MS. POWELL: So I had a question for you

1 about community notification. You mentioned that is
2 one of your key concerns and I wanted to know if you
3 had some ideas about what would be effective
4 notification for the availability of draft permits and
5 public hearings.

6 MS. PRAKASH: Yeah. I think that e-mail
7 alert -- I don't know if environmental news bulletin
8 has -- I don't know how -- I don't know the details of
9 how this would work, but there are a lot of groups that
10 are lucky enough to have staff like we have. A lot of
11 us do use e-mail on a fairly regular basis, and it's
12 just one step. There could be some sort of alert for
13 any time a Title V draft permit is issued. Because
14 right now what we have to do -- there's two ways that
15 there's notification. One is you have to sort of check
16 the environmental news bulletin on a regular basis,
17 which is not so practical, and then the second is that
18 they do send hard copies to the local community boards,
19 which is one, I think, good way to conduct community
20 notification, but I would say it's not sufficient.

21 So there's e-mail list and then -- if
22 there's a way to expand the number of organizations
23 that receive hard copy, just letters even of
24 notification directing people to either a web site, an
25 updated and accurate web site, or to the physical

1 location of the permit, that would be helpful.

2 The permit -- I believe revised permits
3 were sent to -- they were with one local DEC office,
4 they were with one local community organization, and it
5 was with the community board. But if you're not sort
6 of physically near those areas, it's hard, I think, to
7 stop by and read the copies in-house. That's just sort
8 of off the top of my head response.

9 MS. POWELL: Just to let you know, Swati,
10 I think that DEC maintains a mailing list that you can
11 sign up for, so you might want to get on that.

12 So you think if they were effectively
13 maintaining a mailing list or e-mailing notification,
14 that that would be enough?

15 MS. PRAKASH: You know, there's a whole
16 spectrum of community notification. There's the sort
17 of Cadillac version and then there's the, okay, we can
18 live with this version. And I think that good hard
19 copy mailing list, good electronic mailing list,
20 updated web sites and -- would be probably just as a
21 threshold of adequate, yeah. And then there's the next
22 batch of things, which would be -- the way I was
23 notified ultimately was through a phone call from
24 folks, which I realize is not that practical, but
25 that's another, I think, resource for groups that

1 really are not on-line regularly.

2 And then finally, public libraries
3 actually -- although they're severely underfunded -- do
4 serve as a source of information for many communities.
5 That's another realm that I think shouldn't be
6 underestimated.

7 MR. VOGEL: Thank you very much, Swati,
8 for spending time with us today.

9 Do we have another speaker?

10 MS. WILLIAMS: Hi, this is Jane Williams.

11 MR. VOGEL: Yes, we were looking for you
12 earlier.

13 MS. WILLIAMS: I've been hearing a lot of
14 really wonderful testimony while waiting to speak, so
15 I'm glad that the Title V advisory committee is getting
16 the benefit of all this experience.

17 MR. VOGEL: If you're ready to talk with
18 us, I think we can go ahead. Let's first ask if Reed
19 Zars is on?

20 MR. ZARS: Yes, I am on.

21 MR. VOGEL: Who else do we have on?
22 Anybody else on the line?

23 MS. WILLIAMS: This is Jane Williams. I
24 am the executive director of California Communities
25 Against Toxics, which is statewide network of over 70