

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

1 community-based predominately environmental justice  
2 groups in California. We've commented and been  
3 involved in a number of Title V permits predominantly  
4 in California. As well, I chair the Sierra Club  
5 National Air Toxics Task Force, which has also reviewed  
6 some Title V permits in other states as well, largely  
7 on incinerators and other major combustion projects.

8                   Rather than repeat the testimony of my  
9 very able colleagues that came before me, you know, on  
10 things like public notification, which is largely  
11 inadequate in most instances, and the responding -- how  
12 the agency responds to comments and both public  
13 hearings, I think you've probably heard a lot of  
14 testimony about the inadequacies of those in many state  
15 programs. And that is -- California's program is  
16 included in that.

17                   But what I specifically want to talk  
18 about today is the issue of startup, shutdown, and  
19 malfunction. Now, I heard some of the previous  
20 testifiers talk about fugitive emission, and it's  
21 important to distinguish startup, shutdown, and  
22 malfunctioning emission from fugitive emissions,  
23 although sometimes they're closely related.

24                   We have tried very hard and many of the  
25 Title V permits that we've commented on to deal with

1 some of these issues regarding both fugitive emissions  
2 and startup and shutdown and malfunction emissions and  
3 try to get conditions both into operating permits and  
4 in the Title V permits and in the preconstruction  
5 permits to deal with this. And it's been very, very  
6 challenging. We also dealt with this issue in some of  
7 the rules, the mass rules especially at the federal  
8 level.

9                   And I think what we've seen with large  
10 combustion facilities is that the emissions that are  
11 occurring during startup, shutdown and malfunction can  
12 actually dwarf the other emissions. They're already  
13 permitted at the facility. And so poorly run  
14 facilities in states that lack enforcement, you can  
15 have emissions for startup, shutdown and malfunction  
16 that neither receive the actual permitted emissions.

17                   And the other thing that is very -- of  
18 great concern to us on this issue of startup, shutdown  
19 and malfunction is the fact that numerous studies have  
20 shown that during the startup, shutdown, malfunction  
21 event you actually can get enhanced emissions of  
22 products of incomplete combustion, things like dioxins,  
23 furans, and polychlorinate as well as polyaromatic  
24 hydrocarbons that are the kind of very nasty toxic air  
25 contaminants that we are very concerned about from a

1 public health perspective.

2                   And so trying to deal with the issue of  
3 limiting the ability of a facility to operate in its  
4 malfunction mode in the Title V context has been very  
5 challenging. Our efforts to try to get enhanced  
6 monitoring of startup, shutdown, malfunction events or  
7 to try to limit the percent during the time that a  
8 facility can maintain its permit, still be in its  
9 permitted mode and engage startup, shutdown and  
10 malfunction event hasn't -- has been largely  
11 unsuccessful in California at least and in other states  
12 as well.

13                   So this remains a serious jailbreak from  
14 the Clean Air Act in the fact that for many of these  
15 facilities there are no limitations. And, in fact, a  
16 lot of times we see -- these are issues or when the  
17 inspector goes out and looks at a facility, I've seen a  
18 couple times -- what's actually happened is the  
19 inspectors said, well, you can just file an incident  
20 report under your startup, shutdown and malfunction  
21 provision and then you would actually be in compliance  
22 with the law.

23                   So to the extent that startup, shutdown  
24 and malfunction provision and these upset reports are  
25 used to essentially avoid compliance with the

1 continuous compliant requirements of the Clean Air Act,  
2 it becomes a very, very difficult enforcement issue in  
3 the Title V context.

4                   And Eric Schaffer actually at the  
5 Environmental Integrity Project recently did a report  
6 on this issue of startup, shutdown and malfunction. I  
7 know that Kelly was very involved with that. And I  
8 think that report points out very clearly, even in very  
9 limited sectors where we looked at this closely, say in  
10 refineries, we've also looked at it at chemical  
11 manufacturers, as well as hazardous waste incinerators  
12 and other types of incinerators.

13                   When you look at the contribution,  
14 especially to the hazardous air pollutant emission from  
15 these facilities, this issue of sort of shutdown and  
16 malfunction is a very significant public health  
17 problem. And with that, I would request questions or  
18 comments or discussion on my comments.

19                   MR. VOGEL: Thank you very much.  
20 Questions from the Task Force. Bob Morehouse.

21                   MR. MOREHOUSE: Jane, this is Bob  
22 Morehouse. You made a comment about looking for  
23 additional terms related -- for Title V contracts  
24 related to fugitive emissions. Can you explain a  
25 little bit more what the issue is.

1 MS. WILLIAMS: There's a significant  
2 difference between fugitive emissions, which are mainly  
3 leaks from valves and pipes and things like that, which  
4 can actually be very significant overall contributors  
5 to emissions, especially at large industrial  
6 facilities, and what are called startup, shutdown and  
7 malfunction events. And they're two separate and  
8 distinct types of emissions, and the startup, shutdown  
9 and malfunction events often have elevated and  
10 increased amounts of hazardous pollutant emission  
11 because they're -- essentially what's happening during  
12 a startup, shutdown and malfunction event is that  
13 combustion unit is operating outside its optimal  
14 performance limit.

15 MR. MOREHOUSE: Let me clarify because I  
16 know there are different types of emissions. I thought  
17 you were indicating on fugitive emissions, that there  
18 was some issues that you wanted to get into Title V  
19 permit specific.

20 MS. WILLIAMS: No, I'm saying that I  
21 thought that David had covered those. He had  
22 specifically mentioned issues of fugitive. And so I  
23 wasn't going to comment on the issue of fugitive  
24 because it seemed like it was covered in previous  
25 testimony.

1 MR. MOREHOUSE: Okay.

2 MR. VOGEL: Adan Schwartz.

3 MR. SCHWARTZ: Hi, Adan Schwartz with the  
4 Bay Area Air District. Talking about startup,  
5 shutdowns and malfunction provisions, and we're  
6 discussing this in generality so it may be difficult  
7 for that reason, but in general these provisions are  
8 written into the applicable requirements themselves  
9 such as new source performance standards or standards  
10 you find the SIP. And as I think you know, the main  
11 job of the Title V permit is just to -- it's mainly to  
12 incorporate those requirements that come from  
13 elsewhere.

14 And so I'm wondering how you have  
15 approached this in commenting on Title V permits? Are  
16 you essentially urging that the requirements themselves  
17 be rewritten or are you commenting that Title V somehow  
18 requires that these be addressed when they're being  
19 incorporated?

20 MS. WILLIAMS: Well, as you know, it's  
21 predominantly the general provisions that apply on SSM  
22 event, and I guess what we see is that there usually  
23 are no specific requirements on somehow limiting SSM  
24 event either in pre-construction permits or operating  
25 permits or in the regulations themselves. And so when

1 you look at trying to deal with the public health  
2 impacts of SSM events in a Title V context, you know,  
3 you're question to me kind of gets to the point that  
4 we're treading in very unstable waters.

5                   But clearly it was not meant by the  
6 crafters and architects of the Clean Air Act that it --  
7 you would just simply get out of compliance by claiming  
8 that you had an upset condition. But yet we see that  
9 happening over and over. So what we've tried to do is  
10 clarify what are upset conditions, and what we've tried  
11 to do both in federal rules and the Title V context is  
12 to place some limit on the amount of time that a  
13 facility can claim its operating startup, shutdown and  
14 malfunction and avoid compliance essentially with those  
15 Title V and other rules.

16                   MR. SCHWARTZ: So it sounds like you're  
17 saying you're not urging wholesale revision of these  
18 requirements, at least not in a Title V context, but  
19 you are urging more definition to some of these terms  
20 so there's more clarity as to how they should be  
21 applied. Is that fair?

22                   MS. WILLIAMS: Yes.

23                   MR. SCHWARTZ: Thanks.

24                   MS. WILLIAMS: I think in the Title V  
25 context they can't -- as you know, you're trying to

1 implement the federal regulations that are in place,  
2 but certainly in the context of when we're working on  
3 the MACT standards, we've been trying to say that,  
4 well, how do you draw the line between what is an upset  
5 condition, what startup, shutdown and malfunction upset  
6 and what is a violation and trying to clarify that and  
7 even put some sort of restriction.

8                   We often use the example of a permit that  
9 was actually written in Region 9 where there was permit  
10 requirements placed upon a combustion unit that says  
11 that it can only operate under startup, shutdown and  
12 malfunction mode a certain percent of the time per  
13 month, and that if it exceeded that, the facility had  
14 to be shut down and they had to go back and amend their  
15 startup, shutdown malfunction plan.

16                   Often the plans are just reference in the  
17 Title V permit. They're not even included in the  
18 permit, much less is the public made aware of the  
19 conditions of the startup, shutdown and malfunction  
20 plan. It will just simply say there's a plan referred  
21 to it and that the requirements of that plan are  
22 included in the Title V permit.

23                   And then there was also an issue earlier  
24 in the Bush administration where you were able to make  
25 changes to the plan without public comment, and that

1 obviously is not -- we're going to rely upon a startup,  
2 shutdown and malfunction plan to show that we're in  
3 continued compliance with the Clean Air Act, but you  
4 can make changes to the plan anytime you want without  
5 oversight by the public. So that's all very  
6 problematic.

7 MR. VOGEL: This is Ray Vogel. Let me  
8 ask a follow-up question on Adan's question, which is  
9 you think that there's a stronger need to clarify the  
10 startup, shutdown, malfunction provisions in state  
11 rules as well as federal rules. Are there problems in  
12 more state rules or federal rules or vice versa?

13 MS. WILLIAMS: Yes, I definitely would  
14 agree with that. I think that the lack of clarity --  
15 again, it eviscerates the enforceability of the Title V  
16 permit when a facility could just pull out its startup,  
17 shutdown and malfunction plan and say, well, see here,  
18 it was included by reference in the Title V permit and  
19 we're in compliance with it.

20 MR. VOGEL: Just to be clear, are you  
21 saying the problems exist both in the state rules and  
22 the federal rules?

23 MS. WILLIAMS: I think -- you're right,  
24 because the state rules come from the general  
25 provisions. I think the general provisions are vague.

1 I think that the state rules implemented in SIP become  
2 even vaguer, and then when the startup, shutdown,  
3 malfunction plans are just referenced in the Title V  
4 permit, it essentially eviscerates the public's ability  
5 or the citizens surrounding the facility's ability to  
6 effectively enforce against a facility that is out of  
7 compliance with the plan or out of compliance with what  
8 should be a reasonable plan.

9 MR. VOGEL: Okay. Thank you. Another  
10 question from Bob Palzer.

11 MR. PALZER: Hi, Jane.

12 MS. WILLIAMS: Hi, Bob.

13 MR. PALZER: Following up on the startup,  
14 shutdown and malfunction mode, I'd like you to take a  
15 crack at how that could also impact SIP planning if  
16 what you say is correct, that you have instances where  
17 you may have more emissions from a source during those  
18 periods when you're in upset mode or start -- you know,  
19 startup or shutdown as to -- well, if you could just  
20 comment on if you think that is a serious problem and  
21 follow up on your attempts to deal with this without  
22 success in terms of, you know, solving this kind of  
23 problem.

24 MS. WILLIAMS: Okay. First of all, Bob  
25 knows very well that I'm not so much a criteria

1 pollutant person as an air toxics person, but I'll  
2 certainly take a crack at answering the question.

3 I think it's very clear that during the  
4 startup, shutdown and malfunction event, not only do  
5 air toxic emissions rise dramatically, but also  
6 depending on the type of facility, it can be nox or CO  
7 or other types of criteria pollutants that indicate  
8 that inefficient combustion and non-threatening  
9 combustion is taking place.

10 And if you look -- some facilities are  
11 clearly -- completely noncompliant. One of the  
12 facilities that we worked on in the Midwest was  
13 operating its facility in startup, shutdown and  
14 malfunction mode 25 percent of the time. And, of  
15 course, emissions are not measured at those facilities  
16 during those SSM events. You know, what we have is,  
17 you know, special study cases and special reports where  
18 you challenge a facility and then you try to figure out  
19 what its emissions are.

20 But what we found -- just to give you one  
21 example, emissions from medical waste incinerators  
22 during startup, shutdown and malfunction events  
23 emissions of dioxin rose 50 times. So you can see that  
24 a facility that where the emissions are rising 50 times  
25 and is being operated 25 percent of the time in SSM



1 the fees to run the program.

2 MS. WILLIAMS: I don't know, I'm not for  
3 sure if you want to get me started on that since I've  
4 been fighting with Barry Wallersby because he told me  
5 he had to take four million dollars out of his general  
6 fund to fund the Title V program which, of course, he  
7 doesn't like in the first place.

8 MR. PALZER: We've had a number of people  
9 commenting --

10 MS. WILLIAMS: Why are you doing that,  
11 it's supposed to be funded by fees on the polluters.  
12 That just another example of how Title V can be a  
13 program gone awry on the fee issue.

14 Now, they don't include the -- I'm not  
15 aware of any program either in on of that states I've  
16 worked in or in the many different air quality  
17 districts in California where they take into account  
18 emissions during startup, shutdown and malfunction and  
19 the fee setting. The fee setting, again, is more based  
20 on potential to emit or in some air districts or  
21 districts on actual emission.

22 MR. VOGEL: Thank you very much. It's  
23 time to move on to the next speaker. I do appreciate  
24 your taking time on this, Jane, today.

25 MS. WILLIAMS: Okay, thank you very much.