

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

U.S. ENVIRONMENTAL PROTECTION AGENCY

TITLE V TASK FORCE

PUBLIC MEETING

FEBRUARY 7, 2005

MARINES MEMORIAL CLUB & HOTEL

SAN FRANCISCO, CA 94102

Bay Area Court Reporters
21573 Foothill Blvd
Hayward, CA 94541
(510) 889-9400

Reported by: Freddie Reppond

1 [THE PROCEEDING BEGAN AT 8:01 A.M.]

2 MR. HARNETT: I would like to thank everyone
3 for coming today. I especially want to thank again the
4 members of the Task Force for participating and coming
5 to a number of hearings now, this being our third public
6 meeting. In addition, we have done one sort of phone
7 teleconference, and we will be doing another one of
8 those this week here.

9 The Clean Air Act Advisory Committee, which
10 provides advice to the EPA about implementation of the
11 programs under the Clean Air Act created this Task Force
12 over a year ago. The purpose of this Task Force was to
13 look at the experience people have had, now that we've
14 had about ten years since the first state Title V
15 operating permitting program was up and running. And we
16 are getting closer and closer to the point where all of
17 the initial Title V permits will have been issued.

18 And we thought now was a good time to look
19 back on the experiences that have happened and then
20 looking forward to see how can the program best be
21 improved. We were charged by the Advisory Committee to
22 look at how well is the Title V performing and what
23 elements of the program are working well or are working
24 poorly and need to be corrected. The Advisory Committee
25 has asked us to prepare a report to them that answers

1 these questions, based on the information we gather
2 today and throughout this public process that we've been
3 running.

4 We have held public meetings in Chicago and in
5 Washington, D.C., for the purpose of gathering. And we
6 have an open public docket that will continue to be open
7 until March 31st to solicit comments.

8 They gave us some specific advice to follow in
9 how we conduct our work: that the report should reflect
10 perspectives of all the stakeholder groups; that it
11 should reflect, to the maximum extent possible,
12 stakeholders' real-world experiences with the Title V
13 program. Examples are helpful to us in trying to
14 understand things.

15 It's also -- the report should describe the
16 information about how things are working well or leading
17 to beneficial outcomes as well as the reported problems.
18 All too often, when we gather in these kinds of settings
19 and ask about a government program, everyone focuses on
20 what's going wrong with the program, as opposed to
21 what's going right. So we'd like to cover both sides of
22 that.

23 So the task force may also make
24 recommendations for improving the program, based on what
25 it gets. And the report itself will reflect -- for our

1 Task Force we will go around and introduce them in a
2 second -- but we have representatives of industry,
3 public interest groups, and the permit authorities --
4 state and local.

5 And we expect, at the end of it, that we will
6 reflect, in the final report, the opinions of all in the
7 document.

8 The logistics for today is, we will go around
9 in a second and let everyone introduce themselves that
10 are a member of the Task Force.

11 For speakers, as I call you, you will come up
12 and sit almost directly across from me. You will have
13 ten minutes for making your presentation. And then you
14 will have ten minutes that have been set aside for
15 questions from the Task Force for clarification. If you
16 have overheads or other materials for presentation, you
17 can handle those behind me; and we will move them
18 forward for you.

19 You'll see a little box up in front of you
20 that will warn you. It will show you -- when you're
21 green, you can keep talking. When you're in yellow, you
22 should be summing up. That will be about the
23 two-minute warning of the ten. And then you'll have to
24 stop when you get a red light. We are fairly strict
25 about enforcing the time, because we have found that the

1 need to get questions in is very important in this
2 process. And most days we have a pretty full day of
3 speakers coming forward to us.

4 We will -- we do have a website for all this
5 that we can give you that -- where we are posting the
6 transcripts of all of these public meetings. We are
7 recording them, and you can also -- if you like, get
8 sent to you the actual oral version of everything that's
9 given to us. But we also will have a written transcript
10 of everything said here today. Then, again, as I said,
11 we have our docket as well that you can browse through.

12 We will be taking a break this morning at
13 10:00 a.m. And then, again, we will break for lunch
14 from 12:00 to 1:00 and reconvene at 1:00 and finish for
15 the day.

16 Let me just at this point let the Task Force
17 members themselves introduce themselves.

18 MS. VIDETICH: I'm Callie Videtich. I'm with
19 Region 8 EPA in Denver.

20 MS. BROOME: Hi. I'm Shannon Broome; and I'm
21 here on behalf of the Air Permitting Forum.

22 MR. VOGEL: I'm Ray Vogel; and I'm acting
23 manager of the Title V program with the EPA.

24 MR. LING: I'm Michael Ling. I'm also with
25 EPA in the air office.

1 MS. HARAGAN: I'm Kelly Haragan with
2 Environmental Integrity Project.

3 MR. HAGLE: I'm Steve Hagle, Air Permits
4 Division of the Texas Commission on Environmental
5 Quality.

6 MR. HITTE: I'm Steve Hitte, EPA, also air
7 office.

8 MR. MOREHOUSE: Bob Morehouse, ExxonMobil.

9 MS. FREEMAN: Lauren Freeman, Hunton &
10 Williams, here for the Utility Air Regulatory Group.

11 MS. POWELL: Keri Powell, representing the New
12 York Public Interest Research Group.

13 MR. VAN DER VAART: Don van der Vaart, with
14 the Division of Air Quality, North Carolina.

15 MR. SLIWINSKI: Rob Sliwinski with New York
16 State Department of Environmental Conservation.

17 MR. VAN DER VAART: MR. PALZER: Bob Palzer
18 representing the Sierra Club.

19 MS. KEEVER: Marcie Kever representing Our
20 Children's Earth.

21 MR. GOLDEN: David Golden, Eastman Chemical
22 Company.

23 MS. OWEN: Verena Owen with the Lake County
24 Conservation Alliance in Illinois.

25 MR. WOOD: I'm Mike Wood with the Weyerhaeuser

1 Company.

2 MR. HARNETT: With that, I would like to call
3 up the first speaker, who is Chuck Layman, Central
4 States Air Resources Agencies Planning Group.

5 MR. LAYMAN: Thank you and good morning. My
6 name is Chuck Layman. I am representing CENSARA, the
7 Central States Air Resources Agencies Association.

8 CENSARA's members are the air quality agencies
9 of Arkansas, Iowa, Kansas, Louisiana, Minnesota,
10 Missouri, Nebraska, Oklahoma, and Texas, and the local
11 air quality agencies within those states. And there's a
12 representation up on the overhead.

13 On behalf of the CENSARA air quality agencies,
14 I would like to thank the Task Force for this
15 opportunity to discuss our members' experience with the
16 Title V program. Next slide.

17 First and foremost, I will point out that our
18 member state and local agencies fully support the
19 concept of Title V. That is a single document that,
20 one, includes all requirements that an air emission
21 source would need to comply with the requirements of the
22 state implementation plan and federal air quality
23 programs; and, two, which always includes acceptable
24 methods for demonstrating compliance with each of those
25 requirements.

1 Title V has seen its share of successes. But,
2 as with any new program, there are challenges we need to
3 work through to assure that the potential of Title V is
4 realized. I will first share the successes with the
5 Title -- with the Task Force. Then I will turn to the
6 challenges implementing the Title V program identified
7 by the CENSARA members and address possible solutions
8 for many of those challenges.

9 Successes: One of the primary successes of
10 Title V resulted from the in-depth review conducted when
11 the permit applicants completed their initial Title V
12 application. All of our states and local agencies
13 experienced a number of self-disclosed violations
14 resulting from those in-depth reviews. Those violations
15 range from failure to obtain PSD permits to
16 record-keeping infractions. Emission reduction resulted
17 from any -- from many of the self-disclosed violations,
18 benefiting both the public health and the environment.

19 Other benefits realized of the Title V program
20 are: emission reductions resulting from the
21 installation of control equipment to reduce emissions
22 below the major-source threshold; improved compliance
23 through better monitoring and regular performance
24 testing; resolution of old, outdated, and ambiguous
25 permit requirements; and correctionable permit errors.

1 Our member agencies' experience has been that
2 consolidation of applicable requirements and compliance
3 demonstration methodologies into a single document have
4 clarified source obligations resulting in improved
5 compliance. The annual compliance certification has
6 proved to be an effective tool for assuring compliance
7 with air quality requirements. Requiring industry to
8 annually conduct a comprehensive review of the
9 facility's compliance status has achieved its purpose.
10 CENSARA state and local agencies support annual
11 compliance certification as a valuable means of assuring
12 continual compliance with air quality requirements.

13 A secondary benefit is EPA has seen to allow
14 more flexibility in its oversight role due to its
15 experience with Title V. Title V began as a very
16 prescriptive program; however, EPA subsequently issued
17 the White Papers, which allowed the permitting
18 authorities to concentrate more on outcomes and less on
19 strict adherence to the letter of EPA policy and
20 guidance. Localized public health and environmental
21 issues are much more effectively addressed when
22 permitting authorities are provided the flexibility to
23 develop a solution, as opposed to simply implementing an
24 ill-fitting regulatory requirement.

25 The success of the Title V program -- the

1 final success of the Title V program addresses funding.
2 Title V and the public health and environmental benefits
3 realized would not have been possible with the funding
4 mechanism built in the program. States and local
5 agencies are constantly being asked to take on more
6 responsibility while budgets remain flat or decreased.
7 Title V has been the sole program increasing the level
8 of effort required by the states and local agencies that
9 also provided a funding source. Congress and EPA need
10 to realize that states and local agencies are capable
11 and more than willing to take on additional
12 responsibilities, but the funding must accompany the
13 mandates.

14 Now, I'll turn to some of the challenges.

15 One of the main challenges of the Title V
16 program facing state and local permitting agencies is to
17 take complex, technical regulations applicable to a
18 complex source and place them in a document that is easy
19 to comprehend without inadvertently changing any
20 requirement. This single challenge is the root of many
21 of the concerns that have been raised about the Title V
22 program. The level of detail required in permits often
23 makes permit requirements hard to stand -- understand.
24 State and local agencies struggle with folding MACT
25 standards and over-complex requirements into permits.

1 Permits are often hard to read or interpret for those
2 not involved in drafting the permit. Title V, as
3 currently interpreted, requires an inclusion of details
4 that are really not that relevant and permit details
5 with little significant environmental benefit. For
6 example, the military facility example provided by John
7 Paul of Dayton, Ohio, Air Quality Program in his
8 Washington, D.C., testimony provided an excellent
9 example of this concern. Insignificant activities with
10 minimal emissions that are inherently compliant should
11 be exempted from inclusion in the Title V permit.

12 Attempting to paraphrase regulatory language
13 without changing the meaning or opening it up for
14 interpretations inconsistent with regulatory
15 requirements is not possible. Referencing regulatory
16 requirements is not all that helpful if people using the
17 permit do not have the regulations handy. However,
18 attaching the regulations to the permit makes for an
19 awfully large document. Federal regulations are
20 technical, complex, and difficult to comprehend. Yet
21 the states and local agencies are being asked to write
22 these into permits so that everyone can easily
23 understand all the requirements. It should be left to
24 the individual states and local agencies to draft
25 permits in the manner that best works for that state or

1 local agency.

2 The issuance of the permit is a time the
3 permit drafter could provide compliance assistance by
4 thoroughly reviewing the final permit with inspectors
5 and facility personnel. However, this does not help the
6 members of the general public that may be interested in
7 a particular facility. Industry could use this as an
8 opportunity to improve community relations by sponsoring
9 neighborhood meetings at the time of permit issuance.

10 One thing that CENSARA authorities are doing
11 to help address these challenges is, in conjunction with
12 the relevant EPA regions, conducting a permit
13 streamlining initiative. The permitting procedures at
14 each CENSARA permitting authority will be observed by
15 EPA Region 6 staff, which will identify effective and
16 efficient permitting practices. A workshop will then be
17 held where each permitting authority can share these
18 practices with the other. EPA is also beginning an
19 initiative to audit each permitting authority's Title V
20 program to evaluate resource needs. So there are some
21 things going on that are attempting to look at what's
22 working for Title V shared among the states and have
23 other states be able to implement it.

24 Another significant challenge facing the state
25 and local permitting agencies is the timely issuance of

1 Title V permits. There are many reasons for the
2 inability to meet the time frames of the Title V
3 program.

4 First and foremost, our experience with the
5 Title V program has demonstrated that time frames
6 written into the Title V program were just not
7 realistic. Not only was the three years within which to
8 complete the initial permitting too short, the time
9 period for minor modifications and significant
10 modifications or any openings have proved problematic,
11 especially when the prerequisites to the issuance
12 change, such as stacks test results. By the time stack
13 tests are scheduled, conducted, and a report received,
14 the permitting agency has little time left to complete
15 the permit change. The deadlines and requirements for
16 permit modification need to be reevaluated in light of
17 current experience and determine whether value is
18 received for the work expended.

19 Staff turnover due to burnout, both for
20 permitting agencies and industry, is a significant
21 source of delay. It takes a significant amount of time
22 to educate new staff to the point where a Title V permit
23 review can begin. Experienced staff time is also lost
24 while training new staff. In addition, the increased
25 amount of stack testing has created a staffing challenge

1 due to the seasonal nature of stack testing and the
2 significant travel involved.

3 I'm starting to run out of time, so I'm going
4 to -- one thing we really need to work on is improved
5 emission factors. Right now, AP 42 is the base document
6 for emission factors; and it's woefully outdated in many
7 situations. Funds need to be provided to EPA to help
8 update emission factors. And, also, incentives need to
9 be provided to industries to help update those emission
10 factors.

11 Another issue some of our states have wrestled
12 with were addressing deficiencies in federal programs.
13 For instance, some of the new source performance
14 standards are quite old. And some of their monitoring
15 methods might be outdated at this point in time. But we
16 do not feel that Title V is the correct tool to update
17 NSPS requirements regarding monitoring. This should be
18 done through the eight-year review that EPA has
19 required, so we would encourage that to continue.

20 I'm gonna skip right over to my conclusions,
21 'cause I'm running out of time and you can read all
22 this.

23 But, basically -- can you skip over to -- in
24 conclusion, I want to point out that we do support the
25 concept of Title V. Many public health and

1 environmental benefits have been achieved through the
2 Title V program. We support the continuation, including
3 funding mechanisms into federal program mandates. Many
4 of the challenges of the Title V program reflect the
5 desire that states develop easily understandable permits
6 for complex regulations that are applicable to complex
7 facilities. Some efficiencies can be achieved; however,
8 there's no way to avoid the fact that comprehensive
9 permits will remain to be complex documents. The
10 deadlines and requirements for permit issuance,
11 modifications, and reopening need to be reevaluated in
12 light of current experience and determine whether value
13 is received for the work expended.

14 Incentives must be developed to encourage
15 industry to see the benefits of the Title V program.
16 Common understanding of the Title V program needs to be
17 achieved. The Title V program should remain the
18 responsibility of the state and local air quality
19 agencies with national consistency as a goal only when
20 national issues dictate a level playing field.

21 MR. HARNETT: We need, if you are able, to
22 stop there and start with the questions.

23 MR. HARNETT: Bob Morehouse.

24 MR. MOREHOUSE: Chuck, thank you for your
25 time.

1 Question: You touched very briefly on the
2 successes. You mention the White Papers. Can you
3 expand a little bit on the benefits or the success
4 you've seen in the implementation of the concepts in the
5 White Papers, which I assume you're referring to White
6 Papers 1 and 2?

7 MR. LAYMAN: Right. One thing we saw that
8 before the White Papers came out, Title V was a very
9 prescriptive program. Almost every aspect of Title V
10 was dictated by a federal requirement of some sort.

11 The White Paper recognized that states and
12 local agencies do have expertise in these areas and
13 can -- can use their own -- can be trusted to really use
14 their own judgment in some of these issues. So it did
15 streamline the process quite a bit and allow permit
16 progress to be developed more in line with the state's
17 needs or local agency's needs rather than what a federal
18 program might seem.

19 Does that respond to your question?

20 MR. HARNETT: Bob Palzer.

21 MR. PALZER: Thank you for coming, Chuck.

22 One of the things that you mentioned is that
23 there are funding problems in initiating and doing your
24 program. And, of course, the Clean Air ACT requires
25 that fees be collected from the regulating communities

1 to support the program. Are you having difficulty at
2 the state level in getting those fees to be adequate to
3 do the job properly?

4 MR. LAYMAN: I'm not aware of our states --
5 any of our states -- really having problems getting
6 adequate funding for Title V. I think one of the big
7 issues all of our states and locals have run into with
8 Title V is staff burnout. These are hard documents to
9 develop. They are slow. You have young kids right out
10 of college. They're usually training and they get
11 burned out on this process.

12 For Title V, I don't think it's so much a
13 funding issue that states and locals have. It's
14 maintaining the staff necessary to do it. What I was
15 really trying to refer to there was that's one of the
16 real positives of Title V, is that it did provide a
17 funding mechanism, but we have so many other
18 responsibilities to do that we don't have that. We
19 really need to kind of develop that into others. I
20 think for Title V most of our states and local agencies
21 aren't having problems getting the funding necessary for
22 Title V; it's usually a staffing problem that is the
23 problem.

24 MR. PALZER: A related problem is how good is
25 your public participation because of the complexities?

1 MR. LAYMAN: In the central part of the
2 country, where we really don't have a lot of air-quality
3 problems, we don't have a lot of public participation.
4 It's primarily -- primarily where we see public
5 participation is either areas that -- nonattainment
6 areas where there's a lot of public awareness or a
7 situation where there's a specific plant that there
8 might be members of the public concerned with. In the
9 vast majority of our cases in the central parts of the
10 country, when these go on public notice, the only
11 comments are from EPA and the industry. Very seldom do
12 we get public interest in these.

13 MR. PALZER: Thank you.

14 MR. HARNETT: Adan Schwartz, please.

15 MR. SCHWARTZ: Thanks. First of all, Bill,
16 sorry I'm late. I was in the next room, and it took me
17 a while to realize it was a power sewing conference that
18 I was participating in.

19 Just, Mr. Layman, I'd like to -- since you
20 represent a number of states, I'd like to ask you if you
21 have any observations on the interactions with EPA
22 regarding objections or potential objections. Has that
23 worked well? Is there trouble -- are there trouble
24 spots with that? Are the timelines in Part 70 adequate?
25 Or any other thoughts that you have.

1 MR. LAYMAN: I think, in general, most of our
2 states have pretty good regulations with the regions and
3 there's pretty good give-and-take. I think one of the
4 big problems we've run into, though, is that this first
5 round of permits -- it's the push from the regions to
6 get these permits perfect. And that's really hard to do
7 this first time around. So we have a lot of discussions
8 going back between the states and the EPA regions on
9 things that we -- that we probably shouldn't be holding
10 up the permit. So I think part of this process we're
11 working with, with the regions, to review our permitting
12 processes, not only look at the state procedures but
13 also the regional procedures and see if we can't get
14 more in sync and make some of these happen -- things
15 happen a little bit quicker.

16 MR. HARNETT: Shannon Broome.

17 MS. BROOME: Thanks. Good morning.

18 You mentioned an issue about the processing of
19 permit revisions and timeliness. And that's a shared
20 experience in my work as well. And I was just wondering
21 if you don't have any examples -- but if you did have
22 some, if you could submit them -- but, also, just kind
23 of where you think pressure points are and if you have
24 any suggestions for improving the timeliness on
25 processing permit modification, especially with all

1 these new MACT standards that have to be processed,
2 coming up.

3 MR. LAYMAN: Well, one thing that I tried to
4 use the example of where a stack test was required as
5 part of the process. And things like that can chew up a
6 lot of the time that, I think, was really built in to
7 work on the permit and get it rewritten was really taken
8 up with getting stack tests done and things like this to
9 determine what goes into the permits. So -- so that
10 needs to be taken into consideration.

11 I think I talked myself around. I forgot what
12 the question was exactly.

13 MS. BROOME: Just any suggestions on
14 expediting the permit revision processing and how that
15 plays with the MACT standards.

16 MR. LAYMAN: Yeah, the MACT standard issue is
17 one everybody's wrestling with; and no answer's come up
18 yet. You know, that -- that one I don't know. We got
19 to figure it out, but it's going to take all us working
20 together.

21 And other issues: We do think there's some --
22 some situations where we're spending a lot of time doing
23 permit modifications for emissions that really aren't
24 that significant environmentally or public health-wise;
25 and we really need to evaluate that aspect of Title V

1 and really try to get Title V to focus on those emission
2 sources that are really public health and environmental
3 challenges and not spend so much time looking at these
4 smaller units that really just -- there's no way to
5 control them. They're often compliant just the way
6 they're operated. And we're spending a lot of time
7 doing paperwork and reviewing notes. That type, from
8 our perspective, is one of the big --

9 MS. BROOME: So kind of related to your
10 comments about John Paul's policy.

11 MR. LAYMAN: Right, right.

12 MR. HARNETT: Verena Owen.

13 MS. OWEN: Thanks for coming.

14 I actually have two questions, but I think
15 they might be related. In the challenges you listed the
16 lag between updating state rules and the SIP amendment
17 approval -- if you could elaborate on that.

18 And then the second question is what would you
19 think is a realistic time frame? Do you have specific
20 recommendations?

21 MR. LAYMAN: Let me go with the second one
22 first so I don't forget that. And the answer is no. I
23 think we really just need to look at it and evaluate it,
24 see what happens, and then try to develop realistic time
25 frames from what's happened, what's currently taken

1 place. It's just a process that needs to go through.

2 In regards to the other question -- I did it
3 again. I have a one-track mind.

4 MS. OWEN: The lag between --

5 MR. LAYMAN: Okay, yeah.

6 MS. OWEN: -- federal and state rules.

7 MR. LAYMAN: Yeah. Basically, the way the
8 thing -- things are set up so all applicable
9 requirements have to be included in the state -- or in
10 the Title V permit. And the requirements of SIP are one
11 of the applicable requirements. One of the problems we
12 run into is a SIP requirement becomes outdated, so a
13 state changes its regulations to address that outdated
14 requirement. But Title V looks at the SIP requirements
15 still as the requirement needs to go into the Title V
16 permits. So basically the -- you have an outdated
17 requirement in your Title V permit and you have a state
18 requirement that really corrects some of the
19 deficiencies of that, not really being included in the
20 Title V permit as an applicable requirement, but that's
21 the one you really want in there. And some -- some way
22 has to be developed to make us more -- make it more
23 sensible and get that more recent requirement to be what
24 the facility is required to do under the Title V permit
25 and not the SIP requirement, which is outdated.

1 MS. OWEN: Do you have suggestions on how to
2 do this best?

3 MR. LAYMAN: One suggestion would be for EPA
4 to do a quicker turnover of SIP amendments, which is
5 easier said than done, because that, again, there's time
6 frames involved and backlogs involved. But that's the
7 easiest.

8 And another way is to recognize -- have some
9 mechanism in place to repeat or recognize that, yes,
10 that's a better requirement for when you go out on your
11 public notice or whatever to say, "In place of the SIP
12 requirement, we're putting this in place in the Title V
13 permit," something like that in it.

14 MR. HARNETT: Mike Wood.

15 MR. WOOD: Thank you, Chuck, for coming.
16 Appreciate hearing from flyover country. We haven't
17 heard much from that section.

18 I'm -- you mentioned the difficulty of
19 including MACT requirements because of the complexity of
20 permits and complexity of the industries and trying.
21 But there's a -- you stated -- a need for everyone
22 understanding what the requirement is. The concern that
23 industry has for the most part is preserving the
24 flexibility that's built into the MACT standards. And
25 if there's too much prescriptive in the permit, the

1 flexibility goes away. Have you given any thought in
2 how that flexibility might be preserved?

3 MR. LAYMAN: I used to be the air director at
4 Kansas. And we did work that one over and never did
5 figure it out. But you're right. One of the ideas of
6 the MACT standards was provide flexibility so industry
7 could meet changing standards quickly. And the way
8 Title V was written, it kind of wanted to lock folks
9 into one of those requirements. And how to do that we
10 really wrestled with. We had some thoughts on it. And
11 then I retired, and I don't know where they went.

12 But, no, I agree that's one of the big issues
13 on the MACT standard is the built-in flexibility and how
14 to pass that on to industry and have what you need in
15 the Title V permit to -- for people to go in and
16 understand exactly what the requirements are at that
17 point in time. It's a hard one to address. But I think
18 there's a way to do it. We just need to sit down and
19 figure it out.

20 MR. HARNETT: Dave Golden.

21 MR. GOLDEN: You mentioned staff burnout.
22 Have you seen any states employ successful techniques to
23 lower the burnout rate or increase retention?

24 MR. LAYMAN: Really, all our state and local
25 agencies cited burnout as an issue. And I think that's

1 one of the -- the study we're doing in the CENSARA areas
2 is one of the ideas is to see if folks are doing
3 something that does seem to help with that issue. But
4 I'm not aware of anything at this point in time.

5 MR. HARNETT: Don van der Vaart.

6 MR. VAN DER VAART: Thanks, Chuck. A couple
7 of comments that resonated. First of all, on the SIP
8 amendment thing, you know, when you read the preamble of
9 Part 7 -- it's on the background -- certainly sounded to
10 us that Title V was anticipated to actually provide a
11 sort of site-specific SIP amendment mechanism. And I
12 don't think that's really taken place. Personally, I
13 think the EPA is loath to tie their hands to that kind
14 of process. But they like the
15 give-me-what-you've-got-and-I'll-let-you-know type of
16 SIP revision mechanism.

17 In addition, during the initial Title V, we
18 found -- just like you, I think -- a great wealth of
19 compliance definition and compliance issues raised just
20 simply going through the rigors of having to prepare
21 those initial Title V's.

22 In that context, I've got two short questions,
23 which is, one, do you believe, when Congress asked the
24 permittee to certify his or her compliance status, that
25 they wanted both compliance and instances of

1 noncompliance to be certified too?

2 MR. LAYMAN: Now, you're making me think back.

3 MR. VAN DER VAART: It's just your opinion.

4 MR. LAYMAN: I mean, I'd have to go back and
5 really read it. But it was always my understanding that
6 you were certifying those areas that you were in
7 compliance and you were also certifying, at least by
8 negative implication, that you were out of compliance
9 with those other areas.

10 MR. VAN DER VAART: To follow that up, do you
11 think that the permit should form the basis of these
12 compliance certifications; or do you believe that
13 information not contemplated in the permit should be
14 included as well?

15 MR. LAYMAN: My personal belief is that it's
16 always worried me that the permit has been viewed as the
17 single enforceable document in these situations, because
18 that's one reason these permits have to get so complex
19 and complicated. I would like to see some recognition
20 that you can go outside the permit. But at the same
21 time I understand the need for that permit. It's really
22 a conundrum. It really is. I can argue with myself
23 around in circles on that.

24 MR. HARNETT: We're running a little long, but
25 I'm going to close it off after two more questioners.

1 Michael Ling.

2 MR. LING: Good morning. You mentioned that
3 you had experienced improvements in compliance both as a
4 result of the application compliance certification and
5 the annual one. And I was just wondering if you could
6 give us some sense of the magnitude of that. Is it
7 isolated, rare cases; or is it, you know, virtually
8 every permit at least there's some instances of actions
9 taken to improve compliance or somewhere in between?

10 MR. LAYMAN: I think we found -- I think we
11 were surprised -- I know, in Kansas, I can speak
12 personally -- we were surprised at some of the
13 facilities that came in with problems, because we were
14 pretty comfortable that those facilities weren't having
15 problems; and they found some. And so that means the
16 ones we were expecting to have problems did, really. So
17 that first round we were surprised by the number of
18 folks that came and did find actual problems. I think
19 then it turned around those facilities that really work
20 hard to comply, once they found those problems, they
21 addressed them and kept them up. And the facilities
22 that had been challenges in the past remained somewhat
23 of a challenge still.

24 MR. HARNETT: Marcie Kever.

25 MS. KEEVER: Thanks for coming, Chuck.

1 MR. LAYMAN: Sure.

2 MS. KEEVER: You mentioned the out-dated NSPS
3 standards, and I'm wondering if you have any examples of
4 where -- know where states have kind of dealt with that
5 tension between monitoring, required monitoring, and
6 assuring compliance.

7 MR. LAYMAN: Yeah. I was afraid you were
8 going to ask me specific examples. And the one state I
9 knew was -- had raised that issue consistently -- I
10 tried to get back a hold of the person that had been
11 raising that issue, and they were out of the office and
12 I didn't get specific examples. So what I can do is go
13 back and get specific examples and submit them to you.
14 I don't have any right on me.

15 MS. KEEVER: We'd appreciate it.

16 MS. KEEVER: Sure.

17 MR. HARNETT: Thank you very much.

18 MS. KEEVER: Sure. I have some written
19 testimony to submit. Do I give that to you?

20 MR. HARNETT: Yes. You can just leave it up
21 here.

22 And our next speaker is Tammy Wyles of
23 American Forest and Paper Products Association.

24 MS. WYLES: Good morning. As Bill mentioned,
25 I'm here as the representative of AF&PA, the American

1 Forest & Paper Association. We're the national trade
2 association for pulp and paper and wood products
3 manufacturing facilities. And we represent seven
4 percent of the U.S. manufacturing output and have
5 1.5 million employees and are the top-ten manufacturer
6 in 40 of the 50 states.

7 I make those points only to make the point
8 that we have had quite a bit of exposure to Title V. My
9 company, in particular, has over 100 Title V permits in
10 30 -- in more than 30 -- states. So some of the points
11 I'll make I'm making some contrasts, I think, between
12 different states, where I think some states have found a
13 good way to deal with things while some other states
14 still need to move in that direction.

15 The focus of my comments this morning is
16 really on simplification of the Title V program in
17 terms, not only of policy, permits, and forms but also
18 in the permits themselves and the flexibility that they
19 were hopefully intended to provide and hopefully making
20 them more understand -- more understandable; and as
21 short and simple as we can make them without losing the
22 environmental benefit which was intended, which I think
23 we are all aware of.

24 The first comment I would like to make is with
25 regard to the compliance certifications themselves. In

1 some states our facilities are required to go -- well,
2 actually, in most states -- are required to go through
3 every condition of the Title V permit and insert some
4 type of comment. And I would encourage the agencies,
5 the state, and EPA to allow for a simple certification
6 where we know the exceptions, as opposed to going
7 through a line-by-line certification when there are no
8 issues.

9 Along that vein, too, the state of Georgia,
10 for example, where our industry has a large presence,
11 they actually tell their inspectors to do a line-by-line
12 certification; in other words, go back after they've
13 done their annual inspection, open up a Word document,
14 put a comment in for every single condition in that
15 permit. It's taking us six months to get some of our
16 inspection reports, and we would like to know sooner
17 than that if we've got some issues.

18 And the other implication of that is that
19 particular state is putting resources on that task,
20 which we don't think has a great environmental benefit,
21 as opposed to being back processing revisions and
22 initial Title V permits and construction permits. So
23 that is an improvement that's needed.

24 The second comment on renewal applications:
25 Again, most states are requiring a full resubmittal of

1 the prior application, prior permit. I don't think that
2 is necessary, but certainly things change; emission
3 factors change. But it would be nice just to streamline
4 that process so we can provide information where there
5 are updates and changes instead of having to fully
6 resubmit an eight-inch document.

7 The third comment that I would like to make is
8 on construction permitting. Some states -- and examples
9 I would give you are: Georgia, Florida, and Wisconsin,
10 again, where our industry has a presence -- are
11 requiring submittal of two applications where we're
12 going through the construction permitting process. And
13 the information in those is essentially redundant. So I
14 think merging -- as several of my comments, I think,
15 will make this point. I think we need to do a better
16 job of merging these two programs together for all
17 involved.

18 The next comment, too -- and it's really
19 related to the comment I just made -- is the
20 construction to -- in the Title V permit, in the case of
21 a construction project, we need to find a better way --
22 and there's some Federal Register notices and there have
23 been some other memos that were put out trying to
24 address this issue -- but of streamlining the
25 incorporation of construction permit requirements into

1 the Title V permit. It's totally inconsistent. We have
2 some states, for example, I think the states of Arkansas
3 and, perhaps, Minnesota, I believe also, allow for the
4 issuance of a single document. You receive a document
5 both to construct your project and to operate the
6 project and it's gone through the full affected state
7 review and public review process, so all of those
8 requirements have been satisfied and everybody's had the
9 opportunity to provide input and of course had the 30-
10 and 45-day review periods.

11 The -- some other states, for example,
12 examples would be Florida and Wisconsin, where you
13 receive a construction permit, you're free to go ahead
14 and operate your project once you receive that
15 construction permit. But at some point in the future
16 you have to submit your operating permit application
17 revision. And that really presents a number of
18 problems. There is some confusion. You've got
19 different conditions in different documents. And,
20 certainly, if your compliance certification comes up in
21 the middle of that, your Title V is not going to have
22 the most up-to-date conditions that your construction
23 permit has. And it just becomes -- it becomes very
24 confusing.

25 The -- another state that we operate in where

1 we have had some issues is the state of Mississippi,
2 also. In that particular state you receive a
3 construction permit; you can construct your project but
4 you can't start operating until you receive your Title V
5 permit. These facilities will typically go down one to
6 two times a year, and they do those projects during
7 those down times. And if something gets hung up on your
8 Title V permit, then you're stuck there with a facility
9 that can't come back up, which is a huge, huge economic
10 loss. So, again, I think we need to do a better job of
11 somehow merging these two programs that -- it's adding a
12 lot of confusion, a lot of complexity, and has potential
13 economic implications.

14 The next comment I have is with regard to the
15 structure. And, again, I think all of these kind of go
16 around the issue of simplicity. But the structure of
17 the Title V permits -- the states of Oregon and
18 Oklahoma, for example -- jump around all over the
19 permit. You'll have your source description in one
20 place; you'll have your emission limits in another
21 place; you'll have your monitoring requirements 40 pages
22 back and your recordkeeping reporting requirements
23 another 40 pages back. And all the conditions reference
24 each other. And one of the things that happens is that,
25 anytime one of those conditions changes, that permit

1 writer is tasked with having to identify every other
2 condition that changes. Just -- it's very confusing.

3 The state of Arkansas, for example, is
4 probably one of the best ones I've seen. All the
5 requirements for a single source are in a single
6 section. And it's nice that we can actually pull that
7 section out of the permit and give it to our utilities
8 area or give it to our pulp mill. And they know.
9 They've got everything there. And it's easier for them
10 to be compliant and actually understand what the
11 requirements are. So that's actually a structural
12 issue.

13 Just shifting gears a little bit -- and I
14 think there was some mention of this in the last
15 presentation, but I think the Title V permit really
16 needs to serve as an index for other applicable
17 requirements and not an encyclopedia. We have a permit
18 in the state of Florida for one of our pulp and paper
19 mills that is four inches thick and nine-hundred-pages
20 long. This facility has three to four MACT
21 requirements. And everything has been put into the
22 permit. And it really is unworkable; and it's
23 unnecessary. These rules change over time; and if they
24 are hard-wired into the permit, then you -- the same
25 issue as raised in the last presentation -- then you've

1 got to go in and revise the Title V permit.

2 And, also, the same issue that was brought up
3 about flexibility. These MACT provisions, for example,
4 typically will have several different options for
5 complying with the rule. And by incorporating those
6 requirements, hard-wiring those into the rule -- into
7 the permit -- then you have to go through a permit
8 revision to still be in compliance with the rules. So,
9 again, I think that the Title V needs to serve more as
10 an index and not an encyclopedia.

11 Related to that, too, there are some states --
12 and this kind of gets over into the area of the CAM
13 rule -- the Compliance Assurance Monitoring rule --
14 which is really a companion rule to Title V -- but there
15 are some states that are hard-wiring the parametric
16 values that we use to demonstrate compliance under the
17 CAM rule while that rule allows us to be reset in
18 subsequent tests as long as we can demonstrate
19 compliance. This, again, is just adding burden to both
20 the manufacturing operation and to the agency that's
21 having to process multiple revisions. And it really
22 just does not, I don't think, provide any additional
23 environmental benefit.

24 And I am getting close to the end here, but
25 just a couple more comments. I think we need to be

1 careful in the permits, that the monitoring requirements
2 we put in there really are tied to compliance. For
3 example, if we've got a pollutant like carbon monoxide
4 or nitrogen oxides or VOC destruction that may be tied
5 to temperature, then a temperature requirement may make
6 sense. But it may not make sense for particulate
7 matter. And an opacity requirement which may make sense
8 for particulate matter may not make sense for sulfur
9 dioxide, for example. So we've seen a lot of that,
10 where there were requirements that had absolutely
11 nothing to do with the compliance or generation of that
12 pollutant.

13 The final comment that I would like to make is
14 we have had very good relationships and work closely
15 with some of the states in the Southeast and Midwest.
16 And I've mentioned the states of Georgia, South Carolina
17 and Illinois -- actually taking templates from those
18 states and putting together the first draft of the
19 permit for them to work on to save them time. It's an
20 administrative task, but at the same time it helps
21 everyone -- a lot of times we've got all of our
22 descriptions of equipment and so forth in a Word
23 document; and we can just take that electronically, put
24 that into a draft document. We've had a lot of success
25 with that. And we would encourage other states to go

1 down that path.

2 Finally, while we support the Title V program
3 and its continued implementation, we encourage states
4 and EPA to find ways to simplify the program. I think
5 we have made some strides in that direction, but I think
6 there are some more strides that can be made without
7 losing the environmental benefit that was intended.

8 MR. HARNETT: Any questions?

9 Adan Schwartz.

10 MR. SCHWARTZ: Hi.

11 You talked about different states using
12 different approaches to keeping the permit up to date
13 regarding preconstruction permits. And I think you
14 mentioned that there's a state where it happens all at
15 once. The preconstruction permit is issued and at the
16 same time the Title V permit is revised.

17 And so you're nodding. I think I got that
18 right.

19 So in that state I would assume that it's a
20 minor -- it's the minor revision process that's being
21 used for these -- to incorporate these preconstruction
22 permits; is that right?

23 MS. WYLES: No. These were actually -- the
24 references -- these were actually Prevention of
25 Significant Deterioration (PSDs). They were major

1 modifications but just went through the process once.
2 Went through all of the affected state's review and the
3 30- and the 45-day public comment periods once and
4 received its -- all the -- there only is one permit in
5 that state. So you go through all the process one time
6 and you have one permit. You don't have a multitude of
7 permits to keep up with, which is another thing I like
8 about it.

9 MR. SCHWARTZ: Well, do you have any comments
10 or observations on how to make this work for a minor
11 NSR, the kind that don't normally have a public
12 participation process when the preconstruction permit is
13 issued?

14 MS. WYLES: Again, I think you have to look at
15 the magnitude of the changes. And what I've actually
16 been reviewing is some of the states are incorporating
17 the NSR regs into their SIPS and have been -- and the
18 past few days have looked at some of those state
19 regulations. And some of them are also going to make
20 some changes to their minor source program. And some of
21 the states seem to be trying to match the public
22 comment -- that part of the process -- with the
23 magnitude of the change. And one thing I've seen is
24 that some will have like a 10-day or 15-day comment
25 period for extremely minor changes, as opposed to, you

1 know, full 30-plus, 45 days. So I think one answer is I
2 think we need to focus the public review and everybody's
3 participation and everybody's effort with the magnitude
4 of the change. I think that would be a good start.

5 MR. HARNETT: Mike Wood.

6 MR. WOOD: Thanks, Tammy, for giving your
7 testimony. Just a point of clarity about those states
8 that have the dual permitting systems where, for
9 example, if a facility gets a PSD construction permit
10 for a modification and then subsequently revises their
11 Title V permit to incorporate that modification and then
12 18 months or two years down the road there's a minor mod
13 to that same permitting unit, would they have to amend
14 the -- both the construction permit and then the
15 operating -- the Title V permit again?

16 MS. WYLES: I think one possibility -- and
17 haven't thought through that scenario exactly -- but I
18 think one possibility might be to do, on the very minor
19 changes that don't have substantial changes to the Title
20 V, I think it would be a possibility to accumulate those
21 two and wait for the next Title V revision. So I think
22 that might be one possibility on the minor ones, where
23 things -- where you've not having large changes.

24 The other comment I kind of wanted to make,
25 which kind of addresses your question and the one -- the

1 prior one we had too -- in the case of -- one
2 possibility is to have a single permit, but I think
3 another thing we can do, too, is have more of a
4 streamlined administrative process for states that don't
5 have merged programs and don't want to have merged
6 programs for incorporating those revisions into the
7 Title V. In other words, it's more of an administrative
8 process because they've already undergone -- you know,
9 you enhance things up front to go through the affected
10 state's review, which you don't normally go through
11 under PSD. You enhance the state program and then
12 you're able just to somehow roll those through an
13 administrative amendment into the Title V.

14 MS. OWEN: Thank you.

15 MR. HARNETT: Shannon Broome.

16 MS. BROOME: Hi. Thanks for coming.

17 You went through some examples on monitoring,
18 where you were talking about an SO2 particulate; and I
19 have to confess that a lot of it just went right by. I
20 wasn't really following it.

21 MS. WYLES: Okay.

22 MS. BROOME: So if you could maybe go through
23 those a little more slowly. I think your yellow light
24 was on and maybe you were --

25 MS. WYLES: Yeah, I kind of -- I glossed over

1 that for that reason.

2 MS. BROOME: And then, also, have you had any
3 issues -- you mentioned the 30- and the 45-day -- have
4 you had problems with sequencing of that? Or have you
5 been able to do that simultaneously?

6 MS. WYLES: I'll address both of those
7 separate.

8 First of all, on the first issue, on the
9 monitoring, I think some other additional examples would
10 be where we're required to keep fuel certifications --
11 our facilities that burn fuel oil or coal, for example,
12 often will be required to keep a manifest of the
13 shipment on sulfur content, for example. Well, it
14 doesn't make a lot of sense to do that for natural gas,
15 for example, which essentially has no sulfur. And those
16 are the type of requirements that we are seeing.

17 Also, where we're actually seeing a reduction
18 in opacity -- for example, if you've got a state rule
19 that has an opacity limit of 20 percent and a state
20 reduces it to 10 percent, so we're seeing gap-filling
21 and monitoring added and actually making the limits
22 tighter, which I don't think was the intent of the
23 program.

24 So, Shannon, that would be a couple more
25 examples. And you other question had to do with --

1 MS. BROOME: You mentioned -- you mentioned
2 about the 30-day --

3 MS. WYLES: Right.

4 MS. BROOME: -- and the 45-day and it going in
5 sequence instead of simultaneously.

6 MS. WYLES: That was just, I think, very
7 confusing to us in general, because when the Title V
8 program started out, those two were running
9 concurrently. And then they later stopped not running
10 concurrently. And that was very confusing to us as to
11 why that change took place and whether there was
12 actually a regulatory requirement that caused that
13 splitting the half of it. But it is, because it
14 essentially adds 90 days to the permitting process.
15 And -- and I say 90 days -- you've got 75 days of public
16 comment and by the time you incorporate all of those
17 comments, it's 90 days; so it's adding -- adding a lot
18 of time. And, in some cases, for rather insignificant
19 changes. So we're -- we're just, I guess, still not
20 aware of the requirement that forces that to happen.

21 MR. HARNETT: Don van der Vaart.

22 MR. VAN DER VAART: Thank you.

23 Just a quick little preface: We don't
24 understand it either. There's apparently a district
25 court judge in the District of Columbia, sort of a

1 district squared, who made that call; and all of a
2 sudden it became the law of the land, or at least the
3 law of Region 4, which is where you are.

4 MS. WYLES: Right.

5 MR. VAN DER VAART: We have a district court
6 decision on an NSR case in North Carolina. Apparently,
7 the EPA is not going with that one with Duke.

8 In any event, let me just ask -- I'm going to
9 take Tammy to a different place where we're going to
10 forget all about the guidance documents that have been
11 flying around and all the states that -- the various
12 states you have to deal with. And we're just going to a
13 place where Part 70 has just started. And I want -- I'm
14 going to give you a little Faustian proposal, okay?
15 We're gonna -- I'm about to write your permit.

16 My question is, would you, if I go ahead and
17 tell you that I'm going to absolutely guarantee an
18 enforcement shield in the permit so that as long you
19 do -- I'll use the language of the Clean Air Act, for
20 want of a better language, which says, simply you do
21 what's in the permit you're going to -- you're deemed in
22 compliance with the Clean Air Act.

23 So if you give you that on the one hand, would
24 you be willing to take a permit that has monitoring in
25 it and that we agree on through a negotiated process and

1 doesn't include sulfur specs on natural gas and that
2 sort of thing -- but monitoring for every applicable
3 requirement. Would you be willing to certify compliance
4 and noncompliance based solely on those monitoring
5 results every year, given that -- the other part of this
6 deal?

7 MS. WYLES: I can just -- I can answer for my
8 own company. And I think that that may get into the
9 issue of a little bit of reasonable inquiry.

10 MR. VAN DER VAART: Well, what I'm saying
11 is -- what I'm saying is, if I tell you -- I mean, I
12 realize there's a lot of language out there floating
13 around, some of it old, made new again for some reason.
14 But what I'm saying is, let's say I can guarantee you a
15 shield, okay? So really, really everybody tells you
16 that as long as you do what's in the permit you will be
17 deemed in compliance with the Clean Air Act. Would
18 that -- given that, would you be then willing to base
19 your compliance and noncompliance on the monitoring
20 results that the permit specifies?

21 MS. WYLES: I think we would, but I think, you
22 know, again, within our own company we still advise our
23 responsible officials to go beyond that.

24 MR. VAN DER VAART: This isn't a happy world.
25 I'm taking you away. This is happy land. I've taken you

1 into this sort of quasi-amorphous world we live in. So
2 all I'm saying is if you did have that certainty --

3 MS. WYLES: Yes, yes.

4 MR. VAN DER VAART: -- would you then be
5 willing?

6 MS. WYLES: Yes, I think so.

7 MR. VAN DER VAART: Okay. Thanks.

8 MR. HARNETT: Bob Palzer.

9 MR. PALZER: Thanks, Tammy, for coming.
10 I'm from Oregon. And we also have a separated
11 process. And one of the problems that we are finding is
12 that some major sources actually begin construction
13 prior to even filing. They don't file a construction
14 permit. They build a major source -- build a big
15 facility and then go and submit an application to the
16 major source. And, obviously, this is a problem.

17 So my question is, if you were going to
18 suggest that these things be combined, could you be a
19 little more specific on recommendations you have for
20 this committee on how to do it?

21 MS. WYLES: Well, I think, in general -- I
22 think there are two components to that. I think one is
23 that, first of all, those changes need to go through the
24 proper level of review. I think -- I think you can have
25 some -- which we do have some built into this -- some

1 notices that go where the state at least gets an
2 opportunity, because I think it is important to review
3 the magnitude of that change and make sure that they
4 agree with the company on the conclusion that they've
5 reached. So I guess all I'm saying, though, is that you
6 need to make sure that they -- again, that they go
7 through the proper level of review commensurate with the
8 level of the change.

9 But the second -- I guess what I was referring
10 to in the states with merged programs is that you
11 actually, for the modifications that are significant or
12 require some type of construction permit, be it a minor
13 construction permit that the state would issue or a
14 major NSR permit, that once they've gone through that
15 process, they should be able to roll that into their
16 Title V, either through some type of administrative
17 procedure; or, if you have a single document then, once
18 you receive that single document, it allows you to
19 construct and operate the equipment, so just to have a
20 -- to have a single permit.

21 MR. PALZER: Would that be applicable to the
22 major sources in terms of your recommendations? You're
23 talking about not a minor source but something that's --

24 MS. WYLES: Absolutely. Yeah, I think so,
25 because what you -- it seems like what you could do if

1 you don't have the affected review built in -- for
2 example to your NSR program, you could build it in there
3 so that they go through all the public and affected
4 state and all that review process once, so if they --
5 you're not going through a redundant process. I think
6 it seems to help resources on everyone's side, because
7 it seems like there a lot of things that we're doing
8 that are redundant in the process -- going through
9 construction permits to a Title V; we're doing the same
10 things over and over again, both from a manufacturing
11 facility standpoint and, I think, from the state
12 standpoint too -- that we're going through a permitting
13 process twice, when sometimes we could just go through
14 it once and be done; and everybody's done -- had all of
15 their input and gone through all of the requirements of
16 both programs but just doing it once instead of doing it
17 twice.

18 MR. PALZER: Thank you.

19 MR. HARNETT: Next question. Verena Owen.

20 MS. OWEN: Hi. Thank you for coming.

21 Illinois does not have a merge program. We
22 have a construction permit, Title V permit, except we
23 had kind of a reverse-merge program because we had one
24 combined Title I/Title V permits for the initial round.
25 And I thought -- I felt there was some public

1 notification problems with that process.

2 So I just have a clarifying question: Did I
3 understand you right that you think that changes to a
4 Title I permit could be accumulated and dealt with at
5 the time of the next Title V permit -- for the renewal
6 of the next Title V permit?

7 MS. WYLES: I don't think -- I don't think the
8 Title I, you know, in terms of NSR nonattainment
9 review -- I wouldn't necessarily say that. I was saying
10 for some of the minor state-level-type changes -- the
11 insignificant-type changes were the ones I was referring
12 to. I think you've got to differentiate the two.

13 Again, I think you got to have the proper
14 level of permitting with the magnitude of the change --
15 and I agree with what the gentleman from Oregon was
16 saying. I think the state does, you know, somehow have
17 to have some way to -- the problem was that recently in
18 Mississippi they're getting ready to write -- rewrite
19 their NSR rules; and they're looking at -- that EPA's
20 had some problem with their SIP as well on their minor
21 source program. So what they were trying to do, I
22 notice, was build some process in to make sure -- for,
23 like, when you had netting involved, for example, to
24 make sure they still reviewed those, to make sure that
25 nothing did slip through the cracks. So maybe in a

1 netting analysis, for example, it makes sense to have
2 some review of that.

3 MS. OWEN: Do you see a bright line here
4 somewhere?

5 MS. WYLES: I think so. And it really --
6 there are really two -- you know -- two comments. One
7 is the merging of the programs to save on resources.
8 But the other is to make sure that we get the proper
9 level of review for all of us, for the changes that are
10 being made.

11 MS. OWEN: Thank you.

12 MR. HARNETT: Thank you very much for coming.
13 Our next speaker --

14 MS. WYLES: Thank you.

15 MR. HARNETT: -- Debra Rowe from the Alliance
16 of Automobile Manufacturers.

17 And then, just to the Task Force, I've been a
18 little flexible because we were running a little early.
19 I'm going to ask you to stick more to the time on
20 questions, 'cause we've now caught up. Thanks.

21 Go right ahead.

22 MS. ROWE: Thank you and good morning.

23 I'd like to second some of the comments that
24 were made earlier about the success of the Title V
25 program. And I'm not going to spend a lot of time

1 repeating those.

2 Oh, can you hear me? Is that better? All
3 right.

4 I am Debbie Rowe. I am here today
5 representing the Alliance of Automobile Manufacturers
6 Association. I work for DaimlerChrysler Corporation.
7 I've also brought Patty Stratton, who is our Title V
8 expert, because I felt like it was important, you know,
9 as the committee asked questions. If I can't answer
10 them, then perhaps Patty can. So with that, we'll
11 proceed.

12 View the first slide. Still waiting -- yeah.

13 This is just basic background on who the
14 Alliance is. We're a major trade association. Our
15 members include BMW, DaimlerChrysler, Ford, General
16 Motors, Mazda, Mitsubishi, Porsche, Toyota, and
17 Volkswagen. And, again, just to point out who we are,
18 we have manufacturing and sales distribution testing
19 facilities in almost every state in the country. We
20 employ 6.6 million people, either directly or indirectly
21 through our supply base. Obviously, we're a major
22 contributor to the GDP -- almost four percent of the
23 nation's GDP.

24 And, if we can have the last bullet --

25 Basically, we thought, again, as Tammy said

1 for AF&PA, we've had a lot of experience with Title V in
2 the country. So, you know, with that background, that's
3 a little bit of experience that we'd like to share some
4 examples and talk a little bit about some of the costs
5 of Title V.

6 In the interest of time, we thought we'd
7 tackle two issues today, rather than try to go through
8 all the points that we are interested in. You've
9 already had a lot of testimony on some of the other
10 points, so we're just going to talk about the interface
11 between Title I and Title V and the creation of new
12 substantive requirements in some jurisdictions in the
13 country through the Title V process.

14 We are going to submit detailed written
15 comments, which, I think are due at the end of March.

16 And -- trying to get the slides in sync
17 here -- in some jurisdictions, the interface between NSR
18 and Title V is causing substantial duplication of
19 efforts. And you've already heard a lot about that this
20 morning and in some of the other hearings.

21 As you all surely know, the Title V program
22 came a little bit late in the game. States have been
23 issuing permits under their SIPs, like permits to
24 install, since the late 1970s. In addition, many states
25 have their own operating permit programs in place, some

1 of which were mentioned in SIPs, but many of which
2 existed outside the SIP process. It seemed like a
3 relatively simple concept to say that all requirements
4 in federally enforceable permits should be part of the
5 Title V and that those included construction permits.
6 But that concept did not take into account the
7 practicalities of how states administered their
8 individual construction and operating permit programs
9 before Title V.

10 As a result, when Title V came along, it was
11 discovered that many of the construction permits
12 contained outdated, obsolete, or even incorrect terms.
13 These may or may not have been correct in the permit to
14 operate; and that permit to operate may or may not have
15 been acted to revise the underlying construction
16 authorization.

17 As you can see, things were a little bit more
18 complicated than people originally thought, particularly
19 when you considered that 50 states probably took 50
20 different approaches to dealing with those issues. Then
21 along came Title V, and there was the perception that
22 everyone should and had been continually updating the
23 underlying construction permits as operations were
24 updated and all construction permits were written
25 perfectly in the first place and that no rules had

1 changed.

2 We want to talk a little bit about what we
3 mean by "inefficient, redundant, obsolete, and incorrect
4 terms." And, again, we thought the best way to do that
5 would be by providing some examples from our industry.
6 So here is the first example: At one automobile
7 facility, a plant had obtained a construction permit for
8 a curing oven years ago. The permit required the use of
9 a thermal oxidizer, which is a piece of control
10 equipment. Subsequently, the plant undertook a
11 pollution prevention project in the form of material
12 reformulation to reduce volatile organic compounds that
13 made the emissions from the oven pretty minor. Because
14 of these changes, the plant could meet the emission
15 limits on the oven without using the oxidizer.

16 This is a beneficial benefit because it
17 eliminates not only the emission from the pollution
18 prevention project but it also has the potential to
19 eliminate the energy consumption from the oven and from
20 the RTO, from the thermal oxidizer; reduces emissions to
21 the environment; and reduces costs to the plant. The
22 facility wanted the Title V permit to remove the
23 requirement to use the thermal oxidizer. The state
24 denied this request until the facility applied for and
25 obtained a revision to the minor NSR permit, even though

1 the state agreed that the oxidizer was not needed to
2 meet the permit. The concern was that EPA wanted the
3 original NSR permit revised first. This is typical.
4 EPA has told the state that the construction permit
5 needs to be physically changed before the Title V permit
6 can reflect the new requirement.

7 First, this isn't required by the rules. And,
8 second, if it is, what sense does it make to require
9 marked-up copy, you know, of an old paper permit in this
10 electronic world? Surely there must be a better way: A
11 simple permit term, for example, that says Title V
12 permit governs and the changes to the operating or
13 construction conditions can be made in the Title V
14 permit. This could be a generic condition in all Title
15 V programs; there are probably other ways to accomplish
16 the same result.

17 Then I want to provide a second example of an
18 experience with inefficient, obsolete, redundant,
19 incorrect terms in underlying permits; and our concern
20 with this two-step process. It's another oxidizer
21 example because those are fairly simple to understand.
22 But the issues exist for a range of units and controls.
23 In this case, a SIP-based permit contained redundant
24 requirements for a coating operation. It required a
25 destruction efficiency, for example, of 95 percent; and

1 then converted that destruction efficiency into an
2 operating temperature requirement, in this case at least
3 1400 degrees Fahrenheit. The facility was able to
4 operate the oxidizer, however, below this temperature
5 and still achieve the required efficiency. Again, an
6 energy savings and cost savings and reduced
7 environmental emissions through reduced energy
8 consumption.

9 But, again, a two-step process was required to
10 change the temperature requirement: First, the SIP
11 permit and then the Title V permit had to be changed.
12 What, you know -- what really is gained by this two-step
13 process?

14 The second major -- if we could move to the
15 next slide -- area that we wanted to give examples on
16 are new substantive requirements in the Title V program.
17 Leaving the interface issue aside, this is an issue
18 that's very -- you know, highly concerns from the auto
19 facilities -- that you've got both Congress and EPA have
20 emphasized that the Title V program doesn't impose new
21 substantive requirements. It's intended to recite and
22 compile requirements from other parts of the Clean Air
23 Act, which include the SIP, Section 112, CFCs, acid
24 rain, et cetera. Nonetheless, some states are creating
25 new substantive requirements under the guise of

1 monitoring.

2 So, if we could move on.

3 This is an example of the -- one experience
4 with new substantive requirements being applied in the
5 Title V.

6 Considering hourly and annual emission limit
7 on emissions from the electrostatic precipitator. The
8 source tests the electrostatic precipitator; it passes.
9 During the test the source records, as requested by the
10 state, the voltage and current readings that occurred.
11 The facility then finds that the ranges of voltage and
12 current during the stack test had become enforceable
13 limits in the Title V permit; that it must not only
14 monitor but must comply with. This creates a
15 restriction on the plant's operation of its
16 electrostatic precipitator that isn't even related to
17 compliance. Stack tests are done when the unit is
18 operating under specified conditions. Those conditions
19 may or may not exist in regular operation. For example,
20 the load might be lowered because a plant is not as
21 busy. In addition, the weather can have an effect. But
22 by imposing particular voltage or current requirements,
23 the unit is now restricted.

24 Additionally, the margin of compliance during
25 the stack test is not even considered. What if the

1 source tested at 50 percent of its operating level, yet
2 we encountered an automatic requirement to make whatever
3 was happening during the stack test an enforceable
4 limit? This creates a phantom violation, if you will,
5 you know, for basically a sound operation operating
6 within its margin of compliance.

7 We think the Task Force should endorse the
8 approach taken by some states; it's based on the CAM
9 rule. If there is a parameter that is indicative of
10 good operation of a unit or control, then going outside
11 that range would trigger an investigation, if needed;
12 and, if needed, corrective action. Unless the range can
13 be definitively correlated to the emissions level, which
14 in most cases is simply not possible, it should not be a
15 permit violation. This makes much more sense because it
16 focuses on a properly operated control advice rather
17 than trying to replicate a condition that occurred on a
18 single day in a year that may not exist on another day
19 that the source is operating.

20 If you -- okay. Let me just go then, in the
21 interests of time. We're going to talk a little bit
22 about some of the costs that we've experienced from the
23 program.

24 The original annualized five-year capital
25 recovery cost was estimated by EPA to be, for a major

1 large source, 22,000 -- a little over \$22,000 per year;
2 and for a small source around \$11,000 a year.

3 If you look at the expenditures actually
4 experienced under the Title V program for initial
5 applications, which we consider some costs, ongoing
6 maintenance, fees -- if you assume that the program
7 averages \$50,000 a source annually for 18,000 permits
8 issued in the country, that's over a billion dollars per
9 year. Now, our own experience at one of our component
10 plants was that the initial application was \$75,000. We
11 had two modifications at about \$15,000 per year. We
12 added personnel for monitoring, which was another
13 hundred thousand per year. The plant installed warning
14 lights, interlocks, et cetera, at about \$150,000 in
15 capital costs --

16 MR. HARNETT: I'm going to ask you to wrap up.

17 MS. ROWE: Okay.

18 But when we looked at our five-year annualized
19 costs for two plants, basically they were well over
20 \$100,000 per year. So we think that the costs were
21 understated. And we're going to include some more
22 detail on that in our written comments. So if you guys
23 can have a chance to look at that.

24 Our comments are offered in the spirit of
25 constructive criticism. We think that the goals of the

1 program and the original concept of the program is
2 sound. But we do think that we need to address specific
3 issues to make it more streamlined and efficient for all
4 parties.

5 MR. HARNETT: Michael Ling.

6 MR. LING: Thank you for your comment. And I
7 also want to thank you for providing examples, because
8 we love examples.

9 I just wanted to ask you about your examples
10 related to the minor NSR permit changes. And I wondered
11 if you could say, practically, what Title V did to
12 change the situation, because I understand that the
13 state required you to make a minor NSR - to change the
14 underlying NSR permit, but they would have done that
15 pre-Title V. So are you saying that Title V then added
16 an additional layer of process? And can you describe
17 how that -- what that means in terms of practical
18 operations?

19 MS. ROWE: Well, keep in mind that particular
20 example was a reduction in the emissions --

21 MR. LING: Right.

22 MS. ROWE: -- so we had a two-step process
23 where we went through both our revision and the Title V
24 revision, duplication of the public comment period, et
25 cetera. So what we're saying is that it doesn't make a

1 lot of sense, but a one-step process that harmonizes the
2 opportunity, if you will, for public comment but
3 streamline the process for us so that we could actually
4 have, you know, our underlying permit, consistent with
5 our operating permit, which is, I think, our common goal
6 here, would help us in terms of certifying compliance,
7 et cetera.

8 And, also, I would say it's an impediment to
9 pollution prevention, if the facility's out there trying
10 to do the right thing in terms of energy reduction,
11 targets and goals for the environment, as well as for
12 the business.

13 MR. LING: I can understand that from the
14 point of view of why you might not want to revise the
15 underlying minor NSR permit to start with, given that
16 you're already having to revise the minor underlying NSR
17 permit, regardless of whether Title V exists or not.

18 MS. ROWE: Yeah.

19 MR. LING: This is just the question I ask.
20 And I understand the particular point about merging
21 systems that would probably solve the problem with
22 respect to Title V.

23 MS. ROWE: We're not -- I think there's always
24 going to be a need to be able to get a construction
25 permit, you know; so we're not saying you have to have a

1 totally merged program. But there has to be a
2 harmonized approach between the two programs, of sorts.

3 MR. HARNETT: Keri Powell.

4 MS. ROWE: This may be the question for Patty.

5 MS. POWELL: Thank you for your testimony,
6 Debra.

7 It seems to me that on the one hand you want
8 for a Title V permit to have the power to revise an
9 underlying minor new source review permit to simplify
10 your procedures. But on the other hand, you oppose
11 using the Title V permit to establish new monitoring
12 requirements or, you know, requirements to control
13 emissions on particular devices. So those two positions
14 seem contradictory to me. It seems that the Title V
15 permit either has to reflect what the other requirements
16 already include; or is it going to -- or the Title V
17 permit has some kind of power to change requirements.

18 So how do you reconcile those two positions?

19 MS. ROWE: I'm not quite sure I fully
20 understand the question. But the Title V permit should
21 not add new substantive requirements.

22 MS. POWELL: Right. But in your minor new
23 source review example, you were talking about how the
24 minor new source review permit had the requirement to
25 operate -- I think it was an oxidizer --

1 MS. ROWE: Uh-huh.

2 MS. POWELL: -- and you didn't like that you
3 had to revise the minor new source review permit and --
4 before you could get the Title V permit.

5 MS. ROWE: Let me try to clarify. It's not a
6 matter of having to revise as a matter of having to do
7 that through a two-step process. It's not efficient.
8 If the two exist, then they should be harmonized. And I
9 think that's a common goal.

10 MR. HARNETT: Lauren Freeman.

11 MS. FREEMAN: Thank you. And thanks, Debra,
12 for coming.

13 Along the lines of Michael's comment that we
14 love examples, do you have any other examples of new
15 substantive requirements being added on to the permit?

16 MS. ROWE: Well, I think one example -- and I
17 may have to call on Patty to help me with this one --
18 but we have had instances where, under the issuance of
19 the Title V permit, the state agency's gone back and
20 looked at PSD look-back, if you will, on permits that
21 were not related to each other, that had been obtained
22 over, you know, a 30-year period of time, and tried to
23 consolidate those in the context of looking at, you
24 know, did we have a PSD issue.

25 And, you know, again, that's another look at

1 substantive requirements for decisions that had been
2 previously made and approved in those permit reviews,
3 you know, as those permits were issued.

4 So I don't know if you want to add anything to
5 that, Patty.

6 PATTY STRATTON [?]: Is that clear in terms of
7 what was happening as far as the arbitrarily, if you
8 will, combined previously approved permits and
9 considered those as if they had been work projects? And
10 in that context established new emission limitations so
11 if they had been [INAUDIBLE] to the PSD limit and
12 therefore truthfully, you know, created new emission
13 limitations for sources that had never been, you know,
14 one project in the first place.

15 MS. ROWE: It's almost like an NSR review in
16 the context of the Title V.

17 MR. HARNETT: Don van der Vaart.

18 MR. VAN DER VAART: Thanks very much.

19 I had a quick question on the ESP example;
20 and I mean it's just a good example. You're talking
21 about being given monitoring requirements that were
22 really commensurate with a specific stack test. And
23 then all of a sudden those became sort of requirements
24 across the load spectrum. And your point is, "Gee,
25 that's all of a sudden the case."

1 My question is how did you certify compliance
2 during those periods that you're so confident that
3 these -- the same parameters are not relevant?

4 MS. ROWE: Well, until you have another stack
5 test -- I mean, that's the one sample in time, if you
6 will, to relate the loads and probably demonstrate --
7 and this is not an example out of my company; it's from
8 one of the other companies -- but it's an example that
9 demonstrates the -- you know, there's a margin of
10 compliance as well in there.

11 MR. VAN DER VAART: No, I understand that.

12 MS. ROWE: Right. So to artificially tie
13 those parameters --

14 MR. VAN DER VAART: But when you certify
15 compliance, you're certifying based on something.

16 MS. ROWE: Right. Based on the confidence in
17 the original stack test until it's redone.

18 MR. VAN DER VAART: Okay. But then that stack
19 test was only specific to a certain set of operating
20 conditions. So you're using that same test the way to
21 your benefit where you would prohibit or you would omit
22 the fact that the agency is using it against you. Is
23 that --

24 MS. ROWE: Well, if the parameter's set at 50
25 percent of what -- you know -- you've got, say, a

1 50-percent compliance margin and the parameter
2 artificially sets a new limit that's half of what the
3 original underlying permit limits.

4 MR. VAN DER VAART: That's another good
5 question.

6 I'm essentially saying just the specificity of
7 the test works both ways. It is only relevant for both
8 compliance purposes as well as for that, right?

9 MS. ROWE: Right.

10 MR. VAN DER VAART: Okay.

11 MS. ROWE: If there's an absolute correlation,
12 it might make sense, Don, if it shows an absolute
13 correlation and it's at a compliance level. Otherwise,
14 our suggestion is that it triggers an investigation, if
15 you will, and perhaps corrective action.

16 MR. VAN DER VAART: Sure.

17 MS. ROWE: But it shouldn't be an automatic
18 violation. It may not be a violation of --

19 MR. VAN DER VAART: But you're willing to use
20 it to certify compliance. You're not putting any kind
21 of trigger events --

22 MS. ROWE: We're relying on our original stack
23 test, yeah.

24 MR. VAN DER VAART: Okay.

25 MR. HARNETT: Bob, if it's a quick one.

1 MR. MOREHOUSE: Debbie, thank you for your
2 comments.

3 You were mentioning some cost information at
4 the end, where I know you had to wrap up. In feedback
5 from member companies, is there some overall sense for
6 ongoing costs to maintain kind of an average or --

7 MS. ROWE: Yeah. We looked at -- in our
8 case -- what we call the life cycle of a permit, which
9 was a five-year life cycle. And we said, "Here's the
10 original cost of acquiring the permit. Here's the
11 annual cost associated with monitoring." We actually
12 excluded fees, which in some states, for us, exceed
13 \$50,000 for a facility.

14 So we excluded fees, but even when we did that
15 for two major types of facilities -- one being an
16 automotive assembly plant and the other one being a
17 component plant -- in the one case, our annualized cost
18 was over a hundred thousand dollars, almost two hundred;
19 and the other was one-hundred-and-twenty-ish. I'd have
20 to look back at my notes. But they were much, much
21 higher than the original EPA estimates and point to the
22 fact that this is a multi-billion-dollar program for the
23 country.

24 And our real point in saying that is not that
25 we're asking for relief on cost but, as a country, we're

1 investing a lot of money in the Title V program. That
2 doesn't even begin to touch on the states' investment
3 and, you know, and the public interest groups that also
4 try to follow the Title V program. We've got to find a
5 way to make the program more efficient and more
6 cost-effective for everyone that's involved, you know.
7 And so what we're -- our only interest in presenting our
8 costs is that this is just one piece of it, you know.
9 It doesn't -- we need to make sure that we're all
10 getting return on value for that investment.

11 MR. HARNETT: Thank you very much for coming.

12 Our next speaker -- speakers -- will be Doug
13 Campbell and Catherine Fitzsimmons from the Iowa
14 Department of Natural Resources.

15 MS. FREEMAN: I apologize for making things
16 quite so cozy up here. We really appreciate the
17 opportunity to come and speak with you. My name is
18 Catherine Fitzsimmons. I'm -- and I'm the director of
19 the Iowa Air Quality Program. Doug Campbell is with me;
20 and he'll be providing the bulk of our testimony. And
21 we'll both be available to you for questions afterward.
22 Thank you.

23 MR. CAMPBELL: I do have some additional
24 comments and some examples that you'll find in our
25 written testimony that I already submitted.

1 My name is Doug Campbell. I'm the supervisor
2 of the operating permit section of the air quality
3 bureau of the Iowa Department of Natural Resources. I
4 want to thank you for the opportunity to present to the
5 Task Force Iowa's observations and experiences with
6 implementation of the Title V program.

7 Iowa did not have an operating permit program
8 prior to the implementation of the Title V program.
9 Initially, there were 300 major sources in Iowa that
10 were identified as subject to the Title V program.
11 Currently, there are 283 Title V subject sources in
12 Iowa.

13 I think it is appropriate that the Title V
14 program implementation be reviewed at this time to
15 identify areas of successes and areas for improvement.
16 I would first like to discuss the benefits that we have
17 seen to date while implementing Title V in Iowa. The
18 Title V program has been of substantial benefit to the
19 citizens of Iowa and the Iowa DNR. Because permit
20 applications must be -- must review all -- excuse me --
21 applicants must review all applicable air quality
22 requirements -- local, state, and federal -- companies
23 have discovered unfulfilled obligations, such as stack
24 test requirements and recordkeeping requirements, that
25 may not have been timely or consistently addressed due

1 to staff turnover at their facility. Preparation of the
2 Title V permit has necessitated correcting these issues
3 to prevent reincorporation of errors into the new permit
4 or allow unrecognized compliance issues to go
5 unresolved.

6 One of the most common has been failure to
7 obtain construction permits for all nonexempt air
8 pollution-emitting equipment. Addressing these issues
9 has not only brought the sources back into compliance
10 but in certain instances has resulted in additional
11 emission controls being added or increased dispersion
12 modeling of pollutants being required to reduce impacts
13 on public health.

14 One of the most fundamental benefits of the
15 Title V permit is that it incorporates into one document
16 all applicable air quality-related requirements. Over
17 the years, as the air quality programs have expanded and
18 become more complicated, ensuring that a source has
19 fulfilled all the requirements has become a more
20 difficult task. A Title V permit becomes a one-stop
21 document for plant and regulatory personnel to reference
22 to ensure all the obligations are met. The public, for
23 the first time, has the ability to quickly review the
24 activities related to a particular source of interest by
25 reading the Title V application and issued permit. In

1 the past, the whole file might need to be reviewed and
2 copied in order to obtain the same information that can
3 be found in few minutes within the Title V permit.

4 A statement that has been made in previous
5 comments to this group relates to the size of the final
6 Title V permit. Iowa has some very large industrial
7 sources that include hundreds of emission points and
8 many different applicable requirements. We have
9 attempted to condense and tabularize applicable
10 requirements to minimize the size of the final permit.
11 However, our ultimate goal is to produce a permit that
12 is comprehensive and understandable by the public, the
13 affected source, and our regulatory staff, including
14 field inspectors.

15 Cross-referencing old construction permits and
16 state and federal regulations does not provide the kind
17 of regulatory assistance that benefits us all.
18 Likewise, paraphrasing complicated federal standards can
19 lead to misinterpretations and legal problems during
20 compliance actions.

21 The size of the permit is dictated by the size
22 of facility and the number of applicable regulatory
23 requirements.

24 Another significant benefit of the Title V
25 program is that it is designed to provide a dedicated

1 source of funding that cannot be impacted by changing
2 priorities as reflected in legislative or congressional
3 appropriations. This consistent and dedicated funding
4 mechanism has allowed Iowa's Air Quality Bureau to
5 provide a level of service that previously had not been
6 possible. The bureau has been able to be involved in
7 new areas of air quality related activities and is also
8 able to devote additional resources to existing
9 responsibilities. We can thus do a better job of air
10 quality planning, permitting, and enforcement to better
11 protect the public health and serve the regulated
12 industries.

13 The following are some examples of the permit
14 improvements that have been made possible because of the
15 Title V program.

16 The Iowa DNR has improved the dispersion
17 modeling capability by increasing the equipment and
18 staff resource specifically devoted to those major
19 source activities. Construction permitting has improved
20 dramatically by the addition of engineering staff and
21 providing training needed to review and issue accurate
22 construction permits in the short turnaround time that
23 business currently expects and demands. Although the
24 Title V program adds additional monitoring and
25 recordkeeping requirements, the dedicated funding

1 provides the companion resources to improve our field
2 presence and conduct more comprehensive facility
3 inspections.

4 Additional legal staff has also provided the
5 ability of our state to address violations through the
6 administrative process in a more timely manner.

7 In summary, the dedicated funding and resource
8 requirements needed to gain Title V program approval has
9 provided Iowa's Air Quality Program with the support
10 that had previously been lacking due to declining state
11 and federal appropriations.

12 Now I'd like to speak about some of the
13 challenges. One of the greatest challenges that faces
14 all agencies, including IDNR, has been meeting the
15 decline -- meeting the deadline for initial Title V
16 permit issuance. The period of three years from program
17 approval was almost universally exceeded by implementing
18 agencies. The review of all permits, as stated above,
19 identify many issues that needed to be resolved before
20 the permit should be issued. Resolution of these issues
21 has consumed vast amounts of time that the Title -- that
22 the Part 70 regulations did not anticipate or provide
23 for. For example, Iowa is a major grain-producing
24 state. Twenty-three plants, or eight percent of the
25 Title V sources in Iowa, are grain processors. The

1 first four Title V permits to grain processors in Iowa
2 were appealed. All of the grain-processing companies
3 but one joined into a mediation with the DNR over the
4 Title V permitting process. Negotiations involving
5 grain-processing companies lasted over two-and-a-half
6 years and included use of a federal mediator before
7 resolution. All grain-processor application reviews
8 were held up during this negotiation and appeal
9 resolution.

10 Just as Iowa is concluding its negotiation
11 with the whole grain industry, EPA chose to initiate a
12 nationwide PSD violation enforcement with Archer Daniels
13 Midland, or ADM. No Title V reviews of the four ADM
14 permit applications was accomplished during the time --
15 during this time -- as most applicable requirements were
16 subject to change and some equipment was replaced or
17 modified. Iowa has now begun to permit the ADM
18 facilities. Immediately after the ADM global
19 settlement, EPA initiated a similar national enforcement
20 action against another grain-processing company with
21 multiple facilities in Iowa, subject to Title V. One
22 other grain-processing company has been successful in
23 being granted a temporary court injunction against IDNR,
24 preventing the agency from making public information
25 that they contend is confidential business information.

1 IDNR and EPA both contend the information is emissions
2 data, or information necessary to calculate emissions
3 data. This case is currently awaiting trial.

4 Besides the examples I've mentioned, it has
5 become clear that many sources are using the Title V
6 permit review as a mechanism to address issues that had
7 gone without comment for years. Many sources are
8 requesting that construction permits be modified in
9 order to take limits to avoid applicability of either
10 Title V or other regulatory programs. Fifty facilities
11 that originally applied for Title V permits have since
12 dropped out by taking voluntary limits, removing
13 equipment, changing formulations, or rerouting equipment
14 through controls such as they are no longer considered
15 major sources.

16 Other reasons for delayed permit issuance in
17 Title V is there's no incentive for companies to obtain
18 this permit. Any delays in permitting result in delayed
19 initiation of recordkeeping, monitoring, stack testing
20 required by periodic monitoring or compliance assurance
21 monitoring -- CAM. Most Title V permit applications
22 include errors that must be investigated and addressed
23 prior to permit issuance. Getting a company to accept
24 the state's opinion of correct information that should
25 be in the application can be difficult at times. This

1 is particularly true if the company can see that the
2 state's opinion will result in greater regulatory
3 burdens.

4 Another challenge that IDNR has faced is that
5 the implementation of Title V had to commence with
6 little or no guidance from EPA. The White Papers that
7 were eventually published came out of IDNR -- came out
8 after IDNR already had to make policy decisions
9 regarding the same issues. Conflicting guidance from
10 EPA only resulted in confusion and additional debate and
11 delays. Many terms used in the Title V program are not
12 adequately defined to prevent differing interpretations.
13 "Periodic monitoring" is one term that is open to widely
14 differing opinions. Other terms are ill defined or
15 ambiguous to the extent that a state's interpretation is
16 more defensible than the company's. Examples of such
17 terms are: "inherent process equipment" --

18 MR. HARNETT: Can I ask you to wrap up,
19 please.

20 MR. CAMPBELL: Okay.

21 -- "common controls, "supporting activities,"
22 and "determining adequacy of CAM plans."

23 In conclusion, I guess I'd just like to say
24 that Iowa Department of Natural Resources supports the
25 concept of Title V. The dedicated funding that this

1 program provides has resulted in significant
2 improvements. EPA could greatly assist the states by
3 providing, in regulation, definitions of terms that
4 clearly and unambiguously state the intent of the
5 agency. EPA should provide incentives to industry to
6 work cooperatively with the state to expeditiously
7 produce the permit. And Title V program provides the
8 opportunity for states to produce documents that help
9 the public and regulated industry and regulatory staffs
10 manage and understand complex air quality programs.

11 Be happy to entertain any questions you might
12 have.

13 MR. HARNETT: Kelly Haragan.

14 MS. HARAGAN: Thank you very much for your
15 testimony.

16 I'm interested in what ideas you have for
17 giving sources an incentive to want to, say, get the
18 Title V permit done. I mean, I know that the statutes
19 within the regulations give -- one instance, which is
20 that the state decides that the application's incomplete
21 and additional information is needed. The source, you
22 know, has a specific time that they have to turn it in;
23 or, else, they risk losing the permit application
24 shield. So, first, I wanted to know if your agency ever
25 makes use of that threat and, also, whether you had

1 additional specific ideas for what incentives could be
2 given to sources.

3 MR. CAMPBELL: We have very infrequently used
4 the threat of removing the application shield. It has
5 been approached a couple of different times; and
6 immediately upon that suggestion, the companies came
7 through with the requested information.

8 We much prefer to negotiate and work with them
9 cooperatively, but there have been those cases, but very
10 few.

11 As far as suggestions for other incentives
12 that might -- that being a disincentive, I guess -- I
13 really haven't got any specific examples of what we
14 might use to provide an incentive, but I think it's
15 something that EPA might want to study. The
16 construction permit program provides that you can't
17 start construction until you get the permit issued. And
18 in the Title V case there's really nothing to offer
19 there except the regulatory responsibilities, and you
20 confirm through the recordkeeping -- that type of thing.

21 MR. HARNETT: Steve Hagle.

22 MR. HAGLE: First of all, I want to say that I
23 share your frustration with trying to get a Title V
24 permit for facilities that are involved in national
25 enforcement cases.

1 Secondly, I just wanted to pursue a little bit
2 more a comment you made early on about exempt
3 facilities. And I'm trying to find out, do you have
4 facilities where -- when you say "exempt," you mean a
5 whole site is under a certain level and that you don't
6 require a minor NSR permit? Or that you have individual
7 facilities or activities that may even take place at a
8 major source that would not have to get an underlying --

9 MR. CAMPBELL: I was referring to individual
10 processes or individual emission sources that may be
11 exempt from the construction permitting requirements.

12 MR. HAGLE: Okay. And so those sources may or
13 may not -- let's assume that those don't have any other
14 applicable requirements like a federal rule. Then those
15 sources would not be included at all in your Title V
16 permit; is that correct?

17 MR. CAMPBELL: What we've been working on over
18 the years here, we involved industry in some
19 negotiations a few years ago on the insignificant
20 activities for the Title V permit. So there's a
21 selection of source types or categories that are only
22 subject to the most universally applicable standards --
23 the opacity standard and maybe a grain-loading standard
24 that -- for particulate that everything is subject to.
25 So we've got some language in the permit that says,

1 Except for this -- those two general requirements --
2 everything on the insignificant activities list is --
3 that's the only thing they're subject to and we don't
4 consider them worthy of involving in the rest of the
5 permit. They're not required to pay fees on those
6 activities. They don't do their annual emissions
7 inventories on those activities. They're very small,
8 very inconsequential things.

9 There's another list of insignificant
10 activities that we have that don't need to be reiterated
11 or included in the permit in any form at all. You just
12 ignore them. They're not even listed.

13 We've been working with industry, also, to try
14 and bring the insignificant activities in Title V in
15 line with construction permit-exempt activities that you
16 were referring to earlier. There's a little bit of --
17 we're getting closer to that so that if it's exempt from
18 construction permitting, it -- most of them are going to
19 be exempt or insignificant for Title V purposes to
20 minimalize the burden.

21 MR. HAGLE: Thank you.

22 MR. HARNETT: Adan Schwartz.

23 MR. SCHWARTZ: You mentioned periodic
24 monitoring as one of those key Title V phrases, the
25 meaning of which exists mostly in the eye of the

1 beholder. And I was wondering if you came prepared with
2 some examples of how that ambiguity -- if it has created
3 problems for your agency. Or, if not, perhaps you'd
4 like to submit them later.

5 MR. CAMPBELL: One thing Iowa did very early
6 on, when periodic monitoring looked like that was the
7 main additional burden that would come out of a Title V
8 permit, industry was asking us directly, "What do you
9 expect to see?"

10 So one of the first activities we did in the
11 operating permit program was put together an industry
12 work group with the idea -- and our staff -- to work
13 towards identifying what we would consider a mechanism
14 for determining appropriate periodic monitoring. And
15 then a matrix is actually is what came out of it that we
16 put together a guidance document for. So Iowa's
17 periodic monitoring guidance document was -- served us
18 pretty well for about a year. And then we got into that
19 grain mediation exercise that I referred to, the result
20 of which was almost entirely about calculating emissions
21 and how that affected periodic monitoring requirements.

22 So ultimately, after we resolved the
23 mediation, we took our periodic monitoring guidance
24 document and put that into our administrative rules.
25 And that was universally accepted throughout the state

1 of Iowa with very little comment at all. It was a
2 pretty productive exercise. So they -- they can look in
3 this -- in our rules and the reference guidance and see
4 exactly what they're going to be subject to, whether
5 it's going to be an agency O&M -- which is what we call
6 it -- where we have to approve the operation and
7 maintenance plans; whether stack testing is going to be
8 required for the -- any individual emission source at
9 the plant once or twice during the term of the permit;
10 or whether they just happen to have an operation and
11 maintenance plan that the state doesn't even see for the
12 minor type of activities that they just keep on site for
13 their own -- for their own reference. So that's been, I
14 think, a real success in our program.

15 MR. HARNETT: I will take two more
16 questioners.

17 Shannon Broome.

18 MS. BROOME: Hi. Thank you for coming.

19 You mentioned that there were a lot of things
20 in which you'd like some consistency from EPA because
21 they come out with something after you come out with it.
22 But Mr. Layman earlier -- and this isn't just unique to
23 you. It's something that keeps coming up. He wanted
24 flexibility for his states to do the right thing, based
25 on their sources. And it seems like the answer is

1 somewhere in between. So if you want to come in with
2 your comments later or if you want to say those today,
3 that's fine, too. But as to where you draw that line,
4 there's good consistency and there's bad consistency,
5 right?

6 MR. CAMPBELL: Yeah.

7 MS. BROOME: So how -- how do you make that
8 cut?

9 MR. CAMPBELL: Things -- I was attempting to
10 refer regarding consistency. And one we're struggling
11 with currently right now is the interpretation of --
12 this goes back to PSD as well as Title V -- what
13 constitutes a major stationary source. And EPA has
14 guidance out there all over the map on both sides of the
15 issue that both parties in our conflict are using to
16 support their arguments -- what constitutes "common
17 control"; what constitutes -- well, we even get into
18 "adjacent" and "contiguous" definitions. But "common
19 control," "supporting activities" -- those are the types
20 of things that I was referring to, where that
21 terminology needs to be defined once and for all and
22 with a lot of clarity from EPA, I think, to satisfy both
23 sides. We're probably going to end up in court on this
24 case, where a subcontractor considers himself a separate
25 facility and the state and EPA consider them as one

1 major stationary source for both Title V and PSD.

2 MR. HARNETT: Kelly Haragan.

3 MS. HARAGAN: Thanks.

4 You mentioned that you don't think that
5 permits should reference citations rather than including
6 the whole regulation. Is that -- do you include the
7 whole -- all federal regulations with your permit? Is
8 that just attached?

9 MR. CAMPBELL: What we try to do -- and the
10 MACT is where it becomes most problematic, I think.
11 We -- we always include the -- the authority citation
12 anyway -- and the pertinent things. You have to monitor
13 this parameter or you have to do recordkeeping on this
14 or whatever is required there we'll reiterate in plain
15 English language so that the guy on the plant floor who
16 has to actually do it knows what he's supposed to do.
17 That's what I really want this permit to do for Iowa's
18 sources is tell them what do they have to do to be in
19 compliance.

20 Now, when you get into the MACT-source
21 categories, with multiple compliance options --
22 pharmaceutical MACT and some of those things -- it gets
23 very messy. If you can -- we try to work with the
24 sources to identify what they think they want to use as
25 their initial compliance option.

1 And what we've accomplished thus far is,
2 they'll give us what they think their initial compliance
3 option is. And what we'll also do, though, is, say, if
4 they include that -- basically, it's just a requirement
5 that, if they change their mind, just tell us. Give us
6 a heads-up so our field inspectors know what to expect
7 when they go out there, that they've -- you know, thirty
8 days from now we're going to change to this other
9 compliance option. And then we can have everybody
10 notified of what it may be.

11 What we've -- on the very complicated MACT
12 standards, we will reference that and then just include
13 the MACT, just attach it to the back as an amendment or
14 a -- an appendix to the actual permit because, frankly,
15 what we have noticed is people don't have the Code of
16 Federal Regulations on their desks. These plant people
17 may or may not have access to even the state
18 regulations. And so I want to give them all the tools
19 necessary to be able to do the job to the best of their
20 ability.

21 MS. HARAGAN: And so with the MACT, where you
22 put in the initial compliance standard and then you
23 allow them to notify you if they are going to change it,
24 does anything change in the Title V permit itself? I
25 guess I'm curious about how the public would know that

1 that's changed.

2 MR. CAMPBELL: That's probably the one problem
3 there. We would be working with them that they have all
4 these options available to them and they would notify
5 us. So only through the review of the public record and
6 our records would the public be made aware that they are
7 utilizing one or the other available options. They're
8 all legitimate options. So the public would assume
9 they're using one of them. Which one is -- identifying
10 that is a little difficult. We've had a few of those,
11 not too many.

12 MS. HARAGAN: And, then, how, when the sources
13 are noncompliant, does the permit state the option, but
14 if they change that option, do they have a problem with
15 identifying how they're certifying compliance?

16 MR. CAMPBELL: Not to my knowledge. Not at
17 this time anyway.

18 MS. HARAGAN: They're not worried about
19 certifying --

20 MR. CAMPBELL: Something different?

21 MS. HARAGAN: -- if the permit conditions
22 change?

23 MS. FITZSIMMONS: The permit does allow for
24 the other option. So we don't feel as if they're
25 trapped in one until they say the other. They usually

1 provide the notification that goes in the file, too.
2 And so when our -- when our compliance people are
3 looking at it, they'll see that, that they've said
4 they've gone this way or that way at any time.

5 MS. HARAGAN: One related question: The
6 compliance certification, you know, they're supposed to
7 identify how to certify compliance, in looking at the
8 compliance certification can someone can tell because of
9 how they say they determined compliance which option
10 they chose?

11 MR. CAMPBELL: Yes.

12 MS. HARAGAN: Thank you.

13 MR. HARNETT: Thank you very much for coming
14 today.

15 Our next speaker is Jack Broadbent of the
16 State and Territorial Air Pollution Program
17 Administrators as well as the Association of Local Air
18 Pollution Control Officials.

19 The box will give you a warning. When you
20 have two minutes left, it will shift to yellow.

21 MR. BROADBENT: I see. First, I have a
22 question. Do I have ten minutes or twenty minutes?

23 MR. HARNETT: You have ten minutes for
24 presentation and ten minutes for questions.

25 MR. BROADBENT: All right.

1 Well, good morning. Again, my name is Jack
2 Broadbent. Good morning. My name is Jack Broadbent,
3 and I am the executive officer for the Bay Area Air
4 Quality Management District. I am here today on behalf
5 of the State and Territorial Air Pollution Program
6 Administrators (STAPPA) and the Association of Local Air
7 Pollution Control Officers (ALAPCO), the two national
8 associations of air pollution control agencies in
9 states, territories, and localities across the country.
10 The members of our associations have primary
11 responsibility under the Clean Air Act for implementing
12 our nation's air pollution control laws and regulations
13 and, moreover, for providing clean, healthful air for
14 our citizens. As co-chair of the monitoring committee
15 of STAPPA and ALAPCO, I appreciate the opportunity to
16 present our associations' testimony on the Title V
17 permitting program.

18 I'm joined here today by our district counsel
19 for the Bay Area Quality Management District, Brian
20 Bunger; as well as our director of engineering, Brian
21 Bateman. And they might be able to, if the Task Force
22 will so indulge us, help answer some of the questions.

23 But at the outset, I would like to let the
24 Task Force know that the comments that I have for you
25 today represent a compilation of all the different air

1 pollution control agencies across the country. We took
2 great strides to try to pull all of our comments
3 together. And so it represents -- so we could have
4 commonalities, if you will, amongst all the states. You
5 may find, though, that there may be some specific issues
6 being discussed here; and we may need to follow up in
7 writing rather than take kind of specific questions of
8 the Task Force.

9 First of all, at the outset, I'd like to
10 emphasize that the associations fully support a strong
11 Title V program. The suggestions that we offer here can
12 be seen as constructive criticism and not to be taken
13 out of context or used to justify sweeping revisions
14 that we do not support. We believe that much good has
15 come out of the Title V program. Midcourse corrections,
16 however -- we think -- are needed in order to achieve
17 its original goals. We believe that, like a tree in
18 need of pruning, Title V needs to be cut back in some
19 ways if it's to continue to evolve and provide for a
20 sound program. There are -- unnecessary requirements
21 need to be trimmed; and other requirements need to be
22 clarified and strengthened.

23 Title V -- or I should say Clean Air Act --
24 the Title V portions of it enacted by Congress and
25 signed into law in 1990 are now fifteen years old and is

1 due for examination. The current opportunity to
2 evaluate what is and is not working in Title V is
3 extremely important to us. And a vast amount of our
4 time, efforts, and financial resources that are spent by
5 the program are indeed spent by the local and state
6 authorities.

7 Among the stakeholders, we believe we are
8 unmatched in our depth and breadth of experience, having
9 developed, administered, and enforced thousands of
10 permits during the fifteen-year period.

11 Some of the specific questions that we have
12 for you today include:

13 Has consolidation of requirements led to
14 excessive complexity and length of permits?

15 Have compliance certifications, monitoring,
16 and recordkeeping requirements actually enhanced
17 enforcement efforts?

18 Should changes be made to the public comment
19 process?

20 What kinds of programmatic changes can be --
21 can we make that we -- that will make the permitting
22 faster and more effective?

23 We will convey our general comments here and
24 set forth in writing more detailed recommendations for
25 modifications to the program.

1 First, let me just cover consolidation of
2 requirements. The Senate Report accompanying the
3 Title -- the 1990 Clean Air Act stated that the "first
4 benefit of the Title V program is that, like the Clean
5 Water Act program, it will clarify and make more readily
6 enforceable a source's pollution control requirements."
7 At the time, the source's pollution control obligations
8 were scattered throughout numerous, often hard-to-find
9 provisions contained in the permit as well as in state
10 and federal regulations. In theory, permit
11 consolidation would be beneficial; in practice, but
12 there have been mixed results. Consolidation has
13 resulted in more manageable permit programs in some
14 cases, as in New York State, for example, where there
15 were formerly 12,206 separate emission-points. Title V
16 has whittled that down to some 498.

17 Permit administration has generally been
18 simplified. Detailed descriptions of operating
19 conditions contained in permits allow for regulated
20 sources to consistently document compliance.

21 While facility-wide requirements have been
22 clarified and there's been uniformity in recordkeeping
23 and reporting -- just to speed along to make sure I can
24 get within my comments -- the process -- or my time
25 frame.

1 The process for developing operating permits
2 has produced significant improvements in the accuracy in
3 submittals by sources. The application process has
4 resulted in facilities identifying undocumented sources
5 and emissions and better quantifying previously known --
6 unknown -- sources of emissions from facilities.

7 We anticipate the requirements that permits be
8 renewed every five years will, like the original
9 application process, necessitate internal review by
10 sources and their compliance status, resulting in
11 evaluation of and, in many cases, changes in facilities'
12 practices.

13 Another benefit of the operating permit
14 program has been that a significant number of major
15 sources have voluntarily restricted their emissions
16 conditions, and, in some cases, installed pollution
17 controls in order to reduce emissions to avoid Title V
18 altogether.

19 But these successes tell only one side of the
20 story. There are also problems with Title V. The
21 admirable goal of consolidation has often resulted in
22 huge and complex, indeed, supersized-permits. Far from
23 resulting in simplicity and clarity, some operating
24 permits have become daunting and virtually
25 incomprehensible to the interested citizens as well as

1 frustrating to permit holders and permitting
2 authorities. These operating permits must be downsized
3 and made more manageable if the original permit goals of
4 clarity, accessibility, and enforceability are to be
5 fully realized.

6 I will touch on some of the problem areas and
7 suggested solutions that have been suggested by state
8 and local permit specialists.

9 First, incorporation of MACT standards and
10 requirements in operating permits is causing problems.
11 Many permitting authorities, warned of the risk --
12 warned of the risk of any other course of action, are
13 appending the entire MACT rule, which frequently runs to
14 100 or more pages-to the Title V permit. The opposite
15 approach, however, of including only citations to the
16 MACT requirements, requires interested citizens of
17 the -- interested citizens to undertake research and
18 cross-referencing in order to understand the source's
19 obligations and hardly furthers the goal of increased
20 clarity. We recommend that the Task Force examine this
21 issue in detail and develop a recommendation that
22 results in an improved approach that addresses the needs
23 of permitting agencies, citizens, and permit holders.

24 Secondly, there needs to be a serious
25 consideration of whether insignificant emission units

1 should be included in the Title V permits at all. In
2 particular, emission units such as air conditioning
3 units and small space heaters are inherently compliant
4 and do not add much value to the permit.

5 Third, to the greatest extent possible,
6 permits should be written clearly and simply if we are
7 to communicate with the regulated community and public
8 effectively. When esoteric regulatory jargon is
9 systematically included in these permits, the goal of
10 permit clarity cannot be met. Nor can clarity be
11 achieved when we are required to include irrelevant
12 details. Other sectors, such as the insurance
13 companies, have responded to public demands and made
14 progress in substituting plain language for arcane
15 regulatory and legal language.

16 Fourth, we are willing to expand the
17 development of short-term general permits for common
18 small source categories that have no dedicated staff to
19 manage permits. Application, reporting, and
20 certification requirements can be organized, classified,
21 and streamlined without affecting emission limitations
22 and other requirements.

23 Fifth, using the full-blown modification
24 process only because a change of a consideration -- or
25 considered a "Title I modification" can be excessively

1 burdensome.

2 And, finally, the reopening provisions of the
3 program can be extremely burdensome as well. Permits
4 are required to be reopened to add any new applicable
5 requirements to permits that have a remaining term of
6 three or more years. Identifying the appropriate
7 permits when new applicable requirements go into effect
8 is an extra, time-consuming task for permit reviewers.

9 Turning from the general issues raised by
10 permit consolidation, the rest of our testimony -- rest
11 of my testimony -- will address the monitoring,
12 recordkeeping, and reporting; compliance and
13 enforcement; public participation; and programmatic
14 issues.

15 Specifically, we need flexibility in imposing
16 monitoring requirements. One of the benefits of Title V
17 has been the greater consistency in monitoring,
18 recordkeeping, and reporting -- all of which has, we
19 feel, led to enhanced compliance.

20 Monitoring requirements are more detailed and
21 specific. Sources focus more on achieving and
22 maintaining compliance.

23 But there is more to do to improve these
24 tools. We need to arrive at optimum monitoring
25 requirements, whether inspections, pollution monitoring,

1 opacity observations, or parametric monitoring that will
2 all be reasonably and accurately assured compliance for
3 various industry sectors.

4 Questions on monitoring frequency and
5 stringency in Title V have so far spawned several
6 lawsuits, and, most recently, an EPA regulatory response
7 (called the "Four-Part Strategy"), by which EPA plans
8 to, among other things, insert monitoring requirements
9 into old statutory provisions that have none.
10 Meanwhile, reinterpretation of Part 70 monitoring
11 provisions pursuant to settlement of a lawsuit has left
12 permitting authorities with no federal gap-filling
13 monitoring for permits or renewals of permits when, in
14 judgment of the permitting agency, such monitoring
15 requirements must be needed.

16 Let me move ahead real quickly, as I start to
17 lose time.

18 Another area that should be addressed by EPA
19 is excessive numbers of compliance reports. Right now,
20 some sources are generating and permitting authorities
21 are receiving hundreds of reports annually. Deviation
22 reports that are related to emissions and control
23 equipment should be reported expeditiously.

24 Similarly, the increasing costs and
25 diminishing benefits of excessive Title V reporting of

1 compliance-related data in the Air Facility Subsystem
2 (AFS) should also be recognized and corrected.

3 As for the annual compliance certification, we
4 believe that they will come into their own as an
5 important tool for enforcing Title V requirements. They
6 have elevated facility accountability to the corporate
7 officer level. Annual statements of compliance signed
8 under penalty of perjury have appeared to spur internal
9 compliance reviews and have led to increased operator
10 training and improvements in facility recordkeeping
11 practices, such as the control of fugitive emissions and
12 ensuring that degreasers have lids.

13 On the whole, however, Title V has a
14 beneficial effect on enforcement penalties, and citizen
15 suits are now potential consequences of noncompliance.

16 Let me just move ahead, if you will, Mr.
17 Chairman. Let me just move to my summary. How about
18 that?

19 MR. HARNETT: Fine.

20 MR. BROADBENT: In sum, we would like to see
21 this basically sound program improved by trimming some
22 of the deadwood requirements and clarifying areas of
23 uncertainty. Some of the changes that we believe should
24 be made to Title V include the elimination or, at least,
25 streamlining of insignificant emissions units in

1 permits; revision of overly burdensome modification
2 procedures; consolidation of minor deviation reports
3 into semiannual compliance reports; focusing compliance
4 certifications on deviations; voluntary, rather than
5 mandatory, AFS data reporting requirements; utilization
6 of short-term permits or general operating permits for
7 smaller sources; EPA evaluation and revision of NSPS
8 standards and overhaul and organization of SIPs;
9 improvements in public access that nonetheless avoid
10 unnecessary, time-consuming public access requirements
11 when no interest exists.

12 Finally, a Title V Permit Guidance Manual
13 would speed and improve these permits, as would training
14 opportunities for permit writers. Some EPA Regions are
15 visiting permitting agencies and are providing training
16 on compliance assurance monitoring and renewals. This
17 useful activity should be encouraged for all EPA
18 regions.

19 Thank you, and I will be glad to answer
20 questions. And I will try to keep it to my ten minutes.

21 MS. POWELL: Thank you for your testimony. I
22 realize you were running out of time so you went quickly
23 over some really important issues.

24 So I was particularly interested in your
25 thoughts about the EPA's four-part monitoring strategy

1 and your frustration with not being able to add
2 gap-filling monitoring where agencies felt that it was
3 necessary. Would you like to develop those comments a
4 little further?

5 MR. BROADBENT: I would be more than happy to,
6 but actually what I'd prefer to do to make sure I can
7 fully express the concerns of STAPPA and ALAPCO, I'd
8 like the opportunity to follow up, if I could, in
9 writing, relative to the four-part monitoring strategy,
10 only because when you have 50 states and you're trying
11 coordinate amongst all the permitting agencies, it's not
12 the simplest thing to do; I can assure you of that.
13 This has taken some time; and I know that I probably
14 would not capture all the comments by the different
15 states and locals. So, if you would indulge me.

16 MS. POWELL: Thank you.

17 MR. HARNETT: David Golden.

18 MR. GOLDEN: You mentioned the excessive
19 number of compliance reports. And I'm assuming that's
20 deviation reports and other reports on the Part 70
21 permit. Part 70 mandates that the state define
22 deviation according to the nature and type of deviation
23 itself, which, I know, some states that we are working
24 in -- states use that provision to prioritize the --
25 these monitoring reports.

1 By your comment requesting that -- suggesting
2 that EPA do something there, does that mean that some of
3 the states that you're representing, they're not using
4 that provision or they're attempting to use it but
5 something that EPA is doing is preventing them from
6 using it more fully?

7 MR. BROADBENT: The nature of our comment has
8 to do with the fact that, in working with the different
9 regions, we find ourselves actually having too many
10 compliance reporting. And then you have to take a look
11 at all the different types of enforcement reporting that
12 is either being requested of us or we turn around and
13 then require the sources.

14 And at some point, there -- it becomes a point
15 where you just, frankly, are not achieving what you
16 want. And that is that you have too much information.
17 You can't -- you can't fully rely on that information to
18 define compliance in the facility. It's just -- and so
19 there needs to be a look at just a more holistic view of
20 all the different deviation reports being requested
21 and/or compliance information. We -- and, again, I'm
22 bringing it back to somewhat of a general comment here
23 so I can cover all the different states that have these
24 comments and concerns.

25 MR. HARNETT: I'm going to cut it off at the

1 cards that are up right now. But we will go through all
2 of them.

3 Bob Morehouse.

4 MR. MOREHOUSE: Jack, question for you: We
5 heard some testimony this morning of some good -- things
6 that are working well in some states and some things
7 that are not working well.

8 Has STAPPA ever sponsored an effort of really
9 sharing best practices across the states in a
10 concentrated manner and pulled all the states together
11 to see what's working well? What you would suggest
12 changing in other states?

13 MR. BROADBENT: That's a good suggestion.
14 And, indeed, STAPPA has undertaken some additional
15 efforts along those lines. We can certainly be working
16 with EPA further, also. I think the suggestion that
17 you're making is some type of information exchange as to
18 what is working and what isn't amongst all the states
19 just at the STAPPA/ALAPCO level.

20 MR. MOREHOUSE: Right.

21 MR. BROADBENT: That's a very good suggestion.

22 MR. HARNETT: Shannon Broome.

23 MS. BROOME: Good morning. I have just one
24 quick thing and then a question.

25 I always question the extent to which it is

1 appropriate to attribute to a program reductions and
2 potential paper reductions that are achieved as
3 basically the lengths to which people will go to avoid
4 it. I don't really count that as a benefit of a
5 program. It may say something bad about the program,
6 actually.

7 But you mentioned esoteric regulatory jargon.
8 And I wasn't sure what that meant. And if you want to
9 just answer it for yourself, I'm dying to know what you
10 think that is, and as you mentioned, "overly burdensome
11 modification procedures." And if you had an example on
12 that, that would be great.

13 MR. BROADBENT: Well, first of all, let me
14 clarify. Again, I'm here on behalf of STAPPA/ALAPCO.
15 Mr. Peter Hess is going to be providing comments on
16 behalf of the Bay area Air Quality Management District.
17 He would be more than happy to give you a good sense of
18 the -- what is the term -- "regulatory jargon." And,
19 having been a former EPA employee, I've learned quite
20 well how not to answer a question. So, if you don't
21 mind, I'll have Mr. Hess actually answer that as part of
22 his comments today.

23 If you don't mind, would -- you had a two-part
24 question.

25 MS. BROOME: I just wanted to know -- you

1 mentioned "overly burdensome modification procedures."
2 And you -- you have speed-talking down to a science.
3 And I know you probably have more to say about that. I
4 just didn't know what you meant by it.

5 MR. BROADBENT: Well, again, there are many
6 examples that we can probably run through for you. And
7 I'd like the opportunity to have us follow up in writing
8 as to give you -- certainly, here in the Bay Area, we
9 can give you plenty of examples where we feel there's
10 been, frankly, too many excessive requirements or just
11 additional requirements actually imposed on us relative
12 to some of our refinery Title V permits. That's just
13 something that I personally lived through the last year,
14 where we believe, as the agency that has a lot of
15 experience in working down at the ground level, relative
16 to how we assure compliance by the facility. We propose
17 one thing; and oftentimes we're told, Well, the explicit
18 reading of our requirements says the following, although
19 we may have a lot of experience using the particular
20 monitoring methods. So there is that type of experience
21 that we can certainly follow up in writing and give you
22 more detail.

23 MS. BROOME: Thank you.

24 MR. HARNETT: Don van der Vaart, please.

25 MR. VAN DER VAART: Thank you.

1 I just wanted to make a comment or ask a
2 question about an aspect of what I think I heard from
3 you on the MACT issue. We in North Carolina struggle
4 with, on the one hand, wanting to make the permits and
5 requirements accessible to third parties and to the
6 facilities. And, on the other hand, be true to the MACT
7 rules, which, I think, are the real burden -- not the
8 Part 70 permit. But the fact that they're so
9 complicated. We struggled with that. And when we talk
10 to facilities, we realize that they also are not running
11 around using the Part 63 manual as a sort of an
12 operations manual. They have, in fact, condensed the
13 MACT -- the individual MACT down to the substantive
14 requirements for -- that are specific to the facility.
15 And we -- in fact, they're supposed to do that in some
16 MACTs and I think it's called a compliance strategy
17 they're supposed to file before the compliance date. Do
18 you believe that Part 70 permit is an opportunity to
19 have that interpretation vetted by the EPA and then the
20 state folks and the third parties so that -- first of
21 all, by doing so you might actually end up with an
22 understandable statement of the requirements of the MACT
23 and maybe perhaps a little bit less techno-jargon? But
24 it would be, after everyone was done with it, it would
25 then have to -- then it might actually serve a purpose.

1 Would you think that that form then, put in
2 the permit, should be the form that they should be held
3 up to? Or should somebody be able to come back later
4 and say, "Gee, I don't agree with that interpretation,
5 and so I'm going to slam you"?

6 MR. BROADBENT: Well, I think you've done an
7 excellent job of characterizing the issue here, because
8 when you have the MACTs being as complex as they are --
9 can be the size of one of our Title V permits here -- at
10 least in Region 9 -- the question comes down to, "How do
11 you ensure the facility's complying with it?"

12 And it makes a lot of sense to be able to
13 interpret that MACT and bring it down to the relevant,
14 in plain language, and pin that to the Title V permit.
15 The concern we always have is some group that's going to
16 do a bunch of research and comes back and says, "Aha,
17 but your interpretation of this MACT leaves a little bit
18 room in the facility that, we feel, hasn't gone far
19 enough."

20 And so that's -- I think that would probably
21 work in probably 40 out of the 50 states -- the approach
22 that you're taking -- but it may not necessarily work
23 here in California, unfortunately. So I think what
24 needs to have happen is to have guidance on this issue
25 needs to be provided. That was part of the testimony of

1 STAPPA, that the Task Force really needs to take a look
2 at this issue and make some recommendations to EPA in
3 this regard, 'cause this is what almost every state and
4 local is struggling with.

5 At the same time what you're doing is
6 balancing the public accessibility and public ability to
7 understand what's going on. And if they've got to go
8 back and do all this research through reams and reams of
9 information, you've got to ask yourself, What are we
10 really accomplishing? And, in the end, you want to do
11 several things: You want to make sure the facility is
12 in compliance with that MACT standard; and you want to
13 make sure the public understands then what they've got
14 to do. And so -- and I know full well -- we all are
15 very knowledgeable of the fact that EPA took years to
16 develop any individual MACT. So now they -- this is a
17 good time for us to revisit that whole issue. And this
18 Task Force is the appropriate place to do that -- is to
19 take a look at the issue of maybe giving EPA some
20 guidance on the fact that they need to go back and
21 really streamline some of those key MACT requirements.

22 MR. HARNETT: Mike Wood.

23 MR. WOOD: Thank you for being here today.
24 I'll try to ask this quickly.

25 You mentioned a need for, I guess, guidance on

1 assisted monitoring that reasonably and accurately
2 assesses compliance. I'm wondering, with respect to
3 insignificant emissions units, how much time and effort
4 is devoted to monitoring and assessing compliance for
5 those units and both from a regulatory agency standpoint
6 of incorporating that information in the permit and then
7 from the regulated community, how much time and effort
8 should be devoted?

9 MR. BROADBENT: I think in the Title V context
10 my comments were along the lines that it needs to be
11 something that is very streamlined. In a sense, almost
12 a listing of that equipment would be fine and something
13 that the enforcement authority can simply look to see if
14 they are there and as part of their annual inspection or
15 however often that is -- some kind of review to make
16 sure that that equipment is there and operating
17 properly. But beyond that, that -- that's the nature of
18 our comments here today is that there needs to be a hard
19 look at just all those insignificant sources and they
20 need to, frankly, be a much more streamlined effort,
21 almost a listing, if you will, and not necessarily a
22 more detailed effort that's gone into some of the
23 permits, particularly here in Region 9, where there's
24 some detailed requirements spelled out and
25 cross-referenced because there may be SIP requirements

1 associated with them.

2 So there -- this has actually caused a lot of
3 concern here in Region 9 relative to those equipment.
4 As we have had to move the SIPs further to get progress
5 on air quality, that equipment has now come under
6 certain rule requirements significant to the SIP and
7 therefore finding itself with all that information in
8 the Title V permit. We think what might make sense is
9 some kind of listing of that equipment rather than all
10 that as taking up so much of the Title V permit itself.

11 MR. HARNETT: Lauren Freeman.

12 MS. FREEMAN: Thanks.

13 This may actually be more of a request than a
14 question, although you can respond now, if you like.

15 When you further develop your comments on this
16 need for further flexibility to do things like
17 gap-filling on monitoring and write plain language in
18 permits, if you could specifically address a couple of
19 issues that come up. One is the state resources needed
20 to undertake that task for each individual permit term
21 and source. And also the resulting potential for
22 inconsistency for national standards, if that's done
23 state by state, permit by permit.

24 Those are two policy issues I know that EPA
25 thought long and hard about on monitoring issues. So if

1 you could address those.

2 MR. BROADBENT: Be glad to, and we'll be glad
3 to follow that up.

4 And the resource question is very different
5 across the country. I'll just point that out, in terms
6 of the state and local's ability to impose the necessary
7 fees for the Title V programs. That's a struggle in
8 some parts of the country; it certainly is not a
9 struggle here in California, but it is a struggle just
10 east of us in Nevada and beyond. So I'd be glad to
11 answer that and provide more information to the Task
12 Force.

13 MR. HARNETT: And, Kelly, do you not have a
14 question?

15 MS. HARAGAN: No. It got answered. Thanks.

16 MR. HARNETT: Thank you.

17 We're running late here, so I'm going to
18 propose to the committee, do you want a break or do you
19 want to move on?

20 Ten minutes. We'll break for ten minutes and
21 be back here at 10:25. Thank you.

22 [BREAK FROM 10:11 to 10:28 A.M.]

23 MR. HARNETT: We're going to start back up.
24 I'd like to ask Matt Reis. I think I said that
25 properly.

1 MR. REIS: Right.

2 MR. HARNETT: We had a request from members of
3 the audience to make sure that the speakers pull the
4 microphone as close as possible so that everyone can
5 hear the comments. And speak as clear as possible when
6 you go at a break-neck pace.

7 And, if you would, go right ahead and begin.

8 MR. REIS: Okay. Good morning. My name is
9 Matt Reis. And I'm here today as a representative --

10 MR. HARNETT: You may want to pull that just a
11 little closer up.

12 MR. REIS: -- and I'm here today as a
13 representative of the New York State Department of
14 Environmental Conservation. The department appreciates
15 the opportunity to provide testimony before this Task
16 Force. We consider the work being done here to be
17 extremely important and hope that the effort will result
18 in clarifications and improvements and streamlining in
19 the administration of the Title V program across the
20 country.

21 Before I begin, I'd like to mention that the
22 written testimony also being provided to this work group
23 contains more details in the points I will cover as well
24 as additional issues, along with examples.

25 I also had a PowerPoint presentation that

1 apparently the computer doesn't like. So you're going
2 to have to rely on hand puppets, whatever.

3 Our overall DEC believes that New York's
4 implementation of the New York -- of the Title V
5 program -- has been beneficial to our air permitting
6 efforts. The Title V program provided New York with the
7 opportunity to update its permitting program and to
8 consolidate and clarify requirements. The compliance
9 and recordkeeping provisions of Title V allow, in New
10 York, permittees and the public to track and determine a
11 facility's compliance more easily. Public involvement
12 has been enhanced by the Title V process and to the
13 establishment of New York's environmental justice
14 program.

15 To understand the impact that Title V has had
16 on New York, it's worthwhile spending a moment
17 describing our previous permitting system. New York's
18 permitting program, prior to Title V, was in operation
19 for 30-plus years. Under this program, permits were
20 issued on a stack-by-stack basis in a two-step process.
21 Resources were initially issued a permit to construct
22 that was valid for up to six months -- or, rather, for
23 six months to a year. And once construction was
24 complete, a certificate to operate was issued, which was
25 typically good for up to five years.

1 Three different forms were used for
2 applications: one for combustion, one for incineration,
3 and one for process services. Although effective, the
4 department's prior permitting scheme had a number of
5 drawbacks:

6 The one-permit-per-stack system complicated
7 administration.

8 Facility requirements were scattered among
9 dozens or perhaps hundreds of permits at a facility.

10 Scattered expiration dates made it difficult
11 to ensure that all permits at a facility were current.

12 There was also a degree of variability in
13 permit content, depending on each permit writer's
14 judgment.

15 Evaluating one emission point permit at a time
16 tended to distract from overall facility issues.

17 The forms themselves had limitations in the
18 information that was solicited in our fields.

19 And all applicable rules and the basis for
20 permit requirements could not be indicated.

21 There was a special conditions section on the
22 form which could be used to require stack testing or
23 controls, but these weren't typically used; nor was
24 monitoring, recordkeeping, or reporting usually
25 required.

1 Finally, public comment opportunity was not
2 always as well defined as they are under Title V.

3 New York received interim Title V approval in
4 1996 and final approval in 2002. New York's program is
5 now a one-step permitting process through which all --
6 through which new or modified sources can be constructed
7 and operated in one permitting action. All requirements
8 at a facility are placed in a single permit. Thus, the
9 requirements associated with dozens, sometimes hundreds
10 of emission point permits at a facility are now combined
11 into a single document. Statewide, thousands of
12 emission point permits were reduced to about five
13 hundred.

14 The requirements at a -- at the facility
15 expire at the same time. Though there's little need to
16 track expired emission points. Permits do not use the
17 same application form and the formats for all permits
18 are the same. Where conditions were infrequent in the
19 old system, applicable requirements are now included in
20 permits as conditions, each of which is tied to the
21 citation that's the basis of the requirement. The DEC
22 develops these conditions to meet EPA's guidance and
23 enforceability; and use of condition pamphlets
24 encourages consistency for placing monitoring,
25 reporting, and recordkeeping requirements in permits.

1 The larger degree of detail in these conditions allows
2 for a more structured, definitive compliance and
3 enforcement effort.

4 Public participation has been enhanced under
5 the Title V program, with more prescriptive notice
6 requirements. New York also makes a permit review
7 report available, which contains the same type of
8 information, statements of bases due and other
9 permitting agencies. New York also posts draft and
10 final permits on the website along with permit review
11 reports.

12 The whole program has been tied together with
13 a new computer system we refer to as the Air Facilities
14 System, or AFS. AFS is used as a tool in processing
15 applications and developing and issuing permits. AFS is
16 also used for compliance activities; tracking inspection
17 reports and enforcement actions; inventory maintenance,
18 and billing; and can be used for planning as well.

19 Although the Title V program has prompted many
20 improvements in New York, a number of problems have
21 arisen. Perhaps the most significant problem is the
22 lack of consistency with which the Title V program is
23 administered by EPA across the country. What's
24 acceptable or advised in one EPA region may not be
25 acceptable in another. For example, annual compliance

1 certifications in New York require that permittees
2 address compliance in a permit condition -- by a
3 permanent condition basis, with explanations provided as
4 to how compliance was determined. However, in other
5 regions, a simple one-page certification that the
6 facility as a whole is in compliance is accepted.

7 Another example of this is EPA's allowance of
8 concurrency period -- concurrent periods for public
9 notice and EPA review. In some EPA regions, this
10 appears to be acceptable, while in others, it's not.
11 Another significant problem has been the lack of
12 guidance on a myriad of program issues. For example,
13 the proper approach to periodic monitoring for small
14 sources for which there is no regulatory guidance -- for
15 which no regulatory guidance is provided by the EPA, has
16 been a significant issue for the department. The means
17 and necessity of determining compliance with opacity
18 standards also falls into this category.

19 Related to this is the sufficiency monitoring,
20 where periodic monitoring for a type of operation is
21 provided for in a rule, but it's not sufficient to
22 determine compliance. EPA initially proposed
23 sufficiency rules as of September 2002 but subsequently
24 reviewed -- withdrew them in January 2004. EPA promised
25 to provide additional guidance but has not proposed any

1 as yet, leaving the states to deal with sufficiency
2 monitoring on a case-by-case basis.

3 Problems with extended time frames years in
4 length for EPA approval of program -- of SIP submittals
5 also continues nationwide. In New York, for example,
6 the Title V permitting program regulation with the
7 regulation for the requirement for the issuance of the
8 single Title V permit was approved by EPA in 1996.
9 However, the previous version of New York's permitting
10 rule continues to linger in the SIP. As a result, EPA
11 has insisted that the requirements of the old two-step
12 version of the state's permitting rule are still valid
13 and must be placed in permits on the federally
14 enforceable side and that regulatory provisions that are
15 repealed and no longer contained in the state's rules
16 must be included in Title V permits on the state side.
17 On the other hand, the department's revised permitting
18 rules must be placed on the state-enforceable side, as I
19 mentioned.

20 There are many other general problems that
21 need to be addressed. The program and its
22 implementation is complicated and confusing, especially
23 when the requirements for other complex regulatory
24 programs, such as NSDS, the NESHAPs, PSD, NSR, et
25 cetera, are interwoven with the permit. Because of

1 this, permit applications are frequently incomplete; and
2 it's often necessary to request additional information
3 from applicants. Once issued, permits can be long and
4 difficult for the source owner and the public to
5 decipher.

6 Another problem lies in the petition process.
7 The Title V program provides that anyone may petition to
8 object to a permit if an objection is not raised by EPA
9 during the 45-minute -- 45-minute -- 45-day review
10 period. However, there's no opportunity for the
11 permitting authority and facility owner to participate
12 or to intervene. Additions can be initiated only on
13 issues raised during the public comment period. During
14 this period, the department may have to provide a
15 plain-English response -- responses to comments.
16 However, petitions tend to be more sophisticated in the
17 form of legal briefs.

18 Permitting authorities and permittees are not
19 allowed to participate at the same level. The decisions
20 that are made by EPA may dictate future program
21 implementation and policy. And the inability of the
22 permitting authorities to participate in the process
23 puts some them at significant disadvantage.

24 Likewise, the program does not clearly afford
25 permitting agencies the right to appeal an

1 administrator's order with which they disagree. This is
2 particularly problematic in light of the inability of a
3 permitting authority to intervene during the petition
4 process itself.

5 There are other issues as well, such as the
6 status of the area source MACT deferrals. The deferrals
7 for these sources expired on December 9 of 2004. EPA
8 has stated its intention to extend these deferrals, but
9 this hasn't occurred, at least as recently as last
10 Friday. If not addressed, Title V permit applications
11 from thousands of additional facilities in New York will
12 be due by December 9 of this year. This includes
13 sources like the 2,500 dry cleaners that operate in this
14 state.

15 The final compliance reports and
16 certifications that are required as a part of the
17 program have also become overwhelming for permit
18 authorities. The entry of semiannual reports data and
19 annual certification data is time-consuming; and field
20 staff have difficulty completing thorough review of all
21 submittals in a timely manner.

22 To address some of these problems, New York
23 has continued discussions with the EPA. The department
24 has developed a permit manual for staff use and will
25 soon begin implementing a QA program for issued permits

1 after providing training and updates to permitting
2 staff. Our interaction with national and multistate
3 organizations, such as NESCAUM and STAPPA/ALAPCO have
4 also been helpful as well.

5 New York will continue to work to improve the
6 quality of the Title V program in the state; however,
7 significant effort on the part of the EPA to address
8 problems outlined above is -- is imperative if the
9 problems are to be resolved.

10 Then I can take questions.

11 MR. HARNETT: Keri Powell.

12 MS. POWELL: Thank you for your testimony. I
13 am very curious about some of your thoughts on the
14 permitting for area sources, because that's a topic that
15 we haven't really discussed on the Task Force.

16 Has New York considered exploring the option
17 of using a general Title V permit to cover area sources?

18 And, just generally, I have -- I have
19 experience working in New York. And, say, for dry
20 cleaners it would be fairly helpful if there were a way
21 for the public to easily find out where all the dry
22 cleaners were and which ones were subject to the permit
23 requirement and what they had to do to comply, because
24 that information is not easily available, at least it
25 wasn't when I was -- when I was working in New York.

1 So, you know, from our perspective, we can see
2 how Title V could be a useful tool, though obviously
3 there are lots and lots of dry cleaners, say, in New
4 York City; and that could be an overwhelming burden on
5 the agency if they had to permit them one by one.

6 So have you thought about using a general
7 permit for those type of sources; and, if so, I mean,
8 why wouldn't that approach be feasible?

9 MR. REIS: I've heard that mentioned once or
10 twice. We have at least one Title V general permit in
11 the state for combustion facilities. And that was
12 relatively straightforward to develop. But when you
13 look at the other area source categories, it presents a
14 couple of difficulties. If you want to look at multiple
15 source categories for the multiple MACTs that are
16 involved here, it would be a big effort.

17 The other thing for source -- area sources
18 like the dry cleaners. You know, there are 2,500 of
19 them. Most of them are mom-and-pop operations in ethnic
20 communities that have difficulty dealing with that sort
21 of thing. And it would be a tremendous burden for them
22 and a burden for us, you know, to deal with them on a
23 Title V basis.

24 As far as dry cleaners are concerned, we have,
25 in New York, a very well-developed dry cleaner program

1 otherwise. And we feel we have got them very well
2 regulated.

3 That's the long answer. The short answer is
4 -- it would be relatively complicated.

5 MS. POWELL: Can I follow, just to clarify?

6 I know that you have a well-developed dry
7 cleaner program, so it seems to me that once you've gone
8 through the whole process of having, you know -- getting
9 in touch with all the dry cleaners, as I think that you
10 guys have tried to do, and educate them on the
11 requirements that they're to comply with -- that coming
12 up with a Title V general permit shouldn't be placing
13 that much more burden on those facilities -- or actually
14 you guys, because you've already identified the
15 facilities. You know the requirements that apply. What
16 you've really got in front of you is a process that
17 would then enable the public to keep track of what's
18 going on. And so explain to me why, given your
19 well-developed program, why you'd still have such a
20 tremendous burden on the sources and the state.

21 MR. REIS: In New York, when people get the
22 dry cleaning permits and the ability to operate, they
23 fill out a one-page form, okay? I have not seen a state
24 with a one-page form for Title V yet. Our forms are
25 fairly complicated. They require that people

1 demonstrate that they -- that they -- how they'll show
2 that they're in compliance. They would have to submit
3 to us the very complex Title V form; they would have to
4 to go through recordkeeping, monitoring, reporting,
5 operation -- procedures that the larger facilities have
6 to go through. And, frankly, I think it's a burden
7 that's not necessary for these people.

8 You still have to remember that when
9 facilities submitted Title V program -- Title V
10 application, many of them hired a consultant. And
11 consultants are a lot of money. And we've already put a
12 financial burden on our dry cleaners in New York by
13 requiring them to upgrade their equipment. And now
14 requiring them to go and hire a consultant to fill out
15 an application and do the recordkeeping, reporting, et
16 cetera, that's necessary and staying on time for their
17 compliance certifications, et cetera, it -- I think we
18 probably would spend all of our time doing -- doing
19 enforcement rather than permitting.

20 MS. POWELL: Thank you.

21 MR. HARNETT: David Golden.

22 MR. GOLDEN: Thank you for coming this
23 morning.

24 I think out of necessity you had to go through
25 your testimony pretty quickly. One thing that kind of

1 piqued my interest, you referred to, if I understood you
2 correctly, the lack of an ability of the permitting
3 authority to appeal an order at some level or along that
4 line, if I got that right.

5 Would you mind going into more depth what you
6 mean by that and what benefits you might see if that
7 appeal line existed?

8 MR. REIS: Well, there were two items,
9 actually. One is that we are not able to intervene
10 during the petition process. The -- once the EPA's 45
11 days of review has passed, anyone can petition the
12 administrator to object within 60 days of that point.
13 And many times issues that were raised during the
14 comment period that we thought that we answered in a
15 plain-English sort of a way, they get explored more
16 fully during the petition process when you have people
17 that are submitting legal briefs and so forth. And
18 we -- we don't have -- the states and the facility
19 owners don't have the opportunity to answer those or to
20 participate in the discussion. So EPA sees a petition;
21 they act on the petition based on the information that's
22 there and they issue an order.

23 Well, if we believe that, during the petition
24 process there was something that really needed to be
25 said that would have influenced the administrator's

1 order, you know, we think we should have ability to say,
2 "Well, before you impose something on us that's going to
3 change the way we do business, how about if get a chance
4 to appeal it?" So maybe we can point something out or
5 increase someone's understanding; or possibly we have a
6 mistake that needs to be corrected, okay? But we need
7 to -- we feel we need the ability to appeal that
8 decision. And we don't have that at this point.

9 MR. HARNETT: Adan Schwartz.

10 And I'm going to freeze at the current cards
11 that are up.

12 MR. SCHWARTZ: You were talking about
13 compliance certifications. And I think what I heard you
14 say is that in New York compliance certifications have
15 to be line by line. In other words, rather than just
16 noting the exceptions to compliance, the permit holder
17 has to go indicate with each part of the permit whether
18 that complies or not. And I think you said that they
19 have to supply some additional explanation.

20 So I wanted to ask, has this been -- has this
21 worked well in New York? Have you found that this has
22 produced useful information and not just more paper?

23 MR. REIS: Yes, we have. First off, we
24 believe that the reading of regulations that you really
25 need to certify compliance on a line-by-line basis,

1 because you need to indicate how you determine that you
2 are in compliance. We have in the more details in Title
3 V -- the Title V permits and the need to certify to
4 those details -- that we've uncovered a fair number of
5 problems. And so we are able with more -- with more
6 definity to be able to go after those situations where
7 -- where there is a problem. And actually it has worked
8 out pretty well for New York State.

9 MR. HARNETT: Lauren Freeman.

10 MS. FREEMAN: Oh, I'm sorry. Actually, David
11 got my question.

12 MR. HARNETT: Verena Owen.

13 MS. OWEN: David somewhat got my question,
14 too.

15 It was a good question, David.

16 Just another clarifier on this petition
17 question: So in what time frame do you want the state
18 to have the ability to either appeal or be part of the
19 petition process? After the decision? During the
20 decision is made on a petition?

21 MR. REIS: Both. Both. We'd like to be able
22 to participate in the argument that will be the basis.
23 And that will result in the commissioner's order -- I'm
24 sorry -- the administrator's order.

25 MS. OWEN: And a quick question: Does New

1 York do concurrent permitting?

2 MR. REIS: I'm sorry?

3 MS. OWEN: You talked about concurrent
4 permitting. Do you do concurrent permitting

5 MR. REIS: Concurrent permitting?

6 MS. OWEN: Yes.

7 MR. GOLDEN: Review.

8 MS. OWEN: Concurrent review.

9 MR. REIS: So that the 30-day public notice
10 runs -- no, we don't.

11 MS. OWEN: Thank you.

12 MR. REIS: They're consecutive.

13 MR. HARNETT: Michael Ling.

14 MR. LING: Good morning. You had some
15 comments about the volume of -- I think you said --
16 certifications and of semiannual reports. And that
17 echoes some things that we've heard from some of the
18 other states that have talked to today.

19 It seems to me that there must be some helpful
20 information in there. And you did say that you like the
21 detailed certifications that you're getting; that's
22 helping you. But what I'm wondering is, if you could
23 just give us some general ideas on how we could weed out
24 the information in there that's useful. And what
25 information in there is the most useful to you?

1 MR. REIS: Well, the -- if New York's at least
2 short-term solution to this is a -- the ability to do
3 these reports electronically. We are in the process of
4 enhancing our AFS to allow people to go on line to do
5 these compliance certifications and indicate what they
6 -- you know -- line by line, again -- you know, are they
7 in compliance? And how they have determined that they
8 are or are not in compliance?

9 I personally -- other than changing the
10 reading of the rules to require only reporting on permit
11 conditions or requirements with which you are not in
12 compliance -- I mean that that's a possibility. Again,
13 from our reading of the rules, we believe that we need
14 to go line by line. And I think that's the same in many
15 other states. Perhaps that's not the case of Title V
16 is -- is revised, perhaps it could be revised in that
17 way.

18 MR. LING: How about for semiannual reports?
19 I think you mentioned that, too.

20 MR. REIS: That's -- I don't really know what
21 you could do with semiannual reports, 'cause they aren't
22 necessarily compliance certifications, per se. They're
23 supposed to indicate your progress. And I'm not sure
24 what you can do with those, frankly, other than, again,
25 an electronic -- an electronic solution, as we're trying

1 to pursue.

2 MR. HARNETT: Kelly Haragan.

3 MS. HARAGAN: I just had kind of a follow-up
4 question about what would those compliance submission
5 forms look like. Do you have a standard form that
6 people use? And is it -- does it reference the numbers
7 of the permit condition, and they certify each of those?

8 MR. REIS: Yes, it does. We have a state
9 form. EPA has a form as well. As I recall, it mimics
10 that form to a large degree. We've -- you know, we have
11 had some people -- we have told people that they need to
12 use the line-by-line form. Some people don't. They
13 send us a letter saying, you know, We are in compliance,
14 you know, talk to you next year. But we send back a
15 letter saying, Well, thanks, but we need -- you need to
16 do a little bit better than that.

17 MR. HARNETT: Thank you very much for coming
18 today.

19 MR. REIS: Thanks very much.

20 MR. HARNETT: Our next speaker is David
21 Farabee, who will be speaking on behalf of the American
22 Petroleum Institute.

23 Again, if you can pull the mike even closer so
24 that the audience will hear you better, that would be
25 great.

1 MR. FARABEE: Good morning. Thank you for the
2 opportunity to speak here today. Is that working?

3 My name is David Farabee, and I'm here on
4 behalf of the American Petroleum Institute, or API, the
5 U.S. oil and natural gas industry primary trade
6 association. API's membership consists of a broad
7 cross-section of oil, gas, and allied companies in
8 exploration, production, transportation, refining, and
9 marketing. The association's membership currently
10 includes over 400 companies.

11 Personally, I've been working with Title V on
12 permitting issues for refineries and other sources
13 across the country. Most of that experience has been
14 here in California and dates back to the California work
15 group on Title V implementation, which, I think, started
16 up in about '91 or '92, drafting and negotiating the
17 California Title V; implementing legislation; and then
18 numerous permitting actions since that time.

19 API's members have worked hard over the past
20 decade to obtain their Title V permits and to develop
21 systems for compliance with those permits. We are glad
22 EPA has convened this Task Force to examine how the
23 program is working and to recommend ways to improve it.
24 We will be submitting much more detailed comments for
25 the record. Given the limited time today and to try to

1 avoid the speed-talking we've been talking about so far,
2 I want to highlight just two key points: number one
3 being updating the permit; and, number two, permit
4 content and format.

5 In developing our comments, we engaged people
6 working at our members' facilities and living and
7 working with these permits on a daily basis so we can
8 provide you the actual experience of how the program is
9 working.

10 As you know, the program has been extremely
11 costly to implement and far more so than Congress
12 envisioned when it enacted Title V. We did a quick
13 check with a group of our members and found that their
14 application and permit development costs, excluding
15 permit fees, ranged from \$50,000 to \$650,000 per
16 facility, with the average being about \$250,000. These
17 estimates do not take into account a more significant
18 and generally hidden cost of the program; and that's the
19 opportunity cost of delays in implementing plant changes
20 that are needed to meet market requirements.

21 That brings me to Issue No. 1, which is
22 keeping the permit up to date. One of our biggest
23 concerns with the Title V program is keeping the permit
24 up to date in a way that allows implementation of plant
25 changes in a timely manner. The minor modification in

1 the so-called off-permit provisions have become critical
2 elements of the program because they allow
3 implementation of plant changes and new regulatory
4 requirements when a certified application or notice is
5 submitted to the state and/or EPA. Without these
6 streamlined procedures for implementing changes, the
7 ability to respond to market requirements or even to
8 comply with new applicable requirements, such as the new
9 MACT standards, would be severely jeopardized.

10 The ability to implement new or changed
11 applicable requirements is so critical because, even at
12 this early stage of the program, we are seeing delays in
13 the issuance of modifications to our permits. Minor
14 modifications can take several months to process.
15 Significant modifications, more than a year. Even
16 administrative permit revisions can require several
17 months; and they are the simplest of the permit revision
18 classifications under the Title V program. These time
19 frames simply are unacceptable in a dynamic global
20 marketplace. We recognize that states face tremendous
21 challenges to process permit modifications. Many states
22 have backlogs, not only of initial and renewal Title V
23 permits, but also of minor and major new source review
24 permits. When you add to this existing backlog the
25 requirement to process Title V revisions, the system

1 simply is overwhelmed. We believe that only the ability
2 to implement changes quickly, using the off-permit
3 revision and minor modification procedures of Title V
4 rules, is preventing even greater permit revision
5 backlogs.

6 It's important to recognize that with many
7 newly issued EPA rules, such as MACT standards, the
8 ability to implement changes quickly is essential to
9 maintaining compliance with those applicable
10 requirements. Many states are behind in conducting
11 mandatory reopening of permits to incorporate new
12 applicable requirements. Therefore, off-permit changes
13 and minor modifications are often the only way to ensure
14 the rule requirements are met on time. In some ways,
15 this is a story both of what is working well as well as
16 what is not working well. Minor permit modifications
17 are taking too long. That's not working well. Minor
18 permit modification and off-permit procedures that allow
19 new requirements to be met and changes to be implemented
20 while the state takes formal action to update the
21 permits, either through revision or reopening, that is
22 working well.

23 We recognize states are making efforts to
24 process permit revisions, but they are also under
25 pressure to get the initial and renewal permits out.

1 This pressure will continue as more and more rules are
2 due. We hope the Task Force will recognize the
3 importance of these provisions of the rules, both for
4 operational flexibility and for enabling compliance with
5 new applicable requirements that become effective during
6 the life of the permit.

7 Another aspect of keeping the permit up to
8 date involves the relationship between Title I permits
9 and Title V permits -- and I believe Debra Rowe
10 commented on this at some length earlier -- as well as
11 updating permits when there are rule changes under the
12 SIP.

13 For example, we're aware of Title V permits
14 that contain obsolete PSD permit conditions. In one
15 case we're aware of, a PSD permit allowed the use of
16 fuel oil as an alternative fuel, provided that annual
17 testing was done and the site used an SO2 scrubber. The
18 local operating permit subsequently removed the ability
19 to fire the equipment with oil but did not amend the
20 underlying PSD permit to remove the testing requirement.
21 EPA required the district to include the testing
22 requirement in the Title V permit, because it was
23 remaining as a condition of the PSD permit. Amending
24 the PSD permit is roughly a two-year process. And, in
25 the meantime, the facility must continue to conduct

1 superfluous annual tests at a cost of over \$40,000 a
2 piece. And, on top of that, the facility must
3 unnecessarily operate the scrubbers to remove SO2 from
4 the natural gas that it's actually using to fire its
5 equipment.

6 Our written comments will contain other
7 examples, but our core recommendation will be the same.
8 The Title V permit should provide for a single -- excuse
9 me -- a single mechanism for updating requirements under
10 construction permits. The problem is particularly
11 important here in California. In most other states,
12 there's only a two-step process -- both the construction
13 permit and the Title V permit needing revision. Here,
14 we often have a three-step process, where there's a
15 construction permit, then a local operating permit, as
16 well as the Title V permit. The system is very
17 inefficient.

18 We hope the Task Force will recommend ways
19 that EPA can facilitate use of the Title V permit as the
20 repository for up-to-date, applicable requirements
21 without a multi-step, multi-permit revision process.

22 That brings me to Issue No. 2: permit content
23 and format. The second topic is related to the first
24 issue of permit revisions. That's permit content and
25 format for MACT and other standards. A well-written

1 permit can avoid unnecessary permit revisions and
2 thereby minimize the procedural burdens on the system.
3 A well-written permit frees up agency resources to focus
4 on those permit revisions that truly are needed to
5 accommodate newly promulgated requirements or change
6 requirements to the plant changes. We understand
7 several people have discussed the need to avoid
8 paraphrasing a repetition of MACT standards in permits.
9 For all of the reasons presented by those parties, we
10 support a citation-based approach, incorporating MACT
11 standards in permits.

12 Another aspect of MACT permit content that is
13 especially important to the industry is the need to
14 preserve the flexibility that regulatory provision
15 provide to sources. Even where a state has adopted a
16 citation-based format for MACT permit terms, in many
17 cases, those citations have become too specific. We are
18 seeing EPA region offices and state permitting agencies
19 request or impose citations down to a level that
20 restricts our compliance choices and require Title V
21 permit revision prior to using the flexibility that's
22 expressly provided in a MACT standard.

23 Refinery MACT standards include flexibility
24 provisions that were established in response to industry
25 comments. These provisions were subject to the full

1 notice and comment rule-making provisions and were not
2 challenged in litigation. They've been through a
3 thorough public process. And the flexibility they offer
4 should be available to sources without adding another
5 layer of procedural requirements, namely, a Title V
6 permit revision before the flexibility they offer can be
7 used.

8 Another example of the need for streamlined
9 permit content involves units that are subject to
10 multiple overlapping regulatory requirements. In these
11 cases, only the most stringent requirement should be
12 included in the permit, with the monitoring requirements
13 associated with that requirement being sufficient to
14 satisfy all applicable rules.

15 In one case involving an API member, a state
16 permit engineer would not make a stringency
17 determination within the state's own rule for a tank in
18 a single service. This particular tank was declared to
19 be subject both to oil-water separator provisions and
20 the storage tank provisions in that rule, because the
21 determination could not be made as to which applied or
22 if both actually applied as to which was more stringent.
23 This should not be a particularly difficult
24 determination to make. We believe this example is
25 indicative of the general tendency by many states not to

1 take ownership of applicability determinations, perhaps
2 due to fear of EPA second-guessing, scarce resources, or
3 both. It's important that, whatever the cause, these
4 reservations be overcome so permits can be streamlined.

5 In conclusion, I want to emphasize two points:
6 first, the need to maintain elements of the program that
7 allow quick implementation of plant changes, both for
8 compliance and for market reasons; and, second, the
9 importance of preserving the flexibility incorporated in
10 applicable requirements when those requirements are
11 recorded in the Title V permit and for streamlining
12 permit content whenever possible.

13 Thank you for your attention. We will, of
14 course, be submitting more detailed written comments.
15 And I'd be happy to answer any questions you may have.

16 MR. LING: Thanks very much. Bill had to step
17 out, but he gave me the metaphorical gavel, so to speak.

18 So any questions?

19 Shannon Broome.

20 MS. BROOME: Hi. Thanks for coming today.

21 Did you have any examples of MACT
22 flexibility -- a lot of people have spoken to that
23 issue. If you want to comment to us in the written
24 comments, that's fine. But if you have something today,
25 that would be great, too.

1 MR. FARABEE: Sure. Thank you.

2 We can provide substantial details in the
3 written comments, but let me just hit a couple real
4 quickly.

5 In Subpart CC, which is "refinery MACT," there
6 is a provision that relates to process vents and
7 preventing bypassing from process vents. There are two
8 very simple and direct methods specified for assuring
9 that the process vents are not bypassed. The standard
10 says you can do A or B -- very simple, very direct.
11 There are other examples, some of which require more
12 degrees of process or more involved calculations. But
13 that's just one very simple example of the flexibility
14 we'd like to maintain.

15 MR. LING: Don.

16 MR. VAN DER VAART: Thanks very much.

17 I had two questions. One is a pretty simple
18 one. Maybe I missed something. You are the second
19 person that's talked about this concept of "I had a
20 Title I" -- I guess in a PSD or NSR permit -- "and along
21 comes Title V and in the translation into the Title V
22 format, things got bollixed up." Is that what happened
23 in that case?

24 MR. FARABEE: This comment didn't actually
25 pertain to a mistake in translation or an error in

1 translation but rather along the way the --

2 MR. VAN DER VAART: You mean prior to Title V?

3 MR. FARABEE: Prior to Title V. And,
4 actually, it really doesn't matter if it's prior to
5 Title V or it's been subsequent to Title V. You may
6 have, say, a PSD permit -- and in California, many PSD
7 permits are issued, still, by EPA. Then you also have
8 the local permitting agency. In this particular
9 circumstance, the local authority eliminated the
10 source's ability to fire on fuel oil. They changed the
11 permit. But the PSD permit still, because it wasn't
12 amended, maintained the requirement for doing the annual
13 sulfur testing.

14 MR. VAN DER VAART: Could you have not
15 adjudicated that state permit that eliminated that right
16 to do that at that time?

17 MR. FARABEE: No. The source was interested.
18 The source had no particular interest in being -- in
19 maintaining the ability to use the fuel oil. So the
20 bigger problem was the multiple layers of permit.

21 MR. VAN DER VAART: But they recognized the
22 fact that that went part and parcel with that to
23 maintain the structure and getting the fuel
24 certification. So, I mean, when they were severed,
25 wouldn't it -- I mean, this is not a Title V issue. It

1 just seems to me that you should have adjudicated the
2 permit and said, "Look, you're not going to take it and
3 split this baby up." Maybe that's just --

4 MR. FARABEE: But the point, though, is the
5 ability or the lack of ability to use Title V to
6 streamline and make some sense out of the these
7 conflicting sorts of requirements, where, when you have
8 a state restriction that prohibits the use of fuel oil,
9 then, necessarily, the requirement to do periodic
10 testing for sulfur emissions or SO2 emissions when
11 you're using fuel oil, it's superfluous, because you
12 simply can't do it.

13 MR. VAN DER VAART: I understand that. It
14 just seems like you are -- once it gets into Title V
15 process and it's erroneous, it's hard -- it is hard to
16 fix it. And not only because of Title V but because of
17 things that happened in the past. Generally, what we've
18 seen people are gleeful to have an excuse to adjudicate
19 Title V permit because that means they can operate on
20 their previous permit a little bit longer. But yours
21 was a slightly different situation.

22 The one other question I would just have --
23 and I don't know if you were around a little while ago.
24 I was just wondering if you did -- if you could imagine
25 a world where if you did do it -- extend a foolproof

1 permit shield to your folks through the permit -- would
2 you all agree to using a monitoring permit to certify
3 both noncompliance and compliance? I don't know if you
4 were around earlier.

5 In other words, if I -- if I were to say to
6 you, I'm about to issue this Title V permit to you and
7 it's got monitoring for everything, and we've negotiated
8 that monitoring -- but what I'm telling you is that, by
9 giving you this permit, I was then willing to shield you
10 to say that, as long as you do what's in the permit, you
11 will be deemed in compliance with the Clean Air Act. If
12 you believed that, would you then agree to allow
13 monitoring to be used -- the monitoring that's specified
14 in the permit to be used in compliance certification,
15 both for compliance and out of compliance?

16 MR. FARABEE: What I really want to do is go
17 back to the underlying applicable requirements and say
18 that the permit needs to accurately and, in a
19 streamlined manner, incorporate those requirements.

20 MR. VAN DER VAART: Let's assume that we've
21 done that right. Let's assume -- I mean, you wouldn't be
22 happy with the permit unless it did that faithfully. So
23 we faithfully defined "compliance" in a streamlined
24 manner pursuant to 70.2 for all your various things -- a
25 myriad of requirements. But for each one of them, you

1 recognize that there has to be some monitoring, whether
2 it's defined in the MACT or an old SIP requirement --
3 whatever. But you have -- you have negotiated and
4 you're at the point that you're saying, Okay, I'll do
5 those monitoring requirements that you asked for. Would
6 you then be willing to certify at the end of the year --
7 you basically use the monitoring to define both the
8 compliance instances as well as the noncompliance
9 instances.

10 MR. FARABEE: There are -- that's an
11 inordinately large number of details involved in
12 answering that question. Let me just clarify by saying
13 I brought along an example of a Title V permit. This is
14 for a facility here in the Bay Area. The permit itself
15 is roughly 460 pages long. And to commit that every
16 facility would have to abide by all those new monitoring
17 provisions -- go ahead.

18 MR. VAN DER VAART: So you're saying --

19 MR. FARABEE: Here's --

20 MR. VAN DER VAART: -- you're not doing
21 everything that's in the --

22 MR. FARABEE: I'm saying we are doing
23 everything that's in the permit.

24 MR. VAN DER VAART: What I'm saying is, once
25 I -- once you have got a permit that you are actually

1 following -- and I recognize there's lots of details --
2 but let's say we got to the point where you understand
3 what monitoring is required and you're doing it. Would
4 you be willing to base your compliance status, be it yea
5 or nay, on those monitoring requirements that you agreed
6 to?

7 MR. FARABEE: That's not a question that we
8 can answer across the board. The answer to that is
9 going to vary by facility. It's going to vary by
10 permitting authority and will -- potentially be very
11 different, depending on the exact details of what's in
12 there.

13 What I will say, generally, is that we are not
14 of the opinion that the Title V process should be used
15 as a vehicle for imposing new monitoring requirements --
16 new applicable requirements. It's the repository for
17 incorporating what's already out there.

18 MR. LING: Okay. Steve Hagle, and then Ray.
19 And that will be all the follow-up questions for this
20 one.

21 MR. HAGLE: Could you maybe provide us with a
22 couple more examples of where the minor revision process
23 is causing a problem? I know you said it's both
24 problematic and helpful. And the only one that I think
25 we've heard before is, for instance, EPA changed the

1 MACT standards, either eliminating or changing the
2 monitoring requirements. We've actually seen that in
3 Texas, where that has been a problem in our rules.
4 Takes time for our rules to catch up to the EPA. Is
5 there some other situation where the minor revision
6 process -- the length of time that it takes -- really
7 causes you a problem?

8 MR. FARABEE: Well, the problem is, if you run
9 into a situation where you're prohibited from
10 implementing the change until the permitting authority
11 has actually amended the permit, then, to the extent
12 that that prohibits you from complying with the MACT
13 standard making a necessary change, that would be an
14 issue. But our point has been that it's taking an
15 inordinate amount of time for the permitting authorities
16 to actually amend the permit to do that. But what's the
17 saving grace of the program is the flexibility
18 underneath that to do notice-and-go or those sorts of
19 situations, where you provide a notice or submit a
20 certified application and then you can implement the
21 change while it's being processed. We want to encourage
22 maintaining that kind of flexibility.

23 MR. HAGLE: Okay. I guess I'm trying to --
24 I'm having a hard time understanding why the length of
25 time it takes to do a minor revision is the problem.

1 That's the difficulty I'm having.

2 MR. FARABEE: It's just that, while the minor
3 revision is in the works, you're dealing with multiple
4 pieces of paper. Your permit is more complicated than
5 it's supposed to be. And it's not truly the single
6 document that we're looking for. And we'll elaborate a
7 little bit on that in the written comments.

8 MR. LING: Ray.

9 MR. VOGEL: Well, you got a twofer. That was
10 my question as well.

11 MR. FARABEE: Thank you.

12 MR. LING: Thank you very much.

13 Our next speaker is Peter Hess, who's going to
14 answer all the questions that Jack didn't.

15 MR. HESS: Good morning. My name is Peter
16 Hess. And I'm the deputy air pollution control officer
17 at the Bay Area Air Quality Management District. As you
18 know, our district is the Title V permitting agency here
19 in the San Francisco Bay Area; and we're celebrating
20 this year our 50th anniversary as being the regulatory
21 agency.

22 We have issued -- we have issued initial Title
23 V permits for about a hundred facilities; and they're
24 well into the cycle of renewing the Title V permits for
25 these facilities. In addition to this, we now issue

1 over 75 Title V permit revisions per year on changes
2 that occur at the facilities or changes in the
3 applicable requirements. Over the years, we have gained
4 significant experience implementing the Title V program.
5 And I'm here today to provide some suggestions for
6 improving the program.

7 The first issue I'd like to address is public
8 noticing requirements. We feel that these need to be
9 modernized. Newspaper noticing requirements are largely
10 an ineffective means of outreach. They also can be very
11 expensive. The use of Internet postings or e-mail
12 distributions should be allowed as an alternative. We
13 feel that the permitting agency should be given the
14 flexibility to use other creative means of notifying,
15 based on input received from community groups. While
16 public input and EPA review are recognized as critical
17 parts of the Title V program, we feel that some changes
18 are needed to streamline the permit revision process for
19 actions that are not of a significant nature.

20 Specifically, the definition of "minor permit
21 revisions" is unnecessarily narrow. For example, some
22 case-by-case determinations are not significant and
23 should be considered as minor permit revisions rather
24 than significant revisions. One example of this is
25 approving oxygen content limits in landfill gas wells.

1 Another is limits taken to avoid an applicable
2 requirement. Using this criterion, almost any
3 throughput limit has to be handled as a significant
4 revision. Every reopening of a permit should not be
5 considered a change that requires public comment. The
6 district recently reopened many permits merely to
7 incorporate the landfill NESHAP's reporting
8 requirements. The NESHAPs contained no substantive
9 requirements.

10 EPA could also streamline revisions by
11 publishing a list of types of administrative
12 requirements that EPA has approved across the country
13 for use by all regions.

14 EPA began to address the issues of
15 streamlining the permit revision process after
16 promulgation of Part 70 in the early '90s but seemingly
17 abandoned the project. The results of this move is
18 that most permitting authorities are following EPA
19 guidance rather than the Federal Rules. Now that the
20 preliminary work of Title V is changing from issuing
21 initial permits to keeping permits revised and updated,
22 EPA should step up to the plate and amend Part 70 to
23 address this issue.

24 Another important issue I'd like to address is
25 the addition of new monitoring requirements into

1 individual Title V permits. We recognize that
2 enhancement of monitoring is often appropriate, but our
3 experience with Title V has convinced us that
4 case-by-case review is a poor way to approach these
5 issues. Case-by-case monitoring reviews have been
6 extremely resource-intensive and highly contentious.
7 They have resulted in significant delays in permit
8 issuance and inconsistencies in monitoring requirements
9 in different jurisdictions. This problem has been
10 exacerbated by a lack of definitive national EPA
11 guidance.

12 We feel strongly that gap-filling monitoring
13 should be imposed in Title V permits only in very
14 limited instances where it is simple and inexpensive.
15 We feel that there is an imminent need for EPA to
16 provide more guidance and additional oversight to their
17 regional office in respect to this issue.

18 We'd like to give a couple of examples where
19 this could have helped. In one case, the regional
20 office indicated that we must establish federally
21 enforceable monitoring requirements in order to
22 demonstrate a source is not subject to an NSPS emission
23 standard. While we questioned whether this is within
24 the scope of the Title V authority, it would have been
25 at least helpful if EPA provided clear national guidance

1 in imposing this type of applicability monitoring was
2 expected, rather than raising the issue for the first
3 time while commenting on an individual permit more than
4 a decade into the implementation of the program.

5 In another case, the regional office indicated
6 that annual source testing should be opposed for a
7 source, despite EPA's printed industry guidance that
8 indicated that a five-year source test frequency was
9 adequate. The regional office commented in writing that
10 their comments should carry more weight than national
11 guidance still in draft form. In this instance,
12 additional EPA oversight would help to provide more
13 uniform and equitable requirements.

14 We believe that in most instances a far better
15 and more efficient approach to this case-by-case
16 efficiency review process would be to upgrade additional
17 monitoring requirements, as necessary, through
18 rule-making. This approach would allow a more careful
19 deliberative process and broader stakeholder input into
20 monitoring decisions than is possible in the permitting
21 process. It would also reduce inconsistencies in
22 requirements that result from variations in engineering
23 judgment and greatly relieve the burdens on permitting
24 agencies, leading to timelier permit actions. We feel
25 the highest priority for rule development along these

1 lines is the NSPS standards, many of which were adopted
2 many years ago and need to have monitoring requirements
3 clarified and upgraded.

4 Compliance tracking is another task that has
5 proven to be very challenging, particularly for large
6 and complex facilities due to their lack of guidance and
7 tools. For example, we have seen a large variation in
8 the types of compliance certifications that have been
9 submitted, from simple postcard certifications to
10 detailed line-by-line certifications. It would be very
11 useful if EPA could develop software tools that could be
12 used nationally and adopted by state and local agencies
13 to enhance the accuracy and comprehensiveness of
14 compliance reporting -- tools similar to that that is
15 being used in Texas and in New York.

16 Another relatively simple change that could be
17 made would be to allow public agencies to delegate and
18 designate responsible officials in a manner similar to
19 what is being allowed for private corporations. Our
20 public agencies in the Bay Area have brought this up --
21 this issue to us repeatedly. As it stands, only the
22 principal executive officer or ranked elected official
23 is currently allowed.

24 I'd like to conclude my remarks by touching on
25 an area that we think is working very well within the

1 Title V program. And that is the manner in which a
2 decision is made to hold public hearings for proposed
3 permit actions. A public hearing can be a useful way to
4 solicit comments on a proposed permit; but effective
5 hearings can be very resource-intensive because of the
6 required extensive outreach and need to be held in
7 community locations during after-work hours. Currently
8 in the Bay Area, we even hold workshops to educate the
9 public on how to comment and inform them of the Title V
10 permit process. The current regulations -- giving the
11 permitting agency discretion to deny a request for a
12 public hearing if public interest is limited or adequate
13 justification is not otherwise provided -- is
14 appropriate. Again, we believe this approach is working
15 very well.

16 I'd like to conclude by thanking the Task
17 Force for this opportunity to provide input on the Title
18 V program and would be happy to try any -- to answer any
19 questions that you may have regarding my testimony or
20 Mr. Broadbent's.

21 MR. HARNETT: Michael Ling.

22 MR. LING: I think I heard you say that you
23 wanted EPA to revise its issues to address the
24 streamlining of multiple requirements. And then I think
25 I heard you say we need to revise Part 70 to do that. I

1 was wondering if you could explain that a little
2 further.

3 MR. HESS: I was thinking we could do both.
4 Both is very necessary. Going through the rule-making
5 will allow broader stakeholder input, include certain of
6 the monitoring requirements, and also look at Part 70
7 program as well. I think both would be very
8 appropriate.

9 MR. LING: So you don't think we need to
10 revise Part 70 to enable the kind of streamlining
11 multiple applicable requirements that you're talking
12 about?

13 MR. HESS: In certain cases, it may be
14 appropriate. That's -- I think that's an issue that
15 needs to be further discussed.

16 MR. HARNETT: Shannon Broome.

17 MS. BROOME: Thanks for coming.

18 I'm going to go back to the issue of -- I
19 asked the previous speaker about -- on modification.
20 You had said that you're having trouble with the
21 processing things as significant mods that are minor --
22 not in terms of the regulation but in your mind -- as
23 far as monitoring. And I was just wondering if you felt
24 you didn't have discretion from Region 9 to define a
25 significant change in monitoring -- if that was what was

1 happening or kind of what you see as the cause of that.

2 And then, also, you said that you thought that
3 case-by-case determinations and that all significant
4 minors had to be significant mods, but that's not my
5 reading of the rule, if you get a construction permit
6 first. So I was just wondering if it's because you're
7 merging the programs or how that's coming out for you.

8 MR. HESS: One of the problems that we're
9 facing is, again, the definitive guidance. And if we
10 had definitive guidance and broaden the applicability of
11 the requirements, we won't have to take minor,
12 nonemission-related changes to a permit and have that be
13 a major revision. I think it would be very, very
14 helpful to everybody. And I think that's what we're
15 hearing across -- from our industries and from us.
16 We're limited in our time that we are available to
17 stress. And let's put our time where it makes the
18 difference -- on the emission standards and compliance.

19 MR. HARNETT: Bob Palzer.

20 MR. PALZER: Thank you for coming.

21 You mentioned that there should be different
22 approaches to having public notice. And it seems to me
23 that in the use of the Internet, would certainly be a
24 good way of doing that. And I have a question: How
25 would you suggest getting out a notice by the Internet,

1 keeping in mind that there is a segment of the society
2 that isn't plugged into the Internet?

3 MR. HESS: Yes. And we have faced that
4 problem. And what we have done is we've used the
5 community groups who are interested in providing notice
6 to neighborhoods. We've enlisted the support of
7 neighborhood groups and -- to get out the word to people
8 that we're having a hearing, come, voice your -- your --
9 your opinion on the permit. It's very important to have
10 public participation. And we do not want to -- shall we
11 say, stymie or limit that; but there are better ways to
12 get the word out to people that we're going to have the
13 hearing, whether it's direct mailing or -- but
14 newspapers are not the only way to do it. A lot of
15 people don't read newspapers anymore.

16 MR. PALZER: I'm very supportive of that
17 concept. This leads me to the second part of the
18 question; and that is: How frequently do you get public
19 interest enough to have a public hearing? And, more
20 importantly, in your view, do you come to a resolution
21 of issues that are raised by the public on a permit in
22 such a way that there is -- you know, that the
23 regulated, the source, and the public come to some sort
24 of agreement on the outcome?

25 MR. HESS: Well, here on the Left Coast,

1 people are very active in the permitting. And we see,
2 on the major facilities and the controversial facilities
3 that are facilities close to neighborhoods. And if
4 there is an environmental justice issue related to the
5 facility, people want to have a hearing. They want to
6 have a meeting. They want to know. They want to
7 express their concerns. Very seldom is there a
8 resolution of the issue at the hearing; however, the
9 issues are placed on the table. And it gives the
10 permitting agency -- us -- and whoever else is in
11 attendance, namely, the facility and the regional
12 office, a good sense of what the issues are at the
13 facility. Some of those issues cannot be resolved in
14 the Title V issue -- they're outside the federal
15 enforceability, like odor nuisance or something like
16 that. But at least they're brought to the attention;
17 and it can be addressed elsewhere.

18 MR. PALZER: Just one other follow-up on this.
19 I mean, you mention that -- it sounds that if you
20 actually can't get an agreement in the hearing itself,
21 you're aware of the problems. It leads to the question,
22 I've found in those instances where I'm aware that a
23 permit is going to come up, there have been
24 opportunities where the permitting agency has gotten
25 people that are concerned in touch with them and with

1 the source to try to raise some of those issues earlier
2 on in the process rather than at the public hearing.
3 What do you think about that? And have you been able to
4 use this?

5 MR. HESS: Because we are a mature permitting
6 agency, we've had annual operating permits at our
7 facilities since 1976. We -- the issues are very --
8 pretty much well-defined. Only in new requirements or
9 conflicts between requirements I do see we're addressing
10 new issues. But we here in the Bay Area, we're out
11 quite a bit in the neighborhood talking to the community
12 about issues on a facility. So it's -- in the Bay Area,
13 I don't think that would help that much; but in other
14 areas, that would be beneficial.

15 MR. HARNETT: We will freeze with the cards
16 that are up -- Verena Owen.

17 MS. OWEN: Hi. Bob asked a lot of questions
18 that I had too. But you mentioned a workshop that
19 you're holding. Do you find those generally helpful?
20 And, if yes, do you -- you said that you are holding
21 workshops for people interested in commenting on Title V
22 permits.

23 MR. HESS: Yes. We find them very beneficial;
24 and they're very much appreciated by the general public.

25 MS. OWEN: Good. Then you can speak to my

1 next question. Do you have any materials -- teaching
2 tools that you use? And, if yes, would you be willing
3 to share those?

4 MR. HESS: I think we have prepared something.
5 We have a -- shall we say -- standard -- shall we say --
6 presentation. I know the fellow who is -- who does
7 those -- is sitting behind me. So I think we can get
8 together afterwards.

9 MS. OWEN: Thank you.

10 MR. HARNETT: Marcie Keever.

11 MS. KEEVER: Can you explain your -- you
12 mentioned gap-filling monitoring; and I want to hear
13 more about your position on when it was appropriate and,
14 I guess, how that goes along with assuring compliance.

15 MR. HESS: For most of the -- because
16 California and the Bay Area is a mature air pollution
17 control agency, when we adopted our rules and
18 regulations we had the appropriate monitoring and
19 recordkeeping associated with that rule and
20 regulation -- that applicable requirement. So very
21 seldom do we see that there is a source that doesn't
22 have some type of monitoring or recordkeeping. On the
23 gap-filling, it should -- it's our opinion that it
24 should be applicable to when there is no monitoring or
25 recordkeeping applied to it. It should be -- it should

1 be looked at very judiciously, Marcie.

2 MR. HARNETT: Kelly Haragan.

3 MS. HARAGAN: I have kind of a follow-up
4 question on that one about the monitoring. You said you
5 don't really like gap-filling monitoring; it should be
6 used for rarely. We've had other states testify that
7 they feel it's an authority that they want to have. And
8 you mentioned that you think that some of the NSPS don't
9 currently have adequate monitoring or should be looked
10 at to be updated. How -- and I would argue that there
11 is -- and I haven't looked at the Bay Area SIP rules --
12 but I've looked at lot of states' SIP rules and I don't
13 think having monitoring is adequate to show compliance.

14 If you're not going to do gap-filling
15 monitoring, what do you do about issuing permits during
16 the time it takes which is often years, if they're
17 litigated to change federal rules or state -- state
18 rules and then input rules into the SIP -- how can you
19 issue Title V permits that ensure compliance in the
20 meantime?

21 MR. HESS: Yes. I don't think my testimony
22 says I don't like gap-filling requirements. I just said
23 that it should be used at certain places and used at
24 certain times. The Bay Area rules, as I mentioned, does
25 have many gap-monitoring where that monitoring is

1 tailored to the source. And, as we know, the NSPS is
2 sometimes a decade or so out of date. So let's move
3 forward to improve and improve through the NSPS. And if
4 there is no monitoring -- applicable monitoring --
5 applicable monitoring needs to be there, develop it and
6 fill it. That's the purpose of the gap-fill monitoring.

7 MS. HARAGAN: I just want to make sure I'm
8 following things. So are you saying -- until those
9 rules are changed -- do you upgrade the monitoring in
10 the Title V permit or you don't?

11 MR. HESS: If there is no monitoring and there
12 needs to be monitoring, apply the monitoring.

13 MS. HARAGAN: What if there is monitoring but
14 it's not adequate to ensure compliance? Like in some of
15 the NSPS?

16 MR. HESS: We haven't run into that
17 situation -- oh, in the NSPS. Ah, that's a good
18 question.

19 Usually in the Bay Area and a lot of other
20 areas, we have rules that go way beyond the NSPS. For
21 example, we have our SIP rules and regulations for power
22 plants -- we require, what, four parts per million NOx
23 at three-percent oxygen as our standard power plant
24 rules. I mean, we have those limits right there, so
25 they're covered by other places. We haven't run into

1 very many instances where there is no monitoring and we
2 have to fill in the gap.

3 MR. HESS: And if you -- if there was such an
4 instance, would you agree that the Title V permit could
5 be used and should be used to fill that -- until you can
6 get the underlying rules changed?

7 MR. HESS: That's what the rules say.

8 MS. HARAGAN: Thank you.

9 MR. HARNETT: Don van der Vaart.

10 MR. VAN DER VAART: I also agree that NSPS
11 needs to be -- that's an appropriate way of the EPA
12 furthering that program. I still can't figure out
13 whether an excess emission is a violation or not. I
14 haven't got anybody to help me on that.

15 But I also agree with the use of the Internet
16 as a less expensive way than newspapers. It's an
17 amazing cost. One thing I did listen and thought I
18 listened to, but I couldn't quite follow it: You're --
19 were you advocating in the context of this monitoring
20 whenever you decided you needed, did I hear you say that
21 you ought to be able to go to a shelf and pull a
22 nationally defined monitoring strategy for -- or do you
23 not find value in fitting the monitoring to the specific
24 need?

25 MR. HESS: The best case would be a defined

1 monitoring with the applicable rule and regulation.

2 MR. VAN DER VAART: But does that not -- does
3 that not also depend on the compliance margin for the
4 facility and the age and that sort of thing? Do you not
5 leave any sort of discretion there to -- so that you
6 don't just uniformly throw the same monitoring -- which
7 may be adequate in some cases but inadequate in other
8 cases.

9 MR. HESS: If I could answer that through an
10 example, would be our -- when we develop a rule and
11 regulation in the SIP, we have -- we know the best way
12 to monitor that limitation. And we use -- we use that
13 monitoring scenario to determine whether or not the
14 source is in compliance or not. I think that it would
15 be good for -- nationally -- would have a national --
16 shall we say -- monitoring that could be used as a
17 fallback.

18 MR. VAN DER VAART: Maybe I don't -- we had an
19 earlier example, for example, would you treat the sulfur
20 monitoring -- sulfur, SO₂ -- monitoring for a natural
21 gas-fired facility the same as a fuel oil-fired
22 facility; or would you -- would you treat them all --
23 you get to a level of detail where it doesn't make much
24 sense to use a one-size-fits-all. You'd like to be able
25 to tweak it. Are you in favor of that?

1 MR. HESS: Or we could have -- a very good
2 example was you would not monitor a Beavan-Stratford
3 tail gas unit the same way as a Wellman-Lord tail gas
4 unit. Absolutely. Just use your sound judgment on
5 that.

6 MR. HARNETT: Bernie, did you have a question,
7 too, on that?

8 MR. PAUL: Very quick.

9 Part of the fact-finding role here. Do you
10 know how much your agency spends on public notices that
11 are published in the newspaper per year?

12 MR. HESS: Yes, I do. And I would provide
13 that to the committee.

14 MR. HARNETT: Thank you very much.

15 Our next speaker is Norbert Dee of National
16 Petrochemical & Refiners Association.

17 DR. DEE: Thanks, Bill. Ready? Okay.

18 I gave everyone a copy of my statement so you
19 can follow me word for word and make sure I follow and
20 read it correctly. Take good notes.

21 Good morning. I am Dr. Norbert Dee, director
22 of environment & safety for NPRA. NPRA is a national
23 trade association representing more than 450 companies,
24 including virtually all U.S. petroleum refiners and
25 petrochemical manufacturers. I have 35 years of

1 experience in environmental policy and regulatory
2 issues, working 15 years as a consultant, 8 years at EPA
3 headquarters, and 12 years at NPRA.

4 I would like to thank the Task Force for the
5 opportunity to appear today and provide you with our
6 members' review of the Title V program.

7 I would like to commend the Task Force and EPA
8 for undertaking this effort. In attending the
9 Washington, D.C., meeting and reading transcripts of the
10 Chicago meeting, I believe that the past presenters have
11 provided valuable information concerning the benefits of
12 the Title V program and suggested improvements to you
13 and the agency.

14 To answer your questions on Title V, NPRA
15 conducted an outreach process in which it obtained input
16 from several of its members with Title V permits about
17 their on-the-ground experience with obtaining and living
18 with an operating permit. The results of our process
19 will be provided in our written comments to the Task
20 Force.

21 Many presenters to this Task Force have
22 focused on what did or did not go well during the
23 initial issuance of Title V permits. While
24 understanding the program from a historical perspective
25 is inherently valuable, NPRA is focusing its comments on

1 the future. The expenditures on initial applications
2 have been made; the policies regarding permit issuance
3 by states and EPA are in place. What is ripe for
4 examination and potential improvement is the revision
5 and renewal process of the permit. Our comments,
6 therefore, focus on the flexibility needs for permits
7 that have been issued, particularly regarding the
8 revision process, and our suggestions for managing
9 permit compliance going forward.

10 In December of last year, the National
11 Petroleum Council issued a report to the Secretary of
12 the Department of Energy on petroleum product supply.
13 Two recommendations of the Council best summarize our
14 member's interests with respect to Title V permits:

15 Streamlining the permitting process would help
16 improve the environment for domestic refining capacity
17 investment. It should be noted that streamlining does
18 not mean accepting less environmental protection. On
19 the contrary, NPRA members believe strongly that a more
20 transparent, straightforward permit system, leading to
21 faster decision-making, will encourage modernization and
22 innovation that the present cumbersome system
23 discourages.

24 Immediate implementation of the comprehensive
25 NSR reform is a very important policy step needed to

1 improve the climate for investment in domestic refinery
2 capacity expansion. We highlight this report because,
3 even though NSR reform is not the topic of this group,
4 the conclusions it reaches do indicate the need for all
5 permitting processes, including Title V, to operate in a
6 timely and efficient manner to preserve the
7 competitiveness of our operating facilities in the
8 global economy.

9 An efficient and flexible permit process is
10 critical for our members to provide the petroleum and
11 petrochemical products that the public demands. It also
12 enables us to meet our environmental goals while
13 complying with existing regulations. The most critical
14 next steps for our members will occur during the
15 approval of a preconstruction permit, modifications to
16 an existing Title V permit, and the renewal of their
17 operating permit.

18 I would now like to comment on three specific
19 areas: permit flexibility, additional requirements, and
20 the potential for a more burdensome program.

21 Potential -- permit flexibility: It is
22 critical for our members to be able to respond to an
23 ever-increasing demand for petroleum products and
24 changing business cycles. Therefore, streamlining the
25 permit process to obtain preconstruction/construction

1 permits and other modifications of the Title V operating
2 permit is our number-one priority.

3 There is a normal delay in the permitting
4 process between a submittal and approval; however, this
5 delay can grow significantly, depending on the manner in
6 which the State chooses to tie any modifications, minor
7 or significant, to the Title V permit. Some states
8 allow for changes under Section 70.4(b)(14) of the rules
9 utilizing a certified notification and attachment
10 process to allow for compliance with new requirements in
11 a timely manner. These procedures appear to be working
12 well. The Agency is provided timely information and the
13 facility is allowed to make changes without unnecessary
14 delays.

15 On the other hand, there are states which,
16 although they approve the modification (minor or
17 significant), do not allow permit operations to begin
18 until the modification to the Title V permit is
19 approved. This latter approach can create significant
20 roadblocks to a timely response to business opportunity.

21 In addition, in some States, there is a
22 requirement to go through the permitting process twice:
23 once for the modification and once for the change in the
24 Title V permit before the facility can begin operation.
25 This is a requirement for even insignificant changes

1 that may not affect emissions. Delays can also occur
2 when states do not respond to minor modifications in a
3 timely fashion in order to "batch process" multiple
4 minor modifications and deal with them at a single time.

5 Permit terms: As was stated by a number of the
6 commenters in Washington, D.C., and Chicago, several
7 States have added new requirements to the Title V permit
8 that were not considered in the public review -- public
9 rule-making process. Our concern is that this process,
10 which in our opinion is unlawful, would continue when
11 states approve modifications to the Title V permit.

12 The Title V permit is a legal document that
13 requires compliance certification by our members. Our
14 members should not be put into compliance and
15 enforcement risk because of poorly written permit terms,
16 terms that have no basis in the applicable rule, or
17 terms which cannot be met as a practical matter. NPRA
18 believes that explanation of facility processes and
19 emissions, as requested by a number of stakeholders,
20 should be outside the actual permit.

21 Potential for a more burdensome program: Most
22 of the Title V permits are now complete, enabling the
23 focus to be on the care and feeding of the Title V
24 operating permit. This provides the state and EPA an
25 excellent opportunity to move forward to expedite the

1 permit review process. However, we are concerned that
2 just the opposite is starting to occur. We have already
3 heard that at least one EPA Region is suggesting to
4 their states to change their review process for
5 modifications in a manner which we believe would go in
6 the opposite direction of permit streamlining and
7 certainly not expedite the process. In addition, we are
8 still hearing reports about regulation/monitoring creep
9 during the revision and renewal process.

10 We hope the recommendations of this Task Force
11 will focus on preventing a more burdensome and onerous
12 program than what currently exists and strongly urge the
13 states and EPA to streamline the permit review process
14 while still maintaining the necessary environmental
15 protection.

16 If you have any questions, I will be glad to
17 answer them.

18 MR. LING: Thank you.

19 We'll start with Bob Morehouse.

20 MR. MOREHOUSE: Thank you, Norbert. You
21 touched on some examples of streamlining from collecting
22 information from your members. Are there other
23 examples -- streamlining ideas that you'd like to see in
24 the overall process?

25 DR. DEE: Well, I just said to give you some

1 examples of things that have worked: the use of
2 consultants. I think there was a mention in some
3 previous comments -- either in some cases the facility
4 hired a consultant to write the permit. The permit was
5 then given to the state for review. And the state did
6 the review, but that allowed the state to not have
7 resources on basically putting together the permit.
8 There were situations where the state used a consultant
9 to help review the process, all of that which is paid by
10 the facility; but it helped streamline and facilitate
11 the process. Administrative changes made that workable
12 faster.

13 An interesting thing: The State of Kansas,
14 they had what they call "statement of basis." With the
15 permit application in Kansas, the applicant provides a
16 statement of basis. This is an explanation of why the
17 regulations apply and why you propose to do it, which
18 helps the permit reviewer, which may or may not know
19 what a refinery is and what the units are in a refinery,
20 but basically explains how the regulations apply, how it
21 works, and the other. And the person I talked with in
22 Kansas helped facilitate the process significantly.

23 Let's see -- we have, again, off-permit
24 situations changes. Again, that was a number of states
25 and a number of facilities thought that was good and was

1 working well.

2 MR. LING: Shannon.

3 MS. BROOME: Hi. Thank you for coming.

4 I had a question. You mentioned -- there are
5 so many things I wanted to ask questions about. I'll
6 pick one.

7 The -- you mentioned about off-permit, the
8 70.4(b)(14) notices, is that -- it's something of a
9 two-parter -- is that helping you comply with the
10 existing rules -- the new rules -- I'm sorry -- like
11 MACT? Somebody else talked about that earlier.

12 And, also, you mentioned about the roadblocks
13 to timely response for the business opportunity. Do you
14 have any kind of examples that you could give? If you
15 have to do it in writing, that's okay. But if you have
16 something today about how specifically it helps you or
17 hinders you with business opportunity.

18 DR. DEE: I think that some of the earlier
19 commenters made this two-step process was a problem in a
20 sense and essentially giving an example of a roadblock,
21 where there was basically an insignificant change only
22 with basic administrative work, where, in fact, the
23 refinery had to go through the process of making that
24 change, full public hearing. And then wait until the
25 state decided to do the review of the Title V permit and

1 then go through the same permit change in public
2 hearing -- total process -- again for what would be
3 basically a few people talking about an insignificant
4 change -- no change in emissions, nothing, almost
5 administrative. But the way the state rule is made, it
6 goes "A" to "B," so that basically means everything in
7 that state, whether it has to go through a double
8 rule-making process.

9 I think other people commented about, again,
10 the importance of streamlining. The off-permit changes
11 have worked well and basically in our review and people
12 have provided it and have used that for MACT rules and
13 use them for a number of situations. And it has worked
14 well. Again, it provides the agency the opportunity to
15 comment and also provides the process to move forward.
16 I think in most of those cases, there was one -- I can't
17 say in most of the cases -- but that process has worked
18 very well.

19 MR. LING: I want to freeze it to the cards
20 that are up now. Kelly Haragan.

21 MS. HARAGAN: I just had a clarification
22 question.

23 DR. DEE: Sure.

24 MS. HARAGAN: You mentioned one of the things
25 that shouldn't be in the permits are terms which can't

1 be met as a practical manner --

2 DR. DEE: Yeah.

3 MS. HARAGAN: -- and I just wasn't sure if
4 that was really like an NSR permit issue or is that --

5 DR. DEE: No. I gave you an example -- again,
6 there's two examples of interesting things. And a
7 number of people will talk about filling gaps, you know,
8 add these things. But there's two points of view on
9 that. I have one. I think other people around this
10 table may have a different point of view on that.

11 But here's an example of a situation where
12 you -- we really couldn't comply with something that was
13 put in a permit. In one state, one of our facilities is
14 required to monitor leaks on marine vessels and gasoline
15 trucks that are not under the control of the facility.
16 And the annual tightness and test certified is done by
17 the owner of the marine vessels and the tanks. So,
18 even if there was an emission, you have no way to
19 control and certify that you could do anything about it,
20 because you don't own the gasoline truck; nor do you own
21 the marine vessel. But yet you're required to do
22 monitoring for those. And you're -- the person who owns
23 and certifies that everything is done. So you're sort
24 of in a Catch-22 to do something that you really have no
25 control over, but yet in your certification -- on your

1 Title V certification, how are you going to deal with
2 that? That is an example of where you can't meet -- you
3 can't do anything about it but yet you still have to
4 monitor.

5 MS. HARAGAN: So these are units that are in
6 your permit --

7 DR. DEE: Yeah.

8 MS. HARAGAN: -- but you don't have control
9 over them?

10 DR. DEE: I don't think -- I'm not sure
11 they're -- I don't know the details of whether they're
12 in the permit, but basically this is a monitoring issue
13 which you have to deal with, as an example. You have to
14 monitor that. So then a question comes in: The Title V
15 certification -- how does that apply? I don't know of
16 the details. That's sort of an example.

17 MR. LING: David Golden.

18 MR. GOLDEN: This two-step permitting has come
19 up a couple of times. I just want a clarification. In
20 many states -- the folks in the state agency that issue
21 the preconstruction permits is a different group from
22 the Title V --

23 DR. DEE: That's correct.

24 MR. GOLDEN: And in fixing this problem, I'm
25 assuming that -- well, let me set something up --

1 because the preconstruction permit has been around for a
2 while, you can have a permit mod, say, that can be
3 turned around in three months, so that unit can begin
4 construction in three months. But because of other
5 issues -- the Title V permit mod may take six months.
6 Okay. Then, in other words, it's not one for one.

7 DR. DEE: Correct.

8 MR. GOLDEN: I'm assuming, in fixing this
9 problem, you don't want to remove the flexibility of
10 being able to start construction. The only way to fix
11 it is to make you wait six months for your
12 preconstruction permit. I'm assuming you don't want
13 that. You want to retain the flexibility of being able
14 to construct as soon as possible, but you don't want to
15 go -- you'd want to --

16 DR. DEE: You don't want to go through the
17 permitting process twice. And I think, you know, how
18 you fix it -- as I said, I gave scenarios -- the Texas
19 scenario and there's a New Jersey scenario. We deal in
20 a lot of these states, and every state is a little
21 different. And I'm certainly not going to sit here and
22 tell a state official how best to run their program.

23 But we want streamlining, and there seems to
24 be -- if you go through a PSD permit, you go through the
25 monitoring; you go through the whole full thing; and

1 everything is AOK; and then say, Okay, you're ready to
2 go, but we can't let you go. We can't let you go, yet
3 you just went through this full permit process. It's
4 really great. You got everything covered. All the
5 monitoring is done; it's all done. But you can't
6 operate.

7 MR. GOLDEN: Right. I understand more of the
8 PSD context, but in the minor --

9 DR. DEE: And the same thing with minor --
10 sorry.

11 MR. GOLDEN: -- I'm saying in the minor,
12 though, is -- you know you talked about gap-filling
13 monitoring and subsequent requirements being tied to the
14 Title V process. In those states that have a unified
15 permit, it's hard to appeal the Title V portion of that.
16 With that appeal in construction, it delays your
17 construction.

18 DR. DEE: Yeah. You probably know more about
19 the details than I do. But I think the -- the answer is
20 we would like to get the permit; we'd like to go through
21 the appropriate process, public review, and get on with
22 it. And, again, we've seen instances -- for example,
23 you apply to the agency for an alternative monitoring
24 program and EPA approves the alternative monitoring
25 program -- that requires a change in your operating

1 permit. So you get into those situations where you
2 get -- it just doesn't make sense in a lot of cases.
3 And, again, streamlining is the important thing; how you
4 do it best and get the points across I'll leave to your
5 expertise.

6 MR. GOLDEN: I just want to clarify. By
7 streamlining, if you took it to a year, they all can be
8 issued in less than a year. But that's not what you're
9 asking.

10 MS. HARAGAN: Absolutely.

11 MR. LING: Okay, Don.

12 MR. VAN DER VAART: I've just got a small
13 question, kind of follow-up on Kelly there.

14 Do you think it was -- when you talk about
15 that you had unreasonable monitoring or other things
16 that you didn't like to put in your permit, what about
17 -- I mean, I was around before Title V; and we had wahoo
18 permitting back then too. Are you saying there's
19 something about that Title V that has emboldened the
20 state regulators to put more egregious stuff in your
21 permit? Or is it just the fact that you all are just
22 now seeing the gravity of these past transgressions and
23 you didn't adjudicate at the time and now you're stuck
24 with the Title V permit? I don't understand what the
25 Title V process has lent to this kind of crazy

1 permitting you're talking about. Because otherwise, you
2 could just adjudicate that and --

3 DR. DEE: Well, I don't think that's the
4 answer, okay? Right up front, I don't think that's the
5 answer. And, in response -- I didn't mean I'd go to
6 court. I -- I don't know the answer to your specific
7 question. I think, maybe, speculation is that it's more
8 opportunities; you may go through two different groups
9 to basically look at the situation again from a
10 different group. Let me give you an example which I
11 thought was -- it's a very interesting example.

12 This is part of a Title V permit and a SIP.
13 It's required -- a continuous fence around the
14 boundaries of the refinery must be maintained for an SO2
15 MACT state implementation plan, part of a Title V. So
16 you must -- you must maintain records and inspect the
17 cyclone fence around the facility. Now, I don't know if
18 a cyclone fence keeps the SO2 in or what it does. But
19 how does this get into a Title V permit and part of a
20 SIP that you -- this is not security -- this is an SO2
21 permit -- how does a cyclone fence get into that
22 situation?

23 Now -- so that's an example. Now, where did
24 that come from? Now, you know you said there was
25 discussion and negotiation previously; but I think that

1 more opportunities exist now for that to occur. So the
2 answer to your question would be I think it's more --
3 it's more awareness that you can add this stuff in. And
4 it's happened.

5 MR. VAN DER VAART: The fence is probably
6 there because of the modeling demonstration.

7 DR. DEE: I'm sorry?

8 MR. VAN DER VAART: The modeling demonstration
9 that was used to show that you do need a fence. But the
10 point is, you think the Title V process has
11 emboldened --

12 DR. DEE: Yes, definitely.

13 MR. LING: Mike Wood.

14 MR. WOOD: Thanks for coming and compiling
15 these comments. They're good.

16 You have a statement that you believe the
17 explanation of the facility processes and the emissions
18 should be outside the actual permit. I'm not sure of
19 the basis of that.

20 DR. DEE: Okay. Well, I'll respond to a
21 number of excellent comments that maybe Kelly and others
22 have made in Chicago and possibly even in Washington,
23 D.C. And there was this dialogue that was going back
24 and forth between whether we should have something in
25 the permit that somebody understands what the heck

1 you're talking about or whether it should be the 40 CFR
2 dot-dot-dot stuff. We argued it back and forth and I
3 don't think we've reached resolution on it, because
4 we're still talking about it today. But the important
5 thing from a facilities perspective is -- and I've been
6 involved in a lot of MACT rule development; and I can
7 cite the MACTs for refineries. There's a lot of them
8 and took multiple years and multiple hanging on each
9 word. To try to condense that to a couple paragraphs, I
10 think, is out there. I think -- if the explanation is
11 needed to explain to the public what, in fact, this is,
12 then I think that you go outside of the legal
13 requirement of the Title V permit, which is a legal
14 document that we have to comply to when, in fact, we
15 certify that we're in compliance with that document. It
16 shouldn't be made part of the document because somebody
17 wants to write shorthand who probably has never seen a
18 refinery, doesn't even know what these units are, hasn't
19 been involved in the MACT process, which has gone out to
20 three to four years, and is now going to condense that
21 to a page. The chances of making an error are
22 significant. And so I think if, in fact, people want
23 this explanation and it's desirable -- and it's your
24 call -- it should maybe be an attachment or something
25 that isn't made part of the permit so it doesn't become

1 a legal requirement which we have to comply with.
2 That's my point. And I think we're arguing that.

3 MR. LING: Thanks very much for your
4 testimony. We're going to move on with our final
5 speaker before lunch -- Leslie Ritts.

6 MS. RITTS: I am all that stands between you
7 and lunch. Sorry.

8 MR. LING: The Task Force members still have
9 an hour break for lunch. So don't worry. We're just
10 going to start the session a little in the afternoon.

11 MS. RITTS: Okay. I'm going to talk just
12 about the state permit and appeal process and the
13 frustration therewith. There are currently hundreds of
14 permit appeals pending in the states. While EPA doesn't
15 appear to collect data anecdotally, NEDA believes that
16 over a hundred such appeals have been filed in Ohio.
17 And, according to Indiana's website, 47 permit approvals
18 were appealed in FY 04 alone. The majority of these
19 actions were appeals of initial Title V permits.
20 According to the website of the office of legal counsel,
21 representing items spent 2,300 attorney work hours on
22 those cases in FY 04; and the permit branch worked
23 approximately 4,500 hours assisting OLC attorneys.
24 Sixteen air permit appeal cases were settled, dismissed,
25 or withdrawn in FY 04. And the website also states that

1 the office of environmental adjudication which hears
2 these appeals has 150 permit appeals pending. The
3 number of permit appeals and resources being devoted to
4 them reflect a problem with the Title V permit program
5 overall and the appeal process in particular.

6 For facilities, the problem boils down to
7 having to comply with the permit and its terms when they
8 believe those are in error during the pendency of the
9 appeal. Permit appeals are likely to stem from one or
10 more of the following problems: monitoring or other
11 compliance terms that have been introduced into the
12 permit that weren't in the underlying requirement;
13 technical errors introduced from old minor state permits
14 where there were descriptors that were incorporated
15 verbatim because of EPA guidance; the introduction of
16 new substantive terms; technical errors; problems
17 introduced through state boilerplate condition; and
18 repetitive reporting and recordkeeping requirements.

19 Because these terms and conditions must, in
20 nearly all instances, be complied with during the time a
21 permit appeal is pending, facilities are obligated to
22 file numerous deviation reports. Those reports are
23 likely to end up on the errors that go or stay on
24 enforcement tracking systems. And it's becoming our
25 experience that state enforcement actions are frequently

1 filed shortly after a permit deviation report is
2 received. We urge EPA to track these actions and try to
3 figure out how many are related to terms that have been
4 appealed.

5 I want to illustrate some permit appeal
6 problems with examples -- but there are more examples
7 than I can cover here.

8 One was offered from the Flexible Packaging
9 Unit Association to NEDA to talk about here. In Example
10 1, a petrochemical complex filed a permit application in
11 1993; it got its draft permit in summer 2001, which
12 contained numerous technical errors, including the
13 misidentification of equipment, incorporation of
14 obsolete representations and descriptors from prior
15 permits that were restated as operating maximums; new
16 additional monitoring conditions not in underlying
17 requirements, in one instance; also, the addition of a
18 new compliance point.

19 The company hurried to provide comments within
20 the agency-prescribed 14-day review period and urged a
21 face-to-face meeting. Those entreaties were ignored;
22 and the permit was proposed for public comment about
23 seven weeks later, with all of the same errors. The
24 company reiterated its comments for the public record,
25 with more detail.

1 The permit was issued in September 2001, nine
2 weeks after the close of comment. It contained every
3 error. While the response document faithfully recorded
4 the substance of the company's objections, there was
5 little justification for the retention of those terms.
6 The company appealed the permit in October 2001, then
7 agreed to place it on hold during negotiations. Now, it
8 renegotiated the permit, but, in essence, that is a
9 misnomer, because time had prevented those discussions
10 from occurring in the first place.

11 After negotiating the contested conditions, it
12 was agreed that the company would file an application
13 for a significant permit mod that occurred about one
14 year after the permit issuance. During the permit
15 appeal, the company filed a lot of deviation reports,
16 including two annual compliance certifications;
17 explained in each that the deviation was not a violation
18 because of the permit flaws that were under appeal.

19 Unfortunately, because of miscommunication or
20 perhaps no communication, the state agency's enforcement
21 office began issuing NOVs with penalties. During
22 negotiations of those NOVs, the enforcement office did
23 acknowledge that it wasn't aware of the permit
24 discussions that were ongoing. Also, as a result of the
25 enforcement, the -- not only did the facility have to

1 appeal the NOVS, it was forced to expend additional
2 significant resources to prepare to resume the appeal of
3 the original permit.

4 In the end, it took over two years from the
5 time of the permit appeal to renegotiate the permit
6 terms and obtain a significant modification. It took 15
7 months alone for this state to finalize that permit mod.
8 The permit itself -- permit appeal itself, however,
9 could not be resolved for another nine months following
10 the significant mod because of the concurrent
11 enforcement actions against the company. Final
12 negotiations and settlement of the enforcement action
13 and the permit appeal were concluded shortly before the
14 end of 2004, well over three years after the permit was
15 issued.

16 In Example No. 2, a proposed permit for a
17 Midwestern plant was published for comment on May 31,
18 2001. The company submitted written comments objecting
19 to new temperature restrictions on the operation of its
20 catalytic oxidizer and a periodic VOC catcher efficiency
21 test. Both terms that have been added by the permitting
22 authority were not in the underlying applicable VOC
23 control requirement. The company's comments on these
24 issues were ignored, and the permit was issued final on
25 January 30th, 2002.

1 Throughout the following month, the company
2 had numerous contacts and discussion with the agency's
3 staff, endeavoring to reach agreement on the permit
4 objections. A permit appeal was filed with the state
5 board on the final day of the filing period.

6 On June 28, 2002, pursuant to an order of the
7 hearing board, the agency informed the board that it was
8 drafting the modified Title V permit to resolve the
9 appeal and would be ready for the appellant's review by
10 September 2nd, 2002. Thereafter, the board granted the
11 agency an extension till December 2nd, 2002, and another
12 extension to March 3rd, 2003. A fourth extension was
13 granted until June 26th. When the permit had not
14 been -- had not been modified, another extension was
15 granted until October 22nd, 2003. A draft permit mod
16 still has not been produced, as of February 2005.

17 In Example 3, a coating facility in the West
18 has published -- its permit was published on August 11,
19 2000. The company objected. This involved a
20 temperature restriction on a thermal oxidizer and some
21 additional performance testing, neither of which had
22 been in the underlying VOC requirement. The terms
23 remained in the permit when it was issued on November 6,
24 2001. Company officials met with the agency on December
25 11, 2001, to iron these issues out. The state also

1 contacted the federal EPA, which reportedly told the
2 state the additional conditions were not necessary.
3 Thereafter, the agency did not respond to additional
4 inquiries from the company; and, consequently, a
5 projected permit appeal was filed.

6 I have got several more examples dealing with
7 underlying old minor NSR permits and emissions factors,
8 as well as repetitive reporting conditions for a single
9 applicable requirement.

10 Let me go to the sources of the problem. I
11 think there are six. The first one -- No. 6 is there's
12 a state resource problem. Permits are getting shoved
13 out the door, knowing that once the bean has been
14 counted and the permit issued, there's time for further
15 negotiation. In other words, the permit appeal process
16 has become part of the issuance process. In many
17 states, permit authorities fuse but no resources are
18 available for it.

19 No. 5 is there's still a number of substantive
20 program -- problems over permit content, including the
21 permissible scope of monitoring. Others have spoken a
22 lot about that.

23 Reason No. 4 is that the existing institutions
24 which states generally adopted for Title V purposes
25 can't handle the load of permit appeals under the Title

1 V process.

2 No. 3 is an attorney issue. The attorneys
3 involved -- and generally state attorney-general
4 offices -- aren't involved in the issuance of permits;
5 and they're critical to the resolution of appeals.
6 There are many, many stories of attorneys simply not
7 responding to calls and e-mails regarding resolution of
8 permit appeals, even if the states and companies can
9 agree how to resolve those issues.

10 No. 2: Even if those attorneys could have
11 been consulted and could agree with permit engineers,
12 there's no streamlined procedure in the Title V rules to
13 correct that -- these problems. In other words, a
14 correction has to go through the significant mod to
15 reopen a renewal procedure.

16 And the No. 1 reason is there's absolutely no
17 incentive for a state to resolve these problems.

18 We have some recommendations. I have nine
19 seconds -- if you give me seventeen, I'll get them out.

20 We think that the committee should look at
21 time periods, enacting time periods for acting on permit
22 appeals. We think there should be a revision procedure
23 track to correct permits swiftly when permit authorities
24 agree such corrections are necessary. We think you
25 should provide a mechanism for appending a summary of

1 appeal to the Part 70 permit for public information;
2 that's where the enforcement office is. We think that
3 the resolution of the appeal should be made retroactive
4 And, most importantly, we urge the Task Force to
5 consider amendments to the regulations to stay the
6 effectiveness of the permit terms under appeal until the
7 appeal can be resolved. We think that staying the
8 permit term is likely to be the only incentive in an
9 incentiveless system that really will compel permitting
10 authorities to address these appeals.

11 Thanks.

12 MR. LING: Thank you.

13 Any questions? Don.

14 MR. VAN DER VAART: Yeah. I guess that was my
15 question. Are you saying that in some states, when you
16 appeal a permit, it's not stayed? Is that what you're
17 saying?

18 MS. RITTS: I am only aware of one instance
19 out of probably four dozen appeals that I have some
20 personal knowledge of where the permit has been stayed.

21 MR. VAN DER VAART: That's not four dozen
22 states?

23 MS. RITTS: No, no. That's four dozen appeals
24 in different states for different types of facilities.

25 MR. VAN DER VAART: 'Cause that's what I

1 heard. That's why you have all that -- the first one,
2 even though it's been appealed it kept going and
3 therefore you start racking up NOVS.

4 MS. RITTS: Yeah, yeah. That one we started
5 racking up NOVs. In others, you're just risking that
6 all the while. There's no real, real procedure for
7 retroactively applying the resolution of the appeal to
8 the original term.

9 MR. VAN DER VAART: Is that a state
10 administrative procedures act issue or is that a Title V
11 issue?

12 MS. RITTS: I think it's a Title V issue, but
13 there's a state appeal administrative law issue. Recall
14 the state attorneys-general had to certify they had a
15 procedure to handle permit appeals. They generally, I
16 think, in almost all instances, relied on the old
17 procedures for NSR appeals; and the system wasn't there
18 to handle it; nor were the -- the resources there to
19 handle it. I think that those attorneys don't get any
20 part of the Title V permitting pie. So there are few
21 attorneys; there are no resources there; and the
22 administrative procedures are out there; and they don't
23 necessarily -- I think what you're asking is, they don't
24 have time limits for responding.

25 MR. VAN DER VAART: I'm just simply saying

1 adding attorneys is not going to fix your problem.

2 What is NEDA?

3 MS. RITTS: NEDA is a coalition of
4 manufacturing companies; and we represent [INAUDIBLE]
5 Alcoa, Boeing, General Electric, ExxonMobil, a bunch of
6 petrochemicals, home products, semiconductors. No
7 utilities.

8 MR. LING: Shannon.

9 MS. BROOME: Hi, Leslie.

10 MS. RITTS: Hi, Shannon.

11 MS. BROOME: As I was listening to you going
12 through the item, one settled, one withdrawn --

13 MS. RITTS: Are you counting yourself in
14 there?

15 [PARTIES TALKING OVER EACH

16 OTHER.]

17 MS. BROOME: I'm two of twelve that were
18 resolved, so I'm happy -- but not really.

19 My question to you is -- trying to go to root
20 cause. And this will be based on your own personal
21 experience, I think your answer is -- a lot of it just
22 there's not elevation before to the right level of the
23 agency before you get to the finalization of the permit?
24 Like there's so much in a rush to get it out? I mean,
25 it sounds like there's two problems. There's some stuff

1 that's been appealed shouldn't be in an appeal and some
2 stuff that is truly appeal-worthy? Or what's your take?

3 MS. RITTS: My take is that the agencies, of
4 course, hope to acquire the experience that the simple
5 facilities -- and there's been a lot of time in the
6 first, you know, five, six years in the permit program
7 getting these appeals out. And what it got left with
8 were some very large complex facilities; and they ran
9 out of time. Say, their programs were going to be
10 jerked because they were deficient in the sense that
11 issuing those permits and there were a number of edicts
12 issued. I think that's 75 percent of the problem. And
13 it just didn't allow for the kind of communications and
14 resolution.

15 Part of the problem, too, is that we have not,
16 no -- we would say we've resolved the monitoring
17 question to the extent that EPA in last year issued a
18 rule that said no gap-filling unless there -- there's,
19 you know, monitoring at all. But that issue certainly
20 has colored a lot of these appeals.

21 MS. BROOME: Thank you.

22 MR. LING: Adan.

23 MR. SCHWARTZ: This isn't really a question.
24 I just wanted to note a couple of things we've done in
25 the Bay Area. I recognize one of your examples.

1 MS. RITTS: When Peter was up here, I was
2 recognizing it, too.

3 MR. SCHWARTZ: It's the same one. One of the
4 things we did there -- the attorney for the other side
5 gets credit for this -- for thinking of this. When we
6 filed a stipulation with our hearing board, that
7 essentially gave the company the result it wanted while
8 its modification was pending.

9 But the other thing I was going to talk about
10 is, when we issue all these refinery permits, we
11 acknowledged that we had made some errors. It was too
12 much to do and we needed to catch up and fix things.
13 And we did -- we used our enforcement discretion. And
14 we executed a number of enforcement agreements. And
15 essentially we said, you know, These are mistakes we
16 made; we're going to fix them, but in the meantime,
17 here's what you should comply with.

18 MS. RITTS: Oh, so people operated under
19 administrative consent orders then?

20 MR. SCHWARTZ: You could call them that. They
21 weren't really. They were more like settlement
22 agreements.

23 MS. RITTS: Uh-huh.

24 MR. SCHWARTZ: I never thought I'd hear an
25 industry group recommend to the EPA that it should

1 dictate APA procedures for states.

2 MS. RITTS: No. I just think that in the --
3 in the minimum program requirements there were some time
4 lines. I know they weren't satisfactory on permit
5 objection procedures. But in 70.4(B), XII through XIV,
6 there are really no specific requirements other than a
7 permit appeal to get a permit issued or get a permit
8 modified. So some time lines could help -- help
9 stressed states be able to devote some resources to
10 these problems.

11 MR. LING: Ray.

12 MR. VOGEL: I'd like to put some perspective
13 on the extensiveness of this problem. Do you find this
14 problem across the board throughout -- in all the states
15 you deal with, are there some states that are doing a
16 better job than others, some states doing a pretty good
17 job, and it's just sort of a spotty nature? How
18 extensive is this problem?

19 MS. RITTS: I think it's an extensive problem.
20 The five examples I've included in the testimony that I
21 laid in front of your chair are from Northeast,
22 Southeast, West -- West Coast, we've established being
23 San Francisco. I think that it -- but that I'll go back
24 and find out if there's some states that are handling it
25 better, that perhaps that their administrative

1 procedures are a little bit more designed to -- to get
2 these things through the traps and get them settled.

3 MR. LING: Any more questions?

4 Thank you very much, Leslie.

5 MS. RITTS: Lunch?

6 MR. LING: Yes. Just a couple of
7 announcements there. We seem to be running about a slot
8 behind.

9 The other announcement is there's some really
10 good-smelling food outside the room, but it's not
11 connected with this meeting, so please do not eat it.

12 And I would like the Task Force to be back
13 here at 1:20. Thanks very much for all your
14 participation this morning.

15 [PROCEEDING ADJOURNED FROM 12:17
16 TO 1:35 P.M.]

17 MR. HARNETT: Good afternoon. I'd like to
18 welcome everyone back. I'd like to begin the afternoon
19 session here.

20 We are running about a half hour behind
21 schedule now, but we will get everybody in today. If,
22 any of the speakers, this causes you difficulty, would
23 you please go to the outside -- right outside the room
24 and see our contract person, Shannon. She will try and
25 accommodate you earlier in the schedule if need be. But

1 otherwise we will proceed with the schedule as operating
2 on the half-hour behind.

3 And the first speaker for the afternoon will
4 be George Hays, an environmental attorney.

5 A notice -- since all the speakers may not
6 have been here in the morning: We have a little timer
7 in front of you. We've allowed ten minutes for your
8 time -- for your presentation, as well as for us to ask
9 you questions. And you will get a two-minute warning.
10 It'll go from a green light to sum up; and then you get
11 a red light when the ten minutes runs out. We'll try
12 our best to stick to it both for your presentations as
13 well as for the questions. But we have tried not to cut
14 anybody off too harshly, though we sped up a few people
15 this morning.

16 MR. MOREHOUSE: There will be a small electric
17 jolt at the 10-second mark.

18 MR. HARNETT: We haven't gone that far yet.
19 We are in California. They have energy issues.

20 All right. If you want to go ahead.

21 MR. HAYS: My name is George Hays. And let me
22 tell you a little about myself. I spent 12 years
23 working for Region 9 of EPA, until the year 2000, when I
24 left to start my own practice. So right now, I am
25 involved with a number of Clean Air Act citizens' suits

1 -- actions on behalf of citizens. And I also represent
2 Our Children's Earth Foundation as a part-time
3 litigation director. The actions I've been involved
4 with since I started my own practice are almost
5 exclusively Clean Air Act, although very few have
6 involved enforcement of Title V permit provisions, for
7 reasons I'll get into. But -- and they have involved a
8 number of rather major sources, particularly coal-fired
9 power plants.

10 With respect to Title V, my view is that Title
11 V has not really lived up to its advertising when it was
12 adopted in 1990. At that time I was at the region; and
13 the program was sold as a way to make the Clean Air Act
14 enforcement similar to Clean Water Act enforcement by
15 identifying all the applicable requirements that a
16 source had and then specifying monitoring requirements
17 for each of those requirements so that you could
18 determine whether a source was actually meeting all the
19 applicable requirements; and the facility would actually
20 report and tell you whether it was meeting its
21 requirements, making enforcement easy.

22 With that goal stated, I would say that Title
23 V has been a dismal failure. It never happens that way.
24 And anything that the Task Force could do to sort of get
25 the program headed back in the right direction would be

1 tremendous.

2 I wanted to spend -- I don't really know how
3 able the Task Force is going to be to reach that goal.
4 So I wanted to spend a little time talking about a
5 specific problem that perhaps the Task Force could do
6 something about. And that has to do with the situation
7 where we are not talking about adding additional
8 monitoring to a permit but where the monitoring is
9 actually required and what the permit actually says
10 about that. I've seen a number of Title V permits for
11 coal-fired power plants. And these power plants are all
12 subject to opacity standards, either from the new source
13 performance standards or through the state
14 implementation plan. They all are required to have
15 continuous opacity monitors, either because of NSPS
16 requirements or SIP requirements. And yet the permits
17 still specify that the method for determining compliance
18 is Method 9 rather than these COMS. And I think that,
19 as a matter of law, that any permit that so provides
20 would be erroneous for the following reasons.

21 First of all, the statute itself provides that
22 the permit is supposed to include compliance
23 certification testing, monitoring, reporting, and
24 recordkeeping sufficient to assure compliance with the
25 terms and the conditions of the permits. All -- that's

1 70.6 (C) 1. And then 70.6 (A) 3 also provides that
2 there should be monitoring of each applicable
3 requirement.

4 And, finally, Part 64, which is the CAM
5 provision, specifies that, if the source has a
6 continuous requirement from some other program, that it
7 must use that monitoring system as its CAM plan.

8 And 70.6 (A)3, I believe, specifically refers
9 to monitoring required by Part 64 as monitoring which
10 the permit has to specify. Nevertheless, I've seen
11 permits that provide as follows: They give you opacity
12 limit; they'll say method -- compliance is supposed to
13 be determined by Method 9. And then in some other
14 section, they say, "Oh, yes. And you have to have a
15 continuous opacity monitor."

16 If the CAM program is to mean anything and
17 right in Part 64.3, it says that the purpose of the
18 monitoring is to assure compliance, then these Title V
19 permits ought to state that if the monitoring system is
20 their CAM plan, then that monitoring needs to be used to
21 determine compliance with the applicable standard. The
22 opacity standard is a six-minute standard. You measure
23 it every six minutes continuously. And Method 9 could
24 never provide you with the information adequate to make
25 that determination. It's, to me, ludicrous that you

1 would have a requirement that these sources have to have
2 this continuous monitors. They're calibrated pursuant
3 to Performance Spec 1, which requires that the monitors
4 read the same as a Method 9 reader would read, with the
5 opacity coming out of the stack, and yet not specify in
6 Title V permits that those monitors are to be used for
7 determining compliance. So I think that this is a real
8 problem that I've seen in the Title V permits. And I
9 would hope that you all would try to do something to
10 make sure that, when the Title V permits come out, that
11 they specifically provide that those -- that the
12 continuous opacity monitors or other continuous
13 monitors, for that matter, is used as the method for
14 determining compliance the permit.

15 I see I have a couple minutes left, so let me
16 just touch on another issue that I had experienced that
17 I find problematic. And that is the notice of the
18 actual Title V permits. I had a situation where we
19 commented on a permit that the state in question was
20 proposing to issue, they got our comments and said they
21 were going to address them. We never heard another word
22 from them. The state went ahead and issued the permit
23 without issuing any notice at all. And then EPA
24 apparently published on its website the fact that their
25 clock had now started. There was no notice to any of

1 the actual commenters, which we were included with, that
2 the permit had actually come out. And so that caused a
3 real problem for us because, number one, we didn't know
4 about the Region 4 website. Of course, we know about it
5 now.

6 But, number two, I think that this is a real
7 problem -- that the agency -- well, if your clock is
8 going to start ticking, at least show notice to all the
9 commenters. That's a problem that I see. So I think
10 that's something that you all ought to correct as well.
11 And I'll just leave it at that.

12 MR. HARNETT: Bob Palzer.

13 MR. PALZER: Thank you, George, for coming.
14 You hit on a point that's been really of considerable
15 interest for me as well. As a certified plume reader,
16 having gone through the two days of education and the
17 testing procedure, and then going to some sources where
18 they were doing a stack test and taking an opacity
19 reading and then finding out in the permit that -- and
20 the -- let's say, for example, the opacity was five
21 percent. At the time of the source testing, the visual
22 Method 9 was the enforcement method; and the permit
23 limit was 20 percent, which would allow that source to
24 be four times higher than the source test. With that
25 background, have you tried litigating any aspects of

1 these things? And, if so where did you get?

2 MR. HAYS: Yes. In fact, my friend Lauren
3 here and I have been involved in a case in New Mexico
4 for quite some time, where we have been litigating over
5 opacity violations by the San Juan power plant. There
6 the issue was whether the permit actually provided that
7 the continuous opacity monitors were supposed to be used
8 for determining compliance. And in that case I believe
9 the judge ultimately decided that it was.

10 One -- another problem there is that companies
11 tried to import other defenses from outside the permit
12 into the permit when you're trying enforce these
13 permits. And that's problematic as well. You know,
14 these permits ought to be complete so that if a citizen
15 is looking at this, they can determine whether there are
16 any applicable defenses or not and not try to bring an
17 action and then have a whole host of defenses which were
18 never put in the permit terms included. So that has
19 been difficult.

20 I've also been involved in and still involved
21 in an opacity case in the Southeast. And there again
22 we're trying to use COMS as the method for determining
23 compliance. There, we don't have a permit which
24 specifies that COMS are the method for determining
25 compliance. So we are trying to use language in the

1 state implementation plan, which I think provides for
2 that, as well as the credible evidence rule. And the
3 defense community is making a very spirited effort to
4 say that COMS are not equivalent to Method 9 --

5 MR. PALZER: They certainly aren't. They're
6 much better.

7 MR. HAYS: -- and therefore we shouldn't be
8 able to use them. So, yeah, I've had quite a bit of
9 experience with that.

10 MR. PALZER: Thank you.

11 MR. HARNETT: Adan Schwartz.

12 MR. SCHWARTZ: The situation you were
13 describing with the COMS and the opacity standard --
14 clearly, you're convinced that that -- they're both done
15 and the permit is not consistent with the current --
16 with Part 70 as it's currently written. That's what it
17 sounds like to me.

18 So have you tried using the petition process
19 either -- I don't know if you were around when that
20 permit was issued or perhaps looking forward towards
21 renewal or reopening or something?

22 MR. HAYS: You know, I -- to get ready for
23 today, I actually went back and did a bunch of work.
24 And I intend to try to reopen a number of these permits,
25 based on my conclusion that the CAM plan requires that

1 these permits be that these permits specify that COMS
2 are the method for determining compliance.

3 MR. HARNETT: Callie Videtich.

4 MS. VIDETICH: Hi, George. I think -- can you
5 clarify what happened under this notice scenario that
6 you were explaining at the very end. You commented, as
7 I understand it, on a state permit. They did not
8 respond to your comment?

9 MR. HAYS: They did respond.

10 MS. VIDETICH: Oh, they did respond?

11 MR. HAYS: They responded to the comment and
12 said, "We are going to address these when we issue the
13 permit."

14 MS. VIDETICH: Then you --

15 MR. HAYS: And then they waited to get the
16 permit.

17 MS. VIDETICH: And you saw the EPA propose --

18 MR. HAYS: No, we didn't. What happened was
19 that we went, you know -- a few months went by and we
20 thought, "Gosh, whatever happened to that?"

21 So then we did some checking around and, lo
22 and behold, found that the state had issued the permit
23 without providing any notice; that EPA had put it on
24 their website for Region 4, which we didn't know about
25 so we weren't checking. So our clock expires. Then we

1 petitioned EPA anyway, saying that there was a problem
2 with this; and we subsequently -- we also asked for a
3 reopener if they didn't accept our argument that there
4 was no notice. So what EPA said was, "Okay. We're
5 going to reopen this," thereby dancing around the notice
6 issue, because, you know, they basically were going to
7 give us the relief that we want by examining this
8 without getting into whether there's a notice deficiency
9 or not.

10 MS. VIDETICH: So are you here to talk about
11 that particular instance or to state that there's
12 something wrong with this system and you need EPA or
13 someone to address -- the Task Force -- to address an
14 overarching problem or not?

15 MR. HAYS: I think there is an overarching
16 problem. And that is that if you -- if a citizen
17 comments on a permit, the citizen needs notice of when
18 the state takes final action on that permit, because
19 their rights are going to be affected at that point.
20 And, right now, the way the system is set up, there is
21 no notice that goes to the citizens, you know. The
22 state forwards the permit to EPA and that's it. But
23 it's all, you know, an internal process, if you will.
24 And unless you're bird-dogging it every day or every
25 week, you're not going to know.

1 MS. VIDETICH: So you didn't even know when it
2 got sent to EPA for its 45-day review and when that
3 review period was up?

4 MR. HAYS: We didn't. No.

5 MS. VIDETICH: Thank you.

6 MR. HARNETT: Don van der Vaart.

7 MR. VAN DER VAART: Yeah. I was -- just real
8 quickly -- I don't understand the impediment in bringing
9 a suit against somebody for an opacity violation simply
10 because it's not in the Title V permit. In other words,
11 why can't you always bring -- can't you just go to the
12 records? I think these people have to -- most utilities
13 have to report under Appendix P their excess emissions
14 based on COMS. Can't you just go to those and, whenever
15 you find excess emissions, just take the credible
16 evidence rule in hand and go -- I mean, what kind of
17 impediments are you finding?

18 MR. HAYS: Well, I agree with you that you
19 should be able to take those -- that information and,
20 either under the SIP, as it's written, or under the
21 credible evidence rule, you ought to be able to use it.
22 However, because these -- the permits don't specify, as
23 I said, the actions turn into mammoth, years-long --
24 year-long -- battles with experts and everything else
25 over something which should be obvious to everyone.

1 OTHER.]

2 MR. HAYS: No. What I said was that the
3 intent of the program was to try to make Clean Air Act
4 enforcement similar to Clean Water Act enforcement.
5 Under the Clean Water Act, you have a permit which lists
6 your limitations; you have monitoring specified that the
7 source is supposed to perform; and the source is
8 supposed to report whether they're in compliance or not.

9 The Title V permit was supposed to do the
10 exact same thing. It was supposed to collect all the
11 applicable requirements. It was supposed to establish
12 monitoring requirements that went with each of those
13 applicable requirements. And then the source was
14 supposed to report, in their compliance certifications,
15 whether they were compliant with those standards.
16 That's what the program is supposed to do; and it has
17 not lived up to that.

18 MS. BROOME: Title V was not meant to define
19 compliance. We can go on and on and on and dispute
20 that; or you can let me have my question, which is on a
21 separate point. I just want you to understand that not
22 everybody accepts your premise -- put it out there to
23 everybody who accepts that. We don't.

24 But the question I have was, you were talking
25 about two examples. I just wanted to understand the

1 examples, not to -- I'm sorry that I got pulled out
2 there. But you talked about one where there was a
3 permit and it didn't specify the COMS as a method and
4 that you were going out and trying to rely on the SIP.
5 But then you were -- and you thought that was okay that
6 you could do that. And then just before that, you
7 mentioned that sources should not be able to go out to a
8 defense that might be in the SIP and use that. And how
9 do you reconcile those two positions? Or maybe I
10 misunderstood your example.

11 MR. HAYS: Well, first of all, you're not
12 shielded in Title V from violating a requirement if it's
13 been left out of your permit. So that's one thing
14 that's true with respect to Title V permits.

15 What I'm saying is that if you have a
16 provision in a Title V permit that -- and there are
17 alleged defenses that come with that -- then those
18 defenses ought to be specified in the permit.
19 Otherwise -- because sources have the opportunity to
20 look at those permits and make a claim. For instance,
21 if they assert there's a particular type of malfunction
22 defense or whatever, there's a draft permit that's
23 issued. They have the opportunity to look at that. And
24 if they don't stand up and say, "Hey, there's a
25 malfunction defense that you forgot to include in here,"

1 and then the permit goes final; then after that they
2 want to assert that malfunction defense, I think that's
3 a violation of the permitting scheme.

4 So that is my contention.

5 MS. BROOME: I understand your contention.

6 Thank you.

7 MR. HARNETT: Lauren Freeman.

8 MS. FREEMAN: Thanks.

9 I'm struggling a little bit to find out how to
10 phrase -- this is the question. But I think there are
11 some things this Task Force can look at and some things
12 that we can't. I think what's in the -- the nugget of
13 what's in your comments that we can look at maybe with
14 respect to the timing of the issuance of Title V
15 permits. You've described this problem where we've got
16 standards based on one method -- in this case, Method 9
17 -- and other information out there in this case, COMS.
18 And how you reconcile those two in a permit -- and as
19 you pointed out -- EPA promulgated a rule -- the CAM
20 rule -- in 1997, that's supposed to tell you how you use
21 the COMS data to enforce these standards that are not.

22 Anyway, the problem, I think, that you may,
23 you know, have identified here is that the CAM rule,
24 because it's implemented on permit renewal and because
25 permits have been delayed by some of the other things we

1 have heard about today, that CAM hasn't been implemented
2 at some of these sources that you have been looking at.
3 And I think that may be how it can tie in with something
4 this Task Force can do to help get these permits out by
5 simplifying the program so that these gaps can be taken
6 care of with EPA's rules. Now, I'll just put a question
7 mark at the end of that. And if you have any response
8 to that, I'd be interested in hearing.

9 MR. HAYS: Well, actually I have a question,
10 which is, would it be your position then that upon
11 renewal that these permits ought to specify that, if
12 they are subject to a CAM plan, that the COMS are or
13 should be a method for determining compliance?

14 MS. FREEMAN: I think you described the CAM
15 rule correctly, that it required you to use the COMS in
16 your CAM plan. And then the CAM plan has enforceable
17 requirements for what you do the control devices, so on
18 and so forth. It is a rule that specifically addresses
19 that. And getting that rule out there and implement it
20 is an important part of -- well, we've heard comments
21 from other people saying that monitoring is supposed to
22 be enhanced through the Clean Air Act amendments and CAM
23 rule is one way that EPA provided for that. We need to
24 get that out there and get it implemented.

25 So, yeah, it is used for compliance. It's

1 just not used in the same way you might if it were
2 specified directly.

3 MR. HARNETT: Thank you very much for coming
4 today.

5 If it's acceptable to the other speakers, I
6 would ask one speaker, who does have a flight that he
7 may run into difficulties with, that I'd like to bring
8 him up now to speak. If that's -- if none of the other
9 speakers have similar time deadlines, then I'll bring up
10 Mohsen Nazemi from South Coast Air Quality Management
11 District.

12 MR. NAZEMI: Good afternoon. And thank you
13 for accommodating me. I apologize. I have a flight to
14 catch and didn't know it was going to take longer.

15 I'm Mohsen Nazemi, and I'm assistant deputy
16 executive officer in the engineering compliance office
17 for South Coast Air Quality Management District,
18 responsible for permitting and compliance for over
19 26,000 stationary sources in our region. I appreciate
20 the opportunity to speak with you today and hope that my
21 comments are taken in the spirit of mutually benefiting
22 our efforts to comply with the federal requirements
23 while expeditiously advancing our clean air program to
24 protect and improve the air quality and public health in
25 our region.

1 The South Coast Air Quality Management
2 District is the regional air pollution control agency
3 covering all of Orange County and the major portions of
4 Los Angeles, San Bernardino, and Riverside Counties.
5 South Coast AQMD is primarily responsible for cleaning
6 the air and protecting public health for a population of
7 16 million people living and working in our region.
8 South Coast has been the leader in fighting air
9 pollution for over half a century and has made great
10 progress towards improving the air quality for the
11 residents in our region. However, in spite of our
12 efforts and progress, unfortunately, the South Coast
13 area has the worst air quality in the nation and the
14 only area in the nation presently classified as extreme
15 ozone nonattainment.

16 South Coast AQMD is also unique in that we
17 have the largest number of Title V sources compared to
18 all local and almost all state air permitting agencies.
19 And in the South Coast AQMD we presently have about 800
20 Title V facilities, which makes our experience with this
21 program both comprehensive and unique. Comprehensive
22 because there are facilities representing almost all
23 industrial classifications and sizes, from the large
24 refineries and power plants to small printing and
25 coating operations. Unique because the South Coast has

1 had decades of permitting history, issuing detailed
2 preconstruction and operating permits to equipment and
3 operations which emit air pollutants prior to a Title V
4 program.

5 In addition, South Coast AQMD has over a
6 decade of experience with consolidated facility permits.
7 In 1993, South Coast AQMD developed and adopted a market
8 incentive program called Regional Clean Air Incentives
9 Market, also known as RECLAIM, program, where over 370
10 largest nitrogen oxide- and sulfur oxide-emitting
11 facilities participated in an emissions trading program.
12 Each RECLAIM facility was originally assigned an
13 emissions cap and each facility's emission cap was
14 subject to a decline over time.

15 Under RECLAIM, all of the 370-plus facilities
16 were issued a consolidated facility permit and were
17 subject to increased monitoring and reporting
18 requirements. South Coast AQMD believes that, although
19 the Title V program may have resulted in considerable
20 benefit in parts of the country, overall, it has not
21 resulted in any significant air quality or environmental
22 benefit in South Coast.

23 First, the South Coast AQMD has already had a
24 preconstruction as well as an operating permit program
25 for a number of decades. The Title V permit program may

1 not have been a major concern for a state or permitting
2 agency which did not have such a comprehensive permit
3 program or had no operating permit program at all. In
4 which case they would have been able to actually model
5 their operating permit program after the Title V
6 program. However, for the South Coast AQMD, the Title V
7 program created an overlay on top of our existing permit
8 program requiring significant resources to make
9 adjustments to the South Coast AQMD's permit program.
10 Therefore, unlike some other states, in South Coast
11 AQMD, the Title V program by itself has not identified
12 facilities that should have been subject to permitting
13 or required an operating permit which they didn't have
14 otherwise.

15 Second, in South Coast AQMD, although we have
16 about 800 Title V sources, we have not experienced Title
17 V source's installing air pollution control equipment or
18 utilizing other air pollution control strategies to
19 reduce their emissions solely in order to fall below the
20 Title V thresholds and, consequently, be out of the
21 Title V program. As indicated earlier, the South Coast
22 AQMD -- I'll just call us "AQMD," I don't want to repeat
23 "South Coast AQMD" all the time -- AQMD has been the
24 leader in establishing some of the most stringent air
25 pollution control requirements in the country. As a

1 result, the vast majority, if not all of the stationary
2 air pollution sources in South Coast area already have
3 installed some of the most stringent control
4 requirements. And the Title V program has not resulted
5 in installation of any additional air pollution control
6 to reduce facility emissions. Some sources admittedly
7 have requested and obtained facility caps to stay out of
8 the program, but these are typically sources that had
9 emissions that did not reach the Title V thresholds
10 anyway or had reduced their emission as a result of
11 other AQMD rules and regulations and not specifically to
12 drop out of the Title V program.

13 I would now like to provide some comments on
14 specific aspects of the Title V program -- where the
15 program works well and where it doesn't work well, from
16 AQMD's perspective. To that end, I will briefly discuss
17 the areas of Title V applicability for the Title V
18 universe; permit contents; permit revisions; compliance
19 certification and reporting; and, finally, public
20 participation.

21 First, Title V applicability. The Title V
22 program was designed and intended to apply to some of
23 the largest and major polluting sources in the country.
24 However, due to the extreme ozone nonattainment
25 designation in the South Coast area, the Title V program

1 applies to much smaller and lower-polluting facilities
2 than the rest of the country. That is because, under
3 Title I of the federal Clean Air Act, a major source in
4 an extreme ozone nonattainment area is any facility with
5 potential to emit ten tons of nitrogen oxide or
6 hydrocarbons per year. The Title V program contains a
7 series of complex administrative and legal requirements
8 that presumably is manageable by large companies and
9 corporations with environmental expertise. The Title V
10 legislation, however, was not envisioned to apply this
11 complex law to smaller and lower-emitting facilities.
12 Complex requirements don't become less complex by
13 compiling them into one document and issuing a much
14 larger permit to a smaller source.

15 For those facilities without a dedicated
16 environmental staff, the Title V permit becomes a
17 bramble of bureaucratic requirements that, due to SIP
18 gap issues, can often have different and in some cases
19 even conflicting requirements that result in complete
20 confusion regardless of the permit writer's best
21 attempts to provide clarity.

22 Likewise, public participation has not
23 increased by expanding the Title V universe to include
24 smaller sources, because most of the facilities that we
25 have issued Title V permits have been facilities that in

1 other areas would not be considered a Title V source.
2 Some of our Title V sources fit into the definition of
3 "small business," as defined by the U.S. Small Business
4 Administration. It is little wonder that there is no
5 public interest in a permit for Freund Baking Company or
6 Al's Garden Art. Similarly, the area sources should
7 also be exempt from the Title V program.

8 On the other hand and unlike for the Title V
9 program, in an extreme ozone nonattainment area such as
10 South Coast, it is critical to be able to regulate such
11 smaller sources under the new source review and other
12 regulations in order to be able to reduce their
13 emissions to make progress toward attainment of the
14 clean air in our area.

15 Second, I talk about permit content.
16 Consolidation of all the emission sources at a facility
17 and all applicable requirements into a single document
18 has some recognizable benefits. During consolidation,
19 some of the permits have been updated and resulted in
20 more accurate permit documents. Also, combining all the
21 source's applicable requirements into one document
22 provides for a comprehensive listing of the source's
23 emissions monitoring, recordkeeping, reporting and other
24 administrative requirements. However, even for a large
25 source, consolidation of multiple federal requirements

1 and layering them over robust and often more stringent
2 and sometimes completely different state and local
3 requirements doesn't guarantee measurable benefit in the
4 clarify of the permit and its requirements or
5 manageability of the permit program. For example, how
6 is a refinery permit made more manageable by compiling
7 its applicable requirements into more than a dozen
8 four-inch binders or placing the electronic equivalent
9 onto one and a half CDs? And this permit would have
10 grown even larger if some applicable requirements such
11 as MACT hadn't been included by reference. To avoid
12 some of this confusion, EPA should more quickly review
13 and finalize SIP submittals to minimize the SIP gap.
14 Likewise, MACT standards should only be included by
15 reference. Many of the MACTs, for example, have a
16 number of options for compliance and can't be simply
17 summarized or easily paraphrased intelligibly into
18 permits.

19 MR. HARNETT: I'm going to have to ask you to
20 wrap up.

21 MR. NAZEMI: Okay.

22 Another potentially resource intensive item
23 requested by EPA to be included in the Title V permit is
24 the statement of basis, which the statement of basis may
25 serve as a purpose in areas where the Title V program is

1 the first permit issued to a facility by explaining the
2 legal basis but not an area where there has been decades
3 of permitting and permit volume history for that source.

4 I'll wrap up just by saying, on permit
5 revisions, we would like to ask EPA to revisit the
6 definition of "significant revisions." Again, in our
7 area, any increase to a major source is considered a
8 significant increase; and, therefore, for a pound-a-day
9 increase the significant revision public process and EPA
10 review is triggered. Further, minor modifications
11 should not be subject to a 45-day EPA review to the
12 extent that EPA can identify which minor modification
13 they want to review. I think that would help us to get
14 those through much faster.

15 On compliance certification and reporting,
16 it's generally considered to be an effective tool.
17 However, in South Coast, where we already have a strong
18 enforcement program, Title V compliance certification
19 of reports have not resulted in significant improved
20 compliance. Our inspectors routinely make unannounced
21 inspections to Title V sources, such as refineries, as
22 frequently as a couple of times a week. Our experience
23 has been that, although self-compliance may help towards
24 improved compliance, but it doesn't guarantee full
25 compliance unless you couple it with an effective

1 inspection and enforcement program.

2 I also have some comments about the AAFs, but
3 I will pass, because we already have commented to EPA on
4 the extra burden.

5 And I'd just like to quickly go to public
6 participation. The Title V program provides for an
7 increased opportunity for public participation and other
8 citizen actions in case of noncompliance. The goal of
9 enhancing public participation and one that we truly
10 support. And as a leader in environmental justice
11 program, we have held town hall meetings in -- many town
12 hall meetings -- in areas to address specific concerns
13 by the communities. However, we have had mixed results
14 with our public participation in the Title V program.
15 To give you a sense of EPA and public participation of
16 the Title V program, we have issued -- sorry -- Title V
17 permits we have issued today, we have received comments
18 from EPA on about five percent of our permits. Public
19 and environmental organizations have provided comments
20 on less than three percent of our permits. And public
21 hearings have been requested for less than two percent
22 of our Title V permits. We have initiated a lot of
23 meetings -- public consultation meetings -- without any
24 request, especially like for refineries because we knew
25 there was public interest. But, certainly, this level

1 of participation does not considered as extensive but
2 rather sporadic.

3 In conclusion, we support a strong and
4 efficient permitting compliance program which provides
5 increased public participation and enhanced compliance.
6 However, as indicated in my earlier comments, the Title
7 V program may have proven to be beneficial in other
8 parts of the country although it has not resulted in any
9 significant air quality benefit in South Coast. Its
10 program has added complexity to the permitting program.
11 With additional complexity comes additional expense. To
12 date, we have spent more than 175,000 person-hours and
13 over \$13 million to develop and implement a Title V
14 permit program. Overall, full implementation of this
15 program, including permitting compliance support, has
16 cost South Coast AQMD over 235,000 person hours and at a
17 cost of over or about \$18 million.

18 While admittedly the program has some
19 benefits, again, we have not been able to observe
20 significant air quality benefits. Our goal is to
21 improve this program and to comply with the federal --

22 MR. HARNETT: Pardon me. We need to get to
23 the questions.

24 MR. NAZEMI: Sure. Thank you.

25 MR. HARNETT: If you could leave, on your way

1 out, with Shannon, the full statement, we will include
2 it in our record.

3 Kelly Haragan.

4 MS. HARAGAN: I had a question about public
5 participation. You said, you know, you guys really
6 support that. Are there things that you can think of
7 that you could use that would help the public
8 participate more effectively? For instance, I don't
9 know how much information you have online -- permits,
10 draft permits -- things like that that are available
11 online. If there's other things you can think of.

12 MR. NAZEMI: Sure. One of our initiatives is
13 related to environmental justice was to actually hold
14 monthly meetings throughout the four-county region that
15 we have jurisdiction over to talk to the public -- town
16 hall meetings -- to talk to the public about what its
17 concerns are. We find that the public sometimes becomes
18 very frustrated at a Title V hearing or meeting where
19 they come in with specific expectations that Title V
20 programs frankly does not offer. Most of the time, the
21 public is interested in seeing the facility emissions be
22 reduced or the facility, at times, shut down certain
23 parts of their operation or move to another location.
24 And, you know, a lot of times Title V programs can not
25 provide for that.

1 So my recommendation in terms of how we can
2 get better public participation is to initiate public
3 participation, not just at the permitting level but look
4 at the environmental justice and public participation
5 program throughout the whole agency program, including
6 rule-making, including compliance, as well as
7 permitting.

8 MS. HARAGAN: And do you have -- what
9 information do you have available just for the public?

10 MR. NAZEMI: We have -- I can't tell you
11 exactly what's on our website -- but we have, for Title
12 V programs specifically, we have a listing of our Title
13 V facilities on our web. We have a Title V Task Force
14 where you can request to be on the mailing list for all
15 Title V mailings that goes out -- I didn't mean the Task
16 Force. I mean the Title V mailing list where you can
17 get all the notices for all Title V programs. And for
18 the large Title V permits, we provide those in an
19 electronic format during the public comment period for
20 anybody who's interested to review that.

21 MR. HARNETT: Michael Ling.

22 MR. LING: One of the reasons you mentioned
23 that Title V hasn't been of much benefit in the South
24 Coast, as you said, you already have an effective
25 operating permit program. And you said there were some

1 difficulties in adding on some Title V overlay. I'm
2 just wondering if you could give examples of the issues
3 that you found particularly difficult to overlay.

4 MR. NAZEMI: Sure. One of the decisions that
5 we made early on into the program was that we decided to
6 have an integrated Title V program. We feel that it is
7 most effective to have the public participation and EPA
8 participation at the time we are issuing permits to
9 construct or permits to modify a facility rather than at
10 the time where a facility has been in operation for
11 several years and there has been permits to operate
12 granted to that facility.

13 So that's one of the ways that we have had
14 some difficulty was because we wanted to make sure that
15 the public input is taken up at the front end of the
16 process. We have to overlay the Title V program on our
17 permit to construct or preconstruction review program.
18 As a result, again, we have the EPA review and public
19 review, which arguably can prolong the process when you
20 have businesses who want to quickly meet the market
21 demands and change processes and so on and so forth.
22 But we felt that it was important enough that we wanted
23 to have our program in that form.

24 MR. HARNETT: Shannon Broome.

25 MS. BROOME: You mentioned the SIP backlog and

1 the kind of the whole updating thing; and a lot of
2 people have talked about that generally. I was
3 wondering how, given kind of the current state of play
4 with the SIP provisions, what are you doing? And as you
5 change your rules -- I know you guys update your rules
6 all the time, so this is a continuing issue. Have you
7 come with any ideas as to how to get sources, how to get
8 current requirements in the permit. And, if not -- I
9 know it's not an easy issue, so it's not a fair
10 question, but if you come up with something I think we
11 would be all interested to hear it.

12 MR. NAZEMI: Well, sure. Actually the current
13 requirements are in the source's Title V permit. They
14 are just labeled as locally enforceable, not federally
15 enforceable. However, as you mentioned, because of our
16 extreme nonattainment status, we have to continue to
17 push the envelope and adopt new rules or amend our
18 existing rules. And as a result we have requirements
19 that are typically more stringent. I can only think of
20 maybe one or two cases where we had relaxed our
21 requirements. And that's, again, because we try to
22 force technology. And sometimes it doesn't work and
23 have to go back and revisit it.

24 So our experience is that the only way that we
25 can resolve that multiple-gap issue is if we work ahead

1 of time with EPA and relay our view to our state agency
2 to make sure that as we adopt the rules it doesn't sit
3 in their backlog for long periods of time before they
4 get to review it -- that they are actually on board with
5 us up front; and it's a simpler review process.

6 MR. HARNETT: Keri Powell.

7 MS. POWELL: You said that because there's
8 been decades of permitting already in the South Coast
9 that a statement of basis isn't necessary. And I'm a
10 little confused by that, because the purpose of a
11 statement of basis is to have the permitting authority
12 inform the public, the source, and EPA of the factual
13 and legal basis for each of their permit conditions. So
14 I mean, simply because there have been lots of permits
15 in the past, that doesn't to me at all eliminate the
16 need for the permitting authority to explain the basis
17 of their conditions. And, in fact, if some of the
18 conditions are coming from permits issued a long time
19 ago, then it would be very, very helpful for people to
20 have this as sort of a guide and a explanation. So I
21 just wanted you to clarify why you think that a
22 statement of basis isn't needed in your area.

23 MR. NAZEMI: Sure. I apologize. I had to cut
24 through my testimony quickly. But in South Coast, our
25 Title V permits have conditions that are all tagged with

1 the applicable requirement and origin of the rule that
2 actually imposed that requirement on the permit. So if
3 you look at our permits, there is a clear-cut
4 explanation for where each legal basis for each permit
5 condition is. And we feel that the resources to now
6 rewrite the statement of basis to explain what that is
7 can be better used in trying to have better emission
8 reduction programming in place.

9 MS. POWELL: If I can just follow up, in the
10 Title V regulations everybody is required to put the
11 legal source of the requirement in the permit.
12 Everybody does it. But you still need a factual basis.
13 And certainly there are circumstances that your facility
14 -- they do or don't operate a particular kind of
15 equipment, but there are reasons why you decide
16 something is applicable. It's different from just
17 saying the source of it. So are you suggesting that in
18 your statements -- I assume you are preparing statements
19 of basis of some kind right now. Are you saying that
20 they only just repeat the legal source of the
21 requirement but don't actually explain the factual
22 basis?

23 MR. NAZEMI: I think we have a difference of
24 opinion about this statement of basis; and we are
25 working with Region 9 in terms of what is absolutely

1 required to be included in a Title V permit.

2 Again, we feel that having decades of
3 permitting and having requirements starting before the
4 Clean Air Act and new source review program came into
5 effect for new source review has quite a lot of basis
6 for where those requirements come from; and reiterating
7 40-year-old requirements or 10-year-old requirements or
8 one-year-old requirements in the permit does not add a
9 lot more clarity. It just adds more extensive resource
10 drain to the permit.

11 MR. HARNETT: Last question, Verena Owen.

12 MS. OWEN: Hi. I feel like, although I don't
13 know anybody on the South Coast, I have to defend a
14 little bit the people on the South Coast. But you said
15 that you have only three percent of public participation
16 and public comment on Title V permitting. I think
17 that's a very respectable number, really. Coming from
18 Illinois, really, that's a good number.

19 MR. NAZEMI: I appreciate that.

20 MS. OWEN: I hope you take it back to the
21 folks and just encourage them a little more.

22 You said that at your town hall meetings that
23 there's sometimes issues that don't fall within the
24 Title V discussion or renew process. What do you offer
25 folks to make them take notice? I know it's a little

1 bit out of what we should be discussing, but I'm just
2 curious.

3 MR. NAZEMI: Well, what we typically run
4 across when we go to our town hall meetings -- and by
5 the way these are meetings held by our executive
6 staff -- and what we find out is that the community has
7 specific concerns about a source or number of sources
8 within their community. A lot of them don't even relate
9 to a Title V source. It may be a rail yard where they
10 leave their locomotives running, smoking the
11 neighborhood, creating noise and pollution in the
12 neighborhood.

13 What we typically offer is we try to go in
14 with a strong compliance and enforcement program to
15 identify whether or not the source that the community is
16 concerned with has any noncompliance -- specific
17 noncompliance -- issues situated, such as nuisance or
18 other types of maybe fugitive dust that transports
19 beyond the property line and deposits on the community
20 properties. And oftentimes what we do is, through our
21 enforcement program, we are able to provide some relief
22 to the community by identifying sources that are out of
23 compliance or that are creating a nuisance.

24 A lot of times we also found out that
25 community members don't know how to report those -- such

1 as air pollution complaints to the agency, even though
2 we feel like we have done a lot of outreach. When you
3 tell them, "All you have to do is call 1-800-CUTSMOG 24
4 hours day," they say, "Oh well. We didn't know that."

5 So there is a lot of education that also takes
6 place at these town hall meetings. But there are --
7 there are favorable outcomes to the community that comes
8 out of these town hall meetings. But they're mainly
9 through an enforcement program, not through changing a
10 Title V permit.

11 MS. OWEN: Thank you.

12 MR. HARNETT: Thank you very much.

13 Next speaker is Bradley Angel from Greenaction
14 for Health and Environmental Justice.

15 MR. ANGEL: Good afternoon. My name is
16 Bradley Angel; and I'm the director of Greenaction for
17 Health and Environmental Justice. And our organization
18 is based here in San Francisco, but we are working with
19 dozens of urban and rural, desert and indigenous
20 communities around the West and across this country,
21 many of whom have been dealing with Title V issues over
22 a number of years.

23 Before I start, I want to, if I may, with all
24 due respect, point out a problem, which is the
25 demographics of this Task Force. Title V decisions

1 disproportionately affect low-income, people-of-color
2 communities across this country. Need I say more?
3 Except that those communities are not adequately
4 represented in this Task Force.

5 Having said that, I believe that Title V can
6 be helpful and has been helpful, but maybe not in the
7 way that many of you, particularly in government and
8 industry, think about it. But I think in terms of
9 increasing community awareness and increasing public
10 participation, it can and has been, in some instances
11 been helpful.

12 But public participation doesn't just mean you
13 have a process and you advertise it on the obituary page
14 of a newspaper. It means that you actually notify the
15 community. It means that you actually notify them in
16 the language spoken by the community impacted by the
17 facility for which a decision is being made. And it
18 could be helpful if the input from the community is
19 actually listened to and incorporated into a decision.
20 Our experience is that, particularly with the latter,
21 that never happens. And, in fact, the public
22 participation mandate of Title V in the Clean Air Act
23 has become a bad joke.

24 There's a fundamental problem that's also
25 evidenced on this green piece of paper, including

1 "Suggestions for Commenters." But it really goes to one
2 of the main problems, because the document you gave out
3 here asked the question, "Has the Title V program
4 improved citizen participation in air quality decisions
5 by involving the public in the issuance of permits?"

6 Well, I hate to break the news to some of you
7 government and industry folks, but under the Clean Air
8 Act, Title V, you actually have the opportunity to deny
9 a permit. But it's very conveniently forgotten.

10 When the Bay Area Air District and the U.S.
11 EPA and other air districts that we've dealt with talk
12 about the Title V process to the communities, including
13 in written notices in virtually every case, at least
14 until Greenaction finds out about it, the notice says,
15 you know, "Please come. There's a public comment period
16 on the issuance." But that's not what it's about. It's
17 about the decision is, can a company assure compliance?
18 And in the real world not every company can assure
19 compliance. And there are also other laws and policies
20 and mandates that need to be considered as part of a
21 permit evaluation.

22 I'd like to give examples. There was -- I'm
23 going to touch on three case studies very briefly.

24 No. 1: In the late 1990s there was here in
25 East Oakland, California, the Integrated Environmental

1 Systems Company -- was California's last commercial
2 incinerator of medical and some nonmedical waste. This
3 company had several hundred violations over the years.
4 They had even been rewarded, for 164 violations by the
5 air district, by being allowed to get a new -- two new
6 incinerators without public hearings or an EIR.

7 But we realized there was a Title V
8 requirement. And Greenaction and the community
9 coalitioned to force the air district to have a permit
10 process. The air district started by saying this was
11 about -- "Let's make it a better permit" -- "Let's" --
12 you know, "we're going to issue the permit."

13 We showed that the company could not assure
14 compliance to the point that Peter Hess from the air
15 district, who, I believe, testified here earlier this
16 morning, publicly stated that the air district at the
17 time had made a historic decision, which was to
18 tentatively issue a draft denial. And that's quoted,
19 probably, in the media. And it was based on the
20 company's historic and massive history of noncompliance.
21 They never could comply, and there was not a chance that
22 was going to happen.

23 Well, funny thing happened. I heard from a
24 high-ranking official in the air district that their
25 phone rang. And it was the U.S. EPA telling them, "You

1 can't do this. We can't deny a permit. Think of the
2 precedent." That's outrageous. So the air district sat
3 on their decision and sat on their decision. Finally,
4 IES closed -- a wise decision. But it was no thanks to
5 the regulators.

6 We stopped them from issuing the permit, so
7 they sat on it. And that's also a problem -- delays in
8 issuing decisions.

9 We also -- there's a severe problem because
10 the community and Greenaction raised the point that, in
11 making a permit decision, as an air district, you had --
12 and as a recipient of federal funds -- you cannot take
13 action that would have a discriminatory or
14 disproportionate impact in violation of Title VI of the
15 United States Civil Rights Act. We were told by the air
16 district that the Civil Rights Act had nothing to do
17 with their decision, as though this was -- the Bay Area
18 Air District was another country other than the United
19 States. And we had to remind them that the United
20 States Civil Rights actually applied in the Bay Area.
21 The U.S. EPA said, "We can't be -- we don't have to
22 follow the executive order on environmental justice. It
23 doesn't apply." The U.S. EPA clearly has a role in
24 Title V. It clearly does apply.

25 In West Oakland, there is the Red Star Yeast

1 Plant -- Lesaffre. We realized they had to get a Title
2 V permit to continue operating. Greenaction and the
3 community and many allies forced the air district to
4 start a permit process. This was a company that we
5 found out had been in violation of their emission
6 standard for acetaldehyde, a carcinogen -- and this
7 company is right next to homes -- bombarded by numerous
8 pollution sources. They -- we found out in this process
9 that, no thanks to the air district, that they were in
10 constant -- for decades -- violation -- or for many
11 years -- in violation of their emission standards about
12 carcinogens and noxious odors. They admitted -- and the
13 air district admitted -- there was no chance they would
14 come into compliance for at least a year.

15 Yet -- and they had been in violation for
16 decades. Yet the air district wanted to issue a permit.
17 Ditto. At the same time, claiming that civil rights law
18 somehow miraculously didn't apply here in the Bay area.

19 Lastly, in San Francisco, a few miles from
20 where we are sitting now, is an outdated, unnecessary,
21 and terribly polluted power plant -- the PG&E Hunters
22 Point power plant in a low-income community of color,
23 like the others I've mentioned.

24 The air district said from the start they were
25 going to issue a permit. They made the outrageous claim

1 that the air was the same in Bayview/Hunters Point, like
2 in Marin County, which was laughable. In their
3 statement of basis for the Title V permit they said
4 there had been no complaints, which at the hearing drew
5 a roar from the community. And the air district stood
6 up and said, "Well, nobody called our 1-800-333-ODOR
7 number, so there's no complaints." Very convenient,
8 except nobody in the community had ever been told about
9 the very existence of that number.

10 So you could have self-fulfilling prophecies
11 here. They claimed that the air -- the wind direction
12 is constantly out into the Bay and not into the
13 community. Well, gee, that's funny to the residents,
14 who have this plume hanging over their homes every day.
15 There is also -- PG&E was allowed -- they didn't put
16 their permit application for renewal in until the very
17 last moment. And I believe it was even one of the last
18 days. And then the air district sat on the decision
19 because it was politically explosive.

20 And, once again, both the air district and
21 U.S. EPA made the false claim that environmental justice
22 and civil laws and mandates somehow miraculously do not
23 apply here in the United States to a permit decision
24 affecting the very populations who these laws and
25 mandates and executive orders were written and adopted

1 to protect.

2 So we have a real serious problem. Yes, Title
3 V is important; in a lot of ways it's not worth the
4 piece of paper it's written on.

5 And, again, just to summarize the two main
6 points: I think that we need to have -- now, everybody
7 loves to talk -- all these agencies love to talk about
8 their environmental justice policies nowadays. They're
9 not worth anything if people aren't notified and if
10 they're factual -- we're not just talking emotional
11 testimony. We're talking about facts. And if the facts
12 are ignored, if there's a predetermined decision, if the
13 U.S. EPA is calling up the air district and saying, "Oh,
14 my goodness, you can't possibly deny a permit," even if
15 they can never show compliance, we've got a serious
16 problem here.

17 And, just in closing, I just -- again, to
18 emphasize this issue about the mindset that says the
19 whole purpose is to issue the permits or to make better
20 permits or to combine regulations into a single permit.
21 The gentleman who testified before me from the air
22 district stated something to the effect of that
23 communities often have expectations that cannot be met
24 under this program. And he specifically said "including
25 closing facilities." Well, I hate to break the news to

1 him and any of you who might share that, but, again, if
2 a company cannot assure compliance, it's not an
3 unreasonable expectation to communities; it's how it
4 should work. Surprise us sometime. Thanks.

5 MR. HARNETT: Kelly Haragan.

6 MS. HARAGAN: Thanks.

7 I wondered if you could give us what
8 suggestions you have to address ways to increase public
9 participation, get notice out, to get access in the
10 communities to the kind of documents they need to review
11 to look at these permits. We heard a lot about
12 electronic access; and I know that might not work as
13 well in some communities. We've also heard that
14 newspaper notice isn't always the best thing and it's
15 very expensive.

16 So what do you think is the best way to get
17 notice out and materials into the community's hands that
18 they need for permits?

19 MR. ANGEL: Well, yeah. I think all the
20 things you mentioned are important. There should also
21 be, you know, real research into -- for each particular
22 community -- both languages, if there's multiple
23 languages spoken; what are the media that absolutely
24 reach out; enlisting the help of community organizations
25 in the impacted area.

1 But there's a whole 'nother piece of it.
2 Because a lot of times I've heard from residents -- and
3 this happened a lot around the IMGS incinerators, Red
4 Star, and also PG&E: Why bother participating if the
5 fix is in? If they're already saying -- and, as I
6 pointed out -- illegally saying that they automatically
7 have to issue a permit, because people are going to
8 participate in a process if the fix is already in and
9 your factual testimony is going to be ignored. So it's
10 both doing truly comprehensive outreach that works for a
11 particular community and having a transparent and
12 legitimate permit process where the decision is
13 absolutely based on the law and not just "Gee, how we
14 can help this polluter out," even though there's not a
15 chance they're going to comply.

16 MS. HARAGAN: Do you know -- do you think
17 providing more documents electronically on the Web is a
18 useful thing?

19 MR. ANGEL: I do. I think that's important.
20 But realize, again, that a lot of community folks --
21 particularly in the three case-examples I mentioned
22 briefly -- it wouldn't have helped a lot of the people
23 there, but it certainly is something; and it's easy
24 enough to do.

25 MR. HARNETT: Bob Palzer.

1 really recommend better public notice notification; and
2 meaningful, real public participation; and decisions
3 that are based on law, which means you can't violate
4 civil rights and that if a company cannot assure
5 compliance and really can't be brought into compliance,
6 like, real quick, they should not get a permit. People
7 will then have some willingness to take time out of
8 their busy day to participate. Otherwise, people are
9 going to use other avenues to, you know, redress their
10 grievances. But no thanks to regional air districts, in
11 many cases, and the EPA, people think these processes
12 are not meaningful. And we've actually had to say, "We
13 agree, but please come out anyhow to the hearing." And
14 fortunately, with some of those we have had success, no
15 thanks to the Title V process though.

16 MR. HARNETT: Verena Owen.

17 MS. OWEN: Hi. Thanks for coming. I just
18 want to assure you that at least some of us on the Task
19 Force have worked in the minority communities and heard
20 you when you said we have the same struggle what is
21 meaningful public participation.

22 I have a question, though. Have you ever
23 filed a petition asking EPA to object to a permit being
24 issued?

25 MR. ANGEL: Yes. Actually, there was a

1 petition written to the U.S. EPA Region 9 not that long
2 ago following up on the air district's issuance of the
3 Title V renewal for the PG&E power plant. And EPA --
4 and we pointed out the just total inaccuracies and flaws
5 and holes in the statement of basis that the air
6 district used. And our request for review was quite
7 quickly and uncharacteristically quickly rejected by the
8 EPA.

9 MS. OWEN: It was? We still have one pending,
10 so stay tuned.

11 MR. HARNETT: Marcie Keever.

12 MS. KEEVER: I just have a question about -- I
13 know you've done work in a lot of different areas of the
14 country, so I'm wondering how your experience has been
15 on kind of finding out about compliance problems at the
16 facilities. I know that the IES incinerator, for
17 example, it wasn't even the air district that issued the
18 violations to that facility. It was the state medical
19 waste board that had to come in and actually shut them
20 down for a while because of the pretty gross backlog of
21 medical waste that -- and they had a huge problem there.
22 But I'm wondering whether you've had trouble. What's
23 your experience in finding out about compliances?

24 MR. ANGEL: Well, I -- let me just correct
25 something you said. Actually, the air district itself

1 had issued -- there was handling violations for medical
2 waste at the IES, but actually the air district itself,
3 prior to the mid-'90s had, I believe, it was 164
4 violations; and there were dozens and dozens after. So
5 it was actually the air district itself.

6 You know, a lot of times people just don't
7 even hear about Title V processes, you know, that
8 there's a permit review going on. So, for example, we,
9 over the last few years, have started working with
10 residents in North Salt Lake City, Utah, where Stericycle
11 burns medical waste and some nonmedical waste. There's
12 never been a hearing on that facility, including under
13 Title V -- nothing. So people missed -- nobody in the
14 town was told. Maybe some notice went into City Hall,
15 but it was filed away. But none of the residents were
16 told that there was an opportunity to have a say. So
17 it's been mixed. We watchdog it, as others do, as we
18 can.

19 MR. HARNETT: Thank you very much.

20 MR. ANGEL: Thank you.

21 MR. HARNETT: Could we do one more speaker
22 before our break, if people can hold in there?

23 The next two speakers are from the
24 Environmental Law and Justice Clinic at Golden Gate
25 University -- Kerri Bandics and Roger Lin. You can pull

1 an extra chair up. We can squeeze you in. We did this
2 earlier.

3 MS. BANDICS: Thank you and good afternoon.
4 My name is Kerri Bandics. I'm a student clinician at
5 the Golden Gate University School of Law, Environmental
6 Law and Justice Clinic. I'm here testifying today on
7 behalf of Our Children's Earth Foundation.

8 Our clinic has represented OCE and other
9 community and environmental groups in Title V matters.
10 I'm going to draw on our representation of these groups
11 in order to discuss positive experiences with the Title
12 V program in the Bay Area.

13 I want to emphasize one key way that Title V
14 has been effective. Title V is providing a vital forum
15 for communities affected by air pollution and raise
16 concerns and ultimately enforce the Clean Air Act. And
17 I'm going to provide three examples for this.

18 The first example involves a group called the
19 Chester Street Block Club Association, a grassroots
20 community group located in West Oakland. Because the
21 Title V renewal process is a public process provided for
22 public participation, Chester Street was able to
23 identify and resolve a problem with air pollution in
24 their community.

25 For years a yeast plant in West Oakland had

1 operated without complying with limits on its VOC
2 emissions. This is a plant whose operation caused West
3 Oakland residents to complain of nosebleeds; burning of
4 the nose, eyes, and throat; and difficulty breathing.
5 Despite the fact that VOCs are subject to emission
6 limits, when the plant's Title V permit was up for
7 renewal, the Bay Area Air Quality Management District
8 issued a draft permit that would have exempted the plant
9 from complying with those limits. Chester Street
10 participated in the permit renewal process; and its
11 comments led the district to acknowledge that the
12 exemption did not apply to the plant. As a result, any
13 renewed permit would have placed limits on the plant's
14 harmful VOC emissions.

15 In this example, the Title V permit renewal
16 process provided Chester Street with a forum where it
17 could participate and challenge the improper exemption
18 in the yeast plant's permit. And the result has been
19 improved air quality for the residents of West Oakland.

20 As another example, OCE has been involved with
21 the public comment process in order to assure that Bay
22 Area refineries have permits that comply with Title V.
23 This process is ongoing, and it has proven challenging.
24 But in spite of the challenges, OCE has made progress.
25 Prior to the first round of public comments, the permit

1 for at least one refinery contained no requirements for
2 its cooling towers. Nor did the facility identify
3 polluting towers as emission units. OCE commented that
4 cooling towers posed a problem with VOC emissions and
5 that cooling towers should be subject to VOC limits
6 contained in the SIP.

7 Once OCE called the issue to the air
8 district's attention, the district acknowledged that the
9 cooling towers are subject to the SIP rule. It also
10 required all refineries to submit permit applications
11 for cooling towers.

12 This may seem like a small step, but it was a
13 victory just the same. Cooling towers that were
14 originally listed as exempt from permit requirements
15 were added to the permits and were made subject to VOC
16 limitations. In this example, OCE's participation in
17 the Title V permit process accomplished what Congress
18 envisioned for Title V -- that the permits accurately
19 reflect all limits that apply to air pollution sources.

20 A final example involves enforcement action by
21 Our Children's Earth against Mirant Potrero, a power
22 plant located in San Francisco. During the claimed
23 energy crisis, Mirant, EPA, and the local air district
24 agreed that Mirant could operate its peakers in
25 violation of its Title V permit limits in order to

1 produce more energy. Peakers burn distillate fuel oil,
2 which results in high emissions of nitrogen oxide,
3 particulate matter, and chemicals that can cause nerve
4 damage.

5 As a result of the agreement, Mirant exceeded
6 its Title V permit limits on multiple occasions --
7 multiple occasions, excuse me -- over a period of
8 several weeks. These violations occurred in the Bay
9 View/Hunters Point communities, areas already
10 overburdened with air pollution. In coalition with
11 other community groups and the City of San Francisco,
12 OCE filed suit against Mirant for its violations. The
13 parties promptly settled the lawsuit, with Mirant
14 agreeing to comply with its permit conditions and to pay
15 pollution mitigation costs. In this example, OCE's
16 action demonstrates that an informed public helps ensure
17 that sources and government agencies are held
18 accountable for illegal air pollution.

19 In sum, I hope that the examples I've provided
20 demonstrate that Title V is accomplishing in the Bay
21 Area what Congress envisioned for Title V; and that is
22 improved enforcement of the Clean Air Act.

23 My colleague will now discuss some areas in
24 which Title V needs improvement.

25 MR. LIN: Good afternoon. My name is Roger

1 Lin; and I'm also a student clinician at the
2 Environmental Law and Justice Clinic.

3 On behalf of our client Our Children's Earth,
4 we recommend that Title V be improved by providing more
5 accurate and up-to-date information to the public. This
6 can be achieved in four ways.

7 Firstly, the need for basic information. Due
8 to its highly technical nature, it's often extremely
9 difficult for members of the public to effectively
10 participate in Title V permit proceedings. Public
11 review has often lacked the basic information about
12 facility operations, processes, and equipment. This
13 makes it all difficult to identify source functions and
14 all emissions points. In their permit applications,
15 facilities should be required to include process flow
16 diagrams, identifying all emissions points. Communities
17 need this basic information to effectively participate
18 in permit proceedings.

19 Secondly, the use of the compliance schedule
20 requirement. In the clinic's experience, facilities
21 rarely if ever identify noncompliance in their permit
22 applications. As a result, facilities often repeatedly
23 violate the Clean Air Act, often at the same source and
24 without a compliance schedule.

25 For instance, Our Children's Earth, upon

1 reviewing the permit application for the Tesoro refinery
2 near Martinez, discovered there is a significant
3 question as to whether certain sources at the facility
4 are complying with the Clean Air Act. According to air
5 district records, in the past two years the refinery has
6 experienced numerous violations, hundreds of episodes,
7 seven serious incidents, and even two fires in one
8 month. Three of these seven incidents involved the same
9 boiler, which failed last year on July 4th and on
10 October 30th and on January 12th of this year. Each
11 time, the boiler emitted a black plume of coke
12 particulates, other pollutants, and steam. Each
13 instance prompted emergency warnings to neighboring
14 community. In the past two years, this same boiler is
15 responsible for at least 13 violations and 20 other
16 episodes.

17 According to a recent news report, as of a
18 week ago, children at the nearby elementary school were
19 still unable to play outdoors for recess since the
20 January 12 incident.

21 Without compliance schedules, such problems
22 will continue to plague communities and further burden
23 communities that are already overburdened by pollution.

24 Third, improved monitoring frequency. Without
25 adequate monitoring requirements, neither the public nor

1 agencies can evaluate and enforce compliance. The Bay
2 Area Air District has created a presumption of adequate
3 monitoring. Adequate monitoring is presumed unless
4 conclusive evidence shows that existing practices are
5 insufficient. Neither Title V nor the district
6 regulations authorize this presumption. This flawed
7 presumption continually allows inadequate monitoring to
8 detect noncompliance.

9 For instance, the Tesoro refinery's permit
10 only requires a hasty monitoring for determined flaring
11 events -- those that last longer than 15 minutes. As a
12 result, flaring events lasting less than 15 minutes may
13 well violate opacity levels but will not be subject to
14 monitoring. Although not a federally recognized
15 exception, under the district's unauthorized
16 presumption, this short-term flare exemption goes
17 unnoticed. Such minimal glances at compliance are
18 inadequate for the community to truly know if the
19 facility is operating in compliance on a day-to-day
20 basis.

21 Finally, the need for up-to-date information.
22 Permitting authorities should make timely requests for
23 all relevant materials to evaluate permit applications.
24 When a facility fails to supplement outdated or
25 incomplete information, the public cannot participate

1 meaningfully simply attending hearings with an
2 incomplete picture of the facility's compliance status.

3 For example, the Tesoro refinery submitted
4 information for its permit application to the air
5 district in 1996. Over eight years later and after
6 issuing a final permit, the district is just now in the
7 process of attempting to determine whether certain basic
8 requirements apply to facility. The air district has
9 thus created a flawed permit that relied on outdated
10 information and subsequently fails to assure compliance
11 with all applicable requirements. This renders the
12 public participation process enormously difficult. To
13 cure this deficiency, the permitting agency must
14 implement Title V's requirement that the facilities
15 update their applications.

16 In conclusion, to adequately meet the goals of
17 Title V, compliance schedules must be made enforceable
18 and monitoring must be improved to assure compliance
19 with all applicable requirements. In addition,
20 facilities must provide permitting agencies with more
21 complete and up-to-date information and should also
22 provide the public with basic information to facilitate
23 public participation.

24 Thank you.

25 MR. HARNETT: Bob Palzer.

1 MR. PALZER: Thank you, Kerri and Roger, for
2 coming here. It's always good to hear success stories.
3 And I'm glad you were able to assess some specific
4 examples.

5 I want to ask Roger, you made a number of
6 suggestions -- things that should be improved. Can you
7 suggest how to implement them or how this committee
8 might be able to have some impact on that process?

9 MR. LIN: Well, I addressed four basic
10 improvements. Would you like me to suggest one method
11 for each one?

12 MR. PALZER: As you like.

13 MR. LIN: Well, firstly the need for basic
14 information. We believe that public -- the public
15 should be given just basic information on where
16 emissions are coming from, where they are going so the
17 communities can adequately know what is going on in
18 their backyard.

19 MR. PALZER: But how to get information to be
20 disseminated? Do you have any suggestions? You can
21 produce information but if doesn't get in the right
22 hands, it's not that effective. Do you have any
23 suggestions?

24 MR. LIN: We have more suggestions to come in
25 our written comments as of now. But one thing I can

1 suggest that can be done straightaway is the presumption
2 that the Bay Area Air Quality Management District does
3 have inadequacy of monitoring -- or adequacy, rather --
4 by simply removing that presumption. And that is
5 already a way to start in improving Title V.

6 MR. PALZER: Thank you.

7 MR. HARNETT: Kelly Haragan.

8 MS. HARAGAN: Hi. Thanks for coming today.

9 I have a question about the public hearings on
10 Title V permits and what your experience has been and
11 the clinic's experience has been in asking for hearings,
12 whether those are generally granted or are they denied
13 and what the reasons are, if they are denied.

14 MS. BANDICS: I actually may be able to answer
15 that question. I know you guys don't have the full
16 history. Our experience in the past has been that when
17 a facility is, I think, clearly a problem in the
18 community, like the Red Star Yeast facility or the
19 refinery, that hearings are -- the air district just
20 goes ahead and holds a hearing. But when that's not the
21 case and the community -- maybe a single member of
22 community or a public community member -- asks for a
23 hearing, the standard is a lot higher; and public
24 hearings haven't been granted as a matter of course in
25 the Bay Area.

1 MR. HARNETT: Verena Owen.

2 MS. OWEN: Hi. Thanks for coming.

3 First of all, there are no small victories.
4 They are all victories, so celebrate them equally hard.

5 Second, Kerri, I believe you said that when
6 you were involved in the Title V proceedings on the
7 refinery, you found the process challenging, could you
8 just briefly give me one example -- maybe just from your
9 own personal view point -- what could have been done to
10 make this easier.

11 MS. BANDICS: To be honest, I don't have a lot
12 of experience on my own with the refinery petitions. I
13 do know that one issue, at least, that we are still
14 looking at now is the fact that it's been so many years
15 since the initial permits were to be issued and that,
16 even now, neither the facilities nor the public --
17 anybody interested -- has a clear idea of what's in the
18 permits and what should be in the permits. So it's sort
19 of a moving target.

20 I guess my answer is that I don't have an
21 answer.

22 MS. OWEN: I think that was a very good
23 answer.

24 MS. BANDICS: Well, thank you.

25 MR. HARNETT: Adan Schwartz.

1 MR. SCHWARTZ: I think this question is
2 probably for Roger. I work for the air district that is
3 not putting scheduled compliance in its permits at the
4 appropriate frequency. And I was wondering, when you're
5 reviewing records about violations and you had mentioned
6 a situation where there's been multiple violations at a
7 particular unit over a period of time, what kind of
8 information are you looking at? Are you looking at
9 information that lets you know about the causes of those
10 violations or how the events occurred? Or, if not,
11 would more information be helpful to you in deciding
12 whether a schedule of compliance is appropriate?

13 MR. LIN: I personally go over the information
14 from Our Children's Earth petition -- the Tesoro
15 refinery. And I don't know from where Our Children's
16 Earth originally got that information. But maybe Marcie
17 Keever would.

18 MR. SCHWARTZ: Well, not so much from where,
19 but my question goes to the kind of information you're
20 looking at and whether it indicated, for instance, the
21 causes of the violations.

22 MS. KEEVER: Well, I can answer that.

23 [PARTIES TALKING OVER EACH
24 OTHER.]

25 MS. KEEVER: I think we have had information

1 from the air district, which, I think you know because
2 we call you up and say, "Hey, Adan, give us all your
3 records; we want everything." And then we decide what
4 we've going to give back. We're looking at episodes and
5 the notices of violations and things that are an issue
6 to the refineries by the air district and all the air
7 district's records, depending on what isn't a trade
8 secret -- all those issues. But I think that it would
9 be -- when we bring those issues up to the air district
10 and say, "It seems as though there's a pattern of
11 violations here at this facility. They've had this many
12 problems at this boiler." And it kind of comes back and
13 the air district brings it back to us and says that's
14 not a pattern. So maybe we need more information from
15 you about what the air district would consider a pattern
16 and would require a schedule of compliance. And I guess
17 we talked about that earlier, but that's usually the way
18 it goes.

19 And correct me if I'm wrong, Roger.

20 MR. LIN: Sounds good to me.

21 MR. HARNETT: Thank you very much.

22 MS. BANDICS: Thank you.

23 MR. HARNETT: We will take a break now for 20
24 minutes and come back around 3:25.

25 [A BREAK WAS TAKEN FROM 3:03 TO

1 enough to be in the initial group of companies that had
2 their Title V permits issued. And we've been living
3 with our permits -- or living with the program -- living
4 with the permits for six to seven years, living with the
5 program for nine or ten years. So we've got quite a bit
6 of experience in going through the renewal process,
7 coming up on the second time to go through the renewal
8 process.

9 The natural gas industry itself is a very
10 dynamic industry. Many of our members compete on a
11 national scale; and, within our industry, we have to
12 respond to fairly dynamic market conditions that are
13 changing very rapidly. And, as a result, an effective
14 and efficient Title V program is really essential for
15 the GPA member companies to -- to meet the needs of the
16 industry.

17 The first thing I'd really like to touch on is
18 talk about how the Title V program has changed the GPA
19 member company practices. GPA membership, as you would
20 expect, we're committed to compliance with the federal
21 Clean Air Act requirements. And due, in a large part,
22 to the Title V program, our member companies
23 consistently report that overall compliance has improved
24 over the last five to six to seven years. One of the
25 keys to the improvement that we have seen has really

1 been the shift of accountability for environmental
2 compliance to operations organizations within our
3 companies. Senior operations manager typically fill the
4 role of the responsible official. And they take that
5 role very seriously. Member companies have implemented
6 some solid processes to manage Title V compliance.
7 Examples of that include fairly complex database systems
8 to manage the requirements and rigorous internal
9 processes that ensure our responsible officials can have
10 some confidence that we are meeting our obligations.

11 You know, significantly, the complex
12 regulatory structure of the Title V program has been a
13 strong encouragement to companies to voluntarily install
14 emission reduction controls to reduce emission levels
15 below the Title V thresholds. And that -- that has
16 happened significantly in the Gas Processors Association
17 membership.

18 Now, all of these changes and others have
19 really fundamentally altered the behavior of our
20 companies in a positive manner. And the result is
21 really better-protected and healthier environment as a
22 result of Title V. These improvements that I've
23 attributed to Title V program have come at a significant
24 cost to the industry. And while GPA acknowledges the
25 benefit of that investment, we believe that existing

1 requirements of the program will also continue to result
2 in improvements in environmental compliance and
3 environmental performance.

4 As this Title V process review moves along,
5 GPA members respectfully request that the Task Force and
6 the EPA ensure that any recommendations for additional
7 requirements are clear and justifiable and the cost of
8 the additional requirements are balanced with the
9 environmental protection that that might derive.

10 Let me touch a little bit on some permitting
11 issues. Most of the states where we operate have
12 separate NSR and Title V programs. But we also operate
13 in a few states with a combined program. And, you know,
14 in both cases the time it takes to issue Title V permits
15 for the GPA membership is a concern and needs some
16 improvement. In states with combined permit programs,
17 the delays in permit issuance commonly result in project
18 delays, even for projects with emission reductions. And
19 this, of course, leads to lost revenue and higher costs
20 for the applicant.

21 In states with separate permit programs, the
22 lengthy process time for a Title V permit often results
23 in confusion as well as increased costs. And that can
24 result from several things -- multiple changes to that
25 NSR permit while we're waiting on that Title V permit to

1 get issued; reassignment of the permit writers;
2 reassignment of applicant's staff. But the
3 inefficiencies created by all those delays in the
4 permitting process really drive the cost of program both
5 for the applicant as well as the agencies.

6 For GPA member companies that hold Title V
7 permits across multiple states, consistency in the
8 program and the permit is important for us to build
9 effective compliance management systems within our
10 companies.

11 Examples of -- just a couple of examples of
12 the inconsistencies reported by GPA members include, in
13 states with separate -- separate permitting programs,
14 inconsistencies in that underlying NSR permit while
15 we're waiting on the Title V permit to be issued, can
16 create, if we were to implement the changes allowed in
17 that NSR permit, if we implement those, there's cases
18 where the inconsistency between those permits would
19 create Title V deviations and create the requirement for
20 us to report those deviations.

21 So, in some cases -- in many cases -- GPA
22 member companies do not implement those allowed changes
23 to their facilities because they don't want to create
24 Title V deviations. GPA members routinely experience,
25 even within a single state, inconsistency among permit

1 writers. And in some of the worst cases, that creates
2 really impossible compliance situations for the permit
3 holder.

4 Now, with regards to renewals, GPA member
5 companies are experiencing, as we've heard from several
6 commenters, I think, the inclusion of new monitoring and
7 recordkeeping requirements during the renewal process.
8 And, today, that's also creeping into the initial
9 issuance of some of those permits. But those
10 requirements are not necessarily contained in the
11 existing applicable requirements. And GPA would also
12 support an abbreviated renewal process that doesn't
13 require submission of a full permit application,
14 especially when there's not been any significant changes
15 to the sources or to the applicable requirements.

16 Let me talk a little bit about monitoring and
17 reporting a little bit more. Title V has certainly
18 increased -- significantly increased the amount of
19 monitoring that we're performing at major sources. And
20 with regards to monitoring, GPA member companies report
21 that parametric monitoring that is making its way into
22 permits, in some states are excessive and don't
23 necessarily result in better demonstration of
24 compliance. In fact, some of that parametric
25 monitoring, where you're looking at operating

1 conditions, can create confusion because there can be
2 conflicted data in there on whether you're in compliance
3 or out of compliance. We feel that applicants should be
4 allowed to select a parameter that most reasonably
5 confirms compliance. And, in addition, on insignificant
6 sources, we don't believe there should be any
7 monitoring, recordkeeping, or reporting requirements on
8 insignificant sources.

9 GPA does believe that the existing reporting
10 frequency is appropriate. The practical effect of
11 preparing and submitting semi-annual and annual
12 compliance certifications in deviation reports is that
13 companies have to implement systems within the companies
14 that ensure compliance every day. So additional
15 reporting and more frequent reporting of that would not
16 necessarily drive better compliance.

17 One other point: GPA believes that, with
18 regards to the responsible official's signature on
19 documents, we think that's appropriate for semi-annual
20 deviation reports, annual certifications, permit
21 applications; but we don't believe that a responsible
22 official should be required to sign routine reports and
23 correspondence, such as new source performance reports,
24 emission inventories, or emission event reports.

25 And, finally, let me talk a little bit about

1 enforcement. GPA members consistently report that the
2 enforcement posture of agencies has changed as a result
3 of Title V and EPA enforcement policies. And GPA
4 members feel strongly that initiation of enforcement
5 should take into account whether human health or the
6 environment has been harmed, take into account the
7 severity of the noncompliance, whether the violation was
8 self-reported, and the extent and timeliness of the
9 corrective actions.

10 And from a regulated entity viewpoint, it
11 seems that agency staff, in some cases, aren't real sure
12 what to do with Title V deviations. I personally heard
13 senior EPA enforcement staff comment that they feel it's
14 impossible for a Title V facility to operate without
15 deviations; and so there's an expectation that there
16 should be deviations on its reports. Well, in fact,
17 that is okay; and it actually does happen. And when
18 that does occur it's probably a testament to the program
19 and the success of the program rather than an indication
20 that the companies are failing to report.

21 On the other hand, when deviations are
22 reported, the regulatory agency should not use that as
23 an opportunity to automatically initiate enforcement.

24 GPA member companies -- kind of in summary --
25 GPA member companies have been in position over the last

1 nine or ten years to experience the evolution of
2 probably one of the most significant Clean Air Act
3 programs ever implemented. We have encountered frequent
4 changes in interpretations -- regulatory
5 interpretations; applicability determinations;
6 administrative process; and another agency policies.
7 And of particular concern to the GPA members has been
8 the inclination of agencies to initiate enforcement for
9 decisions during this evolution that were made in good
10 faith. And in some cases those decisions were agreed to
11 by or made by agency personnel.

12 That's all I have.

13 MR. HARNETT: Thank you.

14 Bob Palzer.

15 MR. PALZER: Thank you for coming and talking
16 with us today. Let me play devil's advocate here. You
17 mentioned making voluntary reductions beyond what the
18 requirements are. In any way are you using those either
19 as credits for future use at a facility or selling them
20 to other sources?

21 MR. ADMIRE: You know -- no. Most of our --
22 maybe in some cases. I wouldn't say that is universally
23 a "no" answer. But generally our facilities are fairly
24 remote. They're not in nonattainment areas where
25 there's a trading and banking sort of program going on.

1 And we are making those reductions specifically to get
2 out from under Title V.

3 MR. PALZER: Let me ask you another question;
4 and I'll preface it.

5 I believe you said that you didn't think
6 parametric monitoring should necessarily be done on
7 insignificant sources. And I guess sometimes what seems
8 to be insignificant isn't necessarily so. And I could
9 think of some cases in Oregon with wood-product
10 facilities where there were precedents and they were
11 considered to have zero particulate emissions; and
12 therefore there were no requirements. And, after some
13 testing, we find out they're the biggest emission source
14 in those facilities. So how do you determine what is a
15 minor source that doesn't need tending to versus these
16 things that might look to be insignificant and turn out
17 not to be.

18 MR. ADMIRE: Yeah. There's going to be
19 exceptions to any rule you lay down like that. I think
20 it's incumbent upon the applicant and the agency to
21 really do a thorough enough scrubbing during the
22 application process that everybody understands and
23 recognizes what emissions might be coming from all those
24 different sources. And I know from experience -- and
25 whether Title V guides us or not -- I know from

1 experience within our industry as you become more
2 knowledgeable and everybody becomes more aware of the
3 air emissions -- and probably Title V is driving that
4 within a company. And within an industry, you find
5 emission sources that maybe you hadn't recognized for
6 the last 20 or 30 years. So, to that extent, Title V is
7 doing its job. It's making everybody focus on the air
8 emissions, making everybody focus on making sure we have
9 it all scrubbed and we understand what's going on.
10 Well, the end result of that is you're going to find
11 problems; and that's okay. And we deal with those as we
12 find them.

13 MR. HARNETT: Bernie Paul.

14 MR. PAUL: Thank you.

15 I'd like for you to elaborate on a couple of
16 comments that you made. The first one: You described a
17 situation where sources were hesitant to implement
18 different changes in their permits because they were
19 afraid it would trigger deviations on that. So if you
20 could, elaborate on that.

21 And the other thing I would like you to
22 elaborate on is, you've noted that you think the various
23 agencies' enforcement posture have changed. And if
24 could provide some examples of that.

25 MR. ADMIRE: Sure, sure.

1 With regards to your first question, let me
2 just give you an example from one of the member
3 companies. And that they had a state with a separate
4 NSR and Title V program. And their Title V permit
5 actually had a throughput limit for a facility -- gas
6 throughput limit. And they needed to make a change.
7 And so they made the change in the underlying NSR permit
8 to increase the throughput.

9 And so you've got an NSR permit that says it's
10 okay to make that change, but you've got a Title V
11 permit that says that if you exceed this throughput
12 limit, you've got a deviation. And they chose not to
13 make that change until they got the Title V permit.

14 And that goes back to the main focus of that
15 comment was the fact that the timing -- the time it
16 takes to get Title V permits issued needs to be fixed in
17 all cases. And it took them months -- I'm not sure in
18 that case how long it took, but potentially months or a
19 year to get that Title V permit issued.

20 And the second question with regards to
21 enforcement: What we're seeing is -- is the states -- I
22 don't feel -- I don't think they feel like they have any
23 discretion on enforcement anymore. And so they enforce
24 on what normally would have been administrative issues
25 in the past become high-priority violations and

1 automatic enforcement anymore -- simple paperwork
2 violations. And I think that's the change in posture
3 that I think I'm talking about.

4 MR. HARNETT: Michael Ling.

5 MR. LING: You said that you didn't think
6 monitoring should be required for insignificant emission
7 units. That's something we have heard from other folks
8 as well. And, given that they are only included in the
9 permit because they have the typical requirement on
10 them, then what would be the basis for your certifying
11 compliance with those requirements and for demonstrating
12 that to EPA or to the public or the state if they
13 weren't monitoring or at least some kind of
14 recordkeeping about this?

15 MR. ADMIRE: Some of the -- some states just
16 list the insignificant sources in the permit, just to
17 have them listed; and there's no underlying monitoring
18 or recordkeeping or reporting requirements associated
19 with those sources. But what we're seeing is, in the
20 process of doing -- in our case -- typically doing
21 renewals now, they are asking for monitoring on those
22 insignificant sources. It's stuff like probably the --
23 within the pendulum swing on one side, one company was
24 required to actually track the number of welding rods
25 they used so they could calculate the emissions from the

1 welding operation. I mean, this is a facility that
2 doesn't do a lot of welding. And they felt like that
3 was excessive.

4 In other cases, tracking on a daily basis
5 throughput through day tanks of lube oil, which would be
6 an insignificant source; and they thought that was an
7 excessive requirement as well. No underlying
8 requirements there that drive that recordkeeping or
9 reporting.

10 MR. HARNETT: Mike Wood.

11 MR. WOOD: Thank you for your testimony.

12 Just -- you made a comment about consistency
13 leading to more effective compliance mechanisms. Then
14 later you said something about inconsistency between the
15 permit writers leading to confusion about the
16 compliance. Could you elaborate on that a little bit?

17 MR. ADMIRE: Yeah. You know, some of the
18 companies -- GPA member companies are large; and
19 probably the largest member company has maybe 175 Title
20 V air permits that they deal with in seven or eight
21 different states. And when you're dealing with that
22 many Title V permits, in order to build -- for a company
23 to build an effective compliance-management system, they
24 have to be able to count on some consistency between not
25 just between states but within a state. If you develop

1 processes within a company that size that's dealing with
2 that many permits, you need to be able to know that you
3 can put a process in place and that generally everybody
4 in the state of, say, Texas is going to be able to count
5 on that process to ensure compliance at their facility.
6 And when that inconsistency starts creeping into the
7 system, it's difficult to count on that system to catch
8 all of the bits and pieces that fall outside of what
9 normally you would expect.

10 MR. WOOD: Thank you.

11 MR. HARNETT: Shannon Broome.

12 MS. BROOME: I just had a quick clarifying
13 question. When you were talking, you might have been
14 using a little shorthand. You were talking about permit
15 issuance. Were you really meaning permit modification
16 issuance? Because you were talking about the NSR and
17 the Title V interface and how it was a problem for the
18 Title V permit. But if you didn't have a Title V permit
19 yet, it wouldn't be a problem, right? It was to get
20 when you're -- to get the piece and rolling it into an
21 already issued Title V.

22 MR. ADMIRE: Right. Right. So modification
23 of the already issued Title V.

24 MS. BROOME: Right. Yeah. You are just
25 trying fit in your ten minutes.

1 MR. ADMIRE: Sorry.

2 MS. BROOME: Okay. I wanted to make sure I
3 understood. So your concern is related to the
4 modification of the Title V after you modified an
5 underlying NSP permit --

6 MR. ADMIRE: Right.

7 MS. BROOME: -- similar to what some other
8 people talked about.

9 MR. ADMIRE: Right.

10 MR. SCHWARTZ: Okay. Thank you.

11 MR. HARNETT: Don van der Vaart.

12 MR. VAN DER VAART: Do you distinguish between
13 enforcement and a violation and a fine? When you say
14 that states are not exercising discretion, is that on
15 the issuance of an NOV or on the issuance of an actual
16 fine?

17 MR. ADMIRE: Less discretion on issuance of an
18 NOV.

19 You know, they tend to shoot those NOVs out.
20 And in some states those typically turn into fines.
21 Some states, they don't. Depends on the enforcement
22 process in any particular state, but there's certainly
23 an increase in issuance of fines as well.

24 MR. HARNETT: Thank you very much.

25 Our next speaker is Chris Korleski of Honda.

1 MR. KORLESKI: I brought a PowerPoint
2 presentation, but I also brought hard copies. Is it all
3 right if I just pass those around?

4 MR. HARNETT: Sure.

5 MR. KORLESKI: I don't think I brought enough
6 for everybody though. There's more people here than I
7 anticipated.

8 MR. HARNETT: Just make sure that one of the
9 EPA people gets a copy for the record.

10 MR. KORLESKI: Okay.

11 Good afternoon, everybody. My name is Chris
12 Korleski. I'm a counsel for Honda of American
13 Manufacturing in Marysville, Ohio. We're that aspect of
14 the Honda Corporation -- sort of the Honda family of
15 corporations -- that builds cars and minivans and such
16 in Ohio. And the facilities that I'm familiar with are
17 all in Ohio. We have got three facilities that do
18 operate under Title V permits.

19 The other thing I want to say, just by way of
20 background is, I've been with Honda as a lawyer for
21 about nine years now. Prior to that, for eight years, I
22 was an assistant attorney-general in the Ohio
23 environmental enforcement office; and for three years I
24 supervised their enforcement program. So I come to this
25 with some perspective from both sides of the issue, both

1 the governmental side and the company side.

2 So with that, I want to whip through this as
3 quickly as I can. Honda -- we just got our Title V
4 permits, believe it or not, since we had a 1990 Clean
5 Air Act requiring that. Only in the last few months
6 have we received our final Title V's on our biggest
7 facilities. So this is still somewhat new to us. But
8 we can already see the one issue that we think is going
9 to be the greatest concern. And this is it right here.

10 On -- in a big facility like an auto
11 manufacturing plant, I can tell you that we make
12 frequent changes. We make changes all the time.

13 Now, the way it works in Ohio is, there's a
14 preconstruction permit program and then there's a Title
15 V program. So the fundamental concern that Honda has is
16 this: The ability to make a frequent change or
17 frequently changes quickly in a two-permit system when
18 first you got a PTI that includes all the relevant terms
19 and conditions and is issued after public notice and
20 comment. And you have a Title V permit which
21 essentially repeats all that when it folds it in to the
22 modification of the Title V permit. That's our biggest
23 concern.

24 I should emphasize that in Ohio PTIs that are
25 issued look very, very much like the Title V permit.

1 That's the way the state has gone. There's no annual
2 compliance certification in the PTI. But, other than
3 that, it looks very much like a Title V permit. So,
4 again, the way it works in Ohio -- and this is the
5 federal rules and the Ohio rules -- I think everyone
6 here knows that there is a provision for the use of
7 something called the APA, the Administrative Permit
8 Amendment, to incorporate NSR permits like Ohio's PTIs
9 into a Title V permit if -- and these are the two
10 criteria is the PTI procedure consistent with that of
11 the Title V permit modification procedure; and is the
12 PTI subject to compliance requirements substantially
13 equivalent to those required by the Title V permit
14 program? So in the federal and state rules themselves
15 there's already a vehicle which will allow you to do
16 this.

17 Now, the way it works is, under the APA -- the
18 Administrative Permit Amendment -- the sources can
19 implement the changes immediately upon submittal of the
20 APA request. That's very important. Now, in Ohio we
21 have been told -- and the rules provide -- that we
22 cannot add new PTI terms and conditions to the Title V
23 via that APA procedure. And what Ohio EPA has said is
24 that we have found that it would not be beneficial to
25 align the Ohio NSR program with the procedural

1 requirements of the Title V program at this time.

2 Now, what I'd like to do is just take the next
3 two minutes or so and show that actually the differences
4 between Ohio's PTI program and the Title V program are
5 not all that great. There are differences, but I would
6 suggest trying to mesh these is going to provide for
7 much more industrial flexibility than we already have.

8 If you look at what Title V requires,
9 basically the permitting authority has to receive a
10 complete application. It's the same way for a PTI.
11 Obviously, no one is going to process an application or
12 shouldn't process an application without receiving a
13 complete application.

14 Public participation -- and I put this
15 together somewhat quickly. There's a "yes" under "PTI"
16 there. That should say "sometimes." I think originally
17 I put the "yes" because in Honda's case, we want our
18 permits to be public draft and noticed because we need
19 them to be federally enforceable. Typically, we're
20 trying to be below a cap somewhere. So most of our
21 permits are subject to public participation. Our PTIs
22 are subject to that. Public participation on the Title
23 V side -- certainly, if you're talking about the initial
24 issuance or significant modification, yes; but, for
25 example, not for minor modification, there is not.

1 Notification to affected states: In the PTI
2 program, there is not. It's certainly not required.
3 Title V program: sometimes. It depends where the
4 facility is. I think in Honda's case I do not believe
5 our permits have been given to the affected states. And
6 notification to the administrator. In the Title V
7 permit, yes, that's required. In the PTI program,
8 sometimes. I know that a lot of our PTIs are reviewed
9 up in Region 5. Not all of them. Can't explain exactly
10 why that happens and when and precisely.

11 Let's go to the next one.

12 Now, I know of great concern to everybody here
13 is the public notice requirements. Let's take a look at
14 that. For Title V permit, for initial issuance and
15 significant modification, what do you have to do? Well,
16 you have to have the newspaper notice or in a state
17 publication for general public notice or to persons on a
18 mailing list developed by the permitting authority. In
19 Ohio, it's essentially the same for a PTI. In fact, the
20 public notice is very similar. The notice content
21 requirements are very similar about what has to be in
22 the notice.

23 Affected state participation: Again, for the
24 PTI, no, although in a lot of cases there is no affected
25 state participation anyway, as you can see under the

1 Title V permit. It just depends on the location of the
2 facility. And then, if there is public notice, what
3 that means is basically a draft permit is issued -- this
4 is not a final permit -- a draft permit is issued, which
5 provides 30 days' public comment; and if a public
6 hearing is requested and granted, 30 days' advance
7 notice of that public hearing. So, again, those
8 requirements are very similar. And a record of
9 comments, which -- actually, in Ohio, I would say that
10 they do a better job of recording the comments in the
11 PTI program than the Title V program. But nevertheless
12 that's where they are. But my point here is they're
13 very similar; they're not exactly similar, but for a lot
14 of permits they're very, very close.

15 If you remember nothing else about my
16 presentation, this is what I'm trying to remember. If
17 the issuance procedures which you afforded to that
18 preconstruction permit, whatever you call it, are
19 equivalent to or better than the issuance procedures
20 that would be applicable to the Title V permit revision
21 process, for example, significant modification, then
22 there's no reason to prevent a source from operating in
23 accordance with that preconstruction permit during that
24 time period where you're merely rolling over those
25 written requirements into the Title V permit. From

1 Honda's perspective, this is our greatest concern. If
2 there's been adequate public comment, if the public has
3 had a chance to comment on these exact changes, please
4 don't make us wait nine months, six months, eight months
5 -- whatever it might be -- while there's simply the -- I
6 hate to use the word -- but the bureaucratic activity of
7 taking language which is already in one permit and
8 moving it into another, because that kills us; and I
9 think there's not a good reason for that.

10 Next slide, please.

11 Now, again, if the APA is used, if you can
12 meet that criteria of having consistent issuance
13 procedures, 60 days to take action, there does have to
14 be a copy of the revised Title V permit with the U.S.
15 EPA. But, again, the source can make those changes
16 immediately upon submittal of the request.

17 Let's go to the next one.

18 Now, if the APA can't be used, where are you?
19 Well, there's a such thing as the off-permit change,
20 which may apply in some circumstances. You have your
21 minor mod and your significant mod procedures. Now, let
22 me give you an example of what would happen if we were
23 dealing with a significant modification. Let's assume
24 there was a physical modification of a source, which,
25 for whatever reason, resulted in what was deemed to be a

1 relaxation of monitoring requirements. I think we all
2 understand that's a significant modification. So what
3 happens now?

4 And let's go to the next one.

5 There's a rule in Ohio that expressly says,
6 "Where an existing Title V permit would prohibit
7 operation of the modified source, the Title V revision
8 must be obtained before operation of such modified
9 source." So, as I heard someone else say this morning,
10 you could make the physical change, but you can't
11 operate it. You're stuck until you go through that
12 process.

13 Now, the problem here is that, not
14 withstanding the issuance of a permit to install -- and,
15 again, I'm talking about a PTI where there was public
16 notice, public comment, very similar to what's offered
17 in the Title V program -- not withstanding that public
18 comment, the source cannot reduce that monitoring until
19 the Title V permit actually undergoes the modification
20 and issuance, which includes another round. And that's
21 the concern -- another round, another duplicate round of
22 notice and opportunity for comment. Again, that's
23 months of delay and Honda, frankly, does not see the
24 benefit in that if there has already been an adequate
25 opportunity in the Ohio scheme for public comment.

1 That's the concern.

2 Let's go to the last one, because I think I'm
3 about out of time.

4 In Honda's phraseology, this is how I would
5 look at this: Does a duplicate permit process benefit
6 anyone? I would say no. I just basically -- I just
7 said it, so I won't repeat what I said here. If it's
8 already gone through an approved process with adequate
9 public notice, why repeat the exercise and hold up the
10 change until it goes through the second duplicate Title
11 V revision? It doesn't help us. And, just thinking
12 about this right now, off the top of my head, if one of
13 the goals of the Title V permit program -- and I
14 understand it to be a very important goal of the Title V
15 permit program -- is to have all those requirements in
16 one place where people can one-stop shop to see what
17 does Honda have to do, you're better off, I think, by
18 getting those requirements in the Title V permit quicker
19 than later.

20 I'll rest there.

21 MR. HARNETT: Thank you.

22 Don van der Varr.

23 MR. VAN DER VAART: I just want to make sure
24 I'm hearing this correctly. You're telling me that
25 you're making a modification -- let's say it's a

1 significant modification --

2 MR. KORLESKI: Uh-huh.

3 MR. VAN DER VAART: -- and you're telling me
4 you're being prevented from taking both the permits out
5 at the same time and letting them go through the public
6 notice and then perhaps the Title V -- whatever round is
7 parallel and sequential, whatever the day of the week is
8 -- you have to satisfy that 45-day period with the EPA
9 Title V permit. But then you're done, right? You're
10 telling me that you can't do that? You have to actually
11 do it sequentially? You have to first go out --

12 MR. KORLESKI: No. What Ohio EPA would say is
13 "Submit both applications at the same time."

14 MR. VAN DER VAART: Sure.

15 MR. KORLESKI: But even what Ohio EPA is
16 saying is that the Title V application will take
17 substantially longer than the PTI.

18 MR. VAN DER VAART: But it's the same -- I
19 mean they're reviewing the same --

20 MR. KORLESKI: Yes.

21 MR. VAN DER VAART: And they're going to issue
22 a permit -- Ohio permit, let's call it -- that has
23 minor -- I'm sure, like most states, they've made -- to
24 save their own time, they've made the Ohio permit look
25 and have the same kind of monitoring that the Title V

1 permit will ultimately have --

2 MR. KORLESKI: Yes.

3 MR. VAN DER VAART: But they're not calling it
4 the same process?

5 MR. KORLESKI: No, no. They're --

6 MR. VAN DER VAART: Okay. Now, other than to
7 tell you come down to North Carolina -- we can use you
8 down there --

9 MR. KORLESKI: Which would be great. That's
10 one of the reasons I'm here.

11 MR. VAN DER VAART: What can Title V do about
12 that? I mean, that's really sort of an Ohio issue,
13 isn't it?

14 MR. KORLESKI: Well, I don't think so. And
15 that's -- I don't think so, because part of the reason
16 that Ohio is doing what they're doing, I think, is
17 because of interpretations that U.S. EPA Region 5 has
18 made. Ohio EPA has said all along that the
19 interpretation of whether or not or how similar the PTI
20 and the Title V permit program are, that that's an issue
21 that they've discussed with U.S. EPA and it's been
22 perceived as very dissimilar programs, such that they
23 must be kept totally separate. My only point today is
24 maybe Ohio and U.S. EPA should look at this to see
25 they're not that different. They're not that disparate,

1 in which case we might be able to save a lot of time and
2 trouble here. But I don't think it's just an Ohio EPA
3 problem -- I wish Bob were here. I know Bob Hodanbosi
4 very well. I was hoping he'd be here today, but he
5 could answer that better than I could.

6 MR. HARNETT: Verena Owen.

7 MS. OWEN: Hi.

8 I'm struggling a little bit with this. In
9 Illinois, we had one case where it was actually a
10 combined Title I/Title V process. Basically it was by
11 default. It's a long story. What it turned out to be
12 was that the source was waiting for the Title I permit
13 because the Title V took longer to produce. How would
14 you address that?

15 MR. KORLESKI: So in that case it was a merged
16 program? There was one permit?

17 MS. OWEN: Well, they had to get a new Title I
18 permit because they constructed it in violation of their
19 Title I permit, before they even operated a day. So it
20 was kind of an unusual case.

21 MR. KORLESKI: Okay. Well, if I understand
22 what happened is the Title V was delayed because it took
23 longer to incorporate --

24 MS. OWEN: No. The Title I permit that they
25 needed was delayed because they had to wait for the

1 Title V to be done.

2 MR. KORLESKI: Oh, boy.

3 MS. OWEN: The review period --

4 MR. KORLESKI: In that case, if I were in
5 those shoes, what -- I would be saying, "You know what?
6 A merged program isn't helping us very much here,
7 because then you would think if we can get the Title I,
8 we can at least make -- begin the physical construction
9 necessary to make the change and we'll worry about the
10 Title V later."

11 MS. OWEN: Just one comment on one of your
12 slides on the public notice requirements. Half the
13 people in the room will smile when I say this. But the
14 record of comments on Title V is not a requirement and
15 there are states that don't comment on Title V permits.
16 That is the main difference between Title I and Title V.

17 MR. KORLESKI: Okay. I stand corrected. I
18 thought I took that from the rule, but I stand
19 corrected.

20 MR. HARNETT: Steve Hagle.

21 MR. HAGLE: I just wanted to make sure, like
22 Don, I understood exactly. And you can come to Texas,
23 too.

24 MR. VAN DER VAART: He's coming to North
25 Carolina.

1 MR. KORLESKI: We're looking to go somewhere.

2 MR. HAGLE: I just want to make sure that I
3 understood that even for minor Title V revisions, your
4 being required to wait to make those changes -- or wait
5 till you get your permit to make those changes?

6 MR. KORLESKI: No. It would depend on -- it
7 would depend on the language of the existing Title V
8 permit. If the existing Title V permit, in a sense,
9 prohibits or is so different from the change we want to
10 make, we can't do it until we go through that revision.

11 MR. HAGLE: I understand that. That's the
12 same comment we got earlier, too.

13 And the second thing that I want to address is
14 I understand your initial public comment period and
15 everything is similar. What happens -- how would you
16 address the case where you actually do get comment or
17 maybe even a hearing request with regard to the EPA
18 review and public petition process and how -- would that
19 then stop this whole process and you would have to still
20 need to go through that? I don't understand -- I'm not
21 sure --

22 MR. KORLESKI: And it's a good question,
23 because -- and I'm going to struggle with that, because,
24 to my knowledge, we've never had a comment. We
25 sometimes request our own public hearings to expedite to

1 getting a permit through. But we've never had public
2 comments on any of our permits. But I think what would
3 happen -- my whole premise here is that for this MACT
4 circumstance, once the PTI has gone through with
5 whatever requisite degree of public comment is for a
6 particular PTI -- 'cause, again, not all PTIs require
7 the 30-day notice -- there are direct finals issued on
8 some occasions. But if there were public comments -- I
9 mean, my view would be, well, certainly let's work --
10 try to work them out with EPA and the company and
11 neither of us will hold up on the Title V until we get
12 this worked out. That's what I would want to do.

13 MR. HAGLE: So then, you would, in effect
14 separate those two permits. You would go ahead and get
15 your PTI as long as Ohio EPA adequately addressed, at
16 some point, your comments. They would go ahead and
17 issue your PTI, but then we would continue what I call
18 the normal Title V process.

19 MR. KORLESKI: Well, if the comments are
20 addressed and let's say everything is happy after that
21 PTI comment process is done and the PTI is issued, then
22 I would back to what I just said: The PTI process has
23 been taken care of. Use the APA or something similar to
24 fold it in. Don't take us to a complicated Title V
25 permit modification process.

1 MR. HARNETT: Shannon Broome.

2 MS. BROOME: Hi.

3 I just want to make sure I'm hearing you
4 right. You're echoing some of what some of the other
5 folks said about the double process --

6 MR. KORLESKI: I think so.

7 MS. BROOME: -- but you also seem to be making
8 a suggestion that would solve part of it, which is if a
9 source requests somebody to send their PTI to the EPA,
10 we should be recommending to the CAAAC or EPA or whoever
11 that there be some recommendation that the state comply
12 with that so that you are in a position to do an
13 administrative amendment, because they can't really keep
14 you from doing an administrative amendment if their
15 rules allow it if you meet the procedures you can only
16 get them to send to EPA, it sounded like. It's not like
17 you're in -- whatever -- 50 miles of a state border --it
18 seems like on your little chart that's the only thing
19 missing. So I'm trying to think what this group can do.

20 That's one piece of the solution to some of the stuff
21 we've heard today is to encourage states to set up their
22 PTIs so that you could use the administrative amendment?
23 Is that what you're saying? That's kind of what I would
24 take away from everything.

25 MR. KORLESKI: I think that's what I'm saying.

1 But before I would answer it succinctly, I would ask Bob
2 Hodanbosi under what circumstances now are PTIs sent out
3 to the region or to U.S. EPA, because that's not clear.

4 MS. BROOME: Did Bob hear you were coming, and
5 that's why he's not here?

6 MR. KORLESKI: Bob's heard me make this pitch
7 a couple of times, I think.

8 So I'm not sure exactly what the criteria are
9 now for sending them up. But if it would be something
10 as simple as saying, "In order to satisfy this, we're
11 going to send all these PTIs up," I don't know that we
12 really care. All we want to be able to say is, whatever
13 the notice and procedure required by the Title V is
14 required if that's equivalated -- if that's a word --
15 in the PTI process, then the PTI should go and then the
16 Title V should not be a long, cumbersome process.

17 MS. BROOME: You should be able to use an
18 administrative process.

19 MR. KORLESKI: Absolutely.

20 MS. BROOME: Okay. I understand.

21 MR. KORLESKI: Absolutely.

22 MR. HARNETT: Thank you very much.

23 Our next speaker is Dona Hippert of Northwest
24 Environmental Defense Fund.

25 MS. HIPPERT: Good afternoon. My name is Dona

1 Hippert. And I'm here on behalf of Northwest
2 Environmental Defense Center, or NEDC. Based in
3 Portland, Oregon, NEDC is a collaboration of local
4 environmental attorneys and students that attend Lewis
5 and Clark Law School there in Portland. I joined NEDC
6 when I started law school in 1999. And while in school
7 I served as coordinator of the air and toxics group and
8 as a student board member. And currently I'm serving as
9 an attorney board member.

10 First of all, I'd like to thank EPA for
11 holding these hearings. And special thanks go to the
12 Task Force for their efforts, their attendance, their
13 attention, and their patience in listening to all of us.

14 In the relatively short time I've been working
15 to ensure Oregon's compliance with the Clean Air Act,
16 I've seen that there's a great deal of work yet to be
17 done in Oregon. Today, I plan to relate some of these
18 problems to the Task Force and to touch briefly on some
19 overarching policy concerns having to do with the
20 interrelationship of the public sector, industry, and
21 regulatory agencies.

22 First, however, I'd like to start with some
23 bright spots in the Oregon Title V program. In putting
24 together these comments I learned that Oregon was the
25 first state to issue all of its Title V permits. And

1 the low rank of Oregon concerning inspection frequency
2 that was mentioned by a colleague during the November
3 telephone testimony may be attributable to an interface
4 problem between state and EPA computers. A final bright
5 spot is that companies suddenly became aware that they
6 had environmental issues and came to Oregon's
7 departmental -- excuse me -- came to Oregon's Department
8 of Environmental Quality, or DEQ, with their compliance
9 problems. They asked DEQ to take enforcement action
10 against them because of their concern about the public's
11 reaction to their noncompliance, soon to be laid bare by
12 Title V's enhanced public notice provision.

13 Next, I'd like to speak about DEQ funding and
14 EPA audits. During the comment process on one Title V
15 permit, I was told by the permit writer, "You're lucky
16 that you got in touch with me. There are lots of
17 loopholes that the industry attorneys use in the
18 application and permitting process and that continually
19 show up in the permit." But he wouldn't say more than
20 that. For the hearing, I thought I would see if I could
21 get him to elaborate a little further. He really wasn't
22 willing to say much more but did mention that monitoring
23 was often left out of the first round of permits, on the
24 assumption that it would be put in the renewal permits
25 once all the kinks had been worked out of the program.

1 Unfortunately, if nobody from the public
2 sector is paying attention, these monitoring
3 requirements are also being left out of the renewal
4 permits. I do have examples of this need for monitoring
5 that I can relate in supplemental written comments, if
6 needed. However, the most illuminating thing that he
7 told me was that in six months one permit writer in each
8 region is slated to be moved out of DEQ's air permitting
9 program because of a lack of Title V funds due to budget
10 cuts by the legislature, not that there was a lack of
11 Title V work to be done but that there wasn't enough
12 money to keep the employees needed to do it. To
13 exacerbate the problem, it's the more experienced Title
14 V permit writers that are being shifted. So it looks
15 like Oregon is ripe for an EPA audit, as called for by
16 other comments at the previous hearings.

17 The last topic I'd like to touch on is
18 industry influence versus public participation. The
19 extent to which industry has taken over an authoritative
20 role is illustrated by what happened recently in Lane
21 County, Oregon. Lane Regional Air Pollution Authority,
22 or LRAPA, as we call it in Oregon, is the only regional
23 authority in Oregon and operates in its jurisdiction
24 subject to DEQ oversight. One of LRAPA's permit writers
25 was fired last fall.

1 Soon after, LRAPA's board of directors
2 received a survey taken by the environmental managers of
3 two local facilities, wanting to have LRAPA stripped of
4 its power because of a purported concern over LRAPA's
5 lack of competence. Excuse me.

6 The 18 survey facilities, all but one of which
7 were Title V facilities, were asked whether a transfer
8 of authority from LRAPA to DEQ would help their
9 business, hurt their business, or have no effect; and
10 the results were tabulated. Sixty-one percent thought
11 it would help their business; seventeen percent thought
12 it would hurt their business; and twenty-two percent
13 were neutral. The surveyors also stated that they were
14 unable to contact three additional Title V facilities in
15 the area.

16 Now, what makes this all the more interesting
17 is that the primary surveyor is the environmental
18 manager from Weyerhaeuser. And because Trus Joist is
19 also owned by Weyerhaeuser, seven of the eleven
20 facilities responding that the transfer of authority
21 would help their business are actually one entity --
22 Weyerhaeuser. And the permit writer who was fired
23 shortly before the survey frequently showed up to work
24 wearing a Weyerhaeuser jacket.

25 Furthermore, the manager of one Title V

1 facility known to be doing his best to try and lower
2 emissions and be a good citizen, said that nobody ever
3 contacted him. How could somebody be unable to contact
4 a source anyway? Did the facility go on vacation? And
5 in the accompanying letter, the surveyors informed the
6 board that they thought the survey would be helpful to
7 the board's deliberations over the agency director's
8 annual performance review; the fired permit writer's
9 appeal action; and the process to replace the permit
10 writer, if necessary. Not only did the board put the
11 director on probation the day after the survey was
12 received in January -- this was last December -- in
13 January, they reversed themselves and said they would
14 fire him if he didn't immediately submit his
15 resignation. So he resigned. And I've attached a copy
16 of this survey to my comments for the Task Force.

17 When John Walker of NRDC mentioned that
18 sources should not be allowed to comment on their
19 permits, of course he was joking. But for industry to
20 issue such threats for no legitimate reason and to think
21 it has authority over the personnel decisions of the
22 agency is simply outrageous.

23 My next example relates to the current review
24 of a proposed Owens Corning extruded polysterene
25 facility in Portland. And although governed by PSD

1 rather than Title V, it illustrates the laxity of both
2 DEQ and EPA. Oregon SIP divides facilities into four
3 categories with regard to public notice requirements.

4 The default category, Category 3, provides
5 notice; the minimum of 35 days for comment; and a
6 hearing, if requested. Title V permits are Category 3
7 by definition.

8 Category 4 permit proceedings are so specified
9 if there's an anticipated public interest, a history of
10 noncompliance, or potential significant environmental
11 harm. This category requires that public notice be
12 given at the time the application is received. It also
13 requires an informational meeting and allows for public
14 input before the draft permit is even issued.

15 Because Owens Corning planned to emit massive
16 amounts of an ozone-depleting substance in greenhouse
17 gas, it was designated as a Category 4. In spite of
18 this designation, no public notice was sent until the
19 draft permit had already been issued. Worse yet, the
20 notice contained significant factual errors, which,
21 although known, were not corrected until the actual
22 hearing. Also revealed at the hearing was that
23 construction of the facility was well under way despite
24 the fact that no permit had been issued. NEDC filed
25 suit; construction was halted; another hearing

1 scheduled; and additional time was allowed for comments.

2 In the course of all this, I contacted someone
3 at Region 10 EPA to see if I could get some technical
4 help. They said that EPA had declined to review the
5 permit because nobody there really knew anything about
6 Title VI. So I contacted EPA's toll-free ozone hotline,
7 but was never called back. And, by the way, something I
8 would really like to state is that this sort of thing
9 would be very helpful in the Title V program, preferably
10 with someone actually returning the calls.

11 At the next public hearing, the permit writer
12 was asked if the facility was prohibited by the SNAP
13 rules; and he responded that he had been told by
14 somebody at EPA that it wasn't and that he hadn't read
15 the rules because they were very thick.

16 Environmental attorneys and citizen groups
17 lament that agency personnel are too closely aligned
18 with industry. My experiences have varied. And, from a
19 practical viewpoint, I can see how industry and agencies
20 might be very closely aligned, at least in Oregon. It's
21 human nature to want to get along with those you work
22 with. And up until now there's been minimal public
23 input into air permitting processes in Oregon, so
24 agencies have only had to deal the facilities they're
25 regulating. Of course, the facilities are going to tend

1 to complain that they're being regulated too heavily.
2 And, then, if agency management policy goes easy on
3 business, the regulator who wants to do the right thing
4 is fighting against two formidable forces that want her
5 to go the other direction. It's much easier to just say
6 nothing and use the old rubber stamp. But, as Abraham
7 Lincoln said, "To sit in silence when one should protest
8 makes cowards of men."

9 This all goes to show that there is a
10 tremendous need for oversight in our regulatory
11 programs. Regulators should be skeptical when it comes
12 to industry complaints of impossibility and pay heed to
13 the role the the public sector plays in the process.
14 After all, industry and the regulatory agencies were
15 both there before 1990, but in 1990 Congress added the
16 Title V program and other amendments enabling the public
17 to participate meaningfully. And that's when we began
18 to make real progress in cleaning our air.

19 MR. HARNETT: Thank you.

20 Kelly Haragan.

21 MS. HARAGAN: Thank you.

22 You mentioned technical assistance would be
23 helpful. Could you elaborate on that a little bit?

24 And then, also, do you have any other ideas
25 for changes that would make it easier for the public to

1 participate in the program? I'd love to hear those.

2 MS. HIPPERT: Well, just for my own self and
3 trying to find out information to comment on permits, I
4 look at these permits; and half of it is Greek to me.
5 And we've had EPA put on workshops and I was able to
6 attend one of those on Title V. But other than that,
7 you can talk to the permit writer, but they are busy and
8 harried sometimes and can't always talk and just call
9 other people in EPA and hope for the best. So there's
10 really no one central place that we can go for reliable
11 information and feedback. I've got the Air Pollution
12 Engineering and Control Manual, but haven't managed to
13 force myself to sit down and read that yet.

14 MR. HARNETT: Callie Videtich.

15 MS. VIDETICH: Hi, Dona. Earlier, you talked
16 about Title V fees and the fact that Oregon was losing
17 permit writers because it wasn't willing, apparently, to
18 use Title V fees to pay for these folks. So you know,
19 EPA regions are doing Title V program reviews. And as
20 part of those program reviews, they are looking at fees
21 for where the states are accounting for their fees
22 correctly and have enough staff. I would urge you to
23 get a hold of Region 10 to see, first of all, whether
24 Title V program review has been done in Region 10 for
25 Oregon and if not at least be part of that process to

1 see what the results are of that.

2 MS. HIPPERT: Okay. Thank you.

3 MR. HARNETT: Bob Palzer.

4 MR. PALZER: Thank you, Dona, for coming and
5 speaking. When you were mentioning about some of the
6 difficulties, not only with funding oversight, but
7 closeness of the regulators to the regulating
8 communities, do you have any specific suggestions on how
9 the public can get a closer relationship with EPA and
10 the state or local agencies to be able to help work
11 collectively together before permits are written.

12 MS. HIPPERT: Sure. Just get out there and
13 interact with them. I take some of the responsibility
14 on ourselves in Oregon, as public interest groups, in
15 that just there haven't been many of us in the air arena
16 and we haven't been making the contacts. Now, sometimes
17 people say that they receive a hostile reception from
18 agency officials. And, personally, I've never
19 experienced that. I've never had anybody be hostile or
20 rude or anything but helpful to me when I've approached
21 them. And I think it's just a matter of us being there
22 and them expecting us to be there. If they know they're
23 going to have to work with us, they are going to want to
24 get along with us, too, because we are always going to
25 be there.

1 MR. PALZER: Thank you.

2 MR. HARNETT: That you very much for your
3 time.

4 MS. HIPPERT: Thank you.

5 MR. HARNETT: The next speaker is Celeste
6 Draiser of Citizens for Clean Air.

7 MS. DRAISNER: Shall I sit here?

8 MR. HARNETT: Certainly.

9 MS. DRAISNER: Okay. Thank you.

10 MR. HARNETT: You have ten minutes for
11 presentation and ten minutes for follow-up.

12 MS. DRAISNER: I appreciate -- I appreciate
13 how kind everyone has been to me when I signed up for
14 this. First of all, I want to say thank you to everyone
15 who came here today. I deeply appreciate that you're
16 here. And I will do my very level best to be, not only
17 entertaining, but the very princess of positivity.

18 I am here on behalf of Citizens for Clean Air,
19 which is an organization that came about due to Knauf
20 Fiberglass, which is the largest stationary and most
21 massive project to come to California since the era of
22 Pete Wilson and former President Clinton. Knauf
23 Fiberglass is a very powerful company, and they're worth
24 about \$2 billion. And I never knew how much two billion
25 could take you until I became involved.

1 And I'm going to go down this list that you
2 have here so that I answer your questions. I didn't
3 write a little speech, but I would rather answer more
4 specifically the things that you all like to have
5 answered.

6 "How well is the Title V permit performing?"
7 Well, in terms of Knauf Fiberglass, they have been
8 operating for three years -- three years -- without a
9 permit to operate. That would be a Title V permit to
10 operate. As well as a permit to operate on the state
11 level. And, for the people who live near the factory,
12 it feels like every government agency has essentially
13 failed them. And I'm -- not anyone here, of course,
14 because you're all fabulous -- but just in terms of how
15 people who live near the factory feel.

16 "What elements of the Title V program are
17 working well or poorly?" Well, not having a permit to
18 operate for three years, I would say, is something of a
19 poor, like, category-type action, whereas -- whereas, to
20 EPA's credit, when we were originally fighting the
21 permit, they helped us. We received a lot of help from
22 EPA Region 9 in the beginning. That changed later.

23 I want to read to you a letter of a
24 schoolteacher that lives near the factory and also
25 teaches at the middle school -- a gateway. And I think

1 that her words speak better to this than anything else.
2 There's a lot of things going on in this entire
3 situation. But I'm going to read to you her letter,
4 because I think that her voice speaks clearest in terms
5 of what she has seen as well as other teachers that I've
6 spoken to as well as the many people who live near the
7 factory.

8 Shasta Lake, in case you're not familiar, is
9 located at the north end of the Sacramento Valley. And
10 there's a little mini-valley that's up there that takes
11 the pollution from down south. It bottlenecks up there.
12 It's basically surrounded by mountains.

13 And I'm going to read her letter so that you
14 understand that this is not just a wild area with only
15 five people living there. It's a populated area with
16 about a hundred to two hundred thousand in the
17 surrounding areas, and then Redding itself, which is the
18 largest city that -- nearest the factory. Okay.

19 [reading] "On days when the wind blows the
20 smell in presumably large quantities of pollution our
21 way, students, staff, and guests hack, cough, and
22 complain of sore throats, myself included. Children who
23 keep asthma inhalers in the office seem to need them on
24 these days, even after days of non-use.

25 "How does one measure this type of misery?"

1 How does one count a childhood of feeling sick when in a
2 community with a normal amount of pollution they would
3 feel fine? How does one measure the cascade of economic
4 woes that beset a community which has been made very
5 undesireable by air pollution and serious health risks?

6 "Property values fall as informed people
7 refuse to live there. Property tax revenues slip,
8 condemning schools to substandard budgets, materials,
9 and maintenance. The community begins to fail, as those
10 that can afford it leave and a population of poor
11 renters takes their places; when people live here only
12 because they have to, due to low rents instead of
13 because they want to. Investment in the community
14 disappears, both socially and economically.

15 "Increasingly, a lot of pollution on a company
16 already polluting copiously, not paying its fines, and
17 online without an operating permit is not only
18 economically foolish, politically foolish, and possibly
19 illegal, but irresponsible in terms of citizens' health.

20 "I believe that environmental reporters with
21 all major mainstream publications in the U.S. would be
22 very interested in a county shirking its basic
23 responsibility to enforce the legal permit process
24 designed to protect citizens from both economic and
25 health risks.

1 "I want to know why the public hearing has
2 been scheduled after the public comment period is over.
3 This backward plan has the sense of political intrigue.
4 It does not look like the plan of a board interested in
5 what its informed citizens want their economy -- want
6 for their economy and what they are willing to accept in
7 health risks.

8 "It is essential that you extend the period in
9 which written comments are accepted so it coincides with
10 oral comments. Why have -- why have public testimony if
11 it is not going to be considered? Why prevent the
12 obvious information-gathering and opinion-forming that a
13 a public forum inspires? Citizens have a right to form
14 opinions from the many sides that can be represented in
15 public testimony. When written comments are not
16 accepted after an information-sharing function, it makes
17 the board look like it is not only frightened of its
18 citizens' opinions but also that it is actively trying
19 to prevent citizens from accessing information from
20 which to form those opinions. The deadline needs to be
21 changed for the acceptance of written comments. The
22 existing plan reflects very poorly on all members of the
23 board."

24 I'm not going to go on, but that pretty much
25 should give you a small window into -- and there's

1 letters here. It's like many, many letters; lots of
2 documentation and information, which I will give it to
3 you in this handy little, like, you know -- I guess you
4 can call it to kick a door open perhaps or, like, level
5 a table. You don't have to read it, but I wanted to
6 include it because people that I'm representing asked
7 that I give you, like, an idea of what some of their
8 complaints are.

9 It would be nice, in my opinion, if Knauf
10 would obey their original promises, if they would obey
11 the authority-to-construct permit and their PSD permit
12 and the levels they were given in it before the
13 pollution limits were raised. But it would also be nice
14 if they would operate with a permit to operate. In that
15 way, they're not using it sort of as a loophole to avoid
16 having to comply.

17 Some people fear that this committee was
18 brought together for the purpose of gutting the Clean
19 Air Act. I have no idea if that is true or not. But I
20 would hope you'd act as a lobby organization, that each
21 of you would do something for me, because I came down
22 here, and I'm entertaining you, and I'll dance for you
23 if you'd like. But mostly I want -- I have a solution
24 that's going to work and make everyone happy. It'll
25 make industry happy; it'll make citizens happy.

1 Okay. Best available control technology,
2 according to the In re Knauf decision, which is the
3 legal case -- could be as broad as, you know, the
4 regulatory agency wants it to be. However -- however --
5 we all know the best available control technology is
6 increasingly becoming more stringent in terms of what we
7 can do.

8 And my solution is that we need to subsidize
9 it publicly. We need to find a way so that industry
10 doesn't have to spend, like, enormous amounts of
11 money -- if, indeed, that is the case -- to be clean. I
12 think every industry would like to be clean. Even the
13 former -- former -- boss out at Knauf Fiberglass --
14 project manager -- even he said that one day factories
15 will be in compliance with the Hanover Principles and
16 will be zero emissions. And that is where we need to
17 work towards.

18 The only thing that I can see that is going to
19 make everyone happy is if we subsidize it. Honestly, I
20 mean, what, we put like the Iraq war on, like, credit.
21 We can certainly do this. And there's going to be,
22 like, a payback, surely. I promise. There'll be a
23 payback. We won't have to spend as much money on
24 Medicare. We won't have to spend as much money on the
25 many medical things the government has to take

1 responsibility for. We'll save money. And factories
2 can be clean. And then everyone will be happy. You
3 won't have all these citizens coming out of the
4 woodwork, unhappy because they're hacking and coughing
5 and their children have leukemia. Instead, we will have
6 clean factories on the one hand; and we'll have lower
7 medical expenses that the government has to pick up,
8 whether outright or payments or otherwise. And everyone
9 -- everyone -- will be happy.

10 And that's what I came down here mostly for,
11 is to encourage you to spread the word that we can have
12 it all. We really can. We can have clean factories;
13 and we can have, like, clean air; and we can all, like,
14 sit around and sing "Kumbaya." It'll be beautiful. I
15 promise.

16 And that's my speech, and I'm sticking to it.

17 Any questions? A little bit fast.

18 MR. HARNETT: Verena Owen.

19 MS. OWEN: Thanks for coming.

20 MS. DRAISNER: Thank you.

21 MS. OWEN: I have some just basic
22 understanding questions. Who is your permitting agency?

23 MS. DRAISNER: Do you mean in terms of EPA
24 Region 9?

25 MS. DRAISNER: No, the local one.

1 MS. DRAISNER: Oh, that would be the Shasta
2 County Air Quality Air Management District --

3 MS. OWEN: Shasta County.

4 MS. DRAISNER: -- and the Shasta County Board
5 Supervisors simultaneously serve as the Shasta County
6 Air Pollution Control Board. And the letter that I read
7 to you was written to them, because they --

8 MS. OWEN: The board of supervisors serves as
9 the --

10 MS. DRAISNER: Yes. It's -- well, they were
11 -- well, there's some contention that it's too much
12 power. They also serve as the local water agency and --
13 consolidation of power -- it's Shasta County. I don't
14 know. It's very Republican -- and, okay, I love
15 Republicans, I just want to point out. I wouldn't have
16 come to be as successful but for the help of many local
17 Republicans in my area. So --

18 MS. OWEN: It's certainly an interesting
19 sounding situation in Shasta County.

20 MS. DRAISNER: But I love it.

21 MS. OWEN: I'm sure you do.

22 The next question is: As a new source, they
23 started operations three years ago?

24 MS. DRAISNER: Yes. They actually -- they
25 announced -- they announced that Shasta County had won

1 this fabulous fiberglass fastory in 1996. And they
2 began the permitting process; but, because many people
3 locally were opposed to it, it took them until about
4 three years ago before they actually began
5 manufacturing. So --

6 MS. FREEMAN: [PARTIES TALKING OVER EACH
7 OTHER.]

8 MS. OWEN: It has an application for Title V,
9 I'm assuming.

10 MS. DRAISNER: I'm sure they have an
11 application for it. But it's been three years and they
12 are operating illegally, violating their PSD permit and
13 they don't have a permit to operate, so, you know, it's
14 very frustrating to people who are getting sick right
15 now.

16 MS. OWEN: Do you know where it stands in the
17 permitting review process? You said something -- there
18 was a hearing with comments afterward?

19 MS. DRAISNER: This has to do with an EIR. We
20 never had an EIS. We never had an EA. We never had,
21 like, anything from the federal level. What we had was
22 an EIR. And the factory has come in in a piecemeal
23 process, like very small. They've always said, "Oh,
24 we're going to expand. We're going to expand. We're
25 only going to permit for this much. We're only going to

1 start out at one line and we'll move it out."

2 They're currently trying to become a minor
3 source, even though they emit about 500 tons a year.
4 They're basically the poster child for where industry
5 goes wrong, in my opinion. There are a lot of other
6 people out there who, I think, are going a great job --
7 I mean, we need industry in this country. I'm not
8 opposed to it. I think industry is great. We need more
9 of it. I just want to see that government and industry
10 working together so that everyone can be happy. That
11 would be my hope.

12 MR. HARNETT: Bob Palzer.

13 MR. PALZER: Thank you for coming --

14 MS. DRAISNER: Thank you.

15 MR. PALZER: -- and for your costume.

16 Would you -- could you help clarify for me,
17 because I think I may have heard you wrong. I thought
18 you said that the Shasta County board serves as the air
19 and water permitting agencies?

20 MS. DRAISNER: They serve as -- well, they
21 serve as the Shasta County Water Agency. They also
22 serve as the Shasta County Air Pollution Control Board.
23 And they serve as the Shasta County Board of
24 Supervisors. They have a lot of power consolidated.

25 MR. PALZER: Presumably, these folks who are

1 elected don't necessarily have expertise in air quality
2 violations and so forth. Are there staff people that,
3 you know, essentially work on the permitting aspect; and
4 they are the ones that approve or don't approve of a
5 permit?

6 MS. DRAISNER: Okay. I'll try and answer your
7 question the best I can.

8 There have been many different staff people
9 they've gone through. Essentially, the people who make
10 the decisions are not the staff members but the board of
11 supervisors themselves. And, in my humble opinion, I
12 don't feel they are entirely at fault in what they are
13 doing. I feel that they believe there's nothing they
14 can do to oppose this, that this company is so
15 enormously powerful that there isn't anything they can
16 do. That would be my opinion.

17 Plus, you have two of the original members
18 that permitted the factory recently retired. So after
19 they made a decision to approve the latest supplemental
20 EIR. So, basically, they couldn't -- Knauf will not
21 obey the original PSD permit, so the plan has been to do
22 the supplemental EIR, which is the lowest amount of
23 environmental review I guess they felt they could get
24 away with and use -- and approve that. Then they could
25 increase Knauf's limits and reclassify Knauf as a minor

1 source. And everything would be fine and they'd issue
2 the permit. That's my opinion of what's going on.

3 And, hey, there a lot of industries out there
4 that operate clean, that do things the right way. And I
5 think it's unfair to the industries that are doing
6 everything correctly that are, you know, following that
7 that are honestly trying to not play dirty, to dump
8 illegally into the rivers or into the air. And those
9 factories are at a hindrance, because it's so much
10 cheaper to build dirty and to operate dirty and then to
11 pay some fine. In my opinion, it's easier to do it that
12 way.

13 MR. PALZER: As a follow-up to the county
14 board ultimately making the decisions, is that -- do you
15 have experience with other counties in the state? Is
16 that a common practice?

17 MS. DRAISNER: No. In my understanding, it is
18 not a common practice that most air boards -- most air
19 boards do not -- are not also the board of supervisors
20 or a commissioner-type agency. They tend to have
21 different people on them -- some from the city, some
22 from the board of supervisors. And sometimes you can
23 say you don't think something's legal, but
24 unfortunately, unless you're willing to sail out ships
25 of lawsuits, flaming on the open seas, it seems like

1 people don't always listen to you.

2 So we had some complaint at one point about
3 the fact that there was so much power consolidated in
4 one group. However, I don't feel it's just their fault.
5 Every agency I've talked to, whether -- I have some of
6 the letters in here. You know, they write back really
7 nice letters like, you know, "We are investigating the
8 situation. And we're very sorry about this. We'll keep
9 you informed if there's any development." And it's
10 letter after letter that has pretty much the same
11 format.

12 It's frustrating when you have to see young
13 children getting sick, like I've had to. And that's
14 part of the reason why I dress up as this -- to
15 entertain you, to bring attention to something that I
16 think, in my opinion, is rather sad. 'Cause we can do
17 better. We're Americans, right? We're the greatest
18 country on earth. We have diversity; we have debates.
19 We can do it. We can make it better.

20 MR. PALZER: Thank you.

21 MS. DRAISNER: Thank you.

22 MR. HARNETT: Thank you very much for coming
23 today.

24 MS. DRAISNER: Thank you all for being so
25 kind. Keep up the good work.

1 Can I leave this with you? Is this --

2 MR. HARNETT: Yes.

3 MS. DRAISNER: Okay.

4 MR. HARNETT: We have two more speakers. Do
5 you wish to take a break before we get to the final two
6 speakers, or -- suppose we take a break for 20 minutes
7 and come back around, say, 4:55, 15 minutes.

8 [A BREAK WAS TAKEN FROM 4:35 TO
9 4:53 P.M.]

10 MR. HARNETT: Our next speaker is Dennis Bolt,
11 who is with the Western States Petroleum Association.
12 We'd like to welcome you.

13 MR. BOLT: Thank you, Mr. Chairman, members.

14 Again, I'm Dennis Bolt with the Western States
15 Petroleum Association, otherwise known as WSPA.

16 Welcome to San Francisco. I haven't heard
17 anybody say that. I hope you got to enjoy that
18 beautiful day yesterday. And if not, after tonight --
19 after all day today -- tonight you'll definitely want to
20 walk one block down to Powell Street, take a right, walk
21 down to the end of the cable car line, grab that cable
22 car. It's an E-ticket ride over to Fisherman's Wharf
23 and a beautiful view of the bay over there. It will be
24 a beautiful night to be in San Francisco. And I hope
25 you're able to enjoy yourself.

1 I'm really impressed with the deliberations
2 today. I commend the Task Force and the EPA for putting
3 it together -- and, obviously, the collaborative
4 approach that you're all taking to these issues to find
5 ways to enhance the Title V program. Also, I'd like to
6 thank the staff, particularly Ray, for excellent
7 facilitation and support in inviting us all here today.

8 WSPA represents 30 companies that explore for,
9 produce, transport, refine, and market petroleum and
10 petroleum-related products in the five Western states
11 and Hawaii. So it's the majority of the oil interests
12 in the West. We've been involved in the Title V process
13 in developing permits here in the Bay Area for the last
14 five years. I've been involved directly facilitating
15 the group here.

16 In the Northwest, Region 10 did an excellent
17 process in the refinery permits up there. They have
18 their issues, too, but they -- EPA up there used a very
19 good process. So we've had more problems here in the
20 Bay Area. The South Coast doesn't have their permits
21 yet -- I'm speaking to the refineries. The one Central
22 Valley petroleum refinery has their permit. We got our
23 permits here in December 2003, so we've had them about
24 14 months now.

25 It's a very litigious process. First of all,

1 let me say, don't delude yourself into thinking that the
2 public reviews these permits. It doesn't happen.
3 Nonprofit groups' -- like my own and the environmental
4 groups on the other side -- staff are heavily involved
5 in these permits. And then we all have a bank of
6 lawyers working on these permits. We had 13 outreach
7 and public hearings on Title V permits for the
8 refineries here. We had hundreds of people turn out
9 over these; and there was a lot to say. And it was all
10 about the control measures and rule-making underway
11 under our ozone-attainment plan. There was one comment
12 about a Title V permit by a lawyer that attended one of
13 the hearings.

14 So I applaud public outreach. We had a lot of
15 it since 2001 here in the Bay Area under a new outreach
16 initiative that they've had here. It's been very, very
17 effective. It's being done through the community groups
18 -- the best outreach here. They really work to turn
19 people out. They put a lot of resources in it. They
20 mail thousands of announcements.

21 But the fact of the matter is, relative to
22 Title V and the technical issues revolving around these
23 permits, it's very clear and obvious who's drilling into
24 the details and looking at it, because it's very, very
25 technical. The cottage industry in litigating over

1 Title V permits has grown up here in the Bay Area -- it
2 first started in litigation that forced the refinery
3 permits to be issued prematurely before they were ready.

4 So there was a lot of mistakes and errors in the permit
5 that were referenced earlier in the day today. And then
6 that caused litigation by all the refineries and all of
7 the community groups -- some of the community groups.
8 And then there was a follow-on court action and that
9 resulted in another consent decree. And then there's
10 been revisions to the permit. And now there's another
11 set of petitions; and then now there's another court
12 order, or consent decree, that EPA has to respond to
13 that by March 15 for thousands of pages of petition
14 comments.

15 We're trying -- what problem are we trying to
16 solve? Are we trying to clean up the air and have
17 clear, specific, and accurate permits that can be
18 complied with reasonable monitoring requirements?

19 What we've done here -- I don't know how much
20 you've been seeing out of the rest of America but here
21 we have stirred the pot so much that we are not even
22 close to accomplishing the mission. And all these
23 resources are being applied to litigation, not to
24 cleaning up the air. The best of our best people in our
25 facilities are chasing this paperwork rather than

1 continuous improvement opportunities at reducing
2 emissions. And I haven't heard of any emissions
3 inventories being reduced yet because of Title V.

4 And I'm not saying that the PROGRAM can't
5 work. I'm saying the way the program's been set up and
6 launched here, it's missed the mark. And I think
7 there's lessons to be learned. I don't know if there's
8 any way that we can back up and redo, undo, and fix
9 what's wrong here. But it has gone south. And we'll
10 likely be in various forms of litigation for years to
11 come. I just don't see any clear way to go, just based
12 on the decisions that have been made today. And I hope
13 that I'm wrong.

14 The one thing that regulators need to
15 recognize and EPA, particularly, needs to recognize is
16 that it takes a long time to move these permits.
17 There's a lot of technical requirements that need to be
18 understood, first of all, sometimes by the regulators.
19 Our facilities have learned a lot from the regulators
20 through this process and vice versa and then from the
21 regulators up to EPA. And then all this needs to go
22 back and be communicated to the community -- and
23 communicated effectively, as has been spoken to today.

24 In these settlement agreements, the litigation
25 part of this -- not the people trying to do the right

1 thing, not the permit writers, not the engineers, and
2 not the people in the community themselves -- but,
3 rather, just the time lines and the process themselves
4 were so compressed that it breeds errors and mistakes.
5 It takes time to do this job right.

6 What we've found in Region 9 -- and I've
7 learned from the comments today -- sometimes there's
8 problems with the local or state agency. Sometimes
9 there's problems with the regional office and just
10 understanding the technical problems -- the technical
11 issues -- in the underlying permits, like the complex
12 refinery permits. The total of our five permits are
13 probably something approaching 2,000 pages of
14 10-point-type technical details. And understanding
15 those from a regulator's standpoint is a big job.

16 You heard the air district say they've been at
17 this 50 years in the Bay Area here. That's a lot of
18 expertise. Sometimes we have to ask them for our own
19 answers. They're good at what they do. The regional
20 office, at the technical level, hasn't been involved in
21 this for 50 weeks. And the regional offices have come
22 up with some good points, and some gaps have been
23 identified. But there's a lot of push going back and
24 forth between the regional office and the air district
25 and the refineries and the community groups, where

1 somebody has to take the lead on these issues. And I
2 submit, at least in this case, the air district is the
3 -- has the higher level of expertise to be the arbiter
4 of these issues. And there ought to be a way to bring
5 that to bear on these problems or whether or not central
6 offices comes out -- very good people up at Region 9
7 office; they're great folks, trying to do a good job and
8 really work hard. They've taken refinery tours in
9 trying to come up to speed. These are complex
10 engineering issues that are sometimes difficult to
11 understand.

12 An issue in the permits themselves that this
13 group can have lot to say -- you heard the South Coast
14 Air District particularly speak to overlapping and more
15 stringent requirements in local and SIP rule is in the
16 federal requirements. Yet you've got all these
17 conflicting requirements and monitoring issues and
18 levels. And we really believe that central office -- or
19 director, at least -- allow the most stringent
20 requirement to be cited in the regulation and monitored
21 at that level. Going through one time and doing a
22 one-time subsuming and cross-referencing of the
23 regulations and pick the most stringent requirement.
24 Right now, you've got a lot of confusing duplication and
25 monitoring requirements. And that leads to -- it also

1 leads to reporting mistakes and oversights. You want a
2 more crisp permit, as if these permits could ever be
3 crisp, but you really want them to be clear and direct.

4 And let me say about the gap monitoring, first
5 of all, reasonable gap monitoring is, I think, something
6 envisioned in the permits from the start. There --
7 there have been and there continues to be pushes over
8 the line in what is reasonable, which is, effectively,
9 underground rule-making. Trying to -- I was in one
10 meeting here recently where the regulator suggested that
11 a reasonable monitoring requirement for gap monitoring
12 had been found. And, well, they wanted us to
13 effectively back-monitor. And it's -- they should have
14 to go rule-making for that. There's a reason for the
15 standards. Some of these minimal emission points --
16 there needs to be a monitoring requirement for it, but
17 you don't have to have -- we're swimming in monitoring
18 data now that nobody's got time to review.

19 Also, I mean, cooling towers were mentioned
20 before -- the issue around cooling towers we disagree
21 with. We think that that is -- they're trying to do
22 rule-making through the Title V permit; and that's
23 wrong. An issue of permit amendments were just posted
24 on thermal oxidizers. And I'm not sure that that isn't
25 rule-making via Title V permits. We're pushing this

1 monitoring requirement outside of the box. And we need
2 to come back to something that is reasonable. And if
3 more monitoring -- then if you find that more monitoring
4 is required, open up a rule and let's move forward
5 toward reasonable rule-making and see what the next
6 right thing to do is.

7 I mentioned our best and our brightest people
8 work and are working diligently to clean up the permits,
9 respond to thousand of pages of comments, and to shore
10 up the monitoring and compliance, and to certify the
11 compliance. We just did our first annual certification,
12 so I can tell you a lot of effort -- we're taking this
13 program seriously. The outreach is serious; and we care
14 about the Title V program. But we want it to work for
15 everybody, including ourselves.

16 Thank you for your time and consideration.

17 MR. HARNETT: Verena Owen.

18 MS. OWEN: Thank you, Bob. I think one of the
19 benefits of this Task Force is that there are different
20 worlds out there. And I was initially taken aback by
21 your initial comments that it's not the public that
22 reviews permits, it's all attorneys and it's big
23 organizations. Let me assure you that's not the case
24 everywhere. I'm only a very small organizaion; I'm not
25 an attorney. I have reviewed dozens of permits. I've

1 written my own petitions to EPA. So it's not easy to
2 generalize that, as this is all big environmental groups
3 and their attorneys. In my experience that's not the
4 case. I wish I had more attorneys that I could get
5 involved. But that's beside the point.

6 Especially in the beginning of your testimony,
7 you talked a lot about petitions and litigation and how
8 this sucks up the time of the people you work for. I
9 was waiting for some recommendation on how to get out of
10 this boondoggle and didn't hear. Could you elaborate on
11 that?

12 MR. BOLT: I appreciate that. The one thing
13 relative to the petition process that we recommend to
14 you is the permit holder should be an automatic
15 intervener on these petitions and have an opportunity to
16 comment. The EPA is kind of acting as the judge on a
17 permit here. And it's like the prosecutor is making
18 their case and the judge is issuing the ruling. And we
19 think that when EPA prepares the response the permittee
20 should have, like, a 60-day period to review that before
21 it's published in the Federal Register. You know, once
22 you publish the results of these reviews, they kind of
23 get cast. They've been through a pretty strict process
24 within the agency; and we think that there's a step back
25 there where you ought to have the other side.

1 And I heard someone earlier today ask that the
2 local regulators be involved, perhaps at that same
3 level, so perhaps so. Maybe there's a quid pro quo for
4 community groups on the other side of refinery
5 petitions. I don't know. But I think there's an
6 interim step there that's missed that needs to have some
7 review. It's not an open process in these petitions
8 right now. And it is effectively rule-making. And
9 waiting to respond in the Federal Register notice, we
10 think, is too late.

11 MR. HARNETT: Adan Schwartz.

12 MR. SCHWARTZ: I agree with you -- how could I
13 not -- that the refinery in the Bay Area the Title V
14 process has been litigious, and probably will continue
15 to be. And, you know, I think that, by the way, there's
16 a benefit to that. It sharpens some issues and
17 hopefully resolves them. So in a sense other people
18 benefit from the blood that's shed here. But, and
19 there's another -- not as an aside -- I'm getting to my
20 question.

21 I'm trying to think of how we could have
22 avoided some of this; and I'm just not sure we could
23 have, because the legal environment of the Bay Area is
24 kind of unique. So I just don't know if we could have
25 avoided all this litigation. But I'm interested in your

1 thoughts about that and what you think might have been
2 done differently.

3 MR. BOLT: I have absolutely -- we have a very
4 active environmental community here in the Bay Area. I
5 have -- as far as I know and as far as I've ever read,
6 perhaps the most active in the world. And I applaud
7 them for what they do. And I do what I do. And out of
8 the center of that advocacy should rise good, sound
9 public policy based on the best judgments for both our
10 customers and the economic values that we bring as well
11 as the community and the shareholders -- the investors
12 in our business or any business. The three legs of the
13 chair need to be in balance; and that's how you define
14 public policy, in my view.

15 And the mistake here was, I believe, twofold.
16 First of all is that we were getting to have a
17 reasonable permit. And the December 1 date came up and
18 arbitrarily pushed those permits out the door. It was a
19 huge mistake. And the second area of it is that EPA was
20 not brought into the permit development. We had been
21 working for three and a half years on those permits and
22 the drafts. And, at the detail level, EPA was not
23 ramped up over that time. And that was in the
24 retrospective -- that was the second leg of the mistake
25 that undid it.

1 The community groups are responding to what
2 they see and to what they believe to be the case. And
3 that's their job. And any feedback that anybody has of
4 what we could have done better -- and I'm sure there
5 were a myriad of things. I can tell you that we just
6 put a tremendous amount of resources in this process to
7 try to get it done right; and the results of that -- the
8 report card on that -- are poor, at best. And it all
9 deals with time, not with intent. Everybody wanted to
10 do the right thing at the right time for all the right
11 reasons. Good people.

12 MR. HARNETT: Marcie Kever.

13 MS. KEEVER: I guess I'm wondering -- just so
14 everybody knows, we filed a lawsuit to implement that
15 deadline, which was an EPA deadline. But the
16 communities that, when I worked at the clinic,
17 represented wanted to see the permits; and we can debate
18 what the best did. I'm just wondering what you think
19 would have been more time. I don't know if you can
20 answer that question.

21 MR. BOLT: I don't criticize you for wanting a
22 date certain. I like to think that -- I begged ALAPCO
23 to come back and give that a push. I mean I begged
24 everybody to get that date pushed back and just let's
25 look at what we're dealing with and let's get a little

1 more time and see if we can get these things closer to
2 where we're at; and we're just in this cycle now that we
3 have to deal with. And I wish that there was a more
4 collaborative -- at least, if we could just amongst
5 ourselves have effective conversations around what we're
6 dealing with here.

7 And I admit to being part -- part of the
8 problem, if you will. But these kinds of issues create
9 long-standing permits; and it's taking us all off of the
10 ball. And it's creating a lot of waste -- not that
11 we're not making progress and good work being done --
12 but we've fallen far short of our potential in this.

13 MS. KEEVER: I just will say I was happy to
14 see the first Title V certifications for the refineries
15 come out. And the communities were happy to see them
16 come out and the information put out in the public

17 MR. BOLT: And let me just say, if I can,
18 about the compliance certification. There were comments
19 earlier about favoring line-item certification. One of
20 our -- when we discussed it, one of our facilities said,
21 "Well, it might be a 5,000-page document, if we broke
22 out all of our clustered sources." It just seems to be
23 a whole lot of paper to get to the meat of what we're
24 trying to deal with.

25 And I think our air district and EPA came up

1 with a great middle-ground solution to that that's
2 delivered real information to those who might like to
3 review that.

4 MR. HARNETT: Thank you very much.

5 MR. BOLT: Thanks for having me.

6 MR. HARNETT: Our last speaker is Don Cuffel
7 of Valero Refining.

8 MR. CUFFEL: Well, good afternoon, everyone.
9 My name is Don Cuffel, principal refining engineer for
10 Valero Refining Company, California. And I work at the
11 Benecia refinery, which is about 30 miles northwest --
12 northeast, excuse me -- of here. If you're like me
13 right now, you're tired, maybe a little bit rummy; but
14 hopefully I'll have some comments that are new and
15 different to what you've already heard today. And it
16 may spark some ideas about action we can take going
17 forward.

18 I'm going to speak about only one topic, which
19 is at the heart of Title V permits; it's at the heart of
20 certification reporting; it's at the heart of
21 compliance. And that is managing applicability. So if
22 you bear with me, we are going to dig into some nuts and
23 bolts around managing applicability and hopefully come
24 up with some ideas about how to go forward.

25 To put our refinery in perspective, we filed

1 our application in 1996; we received our permit on
2 December 1st of 2003. We received our first revision of
3 the permit December 16th of 2004. So now we have about
4 14 months' experience with the process. And I'm going
5 to share with you some of our experience because that
6 puts my recommendations in context.

7 Basically, when I talk about applicability,
8 I'm talking about the marriage between requirements and
9 sources. And that source could be the site; a process
10 unit; a specific device, like a tank or a combustion
11 source; or it can be a collection of equipment like
12 fugitives. On the applicable requirement side, we have
13 quite a hierarchy. It can be federal regs, state regs,
14 local regs, permit conditions. And this mini-to-mini
15 relationship in the middle is the applicability
16 spaghetti that is sometimes poorly documented in the
17 permit, but in fact that is the reference document where
18 it needs to be accurate and complete.

19 Everybody benefits from an accurate permit.
20 Certainly, the permit holder does; certainly, the public
21 does; and, certainly, issuing does. Much of what we
22 have heard today about how long it takes to get
23 revisions and why are there all these appeals and why
24 are there lawsuits? Well, frequently it's simply driven
25 by errors. It's not that we disagree on the

1 applicability determination; it's just that there are
2 out-and-out errors contained in the permit. And if you
3 were to look at Valero's comments on even Revision 1,
4 you'll see some repeated comments from Revision 0,
5 because those comments have not yet been incorporated
6 from errors that were identified in the first version.

7 To do a line-by-line review of our permit
8 takes two knowledgeable people doing nothing else two
9 weeks; so that's a four-work-week effort to do a
10 line-by-line review. And the reason we have to do that
11 is that we need to identify not only what's in it but
12 what has changed -- what might have crept in
13 unintentionally; what was changed to correct an earlier
14 identified problem; and what else might have been
15 introduced.

16 This is an incredibly inefficient process.
17 In-house how we manage this -- and this is what I'm
18 going to recommend the Task Force consider for broader
19 application is, very simply, we manage applicability
20 with a database. And when we talk about a database, in
21 its simplest form, it's the source, the applicable
22 requirement, and the other attributes of that
23 relationship, such as, is it federally enforceable?
24 What's the effective date? What's the end date? All of
25 these are important attributes of that relationship.

1 When the issuing agency has nothing more
2 sophisticated than a word processor to produce these
3 documents, errors are going to occur. It doesn't matter
4 how diligent or dedicated people are, I can't cut and
5 paste a 700-page document accurately. Can you? I think
6 that's reasonable to expect that of permit authors.

7 In fact -- I think you'll enjoy this -- one of
8 the earlier drafts of our permit contained the entire
9 tank section for another permit holder; it wasn't even
10 our facility, but we had their tanks and their
11 regulations in our permit. So it's easy to cut and
12 paste poorly.

13 So the notion of a database has something that
14 a word processor does not and that's called referential.
15 And referential integrity is simply this: You can
16 neither create, edit, or delete a relationship
17 unintentionally. In other words, when you make a
18 relationship between an applicable requirement and a
19 source, that's an intentional act and it can't
20 accidentally be broken; the database won't let you do
21 that. Is that clear to everybody? It's kind of a
22 technical thing, but it's extremely important that you
23 get that concept, because once you create that
24 relationship it can't accidentally disappear in the next
25 version. Someone consciously has to go in and edit that

1 relationship. That's how we manage our permit in-house.

2 That's how we compare what we think it should be versus
3 what gets issued from the agency. Okay.

4 We already talked about how different
5 regulators regulate differently, so I won't beat that to
6 death, other than to say, the scope of the problem
7 perhaps is bigger in Region 9 and in the Bay Area than
8 you've seen elsewhere. And the reason is, we have over
9 17,000 unique citations in our permit that are federal;
10 we have another 17,000 unique citations from the air
11 district; and then we have an additional 1,800 permit
12 conditions. Now, all of these overlap and frequently
13 the ratio can be as many as 12 parents to one distilled
14 requirement. An example would be the federal rule says
15 you must inspect the tank seal once a year; the Bay Area
16 rule says you must inspect the tank seal twice a year;
17 so the most stringent requirement is inspect it twice a
18 year. That's a very simple example, but you get what I
19 mean by the overlapping requirements.

20 In the areas of fugitives, the ratio can be
21 twelve to one, fifteen to one. Where the federal rules
22 are verbose -- might have six or eight citations and
23 another eight to ten citations than the air district.

24 Just as important as what's in the permit is
25 what is not in the permit. We are missing some very key

1 exemptions. And, again, these are not exemptions that
2 are debated; there's no disagreement between the issuing
3 agency and the refinery, but they are not in the permit.
4 Their absence requires, then, that we file deviation
5 reports. So I'm in the position of filing deviation
6 reports for sources that are in compliance because the
7 exemption does not appear in my permit. I don't believe
8 that was the intent of the Title V program. It
9 certainly isn't meaningful data, but it begins a paper
10 trail that, now, the air district has to respond to; the
11 inspector has to respond to; and you can see the
12 inefficiencies. That's not how we want to use our
13 resources. Again, if there were a database that made
14 sure that exemption was associated with that source,
15 brought forward with each version of the permit, we
16 wouldn't have this paper chase that's going on.

17 You heard Peter Hess earlier today call for a
18 data management system. And I want to underscore what
19 he said. You don't have to start with a blank page.
20 There's plenty of precedent for this. EPA has
21 successfully rolled out the TRI reporting system. It
22 used to be called ATRS; I don't recall its acronym now.
23 But that's used nationwide for very complex
24 toxic-release inventory reporting. Everyone uses it.
25 It's successful. The states of Texas, New York, and

1 others have attempted to automate the applicability
2 determinations on their websites. That's a very
3 fruitful ground. Let's take that and build on it.
4 Let's go forward. There are off-the-shelf software
5 products that can manage applicability and all of the
6 complexities that go with it. If we were to empower the
7 agencies that issue permits with that software, properly
8 populated, we would eliminate a lot of the recycle on
9 permits and be far more efficient. And, frankly, we
10 could spend our time on reliable operations instead of
11 documentation.

12 At my facility, we are consuming roughly three
13 full-time equivalents, not to manage compliance, but to
14 manage the permit and its evolution.

15 And the yellow light's telling me to sum up,
16 so I will.

17 I would just encourage you to include
18 somewhere in your findings a technology solution. It
19 bypasses the politics; it bypasses all the other stuff;
20 and it gets right to the heart of the matter, which is
21 managing applicability.

22 Thank you.

23 MR. HARNETT: Verena Owen.

24 MS. OWEN: Hi. Thanks for coming. I should
25 probably know the answer to this question, but I'm tired

1 and it's late.

2 What exemptions that are not in the permit do
3 you have to file deviation reports for?

4 MR. CUFFEL: An example would be a tank
5 exemption for low vapor pressure exempt service. So a
6 tank may be permitted for storing gasoline but at this
7 moment it's storing diesel fuel, so it's exempt from all
8 the requirements that go with inspections and so forth.

9 MS. OWEN: And what report do you file?

10 MR. CUFFEL: A ten-day deviation report. And,
11 oh, I should have -- thank you for asking that, because
12 in this district, a ten-day deviation report must be
13 filed within ten days of discovery. Then that same
14 event is restated in the monthly summary, in the
15 six-month report, and then the annual report. So we
16 notify four times about the same event.

17 MS. OWEN: Okay. The other thing you
18 mentioned -- and here I share your pain -- really, I do.
19 When you do have to do a line-by-line comparison, do you
20 ever ask the permitting agency to supply you with a
21 strike-out and underlined version of the permit? I just
22 went through that and didn't get one, so I wonder if you
23 maybe had a better experience.

24 MR. CUFFEL: We've taken a different approach,
25 because red-line strike-out is still word processing --

1 MS. OWEN: Well, it's a start though.

2 What's the better idea? I'm curious.

3 MR. CUFFEL: We can actually produce a permit
4 from the database. And so our line-by-line comparison
5 is to take our product and compare it to whatever we
6 get. Whether it's got strike-out or not, we still have
7 to look at every character on a page.

8 MS. OWEN: Thank you.

9 MR. HARNETT: Steve Hagle.

10 MR. HAGLE: You and I talked about this a
11 little bit before, but I'm curious. You say you guys
12 use a database. Is that something that you created or
13 was that a commercially available database? If it's
14 something that you created, would you be willing to
15 share it?

16 MR. CUFFEL: Well, the answer is -- and it's a
17 two-part answer. And, yes, of course. In fact, Friday
18 we met with the air district locally and said, "We'd
19 really like you to consider a small, well-defined trial
20 with a pared-down version of the tool that we've created
21 and just give it a go and see if it works. Can you
22 integrate it into your work practices? Is this
23 something that will work with you?

24 If not, there are commercially available
25 tools. And the one we use for our compliance

1 demonstration is called Inviance. That tool manages all
2 of our tasks. We perform over 35,000 verification tasks
3 per year to certify compliance. And it is related to
4 the overarching requirements and the parent citation's
5 permit conditions. So the relationships are maintained.
6 I mean, this is the key: After you complete a task,
7 what have you satisfied? If you don't know what that
8 task is connected to, if you don't know what the parent
9 citation is, what are you certifying? That I did a
10 task? It's not terribly meaningful. We see it that you
11 have to maintain the relationship between the
12 verification activity and the obligation, as defined in
13 the parent citations. And anything short of that is not
14 a complete certification analysis.

15 So, yes, we'd be happy to share the tool. And
16 we'd be happy to share what we've learned.

17 MR. HAGLE: Now, you're talking about your
18 internal process to generate the permit. What about
19 the -- you said you used a commercial product for
20 compliance.

21 MR. CUFFEL: The internal tool was used to
22 bulk-load and populate Inviance, so the static view of
23 the permit, as enforceable, lives in the Inviance tool.
24 As the permit grows and evolves and is modified, that is
25 our internal tool. And then only as the permit is

1 reissued can we episodically update the compliance and
2 administration tool.

3 So, really, you need a dynamic tracking system
4 and you need an as-enforceable compliance demonstration
5 tool. Dates are everything about this. In other words,
6 if you were to audit me for something that happened last
7 year, we have to agree, well, what citations were in
8 effect last year? So start dates and end dates on
9 everything are absolutely a must.

10 MR. HAGLE: Actually, that was kind of what
11 the second part of my question is: How many people does
12 it take you to keep that system up-to-date, because ours
13 it takes a little longer.

14 MR. CUFFEL: That's actually a great deal
15 easier than reading Word documents. It takes a lot less
16 -- fewer resources to update the database.

17 Let me give you an example: If a rule
18 changes, I can locate every instance of that citation in
19 seconds. It takes very little effort, whereas in a Word
20 document, I cannot reliably do that.

21 Same thing in my Enviance compliance
22 demonstration tool -- if a rule changes, I go look at
23 the task and say, "What, if anything, do I need to
24 modify about this compliance task to assure that I'm
25 verifying compliance?" Again, I can locate it in

1 seconds, because that relationship allows me to query
2 the database. It doesn't matter if there's 49,000
3 citations.

4 MR. HARNETT: Marcie Kever.

5 MS. KEEVER: Verena was asking about
6 redlining. I know that the district does that with a
7 lot of their permits -- did that with your refinery
8 permits. I'd just like to say that the community and
9 the public out there still needs those Word versions,
10 because we don't have technology and the access to it.
11 We can't -- if that's the only way we get to review it
12 and people who don't even have that, it's more difficult.
13 It's been the situation with a lot of the other
14 community groups.

15 So I'd just like to remind people that.

16 MR. CUFFEL: Here's what I would offer as a
17 solution: If you're reading a red-lined struck-out
18 document, it's fundamentally flawed; you're wasting your
19 time. So if you had a correctly produced document that
20 was then exported to a word processor for red-line
21 strike-out, now you have a meaningful exercise in a
22 format that's useful to you. That's really the key --
23 the formatting needs to follow the content. I think
24 here it's been reversed. Everyone's worried about the
25 format and less so about the content. That's why we

1 have appeals.

2 MS. KEEVER: I'd like the permit to be
3 correct, too. Don't worry about that

4 MR. CUFFEL: Okay.

5 MR. HARNETT: Adan Schwartz.

6 MR. SCHWARTZ: My comment has to do with this
7 about the deviation -- the particular exemption in the
8 permit. And I should be cautious here. I should go
9 back and think about this. I'm not sure I'm speaking
10 for the district right now, but that doesn't sound
11 necessarily correct to me, personally. And I guess one
12 thing that concerns me is, if it is correct, then what
13 you have creates a pressure -- creates a dynamic where a
14 facility wants every possible exemption, including
15 permits -- every exemption it might conceivably use.
16 And that can be just permit clutter. So, you know,
17 there may be a different way to do this legally or there
18 may be a different solution of how you write
19 certifications with higher citations and perhaps avoid
20 that.

21 MR. CUFFEL: I think one solution is to
22 consider operating scenarios where -- the example I gave
23 you is real world. Tanks change service; that's just a
24 fact of refinery operation. So we're not asking for
25 every exemption that's conceivable under the law but,

1 instead, saying, "Okay. You have nonexempt service and
2 you have exempt service; and you're known to operate in
3 these two modes; therefore, include the exemption."

4 I'm not an attorney, so I can't comment on the
5 legality of it. But what I can say is I was advised --
6 I think the expression was "under an abundance of
7 caution" -- to file a deviation permit, because failure
8 to do so would imply that I am, in fact, performing my
9 seal inspections on a tank in exempt service. And I'm
10 not performing seal inspections on a tank in exempt
11 service. Therefore, I can't certify that I am. Therein
12 lies the dilemma.

13 MR. HARNETT: Kelly Haragan.

14 MS. HARAGAN: I was wondering if you could
15 provide some written comments that have more detail
16 about what you think is important to have in one of
17 these automated systems. I'm a little bit familiar with
18 the Texas system, but I think it would be helpful to see
19 exactly what you think are the priority issues in making
20 a system work correctly.

21 And then, actually, I disagree. I think it is
22 important to have the exemptions that enter into a
23 permit so that everyone knows how you're going to be
24 operating. I think it's good to know.

25 MR. CUFFEL: Well, thank you. I will be happy

1 to submit additional comments. I think it's a
2 win-win-win, because the permit authors, the enforcement
3 people, the public, the permit holder will all be
4 working from the same basis.

5 MS. HARAGAN: Thank you.

6 MR. CUFFEL: Thank you.

7 MR. HARNETT: Bernie Paul.

8 MR. PAUL: Verena's made a nice habit of
9 letting citizen activists know that she's been through
10 similar experiences. So I thought I'd take it upon
11 myself and let you know that we've been through similar
12 experiences in about the year or so that we've
13 implemented a Title V permit and filing deviation
14 reports for things that you wouldn't think would rise to
15 the level of a regulatory notice that something is wrong
16 in implementing your permit. And you have hundreds of
17 deviations listed and maybe one or two of them are of
18 any value at all.

19 MR. CUFFEL: Thank you for the moral support.
20 It means a lot, believe me.

21 MR. PAUL: And we also use a database system
22 to manage our program.

23 MR. HARNETT: We'll hold off on the group hug
24 and bring today's session to an end here.

25 Thank you very much, though, for your

1 comments.

2 [THE SESSION ENDED AT 5:30 P.M.]

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN FRANCISCO)

3 CERTIFICATE OF REPORTER

4 I, the undersigned, a duly authorized
5 Shorthand Reporter and licensed Notary Public, do hereby
6 certify that the within proceedings were taken down by
7 me in stenotype and thereafter transcribed into
8 typewriting under my direction and supervision, and that
9 this transcript is a true record of the said
10 proceedings.

11 _____
12
13 FREDDIE REPPOND
14
15
16
17
18
19
20
21
22
23
24
25