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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
TITLE V TASK FORCE
PUBLIC HEARING
TUESDAY, FEBRUARY 8, 2005

Taken Before JANA ANDRIENE GUNTER
Certified Shorthand Reporter License No. 7589
County of San Francisco, State of California

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LOCATION

Commandant's Ballroom
Marine's Memorial Club and Hotel
609 Sutter Street
San Francisco, California 94102

APPEARANCES

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1 8:30 A.M.

TUESDAY, FEBRUARY 8, 2005

2 MR. HARNETT: Welcome, Heidi. Well, I think we're
3 ready to begin, then. This is Bill Harnett from EPA. We'll
4 go around the room just -- well, we'll give you an
5 introduction around the room. We won't be able to do this for
6 every speaker, but we'll go around once to give you a feel for
7 who's here, and then you can go ahead.

8 You'll have 15 minutes to make your presentation
9 in. I'll give you a warning at the two-minute mark, and then
10 we will have 15 minutes of questions.

11 MR. SLIWINSKI: Rob Sliwinski, New York
12 Department of Environmental Conservation.

13 MR. WOOD: Mike Wood, Weyerhaeuser Company.

14 MR. GOLDEN: David Golden, Eastman Chemical.

15 MS. HARAGAN: Kelly Haragan, Environmental
16 Integrity Project.

17 MR. VAN DER VAART: Don van der Vaart, Division of
18 Air Quality, North Carolina.

19 MR. VOGEL: Ray Vogel, EPA air office.

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

21 MR. HAGLE: Steve Hagle, Texas Commission on
22 Environmental Quality.

23 MS. OWEN: Verena Owen, Lake County Conservation
24 Alliance of Illinois.

25 MS. VIDETICH: Callie Videtich, EPA in Denver.

1 MR. HITTE: Steve Hitte, EPA, air office.

2 MS. BROOME: Shannon Broome, Air Permitting Forum.

3 MS. FREEMAN: Lauren Freeman, Hunton & Williams
4 for the Utility Air Regulatory Group.

5 MR. MOREHOUSE: Bob Morehouse, ExxonMobil.

6 MR. LING: Michael Ling, EPA's air office.

7 MR. HODANBOSI: Bob Hodanbosi, Ohio EPA.

8 MR. PALZER: Bob Palzer, Sierra Club.

9 MR. HARNETT: Heidi, if you have any hard-copy
10 materials, I'll give you an e-mail address.

11 Do you?

12 MS. HOLLENBACH: Yeah, we will be submitting
13 written comments as a follow-up.

14 MR. HARNETT: Okay. Is it what you're reading
15 from today?

16 MS. HOLLENBACH: It will be an expanded version
17 thereof, but I can also send what I am reading today.

18 MR. HARNETT: Okay. Send it to c-o-x, dot,
19 shannon, s-h-a-n-n-o-n, at e-c-r, web, all one word,
20 e-c-r-w-e-b, dot, c-o-m.

21 MS. HOLLENBACH: Okay.

22 MR. HARNETT: And Heidi is with the State of
23 Michigan.

24 And you can go right ahead and begin.

25 MS. HOLLENBACH: How's the volume?

1 MR. HARNETT: It's fine.

2 MS. HOLLENBACH: Okay. Good morning. I'm here
3 representing the Michigan Department of Environmental Quality.
4 My name is Heidi Hollenbach, and I'm district supervisor for
5 the Air Quality Division, Grand Rapids District Office.

6 I would like to thank the Task Force for the
7 opportunity to comment on Title V, for the work you are doing
8 to try to improve the program. It is has and continues to be
9 a daunting task to incorporate many complex applicable
10 requirements for each major source to a single umbrella permit
11 and to identify the appropriate periodic monitoring for those
12 requirements. Despite the many challenges, however, Michigan
13 supports the Title V program and believes it has resulted in
14 real environmental benefit. For this reason, Michigan is
15 providing testimony today and also supports the testimony of
16 STAPPA/ALAPCO presented to you yesterday.

17 First, I would like to provide a little background
18 information on Michigan's Title V program and what has worked
19 well for us. I do this in response to some of the previous
20 testimony regarding problems being encountered in Title V's
21 implementation across the country with the hope that it
22 provides alternative ideas and approaches.

23 Since its implementation, Michigan has issued 504
24 initial Title V permits of which 74 have since been voided.
25 In Michigan, these are called renewable operating permits or

1 ROPs. We have four remaining initial Title V applications
2 that have been delayed due to enforcement action. We are
3 currently working on modifications, reopening, and renewals,
4 with 61 renewals issued to date.

5 Title V permit writing is decentralized in
6 Michigan. The program is implemented by field staff who are
7 also responsible for overseeing compliance of these sources
8 which ensures "real world" permits. A thorough site
9 inspection is conducted by staff before any Title V permit is
10 drafted.

11 Michigan has developed detailed template documents
12 for the Title V permit and the statement of basis, known as
13 the staff report. These templates ensure adequate detail and
14 consistency throughout the state. Michigan has also developed
15 periodic monitoring guidance to ensure adequate and
16 appropriate monitoring conditions are included in Title V
17 permits. Additionally, we have a comprehensive manual that
18 provides guidance to staff on all aspects of Title V permit
19 development and public-participation processes.

20 All applicable requirements are specifically laid
21 out in the permit. Title V sources are provided up to 30 days
22 for review of permit conditions before a draft permit is
23 published for public comment. While this approach may lead to
24 initial delays in the draft permit, many improvements or
25 clarifications to requirements are accomplished through this

1 interactive process, and the source better understands what is
2 included in the permit and why. By addressing such issues up
3 front, the source is much less likely to comment through the
4 public-comments period or to challenge their permit contents
5 and avoid some of the same comments being raised on citizen or
6 EPA review.

7 Public participation is an important component of
8 Title V. In Michigan, all draft Title V permits are public
9 noticed both on website and in the department's calendar, a
10 bimonthly publication mailed and e-mailed to a large
11 constituency. Controversial permits are also noted in the
12 newspaper and/or through direct mailing. Information
13 regarding the date by which EPA must receive petitions is also
14 outlined on the permit web page. All relevant comments
15 received in the public-comment period or EPA review period,
16 and any changes made to the permit to address those comments,
17 are documented in the staff report before the permit becomes
18 final. Michigan agrees that public participation should
19 remain a key element in the permitting process.

20 Michigan provides Internet access to all formal
21 permit-development documents, including drafts, proposed and
22 final permits, as well as the staff reports, and maintains all
23 final Title V permits on our website. It has been our
24 experience that the more information and guidance that we
25 provide through the Internet, the less time is spent by all

1 parties trying to find or communicate information about
2 Michigan's program.

3 Michigan has a good working relationship with
4 Region 5. Our contact there provides timely follow-up on
5 potential program deficiencies and program approval issues.
6 Region 5 EPA routinely reviews Michigan's Title V permits
7 between the 30-day public-comment period and provides comments
8 during this period. We believe that it is more efficient for
9 EPA to comment during the public-comment period so all
10 comments can be considered at the same time. Therefore, we
11 would recommend that EPA's review time run concurrently with
12 the public-comment period to streamline the permit-review
13 process. If no comments are received, no further EPA review
14 would be needed beyond the initial period. However, if
15 comments are received and changes are made to the permit, an
16 additional review period could be provided for EPA.

17 Michigan has a straightforward yet effective
18 compliance certification form. The responsible official must
19 certify that the source is in compliance with all permit
20 conditions except for those specifically identified in an
21 attached deviation report. We strongly recommend this more
22 streamlined approach to addressing compliance-certification
23 requirements. The burden still remains on the source to
24 review the compliance status on a condition-by-condition basis
25 and to maintain documentation to support the certification.

1 But the form only requires a reporting of deviation. With
2 this approach, deviation information is not buried in stacks
3 of paperwork.

4 Region 5 staff worked with Michigan in the
5 development of this form to ensure that our process adequately
6 implements the federal requirements. The deviation-reporting
7 form requires the source to describe the time and duration of
8 all deviations, as well as corrective actions, and what
9 actions were taken to prevent a reoccurrence. The agency
10 always reserves the right to require the submission of more
11 detailed reports if staff has any reason to be concerned with
12 the source's or client's history, or with the truth, accuracy,
13 or completeness of any certification report. All deviation
14 reports are reviewed by agency staff and a determination made
15 as to whether deviation will be cited as a violation.
16 Michigan has developed guidance material, detailed
17 instruction, and training for sources to ensure that they
18 exercise due diligence in their Title V certification. In
19 addition to the deviation reporting, a routine air quality
20 division inspection includes a thorough review of the source's
21 record.

22 Michigan has seen many benefits arise from the
23 Title V program. Although not a direct or intended result of
24 the program, Michigan has seen a reduction in emissions.
25 Emissions from Title V subject sources have decreased 19

1 percent from 1998 to 2003. Many sources made reductions or
2 accepted more restrictive permit limits to opt out of Title V,
3 and we continue to see this trend. Emissions from sources
4 that have opted out of Title V have decreased 26 percent in
5 that same time period.

6 Title V has also resulted in better compliance by
7 major sources. Sources better understand and pay attention to
8 their permit requirements. Michigan has noted a downward
9 trend in the number of significant air violations at major
10 sources and attributes this to sources being required to
11 certify compliance with all permit requirements.

12 There's an improved monitoring -- there is
13 improved monitoring and record keeping, as well as
14 self-auditing, that have resulted in sources identifying and
15 correcting their problems promptly.

16 In addition, permit conditions are clarified in
17 the Title V permit so the source, the field inspectors, and
18 the public, have a better understanding of their intent and
19 application.

20 Some improvements to the Title V program are still
21 needed. First, the revision process is onerous and
22 confusing. No process should be so convoluted that we have to
23 spend more time figuring out what category of change an action
24 falls into than to actually process the change. It is often
25 too difficult to determine the category for a change, and the

1 requirements for public review can be excessive. For example,
2 reopenings to incorporate new federal standards should not
3 have to go through full public comment since the standards
4 themselves have recently been through the public-comment
5 process. We recommended changes be made to the revision
6 requirements to simplify and better streamline this process.

7 The second concern Michigan has with the Title V
8 program is incorporation of MACT standards into the permit.
9 The complexity and various compliance options, many MACT
10 standards are exceedingly difficult to incorporate into the
11 permit format while still maintaining the flexibility intended
12 in many of the standards. It is not practical or meaningful
13 to include an entire standard word for word within a Title V
14 permit, nor is it useful to provide only a single place-holder
15 requirement. The balancing act between the two extremes is
16 resource intensive. It is our impression that after this
17 problem was highlighted nationally by many state and local
18 agencies, EPA agreed to specify within each new MACT standard
19 what particular requirements within -- to be included in a
20 Title V permit. This has not happened with the majority of
21 standards, and EPA has not provided any useful guidance on
22 incorporating MACT standards for Title V permits.

23 In conclusion, Michigan has developed an effective
24 Title V program and has seen benefits from its implementation.
25 We believe it is too late for EPA to provide standardized

1 guidance and template documents, as suggested by others, with
2 the possible exception of guidance on incorporation of MACT
3 standards into the Title V permit. We also see the
4 opportunity for improvements in the Title V permit-revision
5 process. However, Michigan has worked too hard for too long
6 to implement Title V and seen too many benefits to now abandon
7 the program or to support completely undermining the unique
8 solutions that each regulatory agency has developed and
9 implemented along the way.

10 Thank you. And I would be happy to answer any
11 questions you might have.

12 MR. HARNETT: Bernie Paul?

13 MR. PAUL: Good morning, Heidi. This is Bernie
14 Paul with Eli Lilly.

15 I'm curious to know if you have reviewed any of
16 the quarterly or semiannual compliance reports, deviation
17 reports, and what is your perspective of the nature of the
18 deviations that are being reported?

19 Is it primarily emission-limit violations,
20 paperwork deviations, record-keeping deviations?

21 What are you seeing as a result of the compliance
22 reporting that sources are doing?

23 MS. HOLLENBACH: What we see the majority of
24 deviations for are primarily record keeping, missed records,
25 some opportunities where they were to do some type of opacity

1 reading that was not done. Things along that nature. We do
2 occasionally see reports of emission violations, which we
3 definitely follow up on as a violation. But, typically, a lot
4 of it is the record-keeping component.

5 MR. HARNETT: Shannon Broome.

6 MS. BROOME: Hi, Heidi. My name is Shannon
7 Broome, and I've done a fair amount of permitting in
8 Michigan.

9 So I just want -- one thing is to compliment you
10 on avoiding appeals. We've heard some stuff about appeals
11 yesterday, and one thing that I have noticed is that when
12 people comment on a permit in Michigan, there is a sincere
13 effort to work things out. So I want to compliment you on
14 that.

15 One question I had was on the -- you mentioned
16 the certification form and the deviations.

17 Have you been told by EPA that the long form is
18 required for certifications?

19 MS. HOLLENBACH: Well, the -- there was a lot of
20 work back and forth between Michigan and Region 5 in the
21 development of our form, which we feel still fulfills the
22 requirements, but it's not considered a long form. And it
23 took a while to convince Region 5 that this was an appropriate
24 way to go. And they did eventually side with us and accept
25 our form.

1 MS. BROOME: And they didn't mention to you that
2 RTP's position has been that either the short form or the long
3 form is acceptable in that discussion?

4 MS. HOLLENBACH: We had heard that kind of
5 feedback, yes.

6 MS. BROOME: Okay. Great. Thank you.

7 MS. HOLLENBACH: Uh-huh.

8 MR. HARNETT: Bob Palzer.

9 MR. PALZER: This is Bob Palzer with the Sierra
10 Club. Thank you for calling in. I'm really impressed with
11 the way in which you give public -- your use of the Internet,
12 not only to give public notice of permit issuances, and to
13 have the supporting documents. Because oftentimes that is a
14 big problem for the public to get involved in the program.

15 The question that -- I have several questions.
16 You mentioned that you try to work closely with the source
17 prior to even putting the draft permit out.

18 Do you also, where you know there's significant
19 interest, do you also try to involve the public at that point
20 in the process?

21 MS. HOLLENBACH: In my district we have not had
22 that occur. We haven't had any source with a whole lot of
23 public interest.

24 In the Detroit area there are a lot more
25 controversial sources, and I honestly don't know if they have

1 gone through that process with any particular group prior to
2 the public-comment period. I can look into that and address
3 that in the written testimony.

4 MR. PALZER: I'd appreciate that.

5 As a follow-up, when you do have a public hearing
6 and there are significant comments, how often are those
7 incorporated -- I mean the ones that can be incorporated --
8 into the permit from the draft to the final?

9 Does it tend to be a common event or a less common
10 event?

11 MS. HOLLENBACH: Public hearings aren't extremely
12 common. I think in our state maybe we've had 20 public
13 hearings to date for Title V permits. A lot of times the
14 comments tend to be more New Source Review permitting comments
15 that we can't address through the Title V process. But I do
16 believe if there are comments that are appropriate, that our
17 staff try to make the appropriate change in the permit if it
18 is relevant and appropriate to do so.

19 MR. PALZER: Okay. Thank you.

20 MR. HARNETT: Adan Schwartz?

21 MR. SCHWARTZ: Hi. This is Adan Schwartz with the
22 Bay Area Air District.

23 I wonder if you could speak to the interface of
24 minor new-source review and Title V in Michigan and how you
25 keep the permits up to date with minor NSR permits that are

1 issued after the Title V permit is issued; whether they exist
2 off permit for a while, or whether the permit is updated
3 simultaneously, and so forth.

4 Thanks.

5 MS. HOLLENBACH: At this point, the permit -- the
6 New Source Review, minor New Source Review permit is issued.
7 It is not automatically included in the Title V permit. We
8 are exploring ways to do that to be more efficient in our
9 permitting process.

10 Typically, a minor permit does remain off permit
11 until it is processed as an administrative amendment, if the
12 permit has gone through public comment. If not, it will also
13 just remain off permit unless another change is made to the
14 permit, and then we would incorporate those additions.

15 MR. SCHWARTZ: Just one follow-up. Is that true
16 even if there's a conflict between the minor NSR permit and
17 the terms of the Title V permit?

18 MS. HOLLENBACH: If that is the case, we do try to
19 process those types of permit changes. The companies
20 typically want to see that happen to avoid having to report
21 deviations. But if there is a conflict, we do recommend to
22 the company they report the deviation. We will not take
23 follow-up action obviously. But our rules allow for a company
24 to follow the conditions of the New Source Review permit even
25 if it conflicts with an existing Title V permit if it has not

1 yet been ruled in. As long as they are in compliance with
2 that New Source Review permit.

3 MR. HARNETT: Bob Morehouse.

4 MR. MOREHOUSE: Heidi, this is Bob Morehouse,
5 ExxonMobil. I may not have heard you correctly, so the
6 question, did you indicate that the permit engineers visit the
7 sites that they're working on the permits for?

8 MS. HOLLENBACH: Yes. The field staff who draft
9 the permits are also the inspectors for those sources. But
10 typically they're already quite familiar with the sources, but
11 they do a site visit and an inspection prior to drafting the
12 Title V permit.

13 MR. MOREHOUSE: Thank you.

14 MR. HARNETT: Michael Ling?

15 MR. LING: Good morning. This is Michael Ling
16 with EPA.

17 You mentioned that you had some experience with
18 renewals. I'm just wondering if you can characterize the kind
19 of review that you're doing at renewal and the kind of actions
20 that you're taking to update the permit, if necessary.

21 MS. HOLLENBACH: The renewal process is still a
22 bit onerous, we're finding, primarily because we have updated
23 our template document and made some changes. We are taking
24 pains to make sure the renewals are up to date and that
25 anything that was deficient in a prior permit is addressed,

1 cleaned up. And it is taking quite a bit of time to do that.

2 MR. HARNETT: Mike Wood.

3 MR. WOOD: Good morning, Heidi. This is Mike Wood
4 with Weyerhaeuser. Thank you for taking time to call in this
5 morning. Your comments are very well-prepared.

6 I have a question about your templates and whether
7 those are generic, or if you have a number of templates that
8 are industry-specific?

9 MS. HOLLENBACH: No, our template is basically
10 comprised of the general conditions that would apply to all
11 sources, and then the formatting for the different
12 emission-unit conditions for each condition-free emission
13 unit, that will then get filled in by the permit writers.
14 And, it's also some appendices, so it's a generic document,
15 but it's formatted in a way that enforces the permit writer to
16 be consistent in how they draft permits for individual
17 sources.

18 MR. WOOD: Are insignificant emission units --
19 how are those addressed in your permits?

20 MS. HOLLENBACH: Our rules do not require the
21 reporting of very insignificant emission units in the
22 application. Those that are required to be reported are any
23 with applicable emission limits or standards. And we have
24 crafted some -- this is where we might -- we have some
25 templates that are generic. We've crafted some templates for

1 those types of emission units that have standard conditions,
2 and those are included in the permit, if applicable, for
3 certain sources. So the work is done all up front. The
4 conditions are the same for all those sources for those types
5 of emission units that are de minimis.

6 MR. WOOD: In your written testimony, could you
7 provide an example of one of those insignificant templates?

8 MS. HOLLENBACH: Okay.

9 MR. WOOD: Thank you.

10 MS. HOLLENBACH: Uh-huh.

11 MR. HARNETT: Steve Hagle.

12 MR. HAGLE: Good morning, Heidi. This is Steve
13 Hagle from Texas. I had a question about a statement that you
14 made, and I just wanted to clarify what you were saying. You
15 said permit conditions are clarified in the Title V
16 permitting.

17 Does that mean that you're going back and looking
18 at NSR -- underlying NSR permits and trying to clarify some of
19 those conditions? I really didn't understand what that
20 comment was in relation to.

21 MS. HOLLENBACH: Yes. What we attempted to do is
22 when a New Source Review permit condition is not worded well
23 or is vague or not specific enough, we have tried to clarify
24 the language in the Title V permit so the source understands,
25 we understand, and it's clear to the public.

1 MR. HAGLE: So are you actually changing the
2 underlying NSR permit, or are you just adding additional
3 language as part of the Title V permit, or how do you do that?

4 MS. HOLLENBACH: We are not changing the
5 underlying New Source Review -- or underlying applicable
6 requirement. We're just simply hopefully improving the
7 verbiage.

8 MR. HAGLE: Thank you.

9 MS. HOLLENBACH: Uh-huh.

10 MR. HARNETT: Verena Owen.

11 MS. OWEN: Hi. This is Verena Owen with Lake
12 County Conservation Alliance. I have three quick questions.

13 You do concurrent review. If you receive public
14 comments, does the review stay concurrent, or can EPA request
15 to have them be sequential?

16 MS. HOLLENBACH: Maybe I can clarify that. We
17 currently, although EPA has agreed to review our permits
18 during the 30-day public-comment period, there still is a
19 subsequent 45-day EPA review period. Typically they don't use
20 that period to provide comments; they provide comments up
21 front for us.

22 MS. OWEN: Okay. Thank you.

23 Do you respond to comments?

24 MS. HOLLENBACH: Yes.

25 MS. OWEN: Last, the calendar you mentioned, it

1 sounded like some kind of cost-saving device. You said you
2 mailed it out to a lot of folks that are interested.

3 Does this calendar contain public notices for
4 permits that went out to draft?

5 MS. HOLLENBACH: Yes, this calendar, actually, is
6 a department calendar and includes all public notices for all
7 of the department's actions, including all of our Title V
8 permits.

9 MS. OWEN: So this is a biweekly calendar?

10 MS. HOLLENBACH: Yes.

11 MS. OWEN: So you issue permits basically every 14
12 days in bunch instead of --

13 MS. HOLLENBACH: What we do is, we start the
14 public-comment period, the publication date of a calendar.
15 That's the first day. So it would appear twice in the
16 calendar during the 30-day public-comment period.

17 MS. OWEN: Thank you.

18 MR. HARNETT: Marcie Keever.

19 MS. KEEVER: Thanks for calling us, Heidi. I had
20 a question. You mentioned something about some permits were
21 still not issued because of enforcement actions, and I'm
22 wondering how your state deals with enforcement or compliance
23 problems when also having to deal with issuing Title V
24 permits?

25 MS. HOLLENBACH: We have a scheduled compliance in

1 the appendix of the permit that we use when a company is not
2 in compliance with the terms and conditions of permit. That
3 works in most cases, however we do have -- these remaining
4 four have major enforcement issues ongoing, enforcement
5 actions.

6 And as far as I understand, there is not an
7 agreement yet, necessarily, on the corrective action.
8 Although, I think there are two that are going out. One's
9 going out for public comments in the very near future; and one
10 they will probably include a scheduled compliance in the
11 permit without the company having submitted it and to try and
12 enforce the permit through that way.

13 MS. KEEVER: Thank you.

14 MS. HOLLENBACH: Scheduled compliance is the way
15 we typically deal with a noncompliance issue.

16 MR. HARNETT: Keri Powell.

17 MS. POWELL: This is Keri Powell from the New York
18 Public Interest Research Group.

19 I was wondering if you could expand a little upon
20 what factors your agency considers in deciding how much
21 monitoring is needed to assure compliance and how well that
22 process is working for you.

23 MS. HOLLENBACH: We do have, as I mentioned, a
24 guidance document that lays out typical periodic monitoring
25 that can be used for different pollutants for different types

1 of sources. That has been the foundation of our periodic
2 monitoring program, how we've identified appropriate
3 monitoring.

4 Does that answer your question?

5 MS. POWELL: I'd appreciate it if you'd describe
6 the guidance a little bit. Just more detail.

7 Do you supplement existing monitoring conditions
8 and regulations with additional monitoring when you think it's
9 necessary?

10 MS. HOLLENBACH: Yes, we do. If there is not a
11 monitoring requirement for the applicable requirement, we will
12 make sure that there is something in the permit that can
13 demonstrate compliance with that particular condition.

14 MS. POWELL: And what if there is some amount of
15 monitoring in the underlying requirement but you don't think
16 it's sufficient to assure compliance?

17 MS. HOLLENBACH: Do we gap fill?

18 MR. HARNETT: Could I ask if you would just
19 submit that for our record, a copy of your guidance? That
20 would probably be helpful.

21 MS. HOLLENBACH: Okay.

22 MR. HARNETT: Don van der Vaart.

23 MR. VAN DER VAART: This is Don van der Vaart with
24 North Carolina, Heidi.

25 I was just wondering, on MACT requirements, just

1 two little questions: One, do you do anything with the Title V
2 permit between the notification that a source thinks is
3 subject to the MACT and the substantive compliance date of
4 that MACT, which is usually about two-and-a-half years?

5 And then what -- what do you do, either before or
6 after that substantive compliance date, in terms of placing
7 those conditions; in other words, do you do it by reference or
8 do you paraphrase, or what?

9 MS. HOLLENBACH: If a MACT is in effect, -- and we
10 have in the past reopened permits to include MACT provisions
11 in the permits -- if it's between the notification and the
12 first substantive compliance date, we would not reopen. But
13 if we are in the renewal process, we have included the MACT
14 provision, as best we can, into the Title V permit.

15 How we do that is, we're kind of in the middle.
16 We do not do a high-level citation, nor do we include every
17 detail of the MACT to try and find an appropriate middle
18 ground: at least the emission limit, any work-practice
19 standards, monitoring, record keeping conditions in the
20 permit.

21 MR. VAN DER VAART: Now, do you reopen if the
22 compliance date -- if the actual substantive compliance date
23 occurs before renewal?

24 MS. HOLLENBACH: We have done that for a number of
25 them. I can't speak to all of our permits, but I know that we

1 have reopened a number of permits.

2 MR. HARNETT: Thank you very much for your time,
3 Heidi. We appreciate it.

4 MS. HOLLENBACH: Thank you.

5 MR. HARNETT: Is Bill O'Sullivan on?

6 MR. O'SULLIVAN: I am here.

7 MR. HARNETT: Bill, this is Bill Harnett. You
8 have a mixed crowd here of representatives of public interest
9 groups, states, and industry, and you're free to go ahead.

10 I'll give you a warning -- you have 15 minutes for
11 your presentation, then we're going to take 15 minutes for
12 questions. I'll give you a warning when you have two minutes
13 left.

14 MR. O'SULLIVAN: All right. Well, thanks, Bill,
15 for the opportunity to present this oral testimony. I think
16 the states and locals have a lot to offer. I just wanted to
17 say that much of what Michigan has said satisfies New Jersey
18 as well. There is a lot of commonality in how you approach
19 our operating-permit program.

20 I have with me here my chief of my operating
21 program, John Preczewski, and also his second in command, Rich
22 Langbein, in case I can't answer questions, which may be the
23 case.

24 I want to just focus on renewals right off the
25 bat. I think now is a good time to take operating permits to

1 the next step. As Michigan pointed out, there's an
2 opportunity to improve our operating permits with the
3 renewals. What we are planning to do here in New Jersey is
4 to, with each renewal, provide a comprehensive overview of the
5 air-pollution control at each facility and do this at least
6 once every five years.

7 We see the operating permit not only as a good
8 enforcement tool, but as a useful air-quality-management
9 tool. With a good overview of the facility once every five
10 years, this can be useful to the public, to the air agency,
11 and to the facility management. And when I'm talking about a
12 facility's overview, I'm talking about primarily seven items.

13 One is to summarize the facility changes over the
14 last five years. Some of these changes could get buried in
15 these rather big permits, and so a summary of those changes is
16 appropriate. This would be for both significant and
17 insignificant sources. The insignificant sources are not
18 subject to permit revision during the five-year term. They're
19 only subject to revision at the five-year renewal. So it's
20 important to explain the changes to insignificant sources at
21 that time.

22 Two, to show the emission trends for the criteria
23 pollutants and the significant HAP. We all have emission
24 statements which show us the emissions for each of the major
25 facilities. We're asking our major facilities to show what

1 their trends have been in the criteria pollutants over the
2 last five years and for selective hazardous air pollutants as
3 well.

4 Three, listing of the stack-test results, if any
5 have been conducted over the five years.

6 Four, summarizing exceedances. We've gotten
7 annual compliance certifications and deviation reports, how
8 about -- some summary of these deviations at the five-year
9 renewal is appropriate.

10 Five, give the company an opportunity to describe
11 their efforts to reduce emissions.

12 Six, summarize any air-quality modeling and risk
13 assessment that has occurred, and we're seeing more and more
14 of this as we are getting into the regulation of hazardous air
15 pollutants.

16 And, finally, seven, give the company the
17 opportunity to describe what it will or what it intends to do
18 to reduce or minimize air emissions over the next five years.

19 Let me get into some general feelings about the
20 Title V program. I think it's largely been successful at
21 achieving its purpose. It provides a consolidation of the
22 numerous conditions in our preconstruction permits. In New
23 Jersey, we had approximately 21,000 separate permits for
24 individual pieces of equipment at these facilities. Now
25 they're in a permit, facility-wide permits, for 350 sources.

1 The details are still there. The significant emission units,
2 there's still the details in the permits, but it's organized
3 and it's done in a facility-wide way. In addition, we've got
4 the grandfather sources in these permits, and we have general
5 descriptions and inventory of the insignificant sources.

6 So for the first time we have a better picture, a
7 good picture, of what the true situation is at these major
8 facilities, and the facility -- many of the facilities, for
9 the first time, they also have this picture. We think that
10 compliance-assurance monitoring has been very helpful. We
11 think we're still scratching the surface on testing and on
12 monitoring. But the monitoring that is included in the permit
13 has been helpful at assuring compliance.

14 We see emission reductions as a result of these
15 permits; and that the sources have become aware of the
16 requirements; and because of the monitoring and record keeping
17 or reporting that's required. Some sources have used the
18 opportunity to put enforceable permit conditions in their
19 minor-facility permits to avoid becoming major facilities, and
20 that's helpful for air pollution as well.

21 A comment on something that's been discussed by
22 this work group is whether or not there should be uniform
23 Title V permits, forms, and policies. We don't believe this
24 would be constructive at this point. Each state has developed
25 its own forms and procedures, and each state needs to evolve

1 from where it is now to better, more effective permits. So we
2 don't believe that there should be uniform operating permits
3 across the U.S.A. at this point. We do think it would be
4 appropriate for EPA to provide what I call a model for
5 (inaudible) sets or federal rules. For example, MACT and
6 NSPS, that would be very helpful. And we think it's
7 appropriate for states to be sharing exemplary permit
8 conditions for common-source categories as we evolve with our
9 renewable permits to better permits.

10 B, touch on B, it's also an important point: We
11 found that \$25 a ton was inadequate. We are up to \$90 a ton.
12 And this is obvious for the need for increased fees as
13 emissions decrease because we have more air-pollution
14 controls, permits become more complicated, the work increases.
15 The work doesn't decrease as emissions decrease. We've gone
16 from low-sulfur coal, to low NOx burners, SDRs, rubbers,
17 carbon injection, numerous DEMs, inlet/outlet testing; many
18 more requirements than we had 10, 20 years ago. And this all
19 takes more work by the facilities and by the state inspectors
20 and permit renewers.

21 I'll comment on our \$90 a ton. If you look at the
22 cost, the avoided cost of air-pollution control on the market,
23 it's \$700 a ton for SO2, \$400 a ton for NOx. So even a
24 \$90-a-ton emission fee is a relatively low number compared to
25 the avoided cost of control.

1 How am I doing with time, Bill?

2 MR. HARNETT: You have about seven minutes left.

3 MR. O'SULLIVAN: All right.

4 MR. HARNETT: You don't have to feel obligated to
5 use it all.

6 MR. O'SULLIVAN: You know me, Bill. I'll use it
7 all and then some if I can.

8 A point on certifications. And we've had some
9 issues here with the length of those. We believe that these
10 should be streamlined, focused on deviations, violations, and
11 provide sufficient detail on the deviations. We don't think
12 it's useful for compliance certifications to repeat applicable
13 requirements for source operations where there is no problem.
14 We find that the front line certifications get too detailed
15 for our sources where there are no problems; that the real
16 problems get buried in the certification.

17 Our average operating permit has 60 significant
18 sources, and it has over 1,000 applicable requirements. So to
19 repeat every one of those, you know, monitoring, record
20 keeping, and reporting requirements in a compliance
21 certification is just not appropriate.

22 A little comment on the de minimis, and how the
23 states define what is the significant source to include detail
24 of the operating permit. And there is no federal -- there is
25 no federal definition of significant/insignificant. We all do

1 it based on our preconstruction-permit programs. And there --
2 and I believe that there should be some further EPA guidance
3 on what are appropriate de minimis levels for
4 significant/insignificant sources.

5 Incorporation by reference, we, like Michigan, do
6 it both ways. Sometimes -- we've sometimes taken the MACT
7 standard and developed very detailed permit conditions put in
8 the permit. More recently, we've taken to incorporate some of
9 the very lengthy MACT standards by reference. We think that
10 it's important to include options; where there are options in
11 the MACT standards in the operating permit that clearly
12 indicate to the people overseeing the permit what options are
13 selected by the facility to comply with MACT.

14 I heard a question on site visits. We think that
15 site visits are very useful by our permit evaluators, and that
16 the permits are best when there's a teamwork by the facility
17 environmental manager and his staff, by the permit evaluator,
18 and also by the field inspector. That makes a good team and
19 better permits come out of the process when all are actively
20 engaged.

21 We think there's need for further training. We
22 think it would be helpful to have source categories specific
23 seminars and the sharing of model permits at those kind of
24 seminars; perhaps websites for the state and locals would be
25 useful as well.

1 Potential to emit, we take the opportunity to
2 define "potential to emit" in our operating permits and think
3 that's a good practice.

4 Startup, shutdown, malfunctions, we think the
5 reporting of these is very important, and we include our
6 affirmative defense reporting as a requirement in our
7 operating permit. This involves reporting any exceedances
8 during these situations and what actions are taken to address
9 those exceedances and prevent or minimize them in the future.

10 Public outreach. We don't get much public
11 interest in our permits. When there's a request for a public
12 hearing, we generally honor that request. I don't think we've
13 ever turned down a request for a public hearing, but we don't
14 get many of them. When we get a request to accept public
15 commentary, we do that as well. We don't believe that there
16 should be the need to reissue a public notice if there's a
17 request to extend the comment period.

18 On environmental justice, on -- some communities
19 have indicated an interest in facilities in their
20 neighborhoods, and we're trying to involve those communities
21 up front with any new -- any significant new or modified
22 facilities in the area, that includes any major facilities
23 with operating permits.

24 MR. HARNETT: You have two minutes left.

25 MR. O'SULLIVAN: All right. I'm just about done.

1 Let's see what we have here. For appeals. We've
2 gotten a number of appeals more recently. Some of these
3 appeals are the substance of permit and we simply made a
4 mistake, or we haven't been clear, and we worked those out
5 with the company. Sometimes the appeals are all over the
6 place. We've even gotten appeals on the boilerplate. So
7 we've got some, what we consider, symbolic appeals from
8 certain industry groups which are, in my opinion,
9 problematic.

10 On minor mod, significant mod, I think I'll wrap
11 up with that. On minor mods we have a consolidated permit
12 program here, meaning both our preconstruction and operating
13 permits are reviewed and approved concurrently. We do give
14 the facility the opportunity to get their preconstruction
15 approval first as part of the process. So when we go out with
16 the draft operating permit, we give an approval for the
17 preconstruction permit.

18 For minor mod, the facility can proceed at risk
19 with both construction and operation. For significant mod, a
20 facility can proceed at risk with only construction provided
21 it's not major NSR. We think these are good procedures. We'd
22 like to see some further streamlining here. We think that for
23 significant mods that aren't major NSR, that the facility
24 should be able to also operate when we've issued our proposed
25 permit to EPA and not have to wait for EPA to go through the

1 45-day veto period.

2 I think that finishes up the main points I wanted
3 to make, Bill. We are going to follow up with written
4 comments, which I have put together considerably more than I
5 had the opportunity to do in 15 minutes today.

6 MR. HARNETT: Thank you, Bill.

7 Bob Morehouse.

8 MR. MOREHOUSE: Bill, this is Bob Morehouse,
9 ExxonMobil.

10 Could you explain briefly to the Task Force about
11 the New Jersey write-your-own-permit program that you have?

12 We have a facility in New Jersey that has utilized
13 that and found that to be effective in working with the state
14 to get a better-quality permit.

15 I'd be interested in yours with a broader
16 perspective on that.

17 MR. O'SULLIVAN: There's no magic in
18 write-your-own-permit. The original intent of the Title V
19 program was that the major facilities would submit draft
20 permits to the state, and we'd approve them. And early on in
21 the program we found that that wasn't possible, and we pretty
22 much started writing the permits for all the facilities.

23 More recently, in the last year or so, with the
24 very big facilities, the facilities with batch processes,
25 we've taken on a more teamwork kind of review where we've

1 involved the facility environmental management in writing the
2 permits and encouraged them to do more of the up-front work on
3 the permit conditions with our oversight, with our visiting
4 the facility, with the involvement of our enforcement
5 inspectors; that teamwork I was talking about earlier. And we
6 found that this takes more time, but it produces better
7 permits: better permits for the facility, better permits for
8 us, and better permits for the public.

9 MR. HARNETT: Bernie Paul.

10 MR. PAUL: Hello, Bill. This is Bernie Paul with
11 Eli Lilly.

12 MR. O'SULLIVAN: Hi, Bernie.

13 MR. PAUL: How are you doing? I have a question
14 about deviation reports, compliance reports, compliance
15 certifications.

16 What has been your experience, if you've reviewed
17 these reports, or if any of the staff that's with you have
18 reviewed these reports, what is your experience with the type
19 of information that's being reported as compliance issues,
20 deviations?

21 Is it mostly record keeping, reporting, or are you
22 seeing a lot of emission-limit violations being reported in
23 these reports?

24 I'm just kind of curious, trying to get a flavor
25 from different states of what they're seeing in these reports.

1 MR. O'SULLIVAN: Let me say, as far as -- the
2 Enforcement Program is the only air program that doesn't
3 report to me. So I only can speak from what I know, and that
4 is, from hearing Ed Kromansky (phonetic), who does head up the
5 Enforcement Program, that the reports have been all over the
6 place; that we see all kinds of deviations reported.

7 If you look at the operating permit, we don't
8 require much stack testing; we don't require much continuous
9 emissions monitoring. We do require a lot of process
10 reporting. So obviously you see more deviations on the things
11 that you specified as applicable requirements and less on
12 emissions because you don't ask for much in the way of
13 emissions testing and monitoring.

14 MR. HARNETT: Bob Palzer.

15 MR. PALZER: All right, Bill. Thanks for calling
16 in. I'm representing the Sierra Club.

17 Did I hear you correctly when you said that once
18 compliance certification has been made, there was no need to
19 do it again?

20 MR. O'SULLIVAN: No. No. Compliance
21 certification have to be done periodically. What I said was
22 that compliance certifications should focus on deviations and
23 should not repeat a lot of information on equipment for which
24 there is compliance.

25 MR. PALZER: I'm glad I misheard you. I feel much

1 more comfortable. Thank you.

2 MR. HARNETT: Adan Schwartz.

3 MR. SCHWARTZ: Adan Schwartz with the Bay Area Air
4 District.

5 My question, again, has to do with minor New
6 Source Review. I know you said you have a consolidated
7 program, Bill, so the Title V Action and the New Source Review
8 action happen simultaneously.

9 So my question is, can you generalize about what
10 portion of minor resource-review actions are handled as Title
11 V minor modifications; most of them, all of them, or what can
12 you say about that?

13 MR. O'SULLIVAN: I don't have that data at my
14 fingertips.

15 John? Rich?

16 They don't either.

17 I think a majority of the modifications are minor
18 mods. I sign off on the public notice for the significant
19 mods, and so we're talking thousands a year in the minor-mod
20 case and perhaps a hundred a year in the significant case.
21 We'll get some better statistics there.

22 MR. HARNETT: Thank you.

23 Keri Powell.

24 MS. POWELL: This is Keri Powell from the New York
25 Public Interest Research Group.

1 In your testimony you mentioned that the
2 compliance-assurance monitoring in permits is helpful, but I
3 believe you said that you feel like the agency is still just
4 scratching the surface.

5 I was wondering if you would explain that a little
6 further. Does that mean that you think additional monitoring
7 will be needed in renewal permits, and, if so, can you
8 describe the process for deciding how much monitoring is
9 needed to assure compliance?

10 MR. O'SULLIVAN: Let me start with your last point
11 first.

12 Like Michigan, we do have some -- we call it
13 presumptive norms for monitoring, reporting, for some
14 comment-source categories. And, generally, we only require
15 the stack testing for the very larger sources, the big
16 boilers, for example; and continuous monitors, the same way.
17 Most of the sources at the facility average 60 sources per
18 facility. It's production records; is the source keeping
19 within the production of -- that it committed to as maximum
20 production in the permit. And there might be some other
21 conditions on raw materials and that sort of thing.

22 So there is not much testing and monitoring. I
23 think as we go forward in the future, we'll find the need for
24 more testing and monitoring, and hopefully this will become
25 more cost effective as the cost of continuous monitors go down

1 over time.

2 MR. HARNETT: Callie Videtich.

3 MS. VIDETICH: Hi, Bill, this is Callie Videtich
4 from Region 8 in Denver.

5 MR. O'SULLIVAN: I can't hear you.

6 MS. VIDETICH: My name is Callie Videtich from
7 Region 8 in Denver.

8 Can you hear me now?

9 MR. O'SULLIVAN: I still can't hear you.

10 MS. VIDETICH: Can you hear me now?

11 MR. O'SULLIVAN: Yes. Thank you.

12 MS. VIDETICH: Can you hear me now. This is
13 Callie Videtich, Region 8 in Denver.

14 The last statement you made in your testimony
15 before we started asking questions, you said, "We think that
16 sources should be able to begin construction once we've issued
17 a proposed permit to EPA."

18 Does that mean you think that that's what should
19 happen, or is that the practice?

20 MR. O'SULLIVAN: No, that's what I think should
21 happen.

22 MS. VIDETICH: Okay.

23 MR. O'SULLIVAN: I don't think -- right now,
24 significant mod operation, operation, cannot occur until EPA
25 goes through its 45-day period or otherwise concurs on a

1 permit. And I think we've gone through the draft permit;
2 we've gone to public comment. EPA, in my region, reviews the
3 draft. They do it concurrent with the public.

4 And the only function of the proposed permit is
5 for EPA to ensure that we've adequately incorporated any
6 comments they might make. And so, generally, we pay attention
7 to Region 2 and incorporate their comments in the permit. So
8 I don't think there's much risk of the source operating upon
9 issuance of the proposed permit. That's the permit that goes
10 to EPA for the 45-day review.

11 MS. VIDETICH: Certainly, though, under your
12 scenario, if someone else had commented during the
13 public-comment period, and the source begins to construct
14 during EPA's proposed permitting period, the people who
15 commented under their own public-comment period could do a
16 petition, and that may grind things to a halt if EPA is
17 petitioned over the permit.

18 MR. O'SULLIVAN: It would be at risk. And, once
19 again, we get very little comment on permits, and those we do,
20 we try to incorporate as best we can, and that includes EPA
21 comments. So when we go to the closed permit, we're pretty
22 comfortable that the permit will stand up. The most appeals
23 we get on our permits are from the sources themselves, not
24 from the citizens and not from EPA. Sometimes sources appeal
25 permit conditions that they provided to us.

1 MR. HARNETT: Rob Sliwinski.

2 MR. SLIWINSKI: Hi, Bill.

3 MR. O'SULLIVAN: Hi, Rob.

4 MR. SLIWINSKI: You mentioned startup, shutdown,
5 and malfunctions, and that reporting is important and needs to
6 be required, if I got that correctly.

7 Are you currently requiring that reporting in your
8 emissions reporting, and, if so, how do you assure it occurs?

9 MR. O'SULLIVAN: I believe we're requiring that
10 reporting in two ways. One is as part of our affirmative
11 defense requirements, that any deviation has to be reported
12 within two days, and significant deviations within 15 minutes;
13 along with what actions are being taken to address the
14 deviation and prevent it in the future. And this has been a
15 very good program at getting these kind of exceedances, which
16 are becoming more and more the emissions in this country,
17 addressed.

18 We also require that the emissions from these
19 deviations be incorporated into the annual emissions
20 statement. Now, how successful we are in getting that
21 information, I'm not sure. I can follow up with my
22 emission-statement people on it. But that is a listed
23 requirement in the emission report.

24 MR. HARNETT: Shannon Broome.

25 MS. BROOME: Hi, Bill. This is Shannon Broome.

1 I'm just following up on Callie's question and your statement
2 about the preconstruction and the operating.

3 I was understanding you to say that you've
4 actually issued the preconstruction approval at the point that
5 the proposed operating permit is going to EPA, right?

6 MR. O'SULLIVAN: Actually, no. As you probably
7 know, the operating permit is a two-phase process. It starts
8 with a draft permit that goes out to the public. And then
9 after the public comment, we then issue a proposed permit for
10 EPA's 45-day review.

11 When we do our simultaneous construction approval
12 and operating approval, we do that at the draft stage. We
13 issue both a preconstruction approval and an operating permit
14 modification at the draft stage. Now, depending upon what
15 kind of modification it is governs what the source can do. If
16 it's a minor mod, the source can both construct and operate at
17 that point. If it's a significant mod, it can only construct
18 at that stage, and that's only if it's not a PSD or a major
19 NSR permit.

20 MS. BROOME: I get it now. I just was not
21 following your steps. So I've got it. Thank you.

22 MR. HARNETT: Marcie Keever.

23 MS. KEEVER: Thanks. This is Marcie Keever with
24 Our Children's Earth.

25 I think I asked the same question of Michigan.

1 I'm wondering how you deal with enforcement or compliance
2 problems when issuing either new Title V permits or renewals
3 to facilities in New Jersey?

4 MR. O'SULLIVAN: Much the same as Michigan, where
5 we already have a -- what we call a consent decree, which
6 would have a compliance schedule in it. We would incorporate
7 that into the operating permit as an operating permit
8 compliance schedule and a reverted consent decree.

9 The problem comes when a source operation -- we
10 found this with our initial operating permits -- finds a
11 noncompliance late in the process, where they haven't
12 corrected the problem during the time that we're evaluating
13 the operating permit. And we don't have an enforcement action
14 to incorporate into the permit by reference.

15 In those cases, we try to work out with our
16 enforcement program a compliance schedule. And if they are
17 able to negotiate a compliance schedule with the facility, we
18 would incorporate that prior to the final permit. If timing
19 isn't right, then, like Michigan, we are trying to put in a
20 more generic compliance schedule, that's basically a schedule
21 to get a more detailed schedule while the enforcement of
22 program works out all the details, which as you know sometimes
23 these take considerable time to do.

24 MR. HARNETT: Bob Hodanbosi.

25 MR. HODANBOSI: Hello, Bill. This is Bob

1 Hodanbosi. I just wanted to follow up quickly on the
2 \$90 a ton fee.

3 Is that allowable or actual?

4 MR. O'SULLIVAN: It's actual, of course. And I'd
5 like to point out that we don't have the 5,000-ton-per-year
6 tax. So whatever you mix, you pay. Most facilities it's --
7 the big facilities pay a lot. Most of our major facilities
8 aren't paying a lot of money.

9 MR. HODANBOSI: Okay. And how is that fee set?
10 Do you have to go through rule making? Is that set by the
11 legislature? How is the fee set.

12 MR. O'SULLIVAN: Our fee is set by legislation.
13 We went back to the legislature a year-and-a-half ago to raise
14 the fees.

15 MR. HARNETT: And, Bill, we're through with the
16 questions here.

17 Could you identify the people with you that you
18 referred to before and spell their names for our reporter?

19 MR. O'SULLIVAN: Let me ask them to say their
20 names and spell their names.

21 MR. HARNETT: Okay. That's fine, too.

22 MR. PRECZEWSKI: John Preczewski, that's P-, as in
23 Peter, r-e-c-z-e-w-s-k-i.

24 MR. LANGBEIN: And I'm Richard Langbein,
25 L-a-n-g-b-e-i-n.

1 MS. KADERLY: Bill, this is Shelley Kaderly on the
2 line. I had a question about fee construction.

3 Can I ask a question?

4 MR. HARNETT: Go right ahead.

5 MS. KADERLY: I understood that you charged
6 different fees for your HAPs.

7 Is that still the case?

8 MR. O'SULLIVAN: The HAP fee program is separate
9 and apart from the Title V permit program. And that is not
10 actually in the air program. That's in our right-to-know
11 program.

12 MS. KADERLY: Okay. Thank you.

13 MR. HARNETT: Thank you, very much, Bill.

14 Our next speaker will be Lisa Rector.

15 Lisa, are you on?

16 MS. RECTOR: Yes, I am.

17 MR. HARNETT: And Lisa is with the Northeast
18 States for Coordinated Air Use Management, or NESCAUM.

19 Lisa, you can go ahead. This is Bill Harnett.
20 You have a group in front of you who are listening to you:
21 permitting authorities, industry and public-interest groups,
22 as well as EPA.

23 You have 15 minutes for your presentation. I'll
24 warn you at a two-minute mark to wrap up, and then we will
25 have 15 minutes of questions.

1 Go right ahead.

2 MS. RECTOR: Great. Thanks. Hello. For those of
3 you who don't know, NESCAUM --

4 MR. HARNETT: Can you speak up just a bit? Or if
5 you're on a speaker phone, maybe go to pick it up.

6 MS. RECTOR: Sorry about that.

7 MR. HARNETT: That's better. Thanks.

8 MS. RECTOR: You're welcome.

9 First of all, thank you for giving me the
10 opportunity to submit my testimony. For those of you that
11 aren't familiar with NESCAUM, we are a 38-year-old association
12 of the air quality management of agencies of New York, New
13 Jersey, Connecticut, Maine, Massachusetts, New Hampshire,
14 Rhode Island, and Vermont.

15 I just want to focus my comments more on the
16 compliance and enforcement side of Title V. The majority of
17 our states are going to be either testifying in person, over
18 the phone, or submitting written comments. So I don't want to
19 repeat what they're going to be saying to you. I am the staff
20 lead for the enforcement compliance committee, so I work hand
21 in hand with many of the -- or most of these states.

22 First off, I'd like to say that the Title V
23 program has added a vital component to the state program. At
24 the outset, implementation of the program required a
25 significant amount of resources in order to develop the

1 guidance materials, the forms, the tracking systems, the
2 reporting mechanisms, as well as the need to train permit and
3 enforcement staff to implement the program. The feeling,
4 however, is that the investment really has paid off in a
5 variety of benefits. First and foremost is the role the
6 permit itself plays in providing a comprehensive document that
7 outlines all the requirements for which a facility must adhere
8 prior --

9 MR. HARNETT: Lisa, we're still having trouble
10 hearing you. If you could speak up a bit.

11 And do you have written comments that you might be
12 able to e-mail us as well?

13 MS. RECTOR: Yes.

14 MR. HARNETT: Let me give you an e-mail address
15 that will help our court reporter later. It's cox, c-o-x,
16 dot, shannon, s-h-a-n-n-o-n, at e-c-r-w-e-b, as in "boy" --

17 MS. RECTOR: Yep.

18 MR. HARNETT: -- dot, com. And if you could again
19 try to speak up a little bit. We're just having some
20 difficulty here in the room. Thank you.

21 MS. RECTOR: Okay. I apologize.

22 The major benefit that our enforcement staff has
23 seen is the coordination between the permit writers and the
24 enforcement staff. The initial writing of the permits
25 themselves uncovered a variety of violations, from minor

1 paperwork instructions to identification of new emission
2 sources.

3 In addition, this coordination has also led to a
4 greater understanding of what permit writers need to include
5 in permits so that enforcement staff can make adequate
6 compliance determinations, as well as the permit writers
7 gaining a greater understanding -- or, excuse me, the
8 enforcement staff gaining a knowledge of all the applicable
9 requirements, what a state should be looking for in their
10 inspection.

11 The inspection staff has also noted the benefits
12 to the public in this. The dialogue that is taking place has
13 increased substantially since the implementation of the Title
14 V program. They have a better understanding of what the
15 states can and cannot do. The enforcement and compliance
16 staff are also reporting much more data to EPA on their
17 compliance and enforcement activities. This information is
18 becoming more and more available to the public via online
19 permits, the supporting documents, and EPA's online compliance
20 system ECHO.

21 The Title V program also has increased the ability
22 of the enforcement program to identify the terminology of the
23 regulatory requirements. In many cases, the Title V permit
24 has been used as a checklist by our compliance staff when they
25 conduct inspections. Using this permit has led to a much more

1 thorough and complete inspection process.

2 Another important benefit about the Title V
3 program has been the reports the states receive, especially
4 the quarterly and semiannual compliance reports. This
5 information has proven to be a powerful tool to ascertain the
6 compliance, and many of our enforcement programs have
7 commented that the associated report -- reporting associated
8 with Title V has made them much more efficient in the work
9 they do.

10 However, our states feel that the annual Title V
11 compliance certifications have not yet proved themselves to be
12 a very useful compliance tool. We recognize their value to
13 the public in that they provide an annual snapshot of a
14 facility's compliance, and they also put the onus on the
15 facility that at least once a year they review all of the
16 applicable requirements; however, it has been our experience
17 that they haven't yielded any new compliance issues or
18 compliance actions.

19 More important to our staff has been the quarterly
20 reports and semiannual reports that include information on
21 CEMs, fuel usage, and deviations. However, there's still
22 places where the Title V program could be improved. For
23 instance, in the area of periodic efficiency monitoring, the
24 lack of EPA guidance has made the states unsure of what they
25 can and cannot require of the Title V permit. This situation

1 has hampered the ability to require more monitoring permits,
2 especially when the underlying EPA regulations have inadequate
3 monitoring requirements.

4 This void left by the lack of guidance is a
5 significant burden on the enforcement staff. EPA's Office of
6 Enforcement & Compliance Assurance, OECA, has implemented a
7 new compliance-monitoring strategy. The CMS requires that the
8 enforcement staff must require stack tests when there is no
9 other means to determine compliance. This places the
10 compliance staff in a position of making a regulatory
11 determination as to what adequate monitoring to assure
12 compliance is.

13 It has and continues to be the position of NESCAUM
14 that these determinations should be made by Title V permitting
15 staff and clearly outlined in the permit. In fact, in many
16 cases, our member states can't require additional stack
17 testing if it's not a permit term, and they can only require
18 additional stack testing if they have proof or reason to
19 believe that a violation has occurred. Allowing permit
20 writers to include additional monitoring so enforcement staff
21 can competently assure compliance would significantly
22 strengthen the Title V program.

23 Another area of concern for our member states
24 relates to significant burdens that reporting Title V
25 compliance with enforcement data places on the states. They

1 recognize the importance of this data, and, however, with the
2 advent of this new program, EPA has requested more and more
3 information to be required reported to DC on their activities,
4 not only on Title V sources, but also on certain synthetic
5 minor sources. And this has resulted in a significant
6 increase in resources devoted to reporting data to EPA, in
7 some cases as much as a 65 percent increase in resources
8 devoted in this activity.

9 And the problem that lies within this is that EPA
10 has not made a similar investment into their data system. And
11 while other programs in the water and waste areas have
12 developed modern, sophisticated reporting system, the air
13 program still relies on a very archaic, outdated system known
14 as AFS, which is subject to frequent and prolonged
15 breakdowns. In addition, the data reporting structure itself
16 is significantly cumbersome and does not yield transparent
17 data to the public, nor does it provide the public with the
18 data they most greatly need.

19 And EPA continues to increase the burden of
20 reporting data on the states. And by eliminating the amount
21 of -- by increasing the reporting burden on the states, EPA
22 really limits the amount of time states can spend on assuring
23 compliance with the facilities. There's only a limited amount
24 of resources that states have to implement the Title V
25 program. Reporting air-compliance data would be far less

1 resource intensive and more likely to be of use to the public
2 if EPA were to develop and employ a more modern relational
3 data base.

4 Another issue related to Title V in the new
5 compliance-monitoring strategy relates to the group of
6 facilities known as the SM-80s. These are synthetic minor
7 sources to -- permitted at threshold 80 percent of Title V.
8 EPA, or I should say OECA, is now requiring that states
9 inspect these facilities at least once every five years.
10 However, EPA has not directed any funding to inspecting the
11 SM-80s, and Title V fees cannot be used to support those
12 activities.

13 We understand that they are an important source of
14 monitoring. These are sources that are most likely to be
15 tripping up at 80 percent or at Title V thresholds. However,
16 with limited resources, being able to devote adequate time and
17 energy to this area would require, in our opinion, one of two
18 things: either the ability to use Title V fees to fund these
19 EPA-directed activities, or develop a funding system to
20 collect fees for the SM-80s.

21 What I'd like to say in summary is that we
22 strongly support the Title V program and recommend the value
23 of protecting air quality and public health. We feel that
24 greater investment by EPA into the program would make the
25 program stronger.

1 I want to thank you very much for this opportunity
2 to submit testimony.

3 MR. HARNETT: Thank you.

4 Michael Ling.

5 MR. LING: Hi. This is Michael Ling with EPA.

6 I just wanted to clarify your comments on the
7 reporting of compliance information. It's my understanding
8 that your comments were directed towards EPA policies
9 regarding what compliance data you need to report to the EPA
10 databases, and you weren't commenting about the kinds of
11 information that you were getting from -- your member states
12 were getting from facilities in their compliance and deviation
13 reports.

14 MS. RECTOR: Correct. It's the data that states
15 are being required to submit to EPA and how they're required
16 to submit it. Our states are required to submit compliance
17 and enforcement information at complete levels by subparts,
18 which makes it very confusing. You can have a single
19 pollutant in violation of multiple subparts.

20 MR. LING: Thanks.

21 MR. HARNETT: Rob Sliwinski.

22 MR. SLIWINSKI: Hi, Lisa.

23 MS. RECTOR: Hi, Rob.

24 MR. SLIWINSKI: Would you go into a little bit of
25 detail for everyone here about the EPA's recent ICR about

1 increasing the data that's going to be required for
2 enforcement that the state's going to have to comply to EPA --
3 provide the EPA?

4 MS. RECTOR: Sure. Probably the area of greatest
5 concern to our states is what is known as PCEs, or partial
6 compliance evaluations. These -- it is our understanding that
7 these are the on-site activities. I probably actually need to
8 step back.

9 In the CMS strategy, EPA got away from reporting
10 in sections and now has reporting in what is known as
11 full-compliance evaluations, or FCEs. And these are when you
12 take a variety of tools that you have, including inspections,
13 reports, and whatnot, and make a determination about a
14 facility's compliance. This is now what states report to EPA,
15 this is the bean that is counted; this is how they measure the
16 effectiveness of the state program.

17 EPA is now requesting, or requiring, as a
18 mandatory state or reporting element, that states report
19 partial compliance evaluations. These are when states are on
20 site doing a stack test, completing an inspection. These are
21 numerous requirements, and it will significantly add to the
22 burden that states have to have. It is a huge resource drain,
23 especially when you take a look at the single-stack test
24 element.

25 A stack test will mean each time you have to enter

1 an item, it will have to be for each pollutant at each
2 emission point. In some cases, for something like a
3 municipal-waste combustor, that would require them to enter
4 the task 30 times. A single test that tests for one -- for 30
5 different pollutants, for 30 different times, it takes several
6 hours. So it's a very onerous requirement that is not coming
7 with any additional resources from EPA.

8 MR. HARNETT: Bob Palzer.

9 MR. PALZER: Hi, Lisa. Thanks for calling in.
10 Well, yesterday the president released his budget and EPA --
11 the budget enacted as proposed, EPA will take a significant
12 cut.

13 Could you prioritize the things that you would
14 like to see? You have mentioned a number of things that you
15 feel EPA should be doing.

16 Could you prioritize for me things that would help
17 the Title V program?

18 MS. RECTOR: Are you speaking in general on the
19 Title V program, or merely from an enforcement and compliance
20 perspective?

21 MR. PALZER: No, the issues -- you were referring
22 to a number of things, lack of guidance and so forth.

23 MS. RECTOR: Well, I think, you know, first and
24 foremost, guidance to assure compliance and adequate
25 monitoring is what I think would be very helpful.

1 I think the second thing from a state's
2 perspective is to make an investment in a data system that
3 would allow states to more effectively and efficiently
4 transfer their information up to EPA. It is not a significant
5 amount of money. I believe it's about \$5 million that EPA
6 feels it needs to implement this new system, and the resources
7 aren't there for that to happen. This would allow states to
8 decrease the resource burden associated with reporting that
9 data and would also, I think, provide better data to the
10 public and EPA.

11 So I think those would be the top two priorities,
12 are the -- would be the data reporting and the guidance on
13 monitoring.

14 MR. PALZER: And with that, with those changes,
15 would the process become more transparent? That was what one
16 of your comments, that a lot of the things aren't very
17 transparent to the public.

18 MS. RECTOR: Yeah, I think a more modern data
19 system, I think if you had clearer monitoring requirements,
20 you would get more testing data. If you had the data system
21 that would allow for electronic submittal by companies -- for
22 instance, their annual Title V certifications -- you could
23 have those available on the web without a significant amount
24 of resources from the states or EPA. You could have permits,
25 much more information available to the public, much more

1 visibility.

2 MR. PALZER: Thank you.

3 MR. HARNETT: Kelly Haragan.

4 MS. HARAGAN: Hi. This is Kelly Haragan with the
5 Environmental Integrity Project.

6 And I understood you to say that you think it's
7 important for states to be able to determine what monitoring
8 is needed to assure compliance, and then you said something
9 about states being limited in their ability to require stack
10 tests?

11 MS. RECTOR: Yes.

12 MS. HARAGAN: And I wasn't sure. Could you
13 explain a little more about that?

14 MS. RECTOR: Sure. In many of our states -- I
15 can't state all of them, but in the majority of our states,
16 unless a stack test is required as a permit condition, the
17 states can only require a stack test to be performed if they
18 have reason to believe a violation is occurring. So unless
19 the states have some way of -- some type of evidence behind
20 them to go to their required enforcement order, they can't get
21 any stack test to assure compliance.

22 MS. HARAGAN: And that's a statutory requirement?

23 MS. RECTOR: That's a statutory requirement.

24 MS. HARAGAN: And so they would need -- they would
25 need to have some other monitoring on the source to know they

1 think there's a violation in order to require a stack test?

2 MS. RECTOR: They would need to have some type of
3 either -- they'd have to have some sort of evidence or belief
4 or something to go to their attorneys to put an order in
5 effect to require the stack test.

6 The other piece is that, even if they can require
7 them to do a stack test, it usually takes action by their
8 attorneys, and their attorneys only have so much time. So
9 it's a question of prioritizing. If you've got an
10 investigation ongoing with an actual violation versus trying
11 to get an order out to perform a stack test, it's likely that
12 the investigation where there's a known violation isn't going
13 to take priority.

14 MS. HARAGAN: So the -- if those states were
15 drafting a Title V permit, and let's say everyone assumes that
16 the statute requires them to put in monitoring adequate to
17 assure compliance, that those states can't choose to require a
18 stack test for that monitoring? They would have to use some
19 other --

20 MS. RECTOR: If it's in the permit as a condition,
21 they can require it. The problem is, if it's not in the
22 permit as a condition, and the enforcement and compliance
23 staff doesn't have that information to determine compliance,
24 they can't force them to do a stack test unless they have
25 reason to believe that a violation is occurring.

1 MS. HARAGAN: Okay. Thanks.

2 MR. HARNETT: Shannon Broome.

3 MS. BROOME: Hi, Lisa. Thanks for joining us
4 today.

5 Just a quick follow-up on Kelly's question. If
6 you could submit those statutes or regs to us, that you think
7 prohibit requesting a stack test, that would be great, but
8 that wasn't my question.

9 MS. RECTOR: Okay.

10 MS. BROOME: That wasn't my question. I just
11 really would love to see that.

12 You talked about resource constraints, which I
13 know are real, and then, also, you talked about the desire to
14 supplement on a case-by-case basis New Source
15 performance-standard monitoring.

16 And I'm just wondering -- or to have EPA give you
17 guidance as to how to do that on a case-by-case basis. And I
18 wonder how you weigh that against some suggestions
19 yesterday -- I forget which state it was; suggested that
20 really that's something that should be done by rule making,
21 and that would be the most efficient way to do it, and to
22 prevent disparate treatment sources in the northeast versus
23 the midwest, and, you know, that's kind of the debate.

24 And I wondered how you viewed that has meshing
25 with your resource comment.

1 MS. RECTOR: Well, I think, you know, ideally,
2 updating the underlying requirements. If NSPS needs to be
3 updated, it should be. But we know how long these things take
4 to happen. And I believe it would be more resource intensive
5 to update the NSPSs.

6 At this point, I think what our states have talked
7 about is trying to perhaps develop some type of standardized
8 or -- much like New Jersey has, where if it is X type of unit,
9 you should be having certain types of monitoring available so
10 that you have guidance on your major sources that are not
11 going to be required to have stack tests. If there should be
12 standardization across the board, I think that would greatly
13 improve the situation.

14 MR. HARNETT: Shelley Kaderly, do you have any
15 questions?

16 MS. KADERLY: No, I don't. Thank you.

17 MR. HARNETT: Thank you very much for your time,
18 Lisa, and we're finished for now.

19 We're going to take a break now, and we'll
20 reconvene at 10:30 local time here in San Francisco for the
21 next speaker.

22 (Recess taken at 9:57 to 10:30 a.m.)

23 MR. HARNETT: This is Bill Harnett from EPA, and
24 we're reconvening at this moment.

25 Jeff, we have in the room a group of

1 representatives of permitting authorities, industry and public
2 interest groups, as well as EPA.

3 You will have 15 minutes to make your
4 presentation. I'll give you a warning when you have two
5 minutes left. And then we have 15 minutes set aside for
6 questions, and go right ahead and begin.

7 MR. KITCHENS: Thank you.

8 MR. HARNETT: And please speak clearly. We have a
9 court reporter trying to take this down, and if you can
10 imagine, the terms are new to her, and so the clearer and
11 slower you can speak, the better.

12 MR. KITCHENS: Okay. Hello. My name is Jeffrey
13 Kitchens, and I am representing the Alabama Department of
14 Environmental Management. I would like to thank you for the
15 opportunity to provide our department with testimony on the
16 Title V operating permit program.

17 Currently, the Department of Air Division, which
18 is comprised of approximately 90 engineers and scientists, is
19 responsible for permitting and inspecting 320 Title V major
20 sources and over 260 facilities that hold synthetic minor
21 operating permits, or what some agencies call FESOPS.

22 As with any program, the department's knowledge
23 and understanding of all the requirements of the Title V
24 program have developed and evolved, with the exception of this
25 program, and continue to do so to this date everyday. This

1 statement also holds true with respect to the regulating
2 community. The department feels that the Title V program has
3 both positive and negative aspects. I'm sure that some of the
4 comments that I will share have been voiced by others. To
5 begin with, I would like to share some of the positive aspects
6 or benefits of the Title V program that we have noticed.

7 First, we feel that one major benefit of this
8 program is the fact that you now have one document for each
9 facility, which contains or references all the regulatory
10 requirements for the facility. For Title V, our department
11 issued air permits for each emission source or group of
12 emission sources if we were able to aggregate them at a given
13 plan. Many of the requirements contained in the air permit
14 were what we call standard provisions and were duplicated in
15 each permit.

16 In the Title V major source and operating permit,
17 the general provisions are only stated once, eliminating
18 previous duplication. In the previous air permit, there was
19 no statement as to the regulatory basis for each of the
20 provisions or requirements. Since the Title V permits have
21 the regulatory basis for each of the provisions or
22 requirements, the regulatory reference is easy to define for
23 both the community and the public. It is also easy to
24 determine if that regulation is being applied correctly.

25 As a result of the Title V permit program, we have

1 discovered plants where certain regulations have been
2 incorrectly applied, and we have also discovered requirements
3 that are applicable to some sources that have not been applied
4 in the past.

5 Second, we believe that the Title V program has
6 led to a reduction in emissions. Under the Title V program,
7 facilities are required to develop and implement a
8 comprehensive monitoring approach for each significant unit as
9 planned. The Title V program also requires facilities to pay
10 emission fees each year to support the Title V program where
11 the plant is located. We have noted in Alabama that for
12 plants to be able to avoid these two items, as well as to be
13 able to avoid what they've determined to be other burdensome
14 requirements of the Title V program, some companies have opted
15 to reduce or restrict the emissions from their plants to
16 levels below that which would require them to obtain a major
17 source operating permit.

18 Some of these reductions may only be on paper. We
19 feel that actual emissions have also been reduced so the
20 companies can avoid the Title V program. Some instances of
21 these actual reductions include changing to lower VOC or
22 half-content coding, installing control devices where they
23 would not otherwise be required, and changing to lower
24 sulfur-content fuels. Reductions in actual emissions may also
25 be attributed to companies' desire to pay less in Title V

1 commission fees, which in Alabama are directly linked to
2 actual emissions.

3 As I stated previously, a benefit of the Title V
4 program is that it has brought about more monitoring by plant
5 personnel which is adequate to provide the department with a
6 reasonable assurance that compliance with the applicable
7 emissions limitations are what's practical. Both periodic
8 monitoring and the compliance-assuring monitoring have caused
9 plant personnel to pay closer attention to the operation and
10 maintenance of both the processes and the control devices
11 associated with these processes.

12 Not only has the program required more monitoring,
13 the Title V permit has also set out time frames by which the
14 plants must initiate corrective action when deviation for
15 permit requirements occur. We feel that these factors have
16 likely also led to a reduction of emissions from the plants
17 that hold major-source operating permits. The requirements to
18 submit an annual compliance certification has also led to
19 increasing accountability for environmental issues at the
20 plant-management level as well as the corporate level. When
21 the responsible official has to sign under the required
22 certification language of the annual compliance certification,
23 we feel that he or she is compelled to hold plant
24 environmental issues to a higher degree of scrutiny than they
25 have in the past.

1 The last benefit of the Title V program topic that
2 I will discuss today is the Title V fee. We feel that
3 Congress was correct to include a funding mechanism when this
4 program was conceived. Without this self-funding mechanism,
5 there's no doubt that the department would not be able to
6 fulfill its duties related to the Title V program and would
7 not be reaping the aboveformentioned benefits from the
8 program.

9 While our department has seen benefits arise from
10 the Title V program, we've also noted some negative aspects
11 that have hampered the effectiveness of this program or have
12 hampered our department's ability to effectively and
13 efficiently manage this program.

14 Although combining all the requirements for a
15 facility into one document has its benefits, one negative
16 aspect of this is that it has also created lengthy and complex
17 documents. Some of the Title V permits we have issued exceed
18 300 pages in length. As you can imagine, a document this size
19 is very hard to navigate and hard to totally comprehend, not
20 only to the general public, but also for the regulating
21 community.

22 The Title V permit can also become very complex.
23 Trying to compose a sensible and logical permit or a facility
24 for which there are several national emission standards or
25 hazardous air pollutants or MACT standards applicable can be a

1 daunting task. Compounding the complexity is the issue of
2 overlapping requirements. Think about an emissions unit that
3 underwent a PSD review that resulted in BACT limits that is
4 also subject to various NSPS, MACTs, and other state
5 regulations; it is very difficult to organize an
6 understandable permit that adequately covers all of these
7 requirements.

8 Another problem that our department has
9 encountered is providing an adequate level of detail for an
10 emission unit subject to a MACT standard. We have tried to
11 put as much detail for MACT into the permit as possible
12 without completely rewriting the MACT requirements into the
13 permit. We have also tried referencing the applicable
14 regulatory citations for MACT into the permit. With either of
15 these approaches, we have always been concerned about leaving
16 some minute detail out of the permit that could affect an
17 interpretation of the MACT requirement for that facility.

18 Secondly, the Title V program has drastically
19 increased the amount of the reporting and record keeping
20 required by the affected facility. As I said earlier, some
21 facilities are subject to multiple regulations, each of which
22 may have its own reporting and record keeping requirements.
23 The Title V permits require reports of deviations from permits
24 requirements on at least a semiannual basis. Some of these
25 deviations are considered excursions or exceedances under an

1 applicable MACT which may require reporting under a different
2 time line from the deviation reporting of the Title V permit.

3 An example of this would be a source subject to a
4 MACT that requires reporting on a semiannual basis which is
5 based on a calendar year, and then you have the requirement to
6 submit a Title V semiannual monitoring report, or deviation
7 report, which is not based on a calendar year, that is, it's
8 based on the issuance date of the Title V permit. Trying to
9 harmonize these reporting-time-line discrepancies while
10 meeting the requirements of both the underlying regulations
11 and the Title V regulations has been difficult. We have done
12 our best to try to eliminate duplicative reporting through the
13 wording of the permit, but that is not always possible.

14 Last, the modification procedures under the Title
15 V program have become complex and time consuming. It is also
16 difficult to determine exactly which type of modification
17 certain scenarios should proceed under. This is complicated
18 when companies have plants in more than one state and have
19 been given differing determinations in those other states
20 about what type of modifications are warranted in certain
21 situations. Significant modifications seem to have extended
22 the wait times for facilities to make certain modifications
23 that could have been accomplished in a shorter time frame
24 prior to the issuance of the Title V permit.

25 Under our system, a facility who holds a Title V

1 permit and wishes to install a new emissions unit at the plant
2 can apply for and receive a free construction permit in a
3 relatively short time and apply to modify the Title V permit
4 within one year of the startup of that new unit. If that same
5 facility wanted to modify an emissions unit currently covered
6 by the Title V permit, and that modification was deemed
7 significant, that can lead to an extended time before the
8 company could actually operate under the new requirements.
9 The differences in the way these two permitting actions can be
10 handled demonstrates that much of the procedure for modifying
11 the Title V permits need to be eliminated or changed.

12 I thank you for the opportunity to provide our
13 department's thoughts about the Title V program, and I'll be
14 happy to attempt to answer any questions that you may have at
15 this time.

16 MR. HARNETT: Thank you.

17 Bernie Paul.

18 MR. PAUL: Hello, Jeff. This is Bernie Paul with
19 Eli Lilly. I'm asking the same question of a lot of states
20 because I'm interested in this issue, and that's, I'd like to
21 hear your description of the types of deviations and
22 violations that are being reported in the periodic reports,
23 whether they're quarterly or semiannual, and the annual
24 compliance certifications.

25 So if you could describe whether they're mostly

1 record keeping, recording, mostly emission violations, or some
2 other nature, I'd appreciate hearing about that.

3 MR. KITCHENS: Well, I think we're probably seeing
4 a mixture of all types of deviations and excursions reported.
5 However, it seems like a lot of them, a lot of the deviations
6 reports coming in, could be record keeping and monitoring
7 types of situations, where it may not be a violation, but
8 where they just had a deviation from some permit requirement.

9 MR. HARNETT: Verena Owen.

10 MS. OWEN: Hi, this is Verena Owen with Lake
11 County Conservation Alliance.

12 You didn't mention anything about public
13 participation in Alabama. I wonder if you could, please?

14 MR. KITCHENS: To what specifically would you
15 like me to go into about public participation?

16 MS. OWEN: For instance, do you hold hearings?
17 What is the threshold? Do you use charts for Freedom of
18 Information Act? Things like that.

19 MR. KITCHENS: Public participation in our state
20 has been up and down, I guess you could say. Of course, we're
21 required to hold public-comment periods for all the permits
22 just like every other state. We hold public hearings when we
23 receive significant comments that are directly determined
24 warrant a public hearing.

25 MS. OWEN: Excuse me, I don't think I understood

1 that. Could you repeat that?

2 MR. KITCHENS: For public hearings?

3 MS. OWEN: Yeah.

4 MR. KITCHENS: We hold public hearings when we
5 receive significant relevant comments on the permitting action
6 that lead our directors to believe that a public hearing is
7 warranted.

8 MS. OWEN: So you have to receive those comments
9 first and then you hold a public hearing?

10 MR. KITCHENS: Typically, yes.

11 MS. OWEN: Okay.

12 MR. KITCHENS: And as far as the Freedom of
13 Information Act, we put the -- we put our statement of basis,
14 public comments, and public notice in the draft permit on our
15 website which can be downloaded free of charge. If you have
16 to review the file, that's done through our records management
17 division, and we usually do charge a nominal fee for any
18 copying costs.

19 MS. OWEN: How much would that nominal fee be?

20 MR. KITCHENS: 30 cents a page.

21 MS. OWEN: Do you have a waiver?

22 MR. KITCHENS: We don't charge for anything 33
23 pages and under.

24 MS. OWEN: 33 pages?

25 MR. KITCHENS: Basically a \$10 threshold.

1 MS. OWEN: Going back to the hearing, I'm a little
2 bit confused that the public has to submit significant
3 comments first and then have a hearing.

4 Is there an additional public-comment period after
5 the hearing, or why do you hold a hearing after you receive
6 comments?

7 MR. KITCHENS: Well, we feel like if we can -- if
8 the public has comments and submits those comments during
9 public-comment period, and we can adequately address those
10 concerns, we see no need to hold a public hearing.

11 Let me clarify a little bit. In their comments,
12 they have to specifically request a public hearing. It's just
13 not -- we don't do it if we receive a large number of
14 comments. The commenters (sic) have to specifically request
15 to hold a public hearing.

16 MS. OWEN: How many hearings have you had?

17 MR. KITCHENS: For Title V permits?

18 MS. OWEN: Yeah, the last year or two.

19 MR. KITCHENS: I can't remember any.

20 MS. OWEN: Thank you.

21 MR. HARNETT: Adan Schwartz.

22 MR. SCHWARTZ: Hi. Adan Schwartz with the Bay
23 Area Air District.

24 Has Alabama -- my question goes to periodic
25 monitoring. Has Alabama developed its own guidance on

1 periodic monitoring, or has it been entirely case by case?
2 And do you want to just comment generally on your experience
3 with that aspect of the program.

4 MR. KITCHENS: I would say it's typically been
5 case by case based on the actual emissions as compared to the
6 allowable emission rate. We developed it on a case-by-case
7 basis. We're set up a little different in the fact that our
8 engineers and scientists typically deal with one specific type
9 of industry.

10 For example, I have one engineer who does the
11 permitting and inspections of the electric utilities. So that
12 allows us to be consistent across all of that specific-type
13 industry with the periodic monitoring.

14 MR. HARNETT: Mike Wood.

15 MR. WOOD: Thanks, Jeff. This is Mike Wood with
16 Weyerhaeuser Company. Thank you for taking time to call in
17 today.

18 I just have a quick question about insignificant
19 emissions, emission units, and how those are incorporated into
20 your permits and what level of monitoring or record keeping
21 you think is appropriate for those.

22 MR. KITCHENS: For insignificant emissions units,
23 that's one (inaudible) found potential emission in the past
24 were five times the criteria pollutants, they are not even
25 included in the Title V permit but are listed only in the

1 application.

2 MR. WOOD: Thank you.

3 MR. HARNETT: Shannon Broome.

4 MS. BROOME: Hi, Jeff. Thanks for joining us
5 today. This is Shannon Broome.

6 I wanted to ask you, you guys are using the long
7 form for compliance certification, right?

8 MR. KITCHENS: I don't think it's exactly the long
9 form that EPA has developed, but it's something very similar.

10 MS. BROOME: And were you told by Region 4 that
11 that's required, or did you just come up with that on your
12 own?

13 MR. KITCHENS: It's pretty much been the same form
14 that we've been using ever since the Title V program started.

15 MS. BROOME: And is there a reason that you
16 require certification with provisions that impose no
17 obligations on the source; for example, just generic
18 provisions that say: this permit conveys no property rights
19 that may require certification with that.

20 MR. KITCHENS: Typically, you know, we don't
21 require that. You know, that's an understood item, and, you
22 know, is directly applicable to the requirement in the annual
23 compliance certification. A lot of people will list that
24 requirement because it is in the Title V permit, and they are
25 required to certify compliance with each provision, but we

1 ask -- typically people will note that no certification is
2 required on that item.

3 MS. BROOME: Thanks.

4 MR. HARNETT: Ray Vogel.

5 MR. VOGEL: Ray Vogel with the EPA air office.

6 The question is about periodic monitoring and
7 testing. Do you typically require, or have you required,
8 testing when you create periodic monitoring; say, some idea of
9 how frequently that occurs?

10 MR. KITCHENS: Again, we developed our periodic
11 monitoring on a case-by-case basis and we take into account
12 what the actual emissions will be or what the applicant is
13 thinking what the actual emission will be as compared to the
14 allowable emission rate. We take that into account. If we
15 think it's going to be close, then, yes, we would require some
16 testing and maybe some testing at a future date. We verify
17 that. And it's done on a case-by-case basis, and I really
18 couldn't comment on the percentage of time we do that.

19 MR. VOGEL: You don't have any prohibition from
20 your SIP or state law that puts limits on discretion of the
21 director to require testing?

22 MR. KITCHENS: Actually, our SIP says that we can
23 require testing at any time.

24 MR. VOGEL: Okay. Thank you.

25 MR. HARNETT: Marcie Keever.

1 MS. KEEVER: Hi, Jeff. Marcie Kever with Our
2 Children's Earth. You mentioned CAM monitoring, and I'm
3 wondering if you have any examples. And you said something
4 about sometimes the state requires more monitoring.

5 I'm wondering if you have examples of that or
6 situations where either no monitoring was required and you
7 required monitoring, or where you felt that monitoring wasn't
8 sufficient to assure compliance, and that was put in permits.

9 MR. KITCHENS: Well, we have some state
10 regulations that we've never required much monitoring for, and
11 through the Title V permit, we have included periodic
12 monitoring, and some of those situations will be actually
13 addressed, compliance-assurance-monitoring provisions. I
14 don't have any specific examples for you.

15 MS. KEEVER: So you guys -- you don't know if you
16 have any examples of whether you found a case where
17 monitoring, while it was there, wasn't sufficient to assure
18 compliance and that you actually increased the monitoring of
19 the facility?

20 MR. KITCHENS: I don't have any examples of that,
21 no. I can't think back and think of a case where that has
22 happened. I couldn't say definitely.

23 MR. HARNETT: Shelley Kaderly, do you have any
24 questions?

25 MS. KADERLY: No, I don't. Thank you.

1 MR. HARNETT: Thank you very much, Jeff.

2 MR. KITCHENS: Thank you.

3 MR. HARNETT: Heather Abrams, are you on?

4 MS. ABRAMS: Yes, I am.

5 MR. HARNETT: Heather is with the Georgia
6 Environmental Protection Division.

7 And if you hadn't been on before, you have 15
8 minutes for your presentation. I will interrupt at the
9 two-minute mark and let you know when you have two minutes
10 left, and then we'll have about 15 minutes of questions.

11 If you could speak slowly and clearly. We have a
12 court reporter trying to take all of this information down.
13 Thank you.

14 MS. ABRAMS: Okay. My name is Heather Abrams. I
15 am the permitting program manager for the Georgia
16 Environmental Protection Division, air branch, and I
17 appreciate the opportunity to give Georgia's views of the
18 Title V program.

19 First I'd like to say that Georgia fully supports
20 the concept of the Title V. We feel that the single-document
21 approach that includes all the requirements is a very good
22 program. The Title V program has had numerous success
23 stories, not only the consolidation of applicable requirements
24 has great benefits, but also to process the developing
25 operating permit has produced significant improvements. The

1 application process has resulted in facilities identifying
2 undocumented sources and emissions and better quantifying
3 emissions from these facilities. Permitting agencies have
4 identified new major facilities as well as those that no
5 longer operate.

6 The Title V process has also resulted in in-depth
7 file reviews performed by the division. Through this research
8 and documentation, we now have a precise and thorough
9 permitting history for the Title V source. This has been
10 essential not only for developing site-specific permitting
11 requirements, but also for years to come when the current
12 permitting staff is no longer here to provide the history. In
13 addition, permits have been made more accurate by deletion or
14 revision of language in old permits that was outdated,
15 inapplicable, and not clear. Noncompliant units were
16 discovered during the application process and were the subject
17 of corrective action. Reexamination of requirements in old
18 permits has also led to enhanced practical enforceability.

19 Another benefit of the operating permit program
20 has been that a significant number of major sources have
21 voluntarily restricted their operating condition and in some
22 cases installed pollution controls in order to reduce
23 emissions and avoid Title V altogether. This development,
24 which may not have been anticipated, is similar to the
25 environmental benefit that is achieved with sources install

1 controls, take other limiting action, in order that their
2 emissions not be subject to New Source Review requirement such
3 as the MACT standard. Over the last 15 years, Georgia has
4 developed and implemented the Title V program. After many
5 growing pains, we feel we have developed a (inaudible)
6 program. However, to maintain such a program, it is time to
7 reevaluate the program as a whole. With that in mind, I'd
8 like to discuss some of Georgia's main concerns with the
9 program.

10 While the Title V permits have consolidated all
11 regulations and requirements into one document, it has created
12 enormous permits that are often confusing and hard to manage,
13 not only by the facility, but also by our staff and the
14 general public. To the greatest extent possible, permits
15 should be written clearly and simply if we are to communicate
16 with the regulating community and the public effectively. One
17 of the problems we sometimes find in permits is incorporation
18 of the MACT requirement. In general, Georgia has tried to
19 incorporate only those sections of each MACT that actually
20 apply to the specific source. While this helps eliminate
21 extraneous requirements that do not apply, it takes a
22 considerable amount of time for the MACT department to do
23 this. Also, no matter how streamlined we try to include the
24 MACT standards, they are often confusing to the general
25 public.

1 In addition, clear guidance from EPA to assist the
2 state and local agencies in clarification of certain terms,
3 such as periodic monitoring, inherent process equipment to
4 support facilities. Such guidance from EPA would not only
5 reduce the amount of negotiating of permit terms, it would
6 also assure national consistency of interpretation of periodic
7 monitoring requirements, such as whether the Title V permits
8 should require periodic monitoring above what is specified in
9 an NSPS standard. Modifying these permits can be excessively
10 burdensome.

11 Currently, significant modifications require a
12 lengthy period of at least 75 days before the source can begin
13 to operate. We are under great pressure to turn around
14 permits quickly, and it is hard to do so when there is a
15 built-in 75-day review hearing. We do commend EPA Region 4's
16 effort in aiding when necessary to fast-track a permit.
17 However, we strongly urge EPA to streamline the current
18 process for significant modification across the board.

19 In addition, just trying to determine what type of
20 modification needs to be done, whether it be administrative
21 amendment under modification or significant modification, it's
22 often confusing, not only for our staff, but industry as well.
23 It would help if there are better guidance on the types of
24 modifications or more streamlined approach to the
25 modifications.

1 Another challenge is public participation. We
2 understand the value of good public participation; however,
3 the public often does not understand the limited scope of the
4 Title V program and is often frustrated when the permitting
5 authority does not reopen issues decided in a
6 previously-issued permit. These proceedings are often
7 resource intensive with no benefits. The comments we receive
8 at public meetings and hearings most often deal with the
9 public not wanting to source to operate in their area in
10 general. Industry can take the lead in many of these
11 situations, holding public meetings and reaching out to the
12 community leaders, to benefit not only the public's
13 understanding of Title V, but also demonstrate to the
14 community the facility's desires to be a good neighbor.

15 In addition, it could help speed the permitting
16 process by limiting the number of extraneous comments that we
17 have to respond to. With the issuance of the initial Title V,
18 Georgia was hit with an onslaught of appeals by facilities
19 over their Title V permits. This has been a very
20 resource-intensive endeavor, often ending up negotiating
21 permit language and taking more than a year to come to an
22 agreement. In a few cases, we have had to go to court and
23 have a judge decide the fate of the permit.

24 In addition, various groups have submitted
25 petitions to EPA to object to several of Georgia's Title V

1 permits. This has also been resource intensive. When EPA
2 receives a petition under 40 CFR 70.8(z), the petition should
3 be reviewed in accordance with Paragraph D, which requires any
4 such petition shall be based only on objections to the permit
5 that were raised with reasonable specificity during the
6 public-comment period.

7 Paragraph D further states that if the
8 administrator objects to the permit as a result of the
9 petition. These statements taken together mean EPA should
10 review petitions based on the content of the petition. We
11 urge EPA to discontinue the practice of revisiting the entire
12 permitting action, as they have been doing, and review only
13 the issues raised during the public-comment period.

14 Finally, with respect to EPA's review of the Title
15 V petitions requesting EPA to object to issuance of a Title V
16 permit. The Clean Air Act, Section 502(b)(2), requires EPA
17 grant or deny such petition within 60 days after the petition
18 is filed. The EPA is woefully deficient with respect
19 to the Clean Air Act requirement. These two items, not
20 limiting petitions to only items presented during the
21 public-comment period and not responding to petitions within
22 60 days, are causing states to expend enormous resources
23 addressing EPA requests more than a year after the Title V
24 petition has been submitted.

25 Most of the issues are based on issues not raised

1 in the public-comment period. Approximately 14 petitions to
2 object to Georgia-issued Title V permits have been filed with
3 EPA. The average length of time for a response from EPA has
4 been about one year, and we still have three pending petitions
5 which are all over three years old. The majority of the
6 petitions and appeals have involved concerns about monitoring
7 frequency and stringency in the Title V that have been
8 developed on a case-by-case basis for individual permits.

9 Meanwhile, reinterpretations of Part 70,
10 Monitoring Provisions, pursuant to settlement of a lawsuit,
11 has left permitting authorities no federal gap-filling
12 monitoring for permits or renewals of permits; when, in the
13 judgement of permitting agency, such monitoring requirements
14 might be needed. This should be remedied promptly. And over
15 the longer term, we urge EPA to systematically reevaluate and
16 re-provide pre-1990 federal standards such that meet the
17 requirements of periodic and compliance-assurance monitoring.

18 One thing that has resolved as a result of the
19 Title V process, and as a state agency we would not like to
20 see changed, is that permitting agencies developed programs
21 that best meet the needs of their state. These state-specific
22 programs developed because of the lack of specificity in the
23 federal rules and EPA guidance on many aspects of Title V.
24 Title V programs should continue to allow flexibility so that
25 states can design a program to best suit their needs.

1 In conclusion, Georgia believes the Title V
2 program has great benefits. It is just in need of
3 streamlining with a common-sense approach. Georgia fully
4 supports the comments given by Mr. Jack Broadband (phonetic)
5 on behalf of STAPPA/ALAPCO. That concludes my testimony.
6 Thank you for the opportunity to present Georgia's experience
7 with the Title V program, and I'd be more than happy to answer
8 any questions.

9 MR. HARNETT: Marcie --

10 MS. KEEVER: Oh, no. I'm sorry.

11 MR. HARNETT: Callie Videtich.

12 MS. VIDETICH: Hi, Heather. This is Callie
13 Videtich. I work in EPA Region 8 in Denver, and I have a
14 couple questions for you, please, about petitions.

15 MS. ABRAMS: Okay.

16 MS. VIDETICH: You said that Region 4 had worked
17 on petitions, but that they had reviewed the permits more in
18 depth than the actual petition asked them to.

19 Can you give me an example or two of the permits
20 that the region did that on?

21 MS. ABRAMS: Yes. Actually, one permit in
22 particular, and we're still in the process of working through
23 it with EPA, is Cargil (phonetic), in which, when they looked
24 at the permit, they went outside the record and said that we
25 should have -- there was a particular report called a Power's

1 Report that they said that we should have looked at. That
2 report did not come out until after the permit was developed.
3 So we would not have had access to it.

4 MS. VIDETICH: Do you have another example?

5 MS. ABRAMS: That's the one that has been the most
6 pressing for us. I'm sure I could find some other examples
7 for you, but that's the one that has been the most critical
8 for us.

9 MS. VIDETICH: If you could, if you submit written
10 testimony, could you supply that?

11 MS. ABRAMS: I sure can.

12 MS. VIDETICH: And, also, another question for
13 you, did the region work with you guys on an informal basis as
14 they were putting the response to the petition together?

15 MS. ABRAMS: They did. They asked us a couple of
16 questions, and, unfortunately, that actually became part of
17 the formal records which we were not anticipating. We were
18 just doing an informal knowledge exchange, and it got pulled
19 into the formal proceeding.

20 MS. VIDETICH: Does that mean you would
21 participate in an informal process again, or did you feel like
22 you got burned because of that?

23 MS. ABRAMS: No, we would still participate in an
24 informal process. I still fully believe that that is in the
25 best interest of both us and EPA to continue that type of

1 relationship. I think in this particular case it's just one
2 of those series of unfortunate events.

3 MS. VIDETICH: Okay. Thank you.

4 MR. HARNETT: Keri Powell.

5 MS. POWELL: This is Keri Powell from the New York
6 Public Interest Research Group. You mentioned some
7 frustration with EPA's reinterpretation of the Part 70
8 monitoring requirements and mentioned the settlement that
9 eliminated the state's gap-filling ability, and I just wanted
10 clarification from you.

11 Do you feel like EPA's policy is interfering with
12 your state's ability to include monitoring and permits that's
13 sufficient to assure compliance?

14 MS. ABRAMS: We are finding that we end up in
15 appeal situations, where companies will appeal any monitoring
16 that we put in, and they will use the EPA guidance to say that
17 we cannot do that.

18 So it has just put us in a quandary, as we feel
19 the monitoring needs to be there. But industry pushes back
20 saying: EPA doesn't; you can't put it in there.

21 MR. HARNETT: Ray Vogel.

22 MR. VOGEL: Ray Vogel, EPA air office. I was
23 wanting to know if the appeals were solely due to the
24 periodic-monitoring issue, the appeal of the monitoring that
25 you put in the permit, or if they have to do with other issues

1 such as errors that crop up in the permit and how you deal
2 with those kinds of problems?

3 MS. ABRAMS: No. The majority of them were due to
4 monitoring provisions.

5 MR. VOGEL: All right. Then, also, you mentioned
6 some problem regarding -- which I wasn't quite following --
7 MACT -- the inability of MACT to meet periodic monitoring and
8 CAM, or some guidance of EPA or revisions that EPA might need
9 to do to make sure that the MACT monitoring meets those
10 levels.

11 Could you clarify that?

12 MS. ABRAMS: It wasn't in response to the MACT. I
13 may have misspoke. It was for more like the NSPS standards.
14 MACT we feel is -- those are good standards. We have
15 sufficient monitoring.

16 MR. VOGEL: All right. Thank you.

17 MR. HARNETT: Steve Hagle.

18 MR. HAGLE. Hi, Heather. I'm Steve Hagle from
19 Texas, and I wanted to explore with you a little bit more
20 about one of the first statements you made about going back
21 and adding or deleting language in old permits as part of the
22 Title V program.

23 Do you actually go into those NSR permits and
24 modify them, and I guess your statute allows you the authority
25 to do that?

1 MS. ABRAMS: Not our NSR permits. If it's an NSR
2 or a PSD, those limits and the requirements around those
3 limits are not changed. But just for a major source that has
4 not gone through PSD or NSR, we have found that there's errors
5 in limits or the requirements were not clear as to what we
6 intended the facility to do. And those are the cases where we
7 go in and clean it up.

8 We also have had some cases where what we
9 required, they just don't have to do anymore. There's better
10 ways to do it, and the facility is already doing it a better
11 way. So we incorporate the better requirements in. But for
12 our NSR and PSD permits, we do not change the underlying limit
13 in monitoring for those.

14 MR. HAGLE: So, I'm sorry, you kind of lost me.
15 What permit, then, are you cleaning up?

16 MS. ABRAMS: Well, not all of our permits are NSR
17 or PSD. As a matter of fact, very few of them are. The
18 majority of our sources are just major Title V sources, and
19 they don't have PSC or NSR limitations in them.

20 MR. HAGLE: Okay. But do they have underlying
21 state permit requirements, minor NSR --

22 MS. ABRAMS: Yes, yes. They have underlying state
23 requirements, and our state rules have revamped over the
24 years, and we clean them up to reflect the new language.

25 MR. HAGLE: So you can go into those underlying

1 state minor New Source Review permits and make those changes.

2 MS. ABRAMS: Yes, we can.

3 MR. HAGLE: Okay. And then the last -- the other
4 question I had is, you made a statement, that you said that
5 the permit does not always understand the limited scope of
6 Title V.

7 Have you all made any efforts to hold training or
8 any kind of outreach to educate the public on what the Title V
9 process is meant to do?

10 MS. ABRAMS: Oh, yes, we have. As a matter of
11 fact, I'm leaving here in about 30 minutes to go do just
12 that. We have -- what we do is, if we think there's an
13 interest -- like tonight what I'm doing has to do with our
14 Georgia Power and just try to educate the public. Right now
15 we're doing renewals, and we're trying to educate them as to
16 what a renewal is, what it can and what it can't do. And we
17 held similar types of public meetings, or public
18 question-and-answer sessions, when we were doing the initial
19 Title V as well.

20 So we are using our public relations folks quite a
21 bit to try to get the word out there what the Title V can and
22 cannot do and hopefully limit the comments that we receive
23 during the official public-comment period to those that are
24 actually pertinent to the permitting action at hand.

25 MR. HAGLE: Can you -- if you're going to submit

1 written comments, could you describe some of those activities
2 that you've had in a little more detail?

3 MS. ABRAMS: Sure.

4 MR. HAGLE: Thank you.

5 MR. HARNETT: Bob Palzer.

6 MR. PALZER: Thank you for calling in and giving
7 some very good information on programs in your state. I'm Bob
8 Palzer from the Sierra Club.

9 If I heard you correctly, I believe you were
10 saying that the EPA should limit their comments to those
11 issues that were raised during the comment period and not deal
12 with other issues.

13 Was that -- did I hear you correctly?

14 MS. ABRAMS: When they're addressing our petition,
15 yes.

16 MR. PALZER: Okay. That's only in reference to
17 your petition.

18 MS. ABRAMS: That's only in reference to the
19 petition, not when they're -- not when they do their review of
20 the actual permit.

21 MR. PALZER: Okay. I'm glad to hear that.

22 In addition to doing the public outreach that
23 you're trying to do, how do you give public notice to
24 interested -- to people that might be interested?

25 Do you use the Internet, or do you e-mail

1 interested parties, or are you just limiting your activities
2 to putting things in publications?

3 MS. ABRAMS: We actually do a combination of
4 several of those. We post it on our website. We have a
5 listing of people we notify anytime that we hold a public
6 meeting. And like, for instance, in your case, Sierra Club is
7 on that list, and they got a notification anytime that we have
8 one of these public meetings.

9 We also do outreach in the communities
10 themselves. We usually have a pretty good indication of those
11 folks in the area that are interested, either through past
12 comments that we received or complaints that we received in
13 that area. And we have the phone numbers and addresses, and
14 we'll send them letters to let them know. Especially if
15 someone is requesting us to have a public hearing, which is
16 different than our question-and-answer, we go ahead and we'll
17 have a meeting to do the question-and-answer well in advance
18 of holding a hearing, and we contact those individuals that
19 have requested the hearing to make sure that they're involved.
20 And then we also put a notice in the legal organ for that area
21 letting people know what we're doing.

22 MR. PALZER: Thank you very much.

23 MS. ABRAMS: You're welcome.

24 MR. HARNETT: Bernie Paul?

25 MR. PAUL: This is Bernie Paul with Eli Lilly,

1 Heather. Thank you for your comments. I have a couple
2 questions for you.

3 One deals with the compliance reports that your
4 agency receives from sources, whether it's quarterly or
5 semiannually, periodic report, or the annual compliance
6 certification, I'm kind of curious to hear your perspective on
7 the nature of the deviations that are reported in those
8 documents, whether they're mostly record keeping, reporting,
9 monitoring, or excess-emission-type deviations.

10 And the other question I have deals with your
11 experience in trying to streamline or accommodate where you
12 have an emission unit or emission source that is subject to
13 multiple overlapping emission-control requirements, like maybe
14 a unit is subject to a MACT rule, an NSPS, and a RACT rule.

15 How do you deal with those? If you could answer
16 the compliance-report question first, and then the issue about
17 the overlapping requirements. Thank you.

18 MS. ABRAMS: Okay. And I will try to answer the
19 compliance report one. The way Georgia is set up, we have a
20 permitting group, and we have a compliance group. And I'm
21 head of the permitting group, and the compliance group is the
22 one that receives all our reports and does the inspections
23 based on the permit. And from listening to them and working
24 very closely with them, the deviations that I generally hear
25 about have to do with record-keeping violations or

1 deviations. That's generally what we hear. And then, again,
2 they often usually have some shutdown malfunction, excess
3 emissions, that will occur and get reported. But from what I
4 have heard, the majority of them do have to do with the record
5 keeping and reporting. I hope that kind of helps. Again,
6 that's not the part that I'm directly over.

7 MR. PAUL: That's the kind of answer I was -- the
8 type of description I was hoping to hear. Thank you.

9 MS. ABRAMS: Okay. As far as the streamlining, we
10 have worked very very hard on this. I have a lot of direct
11 experience with pulp and paper mills, and they have numerous
12 regulations that overlap, especially for Georgia, because we
13 have pulp/paper state rules as well. And what we have
14 generally tried to do is to lay out all the regulations for a
15 specific piece of equipment, and where there's overlap, we
16 take the most stringent, and we'll put that in the permit, and
17 we'll say that the others have been subsumed; or this is the
18 most stringent requirement, that's why this one shows up in
19 the permit.

20 But we detail all of that out in our statement of
21 basis, so that anyone that looks at it will know that these
22 other regulations, they are applicable, but this one is the
23 most stringent, and that is why it shows up in the permit.
24 When we have cases where the -- maybe the averaging periods
25 don't quite match up, so, you know, on a shorter time frame,

1 one may be more stringent than the other, we generally put
2 both of those in. But it has been a challenge to do that.

3 MR. HARNETT: David Golden.

4 MR. GOLDEN: Hi, Heather. Thank you for your time
5 this afternoon. A quick question about deviation reporting.

6 As you know, Part 70, specifically,
7 70.6(a)(iii)(B), requires the state to define "prompt"
8 according to the degree and type of deviation likely to occur.

9 I was just curious as to how Georgia has
10 approached that in defining the definition of "prompt" for
11 deviation reporting in your Title V permits.

12 MS. ABRAMS: I know that one of our reporting --
13 I'm trying to think because I don't have one sitting here in
14 front of me. We do have language in our permit that details
15 when a deviation needs to be reported to us. There's one that
16 has to be reported within four hours, and there's another one
17 that's within seven days. And then for -- and I believe both
18 of those have to do directly with excess emissions.

19 If it's a deviation in the reporting or record
20 keeping, then they just notify us either in their semiannual
21 report or their annual compliance certification.

22 MR. GOLDEN: Thank you.

23 MR. HARNETT: Shannon Broome.

24 MS. BROOME: Hi. This is Shannon Broome from the
25 Air Permitting Forum. I wanted to follow up on the

1 incorporation of MACT issues because a lot of people have
2 raised that. And you talked about the enormous permits, and
3 hard to manage, and then you talked about that you've put in
4 only the sections of each MACT that apply.

5 And I wondered if -- two things about that. One
6 is, if you find yourselves making errors when you translate
7 those in so that what actually ends up in the permit sometimes
8 is different than what's in the MACT?

9 And then the second thing is, are you restricting
10 the otherwise available compliance options for the source when
11 you do that, so that they would have to get a Title V revision
12 in order to use the flexibility that's in the MACT standard?

13 MS. ABRAMS: Yes to both. We have found
14 ourselves, when we try to paraphrase or kick out just those
15 pieces that fit, we have found that we've made errors. And
16 when we have, we try to correct those as quickly as we
17 possibly can. Generally we catch them during the comment
18 period, which helps because those -- we can adjust them
19 without having to go through another permitting action. And
20 if a company is very adamant that it's wrong and somehow it
21 still makes it in there, if we end up in an appeal situation,
22 we do try to work with the company to resolve that without
23 going to court. We try to resolve it before we get into an
24 appeal situation.

25 With regard to limiting the options, yes, that

1 has happened, particularly again with the pulp mills. Under
2 the Subpart F (inaudible) rule, there's three or four
3 different options listed, and we have essentially made them
4 choose which options they're going to use. If not, on any
5 given day, our compliance officers have a very hard time going
6 out and knowing if a facility is in compliance or not based
7 on, you know, different options.

8 If the option is spelled out in the format, it
9 gives them certainty to what our inspectors have to look for.
10 However, whenever a facility has requested the change, one of
11 the options -- and we have had that happen -- we try to
12 expedite those permits as quickly as possible so as not to
13 adversely affect the facility.

14 MS. BROOME: And you don't think the record
15 keeping that's provided in the MACT is sufficient?

16 MS. ABRAMS: Not in all cases, no.

17 MS. BROOME: If you have examples of that, I'd
18 appreciate it.

19 MS. ABRAMS: Okay.

20 MR. HARNETT: Don van der Vaart.

21 MR. VAN DER VAART: This is Don van der Vaart with
22 North Carolina. I wasn't sure I heard. You were talking
23 about adding monitoring in the context of the recent EPA
24 policy.

25 Were you saying that the argument had been made

1 that that policy prohibited your adding monitoring in all
2 cases or in just those cases where the underlying requirement
3 already contained monitoring?

4 MS. ABRAMS: Where the underlying requirement
5 already contained monitoring.

6 MR. VAN DER VAART: Okay. So you're still
7 gap-filling as --

8 MS. ABRAMS: Yes, we are still gap-filling where
9 there is no monitoring -- underlying monitor.

10 MR. VAN DER VAART: Okay. Thanks.

11 MR. HARNETT: Keri Powell.

12 MS. POWELL: Do you happen to know what percentage
13 of your Title V permits EPA is reviewing, actually reviewing,
14 and can you tell me how many permits EPA has objected to on
15 its own accord in the absence of a petition?

16 MS. ABRAMS: I don't know the percentage that they
17 actually review. I know they review all of our targeted
18 permits. Past that, I don't know.

19 As far as objected to, as far as I can recall, I
20 do not believe that we've had any that have been objected to.
21 I believe we have worked it out with EPA before we reach that
22 point.

23 MS. POWELL: Thank you.

24 MR. HARNETT: Bob Hodanbosi.

25 MR. HODANBOSI: Hello, Heather. This is Bob

1 Hodanbosi. Just a couple quick questions.

2 One concerning your fees. What are your fees?

3 MS. ABRAMS: \$32.50 per ton.

4 MR. HODANBOSI: And that's on actual emissions,
5 right?

6 MS. ABRAMS: Yes.

7 MR. HODANBOSI: And overall I thought your state
8 was doing pretty good with your permit-issuance rate.

9 MS. ABRAMS: We have issued all of our initial
10 Title V, and we're into the renewals now. And we're --
11 actually, we're starting to slide a little bit on our renewals
12 because of significant modifications to the Title V. The
13 facilities are more concerned about getting their construction
14 permit than they are about getting their renewal permit.

15 MR. HODANBOSI: Okay. But I thought you had
16 completed your initial ones.

17 MS. ABRAMS: Yes, we have completed our initials.

18 MR. HODANBOSI: Thank you.

19 MR. HARNETT: Shelley Kaderly, do you have any
20 questions?

21 MS. KADERLY: No, I don't. Thank you.

22 MR. HARNETT: Thanks very much for your time,
23 Heather.

24 MS. ABRAMS: Thank you.

25 MR. HARNETT: Is Amy Mann on?

1 MS. MANN: Yes, I am.

2 MR. HARNETT: This is Bill Harnett. I can tell
3 already you're going to need to speak up a bit, at least from
4 your first indication, in order for us to hear you in the room
5 and get all the comments down.

6 MS. MANN: Okay. Is that better?

7 MR. HARNETT: That is better.

8 Amy Mann with Delaware Department of Natural
9 Resources.

10 This is Bill Harnett. I will give you a
11 warning -- you have 15 minutes for your presentation. I'll
12 give you a warning at the two-minute mark. And then
13 afterwards we will have about 15 minutes of questions. Go
14 right ahead.

15 MS. MANN: Good morning. My name is Amy Mann.
16 I'm a management analyst for the Air Quality Management
17 Section of Delaware's Department of Natural Resources and
18 Environmental Control. The section appreciates this
19 opportunity to comment on our experiences with the successes
20 of the Title V program and to raise awareness from areas we
21 believe need improvement.

22 While we've experienced some problems, overall the
23 Title V program has been beneficial to us. These problems and
24 benefits will be further outlined in my testimony which is
25 broken into two sections. First, benefits of Title V, and

1 then areas needing improvement.

2 Section No. 1, the benefits of Title V, Benefit
3 No. 1. While this has been widely recognized, we would like
4 to emphasize that Title V permits have resulted in more
5 streamlined compliance determinations for both the agency and
6 the regulating community. Delaware has a minor New Source
7 Review program that has been in effect since the 1970s.
8 Before Title V, many larger facilities in the state had
9 multiple permits, many with ten or more. Each of these
10 permits could have testing, monitoring, reporting, and
11 calibration requirements.

12 In many instances, these requirements were not
13 coordinated between the permits, making it difficult for
14 facilities to develop easily-implemented schedules. It was
15 also difficult for the agency to determine compliance with
16 these requirements. With the advent of Title V, all of these
17 permits were brought under one umbrella, coordinating
18 streamlining requirements for more sensible implementation.
19 The Title V permits have also helped distinguish between
20 facility-wide and emission-unit-specific requirements.

21 Benefit No. 2. Since Title V is a fee-funded
22 program, it has provided additional resources to supplement
23 general state funds and federal funds. These additional
24 resources have been utilized not only to oversee compliance of
25 Title V facilities, but to bolster all aspects of the

1 section's program, such as source monitoring, emission
2 inventory, and planning. It has also shifted the financial
3 burden of the permitting program, making facilities that emit
4 more, and thus require more of the agency's time, pay higher
5 permit fees.

6 Benefit No. 3. Title V has improved communication
7 between the agency and the facilities and within the
8 facilities themselves. The increased interaction between the
9 agency and the facilities through permit application meetings
10 and discussions and section and reports have improved dialogue
11 resulting in better permits and improved compliance. The
12 permits themselves have also helped facility environmental
13 personnel better communicate environmental requirements to
14 managers and operators.

15 No. 4. The Title V program has been a quality
16 assurance/quality control tool for both the agencies and the
17 facilities and has improved overall permit coverage. The
18 Title V program helps the agency review the universe of
19 permanent sources to eliminate shut-down emission units and
20 closed facilities and to permit previously overlooked
21 facilities and emission units. It also helps facilities
22 review their emission points to eliminate shut-down equipment
23 or processes and to permit previously overlooked equipment or
24 processes.

25 Benefit No. 5. Title V has helped reevaluate

1 practical enforceability. Before Title V, permit conditions
2 were not practically enforceable. For example, coating
3 permits would contain conditions such as, quote, "spray gun
4 must receive 85 percent transfer efficiency," end quote.

5 Compliance with this and other similar conditions
6 could not be easily determined. Since Title V, the department
7 has created new language that focuses on practical
8 enforceability. For example, coating permits now seem to
9 contain conditions that specify the types of spray guns and
10 coating techniques that can be used, training requirements,
11 and record-keeping requirements. Compliance with these
12 conditions can be easily determined, and results in better
13 compliance and greater environmental benefit. Overall,
14 practical enforceability has resulted in better permits.

15 Benefit No. 6. Title V requires that a total
16 review of regulatory applicability be conducted for each
17 emission unit at major-source facilities. These reviews
18 resulted in agreement between the agency and facilities
19 regarding what regulations apply to each emission unit. These
20 reviews also improve consistency in the application of
21 regulatory requirements throughout the state.

22 Benefit No. 7. The Title V program provides the
23 agency with a mechanism, the Title V permit, to enforce
24 federal regulations that have not yet been adopted by the
25 state.

1 Benefit No. 8. The five-year renewal requirement
2 for Title V permits provides the agency, the public, and the
3 regulated community with a mechanism to improve Title V
4 permits. As our agency has gained experience with the Title V
5 program and Title V permits, we have seen an improvement in
6 the quality of our renewals over original permits.

7 Now I'm ready to start Section No. 2, Areas
8 Needing Improvement. No. 1. The public participation process
9 within the Title V program is causing frustration for both the
10 agency and the public. The agency has received comments on
11 several permits that appear to be boilerplate and do not
12 address the specifics of each permit. They can also be
13 invalid. For example, during the public-comment hearing for a
14 Title V permit, the agency received the following comment,
15 quote, "The draft permits do not appear to require inspection,
16 entry, monitoring, compliance certification, and reporting
17 requirements that meet the intent of the Clean Air Act.
18 Without these essential requirements being met, EPA, states,
19 and the public do not know whether a facility is complying
20 with air quality and public-health protections. The law is
21 clear in this area. Every permit issued under this title
22 shall set forth inspection, entry, monitoring, compliance
23 certification, and reporting requirements to assure compliance
24 with the permit terms and conditions. Clear Air Act Section
25 504. The draft permit does not adequately meet these

1 standards. Therefore, we respectfully request a public
2 hearing be held to allow for further comment, and/or written
3 comment, in regard to inspection, entry, monitoring,
4 compliance certification, and reporting requirements; all
5 areas of vital concern to the public," end quote.

6 This particular comment was invalid because the
7 draft permit contained inspection and entry requirements in
8 Condition 2-I, general monitoring requirements in Condition
9 3-B, general reporting and compliance certification
10 requirements in Condition 3-C, and specific monitoring, record
11 keeping, and reporting requirements in Condition 3 Table 1.
12 Very general comments like this are often difficult to respond
13 to because they do not identify where or how the permit fails
14 to meet these requirements and where additional requirements
15 should be added. These unspecific, boilerplate comments tie
16 up the permit issuance process.

17 The public's frustration has also manifested
18 itself in the form of verbal abuse and theatrics at public
19 hearings. These inflammatory comments and actions divert
20 attention away from the important issues surrounding the
21 permit and take up valuable time, which makes it difficult for
22 other community members to submit comments to the record.

23 The agency recognizes the importance of public
24 review in the Title V process and is simply suggesting that
25 measures be taken to provide the public with guidance that

1 would enable communities to more clearly articulate concerns
2 on any given permit without resorting to unproductive, canned
3 objections.

4 No. 2. Since the state is an ozone
5 non-attainment area, many smaller businesses have been pulled
6 into the Title V program. These businesses are often family
7 owned and do not have dedicated resources to manage Title V
8 issues. The monitoring, record keeping, reporting, and
9 certification requirements of Title V can be difficult for
10 these facilities to comply with. The current level of
11 resources provided to the Small Business Ombudsman is not
12 always sufficient to meet these needs. The agency recommends
13 that resources such as guidance documents, computer
14 spreadsheets, and other tools be created to help these
15 facilities better manage the reporting and certification
16 requirements.

17 No. 3. The complicated regulatory language that
18 must be included in Title V permits can also be difficult for
19 these smaller businesses to understand. Permit writers are
20 often hesitant to simplify this language for fear of altering
21 the requirements. The agency recommends that regulations that
22 impact small businesses be written in plain English.

23 This is my prepared testimony. Again, thank you
24 for this opportunity to comment. I will be happy to take any
25 questions.

1 MR. HARNETT: Kelly Haragan.

2 MS. HARAGAN: Hi, this is Kelly Haragan with the
3 Environmental Integrity Project, and I had a question about
4 your public-participation comments.

5 It sounded like when you read that letter, someone
6 was making a general comment about monitoring and asking for a
7 hearing and extra time to make more specific comments.

8 Did you grant that request for hearing or give
9 them time to make more specific comments?

10 I know when I try to review some of these, you
11 know, 200-page permits, a 30-day comment period is very
12 short. So I don't always have time to review everything, and
13 extra time can help me make more specific comments.

14 MS. MANN: We did hold a public hearing on this
15 specific permit. I can't remember off the top of my head if
16 the three-day process was extended. But, typically, what
17 we'll do is, at the close of a hearing, if people express the
18 fact that they need more time to look at the requirement or to
19 comment on issues that came up at the hearing, we'll keep the
20 comment period open for a few more weeks after the public --
21 or the public hearing closes.

22 MS. HARAGAN: Okay. Thanks.

23 MR. HARNETT: Verena Owen.

24 MS. OWEN: Hi. This is Verena Owen with the Lake
25 County Conservation Alliance; kind of questions on the same

1 thought that Kelly just had.

2 Your quote for the comments you received
3 yesterday -- I didn't think it was a bad job the public did,
4 I've seen worse -- but did you try and find out what the
5 community was concerned about?

6 And as a follow-up question, when you do start
7 your permitting process, is this an integrated process that
8 also addresses, like, compliance review and enforcement
9 actions on a facility, and is that somewhere found in a
10 statement of basis?

11 MS. MANN: For your first question, typically, we
12 will try to find out the specifics as to what it is that
13 people are interested in. And we do sometimes get those good
14 comments that typically address certain issues.

15 For your second question, I think the way that our
16 state is organized, every facility is assigned one specific
17 engineer or scientist who is in charge of writing their permit
18 and taking -- doing all the inspections, reviewing all of the
19 reports, and conducting any enforcement action if that's
20 necessary. So that person always kind of is totally aware of
21 all of the issues at the facility and can keep them in mind
22 when going through the permit-writing process.

23 MS. OWEN: Well, that's good. Is this somewhere
24 reflected in your project summary or statement of basis?

25 MS. MANN: If something was included in the

1 permit, if a specific condition was included in the permit
2 because of an enforcement action or negotiated settlement,
3 that would be discussed in the statement of basis.

4 MS. OWEN: I have one last question. When you
5 talk about public hearings, I believe you said the word
6 "theatrics."

7 MS. MANN: Yes.

8 MS. OWEN: I guess my question is, if the public
9 has a concern about a source that might not fall within the
10 venues of a hearing, is there another way for them to take
11 this somewhere in your agency so they don't have to resort to
12 theatrics at a hearing?

13 MS. MANN: Yes. Actually, we have two people
14 within our department, called community ombudsman, whose
15 specific job is to work with communities on any concerns that
16 they have.

17 MS. OWEN: Thank you.

18 MR. HARNETT: Shannon Broome.

19 MS. BROOME: Hi, Amy. I wanted to ask just more
20 follow-up on this public-participation issue, a couple of
21 questions.

22 That comment that you read, was that from Mr.
23 Lieman's (phonetic) Weidner (phonetic) University Law Student
24 Project?

25 MS. MANN: I believe it was, yeah.

1 MS. BROOME: Yeah. And it's true that they have
2 filed, basically, that comment on several permits, right?

3 MS. MANN: Yes.

4 MS. BROOME: Okay. And I don't know if you're
5 aware, but you guys got a really bad rap at the first hearing.

6 MS. MANN: We've heard whisperings of that.

7 MS. BROOME: Yeah. And it said that you were
8 deliberately trying to keep people from having access to
9 documents, and when people requested documents, you weren't
10 providing them or, you know, hiding stuff.

11 Is that true?

12 MS. MANN: Absolutely not. We actually are kind
13 of -- we were kind of confused when we heard that. Because we
14 have made every effort, whenever we've had a FOIA request, to
15 pull those files together. And we've had instances where this
16 particular organization will request a FOIA, request an entire
17 Title V file. And we'll take it, we'll pull it together with
18 considerable effort, and then they won't come to look at the
19 file. We've also sent several permits and statements of basis
20 over e-mail at these requests.

21 So we don't really understand where that came
22 from.

23 MS. BROOME: And in terms of your FOIA process, is
24 it true that all you have to do is send an e-mail and request
25 the relevant documents, and if it's available electronically,

1 you basically get a response in a day or so?

2 MS. MANN: For the most part we always try to do
3 that with the permit and the statement of basis to the public,
4 which is already provided in hard copy at all of our offices.
5 If it's something that's kind of an overall, kind of the
6 entire facility file, that may sometimes take more time to go
7 through because we have to pull out any confidential business
8 information.

9 MS. BROOME: Right. Okay. That's consistent with
10 my experience in requesting documents in Delaware.

11 Thanks very much.

12 MS. MANN: Thank you.

13 MR. HARNETT: Shelley Kaderly, do you have any
14 questions?

15 Thank you very much, Amy, for your comments, and
16 we're finished. And we will now take a break until one
17 o'clock and then reconvene here.

18 Thank you.

19 (Recess taken at 11:40 a.m. to 1:02 p.m.)

20 MR. HARNETT: On the phone we have Ned Jerabek
21 from New Mexico Environmental Department.

22 Ned, this is Bill Harnett with the EPA. In the
23 room here we have representatives of industry, permitting
24 authorities, and public-interest groups, as well as EPA.
25 We're looking into the issue, as you're aware, of the

1 implementation of Title V.

2 You will have 15 minutes to present information to
3 us. I'll warn you when we're down to the final two minutes,
4 so you can wrap up, and then we'll have questions for the
5 following 15 minutes. So that there will be a half hour sort
6 of total here. And you can begin anytime you'd like.

7 MR. JERABEK: Can you hear me?

8 MR. HARNETT: No. Give us a second.

9 Try again.

10 MR. JERABEK: How about that?

11 MR. HARNETT: It seems like everybody can hear
12 you. So if you would speak slowly and try to speak clearly;
13 we do have a court reporter taking all of this down. Thank
14 you.

15 MR. JERABEK: Very good. My comments will be a
16 little shorter. I've been listening all morning.

17 MR. HARNETT: If you could turn that up just a
18 little bit.

19 MR. JERABEK: So, Ned Jerabek, the Title V
20 operating permit manager for the New Mexico Environmental --

21 MR. HARNETT: You're cutting in and out. Are you
22 on a speaker phone maybe?

23 MR. JERABEK: Yes. Can I go to the receiver?

24 MR. HARNETT: Yeah, could you go to receiver?
25 That might be clearer for us.

1 MR. JERABEK: Okay. I'll start over.

2 My name is Ned Jerabek. I am the Title V
3 operating permit manager for the New Mexico Environment
4 Department, Air Quality Bureau. I intend to focus on three
5 areas of the permit-review process that we have refined and
6 are working well for us.

7 I'd like to comment. I have read the draft
8 testimony from other agencies, and it has given me ideas on
9 how to improve our process, and for that reason alone, I see
10 this as a very valuable exercise.

11 Okay. The three areas I will address are public
12 hearings, MACT corporation, and insignificant activities.

13 It is important to understand the context of New
14 Mexico's comments. We have been retained in two distinct
15 permitting programs: an NSR program and a Title V operating
16 permit program. So in that context of public hearings.

17 In my experience, the public often has the
18 misconception that a Title V public hearing presents the same
19 opportunity as an NSR public hearing, when in reality the
20 facility's already up and running due to the Title V process.
21 It is very unlikely that the Title V process is going to shut
22 a facility down after an NSR permit has already been issued.

23 Therefore, the public needs to be educated as to
24 what the real opportunities are, such that they can have the
25 greatest impact on issuing an operating permit that maximizes

1 accountability through periodic monitoring, which is the real
2 hammer in operating permits. We have done this by holding
3 open houses and informal public meetings for contentious
4 facilities, and facilities have received a lot of comments
5 during the public notice. The exchange of information is much
6 more positive and productive and often prevents a
7 nonproductive and expensive public hearing where the public
8 goes away feeling thwarted in the process.

9 Next I'll address MACT. MACT requirements cannot
10 be simplified by paraphrasing. This has led to appeals
11 because the applicant interprets the paraphrasing to mean
12 other options in the MACT not addressed in the paraphrasing
13 are no longer available. Therefore, we neither paraphrase nor
14 do we regurgitate the entire MACT into a permit.

15 Instead, we have resorted to citing the relevant
16 section of the MACT, going to as low a level of citation as is
17 practical. Then, if the source or interested party needs more
18 clarification, we try to handle that with conference calls,
19 meetings, and follow-up letters that document and summarize
20 the decisions, which are then added to the permit file as
21 addendum to the statement of basis.

22 The statement of basis is extremely important.
23 It's an important document to the operating permit, and we
24 therefore require staff to submit the statement of basis for
25 management to review in the same manner as a draft permit.

1 Next, insignificant activities. The statement of
2 basis contains a list of qualified insignificant activities,
3 and as such, these activities are exempt from being addressed
4 in the operating permit. We attempt to get the applicant to
5 list individual units that they believe qualify as
6 insignificant activities rather than list categories, which,
7 with the larger facilities, sometimes that is impractical.

8 Unfortunately, any activities for which an
9 applicable requirement applies is not an insignificant
10 activity regardless of whether the activity meets the
11 qualified criteria. Older NSR permits often create applicable
12 requirements for an otherwise insignificant activity by
13 establishing an issuance of less than one ton per year, and
14 thereby disqualify the unit as an insignificant activity.

15 Our regulatory definition of "applicable
16 requirements" specifically includes, and I quote, "Any term or
17 condition of any preconstruction permit issued pursuant to
18 regulations."

19 And then it goes on at the end to also say,
20 "Unless that term or condition is determined by the department
21 to be no longer pertinent, we have limited our interpretation
22 of that exception, no longer pertinent, to units that are
23 retired or no longer operating."

24 I would like EPA to take the position that we have
25 the authority at the local level to take a broader view and

1 deem such applicable requirements as no longer pertinent
2 because the associated periodic monitoring for such a small
3 unit becomes bureaucratic hoop-jumping and is of very little
4 environmental consequence. I would rather see major sources
5 investing their time and money complying with periodic
6 monitoring that truly addresses significant emission units,
7 and as an agency, it would increase our credibility with
8 them.

9 That concludes New Mexico's comments. I sincerely
10 appreciate the opportunity here to give my two-cents worth.

11 Are there any questions? I'm going to go back to
12 speaker phone.

13 MR. HARNETT: One question I have, as we've heard
14 this comment a couple of times on MACT standards, if you could
15 provide for the record some examples of the MACT standards you
16 think are particularly problematic. That would be useful for
17 me.

18 And my second comment relates to the insignificant
19 emission units. Are you looking for guidance that would allow
20 you not to pull in sort of PSD permit requirements for these
21 sources into the Title V?

22 Is that what you were suggesting, a federal set of
23 guidance that would then allow you to pick -- not incorporate
24 all of what was in a previous PSD permit?

25 MR. JERABEK: No, I don't think we would touch a

1 PSD permit. I'm thinking more along the lines of conventional
2 resource-review permits for minor sources. The best example I
3 can think of right offhand is, a source wishes to add some
4 type of storage tank to the facility. They seek a
5 modification in the NSR permit to add the tank. The emissions
6 for the unit are a tenth of a ton per year VOC, and the NSR
7 permit documents that emission in the permit. Now, that
8 becomes an applicable requirement once that source --
9 gradually, as it expands over the years, it becomes a major
10 facility.

11 And then in our analysis of the previous NSR
12 permits, we come across these units that would otherwise be
13 insignificant, but the NSR permit created an applicable
14 requirement that we feel obligated to address in the Title V
15 permit simply because it meets the definition of applicable
16 requirements.

17 MR. HARNETT: I understand now.

18 Steve Hagle?

19 MR. HAGLE: And, Bill, my comment is actually on
20 your comment. We have the same issue in Texas because we
21 require some sort of authorization for just about everything
22 that emits air contaminants. That's one of the things that we
23 would be -- we would like to consider, too, is that the only
24 applicable requirement is some permit by rule or some --
25 something that doesn't -- the actual unit has next to no

1 emissions.

2 Is there a way to keep that out of the Title V
3 permit, just to not have to list that emission unit just
4 because it has that underlying authorization that's part of
5 the state's SIP.

6 MR. HARNETT: Ray Vogel.

7 MR. VOGEL: Ray Vogel, EPA air office. Just to
8 follow along this exemption question.

9 I just wanted to make clear, the exemption you're
10 asking for -- you were talking about, I think, periodic
11 monitoring, or something like that, but did you mean like
12 Steve was talking about, that what you want is an exemption
13 from the need to put them in the Title V permit?

14 MR. JERABEK: Yes.

15 MR. VOGEL: Okay. Thank you.

16 MR. JERABEK: I'm might add --

17 MR. HARNETT: If I could just interrupt. When you
18 start talking for a bit, your speaker phone cuts out too much.
19 So we need you to go back to the handset, unfortunately.

20 MR. JERABEK: Sure.

21 I was going to point out that some units where the
22 NSR permit created an applicable requirement, the example
23 given of a tenth of a ton per year per tank, and so we listed
24 it in the facility-information part of the Title V operating
25 permit but felt that it didn't warrant the creation of

1 periodic monitoring for such a small amount.

2 Well, we received comment back from the company
3 that they were somewhat nervous about that because the unit
4 was addressed in the permit, and yet the permit did not create
5 a mechanism for them to certify annual compliance, and that
6 exposed them to citizen suit. So, you know, it's kind of a
7 Catch-22. You're trying to do what's practical, to enforce
8 the matter, but yet, you know, it exposes the company to
9 liability so....

10 So that's why we'd rather not put it in the permit
11 at all, if there's any way of just deeming it as an
12 insignificant activity, despite the NSR condition, and then
13 just addressing it that way in the statement basis, leaving it
14 out of the Title V permit. So that's where we stand on that.

15 MR. HARNETT: Shannon Broome.

16 MS. BROOME: Hi. Thanks for joining us today.

17 Just back on the insignificant-unit issue, do you
18 have any sense or could you provide some kind of relative
19 measure of the resources that are being placed into -- in
20 dealing with insignificant units? And I'm trying to get a
21 sense in terms of a measure of emissions, resources, number of
22 units versus the significant sources.

23 Are your resources being tipped towards
24 insignificant units?

25 MR. JERABEK: No, they're not being tipped toward

1 insignificant units. New Mexico has issued somewhere --
2 including modifications, significant modifications -- probably
3 between 3- and 400 Title V permits. I would say most SOPs
4 used to contain anywhere from five to 30 or 40 insignificant
5 units. And if the applicant has done the emissions
6 calculation to justify that unit qualifies as an insignificant
7 activity, well, then I usually would ask staff if they have
8 verified the calculation such that they concur.

9 So it's reasonable to conclude that at least four
10 or five hours, for every permit application, invested by the
11 staff to qualify those insignificant emission units. When you
12 multiply that times the amount of permits the program issues,
13 that becomes a significant piece of time that would be much
14 better invested elsewhere.

15 MS. BROOME: And are you requiring people to
16 modify their permit when they add insignificant units, or how
17 are you dealing with that kind of update?

18 Is it the annual, or on renewal, or is it before
19 you can install an insignificant unit that would have an
20 applicable requirement, you have to update?

21 MR. JERABEK: If they were strictly adding an
22 insignificant unit, they would not be required to modify their
23 Title V permit. They may have to address it in the NSR
24 process. I'm not sure; I haven't looked at their rules
25 lately. But we would strictly pick up that unit at the

1 renewal process. Or if they apply for significant
2 modifications for some other stuff, we might at that time pick
3 it up. But most likely at the renewal process.

4 MS. BROOME: Except that a bunch of units don't
5 technically qualify for insignificant because they would have
6 these permitting requirements.

7 MR. JERABEK: Correct.

8 MS. BROOME: Is that -- okay. I just want to make
9 sure I'm following what you were saying. Thanks.

10 MR. JERABEK: Right. Right.

11 If they added an insignificant unit in the New
12 Source Review process, and the New Source Review permit
13 created applicable requirements for it, well, then the
14 regulation requires -- gives them a 12-month time period to
15 submit an application to revise their Title V operating
16 permit. And that becomes a pointless exercise from my
17 perspective, but, regardless, it's a regulatory requirement,
18 so we do it.

19 MS. BROOME: Thank you.

20 MR. HARNETT: Is Shelley Kaderly on?

21 THE WITNESS: Yes, I am.

22 MR. HARNETT: Do you have any questions, Shelley?

23 THE WITNESS: No, I don't. Thank you.

24 MR. HARNETT: Thank you for your time, Ned. And
25 we appreciate it. And if you could, again, provide for the

1 record just some of the MACT standards that cause particular
2 problems, that would be useful.

3 MR. HARNETT: Is Shannon -- let me see if I can
4 get this right -- Therriault on?

5 MS. THERRIAULT: That's close. Yes, I'm here.
6 Shannon Therriault.

7 MR. HARNETT: Okay. As we've said to other
8 speakers, you have 15 minutes for your presentation. At the
9 two-minute mark, I'll give you a warning, and then we have 15
10 minutes set aside for questions. So feel free to go right
11 ahead.

12 MS. THERRIAULT: Okay. Thank you. My name is
13 Shannon Therriault. I'm the environmental health supervisor
14 at the Missoula City/County Health Department in Missoula,
15 Montana, and I appreciate the committee taking the time to
16 listen to all the different groups' concerns about the Title V
17 program.

18 MR. HARNETT: If I could interrupt for just a
19 second. It would be good if you could talk a little bit
20 slower just -- we have a court reporter taking things down.
21 Thank you.

22 MS. THERRIAULT: Okay. Sorry about that.

23 We have one issue with the Title V permitting
24 program, and that's that the state cannot delegate the program
25 to us, the local air agency.

1 As a way of a background, Missoula has the
2 longest-standing local air program in the State of Montana.
3 We established the program in 1969, primarily to deal with
4 wintertime-particulate and carbon-monoxide problems. The
5 urban area has about 65,000 people. We're located in the
6 valley surrounded by mountains, and because of our topography
7 and our meteorology, we have lots of cloud cover in the
8 winter. We suffer from extended temperature inversions, and
9 we've long had problems with air pollution here in the
10 valley.

11 The Environmental Protection Agency designated
12 Missoula as a non-attainment area for both carbon monoxide and
13 particulate, and we have control programs in place that have
14 brought us into compliance with the national ambient air
15 quality standards for both those.

16 Am I still talking too fast?

17 MR. HARNETT: No, you're going fine.

18 MS. THERRIAULT: Okay. The Montana Clean Air Act
19 recognizes the role of local programs in controlling air
20 pollution in the state. The Act declares that local and
21 regional air-pollution-control programs are essential
22 instruments for securing and maintaining appropriate levels of
23 air quality. And the state provides a framework and a
24 coordinated state-wide program. And any rules that the local
25 program adopt have to be consistent with and at least as

1 stringent as the state rules. So there is some consistency
2 with the state, even though local programs have the ability to
3 adopt their own regulations.

4 The Montana Clean Air Act is very clear about what
5 sources the local programs can regulate. The state retains
6 jurisdiction over the very large sources, and by that I mean
7 sources that emit over 250 tons of any pollutant in a year.
8 We have three of those sources in our county. We have a pulp
9 mill, a plywood plant, and a particle board factory. And
10 those, the state regulates. But we have the ability to
11 regulate, at the local air program, all the other sources of
12 air pollution, including medium-size stationary sources that
13 emit between 100 and 250 tons of any pollutant, and of course
14 those are Title V sources.

15 We also have a program for the smaller stationary
16 sources, such as the small incinerators, the asphalt plants,
17 and gravel crushers. So sources from 249 tons a year and down
18 have traditionally been under Missoula County's jurisdiction.
19 We've issued preconstruction and operating permits, which we
20 now call air-quality permits, to these sources for decades.

21 Once Title V was adopted by the State of Montana,
22 we began the process of adopting the Title V program ourself
23 with the blessing of the Department of Environmental Quality,
24 and it was allowed for in the Montana Clean Air Act. But once
25 those rules were written and were taken to our board, we

1 discovered, through conversations with the Environmental
2 Protection Agency, that the state didn't have the ability to
3 delegate Title V to a local program.

4 And, to be honest, I don't know what the problem
5 is. I was told that Title V didn't have the necessary
6 language, was different than a SIP program, and so that the
7 state didn't have the authority to delegate it to a local
8 program. At that time, in 2000, we were told that Missoula
9 County could work directly with the EPA, and the state could
10 rescind its authority in Missoula County. And we could work
11 with the EPA and have a Title V program that didn't go through
12 the state, it went just directly to the Environmental
13 Protection Agency. But since the state has jurisdiction of
14 three major sources in our county, that caused some problems.

15 And, in addition, it would set up an entirely
16 different structure than we currently have in the State of
17 Montana, and it would be unclear of how that would work
18 through the Montana Clean Air Act, where our regulations go
19 through the state and the state-approval processes. So what
20 we did in 2000 as a compromise is, we didn't want to lose the
21 sources. That was really important to us. We have a long
22 history with those sources. But we also realized that we
23 weren't going to be able to get a Title V program, and at that
24 point these sources had to have a Title V operating permit.

25 So our compromise was for us to write the

1 preconstruction permits -- like I said, we called them
2 air-quality permits -- and the state writes the Title V
3 permits. As you can imagine, the industry is not crazy about
4 having two different entities have jurisdiction over those
5 sources. And we have done a lot in order to make the sources
6 as comfortable as they can with the program as is currently
7 devised.

8 For instance, we don't charge the sources
9 anything at the local level. So we don't charge for our
10 permits, for our inspections, or for our enforcement. The
11 state does charge. And we have a contract with the state for
12 a very minimal amount of money, which allows us to be the ones
13 to do all the compliance work. So we do the Title V
14 inspections, we do the compliance check, along with our
15 air-quality permit inspections. So we're doing things in
16 order to maintain the integrity of our program while at the
17 same time not to complicate things for those sources.

18 And I understand that industry has some rules and
19 issues with the Title V program, and I think many of these
20 could be better addressed if the state could delegate the
21 authority to the local program. I know that there are local
22 programs out there that do have the program. It's my
23 understanding those are all through direct interaction with
24 the Environmental Protection Agency.

25 One of the things that has come up when I've

1 heard different industrial advocates talking about the Title V
2 program is one of consistency, that they want to see a
3 consistent program. And we feel we can maintain a better
4 consistency between permits and jurisdictions throughout the
5 State of Montana if our program is connected with the state,
6 instead of us being a separate entity that's working directly
7 with the Environmental Protection Agency.

8 Another issue that comes up is timeliness.
9 Missoula has fewer sources, of course, than the state does,
10 and we would have the ability to get permits and revisions out
11 more quickly than the state. So sources would, of course, be
12 at the top of our list instead of having to fall somewhere
13 within the state list of when to get things done. So this
14 would allow those industries to maintain more flexibility if
15 the changes can occur more quickly. And, like I said, we're
16 already doing their construction permitting.

17 So another thing that comes up is cost
18 effectiveness. And I understand that a lot of the cost
19 associated with Title V permitting is not the permit fee, but
20 it would certainly be more cost effective if we only had one
21 agency for permit fees, the permit fees part, if we only had
22 one agency that was responsible for it instead of two.

23 Another problem that comes up is the Title V
24 permits in Missoula County actually have inaccurate
25 requirements listed. And that's because there's a section in

1 Montana's Title V permit where there's general requirements
2 that all sources have to follow, and these reference the
3 state's rules. However, in Missoula County, Missoula County's
4 regulations take the place of the state's regulations.
5 They're not in addition to the state's regulations.

6 And so it is said that they are unwilling or
7 cannot modify the general portion of that permit to put in
8 references to our regulations; therefore, those Title V
9 permits end up having, in the general section, a reference to
10 a state requirement, for instance, outdoor burning, as an
11 example. And then in another part of the permit, the permit
12 will reference Missoula County's outdoor burning requirements,
13 which are different than the state's. So that sets the source
14 up for -- you know, I understand one of the concepts behind
15 Title V is to have all the applicable requirements in one
16 place, but what ends up happening is that some of the
17 requirements are simply wrong.

18 Another thing that I've heard industry talk about,
19 when it comes to Title V program, is high turnover in the
20 expertise. I don't know why, but our turnover rate is low
21 compared to the state. For some reason our air-quality
22 specialists never seem to leave. One of our directors was an
23 air-quality specialist 30 years ago here. And so we have a
24 long history and institutional knowledge about what's been
25 going on with sources. And we've been into those sources

1 quite a bit, so we understand those sources. We can also --
2 nevertheless, if we have turnover, the state has the same
3 problem. But we can use the state permit writers and
4 compliance operators as a resource, and we can take part in
5 shared training opportunities.

6 In addition, because we're only talking about four
7 sources in Missoula County at the moment that need Title V
8 permits that we potentially have jurisdiction over, or that we
9 do have some jurisdiction over, we're able to focus our
10 energies on very specific types of industry instead of having
11 to look at a wide variety of sources across the state. I know
12 that for others, such as environmental interest groups, that
13 public notification and access to information is an issue, and
14 I think that that could be better accomplished at the local
15 level than it can at the state level.

16 And, of course, with the health department, the
17 issue is being able to fairly, consistently, effectively
18 control air pollution in the valley and to use our local and
19 state resources wisely. We regulate a variety of sources, all
20 of whom don't want to be the only ones regulated, and whenever
21 we're talking with them, initially at least, they feel like
22 they're the ones that are bearing the brunt of the burden of
23 reducing particulate or CO in the valley. And by being able
24 to say, "No, look, we're looking at all of these sources, and
25 we're controlling all of these sources," it makes it easier

1 for people to -- sometimes we have to do rather severe
2 things. For instance, we no longer allow wood stoves in the
3 valley.

4 So another concern of ours is that if the Title V
5 operating permit expands to other smaller sources, which at
6 one point we were told is the intention of the Title V
7 permitting program, we may lose the ability to fairly and
8 effectively control air quality in the Missoula Valley,
9 instead of working with the local community to find equitable
10 solutions, which often takes compromise and give and take. It
11 could set up an adversarial position where we and the source
12 and the state are all fighting, and we don't want to do that.

13 So, in summary, if changes are to be made to the
14 Title V permitting program, we request that whatever language
15 is necessary to allow states to delegate the authority to
16 local jurisdictions be included.

17 And that is it.

18 MR. HARNETT: Thank you.

19 Questions?

20 There are no questions for you. Thank you very
21 much for your comments and taking the time today.

22 MS. THERRIAULT: Thank you.

23 MR. HARNETT: Is Michael Lake on the phone?

24 MR. LAKE: Yes, I am.

25 MR. HARNETT: Michael, you're from the San Diego

1 County Air Pollution Control District. We welcome you here.
2 You will have 15 minutes. I'll give you a warning when we get
3 to the final two minutes, and then we'll have questions for
4 you after that. Feel free to go right ahead.

5 MR. LAKE: Thank you very much, and thank you for
6 the opportunity to provide you with some comments regarding
7 our experience with this Title V permit program here in San
8 Diego County.

9 Just to provide a little bit of background, San
10 Diego County is a large metropolitan area, has a mixture of
11 light to intermediate-size industries, utilities, navy
12 facilities, and the usual municipal operations. And we've
13 been blessed by having a successful program for a number of
14 years.

15 Just to give you some perspective, our exceedances
16 of the one-hour ozone air-quality standards in the last 15
17 years have dropped from 46 to less than one. We've been
18 re-designated as attainment of the one-hour ozone standard.
19 And the number of days that we've been over the eight-hour
20 standard in that same period has dropped from about 110 to
21 less than 10. So we've made a lot of progress in improving
22 air-quality here in the San Diego County. And this is despite
23 a 25 percent increase in population and an even larger
24 increase in vehicle miles traveled.

25 We've been able to accomplish this through a

1 program of requiring the best available retrofit control
2 technology on our stationary sources, state and federal
3 standards for motor vehicles, and we have some fairly
4 aggressive local and state-funded incentive programs to push
5 forward the conversion of mobile sources to cleaner engines.

6 We've had an extensive stationary-source
7 regulatory permitting and enforcement program for more than 25
8 years. Just to put it in perspective, we currently have local
9 air-pollution-control district permits for about 4,200
10 stationary sources in the county, and that includes anywhere
11 from large power plants down to small automotive refinishing
12 facilities, dry cleaners, chrome platers, et cetera. In San
13 Diego, we only have 25 sources that are subject to Title V
14 permit requirements, and that number has actually shrunk.

15 With our ability to achieve attainment of the
16 one-hour ozone standard, we were able to raise our major
17 source thresholds for Title V applicability, and that allowed
18 a few sources to opt out of the Title V permit program. We've
19 issued 27 Title V permits. And working with affected sources
20 here in San Diego County, we've been able to deal with some of
21 the complexities of the Title V program and reduce some of the
22 administrative burdens. So we've made it somewhat workable.

23 For example, we have a process where some of the
24 Title V permitting requirements, monitoring, citation of
25 regulatory requirements, certification requirements, et

1 cetera, are built up front into our construction permit
2 process. So that once the construction is completed, then
3 modification of the Title V permit can move fairly quickly and
4 the facility can go forward with operating the newer, modified
5 equipment in compliance with both our regulatory requirements
6 and Title V requirements.

7 I'll mention, also, that we've had some sources
8 that were able to opt out of the Title V program by
9 eliminating their potential to emit. I know this has been
10 cited before as a source of emission reduction associated with
11 the Title V program. I would note that our experience here in
12 San Diego has been that in most cases facilities had actual
13 emissions below the Title V threshold, and their opting out of
14 the Title V program didn't result in any actual emission
15 reductions. We had one case where a source installed emission
16 controls and reduced their carbon-monoxide emissions by about
17 70 tons per year, but in all other cases, we haven't seen
18 emission reductions that have resulted.

19 Our implementation costs for the Title V program
20 since its inception have been pretty significant. Here at the
21 air pollution control district, we've spent, in labor costs,
22 about \$3 million since we first started to develop our local
23 Title V permit program. And we know that, locally, the
24 businesses and facilities that are subject to the Title V
25 program have spent in excess of \$4 million associated with the

1 application process and obtaining permits and the follow-up to
2 that in terms of monitoring compliance.

3 However, we've seen very little in the way of
4 corresponding air-quality benefit. There have been some
5 improvements, I would say, in the clarity and completeness of
6 the permits that are issued. I think one result of the Title
7 V permit program here in San Diego was that it forced us to,
8 at one time, look at all the permits that had been developed
9 for various emission units at major sources over the years and
10 make sure that the requirements were clear, that there was a
11 clear reference to an applicable requirement, whether it be a
12 federal requirement, state or local, and also that all the
13 permits and permit conditions were up to date.

14 So we have now, for the sources subject to Title V
15 permits, probably much more complete and comprehensive Title V
16 permits or permits for their operations. I'm not sure,
17 though, that that has resulted in a permit document that is
18 less confusing and less cumbersome for applicants and for the
19 general public.

20 I would note that when we issue Title V permits,
21 we do provide public notice of those proposed permits, and
22 this includes significant modifications to Title V permits.
23 We provide website notice, and we also provide direct notice
24 to interested parties that have indicated their interest in
25 receiving notice of Title V permits. And, to date, for all

1 the Title V permits that we've issued, we have received no
2 public comment, we've received no public objections or
3 expressions of any public or interest-group objections or
4 areas of concern.

5 With the issuance of Title V permits we now have
6 had a couple of years of compliance certifications and
7 deviation reporting from the Title V permitted sources. And
8 that has really resulted in few surprises and no substantive
9 noncompliance with emission standards. The deviations that we
10 see being reported are relatively minor in nature, would have
11 been known by the district, most likely without Title V; and
12 if they are associated with equipment breakdowns, we had three
13 Title-V-breakdown reporting requirements in existence in our
14 program already.

15 And I should mention, also, that the stationary
16 sources that are required to have Title V permits are already
17 inspected by our agency anywhere from two to four times a
18 year. Those inspections include reviewing records the
19 facilities are required to complete and maintain, and that
20 gives us a good indication of any noncompliance concerns
21 associated with the facility separate from any deviation
22 reporting that we see.

23 We have been involved in the past, and I know
24 EPA, state, and other local agencies have been involved in
25 developing the White Papers on the Title V program. We've

1 made use of those old White Papers to help streamline and
2 simplify the application process and the Title V permitting
3 process, but I would say that on occasion we do get a sense of
4 resistance from EPA staff on being able to exercise all the
5 streamlining options available in the White Papers. So we
6 would only encourage EPA to make sure that those White Papers
7 are available and our local agencies are able to use the
8 provisions of the White Papers.

9 We also have some concern that any additional
10 monitoring requirements on processes that might result during
11 the renewal of the Title V permits, that we be able to focus
12 those on the processes that have the most risk or highest risk
13 of significant emissions. We're a little concerned right now
14 that it appears additional CAM requirements may be applied to
15 Title V facility emission units based on their potential to
16 emit rather than their actual emissions, which tend to be far
17 less.

18 Similar to previous speakers, we also share their
19 concern about not extending Title V permit requirements to
20 area sources. As I mentioned earlier, we have an existing
21 permitting program that covers about 4200 stationary sources.
22 That includes dry cleaners and chrome platers, and we don't
23 really see a value, and certainly a lot of disadvantages, to
24 extending Title V permit requirements to those types of
25 sources. Generally, they're very small, independent

1 operations that we are already effectively regulating through
2 our permit programs, through emission-control requirements,
3 and through regular inspection and compliance-education
4 policies.

5 One other thing that I'll mention is that in the
6 last year we have seen a couple of proposals from EPA to
7 expand the reporting requirements for a permitting agency,
8 such as ourselves, on inspection, source testing, violation,
9 and penalty data on large sources, which encompasses primarily
10 Title V sources and synthetic minor sources. And while we
11 have been able to apply the resources necessary to meet the
12 current requirements, it is a burden. And we're quite
13 concerned that EPA very recently has proposed increasing those
14 reporting requirements -- and we had provided comments
15 previously to EPA; we can certainly provide copies of those
16 comments if the Task Force is interested -- concern about
17 extending or expanding those data-reporting requirements.

18 We are already, have been faced, with reductions
19 in funds from the state, increasing local costs, the
20 possibility of reduced EPA 105 grant funding, and the prospect
21 of doing additional reporting to EPA on compliance matters,
22 that we feel that we're handling quite well here locally,
23 raises additional concerns on the administrative burden that
24 we'd be faced with.

25 One final thing I'll mention is that our folks

1 that have been working on Title V permits have expressed
2 concern that Title I -- currently, all Title I modifications
3 have to be treated as significant permit modifications under
4 the Title V program. And, in particular, some of the NESHAPs,
5 and I believe here locally, primarily the aerospace NESHAP,
6 has aspects to it that any change that a facility might make
7 that would increase or change the HAPS that are being emitted,
8 either through coating or cleanup solvents, et cetera, has to
9 be treated as a Title I modification.

10 Now, we locally have a project, air-contaminant
11 control program, where any type of permit modification of this
12 nature, where the emissions of a toxic air contaminant may
13 change or increase, we look at that to make sure it doesn't
14 present any adverse public health risk. And so we have local
15 protection against any changes that might pose such a public
16 health risk. But we could do that relatively quickly. We
17 have tools available to us to do that. The problem is that
18 any change in the HAP emissions has the potential to trigger a
19 Title I modification in this case and also significant
20 modification under the Title V permit.

21 And we would ask that EPA consider establishing a
22 levels of HAP emissions that -- or HAP-emission increases that
23 could be considered de minimis for purposes of Title V permit
24 modification. Otherwise, at least for some of our sources
25 locally, we may be faced with unnecessary administrative and

1 permitting processes that we have to go through simply because
2 of a change in materials that doesn't really present any
3 public-health concern.

4 That concludes my remarks. Again, I appreciate
5 the opportunity to talk a little bit about our experience with
6 the Title V permit program, and we would certainly be
7 available to answer any questions that you might have.

8 MR. HARNETT: Keri Powell?

9 MS. POWELL: Hi. This is Keri Powell from the New
10 York Public Interest Research Group.

11 I was wondering whether your current non-Title-V
12 permitting system requires permits of all sources that would
13 qualify as area sources; and, if so, if you can describe what
14 kind of permits they're getting.

15 MR. LAKE: Well, virtually any source of air
16 contaminants from an industrial perspective or commercial
17 perspective that you can think of requires a permit from us.
18 Gas stations, dry cleaners, automotive repair shops, asphalt,
19 tar pots, portable engines, small boilers at hotels, and
20 ethylene oxide sterilizers, I could go on and on. There's a
21 long list of types of equipment that require permits from us.

22 We do have a list of permits, types of equipment,
23 that are exempt from permits, but generally they are very
24 small or small emissions, and the general threshold is about
25 less than five pounds per day emissions. So, for example, a

1 coating operation that uses more than 20 gallons per year is
2 required to have a permit. That's a pretty small coating
3 operation.

4 In terms of the type of permit that we're required
5 to get, we have all the preconstruction permit requirements,
6 we call it an authority to construct, and under that review we
7 look at any air-quality impacts, whether they're using the
8 best-available control technology. If it's a major source,
9 they have to provide offsets. Or if we're applying New Source
10 Review -- and, in addition, we have our own toxics
11 New Source Review program as well as prohibitory rules that
12 dictate either levels of emission controls or allowable limits
13 on the VOC contents of coating, et cetera. So we have a
14 pretty extensive program that applies to a lot of sources of
15 air contaminants.

16 MS. POWELL: If I can just follow up, could you
17 just share with me a little bit about how those permits
18 compare to the features of a Title V permit? Like do they
19 have to do any kind of --

20 First, do all sources have a preconstruction
21 permit? I don't know how old that program is.

22 And, second, do they do annual compliance
23 certifications or any monitoring or reporting, that sort of
24 thing?

25 MR. LAKE: As far as preconstruction permit

1 program, that's been in existence probably for more than --
2 pretty close to 30 years if not more. Essentially, all
3 sources that require permits from the district require a
4 preconstruction permit or review. The types of permit
5 conditions that are applied are -- in some respects they
6 reflect the specific requirements of our rules that apply.

7 For example, if a new boiler is proposed to be
8 installed, and in order to meet best-available control
9 technology requirements, it has the usual NOx burners and
10 (inaudible) gas for circulation and meet a specific Knox limit
11 of, let's say, 12 PPM, then that will be specified in the
12 permit. They'll also be required to keep records of the
13 amount of fuels that they use, limits on, if it's an
14 oil-burning, which is pretty uncommon here, but sulfur content
15 of the fuel. And they would require periodic source testing
16 to verify that they are in compliance with the emission limits
17 of the permit, and that source testing is conducted by either
18 the district or by an independent test contractor. In
19 addition, most of our permitted sources are inspected at least
20 once a year.

21 MS. POWELL: Thank you.

22 MR. LAKE: In addition, they are required to keep
23 records of materials that they use, the type of fuels that
24 they use, if there are critical operating parameters for
25 either the basic equipment or the air-pollution-control

1 equipment, they have to either continuously monitor that or
2 keep, generally, daily records of those types of critical
3 operating parameters.

4 And when our inspectors do the inspection, they
5 look at whether or not, number one, the facility has kept the
6 records; and, number two, do those records indicate any
7 instances of noncompliance that require some remedial action.

8 MR. HARNETT: Shannon Broome.

9 MS. BROOME: Hi, Michael. Thanks for joining us.

10 You were talking at the end of your statement
11 about any increase in HAP emissions and that coming at the
12 federal level.

13 What specific rule were you talking about?

14 MR. LAKE: As I understand it, the aerospace
15 NESHAP has provisions in it that speak to specific HAP
16 emissions from cleanup operations and from the coatings that
17 are used. And I think if a source elects to change to an
18 alternative, allowable cleaning material or cleanup solvent or
19 is -- switches to an alternative coating formulation that may
20 have different HAPS in it, then that could trigger a, in
21 essence, a Title I modification requirement.

22 It doesn't mean that it's significant in terms of
23 air quality or public health, but it is a change in HAP
24 emissions, or potentially an increase in HAP emissions, that
25 we would look at, locally anyway, to make sure it doesn't

1 present a public-health risk, but which might also trigger
2 Title I and significant modification requirements.

3 MS. BROOME: And who's saying that that's a Title
4 I mod?

5 MR. LAKE: We understand that that's a Part 70
6 requirement that was carried over into our Title V permit
7 program regulations.

8 MS. BROOME: Right, but who's saying that
9 increases in HAPS under the NESHAP is a Title I mod? It
10 doesn't trigger 112(g), so it shouldn't be a Title I mod.

11 MR. LAKE: Well, as I understand it, 1-12-G talked
12 about major modifications in new sources, but it did not
13 necessarily apply a (inaudible) for all of the sources subject
14 to specific NESHAPs. But we can certainly look into that and
15 clarify that in our written comments that we'll provide as a
16 follow-up to this testimony.

17 MS. BROOME: It would be great to just understand
18 where that's coming from so that we can kind of follow up
19 that, really.

20 MR. LAKE: Okay.

21 MS. BROOME: Thank you.

22 MR. HARNETT: Bob Morehouse.

23 MR. MOREHOUSE: Michael, this is Bob Morehouse.
24 The question -- you mentioned you used the White Papers, and
25 you also mentioned you had received some resistance from EPA.

1 Are there specific -- do you recall, are there
2 specific parts of the White Papers where there was the
3 differences of opinion?

4 MR. LAKE: Well, I think there were a few
5 instances where we were looking to streamline multiple
6 applicable requirements, where we felt local requirement was
7 as stringent and adequately covered off on the federal
8 applicable requirement. Eventually we were able to do it, but
9 if took -- as I said, we met some resistance to doing it.

10 MR. HARNETT: Rob Sliwinski.

11 MR. SLIWINSKI: Hi, Michael. Rob Sliwinski, New
12 York State.

13 I was interested in having you expand upon the
14 efforts that you undertake to perform the data collection and
15 reporting to EPA regarding the compliance data, and how the
16 new requirements coming in effect later this year will affect
17 your program.

18 MR. LAKE: This was initially proposed by EPA, I
19 believe about June of last year, in 2004. And we and many
20 other agencies, I believe STAPPA/ALAPCO and CAPCOA, commented
21 on the expanded requirements. As I understand it, it's some
22 additional reporting on the results of emission-source
23 testing, more detailed pollutant-specific reporting on
24 inspection results, and follow-up to inspections. As I said,
25 we're already meeting the existing requirements and will

1 continue to do so. And we work with our local EPA Region 9 to
2 try to understand those requirements as best we can and make
3 them work in practical applications.

4 But there were a number of additional things that
5 it looked like we would be required to provide additional
6 reporting on. As I mentioned, pollutant-specific reports on
7 source-test results and on compliance inspections and
8 compliance actions, et cetera, and our staff that handled this
9 have indicated that this would be a fairly significant
10 additional burden on our already pretty well-stretched
11 compliance division staff.

12 MR. SLIWINSKI: Thank you.

13 MR. HARNETT: Bob Hodanbosi.

14 MR. HODANBOSI: Hello, Mike. This is Bob
15 Hodanbosi from Ohio EPA. I just have a few questions for
16 you.

17 You mentioned that you have 25 facilities that are
18 subject to Title V?

19 MR. LAKE: Yes.

20 MR. HODANBOSI: Are a good percentage of those
21 associated with military operations?

22 MR. LAKE: Actually, only two. Most are
23 electrical-generating operations, some of them municipal
24 landfills and some associated equipment with those, and
25 several local manufacturing facilities.

1 MR. HODANBOSI: But do you have any military bases
2 covered by Title V permits?

3 MR. LAKE: We have two.

4 MR. HODANBOSI: Okay.

5 MR. LAKE: It's actually two separate operations
6 or commands at one geographic location.

7 MR. HODANBOSI: And are they large Title V
8 permits, or are they relatively simple ones? Do they have
9 lots of insignificant emission units and all that, or not?

10 MR. LAKE: One is very large, has a lot of small
11 emission units and multiple types of operations. One is, I
12 believe, only in because it's subject to the aerospace
13 NESHAP. So that one is less broad. It's a fairly narrow
14 Title V permit.

15 MR. HODANBOSI: Okay. That's all. Thank you.

16 MR. HARNETT: Shelley Kaderly, do you have any
17 questions?

18 Thank you very much, Michael.

19 MR. LAKE: Thank you for the opportunity, and we
20 will be following up with some written comments for
21 submission, and we'll try to address those questions I was
22 unable to answer.

23 MR. HARNETT: I appreciate that. Thank you very
24 much.

25 MR. LAKE: All right.

1 MR. HARNETT: The hearing record is now closed.

2 STATE OF CALIFORNIA)
3 COUNTY OF SAN FRANCISCO)

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6 I, JANA ANDRIENE GUNTER, do hereby certify:

7 That I am a Certified Shorthand Reporter, duly
8 qualified, licensed and acting in the State of California;

9 That the foregoing pages constitute a true and
10 complete transcription of my stenotype notes of the
11 proceedings set forth in the caption on the date of February
12 8, 2005.

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16 DATED: _____, 2005.

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