1 just stop right here. Thank you.

2 MR. LING: Thank you very much, John.

3 Questions for John? Bernie was first, I think,

4 although it was close.

5 MR. PAUL: I'd like to get a clarification

6 from you on one of your statements. You seemed to be

7 supportive, initially, of the approach of

8 incorporating complex regulatory requirements into

9 the permit, by reference. But you followed that with

10 statements that it would be helpful to have all those

11 requirements in the permit. What's your final view

12 of how complex rules should be incorporated into the

13 permit?

14 MR. WALKE: I should have been more

15 refined in my response, because the statutory

16 language actually guides us on this. I believe it's

17 Section 504(a) of the statute that requires assurance

18 of compliance with all applicable requirements,

19 including emissions limitations, monitoring, or

20 something or other. I'm not quoting it accurately,

21 of course, but I think the statute requires those

22 core requirements, such as emissions limitations and

1 monitoring and recordkeeping and reporting, to
2 actually be spelled out in the permit itself. If I
3 recall, the Agency has said as much.
4 Having said that, any given subpart under
5 Part 63 or Part 61 is exceeding long, and I don't
6 believe Title V in the statute or the regulations or
7 the EPA guidance, requires every word of those
8 regulations to be spelled out.
9 So I think there's kind of a sensible
10 balance that can occur between those core legal
11 requirements and common sense and workability on the
12 other hand.
13 The only thing that the regulations and
14 the statute require is that kind of the core legal
15 requirements be fulfilled. Beyond that, if the State
16 of Ohio decides that it's in its programs interests
17 or helpful to the public or the source to put greater
18 specificity and detail in, that is certainly their
19 right as a policy matter, and it's even their right
20 under state law.
21 I guess I was just slightly taking issue
22 with the suggestion that the mere length of a permit

1 is any indication of its sensibilities or complexity.
2 I've seen permits all over the map. I've seen some
3 that don't have what I consider to be the legally
4 required information, and I see some that seem to be
5 just encyclopedias of information.
6 As with most things, somewhere in the
7 middle is more sensible.
8 MR. LING: Don?
9 MR. VAN DER VAART: Thanks. John, much of
10 what you said, I totally agree with. The goals and
11 the fact that of those three goals, the third is the
12 most problematic, the compilation issue.
13 I think most permits -- I mean, that's a
14 great function, but, again, there were permits that
15 actually weren't complete. On the participation
16 issue, you are absolutely right.
17 In fact, the vast majority of time spent
18 in dealing with comments, does come from the
19 facilities, and there are some good reasons for that,
20 of course, but that's a fact.
21 The final issue, though, is a problem, and
22 I'm a little bit confused, as you trailed off there

1 on the compliance enhancement function. Let's for a
2 minute set aside how happy I guess you are, or not
3 happy with the current state of the monitoring rules,
4 whether you call it enhancement, CAM, or periodic
5 monitoring.
6 The CAM rule, to me, is the way it's
7 played out. It has been sort of severed from the
8 compliance function of Part 70. I don't think you
9 can be out of compliance with an emission standard
10 under CAM, the way I read the rule.
11 It's just so mamby-pamby, but it's --
12 MR. WALKE: I agree.
13 MR. VAN DER VAART: Let's say, in any
14 event, that you had good monitoring, just for the
15 sake of the last. Wouldn't you feel that the
16 public's interest is best served when the monitoring
17 in the permit is definitive, and, therefore, it can
18 be used to demonstrate noncompliance, as well as
19 compliance.
20 Where I'm going with that, that's why I
21 have problems when you go to the next step, which is,
22 how important or how much would the efforts to

1 include monitoring evidence outside that which is
2 listed in the permit, tends to diffuse that function
3 of the permitting program.
4 I'm not going to say "credible evidence,"
5 but what I'm saying is, why can't we just rely on the
6 monitoring? Would you not be happy with that, as
7 long as the monitoring is appropriate?
8 MR. WALKE: No, I would not. First of
9 all, I agree with your characterization of what good
10 monitoring should accomplish. You crystallized it
11 better than I did, but this whole controversy about
12 credible evidence and whether monitoring the permit
13 is sufficient, to me, is just incredibly revealing
14 about this continuing resistance by -- I say it --
15 industry, above all, to want to be subject to the
16 same understanding that we've had under the judicial
17 system in this country for 200 years, as to whether
18 they should be judged under the law.
19 There's virtually no area in the law that
20 I can think of where evidence of wrongdoing isn't
21 admissible before a court.
22 MR. VAN DER VAART: On the other side,

1 doesn't that hurt the parties, because now third
2 parties can't actually definitively know whether, as
3 you said, a facility is in compliance, because
4 there's always an unknown quantity or unknown
5 information, never accessible to third parties, and,
6 in fact, now they're barred from using the monitoring
7 data which is available to them to determine
8 compliance.
9 MR. WALKE: The last point is not true.
10 MR. VAN DER VAART: It is if you assume
11 that the monitoring condition in the permit is not
12 definitive.
13 MR. WALKE: You can use it.
14 MR. VAN DER VAART: You can try to use it,
15 but then the industry is going to use the same
16 argument that you want to use, which is, hey, I've
17 got credible evidence saying I wasn't.
18 MR. WALKE: That's fine. I'm happy to
19 take that situation. It's not third parties from the
20 public who are objecting to the use of credible
21 evidence, because it creates this uncertainty and
22 chaos.

1 MR. VAN DER VAART: But it should. I
2 don't care if it is or not. What I'm saying is, by
3 opening that door, the other door opens, so now the
4 whole definitiveness, which we all really have heard
5 is important and would be a great asset, seems to be
6 diffused because of the fact that there may always be
7 a hidden piece of data or series of monitoring data
8 that may contradict and be relevant to determine
9 whether you're in compliance.
10 To me, it just seems like there's a
11 problem on both sides.
12 MR. WALKE: I agree that the situation
13 exists on both sides, but I don't think it's a
14 problem. I don't mean to be flip here, but that's
15 life. There is no clarity of definitiveness in any
16 area of the law when it comes to proof of violation.
17 MR. VAN DER VAART: But then you do get to
18 the final question, which is, why are we doing this
19 permit program anyway, when, in fact, the final
20 determination of what's compliance or not, is very
21 well hidden within the confines of the facility and
22 inaccessible to anyone, on a practical basis. So

1 what's the purpose of the permitting program?

2 MR. WALKE: The three-part purpose that I

3 laid out is still my view. The question of credible

4 evidence is one of ultimate proof of what's

5 admissible before a court. That shouldn't be

6 confused with how -- whether or not the public

7 benefits from requiring industry to consider that

8 additional information or whether better and more

9 accurate monitoring is a good thing.

10 I happen to think that the answers to both

11 of those questions are pretty self-evident, from the

12 public perspective, but maybe you disagree, but we

13 are so, so very far from that ideal world, because

14 we've got parametric monitor. We've got sufficiency

15 monitoring just having been eliminated; CAM being

16 feckless in the extreme; terms being written into the

17 permits to ensure that the compliance certifications

18 are meaningless, so people don't actually have to say

19 whether they are in compliance or not.

20 Part of these discussions are kind of

21 academic ones that occur between people in

22 Washington, but the public wants to know, and the

1 ideal situation for the public, frankly, Don, would
2 be to be able to get on their Internet, look up and
3 find out whether a source that's actively monitoring
4 its emissions, was in compliance, met its emission
5 limits the day before.
6 That's the nirvana I'm working toward.
7 We're so far from that situation that I think you do
8 have to look at the policy and legal decisions that
9 EPA has made along the way, because they have
10 resulted in the situation where we are right now.
11 MR. LING: Shannon?
12 MS. BROOME: Bernie asked my question.
13 MR. LING: Then Bob?
14 MR. HODANBOSI: This is both a question
15 and a comment concerning the length of a permit.
16 Many of our permits do have hundreds of pages of the
17 MACT rules snapped onto them. That is what we are
18 told we need to do in order to have an acceptable
19 permit through the region.
20 We would like to just put a reference in,
21 and we have been told that we cannot do that. So
22 that is the approach we have taken to try to address

1 the issue that the region has raised.

2 Maybe it's different because we have not

3 adopted on the state level, all of the MACT rules.

4 We rely on U.S. EPA's regulations. What we have been

5 told is that that is what is acceptable to U.S. EPA,

6 that we just can't reference a certain subpart.

7 Part of the length is also dependent on

8 the specific facility. Sometimes the MACTs have

9 options, and they want all of those options

10 available.

11 They are not going to say we're just going

12 to take the first track and forget the rest. They

13 want what's available under the rules, so we can put

14 all of that in the rule.

15 My other comment would be that even if

16 it's an attachment to that permit, nonetheless, those

17 are all applicable requirements that are slapped on

18 that permit, that people have to read and understand,

19 and comply with.

20 MR. WALKE: I agree with all of that, Bob.

21 I wasn't trying to be catty; I was just trying to

22 make the point that in this instance, there were

1 explanations for the length of the permit that may be
2 quite reasonable, but didn't have to do with Title V,
3 per se.
4 I don't believe that practice that Region
5 V is imposing upon you, is uniformly followed. My
6 Title V knowledge is a little rusty, since I've been
7 listing in NSR for the last couple of years. I would
8 be surprised if that were a position that
9 headquarters had said was legally required and that
10 all of the regions were following.
11 That's something that would be worth
12 looking into.
13 MR. LING: Kathleen?
14 MS. ANDERSON: I'm just curious about your
15 comments on insignificant emission units. This is
16 just -- I understand your concern, saying that there
17 is no such thing as an insignificant emissions unit,
18 but I wonder if you are aware of the way -- states
19 never adopted regulations with Title V in mind, and
20 they often have very generic regulations that apply
21 to all units at a site.
22 Do you believe that every single unit,

1 then, must be held to the same level of monitoring,
2 recordkeeping, and reporting, even though they are
3 very small units? I'm thinking of grain loading
4 standards, visible emissions standards, do emissions
5 for a bag house count, as much as emissions from a
6 kiln?
7 I just don't know. I'm sure you're aware,
8 but I think the states in here could probably attest
9 to the fact that they never adopted regulations with
10 Title V in mind. It creates a very conflicting
11 situation when you come to writing a permit, as to
12 what level of monitoring, and especially with
13 insignificant emissions units.
14 My question to you is whether you think
15 that every emissions unit deserves the same degree of
16 analysis or monitoring or reporting as every other
17 unit?
18 MR. WALKE: That's a good question. I
19 actually think there are several embedded questions
20 in there that I have different answers for. A state
21 either decided that a sitewide rule or some SIP rule
22 or generic rule intended to apply to certain

1 emissions units or it didn't.

2 If the unit is covered under the plain

3 language of the state rule, and if it's an applicable

4 requirement because it's SIP approved or is otherwise

5 federally required that would subject it to Title V,

6 then it has to be included in the permit.

7 It's the states' prerogative to go back

8 and rewrite the rules so that that's not the case, so

9 that units not covered -- but Title V didn't change

10 the fact that the state intended that unit to be

11 covered by that law under state or federal law.

12 That's kind of a basic question.

13 The permit question is an entirely

14 separate one. Once included in the permit, should

15 there be different levels of requirements,

16 monitoring, recordkeeping, and reporting and the like

17 to reflect the fact that those units are different in

18 some way than significant emissions units? Sure.

19 Why not?

20 There's nothing -- the language of

21 periodic monitor or CAM or sufficiency monitoring,

22 before it ceased to mean anything, is general enough

1 that it is not a straightjacket imposing the
2 identical level of monitoring, recordkeeping, and
3 reporting requirements on the so-called IEUs that you
4 would have for a unit that is a hundred times its
5 size.
6 But is there any ability in the statute or
7 the regulations to completely exempt those units from
8 monitoring, recordkeeping, and reporting? I do not
9 believe so.
10 If the Agency wanted to try to create a de
11 minimis regulatory exemption under its Alabama Power
12 statutory authority, they could take a run at it and
13 we'd see whether it survived or not. But there is no
14 regulatory exemption right now, and the Agency has no
15 authority to create such an exemption by guidance.
16 So then you're just thrown back into the
17 more refined question of, well, what level of
18 monitoring, recordkeeping, and reporting should you
19 have? My impression is that that's what states have
20 been doing, at least those that have been including
21 them in the permit.
22 I have no quarrel with that. I do have a

1 quarrel with the more definitive black and white
2 position that, no, they don't have to be in the
3 permit, or, no, they don't have to have monitoring,
4 recordkeeping, or reporting at all.
5 MS. ANDERSON: This Task Force is to
6 recommend changes to Title V. If you were to be able
7 to change Title V, would you ever give an exemption?
8 It's almost like a trivial activity.
9 It would still be listed in the permit,
10 but do you think there's ever a situation where they
11 don't have to include monitoring or recordkeeping?
12 Do you see that as a possibility?
13 MR. WALKE: Let me tell you my bias, and
14 you can probably guess my bias. But if the state
15 thinks that a legal requirement is important enough
16 to impose from an emissions' limitation perspective,
17 it's hard for me to think of a coherent, intellectual
18 reason why you wouldn't want to know whether the
19 source is actually complying with that.
20 Can you or should you have less burdensome
21 or less frequent monitoring, recordkeeping, and
22 reporting? Sure. Why not?

1 But if it's within the state's prerogative
2 to decide whether they want to subject that emissions
3 unit to an emissions limitation, if they do, it seems
4 to me that we care about whether they comply or not.
5 MR. LING: Shelley?
6 MS. KADERLY: First of all, I was
7 wondering whether the NRDC was planning on submitting
8 written comments to this Task Force?
9 MR. WALKE: That's a good question. I
10 didn't exactly know when I got here, the nature of
11 the Task Force and how it was going to be conducted,
12 but I think that over the course of the months, as
13 you go forward with additional hearings, we probably
14 will.
15 It will probably be in conjunction with
16 other groups, since we are resource-strapped. But I
17 was very interested when I arrived in the nature of
18 the discussion and the issues that would be raised by
19 other state and industry folks, as well. And if
20 there is any opportunity for us to receive
21 transcripts on the web or otherwise, have access to
22 information that's compiled from the earlier