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

1 hearings, that would be very helpful to our ability
2 to submit comments down the road that provide our
3 perspective on those comments and testimony that have
4 been raised, so, I'd actually make that
5 recommendation.
6 MR. LING: There is.
7 MS. KADERLY: The reason that I ask that
8 is that in your comments, you had some generalities
9 about the funding mechanisms of Title V. In some of
10 your comments, I perceived that you believed that
11 some of the states had inadequate funding in order to
12 conduct the program and fully implement the program
13 properly.
14 I was wondering whether you would provide
15 us with some specific examples of where you think
16 this has happened and why you believe that is the
17 case.
18 MR. WALKE: Sure. I can tell you why now.
19 It's almost, in my view -- it may seem a little bit
20 glib, but it's almost, per se, proof that states are,
21 in most instances, six or seven years overdue from
22 their statutory deadlines for issuing permits.

1 If they had more resources than they're
2 currently being funded for, that situation would not
3 exist. Obviously, there are other factors, but it's
4 hard to dispute that if they had the resources to
5 devote to issuing those permits on time, that they
6 could have been issued on time, whether you think
7 that would have bankrupted the program or brought the
8 wrath of Congress down upon the statute, is another
9 thing.
10 But, you know, they just have not been
11 issuing the permits by the time that they are
12 supposed to and funding is absolutely an essential
13 reason for that.
14 MS. KADERLY: Just to kind of follow up on
15 that, there are states - even in our state, even if
16 we had $5 million of Title V money in the bank, if we
17 have an FTE cap for whatever reason, we're not going
18 to be able to hire the people.
19 We have been able to use contractors to
20 assist us in our efforts in the last several years to
21 make that happen. Our issues initially, early on in
22 the program, in order to get our permits done, had

1 more to do with finding the people that could
2 understand what was needed to be done and who were
3 willing to take a salary at a state agency in order
4 to do the job.
5 And now within the last couple of years,
6 the economy is a little different. As John Paul's
7 comments earlier, we've been able to find some very
8 good people out there to help us, and our issuance
9 rates have shot up tremendously and we're down to the
10 last two permits or three permits.
11 MR. WALKE: I didn't mean to assign blame
12 to the permitting authorities, because I tried to
13 make the point that it is these artificial
14 restrictions imposed by political bodies in your
15 states, in addition to having these slashings of
16 staff, these Governors who came in and imposed FTE
17 caps.
18 That is, frankly, fundamentally at odds
19 with the Congressional mandate to issue permits by a
20 certain date. The legislatures also artificially
21 capped the fees, which is also fundamentally at odds
22 with the issuance of permits by that time, as well.

1 OAQPS, a number of years back, did a
2 survey of STAPPA members, in which they identified
3 the low salaries of permitting engineers in states as
4 probably one of the top two or three reasons for the
5 permit issuance rates. And I think that's correct.
6 I understand that.
7 I'm glad to hear the situation is turning
8 around. The turnover was just unbelievable during
9 some period, and the engineers were being lost to
10 private consultants and to private industry.
11 MR. LING: Steve Hagle?
12 MR. HAGLE: Thanks. John, I wanted to
13 talk a little bit more about insignificant
14 facilities, if I could. John Paul mentioned earlier
15 that he felt like they had a pretty good permitting
16 program prior to Title V.
17 In Texas, we still think we have the same
18 kind of thing. We had a permitting program that
19 virtually went -- virtually said, anything that you
20 had that was going to emit air contaminants, you had
21 to have some sort of authorization for that.
22 Some of those were permits-by-rule, many

1 of which didn't require registrations, but all of
2 that was submitted to EPA as part of our SIP, and to
3 now say that you have to include all of those units
4 in your Title V -- water heaters, air conditioners,
5 all of those things in your Title V permit, list them
6 in your Title V permit because they do have an
7 applicable requirement as part of the SIP, seems to
8 be a little counterproductive to us.
9 You mentioned that a state could go back
10 and change its rules and take those things out of the
11 SIP. That's not a very easy process to do,
12 especially to try and demonstrate that you're not
13 backsliding, that you're not willing to reduce your
14 requirements on industry.
15 I just wanted to, I guess, hear your
16 comments about that.
17 MR. WALKE: I understand and appreciate
18 that, and I think we confronted that time and time
19 again when I was at EPA. There was actually a
20 guidance document written about it that didn't make a
21 lot of people terribly happy, but I'm going to sound
22 flip again here, but legal requirements create

1 awkward situations or unhappy consequences when they
2 confront past practices.
3 The truth is that Congress wrote the
4 statute in such a way to require the permit to
5 include and assure compliance with all applicable
6 requirements. By definition, the situation you
7 described is one in which those obligations, units,
8 and requirements, are required to show up in the
9 permit, and going back and correcting that situation,
10 because your historical practice confronted a
11 Congressional mandate, does take time and burden.
12 I don't have any easy answer for you,
13 because I think the law does require that. I think
14 there are sensible policy reasons why, if you think
15 something is important enough to regulate, not only
16 in your state law but in your SIP, that it's not an
17 unnecessary additional burden to have that reflected
18 in the Title V permit.
19 But I can certainly see why smart people
20 of good faith and reason, would disagree.
21 MR. HAGLE: Given that, is there anything
22 that you could suggest that would make that process,

1 either the process of removing those items from your
2 state implementation plan, or possibly even changing
3 the law to the extent that you can, to provide for
4 some insignificant activity?
5 To me, it just makes sense. We're wasting
6 a lot of resources, in my opinion, trying to identify
7 those units and include them in the Title V permit,
8 and it really doesn't benefit a lot of people to try
9 to do that, in my opinion.
10 MR. WALKE: I guess, at bottom, I don't
11 fully understand the conflict where, if you have a
12 law that is intended to apply to units and you intend
13 for people on the ground, including plant workers who
14 aren't lawyers, to understand that those units are
15 supposed to comply with the law, why it's either a
16 bad idea or an invalid burden to require that that
17 situation be made known.
18 If it's not a good idea to subject those
19 requirements to the law, you know, that's the real
20 answer. Otherwise, you're talking about a situation
21 where, in order to avoid that burden, you're
22 basically living in a kind of state of darkness or a

1 state of ignorance, and you're more happy with that.
2 You want the requirements to apply to
3 these units and you want people to comply with them.
4 You just don't really want them to know that they
5 apply to them, or you don't want it -- you don't have
6 to undertake the steps necessary to get to the
7 clarity that they do apply.
8 That, to me, doesn't make a lot of sense.
9 I fully respect all of your points about the burden
10 and the time associated with that, but it seems to
11 me, at bottom, the problem is the decision to subject
12 those units to the law or not. Otherwise, you don't
13 want people to comply, or otherwise you're not as
14 concerned about people complying with them, that
15 you're not prepared to go to the level of making sure
16 they understand that those requirements do apply.
17 MR. LING: Let me just check in here.
18 It's about noon right now. I've told Lyman Welch
19 that he is going to be able to go before lunch. I
20 just want to check with the Task Force and see if you
21 can make it. I'd be glad to continue with
22 questioning for Mr. Walke, but I do want to make sure

1 that you're all aware that we're going to have Mr.
2 Welch's presentation before lunch, as well.
3 Go ahead.
4 MR. HITTE: I just want to go ahead with
5 the Task Force, that if I understood one of John's
6 recommendations, which was in the funding area, we
7 should be making sure that Title V fees that are
8 collected, are used for Title V purposes. About
9 three years ago, due to the regulations requiring EPA
10 to oversee that periodically, we do have an oversight
11 or audit -- whatever word you want to use -- with
12 the regions being requested to investigate that at a
13 rate of a couple of permitting agencies per year.
14 Subsequent to that request, the EPA's IG
15 looked into some issues with Title V and officially
16 told the Agency to continue to look into and write
17 reports, while making sure Title V fees are being
18 used for Title V purposes. So, would we, as a Task
19 Force, go to look into that?
20 I want to let you all know, on the record,
21 that we're doing that already.
22 MR. LING: Shannon?

1 MS. BROOME: I just wanted to follow up on
2 the insignificant-unit issue that you were discussing
3 with Steve. I think you guys are talking past each
4 other a little bit.
5 You can tell me if I'm right. A lot of
6 the stuff that Steve is referring to, I think -- and
7 I'm basing it on experience in other states -- are
8 rules that were written in the '70s when units may
9 have actually needed to do something to comply with
10 some of these rules and now they are inherently
11 compliant.
12 So you're spending a lot of resources
13 looking at things that are inherently compliant, and,
14 no, they don't want to eliminate it from their SIP
15 and say, no, you don't have to do it anymore, but
16 they don't want to spend resources writing every one
17 of those things down when they could be worried about
18 big, new stuff.
19 Isn't that something that does have a
20 place in this Task Force? That's what I'm hearing
21 from Steve. You can tell by my tone that I tend to
22 agree with him, but I think it's a conflict, in that

1 the air world has evolved over the last 30 years and
2 the regs, as they are currently written, aren't
3 recognizing that.
4 And so I think that part of our work is to
5 see if there are cuts that can be made that recognize
6 those things and how those might be made in a way
7 that is protective and also is streamlining, so that
8 we don't jeopardize enforceability.
9 I don't think anybody is saying, oh, no,
10 those things shouldn't ever be enforceable. That's
11 not the point. The point is, let's get on with this
12 program.
13 MR. WALKE: Could I ask for both an
14 example and clarification?
15 MS. BROOME: Some of the air conditioning
16 units, some of the generators that are regulated as
17 non-roads now, those things are inherently compliant
18 with opacity limits. You don't see problems with
19 that. You know you don't see problems with that.
20 If you have examples of problems with
21 that, I would love to see it. There's lots of -- I'm
22 talking about really small stuff that we're spending

1 time on. I think maybe it has to do with the
2 definition of small stuff, but I think that that is a
3 fruitful area for people to be looking at their
4 permits and coming in with data on that, so we can
5 have a more meaningful discussion.
6 In theory, somebody could agree with you
7 and agree with him at the same time and still not
8 reach any resolution. I'm not saying that you are
9 necessarily wrong that these are requirements; I'm
10 not disputing that.
11 I'm saying that the world has changed, and
12 is there a way that we can recognize that with better
13 controls? I think we all know that things have
14 gotten better.
15 MR. WALKE: If I understand kind of the
16 nub of what you're suggesting, I do not accept the
17 concept of inherent compliance. That's something
18 that has no meaning to me.
19 If you're talking about a situation where,
20 say, a generator is burning natural gas and isn't
21 going to have opacity, okay, that's fine. You
22 shouldn't have to do an opacity reading, but should

1 you have to determine whether they are still burning
2 natural gas and not switching to No. 2 Fuel Oil or
3 high-sulfur coal? That's a compliance monitoring
4 requirement.
5 MS. BROOME: Let's be realistic.
6 MR. WALKE: I'm using an example here.
7 The truth is that there is a reason for inherent
8 compliance and the reason is the way the source is
9 operating. It's not a burden to make sure, once in a
10 blue moon, once a year, whatever the situation may
11 be, that the source continues to operate in a way
12 that ensures what you consider to be inherent
13 compliance.
14 It doesn't mean that there's one-size-
15 fits-all monitoring for all situations. The concept
16 of enforceability and inherent compliance cannot be
17 reconciled. I don't even really accept the concept.
18 MS. BROOME: I guess, if you're not
19 willing to accept any question on allocation of
20 resource and how people should spend their money,
21 meaning the Government spend its money and focus its
22 resources, then, yes, you can have people spend all

1 of their time, and then you shouldn't be complaining
2 when something big gets missed, because they're
3 spending all their time. That's all I'm saying.
4 MR. WALKE: That's not what I said.
5 MS. BROOME: Then I misunderstand you. Do
6 you think there are cuts that can be made, or where
7 streamlining -- I'm truly interested in figuring out
8 if there's something that can be done, because I
9 think his problem is real. It is real to him, I
10 know.
11 MR. WALKE: I did try to acknowledge that
12 I just don't think that the cuts that can be made are
13 ones that remove the legally-covered units from the
14 legal system. Are there within the legal system,
15 things that can be done to streamline or to have less
16 frequent or less burdensome monitoring, or other
17 things?
18 Yes, absolutely. And I tried to be clear
19 about that, but if the suggestion is that you just
20 totally remove them from the field of legal coverage,
21 that's not the solution.
22 MS. BROOME: I'm not suggesting anything

1 right now. I'm just trying to see if you think
2 there's some cut that could be made and where it
3 could be made, and maybe in your written comments --
4 MR. WALKE: It's a conversation that's
5 hard to have in the abstract.
6 MS. BROOME: That's why I was hoping to
7 get some examples in. That would really help us to
8 do an analysis.
9 MR. WALKE: I'll see what we can do.
10 MR. LING: Thank you very much, John. I'm
11 sorry, I forgot John Higgins.
12 MR. HIGGINS: I'll ask the same question
13 again: From A to F, can you give us a grade?
14 MR. WALKE: Since John said he's grading
15 on a curve, I would grade the program according to
16 two subgrades, because I think that the compliance
17 enhancement aspects of the program deserve about a D,
18 and I think that the other aspects of the program
19 deserve about a B.
20 MR. LING: All right, thanks. Lyman
21 Welch. Bernie?
22 MR. PAUL: This is another question for

1 John. I did have an example of the type of
2 regulatory requirement that you can inherently comply
3 with. In the '70s, there were regulations that many
4 states adopted called process weight rules.
5 Basically, they set up a table that if
6 your process weight rate, the amount of material that
7 you are processing, is so much, you're pound-per-hour
8 emission limit is another value in the table, and
9 there's an equation that you can use to generate the
10 emission.
11 There are a number of processes based on
12 those equations that establish your limits. It is
13 physically impossible for you to omit, with or
14 without air pollution equipment, at a level that
15 you're allowed to emit, so you're inherently in
16 compliance with your limit at all times. These types
17 of things end up in permits.
18 Then they also apply to processes.
19 There's no exemption in the state rules, so we ask
20 the state, what is a process? Is a paper shredder a
21 process? They won't say no; they won't say yes,
22 either; they won't say no.

1 Is a pencil sharpener a process? They
2 won't say yes; they won't say no. All of these
3 things could generate particulate matter and you're
4 left to decide whether or not you have to certify
5 compliance with these things.
6 So then we tried to get them to change the
7 state rules, to have de minimis values in there or
8 say that they only apply to manufacturing processes,
9 and there's trepidation on the part of the state
10 agencies to do that, because going through the SIP
11 approval process is not easy. Going through a
12 rulemaking process to change that is not easy.
13 And so the inclination of everybody
14 involved is, let's try to find a more practical
15 solution to this, rather than the legalistic approach
16 that you suggested. Intellectually, and from a legal
17 standpoint, I agree with you, but perhaps we can find
18 a more practical way out of this box.
19 MR. WALKE: Point taken.
20 MR. LING: One more time, Mr. Welch?
21 MR. WELCH: Thank you. At the risk of --
22 I don't want to disrupt the schedule. I know we're

1 after noon, and I am perfectly willing to come back
2 at 1:00 and give my presentation then and give you
3 the chance to ask questions, if the Task Force would
4 prefer to do that, or I can go through my
5 presentation now.
6 Given the length of the questions that
7 I've heard before, I think it might be better if we
8 waited till after lunch, but it's up to you. I'm
9 happy to do what you want.
10 MR. LING: If you're willing to do that,
11 it looks like most people are not objecting to that
12 idea. Thank you very much.
13 I want to give everybody the full hour for
14 lunch, so I have 12:15, and let's meet back here at
15 1:15. Thank you very much for your patience. This
16 has been a very good discussion, I think, at a level
17 of detail that was maybe more than some of our stuff,
18 but at a level of detail that we need to do our jobs.
19 So, thank you.
20 (Whereupon, at 12:15 p.m., the meeting was
21 recessed for luncheon, to be reconvened this same day
22 at 1:15 p.m.)