1 AFTERNOON SESSION

2 (1:25 p.m.)

3 MR. LING: Why don't we go ahead and

4 resume the discussion so we can finish in a timely

5 fashion. We may end up taking the whole day, after

6 all.

7 I now introduce the patient and flexible

8 Lyman Welch.

9 (Slide.)

10 MR. WELCH: Thanks very much for the

11 opportunity to make this presentation to the Task

12 Force. My name is Lyman Welch. I'm the Associate

13 Director and General Counsel of the Mid-Atlantic

14 Environmental Law Center.

15 I've put together a PowerPoint

16 presentation to kind of provide an outline for my

17 comments. Next slide, please.

18 (Slide.)

19 MR. WELCH: This is an overview of what

20 I'm going to be commenting on. First, I'll give you

21 a little background on what the Mid-Atlantic

22 Environmental Law Center is, and then talk a little

1 bit about the benefits of the Title V program, then
2 make some suggestions as to improvements that should
3 be made to the Title V program, and then make a few
4 comments about the composition of the Task Force.
5 Next slide, please.
6 (Slide.)
7 MR. WELCH: What is the Mid-Atlantic
8 Environmental Law Center? I think it's fair to give
9 you some background about where I'm coming from.
10 From my perspective, I think I'm bringing
11 a kind of on-the-ground environmental perspective to
12 how the Title V program is working. The Mid-Atlantic
13 Environmental Law Center is a nonprofit law firm. We
14 represent a variety of environmental groups in the
15 Mid-Atlantic region. We're located in Wilmington,
16 Delaware, and we work in tandem with law students at
17 Widner University's Environmental and Natural
18 Resources Law Clinic.
19 I've been working, I guess, since 2001 on
20 Clean Air Act issues and Title V issues. I'm a
21 lawyer. I've been in practice for about 11 years.
22 Next slide, please.

1 (Slide.)

2 MR. WELCH: Benefits of the Title V

3 program: One of the most important benefits or

4 advantages of the Title V program is the fact that it

5 takes a huge number of individual permits and

6 combines then into one single permit for a facility.

7 To give you an example of this, when I

8 first started working at the Center, we had clients

9 that came to us, and they were concerned about

10 pollution from power plants from major sources in

11 Delaware. Because of that, there are about seven big

12 power plants that are in Delaware that are very old,

13 coal-fired power plants.

14 We went to the agency, to the state

15 agency, and said, okay, we'd like to see the permits

16 and compliance information for these seven power

17 plants, so we can figure out which ones are the dirty

18 ones, which ones are in compliance, which ones should

19 we try and pay some attention to or try to make

20 improvements with?

21 We made this request in the Fall of 2001,

22 and it took many months, and we never got anything.

1 There wasn't anything forthcoming from the agency.
2 We filed a Freedom of Information Act request.
3 We were trying to compile it all, you
4 know, and I was working with a law student. We were
5 in a year-long program, and I had given this
6 assignment to the law student. He said, well, you
7 know, I'm about to graduate, and I don't have
8 anything to look at.
9 So I called up the agency and I said,
10 look, my student is about to graduate. Can you give
11 us one facility to look at? I know what we've asked
12 to look at all the power plants.
13 So, after a few more months, we were
14 eventually, you know, a couple of weeks before my
15 student graduated, and we were able to get in and
16 take a look at some information in the files for one
17 of the power plants in the State of Delaware.
18 This is a facility that had not yet had a
19 Title V permit. And what I was faced with, coming in
20 from the public, is a roomful of documents, file
21 folders spread out on a number of tables, stacked
22 high, you know, over a foot high in several stacks

1 going around the table, and not very well organized.
2 I mean, the files I was faced with, had
3 documents going back to the 1950s and the 1960s, and
4 didn't seem to be in any order. You could pull up
5 one file and you'd have a document from 1960 and
6 you'd have a document from 2001 in the very same
7 file. It's not organized chronologically or under
8 hardly any order that one could see.
9 You had correspondence mixed in with
10 permits, mixed in with violation notices, all kind of
11 thrown together. And to walk into this room and to
12 try and figure out, okay, you know, how well is this
13 facility doing? Is it in compliance? Is it not?
14 It's a daunting task.
15 And then to try and figure out, from a
16 legal perspective, what are the permit requirements
17 that apply to this facility, you know, I'd go in and,
18 well, here's a permit. Well, this is a permit for,
19 you know, Source 151, Amendment No. 3.
20 I'm like, okay, well, this is a permit.
21 There are some legal requirements here. But to
22 actually figure out what requirements applied to this

1 single source, this single piece of equipment,
2 whether it be a boiler or whatever, not only do I
3 have to look at this particular document, but I have
4 to go back and I have to find Amendment No. 2 and
5 Amendment No. 1, which aren't anywhere in this file
6 near this permit.
7 So I have to get all these amendments and
8 then try and figure them out because they all relate
9 to one another. You can't just look at one document
10 that says Amendment No. 3. It doesn't have all of
11 the particular requirements that apply.
12 You have to go back and look at all of
13 these other ones. And then that's only just one
14 piece of equipment. This applies for the whole
15 facility, so, to try to synthesize all of these
16 things into one, this is a huge accomplishment that
17 the Title V program has done, is to force and require
18 the facilities and the agencies to go through their
19 files that go back decades, and find all the permits
20 and the requirements that apply to a facility and put
21 them into a single permit.
22 Now, as I'm looking at facilities -- and

1 Delaware has gotten a little better about working on
2 the Title V program. If the facility has a Title V
3 permit and I ask to see, you know, let's see the
4 permit, then there's a single document and you can go
5 through it.
6 If I'm interested in a particular portion
7 of the facility, you can go to that section in the
8 permit. If I'm interested in the whole thing, the
9 whole thing is there.
10 So, that is a huge, huge benefit, putting
11 that together. And I'd like everyone to keep that in
12 mind, because I would hate to go backward or to drop
13 the whole Title V ability of putting all of these
14 permits into one.
15 I mean, from the public's point of a view
16 or as a lawyer representing the citizens that are
17 trying to do something about air pollution, it's a
18 vast improvement. I mean, even if the permit is 60
19 or 100 pages long, it's much better to have that than
20 to have to look at a roomful to try to figure out
21 what are the requirements, the basic, first step that
22 you would need to look at to figure out how well a

1 facility is doing.

2 Okay, next slide, please.

3 (Slide.)

4 MR. WELCH: A second major benefit of the

5 Title V program is public participation in the

6 permitting process. This is, you know, the one major

7 area in air permitting where the public has a voice,

8 can become involved, can participate, hopefully, in

9 the ideal situation, in the development of the

10 document that will put the requirements on the

11 facility or at least put them into one place.

12 And the public is very concerned about

13 clean air. I mean, more and more, as more

14 information is developed, people care. They want to

15 breathe clean air. They don't want to be getting

16 asthma or cancer or other problems that come from

17 dirty air.

18 And the public wants to be involved, and

19 here is the Title V program that allows the public to

20 be involved. To some extent, when we -- you know, I

21 have to say that I think the Title V program provides

22 great opportunity for the public to participate, but

1 as implemented, it does not always and not uniformly
2 allow the public to participate as equal partners at
3 the table.
4 When we began working in Delaware, we
5 were, I think, the first group that ever asked for a
6 public hearing on the Title V permit in the entire
7 state. The state agency viewed it as, well, now
8 we're really starting to understand the Title V
9 program, as we started asking questions and
10 participating in the process.
11 I think that when the public participates,
12 it enhances the process and makes it better and leads
13 to a better result. Next slide, please.
14 (Slide.)
15 MR. WELCH: Just for comparison, I took a
16 section from Delaware's Administrative Procedures
17 Act, so that you can see that without the Title V
18 program and the public participation requirements, in
19 Delaware, there's really no opportunity for the
20 public to participate in the process.
21 The Administrative Procedures Act and the
22 permitting program means that you must have the

1 ability in either a regulation or law, to allow the
2 public to participate in the development of the
3 permit.
4 The permit holder, of course, has the
5 right to participate in Delaware, and the agency has
6 a right to participate, but without the Title V
7 requirements and the regulations that are then
8 incorporated into Delaware's SIP, the public really
9 would just be able to sit back and observe what's
10 happening and not participate in the process.
11 The Title V procedures are very important
12 here. Next slide, please.
13 (Slide.)
14 MR. WELCH: EPA has really seen public
15 participation as an important value, and this is a
16 quote from a 1993 memo concerning public
17 participation. And it shows that EPA really
18 recognized the importance of public participation in
19 the process; that EPA wants to remain open to all
20 points of view, to listen to the constituents, to
21 incorporate them into the process.
22 I put it in here just to show the

1 importance of public participation being recognized
2 by EPA, and it needs to remain a part of Title V and
3 be enhanced where it can. Next slide, please.
4 (Slide.)
5 MR. WELCH: These are four major points
6 where public participation is incorporated in the
7 Title V program currently. The first is that major
8 air pollution sources must obtain Title V operating
9 permits; then public hearings are required, if they
10 are requested.
11 There are minimum permit standards
12 incorporated through Part 70, and additional
13 inspection, monitoring, and reporting requirements
14 can be required to ensure compliance with the
15 program. I see these as four key areas that are part
16 of the Title V process that are very important and
17 that have worked well in the field when they are
18 implemented properly.
19 Now, I'll note the additional inspection,
20 the last one there, I understand EPA is putting out
21 rules to try to do away with some of these
22 requirements, and I'm very disappointed in that.

1 Next slide, please.

2 (Slide.)

3 MR. WELCH: Here are some of the benefits

4 I see of citizen participation, and I put four up

5 here: Ensuring meaningful public participation. By

6 "meaningful," I mean that you can actually accomplish

7 something if you are a citizen trying to be involved

8 in the process.

9 Second, requiring accountability in

10 operating permits where there is a real virtue that

11 citizens can bring, in that when they see a facility

12 that's a problem or is putting out a lot of

13 pollution, they can get involved. They can make sure

14 that the permits have the requirements, so that the

15 public can check up on a facility and see if it's

16 actually, you know, following the requirements, that

17 the agency is implementing the permit in an

18 appropriate manner.

19 Third is that Title V focuses the

20 attention of the public and policy makers on

21 enforcement of clean air laws. There, in terms of

22 enforcement, I mean, one of the important things of

1 the Title V program is that you have compliance
2 certification, that a lot of the Title V regulations
3 are developed to set out a permit where there are
4 requirements that are identified, the means of
5 monitoring or otherwise testing to see whether the
6 facility is actually meeting those requirements.
7 And then, you know, the public, by being
8 part of this process, can see, okay, here's a
9 facility; is it in compliance or not? If it's not in
10 compliance, then what is the government doing to
11 enforce the law, to bring the facility into
12 compliance?
13 The Title V process allows the public to
14 really evaluate whether a facility is doing what it
15 should be doing, or, if it's not, and if it's not,
16 then it helps identify what the problem is and
17 identify areas that can be corrected.
18 And finally, you know, perhaps the most
19 important benefit is reducing air pollution for major
20 violators. I see that when the citizens become
21 involved, just by entering into the process, asking
22 questions, looking carefully at the requirements,

1 that this kind of focusing of the attention actually
2 brings air improvement benefits where the permits are
3 enforced.
4 And this is something that citizens care
5 about. I mean, the bottom line is, is the air
6 getting cleaner? I think the Title V program is
7 resulting in that benefit, and by having the citizens
8 participate in the process, it enhances that and can
9 help focus the attention on the facilities that the
10 citizens care most about.
11 All right, next slide, please.
12 (Slide.)
13 MR. WELCH: Okay, on this slide, I wanted
14 to give you a sense of some of the work that I have
15 been involved in at the Mid-Atlantic Environmental
16 Law Center. As a Task Force, you have asked for
17 examples of practical experiences.
18 I'm not going to go into detail into all
19 of these right now, but I wanted to highlight a few
20 of these facilities that we've been involved in the
21 State of Delaware, trying to get improvements at
22 major facilities. I'll touch on a few of these as

1 examples here:

2 The Indian River Power Plant is one of the

3 most polluting sources in the State of Delaware. We

4 asked for a public hearing on a draft Title V permit.

5 The hearing date was December 2002, and a public

6 hearing took place. We put comments forward into the

7 record, participated fully in the process.

8 The permit then went through a long review

9 process. It never came out until just recently, a

10 couple of months ago, and the final or proposed Title

11 V permit was recently issued and sent to EPA a few

12 months ago, and EPA's comment period has just ended

13 three days ago on that Title V permit.

14 This was an original, the first Title V

15 permit for this source, and it is now open for public

16 petition, which may be forthcoming. As part of that

17 process, this was one of the first Title V permits

18 that we participated in. I think that both the

19 agency and our organization learned a lot about the

20 Title V program by going through that process.

21 There were many people when we had a

22 public hearing on this. Many people came out to

1 speak, to talk about the problems of air pollution
2 and the impact on them from this facility, and by
3 having the Title V program involvement, I think it
4 was helpful.
5 One of the things that came out of this
6 process is that Delaware is now looking at developing
7 new laws to reduce pollution from power plants,
8 because they found that existing laws were not
9 actually able to reduce the pollution that was coming
10 out of coal-fired power plants, and that new laws
11 were required.
12 So, when the public came to complain, one
13 of Delaware's responses is, well, we can't do much
14 under current law, but we're taking a look at new
15 laws to actually accomplish pollution reduction. So,
16 it helped us participate in the process, and one of
17 the problems is that here is part of Title V, and
18 there isn't a lot as far as a coal-fired power plant
19 and there's not a lot of legal requirements that
20 actually can be used to reduce the pollution from
21 that kind of facility.
22 Hopefully, Delaware is now serious about

1 actually trying to reduce the air pollution through
2 new requirements. We'll see if that actually comes
3 to pass, but that's what they said in response to
4 comments on that.
5 Connectiv's Power Plant is another coal-
6 fired power plant. It's very similar and came out at
7 about the same time, and it's just within the last
8 month that a proposed permit has been sent to EPA
9 for comments. I hope EPA carefully looks at that
10 Title V permit as well. We participated in the
11 entire process, held a public hearing. Many people
12 came from the public to speak on that source.
13 The next is the Motiva refinery. This is
14 a refinery in Delaware City, Delaware. It is
15 interesting for the fact that it does not have a
16 single Title V permit. When I say that, what I mean
17 is that the facility has been divided into three or
18 perhaps four parts, and it has what they call a Title
19 V permit, Part I that covers some sources at the
20 refinery, but not all of them, and that is in effect.
21 And then there are two other parts, Part II and a
22 Part III. In Part II, there was an application

1 submitted years ago and that has not yet been put
2 forward, and a Part III that just recently was put
3 forward in draft form to the public.
4 I say four parts, because -- I'll get to
5 that a little later when I get to DuPont. But we
6 have participated as far as the Motiva refinery is
7 concerned, in asking for hearings on some of the
8 minor source permits or requests to amend the permit
9 that would later be incorporated into the Title V,
10 because they don't have a full Title V.
11 It only covers part of the facility, and I
12 see that as a real problem. When you have at Title V
13 that only covers part of the facility, it's very
14 difficult, coming from the public's perspective, to
15 figure out, okay, we hear there's a violation at
16 Motiva, the refinery. There was a release of some
17 pollutant. We hear about that.
18 Well, is it covered by the Title V permit
19 or is it one of those -- where is the release coming
20 from? Is it one of the sources that's not in the
21 Title V? You know, from the public's perspective,
22 it's much better to have a single permit that covers

1 the entire facility and to have compliance that does
2 that, rather than divide it up.
3 I won't go into detail on some of these
4 others. Wilmington Sewage Plant is another Title V
5 permit we commented on. We're still waiting for the
6 draft to come out to see what reaction to comments we
7 will get.
8 SPI Polyols, we participated in that
9 process, and that resulted in some improvements
10 responsive to our comments on the permit.
11 Dow Reichold Specialty Latex, another
12 manufacturing firm that we've participated in the
13 Title process for that, and that also resulted in a
14 petition to EPA that's still pending decision.
15 Some of the other facilities that we've
16 been involved in are: The Cherry Island Landfill,
17 Daimler Chrysler, a Newark assembly plant that we
18 provided comments on.
19 As to DuPont's sulfuric acid plant, I
20 wanted to mention this, because what happened was,
21 with the Motiva refinery, is that Motiva decided that
22 it didn't want to keep operating its sulfuric acid

1 treatment part of its refinery, in part, because they
2 had an explosion a couple of years ago that killed
3 one of their -- just vaporized one of their workers.
4 And they decided that now they want to
5 contract that out to someone else to handle it, so
6 they asked DuPont to come in and build a sulfuric
7 acid plant to handle all of the gas from Motiva's
8 refinery. They lease them some land on the refinery
9 property and then DuPont applied for a minor source
10 permit to build this sulfuric acid plant, the main
11 purpose of which is to treat the gas from Motiva's
12 refinery, but they applied separately.
13 So, is wasn't a Title V. It wouldn't be
14 part of Motiva's Title V. We commented on this and
15 objected to the fact that DuPont was being treated
16 separately, and eventually Delaware agreed and said
17 that because it's under the control of Motiva, that
18 it should be part of Motiva's emission source and
19 calculated in with all of their's.
20 So, now there will be a Title V permit for
21 the DuPont sulfuric acid plant as a result of this.
22 It still will remain under -- it will be a DuPont

1 Title V permit, but it's because it's connected with
2 the refinery that it will have its own Title V permit
3 and subject to those regulations.
4 You know, just more recently, we've
5 commented on Johnson Controls Battery Group, a permit
6 there, and the Premcor refinery. Just recently,
7 Premcor bought the Motiva refinery, so now the Part
8 III Title V permit for now a Premcor refinery was put
9 out for comment and we've requested a hearing on that
10 and we're waiting to see what happens there. But,
11 best of luck to Premcor taking over that facility.
12 Next slide, please.
13 (Slide.)
14 MR. WELCH: Okay, benefits of the Title V
15 program: Another important benefit of the Title V
16 program is improved enforcement. By having all of
17 the requirements in one place, in one permit, and
18 spelled out in clear language as best as possible,
19 this enables both the government agencies and the
20 public to ascertain whether a facility is in
21 compliance or not, and then to take enforcement
22 action when a facility is violating the laws.

1 And this is a real benefit of the Title V
2 program and the Title V regulations. You know,
3 recognize that not only is the government able to
4 bring enforcement actions, but citizens can as well,
5 under the citizen supervision.
6 Having clear permits developed through the
7 Title V program, as well as compliance monitoring and
8 recordkeeping, keeping track of all of those records
9 at a facility and having them available to the public
10 as well as the government, is important. You can't
11 just rely, if you are a citizen trying to bring an
12 action to bring a facility into compliance, a citizen
13 can't rely on a government inspection alone, because,
14 you know, the citizen isn't part of that inspection,
15 has no influence on that. All you can read is the
16 report, if the agency chooses to write one of that
17 inspection, to see what happened.
18 So, the requirements for monitoring and
19 recordkeeping and compliance that are part of Title
20 V, lead to improved enforcement, both on the
21 government level and the citizen public's point of
22 view. Next slide, please.

1 (Slide.)

2 MR. WELCH: Okay, in line with the Task

3 Force request to provide practical examples of how

4 Title V has worked, I offer up a successful

5 enforcement action based on a violation of a Title V

6 permit. And this example is for Sunoco's refinery.

7 Sunoco has a refinery that's kind of split

8 between Pennsylvania and Delaware. It has portions

9 on both sides.

10 And Sunoco recently, a couple of years

11 ago, was issued a Title V permit for flares that are

12 located on the Delaware side. Now, what Sunoco does

13 is, it sends hydrogen sulfide gas kind of over the

14 state line to be processed, and when, you know, there

15 are problems, then it can end up being sent to a

16 flare in Delaware that produce a lot of sulfur

17 dioxide pollution.

18 And the Title V permit that was developed

19 for Sunoco after examining the regulatory

20 requirements, essentially prohibited Sunoco from

21 flaring at this particular flare. It had, you know,

22 essentially a zero emission of no flaring type of

1 requirement.

2 And Sunoco was sending its gas to another

3 facility operated by General Chemical Corporation,

4 which was supposed to handle the gas in the normal

5 course. The problem that was faced in Delaware is

6 that when there were operational problems at Sunoco's

7 refinery or when there were problems accepting the

8 hydrogen sulfide gas at the general chemical

9 facility, the Sunoco had really no option but just to

10 flare the gas. They didn't have any means to handle

11 this hydrogen sulfide gas, and so they flared it and

12 were producing tons of sulfur dioxide emissions that

13 were prohibited by their Title V permit.

14 And when this began to be reported in the

15 press, it was pretty clear that there was a problem.

16 There were newspaper articles saying, well, Sunoco's

17 permit prohibits flaring, and they're flaring. And

18 the flaring, you know, not only really is sending all

19 this sulfur dioxide into the environment and it was

20 not only a problem from an environmental perspective,

21 but neighbors and people that live near this flare,

22 had huge -- I mean, it just smells bad; it stinks.

1 That's what happens, and they were calling and
2 complaining.
3 Well, when we got involved in the
4 situation, and when we first approached Delaware, the
5 agency, and called and talked to the engineer, after
6 one of the first flaring events, the engineer's
7 response was, well, it's not a big problem. We don't
8 expect it to happen again. We're not going to do
9 anything about it.
10 Well, then the days and weeks went by and
11 repeated flaring happened again and again, day after
12 day, and we called up and eventually the agency
13 stopped returning our phone calls, and we represented
14 the Clean Air Council in sending a notice of intent
15 to sue under the citizen supervision of the Clean Air
16 Act for violating the provisions of the Title V.
17 Well, as you know, there's a 60-day period
18 between when you send the notice letter and when you
19 can actually file a lawsuit in court under that, and
20 during that time, there were more flaring events,
21 some, really, some tons and tons of sulfur dioxide
22 coming out from this facility.

1 Sunoco got together with the government
2 agency, and a couple of days before our 60-day notice
3 period would have run and we could have brought our
4 own enforcement action, they reached a consent
5 agreement with Sunoco and the government to develop a
6 plan to solve this problem, to stop the flaring
7 problem, and they had to come up under this court-
8 ordered agreement.
9 They'd have to come up with a plan within
10 four years to solve the problem. Well, that wasn't
11 sufficient from our point of view.
12 We brought an actual lawsuit, saying that
13 that was not diligent prosecution, that wasn't
14 solving the problem; there was still flaring
15 continuing, still violations. Eventually what Sunoco
16 did is, they built a sulfur recovery unit on their
17 property, so that instead of trying to send it to
18 General Chemical, they had their own sulfur recovery
19 unit on the facility.
20 You know, I've heard estimates that
21 they've spent around $20 or $25 million to put in
22 this piece of equipment. They also, as part of the

1 deal with the agency, they paid a penalty of
2 $390,000, and at the end of the day, you know, we see
3 that in 2002, there were over 600 tons of sulfur
4 dioxide emissions from this one single flare, and
5 because of the Title V permit that was in place,
6 because the language was clear enough, the government
7 agency was able to take enforcement action when
8 prompted by the citizens, and that has now resulted
9 in Sunoco putting in the sulfur recovery units and
10 the flaring essentially is over with, and has been
11 resolved.
12 So, I view this as a clear example of
13 where the Title V permit process has helped improve
14 enforcement on an air violation. Next slide, please.
15 (Slide.)
16 MR. WELCH: Okay, I also wanted to respond
17 to your request for some ideas about improvements to
18 the Title V program, and I put these out here as more
19 issues or areas that the Task Force should consider,
20 rather than a specific regulatory change that I'm
21 proposing.
22 First, more frequent monitoring. I'm

1 finding in the Title V process, as we go through
2 various permits, that there -- obviously, for
3 different types of sources, there's different types
4 of monitoring that's required or appropriate.
5 Stack tests often are not done when they
6 should be, when Title V permits are up for renewal,
7 and that should be looked at. Monitoring should be
8 looked at for different types of facilities and
9 figuring out, you know, what is the appropriate types
10 of units and, you know, how often should this
11 monitoring be done.
12 Right now, Title V often only requires
13 tests to be done when the permit is up for renewal
14 again, which may be five or more years down into the
15 future, and, you know, this is an area that I think
16 the Task Force ought to think about, is more frequent
17 monitoring for major sources. That might be one area
18 that should be required.
19 Secondly, more frequent compliance
20 reports: Right now, for a lot of facilities, what
21 you have is, you may have a semiannual or annual
22 compliance report under Title V that addresses the

1 issues.

2 And, you know, in comparison to the Clean

3 Water Act Program, where you generally have monthly

4 reports from a facility, the semiannual and the

5 annual reports really make it hard for a citizen or a

6 member of the public to really verify the compliance

7 of a facility, you know, on a day-to-day basis.

8 You know, when you try to look at the

9 facility's compliance, you know, it could have been

10 in violation for four months and you're not going to

11 know that until two or three months when they put out

12 a semiannual compliance report and then have to put

13 out some statement like that.

14 I mean, I would like to see perhaps a

15 monthly report coming out from a facility that would,

16 you know, tell us what the compliance is, in a

17 similar way to that which you have under the Clean

18 Water Act where you have a monthly type of report.

19 And, you know, that monthly report wouldn't

20 necessarily have to be as detailed as the semiannual

21 or the compliance report, but, you know, it could

22 just tell you perhaps, you know, how many violations

1 there have been, or break it up by units and tell
2 you, you know, which units are experiencing
3 violations or what type of pollutant is coming out
4 from a facility.
5 Another way that you might take a look at
6 having more compliance reports available is by
7 looking at the Internet and putting out release
8 information for facilities and making it available on
9 websites that the public can access.
10 In Delaware, for example, under state law
11 that was adopted a couple of years ago, Delaware puts
12 out release information for spills and for releases
13 from all facilities in the state that take place.
14 And this -- you know, this applies not only to major
15 sources, but even smaller ones.
16 And you can tell pretty quickly. Delaware
17 lets you sign up so that you can get e-mails when
18 releases occur, or even phone calls, if you care
19 about a particular facility or all facilities in the
20 state. And these release reports describe, you know,
21 what chemical was released, you know, approximately
22 how many pounds, what time that this occurred, what

1 health risks there are, all the sorts of information
2 that you'd want to know from the public's standpoint.
3 And just by looking over these release
4 reports, you know, we find, for example, Motiva puts
5 out two or three a week. They are now, I guess,
6 Premcor.
7 And you can tell that there are violations
8 at the facility, because they continue to put out
9 these release reports. When Sunoco was having its
10 flaring operations, we couldn't tell exactly how
11 much, you know, pollution of sulfur dioxide was
12 coming out from the facility by looking at the
13 semiannual compliance reports, because we didn't get
14 those, you know, for months into the future.
15 But because of Delaware's release
16 reporting capability, you know, every day Sunoco was
17 putting out, well, we flared today and there was this
18 amount of sulfur dioxide going into the air, and that
19 is very valuable from the public's point of view in
20 being able to look at a facility and evaluate whether
21 it's in compliance or not.
22 So, something you might want to look at is

1 a way to get more up-to-the-date information on
2 compliance made available to the public, so it's not
3 just waiting for a semiannual or annual compliance
4 report. Certainly, those are valuable, and I would
5 look at those for a facility, but having a way,
6 perhaps through the Internet, where that type of
7 information would be available, would be improved.
8 And inspections, that's another way that
9 government finds out information about compliance.
10 You know, we found that in Delaware, what Delaware
11 might do is, they do inspections every other year for
12 a source. And on the off year, they would do what
13 they call a desk review or partial review where they
14 would just look at reports and documentation, but
15 wouldn't actually go out to the facility.
16 You know, I think, personally, that
17 actually going out and inspecting on the ground at
18 the facility is a better way to determine compliance
19 for an agency than simply relying on the reports
20 generated by the company. So, you might take a look
21 at what type of inspection is required through the
22 Title V program.

1 Third, better public participation
2 mechanisms: Delaware may be better than other
3 states, even though we've had our problems there,
4 but, you know, just knowing when a Title V permit is
5 available for comment or to ask for a hearing, can be
6 difficult.
7 I mean, there are requirements to put
8 legal notices in newspapers, but not everyone is
9 going to see those types of notices. In Delaware
10 what they done is, they've established a website, and
11 on that website, you can go and you can look at all
12 the public notices that are currently open.
13 So, for any facility that currently you
14 could comment on or ask for a hearing on, you can go
15 to a page on DNREC's website and it will list all the
16 public notices that, you know, are just basically an
17 electronic copy of what was printed in the paper, and
18 it's available on their website, and you can click on
19 it and see how to go about requesting a hearing.
20 So, if I'm on vacation for a week or two,
21 and I come back and I say, well, what's going on? I
22 can click on this web page and I can see, well,

1 here's what I could comment on or ask for a hearing
2 on.
3 The public finds this very valuable,
4 instead of trying to look through the paper every day
5 to figure out, you know, if there is a public notice
6 going on. Also, Delaware allows you to sign up so
7 that you can get e-mail notices, so when they put a
8 public notice on the website, I get an e-mail that
9 says here are all the public notices that have gone
10 up this day.
11 And, you know, I use that; I subscribe to
12 that; I get these notices, and that's very valuable.
13 I don't think every state offers that opportunity.
14 In Pennsylvania, stuff is published in the
15 Bulletin, but there is no way that you can track when
16 a Title V permit is coming up for review. We've
17 called Pennsylvania and asked them, you know, how do
18 we know what facility is coming up? And it's like,
19 there's no way. We don't know.
20 Even the engineers are working on permits.
21 They don't know when they are going to be made
22 available for public comment, and they've got this --

1 they have sort of a website system, but it doesn't
2 really work for commenting on permits or when comment
3 deadlines become open.
4 So from a state point of view, it's -- you
5 know, you have to get the Bulletin where they put the
6 legal notices, but there's not an easy way for
7 citizens to find out, you know, when can we ask for a
8 hearing? And often, dates are missed; hearings are
9 not requested, because the date passes and then the
10 thing is put in final form, and citizens just don't
11 have that opportunity.
12 All right, EPA has done a good job when it
13 gets to their level. They have a website of noting,
14 you know, here are the permits that are under our
15 review; we got them on this date and we've got a 45-
16 day review period, and it ends on this date, and then
17 there's a 60-day public petition period that's open.
18 And EPA has a good -- at least in Region
19 III, anyway, has a web page that you can get all that
20 information from, and it's updated every week or so,
21 and that's helpful. I guess the problem is, from the
22 public standpoint, is that EPA would prefer that we

1 get involved at the state level, and if the states
2 don't notify us about when we can ask for hearing,
3 then all we're left to do is, well, we have to
4 petition the EPA to fix the problem that would have
5 been better corrected at the state level, and EPA
6 doesn't like that.
7 MR. LING: Can I just ask you if it's
8 possible for you to wrap up in about five minutes,
9 just so we have enough time for questions and for the
10 rest of the speakers? Thanks.
11 MR. WELCH: Sure, happy to do that.
12 The last point, just for the record, is
13 the elimination of the malfunction and upset
14 loopholes. That is something that facilities use to
15 try and escape violations whenever they occur.
16 Language in the Title V permits is often vague and
17 unclear on what's required to be a malfunction or an
18 upset.
19 Any lawyer representing a facility, if you
20 try and say there's a violation, they'll say, there's
21 an upset or there's a malfunction. It would be good
22 -- this is an area that you should really take a look

1 at, making an improvement, putting the burden, making
2 clear that the burden is on the facility to
3 demonstrate that.
4 Whether you actually allow a malfunction
5 or an upset, you know, especially when you have a
6 dozen of these events happening over months and
7 months, after a period of time, there's a problem
8 there. It's not just a one-time occurrence. Next
9 slide, please.
10 (Slide.)
11 MR. WELCH: The last issue I want to raise
12 with the Task Force is the composition of the Task
13 Force. Just looking at the membership here, it is
14 clear that the Task Force is weighted against
15 environmental groups.
16 There are six members from industry, six
17 members from government, and only four members from
18 the environmental groups. The day that the list came
19 out for this Task Force, I sent an e-mail around to
20 everyone on the Task Force, complaining about the
21 lack of representation from environmental groups.
22 I view this as a real serious problem that

1 puts into question, whatever report this group could
2 come out with at the end of the day. A Task Force
3 like this should have fair and balanced
4 representation from the environmental community and
5 from the public.
6 Just numerically, you can see that there
7 is not equal representation for the environmental
8 side, and it's not because there aren't people
9 willing to come and to represent environmental
10 groups. I put my own name out there as one who is
11 willing to serve on the Task Force.
12 I know of other people who were interested
13 in serving on the Task Force, representing the
14 environmental groups or the public, that are not
15 present here on the Task Force. While having four
16 members in your group is probably far better than the
17 Vice President's Energy Task Force representation.
18 It still is not an equal representation.
19 I think that before you meet again in Chicago, that
20 you should appoint two members to represent the
21 environmental community to serve on your Task Force.
22 I was here at the beginning of the day when you

1 commented on this issue, and said that it was because
2 of lack of funding that that could not be done.
3 I take real exception to that. The
4 Federal Register notice that was put out for this
5 Task Force said at the beginning, that there would be
6 no reimbursement for expenses. I know of people, I
7 talked with people from environmental groups, that
8 did not even apply to be on the Task Force because
9 they couldn't afford the travel expenses to come out
10 and be on the Task Force.
11 So there were people from the
12 environmental community that didn't even apply
13 because of that restriction that was out there. When
14 I put my name out there, I assume that I'd travel
15 here and handle that all through other resources,
16 rather than being reimbursed by EPA.
17 No one came to me or anyone else that I
18 know of and said, look, EPA Can only fund four
19 people's expenses to be on this Task Force. Would
20 you be willing to serve voluntarily without
21 reimbursement?
22 The environmental community could make

1 arrangements. We could share rooms. There are other
2 people who would be willing to serve for free on this
3 Task Force.
4 You talk about lack of voting. I don't
5 know what you're going to do in the future, but to
6 develop a fair record and really examine the issues,
7 it is unfair and not representative to exclude the
8 views of members of the public and the environmental
9 community by reducing their representation.
10 The number of questions that can be asked
11 around this table are reduced because of the lack of
12 representation, the type of issues and backgrounds
13 that can be brought to bear is reduced by lack of
14 representation. I'm certain that industry or the
15 government would object if you decided to strike two
16 members from the people around here from those
17 groups, and said, well, you an submit your stuff into
18 the record and that will be fair.
19 It's not fair. EPA should strive to have
20 fair, balanced representation from the environmental
21 community and from the public. I hope that you
22 correct that problem before you meet again. Thank

1 you. I'll be happy to answer any questions that you
2 have for me.
3 MR. LING: A couple of things: First of
4 all, I'll say again what I said this morning, for the
5 benefit of those who weren't present. We are
6 intending to run this process so that everyone has a
7 chance to be heard, every individual who wants to and
8 every group that wants to.
9 We're hoping that -- and we've represented
10 each group on the Task Force. My experience so far
11 is that everyone who has been sitting in your chair
12 has had a chance to be heard, and everybody at the
13 table who has wanted to ask a question, has had a
14 chance to do so.
15 Our intent is to continue to do that. My
16 other question was, did you give a hard copy of your
17 presentation to anyone here yet?
18 MR. WELCH: I have not yet, but I have one
19 here.
20 MR. LING: The Task Force would definitely
21 like to get a hard copy of every one from those who
22 have ones like that. With that, I'll throw it open

1 for questions. Steve Hitte was first.

2 MR. HITTE: I appreciate your

3 presentation, and have a lot of questions, but I

4 won't hog the panel here. I'll just ask my first

5 one.

6 You said that one benefit of Title V is

7 the consolidation of all of the requirements into the

8 permit. You heard earlier this morning about the

9 length of the permit, et cetera.

10 Speaking for yourself, and if you can

11 broaden your representation, that's fine. EPA -- I

12 should say that states have options, when they go to

13 write a permit, from cross-referencing the regs to

14 putting the actual regs into the permit, to

15 summarizing the regs.

16 Given the perspective of the chair you sat

17 in from pre-Title V days when you said you couldn't

18 find anything, and what you heard earlier about the

19 volume of the permits, what would you suggest this

20 Task Force consider, how to best get the regs in the

21 permits?

22 MR. WELCH: Certainly, at a minimum, you

1 would want to reference the federal requirements.
2 Many permits I've seen, even if they provide some
3 language that comes from a federal requirement, they
4 will put a cite to the Federal Register provision so
5 you can look it up and see what the actual language
6 is or what might apply.
7 One problem I've seen with summarizing is
8 that sometimes the permit agency will try and
9 summarize what the federal requirement is. But they
10 will leave out important language from the regulation
11 when they attempt to do that.
12 I think that creates a huge problem down
13 the road, if you were to try to enforce that
14 requirement, because there would be an argument that
15 I'm certain the industry would raise, that there's a
16 permit shield, and that the only requirement that
17 applies to them is the actual language that's written
18 into their permit.
19 You might say the agency wanted to
20 specialize or develop a special regulation and
21 requirement just for them, or modify the regulation,
22 and you can look at the Federal Register or the CFR

1 and see, well, here's the full requirement and you
2 may not have complied with a part of that or evidence
3 might not be admissible, or there might be useful
4 information that's in the CFR that you would want to
5 rely on.
6 But then you're faced with this permit
7 shield argument or this other argument from the
8 facility because of the language that's written into
9 the permit. I think you need to address that
10 situation, if you're going to try and summarize or
11 put language into the permit as to whether that gives
12 a shield of some sort to the facility, or whether you
13 can look at the actual regulation itself.
14 MR. HITTE: Just to clarify, though, I'm
15 asking you to speak personally. Would you rather
16 pick up a permit, a Title V permit, forget the
17 summarization, and see a cross reference, or would
18 you rather see it attached like the example we heard
19 about in Ohio?
20 MR. WELCH: I certainly would not want to
21 have a 300-and-some page document attached to a
22 permit if it could be referenced another way. I do

1 find it helpful in looking at a permit when there are
2 requirements that, whether it's a numeric requirement
3 or something of that sort, when it's actually spelled
4 out in the permit so you know it applies.
5 There are often times as well when there
6 are perhaps alternative approaches in the
7 regulations. The company may want to pick one, and
8 the government says, well, we're going to use this
9 approach. If that's specified in the permit, it's
10 clear what they're doing.
11 If you just cross reference, then you're
12 wondering, among the three alternative approaches,
13 which one are they using for recordkeeping? I think
14 there is a balance that needs to be made when you're
15 drafting a permit, because you wouldn't want to get a
16 permit that all it had in it was just a string of
17 citations to 40 CFR. You'd be spending all day
18 trying to figure that out.
19 MR. LING: Bernie?
20 MR. PAUL: Thank you for your practical
21 insights into how the program has been working for
22 you. One of the things that I'm going to try to

1 accomplish as I sit on this Task Force, is to
2 understand what could have been achieved before Title
3 V, and what could have been achieved, and compare
4 that to what Title V brings to the table, and also
5 the burdens before and after Title V.
6 I'm curious, in the case of the Sunoco
7 refinery, you described at length, what is it about
8 Title V, in particular, that enabled that series of
9 events to occur that could not have occurred without
10 Title V. I really struggled to understand that as
11 you described that situation.
12 If you could answer that question, then
13 the second question I have for you is, you had
14 suggested the Water Program, which has monthly
15 reporting requirements, could be stretched over into
16 the Air Program. I wonder if you appreciate the
17 difference between a plant site that might have two
18 or three discharge points and subject to a limited
19 number of requirements, versus a site that's under an
20 air permit that might have hundreds of discharge
21 points and is under several different requirements
22 with a 400-page permit, and that sort of thing, and

1 the increased burden that a monthly reporting
2 requirement would have.
3 MR. WELCH: To answer the first question
4 on the Sunoco Title V, the Title V limit on flaring
5 for this flare that was in the permit, was made very
6 clear and absolute. It was clear that there was a
7 violation, and to the extent that the Title V program
8 kind of brought that together and put that into
9 force, I think that was the benefit of the Title V
10 program.
11 From a citizen's perspective, trying to
12 come in and figure out there's more than one flare at
13 the Sunoco refinery, in trying to figure out, is
14 there a violation here or not, and going in to look
15 at a room full of documents and trying to figure out
16 what the actual limit is for flaring, I don't think
17 could have been done with any chance of success from
18 the public side until the Title V permit was put into
19 place.
20 I think that for the government, it would
21 have been a much more difficult time for them, as
22 well. I can't speak for them, but I guess my own

1 experience of trying to pull out different
2 requirements --
3 MR. PAUL: Can I ask a clarifying
4 question? I thought that's what your answer was
5 going to be, and I'm really surprised that that's the
6 answer because Title V should not have been creating
7 a prohibition on flaring.
8 That should have come from an underlying
9 requirement, like a SIP regulation or a pre-
10 construction permit of some kind. So, I don't
11 understand how Title V achieved that objective,
12 because that is not one of the roles of Title V.
13 MR. WELCH: I haven't gone back to look at
14 the source and derivation of when that requirement
15 was put into place, to compare how it was before and
16 after.
17 MR. PAUL: I guess I would like to point
18 out then for the Task Force, that until we see more
19 information about that particular situation, maybe
20 this isn't one where Title V was the cause of the
21 benefit that you achieved through that particular
22 situation. That may have been something else.

1 MR. WELCH: I think that the benefit in
2 that situation was that from the citizen's
3 perspective or the public's perspective, it was easy
4 for us, because Sunoco had a Title V permit, to ask
5 the agency for a copy of that permit, and we got it
6 fairly quickly.
7 And we could look at it; we could see,
8 okay, this is the requirement on page 87 or whatever
9 page it was, that applies to this flare. Here's the
10 language, and we could put together a good analysis
11 to say here's the requirement in the permit and
12 you're violating it. By having that permit, we were
13 able to do that very quickly and come to a conclusion
14 where we were comfortable that, yes, there was a
15 violation here.
16 In the case of another facility that did
17 not have the single Title V permit, it would not have
18 been possible to come to that conclusion so quickly
19 and with that degree of confidence.
20 MR. PAUL: That clarifies things.
21 MR. WELCH: You had asked a second
22 question.