MR. WELCH: I think that the benefit in that situation was that from the citizen's perspective or the public's perspective, it was easy for us, because Sunoco had a Title V permit, to ask the agency for a copy of that permit, and we got it fairly quickly.

And we could look at it; we could see, okay, this is the requirement on page 87 or whatever page it was, that applies to this flare. Here's the language, and we could put together a good analysis to say here's the requirement in the permit and you're violating it. By having that permit, we were able to do that very quickly and come to a conclusion where we were comfortable that, yes, there was a violation here.

In the case of another facility that did not have the single Title V permit, it would not have been possible to come to that conclusion so quickly and with that degree of confidence.

MR. PAUL: That clarifies things.

MR. WELCH: You had asked a second question.

MR. PAUL: About the monthly reporting.

MR. WELCH: As I said before, I think the ideal situation would be to know on a day-to-day basis, whether a facility is in compliance or not. The closer that you come to that, the better you're doing.

The type of monthly report that I might like to see might only need to have two or three pages to it, and provide a summary of the compliance status is, just so that someone would be able to look at that and see, is this facility in compliance or not?

MR. PAUL: Can I glean from your answer that some reporting is more important than other reporting, given the nature of the facility and the types of emissions that that facility might have?

MR. WELCH: Yes.

MR. LING: Mike Wood.

MR. WOOD: Thank you for taking the time to prepare your comments. You've touched on a whole lot of areas.

I've got a number of questions, but I'll

just address one area right now. That is the public participation in the permitting process. It seems you've commented on draft permits, and attended hearings.

What sort of issues have you raised with permits? Do you see a common problem?

MR. WELCH: There are a number of issues that seem to recur with some frequency, some of that we've seen a lot of, just in the drafting of the permit. There might be a requirement that's stated in the permit, but it would be lacking a means of monitoring that requirement or assuring compliance with the requirement.

Many of our comments are often directed to, okay, here, you say here's the requirement, but then how do you verify that? What are the means of checking up on that?

I think those are important areas to make sure that the permit has. If there's no means of monitoring or showing compliance with the requirement, there's no way to go back and check to see if it's actually happening.

That's one area. Another area that I've seen also has to do with compliance. We see that often times there are facilities that seem to be in violation, repeatedly. They may have ongoing violations, yet when it comes time to issue the permit, there's no requirement to address the problem of the facility.

The facility may have put in an application five years before, and certified that we are in compliance with all applicable requirements in 1995. When it comes to 2004, and it's time to put out a draft permit, they may have had violations that have happened in the interim, and it's difficult to address that.

Often we will raise the idea of here are several violations that have occurred. What's the facility doing to correct this problem?

And more times than not, there is no compliance schedule that's put into the permit to address the problem. It's kind of left up to the company's good will to fix the problem.

MR. WOOD: Have the permitting authorities

been responsive to your concerns?

MR. WELCH: What Delaware has told us is that they do not want to issue a permit to a facility that's in violation, and they deal with violations as an enforcement matter, rather than a permitting matter.

So I think my on-the-ground experience is that often times the permit issuance is held up or delayed internally because of a violation issue, and so the permit is not issued. Or, we have had permits that have been issued, but recognize that there have been violations and the facility has agreed to develop a plan to address the problem, but the plan hasn't been developed at the time the permit is issued, or it's not made an enforceable requirement in part of the permit. We would object to that.

MR. WOOD: How about on the monitoring? Have you been able to have additional monitoring included when you raised that concern?

MR. WELCH: We have had some success in requiring additional monitoring or other means of ensuring compliance with requirements in permits. I

think that's been a big benefit that we've gotten by participating. We've identified requirements where there's not a monitoring or recordkeeping requirement and raised that issue, and, in some cases, that has been added to the permit.

MR. LING: Shannon?

MS. BROOME: I'll be really quick, because people have raised most of what I wanted to raise. Back on the access point, it sounded like you were pretty pleased with the Internet kind of approach to knowing when something was out for public comment, that that was working for you in Delaware, that you could get access to the draft permit that you needed.

You said you get an e-mail when something goes out for public comment.

MR. WELCH: What we get is a notice.

MS. BROOME: That something has been on the web, and then you can go and you're able to get it. You can download a PDF file.

I was just trying to understand what the process is, because I know in Ohio that everything is up there, and there's a date when it went to EPA. In

Indiana, Bernie knows, I do a lot of work there, too, and in Michigan also.

My experience is a lot in Region V and Region IX, so I'm kind of interested in more of the Region III kind of world.

MR. WELCH: The system you described is probably better in a number of ways than what we have in Delaware. What we have in Delaware is, there's a website that lists the permits that open for comment that you can request a hearing on.

MS. BROOME: But you can't click it.

MR. WELCH: You can't click it and get a draft copy of the permit. You have to call and file a Freedom of Information Act request to obtain the draft permit, or the documents that relate to that.

MS. BROOME: That's interesting. And then not to carry Pennsylvania's water at all, but I thought -- and tell me if I'm wrong -- I thought that at least you could get a copy of their little bulletin online, right, or get it e-mailed or something. At one time, I was on a ListServe, I thought, for that.

But you can't get the document, that was my experience, and I wondered if that still -- you were saying that Pennsylvania had an issue. You can follow up on that. I don't want to press you to answer, but --

MR. WELCH: Pennsylvania has the bulletin online where everything is published, so you can have access through the web for the legal notices.

MS. BROOME: But then you have to go get the document yourself, somehow, right?

MR. WELCH: Yes, and it's difficult to find out what permits are open for comment in Pennsylvania. Like in Delaware, there's a single website that lists every permit that's available for comment.

Pennsylvania has a list of rules or things that might be open for comment.

MS. BROOME: Just so you don't feel lonely in Indiana, you get a permit and they mail it to you in the mail, and they don't tell you that they issued it, and it was effective two weeks ago.

Thank you very much. Just so you don't

feel lonely, but I wanted to thank you for the detail of your comments. I would love to see copies of the comments that you filed on the permits, because I think it will help us analyze kind of what issues are coming up and what we might be able to do to help streamline things in terms of process for people like you and for the regulated entities, as well, for everyone.

MR. WELCH: If you'd like copies of our permit comments, they're practically all available on our website, www.maelc.org, and there's a section on the home page for resources, and you click to PDFs.

MR. LING: I'm going to go till about quarter past on questions, because that's my rough estimate of how long we have in order to get the other speakers in. Bob Hodanbosi?

MR. HODANBOSI: I think this will be pretty quick, this question. Certainly, you appear to have been involved with Delaware in providing a number of comments. I was just wondering, you've provided comments on a draft permit. Do you have followup with the agencies? Do you talk with them?

Do they call you? Do you get to see a final permit and you compare and say, oh, you took our comment and changed it? I just want to know how much interaction there is after you've filed comments.

MR. WELCH: We have requested hearings on a number of the permits, so there is that opportunity to present oral comments and additional written comments at the public hearing. After that, it's really up to the agency. We have no contact with them after that.

I'm sure we could call and ask them questions, if we had a question about what was going on, but they don't make any effort to reach out to us and involve us in the process after that. They do make an effort to involve the permittee. They will go to the permittee and say these are all the comments that we've received from the public. What's your response?

And they will often put the permittee's response into the record, and when they do issue the permit, Delaware now is being much better at having a written comment and response document, so there is a

response to comment documents that the agency will prepare, which gives some explanation about how they either ignored our comment or made a change.

MR. LING: Keri?

MS. POWELL: You are familiar with the Clean Air Act requirement that there not only be a six-month monitoring report, but that there also be a prompt report of any deviation from permit requirements.

MR. WELCH: Yes.

MS. POWELL: How are the states you work in, implementing that requirement? Do you think that's sufficient?

MR. WELCH: In several cases in Delaware, there will be a report and we can find that release report or information. But what's really more useful is the more detailed report from the facility.

Often that's not available for a month or more to where the facility will actually explain what was the cause of the release or violation, and what are they doing to fix the problem. There may be a 30-day requirement from Delaware to submit the

report, but that's commonly extended, and the company is given more time to do analysis or whatever.

The public has a difficult time gaining access to those reports, as well. You would have to file a Freedom of Information Act request and go through that process, so I think it's difficult and burdensome and hasn't worked very well from my perspective.

MR. LING: Don?

MR. VAN DER VAART: Just real quick, I have to assume that the permit for the refinery was issued correctly, so that there was some requirement for which the amount of time that the gas was sent to flare -- there was some sort of a monitoring requirement.

That's just what I'm guessing. If that's not the case, let's speak more generally. The comment made by John Walke, would you think it's a good idea that a facility could appeal to some other information and certify compliance for that period, despite the fact that the monitoring might have said, gee, when we send your gas to this flare three times

a year and they sent it six times, but they have some other information that would indicate that the underlying standard was not violated, would you think that's okay for them to then certify compliance, or would you like to see them certify noncompliance for that act?

MR. WELCH: I'm not sure I understand the question. As far as Sunoco, they had their own reports certified that they had violated.

MR. VAN DER VAART: Let's say that for whatever reason, Sunoco had reason to believe that despite the fact that they sent it over there as many times as they did, that they hadn't actually violated the underlying standard. Let's just say that.

The monitoring of the permit indicated that they had exceeded this requirement, but that they had other reason to believe that perhaps they were in compliance. As a consequence, they certified compliance at the end of the year, or, perhaps, I don't know.

How would you feel about that? Earlier, John Walke, I understood him to say that a person

from your viewpoint wouldn't much care about that issue. I'm just trying to understand.

In your case, of course, they did certify noncompliance; that was clear. I'm just giving you a hypothetical.

MR. WELCH: I guess I might have a little interest in that. Sunoco did make a legal argument that there was another section of the permit that they argued required them to operate these flares when the General Chemical could not accept the gases.

And they argued that some of the violations that took place were because of malfunctions at General Chemical, and the permit legally obligated them to operate the flare, 24 hours a day, just burning this off, because of that.

Delaware disagreed with this interpretation. We would disagree with that interpretation.

MR. VAN DER VAART: Generally speaking, you'd like to be able to look at the monitoring requirements and determine whether they're in compliance or not, based on the results. Is that

what I'm hearing or not?

MR. WELCH: Yes, I would like it to work similar to the Clean Water Act Discharge Monitoring Report where a facility might report, here's our limit of seven and we were over that at 50, but with a little asterisk saying at the bottom, here's an explanation, you know. Our line froze up this day and that's why this one-time thing occurred.

I would like to see the same type of procedure work in the air situation.

MR. LING: David?

MR. GOLDEN: First, I'd like to thank you for coming today and giving a very ground-level view of what communities go through to get to the end of the rainbow to figure some of this stuff out. Even those who deal with it on the other side can find the Clean Air Act rather hard to figure out on some days.

Just a couple of questions for clarification: In closing the loophole associated with malfunctions, I wanted to make sure I understood you correctly. You're not opposed to malfunction defenses, per se, in all circumstances, but you would

really like to avoid abuse that may be going on where a facility asserts that whatever has gone on, is a malfunction.

I mean, if I understood you correctly, you didn't say to do away with it, but to shift the burden on the facility to have to prove that it was a malfunction, a sudden, unavoidable, unexpected, not caused by operator error or poor design. Am I reading too much into what you said?

MR. WELCH: I think you're not reading enough. My personal preference would be not to have any malfunction defense.

If a facility claimed there was a malfunction, then that might go towards mitigating the penalty for what took place. But I would make it more of a strict liability approach for the violation.

MR. GOLDEN: I just wanted to be clear on that. So, a lightening strike or something like that would just be mitigation and the enforcement action, not an affirmative defense?

MR. WELCH: Right.

MR. GOLDEN: On additional monitoring, you indicated that you saw some permits that required monitoring once every five years upon renewal. I just wanted to make sure I understood you correctly.

Are you referring to stack testing as a form of monitoring, or are you saying that you've seen some permits that don't require any sort of monitoring, parametric or otherwise?

MR. WELCH: I was raising the issue because I've seen it come up with many permits. Stack testing is one thing that should be required more frequently and should be done, I think, before a Title V permit is issued.

For many cases where it's appropriate, I've seen permits where there's no monitoring for specific units or a specific requirement. That would be something we would want to be included in the program.

MR. GOLDEN: I just want to be clear, whether it's stack testing you're referring to when you say "additional monitoring," or other monitoring. Have you or your students had an opportunity to deal

with facilities that are subject to MACT standards.

Obviously, MACT, post-'90, MACT standards impose a significant amount of monitoring. In what may be pre-'90 standards, do you find that monitoring appropriate, or are you mainly arguing units that don't have anything.

MR. WELCH: Most of the facilities we've dealt with are older facilities. If MACT would apply to a facility, it would typically only apply to a specific source within the facility. Most of the sources that we've dealt with in a large refinery, might have -- 80 or 90 percent of it would be not subject to MACT, but there might be a new unit they've built that is subject to MACT.

MR. GOLDEN: MACT would also apply to existing sources, too. Maybe you looked at it -- there's a refinery MACT out finally on the website, if you had your perfect website where the information was available and you could click and find and sort and get what you wanted.

It seems like you don't find newspaper postings very helpful. Could you envision a time

where the web could replace noticing things in the newspaper?

MR. WELCH: No. I think the newspaper public notice is important, and there are many people in the community who don't have Internet access or do read the newspaper more often and see those notices and would call us up or become involved through that newspaper notice.

But the website and Internet notice, I think, should be in addition to the newspaper or legal notice, and, ideally, I would like to have a website where it would put, here's a notice of the facility, and, in the ideal situation, you'll be able to click on that and get a copy of the draft permit, as well as the statement of basis or the technical memorandum.

Most of the time, the first thing I look at, if I'm doing a draft permit, is the technical memorandum or the statement of basis that tracks through what the different requirements are and how they developed the permit. I find that very valuable, so I would like to have that statement as

well as the direct permit available online, and I see no reason why the states could not make that available.

MR. GOLDEN: Thank you.

MR. LING: Marcie, I'll let you be the last question here. I'm going to try to figure out a way to follow up with the other folks' questions. We can follow up after the meeting. We're going to have to start working that way because of time.

MS. KEEVER: I'm going on what you guys discovered at the refinery. Have you experienced times when you were going through the Title V process and it leads to discovery of applicable requirements that weren't being followed by the facility, the ones that Title V process had shown were really supposed to be followed?

MR. WELCH: I was trying to think of a specific example. I think sometimes that happens. Certainly the government seems to identify a number of things, even before they put the draft out, that hadn't come up before, and there have been occasions where we've raised questions or issues, and they have

gone back to the original permit or we send them.

We say, look, you've missed some language from the applicable requirement that's in the CFR, and they have added that in or changed the language in some way to recognize that that was not fully there.

MR. LING: We would be interested in hearing specific examples, if you want to follow up with that for the record. Thanks, and thank you very much for your testimony and for coming here today.

MR. WELCH: Thank you.

MR. LING: The next speaker is Glen Rountree.

MR. ROUNTREE: Good afternoon. My name is Glen Rountree. I am the manager of Air Quality Programs at the American Forestry and Paper Association referred to as AF&PA.

AF&PA represents about 200 companies and allied trade associations that represent forest, paper and wood product companies. We account for about 7 percent of the U.S. manufacturing and we employ about 1.5 million people in the U.S.

I want to say that I really enjoyed the discussion around this table this morning. This has been very educational and fun for me, a lot more fun than the BART Public Hearings I attended about two weeks ago. Thank you for that. I'm going to help with the time problem because my remarks will be very brief. If you have specific questions for me, it's unlikely that I will be able to answer them because I have been working environmental issues at trade associations for about 13 years, but I am by no means a Title V expert.

But one of the things that I want to say to you is that my industry thinks this is very important work that you're doing and we will have internal discussions within AF&PA and our companies will provide detailed input to you at your September meeting in Chicago. That's the first point that I want to make.

The second point that I want to make is there are two issues that sort of bubble up right away that I can at least tell you what we think are important issues that you should look at during this

process. One, and I'm sure you're going to hear this many times, is the time required to obtain Title V permits. You will find that over and over you will hear this from industry. In our industry, I've often heard this cited as the major disadvantage that our companies face compared to our overseas competitors.

The second issue that I would like you to take a look at, if you would, is the recently implemented line-by-line Title V compliance certification forms, which are coming online in many of the states right now. It's been raised a couple of times already in the discussions to date, but we question whether the benefits of such a form is justified when you look at the increased resources that are needed to fill out such forms.

Again, I say to you that we will have detailed inputs to provide you when you go to Chicago. I think there will be some other industries that will weigh in at that time. I will provide a copy of these very brief comments to the website that you have.

MR. LING: Thank you very much.

The first question is Bob Palzer.

MR. PALZER: Hello. Thank you for coming and presenting the information. I didn't quite get -- you said 70 percent and I didn't get the context.

MR. ROUNTREE: AF&PA represents 7 percent. Yes, sir.

MR. PALZER: Do you, and this is a national organization, so you have representatives throughout the entire country?

MR. ROUNTREE: Yes, sir. That's right.

MR. PALZER: I'm going to stop. There's other questions I was going to ask. I'm going to pass. Thank you.

MR. LING: Don?

MR. VAN DER VAART: A very brief question. I think the modification issue is something everyone knows we're going to have to get our hands around, but on this line-by-line certification, can I ask you whether you're in a position to know, unless somebody has tried to delegate you as a responsible official for somebody, which I wouldn't be surprised. But can I ask you if you think that instead of generating a

new line-by-line document whether your organization would be okay with simply taking their Title V permit and simply using that as the compliance certification form, simply putting columns on the right side of the page or whatever and putting in a format, whether that makes it feasible, but recognizing, and I'm sure all your members comply with every part of the permit and they're familiar with every part of the permit. That way they would not have to introduce themselves to yet another document, either by paying some attorney or consultant, but would simply use the same permit they've been using all year. Would that make sense?

MR. ROUNTREE: I'm not sure. I would say, from my experience, that compliance is a given. I understand the problems that you're having in assuring the public that compliance is taking place. With our industry, that's really the starting point. We know that you need documentation for that. But, perhaps, you've gone too far. Our best engineers should be doing pollution prevention in the plant and we're taking our best engineers to fill out these

compliance forms. The longer we fill them out the bigger the forms get. That's our concern.

MR. LING: Keri?

MS. POWELL: I'm saving my questions.

MR. LING: Shelley?

MS. KADERLY: Thank you, Glen, for being here today. I was interested to hear the length of time that it's taken the permits to issue is a problem for your industry. That's not something that I've heard from the industry in my state. I typically hear that the timing is more of an issue with the construction permit program over the Title V program. And, I guess, something -- if some of your industry is going to come to Chicago, something I would be interested in hearing is, given a choice between getting a construction permit or getting your operating permit, which one would you have a priority on? Not only getting out of the agency the permitting authority, but also in being responsive to questions that are raised by the permitting authority during their review process.

MR. ROUNTREE: I'll get you an answer for

that.

MR. LING: David?

MR. GOLDEN: In working with your members, do you get a sense that among your members they're taking compliance more seriously because of Title V and associated certifications?

MR. ROUNTREE: I'm not sure how to answer that. I would say that more time is taken with Title V certifications than with other obligatory requirements in other arenas. Title V, of course, is more complex. There is so much to watch for.

MR. GOLDEN: Do you feel upper management is more aware of Clean Air Act requirements and setting a better tone from the top that compliance is expected because responsible officials are having to certify?

MR. ROUNTREE: I think even the CEOs recognize that being out of compliance with any of the environmental statutes will shut the door. The facility cannot operate if it's not in compliance. We take it very, very seriously, whether it's clean air or water or any of the other media.

Does that answer your question? I'm not sure it does.

MR. GOLDEN: The question was more aimed at Title V. I'm sure all industry is very committed to compliance, but I'm just wondering if Title V itself has brought an even greater sense of commitment to that. Prior to Title V, I don't think anyone was certifying compliance and I'm just curious, not naming names in your industry, but just is there a greater sense of focus on compliance because there's a Title V certification that responsible officials have to sign?

MR. ROUNTREE: I will bring a response back to that question. Thank you.

MR. LING: Bob?

MR. MOREHOUSE: I just wanted to add a couple of comments to what was made back on the issue of delays related to permits. You were commenting. This really isn't a question. It's more of an observation from our experience. In some states -- where you were talking about delays in Title V, in some states, Title V and preconstruction permits are

tied together. That's where the permit delay becomes critical because they are tied together and we see that, for example, in Louisiana. The issue you get into if you have -- and our folks are telling us that it can be a 9-month to 18-month process to basically get a preconstruction permit and therefore update your Title V.

The dilemma that you get into is that has become, in many cases, a critical path to being able to make plant changes. Now what you have is you have plant folks who have to go in very early because you can't make the change to start construction if it's a preconstruction permit until such time as you have the permits. So our folks have to go very early in the project development stage into the agency with a permit application and so we do that solely so you can basically get the permit at the time you want to start construction and move forward.

Of course, one of the dilemmas is, when that is critical path and you have to go so early in the process, the projects are less defined. Now you've raised the issue of you don't have as good a

definition because you're not doing the process design. You may be in conceptual engineering. That leads to other changes which you have to make during that whole time that you've got to put a permit application in. You've got to come back with the projects better defined. That's one of the issues with delays on the project. Just a general observation and some discussion around compliance certifications and all of that.

Certainly, companies like ours have a very clear compliance obligation, have always had that obligation and, in fact, that's an ethics violation for our company to do that. So it's always been a focus. I think what Title V has provided is more of a structured environment where the plant manager sign off and certification, which I think strengthens the overall compliance assurance process. And I can speak for a number of companies that I'm aware of that we have very rigid compliance assurance systems and Title V has helped to drive that by the responsibilities we have, but I wouldn't want to say that in the base case there's been a change in

compliance, but it strengthens the compliance assurance process and I think you can probably see that in a number of companies.

MR. LING: Keri?

MS. POWELL: I want to echo the observation facilities don't tend to be that worried about getting their Title V permits to begin with. Just because if they apply on time they get an operations shield that lets them continue to operate even without that permit. I can only assume that your members are concerned about what happens when they're trying to construct a new unit and how that relates to the Title V permit.

If that's the case, I would greatly appreciate detailed information that will help us tease out what part of the delay that you're concerned about is due to preconstruction permit requirements and what part is some kind of additional delay that might be caused by Title V. It's very difficult for us to evaluate those issues without having more detail and understanding about what new delay might possibly be created by Title V.

As we heard earlier today, the vast majority of Title V permits and modifications never receive public comment, so it's hard to believe that it's actually the public process that's slowing that down.

MR. LING: Steve?

MR. HITTE: Just to add further to the possible confusion, Don, this is directed to your comment. I thought you were going to talk about delays in permit modifications not the initial permit. That's another thing to clarify. Is your membership talking about, as you've already heard, a construction permit, a Title V permit or a revision to a Title V permit?

MR. LING: Thank you very much, Mr. Rountree.

Other questions?

MS. OWEN: Thank you.

Not to Mr. Rountree, but I would like to make a comment. I certainly did not appreciate being cut off asking Mr. Welch a question after his presentation. We're talking here often about

meaningful public participation and, as I said at the beginning, I am not a professional. I do this on a volunteer basis. I might be a little slower at times, so I understand why you cut it off because you gave us a time limit and it was a quarter to 3:00.

On the other hand, I've been in situations at hearings where it was suddenly 9:30 and everybody was cut off because apparently somebody was going to turn into a pumpkin.

MR. LING: Let me suggest this. Since Glen's presentation didn't take as long as I was anticipating, we could call Mr. Welch up and I believe there were a couple of more questions.

MS. OWEN: That would have been my suggestion, but, on the other hand, I would also like some kind of idea how the last three people that get their cards up because they're a little slower. That will always be me.

(Laughter.)

MS. OWEN: So, if you never want to hear from me again, just cut the last three off on a continuous basis. Or we could think about how this

could be better handled in Chicago.

MR. LING: I agree. Thanks.

Mr. Welch, would you like to come up and take a couple more questions?

(Laughter.)

MR. LING: Maybe just one more.

MR. WELCH: I'm more than happy to come up and answer questions for as long as you like.

MS. OWEN: Again, I would like to point out that I was last.

(Laughter.)

MS. OWEN: Thanks for coming back. I really had just a few questions and some clarifying questions.

During your comments, you said you had to have FOIA permits. Did I understand that right? I'm sorry. Was it your question?

MR. WELCH: I think the Title V process in Delaware has undergone some evolution since we've entered the process. We originally had to submit FOIA requests for all the information. More recently, Delaware made available copies of the draft

permits, copies of the technical memo to us and we could go into the office to review the application. But Delaware required us to submit FOIAs if we wanted to see notices of violation and compliance information for the facility.

Now, since about the last year, there haven't been any new draft Title V permits coming out until the last month, so I don't know if there's been a change in Delaware. I understand that there was that would require Delaware to make available all the information, including the compliance information to us. We've asked them many times to set up a reading room so all that information would be available to the public. But, historically, we've had some difficulty getting that information.

MS. OWEN: That was actually kind of my follow-up question. For those documents, you do need a FOIA and you do need for review. How easy is the access to those documents? Is there ever like a repository for information for a particular source? Or, if there's public interest, do you incur costs when you have to FOIA things?

MR. WELCH: We've had some difficulty with Delaware in the past and some of our comments reflect our trouble getting timely responses to FOIA requests. I'm trying to sort because we deal not only with Title V permits, but with other air permits that might not be covered by Title V regulations. We've had to file a lawsuit against Delaware on one occasion when they didn't response to a FOIA request for an air permit from Motiva.

After filing that lawsuit, we kind of reached a resolution with DNREC where they'd be a little more accommodating to providing us with documents.

MS. OWEN: Would you say that accommodating providing you with documents, would you assume that would be true for any other group that would approach them with document requests? Do you see that maybe this should be put in some kind of policy? I always worry that some of the things we work for we then finally get, but about who is going to follow us in two years wasn't part of the initial negotiations of getting something. There would be

backsliding.

MR. WELCH: Ideally, if you're looking to set policy, I would suggest that before the state puts out a notice that there's a draft permit ready for public review they should set up a reading room where they've got the draft permit, the technical memorandum, the information that they based the permit upon, compliance information, notices of violation that have been issued to the facility for the past five years, all that information should be made available.

In Delaware, that has not been the case. They have the ability to come in and look at the draft permit and a technical memo, but you wouldn't get access to all of the compliance information automatically without making a special request.

MS. OWEN: Thank you.

MR. LING: Padmini?

MS. SINGH: I guess my question is very similar to Verena's question. I'm a little surprised to hear that you had to file a FOIA request to get draft permit and documentation in the record

regarding the draft permit. That shouldn't be the case. The draft permit and all documents relying to the permit that's in the permit record should be available publicly. There may be some restrictions such as the timings or the hours that you can come in and look at the permit. And there might be some copying fee charges, but you should not be having to file a FOIA request to get access to that and I think the Taskforce should be interested in getting any information where states are requiring FOIA requests for getting information that pertains to the permit record.

On another note, by the compliance schedules, I think it's pretty clear that a permit should not be issued without a compliance schedule if there are violations. The regs are pretty clear about what should be included in the compliance schedule under certain timelines, milestones, et cetera that should be included in the compliance schedule. And, if you don't see it there, then you should be commenting on it.

And, on another topic that came up this

morning about incorporation by reference, I think the agency has issued guidance on that and, in recent orders, responding to petitions for review. The administrator's orders have stated that any documents that are publicly available or available in the CFR or on a publicly available website can be incorporated by reference. These orders are also available on the website. If anybody is interested, I can give you the website. Thanks.

MR. LING: Is that another question?

Okay, Verena. Once again, thank you, Mr. Welch.

I'm sorry. One more? That's a new one? Okay.

Bob Palzer?

MR. PALZER: Actually, this is sort of an observation to be followed by a question.

In the wood products industry, I'm from Oregon. That's not a minor source. It's rather common to use dual fuel, perhaps, the boilers are a burning waste products, maybe natural gas. Sometimes there's an interruptible service, so you're using an

alternate fuel. You raised the question of how good it would be to have closer monitoring. You were talking about in terms of the flares. You don't get the data until months later when it's a little bit more difficult and I just want to share something that we've done in certain areas in certain facilities where there actually are continuous emissions monitors and that information actually goes online to our state agency and so it is a matter of public record. So you can get real time information and it's been really helpful in terms of SIP planning as to what is contributing when it's very hard to source apportionment.

The question that I have is, have you experienced situations at the sources that you've looked at where there is dual fueling or there are significant changes in an operation over time that would be of importance and interest to you?

MR. WELCH: I believe some of the refineries have the option to use refinery fuel gas or other types of fuels, but that's not really an issue I've focused on. I have raised, in some

permits, that it would be ideal to have a continuous monitor with real time information provided to the public. That's never happened in any permit that I'm aware of in Delaware.

MR. PALZER: Did you say it was because of the state requirement that there's a delay?

MR. WELCH: The delay that I was referring to was the Title V, the semi-annual report. Just the practical fact that, if you're looking at that, you wouldn't have that for several months all with their release reporting, more prompt reporting. You don't get the full report from the facility explaining what happened for a month or more.

MR. PALZER: Have you specifically made a request to find some other way obligating more real time information, if not the same day, certainly, much more contemporaneous?

MR. WELCH: Delaware has frequently responded that they're trying to upgrade their website and they're having difficulty just getting their notice of violation for the various facilities posted on their website in a timely fashion. I've

commented on that, so I think we're, at least in Delaware, we're several lengths away from getting to a real time reporting system.

As I mentioned, there is, in Delaware, kind of a release reporting of a more immediate nature. If there's a release from a facility, there is a state law that requires more immediate public notification and there is a website that tracks those types of releases. But, as far as fuel changes or other things, I'm not aware of any system like that.

MR. HIGGINS: A through F, how would you grade it?

MR. WELCH: I guess I have to break it down a bit. In concept and as far as the law is concerned, it's a fairly good program. I would give it an A-. In practical follow through or implementation, with all the legal requirements more like a C.

MR. LING: One more from Verena, then we've got to move on to the next speaker.

MS. OWEN: Thank you. I'm sorry. I realize I asked you too many questions at the same

time and I'm trying to be a little more precise next time. But I did ask you if you had paid for photocopying and copying charges for documents that you have to FOIA.

MR. WELCH: You did ask that. In Delaware, there is a provision for waiver of copying costs for nonprofit organizations built into Delaware's FOIA regulations.

MS. OWEN: Just for nonprofit or for any organization that is for the public benefit, meaning, everybody except consultants and attorneys?

MR. WELCH: I believe Delaware's regulation is broad enough that it would cover any type of organization.

MS. OWEN: In my viewpoint, there's absolutely no reasonable copy fee. I work in a lot of environmentalist communities and, if we have to start paying for copying charges, nobody would ever make any more comments on Title V. It's impossible.

MR. WELCH: I should add that is not the case in Pennsylvania and Maryland and other states. Pennsylvania, if you go beyond 10 copies, you've got

to start paying them. In Maryland, they charge also for copying.

MS. OWEN: Did you say beyond 10 copies?

MR. WELCH: Ten pages, then they start charging.

MS. OWEN: Illinois is a little more generous. They start charging after 400, but then you pay all the 400. If you have 401, you actually pay $100.25. I happen to know that because I once did 120 and I was rather surprised about the bill. Thank you.

MR. LING: Thank you again.

I'm going to call up Kelly Haragan. While she's coming up, I just want to let people know I'm going to do a little time check here. The meeting was announced as going to five o'clock. We reserved the room, the court reporter and the AV folks until five o'clock. The Taskforce has the expectation we were going to be going until five o'clock.

I've been checking on the possibility of going longer, if we need to do that. It's looking promising, but I do expect people who have scheduled

flights and things to start drifting off. So I just want to kind of let people know what the expectations are for the rest of the afternoon.

With that, without further ado, here's Kelly.

MS. HARAGAN: I'm Kelly Haragan, Council with the Environmental Integrity Project here in Washington, D.C.

I'd like to raise just a few points about the public participation before I start. One, that I've heard that there's been discussion about the possibility of a telephone hearing where members of the public could participate who can't pay to travel to some of these events and I think that's a great idea. I hope you'll do that. I'd also encourage you to think about holding at least one of these hearings in another place where there are more Title V facilities and where there are more members in the public actually involved in commenting. D.C. is not a great place for the public. If you really want to hear from them, I think the hearing should be held someplace like San Francisco, New Orleans, some place

like that.

As I said, I work for the Environmental Integrity Project here now. Prior to that, I was staff attorney with Public Citizens Office in Texas. Most of my experience has been with the Texas program. I've worked with Steve a lot. I worked a lot on programmatic issues. We filed comments on the Texas program. We worked with EPA when they issued NODs on the program. We actually sued over the approval of the program and I think the Texas program is significantly better today than it was a few years ago. I think it's still got a ways to go as a lot of state programs do.

I've also commented on a number of permits namely, refinery and chemical plant permits and have helped citizens to try to go through the commenting -- comment on permits. I've been a speaker at a number of EPA citizen trainings, which they've held all over the country, to try to help citizens learn how to effectively participate in the Title V process.

Most recently, I filed comments objecting

to EPA's proposed settlement on the monitoring issue and we're one of the petitioners in the suit challenging EPA's monitoring decision.

Someone earlier mentioned having a cute quote. Mine's from Thomas Jefferson and he said the execution of the laws is more important than the making of them and I kind of think that's what Title V is about. There are good laws on the books, but the air wasn't getting clean enough. That was the purpose of Title V. It was to help compliance and enforcement with the Clean Air laws.

A lot of my comments go over what other people have raised, so I'm kind of going to jump around and hit the highlights for the sake of time so I can answer some questions.

I think Title V's goals and the tools it provides, a single permit, improved monitoring, deviation reporting and compliance certifications are clearly as important today as they were in 1990. Without that, we'd still be left with really scattered requirements and no way for the public, and I think often, even for facilities and regulators to

know what a facility was really suppose to comply with.

Implementation of the program, I think, has been a rocky road at best. EPA oversight has been too weak. States were allowed to run programs for years under interim approval when those programs didn't meet federal standards and EPA wasn't giving enough feedback to the states about those programs. Many states are just now getting to the point where they're issuing some of their largest permits. I know a lot of the refinery and chemical plant permits are just going through the process now.

I think we are still in the infancy of this program. We're just finishing some of the hardest parts of the program, certainly, for regulators and for industry getting their initial permits, but for the public, too. It's been difficult for us to focus on problems with state programs and try to deal, on the programmatic level, at the same time all these permits are coming out and we're trying to comment on them. I think a lot of the problems that we've talked about today should get

better once the initial permits come out. They really should be easier than the initial issuance was.

The most significant benefits I see in the program are similar to what other people have already raised. For me, the most important thing is monitoring. I think it's clear from the legislative history that that was a priority for Congress and, without adequate monitoring, you really can't tell whose complying with permit limits.

The second is consolidation. People have said it's just impossible for citizens to determine what a facility is suppose to comply with when there's 30 or 40 separate permits in the filing. I'll get into a little more detail on that in a minute.

Lastly, compliance reporting. I think enough has been said about that. We can't track compliance unless there's deviation reporting and compliance certification, otherwise, there's no way for us to figure out whether or not a facility is complying. And it is important because citizens sees

flares going off. They experience odors and they want to know what's happening. What's causing that? It should benefit the facility as well as the community for the community to be able to tell quickly whether it really is a violation or not a violation.

Now I'll go over some of the flaws I see with each of those big goals of the program. The first one is monitoring. I think that the monitoring rules the EPA adopted are just flatly contrary to the plain language of the statute and illegal. That's obviously not something this body can do much about, but I do think without Title V permits being able to add better monitoring, you lose one of the most significant benefits of the program.

I do think it's inconceivable that any regulator would think that, as a matter of fact, monitoring more than once in five years is always going to be adequate monitoring.

On consolidation, there's a couple of things that I think have hurt the goal of Title V. Having one place where you can go and look at

facility requirements, one of those is incorporation by reference. My experience has been a little bit different than what we've been talking about. The problem I've had isn't so much with the regulations and how they're incorporated by reference or put the whole text in there, it's the underlying NSR, minor NSR permits.

In Texas, those permits, the numbers just referenced in the Title V permit. You don't get any of the actual requirements in the permit. So it really defeats the consolidation purpose of Title V because you still have to go to the file room and try to pull the many, many permits that are under the Title V permit. We had a lot of problems doing that. One of the facilities we went to look at was a chemical facility. I'll get into this a little bit more in a minute.

The multiple permits for one facility is a problem, too. But this facility six of those permits were issued at one time. Underlying those permits were 20 NSR and minor NSR permits, a PSD permit and 42 plus some permits by rule. We went to the filing

six times to try and gather all of that and couldn't in the end. A couple of the permits were only on microfilm, which is really old and you couldn't read them and you couldn't print them even with the best efforts of the filing staff and they were genuinely trying to help us find information, but just wasn't possible.

Two of the NSR permits the files were there, but the permits were missing and no one could find them. This was a problem before Title V. Title V was suppose to fix this kind of thing and I think, when you incorporate by reference just permit numbers, you don't solve that problem. You're still left with having to go dig through your multiple files and try to find permits.

The other issue is multiple permits for one facility. This facility that I'm talking about has about 27 Title V permits. So it's just for a member of the public there's just no way for them to figure out which permit applies to the part of the facility they're concerned about and there's different units that may overlap between permits.

So, while Texas has so many permits to issue for so many big facilities, I can see that it might eased the initial issuance process to divide these facilities up to try get the permits out. But, certainly, at renewal, I think these need to be put into one permit so there's one place where people can go and look and see what the facility is suppose to comply with.

On compliance reporting, some of these issues people have also talked about the shortfall compliance certifications as oppose to the long form where you actually have all the requirements listed. For members of the public and, especially, where your permit itself uses a lot of incorporation by reference, like if these permits are just listed by permit number and then the compliance certification doesn't list other requirements either. It just lists the non-compliance. You never get one place where you can go and look and see what the facility is suppose to comply with. So it's a real problem and I think there is some real benefit to having a list of all the facility requirements and having the

facility manager have to say that they're in compliance with each one. I think it does make people take the task more seriously, especially, when they're the one's signing it and they're on the line for whether it's true or not.

I also think there are some problems with ongoing non-compliance and when you certify non-compliance and when you don't and what a compliance plan, how that interacts. I'm hoping I can provide you some more specifics and written comments on an example for this, but I've seen facilities who have reported deviations once. This particular facility reported a deviation and then came in for their Title V renewal and they got a compliance plan for that deviation, which was they were exceeding their heat input. Once they had that compliance plan, they thought they no longer had violations. That they were covered. The compliance plan said come in and then get a permit revision and increase your heat input.

On subsequent certification, they didn't certify that as not non-compliance, even though they

kept violating. I think it will help to have some clarity on, one, what is non-compliance? If you have, say, a set of events every week, but you don't have one -- you're not having one. The second one you certify your compliance certification. What are you suppose to do with that? Then, also, clarifying that just because you have a compliance plan, you're still out of compliance if you're not complying with your Title V permit. You need to report that as a deviation. It doesn't give you a pass on those violations.

The other thing I'd like to address briefly is public and EPA participation in this process. As I understand it, EPA has, in large part, stopped reviewing Title V permits and I think that is terrible unless the public comments on the permit. The EPA will look at it. There used to be requirements that recent review a certain percentage of the permits that came in front of them. I don't think that's a requirement. It's impossible for EPA to know what's going on in state programs unless they're looking at individual permits. That also

makes citizen participation that much more important. There's no one else there to catch problems with permits and the 30-day comment period is just for some of these facilities a joke. There's no way that someone can pull up some of these permits for a refinery or chemical plant and in 30 days really know and understand what it says and what the requirements are.

It's bad for citizens, but it's also bad for the agencies and the facilities because it means that citizens are forced, sometimes, to almost request a hearing as a placeholder because that gives them more time to review the permit. Ideally, you want to be able to make a smart decision about whether you want a hearing and whether you want to comment before your deadline. But, because the 30 days were so short, a lot of times you don't have an option. On the notice and getting things up on the web, I think that's fantastic and one of the best things that you can do for public participation because, first, it makes sure that all of the documents are really there when you put them up on

the web. It is a lot easier access. If people don't have computers at their homes, they can still go to the agency and pull the documents up on the agency's computers or in the files. But, for a lot of people, they do have computer access and it makes it so much easier to be able to pull the notice, the draft permit, the underlying permits off the web.

I know Texas started a notice process where they've got a webpage. At least all of the facilities that have been authorized to go to public notice, so it's actually a little bit before the 30 days actually starts. It's a great system because you can actually go and look and see which facilities are going to be coming up for notice and you can plan a little bit for how you want to comment, which ones you want to prioritize.

I think that someone -- I think Lyman brought up upsets. That is an issue that needs to be addressed and we'll be addressing that more in our written comments, but Texas does have a great website for that as well. Actually, facilities report electronically their upset imaging and you get

information on the web about what was emitted, how much and what the cause was. I think a system like that, not just for upsets, but for deviation reporting would be great. It would let the public really know what's going on and alleviate their concerns. When there's an event that they see happening, they could go look and see what the cause was and if it something they really need to be worried about.

So, in conclusion, I think Title V is a vitally important program. It's very beneficial to the public. There's definitely room for improvement and I think a lot of the issues that have been raised here are valid issues. I think there are ways that permits can be streamlined without preventing the public from having real access.

There's been a lot of talk about the incorporation by reference of regulations and I don't have a problem with using a numerical reference for a regulation because that's actually accessible to the public. I think it is important that the numerical reference go down to a low enough level of detail

that you're not just referred to a section that's 50 pages long and you don't which part applies to the facility.

We will be submitting written comments and try to provide more specific details about the things I've talked about, but I'm happy to answer any questions.

MR. LING: Shannon?

MS. BROOME: Just two points on what you said. On the compliance plan thing, it would be my thought that that was a misunderstanding by the facility of the rules. It's very clear in the Title V regs that were federally adopted and in the state rules. I will read it. "Any such schedule of compliance shall be supplemental to and shall not sanction non-compliance with the applicable requirements on which it is based. The applicable requirement would be in the permit."

To me, I don't think the rule needs to be changed.

MS. HARAGAN: I agree with you.

MS. BROOME: I didn't know if you were

reading it differently.

MS. HARAGAN: I agree with you completely about that requirement. I just think, if you want real experience of what's going on --

MS. BROOME: I appreciate that.

MS. HARAGAN: I agree with you.

MS. BROOME: I just wanted to make sure that it wasn't some -- that I was reading it differently than you were. Okay.

And then it hasn't been my experience, and it may be a regional thing because I'm not doing a lot of work in Texas, that EPA is no longer reviewing the permits. In Regions 5 and 4 and 9, I am seeing consistent review of permits in my work, so maybe you mentioned that you're mostly down in Texas, so maybe that's something that's going on down there or maybe you're not hearing it or something. But I'll turn that to EPA, but just from my experience it's been to the contrary.

MR. HITTE: Let me quickly clarify. It's it true that, officially, the regions do not have to review permits. In reality, most of them still do.

MS. BROOME: That would maybe explain the disconnect and maybe it will make you feel a little better.

MS. HARAGAN: I'm glad some places are still reviewing the permits and I think it's very important and I think there should be a requirement that the regions review a certain percentage of the permits, otherwise, I don't know how they're keeping track of what's going on in the state programs.

MS. BROOME: Thanks for your comments and for coming.

MR. LING: Bob?

MR. MOREHOUSE: Kelly, I appreciate your comments. Can you summarize on the permits you've commented on the types of comments you had, the concerns you've had, both on the original permit, but also have you had an opportunity to comment on permit revisions? Is it a different set of issues?

MS. HARAGAN: A lot of our comments were comments that were more programmatic because when we started commenting there were still a lot of what we saw as programmatic flaws with the Texas program, so

they showed up on every single permit like not having a statement of basis, things like that.

For some of the specific comments have mostly been on monitoring where we thought monitoring was inadequate. I haven't commented on a renewal. Texas is issuing the permits right now for some of the bigger facilities, refineries and chemical plants, so we were focusing on initial instances. Thank you.

MR. LING: Steve?

MR. HITTE: Thank you as well for your testimony. I don't know if it's a question or comment on both what you said on the IDR as well as multiple Title V permits to one facility. IDRing seems to be the hot topic. I just want to clarify you. I heard you say twice that IDRing rates is not the issue, but that your issue is the fact that Texas IDRs NSR permits. I'm not aware that any other state is allowed to do that. So, if I'm wrong, I'd like to hear that.

And, two, I don't know if you're experiencing more, but, with the arrangement with

Texas to do IDRing, there was suppose to at the same time have their NSR permits readily available. That was part of the deal. Are you saying that's still not happening?

MS. HARAGAN: I can't address most recently since I have been here. I'm focused on Title V, maybe Steve can. But, when I left, they were theoretically in the file room. But the problem is they aren't always in the file room.

MR. HAGLE: I'll address this. First of all, I'll agree with Kelly. There actually still is a problem sometimes in the file room. We have just recently started addressing that they're talking about outsourcing the folks who do the filing. It's been a problem even for us to find some permits in our file room. I'll just be honest with you there. And so they are suppose to be publicly available and, in some cases, it has been difficult to find.

MR. HITTE: Good news then. I know you're working on it. The other one is I've heard now I think twice on the issue of multiple permits. I'm still, personally, not understanding what the issue

is, whether it be now or in additional comments, what is the specific issue with having three or four Title V permits at one facility, especially, when they seem to be not the big sources like refineries where I think it makes sense to have them there. Couldn't imagine looking at a 15,000 page permit. I think I'd rather look at five 500-page permits.

MS. HARAGAN: I think that's actually not the case for the public because they don't know how to determine which permit to go look at if there's multiple permits. A lot of times there are many, many permits not three. So I would rather, and I think most members of the public, would rather have one permit to go look at, one place, even if you have to go find the right chapter of the permit. It's easier than trying to figure out which permit covers the units you're concerned about, especially, when there's some overlap. What flares are you using for multiple units?

It's really very hard, both to tell if the applicable requirements get put into permits because you have to look in a bunch of permits to see if

they're in one of them somewhere and it's difficult to know if the whole facility actually gets covered if there's not something left out because these permits are coming out at different times. So I have 4 to look at, but I don't know what the other 20 are going to look like, so it's very difficult for me to comment on whether all applicable requirements are included because I don't know what the other permits are going to say.

MR. HITTE: In the theory, though, at the end of the day when all 20 are issued, and if they all happen at the same time versus another 20, that solves your problem and it's just this interim?

MS. HARAGAN: I don't think so. It's always better to have one permit for the public. It's just easier to look at one permit because they don't think of facilities maybe the way regulators or industry do in terms of units. It's a facility.

MR. HITTE: Just to clarify, you're not challenging whether that it allowed under Title V. You just don't like the way it's being implemented.

MS. HARAGAN: I'm not raising that issue.

I can address it in the written comments.

MR. HITTE: I would like to see more specifics in order to react to it.

MS. HARAGAN: Sure.

MR. LING: Bernie?

MR. PAUL: I'm curious to know what recommendations you would have for those complex facilities, especially, where there are multiple business organizations and not everything is the same company. I've seen this a lot in Indiana with the steel companies where there will be, perhaps, five or six different companies on the same facility and sort of the normal public's view that's one plant site over there, but there are five different companies that running different operations on that. What would your recommendation be?

MS. HARAGAN: I actually haven't encountered that. I haven't seen the public not being able to separate by company. That's not something I've had a problem with. I know there are circumstances where different companies share units and I think that because each company is responsible

for their own compliance that the requirements for that unit should be in both requirements. I'm not sure that exactly addresses your question, though.

MR. PAUL: You described a different issue than what we're experiencing. I just wanted to be sure that I understood that.

In a situation like some that I've seen where you have multiple companies on the same site running different parts of an integrated steel mill, for example, it makes sense for them to have separate permits because you will have different responsible officials. You want to keep that type of compliance management chain fairly tight. There are some valid reasons for having separate permits. I just wanted to see if that was your issue or if it was something else. You've helped clarify that for me. Thank you.

MR. LING: John Higgins?

MR. HIGGINS: One quick observation. I've heard a couple of folks speak to the fact that they think that issuing renewal permits is getting easier. That's what I was hoping. We know a lot more today than we did when we issued our first 105 permits and

I think early on it's not obvious to me, as a permitter, that it's going to be easier for us to reissue because we're essentially starting all over again from scratch. We tried to make the application process a little easier and we know more about writing the Title V permits the way we want to write them, but there are different permits than the permits the guys already have.

It's not going to be quite as easy, I don't think, as we all hoped it would be the second time around and I'll ask you my standard question I asked everybody else. A through F, what's your grade?

MS. HARAGAN: First, I'd like to address your first point. You know, obviously, you know permitting, how difficult that is, way better than I do. But, at least, it seems like first round, you go back and you deal with those permits from eons ago that are lost. You go and find them and figure out what the requirements are and you get a baseline agreement between the facility and regulator about what the requirements are and some of those may