TITLE V TASK FORCE

DALLAS, TEXAS

NOVEMBER 15, 2004

U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Steve Hitte, Office of Air Quality Planning and Standards
Ms. Carol Holmes, Office of Enforcement and Compliance Assurance
Mr. Michael Ling, Office of Air Quality Planning and Standards
Mr. Ray Vogel, Office of Air Quality Planning and Standards
Ms. Callie Videtich, Region 8

TASK FORCE MEMBERS

Ms. Shannon Broome, Air Permitting Forum
Ms. Lauren Freeman, Utility Air Regulatory Group
Mr. Steve Hagle, Texas Commission on Environmental Quality
Mr. Bob Hodanbosi, Ohio Environmental Protection Agency
Ms. Shelley Kaderly, Nebraska Department of Environmental Quality
Ms. Marcie Keever, Our Children's Earth
Mr. Bob Morehouse, ExxonMobil
Ms. Verena Owen, Lake County Conservation Alliance
Mr. Bob Palzer, Sierra Club
Mr. Bernie Paul, Eli Lilly
Ms. Keri Powell, New York Public Interest Research Group
Mr. Adan Schwartz, Bay Area Air Quality Management District
Mr. Don van der Vaart, North Carolina Department of Environment and Natural Resources
Mr. David Golden, Eastman Chemical
Ms. Kelly Haragan, Environmental Integrity Project
Mr. Mike Wood, Weyerhaeuser

EC/R INCORPORATED

Mr. Graham Fitzsimons
Ms. Shannon Cox

LIST OF SPEAKERS

NAME	GROUP
Marian Feinberg	For a Better Bronx
Michael Boyd	Californians for Renewable Energy, Inc. (CARE)
Robert Hall	Nevada Environmental Coalition, Inc.
David Frederick	Frederick Law (TX)
Robert Ukeiley	GA Center of Law in the Public Interest
Gary Abraham	Concerned Citizens of Cattaraugus County (NY)
Sharon Genasci	Northwest District Association Health & Environment Committee
Scott Gollwitzer	Appalachian Voices (NC)
Avram Friedman	Executive Director of the Canary Coalition
Merrijane Yerger	Clean Up LA
John Wilson	Galveston-Houston Association for Smog Prevention (GHASP)
Alexandra Gorman	Women's Voices for the Earth
Kathy Van Dame	Wasatch Clean Air Coalition (UT)
Melissa Scanlan	Midwest Environmental Advocates, Inc.
John Suttles	Tulane Environmental Law Clinic
David Monk	Oregon Toxics Alliance
Swati Prakash	W. Harlem Environmental Action
Jane Williams	California Communities Against Toxics (CA)
Reed Zars	Citizen attorney
Deborah Masters	Community Board 1 (Brooklyn) and Neighbors Against Garbage (NY)

MR. VOGEL: This is the EPA Title V Task Force conference call. My name is Ray Vogel. I will be moderating the call until someone else shows up to do that. And do we have any callers on the line? And I apologize for the delay in getting the line open.

Well, for the purpose of the court reporter, let's go around the room and introduce ourselves. And like I said, I'm Ray Vogel with the U.S. EPA in North Carolina.

MS. KADERLY: Shelley Kaderly, State of Nebraska.

MS. KEEVER: Marcie Keever with Our Children's Earth.

MS. BROOME: Shannon Broome, Air Permitting Forum.

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

MR. GOLDEN: David Golden, Eastman Chemical Company.

MS. HARAGAN: Kelly Haragan, Environmental Integrity Project.

MS. HOLMES: Carol Holmes, EPA.

MR. MOREHOUSE: Bob Morehouse, ExxonMobil.

MS. FREEMAN: Lauren Freeman for the

Utility Air Regulatory Group.

MR. HODANBOSI: Bob Hodanbosi, Ohio EPA.

MS. POWELL: Keri Powell for the New York Public Interest Research Group.

MR. FITZSIMONS: Graham Fitzsimons with EC/R, Incorporated, EPA support contract.

MS. COX: Shannon Cox, also with EC/R, Incorporated.

MR. PALZER: Bob Palzer representing the Sierra Club.

MR. SCHWARTZ: Adan Schwartz with the San Francisco Bay Area Air Quality Management District.

MS. OWEN: Verena Owen, Lake County Conservation Alliance.

MR. WOOD: Mike Wood, Weyerhaeuser Company.

MR. VOGEL: This is Ray again. I'll note that there are several people absent here and I'll say their names too. Michael Ling from the U.S. EPA, looks like Bernie Paul is not here, Eli Lilly. Steve Hitte is not here from the EPA. Bill Harnett from the EPA. John Higgins from the New York Department of Environmental Conservation and Don van der Vaart from the North Carolina Department of Environment and Natural Resources. Also Padmini Singh from the U.S.

EPA and Richard Van Frank from Improving Kids' Environment. Callie Videtich with the U.S. EPA Region 8. Hope I covered everybody. Do we have the first caller? I apologize. The caller had called in before that we had the line opened up. So I hope that they will now call back in and we will be going on here.

UNIDENTIFIED SPEAKER: (Inaudible)

MR. VOGEL: I'm sorry. We're having a very hard time hearing you. Bear with us a second. We will try to -- hello? We can barely understand your voice, please. Excuse me. We are having technical difficulties. Please bear with us.

We have a hard time understanding your voice on the speaker system here in the room. Please stay on the line. We will figure out the problem and get back to you very soon. This is the Title V conference call. We are having problems. Until we get that fixed, please try to stay on the line until we can get a phone that allows us to hear the callers.

UNIDENTIFIED SPEAKER: Okay.

MR. VOGEL: This is Ray Vogel again. We are having a difficult time hearing anyone calling in. We are attempting to fix this problem. And we hope to get it fixed soon. But in the meantime please stay on the line so we can start hearing your presentation when

we get the communication problem fixed. We can't hear you here because we were having some technical difficulties. If you can just hang on. Can you hear me?

This is Ray Vogel. This is the Title V Task Force. I believe we can hear you now. Thank you very much for your patience. People are extremely relieved in the room that we now can go on. So let me ask who we have on the line, or maybe I should ask more directly, do we have Marian Feinberg?

MS. FEINBERG: Yes.

MR. VOGEL: And Elizabeth Rosemeyer?

MS. FEINBERG: What happened was going to come on the mic, we were cut off. It said the leader had disconnected so I actually just called back in right, you know, like 30 seconds before your voice came on so maybe she hasn't --

MR. VOGEL: Well, I think what we will do is if folks could bear with us, Marian, could you go ahead and make your presentation? But before you do that, I would like to tell you and everybody on the line that this conversation is being taped for transcript purposes for audio and also written testimony is being recorded, so please go ahead and make introduction and continue with the presentation.

MS. FEINBERG: Hi, good morning. Thank you for the opportunity to testify today. My name is Marian Feinberg. I'm the (inaudible) for an organization called For a Better Bronx. We used to be with -- the name of the organization used to be called South Bronx Clean Air Coalition.

Title V is a program that represented a real advance in our air regulations in terms of the single clear and consolidated place where air emission requirements can be found and enforced. Requirement to reporting and monitoring sufficient to ensure compliance are also embedded in the program. And public participation is supported. Our community values these advances and the promise of Title V while at the same time being profoundly disappointed in its reality here as the program is practiced in New York State.

We are also disappointed that EPA has failed to assert its authority to ensure that state program fulfills its purpose. It is after all a program of the Clean Air Act. In the Bronx my organization at one time South Bronx Clean Air Coalition has participated in the Title V permit process for two different projects. Once for a plant NYOFCO, which stands for New York Organic Fertilizer

Company that pelletizes two-thirds of the sewage sludge produced in New York City. And the other around two New York power plants called (inaudible) which consist of four generators.

What's our opinion of some of the deficits in the way New York State carries out its program. Our problems with the program fall into two categories. The first category is community participation. New York State not only fails in the spirit of Title V but also fails to follow its own environmental justice guidelines which by the way were set up on order of EPA.

One of those problems by communities that want to participate in the Title V process. One, failure to do adequate notification to community-based organizations, state institutions, et cetera, in the vicinity of a facility. That a comment period is open.

Often community-based organizations and churches in our community do not find out about a comment period until the last minute or even after a deadline. Although I personally have helped organize the public outcry for a Title V hearing on the NYOFCO plant two years ago and had testified at that hearing, even I didn't receive notification that a comment period had now opened just this past fall for permit

revisions.

Second, failure to respond to community requests for a Title V hearing. The New York State DEC responds to requests for public hearing by saying well, we'll see if there's sufficient interest. They have never made public nor perhaps do they even have any objective criteria for what constitutes sufficient interest.

Thus, community groups with scarce human and financial resources go into a frenzy of activity trying to get better community members, elected officials to the DEC asking for such a hearing. Sometimes they say yes, other times no. The time and resources spent on getting DEC to agree to a hearing would be better spent analyzing the permit, educating community members about the permit and the Title V process and preparing comments.

Three, failure to take community comments seriously. It is very painful to be at a hearing and hear community members, you know, pouring out their hearts about how pollution in the different plants has affected their family's health and then to see that the DEC has not responded.

DEC also failed to respond to even technical comments generated by the community.

(Inaudible) participation process presents the illusion of democracy without its content. A number of community representatives have said we would be better off picketing the hearing than talking at it. That is a sad commentary on the ways these things are conducted.

The other area is about content of these permits and how it is looked at in New York State. One, in the facilities that we have, you know, participated in the process for, the failures of these facilities to carry out the mandates of the original permits has not been taken into account when setting conditions for the Title V permit.

For example, failure to include sufficient monitoring and record keeping to ensure compliance where taking note of a facility's failure in its regard emission permit -- I'm sorry -- I just got lost here -- that the DEC often fails to include sufficient monitoring and record-keeping to ensure compliance but take note of when a facility has failed in this regard in their initial permit and that's the DEC instead of setting stricter standards enforcing them through Title V fail to do so.

For example, the NYOFCO facility that I mentioned have failed to conduct many stack tests that

have been required under their original permit. And the New York power authority plants have seriously exceeded emissions limits of the original permit, yet Title V does not take these exceedances into account when setting conditions.

Failure to -- another failure of the is the failure to take note of background community health have when setting limits is as has long been fought for by the environmental justice community. In the case of power plants the DEC has actually violated as was judged by court, their own SEQRA standards which stands from State Environmental Quality Review Act, with state in terms of where power plants were cited and the fact that they did not do any analysis of PM2.5 which is long recognized as, you know, a major culprit in asthma, for example, which is very high in this community.

Just to comment on something that happened with EPA itself, our community (inaudible) community organizations before making these comments. When the NYOFCO permit was approved, the Title V permit was approved two years ago, the community, you know, gave an appeal to EPA and the EPA just responded over two years later, just responded now.

And we don't understand why that took so

long. And so -- and we would really -- you know, we don't understand whether it's a lack of (inaudible), whether EPA is understaffed, what it is -- not sufficient communication going on back and forth.

So one recommendation that we have that EPA take more authority and shorten its response time. Two, we request that it be said in terms of Title V to establish a fund for community groups either on the state level or the national level so that groups can access scientific and legal technical assistance.

It's very hard for, you know, community residents to get together sufficient funds to hire their own engineer, hire their own lawyer where the state has engineers and lawyers and the facility has engineers and lawyers. So we're really at a disadvantage in preparing certain technical comments.

And we would like to see public health criteria used in analysis and setting of permit limits. We would like to make sure that the past failures of emission limits or monitoring taken into account, some permit conditions. We want to see these permits actually enforced and not just on paper. And we would like very much to have public hearings be made mandatory following a simple request as is done in many other states but not in New York. That's my testimony.

MR. VOGEL: Thank you. Questions from the panel. Keri Powell.

MS. POWELL: Hi, Marian. Can you hear me now?

MS. FEINBERG: Yeah.

MS. POWELL: Thank you so much for your testimony. I just wanted a little bit of clarification on when you talked about NYOFCO not having performed the stack tests required under its original permit. I guess you're referring to a construction permit.

MS. FEINBERG: I also NYOFCO facility that was one of those facilities that is operated before Title V before New York started to get to have Title V permits issued. So after it had been operating for, let me see -- it had been operating for eight years. So it's really substantial information that was available on the past performance both in terms of emissions and their effects on the community and in terms of technical things in permit like not doing their stack tests.

MS. POWELL: What I just wanted some clarification on was -- you said that you didn't feel that the Title V permit adequately addressed NYOFCO's failure to perform the stack tests that were already required. And I just wanted to understand better, what

did the Title V permit do about that and what did you think that it should have done?

MS. FEINBERG: I don't know if I'm really quite prepared to answer that. I think that there really has to be both -- you know, if I think that there's going to have to be more monitoring of the -- by the state of more when they do this and more penalties when they don't fulfill their mandates under the permit.

I think that the Title V permits still gave them a lot of leeway in terms of how long it gave them to do new stack tests and still didn't have it completely worked out to issue reports on what they were going to do to control certain kinds of emissions. They even under this Title V permit the conditions have not been very forcefully enforced by the state and those conditions were very weak.

MS. POWELL: Thanks, Marian.

MS. FEINBERG: I'm sorry I can't be more technical about it, but it's a little beyond me.

MR. VOGEL: Adan Schwartz.

MR. SCHWARTZ: This is Adan Schwartz of the Bay Area Air District. Can you hear me?

MS. FEINBERG: Yes, I can.

MR. SCHWARTZ: You commented on a failure

to notify about the beginning of the comment period. Do you have suggestions for how that could have been done better from your perspective?

MS. FEINBERG: There was actually, you know, the DEC because it had (inaudible) that's the New York State Department of Conservation Agency. The DEC has failed to really set up an environmental justice program and the EPA kind of pushed them to do that several years ago.

There were hearings held all over the state and one of the major things that people testified on is this issue about community notification. And there were recommendations that were raised at that time and were sort of included in -- one of the things really has to do with -- at least in New York City -- I don't know what the rest of the country is like, but in New York City there's readily available lists from community boards and from programs from city officials lists of community-based organizations, lists of state-based institutions, et cetera.

And it really needs to be broad notification to the institutions that really the information conduits in the community. Posting something in some obscure place on the DEC web site does not constitute public notification. And the DEC,

you know, I mean at least to notify people who testified at prior hearings at the same facility, that would be nice. That would be an advance to where -- you know, to where we are now. They don't seem to take this question seriously at all. The information, public information you know the whole idea of an informed citizenry is totally essential to the issue of democracy and totally essential to the issue of really allowing public comment.

MR. VOGEL: Bob Palzer.

MR. PALZER: I'm Bob Palzer of the Sierra Club. You were saying that you not only don't get good notice, but when you are able to get notice, you don't have the technical resources to be able to respond, and when you do respond, your input isn't taken seriously.

Do you have any suggestions on how that could be improved on things that could be done within the program to be able to get the notification in time, have the resources to make meaningful comments and to get them actually implemented?

MS. FEINBERG: Well, in terms of the resources, like I said, we really feel that this is on the basis of talking with several organizations that we really would like to see a -- you know, a TA fund set up to be able at least to cover -- I mean, even if

someone wants to donate some labor time and the people need -- there's still some resources to cover their expenses for getting organizations technical assistance.

So the technical assistance funding would be helpful, but some of the other things really have to do with -- I mean, in our experience giving the state of New York the latitude to do their own thing has not resulted in the state doing so.

So then we're left with a situation of really asking for there to be mandates and part of the Title V program and saying, well, if we're giving this power to the state to do this, then the state has to fulfill these mandates. And one of them really needs to be a broad public notification in sufficient time and starting with some of the things that the state does in order to evade public participation.

For example, you know, in one situation where they persistently set up public hearings five days, ten days before Christmas, for example, when -- and the fact that community members still come out 150 or 200 people to respond to something even at that time is a real tribute to the level of interest.

And one might wonder if it weren't five days before Christmas how many people might have been

able to come out. So we feel like sometimes it's not only carelessness but deliberate in terms of trying to keep down the numbers of people who can come out or who can comment.

In terms of taking people seriously, what can you do? I mean, it's like what can you say, I mean, other than to say that every comment that is made needs to be responded to because when you give them a choice, they don't.

MR. VOGEL: Thank you. In the interest of time, we have about two minutes left for questions. Go with Shannon Broome and if there is time left, Verena.

MS. BROOME: Marian, can you hear me? My name is Shannon Broome and I'm with the Air Permitting Forum. I know you're really busy, but I was hoping -- and rather than ask you in two minutes to say everything, if you could give us examples because if we're going to be effective in making any recommendations at all, you know, we could make generalizations and say, oh, these guys aren't responding, but if we could say, here's an example of a situation, this comment was made, they made absolutely no response. This comment was made and they just blew it off with a hand gesture and said see you later. You

know, anything that would be where you could just even send in the permit with a big X and a copy of what you submitted would be helpful to us, and we'll do the work of looking at it.

MS. FEINBERG: Okay. I would be happy to -- yeah, because I can't do it offhand. I really have to go back and pick things out that I think would be effective.

MS. BROOME: Thank you.

MS. FEINBERG: So how do I send that in?

MS. BROOME: Ray will tell you later.

MR. VOGEL: You can send that to my e-mail, Vogel.Ray@EPA.Gov. We are asking for comments by March of this year, but, you know, the sooner the better -- next year, I'm sorry. Soon as you can get it to us, the better the Task Force will be able to digest it. Verena, do you have a short question?

MS. OWEN: As a matter of fact, I have a yes or no question. Hi, Marian, this is Verena Owen, Lake County Conservation Alliance. I was doing a bit of nodding while you were talking.

MS. FEINBERG: Hi.

MS. OWEN: I'm from Illinois. I have a quick question. Does the DEC have a designated community relations officer that works with

communities?

MS. FEINBERG: Does the EPA here in Region 2?

MS. OWEN: Does DEC?

MS. FEINBERG: Does DEC? There is a person who (inaudible) this person doesn't (inaudible) there's a person that does it in our area who I see is often (inaudible) but she -- you know, she's a hard row to hoe.

MS. OWEN: Pardon me? I didn't hear the last part.

MS. FEINBERG: She's often very helpful. There is a person. She's also very helpful but it is --

MS. OWEN: You would like to see more?

MS. FEINBERG: Right, right. And she is -- her job is very difficult.

MS. OWEN: Thank you.

MS. FEINBERG: Okay.

MR. VOGEL: Thank you, Marian. Do we have Elizabeth Rosemeyer on the phone? Michael Boyd?

MS. MASTERS: I'm on the phone.

MR. VOGEL: I'm sorry, who are you?

MS. MASTERS: Deborah Masters.

MR. VOGEL: Deborah, I have you down at

5:20 this afternoon.

MS. MASTERS: Ray changed it to 8:40.

MR. VOGEL: Well, I am Ray and unfortunately maybe I didn't send you the e-mail or you didn't get the e-mail.

MS. MASTERS: I was at 5:20 and just last week you wrote to me and said could I do 8:40 so you didn't have a gap in the schedule, and I wrote back and said yes and here I am.

MR. VOGEL: I'm sorry for that, but we do have everyone in at -- we have already taken the 8:40 speaker, and now we're moving on to the 9:00 and 9:20.

MS. MASTERS: Should I call back at 5:20?

MR. VOGEL: If you wouldn't mind, thank you very much. 5:20 central time. Who do we have?

MR. BOYD: This is Mike Boyd.

MR. VOGEL: Michael, thank you for your patience. We are running late, but we will now be ready for your presentation. Let me remind you that we are taping this for audio transcripts and recording on written transcripts. You have ten minutes for your presentations, and then we'll allow ten minutes for questions.

MR. BOYD: Certainly that's sufficient time for what I need to say. My name is Mike Boyd and

I'm president of the Californians for Renewable Energy, CARE, and the nature of Title V permits that I was involved in for a facility called Los Medanos Energy Center located in Pittsburg, California. It's a 550 megawatt gas fired combined cycle power plant.

My organization was involved in the initial permit issued by an agency called the California Energy Commission. I sent a couple of e-mails including attachments to you, Ray, and the other persons listed on the e-mail list. And basically that's what I'm taking this from and I have pretty much written it down already.

I am forwarding e-mail along with four attachments which included CARE's requests for supplemental environmental projects. The Los Medanos energy permit issued November 9th this year and the response of the Bay Area Air Quality Management District, BAAQMD, the U.S. EPA to our comments and I forwarded that to the U.S. review Task Force.

The U.S. -- I also included the U.S. EPA office bill of rights and the coordination and review section of the civil rights division of the U.S. Department of Justice. Californians for Renewable Energy, CARE, complained under Title VI of the Civil Rights Act of 1964 and executive order 12898 against

the approval of the Los Medanos Energy Center. And another facility nearby is called the Delta Energy Center. Violations by the California Energy Commission, the California Air Resources Board, and BAAQMD with the U.S. EPA on April 17, 2000, File Number 2R00-R9.

We were told by the U.S. EPA office of civil rights had accepted CARE's complaint for investigation only to CARB and BAAQMD and not the CEC as they are the recipients of EPA funding. Since this time we've become aware that the CEC is not exempt from investigation but instead the investigating agency -- a guy named Sebastian Lock, who is the staff attorney at the coordination and review section of the civil rights division of the U.S. Department of Justice.

CARE's participation in the aforementioned parties alternative dispute settlement process funded by the U.S. EPA through monthly meetings from June through December of 2002. Left unresolved was communication to be offered up for Pittsburg community communicated these two plants' impact on air emissions locally. This is in addition complaint against BAAQMD permitting Calpine's continued operation of this facility with 66 each notices of violations still listed as pending. I note based on the response

that I provided to our comments on the Title V permits this remains unresolved as the BAAQMD does not produce the NOV records despite BAAQMD'S assurances to do so.

On March 21st, 2004, CARE requested BAAQMD to settle the U.S. EPA Title VI complaints through supplemental and environmental projects. And we assumed that this permit is a response to our request to BAAQMD to settle the Title VI complaint supplemental and environmental projects.

We also assume that this permit issued through BAAQMD final response to our request over a year old the records in BAAQMD's possession on NOV herein cited as lawful request California -- record that -- which I note on November 2nd was made part of the state constitution by 83 percent approval, Prop 59.

I also attached and I -- this was directed specifically to the performance review Task Force. I attached to draft Title V permit and public comment period on Los Medanos Energy Center Title V permit. Remanded back to BAAQMD by U.S. EPA Administrator in response to successful appeal by CARE of the original BAAQMD Title V permit issued for the facility.

This provides evidence that the new Title V permit process under view by Task Force performed as

planned and that BAAQMD reopened the permit for public comment. The major flaw in the U.S. EPA Title V permit is that a lack of active enforcement by U.S. EPA through a corrective action program to recognize that once the public decides to actively participate in a project Title V permit for review process, the air district must be transparent as regards to Title V permit applicant's prior performance and conditions required in its original permit.

BAAQMD's response to comment admitted failing to provide CARE information on over a dozen notices of violation on the project Los Medanos conformance to the conditions and further denied our request for a public hearing lawfully requested on this permit.

BAAQMD invited public comment and requests for public hearing is shown in the document that I attached. It said, quote, The district invites written comment on issued identified in EPA's order as well as any proposed changes. All comments must be received by September 20th, 2004, and the public may also request a public hearing for this reopening of the permit.

In issuing its November 9th permit without the lawfully requested public hearing and

without providing CARE the lawfully requested enforcement on NOV's relevant to the applicant's performance to its original Title V permit conditions of operation, the district exposes a failure in the U.S. EPA Title V program by failing to provide CARE as a representative to the public an opportunity to meaningful, informed public participation in the Title V permit.

A scientist like myself, typical process control needs to be implemented on U.S. EPA Title V program to determine the root cause of this failure when the U.S. EPA administrator rules in favor of an appellate and against the local agency that it's reluctant to comply with the administrator's directive, what remedy is there for the appellate to ensure full compliance with the order?

Put another way, is this just one rogue district or is the entire Title V program flawed by design? This is relevant to the Task Force rule in evaluating performance of the Title V program as originally planned to give the public an opportunity to meaningful and informed public participation in the Title V permit. Thank you.

MR. VOGEL: Thank you, Michael. Ray Vogel again. Could I ask you if you have something

that you're reading from, could you e-mail it in?

MR. BOYD: Yeah, I already sent it. You received -- this was sent -- I sent you a copy on the 12th and then this looks like the 13th probably.

MR. VOGEL: It should be in my e-mail when I get back then.

MR. BOYD: I can resend everything if you want.

MR. VOGEL: No, that won't be necessary.

MR. BOYD: Yeah. Just get back to me if there's something that you didn't get. I would be happy to resend it.

MR. VOGEL: Now we have questions from the panel. Marcie Keever.

MS. KEEVER: Hi, Mike. It's Marcie Keever from Our Children's Earth. I had a question about -- you talked about notices of violation. And I think there's a list of them in the e-mail that you sent to us. You were never given the information on those notices of violation; is that correct?

MR. BOYD: That is correct.

MS. KEEVER: And the reason for never receiving any information besides -- I think you have a list and that's all.

MR. BOYD: Part of the law enforcement

investigation, that's what they were protecting under.

MR. VOGEL: Shelley Kaderly.

MS. KADERLY: Shelley Kaderly with the State of Nebraska. I was wondering whether you were provided a reason why you were denied a request for public hearing.

MR. BOYD: Yes. It's in my response. Basically they said that the information I was seeking wasn't relevant, that the NOV wasn't relevant to the -- to my comment basically, that it wasn't relevant to the -- that I could have still -- they still provided me -- they claim they still provided me enough information to provide both meaningful and informed participation, my position being that they provided me an opportunity for maybe meaningful at a stretch, but they didn't give me informed participation because they didn't provide me the records.

MS. KADERLY: Were you provided a written response to your request?

MR. BOYD: Certainly. It was a one-page response basically saying that it was part of a law enforcement investigation, and they couldn't give me the investigation. They would make that information available to me as soon as it was available. And I provided copies of that as attachments in my e-mail

that I sent around.

MR. VOGEL: Kelly Haragan.

MS. HARAGAN: Hi, this is Kelly Haragan with the Environmental Integrity Project. In EPA's response to your petition, it sounds like they granted your petition and agreed with you; is that right?

MR. BOYD: Well, basically Title V what's called positive action in our petition in which one was accepted was they hadn't provided a statement of basis in the original Title V permit.

MS. HARAGAN: Did EPA say anything about their failure to provide you access to those NOVs?

MR. BOYD: No. At that time when we filed it, that wasn't an issue. That became an issue later. CARE was trying to get those records because we were participating before the California Energy Commission on other projects with the same power company, Calpine Corporation, who was applying for numerous gas fired power plants throughout the state of California, particularly in low income communities.

MS. HARAGAN: So the state's position is still that they won't give you those NOVs until they resolve any kind of enforcement action they're going to take?

MR. BOYD: Correct. They wouldn't

provide it to me until they settled the penalty for which they were going to charge Calpine for its NOVs. Now, we were proposing they adopt a supplemental environmental program which was about five million dollars in actual reductions through, like, school bus retrofit and garbage truck retrofit. Silver Tower, our school district -- school district along with the original complainant in the civil rights complaint back in 2000 that we --

MS. HARAGAN: So, I mean, they're withholding everything about those NOVs from you, even emissions data?

MR. BOYD: Correct. They would not give us what -- they wouldn't give us more than that one page that I sent you which basically was a list of all the notices of violation.

MS. HARAGAN: Okay. Thank you.

MR. BOYD: Now, they did provide it to another group, Golden Gate University, which I think Ms. Keever was part of. And she was able to get some of those records outside of the process we were involved in which was the California Public Records Act project.

MS. HARAGAN: So do you have those -- do you have the NOVs now?

MR. BOYD: Do I have them? No, I don't have all the information on NOVs, no. We never got all the information we needed. They didn't (inaudible) involve -- we would get, like, a copy of the actual notice but none of the details on how they -- they didn't -- claiming that the violations were corrected immediately after they occurred, but they didn't provide the information so that we could assert that that actually happened, is what the problem is.

MS. HARAGAN: Okay. Thanks.

MR. VOGEL: Question from Adan Schwartz.

MR. SCHWARTZ: Hi, Michael. I may know the answer to this but I'm going to ask you anyway just to get it on record. First of all, you may want to check with Bob Sarby because I think he does now have the complete enforcement files, but that's now and I know you're talking about --

MR. BOYD: I spoke to Bob on Saturday, and we haven't got anything yet. We have been requesting it. And the lady at the district in charge has been unavailable for about the last week.

MR. SCHWARTZ: Well, in any case, you're talking about the period when you were reviewing the permit which is, you know, that's not now to focus on when you really wanted the information and didn't have

it. And I just wondered if you could say more about the kinds of information that you were seeking regarding these violations and how that would have been useful to you or --

MR. BOYD: Well, we were seeking specific information about what exactly they had violated, what limits they had exceeded, what basically the violations were permit condition. And information that provided us wasn't sufficient for us to determine the actual cause of the notice of violation.

And so that's why we were seeking details on what the air district did to correct it to make sure that, in fact, the violations didn't occur. And since there were so many violations, it appeared to us that the same thing was being violated. It's not like there were 66 violations that were all different each time of a different condition of operations. It was what we -- we were seeking to show was that, in fact, these guys were continuously in violation of their operating permits and that the conditions that were imposed on them weren't sufficient to mitigate their impact on the surrounding community. And that's what we were looking for, and basically we couldn't make a decision on whether or not that was the case because we weren't given sufficient information to do so.

MR. VOGEL: Thanks, Mike.

MR. BOYD: Sure.

MR. VOGEL: There will be no more questions from the panel. Thank you, Michael. I'm sorry, there's one question from Marcie Keever.

MS. KEEVER: Mike, I just wanted to ask, when you asked for a public hearing, was that on the renewal of the Los Medanos Title V permit?

MR. BOYD: What we stated was that we couldn't really provide on the new permit. We couldn't provide any meaningful comment because we didn't have the information we were seeking on NOVs and, therefore, we asked for a public hearing so that we could, you know, have an opportunity for the public to be heard on the basis of -- we were doing that with the hope, of course, that the district would be forthcoming with this information and so that they would be useful for us to have a permit hearing.

And since Adan has mentioned, it seems to be their intent to provide the information. That makes it even more useful to have a public hearing because now we have some new information on which to provide -- you know, participate meaningfully and be informed.

MR. VOGEL: Thank you, Michael.

MR. BOYD: Thank you, bye.

MR. VOGEL: In the interest of time let me propose to the Task Force that we have -- we had a break scheduled from 9:40 to 10:00. We're almost at 10:00. The next speaker and series of speakers are due the up at 10:00 going to noon. Could I propose that we work through our break to get back on time, and if folks want to take a break, then they can do it on their own.

SPEAKER: If we do that, can we commit to breaking for lunch?

MR. VOGEL: Yes, I think we can do that. Do we have Sharon Genasci on the line?

Robert, would you like to do your testimony now?

MR. HALL: Can you hear me loud and clear? I've got a fairly good speaker phone. Other people do not and when you run into that, you might ask them to pick up the telephone.

MR. VOGEL: Go ahead, please.

MR. HALL: I used to be an airline pilot, pardon me for that technical information.

MR. VOGEL: As long as we don't have too much turbulence.

MR. HALL: That's when the radios weren't very good.