MS. HARAGAN: Thanks a lot.

MS. GENASCI: They did respond to that.

MR. VOGEL: Thank you, Sharon. Thank you for being with us today.

MS. GENASCI: Thank you very much.

MR. VOGEL: Now we'll go with Scott Gollwitzer.

MS. GENASCI: Can I stay on and listen to it?

MR. VOGEL: You certainly can.

MR. GOLLWITZER: Thank you. My name is Scott Gollwitzer. Is there a court reporter?

MR. VOGEL: Yes, there is, and your voice is being recorded for audio transcript as well.

MR. GOLLWITZER: For the court reporter's benefit I'll spell my last name. G-o-l-l-w-i-t-z-e-r. I'm the staff attorney and clean air campaign coordinator with Appalachian Voices. We're a regional nonprofit organization based in Boone, North Carolina committed to protecting and restoring the ecological integrity, economic vitality and cultural heritage of the southern and central Appalachian Mountains.

We accomplish these goals through four primary campaigns. The first is defending public lands; second, promoting sustainable forestry; third,

ending mountain top removal coal mining; and the fourth is eliminating pollution.

Before getting to the substance of my comment, I'd like to thank the Task Force for allowing me to testify today and for allowing me to leave my suit and tie in the closet this morning.

And now some background of why Appalachian Voices is providing testimony today. After working to pass our Clean Smokestacks Act in North Carolina during the summer of 2002, Appalachian Voices quickly realized that reducing emissions from our 14 grandfathered coal fired power plants would prove meaningless without an effort to force North Carolina's other polluters to comply with the Clean Air Act.

Beginning the spring of 2003 we embarked on an ambitious campaign which we call North Carolina Stack Watch. The intent of this campaign is to promote three fundamental purposes of Title V, and those were described by John Walke in his testimony as: Compilation of permit requirements, increasing public participation and compliance enhancement.

When we launched our Stack Watch campaign we had three goals in mind of our own. The first one was to review and comment on every Title V permit proposed to be issued in North Carolina. The second

was to appeal poor permitting decisions through administrative or judicial avenues, and the third was to assist people living in the shadows of polluters to use Title V as a mechanism to enhance pollution control compliance.

Due to our unique conceptualization of the permit program, we feel that Title V is an important tool for improving air quality and that it should be maintained and improved to achieve its purposes. After nearly 18 months of implementing our Stack Watch campaign, I'm happy to announce that we commented on roughly 95 percent of the draft permits put out by the Division of Air Quality, DAQ. This despite the fact that at the time we launched this campaign we were unaware that DAQ was preparing to issue all remaining initial permits by the end 'O3.

As Mr. Van Der Vaart can no doubt attest, we were extremely busy during the last quarter of 2003 trying to keep up with DAQ's equally feverish pace.

MS. VOGEL: Scott, speaking of pace, you could slow your pace down from talking a bit so we can understand you better, please.

MR. GOLLWITZER: Oh, sorry.

During the 18 months since the inception of our Stack Watch campaign, we developed an empathetic

understanding of the two principal obstacles preventing DAQ and EPA from fully meeting the objective of Title V. Those obstacles, as we see them, are insufficient funding and lack of personnel. Likewise, the same obstacles have impeded our ability to fully realize the goals of our own Stack Watch campaign.

However, we do believe that with the appropriate recommendations from this Task Force, coupled with full implementation of those recommendations, we will be able to achieve our goals in the not too distant future.

That being said, let me back up just for a second. Without debating the wisdom of Congress's choices in developing Title V, Appalachian Voices understand that Title V sought to equitably distribute the rights and responsibilities of the permit program. That division would be between the federal government, state regulatory agencies, the public, and polluters who refuse to internalize the cost of production and clean-up in the prices of their products. In essence, Title V has created a partnership among these stakeholders to achieve one fundamental purpose. That would be improving air quality.

Although in a perfect world Appalachian Voices would not need a Stack Watch campaign. We plan

to continue on behalf our members to fully participate in this partnership to improve the air we all breathe.

If I may, I would like to quickly give you a list of areas that might be improved in order to make the aforementioned partnership more effective. Please bear in mind that although our Title V experience is limited to North Carolina, much of these suggested reforms can and should be made in other states as well.

First I would like to commend DAQ for doing an admiral job in providing interested parties electronic notification of draft permits. Specifically they provided a copy of the draft permit and the permit application review at the same time they provide notice that the permit is open for public comment. Although this is a great start, DAQ can really help the public in fulfilling its partnership role by providing copies of the application and any other relevant supporting materials at the same time a notice in posted.

We understand that this request places a slight burden on DAQ. Yet that burden is de minimis when compared to the onerous burden placed on the public when they are forced to travel to a regional office or a headquarters to obtain these documents in a timely manner. If DAQ cannot or is unwilling to

accommodate the public's needs in meeting this Title V partnership by providing the documents at the time public notice is given, perhaps the public comment period could be extended to 90 days.

For those on the panel who may be grimacing at this suggestion and its concomitant delay, I encourage you as Title V partners to meet us halfway by supporting our request that the relevant underlying documents be provided electronically and simultaneously with the permit notification.

Secondly, it would be useful if DAQ would take time to provide written comments or responses to our public comments. Again, at first blush this may seem to place an undue burden on DAQ. However, we believe that the public participation process would ultimately be streamlined. Our experience to date has forced us to waste our limited resources making the same comments on the same issues over and over and over again. Theoretically, this process results in DAQ having to wade through our comments over and over and over again as well.

Written responses to the extent that they contain reasonable legally justified explanations of DAQ's actions would alleviate much of this duplicative work for both the agencies and organizations such as

ours and would no doubt benefit polluters by expediting the permit review comment process. Providing written responses should not place an extraordinary burden on DAQ as permitting authorities are already required to provide explanations to a sister state when they submit recommendations rejected by the permitting authority. And that's citation is 42 U.S.C. 7661d.

Third, DAQ should make every effort to cast the widest net possible in terms of soliciting public comment. This could be accomplished by broadly defining the affected community. Although no bright line has been established for defining the extent of an affected community, the Clean Air Act provides some congressional guidance. For instance, section 7661d requires that the permitting authority submit proposed permits to states lying within 50 miles of the polluter. Hence, at a minimum, DAQ should provide public notice in all communities lying within a 50-mile radius of a polluter.

In casting this wider public net, the public will be well served if DAQ would enlist the help of radio and TV stations that regularly run public service announcements. Likewise, where appropriate, public notice should be announced through non-English speaking media outlets.

The public benefit associated with casting this wider public notice net cannot be overstated. Our experience to date demonstrates that if each county within 50 miles of a particular polluter were included as part of the affected community, DAQ would be better equipped to achieve the spirit of Title V's environmental justice considerations.

In fact, when one calculates the number of low income African-American and Latin -- excuse me, Latino-American residents within this broader affected community in North Carolina, one invariably finds a disproportionate number of one or more of these subsets of North Carolina's population residing within the shadows of the polluter's facility.

I would like to mention another less obvious benefit of casting this wider net. If one considers the fact that many polluters are large employers within the immediate vicinity of their facility, there's little doubt that many residents are intimidated for fear of losing their job or an opportunity to get one to speak out against any polluter. These fears, whether real or imagined, have a chilling effect on the public's willingness to engage in the Title V process.

Casting a wider public notice net will

not only alleviate this chilling effect, but would go a long way to ensure -- and I'm quoting EPA here -- that no group of people, including racial, ethnic or socioeconomic groups should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

I know time is running short so I've five quick points to make in addition to the ones I've already made. First, permits need to include some sort of monitoring record keeping and reporting requirements for each and every standard or limitation listed in the permit. In North Carolina, almost every permit includes some emission limit or standard without any monitoring, record keeping, or reporting requirement. Without such requirement, the public is unable to fulfill its role as private attorneys general.

Second, we need more public hearings in North Carolina. In North Carolina, the public notice net is cast in very narrow geographic range. The circumstance generally results in no one, other than our organization, requesting a public hearing. This allows the director of DAQ to impermissibly use a critical mass standard to determining whether to hold a

public hearing. DAQ's track record during our Stack Watch campaign is abysmal. Between May 13, 2003 and September 16, 2004, 76 out of roughly 80 requests for public hearings were summarily denied.

Better public notice protocols as outlined above will help eliminate the director's use of this critical mass standard. If DAQ refuses to approve the public notification protocols, at a minimum they should periodically check the public's pulse by holding some public hearings on permits for large facilities and heavily populated areas.

Third wrap-up point relates to how detailed the permits should be in laying out relevant legal standards. I saw a lot of this discussed in the transcripts thus far. Personally I would be happy with some middle ground where a standard might be briefly described and reference via citation. However, my personal preferences do not trump the Clean Air Act's public participation requirements.

Many people do not have the resources to adequately access the laws and regulations if they're simply referenced. As such, it is incumbent upon permitting authorities to include verbatim the laws and regulations in a permit. Whether it be in the body or as an attachment is something this Task Force can

grabble with and come up with a recommendation.

Fourth, I would like to see agencies accept comments submitted by multiple parties as if each were submitted individually. Based on experience with other agencies I've worked with, there's a growing tend emerging whereby agencies are treating sign-on comments as a single unit without considering the number of groups and/or individuals these groups represent as a mandate for what the public expects.

The summary dismissal is an affront to the public's sensibilities and is unfair insofar as other agencies are reportedly receiving comments from trade associations and treating those as if each of the represented polluters submitted the comments on their own behalf. As such, I would encourage you to treat any group comments submitted by an environmental or public health organization in terms of the coalition as you would treat those comments submitted by the American Chemistry Counsel on behalf of its 136 members.

Finally, I would like to make clear that although I appreciate the work and dedication of the individuals on this Task Force, I must object to the composition of the panel and the dubious explanation provided by the hearing officer on June 25th. Unless

this imbalance is immediately corrected, the legitimacy of the Task Force and its recommendations will be greeted with a great of skepticism by clean air advocates.

In conclusion, I'd like to stress that we firmly believe in Title V and it will be an incredibly useful tool in meeting the three objectives outlined before, compilation, increase public participation, and enhanced enforcement.

Appalachian Voices will, to the fullest extent possible, continue to exercise its rights and meet its responsibilities to improve the nation's air quality under Title V, and we urge our partners to do the same. Thank you.

MR. VOGEL: Thank you, Scott. Sounds like you had something in writing there you were reading from. Could you send that to me?

MR. GOLLWITZER: I am submitting more fully developed comments by the March deadline.

MR. VOGEL: Would it be possible for you to send it to me by e-mail before the March deadline?

MR. GOLLWITZER: I can send you what I've got thus far.

MR. VOGEL: Thank you. Do we have questions from the panel?

MR. VOGEL: Adan Schwartz.

MR. SCHWARTZ: Adan Schwartz with the Bay Area Air District. You mentioned that you would like to see relevant underlying documents made available at the time the draft permit is noticed, and I was wondering if you had in mind sort of a generic list of what categories of information or types of documents would be -- should be made available. Obviously the application is one, and you mentioned that, but in addition to that.

MR. GOLLWITZER: I would recommend notices of violations and how those notices of violations were corrected, if at all, or addressed, and perhaps any complaints that citizens in the local area may have filed against a particular facility, whether or not an NOV was issued afterwards. And I would be happy to flesh that out more in some written comments by the March deadline.

MR. SCHWARTZ: Thanks. That would be useful.

MR. VOGEL: Bob Palzer.

MR. PALZER: Two things. Bob Palzer, Sierra Club. Two things I would like to check on. One is your concern about the composition of the committee. Is that based on the initial composition of having four

environmentalists and six members from industry and six regulators?

MR. GOLLWITZER: That is correct. If the composition has changed since the transcripts I've read, I'd be happy to rescind that comment.

MR. PALZER: You might want to do that because, in fact, we are at full strength. Six, six, and six.

MR. GOLLWITZER: Okay. I would be happy to rescind that.

MR. PALZER: I would like to let you know something that we do in the state of Oregon and see what you think how it would satisfy your request for making it easier to be able to get a hearing held when you have issues even though you don't have this, what you call, critical mass.

In our state whenever there's a request by ten individuals or an organization representing ten individuals, the state is obligated to grant a hearing. What do you think of that idea?

MR. GOLLWITZER: I'd probably defer any particular answer at this time, although I do like the idea. I think that would go at least in one direction to kill this critical mass standard that is currently being used by the North Carolina Division of Air

Quality. And I would certainly be happy to address that as well in my written comments.

MR. PALZER: Well, do you have any other suggestions of ways to fight your critical mass issue?

MR. GOLLWITZER: None that I would be willing to share right now. Again, I would be happy to flesh that out.

MR. PALZER: Thanks.

MR. VOGEL: Verena Owen.

MS. OWEN: Hi, I'm Verena Owen. I'm with the Lake County Conservation Alliance in Illinois. I have a question. When you prepare for a permit review, what other documents do you try to get and have you ever encountered any problems receiving them, like enforcement issues or notice of violations?

MR. GOLLWITZER: Let's be candid. Again, I will remind you all that we as well have personnel and funding problems. I do a lot more than just air permits. It's really difficult for me to spend my time and resources doing every permit as well as I should be doing them.

The division of air quality, I generally go to the headquarters to get information and the files there are accessible and I can at that time get the documents I'm looking for. However, headquarters is

four and a half hours away. Sometimes four or five permits are up at once or they come out one day after another. So it's really hard to go there in a concise manner and get everything I am looking for in 30 days. Does that answer your question?

MS. OWEN: Yes, it does, kind of. Can I ask one follow-up, please? Do you have to pay for copies when you go to headquarters -- and, actually, it's two questions -- and has the agency ever offered to have a public repository of information in the location of the permit?

MR. GOLLWITZER: First, yes, there is a charge, it's relatively reasonable. I haven't had too many problems with that.

MS. OWEN: Could you share how much that is?

MR. GOLLWITZER: In terms of repositories, the regional offices within which the polluter lies also has copies or should have copies of the relevant documents. Again, North Carolina is a very large state. I live on the western end of the state and it can take me eight hours to get to the eastern side of the state to get to a regional office. Again, we do see a problem with our having to travel and our ability to get to some of these offices to get

the underlying documentation.

20 years ago that's the way things would work. However, with today's scanning abilities and electronic communication abilities, I think the burden on the Division of Air Quality would be diminimous in terms of scanning and providing those documents, and that cost can also be passed on to the polluters under Title V.

MR. VOGEL: Keri Powell.

MS. POWELL: Hey, Scott, can you hear me?

MR. GOLLWITZER: Barely.

MS. POWELL: Now can you hear me?

MR. GOLLWITZER: Yeah.

MS. POWELL: I just wanted to know from the comments that you filed so far on permits, do you feel like you've made any significant improvements in those permits; and if so, can you describe some of those successes?

MR. GOLLWITZER: I have yet -- and, again, it's based on our own resources -- to see any significant changes in permits. By the same token, I must admit it's really tough to review a proposed permit after we've submitted draft comments. Again, it's one of the reasons why we would like to see written responses to our comments.

If, in fact, the DAQ took the time to file a written response to my comments, I could read that much quicker than looking at a proposed permit and comparing the proposed to the draft and going back to my comments to see how everything fit into that puzzle.

MS. POWELL: So how do you know if there's no written response to your comment --

MR. GOLLWITZER: That's the answer I have at this time.

MS. POWELL: How do you know that the permit has actually been forwarded to EPA as a proposed permit?

MR. GOLLWITZER: Oh, interesting. The Division of Air Quality recently has begun sending the electronic copies of the proposals. And that was a problem initially, and actually our comments might have spurred them to start doing that, so that might be a success from our comments addressed.

MS. POWELL: Sofar as you have filed a petition to EPA to object to any of the permits?

MR. GOLLWITZER: We have not. Again, I empathize with the permitting authorities in terms of personnel resources.

MS. POWELL: Thanks, Scott.

MR. VOGEL: Thank you, Scott, for taking

the time to be with us today.

MR. GOLLWITZER: Thank you all for having me.

MR. VOGEL: You're welcome. We are now going to take a break until 1:00.

(Recess taken)

MR. VOGEL: Okay. I think we are ready for you to make your presentation. You'll have ten minutes for your presentation and ten minutes for questions. Let me say that we are recording this for audio and written transcripts.

MR. GOLLWITZER: Ray, by way of disclosure, this is Scott Gollwitzer listening in on my colleague.

MR. VOGEL: That's fine, Scott.

Go ahead, Avram.

MR. FRIEDMAN: Thank you. First I would like to thank the Task Force for giving me the opportunity to speak on the merits and the problems on the Title V permitting process. I am not an attorney, but I do speak as a representative of the Canary Coalition, a broad-based grassroots clean air advocacy coalition that includes members of the business community, local government officials, members of the religious community, academic community, the medical