critical. I think it's important that community members know whether the facility is in compliance, and if not, based on what emission is -- are they out of compliance and what the timeline is for rectifying that problem.

Let's see, I guess that covers most of what I was hoping to say. I just wanted to impress upon you all that the fenceline communities are the folks that I work with most and I really feel from them that the current system doesn't sufficiently protect their health and well-being, and I realize there are many issues with regards to that to improve that system, but I hope that, if nothing else, the Title V program will be improved and will continue on for many years to come. Thank you very much.

MR. VOGEL: Thank you. Thank you for spending the time with us today.

MR. MONK: Sure.

MR. VOGEL: Do we have another speaker on the line? Anyone else on the line? We'll wait a little bit for the next speaker.

(Recess taken)

MR. VOGEL: My name is Ray Vogel with the EPA. I would like to just say we have 20 minutes altogether for you, ten minutes of it will be

presentation, ten minutes for questions and answers. We're also doing an audio transcript and a written transcript of this proceeding. So if you would like, please go ahead.

MS. PRAKASH: Okay, great. Well, my name is Swati Prakash and I'm the environmental health director for We Act For Environment Justice, also known as West Harlem Environmental Action, and we are a grassroots nonprofit organization dedicated to community power to fight environmental racism and improve environmental health, protection, and policy in communities of color.

We were formed in 1988 out of community struggles against noxious emission from the North River Sewage Treatment Facility, which is built on the west side of Manhattan and processes up to 170 million gallons of waste water every day, and when it first began operating was doing so with almost no air pollution control technology. And so community struggles around that culminated in a lawsuit, a 55 million dollar settlement to upgrade the air pollution control equipment on that facility and installed air monitors in the community. And we were borne out of those struggles and have worked since then to protect and promote environmental health for residents in its

community.

And it's Title V permit for that facility formerly -- formally called the North River Waste Water Control Pollution Plant that I form the basis of my comments today. I just want to say as a caveat that I submitted those comments in June of 2002 and don't sort of to advocacy on these sort of issues as much as I would like to have time to do, and so from the follow-up after those comments were submitted are a little bit hazy to me, as well as my memory, but I'm going to do my best.

Just to start off with I wanted to say that I think that the Title V program is a great program of the EPA and of the Clean Air Act, provided a good opportunity for effective communities to get all their information in one place and to weigh in in just one process. And it's a good opportunity to help individuals who are affected by the operations of a polluting facility to have the right to know what that facility is doing and be assured that it's complying with the law.

And from an environmental justice perspective, in particular, and that's the perspective I'm speaking from, which are the idea that communities of color are burdened with -- are often burdened with

multiple stationary sources of air pollution. We have very few resources to act as watchdogs of those facilities or of the agencies that are supposed to be regulating them.

So the Title V permitting program allows us to learn what the air quality rules are that apply to the facilities that are located in our communities and determine if they're in compliance. And in particular, I like the monitoring -- I like that the monitoring requirement for the facility to ensure compliance are written directly into the permit because having access to that data and knowing that this monitoring is taking place is one of the few tools that many under-resourced community groups have.

With that said, I think that there's still some way to go before the vision and ideals of transparency and ease and community participation, which is what Title V embodies, are completely realized. From my limited experience, I think the major stumbling points have been around community notification of the permitting process, technical support for community residents, community groups to decipher the permit, the draft permits and the statement of basis, and a strong commitment in -- at least the permit that I looked at, to

monitoring requirements.

So I was just going to talk a little bit about my experience weighing in on the Title V process. Y'all can still hear me, right?

MR. VOGEL: Yes, we can.

MS. PRAKASH: So this is in reference to the Title V permits for the North River Waste Water Pollution Control Plant, and April 27th of 2001 the nearest New York State DEC issued a notice of complete application for the draft Title V permit for that facility, which the draft permit was noted in the May 2, 2001 edition of the New York State DEC's Environmental News Bulletin. I actually was not aware of the Title V program at the time and I didn't make comments during that draft period. It wasn't until I went through the Title V training cosponsored by EPA Region 2 and the Earth Day Coalition in November of 2001 that I knew to be on the lookout for a revised permit for North River.

And so in May of 2002, I think about -- somehow it came to my attention that a revised permit had been issued. But I could not find notice of the issuance anywhere on the DEC web site, which is the first place that I went to to find information about the revised permit. And there was no notice of hearing

published in the DEC's environmental news bulletin for the revised permit.

So the only thing I could find on the DEC's web site was a draft permit dated April 27, 2001. So after I made several phone calls to everybody that I knew in the DEC, I got help from Michelle Moore, who is the environmental justice coordinator for DEC Region 2, and she faxed me on May 31st, 2002, a notice of revised draft air permit and legislative public hearing which was to take place on June 4, 2002. And that also listed June 7th as the last day for public comments to be received by the DEC.

However, Ms. Moore still didn't have -- she didn't have a copy of the actual revised permit to send me. There was just no copy of the revised permit to be found. So I made my comments on the older permit. As of June 4th, the date of the public hearing, the date on the DEC web site still read May 2001. And I -- you know, I think it was a problem that the web site wasn't updated and that a lot of the individuals who provided public comment at the June 4th hearing were commenting on an outdated draft.

The revised permit did go up on the DEC web site the day after the hearing and there was a considerable difference between the first draft and the

revised draft. And the DEC did agree to extend the public comment period until June 14th, but I wasn't totally confident that they would honor that extension, so I just, between June 5th and June 7th, consulted a lot of my engineering friends and got a great deal of help as well from Tracey Peel from New York Public Research Group.

And from my background, I have a master's degree in environmental health with a specialty in science and engineering, which I really relied on because very little in the permit itself I think is comprehensible to the nonspecialized person or just someone who doesn't have some sort of engineering and technical background.

So I sent fairly detailed technical comments on June 7th by fax. What happened is that I never received a written response or an acknowledgment of receipt for those comments. And then several months later when the DEC did send its general responses to public comments on that revised permit, on the revised draft permit, I didn't see any of my specific comments addressed in those general responses, although I did see specific comments of other organizations, including NYPIRG addressed, which led me to wonder whether my comments -- my written comments, not the oral comments,

I provided on June 4th had been received or read at all, and I still actually, to be honest, don't know to this day if they were ever received.

My next set of comments just have to do with the permit itself, which I will try to go through quickly. I can submit -- I am going to be submitting testimony to you too, which goes into more detail. I'm just trying to hit the major points here.

The first has to do with the statement of basis laid out in the draft permit which was inadequate. The relevant regulations weren't properly referenced and -- let's see, while the permit review report did summarize relevant regulations under the applicability discussion, the summaries didn't list the actual emissions limitations or the other regulatory requirements with enough specificity for a public comment to be able to determine if the proposed action played out in the permit would lead to compliant.

The second issue has to do with the format of the draft permits, which just, I think, was unnecessarily obscure and difficult to follow. The technical language aside, I think just the format and the organization of the permit was very difficult to follow. And as an example, you know, just the difference between a federally enforceable condition

and a federal applicable requirement was not clear. So, you know, the consequences having such an obscure format is -- it discarded effective review from effective impacted community residents, especially the lay public.

And then finally, there is several -- a great deal of technical concern about whether the correct regulations were being referenced and whether the appropriate pollution control technologies were being suggested as the way to comply with the certain state regulations, which I can include all those specifics if you all want that in my comments to you.

And let me see here, I was concerned they actually -- one of the monitoring requirements that the facility had been complying with up until that point in the permit was proposed to be discontinued after 24 months, and that was replacing a continuous opacity monitor with visual monitoring inspection. And so that -- I gave my comment that I felt like given the fact that is a facility which has so much community struggles around it and had initially been operating with very poor complaint, it's very important to have the hard data from a machine as opposed to from a human being looking and getting a judgment about whether opacity had been exceeded. And specifically the

opacity requirements in the previous four years of this facility had been violated several times.

So just in closing, because I see I'm running out of time here, I guess I'll just close by saying I think that the Title V permitting process can be -- for all of its benefits in terms of public participation and accessibility can be a double-edged sword partially because of the permit shield created by the process, which my admittedly lay understanding of that permit shield is that it protects the facility from legal liability.

It turns out that a permit has been written incorrectly or inaccurately, as long as they're compliant with the permit, even if they're not complying with the letter the law, they're shielded from legal liability, and that's a clause that concerns me because after seeing all of the things in the permit that I looked at, that just didn't seem right to me. It seems like those issues aren't addressed and then the window of opportunity to weigh in and point out the problems when the permit closes, then one pool of the community residents often have to resort to build our power and ensure that compliance is met is the legal process unfortunately.

And so to take that away by creating a

permit shield is something that concerns me that it can negatively impact, in particular communities of color but, really, all communities that are posting polluting sources that are subject to Title V requirements.

And then the last topic, if there's a way to create some sort of technical assistance so that the ideal public participation is really met in that information is provided in a way that it's really not just acceptable as, you know, looking on a web page would technically be accessibility, but actually understandable to the average resident. The real intricate details about what the regulations means, what -- whether -- what the pollution control technologies that are being referenced do and how likely it is that there's a match between those two things, I think that's become the key to really ensuring the success of the spirit of Title V as well as the actual letter of how it's written. So with that, I'll close.

MR. VOGEL: Thank you. Questions? Shannon Broome.

MS. BROOME: Hi, my name is Shannon Broome, and I was just wanting to clarify a question that I had on something you said about the format of the New York permits. Were you talking about how they

have that -- it's got that really condensed list and then it says compliant certification and it kind of seems like it's not in English. Is that what you mean? I think I know what you're talking about, but I just want to make sure I understand what you think is the format problem and if it's the same format problem that I see.

MS. PRAKASH: There's two -- one is, yes, the plain English, not even -- I mean, not even talking about technical language, but really more like -- these are the relevant regulations that apply to this facility and these are the way in which the facility proposes to meet those regulations. I mean, just sort of an overview perhaps of what was included in the permit would have been, I think, a helpful thing. Let me look at what I see specifically.

And then there was also language in terms of things like what's the distinction between a condition and an item.

MS. BROOME: Yeah, I know.

MS. PRAKASH: Okay. Conditions were listed in correct order and certain conditions were listed in -- they were out of order when they were listed.

MS. BROOME: Or that whole listing at the

front of the permit that you have no idea what it means, where it's just the unit after unit after unit, okay, why is this here.

MS. PRAKASH: Right.

MS. BROOME: Okay, we have the same problem. Thanks.

MR. VOGEL: Bob Palzer.

MR. PALZER: Hi, this is Bob Palzer of the Sierra Club. When you explained that the facility you were looking at at four years of monitoring data with CAMS and there were numerous violations and then ultimately the permit was written without those requirements, was there any rationale given for why that was done?

MS. PRAKASH: I'm looking at my notes. They didn't reference the violations, obviously they wouldn't reference that in the permit, but they just said that they felt that a daily visual inspection would be sufficient. I can look up -- let's see. Yeah, they just said that they thought it would be sufficient to ensure compliance.

MR. PALZER: Seems pretty lame to me because obviously a visual method that can only be done under limited circumstances at a facility when you had a operating system which showed violations, seems

they're disconnecting.

MS. PRAKASH: I may have to get back to you in writing too because there's also some details in here about switching the COM system from one type of engine to another, from pump engines to blower engines. So I need to follow to see if this was essentially creating a whole new monitoring system for a different set of engines or whether -- my understanding was that they were going to discontinue the operation of what was operating at the time, the COM, and replace it with daily visual inspection.

MR. PALZER: So when you have a chance to review that, will you send that in to us?

MS. PRAKASH: Sure.

MR. PALZER: Thanks.

MR. VOGEL: Verena Owen.

MS. OWEN: Hi, this is Verena Owen. I'm with the Lake County Conservation Alliance. I have two quick questions. Do you recall if the permit comment period extension was given in writing or was this some kind of formal announcement?

MS. PRAKASH: It was definitely not a formal announcement. In fact, the way I found out about it was I was working -- I don't know if -- did Tracy Peel testify today? She was my connection at

NYPIRGs, and she was helping me a lot to figure out what was happening. But she told me that she communicated with a DEC attorney, a Lisa Wilkinson, who agreed to do an extension until June 14th but that the DEC wanted to see from the environmental groups an agreement in writing to this extension period.

So I believe -- which seems backward to me -- but I believe that a few different environmental groups signed on to that, but from what I recall, I went ahead and sent my comments by the 7th, because the whole thing -- I didn't see anything in writing by the 7th, so I didn't want to take the chance.

MS. OWEN: I'm sorry, I'm not sure I understood. The DEC wanted environmental groups to have some kind of commitment to the permit comment?

MS. PRAKASH: I guess agree that we felt that the -- she wants a letter or letters from all of us environmental groups agreeing to the extension. That's what this e-mail from Tracey Peel says to me. So I think that -- I guess she wanted in writing that we thought the 14th was sufficient. So there may have been something ultimately in writing, but I don't have that in my file.

MS. OWEN: Okay. When you said that you're not sure that your comments were considered, do

you believe the DEC has kind of a relevancy threshold to public comments and feels that certain comments do not require a response?

MS. PRAKASH: A lot of my comments overlapped with -- the technical comments overlapped with NYPIRG's, and those were responded to. Now, I have not been able to put my hands on the DEC's response in the past week, so I can't go through that and tell you right now, but I do remember looking through and thinking, well, a lot of comments that were very similar to mine were addressed, but some of the comments that I had made that were not made by NYPIRG were not addressed. So I couldn't tell if they thought that they addressed them by -- if normal practice to sort of take the most detailed comments and respond to those or if they really just never got my fax.

MS. OWEN: Thank you.

MR. VOGEL: Keri Powell.

MS. POWELL: Hi Swati, this is Keri. I'm sorry I can't help you more on what happened with that permit proceeding, but as you know, I wasn't at NYPIRG when that started happening. Tracey didn't testify because she's actually not with NYPIRG anymore.

MS. PRAKASH: Oh, okay.

MS. POWELL: So I had a question for you

about community notification. You mentioned that is one of your key concerns and I wanted to know if you had some ideas about what would be effective notification for the availability of draft permits and public hearings.

MS. PRAKASH: Yeah. I think that e-mail alert -- I don't know if environmental news bulletin has -- I don't know how -- I don't know the details of how this would work, but there are a lot of groups that are lucky enough to have staff like we have. A lot of us do use e-mail on a fairly regular basis, and it's just one step. There could be some sort of alert for any time a Title V draft permit is issued. Because right now what we have to do -- there's two ways that there's notification. One is you have to sort of check the environmental news bulletin on a regular basis, which is not so practical, and then the second is that they do send hard copies to the local community boards, which is one, I think, good way to conduct community notification, but I would say it's not sufficient.

So there's e-mail list and then -- if there's a way to expand the number of organizations that receive hard copy, just letters even of notification directing people to either a web site, an updated and accurate web site, or to the physical

location of the permit, that would be helpful.

The permit -- I believe revised permits were sent to -- they were with one local DEC office, they were with one local community organization, and it was with the community board. But if you're not sort of physically near those areas, it's hard, I think, to stop by and read the copies in-house. That's just sort of off the top of my head response.

MS. POWELL: Just to let you know, Swati, I think that DEC maintains a mailing list that you can sign up for, so you might want to get on that.

So you think if they were effectively maintaining a mailing list or e-mailing notification, that that would be enough?

MS. PRAKASH: You know, there's a whole spectrum of community notification. There's the sort of Cadillac version and then there's the, okay, we can live with this version. And I think that good hard copy mailing list, good electronic mailing list, updated web sites and -- would be probably just as a threshold of adequate, yeah. And then there's the next batch of things, which would be -- the way I was notified ultimately was through a phone call from folks, which I realize is not that practical, but that's another, I think, resource for groups that

really are not on-line regularly.

And then finally, public libraries actually -- although they're severely underfunded -- do serve as a source of information for many communities. That's another realm that I think shouldn't be underestimated.

MR. VOGEL: Thank you very much, Swati, for spending time with us today.

Do we have another speaker?

MS. WILLIAMS: Hi, this is Jane Williams.

MR. VOGEL: Yes, we were looking for you earlier.

MS. WILLIAMS: I've been hearing a lot of really wonderful testimony while waiting to speak, so I'm glad that the Title V advisory committee is getting the benefit of all this experience.

MR. VOGEL: If you're ready to talk with us, I think we can go ahead. Let's first ask if Reed Zars is on?

MR. ZARS: Yes, I am on.

MR. VOGEL: Who else do we have on? Anybody else on the line?

MS. WILLIAMS: This is Jane Williams. I am the executive director of California Communities Against Toxics, which is statewide network of over 70