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TITLE V TASK FORCE

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INDEX OF TESTIMONY

TELEPHONIC TESTIMONY OF:	PAGE
Heidi Hollenbach	6
Bill O'Sullivan	26
Lisa Rector	47
Jeff Kitchens	62
Heather Abrams	77
Amy Mann	99
Ned Jerabek	112
Shannon Therriault	121
Michael Lake	130

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8:30 A.M. TUESDAY, FEBRUARY 8, 2005

MR. HARNETT: Welcome, Heidi. Well, I think we're ready to begin, then. This is Bill Harnett from EPA. We'll go around the room just -- well, we'll give you an introduction around the room. We won't be able to do this for every speaker, but we'll go around once to give you a feel for who's here, and then you can go ahead.

You'll have 15 minutes to make your presentation in. I'll give you a warning at the two-minute mark, and then we will have 15 minutes of questions.

MR. SLIWINSKI: Rob Sliwinski, New York Department of Environmental Conservation.

MR. WOOD: Mike Wood, Weyerhaeuser Company.

MR. GOLDEN: David Golden, Eastman Chemical.

MS. HARAGAN: Kelly Haragan, Environmental Integrity Project.

MR. VAN DER VAART: Don van der Vaart, Division of Air Quality, North Carolina.

MR. VOGEL: Ray Vogel, EPA air office.

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

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

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

MS. VIDETICH: Callie Videtich, EPA in Denver.

MR. HITTE: Steve Hitte, EPA, air office.

MS. BROOME: Shannon Broome, Air Permitting Forum.

MS. FREEMAN: Lauren Freeman, Hunton & Williams for the Utility Air Regulatory Group.

MR. MOREHOUSE: Bob Morehouse, ExxonMobil.

MR. LING: Michael Ling, EPA's air office.

MR. HODANBOSI: Bob Hodanbosi, Ohio EPA.

MR. PALZER: Bob Palzer, Sierra Club.

MR. HARNETT: Heidi, if you have any hard-copy materials, I'll give you an e-mail address.

Do you?

MS. HOLLENBACH: Yeah, we will be submitting written comments as a follow-up.

MR. HARNETT: Okay. Is it what you're reading from today?

MS. HOLLENBACH: It will be an expanded version thereof, but I can also send what I am reading today.

MR. HARNETT: Okay. Send it to c-o-x, dot, shannon, s-h-a-n-n-o-n, at e-c-r, web, all one word, e-c-r-w-e-b, dot, c-o-m.

MS. HOLLENBACH: Okay.

MR. HARNETT: And Heidi is with the State of Michigan.

And you can go right ahead and begin.

MS. HOLLENBACH: How's the volume?

MR. HARNETT: It's fine.

MS. HOLLENBACH: Okay. Good morning. I'm here representing the Michigan Department of Environmental Quality. My name is Heidi Hollenbach, and I'm district supervisor for the Air Quality Division, Grand Rapids District Office.

I would like to thank the Task Force for the opportunity to comment on Title V, for the work you are doing to try to improve the program. It is has and continues to be a daunting task to incorporate many complex applicable requirements for each major source to a single umbrella permit and to identify the appropriate periodic monitoring for those requirements. Despite the many challenges, however, Michigan supports the Title V program and believes it has resulted in real environmental benefit. For this reason, Michigan is providing testimony today and also supports the testimony of STAPPA/ALAPCO presented to you yesterday.

First, I would like to provide a little background information on Michigan's Title V program and what has worked well for us. I do this in response to some of the previous testimony regarding problems being encountered in Title V's implementation across the country with the hope that it provides alternative ideas and approaches.

Since its implementation, Michigan has issued 504 initial Title V permits of which 74 have since been voided. In Michigan, these are called renewable operating permits or

ROPs. We have four remaining initial Title V applications that have been delayed due to enforcement action. We are currently working on modifications, reopening, and renewals, with 61 renewals issued to date.

Title V permit writing is decentralized in Michigan. The program is implemented by field staff who are also responsible for overseeing compliance of these sources which ensures "real world" permits. A thorough site inspection is conducted by staff before any Title V permit is drafted.

Michigan has developed detailed template documents for the Title V permit and the statement of basis, known as the staff report. These templates ensure adequate detail and consistency throughout the state. Michigan has also developed periodic monitoring guidance to ensure adequate and appropriate monitoring conditions are included in Title V permits. Additionally, we have a comprehensive manual that provides guidance to staff on all aspects of Title V permit development and public-participation processes.

All applicable requirements are specifically laid out in the permit. Title V sources are provided up to 30 days for review of permit conditions before a draft permit is published for public comment. While this approach may lead to initial delays in the draft permit, many improvements or clarifications to requirements are accomplished through this

interactive process, and the source better understands what is included in the permit and why. By addressing such issues up front, the source is much less likely to comment through the public-comments period or to challenge their permit contents and avoid some of the same comments being raised on citizen or EPA review.

Public participation is an important component of Title V. In Michigan, all draft Title V permits are public noticed both on website and in the department's calendar, a bimonthly publication mailed and e-mailed to a large constituency. Controversial permits are also noted in the newspaper and/or through direct mailing. Information regarding the date by which EPA must receive petitions is also outlined on the permit web page. All relevant comments received in the public-comment period or EPA review period, and any changes made to the permit to address those comments, are documented in the staff report before the permit becomes final. Michigan agrees that public participation should remain a key element in the permitting process.

Michigan provides Internet access to all formal permit-development documents, including drafts, proposed and final permits, as well as the staff reports, and maintains all final Title V permits on our website. It has been our experience that the more information and guidance that we provide through the Internet, the less time is spent by all

parties trying to find or communicate information about Michigan's program.

Michigan has a good working relationship with Region 5. Our contact there provides timely follow-up on potential program deficiencies and program approval issues. Region 5 EPA routinely reviews Michigan's Title V permits between the 30-day public-comment period and provides comments during this period. We believe that it is more efficient for EPA to comment during the public-comment period so all comments can be considered at the same time. Therefore, we would recommend that EPA's review time run concurrently with the public-comment period to streamline the permit-review process. If no comments are received, no further EPA review would be needed beyond the initial period. However, if comments are received and changes are made to the permit, an additional review period could be provided for EPA.

Michigan has a straightforward yet effective compliance certification form. The responsible official must certify that the source is in compliance with all permit conditions except for those specifically identified in an attached deviation report. We strongly recommend this more streamlined approach to addressing compliance-certification requirements. The burden still remains on the source to review the compliance status on a condition-by-condition basis and to maintain documentation to support the certification.

But the form only requires a reporting of deviation. With this approach, deviation information is not buried in stacks of paperwork.

Region 5 staff worked with Michigan in the development of this form to ensure that our process adequately implements the federal requirements. The deviation-reporting form requires the source to describe the time and duration of all deviations, as well as corrective actions, and what actions were taken to prevent a reoccurrence. The agency always reserves the right to require the submission of more detailed reports if staff has any reason to be concerned with the source's or client's history, or with the truth, accuracy, or completeness of any certification report. All deviation reports are reviewed by agency staff and a determination made as to whether deviation will be cited as a violation. Michigan has developed guidance material, detailed instruction, and training for sources to ensure that they exercise due diligence in their Title V certification. In addition to the deviation reporting, a routine air quality division inspection includes a thorough review of the source's record.

Michigan has seen many benefits arise from the Title V program. Although not a direct or intended result of the program, Michigan has seen a reduction in emissions. Emissions from Title V subject sources have decreased 19

percent from 1998 to 2003. Many sources made reductions or accepted more restrictive permit limits to opt out of Title V, and we continue to see this trend. Emissions from sources that have opted out of Title V have decreased 26 percent in that same time period.

Title V has also resulted in better compliance by major sources. Sources better understand and pay attention to their permit requirements. Michigan has noted a downward trend in the number of significant air violations at major sources and attributes this to sources being required to certify compliance with all permit requirements.

There's an improved monitoring -- there is improved monitoring and record keeping, as well as self-auditing, that have resulted in sources identifying and correcting their problems promptly.

In addition, permit conditions are clarified in the Title V permit so the source, the field inspectors, and the public, have a better understanding of their intent and application.

Some improvements to the Title V program are still needed. First, the revision process is onerous and confusing. No process should be so convoluted that we have to spend more time figuring out what category of change an action falls into than to actually process the change. It is often too difficult to determine the category for a change, and the

requirements for public review can be excessive. For example, reopenings to incorporate new federal standards should not have to go through full public comment since the standards themselves have recently been through the public-comment process. We recommended changes be made to the revision requirements to simplify and better streamline this process.

The second concern Michigan has with the Title V program is incorporation of MACT standards into the permit. The complexity and various compliance options, many MACT standards are exceedingly difficult to incorporate into the permit format while still maintaining the flexibility intended in many of the standards. It is not practical or meaningful to include an entire standard word for word within a Title V permit, nor is it useful to provide only a single place-holder requirement. The balancing act between the two extremes is resource intensive. It is our impression that after this problem was highlighted nationally by many state and local agencies, EPA agreed to specify within each new MACT standard what particular requirements within -- to be included in a Title V permit. This has not happened with the majority of standards, and EPA has not provided any useful guidance on incorporating MACT standards for Title V permits.

In conclusion, Michigan has developed an effective Title V program and has seen benefits from its implementation. We believe it is too late for EPA to provide standardized

guidance and template documents, as suggested by others, with the possible exception of guidance on incorporation of MACT standards into the Title V permit. We also see the opportunity for improvements in the Title V permit-revision process. However, Michigan has worked too hard for too long to implement Title V and seen too many benefits to now abandon the program or to support completely undermining the unique solutions that each regulatory agency has developed and implemented along the way.

Thank you. And I would be happy to answer any questions you might have.

MR. HARNETT: Bernie Paul?

MR. PAUL: Good morning, Heidi. This is Bernie Paul with Eli Lilly.

I'm curious to know if you have reviewed any of the quarterly or semiannual compliance reports, deviation reports, and what is your perspective of the nature of the deviations that are being reported?

Is it primarily emission-limit violations, paperwork deviations, record-keeping deviations?

What are you seeing as a result of the compliance reporting that sources are doing?

MS. HOLLENBACH: What we see the majority of deviations for are primarily record keeping, missed records, some opportunities where they were to do some type of opacity

reading that was not done. Things along that nature. We do occasionally see reports of emission violations, which we definitely follow up on as a violation. But, typically, a lot of it is the record-keeping component.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi, Heidi. My name is Shannon Broome, and I've done a fair amount of permitting in Michigan.

So I just want -- one thing is to compliment you on avoiding appeals. We've heard some stuff about appeals yesterday, and one thing that I have noticed is that when people comment on a permit in Michigan, there is a sincere effort to work things out. So I want to compliment you on that.

One question I had was on the -- you mentioned the certification form and the deviations.

Have you been told by EPA that the long form is required for certifications?

MS. HOLLENBACH: Well, the -- there was a lot of work back and forth between Michigan and Region 5 in the development of our form, which we feel still fulfills the requirements, but it's not considered a long form. And it took a while to convince Region 5 that this was an appropriate way to go. And they did eventually side with us and accept our form.

MS. BROOME: And they didn't mention to you that RTP's position has been that either the short form or the long form is acceptable in that discussion?

MS. HOLLENBACH: We had heard that kind of feedback, yes.

MS. BROOME: Okay. Great. Thank you.

MS. HOLLENBACH: Uh-huh.

MR. HARNETT: Bob Palzer.

MR. PALZER: This is Bob Palzer with the Sierra Club. Thank you for calling in. I'm really impressed with the way in which you give public -- your use of the Internet, not only to give public notice of permit issuances, and to have the supporting documents. Because oftentimes that is a big problem for the public to get involved in the program.

The question that -- I have several questions. You mentioned that you try to work closely with the source prior to even putting the draft permit out.

Do you also, where you know there's significant interest, do you also try to involve the public at that point in the process?

MS. HOLLENBACH: In my district we have not had that occur. We haven't had any source with a whole lot of public interest.

In the Detroit area there are a lot more controversial sources, and I honestly don't know if they have

gone through that process with any particular group prior to the public-comment period. I can look into that and address that in the written testimony.

MR. PALZER: I'd appreciate that.

As a follow-up, when you do have a public hearing and there are significant comments, how often are those incorporated -- I mean the ones that can be incorporated -- into the permit from the draft to the final?

Does it tend to be a common event or a less common event?

MS. HOLLENBACH: Public hearings aren't extremely common. I think in our state maybe we've had 20 public hearings to date for Title V permits. A lot of times the comments tend to be more New Source Review permitting comments that we can't address through the Title V process. But I do believe if there are comments that are appropriate, that our staff try to make the appropriate change in the permit if it is relevant and appropriate to do so.

MR. PALZER: Okay. Thank you.

MR. HARNETT: Adan Schwartz?

MR. SCHWARTZ: Hi. This is Adan Schwartz with the Bay Area Air District.

I wonder if you could speak to the interface of minor new-source review and Title V in Michigan and how you keep the permits up to date with minor NSR permits that are

issued after the Title V permit is issued; whether they exist off permit for a while, or whether the permit is updated simultaneously, and so forth.

Thanks.

MS. HOLLENBACH: At this point, the permit -- the New Source Review, minor New Source Review permit is issued. It is not automatically included in the Title V permit. We are exploring ways to do that to be more efficient in our permitting process.

Typically, a minor permit does remain off permit until it is processed as an administrative amendment, if the permit has gone through public comment. If not, it will also just remain off permit unless another change is made to the permit, and then we would incorporate those additions.

MR. SCHWARTZ: Just one follow-up. Is that true even if there's a conflict between the minor NSR permit and the terms of the Title V permit?

MS. HOLLENBACH: If that is the case, we do try to process those types of permit changes. The companies typically want to see that happen to avoid having to report deviations. But if there is a conflict, we do recommend to the company they report the deviation. We will not take follow-up action obviously. But our rules allow for a company to follow the conditions of the New Source Review permit even if it conflicts with an existing Title V permit if it has not

yet been ruled in. As long as they are in compliance with that New Source Review permit.

MR. HARNETT: Bob Morehouse.

MR. MOREHOUSE: Heidi, this is Bob Morehouse, ExxonMobil. I may not have heard you correctly, so the question, did you indicate that the permit engineers visit the sites that they're working on the permits for?

MS. HOLLENBACH: Yes. The field staff who draft the permits are also the inspectors for those sources. But typically they're already quite familiar with the sources, but they do a site visit and an inspection prior to drafting the Title V permit.

MR. MOREHOUSE: Thank you.

MR. HARNETT: Michael Ling?

MR. LING: Good morning. This is Michael Ling with EPA.

You mentioned that you had some experience with renewals. I'm just wondering if you can characterize the kind of review that you're doing at renewal and the kind of actions that you're taking to update the permit, if necessary.

MS. HOLLENBACH: The renewal process is still a bit onerous, we're finding, primarily because we have updated our template document and made some changes. We are taking pains to make sure the renewals are up to date and that anything that was deficient in a prior permit is addressed,

cleaned up. And it is taking quite a bit of time to do that.

MR. HARNETT: Mike Wood.

MR. WOOD: Good morning, Heidi. This is Mike Wood with Weyerhaeuser. Thank you for taking time to call in this morning. Your comments are very well-prepared.

I have a question about your templates and whether those are generic, or if you have a number of templates that are industry-specific?

MS. HOLLENBACH: No, our template is basically comprised of the general conditions that would apply to all sources, and then the formatting for the different emission-unit conditions for each condition-free emission unit, that will then get filled in by the permit writers. And, it's also some appendices, so it's a generic document, but it's formatted in a way that enforces the permit writer to be consistent in how they draft permits for individual sources.

MR. WOOD: Are insignificant emission units -- how are those addressed in your permits?

MS. HOLLENBACH: Our rules do not require the reporting of very insignificant emission units in the application. Those that are required to be reported are any with applicable emission limits or standards. And we have crafted some -- this is where we might -- we have some templates that are generic. We've crafted some templates for

those types of emission units that have standard conditions, and those are included in the permit, if applicable, for certain sources. So the work is done all up front. The conditions are the same for all those sources for those types of emission units that are de minimis.

MR. WOOD: In your written testimony, could you provide an example of one of those insignificant templates?

MS. HOLLENBACH: Okay.

MR. WOOD: Thank you.

MS. HOLLENBACH: Uh-huh.

MR. HARNETT: Steve Hagle.

MR. HAGLE: Good morning, Heidi. This is Steve Hagle from Texas. I had a question about a statement that you made, and I just wanted to clarify what you were saying. You said permit conditions are clarified in the Title V permitting.

Does that mean that you're going back and looking at NSR -- underlying NSR permits and trying to clarify some of those conditions? I really didn't understand what that comment was in relation to.

MS. HOLLENBACH: Yes. What we attempted to do is when a New Source Review permit condition is not worded well or is vague or not specific enough, we have tried to clarify the language in the Title V permit so the source understands, we understand, and it's clear to the public.

MR. HAGLE: So are you actually changing the underlying NSR permit, or are you just adding additional language as part of the Title V permit, or how do you do that?

MS. HOLLENBACH: We are not changing the underlying New Source Review -- or underlying applicable requirement. We're just simply hopefully improving the verbiage.

MR. HAGLE: Thank you.

MS. HOLLENBACH: Uh-huh.

MR. HARNETT: Verena Owen.

MS. OWEN: Hi. This is Verena Owen with Lake County Conservation Alliance. I have three quick questions.

You do concurrent review. If you receive public comments, does the review stay concurrent, or can EPA request to have them be sequential?

MS. HOLLENBACH: Maybe I can clarify that. We currently, although EPA has agreed to review our permits during the 30-day public-comment period, there still is a subsequent 45-day EPA review period. Typically they don't use that period to provide comments; they provide comments up front for us.

MS. OWEN: Okay. Thank you.

Do you respond to comments?

MS. HOLLENBACH: Yes.

MS. OWEN: Last, the calendar you mentioned, it

sounded like some kind of cost-saving device. You said you mailed it out to a lot of folks that are interested.

Does this calendar contain public notices for permits that went out to draft?

MS. HOLLENBACH: Yes, this calendar, actually, is a department calendar and includes all public notices for all of the department's actions, including all of our Title V permits.

MS. OWEN: So this is a biweekly calendar?

MS. HOLLENBACH: Yes.

MS. OWEN: So you issue permits basically every 14 days in bunch instead of --

MS. HOLLENBACH: What we do is, we start the public-comment period, the publication date of a calendar. That's the first day. So it would appear twice in the calendar during the 30-day public-comment period.

MS. OWEN: Thank you.

MR. HARNETT: Marcie Keever.

MS. KEEVER: Thanks for calling us, Heidi. I had a question. You mentioned something about some permits were still not issued because of enforcement actions, and I'm wondering how your state deals with enforcement or compliance problems when also having to deal with issuing Title V permits?

MS. HOLLENBACH: We have a scheduled compliance in

the appendix of the permit that we use when a company is not in compliance with the terms and conditions of permit. That works in most cases, however we do have -- these remaining four have major enforcement issues ongoing, enforcement actions.

And as far as I understand, there is not an agreement yet, necessarily, on the corrective action. Although, I think there are two that are going out. One's going out for public comments in the very near future; and one they will probably include a scheduled compliance in the permit without the company having submitted it and to try and enforce the permit through that way.

MS. KEEVER: Thank you.

MS. HOLLENBACH: Scheduled compliance is the way we typically deal with a noncompliance issue.

MR. HARNETT: Keri Powell.

MS. POWELL: This is Keri Powell from the New York Public Interest Research Group.

I was wondering if you could expand a little upon what factors your agency considers in deciding how much monitoring is needed to assure compliance and how well that process is working for you.

MS. HOLLENBACH: We do have, as I mentioned, a guidance document that lays out typical periodic monitoring that can be used for different pollutants for different types

of sources. That has been the foundation of our periodic monitoring program, how we've identified appropriate monitoring.

Does that answer your question?

MS. POWELL: I'd appreciate it if you'd describe the guidance a little bit. Just more detail.

Do you supplement existing monitoring conditions and regulations with additional monitoring when you think it's necessary?

MS. HOLLENBACH: Yes, we do. If there is not a monitoring requirement for the applicable requirement, we will make sure that there is something in the permit that can demonstrate compliance with that particular condition.

MS. POWELL: And what if there is some amount of monitoring in the underlying requirement but you don't think it's sufficient to assure compliance?

MS. HOLLENBACH: Do we gap fill?

MR. HARNETT: Could I ask if you would just submit that for our record, a copy of your guidance? That would probably be helpful.

MS. HOLLENBACH: Okay.

MR. HARNETT: Don van der Vaart.

MR. VAN DER VAART: This is Don van der Vaart with North Carolina, Heidi.

I was just wondering, on MACT requirements, just

two little questions: One, do you do anything with the Title V permit between the notification that a source thinks is subject to the MACT and the substantive compliance date of that MACT, which is usually about two-and-a-half years?

And then what -- what do you do, either before or after that substantive compliance date, in terms of placing those conditions; in other words, do you do it by reference or do you paraphrase, or what?

MS. HOLLENBACH: If a MACT is in effect, -- and we have in the past reopened permits to include MACT provisions in the permits -- if it's between the notification and the first substantive compliance date, we would not reopen. But if we are in the renewal process, we have included the MACT provision, as best we can, into the Title V permit.

How we do that is, we're kind of in the middle. We do not do a high-level citation, nor do we include every detail of the MACT to try and find an appropriate middle ground: at least the emission limit, any work-practice standards, monitoring, record keeping conditions in the permit.

MR. VAN DER VAART: Now, do you reopen if the compliance date -- if the actual substantive compliance date occurs before renewal?

MS. HOLLENBACH: We have done that for a number of them. I can't speak to all of our permits, but I know that we

have reopened a number of permits.

MR. HARNETT: Thank you very much for your time, Heidi. We appreciate it.

MS. HOLLENBACH: Thank you.

MR. HARNETT: Is Bill O'Sullivan on?

MR. O'SULLIVAN: I am here.

MR. HARNETT: Bill, this is Bill Harnett. You have a mixed crowd here of representatives of public interest groups, states, and industry, and you're free to go ahead.

I'll give you a warning -- you have 15 minutes for your presentation, then we're going to take 15 minutes for questions. I'll give you a warning when you have two minutes left.

MR. O'SULLIVAN: All right. Well, thanks, Bill, for the opportunity to present this oral testimony. I think the states and locals have a lot to offer. I just wanted to say that much of what Michigan has said satisfies New Jersey as well. There is a lot of commonality in how you approach our operating-permit program.

I have with me here my chief of my operating program, John Preczewski, and also his second in command, Rich Langbein, in case I can't answer questions, which may be the case.

I want to just focus on renewals right off the bat. I think now is a good time to take operating permits to

the next step. As Michigan pointed out, there's an opportunity to improve our operating permits with the renewals. What we are planning to do here in New Jersey is to, with each renewal, provide a comprehensive overview of the air-pollution control at each facility and do this at least once every five years.

We see the operating permit not only as a good enforcement tool, but as a useful air-quality-management tool. With a good overview of the facility once every five years, this can be useful to the public, to the air agency, and to the facility management. And when I'm talking about a facility's overview, I'm talking about primarily seven items.

One is to summarize the facility changes over the last five years. Some of these changes could get buried in these rather big permits, and so a summary of those changes is appropriate. This would be for both significant and insignificant sources. The insignificant sources are not subject to permit revision during the five-year term. They're only subject to revision at the five-year renewal. So it's important to explain the changes to insignificant sources at that time.

Two, to show the emission trends for the criteria pollutants and the significant HAP. We all have emission statements which show us the emissions for each of the major facilities. We're asking our major facilities to show what

their trends have been in the criteria pollutants over the last five years and for selective hazardous air pollutants as well.

Three, listing of the stack-test results, if any have been conducted over the five years.

Four, summarizing exceedances. We've gotten annual compliance certifications and deviation reports, how about -- some summary of these deviations at the five-year renewal is appropriate.

Five, give the company an opportunity to describe their efforts to reduce emissions.

Six, summarize any air-quality modeling and risk assessment that has occurred, and we're seeing more and more of this as we are getting into the regulation of hazardous air pollutants.

And, finally, seven, give the company the opportunity to describe what it will or what it intends to do to reduce or minimize air emissions over the next five years.

Let me get into some general feelings about the Title V program. I think it's largely been successful at achieving its purpose. It provides a consolidation of the numerous conditions in our preconstruction permits. In New Jersey, we had approximately 21,000 separate permits for individual pieces of equipment at these facilities. Now they're in a permit, facility-wide permits, for 350 sources.

The details are still there. The significant emission units, there's still the details in the permits, but it's organized and it's done in a facility-wide way. In addition, we've got the grandfather sources in these permits, and we have general descriptions and inventory of the insignificant sources.

So for the first time we have a better picture, a good picture, of what the true situation is at these major facilities, and the facility -- many of the facilities, for the first time, they also have this picture. We think that compliance-assurance monitoring has been very helpful. We think we're still scratching the surface on testing and on monitoring. But the monitoring that is included in the permit has been helpful at assuring compliance.

We see emission reductions as a result of these permits; and that the sources have become aware of the requirements; and because of the monitoring and record keeping or reporting that's required. Some sources have used the opportunity to put enforceable permit conditions in their minor-facility permits to avoid becoming major facilities, and that's helpful for air pollution as well.

A comment on something that's been discussed by this work group is whether or not there should be uniform Title V permits, forms, and policies. We don't believe this would be constructive at this point. Each state has developed its own forms and procedures, and each state needs to evolve

from where it is now to better, more effective permits. So we don't believe that there should be uniform operating permits across the U.S.A. at this point. We do think it would be appropriate for EPA to provide what I call a model for (inaudible) sets or federal rules. For example, MACT and NSPS, that would be very helpful. And we think it's appropriate for states to be sharing exemplary permit conditions for common-source categories as we evolve with our renewable permits to better permits.

B, touch on B, it's also an important point: We found that $25 a ton was inadequate. We are up to $90 a ton. And this is obvious for the need for increased fees as emissions decrease because we have more air-pollution controls, permits become more complicated, the work increases. The work doesn't decrease as emissions decrease. We've gone from low-sulfur coal, to low NOx burners, SDRs, rubbers, carbon injection, numerous DEMs, inlet/outlet testing; many more requirements than we had 10, 20 years ago. And this all takes more work by the facilities and by the state inspectors and permit renewers.

I'll comment on our $90 a ton. If you look at the cost, the avoided cost of air-pollution control on the market, it's $700 a ton for SO2, $400 a ton for NOx. So even a $90-a-ton emission fee is a relatively low number compared to the avoided cost of control.

How am I doing with time, Bill?

MR. HARNETT: You have about seven minutes left.

MR. O'SULLIVAN: All right.

MR. HARNETT: You don't have to feel obligated to use it all.

MR. O'SULLIVAN: You know me, Bill. I'll use it all and then some if I can.

A point on certifications. And we've had some issues here with the length of those. We believe that these should be streamlined, focused on deviations, violations, and provide sufficient detail on the deviations. We don't think it's useful for compliance certifications to repeat applicable requirements for source operations where there is no problem. We find that the front line certifications get too detailed for our sources where there are no problems; that the real problems get buried in the certification.

Our average operating permit has 60 significant sources, and it has over 1,000 applicable requirements. So to repeat every one of those, you know, monitoring, record keeping, and reporting requirements in a compliance certification is just not appropriate.

A little comment on the de minimis, and how the states define what is the significant source to include detail of the operating permit. And there is no federal -- there is no federal definition of significant/insignificant. We all do

it based on our preconstruction-permit programs. And there -- and I believe that there should be some further EPA guidance on what are appropriate de minimis levels for significant/insignificant sources.

Incorporation by reference, we, like Michigan, do it both ways. Sometimes -- we've sometimes taken the MACT standard and developed very detailed permit conditions put in the permit. More recently, we've taken to incorporate some of the very lengthy MACT standards by reference. We think that it's important to include options; where there are options in the MACT standards in the operating permit that clearly indicate to the people overseeing the permit what options are selected by the facility to comply with MACT.

I heard a question on site visits. We think that site visits are very useful by our permit evaluators, and that the permits are best when there's a teamwork by the facility environmental manager and his staff, by the permit evaluator, and also by the field inspector. That makes a good team and better permits come out of the process when all are actively engaged.

We think there's need for further training. We think it would be helpful to have source categories specific seminars and the sharing of model permits at those kind of seminars; perhaps websites for the state and locals would be useful as well.

Potential to emit, we take the opportunity to define "potential to emit" in our operating permits and think that's a good practice.

Startup, shutdown, malfunctions, we think the reporting of these is very important, and we include our affirmative defense reporting as a requirement in our operating permit. This involves reporting any exceedances during these situations and what actions are taken to address those exceedances and prevent or minimize them in the future.

Public outreach. We don't get much public interest in our permits. When there's a request for a public hearing, we generally honor that request. I don't think we've ever turned down a request for a public hearing, but we don't get many of them. When we get a request to accept public commentary, we do that as well. We don't believe that there should be the need to reissue a public notice if there's a request to extend the comment period.

On environmental justice, on -- some communities have indicated an interest in facilities in their neighborhoods, and we're trying to involve those communities up front with any new -- any significant new or modified facilities in the area, that includes any major facilities with operating permits.

MR. HARNETT: You have two minutes left.

MR. O'SULLIVAN: All right. I'm just about done.

Let's see what we have here. For appeals. We've gotten a number of appeals more recently. Some of these appeals are the substance of permit and we simply made a mistake, or we haven't been clear, and we worked those out with the company. Sometimes the appeals are all over the place. We've even gotten appeals on the boilerplate. So we've got some, what we consider, symbolic appeals from certain industry groups which are, in my opinion, problematic.

On minor mod, significant mod, I think I'll wrap up with that. On minor mods we have a consolidated permit program here, meaning both our preconstruction and operating permits are reviewed and approved concurrently. We do give the facility the opportunity to get their preconstruction approval first as part of the process. So when we go out with the draft operating permit, we give an approval for the preconstruction permit.

For minor mod, the facility can proceed at risk with both construction and operation. For significant mod, a facility can proceed at risk with only construction provided it's not major NSR. We think these are good procedures. We'd like to see some further streamlining here. We think that for significant mods that aren't major NSR, that the facility should be able to also operate when we've issued our proposed permit to EPA and not have to wait for EPA to go through the

45-day veto period.

I think that finishes up the main points I wanted to make, Bill. We are going to follow up with written comments, which I have put together considerably more than I had the opportunity to do in 15 minutes today.

MR. HARNETT: Thank you, Bill.

Bob Morehouse.

MR. MOREHOUSE: Bill, this is Bob Morehouse, ExxonMobil.

Could you explain briefly to the Task Force about the New Jersey write-your-own-permit program that you have?

We have a facility in New Jersey that has utilized that and found that to be effective in working with the state to get a better-quality permit.

I'd be interested in yours with a broader perspective on that.

MR. O'SULLIVAN: There's no magic in write-your-own-permit. The original intent of the Title V program was that the major facilities would submit draft permits to the state, and we'd approve them. And early on in the program we found that that wasn't possible, and we pretty much started writing the permits for all the facilities.

More recently, in the last year or so, with the very big facilities, the facilities with batch processes, we've taken on a more teamwork kind of review where we've

involved the facility environmental management in writing the permits and encouraged them to do more of the up-front work on the permit conditions with our oversight, with our visiting the facility, with the involvement of our enforcement inspectors; that teamwork I was talking about earlier. And we found that this takes more time, but it produces better permits: better permits for the facility, better permits for us, and better permits for the public.

MR. HARNETT: Bernie Paul.

MR. PAUL: Hello, Bill. This is Bernie Paul with Eli Lilly.

MR. O'SULLIVAN: Hi, Bernie.

MR. PAUL: How are you doing? I have a question about deviation reports, compliance reports, compliance certifications.

What has been your experience, if you've reviewed these reports, or if any of the staff that's with you have reviewed these reports, what is your experience with the type of information that's being reported as compliance issues, deviations?

Is it mostly record keeping, reporting, or are you seeing a lot of emission-limit violations being reported in these reports?

I'm just kind of curious, trying to get a flavor from different states of what they're seeing in these reports.

MR. O'SULLIVAN: Let me say, as far as -- the Enforcement Program is the only air program that doesn't report to me. So I only can speak from what I know, and that is, from hearing Ed Kromansky (phonetic), who does head up the Enforcement Program, that the reports have been all over the place; that we see all kinds of deviations reported.

If you look at the operating permit, we don't require much stack testing; we don't require much continuous emissions monitoring. We do require a lot of process reporting. So obviously you see more deviations on the things that you specified as applicable requirements and less on emissions because you don't ask for much in the way of emissions testing and monitoring.

MR. HARNETT: Bob Palzer.

MR. PALZER: All right, Bill. Thanks for calling in. I'm representing the Sierra Club.

Did I hear you correctly when you said that once compliance certification has been made, there was no need to do it again?

MR. O'SULLIVAN: No. No. Compliance certification have to be done periodically. What I said was that compliance certifications should focus on deviations and should not repeat a lot of information on equipment for which there is compliance.

MR. PALZER: I'm glad I misheard you. I feel much

more comfortable. Thank you.

MR. HARNETT: Adan Schwartz.

MR. SCHWARTZ: Adan Schwartz with the Bay Area Air District.

My question, again, has to do with minor New Source Review. I know you said you have a consolidated program, Bill, so the Title V Action and the New Source Review action happen simultaneously.

So my question is, can you generalize about what portion of minor resource-review actions are handled as Title V minor modifications; most of them, all of them, or what can you say about that?

MR. O'SULLIVAN: I don't have that data at my fingertips.

John? Rich?

They don't either.

I think a majority of the modifications are minor mods. I sign off on the public notice for the significant mods, and so we're talking thousands a year in the minor-mod case and perhaps a hundred a year in the significant case. We'll get some better statistics there.

MR. HARNETT: Thank you.

Keri Powell.

MS. POWELL: This is Keri Powell from the New York Public Interest Research Group.

In your testimony you mentioned that the compliance-assurance monitoring in permits is helpful, but I believe you said that you feel like the agency is still just scratching the surface.

I was wondering if you would explain that a little further. Does that mean that you think additional monitoring will be needed in renewal permits, and, if so, can you describe the process for deciding how much monitoring is needed to assure compliance?

MR. O'SULLIVAN: Let me start with your last point first.

Like Michigan, we do have some -- we call it presumptive norms for monitoring, reporting, for some comment-source categories. And, generally, we only require the stack testing for the very larger sources, the big boilers, for example; and continuous monitors, the same way. Most of the sources at the facility average 60 sources per facility. It's production records; is the source keeping within the production of -- that it committed to as maximum production in the permit. And there might be some other conditions on raw materials and that sort of thing.

So there is not much testing and monitoring. I think as we go forward in the future, we'll find the need for more testing and monitoring, and hopefully this will become more cost effective as the cost of continuous monitors go down

over time.

MR. HARNETT: Callie Videtich.

MS. VIDETICH: Hi, Bill, this is Callie Videtich from Region 8 in Denver.

MR. O'SULLIVAN: I can't hear you.

MS. VIDETICH: My name is Callie Videtich from Region 8 in Denver.

Can you hear me now?

MR. O'SULLIVAN: I still can't hear you.

MS. VIDETICH: Can you hear me now?

MR. O'SULLIVAN: Yes. Thank you.

MS. VIDETICH: Can you hear me now. This is Callie Videtich, Region 8 in Denver.

The last statement you made in your testimony before we started asking questions, you said, "We think that sources should be able to begin construction once we've issued a proposed permit to EPA."

Does that mean you think that that's what should happen, or is that the practice?

MR. O'SULLIVAN: No, that's what I think should happen.

MS. VIDETICH: Okay.

MR. O'SULLIVAN: I don't think -- right now, significant mod operation, operation, cannot occur until EPA goes through its 45-day period or otherwise concurs on a

permit. And I think we've gone through the draft permit; we've gone to public comment. EPA, in my region, reviews the draft. They do it concurrent with the public.

And the only function of the proposed permit is for EPA to ensure that we've adequately incorporated any comments they might make. And so, generally, we pay attention to Region 2 and incorporate their comments in the permit. So I don't think there's much risk of the source operating upon issuance of the proposed permit. That's the permit that goes to EPA for the 45-day review.

MS. VIDETICH: Certainly, though, under your scenario, if someone else had commented during the public-comment period, and the source begins to construct during EPA's proposed permitting period, the people who commented under their own public-comment period could do a petition, and that may grind things to a halt if EPA is petitioned over the permit.

MR. O'SULLIVAN: It would be at risk. And, once again, we get very little comment on permits, and those we do, we try to incorporate as best we can, and that includes EPA comments. So when we go to the closed permit, we're pretty comfortable that the permit will stand up. The most appeals we get on our permits are from the sources themselves, not from the citizens and not from EPA. Sometimes sources appeal permit conditions that they provided to us.

MR. HARNETT: Rob Sliwinski.

MR. SLIWINSKI: Hi, Bill.

MR. O'SULLIVAN: Hi, Rob.

MR. SLIWINSKI: You mentioned startup, shutdown, and malfunctions, and that reporting is important and needs to be required, if I got that correctly.

Are you currently requiring that reporting in your emissions reporting, and, if so, how do you assure it occurs?

MR. O'SULLIVAN: I believe we're requiring that reporting in two ways. One is as part of our affirmative defense requirements, that any deviation has to be reported within two days, and significant deviations within 15 minutes; along with what actions are being taken to address the deviation and prevent it in the future. And this has been a very good program at getting these kind of exceedances, which are becoming more and more the emissions in this country, addressed.

We also require that the emissions from these deviations be incorporated into the annual emissions statement. Now, how successful we are in getting that information, I'm not sure. I can follow up with my emission-statement people on it. But that is a listed requirement in the emission report.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi, Bill. This is Shannon Broome.

I'm just following up on Callie's question and your statement about the preconstruction and the operating.

I was understanding you to say that you've actually issued the preconstruction approval at the point that the proposed operating permit is going to EPA, right?

MR. O'SULLIVAN: Actually, no. As you probably know, the operating permit is a two-phase process. It starts with a draft permit that goes out to the public. And then after the public comment, we then issue a proposed permit for EPA's 45-day review.

When we do our simultaneous construction approval and operating approval, we do that at the draft stage. We issue both a preconstruction approval and an operating permit modification at the draft stage. Now, depending upon what kind of modification it is governs what the source can do. If it's a minor mod, the source can both construct and operate at that point. If it's a significant mod, it can only construct at that stage, and that's only if it's not a PSD or a major NSR permit.

MS. BROOME: I get it now. I just was not following your steps. So I've got it. Thank you.

MR. HARNETT: Marcie Keever.

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

I think I asked the same question of Michigan.

I'm wondering how you deal with enforcement or compliance problems when issuing either new Title V permits or renewals to facilities in New Jersey?

MR. O'SULLIVAN: Much the same as Michigan, where we already have a -- what we call a consent decree, which would have a compliance schedule in it. We would incorporate that into the operating permit as an operating permit compliance schedule and a reverted consent decree.

The problem comes when a source operation -- we found this with our initial operating permits -- finds a noncompliance late in the process, where they haven't corrected the problem during the time that we're evaluating the operating permit. And we don't have an enforcement action to incorporate into the permit by reference.

In those cases, we try to work out with our enforcement program a compliance schedule. And if they are able to negotiate a compliance schedule with the facility, we would incorporate that prior to the final permit. If timing isn't right, then, like Michigan, we are trying to put in a more generic compliance schedule, that's basically a schedule to get a more detailed schedule while the enforcement of program works out all the details, which as you know sometimes these take considerable time to do.

MR. HARNETT: Bob Hodanbosi.

MR. HODANBOSI: Hello, Bill. This is Bob

Hodanbosi. I just wanted to follow up quickly on the $90 a ton fee.

Is that allowable or actual?

MR. O'SULLIVAN: It's actual, of course. And I'd like to point out that we don't have the 5,000-ton-per-year tax. So whatever you mix, you pay. Most facilities it's -- the big facilities pay a lot. Most of our major facilities aren't paying a lot of money.

MR. HODANBOSI: Okay. And how is that fee set? Do you have to go through rule making? Is that set by the legislature? How is the fee set.

MR. O'SULLIVAN: Our fee is set by legislation. We went back to the legislature a year-and-a-half ago to raise the fees.

MR. HARNETT: And, Bill, we're through with the questions here.

Could you identify the people with you that you referred to before and spell their names for our reporter?

MR. O'SULLIVAN: Let me ask them to say their names and spell their names.

MR. HARNETT: Okay. That's fine, too.

MR. PRECZEWSKI: John Preczewski, that's P-, as in Peter, r-e-c-z-e-w-s-k-i.

MR. LANGBEIN: And I'm Richard Langbein, L-a-n-g-b-e-i-n.

MS. KADERLY: Bill, this is Shelley Kaderly on the line. I had a question about fee construction.

Can I ask a question?

MR. HARNETT: Go right ahead.

MS. KADERLY: I understood that you charged different fees for your HAPs.

Is that still the case?

MR. O'SULLIVAN: The HAP fee program is separate and apart from the Title V permit program. And that is not actually in the air program. That's in our right-to-know program.

MS. KADERLY: Okay. Thank you.

MR. HARNETT: Thank you, very much, Bill.

Our next speaker will be Lisa Rector.

Lisa, are you on?

MS. RECTOR: Yes, I am.

MR. HARNETT: And Lisa is with the Northeast States for Coordinated Air Use Management, or NESCAUM.

Lisa, you can go ahead. This is Bill Harnett. You have a group in front of you who are listening to you: permitting authorities, industry and public-interest groups, as well as EPA.

You have 15 minutes for your presentation. I'll warn you at a two-minute mark to wrap up, and then we will have 15 minutes of questions.

Go right ahead.

MS. RECTOR: Great. Thanks. Hello. For those of you who don't know, NESCAUM --

MR. HARNETT: Can you speak up just a bit? Or if you're on a speaker phone, maybe go to pick it up.

MS. RECTOR: Sorry about that.

MR. HARNETT: That's better. Thanks.

MS. RECTOR: You're welcome.

First of all, thank you for giving me the opportunity to submit my testimony. For those of you that aren't familiar with NESCAUM, we are a 38-year-old association of the air quality management of agencies of New York, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

I just want to focus my comments more on the compliance and enforcement side of Title V. The majority of our states are going to be either testifying in person, over the phone, or submitting written comments. So I don't want to repeat what they're going to be saying to you. I am the staff lead for the enforcement compliance committee, so I work hand in hand with many of the -- or most of these states.

First off, I'd like to say that the Title V program has added a vital component to the state program. At the outset, implementation of the program required a significant amount of resources in order to develop the

guidance materials, the forms, the tracking systems, the reporting mechanisms, as well as the need to train permit and enforcement staff to implement the program. The feeling, however, is that the investment really has paid off in a variety of benefits. First and foremost is the role the permit itself plays in providing a comprehensive document that outlines all the requirements for which a facility must adhere prior --

MR. HARNETT: Lisa, we're still having trouble hearing you. If you could speak up a bit.

And do you have written comments that you might be able to e-mail us as well?

MS. RECTOR: Yes.

MR. HARNETT: Let me give you an e-mail address that will help our court reporter later. It's cox, c-o-x, dot, shannon, s-h-a-n-n-o-n, at e-c-r-w-e-b, as in "boy" --

MS. RECTOR: Yep.

MR. HARNETT: -- dot, com. And if you could again try to speak up a little bit. We're just having some difficulty here in the room. Thank you.

MS. RECTOR: Okay. I apologize.

The major benefit that our enforcement staff has seen is the coordination between the permit writers and the enforcement staff. The initial writing of the permits themselves uncovered a variety of violations, from minor

paperwork instructions to identification of new emission sources.

In addition, this coordination has also led to a greater understanding of what permit writers need to include in permits so that enforcement staff can make adequate compliance determinations, as well as the permit writers gaining a greater understanding -- or, excuse me, the enforcement staff gaining a knowledge of all the applicable requirements, what a state should be looking for in their inspection.

The inspection staff has also noted the benefits to the public in this. The dialogue that is taking place has increased substantially since the implementation of the Title V program. They have a better understanding of what the states can and cannot do. The enforcement and compliance staff are also reporting much more data to EPA on their compliance and enforcement activities. This information is becoming more and more available to the public via online permits, the supporting documents, and EPA's online compliance system ECHO.

The Title V program also has increased the ability of the enforcement program to identify the terminology of the regulatory requirements. In many cases, the Title V permit has been used as a checklist by our compliance staff when they conduct inspections. Using this permit has led to a much more

thorough and complete inspection process.

Another important benefit about the Title V program has been the reports the states receive, especially the quarterly and semiannual compliance reports. This information has proven to be a powerful tool to ascertain the compliance, and many of our enforcement programs have commented that the associated report -- reporting associated with Title V has made them much more efficient in the work they do.

However, our states feel that the annual Title V compliance certifications have not yet proved themselves to be a very useful compliance tool. We recognize their value to the public in that they provide an annual snapshot of a facility's compliance, and they also put the onus on the facility that at least once a year they review all of the applicable requirements; however, it has been our experience that they haven't yielded any new compliance issues or compliance actions.

More important to our staff has been the quarterly reports and semiannual reports that include information on CEMs, fuel usage, and deviations. However, there's still places where the Title V program could be improved. For instance, in the area of periodic efficiency monitoring, the lack of EPA guidance has made the states unsure of what they can and cannot require of the Title V permit. This situation

has hampered the ability to require more monitoring permits, especially when the underlying EPA regulations have inadequate monitoring requirements.

This void left by the lack of guidance is a significant burden on the enforcement staff. EPA's Office of Enforcement & Compliance Assurance, OECA, has implemented a new compliance-monitoring strategy. The CMS requires that the enforcement staff must require stack tests when there is no other means to determine compliance. This places the compliance staff in a position of making a regulatory determination as to what adequate monitoring to assure compliance is.

It has and continues to be the position of NESCAUM that these determinations should be made by Title V permitting staff and clearly outlined in the permit. In fact, in many cases, our member states can't require additional stack testing if it's not a permit term, and they can only require additional stack testing if they have proof or reason to believe that a violation has occurred. Allowing permit writers to include additional monitoring so enforcement staff can competently assure compliance would significantly strengthen the Title V program.

Another area of concern for our member states relates to significant burdens that reporting Title V compliance with enforcement data places on the states. They

recognize the importance of this data, and, however, with the advent of this new program, EPA has requested more and more information to be required reported to DC on their activities, not only on Title V sources, but also on certain synthetic minor sources. And this has resulted in a significant increase in resources devoted to reporting data to EPA, in some cases as much as a 65 percent increase in resources devoted in this activity.

And the problem that lies within this is that EPA has not made a similar investment into their data system. And while other programs in the water and waste areas have developed modern, sophisticated reporting system, the air program still relies on a very archaic, outdated system known as AFS, which is subject to frequent and prolonged breakdowns. In addition, the data reporting structure itself is significantly cumbersome and does not yield transparent data to the public, nor does it provide the public with the data they most greatly need.

And EPA continues to increase the burden of reporting data on the states. And by eliminating the amount of -- by increasing the reporting burden on the states, EPA really limits the amount of time states can spend on assuring compliance with the facilities. There's only a limited amount of resources that states have to implement the Title V program. Reporting air-compliance data would be far less

resource intensive and more likely to be of use to the public if EPA were to develop and employ a more modern relational data base.

Another issue related to Title V in the new compliance-monitoring strategy relates to the group of facilities known as the SM-80s. These are synthetic minor sources to -- permitted at threshold 80 percent of Title V. EPA, or I should say OECA, is now requiring that states inspect these facilities at least once every five years. However, EPA has not directed any funding to inspecting the SM-80s, and Title V fees cannot be used to support those activities.

We understand that they are an important source of monitoring. These are sources that are most likely to be tripping up at 80 percent or at Title V thresholds. However, with limited resources, being able to devote adequate time and energy to this area would require, in our opinion, one of two things: either the ability to use Title V fees to fund these EPA-directed activities, or develop a funding system to collect fees for the SM-80s.

What I'd like to say in summary is that we strongly support the Title V program and recommend the value of protecting air quality and public health. We feel that greater investment by EPA into the program would make the program stronger.

I want to thank you very much for this opportunity to submit testimony.

MR. HARNETT: Thank you.

Michael Ling.

MR. LING: Hi. This is Michael Ling with EPA.

I just wanted to clarify your comments on the reporting of compliance information. It's my understanding that your comments were directed towards EPA policies regarding what compliance data you need to report to the EPA databases, and you weren't commenting about the kinds of information that you were getting from -- your member states were getting from facilities in their compliance and deviation reports.

MS. RECTOR: Correct. It's the data that states are being required to submit to EPA and how they're required to submit it. Our states are required to submit compliance and enforcement information at complete levels by subparts, which makes it very confusing. You can have a single pollutant in violation of multiple subparts.

MR. LING: Thanks.

MR. HARNETT: Rob Sliwinski.

MR. SLIWINSKI: Hi, Lisa.

MS. RECTOR: Hi, Rob.

MR. SLIWINSKI: Would you go into a little bit of detail for everyone here about the EPA's recent ICR about

increasing the data that's going to be required for enforcement that the state's going to have to comply to EPA -- provide the EPA?

MS. RECTOR: Sure. Probably the area of greatest concern to our states is what is known as PCEs, or partial compliance evaluations. These -- it is our understanding that these are the on-site activities. I probably actually need to step back.

In the CMS strategy, EPA got away from reporting in sections and now has reporting in what is known as full-compliance evaluations, or FCEs. And these are when you take a variety of tools that you have, including inspections, reports, and whatnot, and make a determination about a facility's compliance. This is now what states report to EPA, this is the bean that is counted; this is how they measure the effectiveness of the state program.

EPA is now requesting, or requiring, as a mandatory state or reporting element, that states report partial compliance evaluations. These are when states are on site doing a stack test, completing an inspection. These are numerous requirements, and it will significantly add to the burden that states have to have. It is a huge resource drain, especially when you take a look at the single-stack test element.

A stack test will mean each time you have to enter

an item, it will have to be for each pollutant at each emission point. In some cases, for something like a municipal-waste combustor, that would require them to enter the task 30 times. A single test that tests for one -- for 30 different pollutants, for 30 different times, it takes several hours. So it's a very onerous requirement that is not coming with any additional resources from EPA.

MR. HARNETT: Bob Palzer.

MR. PALZER: Hi, Lisa. Thanks for calling in. Well, yesterday the president released his budget and EPA -- the budget enacted as proposed, EPA will take a significant cut.

Could you prioritize the things that you would like to see? You have mentioned a number of things that you feel EPA should be doing.

Could you prioritize for me things that would help the Title V program?

MS. RECTOR: Are you speaking in general on the Title V program, or merely from an enforcement and compliance perspective?

MR. PALZER: No, the issues -- you were referring to a number of things, lack of guidance and so forth.

MS. RECTOR: Well, I think, you know, first and foremost, guidance to assure compliance and adequate monitoring is what I think would be very helpful.

I think the second thing from a state's perspective is to make an investment in a data system that would allow states to more effectively and efficiently transfer their information up to EPA. It is not a significant amount of money. I believe it's about $5 million that EPA feels it needs to implement this new system, and the resources aren't there for that to happen. This would allow states to decrease the resource burden associated with reporting that data and would also, I think, provide better data to the public and EPA.

So I think those would be the top two priorities, are the -- would be the data reporting and the guidance on monitoring.

MR. PALZER: And with that, with those changes, would the process become more transparent? That was what one of your comments, that a lot of the things aren't very transparent to the public.

MS. RECTOR: Yeah, I think a more modern data system, I think if you had clearer monitoring requirements, you would get more testing data. If you had the data system that would allow for electronic submittal by companies -- for instance, their annual Title V certifications -- you could have those available on the web without a significant amount of resources from the states or EPA. You could have permits, much more information available to the public, much more

visibility.

MR. PALZER: Thank you.

MR. HARNETT: Kelly Haragan.

MS. HARAGAN: Hi. This is Kelly Haragan with the Environmental Integrity Project.

And I understood you to say that you think it's important for states to be able to determine what monitoring is needed to assure compliance, and then you said something about states being limited in their ability to require stack tests?

MS. RECTOR: Yes.

MS. HARAGAN: And I wasn't sure. Could you explain a little more about that?

MS. RECTOR: Sure. In many of our states -- I can't state all of them, but in the majority of our states, unless a stack test is required as a permit condition, the states can only require a stack test to be performed if they have reason to believe a violation is occurring. So unless the states have some way of -- some type of evidence behind them to go to their required enforcement order, they can't get any stack test to assure compliance.

MS. HARAGAN: And that's a statutory requirement?

MS. RECTOR: That's a statutory requirement.

MS. HARAGAN: And so they would need -- they would need to have some other monitoring on the source to know they

think there's a violation in order to require a stack test?

MS. RECTOR: They would need to have some type of either -- they'd have to have some sort of evidence or belief or something to go to their attorneys to put an order in effect to require the stack test.

The other piece is that, even if they can require them to do a stack test, it usually takes action by their attorneys, and their attorneys only have so much time. So it's a question of prioritizing. If you've got an investigation ongoing with an actual violation versus trying to get an order out to perform a stack test, it's likely that the investigation where there's a known violation isn't going to take priority.

MS. HARAGAN: So the -- if those states were drafting a Title V permit, and let's say everyone assumes that the statute requires them to put in monitoring adequate to assure compliance, that those states can't choose to require a stack test for that monitoring? They would have to use some other --

MS. RECTOR: If it's in the permit as a condition, they can require it. The problem is, if it's not in the permit as a condition, and the enforcement and compliance staff doesn't have that information to determine compliance, they can't force them to do a stack test unless they have reason to believe that a violation is occurring.

MS. HARAGAN: Okay. Thanks.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi, Lisa. Thanks for joining us today.

Just a quick follow-up on Kelly's question. If you could submit those statutes or regs to us, that you think prohibit requesting a stack test, that would be great, but that wasn't my question.

MS. RECTOR: Okay.

MS. BROOME: That wasn't my question. I just really would love to see that.

You talked about resource constraints, which I know are real, and then, also, you talked about the desire to supplement on a case-by-case basis New Source performance-standard monitoring.

And I'm just wondering -- or to have EPA give you guidance as to how to do that on a case-by-case basis. And I wonder how you weigh that against some suggestions yesterday -- I forget which state it was; suggested that really that's something that should be done by rule making, and that would be the most efficient way to do it, and to prevent disparate treatment sources in the northeast versus the midwest, and, you know, that's kind of the debate.

And I wondered how you viewed that has meshing with your resource comment.

MS. RECTOR: Well, I think, you know, ideally, updating the underlying requirements. If NSPS needs to be updated, it should be. But we know how long these things take to happen. And I believe it would be more resource intensive to update the NSPSs.

At this point, I think what our states have talked about is trying to perhaps develop some type of standardized or -- much like New Jersey has, where if it is X type of unit, you should be having certain types of monitoring available so that you have guidance on your major sources that are not going to be required to have stack tests. If there should be standardization across the board, I think that would greatly improve the situation.

MR. HARNETT: Shelley Kaderly, do you have any questions?

MS. KADERLY: No, I don't. Thank you.

MR. HARNETT: Thank you very much for your time, Lisa, and we're finished for now.

We're going to take a break now, and we'll reconvene at 10:30 local time here in San Francisco for the next speaker.

(Recess taken at 9:57 to 10:30 a.m.)

MR. HARNETT: This is Bill Harnett from EPA, and we're reconvening at this moment.

Jeff, we have in the room a group of

representatives of permitting authorities, industry and public interest groups, as well as EPA.

You will have 15 minutes to make your presentation. I'll give you a warning when you have two minutes left. And then we have 15 minutes set aside for questions, and go right ahead and begin.

MR. KITCHENS: Thank you.

MR. HARNETT: And please speak clearly. We have a court reporter trying to take this down, and if you can imagine, the terms are new to her, and so the clearer and slower you can speak, the better.

MR. KITCHENS: Okay. Hello. My name is Jeffrey Kitchens, and I am representing the Alabama Department of Environmental Management. I would like to thank you for the opportunity to provide our department with testimony on the Title V operating permit program.

Currently, the Department of Air Division, which is comprised of approximately 90 engineers and scientists, is responsible for permitting and inspecting 320 Title V major sources and over 260 facilities that hold synthetic minor operating permits, or what some agencies call FESOPS.

As with any program, the department's knowledge and understanding of all the requirements of the Title V program have developed and evolved, with the exception of this program, and continue to do so to this date everyday. This

statement also holds true with respect to the regulating community. The department feels that the Title V program has both positive and negative aspects. I'm sure that some of the comments that I will share have been voiced by others. To begin with, I would like to share some of the positive aspects or benefits of the Title V program that we have noticed.

First, we feel that one major benefit of this program is the fact that you now have one document for each facility, which contains or references all the regulatory requirements for the facility. For Title V, our department issued air permits for each emission source or group of emission sources if we were able to aggregate them at a given plan. Many of the requirements contained in the air permit were what we call standard provisions and were duplicated in each permit.

In the Title V major source and operating permit, the general provisions are only stated once, eliminating previous duplication. In the previous air permit, there was no statement as to the regulatory basis for each of the provisions or requirements. Since the Title V permits have the regulatory basis for each of the provisions or requirements, the regulatory reference is easy to define for both the community and the public. It is also easy to determine if that regulation is being applied correctly.

As a result of the Title V permit program, we have

discovered plants where certain regulations have been incorrectly applied, and we have also discovered requirements that are applicable to some sources that have not been applied in the past.

Second, we believe that the Title V program has led to a reduction in emissions. Under the Title V program, facilities are required to develop and implement a comprehensive monitoring approach for each significant unit as planned. The Title V program also requires facilities to pay emission fees each year to support the Title V program where the plant is located. We have noted in Alabama that for plants to be able to avoid these two items, as well as to be able to avoid what they've determined to be other burdensome requirements of the Title V program, some companies have opted to reduce or restrict the emissions from their plants to levels below that which would require them to obtain a major source operating permit.

Some of these reductions may only be on paper. We feel that actual emissions have also been reduced so the companies can avoid the Title V program. Some instances of these actual reductions include changing to lower VOC or half-content coding, installing control devices where they would not otherwise be required, and changing to lower sulfur-content fuels. Reductions in actual emissions may also be attributed to companies' desire to pay less in Title V

commission fees, which in Alabama are directly linked to actual emissions.

As I stated previously, a benefit of the Title V program is that it has brought about more monitoring by plant personnel which is adequate to provide the department with a reasonable assurance that compliance with the applicable emissions limitations are what's practical. Both periodic monitoring and the compliance-assuring monitoring have caused plant personnel to pay closer attention to the operation and maintenance of both the processes and the control devices associated with these processes.

Not only has the program required more monitoring, the Title V permit has also set out time frames by which the plants must initiate corrective action when deviation for permit requirements occur. We feel that these factors have likely also led to a reduction of emissions from the plants that hold major-source operating permits. The requirements to submit an annual compliance certification has also led to increasing accountability for environmental issues at the plant-management level as well as the corporate level. When the responsible official has to sign under the required certification language of the annual compliance certification, we feel that he or she is compelled to hold plant environmental issues to a higher degree of scrutiny than they have in the past.

The last benefit of the Title V program topic that I will discuss today is the Title V fee. We feel that Congress was correct to include a funding mechanism when this program was conceived. Without this self-funding mechanism, there's no doubt that the department would not be able to fulfill its duties related to the Title V program and would not be reaping the aboveformentioned benefits from the program.

While our department has seen benefits arise from the Title V program, we've also noted some negative aspects that have hampered the effectiveness of this program or have hampered our department's ability to effectively and efficiently manage this program.

Although combining all the requirements for a facility into one document has its benefits, one negative aspect of this is that it has also created lengthy and complex documents. Some of the Title V permits we have issued exceed 300 pages in length. As you can imagine, a document this size is very hard to navigate and hard to totally comprehend, not only to the general public, but also for the regulating community.

The Title V permit can also become very complex. Trying to compose a sensible and logical permit or a facility for which there are several national emission standards or hazardous air pollutants or MACT standards applicable can be a

daunting task. Compounding the complexity is the issue of overlapping requirements. Think about an emissions unit that underwent a PSD review that resulted in BACT limits that is also subject to various NSPS, MACTs, and other state regulations; it is very difficult to organize an understandable permit that adequately covers all of these requirements.

Another problem that our department has encountered is providing an adequate level of detail for an emission unit subject to a MACT standard. We have tried to put as much detail for MACT into the permit as possible without completely rewriting the MACT requirements into the permit. We have also tried referencing the applicable regulatory citations for MACT into the permit. With either of these approaches, we have always been concerned about leaving some minute detail out of the permit that could affect an interpretation of the MACT requirement for that facility.

Secondly, the Title V program has drastically increased the amount of the reporting and record keeping required by the affected facility. As I said earlier, some facilities are subject to multiple regulations, each of which may have its own reporting and record keeping requirements. The Title V permits require reports of deviations from permits requirements on at least a semiannual basis. Some of these deviations are considered excursions or exceedances under an

applicable MACT which may require reporting under a different time line from the deviation reporting of the Title V permit.

An example of this would be a source subject to a MACT that requires reporting on a semiannual basis which is based on a calendar year, and then you have the requirement to submit a Title V semiannual monitoring report, or deviation report, which is not based on a calendar year, that is, it's based on the issuance date of the Title V permit. Trying to harmonize these reporting-time-line discrepancies while meeting the requirements of both the underlying regulations and the Title V regulations has been difficult. We have done our best to try to eliminate duplicative reporting through the wording of the permit, but that is not always possible.

Last, the modification procedures under the Title V program have become complex and time consuming. It is also difficult to determine exactly which type of modification certain scenarios should proceed under. This is complicated when companies have plants in more than one state and have been given differing determinations in those other states about what type of modifications are warranted in certain situations. Significant modifications seem to have extended the wait times for facilities to make certain modifications that could have been accomplished in a shorter time frame prior to the issuance of the Title V permit.

Under our system, a facility who holds a Title V

permit and wishes to install a new emissions unit at the plant can apply for and receive a free construction permit in a relatively short time and apply to modify the Title V permit within one year of the startup of that new unit. If that same facility wanted to modify an emissions unit currently covered by the Title V permit, and that modification was deemed significant, that can lead to an extended time before the company could actually operate under the new requirements. The differences in the way these two permitting actions can be handled demonstrates that much of the procedure for modifying the Title V permits need to be eliminated or changed.

I thank you for the opportunity to provide our department's thoughts about the Title V program, and I'll be happy to attempt to answer any questions that you may have at this time.

MR. HARNETT: Thank you.

Bernie Paul.

MR. PAUL: Hello, Jeff. This is Bernie Paul with Eli Lilly. I'm asking the same question of a lot of states because I'm interested in this issue, and that's, I'd like to hear your description of the types of deviations and violations that are being reported in the periodic reports, whether they're quarterly or semiannual, and the annual compliance certifications.

So if you could describe whether they're mostly

record keeping, recording, mostly emission violations, or some other nature, I'd appreciate hearing about that.

MR. KITCHENS: Well, I think we're probably seeing a mixture of all types of deviations and excursions reported. However, it seems like a lot of them, a lot of the deviations reports coming in, could be record keeping and monitoring types of situations, where it may not be a violation, but where they just had a deviation from some permit requirement.

MR. HARNETT: Verena Owen.

MS. OWEN: Hi, this is Verena Owen with Lake County Conservation Alliance.

You didn't mention anything about public participation in Alabama. I wonder if you could, please?

MR. KITCHENS: To what specifically would you like me to go into about public participation?

MS. OWEN: For instance, do you hold hearings? What is the threshold? Do you use charts for Freedom of Information Act? Things like that.

MR. KITCHENS: Public participation in our state has been up and down, I guess you could say. Of course, we're required to hold public-comment periods for all the permits just like every other state. We hold public hearings when we receive significant comments that are directly determined warrant a public hearing.

MS. OWEN: Excuse me, I don't think I understood

that. Could you repeat that?

MR. KITCHENS: For public hearings?

MS. OWEN: Yeah.

MR. KITCHENS: We hold public hearings when we receive significant relevant comments on the permitting action that lead our directors to believe that a public hearing is warranted.

MS. OWEN: So you have to receive those comments first and then you hold a public hearing?

MR. KITCHENS: Typically, yes.

MS. OWEN: Okay.

MR. KITCHENS: And as far as the Freedom of Information Act, we put the -- we put our statement of basis, public comments, and public notice in the draft permit on our website which can be downloaded free of charge. If you have to review the file, that's done through our records management division, and we usually do charge a nominal fee for any copying costs.

MS. OWEN: How much would that nominal fee be?

MR. KITCHENS: 30 cents a page.

MS. OWEN: Do you have a waiver?

MR. KITCHENS: We don't charge for anything 33 pages and under.

MS. OWEN: 33 pages?

MR. KITCHENS: Basically a $10 threshold.

MS. OWEN: Going back to the hearing, I'm a little bit confused that the public has to submit significant comments first and then have a hearing.

Is there an additional public-comment period after the hearing, or why do you hold a hearing after you receive comments?

MR. KITCHENS: Well, we feel like if we can -- if the public has comments and submits those comments during public-comment period, and we can adequately address those concerns, we see no need to hold a public hearing.

Let me clarify a little bit. In their comments, they have to specifically request a public hearing. It's just not -- we don't do it if we receive a large number of comments. The commenters (sic) have to specifically request to hold a public hearing.

MS. OWEN: How many hearings have you had?

MR. KITCHENS: For Title V permits?

MS. OWEN: Yeah, the last year or two.

MR. KITCHENS: I can't remember any.

MS. OWEN: Thank you.

MR. HARNETT: Adan Schwartz.

MR. SCHWARTZ: Hi. Adan Schwartz with the Bay Area Air District.

Has Alabama -- my question goes to periodic monitoring. Has Alabama developed its own guidance on

periodic monitoring, or has it been entirely case by case? And do you want to just comment generally on your experience with that aspect of the program.

MR. KITCHENS: I would say it's typically been case by case based on the actual emissions as compared to the allowable emission rate. We developed it on a case-by-case basis. We're set up a little different in the fact that our engineers and scientists typically deal with one specific type of industry.

For example, I have one engineer who does the permitting and inspections of the electric utilities. So that allows us to be consistent across all of that specific-type industry with the periodic monitoring.

MR. HARNETT: Mike Wood.

MR. WOOD: Thanks, Jeff. This is Mike Wood with Weyerhaeuser Company. Thank you for taking time to call in today.

I just have a quick question about insignificant emissions, emission units, and how those are incorporated into your permits and what level of monitoring or record keeping you think is appropriate for those.

MR. KITCHENS: For insignificant emissions units, that's one (inaudible) found potential emission in the past were five times the criteria pollutants, they are not even included in the Title V permit but are listed only in the

application.

MR. WOOD: Thank you.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi, Jeff. Thanks for joining us today. This is Shannon Broome.

I wanted to ask you, you guys are using the long form for compliance certification, right?

MR. KITCHENS: I don't think it's exactly the long form that EPA has developed, but it's something very similar.

MS. BROOME: And were you told by Region 4 that that's required, or did you just come up with that on your own?

MR. KITCHENS: It's pretty much been the same form that we've been using ever since the Title V program started.

MS. BROOME: And is there a reason that you require certification with provisions that impose no obligations on the source; for example, just generic provisions that say: this permit conveys no property rights that may require certification with that.

MR. KITCHENS: Typically, you know, we don't require that. You know, that's an understood item, and, you know, is directly applicable to the requirement in the annual compliance certification. A lot of people will list that requirement because it is in the Title V permit, and they are required to certify compliance with each provision, but we

ask -- typically people will note that no certification is required on that item.

MS. BROOME: Thanks.

MR. HARNETT: Ray Vogel.

MR. VOGEL: Ray Vogel with the EPA air office.

The question is about periodic monitoring and testing. Do you typically require, or have you required, testing when you create periodic monitoring; say, some idea of how frequently that occurs?

MR. KITCHENS: Again, we developed our periodic monitoring on a case-by-case basis and we take into account what the actual emissions will be or what the applicant is thinking what the actual emission will be as compared to the allowable emission rate. We take that into account. If we think it's going to be close, then, yes, we would require some testing and maybe some testing at a future date. We verify that. And it's done on a case-by-case basis, and I really couldn't comment on the percentage of time we do that.

MR. VOGEL: You don't have any prohibition from your SIP or state law that puts limits on discretion of the director to require testing?

MR. KITCHENS: Actually, our SIP says that we can require testing at any time.

MR. VOGEL: Okay. Thank you.

MR. HARNETT: Marcie Keever.

MS. KEEVER: Hi, Jeff. Marcie Keever with Our Children's Earth. You mentioned CAM monitoring, and I'm wondering if you have any examples. And you said something about sometimes the state requires more monitoring.

I'm wondering if you have examples of that or situations where either no monitoring was required and you required monitoring, or where you felt that monitoring wasn't sufficient to assure compliance, and that was put in permits.

MR. KITCHENS: Well, we have some state regulations that we've never required much monitoring for, and through the Title V permit, we have included periodic monitoring, and some of those situations will be actually addressed, compliance-assurance-monitoring provisions. I don't have any specific examples for you.

MS. KEEVER: So you guys -- you don't know if you have any examples of whether you found a case where monitoring, while it was there, wasn't sufficient to assure compliance and that you actually increased the monitoring of the facility?

MR. KITCHENS: I don't have any examples of that, no. I can't think back and think of a case where that has happened. I couldn't say definitely.

MR. HARNETT: Shelley Kaderly, do you have any questions?

MS. KADERLY: No, I don't. Thank you.

MR. HARNETT: Thank you very much, Jeff.

MR. KITCHENS: Thank you.

MR. HARNETT: Heather Abrams, are you on?

MS. ABRAMS: Yes, I am.

MR. HARNETT: Heather is with the Georgia Environmental Protection Division.

And if you hadn't been on before, you have 15 minutes for your presentation. I will interrupt at the two-minute mark and let you know when you have two minutes left, and then we'll have about 15 minutes of questions.

If you could speak slowly and clearly. We have a court reporter trying to take all of this information down. Thank you.

MS. ABRAMS: Okay. My name is Heather Abrams. I am the permitting program manager for the Georgia Environmental Protection Division, air branch, and I appreciate the opportunity to give Georgia's views of the Title V program.

First I'd like to say that Georgia fully supports the concept of the Title V. We feel that the single-document approach that includes all the requirements is a very good program. The Title V program has had numerous success stories, not only the consolidation of applicable requirements has great benefits, but also to process the developing operating permit has produced significant improvements. The

application process has resulted in facilities identifying undocumented sources and emissions and better quantifying emissions from these facilities. Permitting agencies have identified new major facilities as well as those that no longer operate.

The Title V process has also resulted in in-depth file reviews performed by the division. Through this research and documentation, we now have a precise and thorough permitting history for the Title V source. This has been essential not only for developing site-specific permitting requirements, but also for years to come when the current permitting staff is no longer here to provide the history. In addition, permits have been made more accurate by deletion or revision of language in old permits that was outdated, inapplicable, and not clear. Noncompliant units were discovered during the application process and were the subject of corrective action. Reexamination of requirements in old permits has also led to enhanced practical enforceability.

Another benefit of the operating permit program has been that a significant number of major sources have voluntarily restricted their operating condition and in some cases installed pollution controls in order to reduce emissions and avoid Title V altogether. This development, which may not have been anticipated, is similar to the environmental benefit that is achieved with sources install

controls, take other limiting action, in order that their emissions not be subject to New Source Review requirement such as the MACT standard. Over the last 15 years, Georgia has developed and implemented the Title V program. After many growing pains, we feel we have developed a (inaudible) program. However, to maintain such a program, it is time to reevaluate the program as a whole. With that in mind, I'd like to discuss some of Georgia's main concerns with the program.

While the Title V permits have consolidated all regulations and requirements into one document, it has created enormous permits that are often confusing and hard to manage, not only by the facility, but also by our staff and the general public. To the greatest extent possible, permits should be written clearly and simply if we are to communicate with the regulating community and the public effectively. One of the problems we sometimes find in permits is incorporation of the MACT requirement. In general, Georgia has tried to incorporate only those sections of each MACT that actually apply to the specific source. While this helps eliminate extraneous requirements that do not apply, it takes a considerable amount of time for the MACT department to do this. Also, no matter how streamlined we try to include the MACT standards, they are often confusing to the general public.

In addition, clear guidance from EPA to assist the state and local agencies in clarification of certain terms, such as periodic monitoring, inherent process equipment to support facilities. Such guidance from EPA would not only reduce the amount of negotiating of permit terms, it would also assure national consistency of interpretation of periodic monitoring requirements, such as whether the Title V permits should require periodic monitoring above what is specified in an NSPS standard. Modifying these permits can be excessively burdensome.

Currently, significant modifications require a lengthy period of at least 75 days before the source can begin to operate. We are under great pressure to turn around permits quickly, and it is hard to do so when there is a built-in 75-day review hearing. We do commend EPA Region 4's effort in aiding when necessary to fast-track a permit. However, we strongly urge EPA to streamline the current process for significant modification across the board.

In addition, just trying to determine what type of modification needs to be done, whether it be administrative amendment under modification or significant modification, it's often confusing, not only for our staff, but industry as well. It would help if there are better guidance on the types of modifications or more streamlined approach to the modifications.

Another challenge is public participation. We understand the value of good public participation; however, the public often does not understand the limited scope of the Title V program and is often frustrated when the permitting authority does not reopen issues decided in a previously-issued permit. These proceedings are often resource intensive with no benefits. The comments we receive at public meetings and hearings most often deal with the public not wanting to source to operate in their area in general. Industry can take the lead in many of these situations, holding public meetings and reaching out to the community leaders, to benefit not only the public's understanding of Title V, but also demonstrate to the community the facility's desires to be a good neighbor.

In addition, it could help speed the permitting process by limiting the number of extraneous comments that we have to respond to. With the issuance of the initial Title V, Georgia was hit with an onslaught of appeals by facilities over their Title V permits. This has been a very resource-intensive endeavor, often ending up negotiating permit language and taking more than a year to come to an agreement. In a few cases, we have had to go to court and have a judge decide the fate of the permit.

In addition, various groups have submitted petitions to EPA to object to several of Georgia's Title V

permits. This has also been resource intensive. When EPA receives a petition under 40 CFR 70.8(z), the petition should be reviewed in accordance with Paragraph D, which requires any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public-comment period.

Paragraph D further states that if the administrator objects to the permit as a result of the petition. These statements taken together mean EPA should review petitions based on the content of the petition. We urge EPA to discontinue the practice of revisiting the entire permitting action, as they have been doing, and review only the issues raised during the public-comment period.

Finally, with respect to EPA's review of the Title V petitions requesting EPA to object to issuance of a Title V permit. The Clean Air Act, Section 502(b)(2), requires EPA grant or deny such petition within 60 days after the petition is filed. The EPA is woefully deficient with respect to the Clean Air Act requirement. These two items, not limiting petitions to only items presented during the public-comment period and not responding to petitions within 60 days, are causing states to expend enormous resources addressing EPA requests more than a year after the Title V petition has been submitted.

Most of the issues are based on issues not raised

in the public-comment period. Approximately 14 petitions to object to Georgia-issued Title V permits have been filed with EPA. The average length of time for a response from EPA has been about one year, and we still have three pending petitions which are all over three years old. The majority of the petitions and appeals have involved concerns about monitoring frequency and stringency in the Title V that have been developed on a case-by-case basis for individual permits.

Meanwhile, reinterpretations of Part 70, Monitoring Provisions, pursuant to settlement of a lawsuit, has left permitting authorities no federal gap-filling monitoring for permits or renewals of permits; when, in the judgement of permitting agency, such monitoring requirements might be needed. This should be remedied promptly. And over the longer term, we urge EPA to systematically reevaluate and re-provide pre-1990 federal standards such that meet the requirements of periodic and compliance-assurance monitoring.

One thing that has resolved as a result of the Title V process, and as a state agency we would not like to see changed, is that permitting agencies developed programs that best meet the needs of their state. These state-specific programs developed because of the lack of specificity in the federal rules and EPA guidance on many aspects of Title V. Title V programs should continue to allow flexibility so that states can design a program to best suit their needs.

In conclusion, Georgia believes the Title V program has great benefits. It is just in need of streamlining with a common-sense approach. Georgia fully supports the comments given by Mr. Jack Broadband (phonetic) on behalf of STAPPA/ALAPCO. That concludes my testimony. Thank you for the opportunity to present Georgia's experience with the Title V program, and I'd be more than happy to answer any questions.

MR. HARNETT: Marcie --

MS. KEEVER: Oh, no. I'm sorry.

MR. HARNETT: Callie Videtich.

MS. VIDETICH: Hi, Heather. This is Callie Videtich. I work in EPA Region 8 in Denver, and I have a couple questions for you, please, about petitions.

MS. ABRAMS: Okay.

MS. VIDETICH: You said that Region 4 had worked on petitions, but that they had reviewed the permits more in depth than the actual petition asked them to.

Can you give me an example or two of the permits that the region did that on?

MS. ABRAMS: Yes. Actually, one permit in particular, and we're still in the process of working through it with EPA, is Cargil (phonetic), in which, when they looked at the permit, they went outside the record and said that we should have -- there was a particular report called a Power's

Report that they said that we should have looked at. That report did not come out until after the permit was developed. So we would not have had access to it.

MS. VIDETICH: Do you have another example?

MS. ABRAMS: That's the one that has been the most pressing for us. I'm sure I could find some other examples for you, but that's the one that has been the most critical for us.

MS. VIDETICH: If you could, if you submit written testimony, could you supply that?

MS. ABRAMS: I sure can.

MS. VIDETICH: And, also, another question for you, did the region work with you guys on an informal basis as they were putting the response to the petition together?

MS. ABRAMS: They did. They asked us a couple of questions, and, unfortunately, that actually became part of the formal records which we were not anticipating. We were just doing an informal knowledge exchange, and it got pulled into the formal proceeding.

MS. VIDETICH: Does that mean you would participate in an informal process again, or did you feel like you got burned because of that?

MS. ABRAMS: No, we would still participate in an informal process. I still fully believe that that is in the best interest of both us and EPA to continue that type of

relationship. I think in this particular case it's just one of those series of unfortunate events.

MS. VIDETICH: Okay. Thank you.

MR. HARNETT: Keri Powell.

MS. POWELL: This is Keri Powell from the New York Public Interest Research Group. You mentioned some frustration with EPA's reinterpretation of the Part 70 monitoring requirements and mentioned the settlement that eliminated the state's gap-filling ability, and I just wanted clarification from you.

Do you feel like EPA's policy is interfering with your state's ability to include monitoring and permits that's sufficient to assure compliance?

MS. ABRAMS: We are finding that we end up in appeal situations, where companies will appeal any monitoring that we put in, and they will use the EPA guidance to say that we cannot do that.

So it has just put us in a quandary, as we feel the monitoring needs to be there. But industry pushes back saying: EPA doesn't; you can't put it in there.

MR. HARNETT: Ray Vogel.

MR. VOGEL: Ray Vogel, EPA air office. I was wanting to know if the appeals were solely due to the periodic-monitoring issue, the appeal of the monitoring that you put in the permit, or if they have to do with other issues

such as errors that crop up in the permit and how you deal with those kinds of problems?

MS. ABRAMS: No. The majority of them were due to monitoring provisions.

MR. VOGEL: All right. Then, also, you mentioned some problem regarding -- which I wasn't quite following -- MACT -- the inability of MACT to meet periodic monitoring and CAM, or some guidance of EPA or revisions that EPA might need to do to make sure that the MACT monitoring meets those levels.

Could you clarify that?

MS. ABRAMS: It wasn't in response to the MACT. I may have misspoke. It was for more like the NSPS standards. MACT we feel is -- those are good standards. We have sufficient monitoring.

MR. VOGEL: All right. Thank you.

MR. HARNETT: Steve Hagle.

MR. HAGLE. Hi, Heather. I'm Steve Hagle from Texas, and I wanted to explore with you a little bit more about one of the first statements you made about going back and adding or deleting language in old permits as part of the Title V program.

Do you actually go into those NSR permits and modify them, and I guess your statute allows you the authority to do that?

MS. ABRAMS: Not our NSR permits. If it's an NSR or a PSD, those limits and the requirements around those limits are not changed. But just for a major source that has not gone through PSD or NSR, we have found that there's errors in limits or the requirements were not clear as to what we intended the facility to do. And those are the cases where we go in and clean it up.

We also have had some cases where what we required, they just don't have to do anymore. There's better ways to do it, and the facility is already doing it a better way. So we incorporate the better requirements in. But for our NSR and PSD permits, we do not change the underlying limit in monitoring for those.

MR. HAGLE: So, I'm sorry, you kind of lost me. What permit, then, are you cleaning up?

MS. ABRAMS: Well, not all of our permits are NSR or PSD. As a matter of fact, very few of them are. The majority of our sources are just major Title V sources, and they don't have PSC or NSR limitations in them.

MR. HAGLE: Okay. But do they have underlying state permit requirements, minor NSR --

MS. ABRAMS: Yes, yes. They have underlying state requirements, and our state rules have revamped over the years, and we clean them up to reflect the new language.

MR. HAGLE: So you can go into those underlying

state minor New Source Review permits and make those changes.

MS. ABRAMS: Yes, we can.

MR. HAGLE: Okay. And then the last -- the other question I had is, you made a statement, that you said that the permit does not always understand the limited scope of Title V.

Have you all made any efforts to hold training or any kind of outreach to educate the public on what the Title V process is meant to do?

MS. ABRAMS: Oh, yes, we have. As a matter of fact, I'm leaving here in about 30 minutes to go do just that. We have -- what we do is, if we think there's an interest -- like tonight what I'm doing has to do with our Georgia Power and just try to educate the public. Right now we're doing renewals, and we're trying to educate them as to what a renewal is, what it can and what it can't do. And we held similar types of public meetings, or public question-and-answer sessions, when we were doing the initial Title V as well.

So we are using our public relations folks quite a bit to try to get the word out there what the Title V can and cannot do and hopefully limit the comments that we receive during the official public-comment period to those that are actually pertinent to the permitting action at hand.

MR. HAGLE: Can you -- if you're going to submit

written comments, could you describe some of those activities that you've had in a little more detail?

MS. ABRAMS: Sure.

MR. HAGLE: Thank you.

MR. HARNETT: Bob Palzer.

MR. PALZER: Thank you for calling in and giving some very good information on programs in your state. I'm Bob Palzer from the Sierra Club.

If I heard you correctly, I believe you were saying that the EPA should limit their comments to those issues that were raised during the comment period and not deal with other issues.

Was that -- did I hear you correctly?

MS. ABRAMS: When they're addressing our petition, yes.

MR. PALZER: Okay. That's only in reference to your petition.

MS. ABRAMS: That's only in reference to the petition, not when they're -- not when they do their review of the actual permit.

MR. PALZER: Okay. I'm glad to hear that.

In addition to doing the public outreach that you're trying to do, how do you give public notice to interested -- to people that might be interested?

Do you use the Internet, or do you e-mail

interested parties, or are you just limiting your activities to putting things in publications?

MS. ABRAMS: We actually do a combination of several of those. We post it on our website. We have a listing of people we notify anytime that we hold a public meeting. And like, for instance, in your case, Sierra Club is on that list, and they got a notification anytime that we have one of these public meetings.

We also do outreach in the communities themselves. We usually have a pretty good indication of those folks in the area that are interested, either through past comments that we received or complaints that we received in that area. And we have the phone numbers and addresses, and we'll send them letters to let them know. Especially if someone is requesting us to have a public hearing, which is different than our question-and-answer, we go ahead and we'll have a meeting to do the question-and-answer well in advance of holding a hearing, and we contact those individuals that have requested the hearing to make sure that they're involved. And then we also put a notice in the legal organ for that area letting people know what we're doing.

MR. PALZER: Thank you very much.

MS. ABRAMS: You're welcome.

MR. HARNETT: Bernie Paul?

MR. PAUL: This is Bernie Paul with Eli Lilly,

Heather. Thank you for your comments. I have a couple questions for you.

One deals with the compliance reports that your agency receives from sources, whether it's quarterly or semiannually, periodic report, or the annual compliance certification, I'm kind of curious to hear your perspective on the nature of the deviations that are reported in those documents, whether they're mostly record keeping, reporting, monitoring, or excess-emission-type deviations.

And the other question I have deals with your experience in trying to streamline or accommodate where you have an emission unit or emission source that is subject to multiple overlapping emission-control requirements, like maybe a unit is subject to a MACT rule, an NSPS, and a RACT rule.

How do you deal with those? If you could answer the compliance-report question first, and then the issue about the overlapping requirements. Thank you.

MS. ABRAMS: Okay. And I will try to answer the compliance report one. The way Georgia is set up, we have a permitting group, and we have a compliance group. And I'm head of the permitting group, and the compliance group is the one that receives all our reports and does the inspections based on the permit. And from listening to them and working very closely with them, the deviations that I generally hear about have to do with record-keeping violations or

deviations. That's generally what we hear. And then, again, they often usually have some shutdown malfunction, excess emissions, that will occur and get reported. But from what I have heard, the majority of them do have to do with the record keeping and reporting. I hope that kind of helps. Again, that's not the part that I'm directly over.

MR. PAUL: That's the kind of answer I was -- the type of description I was hoping to hear. Thank you.

MS. ABRAMS: Okay. As far as the streamlining, we have worked very very hard on this. I have a lot of direct experience with pulp and paper mills, and they have numerous regulations that overlap, especially for Georgia, because we have pulp/paper state rules as well. And what we have generally tried to do is to lay out all the regulations for a specific piece of equipment, and where there's overlap, we take the most stringent, and we'll put that in the permit, and we'll say that the others have been subsumed; or this is the most stringent requirement, that's why this one shows up in the permit.

But we detail all of that out in our statement of basis, so that anyone that looks at it will know that these other regulations, they are applicable, but this one is the most stringent, and that is why it shows up in the permit. When we have cases where the -- maybe the averaging periods don't quite match up, so, you know, on a shorter time frame,

one may be more stringent than the other, we generally put both of those in. But it has been a challenge to do that.

MR. HARNETT: David Golden.

MR. GOLDEN: Hi, Heather. Thank you for your time this afternoon. A quick question about deviation reporting.

As you know, Part 70, specifically, 70.6(a)(iii)(B), requires the state to define "prompt" according to the degree and type of deviation likely to occur.

I was just curious as to how Georgia has approached that in defining the definition of "prompt" for deviation reporting in your Title V permits.

MS. ABRAMS: I know that one of our reporting -- I'm trying to think because I don't have one sitting here in front of me. We do have language in our permit that details when a deviation needs to be reported to us. There's one that has to be reported within four hours, and there's another one that's within seven days. And then for -- and I believe both of those have to do directly with excess emissions.

If it's a deviation in the reporting or record keeping, then they just notify us either in their semiannual report or their annual compliance certification.

MR. GOLDEN: Thank you.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi. This is Shannon Broome from the Air Permitting Forum. I wanted to follow up on the

incorporation of MACT issues because a lot of people have raised that. And you talked about the enormous permits, and hard to manage, and then you talked about that you've put in only the sections of each MACT that apply.

And I wondered if -- two things about that. One is, if you find yourselves making errors when you translate those in so that what actually ends up in the permit sometimes is different than what's in the MACT?

And then the second thing is, are you restricting the otherwise available compliance options for the source when you do that, so that they would have to get a Title V revision in order to use the flexibility that's in the MACT standard?

MS. ABRAMS: Yes to both. We have found ourselves, when we try to paraphrase or kick out just those pieces that fit, we have found that we've made errors. And when we have, we try to correct those as quickly as we possibly can. Generally we catch them during the comment period, which helps because those -- we can adjust them without having to go through another permitting action. And if a company is very adamant that it's wrong and somehow it still makes it in there, if we end up in an appeal situation, we do try to work with the company to resolve that without going to court. We try to resolve it before we get into an appeal situation.

With regard to limiting the options, yes, that

has happened, particularly again with the pulp mills. Under the Subpart F (inaudible) rule, there's three or four different options listed, and we have essentially made them choose which options they're going to use. If not, on any given day, our compliance officers have a very hard time going out and knowing if a facility is in compliance or not based on, you know, different options.

If the option is spelled out in the format, it gives them certainty to what our inspectors have to look for. However, whenever a facility has requested the change, one of the options -- and we have had that happen -- we try to expedite those permits as quickly as possible so as not to adversely affect the facility.

MS. BROOME: And you don't think the record keeping that's provided in the MACT is sufficient?

MS. ABRAMS: Not in all cases, no.

MS. BROOME: If you have examples of that, I'd appreciate it.

MS. ABRAMS: Okay.

MR. HARNETT: Don van der Vaart.

MR. VAN DER VAART: This is Don van der Vaart with North Carolina. I wasn't sure I heard. You were talking about adding monitoring in the context of the recent EPA policy.

Were you saying that the argument had been made

that that policy prohibited your adding monitoring in all cases or in just those cases where the underlying requirement already contained monitoring?

MS. ABRAMS: Where the underlying requirement already contained monitoring.

MR. VAN DER VAART: Okay. So you're still gap-filling as --

MS. ABRAMS: Yes, we are still gap-filling where there is no monitoring -- underlying monitor.

MR. VAN DER VAART: Okay. Thanks.

MR. HARNETT: Keri Powell.

MS. POWELL: Do you happen to know what percentage of your Title V permits EPA is reviewing, actually reviewing, and can you tell me how many permits EPA has objected to on its own accord in the absence of a petition?

MS. ABRAMS: I don't know the percentage that they actually review. I know they review all of our targeted permits. Past that, I don't know.

As far as objected to, as far as I can recall, I do not believe that we've had any that have been objected to. I believe we have worked it out with EPA before we reach that point.

MS. POWELL: Thank you.

MR. HARNETT: Bob Hodanbosi.

MR. HODANBOSI: Hello, Heather. This is Bob

Hodanbosi. Just a couple quick questions.

One concerning your fees. What are your fees?

MS. ABRAMS: $32.50 per ton.

MR. HODANBOSI: And that's on actual emissions, right?

MS. ABRAMS: Yes.

MR. HODANBOSI: And overall I thought your state was doing pretty good with your permit-issuance rate.

MS. ABRAMS: We have issued all of our initial Title V, and we're into the renewals now. And we're -- actually, we're starting to slide a little bit on our renewals because of significant modifications to the Title V. The facilities are more concerned about getting their construction permit than they are about getting their renewal permit.

MR. HODANBOSI: Okay. But I thought you had completed your initial ones.

MS. ABRAMS: Yes, we have completed our initials.

MR. HODANBOSI: Thank you.

MR. HARNETT: Shelley Kaderly, do you have any questions?

MS. KADERLY: No, I don't. Thank you.

MR. HARNETT: Thanks very much for your time, Heather.

MS. ABRAMS: Thank you.

MR. HARNETT: Is Amy Mann on?

MS. MANN: Yes, I am.

MR. HARNETT: This is Bill Harnett. I can tell already you're going to need to speak up a bit, at least from your first indication, in order for us to hear you in the room and get all the comments down.

MS. MANN: Okay. Is that better?

MR. HARNETT: That is better.

Amy Mann with Delaware Department of Natural Resources.

This is Bill Harnett. I will give you a warning -- you have 15 minutes for your presentation. I'll give you a warning at the two-minute mark. And then afterwards we will have about 15 minutes of questions. Go right ahead.

MS. MANN: Good morning. My name is Amy Mann. I'm a management analyst for the Air Quality Management Section of Delaware's Department of Natural Resources and Environmental Control. The section appreciates this opportunity to comment on our experiences with the successes of the Title V program and to raise awareness from areas we believe need improvement.

While we've experienced some problems, overall the Title V program has been beneficial to us. These problems and benefits will be further outlined in my testimony which is broken into two sections. First, benefits of Title V, and

then areas needing improvement.

Section No. 1, the benefits of Title V, Benefit No. 1. While this has been widely recognized, we would like to emphasize that Title V permits have resulted in more streamlined compliance determinations for both the agency and the regulating community. Delaware has a minor New Source Review program that has been in effect since the 197Os. Before Title V, many larger facilities in the state had multiple permits, many with ten or more. Each of these permits could have testing, monitoring, reporting, and calibration requirements.

In many instances, these requirements were not coordinated between the permits, making it difficult for facilities to develop easily-implemented schedules. It was also difficult for the agency to determine compliance with these requirements. With the advent of Title V, all of these permits were brought under one umbrella, coordinating streamlining requirements for more sensible implementation. The Title V permits have also helped distinguish between facility-wide and emission-unit-specific requirements.

Benefit No. 2. Since Title V is a fee-funded program, it has provided additional resources to supplement general state funds and federal funds. These additional resources have been utilized not only to oversee compliance of Title V facilities, but to bolster all aspects of the

section's program, such as source monitoring, emission inventory, and planning. It has also shifted the financial burden of the permitting program, making facilities that emit more, and thus require more of the agency's time, pay higher permit fees.

Benefit No. 3. Title V has improved communication between the agency and the facilities and within the facilities themselves. The increased interaction between the agency and the facilities through permit application meetings and discussions and section and reports have improved dialogue resulting in better permits and improved compliance. The permits themselves have also helped facility environmental personnel better communicate environmental requirements to managers and operators.

No. 4. The Title V program has been a quality assurance/quality control tool for both the agencies and the facilities and has improved overall permit coverage. The Title V program helps the agency review the universe of permanent sources to eliminate shut-down emission units and closed facilities and to permit previously overlooked facilities and emission units. It also helps facilities review their emission points to eliminate shut-down equipment or processes and to permit previously overlooked equipment or processes.

Benefit No. 5. Title V has helped reevaluate

practical enforceability. Before Title V, permit conditions were not practically enforceable. For example, coating permits would contain conditions such as, quote, "spray gun must receive 85 percent transfer efficiency," end quote.

Compliance with this and other similar conditions could not be easily determined. Since Title V, the department has created new language that focuses on practical enforceability. For example, coating permits now seem to contain conditions that specify the types of spray guns and coating techniques that can be used, training requirements, and record-keeping requirements. Compliance with these conditions can be easily determined, and results in better compliance and greater environmental benefit. Overall, practical enforceability has resulted in better permits.

Benefit No. 6. Title V requires that a total review of regulatory applicability be conducted for each emission unit at major-source facilities. These reviews resulted in agreement between the agency and facilities regarding what regulations apply to each emission unit. These reviews also improve consistency in the application of regulatory requirements throughout the state.

Benefit No. 7. The Title V program provides the agency with a mechanism, the Title V permit, to enforce federal regulations that have not yet been adopted by the state.

Benefit No. 8. The five-year renewal requirement for Title V permits provides the agency, the public, and the regulated community with a mechanism to improve Title V permits. As our agency has gained experience with the Title V program and Title V permits, we have seen an improvement in the quality of our renewals over original permits.

Now I'm ready to start Section No. 2, Areas Needing Improvement. No. 1. The public participation process within the Title V program is causing frustration for both the agency and the public. The agency has received comments on several permits that appear to be boilerplate and do not address the specifics of each permit. They can also be invalid. For example, during the public-comment hearing for a Title V permit, the agency received the following comment, quote, "The draft permits do not appear to require inspection, entry, monitoring, compliance certification, and reporting requirements that meet the intent of the Clean Air Act. Without these essential requirements being met, EPA, states, and the public do not know whether a facility is complying with air quality and public-health protections. The law is clear in this area. Every permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Clear Air Act Section 504. The draft permit does not adequately meet these

standards. Therefore, we respectfully request a public hearing be held to allow for further comment, and/or written comment, in regard to inspection, entry, monitoring, compliance certification, and reporting requirements; all areas of vital concern to the public," end quote.

This particular comment was invalid because the draft permit contained inspection and entry requirements in Condition 2-I, general monitoring requirements in Condition 3-B, general reporting and compliance certification requirements in Condition 3-C, and specific monitoring, record keeping, and reporting requirements in Condition 3 Table 1. Very general comments like this are often difficult to respond to because they do not identify where or how the permit fails to meet these requirements and where additional requirements should be added. These unspecific, boilerplate comments tie up the permit issuance process.

The public's frustration has also manifested itself in the form of verbal abuse and theatrics at public hearings. These inflammatory comments and actions divert attention away from the important issues surrounding the permit and take up valuable time, which makes it difficult for other community members to submit comments to the record.

The agency recognizes the importance of public review in the Title V process and is simply suggesting that measures be taken to provide the public with guidance that

would enable communities to more clearly articulate concerns on any given permit without resorting to unproductive, canned objections.

No. 2. Since the state is an ozone non-attainment area, many smaller businesses have been pulled into the Title V program. These businesses are often family owned and do not have dedicated resources to manage Title V issues. The monitoring, record keeping, reporting, and certification requirements of Title V can be difficult for these facilities to comply with. The current level of resources provided to the Small Business Ombudsman is not always sufficient to meet these needs. The agency recommends that resources such as guidance documents, computer spreadsheets, and other tools be created to help these facilities better manage the reporting and certification requirements.

No. 3. The complicated regulatory language that must be included in Title V permits can also be difficult for these smaller businesses to understand. Permit writers are often hesitant to simplify this language for fear of altering the requirements. The agency recommends that regulations that impact small businesses be written in plain English.

This is my prepared testimony. Again, thank you for this opportunity to comment. I will be happy to take any questions.

MR. HARNETT: Kelly Haragan.

MS. HARAGAN: Hi, this is Kelly Haragan with the Environmental Integrity Project, and I had a question about your public-participation comments.

It sounded like when you read that letter, someone was making a general comment about monitoring and asking for a hearing and extra time to make more specific comments.

Did you grant that request for hearing or give them time to make more specific comments?

I know when I try to review some of these, you know, 200-page permits, a 30-day comment period is very short. So I don't always have time to review everything, and extra time can help me make more specific comments.

MS. MANN: We did hold a public hearing on this specific permit. I can't remember off the top of my head if the three-day process was extended. But, typically, what we'll do is, at the close of a hearing, if people express the fact that they need more time to look at the requirement or to comment on issues that came up at the hearing, we'll keep the comment period open for a few more weeks after the public -- or the public hearing closes.

MS. HARAGAN: Okay. Thanks.

MR. HARNETT: Verena Owen.

MS. OWEN: Hi. This is Verena Owen with the Lake County Conservation Alliance; kind of questions on the same

thought that Kelly just had.

Your quote for the comments you received yesterday -- I didn't think it was a bad job the public did, I've seen worse -- but did you try and find out what the community was concerned about?

And as a follow-up question, when you do start your permitting process, is this an integrated process that also addresses, like, compliance review and enforcement actions on a facility, and is that somewhere found in a statement of basis?

MS. MANN: For your first question, typically, we will try to find out the specifics as to what it is that people are interested in. And we do sometimes get those good comments that typically address certain issues.

For your second question, I think the way that our state is organized, every facility is assigned one specific engineer or scientist who is in charge of writing their permit and taking -- doing all the inspections, reviewing all of the reports, and conducting any enforcement action if that's necessary. So that person always kind of is totally aware of all of the issues at the facility and can keep them in mind when going through the permit-writing process.

MS. OWEN: Well, that's good. Is this somewhere reflected in your project summary or statement of basis?

MS. MANN: If something was included in the

permit, if a specific condition was included in the permit because of an enforcement action or negotiated settlement, that would be discussed in the statement of basis.

MS. OWEN: I have one last question. When you talk about public hearings, I believe you said the word "theatrics."

MS. MANN: Yes.

MS. OWEN: I guess my question is, if the public has a concern about a source that might not fall within the venues of a hearing, is there another way for them to take this somewhere in your agency so they don't have to resort to theatrics at a hearing?

MS. MANN: Yes. Actually, we have two people within our department, called community ombudsman, whose specific job is to work with communities on any concerns that they have.

MS. OWEN: Thank you.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi, Amy. I wanted to ask just more follow-up on this public-participation issue, a couple of questions.

That comment that you read, was that from Mr. Lieman's (phonetic) Weidner (phonetic) University Law Student Project?

MS. MANN: I believe it was, yeah.

MS. BROOME: Yeah. And it's true that they have filed, basically, that comment on several permits, right?

MS. MANN: Yes.

MS. BROOME: Okay. And I don't know if you're aware, but you guys got a really bad rap at the first hearing.

MS. MANN: We've heard whisperings of that.

MS. BROOME: Yeah. And it said that you were deliberately trying to keep people from having access to documents, and when people requested documents, you weren't providing them or, you know, hiding stuff.

Is that true?

MS. MANN: Absolutely not. We actually are kind of -- we were kind of confused when we heard that. Because we have made every effort, whenever we've had a FOIA request, to pull those files together. And we've had instances where this particular organization will request a FOIA, request an entire Title V file. And we'll take it, we'll pull it together with considerable effort, and then they won't come to look at the file. We've also sent several permits and statements of basis over e-mail at these requests.

So we don't really understand where that came from.

MS. BROOME: And in terms of your FOIA process, is it true that all you have to do is send an e-mail and request the relevant documents, and if it's available electronically,

you basically get a response in a day or so?

MS. MANN: For the most part we always try to do that with the permit and the statement of basis to the public, which is already provided in hard copy at all of our offices. If it's something that's kind of an overall, kind of the entire facility file, that may sometimes take more time to go through because we have to pull out any confidential business information.

MS. BROOME: Right. Okay. That's consistent with my experience in requesting documents in Delaware.

Thanks very much.

MS. MANN: Thank you.

MR. HARNETT: Shelley Kaderly, do you have any questions?

Thank you very much, Amy, for your comments, and we're finished. And we will now take a break until one o'clock and then reconvene here.

Thank you.

(Recess taken at 11:40 a.m. to 1:02 p.m.)

MR. HARNETT: On the phone we have Ned Jerabek from New Mexico Environmental Department.

Ned, this is Bill Harnett with the EPA. In the room here we have representatives of industry, permitting authorities, and public-interest groups, as well as EPA. We're looking into the issue, as you're aware, of the

implementation of Title V.

You will have 15 minutes to present information to us. I'll warn you when we're down to the final two minutes, so you can wrap up, and then we'll have questions for the following 15 minutes. So that there will be a half hour sort of total here. And you can begin anytime you'd like.

MR. JERABEK: Can you hear me?

MR. HARNETT: No. Give us a second.

Try again.

MR. JERABEK: How about that?

MR. HARNETT: It seems like everybody can hear you. So if you would speak slowly and try to speak clearly; we do have a court reporter taking all of this down. Thank you.

MR. JERABEK: Very good. My comments will be a little shorter. I've been listening all morning.

MR. HARNETT: If you could turn that up just a little bit.

MR. JERABEK: So, Ned Jerabek, the Title V operating permit manager for the New Mexico Environmental --

MR. HARNETT: You're cutting in and out. Are you on a speaker phone maybe?

MR. JERABEK: Yes. Can I go to the receiver?

MR. HARNETT: Yeah, could you go to receiver? That might be clearer for us.

MR. JERABEK: Okay. I'll start over.

My name is Ned Jerabek. I am the Title V operating permit manager for the New Mexico Environment Department, Air Quality Bureau. I intend to focus on three areas of the permit-review process that we have refined and are working well for us.

I'd like to comment. I have read the draft testimony from other agencies, and it has given me ideas on how to improve our process, and for that reason alone, I see this as a very valuable exercise.

Okay. The three areas I will address are public hearings, MACT corporation, and insignificant activities.

It is important to understand the context of New Mexico's comments. We have been retained in two distinct permitting programs: an NSR program and a Title V operating permit program. So in that context of public hearings.

In my experience, the public often has the misconception that a Title V public hearing presents the same opportunity as an NSR public hearing, when in reality the facility's already up and running due to the Title V process. It is very unlikely that the Title V process is going to shut a facility down after an NSR permit has already been issued.

Therefore, the public needs to be educated as to what the real opportunities are, such that they can have the greatest impact on issuing an operating permit that maximizes

accountability through periodic monitoring, which is the real hammer in operating permits. We have done this by holding open houses and informal public meetings for contentious facilities, and facilities have received a lot of comments during the public notice. The exchange of information is much more positive and productive and often prevents a nonproductive and expensive public hearing where the public goes away feeling thwarted in the process.

Next I'll address MACT. MACT requirements cannot be simplified by paraphrasing. This has led to appeals because the applicant interprets the paraphrasing to mean other options in the MACT not addressed in the paraphrasing are no longer available. Therefore, we neither paraphrase nor do we regurgitate the entire MACT into a permit.

Instead, we have resorted to citing the relevant section of the MACT, going to as low a level of citation as is practical. Then, if the source or interested party needs more clarification, we try to handle that with conference calls, meetings, and follow-up letters that document and summarize the decisions, which are then added to the permit file as addendum to the statement of basis.

The statement of basis is extremely important. It's an important document to the operating permit, and we therefore require staff to submit the statement of basis for management to review in the same manner as a draft permit.

Next, insignificant activities. The statement of basis contains a list of qualified insignificant activities, and as such, these activities are exempt from being addressed in the operating permit. We attempt to get the applicant to list individual units that they believe qualify as insignificant activities rather than list categories, which, with the larger facilities, sometimes that is impractical.

Unfortunately, any activities for which an applicable requirement applies is not an insignificant activity regardless of whether the activity meets the qualified criteria. Older NSR permits often create applicable requirements for an otherwise insignificant activity by establishing an issuance of less than one ton per year, and thereby disqualify the unit as an insignificant activity.

Our regulatory definition of "applicable requirements" specifically includes, and I quote, "Any term or condition of any preconstruction permit issued pursuant to regulations."

And then it goes on at the end to also say, "Unless that term or condition is determined by the department to be no longer pertinent, we have limited our interpretation of that exception, no longer pertinent, to units that are retired or no longer operating."

I would like EPA to take the position that we have the authority at the local level to take a broader view and

deem such applicable requirements as no longer pertinent because the associated periodic monitoring for such a small unit becomes bureaucratic hoop-jumping and is of very little environmental consequence. I would rather see major sources investing their time and money complying with periodic monitoring that truly addresses significant emission units, and as an agency, it would increase our credibility with them.

That concludes New Mexico's comments. I sincerely appreciate the opportunity here to give my two-cents worth.

Are there any questions? I'm going to go back to speaker phone.

MR. HARNETT: One question I have, as we've heard this comment a couple of times on MACT standards, if you could provide for the record some examples of the MACT standards you think are particularly problematic. That would be useful for me.

And my second comment relates to the insignificant emission units. Are you looking for guidance that would allow you not to pull in sort of PSD permit requirements for these sources into the Title V?

Is that what you were suggesting, a federal set of guidance that would then allow you to pick -- not incorporate all of what was in a previous PSD permit?

MR. JERABEK: No, I don't think we would touch a

PSD permit. I'm thinking more along the lines of conventional resource-review permits for minor sources. The best example I can think of right offhand is, a source wishes to add some type of storage tank to the facility. They seek a modification in the NSR permit to add the tank. The emissions for the unit are a tenth of a ton per year VOC, and the NSR permit documents that emission in the permit. Now, that becomes an applicable requirement once that source -- gradually, as it expands over the years, it becomes a major facility.

And then in our analysis of the previous NSR permits, we come across these units that would otherwise be insignificant, but the NSR permit created an applicable requirement that we feel obligated to address in the Title V permit simply because it meets the definition of applicable requirements.

MR. HARNETT: I understand now.

Steve Hagle?

MR. HAGLE: And, Bill, my comment is actually on your comment. We have the same issue in Texas because we require some sort of authorization for just about everything that emits air contaminants. That's one of the things that we would be -- we would like to consider, too, is that the only applicable requirement is some permit by rule or some -- something that doesn't -- the actual unit has next to no

emissions.

Is there a way to keep that out of the Title V permit, just to not have to list that emission unit just because it has that underlying authorization that's part of the state's SIP.

MR. HARNETT: Ray Vogel.

MR. VOGEL: Ray Vogel, EPA air office. Just to follow along this exemption question.

I just wanted to make clear, the exemption you're asking for -- you were talking about, I think, periodic monitoring, or something like that, but did you mean like Steve was talking about, that what you want is an exemption from the need to put them in the Title V permit?

MR. JERABEK: Yes.

MR. VOGEL: Okay. Thank you.

MR. JERABEK: I'm might add --

MR. HARNETT: If I could just interrupt. When you start talking for a bit, your speaker phone cuts out too much. So we need you to go back to the handset, unfortunately.

MR. JERABEK: Sure.

I was going to point out that some units where the NSR permit created an applicable requirement, the example given of a tenth of a ton per year per tank, and so we listed it in the facility-information part of the Title V operating permit but felt that it didn't warrant the creation of

periodic monitoring for such a small amount.

Well, we received comment back from the company that they were somewhat nervous about that because the unit was addressed in the permit, and yet the permit did not create a mechanism for them to certify annual compliance, and that exposed them to citizen suit. So, you know, it's kind of a Catch-22. You're trying to do what's practical, to enforce the matter, but yet, you know, it exposes the company to liability so....

So that's why we'd rather not put it in the permit at all, if there's any way of just deeming it as an insignificant activity, despite the NSR condition, and then just addressing it that way in the statement basis, leaving it out of the Title V permit. So that's where we stand on that.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi. Thanks for joining us today.

Just back on the insignificant-unit issue, do you have any sense or could you provide some kind of relative measure of the resources that are being placed into -- in dealing with insignificant units? And I'm trying to get a sense in terms of a measure of emissions, resources, number of units versus the significant sources.

Are your resources being tipped towards insignificant units?

MR. JERABEK: No, they're not being tipped toward

insignificant units. New Mexico has issued somewhere -- including modifications, significant modifications -- probably between 3- and 400 Title V permits. I would say most SOPs used to contain anywhere from five to 30 or 40 insignificant units. And if the applicant has done the emissions calculation to justify that unit qualifies as an insignificant activity, well, then I usually would ask staff if they have verified the calculation such that they concur.

So it's reasonable to conclude that at least four or five hours, for every permit application, invested by the staff to qualify those insignificant emission units. When you multiply that times the amount of permits the program issues, that becomes a significant piece of time that would be much better invested elsewhere.

MS. BROOME: And are you requiring people to modify their permit when they add insignificant units, or how are you dealing with that kind of update?

Is it the annual, or on renewal, or is it before you can install an insignificant unit that would have an applicable requirement, you have to update?

MR. JERABEK: If they were strictly adding an insignificant unit, they would not be required to modify their Title V permit. They may have to address it in the NSR process. I'm not sure; I haven't looked at their rules lately. But we would strictly pick up that unit at the

renewal process. Or if they apply for significant modifications for some other stuff, we might at that time pick it up. But most likely at the renewal process.

MS. BROOME: Except that a bunch of units don't technically qualify for insignificant because they would have these permitting requirements.

MR. JERABEK: Correct.

MS. BROOME: Is that -- okay. I just want to make sure I'm following what you were saying. Thanks.

MR. JERABEK: Right. Right.

If they added an insignificant unit in the New Source Review process, and the New Source Review permit created applicable requirements for it, well, then the regulation requires -- gives them a 12-month time period to submit an application to revise their Title V operating permit. And that becomes a pointless exercise from my perspective, but, regardless, it's a regulatory requirement, so we do it.

MS. BROOME: Thank you.

MR. HARNETT: Is Shelley Kaderly on?

THE WITNESS: Yes, I am.

MR. HARNETT: Do you have any questions, Shelley?

THE WITNESS: No, I don't. Thank you.

MR. HARNETT: Thank you for your time, Ned. And we appreciate it. And if you could, again, provide for the

record just some of the MACT standards that cause particular problems, that would be useful.

MR. HARNETT: Is Shannon -- let me see if I can get this right -- Therriault on?

MS. THERRIAULT: That's close. Yes, I'm here. Shannon Therriault.

MR. HARNETT: Okay. As we've said to other speakers, you have 15 minutes for your presentation. At the two-minute mark, I'll give you a warning, and then we have 15 minutes set aside for questions. So feel free to go right ahead.

MS. THERRIAULT: Okay. Thank you. My name is Shannon Therriault. I'm the environmental health supervisor at the Missoula City/County Health Department in Missoula, Montana, and I appreciate the committee taking the time to listen to all the different groups' concerns about the Title V program.

MR. HARNETT: If I could interrupt for just a second. It would be good if you could talk a little bit slower just -- we have a court reporter taking things down. Thank you.

MS. THERRIAULT: Okay. Sorry about that.

We have one issue with the Title V permitting program, and that's that the state cannot delegate the program to us, the local air agency.

As a way of a background, Missoula has the longest-standing local air program in the State of Montana. We established the program in 1969, primarily to deal with wintertime-particulate and carbon-monoxide problems. The urban area has about 65,000 people. We're located in the valley surrounded by mountains, and because of our topography and our meteorology, we have lots of cloud cover in the winter. We suffer from extended temperature inversions, and we've long had problems with air pollution here in the valley.

The Environmental Protection Agency designated Missoula as a non-attainment area for both carbon monoxide and particulate, and we have control programs in place that have brought us into compliance with the national ambient air quality standards for both those.

Am I still talking too fast?

MR. HARNETT: No, you're going fine.

MS. THERRIAULT: Okay. The Montana Clean Air Act recognizes the role of local programs in controlling air pollution in the state. The Act declares that local and regional air-pollution-control programs are essential instruments for securing and maintaining appropriate levels of air quality. And the state provides a framework and a coordinated state-wide program. And any rules that the local program adopt have to be consistent with and at least as

stringent as the state rules. So there is some consistency with the state, even though local programs have the ability to adopt their own regulations.

The Montana Clean Air Act is very clear about what sources the local programs can regulate. The state retains jurisdiction over the very large sources, and by that I mean sources that emit over 250 tons of any pollutant in a year. We have three of those sources in our county. We have a pulp mill, a plywood plant, and a particle board factory. And those, the state regulates. But we have the ability to regulate, at the local air program, all the other sources of air pollution, including medium-size stationary sources that emit between 100 and 250 tons of any pollutant, and of course those are Title V sources.

We also have a program for the smaller stationary sources, such as the small incinerators, the asphalt plants, and gravel crushers. So sources from 249 tons a year and down have traditionally been under Missoula County's jurisdiction. We've issued preconstruction and operating permits, which we now call air-quality permits, to these sources for decades.

Once Title V was adopted by the State of Montana, we began the process of adopting the Title V program ourself with the blessing of the Department of Environmental Quality, and it was allowed for in the Montana Clean Air Act. But once those rules were written and were taken to our board, we

discovered, through conversations with the Environmental Protection Agency, that the state didn't have the ability to delegate Title V to a local program.

And, to be honest, I don't know what the problem is. I was told that Title V didn't have the necessary language, was different than a SIP program, and so that the state didn't have the authority to delegate it to a local program. At that time, in 2000, we were told that Missoula County could work directly with the EPA, and the state could rescind its authority in Missoula County. And we could work with the EPA and have a Title V program that didn't go through the state, it went just directly to the Environmental Protection Agency. But since the state has jurisdiction of three major sources in our county, that caused some problems.

And, in addition, it would set up an entirely different structure than we currently have in the State of Montana, and it would be unclear of how that would work through the Montana Clean Air Act, where our regulations go through the state and the state-approval processes. So what we did in 2000 as a compromise is, we didn't want to lose the sources. That was really important to us. We have a long history with those sources. But we also realized that we weren't going to be able to get a Title V program, and at that point these sources had to have a Title V operating permit.

So our compromise was for us to write the

preconstruction permits -- like I said, we called them air-quality permits -- and the state writes the Title V permits. As you can imagine, the industry is not crazy about having two different entities have jurisdiction over those sources. And we have done a lot in order to make the sources as comfortable as they can with the program as is currently devised.

For instance, we don't charge the sources anything at the local level. So we don't charge for our permits, for our inspections, or for our enforcement. The state does charge. And we have a contract with the state for a very minimal amount of money, which allows us to be the ones to do all the compliance work. So we do the Title V inspections, we do the compliance check, along with our air-quality permit inspections. So we're doing things in order to maintain the integrity of our program while at the same time not to complicate things for those sources.

And I understand that industry has some rules and issues with the Title V program, and I think many of these could be better addressed if the state could delegate the authority to the local program. I know that there are local programs out there that do have the program. It's my understanding those are all through direct interaction with the Environmental Protection Agency.

One of the things that has come up when I've

heard different industrial advocates talking about the Title V program is one of consistency, that they want to see a consistent program. And we feel we can maintain a better consistency between permits and jurisdictions throughout the State of Montana if our program is connected with the state, instead of us being a separate entity that's working directly with the Environmental Protection Agency.

Another issue that comes up is timeliness. Missoula has fewer sources, of course, than the state does, and we would have the ability to get permits and revisions out more quickly than the state. So sources would, of course, be at the top of our list instead of having to fall somewhere within the state list of when to get things done. So this would allow those industries to maintain more flexibility if the changes can occur more quickly. And, like I said, we're already doing their construction permitting.

So another thing that comes up is cost effectiveness. And I understand that a lot of the cost associated with Title V permitting is not the permit fee, but it would certainly be more cost effective if we only had one agency for permit fees, the permit fees part, if we only had one agency that was responsible for it instead of two.

Another problem that comes up is the Title V permits in Missoula County actually have inaccurate requirements listed. And that's because there's a section in

Montana's Title V permit where there's general requirements that all sources have to follow, and these reference the state's rules. However, in Missoula County, Missoula County's regulations take the place of the state's regulations. They're not in addition to the state's regulations.

And so it is said that they are unwilling or cannot modify the general portion of that permit to put in references to our regulations; therefore, those Title V permits end up having, in the general section, a reference to a state requirement, for instance, outdoor burning, as an example. And then in another part of the permit, the permit will reference Missoula County's outdoor burning requirements, which are different than the state's. So that sets the source up for -- you know, I understand one of the concepts behind Title V is to have all the applicable requirements in one place, but what ends up happening is that some of the requirements are simply wrong.

Another thing that I've heard industry talk about, when it comes to Title V program, is high turnover in the expertise. I don't know why, but our turnover rate is low compared to the state. For some reason our air-quality specialists never seem to leave. One of our directors was an air-quality specialist 30 years ago here. And so we have a long history and institutional knowledge about what's been going on with sources. And we've been into those sources

quite a bit, so we understand those sources. We can also -- nevertheless, if we have turnover, the state has the same problem. But we can use the state permit writers and compliance operators as a resource, and we can take part in shared training opportunities.

In addition, because we're only talking about four sources in Missoula County at the moment that need Title V permits that we potentially have jurisdiction over, or that we do have some jurisdiction over, we're able to focus our energies on very specific types of industry instead of having to look at a wide variety of sources across the state. I know that for others, such as environmental interest groups, that public notification and access to information is an issue, and I think that that could be better accomplished at the local level than it can at the state level.

And, of course, with the health department, the issue is being able to fairly, consistently, effectively control air pollution in the valley and to use our local and state resources wisely. We regulate a variety of sources, all of whom don't want to be the only ones regulated, and whenever we're talking with them, initially at least, they feel like they're the ones that are bearing the brunt of the burden of reducing particulate or CO in the valley. And by being able to say, "No, look, we're looking at all of these sources, and we're controlling all of these sources," it makes it easier

for people to -- sometimes we have to do rather severe things. For instance, we no longer allow wood stoves in the valley.

So another concern of ours is that if the Title V operating permit expands to other smaller sources, which at one point we were told is the intention of the Title V permitting program, we may lose the ability to fairly and effectively control air quality in the Missoula Valley, instead of working with the local community to find equitable solutions, which often takes compromise and give and take. It could set up an adversarial position where we and the source and the state are all fighting, and we don't want to do that.

So, in summary, if changes are to be made to the Title V permitting program, we request that whatever language is necessary to allow states to delegate the authority to local jurisdictions be included.

And that is it.

MR. HARNETT: Thank you.

Questions?

There are no questions for you. Thank you very much for your comments and taking the time today.

MS. THERRIAULT: Thank you.

MR. HARNETT: Is Michael Lake on the phone?

MR. LAKE: Yes, I am.

MR. HARNETT: Michael, you're from the San Diego

County Air Pollution Control District. We welcome you here. You will have 15 minutes. I'll give you a warning when we get to the final two minutes, and then we'll have questions for you after that. Feel free to go right ahead.

MR. LAKE: Thank you very much, and thank you for the opportunity to provide you with some comments regarding our experience with this Title V permit program here in San Diego County.

Just to provide a little bit of background, San Diego County is a large metropolitan area, has a mixture of light to intermediate-size industries, utilities, navy facilities, and the usual municipal operations. And we've been blessed by having a successful program for a number of years.

Just to give you some perspective, our exceedances of the one-hour ozone air-quality standards in the last 15 years have dropped from 46 to less than one. We've been re-designated as attainment of the one-hour ozone standard. And the number of days that we've been over the eight-hour standard in that same period has dropped from about 110 to less than 10. So we've made a lot of progress in improving air-quality here in the San Diego County. And this is despite a 25 percent increase in population and an even larger increase in vehicle miles traveled.

We've been able to accomplish this through a

program of requiring the best available retrofit control technology on our stationary sources, state and federal standards for motor vehicles, and we have some fairly aggressive local and state-funded incentive programs to push forward the conversion of mobile sources to cleaner engines.

We've had an extensive stationary-source regulatory permitting and enforcement program for more than 25 years. Just to put it in perspective, we currently have local air-pollution-control district permits for about 4,200 stationary sources in the county, and that includes anywhere from large power plants down to small automotive refinishing facilities, dry cleaners, chrome platers, et cetera. In San Diego, we only have 25 sources that are subject to Title V permit requirements, and that number has actually shrunk.

With our ability to achieve attainment of the one-hour ozone standard, we were able to raise our major source thresholds for Title V applicability, and that allowed a few sources to opt out of the Title V permit program. We've issued 27 Title V permits. And working with affected sources here in San Diego County, we've been able to deal with some of the complexities of the Title V program and reduce some of the administrative burdens. So we've made it somewhat workable.

For example, we have a process where some of the Title V permitting requirements, monitoring, citation of regulatory requirements, certification requirements, et

cetera, are built up front into our construction permit process. So that once the construction is completed, then modification of the Title V permit can move fairly quickly and the facility can go forward with operating the newer, modified equipment in compliance with both our regulatory requirements and Title V requirements.

I'll mention, also, that we've had some sources that were able to opt out of the Title V program by eliminating their potential to emit. I know this has been cited before as a source of emission reduction associated with the Title V program. I would note that our experience here in San Diego has been that in most cases facilities had actual emissions below the Title V threshold, and their opting out of the Title V program didn't result in any actual emission reductions. We had one case where a source installed emission controls and reduced their carbon-monoxide emissions by about 70 tons per year, but in all other cases, we haven't seen emission reductions that have resulted.

Our implementation costs for the Title V program since its inception have been pretty significant. Here at the air pollution control district, we've spent, in labor costs, about $3 million since we first started to develop our local Title V permit program. And we know that, locally, the businesses and facilities that are subject to the Title V program have spent in excess of $4 million associated with the

application process and obtaining permits and the follow-up to that in terms of monitoring compliance.

However, we've seen very little in the way of corresponding air-quality benefit. There have been some improvements, I would say, in the clarity and completeness of the permits that are issued. I think one result of the Title V permit program here in San Diego was that it forced us to, at one time, look at all the permits that had been developed for various emission units at major sources over the years and make sure that the requirements were clear, that there was a clear reference to an applicable requirement, whether it be a federal requirement, state or local, and also that all the permits and permit conditions were up to date.

So we have now, for the sources subject to Title V permits, probably much more complete and comprehensive Title V permits or permits for their operations. I'm not sure, though, that that has resulted in a permit document that is less confusing and less cumbersome for applicants and for the general public.

I would note that when we issue Title V permits, we do provide public notice of those proposed permits, and this includes significant modifications to Title V permits. We provide website notice, and we also provide direct notice to interested parties that have indicated their interest in receiving notice of Title V permits. And, to date, for all

the Title V permits that we've issued, we have received no public comment, we've received no public objections or expressions of any public or interest-group objections or areas of concern.

With the issuance of Title V permits we now have had a couple of years of compliance certifications and deviation reporting from the Title V permitted sources. And that has really resulted in few surprises and no substantive noncompliance with emission standards. The deviations that we see being reported are relatively minor in nature, would have been known by the district, most likely without Title V; and if they are associated with equipment breakdowns, we had three Title-V-breakdown reporting requirements in existence in our program already.

And I should mention, also, that the stationary sources that are required to have Title V permits are already inspected by our agency anywhere from two to four times a year. Those inspections include reviewing records the facilities are required to complete and maintain, and that gives us a good indication of any noncompliance concerns associated with the facility separate from any deviation reporting that we see.

We have been involved in the past, and I know EPA, state, and other local agencies have been involved in developing the White Papers on the Title V program. We've

made use of those old White Papers to help streamline and simplify the application process and the Title V permitting process, but I would say that on occasion we do get a sense of resistance from EPA staff on being able to exercise all the streamlining options available in the White Papers. So we would only encourage EPA to make sure that those White Papers are available and our local agencies are able to use the provisions of the White Papers.

We also have some concern that any additional monitoring requirements on processes that might result during the renewal of the Title V permits, that we be able to focus those on the processes that have the most risk or highest risk of significant emissions. We're a little concerned right now that it appears additional CAM requirements may be applied to Title V facility emission units based on their potential to emit rather than their actual emissions, which tend to be far less.

Similar to previous speakers, we also share their concern about not extending Title V permit requirements to area sources. As I mentioned earlier, we have an existing permitting program that covers about 4200 stationary sources. That includes dry cleaners and chrome platers, and we don't really see a value, and certainly a lot of disadvantages, to extending Title V permit requirements to those types of sources. Generally, they're very small, independent

operations that we are already effectively regulating through our permit programs, through emission-control requirements, and through regular inspection and compliance-education policies.

One other thing that I'll mention is that in the last year we have seen a couple of proposals from EPA to expand the reporting requirements for a permitting agency, such as ourselves, on inspection, source testing, violation, and penalty data on large sources, which encompasses primarily Title V sources and synthetic minor sources. And while we have been able to apply the resources necessary to meet the current requirements, it is a burden. And we're quite concerned that EPA very recently has proposed increasing those reporting requirements -- and we had provided comments previously to EPA; we can certainly provide copies of those comments if the Task Force is interested -- concern about extending or expanding those data-reporting requirements.

We are already, have been faced, with reductions in funds from the state, increasing local costs, the possibility of reduced EPA 105 grant funding, and the prospect of doing additional reporting to EPA on compliance matters, that we feel that we're handling quite well here locally, raises additional concerns on the administrative burden that we'd be faced with.

One final thing I'll mention is that our folks

that have been working on Title V permits have expressed concern that Title I -- currently, all Title I modifications have to be treated as significant permit modifications under the Title V program. And, in particular, some of the NESHAPs, and I believe here locally, primarily the aerospace NESHAP, has aspects to it that any change that a facility might make that would increase or change the HAPS that are being emitted, either through coating or cleanup solvents, et cetera, has to be treated as a Title I modification.

Now, we locally have a project, air-contaminant control program, where any type of permit modification of this nature, where the emissions of a toxic air contaminant may change or increase, we look at that to make sure it doesn't present any adverse public health risk. And so we have local protection against any changes that might pose such a public health risk. But we could do that relatively quickly. We have tools available to us to do that. The problem is that any change in the HAP emissions has the potential to trigger a Title I modification in this case and also significant modification under the Title V permit.

And we would ask that EPA consider establishing a levels of HAP emissions that -- or HAP-emission increases that could be considered de minimis for purposes of Title V permit modification. Otherwise, at least for some of our sources locally, we may be faced with unnecessary administrative and

permitting processes that we have to go through simply because of a change in materials that doesn't really present any public-health concern.

That concludes my remarks. Again, I appreciate the opportunity to talk a little bit about our experience with the Title V permit program, and we would certainly be available to answer any questions that you might have.

MR. HARNETT: Keri Powell?

MS. POWELL: Hi. This is Keri Powell from the New York Public Interest Research Group.

I was wondering whether your current non-Title-V permitting system requires permits of all sources that would qualify as area sources; and, if so, if you can describe what kind of permits they're getting.

MR. LAKE: Well, virtually any source of air contaminants from an industrial perspective or commercial perspective that you can think of requires a permit from us. Gas stations, dry cleaners, automotive repair shops, asphalt, tar pots, portable engines, small boilers at hotels, and ethylene oxide sterilizers, I could go on and on. There's a long list of types of equipment that require permits from us.

We do have a list of permits, types of equipment, that are exempt from permits, but generally they are very small or small emissions, and the general threshold is about less than five pounds per day emissions. So, for example, a

coating operation that uses more than 20 gallons per year is required to have a permit. That's a pretty small coating operation.

In terms of the type of permit that we're required to get, we have all the preconstruction permit requirements, we call it an authority to construct, and under that review we look at any air-quality impacts, whether they're using the best-available control technology. If it's a major source, they have to provide offsets. Or if we're applying New Source Review -- and, in addition, we have our own toxics New Source Review program as well as prohibitory rules that dictate either levels of emission controls or allowable limits on the VOC contents of coating, et cetera. So we have a pretty extensive program that applies to a lot of sources of air contaminants.

MS. POWELL: If I can just follow up, could you just share with me a little bit about how those permits compare to the features of a Title V permit? Like do they have to do any kind of --

First, do all sources have a preconstruction permit? I don't know how old that program is.

And, second, do they do annual compliance certifications or any monitoring or reporting, that sort of thing?

MR. LAKE: As far as preconstruction permit

program, that's been in existence probably for more than -- pretty close to 30 years if not more. Essentially, all sources that require permits from the district require a preconstruction permit or review. The types of permit conditions that are applied are -- in some respects they reflect the specific requirements of our rules that apply.

For example, if a new boiler is proposed to be installed, and in order to meet best-available control technology requirements, it has the usual NOx burners and (inaudible) gas for circulation and meet a specific knox limit of, let's say, 12 PPM, then that will be specified in the permit. They'll also be required to keep records of the amount of fuels that they use, limits on, if it's an oil-burning, which is pretty uncommon here, but sulfur content of the fuel. And they would require periodic source testing to verify that they are in compliance with the emission limits of the permit, and that source testing is conducted by either the district or by an independent test contractor. In addition, most of our permitted sources are inspected at least once a year.

MS. POWELL: Thank you.

MR. LAKE: In addition, they are required to keep records of materials that they use, the type of fuels that they use, if there are critical operating parameters for either the basic equipment or the air-pollution-control

equipment, they have to either continuously monitor that or keep, generally, daily records of those types of critical operating parameters.

And when our inspectors do the inspection, they look at whether or not, number one, the facility has kept the records; and, number two, do those records indicate any instances of noncompliance that require some remedial action.

MR. HARNETT: Shannon Broome.

MS. BROOME: Hi, Michael. Thanks for joining us.

You were talking at the end of your statement about any increase in HAP emissions and that coming at the federal level.

What specific rule were you talking about?

MR. LAKE: As I understand it, the aerospace NESHAP has provisions in it that speak to specific HAP emissions from cleanup operations and from the coatings that are used. And I think if a source elects to change to an alternative, allowable cleaning material or cleanup solvent or is -- switches to an alternative coating formulation that may have different HAPS in it, then that could trigger a, in essence, a Title I modification requirement.

It doesn't mean that it's significant in terms of air quality or public health, but it is a change in HAP emissions, or potentially an increase in HAP emissions, that we would look at, locally anyway, to make sure it doesn't

present a public-health risk, but which might also trigger Title I and significant modification requirements.

MS. BROOME: And who's saying that that's a Title I mod?

MR. LAKE: We understand that that's a Part 70 requirement that was carried over into our Title V permit program regulations.

MS. BROOME: Right, but who's saying that increases in HAPS under the NESHAP is a Title I mod? It doesn't trigger 112(g), so it shouldn't be a Title I mod.

MR. LAKE: Well, as I understand it, 1-12-G talked about major modifications in new sources, but it did not necessarily apply a (inaudible) for all of the sources subject to specific NESHAPs. But we can certainly look into that and clarify that in our written comments that we'll provide as a follow-up to this testimony.

MS. BROOME: It would be great to just understand where that's coming from so that we can kind of follow up that, really.

MR. LAKE: Okay.

MS. BROOME: Thank you.

MR. HARNETT: Bob Morehouse.

MR. MOREHOUSE: Michael, this is Bob Morehouse. The question -- you mentioned you used the White Papers, and you also mentioned you had received some resistance from EPA.

Are there specific -- do you recall, are there specific parts of the White Papers where there was the differences of opinion?

MR. LAKE: Well, I think there were a few instances where we were looking to streamline multiple applicable requirements, where we felt local requirement was as stringent and adequately covered off on the federal applicable requirement. Eventually we were able to do it, but if took -- as I said, we met some resistance to doing it.

MR. HARNETT: Rob Sliwinski.

MR. SLIWINSKI: Hi, Michael. Rob Sliwinski, New York State.

I was interested in having you expand upon the efforts that you undertake to perform the data collection and reporting to EPA regarding the compliance data, and how the new requirements coming in effect later this year will affect your program.

MR. LAKE: This was initially proposed by EPA, I believe about June of last year, in 2004. And we and many other agencies, I believe STAPPA/ALAPCO and CAPCOA, commented on the expanded requirements. As I understand it, it's some additional reporting on the results of emission-source testing, more detailed pollutant-specific reporting on inspection results, and follow-up to inspections. As I said, we're already meeting the existing requirements and will

continue to do so. And we work with our local EPA Region 9 to try to understand those requirements as best we can and make them work in practical applications.

But there were a number of additional things that it looked like we would be required to provide additional reporting on. As I mentioned, pollutant-specific reports on source-test results and on compliance inspections and compliance actions, et cetera, and our staff that handled this have indicated that this would be a fairly significant additional burden on our already pretty well-stretched compliance division staff.

MR. SLIWINSKI: Thank you.

MR. HARNETT: Bob Hodanbosi.

MR. HODANBOSI: Hello, Mike. This is Bob Hodanbosi from Ohio EPA. I just have a few questions for you.

You mentioned that you have 25 facilities that are subject to Title V?

MR. LAKE: Yes.

MR. HODANBOSI: Are a good percentage of those associated with military operations?

MR. LAKE: Actually, only two. Most are electrical-generating operations, some of them municipal landfills and some associated equipment with those, and several local manufacturing facilities.

MR. HODANBOSI: But do you have any military bases covered by Title V permits?

MR. LAKE: We have two.

MR. HODANBOSI: Okay.

MR. LAKE: It's actually two separate operations or commands at one geographic location.

MR. HODANBOSI: And are they large Title V permits, or are they relatively simple ones? Do they have lots of insignificant emission units and all that, or not?

MR. LAKE: One is very large, has a lot of small emission units and multiple types of operations. One is, I believe, only in because it's subject to the aerospace NESHAP. So that one is less broad. It's a fairly narrow Title V permit.

MR. HODANBOSI: Okay. That's all. Thank you.

MR. HARNETT: Shelley Kaderly, do you have any questions?

Thank you very much, Michael.

MR. LAKE: Thank you for the opportunity, and we will be following up with some written comments for submission, and we'll try to address those questions I was unable to answer.

MR. HARNETT: I appreciate that. Thank you very much.

MR. LAKE: All right.

MR. HARNETT: The hearing record is now closed.

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

I, JANA ANDRIENE GUNTER, do hereby certify:

That I am a Certified Shorthand Reporter, duly qualified, licensed and acting in the State of California;

That the foregoing pages constitute a true and complete transcription of my stenotype notes of the proceedings set forth in the caption on the date of February 8, 2005.

DATED:_____, 2005.

_____
CSR NO. 7589
JANA A. GUNTER