1 U.S. ENVIRONMENTAL PROTECTION
2 AGENCY TASK FORCE ON THE PERFORMANCE
3 OF THE TITLE V OPERATING
4 PERMITS PROGRAM
5
6
7 Washington Marriott
8 1221 22nd Street, NW
9 Washington, DC
10
11 Friday, June 25, 2004
12 9:05 a.m.
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15 Meeting of the U.S. EPA, was held on Friday,
16 June 25, 2004, at 1221 22nd Street, NW, commencing at
17 9:05 a.m., Michael Ling, presiding.
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1 P R O C E E D I N G S

2 (9:05 a.m.)

3 MR. LING: Why don't folks go ahead and

4 take their seats. We'll call this to order here real

5 soon.

6 (Pause.)

7 MR. LING: Good morning everyone. I want

8 to thank everybody for coming today. My name is

9 Michael Ling. The first thing you'll probably notice

10 is that I'm not Bill Harnett. Many of you were

11 probably expecting Bill to sit here today, but he was

12 called away at the last minute. He's in Washington

13 and he may make an appearance today depending on how

14 his morning goes over at EPA.

15 But I found out last night that I'll be

16 sitting in and chairing the meeting today for him.

17 He will still be heavily engaged in this process.

18 And like I said, he may be making an appearance later

19 today.

20 I want to thank everyone for coming today.

21 I especially want to thank the Task Force members for

22 coming.

1 The success of this Task Force project
2 will rely on the experience and involvement of the
3 folks sitting around the table and will also rely on
4 the involvement of folks who come and present us
5 information.
6 This is principally an information-
7 gathering exercise. Let me just say a few words
8 about why we are here. This will be familiar to the
9 Task Force and probably to some of you in the
10 audience.
11 But the Clean Air Act Advisory Committee,
12 which is a committee that provides advice to EPA
13 about its clean air programs, created this Task Force
14 to report back to its committee, the subcommittee on
15 permitting, on the implementation experience with the
16 Title V operating permits program.
17 Basically what they're asking for was a
18 state of the Title V report. The advisory committee
19 felt and EPA agrees that now is a good time to ask
20 for this kind of report because it's been about 10
21 years since the first state Title V programs got up
22 and running and nearly all of the first round of

1 Title V permits have been issued.
2 Although some folks here have indicated that they
3 don't have their Title V permits yet, virtually all
4 of them have been issued. So as a result there's a
5 tremendous amount of Title V experience out there in
6 this room and around this table. We would like this
7 experience to inform EPA's perspective as we move
8 forward with our oversight of the Title V program.
9 The committee charged the Task Force here
10 with answering two questions: How well is the Title V
11 program performing? And what elements of the program
12 are working well or poorly?
13 The committee asks the Task Force to
14 prepare a report for them. And the report should
15 answer those questions based on the information that
16 we gather today and at the other Task Force meetings
17 and throughout the public process, which is more than
18 just these three meetings.
19 In preparing the report the committee gave
20 us some further specific advice as we conduct our
21 work. First,
22 it will reflect the perspective of all the groups who

1 have a stake in the Title V program. Second, it
2 should reflected to a maximum possible real world
3 experience with the Title V program.
4 Many of you may have views about the
5 wisdom of the enactment of Title V. But we're not
6 here to debate that. In order to do our work the
7 Task Force needs as much real information and
8 examples and data as we can get.
9 The report should also describe
10 information about things that are working well or
11 leading to beneficial outcomes because as we move
12 forward with oversight, we want to make sure we're
13 not losing the beneficial things as we try to improve
14 upon the things that are not beneficial.
15 Finally, the committee said that the Task
16 Force may elect to make recommendations for improving
17 the program based on the information that it gets.
18 And we expect that will happen.
19 Overall I'm optimistic that this process
20 will result in the collection of a lot of valuable
21 information and some recommendations that EPA can use
22 to make the Title V program more effective and more

1 efficient.

2 I want to talk briefly about the logistics

3 of how today's meeting will be run. In just a minute

4 I'm going to ask everyone on the Task Force to

5 introduce themselves. But first I just want to talk

6 a little bit about how I expect the day to unfold.

7 We have talked to the Task Force once via

8 telephone. And we also had a group of CAAAC folks

9 that helped us plan the logistics.

10 So what we're going to do -- the main goal

11 of this process is to insure that everyone with

12 information relative to the Task Force's mission will

13 have a chance to be heard. I want to address a

14 couple of issues that we have heard about.

15 The makeup of the Task Force. One of the

16 issues is that there are four environmental groups as

17 compared to six state and six industry. Our issue

18 here was that we were supposed -- we needed to fund

19 the environmental groups. Otherwise their

20 participation might not be able to be full on the

21 Task Force because of the travel, the way we set it

22 up for travel around the country.

1 So we were limited in the number of people
2 we could bring. But we've set it up so that all the
3 views and all the stakeholder groups will be
4 reflected. The Task Force is not a vote-based group.
5 And as I said earlier, the report is going to reflect
6 the views of all the stakeholders involved.
7 The other issue is I just want to point
8 out that there are some who applied for the Task
9 Force who are not on it, which is just simply not
10 possible to represent every particular industry
11 category or every particular kind of state program or
12 whatever.
13 Title V has a wide variety of programs and
14 sources out there that are covered. We tried to
15 strike a balance in selecting the Task Force. But I
16 again want to stress that we want everybody to be
17 heard. And there's multiple ways to be heard.
18 People on the advisory committee will be
19 reviewing the report. We're going to have public
20 meetings. We're going to have an opportunity to
21 provide written comments.
22 We would like for each person who comes

1 here today to present information to the Task Force.
2 We'd like to have them have an opportunity to talk to
3 the Task Force and interact with us.
4 With that in mind I'd like to invite the
5 speakers to sit at the end of the table there.
6 There's a microphone which you should always press
7 the red button to talk. Make sure your red thing is
8 lit up, because we're making an audio tape of this.
9 And if your mic is not on, you will not be heard on
10 the audio.
11 We'll take the speakers on a first-come,
12 first-serve order. Based on what I've seen so far
13 we're not going to have any trouble fitting today's
14 speakers into the morning time.
15 Maybe that's an indication that the Title
16 V program is working very smoothly if only two folks
17 have come to speak about it. There might be some who
18 would disagree with that conclusion.
19 So we'd like each speaker who comes to the
20 table to introduce themselves. In the federal
21 register we said you can limit yourself to five
22 minutes, but I think today we're not going to be

1 wrestling you to the ground after five minutes.

2 Take as long as you want to present your

3 perspective. Then after your presentation, the Task

4 Force will likely want to ask follow-up questions.

5 So we invite you to remain at the table to answer

6 these questions.

7 I think the interaction between the

8 speakers and the Task Force is going to be an

9 important part of our information-gathering efforts,

10 so we'll allow as much time for questions as we can

11 within the constraints of time and the number of

12 speakers. I think there will be enough time to do

13 that this morning.

14 We are keeping a transcript of this

15 meeting -- we have a court reporter over here -- that

16 will ultimately be made available to the public in

17 written form, as well as the audio recording that

18 we're making. We will release it on the Internet.

19 We further invite people to submit written

20 comments, which will be put in a docket that was

21 established for this effort. And the process for

22 submitting written comments is presented on our

1 website. But I would also ask people who have
2 brought written presentations with them today to
3 leave them with Shannon Cox, out front, who is the
4 woman that you met when you checked in this morning.
5 She is a contractor with EC/R, whom we've hired to
6 support the Task Force efforts.
7 Also Graham Fitzsimons at the end of the
8 table is with that same contractor there. If you
9 have any questions about the logistics of signing up
10 to speak or giving your comments for the docket or
11 anything, speak to them.
12 They are also running the logistics of the
13 meeting, so things like electrical outlets that we've
14 had a question about already -- they're the ones to
15 talk to about that.
16 As the website says, and I think as the
17 Federal Register notice said, we're going to keep
18 this open until 5:00 today.
19 Depending on turnout I think that there
20 are folks on the Task Force who may have an interest
21 in catching flights and may not stay until the end.
22 And we understand that throughout this process it

1 won't be 100 percent Task Force attendance at all
2 three meetings or for the entire day of all three
3 meetings.
4 But the EPA folks will stay here. At
5 least some of the EPA folks will stay here until 5:00
6 today to hear from anybody who shows up or to take
7 written comments from anyone.
8 Also I expect that because there are not a
9 lot of speakers signed up today, there will be time
10 for the Task Force to have an opportunity to discuss
11 issues amongst themselves. There's a considerable
12 body of Title V experience at the table.
13 I think most of you will have issues that
14 you want to discuss or may want to react to some of
15 what you've heard this morning. And I would
16 encourage that.
17 There will be at least two more public
18 meetings like this later in the year so those of you
19 who wanted to come check out the first one to see how
20 it goes, you can speak at the second one, which will
21 be tentatively in Chicago in the middle of September.
22 September 14th is the tentative date, I

1 think, we've set up for that. But we'll be checking
2 with the Task Force to see if that date is going to
3 be problematic.
4 There will also be a meeting later this
5 year in a Western state to make sure we have good
6 geographic distribution. Depending on how the
7 process is going, we may have additional meetings.
8 But we haven't made any sort of commitment like that
9 so far.
10 All the information about where the
11 meetings will be and where they will be is regularly
12 updated on our CAAAC advisory website, which is
13 www.epa.gov/oar/caaac -- Clean Air Act Advisory
14 Committee.
15 Finally, as you will note from the
16 handouts out front, we will be breaking for lunch at
17 noon today. We'll be reconvening at 1:00. There's
18 no formally scheduled breaks at any other time in the
19 morning. But I think we can play it informally. And
20 if the Task Force needs a break, just let me know.
21 I didn't check to see where all the
22 important landmarks were -- like the restrooms and

1 other things. But I'm sure Shannon out front can
2 help you.
3 That's the end of the logistical part of
4 my talk. The last thing I want to do -- I want to
5 allow all the Task Force members to go around and
6 introduce themselves, say a few words about their
7 interest and involvement in the Task Force and their
8 interest and involvement in Title V permitting and
9 any other introductory remarks that you might have.
10 Also because this is our first face-to-
11 face meeting as a group, I would like the Task Force
12 to just tell us if they would like -- tell us a bit
13 about themselves.
14 I will begin by saying that I am pleased
15 to be on this Task Force on behalf of EPA. I'm a
16 little surprised to be sitting in this chair this
17 morning, but I think that the Task Force offers a
18 great opportunity to learn about the experiences with
19 Title V and apply what we've learned -- EPA has
20 learned -- to improve the Title V program at the end
21 of this.
22 I want to provide us some brief

1 perspective on how this effort can help us better
2 achieve the goals of Title V. There's not a
3 definitive statement by Congress about the purposes
4 of Title V in the Clear Air Act.
5 But various statements by Congress and by
6 EPA in its rules and by others point to a range of
7 goals for the Title V program. I'll just throw out a
8 couple of these. The advisory committee listed these
9 in its charge to create the Task Force.
10 The first goal was to create a written
11 document, i.e., a permit that clearly compiles all
12 the sources of applicable Clean Air Act requirements
13 into one place, thus enabling sources, states, EPA,
14 and the public to better understand the requirements
15 that apply to the source.
16 Second, to enable sources, states, and the
17 EPA not only to better understand them but to better
18 know whether a source is meeting them.
19 Third, to trigger actions by these sources
20 that result in better compliance with the Clean Air
21 Act.
22 Fourth, to allow for better enforcement by

1 EPA and states of the Clean Air Act requirements.

2 Fifth, to improve citizen participation in

3 air quality decisions by involving the public in the

4 issuance of permits.

5 Sixth, to improve EPA's ability to

6 implement and oversee the other Clean Air Act

7 programs like air toxics, acid rain and so on.

8 Seventh, to enhance EPA and state

9 government's ability to do more efficient and

10 effective air quality planning. There is sort of

11 sort of a feedback loop between Title V and the other

12 programs.

13 Eighth -- there's only nine of these -- to

14 insure the self-funding's adequate so that the states

15 can run the programs effectively.

16 And finally and ultimately, to improve air

17 quality.

18 To me if these sound relatively

19 straightforward -- and I think most of you would

20 agree that they're appropriate goals for EPA to be

21 pursuing as we work to implement the Clean Air Act.

22 However, pursuing each one of these goals carries

1 with it an associated burden.

2 To make the Title V program work better we

3 need to insure that the program is effectively

4 achieving these goals while minimizing the burden.

5 It's difficult for us to do this in the

6 Title V program. It's very hard to measure success -

7 - whether we're meeting these goals. You can't just

8 put out an air quality monitor before and after a

9 source gets a Title V permit to measure whether it's

10 triggering actions that result in better compliance

11 with the Clean Air Act.

12 The benefits of improved compliance --

13 better public participation, more efficient air

14 quality planning, and so forth, are often intangible

15 and very difficult to assess.

16 So we are looking to the Task Force and

17 the presenters today to help us get information that

18 we can use to make this assessment however that ends

19 being done.

20 Similarly we are looking to the Task Force

21 and the other presenters to help us identify the

22 factors that are contributing to unnecessary burdens

1 or that are acting as barriers to the program
2 achieving its benefits.
3 So we will be very interested in hearing
4 the information and examples and your personal
5 experience. And I'm speaking to the Task Force and
6 the speakers when I'm saying that as to what is and
7 isn't working well about Title V.
8 We're especially interested in issues that
9 you see as currently the most relevant to you or that
10 you see as the most important to the success of the
11 program or that are most likely to have broad
12 applicability -- not just local parochial kinds of
13 issues and ones that can be identified and
14 illustrated with specific examples that would give us
15 a basis for going forward if we want to make
16 improvements.
17 As I said earlier, we'd like to stress
18 what's working well, as well as what isn't working so
19 that we can preserve the good things about Title V as
20 we move forward.
21 One last point. There is still active
22 litigation on the original Title V rules. I would

1 like as much as possible for this forum not to be a
2 forum for debating those litigation issues. There
3 will be an appropriate forum for doing that in the
4 context of the litigation.
5 But I would like this not to be that,
6 because this is more of an information-gathering
7 forum. Sharing information that are touched by the
8 litigation seems worth while. But actually trying to
9 get into the litigation is something that we hope not
10 to do. And I hope other folks are in agreement with
11 that.
12 I look forward to hearing from the Task
13 Force and from today's speakers. And I will turn it
14 over to Bob.
15 MR. MOREHOUSE: I'm going to just give a
16 brief introduction. I think that's the intent
17 initially, Michael. I'm Bob Morehouse. I currently
18 work with Exxon/ Mobil. Just as background, after
19 coming out of school I worked three years as an
20 environmental consultant -- 28 years with
21 Exxon/Mobil, the first 18 in a variety of technical
22 marketing operations (either technical jobs,

1 management positions), the last 10 years in the
2 environmental area, 6 of which involved the RCRA
3 program and the last 4 with air.
4 Within our company I have responsibilities
5 across really all of our operations in the United
6 States. Specifically Title V activities is one area
7 that I have responsibility for in terms of our
8 working with our various sites and setting up
9 compliance assurance systems as well as taking care
10 of the regulations themselves and helping our sites
11 understand the requirements of Title V, taking a look
12 at permits as sites need support, compliance support
13 on permit type issues, whether it's reporting Title V
14 deviations -- that type of activity.
15 I'm also involved in a number of other air
16 issues, both as a company member but also through
17 some of the trade organizations here in Washington --
18 primarily the American Chemistry Council -- but also
19 I certainly interact with American Petroleum
20 Institute as well as the NPRA.
21 I get involved in activities both here as
22 well as certainly compliance support for our

1 facilities. My primary interest over today and
2 future meetings -- I'll talk about our experiences --
3 really is to share some of our company experiences.
4 We have just in our major facilities, our
5 chemical plants and refineries, we probably have more
6 than 80 permit applications in. We still have a
7 number of permits that we have not yet received --
8 some of the large facilities.
9 But we certainly have a lot of facilities
10 across numerous states in the country and it's my
11 intent to pull together that information, share that
12 with the Task Force, as well as encourage some of the
13 trade organizations I work with to also put together
14 information that I think would be valuable for the
15 Task Force in assessing the performance of the Title
16 V program.
17 MR. VAN DER VAART: My name is Don VAN DER
18 Vaart. I'm with the North Carolina Division of Air
19 Quality. My group is responsible for issuing all the
20 Title V permits in North Carolina.
21 By way of background, before coming to the
22 state I worked for a number of years with Shell

1 development on their R&D side. I also worked for
2 some university research organizations mostly in the
3 field of combustion and hydrocarbon processing.
4 I've also been the environmental manager
5 for a utility, so that makes me one of the few people
6 that have operated both in the free enterprise system
7 and in the public monopolies.
8 At any rate, most of my time now is spent
9 with the state in issuing Title V permits. And I'm
10 very excited to be here to try to clarify how this
11 program is achieving the goals that Michael stated,
12 primarily that we're to look at these permits as a
13 single source for exactly all the obligations and
14 requirements under the Clean Air Act.
15 MR. GOLDEN: I'm David Golden with Eastman
16 Chemical Company. I first became interested in clean
17 air when I was in law school, going to school in an
18 area that probably wasn't an attainment for all the
19 ambient air quality standards let's say.
20 I clerked for a law firm and was impressed
21 with the role attorneys can play in helping clients
22 understand complex regulatory programs and

1 influencing them to comply with them.

2 So after law school I went into private

3 practice with Lauren's firm. After that I went in

4 house with Eastman Chemical Company, which was about

5 nine years ago. Eastman is one of those companies

6 that you're probably most familiar with Eastman

7 Kodak, which we're no longer a part of.

8 We are one of those that makes lots of

9 things that are in the products you buy, but none of

10 them are the products you buy. We're downstream from

11 Bob's company but upstream of pretty much what you

12 generally buy in the store. I've been working with

13 Title V literally since the rules went final. I've

14 helped a number of companies, prior to coming with

15 Eastman, understand the rules and begin the

16 application process.

17 Eastman as well has filed over 50

18 applications, and worked in clean air permitting in

19 over a dozen states. I'm not only helping with

20 applications, but permit negotiations and I think

21 most importantly designing the compliance systems

22 necessary to insure compliance and that reasonable

1 inquiry occurs, that the responsible official can
2 feel comfortable with certification.
3 Most recently, in addition to clean air
4 duties, I've become the director of corporate
5 compliance for Eastman Chemical Company and I've been
6 struck with how Title V to some degree was Sarbanes-
7 Oxley for air before Sarbanes-Oxley was around,
8 before certifications became popular.
9 Anyway, I'm looking forward to working
10 here and see what we can do to capture what's good
11 and improve what's not quite as good.
12 MS. FREEMAN: Good morning. Lauren
13 Freeman with the law firm of Hunter and Williams.
14 And I'm located here in Washington, D.C. I've been
15 practicing under the Clean Air Act I guess for about
16 14 years now -- almost exclusively under the Clean
17 Air Act.
18 I'm here today representing the
19 constituency of the Utility Air Regulatory Group,
20 which is a group of, I guess, about 50 individual
21 electric utility companies and generating companies.
22 Depending on how you count them, it could be anywhere

1 from 50 to 100. With mergers the number is changing
2 every day.
3 The purpose of UARG is to participate in
4 Clean Air Act rulemakings and litigation on behalf of
5 the utility industry. Through my work with them I
6 have participated obviously in all the major
7 rulemakings for Title V and much of the litigation.
8 But my day-to-day work with UARG is
9 primarily in counseling -- counseling and
10 interpretation of -- counseling on compliance
11 certifications and reasonable inquiry, which David
12 Golden mentioned.
13 I also represented individual utility
14 companies on those same issues, helping to draft
15 permits, permit applications, interpret -- I'm hoping
16 to share some of the experiences of the UARG members
17 and the other individual members through this Task
18 Force participation.
19 MR. HITTE: Good morning. My name is
20 Steve Hitte with the U.S. EPA. I guess I have the
21 dubious distinction of being the program manager for
22 the Title V program.

1 I've been with EPA my entire career, which
2 is getting on over 30 years now. And I've been in
3 various positions, worked in various places at EPA,
4 ranging from solid waste programs to the drinking
5 water programs to the compliance enforcement program
6 and for the last probably 12 to 13 years in the air
7 program, specifically with the Title V program, which
8 I had to look up before I came because I forgot how
9 long I've been here -- about 10 years now.
10 Like everyone else I do look forward to
11 hearing what people have to say. I sit in this seat,
12 where I hear a lot of things from all of the
13 stakeholders out there, both what's working and
14 what's not working well.
15 Some of it is probably very true and some
16 of it's probably just a stretch of the truth.
17 Nonetheless, I hope to gather the facts over this
18 meeting and the other meetings so we do have a good
19 product to produce.
20 If there's areas where we can improve this
21 program, which I'm sure there are, that's definitely
22 my goal to do that.

1 MS. POWELL: My name is Keri Powell here
2 representing the New York Public Interest Research
3 Group. I've been involved in the Title V program
4 since 1998. Most of my experience has been with the
5 New York Title V program.
6 While I was at NYPIRG as a staff attorney
7 I reviewed and commented on about 50 Title V permits
8 and filed petitions on more than a dozen of those.
9 I have also played a leading role in
10 organizing grassroots advocates around the country to
11 teach them about the Title V program and the
12 opportunities that it provides.
13 I hope as a member of this Task Force that
14 I'll be able to bring a perspective on how this
15 program serves as a tremendous tool for the public to
16 get involved in the regulation of clean air in their
17 communities. And it really opens the process up in a
18 way that just wasn't happening before the
19 implementation of the Title V program.
20 MS. KADERLY: My name is Shelley Kaderly,
21 the Air Director for the state of Nebraska
22 Environmental Agency. I've been with the Nebraska

1 Environmental Agency for about 13 or 14 years. And
2 I've been in the air program for the majority of that
3 time.
4 I have also been involved in the superfund
5 and the water programs as well. I moved over into
6 the air program right when Nebraska was starting to
7 implement Title V. One of my first duties was to get
8 involved with the fee program and also to write Title
9 V permits.
10 I hope to bring to you all a perspective
11 from a smaller state agency that has had to implement
12 this program, bring perspective on the benefits we've
13 received from it, as well as some of the challenges
14 we've had to face over the last 10 years. And I look
15 forward to working with all of you.
16 MR. PAUL: I am Bernie Paul with Eli Lilly
17 and Company. It's a research-based pharmaceutical
18 company out of Indiana. We have seven facilities,
19 either research or manufacturing facilities that are
20 subject to the Title V program in Indiana and in
21 Puerto Rico.
22 We have Title V permits or FESOP permits

1 for about half the facilities. Although you can't
2 divide seven by half, I'll let you guess whether we
3 have three or four. I've also been involved in
4 various industry-based groups, working with state
5 agencies and the U.S. EPA on Title V.
6 The state of Indiana spent a few years
7 developing model permits before they really started
8 rolling them out. I was pretty heavily involved in
9 the development of that model permit, providing the
10 business perspective on what went into the model
11 permit.
12 I've also been involved in efforts with
13 the pharmaceutical industry and other multi-industry
14 groups that have to live with the Title V program.
15 And I've tried to offer feedback to state agencies
16 and EPA about how the program is working.
17 What I was thinking about -- what I was
18 going to say -- I thought I might offer a cute quote.
19 I'll still offer this cute quote, but it may not be
20 true.
21 I was going to quote a former major league
22 baseball manager named Wes Westrum, who once said

1 after he was besieged by reporters why he did
2 something in a particular game. He said, "Baseball
3 is like religion. Many attend but few understand."
4 And I was thinking the same applied to
5 Title V. But after looking around this table, I
6 think maybe more people understand Title V than I was
7 giving them credit for.
8 A couple of things that I wanted to just
9 initially learn from the Task Force members and from
10 the public participants who will be speaking -- I'm
11 real interested in understanding the views of the
12 state agencies as they try to implement the program,
13 because they are sort of the fulcrum of the program.
14 I think their views about how it's
15 working, what are its successes and problems, are
16 very, very important.
17 I'm also interested in hearing the views
18 of environmental organization stakeholders, in
19 particular, with what I see as sort of what can be
20 the crushing weight of Title V.
21 It's so detailed and so heavy with multi-
22 100-page permits and multi-100 page quarterly reports

1 and annual compliance certifications. How do the
2 people on the outside of the program view it in that
3 light? That's my opening statement.
4 MS. SINGH: I'm Padmini Singh. I'm from
5 EPA's Office of General Counsel. Our office works
6 very closely with the Office of Air Mediation on all
7 aspects of their work providing counseling for day-
8 to-day questions, rulemakings, and working with the
9 Department of Justice when litigation arises on any
10 of the issues that were worked on.
11 At a personal level I worked out of law
12 school. I went to a private law firm, worked there
13 for a number of years, then came to EPA.
14 At EPA I worked -- before I came to the
15 Air Remediation Office I worked at the pesticides and
16 toxic substances law office, then the international
17 environmental law office.
18 And now, in a rather checkered career, I
19 am back now in the General Counsel's Office. We're
20 looking forward to hearing your experiences on the
21 Title V program and what we can do better.
22 Thanks.

1 MR. VOGEL: My name is Ray Vogel with U.S.
2 EPA. I work in the operating permit program.
3 My main role is to support the Task Force
4 in whatever capacity they'd like. I've worked on the
5 Title V program since the proposal of the part 70
6 regulation's final promulgation came out in 1992 and
7 probably on just about every rulemaking that's
8 occurred since then, some of which were published,
9 some of which were not published.
10 I guess my intent -- one of the things I
11 would like to make sure happens here in this process
12 is to come up with some real examples of what's
13 working and what isn't working with Title V.
14 Since the inception of the program during
15 its implementation, when states were first issuing
16 permits, and since then we've met with a lot of state
17 and local industry groups.
18 One person would make statements about
19 things that were not working well. We would always
20 ask them, "Well, do you have examples of real
21 situations that illustrate what you're talking
22 about?"

1 We never saw those real examples. I would
2 still hope that we'd get some real examples out of
3 this Task Force as a way of demonstrating that some
4 of these situations or beliefs that people have are
5 either real or they're not real. That would be one
6 of my hopes.
7 MS. KEEVER: I'm Marcie Keever with Our
8 Children's Earth. We're a San Francisco based
9 nonprofit organization.
10 For the past three years we've spent a lot
11 of time commenting on Title V permits. We've
12 commented on at least 25 facilities and filed at
13 least 5 petitions in conjunction with other groups in
14 the Bay area and across the country.
15 I really do hope to bring a community
16 perspective to Title V and the experiences that we
17 and others have had in the Bay area with the Title V
18 program and how it has really helped communities
19 become involved in the facilities that are in their
20 communities and giving them an opportunity to speak
21 out and really understand the Clean Air Act
22 requirements.

1 MR. HAGLE: I'm Steve Hagle, special
2 assistant to the director of the air permits program
3 in Texas. I've been working in air permits since
4 1987. Prior to that I was in the oil and gas
5 industry.
6 I started out in new source review and
7 worked as a permit engineer and also a manager in the
8 new source review program and then went into the
9 Title V program. I actually issued a couple of Title
10 V permits.
11 I then worked with Ray and Michael and
12 some others on some challenges we had in Texas with
13 response to note the deficiencies in our program and
14 also challenges to the programs of environmental
15 groups.
16 So I have a perspective of some of the
17 challenges we have in Texas, being the largest state
18 in terms of number of Title V permits. We have over
19 1,700 sources, Title V sites in Texas, many of them,
20 including some of Bob's, that haven't been issued
21 yet.
22 But we are still working on that program

1 and trying to hopefully get those issues in the next
2 year or so.
3 Thank you.
4 MR. HODANBOSI: My name is Bob Hodanbosi
5 with the Ohio Environmental Protection Agency. I've
6 been employed by the agency for more than 30 years
7 now.
8 I've had an opportunity, looking around
9 the table, to work with about half of you over the
10 years. So it's good to see that we have that type of
11 experience here to work on this project.
12 One of my other goals is I am chair of the
13 permitting committee for the State and Territorial
14 Air Pollution Program Administrators (STAPPA). In
15 that role, along with that Ursula Kramer, chair of
16 the local side of the organization, we hear a lot
17 about Title V and things from the various state and
18 locals about some of the frustrations in making this
19 program work.
20 It certainly appears from my perspective
21 that there's some fertile ground here to work on and
22 come up with recommendations so we can improve

1 overall the processing of Title V permits and still
2 meet those objectives Michael laid out when he went
3 through the nine separate items. I don't think
4 anybody has a disagreement with any of those.
5 It's just turning out to be a much longer,
6 more arduous process to get through all these permits
7 than I think anybody envisioned.
8 I'm looking forward to working with all of
9 you and seeing if we can come up with a good package
10 that then EPA can take and depending on those
11 recommendations, the nature of those, to move forward
12 so we can meet all those objectives, but still do it
13 in an efficient way.
14 MS. OWEN: Good morning. My name is
15 Verena Owen. Just let me say two things up front --
16 (a) I don't think I have an accent.
17 (Laughter.)
18 MS. OWEN: But I was born and raised and
19 received a degree in biology in Berlin, Germany.
20 And secondly, if you have not yet heard of
21 the Lake County Conservation Alliance, I won't hold
22 it against you. We are a grassroots environmental

1 organization that serves as an umbrella group for
2 small groups, neighborhoods, PTO's.
3 We are a not-for-profit organization. We
4 are all volunteer. We don't have any paid staff.
5 Although we're located in Lake County, we certainly
6 have done a lot of work all over the state on Title
7 V.
8 We're very much hands on and we offer
9 guidance. But we also do outreach if we think it's
10 necessary.
11 I applied for this Task Force because I
12 strongly felt that concerned citizens should have a
13 voice at this table. And I hope that I can maybe
14 offer a very different perspective at times from
15 years of work really in the trenches.
16 MS. BROOME: Good morning. My name is
17 Shannon Broome. I'm here on behalf of the Air
18 Permitting Forum. Just for the background
19 perspective, I came out of school with a chemical
20 engineering degree. So even though I'm a lawyer,
21 usually the engineers give me a break and they'll
22 talk to me.

1 I went and worked at a law firm and then I
2 worked at General Electric for quite some time on
3 their Title V program -- getting that off the ground.
4 And others have taken that and really sailed to
5 fruition since I left.
6 But day to day my life is pretty much
7 Title V. Some of you may find it kind of amazing
8 that I would do that day to day, but I find myself in
9 two to three states a day -- in my mind obviously,
10 not travelling fortunately, but in different
11 regulations.
12 And I have experience with, I would say,
13 about 25 states that I've done Title V permits in.
14 And I'm working with facilities that are on the
15 ground trying to implement the program after they
16 have the permit.
17 And everybody thought they thought of
18 everything that needed to be done. Then you find
19 that typo or you find that thing and it's got to be
20 revised. How do we get through that day- to-day
21 compliance certification issues as well?
22 So I'm hoping to bring that practical

1 perspective to the Task Force and to hear everybody
2 else's views and see if we can reach some common
3 ground on goals and maybe some recommendations as to
4 how things can be improved.
5 Thank you.
6 MS. ANDERSON: I'm Kathleen Anderson with
7 EPA, but I'm with EPA region III. Region III is the
8 lead region for permitting. So I'm here representing
9 all 10 regional offices.
10 Personally I have as many years in the
11 government as I do in private industry. I've even
12 been part of -- I've even had to develop a compliance
13 certification, compliance system, done reasonable
14 inquiries so I have as much experience being a
15 regulator as I do being a regulated person or
16 regulated entity.
17 So I'm very curious or very hopeful that I
18 can bring something here and learn something as well.
19 One of the things the regional offices
20 have is kind of the middle man position. We can see
21 the struggles that the states have in implementing
22 this program.

1 And this truly is a very difficult program
2 to implement. It's also a difficult program to
3 implement if you're in industry.
4 So I'm hoping I can bring some
5 recommendations and learn something as well. Thank
6 you.
7 MR. WOOD: Mike Wood with the Weyerhaeuser
8 Company. I'm an environmental affairs manager
9 supporting facilities in the central part of the
10 United States.
11 I work with six facilities that have Title
12 V permits right now that have been involved in all
13 phases of the permitting process. One of the
14 facilities has yet to get their final first Title V
15 permit.
16 Three of those have already been through
17 renewals. We've even experienced some enforcement
18 activity at one of our facilities.
19 So we take Title V very seriously. And I
20 am pleased to be part of this Task Force. I think
21 it's important that all stakeholder perspectives are
22 heard and addressed. I commend EPA for forming this

1 group.

2 MR. PALZER: I'm Bob Palzer. I'm a

3 volunteer for the Sierra Club. I have been an

4 activist for more than 40 years. I was involved in

5 trying to get the original Clean Air Act implemented

6 and putting Title V program in place.

7 I serve as a volunteer for the Sierra

8 Club. I was chair of their national air committee.

9 And now I'm a senior policy advisor for that

10 committee.

11 I've worked on a lot of permits, both in

12 working with the sources and agencies and drafting

13 them and reviewing them and commenting.

14 What I'm hoping to get out of this process

15 is an opportunity to fix what needs to be fixed. And

16 I think there are some things. And to see what kind

17 of common ground there is on problems that the

18 sources have as well.

19 Thanks.

20 MR. MESSINA: Ed Messina, an attorney with

21 the air enforcement division at EPA. I'm here

22 subbing for my assistant director, Carol Holmes.

1 The air enforcement division is
2 principally responsible for coordinating with the
3 region's air enforcement efforts around the country.
4 We support all the nine goals of the Title V program.
5 And I think at the end of the day our focus will
6 probably be on the principal goal of better
7 understanding how the source is meeting its clean air
8 obligations.
9 I'm very interested to hear what people
10 have to say in the Title V programs. So thanks.
11 MR. HIGGINS: My name is John Higgins.
12 I'm with the New York State Department of
13 Environmental Conservation. I have been with the
14 division of air resources since 1968. I was in
15 charge of the whole permitting program from 1993
16 until 2003.
17 In New York we have about 550 Title V
18 facilities, all of which have been permitted once.
19 So we started doing renewal permits a year ago. So
20 it's our second time around the block with Title V.
21 Our facilities range from Kodak Park, which is one of
22 the larger industrial complexes you'll find anyplace,

1 down to 25 tonners down in New York City, because of
2 the ozone non-attainment designation in that neck of
3 the woods.
4 We spent a huge amount of resources during
5 the Title V program. The main reason we wanted to be
6 here is because we wanted to hear everybody else's
7 impression of how it was for them.
8 We did a lot of work. We worked with a
9 lot of companies. We worked with a lot of
10 environmental groups. We expended a lot of the
11 taxpayer dollars. We had a reasonably positive
12 experience. And I'm just interested in hearing how
13 it went every place else.
14 I'm also in a corollary role representing
15 the NESCOM states, which is New England, New York,
16 and New Jersey at the table here also.
17 MR. LING: I recognize that I forgot to
18 say a few words about myself. I gave EPA's
19 perspective, but I'm Michael Ling. I work for Bill
20 Harnett in the front office or what we call the
21 division office of the division he directs, the name
22 of which is very unwieldy.

1 I have an undergraduate degree in physics.
2 And I have a master's degree in environmental
3 management. I started out working as a contractor
4 focused on new source review on Title V issues.
5 Then I came over to EPA and worked with
6 Steve and Ray in the Title V permit program. For
7 about the last five years I've been working directly
8 with Bill Harnett on the issues that our division
9 faces, most of which seem to involve NSR -- it's
10 Title V. It's been a fairly busy time in NSR lately.
11 But we're also very interested in turning our
12 attention to the Title V program.
13 Also I spent a year as a fellow on Capitol
14 Hill working for the Senate Environment Committee and
15 learned how the legislative branch looks at the
16 executive branch.
17 So with that I will just say that I am
18 fully supportive of the EPA's goals for this program.
19 I think it makes a lot of sense for EPA to always be
20 looking for ways to improve the efficiency and
21 effectiveness of its programs. I think it also makes
22 a lot of sense for us to gather a lot of information

1 before we set out to do something. And those are my
2 two goals here.
3 Keri.
4 MS. POWELL: Michael, I'd like to go on
5 record that I strongly object to EPA's decision to
6 only put four environmental advocates on the Task
7 Force. I am aware that there were at least a few
8 advocates who applied for the Task Force saying that
9 they were able to pay their own expenses to
10 participate.
11 I'm unaware of any attempt by EPA to reach
12 out to advocates to find out whether they could at
13 least pay some portion of their costs or whether
14 there were any other advocates that they could think
15 of that would be able to support their own financial
16 expenses for participating on this Task Force.
17 As a Task Force member I'm troubled by the
18 decision because at the outset anyone that looks at
19 the composition of this Task Force views it as being
20 stacked against the environmental perspective. I
21 think that that's a negative impression to give --
22 whether EPA intended to give that impression or not.

1 It's something that I think should have
2 been recognized at the outset. I would encourage the
3 agency to reconsider that decision and appoint two
4 additional environmental group representatives to the
5 Task Force.
6 Thank you.
7 MR. LING: Those concerns are noted. Like
8 I said, a transcript of this is being made.
9 I will say my hope would be it certainly
10 wasn't EPA's intent to create that impression if
11 that's how it's viewed. I'm disappointed to hear
12 that it is being viewed that way by some.
13 I would request that folks on the Task
14 Force respond with some of the points that I made
15 earlier about how it isn't really a vote-based Task
16 Force and the intent is to make sure that everyone
17 has a chance to be heard. I hope that that's the way
18 that the Task Force does its business.
19 I have been given a list of folks who have
20 signed up to speak this morning. Presently there's
21 five folks on the list. I'll just start, like I
22 said, first come, first serve. The first person on

1 the list is John Paul.

2 Let me just ask you, John, we've got a

3 couple of ways we can proceed here. One is we can

4 have the Task Force members hold their questions

5 until the end. The other is we could just stop you

6 at any time and ask questions. I'll leave it to you

7 how you want to handle that.

8 MR. J. PAUL: Why don't we make it just as

9 informal as possible. I know just about everybody on

10 the Task Force. It's my purpose this morning really

11 to give you a statement and maybe to lay some

12 groundwork.

13 But we also intend to offer some specific

14 written comments from our agency. We'll work -- as a

15 state and local we work with Bob and Ursula and

16 others to make sure that other state and local agency

17 comments come forward.

18 I'm especially interested that you hear

19 the comments of the local agencies. There's always a

20 different perspective between state and local

21 agencies just as there's a different perspective

22 between a state agency, EPA, EPA headquarters, and

1 EPA region.

2 The closer you get down to living in the

3 neighborhood that you regulate always gives you

4 somewhat of a different perspective. That's what I'm

5 going to try to bring to this Task Force.

6 So you've got a copy of my written

7 statement. I'll just go through that. And if you

8 want to stop me at some point and ask a question,

9 that's fine.

10 For the record my name is John Paul. I'm

11 supervisor of the Regional Air Pollution Control

12 Agency of Dayton, Ohio. RAPCA is a six-county local

13 agency, which for more than 30 years has had as its

14 primary mission the protection of the citizens of the

15 Miami valley from the adverse health and welfare

16 impacts of air pollution.

17 I appear before you today to give you a

18 brief overview of the agency's experiences with the

19 Title V program. I also plan to submit detailed

20 comments on Title V at some future date.

21 Just a little bit of background on the

22 agency. RAPCA is a six-county agency. We actually

1 began within the city of Dayton in the 1950s. We're
2 within the Board of Health. We're actually the
3 Bureau of Engineering. Of the Montgomery County
4 combined general health district we contact with five
5 other surrounding counties. So we're a six-county
6 local agency. Within Ohio there are nine local
7 agencies, all of which existed prior to U.S. EPA and
8 prior to Ohio EPA.
9 And I started with the agency as an intern
10 in 1972. And actually my job that summer as an
11 intern was to go through questionnaires that
12 companies had filled out with regard to the air
13 pollution sources that they had and to determine what
14 kind of applications they needed for permits.
15 Ohio has always had a permit to operate
16 the system. It's been a strong system and a real
17 good system and one which obviously in our minds we
18 compare how things were done under that and how
19 things are done under Title V.
20 I want to commend EPA, the Clean Air Act
21 Advisory Committee, and those who volunteered for
22 this Task Force for your willingness to examine the

1 Title V program and consider the comments of
2 stakeholders on what is not working well with the
3 Title V program.
4 Given the diversity of the Task Force,
5 which I think fairly represents the diversity of
6 opinions on the purposes of the Title V program, I
7 envision that you will have a difficult time reaching
8 consensus on issues.
9 Therefore I urge you to have as your
10 primary goal the identification of issues and the
11 accurate representation of various stakeholder
12 positions on those issues.
13 As a member of CAAAC and as an interested
14 local agency director, I look forward to your report
15 and trust it will contribute to the improvement of
16 the Title V program.
17 Just a little bit on the issues and why
18 I'm recommending that you have as your primary goal
19 the identification of issues and the documentation of
20 the stakeholder positions on those issues.
21 One of the issues that I think -- well, I
22 know -- that you'll discuss is the issue of

1 insignificant emission sources, insignificant
2 activities. I can imagine you will have divergent
3 opinions on that.
4 My experience has been that some want
5 these listed. They want what the applicable rules
6 are for the insignificant activities, what the test
7 is. They want certification of compliance. And I'll
8 give you an example later as to how that can get very
9 burdensome.
10 One of the things that you heard some
11 reference to -- I know Bob said something about that
12 and I think Shelley mentioned also resources. We
13 only have so many resources at the state or local
14 level. And we need to spend those resources wisely.
15 And so if you as a Task Force should
16 recommend, for instance, that insignificant emission
17 sources receive a lot of attention, you just need to
18 realize that that attention paid to what by
19 definition are insignificant sources is going to take
20 away from time that we can spend on significant
21 sources.
22 RAPCA is one of seven local agencies in

1 Ohio that prepares Title V permits for issuance by
2 Ohio EPA. When the Title V program was initiated, we
3 had approximately 65 facilities which qualified for
4 the program.
5 That number has been reduced to 48 through
6 the issuance of state permits, or FESOP's, limiting
7 facilities' potentials to emit. Of the 48 Task Force
8 facilities all but 1 have been issued their final
9 Title V permit.
10 I might note that within Ohio there are
11 739 Title V facilities with 667, or 90 percent,
12 having been issued Title V permits as of June 1st,
13 2004. So there's been good progress on this.
14 I don't think when we initiated the
15 program that we defined having 90 percent of the
16 permits done by 2004 as progress. But having
17 experienced it and gone through it, 90 percent of the
18 permits is good progress.
19 It's our understanding that the Title V
20 program was originally designed to accomplish one
21 primary purpose, that being to bring together in one
22 permit all the air pollution rules applicable to a

1 particular source.

2 Beyond that primary purpose there are

3 certainly other secondary purposes, including the

4 collection of fees, the assurance of compliance,

5 improved citizen participation, and improved records

6 of performance.

7 However, there were already in existence

8 at least 35 state or local permit programs across the

9 country when the Title V program began. For

10 instance, as I mentioned earlier, Ohio has had a

11 permit to operate program since the early 1970s and

12 it has worked fine.

13 There are areas of the country where the

14 Title V purposes may have been already met. That's

15 my point -- in pointing out that there were permit to

16 operate programs in areas that were working well.

17 It may be that those purposes were already

18 being met and for such areas the Title V program

19 represents a significant amount of work with very

20 little added value. In fact, it's our belief that for

21 most of the country the Title V program has quickly

22 become one for which the work involved greatly

1 exceeds the value of the end product.

2 The reasons for this are varied and will

3 be covered in greater detail in our written comments.

4 But please allow me to spend the rest of this time

5 giving a general overview of how we feel the Title V

6 program has failed to meet its intended primary

7 purpose.

8 The Plain English Guide to the Clean Air

9 Act says the following in describing the Title V

10 program: "The permit system simplifies and clarifies

11 businesses' obligations for cleaning up air pollution

12 and over time can reduce paperwork."

13 In stark contrast to that statement is one

14 of the Title V permits recently issued for a source

15 within our jurisdiction. This is the Wright

16 Patterson Air Force Base located in Greene County,

17 Ohio.

18 The permit is 634 pages long. I have to

19 laugh because I look back at the Plan English Guide

20 that said this was going to reduce paperwork. 634

21 pages long. So much for simplification,

22 clarification, and reduced paperwork.

1 I doubt there's a single person in the
2 entire world that will ever read and understand this
3 whole document including the poor official that is
4 supposed to sign a statement certifying compliance
5 with all the terms and conditions contained in this
6 634-page permit.
7 I am remembering a slide that I once saw
8 of Dirty Harry. It said -- it was something to the
9 extent of "go ahead, sign that permit certification.
10 Make my day." But at any rate, our average Title V
11 permit exceeds 100 pages in length, so this is
12 definitely not a simple program.
13 There are several contributors to such
14 lengthy permits -- the incorporation of multiple
15 compliance scenarios, along with the compliance
16 assurance requirements for each, all of which are
17 spelled out for each individual unit rather than
18 simply referenced.
19 When you have similar sources, for
20 instance, boilers that all have the same applicable
21 requirements, the same compliance assurance
22 requirements, that can be simplified rather than

1 repeating that, repeating that, repeating that.
2 The incorporation of MACT standards word
3 for word in Ohio rather than simply referencing a
4 particular federal MACT standard and then stating its
5 applicability -- and I don't know if that's
6 particular to Ohio, but that's something that's not.
7 So basically rather than list in a permit
8 that a particular MACT standard is applicable and
9 then have that MACT standard available for people to
10 read, you have to copy it word for word into the
11 permit. We think that's excessive.
12 The inclusion of insignificant emissions
13 units. At the Wright Patterson site there are over
14 1,000 insignificant emissions units. Along with the
15 applicable rules for each, these alone take up 25
16 pages in the Wright Patterson permit and by
17 definition are insignificant.
18 I talked to the permit writer before I
19 came here about his experience with that. He said it
20 took him three weeks to sort out the insignificant
21 emission units for this permit.
22 Then the inclusion of periodic compliance

1 reports, some of which are monthly, some of which are
2 quarterly, and then some of which are then all
3 repeated in the annual certification of compliance
4 with every requirement in the permit.
5 Add to this the generation of all these
6 requirements, the agency obligation for inspections
7 to insure that all the listed requirements are being
8 met on an annual basis, the review of all the
9 periodic reports that are submitted. RAPCA received
10 last year 6,292 such reports.
11 Then the requirements to keep the written
12 records of all the data and make them available for
13 public inspection. The increasing requirement to
14 report all these inspections and report reviews into
15 the federal electronic database -- and suddenly you
16 find that the Title V program is a multi-headed
17 monster.
18 With regard to the reports that are filed
19 -- the 6,292 -- I recognize that there are some
20 agencies that will take these reports and simply file
21 them away. One of the principles that we have -- and
22 our local agency -- is that if an industry has to

1 file a report, then we have an obligation to review
2 that report and to record our review and make a
3 determination with regard to that.
4 We take it seriously when we ask for
5 reports, compliance reports, because we know that's
6 something that we're going to have to review.
7 So I'm personally very concerned with the
8 time and resources being spent on this program and
9 the lack of corresponding benefit.
10 Of the 39 full-time personnel we have at
11 RAPCA, 8 are assigned to the permit unit -- 6 permit
12 reviewers, 1 permit clerk, and 1 supervisor.
13 Remember, we're just a local agency. We're not the
14 state. That's over 20 percent of our resources.
15 Additionally, I'm concerned that we have
16 this growing perception in the air pollution control
17 field that somehow placing pages and pages of terms
18 and conditions in permits equates to control of air
19 pollution or the equally troubling perception that if
20 an applicable rule is not included in the Title V
21 permit, that it is somehow no longer enforceable.
22 If this is true, how did we ever control

1 air pollution before the Title V program? How was it
2 that we made such significant gains in air quality
3 from 1970 to 1990?
4 I will say this. It was not by having 20
5 percent of our people sitting at their desks 40 hours
6 a week writing permits, which average over 100 pages
7 in length. There are many other issues. We will
8 detail those in our written comments: issues such as
9 the length of time involved in the four stages of the
10 permit issuance, the six types of modifications that
11 can be made to permits, the requirement for
12 nondeclaration compliance reports, the required
13 statements of basis for the permits, the complicated
14 integration of permits to install into the Title V
15 permit, and the never-ending search for the perfect
16 permit, which will be covered in detail with
17 suggestions for improvement.
18 The never-ending search for the perfect
19 permit is something which is especially troubling for
20 our local agency. We draft a permit. It's reviewed
21 by the state. That process there may take years.
22 Then it's going to be reviewed by the

1 region. Then it's going to be reviewed by the
2 public. Then it's going to be reviewed by the
3 company. Everyone has changes to it.
4 It's very difficult to motivate people to
5 write multi-100-page permits, get back hundreds of
6 comments, make changes to those, and then repeat that
7 process, repeat that process, repeat that process.
8 That's very difficult. And as a local
9 agency director I'm faced with this dilemma. Do I
10 concentrate on having people who are satisfied with
11 doing that? Or do I want people who say, "This is
12 crazy. This is just paperwork. I want to control
13 air pollution."
14 There's a dilemma for us. You can hire
15 people who would be very good at that, very good at
16 details. Write it, write it, write it, write it. I
17 would rather have people who can see the big picture,
18 who are more aggressive in actual air pollution
19 control, actually meeting with people, actually
20 talking with complainants, actually looking at
21 sources rather than spending time at their desks.
22 So my challenge to the Task Force is to

1 identify ways to simplify this program now before we
2 get too far into the renewal of permits and generate
3 even more paper that does little or nothing to
4 control air pollution.
5 I would ask you to please listen carefully
6 to those people that offer suggestions for
7 simplification. Please resist those that want to add
8 even more requirements to this already burdened
9 system, especially with regard to insignificant
10 emissions units.
11 As a local agency director that is dealing
12 with a problem of limited resources and increasing
13 demands, I want to have the option to direct our
14 limited resources to tasks that produce the greatest
15 return in reductions of air pollution.
16 Thank you for this opportunity to offer
17 testimony. I'll do my best to see that our written
18 comments offered as a follow-up to this testimony are
19 complete and hopefully beneficial to your
20 considerations.
21 As a member of the Clean Air Act Advisory
22 Committee, I will look forward to your report. And

1 I'll be more than happy to answer any questions you
2 might have.
3 MR. LING: Thank you very much, John.
4 I'll just throw it open to the Task Force. I think I
5 saw I saw Bob's hand first.
6 MR. PALZER: John, you brought out a
7 number, quite a number of interesting points in terms
8 of the -- actually, before I ask the specific
9 question, it sounds like you should really be sitting
10 at the table not as a person giving testimony, but as
11 a member of this panel.
12 Did you by any chance try to get on this
13 Task Force?
14 MR. J. PAUL: That's kind of a mixed
15 thing. Yes, I did apply for it as a member of CAAAC
16 I participated in the steering group and offered
17 suggestions for that.
18 Then EPA -- I think it was pretty much as
19 a matter of procedure -- asked all of the steering
20 group members to apply for the Task Force.
21 But let me say that I'm perfectly happy
22 with the Task Force and with the process. And I

1 really think the most important part of this process
2 is the offering of testimony of the establishment of
3 a record.
4 I'm perfectly satisfied that my views will
5 be represented, that they will be considered. I'm
6 perfectly happy to work with other state and local
7 agencies to encourage them to bring comments to the
8 table. I am perfectly happy to meet with different
9 members to discuss different details.
10 MR. PALZER: Thanks. One of your points,
11 one of the many good ones I thought, you brought
12 forward is the complexity of the permits and the
13 amount of time spent, as you said, creating the
14 perfect permit potentially. I've often heard that
15 perfection is the enemy of completion of a project.
16 I've also experienced -- I'm a chemist --
17 a good deal of comfort with reading technical
18 information. But a lot of people that I work with
19 who are very interested in breathing clean air find
20 it a rather intimidating process.
21 As you mentioned, there is a lot of effort
22 to deal with some sources of emissions that may not

1 be as significant as other ones, but will take up a
2 good deal of the bulk of the permit itself.
3 And certainly among the regulated
4 community and the regulators and the public trying to
5 deal with those issues, do you have any suggestions
6 on how that could be simplified?
7 MR. J. PAUL: That's one of the things
8 that I plan on asking other state and local agencies.
9 My own personal opinion is if you just dealt with the
10 significant emission units and made sure those were
11 covered in the Title V permit --
12 I recognize that comes from a local
13 perspective. It's quite common for us to sit down
14 with citizens' groups and talk about a particular
15 facility -- what the problems are -- and make sure
16 that those problems are addressed.
17 So my concern is not so much the detail in
18 the permit as understanding what the actual problems
19 might be at a facility. So to a certain extent I'm
20 saying that there are better ways to get at some of
21 those details. And if those are in place, then they
22 don't have to all be in the Title V permit.

1 But that means that you'd have to have a
2 good agency. You have to have an agency that's
3 meeting with people. You have to have an agency
4 that's cognizant of the problems.
5 It's also to say that if you don't have
6 that, just getting all these details in some pieces
7 of paper is not going to take care of the problem.
8 MR. LING: I see people have adopted the
9 convention of putting your name tent on its side when
10 you want to ask a question. That sounds good to me.
11 I see Shelley -- lots of questions. I see Shelley's
12 first.
13 MS. KADERLY: John, thank you for your
14 comments today. I appreciate the resource
15 limitations of a local agency. Being from a small
16 state I think we have some commonality there.
17 I was really interested in your comments
18 on the reports and how there are almost 6,300 reports
19 last year to be reviewed. I commend you and your
20 staff for looking at each and every one of those that
21 come in. That's an awful lot of reports to go
22 through.

1 Something I was interested in is whether
2 in the evaluation of those reports whether you felt
3 that compliance issues, noncompliance issues in
4 particular, were identified that would not have
5 otherwise been identified in your regular course of
6 doing business.
7 MR. J. PAUL: Yes. We do find
8 noncompliance from those reports. Actually from
9 those reports and from stack tests are two of the
10 biggest areas we find noncompliance.
11 We do believe that they have value.
12 However, I think that we could go through and search
13 those and find the ones that have produced the
14 greatest value and find the ones that produce little
15 or no value.
16 For instance, if you had a requirement
17 that people take method 9 readings on a spray booth
18 because it's subject to particulates. We don't want
19 to see that. When we go out on our annual inspection,
20 we can usually tell whether or not the particulates
21 are being controlled from a spray booth.
22 Similarly, the bag houses that are on top

1 of silos. There are a lot of things we could
2 identify that if there's a problem, we will see it or
3 the people in the parking lot will see it before it's
4 something they had to report.
5 So there are different ways of identifying
6 a lot of these problems that are not necessarily
7 covered by the periodic reports.
8 MR. LING: Bernie.
9 MR. B. PAUL: I was curious if you could
10 describe to me the process your staff uses and if
11 you're not able to do that -- and if that's something
12 you could include in your written comments that you
13 supply later.
14 MR. J. PAUL: I can answer that. We
15 assign them in a number of ways. Our abatement unit
16 is broken up. We have permit writers. We have
17 facility inspectors and we have an enforcement unit.
18 And one of the jobs of the enforcement
19 unit is to review the periodic reports, so we have
20 different people. We have some that specialize in
21 coal reports, some that specialize in VOC reports,
22 some that just look at CEM's. So it's broken out

1 that way.

2 And people have it set up in spreadsheets

3 so they have the companies. They pretty much know

4 what to expect. And then they go get those in and go

5 through it.

6 Where we have our problem is when we have

7 employee turnover. Then it's very difficult to pick

8 that up or to transfer that to someone else. That's

9 one of the places that we have a problem. But we'll

10 give you more detail on that.

11 MR. B. PAUL: A second question I have.

12 You've issued approximately 20 potential to emit

13 limiting permits. We call them FESOP's. I don't

14 know what you call them in your agency.

15 Are there any material differences between

16 the level of detail in your FESOP type permits or the

17 requirements within those permits compared to the

18 Title V permits?

19 MR. J. PAUL: There's some differences,

20 but I'm looking at Bob, since that's who we submit

21 our FESOP's to.

22 But they're also a very complicated

1 permit. They're detailed. There are obviously a lot
2 of reports that are involved with the FESOP's because
3 the facility has to show that they are continuing to
4 stay under whatever the limits are.
5 I would equate them to a Title V permit.
6 There are certainly Title V permits that are less
7 complicated than some of the more complicated
8 FESOP's.
9 MR. B. PAUL: I have a question for
10 Michael. John mentioned that he's going to be
11 submitting written comments. I'm sure there will be
12 others who will be submitting written comments.
13 I don't know if you guys have thought
14 through a process for how Task Force members would be
15 able to review those written comments other than
16 going out to the e-docket and searching for them that
17 way. Or will we be provided with a monthly listing
18 of people who have submitted comments so we can try
19 to search them out.
20 I'm just trying to think of a way that
21 will prompt us to find them or receive them or
22 whatever.

1 MR. LING: We've talked a little bit about
2 this. Ultimately these are the kinds of issues a
3 Task Force can decide for itself. But what we have
4 talked about when we addressed this in the past was
5 that we have a contractor on board who is going to be
6 summarizing these written comments. Of course, if
7 you'd like to read the comments themselves, they are
8 on e-docket.
9 I don't recall exactly when the comment
10 period is going to close. But we're going to close
11 the comment period at some period well before the
12 Task Force is expected to produce a report so that
13 the contractor can have a summary available and so
14 you can do your own research. And Ray may have
15 something to add there.
16 MR. VOGEL: The comment period is open
17 right now till March 1st of next year. We can always
18 extend it if necessary.
19 MR. LING: I believe the next question was
20 Keri.
21 MS. POWELL: Mr. Paul, thank you for
22 coming before us and answering questions. It's good

1 to get an opportunity to talk to you about your
2 program. I have a number of questions specific to
3 your testimony. And so I hope the others will bear
4 with me and let me just sort of run through them as
5 quickly as I can.
6 You mentioned that you thought -- I don't
7 know if you said this explicitly in your testimony.
8 But you seemed to be saying that you thought that
9 Ohio had a sufficient permit program in place prior
10 to adoption of the Title V program. Am I
11 understanding your testimony correctly?
12 MR. J. PAUL: Yes, certainly from our
13 view. Obviously I would have access, but I'm not
14 commenting on permits in northwest Ohio or something
15 like that. I'm commenting on the permits in our area
16 and the approach that we took early on to how we
17 wanted to write those permits and how we wanted to
18 use those permits.
19 MS. POWELL: Were the permits in your area
20 different from permits in other parts of the state?
21 MR. J. PAUL: There were parts that were,
22 yes.

1 MS. POWELL: So there's no statewide
2 regulation governing how the permits needed to be
3 structured?
4 MR. J. PAUL: There was. And over the
5 years that was one of the early concerns of Ohio
6 industry -- was the difference in the permit in
7 southwest Ohio and northeast Ohio.
8 So over the time there's been a lot of
9 work at the issue and some engineering guidelines and
10 other things. And there's been a lot of effort at
11 the state level to review permits to make sure that a
12 permit issued in one part of the state was equal to a
13 permit issued in the other part of the state.
14 That's good on that level. It's bad on
15 the level that now you have to make sure that every
16 permit, even if it's a gas station, has to be
17 reviewed at the state level.
18 Once again, there's parts even of that
19 that we thought could be simplified.
20 MS. POWELL: Do gas stations get Title V
21 permits in Ohio?
22 MR. J. PAUL: No.

1 MS. POWELL: Is your testimony that before
2 the Title V program you thought that permits in your
3 region might have been better than permits issued by
4 some other regions in Ohio?
5 MR. J. PAUL: They might have been better
6 on some and they might not been not as good on some
7 others.
8 MS. POWELL: In what ways might permits,
9 prior to the Title V program, have been better in
10 your region than in other regions?
11 MR. J. PAUL: We would make sure that we
12 had all of the testing requirements and that we had
13 the precise limits and just that everything was real
14 clear.
15 MS. POWELL: So other regions might not
16 have been issuing permits that had all the testing
17 requirements and limits.
18 MR. J. PAUL: It's possible. Anything's
19 possible. You can actually ask Bob that question.
20 MS. POWELL: I'll ask him later.
21 MR. HODANBOSI: Just to put some
22 perspective, we have 80,000 emission units in our

1 system. Certainly with that number of sources we
2 have 12 different agencies reviewing permits.
3 One of the challenges that we particularly
4 have in Ohio is the consistency issue and how do we
5 keep permits going, but yet how do make sure that the
6 permits that RAPCA issues are consistent with what is
7 being done in some of our district offices as an
8 example.
9 Overall I think RAPCA's permits were
10 probably of a higher quality than, generally
11 speaking, the others in the state. But yet that
12 wouldn't necessarily mean that the other ones were in
13 some way deficient. They just maybe didn't have
14 quite as much detail that RAPCA put into their
15 permits.
16 But the magnitude, I think, of the point
17 John is trying to make here is that our previous
18 permit system covered a lot of services. We had a
19 permit system in place that covered a lot of
20 services.
21 MS. POWELL: I just want to find out a
22 little bit more about ways in which you think that

1 your prior program did the job that needed to be done
2 and you didn't need the Title V program.
3 For a facility like the Air Force base
4 that you're describing in your comments, about how
5 many permits would that source have had prior to the
6 Title V program?
7 MR. J. PAUL: Well, it would have had at
8 least 33. That's how many significant emission units
9 are out there. And then probably the whole 1,000
10 insignificant emission units may have -- a great
11 number of those may have had permits to install.
12 Permits to install are required in Ohio
13 for virtually everything. We were just starting to
14 put some de minimus things in place. I would say
15 virtually everything was covered.
16 MS. POWELL: Are you saying that of those
17 1,000 insignificant emission units they might of each
18 had their own preconstruction permit?
19 MR. J. PAUL: They might have depending on
20 when they were installed and, you know, the size of
21 some of them. I don't know how many, but I would
22 feel confident that everything significant out there

1 was covered by a permit.

2 MS. POWELL: So now that you have the

3 Title V permit, you have finalized that Title V

4 permit for the Air Force base; is that correct?

5 MR. J. PAUL: Yes.

6 MS. POWELL: Does that one permit cover

7 the information contained in all 1,000+ permits that

8 were subject to that facility?

9 MR. J. PAUL: Yes, it does.

10 MS. POWELL: My next question is I

11 understand the frustration of having a 600-page

12 permit. As an advocate we have trouble even

13 downloading a permit that size onto our computers.

14 Certainly some ways to streamline the

15 permits would, I think, be in everyone's interest.

16 However, I do have some questions about your

17 testimony that the 600-page permit might have added

18 complexity to the system.

19 Prior to issuance in the Title V program

20 if somebody wanted to find out what requirements

21 applied to the source, was there one place where they

22 could go to see what all those requirements were?

1 MR. J. PAUL: Yes, they would have been
2 listed in the individual permits to operate. The
3 reason this would have been simpler -- let's say that
4 you're interested in just looking at the boilers in
5 Ohio. You could have called up just all of the
6 boiler permits and seen how those are being handled.
7 Now you have to call up all the Title V
8 permits. So rather than just looking at the boiler
9 permits at Wright Patterson Air Force base, now you
10 have to look at the whole Title V permit.
11 MS. POWELL: But if you wanted to look at
12 what the entire facility was doing prior to the Title
13 V program, an advocate would have had to look up at
14 least 33 operating permits and possibly as much as a
15 1,000 pre construction operating permits.
16 MR. J. PAUL: Right. Actually -- and this
17 is where it differs a little bit with the local
18 agency -- you would come in. You would sit down.
19 And we would make available the whole file to you.
20 You'd go through the file and say, "Okay, I'm only
21 interested in these major sources."
22 MS. POWELL: Your prior permits, were they

on line? Were they available on the Internet?

MR. J. PAUL: No.

MS. POWELL: Your current Title V programs are available.

MR. J. PAUL: Yes.

MS. POWELL: If an advocate wants to find out what the Air Force base has to comply with now, they can go on the Internet and download that permit; is that correct?

MR. J. PAUL: Sure.

MS. POWELL: Is it possible to word search that permit?

MR. J. PAUL: I would assume that once you download it, you could word search it.

MS. BROOME: I answer that question. You can. I've done it.

MS. POWELL: So if an advocate was interested in boilers and however you identify your boilers with a particular number, they could type into the PDF version of that permit the number for the unit and find each requirement that applies to it.

1 MR. J. PAUL: That's correct.

2 MS. POWELL: I'm going to let the other

3 Task Force members ask some questions. I might have

4 some follow-up. Thank you.

5 MR. LING: The next one I saw was Bob

6 Morehouse.

7 MR. MOREHOUSE: Thanks, John, for your

8 comments. Can you tell us a little bit about your

9 experience on the permit revision process in your

10 area. Do you get a lot of requests for permit

11 revisions, time to process, pluses minuses with that?

12 I realize some of these questions are

13 probably the ones you're going to be answering and

14 you've had a chance -- or we'll have a chance over

15 the next few months to put thoughts together.

16 But I'm interested in initial comments.

17 MR. J. PAUL: I'm not obviously as

18 familiar with this as staff are, but I did ask some

19 questions about that before coming here today.

20 People are concerned, I guess especially

21 with significant modifications, that they'll have to

22 through -- I guess they have to go through the four-

1 part process. So if you're making a significant
2 modification to your Title V permit, that's going to
3 be a long process.
4 I don't even know all the steps. It's
5 triple P, double P, single P. I don't know what
6 happens when you run out of P's. But I think there's
7 four parts to that. That's a significant process.
8 MR. MOREHOUSE: You were commenting about
9 the burden and high costs associated with
10 implementation. Will you be pulling together any
11 information on that in your comments?
12 And the reason I mention that is if you go
13 back to the original rule back in '92, at that time
14 the estimate was, the total program nationwide would
15 cost just over $500 million. The math was about
16 $15,000 per permit. And it is a reference point for
17 which we ought to be taking a look in terms of just
18 one measure on the program.
19 I think some of your comments were
20 suggesting it could be much higher than that. I can
21 speak as an industry representative that it's higher
22 than that on a per permit basis. But I was curious.

1 MR. J. PAUL: I would not go higher. I
2 would go less. Seriously, I think -- I know that we
3 as a local agency -- I think we have adequate
4 resources to do the job. But that depends on us
5 defining the job.
6 And the more complicated it becomes, that
7 requires more resources. But I don't necessarily
8 think those resources are really necessary to do an
9 adequate job. So I would redefine the job rather
10 than raise the resources.
11 MR. MOREHOUSE: Thanks.
12 MR. LING: Don VAN DER Vaart.
13 MR. VAN DER VAART: Thanks. This is a
14 great little overview and it's one of these cases
15 where I agree with everything you say, but I don't
16 agree with your conclusion. And that is the benefit
17 side.
18 The costs I agree that there's a lot of
19 things here I should mention that I think part of
20 some of the details, issues here may perhaps be due
21 to the way that you all are implementing the
22 insignificant activities issue.

1 I think EPA -- Mike could have done a
2 little better job in explaining the way that needs to
3 be implemented. As a result of a lawsuit some years
4 ago -- but what I want to ask you is -- and you kind
5 of spoke to it when you were you referring to your
6 previous permitting program. I wasn't sure I was
7 hearing you right.
8 Do you think a big benefit of the program
9 could have been or is or was the definitive nature of
10 the obligations? In other words, while you've got
11 all these, in your case you seem to -- you actually
12 write all the standards in the permit rather than
13 paraphrasing them or referencing them.
14 But at the bottom of all those, do you
15 have some monitoring that says do this? Would you
16 feel that the benefit of the permit program would be
17 greater if that was very clear for every requirement
18 so that third parties could see it and so that the
19 responsible official could see it and we could see it
20 as regulators and that that defined compliance,
21 rather than just listing all these things in there
22 and then letting a third party try to decipher what

1 that regulation really meant in terms of how to
2 comply with it?
3 MR. J. PAUL: Yes. And I agree. The
4 original permits that we were issuing -- that was the
5 primary purpose. That was our biggest purpose --
6 was to make sure that any readable form be
7 requirements for that source were very clearly
8 spelled out.
9 MR. VAN DER VAART: So in other words, you
10 distilled these mammoth -- and they are even more
11 mammoth no -- but these large requirements and
12 requirements that necessarily were written for
13 general application. You then applied those to the
14 specific source.
15 MR. J. PAUL: Yes.
16 MR. VAN DER VAART: And translated them
17 into the definition of capacity for that source.
18 Now, here's the $64 question. Why do you feel Title
19 V should have been a different permit because North
20 Carolina -- it was absolutely the opposite.
21 We had permits prior to Title V that they
22 were like my seventh grade history tests. They had a

1 list of all these folks on the left-hand side and a
2 list of these things they did on the right-hand side.
3 And my obligation to try to get a passing grade was
4 to draw a line from one to the next.
5 And that was what our permits were. You
6 have a list of sources and we had a list of
7 applicable requirements. First of all, we didn't
8 even draw the lines. And second of all, we didn't do
9 what you did, which was distill the applicable
10 requirements down to an actual obligation.
11 We view Title V as the requirement to do
12 so. And I guess maybe we just had a terrible permit
13 program. But why do you feel Title V was not that
14 same obligation to distill?
15 MR. J. PAUL: I think we just felt that it
16 just added so many things to that that basic
17 explanation gets lost in the paperwork. I do think
18 that you could look at a 200-page permit and go
19 through and distill that down to a five-page permit.
20 MR. VAN DER VAART: I'm going to let these
21 other folks get in, but I'm trying to make sure I
22 understand. You're actually writing your

1 observation.

2 Of course, North Carolina treats

3 insignificant activities totally differently. And I

4 think we need to get together and understand. I

5 think you're in region V and region IV, how many you

6 go through.

7 But if I can just ask the next question.

8 We have a lot of military bases as well. If I took

9 your 600-page permit and used black ink for the

10 rendition of all the requirements, the rules, the

11 various MACT's, all the SIP standards which you have

12 in the department clearly, but then I'll use green

13 ink to specify that punch line, the monitoring that

14 defines compliance, would that be a reasonable way --

15 and I'm not saying I'm doing this. But I'm trying

16 to understand your permit.

17 That is still possible, right? I could

18 then still just look at the green ink and determine

19 whether these folks were in compliance or not? Sort

20 of like your old permit.

21 MR. J. PAUL: I would assume so. But I'll

22 check that. I like your suggestion. Yes.

1 MR. LING: Shannon.

2 MS. BROOME: Thanks, Mike. A couple other

3 people hit some of the questions I was going to ask,

4 so I'll be brief.

5 The two things that I want -- you probably

6 will come back with because they're more detailed.

7 One question is, in terms of public participation on

8 the permits and the revisions that you've done so

9 far, what has been -- have you been having a lot of

10 requests for hearings? Have you had a lot of public

11 comments to respond to?

12 Because I look at the format of your

13 permits and I think they are pretty -- I'm not going

14 to impugn other states right now. But you have a

15 nice little table. And these are the limits. Here's

16 the monitoring. Here's the other things.

17 And whether or not I agree with what those

18 are, I at least know where to find them. So I think

19 they're fairly accessible to somebody who doesn't

20 know a facility. What's been your experience?

21 MR. J. PAUL: We've had no requests for

22 public hearings.

1 MS. BROOME: Have you had any public
2 comments?
3 MR. J. PAUL: Not that I'm aware of.
4 MS. BROOME: That's why I said it's kind
5 of asking for something that you probably didn't
6 think about before you came in here.
7 MR. J. PAUL: I know we've had comments
8 from the region. I know we've had comments from the
9 company. So I don't think we've had any comments
10 from the public.
11 MS. BROOME: And I know EPA views
12 themselves as standing in the shoes of the citizens
13 as well. And then on staffing you mentioned
14 turnover. I was just wondering, you mentioned the
15 problem of keeping people interested in some of the
16 stuff as they go along.
17 Is finding good people an issue for you to
18 do a good job?
19 MR. J. PAUL: We're about to find out.
20 Our permit clerk -- and I mean anybody that has a
21 clerk knows that our permit clerk, who has been with
22 us for 29 years, is retiring at the end of July. So

1 we're about to find out how difficult it is to
2 replace her.
3 But actually right now hiring of
4 replacement staff has actually improved. There's
5 some real quality people that are apparently having
6 problems in the consulting field that are applying
7 for jobs with the agency. So that has helped.
8 MS. BROOME: Do you think -- you know, you
9 mentioned the long time it took to issue permits. Do
10 you think part of it was just in finding the right
11 people who could do the job efficiently?
12 Or if you knocked out the insignificant
13 emission units, could you have cut off three years
14 from your issuance process?
15 MR. J. PAUL: Within Ohio it's more a
16 problem of Ohio trying to fulfill their obligation to
17 review them all? So you have 12 different agencies
18 drafting permits, sending them. They're being
19 reviewed at the state level, sent back.
20 MS. BROOME: By one particular person at
21 the state level?
22 MR. J. PAUL: Or several, yes.

1 MS. BROOME: I'm familiar. Thank you.

2 MR. LING: I'm just going to make a

3 process point. Clearly there's a lot more interest

4 in this than just by EPA and the Task Force, a lot of

5 good questions being asked. We have a couple of

6 people who need to testify before lunch.

7 So I'm going to cut off questioning for

8 John at 11:00. Then we can talk to the Task Force

9 about maybe getting John to come back or a way to

10 follow up with him separately if we don't get all the

11 questions asked before 11:00.

12 Kathleen was the next questioner I saw.

13 MS. ANDERSON: I'm targeting this toward

14 your relationship as a local to your state authority.

15 Just in looking through your comments I can see

16 several areas where you can actually streamline your

17 permit through incorporation by reference and other

18 techniques.

19 And even the way you bring new source

20 review permits onto the Title V permit can be a

21 streamlined process. Are you precluded from doing

22 that because of state oversight? If you are aware of

1 all the different areas in which you can actually
2 streamline this permit, are you precluded from doing
3 that without the concurrence of Ohio?
4 MR. J. PAUL: I would say no, we're not
5 precluded. We work really closely with Ohio. And
6 I'm sure if there were identified ways of
7 streamlining the permit, that we could come to
8 agreement on that.
9 MS. ANDERSON: I think I agree with Don's
10 comments. There are different ways of dealing with
11 some of the problems that you highlighted. I can
12 think really of some ways to relieve that burden and
13 to make the permit a little bit more concise.
14 I don't know if it's just a matter of you
15 not being aware of what's available to you. I don't
16 know your specific regulations, but I can say, you
17 know, on behalf of Title V that there are actually
18 ways that can make the permit more concise.
19 MR. J. PAUL: That will be a great help.
20 If this Task Force had as one of its product a list
21 of ways to streamline permits that EPA would sign off
22 on, that would be a great help to states and locals.

1 MS. ANDERSON: One of the things that may
2 come out as a result of this Task Force is maybe even
3 some inconsistencies. We have inconsistencies among
4 states, but there also may be some inconsistencies
5 among EPA regional offices. It will be interesting
6 to see how that plays out in this discussion.
7 MR. LING: Verena.
8 MS. OWEN: Thank you. Shannon asked a
9 question I would have asked about how many public
10 comments you had on your permits. I believe the
11 answer was you didn't really have any and no requests
12 for hearings.
13 I would be interested in your written
14 comments maybe -- what kind of public outreach
15 activities you do. I once raised that question with
16 another permitting agency and the answer was very
17 truthfully that they felt they didn't have any public
18 involvement because we're doing such a good job.
19 That might be the case in your case too.
20 But on the other hand maybe the public wants to pat
21 you on the shoulder too. But they should be given
22 that opportunity.

1 A quick question about the 100-page
2 permits. Really don't scare me. How much of your
3 100-page permits actually have facility-specific
4 requirements? And how much of those 100-pages are
5 boiler plate language? Give me just an estimate.
6 That's fine.
7 MR. J. PAUL: I'll give you an estimate.
8 Maybe it's 50-50.
9 MS. OWEN: 50-50?
10 MR. J. PAUL: It's just an estimate. It
11 could be higher. It could be lower. We do both. We
12 do both facility-specific and there are boiler plate
13 certainly. Yes.
14 MS. OWEN: I'm going to cut this short. I
15 would also especially be interested in your written
16 comments and discussion of the staff time and the
17 value of a good statement of basis.
18 I believe you said that you felt that the
19 Title V added requirements to existing permits.
20 Illinois also has or had a state operating permit
21 program.
22 Actually my experience is more the other

1 way around -- that I have more problems identifying
2 streamlining procedures in the Title V permits, the
3 conditions that in my view disappeared out of the
4 existing state operating permit. I'd be really
5 interested in your view on that too.
6 MR. J. PAUL: Okay.
7 MR. LING: Lauren or David, I don't recall
8 who.
9 MS. FREEMAN: Thank you. I wanted to come
10 back to two points I heard you make and explore
11 whether you think there's an interrelationship
12 between them.
13 One was your comment on the endless
14 pursuit of the perfect permit and the extraordinary
15 resources that go into that as opposed to some other
16 things that might be more beneficial.
17 The other point was problems that
18 sometimes occur with staff turnover and how that
19 slows down the review of reports.
20 I'm wondering whether you see an
21 interrelationship with staff turnover and
22 interpretation of permits and whether there's a

1 concern that a permit has to be perfect in order for
2 it to be consistently interpreted by a permit writer
3 and enforcement and perhaps new people coming in.
4 MR. J. PAUL: We see that. The staff
5 turnover is more a problem with the people that are
6 reviewing our permits than it is with people that are
7 writing them.
8 The first draft was reviewed by one
9 person. They left the agency. The second draft is
10 reviewed by another person -- maybe one person liked
11 the word "will" and the other person likes the word
12 "shall." That just drives people crazy.
13 So to the extent that it's possible, stuff
14 like that just needs to be eliminated. Nobody to me
15 is served by permits going back and forth in draft
16 form. They're best served when the permit's issued.
17 And I think there's a point where obviously you want
18 an accurate permit.
19 But there's a point where further pursuit
20 of this perfect permit just doesn't make sense.
21 Hopefully that's something that will go more smoothly
22 in the renewals. We'll see pretty soon.

1 MR. LING: Did you have a follow-up?

2 MS. FREEMAN: I'm curious. Maybe you

3 could cover this in any written comments -- whether

4 there are instances of disagreements among the staff

5 in the final permit as to what the meaning of a term

6 is.

7 MR. J. PAUL: I'll ask on that.

8 MR. LING: Dave.

9 MR. GOLDEN: Just a couple of quick

10 questions. Your pre-Title V permits, do they include

11 compliance certifications by responsible officials?

12 MR. J. PAUL: No.

13 MR. GOLDEN: It seems to me there's kind

14 of two approaches to Title V compliance, to

15 paraphrase Mr. Eastwood. Again, there's the do-you-

16 feel-lucky approach. Then there's the second, which

17 would be the a-man's-got-to-know-his-limitations

18 approach, where you kind of get a handle on it.

19 With you and your working with regulated

20 entities, do you find that the attention to

21 compliance has been increased or heightened because

22 of responsible officials now doing a certification?

1 MR. J. PAUL: I don't know on that yet.
2 We did have a criminal enforcement case with an
3 official who falsified records. So we did pursue
4 that.
5 MR. GOLDEN: Pre or post?
6 MR. J. PAUL: Post. That's something
7 we're going to get experience on. I think, you know,
8 the first cut that we're trying to look at right now
9 is if somebody certified compliance and they're on
10 our significant violators list. Well, that's a
11 problem.
12 We will look seriously at these. We have
13 had some preliminary discussions within the agency
14 about just the fact that we need to look for some of
15 the more obvious cases, where they obviously didn't
16 pay attention and pursue those. And I think that's
17 something there will be a growing awareness as we
18 pursue some of those.
19 MR. GOLDEN: Finally, do you find many
20 sources going on an entire without reporting any
21 deviations?
22 MR. J. PAUL: There are some, but there

1 are a lot of deviations. And some are significant
2 and some are not. And we look at different
3 enforcement discretion cut-offs for down time with
4 equipment and exceedences of opacity and different
5 things like that.
6 MR. GOLDEN: If a source reports no
7 deviations for a year, does that appear kind of
8 suspicious to you?
9 MR. J. PAUL: It certainly sounds
10 suspicious to me, yes.
11 MR. GOLDEN: Thanks.
12 MR. LING: Bernie, is yours a quick
13 question?
14 MR. B. PAUL: It's a very quick question.
15 I'm interested in knowing what your Title V operating
16 permit program fees are that you assess to the
17 regulated entities and whether you feel that
18 adequately covers the resources that you apply to the
19 program.
20 MR. J. PAUL: The fees are the standard
21 fees. They start out at $25 and increase.
22 MR. B. PAUL: I'm curious. For those 60-

1 some odd sources that you have under your program,
2 what's the total amount of fees that you collect? Is
3 it $5 million? $2 million?
4 MR. J. PAUL: For Dayton, it's what?
5 MR. HODANBOSI: For the entire state it's
6 $15 or 16 million.
7 MR. J. PAUL: I think we're at 800,000 or
8 something like that. That question is almost like a
9 trick question because it's like, you know, asking
10 your kid, "Do you have enough money?" when they go
11 out on a date. You could always use more money.
12 But at the same time you recognize there
13 are limits. There are so many things that we really
14 honestly need to do a good program. So I think we
15 have enough money to do a good program. But I'm
16 concerned with the increasing demands on those
17 limited resources that we have.
18 MR. LING: Go ahead, Keri. This will be
19 the last one for John.
20 MS. POWELL: I promise this will be quick,
21 but I might sneak in two quick ones.
22 The first one: in your written testimony

1 you provided us -- you mentioned among the burdens of
2 the Title V program that one of those burdens is the
3 agency obligation for inspectors to assure all the
4 listed requirements are being met on an annual basis.
5 I just want to know are you testifying
6 that prior to the Title V program you weren't
7 burdened with issuing compliance of all requirements
8 on an annual basis?
9 MR. J. PAUL: Correct. I want to make it
10 clear that we think the most important thing is
11 getting inspectors out to the sources. And prior to
12 Title V with the more simple permits and the permits
13 that just look at the major -- really the significant
14 sources that was a simpler process.
15 I'm not sure yet what our obligations are
16 with regard to verifying things with regard to the
17 insignificant emissions sources. That's something I
18 don't want our inspectors spending a lot of time on.
19 I'm hoping that the Title V system does not force
20 that on our inspectors.
21 MS. POWELL: Which leads right into my
22 last wrap-up question. There are 1,000 significant

1 emissions units for an Air Force base. What's the
2 maximum amount of pollution that could be emitted by
3 one insignificant emissions unit?
4 MR. J. PAUL: Do you know, Bob? It's like
5 maybe a ton maybe.
6 MR. HODANBOSI: No. It might be higher
7 than that. It might be five tons.
8 MS. POWELL: For the Air Force base those
9 thousand insignificant emissions units that are not
10 that important could emit a total of up to 5,000 tons
11 of pollution a year?
12 MR. J. PAUL: No. I mean, theoretically
13 yes. But no.
14 MS. POWELL: Do you know what the total
15 pollution is from those 1,000 insignificant emissions
16 units?
17 MR. J. PAUL: I can find out.
18 MS. POWELL: I'd appreciate that.
19 MR. J. PAUL: But I'm not going to have a
20 person spend three weeks finding out.
21 MS. POWELL: I agree with that too, but I
22 would like to know whether you know.

1 MR. J. PAUL: Sure. Good question.

2 MR. LING: John, Lee has told me -- oh, go

3 ahead.

4 MR. HODANBOSI: John, that facility -- the

5 insignificant emissions unit should be part of the

6 total fee package that they're reporting.

7 MR. LING: John says he has a question

8 that doesn't take long to answer. I'm going to let

9 him go even though I said it was the last question.

10 MR. HIGGINS: It's a question I'd like to

11 ask everybody that testifies. I'm just curious if

12 you're grading it A to F, what grade do you give

13 Title V?

14 MR. J. PAUL: I would grade it on a curve.

15 (Laughter.)

16 MR. J. PAUL: I would compare it to the

17 existing permit system and I would say that the value

18 added is not that great. But that's because we put a

19 lot of time and effort into the previous permit

20 system.

21 So I would not grade it a C or below. I

22 would grade it at least a B because it is a good

1 program. It is a valuable program.

2 But it is one that we have to watch very,

3 very carefully to make sure that we don't get so

4 wrapped up in the details that we forget the

5 objective, which is to control air pollution. That's

6 my major concern with the Title V program.

7 MR. LING: Thank you, John, for your

8 statement and for patiently answering a lot of

9 questions.

10 MR. J. PAUL: I appreciate it. Thank you.

11 MR. LING: If anybody else who is

12 scheduled to speak hasn't left the room screaming

13 after what happened with John, I'm pleased with the

14 amount of information that is being able to be

15 exchanged here.

16 Bernie, did you have a question?

17 MR. B. PAUL: Yes. I'd like as a follow-

18 up to the issue that Bob Morehouse raised about the

19 total cost of the program, I would like to know

20 whether EPA or STAPPA-ALAPCO have compiled an

21 analysis of the total operating permit fees that

22 sources have paid since the inception of the program

1 so we can get an understanding of that element.

2 Of course, there are other costs the

3 companies have incurred on their own -- hopefully

4 many companies will bring to the table. That should

5 be an easier piece of data to find than maybe some of

6 the other stuff.

7 MR. HITTE: I did that in '99 or 2000

8 where I answered two questions: what were the fees

9 permitting authorities were charging, and up to that

10 point in time what was the amount of money they had

11 collected.

12 I have been tempted to do that again. But

13 it would be best if I could do it through STAPPA and

14 ALAPCO's help as opposed to just coming from me.

15 I'll get probably better cooperation.

16 MR. LING: The next speaker is Lyman

17 Welch.

18 MR. WELCH: I have a Power Point

19 presentation. I don't know if this is a good time to

20 take a break while we load that up.

21 MR. LING: If anyone needs a break, you

22 can take it. We can load that up quickly.

1 (Brief recess.)

2 MR. LING: I had a change to the speaker

3 order. The next speaker will be John Walke, then

4 Lyman Welch.

5 Go ahead and take your seat, John. We'll

6 wait a couple of more minutes. Then we'll start.

7 (Pause.)

8 MR. LING: Not everyone's here, but you

9 can start when you're ready. If you'd like to wait a

10 few more minutes, feel free. But let's just start

11 whenever you're ready.

12 MR. WALKE: I'm ready. My name is John

13 Walke, Clean Air Director with the Natural Resources

14 Defense Council located here in Washington, D.C.

15 Just by way of quick background, I started

16 practicing in private practice at a law firm here in

17 Washington in the early 90's and did about three or

18 four years of Title V permitting there for private

19 companies, Fortune 500 companies, mostly preparing

20 applications at that stage because it was the very

21 beginning of the program.

22 Then I moved to EPA's Office of General

1 Counsel in 1997, where I was EPA's national Title V
2 attorney from 1997 to 2000 counseling the regions and
3 headquarters on all aspects of the program really.
4 Then I joined NRDC in 2000 and have been
5 there since.
6 I want to revisit just a little bit of
7 history to explain how we got where we are from the
8 public's perspective because I think that highlights
9 some of our views of how the program has been carried
10 out and how it's promises have been met in some
11 respects and how its promises have certainly not been
12 met in other respects.
13 It's fair to remember that Title V in 1992
14 and the rules that were issued under the first Bush
15 administration were that the air pollution equivalent
16 of NSR under this administration -- it was an
17 extremely contentious process.
18 And you'll all recall the vice president's
19 council on competitiveness in the Office of
20 Management and Budget, which interfered with EPA's
21 issuance of the rule, leading to Congressional
22 oversight and frankly rules that were not consistent

1 with the Clean Air Act in 1992.

2 And litigation resulted. That's the only

3 mention I'll make of the litigation. But in 1994 and

4 1996 EPA put forward rulemaking proposals to rectify

5 the problems, some of the problems and some of the

6 concerns with the original rules.

7 Both from industry's perspective and

8 states and environmental group perspectives some 8 to

9 10 years later it's really quite a scandal that those

10 rule revisions have not been adopted yet.

11 I think that's one of the reasons we're in

12 a state now that is far from ideal. It's far from

13 what Congress expected.

14 The environmental petitions who brought

15 those original suits recently moved to reopen that

16 original lawsuit out of frustration that the rules

17 had not been finalized at this late date -- and

18 seeing no prospect of that being done.

19 I think it's fair for this Task Force to

20 understand that only then was an idea of a Title V

21 Task Force floated. I think it occurred to us and

22 many others that this was quite obviously a blocking

1 move to prevent adoption of those final rules or a
2 reopening of the lawsuit.
3 So I just wanted to present that
4 alternative picture while at the same time eagerly
5 participating in good faith before a group of other
6 people who are also participating in good faith.
7 But fundamentally there are just some
8 irreconcilable conflicts at the heart of what people
9 think Title V is to accomplish and that is embodied
10 in the original 1992 rules, the '94 and '96 proposals
11 and the lawsuit over the original rule.
12 It's my respectful suggestion that one of
13 the best ways to get on with this program and
14 accomplishing what it should is that we should have a
15 resolution of those matters.
16 Frankly I don't view it as being entirely
17 helpful that the agency has embarked upon another
18 one-year delaying process in the form of this Task
19 Force to prevent that resolution from occurring.
20 So to the extent that this body can
21 address some of those foundational principles, I
22 think it would be most helpful to the public. How

1 you do that with the pending lawsuit is up for you to
2 decide, but that would be one recommendation I have.
3 Along those same lines, notwithstanding
4 the agency's inability to adopt final rules that were
5 proposed in 1994 and 1996, it's recently come to our
6 attention that the agency is, nonetheless, going to
7 embark upon another rulemaking proposal on Title V by
8 the end of this year that they intend to finalize it
9 in short order thereafter.
10 Clearly -- what explains this? Well, what
11 explains it is the new rulemaking proposal that's
12 coming out, a new round of industry flexibilities
13 arising out of the White Paper #3 draft guidance
14 document that the agency issued at the end of 2000
15 for comment, but has languished ever since, hopefully
16 at least in my estimation because of the strong
17 negative comment that greeted that document.
18 If the agency has time to issue White
19 Paper #1 and White Paper #2 and draft White Paper #3
20 and proposed White Paper #3 rulemaking, surely it has
21 the ability and the resources to finalize those
22 revisions and have this end up in the courts where

1 that resolution that I mentioned earlier can occur.
2 I've already made a request to Bill
3 Harnett that he place before this Task Force the
4 issues that the agency intends to propose for comment
5 in the white paper number 3 rulemaking. Without
6 giving me a formal response he sounded open to that.
7 So that's something else I would encourage
8 you to do and to consider whether it really makes
9 sense to have a new rulemaking without those earlier
10 rulemakings, which go to so many foundational
11 principles, resolved yet.
12 The original Title V program in my view
13 had three basic purposes. We've discussed them. But
14 let me just give them my own labels since that's how
15 I'll be structuring my remarks.
16 The first was a compilation purpose.
17 Title V is supposed to compile applicable
18 requirements into the same document structured after
19 the Clean Air Act-NPDS permit program because the Air
20 Act didn't have one.
21 Congress looked at the chaos of the SIP
22 world and all the federal rules at the 80's and said,

1 you know, we really just need to provide a structured
2 place to have one document where everyone knows
3 what's going on.
4 That process has been long and
5 frustrating. But ultimately I believe after the
6 first round of permits are issued, we'll be far less
7 resource-intensive and contentious in the future,
8 because frankly the renewal permits and the renewal
9 permit applications -- especially with the fact that
10 you get a permit shield if you submit a renewal
11 permit application -- it's not going to be nearly the
12 amount of work it was in the first decade.
13 Certainly there will be new units on line
14 and new requirements that have come into place. But
15 I hope we can all agree that it's not nearly going to
16 be as much work.
17 The second purpose is kind of a broad
18 public participation purpose to the program.
19 Dispersed throughout Title V are additional
20 opportunities for public participation and the permit
21 issuance process, the permit review process, the
22 permit petition process, the permit appeal process.

1 I'm not going to do all those, although it
2 is the view of the environmental petitioners that the
3 agency did not meet its statutory obligations with
4 respect to the permit revision process.
5 And you'll probably recall that was the
6 source of all the controversy and media coverage in
7 the '92 period surrounding the intervention of the
8 competitiveness council.
9 I do just want to make one point since I
10 think it's highly relevant to what you're discussing.
11 The vast majority, overwhelming majority, of comments
12 on permits, arguments about permits terms and the
13 like come from the sources themselves.
14 At least let's be candid about that. The
15 public comments on relatively few, exceedingly few --
16 in Dayton, Ohio, no permits.
17 But the negotiation process that occurs
18 between source owners and permitting authorities is
19 by far the most conversation that occurs between
20 regulators and outside parties.
21 Now, the following remark is made in jest,
22 but if you want to streamline the process, don't let

1 source owners comment on their permits. Obviously
2 that's not going to happen. But if this body -- and
3 it should not happen.
4 But if this body is going to consider ways
5 in which public involvement is a potential impediment
6 to the process and a resource drag and a burden and
7 arguments over what terms should or should not be,
8 let's just recognize that that's coming from the
9 private sector side and not from the public.
10 I'm not contesting that right, but at
11 least as a factual matter I think it's important to
12 make that point.
13 The third aspect of the program, which I
14 think is the greatest value added in my personal
15 opinion, but also the area where the agency, EPA, and
16 states have most thoroughly fallen down on the job,
17 is what I call the compliance enhancement aspect of
18 the program.
19 By that I refer to the actual procedural
20 substantive requirements that Title V added to pre-
21 existing permitting regimes and regulatory regimes,
22 and those are enhanced monitoring, periodic

1 monitoring, compliance certifications, deviation
2 reporting, semiannual reporting, and things of the
3 like.
4 Congress decided, I think, correctly, that
5 the clean air world, in particular, was woefully
6 inadequate when it came to the actual ability of the
7 public regulators and industry to determine whether
8 they were in compliance or not. Again, they looked
9 to the Clean Water Program and saw NPDS permitting
10 and monitoring being much more rigorous, and, again,
11 the underlying certification aspect of the program
12 found their genesis in the Clean Water Program as
13 well.
14 The most contentious aspects of the
15 program, from the beginning, and the source of the
16 greatest challenges and difficulties when I was at
17 the Agency, dealt with these core aspects. In my
18 opinion, industry, and, above all, industry lobbyists
19 in Washington, never bought into those parts of the
20 program and have systematically done what they could
21 to undermine those aspects of the program.
22 I must say, unfortunately, EPA, under the

1 previous Administration, certainly continuing with
2 this Administration, succumbed to that pressure. The
3 Enhanced Monitoring Rule, which became the Compliance
4 Assurance Monitoring Rule, fails to provide the
5 public with knowledge or certainty that industry
6 knows what its emissions are. To this date, permits
7 do not have monitoring because the Agency delayed in
8 the imposition of that monitoring until permit
9 renewals, so a function of permits not being issued
10 all across this country, ten years after the program
11 -- 12 years after the program started, and six to
12 eight years after the statute required that all
13 permits be issued.
14 The function of EPA's decision not to
15 require monitoring to permit renewals, is that we
16 still do not have monitoring that was called for by
17 the 1990 Clean Air Act. The Office of Management and
18 Budget and Competitiveness Council intervened in 1991
19 and 1992 to ensure that periodic monitoring language
20 was written into the regulations, but also failed to
21 provide the public with any assurance that sources
22 had monitoring sufficient to allow them to assure

1 compliance.

2 Then, most recently, and most

3 scandalously, the Agency has backed away from what

4 requirement was in the regulations themselves to

5 provide sufficiency monitoring that would also

6 provide the ability for the public to know if

7 industry was accurately monitoring their emissions or

8 not.

9 For those people on the panel who are not

10 aware of that, that last action by the Agency is

11 under challenge in the D.C. Circuit Court of Appeals

12 in Washington right now. I won't comment on it any

13 further.

14 In addition to really just woefully

15 inadequate monitoring that doesn't legitimately allow

16 any business around this table or anyone in the

17 country to actually tell the public with confidence,

18 whether they are in compliance or not, or, more to

19 the point, whether they can accurately quantify their

20 emissions or not, with the exception of probably the

21 utility sector because of their continuous monitors

22 and the like, and certain other industries that have

1 them.

2 Regulators or insiders like us, simply

3 could not honestly tell people at a cocktail party

4 that industry is able to accurately quantify their

5 emission and knows what its emissions are. That

6 situation is repeated on the compliance certification

7 front, where there has been a relentless campaign

8 from the beginning to ensure that industry didn't

9 actually have to sign a document that said whether

10 they were in compliance or not.

11 Part of that was struck down through the

12 continuous or intermittent compliance portion of the

13 court decision in the CAM case, but to this day, the

14 most contested part of permits and the like, just

15 comes down to the very basic fact of whether industry

16 can tell the public whether they're complying with

17 the law or not.

18 The situation is not much better, from I

19 can tell, than it was before the intermittent

20 monitoring rule was struck down by the D.C. Circuit.

21 But for a program that held out the promise to the

22 public that we would better be able to tell whether

1 people are in compliance or people know what their
2 emissions are, I think it's very telling that those
3 are the parts of the program that we have focused on
4 so much in these regulatory fights in Washington, and
5 it's not a very reassuring situation for the public
6 to think that we spend so much energy trying to avoid
7 those very basic and fundamental questions.
8 I want to touch on just a couple of other
9 issues, to allow you to ask some questions and to
10 have the other speakers touch on their remarks as
11 well.
12 Actually, one of my pet peeves has already
13 come up -- insignificant emissions units. The Agency
14 chose the most derogatory semantic label that they
15 possibly could have. There is no such thing as an
16 insignificant emissions unit in the statute. The
17 Clean Air Act doesn't mention it.
18 This was a label that the first Bush
19 Administration came up with. The question is, is an
20 emissions unit subject to a legal requirement under
21 federal law, or is it not?
22 If it is, it should be in the permit, and

1 the public should have the same right to understand
2 whether it is complying with the law and being
3 subject to monitoring and compliance for
4 certification as anything else. The fact that we
5 call it an insignificant emissions unit is just
6 nothing more than a derogatory label.
7 As Keri has pointed out already, these
8 things can add up. I would encourage you to get past
9 labels and to look to see whether it's with the basic
10 purpose and framework of Title V to require emissions
11 unit, subject to federal law, to be subject to the
12 permit program.
13 The last time I checked, it's the current
14 policy, the legal position and policy of EPA, that
15 units do have to be included in the permit, if they
16 are subject to applicable requirements.
17 Now, I'm all in favor of sensible
18 streamlining. The thing that troubles me most about
19 the program, both when I was at EPA in talking to
20 John Paul and others, is the unnecessary resource and
21 time and burden associated with the program.
22 That does not benefit the public. I'd

1 rather have regulators focused on air quality
2 objectives as well. But the truth be told, I still
3 fundamentally believe that a lot of delay comes up
4 through the source interactions.
5 More to the point, some permits are just
6 written poorly and need not take that much time, or
7 need not be written at the length that they are. The
8 Agency has tried to address that through streamlining
9 guidance and the like in the past.
10 Since this permit also came out, the Air
11 Force permit that was mentioned earlier, I actually
12 looked into this because I was curious about it. The
13 one for Wright-Patterson Air Force Base that was
14 mentioned as being 634 pages long, actually the
15 permit is 295 pages long. The additional 334 pages
16 associated with the permit comes from an attachment,
17 which is 40 CFR Part 63, Subpart (MMM), both the
18 preamble and the rule in the Federal Register.
19 That's certainly not necessary to add to a
20 permit, and it cuts the permit in half right there.
21 Of the 295 pages of the permit itself, I counted 30
22 blank pages that are in there inexplicably, and there

1 is a great deal of boilerplate that is found in all
2 permits.
3 The State of Ohio, for reasons that aren't
4 clear to me, also chooses to write out federal
5 requirements, word-for-word, in the permit. There's
6 no need to do that. You don't have to write the
7 NESHAP into the permit. That adds tremendous length
8 to a permit.
9 You can incorporate those things by
10 reference. The truth is, if someone wants to find
11 out what the requirements are, they're either going
12 to have to look in 40 CFR Part 63, or you can look
13 into the permit, but you can't blame Title V, because
14 EPA wrote Subpart A or Subpart DD to be as long as it
15 is.
16 That's just a fact of life. Maybe it does
17 make sense to have a 300-page permit with all of the
18 NESHAP there, so you don't have to go to a library
19 somewhere on the site to do it, to look up the
20 subpart. I think that kind of makes sense.
21 But I don't think you can really turn
22 around and criticize the permit for being 300 pages

1 long. Anyway, I thought Keri's points were also very
2 well taken.
3 Streamlining recommendations from this
4 group would be welcomed. I think there are sensible
5 things that can be done, so long as we don't lose the
6 legal requirements or we don't try to pull any fast
7 ones, which I personally think White Paper 1 and
8 White Paper 2 do, in order to eliminate requirements.
9 As one of the speakers, Ms. Owen, referred
10 to already, I think it's questionable, whether those
11 legal requirements actually do evaporate through some
12 of the White Paper's guidance. But putting that
13 aside, I think there's always sensible streamlining
14 that can occur.
15 I want to just quickly touch on one
16 subject that came up, and that is the question of
17 funding. This is actually something I dealt with a
18 lot when I was at the Agency.
19 There are a lot of dirty little secrets
20 about Title V funding and they are part of the
21 history here. One is that state legislatures, almost
22 from the beginning, placed artificial caps on the

1 amount of permit fees that could be charged, without
2 regard to any knowledge of how many resources it was
3 going to take to issue permits.
4 Another phenomenon that occurred is that
5 in the mid-'90s, there was a wave of elections of
6 conservative governors who slashed permitting staffs
7 across the country, and in Michigan, being a
8 notorious example, with the effect that, guess what?
9 They weren't able to issue the permits.
10 Congress imposed an artificial, arbitrary,
11 statutory deadline for permit issuance. We are all
12 stuck with that. EPA didn't meet it anywhere, so the
13 blame, as is often the case, lies with Congress, but
14 EPA was given a mandate and states were given a
15 mandate to issue permits under a certain schedule.
16 The fact is, they allowed permit fees and
17 funding to be instituted in programs that were not
18 adequate to do the job.
19 I have great sympathy for John Paul, and I
20 think he's taken a responsible position as a manager
21 for doing the best that he can with the resources
22 that he has. But if you want to look at whether the

1 program is working in a timely fashion, look at the
2 funding mechanisms. It's supposed to be self-funded,
3 another little dirty secret.
4 My favorite part of the program is that
5 there are actually states out there that are stealing
6 Title V money and putting into the general treasury
7 fund. There are at least five or six that I
8 remember, and who knows how many are going on now.
9 One recommendation would be to do an audit
10 of these programs. It is illegal for these states to
11 take money from the Title V self-funding mechanism
12 and put it into the general treasury, which I'm sure
13 is very tempting, but doesn't help the program a lot,
14 and it's something that EPA can easily uncover, and
15 they have in the past.
16 They should be doing audits in the future.
17 I think I'll stop there. I could probably go on.
18 I've got some other personal pet peeves, anti-
19 credible evidence language that's cropped up in
20 permits, which fit in which my third thesis about the
21 compliance enhancement portions of the program.
22 But, in the name of taking questions, I'll

1 just stop right here. Thank you.

2 MR. LING: Thank you very much, John.

3 Questions for John? Bernie was first, I think,

4 although it was close.

5 MR. PAUL: I'd like to get a clarification

6 from you on one of your statements. You seemed to be

7 supportive, initially, of the approach of

8 incorporating complex regulatory requirements into

9 the permit, by reference. But you followed that with

10 statements that it would be helpful to have all those

11 requirements in the permit. What's your final view

12 of how complex rules should be incorporated into the

13 permit?

14 MR. WALKE: I should have been more

15 refined in my response, because the statutory

16 language actually guides us on this. I believe it's

17 Section 504(a) of the statute that requires assurance

18 of compliance with all applicable requirements,

19 including emissions limitations, monitoring, or

20 something or other. I'm not quoting it accurately,

21 of course, but I think the statute requires those

22 core requirements, such as emissions limitations and

1 monitoring and recordkeeping and reporting, to
2 actually be spelled out in the permit itself. If I
3 recall, the Agency has said as much.
4 Having said that, any given subpart under
5 Part 63 or Part 61 is exceeding long, and I don't
6 believe Title V in the statute or the regulations or
7 the EPA guidance, requires every word of those
8 regulations to be spelled out.
9 So I think there's kind of a sensible
10 balance that can occur between those core legal
11 requirements and common sense and workability on the
12 other hand.
13 The only thing that the regulations and
14 the statute require is that kind of the core legal
15 requirements be fulfilled. Beyond that, if the State
16 of Ohio decides that it's in its programs interests
17 or helpful to the public or the source to put greater
18 specificity and detail in, that is certainly their
19 right as a policy matter, and it's even their right
20 under state law.
21 I guess I was just slightly taking issue
22 with the suggestion that the mere length of a permit

1 is any indication of its sensibilities or complexity.
2 I've seen permits all over the map. I've seen some
3 that don't have what I consider to be the legally
4 required information, and I see some that seem to be
5 just encyclopedias of information.
6 As with most things, somewhere in the
7 middle is more sensible.
8 MR. LING: Don?
9 MR. VAN DER VAART: Thanks. John, much of
10 what you said, I totally agree with. The goals and
11 the fact that of those three goals, the third is the
12 most problematic, the compilation issue.
13 I think most permits -- I mean, that's a
14 great function, but, again, there were permits that
15 actually weren't complete. On the participation
16 issue, you are absolutely right.
17 In fact, the vast majority of time spent
18 in dealing with comments, does come from the
19 facilities, and there are some good reasons for that,
20 of course, but that's a fact.
21 The final issue, though, is a problem, and
22 I'm a little bit confused, as you trailed off there

1 on the compliance enhancement function. Let's for a
2 minute set aside how happy I guess you are, or not
3 happy with the current state of the monitoring rules,
4 whether you call it enhancement, CAM, or periodic
5 monitoring.
6 The CAM rule, to me, is the way it's
7 played out. It has been sort of severed from the
8 compliance function of Part 70. I don't think you
9 can be out of compliance with an emission standard
10 under CAM, the way I read the rule.
11 It's just so mamby-pamby, but it's --
12 MR. WALKE: I agree.
13 MR. VAN DER VAART: Let's say, in any
14 event, that you had good monitoring, just for the
15 sake of the last. Wouldn't you feel that the
16 public's interest is best served when the monitoring
17 in the permit is definitive, and, therefore, it can
18 be used to demonstrate noncompliance, as well as
19 compliance.
20 Where I'm going with that, that's why I
21 have problems when you go to the next step, which is,
22 how important or how much would the efforts to

1 include monitoring evidence outside that which is
2 listed in the permit, tends to diffuse that function
3 of the permitting program.
4 I'm not going to say "credible evidence,"
5 but what I'm saying is, why can't we just rely on the
6 monitoring? Would you not be happy with that, as
7 long as the monitoring is appropriate?
8 MR. WALKE: No, I would not. First of
9 all, I agree with your characterization of what good
10 monitoring should accomplish. You crystallized it
11 better than I did, but this whole controversy about
12 credible evidence and whether monitoring the permit
13 is sufficient, to me, is just incredibly revealing
14 about this continuing resistance by -- I say it --
15 industry, above all, to want to be subject to the
16 same understanding that we've had under the judicial
17 system in this country for 200 years, as to whether
18 they should be judged under the law.
19 There's virtually no area in the law that
20 I can think of where evidence of wrongdoing isn't
21 admissible before a court.
22 MR. VAN DER VAART: On the other side,

1 doesn't that hurt the parties, because now third
2 parties can't actually definitively know whether, as
3 you said, a facility is in compliance, because
4 there's always an unknown quantity or unknown
5 information, never accessible to third parties, and,
6 in fact, now they're barred from using the monitoring
7 data which is available to them to determine
8 compliance.
9 MR. WALKE: The last point is not true.
10 MR. VAN DER VAART: It is if you assume
11 that the monitoring condition in the permit is not
12 definitive.
13 MR. WALKE: You can use it.
14 MR. VAN DER VAART: You can try to use it,
15 but then the industry is going to use the same
16 argument that you want to use, which is, hey, I've
17 got credible evidence saying I wasn't.
18 MR. WALKE: That's fine. I'm happy to
19 take that situation. It's not third parties from the
20 public who are objecting to the use of credible
21 evidence, because it creates this uncertainty and
22 chaos.

1 MR. VAN DER VAART: But it should. I
2 don't care if it is or not. What I'm saying is, by
3 opening that door, the other door opens, so now the
4 whole definitiveness, which we all really have heard
5 is important and would be a great asset, seems to be
6 diffused because of the fact that there may always be
7 a hidden piece of data or series of monitoring data
8 that may contradict and be relevant to determine
9 whether you're in compliance.
10 To me, it just seems like there's a
11 problem on both sides.
12 MR. WALKE: I agree that the situation
13 exists on both sides, but I don't think it's a
14 problem. I don't mean to be flip here, but that's
15 life. There is no clarity of definitiveness in any
16 area of the law when it comes to proof of violation.
17 MR. VAN DER VAART: But then you do get to
18 the final question, which is, why are we doing this
19 permit program anyway, when, in fact, the final
20 determination of what's compliance or not, is very
21 well hidden within the confines of the facility and
22 inaccessible to anyone, on a practical basis. So

1 what's the purpose of the permitting program?

2 MR. WALKE: The three-part purpose that I

3 laid out is still my view. The question of credible

4 evidence is one of ultimate proof of what's

5 admissible before a court. That shouldn't be

6 confused with how -- whether or not the public

7 benefits from requiring industry to consider that

8 additional information or whether better and more

9 accurate monitoring is a good thing.

10 I happen to think that the answers to both

11 of those questions are pretty self-evident, from the

12 public perspective, but maybe you disagree, but we

13 are so, so very far from that ideal world, because

14 we've got parametric monitor. We've got sufficiency

15 monitoring just having been eliminated; CAM being

16 feckless in the extreme; terms being written into the

17 permits to ensure that the compliance certifications

18 are meaningless, so people don't actually have to say

19 whether they are in compliance or not.

20 Part of these discussions are kind of

21 academic ones that occur between people in

22 Washington, but the public wants to know, and the

1 ideal situation for the public, frankly, Don, would
2 be to be able to get on their Internet, look up and
3 find out whether a source that's actively monitoring
4 its emissions, was in compliance, met its emission
5 limits the day before.
6 That's the nirvana I'm working toward.
7 We're so far from that situation that I think you do
8 have to look at the policy and legal decisions that
9 EPA has made along the way, because they have
10 resulted in the situation where we are right now.
11 MR. LING: Shannon?
12 MS. BROOME: Bernie asked my question.
13 MR. LING: Then Bob?
14 MR. HODANBOSI: This is both a question
15 and a comment concerning the length of a permit.
16 Many of our permits do have hundreds of pages of the
17 MACT rules snapped onto them. That is what we are
18 told we need to do in order to have an acceptable
19 permit through the region.
20 We would like to just put a reference in,
21 and we have been told that we cannot do that. So
22 that is the approach we have taken to try to address

1 the issue that the region has raised.

2 Maybe it's different because we have not

3 adopted on the state level, all of the MACT rules.

4 We rely on U.S. EPA's regulations. What we have been

5 told is that that is what is acceptable to U.S. EPA,

6 that we just can't reference a certain subpart.

7 Part of the length is also dependent on

8 the specific facility. Sometimes the MACTs have

9 options, and they want all of those options

10 available.

11 They are not going to say we're just going

12 to take the first track and forget the rest. They

13 want what's available under the rules, so we can put

14 all of that in the rule.

15 My other comment would be that even if

16 it's an attachment to that permit, nonetheless, those

17 are all applicable requirements that are slapped on

18 that permit, that people have to read and understand,

19 and comply with.

20 MR. WALKE: I agree with all of that, Bob.

21 I wasn't trying to be catty; I was just trying to

22 make the point that in this instance, there were

1 explanations for the length of the permit that may be
2 quite reasonable, but didn't have to do with Title V,
3 per se.
4 I don't believe that practice that Region
5 V is imposing upon you, is uniformly followed. My
6 Title V knowledge is a little rusty, since I've been
7 listing in NSR for the last couple of years. I would
8 be surprised if that were a position that
9 headquarters had said was legally required and that
10 all of the regions were following.
11 That's something that would be worth
12 looking into.
13 MR. LING: Kathleen?
14 MS. ANDERSON: I'm just curious about your
15 comments on insignificant emission units. This is
16 just -- I understand your concern, saying that there
17 is no such thing as an insignificant emissions unit,
18 but I wonder if you are aware of the way -- states
19 never adopted regulations with Title V in mind, and
20 they often have very generic regulations that apply
21 to all units at a site.
22 Do you believe that every single unit,

1 then, must be held to the same level of monitoring,
2 recordkeeping, and reporting, even though they are
3 very small units? I'm thinking of grain loading
4 standards, visible emissions standards, do emissions
5 for a bag house count, as much as emissions from a
6 kiln?
7 I just don't know. I'm sure you're aware,
8 but I think the states in here could probably attest
9 to the fact that they never adopted regulations with
10 Title V in mind. It creates a very conflicting
11 situation when you come to writing a permit, as to
12 what level of monitoring, and especially with
13 insignificant emissions units.
14 My question to you is whether you think
15 that every emissions unit deserves the same degree of
16 analysis or monitoring or reporting as every other
17 unit?
18 MR. WALKE: That's a good question. I
19 actually think there are several embedded questions
20 in there that I have different answers for. A state
21 either decided that a sitewide rule or some SIP rule
22 or generic rule intended to apply to certain

1 emissions units or it didn't.

2 If the unit is covered under the plain

3 language of the state rule, and if it's an applicable

4 requirement because it's SIP approved or is otherwise

5 federally required that would subject it to Title V,

6 then it has to be included in the permit.

7 It's the states' prerogative to go back

8 and rewrite the rules so that that's not the case, so

9 that units not covered -- but Title V didn't change

10 the fact that the state intended that unit to be

11 covered by that law under state or federal law.

12 That's kind of a basic question.

13 The permit question is an entirely

14 separate one. Once included in the permit, should

15 there be different levels of requirements,

16 monitoring, recordkeeping, and reporting and the like

17 to reflect the fact that those units are different in

18 some way than significant emissions units? Sure.

19 Why not?

20 There's nothing -- the language of

21 periodic monitor or CAM or sufficiency monitoring,

22 before it ceased to mean anything, is general enough

1 that it is not a straightjacket imposing the
2 identical level of monitoring, recordkeeping, and
3 reporting requirements on the so-called IEUs that you
4 would have for a unit that is a hundred times its
5 size.
6 But is there any ability in the statute or
7 the regulations to completely exempt those units from
8 monitoring, recordkeeping, and reporting? I do not
9 believe so.
10 If the Agency wanted to try to create a de
11 minimis regulatory exemption under its Alabama Power
12 statutory authority, they could take a run at it and
13 we'd see whether it survived or not. But there is no
14 regulatory exemption right now, and the Agency has no
15 authority to create such an exemption by guidance.
16 So then you're just thrown back into the
17 more refined question of, well, what level of
18 monitoring, recordkeeping, and reporting should you
19 have? My impression is that that's what states have
20 been doing, at least those that have been including
21 them in the permit.
22 I have no quarrel with that. I do have a

1 quarrel with the more definitive black and white
2 position that, no, they don't have to be in the
3 permit, or, no, they don't have to have monitoring,
4 recordkeeping, or reporting at all.
5 MS. ANDERSON: This Task Force is to
6 recommend changes to Title V. If you were to be able
7 to change Title V, would you ever give an exemption?
8 It's almost like a trivial activity.
9 It would still be listed in the permit,
10 but do you think there's ever a situation where they
11 don't have to include monitoring or recordkeeping?
12 Do you see that as a possibility?
13 MR. WALKE: Let me tell you my bias, and
14 you can probably guess my bias. But if the state
15 thinks that a legal requirement is important enough
16 to impose from an emissions' limitation perspective,
17 it's hard for me to think of a coherent, intellectual
18 reason why you wouldn't want to know whether the
19 source is actually complying with that.
20 Can you or should you have less burdensome
21 or less frequent monitoring, recordkeeping, and
22 reporting? Sure. Why not?

1 But if it's within the state's prerogative
2 to decide whether they want to subject that emissions
3 unit to an emissions limitation, if they do, it seems
4 to me that we care about whether they comply or not.
5 MR. LING: Shelley?
6 MS. KADERLY: First of all, I was
7 wondering whether the NRDC was planning on submitting
8 written comments to this Task Force?
9 MR. WALKE: That's a good question. I
10 didn't exactly know when I got here, the nature of
11 the Task Force and how it was going to be conducted,
12 but I think that over the course of the months, as
13 you go forward with additional hearings, we probably
14 will.
15 It will probably be in conjunction with
16 other groups, since we are resource-strapped. But I
17 was very interested when I arrived in the nature of
18 the discussion and the issues that would be raised by
19 other state and industry folks, as well. And if
20 there is any opportunity for us to receive
21 transcripts on the web or otherwise, have access to
22 information that's compiled from the earlier

1 hearings, that would be very helpful to our ability
2 to submit comments down the road that provide our
3 perspective on those comments and testimony that have
4 been raised, so, I'd actually make that
5 recommendation.
6 MR. LING: There is.
7 MS. KADERLY: The reason that I ask that
8 is that in your comments, you had some generalities
9 about the funding mechanisms of Title V. In some of
10 your comments, I perceived that you believed that
11 some of the states had inadequate funding in order to
12 conduct the program and fully implement the program
13 properly.
14 I was wondering whether you would provide
15 us with some specific examples of where you think
16 this has happened and why you believe that is the
17 case.
18 MR. WALKE: Sure. I can tell you why now.
19 It's almost, in my view -- it may seem a little bit
20 glib, but it's almost, per se, proof that states are,
21 in most instances, six or seven years overdue from
22 their statutory deadlines for issuing permits.

1 If they had more resources than they're
2 currently being funded for, that situation would not
3 exist. Obviously, there are other factors, but it's
4 hard to dispute that if they had the resources to
5 devote to issuing those permits on time, that they
6 could have been issued on time, whether you think
7 that would have bankrupted the program or brought the
8 wrath of Congress down upon the statute, is another
9 thing.
10 But, you know, they just have not been
11 issuing the permits by the time that they are
12 supposed to and funding is absolutely an essential
13 reason for that.
14 MS. KADERLY: Just to kind of follow up on
15 that, there are states - even in our state, even if
16 we had $5 million of Title V money in the bank, if we
17 have an FTE cap for whatever reason, we're not going
18 to be able to hire the people.
19 We have been able to use contractors to
20 assist us in our efforts in the last several years to
21 make that happen. Our issues initially, early on in
22 the program, in order to get our permits done, had

1 more to do with finding the people that could
2 understand what was needed to be done and who were
3 willing to take a salary at a state agency in order
4 to do the job.
5 And now within the last couple of years,
6 the economy is a little different. As John Paul's
7 comments earlier, we've been able to find some very
8 good people out there to help us, and our issuance
9 rates have shot up tremendously and we're down to the
10 last two permits or three permits.
11 MR. WALKE: I didn't mean to assign blame
12 to the permitting authorities, because I tried to
13 make the point that it is these artificial
14 restrictions imposed by political bodies in your
15 states, in addition to having these slashings of
16 staff, these Governors who came in and imposed FTE
17 caps.
18 That is, frankly, fundamentally at odds
19 with the Congressional mandate to issue permits by a
20 certain date. The legislatures also artificially
21 capped the fees, which is also fundamentally at odds
22 with the issuance of permits by that time, as well.

1 OAQPS, a number of years back, did a
2 survey of STAPPA members, in which they identified
3 the low salaries of permitting engineers in states as
4 probably one of the top two or three reasons for the
5 permit issuance rates. And I think that's correct.
6 I understand that.
7 I'm glad to hear the situation is turning
8 around. The turnover was just unbelievable during
9 some period, and the engineers were being lost to
10 private consultants and to private industry.
11 MR. LING: Steve Hagle?
12 MR. HAGLE: Thanks. John, I wanted to
13 talk a little bit more about insignificant
14 facilities, if I could. John Paul mentioned earlier
15 that he felt like they had a pretty good permitting
16 program prior to Title V.
17 In Texas, we still think we have the same
18 kind of thing. We had a permitting program that
19 virtually went -- virtually said, anything that you
20 had that was going to emit air contaminants, you had
21 to have some sort of authorization for that.
22 Some of those were permits-by-rule, many

1 of which didn't require registrations, but all of
2 that was submitted to EPA as part of our SIP, and to
3 now say that you have to include all of those units
4 in your Title V -- water heaters, air conditioners,
5 all of those things in your Title V permit, list them
6 in your Title V permit because they do have an
7 applicable requirement as part of the SIP, seems to
8 be a little counterproductive to us.
9 You mentioned that a state could go back
10 and change its rules and take those things out of the
11 SIP. That's not a very easy process to do,
12 especially to try and demonstrate that you're not
13 backsliding, that you're not willing to reduce your
14 requirements on industry.
15 I just wanted to, I guess, hear your
16 comments about that.
17 MR. WALKE: I understand and appreciate
18 that, and I think we confronted that time and time
19 again when I was at EPA. There was actually a
20 guidance document written about it that didn't make a
21 lot of people terribly happy, but I'm going to sound
22 flip again here, but legal requirements create

1 awkward situations or unhappy consequences when they
2 confront past practices.
3 The truth is that Congress wrote the
4 statute in such a way to require the permit to
5 include and assure compliance with all applicable
6 requirements. By definition, the situation you
7 described is one in which those obligations, units,
8 and requirements, are required to show up in the
9 permit, and going back and correcting that situation,
10 because your historical practice confronted a
11 Congressional mandate, does take time and burden.
12 I don't have any easy answer for you,
13 because I think the law does require that. I think
14 there are sensible policy reasons why, if you think
15 something is important enough to regulate, not only
16 in your state law but in your SIP, that it's not an
17 unnecessary additional burden to have that reflected
18 in the Title V permit.
19 But I can certainly see why smart people
20 of good faith and reason, would disagree.
21 MR. HAGLE: Given that, is there anything
22 that you could suggest that would make that process,

1 either the process of removing those items from your
2 state implementation plan, or possibly even changing
3 the law to the extent that you can, to provide for
4 some insignificant activity?
5 To me, it just makes sense. We're wasting
6 a lot of resources, in my opinion, trying to identify
7 those units and include them in the Title V permit,
8 and it really doesn't benefit a lot of people to try
9 to do that, in my opinion.
10 MR. WALKE: I guess, at bottom, I don't
11 fully understand the conflict where, if you have a
12 law that is intended to apply to units and you intend
13 for people on the ground, including plant workers who
14 aren't lawyers, to understand that those units are
15 supposed to comply with the law, why it's either a
16 bad idea or an invalid burden to require that that
17 situation be made known.
18 If it's not a good idea to subject those
19 requirements to the law, you know, that's the real
20 answer. Otherwise, you're talking about a situation
21 where, in order to avoid that burden, you're
22 basically living in a kind of state of darkness or a

1 state of ignorance, and you're more happy with that.
2 You want the requirements to apply to
3 these units and you want people to comply with them.
4 You just don't really want them to know that they
5 apply to them, or you don't want it -- you don't have
6 to undertake the steps necessary to get to the
7 clarity that they do apply.
8 That, to me, doesn't make a lot of sense.
9 I fully respect all of your points about the burden
10 and the time associated with that, but it seems to
11 me, at bottom, the problem is the decision to subject
12 those units to the law or not. Otherwise, you don't
13 want people to comply, or otherwise you're not as
14 concerned about people complying with them, that
15 you're not prepared to go to the level of making sure
16 they understand that those requirements do apply.
17 MR. LING: Let me just check in here.
18 It's about noon right now. I've told Lyman Welch
19 that he is going to be able to go before lunch. I
20 just want to check with the Task Force and see if you
21 can make it. I'd be glad to continue with
22 questioning for Mr. Walke, but I do want to make sure

1 that you're all aware that we're going to have Mr.
2 Welch's presentation before lunch, as well.
3 Go ahead.
4 MR. HITTE: I just want to go ahead with
5 the Task Force, that if I understood one of John's
6 recommendations, which was in the funding area, we
7 should be making sure that Title V fees that are
8 collected, are used for Title V purposes. About
9 three years ago, due to the regulations requiring EPA
10 to oversee that periodically, we do have an oversight
11 or audit -- whatever word you want to use -- with
12 the regions being requested to investigate that at a
13 rate of a couple of permitting agencies per year.
14 Subsequent to that request, the EPA's IG
15 looked into some issues with Title V and officially
16 told the Agency to continue to look into and write
17 reports, while making sure Title V fees are being
18 used for Title V purposes. So, would we, as a Task
19 Force, go to look into that?
20 I want to let you all know, on the record,
21 that we're doing that already.
22 MR. LING: Shannon?

1 MS. BROOME: I just wanted to follow up on
2 the insignificant-unit issue that you were discussing
3 with Steve. I think you guys are talking past each
4 other a little bit.
5 You can tell me if I'm right. A lot of
6 the stuff that Steve is referring to, I think -- and
7 I'm basing it on experience in other states -- are
8 rules that were written in the '70s when units may
9 have actually needed to do something to comply with
10 some of these rules and now they are inherently
11 compliant.
12 So you're spending a lot of resources
13 looking at things that are inherently compliant, and,
14 no, they don't want to eliminate it from their SIP
15 and say, no, you don't have to do it anymore, but
16 they don't want to spend resources writing every one
17 of those things down when they could be worried about
18 big, new stuff.
19 Isn't that something that does have a
20 place in this Task Force? That's what I'm hearing
21 from Steve. You can tell by my tone that I tend to
22 agree with him, but I think it's a conflict, in that

1 the air world has evolved over the last 30 years and
2 the regs, as they are currently written, aren't
3 recognizing that.
4 And so I think that part of our work is to
5 see if there are cuts that can be made that recognize
6 those things and how those might be made in a way
7 that is protective and also is streamlining, so that
8 we don't jeopardize enforceability.
9 I don't think anybody is saying, oh, no,
10 those things shouldn't ever be enforceable. That's
11 not the point. The point is, let's get on with this
12 program.
13 MR. WALKE: Could I ask for both an
14 example and clarification?
15 MS. BROOME: Some of the air conditioning
16 units, some of the generators that are regulated as
17 non-roads now, those things are inherently compliant
18 with opacity limits. You don't see problems with
19 that. You know you don't see problems with that.
20 If you have examples of problems with
21 that, I would love to see it. There's lots of -- I'm
22 talking about really small stuff that we're spending

1 time on. I think maybe it has to do with the
2 definition of small stuff, but I think that that is a
3 fruitful area for people to be looking at their
4 permits and coming in with data on that, so we can
5 have a more meaningful discussion.
6 In theory, somebody could agree with you
7 and agree with him at the same time and still not
8 reach any resolution. I'm not saying that you are
9 necessarily wrong that these are requirements; I'm
10 not disputing that.
11 I'm saying that the world has changed, and
12 is there a way that we can recognize that with better
13 controls? I think we all know that things have
14 gotten better.
15 MR. WALKE: If I understand kind of the
16 nub of what you're suggesting, I do not accept the
17 concept of inherent compliance. That's something
18 that has no meaning to me.
19 If you're talking about a situation where,
20 say, a generator is burning natural gas and isn't
21 going to have opacity, okay, that's fine. You
22 shouldn't have to do an opacity reading, but should

1 you have to determine whether they are still burning
2 natural gas and not switching to No. 2 Fuel Oil or
3 high-sulfur coal? That's a compliance monitoring
4 requirement.
5 MS. BROOME: Let's be realistic.
6 MR. WALKE: I'm using an example here.
7 The truth is that there is a reason for inherent
8 compliance and the reason is the way the source is
9 operating. It's not a burden to make sure, once in a
10 blue moon, once a year, whatever the situation may
11 be, that the source continues to operate in a way
12 that ensures what you consider to be inherent
13 compliance.
14 It doesn't mean that there's one-size-
15 fits-all monitoring for all situations. The concept
16 of enforceability and inherent compliance cannot be
17 reconciled. I don't even really accept the concept.
18 MS. BROOME: I guess, if you're not
19 willing to accept any question on allocation of
20 resource and how people should spend their money,
21 meaning the Government spend its money and focus its
22 resources, then, yes, you can have people spend all

1 of their time, and then you shouldn't be complaining
2 when something big gets missed, because they're
3 spending all their time. That's all I'm saying.
4 MR. WALKE: That's not what I said.
5 MS. BROOME: Then I misunderstand you. Do
6 you think there are cuts that can be made, or where
7 streamlining -- I'm truly interested in figuring out
8 if there's something that can be done, because I
9 think his problem is real. It is real to him, I
10 know.
11 MR. WALKE: I did try to acknowledge that
12 I just don't think that the cuts that can be made are
13 ones that remove the legally-covered units from the
14 legal system. Are there within the legal system,
15 things that can be done to streamline or to have less
16 frequent or less burdensome monitoring, or other
17 things?
18 Yes, absolutely. And I tried to be clear
19 about that, but if the suggestion is that you just
20 totally remove them from the field of legal coverage,
21 that's not the solution.
22 MS. BROOME: I'm not suggesting anything

1 right now. I'm just trying to see if you think
2 there's some cut that could be made and where it
3 could be made, and maybe in your written comments --
4 MR. WALKE: It's a conversation that's
5 hard to have in the abstract.
6 MS. BROOME: That's why I was hoping to
7 get some examples in. That would really help us to
8 do an analysis.
9 MR. WALKE: I'll see what we can do.
10 MR. LING: Thank you very much, John. I'm
11 sorry, I forgot John Higgins.
12 MR. HIGGINS: I'll ask the same question
13 again: From A to F, can you give us a grade?
14 MR. WALKE: Since John said he's grading
15 on a curve, I would grade the program according to
16 two subgrades, because I think that the compliance
17 enhancement aspects of the program deserve about a D,
18 and I think that the other aspects of the program
19 deserve about a B.
20 MR. LING: All right, thanks. Lyman
21 Welch. Bernie?
22 MR. PAUL: This is another question for

1 John. I did have an example of the type of
2 regulatory requirement that you can inherently comply
3 with. In the '70s, there were regulations that many
4 states adopted called process weight rules.
5 Basically, they set up a table that if
6 your process weight rate, the amount of material that
7 you are processing, is so much, you're pound-per-hour
8 emission limit is another value in the table, and
9 there's an equation that you can use to generate the
10 emission.
11 There are a number of processes based on
12 those equations that establish your limits. It is
13 physically impossible for you to omit, with or
14 without air pollution equipment, at a level that
15 you're allowed to emit, so you're inherently in
16 compliance with your limit at all times. These types
17 of things end up in permits.
18 Then they also apply to processes.
19 There's no exemption in the state rules, so we ask
20 the state, what is a process? Is a paper shredder a
21 process? They won't say no; they won't say yes,
22 either; they won't say no.

1 Is a pencil sharpener a process? They
2 won't say yes; they won't say no. All of these
3 things could generate particulate matter and you're
4 left to decide whether or not you have to certify
5 compliance with these things.
6 So then we tried to get them to change the
7 state rules, to have de minimis values in there or
8 say that they only apply to manufacturing processes,
9 and there's trepidation on the part of the state
10 agencies to do that, because going through the SIP
11 approval process is not easy. Going through a
12 rulemaking process to change that is not easy.
13 And so the inclination of everybody
14 involved is, let's try to find a more practical
15 solution to this, rather than the legalistic approach
16 that you suggested. Intellectually, and from a legal
17 standpoint, I agree with you, but perhaps we can find
18 a more practical way out of this box.
19 MR. WALKE: Point taken.
20 MR. LING: One more time, Mr. Welch?
21 MR. WELCH: Thank you. At the risk of --
22 I don't want to disrupt the schedule. I know we're

1 after noon, and I am perfectly willing to come back
2 at 1:00 and give my presentation then and give you
3 the chance to ask questions, if the Task Force would
4 prefer to do that, or I can go through my
5 presentation now.
6 Given the length of the questions that
7 I've heard before, I think it might be better if we
8 waited till after lunch, but it's up to you. I'm
9 happy to do what you want.
10 MR. LING: If you're willing to do that,
11 it looks like most people are not objecting to that
12 idea. Thank you very much.
13 I want to give everybody the full hour for
14 lunch, so I have 12:15, and let's meet back here at
15 1:15. Thank you very much for your patience. This
16 has been a very good discussion, I think, at a level
17 of detail that was maybe more than some of our stuff,
18 but at a level of detail that we need to do our jobs.
19 So, thank you.
20 (Whereupon, at 12:15 p.m., the meeting was
21 recessed for luncheon, to be reconvened this same day
22 at 1:15 p.m.)

1 AFTERNOON SESSION

2 (1:25 p.m.)

3 MR. LING: Why don't we go ahead and

4 resume the discussion so we can finish in a timely

5 fashion. We may end up taking the whole day, after

6 all.

7 I now introduce the patient and flexible

8 Lyman Welch.

9 (Slide.)

10 MR. WELCH: Thanks very much for the

11 opportunity to make this presentation to the Task

12 Force. My name is Lyman Welch. I'm the Associate

13 Director and General Counsel of the Mid-Atlantic

14 Environmental Law Center.

15 I've put together a PowerPoint

16 presentation to kind of provide an outline for my

17 comments. Next slide, please.

18 (Slide.)

19 MR. WELCH: This is an overview of what

20 I'm going to be commenting on. First, I'll give you

21 a little background on what the Mid-Atlantic

22 Environmental Law Center is, and then talk a little

1 bit about the benefits of the Title V program, then
2 make some suggestions as to improvements that should
3 be made to the Title V program, and then make a few
4 comments about the composition of the Task Force.
5 Next slide, please.
6 (Slide.)
7 MR. WELCH: What is the Mid-Atlantic
8 Environmental Law Center? I think it's fair to give
9 you some background about where I'm coming from.
10 From my perspective, I think I'm bringing
11 a kind of on-the-ground environmental perspective to
12 how the Title V program is working. The Mid-Atlantic
13 Environmental Law Center is a nonprofit law firm. We
14 represent a variety of environmental groups in the
15 Mid-Atlantic region. We're located in Wilmington,
16 Delaware, and we work in tandem with law students at
17 Widner University's Environmental and Natural
18 Resources Law Clinic.
19 I've been working, I guess, since 2001 on
20 Clean Air Act issues and Title V issues. I'm a
21 lawyer. I've been in practice for about 11 years.
22 Next slide, please.

1 (Slide.)

2 MR. WELCH: Benefits of the Title V

3 program: One of the most important benefits or

4 advantages of the Title V program is the fact that it

5 takes a huge number of individual permits and

6 combines then into one single permit for a facility.

7 To give you an example of this, when I

8 first started working at the Center, we had clients

9 that came to us, and they were concerned about

10 pollution from power plants from major sources in

11 Delaware. Because of that, there are about seven big

12 power plants that are in Delaware that are very old,

13 coal-fired power plants.

14 We went to the agency, to the state

15 agency, and said, okay, we'd like to see the permits

16 and compliance information for these seven power

17 plants, so we can figure out which ones are the dirty

18 ones, which ones are in compliance, which ones should

19 we try and pay some attention to or try to make

20 improvements with?

21 We made this request in the Fall of 2001,

22 and it took many months, and we never got anything.

1 There wasn't anything forthcoming from the agency.
2 We filed a Freedom of Information Act request.
3 We were trying to compile it all, you
4 know, and I was working with a law student. We were
5 in a year-long program, and I had given this
6 assignment to the law student. He said, well, you
7 know, I'm about to graduate, and I don't have
8 anything to look at.
9 So I called up the agency and I said,
10 look, my student is about to graduate. Can you give
11 us one facility to look at? I know what we've asked
12 to look at all the power plants.
13 So, after a few more months, we were
14 eventually, you know, a couple of weeks before my
15 student graduated, and we were able to get in and
16 take a look at some information in the files for one
17 of the power plants in the State of Delaware.
18 This is a facility that had not yet had a
19 Title V permit. And what I was faced with, coming in
20 from the public, is a roomful of documents, file
21 folders spread out on a number of tables, stacked
22 high, you know, over a foot high in several stacks

1 going around the table, and not very well organized.
2 I mean, the files I was faced with, had
3 documents going back to the 1950s and the 1960s, and
4 didn't seem to be in any order. You could pull up
5 one file and you'd have a document from 1960 and
6 you'd have a document from 2001 in the very same
7 file. It's not organized chronologically or under
8 hardly any order that one could see.
9 You had correspondence mixed in with
10 permits, mixed in with violation notices, all kind of
11 thrown together. And to walk into this room and to
12 try and figure out, okay, you know, how well is this
13 facility doing? Is it in compliance? Is it not?
14 It's a daunting task.
15 And then to try and figure out, from a
16 legal perspective, what are the permit requirements
17 that apply to this facility, you know, I'd go in and,
18 well, here's a permit. Well, this is a permit for,
19 you know, Source 151, Amendment No. 3.
20 I'm like, okay, well, this is a permit.
21 There are some legal requirements here. But to
22 actually figure out what requirements applied to this

1 single source, this single piece of equipment,
2 whether it be a boiler or whatever, not only do I
3 have to look at this particular document, but I have
4 to go back and I have to find Amendment No. 2 and
5 Amendment No. 1, which aren't anywhere in this file
6 near this permit.
7 So I have to get all these amendments and
8 then try and figure them out because they all relate
9 to one another. You can't just look at one document
10 that says Amendment No. 3. It doesn't have all of
11 the particular requirements that apply.
12 You have to go back and look at all of
13 these other ones. And then that's only just one
14 piece of equipment. This applies for the whole
15 facility, so, to try to synthesize all of these
16 things into one, this is a huge accomplishment that
17 the Title V program has done, is to force and require
18 the facilities and the agencies to go through their
19 files that go back decades, and find all the permits
20 and the requirements that apply to a facility and put
21 them into a single permit.
22 Now, as I'm looking at facilities -- and

1 Delaware has gotten a little better about working on
2 the Title V program. If the facility has a Title V
3 permit and I ask to see, you know, let's see the
4 permit, then there's a single document and you can go
5 through it.
6 If I'm interested in a particular portion
7 of the facility, you can go to that section in the
8 permit. If I'm interested in the whole thing, the
9 whole thing is there.
10 So, that is a huge, huge benefit, putting
11 that together. And I'd like everyone to keep that in
12 mind, because I would hate to go backward or to drop
13 the whole Title V ability of putting all of these
14 permits into one.
15 I mean, from the public's point of a view
16 or as a lawyer representing the citizens that are
17 trying to do something about air pollution, it's a
18 vast improvement. I mean, even if the permit is 60
19 or 100 pages long, it's much better to have that than
20 to have to look at a roomful to try to figure out
21 what are the requirements, the basic, first step that
22 you would need to look at to figure out how well a

1 facility is doing.

2 Okay, next slide, please.

3 (Slide.)

4 MR. WELCH: A second major benefit of the

5 Title V program is public participation in the

6 permitting process. This is, you know, the one major

7 area in air permitting where the public has a voice,

8 can become involved, can participate, hopefully, in

9 the ideal situation, in the development of the

10 document that will put the requirements on the

11 facility or at least put them into one place.

12 And the public is very concerned about

13 clean air. I mean, more and more, as more

14 information is developed, people care. They want to

15 breathe clean air. They don't want to be getting

16 asthma or cancer or other problems that come from

17 dirty air.

18 And the public wants to be involved, and

19 here is the Title V program that allows the public to

20 be involved. To some extent, when we -- you know, I

21 have to say that I think the Title V program provides

22 great opportunity for the public to participate, but

1 as implemented, it does not always and not uniformly
2 allow the public to participate as equal partners at
3 the table.
4 When we began working in Delaware, we
5 were, I think, the first group that ever asked for a
6 public hearing on the Title V permit in the entire
7 state. The state agency viewed it as, well, now
8 we're really starting to understand the Title V
9 program, as we started asking questions and
10 participating in the process.
11 I think that when the public participates,
12 it enhances the process and makes it better and leads
13 to a better result. Next slide, please.
14 (Slide.)
15 MR. WELCH: Just for comparison, I took a
16 section from Delaware's Administrative Procedures
17 Act, so that you can see that without the Title V
18 program and the public participation requirements, in
19 Delaware, there's really no opportunity for the
20 public to participate in the process.
21 The Administrative Procedures Act and the
22 permitting program means that you must have the

1 ability in either a regulation or law, to allow the
2 public to participate in the development of the
3 permit.
4 The permit holder, of course, has the
5 right to participate in Delaware, and the agency has
6 a right to participate, but without the Title V
7 requirements and the regulations that are then
8 incorporated into Delaware's SIP, the public really
9 would just be able to sit back and observe what's
10 happening and not participate in the process.
11 The Title V procedures are very important
12 here. Next slide, please.
13 (Slide.)
14 MR. WELCH: EPA has really seen public
15 participation as an important value, and this is a
16 quote from a 1993 memo concerning public
17 participation. And it shows that EPA really
18 recognized the importance of public participation in
19 the process; that EPA wants to remain open to all
20 points of view, to listen to the constituents, to
21 incorporate them into the process.
22 I put it in here just to show the

1 importance of public participation being recognized
2 by EPA, and it needs to remain a part of Title V and
3 be enhanced where it can. Next slide, please.
4 (Slide.)
5 MR. WELCH: These are four major points
6 where public participation is incorporated in the
7 Title V program currently. The first is that major
8 air pollution sources must obtain Title V operating
9 permits; then public hearings are required, if they
10 are requested.
11 There are minimum permit standards
12 incorporated through Part 70, and additional
13 inspection, monitoring, and reporting requirements
14 can be required to ensure compliance with the
15 program. I see these as four key areas that are part
16 of the Title V process that are very important and
17 that have worked well in the field when they are
18 implemented properly.
19 Now, I'll note the additional inspection,
20 the last one there, I understand EPA is putting out
21 rules to try to do away with some of these
22 requirements, and I'm very disappointed in that.

1 Next slide, please.

2 (Slide.)

3 MR. WELCH: Here are some of the benefits

4 I see of citizen participation, and I put four up

5 here: Ensuring meaningful public participation. By

6 "meaningful," I mean that you can actually accomplish

7 something if you are a citizen trying to be involved

8 in the process.

9 Second, requiring accountability in

10 operating permits where there is a real virtue that

11 citizens can bring, in that when they see a facility

12 that's a problem or is putting out a lot of

13 pollution, they can get involved. They can make sure

14 that the permits have the requirements, so that the

15 public can check up on a facility and see if it's

16 actually, you know, following the requirements, that

17 the agency is implementing the permit in an

18 appropriate manner.

19 Third is that Title V focuses the

20 attention of the public and policy makers on

21 enforcement of clean air laws. There, in terms of

22 enforcement, I mean, one of the important things of

1 the Title V program is that you have compliance
2 certification, that a lot of the Title V regulations
3 are developed to set out a permit where there are
4 requirements that are identified, the means of
5 monitoring or otherwise testing to see whether the
6 facility is actually meeting those requirements.
7 And then, you know, the public, by being
8 part of this process, can see, okay, here's a
9 facility; is it in compliance or not? If it's not in
10 compliance, then what is the government doing to
11 enforce the law, to bring the facility into
12 compliance?
13 The Title V process allows the public to
14 really evaluate whether a facility is doing what it
15 should be doing, or, if it's not, and if it's not,
16 then it helps identify what the problem is and
17 identify areas that can be corrected.
18 And finally, you know, perhaps the most
19 important benefit is reducing air pollution for major
20 violators. I see that when the citizens become
21 involved, just by entering into the process, asking
22 questions, looking carefully at the requirements,

1 that this kind of focusing of the attention actually
2 brings air improvement benefits where the permits are
3 enforced.
4 And this is something that citizens care
5 about. I mean, the bottom line is, is the air
6 getting cleaner? I think the Title V program is
7 resulting in that benefit, and by having the citizens
8 participate in the process, it enhances that and can
9 help focus the attention on the facilities that the
10 citizens care most about.
11 All right, next slide, please.
12 (Slide.)
13 MR. WELCH: Okay, on this slide, I wanted
14 to give you a sense of some of the work that I have
15 been involved in at the Mid-Atlantic Environmental
16 Law Center. As a Task Force, you have asked for
17 examples of practical experiences.
18 I'm not going to go into detail into all
19 of these right now, but I wanted to highlight a few
20 of these facilities that we've been involved in the
21 State of Delaware, trying to get improvements at
22 major facilities. I'll touch on a few of these as

1 examples here:

2 The Indian River Power Plant is one of the

3 most polluting sources in the State of Delaware. We

4 asked for a public hearing on a draft Title V permit.

5 The hearing date was December 2002, and a public

6 hearing took place. We put comments forward into the

7 record, participated fully in the process.

8 The permit then went through a long review

9 process. It never came out until just recently, a

10 couple of months ago, and the final or proposed Title

11 V permit was recently issued and sent to EPA a few

12 months ago, and EPA's comment period has just ended

13 three days ago on that Title V permit.

14 This was an original, the first Title V

15 permit for this source, and it is now open for public

16 petition, which may be forthcoming. As part of that

17 process, this was one of the first Title V permits

18 that we participated in. I think that both the

19 agency and our organization learned a lot about the

20 Title V program by going through that process.

21 There were many people when we had a

22 public hearing on this. Many people came out to

1 speak, to talk about the problems of air pollution
2 and the impact on them from this facility, and by
3 having the Title V program involvement, I think it
4 was helpful.
5 One of the things that came out of this
6 process is that Delaware is now looking at developing
7 new laws to reduce pollution from power plants,
8 because they found that existing laws were not
9 actually able to reduce the pollution that was coming
10 out of coal-fired power plants, and that new laws
11 were required.
12 So, when the public came to complain, one
13 of Delaware's responses is, well, we can't do much
14 under current law, but we're taking a look at new
15 laws to actually accomplish pollution reduction. So,
16 it helped us participate in the process, and one of
17 the problems is that here is part of Title V, and
18 there isn't a lot as far as a coal-fired power plant
19 and there's not a lot of legal requirements that
20 actually can be used to reduce the pollution from
21 that kind of facility.
22 Hopefully, Delaware is now serious about

1 actually trying to reduce the air pollution through
2 new requirements. We'll see if that actually comes
3 to pass, but that's what they said in response to
4 comments on that.
5 Connectiv's Power Plant is another coal-
6 fired power plant. It's very similar and came out at
7 about the same time, and it's just within the last
8 month that a proposed permit has been sent to EPA
9 for comments. I hope EPA carefully looks at that
10 Title V permit as well. We participated in the
11 entire process, held a public hearing. Many people
12 came from the public to speak on that source.
13 The next is the Motiva refinery. This is
14 a refinery in Delaware City, Delaware. It is
15 interesting for the fact that it does not have a
16 single Title V permit. When I say that, what I mean
17 is that the facility has been divided into three or
18 perhaps four parts, and it has what they call a Title
19 V permit, Part I that covers some sources at the
20 refinery, but not all of them, and that is in effect.
21 And then there are two other parts, Part II and a
22 Part III. In Part II, there was an application

1 submitted years ago and that has not yet been put
2 forward, and a Part III that just recently was put
3 forward in draft form to the public.
4 I say four parts, because -- I'll get to
5 that a little later when I get to DuPont. But we
6 have participated as far as the Motiva refinery is
7 concerned, in asking for hearings on some of the
8 minor source permits or requests to amend the permit
9 that would later be incorporated into the Title V,
10 because they don't have a full Title V.
11 It only covers part of the facility, and I
12 see that as a real problem. When you have at Title V
13 that only covers part of the facility, it's very
14 difficult, coming from the public's perspective, to
15 figure out, okay, we hear there's a violation at
16 Motiva, the refinery. There was a release of some
17 pollutant. We hear about that.
18 Well, is it covered by the Title V permit
19 or is it one of those -- where is the release coming
20 from? Is it one of the sources that's not in the
21 Title V? You know, from the public's perspective,
22 it's much better to have a single permit that covers

1 the entire facility and to have compliance that does
2 that, rather than divide it up.
3 I won't go into detail on some of these
4 others. Wilmington Sewage Plant is another Title V
5 permit we commented on. We're still waiting for the
6 draft to come out to see what reaction to comments we
7 will get.
8 SPI Polyols, we participated in that
9 process, and that resulted in some improvements
10 responsive to our comments on the permit.
11 Dow Reichold Specialty Latex, another
12 manufacturing firm that we've participated in the
13 Title process for that, and that also resulted in a
14 petition to EPA that's still pending decision.
15 Some of the other facilities that we've
16 been involved in are: The Cherry Island Landfill,
17 Daimler Chrysler, a Newark assembly plant that we
18 provided comments on.
19 As to DuPont's sulfuric acid plant, I
20 wanted to mention this, because what happened was,
21 with the Motiva refinery, is that Motiva decided that
22 it didn't want to keep operating its sulfuric acid

1 treatment part of its refinery, in part, because they
2 had an explosion a couple of years ago that killed
3 one of their -- just vaporized one of their workers.
4 And they decided that now they want to
5 contract that out to someone else to handle it, so
6 they asked DuPont to come in and build a sulfuric
7 acid plant to handle all of the gas from Motiva's
8 refinery. They lease them some land on the refinery
9 property and then DuPont applied for a minor source
10 permit to build this sulfuric acid plant, the main
11 purpose of which is to treat the gas from Motiva's
12 refinery, but they applied separately.
13 So, is wasn't a Title V. It wouldn't be
14 part of Motiva's Title V. We commented on this and
15 objected to the fact that DuPont was being treated
16 separately, and eventually Delaware agreed and said
17 that because it's under the control of Motiva, that
18 it should be part of Motiva's emission source and
19 calculated in with all of their's.
20 So, now there will be a Title V permit for
21 the DuPont sulfuric acid plant as a result of this.
22 It still will remain under -- it will be a DuPont

1 Title V permit, but it's because it's connected with
2 the refinery that it will have its own Title V permit
3 and subject to those regulations.
4 You know, just more recently, we've
5 commented on Johnson Controls Battery Group, a permit
6 there, and the Premcor refinery. Just recently,
7 Premcor bought the Motiva refinery, so now the Part
8 III Title V permit for now a Premcor refinery was put
9 out for comment and we've requested a hearing on that
10 and we're waiting to see what happens there. But,
11 best of luck to Premcor taking over that facility.
12 Next slide, please.
13 (Slide.)
14 MR. WELCH: Okay, benefits of the Title V
15 program: Another important benefit of the Title V
16 program is improved enforcement. By having all of
17 the requirements in one place, in one permit, and
18 spelled out in clear language as best as possible,
19 this enables both the government agencies and the
20 public to ascertain whether a facility is in
21 compliance or not, and then to take enforcement
22 action when a facility is violating the laws.

1 And this is a real benefit of the Title V
2 program and the Title V regulations. You know,
3 recognize that not only is the government able to
4 bring enforcement actions, but citizens can as well,
5 under the citizen supervision.
6 Having clear permits developed through the
7 Title V program, as well as compliance monitoring and
8 recordkeeping, keeping track of all of those records
9 at a facility and having them available to the public
10 as well as the government, is important. You can't
11 just rely, if you are a citizen trying to bring an
12 action to bring a facility into compliance, a citizen
13 can't rely on a government inspection alone, because,
14 you know, the citizen isn't part of that inspection,
15 has no influence on that. All you can read is the
16 report, if the agency chooses to write one of that
17 inspection, to see what happened.
18 So, the requirements for monitoring and
19 recordkeeping and compliance that are part of Title
20 V, lead to improved enforcement, both on the
21 government level and the citizen public's point of
22 view. Next slide, please.

1 (Slide.)

2 MR. WELCH: Okay, in line with the Task

3 Force request to provide practical examples of how

4 Title V has worked, I offer up a successful

5 enforcement action based on a violation of a Title V

6 permit. And this example is for Sunoco's refinery.

7 Sunoco has a refinery that's kind of split

8 between Pennsylvania and Delaware. It has portions

9 on both sides.

10 And Sunoco recently, a couple of years

11 ago, was issued a Title V permit for flares that are

12 located on the Delaware side. Now, what Sunoco does

13 is, it sends hydrogen sulfide gas kind of over the

14 state line to be processed, and when, you know, there

15 are problems, then it can end up being sent to a

16 flare in Delaware that produce a lot of sulfur

17 dioxide pollution.

18 And the Title V permit that was developed

19 for Sunoco after examining the regulatory

20 requirements, essentially prohibited Sunoco from

21 flaring at this particular flare. It had, you know,

22 essentially a zero emission of no flaring type of

1 requirement.

2 And Sunoco was sending its gas to another

3 facility operated by General Chemical Corporation,

4 which was supposed to handle the gas in the normal

5 course. The problem that was faced in Delaware is

6 that when there were operational problems at Sunoco's

7 refinery or when there were problems accepting the

8 hydrogen sulfide gas at the general chemical

9 facility, the Sunoco had really no option but just to

10 flare the gas. They didn't have any means to handle

11 this hydrogen sulfide gas, and so they flared it and

12 were producing tons of sulfur dioxide emissions that

13 were prohibited by their Title V permit.

14 And when this began to be reported in the

15 press, it was pretty clear that there was a problem.

16 There were newspaper articles saying, well, Sunoco's

17 permit prohibits flaring, and they're flaring. And

18 the flaring, you know, not only really is sending all

19 this sulfur dioxide into the environment and it was

20 not only a problem from an environmental perspective,

21 but neighbors and people that live near this flare,

22 had huge -- I mean, it just smells bad; it stinks.

1 That's what happens, and they were calling and
2 complaining.
3 Well, when we got involved in the
4 situation, and when we first approached Delaware, the
5 agency, and called and talked to the engineer, after
6 one of the first flaring events, the engineer's
7 response was, well, it's not a big problem. We don't
8 expect it to happen again. We're not going to do
9 anything about it.
10 Well, then the days and weeks went by and
11 repeated flaring happened again and again, day after
12 day, and we called up and eventually the agency
13 stopped returning our phone calls, and we represented
14 the Clean Air Council in sending a notice of intent
15 to sue under the citizen supervision of the Clean Air
16 Act for violating the provisions of the Title V.
17 Well, as you know, there's a 60-day period
18 between when you send the notice letter and when you
19 can actually file a lawsuit in court under that, and
20 during that time, there were more flaring events,
21 some, really, some tons and tons of sulfur dioxide
22 coming out from this facility.

1 Sunoco got together with the government
2 agency, and a couple of days before our 60-day notice
3 period would have run and we could have brought our
4 own enforcement action, they reached a consent
5 agreement with Sunoco and the government to develop a
6 plan to solve this problem, to stop the flaring
7 problem, and they had to come up under this court-
8 ordered agreement.
9 They'd have to come up with a plan within
10 four years to solve the problem. Well, that wasn't
11 sufficient from our point of view.
12 We brought an actual lawsuit, saying that
13 that was not diligent prosecution, that wasn't
14 solving the problem; there was still flaring
15 continuing, still violations. Eventually what Sunoco
16 did is, they built a sulfur recovery unit on their
17 property, so that instead of trying to send it to
18 General Chemical, they had their own sulfur recovery
19 unit on the facility.
20 You know, I've heard estimates that
21 they've spent around $20 or $25 million to put in
22 this piece of equipment. They also, as part of the

1 deal with the agency, they paid a penalty of
2 $390,000, and at the end of the day, you know, we see
3 that in 2002, there were over 600 tons of sulfur
4 dioxide emissions from this one single flare, and
5 because of the Title V permit that was in place,
6 because the language was clear enough, the government
7 agency was able to take enforcement action when
8 prompted by the citizens, and that has now resulted
9 in Sunoco putting in the sulfur recovery units and
10 the flaring essentially is over with, and has been
11 resolved.
12 So, I view this as a clear example of
13 where the Title V permit process has helped improve
14 enforcement on an air violation. Next slide, please.
15 (Slide.)
16 MR. WELCH: Okay, I also wanted to respond
17 to your request for some ideas about improvements to
18 the Title V program, and I put these out here as more
19 issues or areas that the Task Force should consider,
20 rather than a specific regulatory change that I'm
21 proposing.
22 First, more frequent monitoring. I'm

1 finding in the Title V process, as we go through
2 various permits, that there -- obviously, for
3 different types of sources, there's different types
4 of monitoring that's required or appropriate.
5 Stack tests often are not done when they
6 should be, when Title V permits are up for renewal,
7 and that should be looked at. Monitoring should be
8 looked at for different types of facilities and
9 figuring out, you know, what is the appropriate types
10 of units and, you know, how often should this
11 monitoring be done.
12 Right now, Title V often only requires
13 tests to be done when the permit is up for renewal
14 again, which may be five or more years down into the
15 future, and, you know, this is an area that I think
16 the Task Force ought to think about, is more frequent
17 monitoring for major sources. That might be one area
18 that should be required.
19 Secondly, more frequent compliance
20 reports: Right now, for a lot of facilities, what
21 you have is, you may have a semiannual or annual
22 compliance report under Title V that addresses the

1 issues.

2 And, you know, in comparison to the Clean

3 Water Act Program, where you generally have monthly

4 reports from a facility, the semiannual and the

5 annual reports really make it hard for a citizen or a

6 member of the public to really verify the compliance

7 of a facility, you know, on a day-to-day basis.

8 You know, when you try to look at the

9 facility's compliance, you know, it could have been

10 in violation for four months and you're not going to

11 know that until two or three months when they put out

12 a semiannual compliance report and then have to put

13 out some statement like that.

14 I mean, I would like to see perhaps a

15 monthly report coming out from a facility that would,

16 you know, tell us what the compliance is, in a

17 similar way to that which you have under the Clean

18 Water Act where you have a monthly type of report.

19 And, you know, that monthly report wouldn't

20 necessarily have to be as detailed as the semiannual

21 or the compliance report, but, you know, it could

22 just tell you perhaps, you know, how many violations

1 there have been, or break it up by units and tell
2 you, you know, which units are experiencing
3 violations or what type of pollutant is coming out
4 from a facility.
5 Another way that you might take a look at
6 having more compliance reports available is by
7 looking at the Internet and putting out release
8 information for facilities and making it available on
9 websites that the public can access.
10 In Delaware, for example, under state law
11 that was adopted a couple of years ago, Delaware puts
12 out release information for spills and for releases
13 from all facilities in the state that take place.
14 And this -- you know, this applies not only to major
15 sources, but even smaller ones.
16 And you can tell pretty quickly. Delaware
17 lets you sign up so that you can get e-mails when
18 releases occur, or even phone calls, if you care
19 about a particular facility or all facilities in the
20 state. And these release reports describe, you know,
21 what chemical was released, you know, approximately
22 how many pounds, what time that this occurred, what

1 health risks there are, all the sorts of information
2 that you'd want to know from the public's standpoint.
3 And just by looking over these release
4 reports, you know, we find, for example, Motiva puts
5 out two or three a week. They are now, I guess,
6 Premcor.
7 And you can tell that there are violations
8 at the facility, because they continue to put out
9 these release reports. When Sunoco was having its
10 flaring operations, we couldn't tell exactly how
11 much, you know, pollution of sulfur dioxide was
12 coming out from the facility by looking at the
13 semiannual compliance reports, because we didn't get
14 those, you know, for months into the future.
15 But because of Delaware's release
16 reporting capability, you know, every day Sunoco was
17 putting out, well, we flared today and there was this
18 amount of sulfur dioxide going into the air, and that
19 is very valuable from the public's point of view in
20 being able to look at a facility and evaluate whether
21 it's in compliance or not.
22 So, something you might want to look at is

1 a way to get more up-to-the-date information on
2 compliance made available to the public, so it's not
3 just waiting for a semiannual or annual compliance
4 report. Certainly, those are valuable, and I would
5 look at those for a facility, but having a way,
6 perhaps through the Internet, where that type of
7 information would be available, would be improved.
8 And inspections, that's another way that
9 government finds out information about compliance.
10 You know, we found that in Delaware, what Delaware
11 might do is, they do inspections every other year for
12 a source. And on the off year, they would do what
13 they call a desk review or partial review where they
14 would just look at reports and documentation, but
15 wouldn't actually go out to the facility.
16 You know, I think, personally, that
17 actually going out and inspecting on the ground at
18 the facility is a better way to determine compliance
19 for an agency than simply relying on the reports
20 generated by the company. So, you might take a look
21 at what type of inspection is required through the
22 Title V program.

1 Third, better public participation
2 mechanisms: Delaware may be better than other
3 states, even though we've had our problems there,
4 but, you know, just knowing when a Title V permit is
5 available for comment or to ask for a hearing, can be
6 difficult.
7 I mean, there are requirements to put
8 legal notices in newspapers, but not everyone is
9 going to see those types of notices. In Delaware
10 what they done is, they've established a website, and
11 on that website, you can go and you can look at all
12 the public notices that are currently open.
13 So, for any facility that currently you
14 could comment on or ask for a hearing on, you can go
15 to a page on DNREC's website and it will list all the
16 public notices that, you know, are just basically an
17 electronic copy of what was printed in the paper, and
18 it's available on their website, and you can click on
19 it and see how to go about requesting a hearing.
20 So, if I'm on vacation for a week or two,
21 and I come back and I say, well, what's going on? I
22 can click on this web page and I can see, well,

1 here's what I could comment on or ask for a hearing
2 on.
3 The public finds this very valuable,
4 instead of trying to look through the paper every day
5 to figure out, you know, if there is a public notice
6 going on. Also, Delaware allows you to sign up so
7 that you can get e-mail notices, so when they put a
8 public notice on the website, I get an e-mail that
9 says here are all the public notices that have gone
10 up this day.
11 And, you know, I use that; I subscribe to
12 that; I get these notices, and that's very valuable.
13 I don't think every state offers that opportunity.
14 In Pennsylvania, stuff is published in the
15 Bulletin, but there is no way that you can track when
16 a Title V permit is coming up for review. We've
17 called Pennsylvania and asked them, you know, how do
18 we know what facility is coming up? And it's like,
19 there's no way. We don't know.
20 Even the engineers are working on permits.
21 They don't know when they are going to be made
22 available for public comment, and they've got this --

1 they have sort of a website system, but it doesn't
2 really work for commenting on permits or when comment
3 deadlines become open.
4 So from a state point of view, it's -- you
5 know, you have to get the Bulletin where they put the
6 legal notices, but there's not an easy way for
7 citizens to find out, you know, when can we ask for a
8 hearing? And often, dates are missed; hearings are
9 not requested, because the date passes and then the
10 thing is put in final form, and citizens just don't
11 have that opportunity.
12 All right, EPA has done a good job when it
13 gets to their level. They have a website of noting,
14 you know, here are the permits that are under our
15 review; we got them on this date and we've got a 45-
16 day review period, and it ends on this date, and then
17 there's a 60-day public petition period that's open.
18 And EPA has a good -- at least in Region
19 III, anyway, has a web page that you can get all that
20 information from, and it's updated every week or so,
21 and that's helpful. I guess the problem is, from the
22 public standpoint, is that EPA would prefer that we

1 get involved at the state level, and if the states
2 don't notify us about when we can ask for hearing,
3 then all we're left to do is, well, we have to
4 petition the EPA to fix the problem that would have
5 been better corrected at the state level, and EPA
6 doesn't like that.
7 MR. LING: Can I just ask you if it's
8 possible for you to wrap up in about five minutes,
9 just so we have enough time for questions and for the
10 rest of the speakers? Thanks.
11 MR. WELCH: Sure, happy to do that.
12 The last point, just for the record, is
13 the elimination of the malfunction and upset
14 loopholes. That is something that facilities use to
15 try and escape violations whenever they occur.
16 Language in the Title V permits is often vague and
17 unclear on what's required to be a malfunction or an
18 upset.
19 Any lawyer representing a facility, if you
20 try and say there's a violation, they'll say, there's
21 an upset or there's a malfunction. It would be good
22 -- this is an area that you should really take a look

1 at, making an improvement, putting the burden, making
2 clear that the burden is on the facility to
3 demonstrate that.
4 Whether you actually allow a malfunction
5 or an upset, you know, especially when you have a
6 dozen of these events happening over months and
7 months, after a period of time, there's a problem
8 there. It's not just a one-time occurrence. Next
9 slide, please.
10 (Slide.)
11 MR. WELCH: The last issue I want to raise
12 with the Task Force is the composition of the Task
13 Force. Just looking at the membership here, it is
14 clear that the Task Force is weighted against
15 environmental groups.
16 There are six members from industry, six
17 members from government, and only four members from
18 the environmental groups. The day that the list came
19 out for this Task Force, I sent an e-mail around to
20 everyone on the Task Force, complaining about the
21 lack of representation from environmental groups.
22 I view this as a real serious problem that

1 puts into question, whatever report this group could
2 come out with at the end of the day. A Task Force
3 like this should have fair and balanced
4 representation from the environmental community and
5 from the public.
6 Just numerically, you can see that there
7 is not equal representation for the environmental
8 side, and it's not because there aren't people
9 willing to come and to represent environmental
10 groups. I put my own name out there as one who is
11 willing to serve on the Task Force.
12 I know of other people who were interested
13 in serving on the Task Force, representing the
14 environmental groups or the public, that are not
15 present here on the Task Force. While having four
16 members in your group is probably far better than the
17 Vice President's Energy Task Force representation.
18 It still is not an equal representation.
19 I think that before you meet again in Chicago, that
20 you should appoint two members to represent the
21 environmental community to serve on your Task Force.
22 I was here at the beginning of the day when you

1 commented on this issue, and said that it was because
2 of lack of funding that that could not be done.
3 I take real exception to that. The
4 Federal Register notice that was put out for this
5 Task Force said at the beginning, that there would be
6 no reimbursement for expenses. I know of people, I
7 talked with people from environmental groups, that
8 did not even apply to be on the Task Force because
9 they couldn't afford the travel expenses to come out
10 and be on the Task Force.
11 So there were people from the
12 environmental community that didn't even apply
13 because of that restriction that was out there. When
14 I put my name out there, I assume that I'd travel
15 here and handle that all through other resources,
16 rather than being reimbursed by EPA.
17 No one came to me or anyone else that I
18 know of and said, look, EPA Can only fund four
19 people's expenses to be on this Task Force. Would
20 you be willing to serve voluntarily without
21 reimbursement?
22 The environmental community could make

1 arrangements. We could share rooms. There are other
2 people who would be willing to serve for free on this
3 Task Force.
4 You talk about lack of voting. I don't
5 know what you're going to do in the future, but to
6 develop a fair record and really examine the issues,
7 it is unfair and not representative to exclude the
8 views of members of the public and the environmental
9 community by reducing their representation.
10 The number of questions that can be asked
11 around this table are reduced because of the lack of
12 representation, the type of issues and backgrounds
13 that can be brought to bear is reduced by lack of
14 representation. I'm certain that industry or the
15 government would object if you decided to strike two
16 members from the people around here from those
17 groups, and said, well, you an submit your stuff into
18 the record and that will be fair.
19 It's not fair. EPA should strive to have
20 fair, balanced representation from the environmental
21 community and from the public. I hope that you
22 correct that problem before you meet again. Thank

1 you. I'll be happy to answer any questions that you
2 have for me.
3 MR. LING: A couple of things: First of
4 all, I'll say again what I said this morning, for the
5 benefit of those who weren't present. We are
6 intending to run this process so that everyone has a
7 chance to be heard, every individual who wants to and
8 every group that wants to.
9 We're hoping that -- and we've represented
10 each group on the Task Force. My experience so far
11 is that everyone who has been sitting in your chair
12 has had a chance to be heard, and everybody at the
13 table who has wanted to ask a question, has had a
14 chance to do so.
15 Our intent is to continue to do that. My
16 other question was, did you give a hard copy of your
17 presentation to anyone here yet?
18 MR. WELCH: I have not yet, but I have one
19 here.
20 MR. LING: The Task Force would definitely
21 like to get a hard copy of every one from those who
22 have ones like that. With that, I'll throw it open

1 for questions. Steve Hitte was first.

2 MR. HITTE: I appreciate your

3 presentation, and have a lot of questions, but I

4 won't hog the panel here. I'll just ask my first

5 one.

6 You said that one benefit of Title V is

7 the consolidation of all of the requirements into the

8 permit. You heard earlier this morning about the

9 length of the permit, et cetera.

10 Speaking for yourself, and if you can

11 broaden your representation, that's fine. EPA -- I

12 should say that states have options, when they go to

13 write a permit, from cross-referencing the regs to

14 putting the actual regs into the permit, to

15 summarizing the regs.

16 Given the perspective of the chair you sat

17 in from pre-Title V days when you said you couldn't

18 find anything, and what you heard earlier about the

19 volume of the permits, what would you suggest this

20 Task Force consider, how to best get the regs in the

21 permits?

22 MR. WELCH: Certainly, at a minimum, you

1 would want to reference the federal requirements.
2 Many permits I've seen, even if they provide some
3 language that comes from a federal requirement, they
4 will put a cite to the Federal Register provision so
5 you can look it up and see what the actual language
6 is or what might apply.
7 One problem I've seen with summarizing is
8 that sometimes the permit agency will try and
9 summarize what the federal requirement is. But they
10 will leave out important language from the regulation
11 when they attempt to do that.
12 I think that creates a huge problem down
13 the road, if you were to try to enforce that
14 requirement, because there would be an argument that
15 I'm certain the industry would raise, that there's a
16 permit shield, and that the only requirement that
17 applies to them is the actual language that's written
18 into their permit.
19 You might say the agency wanted to
20 specialize or develop a special regulation and
21 requirement just for them, or modify the regulation,
22 and you can look at the Federal Register or the CFR

1 and see, well, here's the full requirement and you
2 may not have complied with a part of that or evidence
3 might not be admissible, or there might be useful
4 information that's in the CFR that you would want to
5 rely on.
6 But then you're faced with this permit
7 shield argument or this other argument from the
8 facility because of the language that's written into
9 the permit. I think you need to address that
10 situation, if you're going to try and summarize or
11 put language into the permit as to whether that gives
12 a shield of some sort to the facility, or whether you
13 can look at the actual regulation itself.
14 MR. HITTE: Just to clarify, though, I'm
15 asking you to speak personally. Would you rather
16 pick up a permit, a Title V permit, forget the
17 summarization, and see a cross reference, or would
18 you rather see it attached like the example we heard
19 about in Ohio?
20 MR. WELCH: I certainly would not want to
21 have a 300-and-some page document attached to a
22 permit if it could be referenced another way. I do

1 find it helpful in looking at a permit when there are
2 requirements that, whether it's a numeric requirement
3 or something of that sort, when it's actually spelled
4 out in the permit so you know it applies.
5 There are often times as well when there
6 are perhaps alternative approaches in the
7 regulations. The company may want to pick one, and
8 the government says, well, we're going to use this
9 approach. If that's specified in the permit, it's
10 clear what they're doing.
11 If you just cross reference, then you're
12 wondering, among the three alternative approaches,
13 which one are they using for recordkeeping? I think
14 there is a balance that needs to be made when you're
15 drafting a permit, because you wouldn't want to get a
16 permit that all it had in it was just a string of
17 citations to 40 CFR. You'd be spending all day
18 trying to figure that out.
19 MR. LING: Bernie?
20 MR. PAUL: Thank you for your practical
21 insights into how the program has been working for
22 you. One of the things that I'm going to try to

1 accomplish as I sit on this Task Force, is to
2 understand what could have been achieved before Title
3 V, and what could have been achieved, and compare
4 that to what Title V brings to the table, and also
5 the burdens before and after Title V.
6 I'm curious, in the case of the Sunoco
7 refinery, you described at length, what is it about
8 Title V, in particular, that enabled that series of
9 events to occur that could not have occurred without
10 Title V. I really struggled to understand that as
11 you described that situation.
12 If you could answer that question, then
13 the second question I have for you is, you had
14 suggested the Water Program, which has monthly
15 reporting requirements, could be stretched over into
16 the Air Program. I wonder if you appreciate the
17 difference between a plant site that might have two
18 or three discharge points and subject to a limited
19 number of requirements, versus a site that's under an
20 air permit that might have hundreds of discharge
21 points and is under several different requirements
22 with a 400-page permit, and that sort of thing, and

1 the increased burden that a monthly reporting
2 requirement would have.
3 MR. WELCH: To answer the first question
4 on the Sunoco Title V, the Title V limit on flaring
5 for this flare that was in the permit, was made very
6 clear and absolute. It was clear that there was a
7 violation, and to the extent that the Title V program
8 kind of brought that together and put that into
9 force, I think that was the benefit of the Title V
10 program.
11 From a citizen's perspective, trying to
12 come in and figure out there's more than one flare at
13 the Sunoco refinery, in trying to figure out, is
14 there a violation here or not, and going in to look
15 at a room full of documents and trying to figure out
16 what the actual limit is for flaring, I don't think
17 could have been done with any chance of success from
18 the public side until the Title V permit was put into
19 place.
20 I think that for the government, it would
21 have been a much more difficult time for them, as
22 well. I can't speak for them, but I guess my own

1 experience of trying to pull out different
2 requirements --
3 MR. PAUL: Can I ask a clarifying
4 question? I thought that's what your answer was
5 going to be, and I'm really surprised that that's the
6 answer because Title V should not have been creating
7 a prohibition on flaring.
8 That should have come from an underlying
9 requirement, like a SIP regulation or a pre-
10 construction permit of some kind. So, I don't
11 understand how Title V achieved that objective,
12 because that is not one of the roles of Title V.
13 MR. WELCH: I haven't gone back to look at
14 the source and derivation of when that requirement
15 was put into place, to compare how it was before and
16 after.
17 MR. PAUL: I guess I would like to point
18 out then for the Task Force, that until we see more
19 information about that particular situation, maybe
20 this isn't one where Title V was the cause of the
21 benefit that you achieved through that particular
22 situation. That may have been something else.

1 MR. WELCH: I think that the benefit in
2 that situation was that from the citizen's
3 perspective or the public's perspective, it was easy
4 for us, because Sunoco had a Title V permit, to ask
5 the agency for a copy of that permit, and we got it
6 fairly quickly.
7 And we could look at it; we could see,
8 okay, this is the requirement on page 87 or whatever
9 page it was, that applies to this flare. Here's the
10 language, and we could put together a good analysis
11 to say here's the requirement in the permit and
12 you're violating it. By having that permit, we were
13 able to do that very quickly and come to a conclusion
14 where we were comfortable that, yes, there was a
15 violation here.
16 In the case of another facility that did
17 not have the single Title V permit, it would not have
18 been possible to come to that conclusion so quickly
19 and with that degree of confidence.
20 MR. PAUL: That clarifies things.
21 MR. WELCH: You had asked a second
22 question.

1 MR. PAUL: About the monthly reporting.
2 MR. WELCH: As I said before, I think the
3 ideal situation would be to know on a day-to-day
4 basis, whether a facility is in compliance or not.
5 The closer that you come to that, the better you're
6 doing.
7 The type of monthly report that I might
8 like to see might only need to have two or three
9 pages to it, and provide a summary of the compliance
10 status is, just so that someone would be able to look
11 at that and see, is this facility in compliance or
12 not?
13 MR. PAUL: Can I glean from your answer
14 that some reporting is more important than other
15 reporting, given the nature of the facility and the
16 types of emissions that that facility might have?
17 MR. WELCH: Yes.
18 MR. LING: Mike Wood.
19 MR. WOOD: Thank you for taking the time
20 to prepare your comments. You've touched on a whole
21 lot of areas.
22 I've got a number of questions, but I'll

1 just address one area right now. That is the public
2 participation in the permitting process. It seems
3 you've commented on draft permits, and attended
4 hearings.
5 What sort of issues have you raised with
6 permits? Do you see a common problem?
7 MR. WELCH: There are a number of issues
8 that seem to recur with some frequency, some of that
9 we've seen a lot of, just in the drafting of the
10 permit. There might be a requirement that's stated
11 in the permit, but it would be lacking a means of
12 monitoring that requirement or assuring compliance
13 with the requirement.
14 Many of our comments are often directed
15 to, okay, here, you say here's the requirement, but
16 then how do you verify that? What are the means of
17 checking up on that?
18 I think those are important areas to make
19 sure that the permit has. If there's no means of
20 monitoring or showing compliance with the
21 requirement, there's no way to go back and check to
22 see if it's actually happening.

1 That's one area. Another area that I've
2 seen also has to do with compliance. We see that
3 often times there are facilities that seem to be in
4 violation, repeatedly. They may have ongoing
5 violations, yet when it comes time to issue the
6 permit, there's no requirement to address the problem
7 of the facility.
8 The facility may have put in an
9 application five years before, and certified that we
10 are in compliance with all applicable requirements in
11 1995. When it comes to 2004, and it's time to put
12 out a draft permit, they may have had violations that
13 have happened in the interim, and it's difficult to
14 address that.
15 Often we will raise the idea of here are
16 several violations that have occurred. What's the
17 facility doing to correct this problem?
18 And more times than not, there is no
19 compliance schedule that's put into the permit to
20 address the problem. It's kind of left up to the
21 company's good will to fix the problem.
22 MR. WOOD: Have the permitting authorities

1 been responsive to your concerns?

2 MR. WELCH: What Delaware has told us is

3 that they do not want to issue a permit to a facility

4 that's in violation, and they deal with violations as

5 an enforcement matter, rather than a permitting

6 matter.

7 So I think my on-the-ground experience is

8 that often times the permit issuance is held up or

9 delayed internally because of a violation issue, and

10 so the permit is not issued. Or, we have had permits

11 that have been issued, but recognize that there have

12 been violations and the facility has agreed to

13 develop a plan to address the problem, but the plan

14 hasn't been developed at the time the permit is

15 issued, or it's not made an enforceable requirement

16 in part of the permit. We would object to that.

17 MR. WOOD: How about on the monitoring?

18 Have you been able to have additional monitoring

19 included when you raised that concern?

20 MR. WELCH: We have had some success in

21 requiring additional monitoring or other means of

22 ensuring compliance with requirements in permits. I

1 think that's been a big benefit that we've gotten by
2 participating. We've identified requirements where
3 there's not a monitoring or recordkeeping requirement
4 and raised that issue, and, in some cases, that has
5 been added to the permit.
6 MR. LING: Shannon?
7 MS. BROOME: I'll be really quick, because
8 people have raised most of what I wanted to raise.
9 Back on the access point, it sounded like you were
10 pretty pleased with the Internet kind of approach to
11 knowing when something was out for public comment,
12 that that was working for you in Delaware, that you
13 could get access to the draft permit that you needed.
14 You said you get an e-mail when something
15 goes out for public comment.
16 MR. WELCH: What we get is a notice.
17 MS. BROOME: That something has been on
18 the web, and then you can go and you're able to get
19 it. You can download a PDF file.
20 I was just trying to understand what the
21 process is, because I know in Ohio that everything is
22 up there, and there's a date when it went to EPA. In

1 Indiana, Bernie knows, I do a lot of work there, too,
2 and in Michigan also.
3 My experience is a lot in Region V and
4 Region IX, so I'm kind of interested in more of the
5 Region III kind of world.
6 MR. WELCH: The system you described is
7 probably better in a number of ways than what we have
8 in Delaware. What we have in Delaware is, there's a
9 website that lists the permits that open for comment
10 that you can request a hearing on.
11 MS. BROOME: But you can't click it.
12 MR. WELCH: You can't click it and get a
13 draft copy of the permit. You have to call and file
14 a Freedom of Information Act request to obtain the
15 draft permit, or the documents that relate to that.
16 MS. BROOME: That's interesting. And then
17 not to carry Pennsylvania's water at all, but I
18 thought -- and tell me if I'm wrong -- I thought that
19 at least you could get a copy of their little
20 bulletin online, right, or get it e-mailed or
21 something. At one time, I was on a ListServe, I
22 thought, for that.

1 But you can't get the document, that was
2 my experience, and I wondered if that still -- you
3 were saying that Pennsylvania had an issue. You can
4 follow up on that. I don't want to press you to
5 answer, but --
6 MR. WELCH: Pennsylvania has the bulletin
7 online where everything is published, so you can have
8 access through the web for the legal notices.
9 MS. BROOME: But then you have to go get
10 the document yourself, somehow, right?
11 MR. WELCH: Yes, and it's difficult to
12 find out what permits are open for comment in
13 Pennsylvania. Like in Delaware, there's a single
14 website that lists every permit that's available for
15 comment.
16 Pennsylvania has a list of rules or things
17 that might be open for comment.
18 MS. BROOME: Just so you don't feel lonely
19 in Indiana, you get a permit and they mail it to you
20 in the mail, and they don't tell you that they issued
21 it, and it was effective two weeks ago.
22 Thank you very much. Just so you don't

1 feel lonely, but I wanted to thank you for the detail
2 of your comments. I would love to see copies of the
3 comments that you filed on the permits, because I
4 think it will help us analyze kind of what issues are
5 coming up and what we might be able to do to help
6 streamline things in terms of process for people like
7 you and for the regulated entities, as well, for
8 everyone.
9 MR. WELCH: If you'd like copies of our
10 permit comments, they're practically all available on
11 our website, www.maelc.org, and there's a section on
12 the home page for resources, and you click to PDFs.
13 MR. LING: I'm going to go till about
14 quarter past on questions, because that's my rough
15 estimate of how long we have in order to get the
16 other speakers in. Bob Hodanbosi?
17 MR. HODANBOSI: I think this will be
18 pretty quick, this question. Certainly, you appear
19 to have been involved with Delaware in providing a
20 number of comments. I was just wondering, you've
21 provided comments on a draft permit. Do you have
22 followup with the agencies? Do you talk with them?

1 Do they call you? Do you get to see a final permit
2 and you compare and say, oh, you took our comment and
3 changed it? I just want to know how much interaction
4 there is after you've filed comments.
5 MR. WELCH: We have requested hearings on
6 a number of the permits, so there is that opportunity
7 to present oral comments and additional written
8 comments at the public hearing. After that, it's
9 really up to the agency. We have no contact with
10 them after that.
11 I'm sure we could call and ask them
12 questions, if we had a question about what was going
13 on, but they don't make any effort to reach out to us
14 and involve us in the process after that. They do
15 make an effort to involve the permittee. They will
16 go to the permittee and say these are all the
17 comments that we've received from the public. What's
18 your response?
19 And they will often put the permittee's
20 response into the record, and when they do issue the
21 permit, Delaware now is being much better at having a
22 written comment and response document, so there is a

1 response to comment documents that the agency will
2 prepare, which gives some explanation about how they
3 either ignored our comment or made a change.
4 MR. LING: Keri?
5 MS. POWELL: You are familiar with the
6 Clean Air Act requirement that there not only be a
7 six-month monitoring report, but that there also be a
8 prompt report of any deviation from permit
9 requirements.
10 MR. WELCH: Yes.
11 MS. POWELL: How are the states you work
12 in, implementing that requirement? Do you think
13 that's sufficient?
14 MR. WELCH: In several cases in Delaware,
15 there will be a report and we can find that release
16 report or information. But what's really more useful
17 is the more detailed report from the facility.
18 Often that's not available for a month or
19 more to where the facility will actually explain what
20 was the cause of the release or violation, and what
21 are they doing to fix the problem. There may be a
22 30-day requirement from Delaware to submit the

1 report, but that's commonly extended, and the company
2 is given more time to do analysis or whatever.
3 The public has a difficult time gaining
4 access to those reports, as well. You would have to
5 file a Freedom of Information Act request and go
6 through that process, so I think it's difficult and
7 burdensome and hasn't worked very well from my
8 perspective.
9 MR. LING: Don?
10 MR. VAN DER VAART: Just real quick, I
11 have to assume that the permit for the refinery was
12 issued correctly, so that there was some requirement
13 for which the amount of time that the gas was sent to
14 flare -- there was some sort of a monitoring
15 requirement.
16 That's just what I'm guessing. If that's
17 not the case, let's speak more generally. The
18 comment made by John Walke, would you think it's a
19 good idea that a facility could appeal to some other
20 information and certify compliance for that period,
21 despite the fact that the monitoring might have said,
22 gee, when we send your gas to this flare three times

1 a year and they sent it six times, but they have some
2 other information that would indicate that the
3 underlying standard was not violated, would you think
4 that's okay for them to then certify compliance, or
5 would you like to see them certify noncompliance for
6 that act?
7 MR. WELCH: I'm not sure I understand the
8 question. As far as Sunoco, they had their own
9 reports certified that they had violated.
10 MR. VAN DER VAART: Let's say that for
11 whatever reason, Sunoco had reason to believe that
12 despite the fact that they sent it over there as many
13 times as they did, that they hadn't actually violated
14 the underlying standard. Let's just say that.
15 The monitoring of the permit indicated
16 that they had exceeded this requirement, but that
17 they had other reason to believe that perhaps they
18 were in compliance. As a consequence, they certified
19 compliance at the end of the year, or, perhaps, I
20 don't know.
21 How would you feel about that? Earlier,
22 John Walke, I understood him to say that a person

1 from your viewpoint wouldn't much care about that
2 issue. I'm just trying to understand.
3 In your case, of course, they did certify
4 noncompliance; that was clear. I'm just giving you a
5 hypothetical.
6 MR. WELCH: I guess I might have a little
7 interest in that. Sunoco did make a legal argument
8 that there was another section of the permit that
9 they argued required them to operate these flares
10 when the General Chemical could not accept the gases.
11 And they argued that some of the
12 violations that took place were because of
13 malfunctions at General Chemical, and the permit
14 legally obligated them to operate the flare, 24 hours
15 a day, just burning this off, because of that.
16 Delaware disagreed with this
17 interpretation. We would disagree with that
18 interpretation.
19 MR. VAN DER VAART: Generally speaking,
20 you'd like to be able to look at the monitoring
21 requirements and determine whether they're in
22 compliance or not, based on the results. Is that

1 what I'm hearing or not?

2 MR. WELCH: Yes, I would like it to work

3 similar to the Clean Water Act Discharge Monitoring

4 Report where a facility might report, here's our

5 limit of seven and we were over that at 50, but with

6 a little asterisk saying at the bottom, here's an

7 explanation, you know. Our line froze up this day

8 and that's why this one-time thing occurred.

9 I would like to see the same type of

10 procedure work in the air situation.

11 MR. LING: David?

12 MR. GOLDEN: First, I'd like to thank you

13 for coming today and giving a very ground-level view

14 of what communities go through to get to the end of

15 the rainbow to figure some of this stuff out. Even

16 those who deal with it on the other side can find the

17 Clean Air Act rather hard to figure out on some days.

18 Just a couple of questions for

19 clarification: In closing the loophole associated

20 with malfunctions, I wanted to make sure I understood

21 you correctly. You're not opposed to malfunction

22 defenses, per se, in all circumstances, but you would

1 really like to avoid abuse that may be going on where
2 a facility asserts that whatever has gone on, is a
3 malfunction.
4 I mean, if I understood you correctly, you
5 didn't say to do away with it, but to shift the
6 burden on the facility to have to prove that it was a
7 malfunction, a sudden, unavoidable, unexpected, not
8 caused by operator error or poor design. Am I
9 reading too much into what you said?
10 MR. WELCH: I think you're not reading
11 enough. My personal preference would be not to have
12 any malfunction defense.
13 If a facility claimed there was a
14 malfunction, then that might go towards mitigating
15 the penalty for what took place. But I would make it
16 more of a strict liability approach for the
17 violation.
18 MR. GOLDEN: I just wanted to be clear on
19 that. So, a lightening strike or something like that
20 would just be mitigation and the enforcement action,
21 not an affirmative defense?
22 MR. WELCH: Right.

1 MR. GOLDEN: On additional monitoring, you
2 indicated that you saw some permits that required
3 monitoring once every five years upon renewal. I
4 just wanted to make sure I understood you correctly.
5 Are you referring to stack testing as a
6 form of monitoring, or are you saying that you've
7 seen some permits that don't require any sort of
8 monitoring, parametric or otherwise?
9 MR. WELCH: I was raising the issue
10 because I've seen it come up with many permits.
11 Stack testing is one thing that should be required
12 more frequently and should be done, I think, before a
13 Title V permit is issued.
14 For many cases where it's appropriate,
15 I've seen permits where there's no monitoring for
16 specific units or a specific requirement. That would
17 be something we would want to be included in the
18 program.
19 MR. GOLDEN: I just want to be clear,
20 whether it's stack testing you're referring to when
21 you say "additional monitoring," or other monitoring.
22 Have you or your students had an opportunity to deal

1 with facilities that are subject to MACT standards.

2 Obviously, MACT, post-'90, MACT standards

3 impose a significant amount of monitoring. In what

4 may be pre-'90 standards, do you find that monitoring

5 appropriate, or are you mainly arguing units that

6 don't have anything.

7 MR. WELCH: Most of the facilities we've

8 dealt with are older facilities. If MACT would apply

9 to a facility, it would typically only apply to a

10 specific source within the facility. Most of the

11 sources that we've dealt with in a large refinery,

12 might have -- 80 or 90 percent of it would be not

13 subject to MACT, but there might be a new unit

14 they've built that is subject to MACT.

15 MR. GOLDEN: MACT would also apply to

16 existing sources, too. Maybe you looked at it --

17 there's a refinery MACT out finally on the website,

18 if you had your perfect website where the information

19 was available and you could click and find and sort

20 and get what you wanted.

21 It seems like you don't find newspaper

22 postings very helpful. Could you envision a time

1 where the web could replace noticing things in the
2 newspaper?
3 MR. WELCH: No. I think the newspaper
4 public notice is important, and there are many people
5 in the community who don't have Internet access or do
6 read the newspaper more often and see those notices
7 and would call us up or become involved through that
8 newspaper notice.
9 But the website and Internet notice, I
10 think, should be in addition to the newspaper or
11 legal notice, and, ideally, I would like to have a
12 website where it would put, here's a notice of the
13 facility, and, in the ideal situation, you'll be able
14 to click on that and get a copy of the draft permit,
15 as well as the statement of basis or the technical
16 memorandum.
17 Most of the time, the first thing I look
18 at, if I'm doing a draft permit, is the technical
19 memorandum or the statement of basis that tracks
20 through what the different requirements are and how
21 they developed the permit. I find that very
22 valuable, so I would like to have that statement as

1 well as the direct permit available online, and I see
2 no reason why the states could not make that
3 available.
4 MR. GOLDEN: Thank you.
5 MR. LING: Marcie, I'll let you be the
6 last question here. I'm going to try to figure out a
7 way to follow up with the other folks' questions. We
8 can follow up after the meeting. We're going to have
9 to start working that way because of time.
10 MS. KEEVER: I'm going on what you guys
11 discovered at the refinery. Have you experienced
12 times when you were going through the Title V process
13 and it leads to discovery of applicable requirements
14 that weren't being followed by the facility, the ones
15 that Title V process had shown were really supposed
16 to be followed?
17 MR. WELCH: I was trying to think of a
18 specific example. I think sometimes that happens.
19 Certainly the government seems to identify a number
20 of things, even before they put the draft out, that
21 hadn't come up before, and there have been occasions
22 where we've raised questions or issues, and they have

1 gone back to the original permit or we send them.

2 We say, look, you've missed some language

3 from the applicable requirement that's in the CFR,

4 and they have added that in or changed the language

5 in some way to recognize that that was not fully

6 there.

7 MR. LING: We would be interested in

8 hearing specific examples, if you want to follow up

9 with that for the record. Thanks, and thank you very

10 much for your testimony and for coming here today.

11 MR. WELCH: Thank you.

12 MR. LING: The next speaker is Glen

13 Rountree.

14 MR. ROUNTREE: Good afternoon. My name is

15 Glen Rountree. I am the manager of Air Quality

16 Programs at the American Forestry and Paper

17 Association referred to as AF&PA.

18 AF&PA represents about 200 companies and

19 allied trade associations that represent forest,

20 paper and wood product companies. We account for

21 about 7 percent of the U.S. manufacturing and we

22 employ about 1.5 million people in the U.S.

1 I want to say that I really enjoyed the
2 discussion around this table this morning. This has
3 been very educational and fun for me, a lot more fun
4 than the BART Public Hearings I attended about two
5 weeks ago. Thank you for that. I'm going to help
6 with the time problem because my remarks will be very
7 brief. If you have specific questions for me, it's
8 unlikely that I will be able to answer them because I
9 have been working environmental issues at trade
10 associations for about 13 years, but I am by no means
11 a Title V expert.
12 But one of the things that I want to say
13 to you is that my industry thinks this is very
14 important work that you're doing and we will have
15 internal discussions within AF&PA and our companies
16 will provide detailed input to you at your September
17 meeting in Chicago. That's the first point that I
18 want to make.
19 The second point that I want to make is
20 there are two issues that sort of bubble up right
21 away that I can at least tell you what we think are
22 important issues that you should look at during this

1 process. One, and I'm sure you're going to hear this
2 many times, is the time required to obtain Title V
3 permits. You will find that over and over you will
4 hear this from industry. In our industry, I've often
5 heard this cited as the major disadvantage that our
6 companies face compared to our overseas competitors.
7 The second issue that I would like you to
8 take a look at, if you would, is the recently
9 implemented line-by-line Title V compliance
10 certification forms, which are coming online in many
11 of the states right now. It's been raised a couple
12 of times already in the discussions to date, but we
13 question whether the benefits of such a form is
14 justified when you look at the increased resources
15 that are needed to fill out such forms.
16 Again, I say to you that we will have
17 detailed inputs to provide you when you go to
18 Chicago. I think there will be some other industries
19 that will weigh in at that time. I will provide a
20 copy of these very brief comments to the website that
21 you have.
22 MR. LING: Thank you very much.

1 The first question is Bob Palzer.

2 MR. PALZER: Hello. Thank you for coming

3 and presenting the information. I didn't quite get -

4 - you said 70 percent and I didn't get the context.

5 MR. ROUNTREE: AF&PA represents 7 percent.

6 Yes, sir.

7 MR. PALZER: Do you, and this is a

8 national organization, so you have representatives

9 throughout the entire country?

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

11 MR. PALZER: I'm going to stop. There's

12 other questions I was going to ask. I'm going to

13 pass. Thank you.

14 MR. LING: Don?

15 MR. VAN DER VAART: A very brief question.

16 I think the modification issue is something everyone

17 knows we're going to have to get our hands around,

18 but on this line-by-line certification, can I ask you

19 whether you're in a position to know, unless somebody

20 has tried to delegate you as a responsible official

21 for somebody, which I wouldn't be surprised. But can

22 I ask you if you think that instead of generating a

1 new line-by-line document whether your organization
2 would be okay with simply taking their Title V permit
3 and simply using that as the compliance certification
4 form, simply putting columns on the right side of the
5 page or whatever and putting in a format, whether
6 that makes it feasible, but recognizing, and I'm sure
7 all your members comply with every part of the permit
8 and they're familiar with every part of the permit.
9 That way they would not have to introduce themselves
10 to yet another document, either by paying some
11 attorney or consultant, but would simply use the same
12 permit they've been using all year. Would that make
13 sense?
14 MR. ROUNTREE: I'm not sure. I would say,
15 from my experience, that compliance is a given. I
16 understand the problems that you're having in
17 assuring the public that compliance is taking place.
18 With our industry, that's really the starting point.
19 We know that you need documentation for that. But,
20 perhaps, you've gone too far. Our best engineers
21 should be doing pollution prevention in the plant and
22 we're taking our best engineers to fill out these

1 compliance forms. The longer we fill them out the
2 bigger the forms get. That's our concern.
3 MR. LING: Keri?
4 MS. POWELL: I'm saving my questions.
5 MR. LING: Shelley?
6 MS. KADERLY: Thank you, Glen, for being
7 here today. I was interested to hear the length of
8 time that it's taken the permits to issue is a
9 problem for your industry. That's not something that
10 I've heard from the industry in my state. I
11 typically hear that the timing is more of an issue
12 with the construction permit program over the Title V
13 program. And, I guess, something -- if some of your
14 industry is going to come to Chicago, something I
15 would be interested in hearing is, given a choice
16 between getting a construction permit or getting your
17 operating permit, which one would you have a priority
18 on? Not only getting out of the agency the
19 permitting authority, but also in being responsive to
20 questions that are raised by the permitting authority
21 during their review process.
22 MR. ROUNTREE: I'll get you an answer for

1 that.

2 MR. LING: David?

3 MR. GOLDEN: In working with your members,

4 do you get a sense that among your members they're

5 taking compliance more seriously because of Title V

6 and associated certifications?

7 MR. ROUNTREE: I'm not sure how to answer

8 that. I would say that more time is taken with Title

9 V certifications than with other obligatory

10 requirements in other arenas. Title V, of course, is

11 more complex. There is so much to watch for.

12 MR. GOLDEN: Do you feel upper management

13 is more aware of Clean Air Act requirements and

14 setting a better tone from the top that compliance is

15 expected because responsible officials are having to

16 certify?

17 MR. ROUNTREE: I think even the CEOs

18 recognize that being out of compliance with any of

19 the environmental statutes will shut the door. The

20 facility cannot operate if it's not in compliance.

21 We take it very, very seriously, whether it's clean

22 air or water or any of the other media.

1 Does that answer your question? I'm not
2 sure it does.
3 MR. GOLDEN: The question was more aimed
4 at Title V. I'm sure all industry is very committed
5 to compliance, but I'm just wondering if Title V
6 itself has brought an even greater sense of
7 commitment to that. Prior to Title V, I don't think
8 anyone was certifying compliance and I'm just
9 curious, not naming names in your industry, but just
10 is there a greater sense of focus on compliance
11 because there's a Title V certification that
12 responsible officials have to sign?
13 MR. ROUNTREE: I will bring a response
14 back to that question. Thank you.
15 MR. LING: Bob?
16 MR. MOREHOUSE: I just wanted to add a
17 couple of comments to what was made back on the issue
18 of delays related to permits. You were commenting.
19 This really isn't a question. It's more of an
20 observation from our experience. In some states --
21 where you were talking about delays in Title V, in
22 some states, Title V and preconstruction permits are

1 tied together. That's where the permit delay becomes
2 critical because they are tied together and we see
3 that, for example, in Louisiana. The issue you get
4 into if you have -- and our folks are telling us that
5 it can be a 9-month to 18-month process to basically
6 get a preconstruction permit and therefore update
7 your Title V.
8 The dilemma that you get into is that has
9 become, in many cases, a critical path to being able
10 to make plant changes. Now what you have is you have
11 plant folks who have to go in very early because you
12 can't make the change to start construction if it's a
13 preconstruction permit until such time as you have
14 the permits. So our folks have to go very early in
15 the project development stage into the agency with a
16 permit application and so we do that solely so you
17 can basically get the permit at the time you want to
18 start construction and move forward.
19 Of course, one of the dilemmas is, when
20 that is critical path and you have to go so early in
21 the process, the projects are less defined. Now
22 you've raised the issue of you don't have as good a

1 definition because you're not doing the process
2 design. You may be in conceptual engineering. That
3 leads to other changes which you have to make during
4 that whole time that you've got to put a permit
5 application in. You've got to come back with the
6 projects better defined. That's one of the issues
7 with delays on the project. Just a general
8 observation and some discussion around compliance
9 certifications and all of that.
10 Certainly, companies like ours have a very
11 clear compliance obligation, have always had that
12 obligation and, in fact, that's an ethics violation
13 for our company to do that. So it's always been a
14 focus. I think what Title V has provided is more of
15 a structured environment where the plant manager sign
16 off and certification, which I think strengthens the
17 overall compliance assurance process. And I can
18 speak for a number of companies that I'm aware of
19 that we have very rigid compliance assurance systems
20 and Title V has helped to drive that by the
21 responsibilities we have, but I wouldn't want to say
22 that in the base case there's been a change in

1 compliance, but it strengthens the compliance
2 assurance process and I think you can probably see
3 that in a number of companies.
4 MR. LING: Keri?
5 MS. POWELL: I want to echo the
6 observation facilities don't tend to be that worried
7 about getting their Title V permits to begin with.
8 Just because if they apply on time they get an
9 operations shield that lets them continue to operate
10 even without that permit. I can only assume that
11 your members are concerned about what happens when
12 they're trying to construct a new unit and how that
13 relates to the Title V permit.
14 If that's the case, I would greatly
15 appreciate detailed information that will help us
16 tease out what part of the delay that you're
17 concerned about is due to preconstruction permit
18 requirements and what part is some kind of additional
19 delay that might be caused by Title V. It's very
20 difficult for us to evaluate those issues without
21 having more detail and understanding about what new
22 delay might possibly be created by Title V.

1 As we heard earlier today, the vast
2 majority of Title V permits and modifications never
3 receive public comment, so it's hard to believe that
4 it's actually the public process that's slowing that
5 down.
6 MR. LING: Steve?
7 MR. HITTE: Just to add further to the
8 possible confusion, Don, this is directed to your
9 comment. I thought you were going to talk about
10 delays in permit modifications not the initial
11 permit. That's another thing to clarify. Is your
12 membership talking about, as you've already heard, a
13 construction permit, a Title V permit or a revision
14 to a Title V permit?
15 MR. LING: Thank you very much, Mr.
16 Rountree.
17 Other questions?
18 MS. OWEN: Thank you.
19 Not to Mr. Rountree, but I would like to
20 make a comment. I certainly did not appreciate being
21 cut off asking Mr. Welch a question after his
22 presentation. We're talking here often about

1 meaningful public participation and, as I said at the
2 beginning, I am not a professional. I do this on a
3 volunteer basis. I might be a little slower at
4 times, so I understand why you cut it off because you
5 gave us a time limit and it was a quarter to 3:00.
6 On the other hand, I've been in situations
7 at hearings where it was suddenly 9:30 and everybody
8 was cut off because apparently somebody was going to
9 turn into a pumpkin.
10 MR. LING: Let me suggest this. Since
11 Glen's presentation didn't take as long as I was
12 anticipating, we could call Mr. Welch up and I
13 believe there were a couple of more questions.
14 MS. OWEN: That would have been my
15 suggestion, but, on the other hand, I would also like
16 some kind of idea how the last three people that get
17 their cards up because they're a little slower. That
18 will always be me.
19 (Laughter.)
20 MS. OWEN: So, if you never want to hear
21 from me again, just cut the last three off on a
22 continuous basis. Or we could think about how this

1 could be better handled in Chicago.

2 MR. LING: I agree. Thanks.

3 Mr. Welch, would you like to come up and

4 take a couple more questions?

5 (Laughter.)

6 MR. LING: Maybe just one more.

7 MR. WELCH: I'm more than happy to come up

8 and answer questions for as long as you like.

9 MS. OWEN: Again, I would like to point

10 out that I was last.

11 (Laughter.)

12 MS. OWEN: Thanks for coming back. I

13 really had just a few questions and some clarifying

14 questions.

15 During your comments, you said you had to

16 have FOIA permits. Did I understand that right? I'm

17 sorry. Was it your question?

18 MR. WELCH: I think the Title V process in

19 Delaware has undergone some evolution since we've

20 entered the process. We originally had to submit

21 FOIA requests for all the information. More

22 recently, Delaware made available copies of the draft

1 permits, copies of the technical memo to us and we
2 could go into the office to review the application.
3 But Delaware required us to submit FOIAs if we wanted
4 to see notices of violation and compliance
5 information for the facility.
6 Now, since about the last year, there
7 haven't been any new draft Title V permits coming out
8 until the last month, so I don't know if there's been
9 a change in Delaware. I understand that there was
10 that would require Delaware to make available all the
11 information, including the compliance information to
12 us. We've asked them many times to set up a reading
13 room so all that information would be available to
14 the public. But, historically, we've had some
15 difficulty getting that information.
16 MS. OWEN: That was actually kind of my
17 follow-up question. For those documents, you do need
18 a FOIA and you do need for review. How easy is the
19 access to those documents? Is there ever like a
20 repository for information for a particular source?
21 Or, if there's public interest, do you incur costs
22 when you have to FOIA things?

1 MR. WELCH: We've had some difficulty with
2 Delaware in the past and some of our comments reflect
3 our trouble getting timely responses to FOIA
4 requests. I'm trying to sort because we deal not
5 only with Title V permits, but with other air permits
6 that might not be covered by Title V regulations.
7 We've had to file a lawsuit against Delaware on one
8 occasion when they didn't response to a FOIA request
9 for an air permit from Motiva.
10 After filing that lawsuit, we kind of
11 reached a resolution with DNREC where they'd be a
12 little more accommodating to providing us with
13 documents.
14 MS. OWEN: Would you say that
15 accommodating providing you with documents, would you
16 assume that would be true for any other group that
17 would approach them with document requests? Do you
18 see that maybe this should be put in some kind of
19 policy? I always worry that some of the things we
20 work for we then finally get, but about who is going
21 to follow us in two years wasn't part of the initial
22 negotiations of getting something. There would be

1 backsliding.

2 MR. WELCH: Ideally, if you're looking to

3 set policy, I would suggest that before the state

4 puts out a notice that there's a draft permit ready

5 for public review they should set up a reading room

6 where they've got the draft permit, the technical

7 memorandum, the information that they based the

8 permit upon, compliance information, notices of

9 violation that have been issued to the facility for

10 the past five years, all that information should be

11 made available.

12 In Delaware, that has not been the case.

13 They have the ability to come in and look at the

14 draft permit and a technical memo, but you wouldn't

15 get access to all of the compliance information

16 automatically without making a special request.

17 MS. OWEN: Thank you.

18 MR. LING: Padmini?

19 MS. SINGH: I guess my question is very

20 similar to Verena's question. I'm a little

21 surprised to hear that you had to file a FOIA request

22 to get draft permit and documentation in the record

1 regarding the draft permit. That shouldn't be the
2 case. The draft permit and all documents relying to
3 the permit that's in the permit record should be
4 available publicly. There may be some restrictions
5 such as the timings or the hours that you can come in
6 and look at the permit. And there might be some
7 copying fee charges, but you should not be having to
8 file a FOIA request to get access to that and I think
9 the Taskforce should be interested in getting any
10 information where states are requiring FOIA requests
11 for getting information that pertains to the permit
12 record.
13 On another note, by the compliance
14 schedules, I think it's pretty clear that a permit
15 should not be issued without a compliance schedule if
16 there are violations. The regs are pretty clear
17 about what should be included in the compliance
18 schedule under certain timelines, milestones, et
19 cetera that should be included in the compliance
20 schedule. And, if you don't see it there, then you
21 should be commenting on it.
22 And, on another topic that came up this

1 morning about incorporation by reference, I think the
2 agency has issued guidance on that and, in recent
3 orders, responding to petitions for review. The
4 administrator's orders have stated that any documents
5 that are publicly available or available in the CFR
6 or on a publicly available website can be
7 incorporated by reference. These orders are also
8 available on the website. If anybody is interested,
9 I can give you the website. Thanks.
10 MR. LING: Is that another question?
11 Okay, Verena. Once again, thank you,
12 Mr. Welch.
13 I'm sorry. One more? That's a new one?
14 Okay.
15 Bob Palzer?
16 MR. PALZER: Actually, this is sort of an
17 observation to be followed by a question.
18 In the wood products industry, I'm from
19 Oregon. That's not a minor source. It's rather
20 common to use dual fuel, perhaps, the boilers are a
21 burning waste products, maybe natural gas. Sometimes
22 there's an interruptible service, so you're using an

1 alternate fuel. You raised the question of how good
2 it would be to have closer monitoring. You were
3 talking about in terms of the flares. You don't get
4 the data until months later when it's a little bit
5 more difficult and I just want to share something
6 that we've done in certain areas in certain
7 facilities where there actually are continuous
8 emissions monitors and that information actually goes
9 online to our state agency and so it is a matter of
10 public record. So you can get real time information
11 and it's been really helpful in terms of SIP planning
12 as to what is contributing when it's very hard to
13 source apportionment.
14 The question that I have is, have you
15 experienced situations at the sources that you've
16 looked at where there is dual fueling or there are
17 significant changes in an operation over time that
18 would be of importance and interest to you?
19 MR. WELCH: I believe some of the
20 refineries have the option to use refinery fuel gas
21 or other types of fuels, but that's not really an
22 issue I've focused on. I have raised, in some

1 permits, that it would be ideal to have a continuous
2 monitor with real time information provided to the
3 public. That's never happened in any permit that I'm
4 aware of in Delaware.
5 MR. PALZER: Did you say it was because of
6 the state requirement that there's a delay?
7 MR. WELCH: The delay that I was referring
8 to was the Title V, the semi-annual report. Just the
9 practical fact that, if you're looking at that, you
10 wouldn't have that for several months all with their
11 release reporting, more prompt reporting. You don't
12 get the full report from the facility explaining what
13 happened for a month or more.
14 MR. PALZER: Have you specifically made a
15 request to find some other way obligating more real
16 time information, if not the same day, certainly,
17 much more contemporaneous?
18 MR. WELCH: Delaware has frequently
19 responded that they're trying to upgrade their
20 website and they're having difficulty just getting
21 their notice of violation for the various facilities
22 posted on their website in a timely fashion. I've

1 commented on that, so I think we're, at least in
2 Delaware, we're several lengths away from getting to
3 a real time reporting system.
4 As I mentioned, there is, in Delaware,
5 kind of a release reporting of a more immediate
6 nature. If there's a release from a facility, there
7 is a state law that requires more immediate public
8 notification and there is a website that tracks those
9 types of releases. But, as far as fuel changes or
10 other things, I'm not aware of any system like that.
11 MR. HIGGINS: A through F, how would you
12 grade it?
13 MR. WELCH: I guess I have to break it
14 down a bit. In concept and as far as the law is
15 concerned, it's a fairly good program. I would give
16 it an A-. In practical follow through or
17 implementation, with all the legal requirements more
18 like a C.
19 MR. LING: One more from Verena, then
20 we've got to move on to the next speaker.
21 MS. OWEN: Thank you. I'm sorry. I
22 realize I asked you too many questions at the same

1 time and I'm trying to be a little more precise next
2 time. But I did ask you if you had paid for
3 photocopying and copying charges for documents that
4 you have to FOIA.
5 MR. WELCH: You did ask that. In
6 Delaware, there is a provision for waiver of copying
7 costs for nonprofit organizations built into
8 Delaware's FOIA regulations.
9 MS. OWEN: Just for nonprofit or for any
10 organization that is for the public benefit, meaning,
11 everybody except consultants and attorneys?
12 MR. WELCH: I believe Delaware's
13 regulation is broad enough that it would cover any
14 type of organization.
15 MS. OWEN: In my viewpoint, there's
16 absolutely no reasonable copy fee. I work in a lot
17 of environmentalist communities and, if we have to
18 start paying for copying charges, nobody would ever
19 make any more comments on Title V. It's impossible.
20 MR. WELCH: I should add that is not the
21 case in Pennsylvania and Maryland and other states.
22 Pennsylvania, if you go beyond 10 copies, you've got

1 to start paying them. In Maryland, they charge also
2 for copying.
3 MS. OWEN: Did you say beyond 10 copies?
4 MR. WELCH: Ten pages, then they start
5 charging.
6 MS. OWEN: Illinois is a little more
7 generous. They start charging after 400, but then
8 you pay all the 400. If you have 401, you actually
9 pay $100.25. I happen to know that because I once
10 did 120 and I was rather surprised about the bill.
11 Thank you.
12 MR. LING: Thank you again.
13 I'm going to call up Kelly Haragan. While
14 she's coming up, I just want to let people know I'm
15 going to do a little time check here. The meeting
16 was announced as going to five o'clock. We reserved
17 the room, the court reporter and the AV folks until
18 five o'clock. The Taskforce has the expectation we
19 were going to be going until five o'clock.
20 I've been checking on the possibility of
21 going longer, if we need to do that. It's looking
22 promising, but I do expect people who have scheduled

1 flights and things to start drifting off. So I just
2 want to kind of let people know what the expectations
3 are for the rest of the afternoon.
4 With that, without further ado, here's
5 Kelly.
6 MS. HARAGAN: I'm Kelly Haragan, Council
7 with the Environmental Integrity Project here in
8 Washington, D.C.
9 I'd like to raise just a few points about
10 the public participation before I start. One, that
11 I've heard that there's been discussion about the
12 possibility of a telephone hearing where members of
13 the public could participate who can't pay to travel
14 to some of these events and I think that's a great
15 idea. I hope you'll do that. I'd also encourage you
16 to think about holding at least one of these hearings
17 in another place where there are more Title V
18 facilities and where there are more members in the
19 public actually involved in commenting. D.C. is not
20 a great place for the public. If you really want to
21 hear from them, I think the hearing should be held
22 someplace like San Francisco, New Orleans, some place

1 like that.

2 As I said, I work for the Environmental

3 Integrity Project here now. Prior to that, I was

4 staff attorney with Public Citizens Office in Texas.

5 Most of my experience has been with the Texas

6 program. I've worked with Steve a lot. I worked a

7 lot on programmatic issues. We filed comments on the

8 Texas program. We worked with EPA when they issued

9 NODs on the program. We actually sued over the

10 approval of the program and I think the Texas program

11 is significantly better today than it was a few years

12 ago. I think it's still got a ways to go as a lot of

13 state programs do.

14 I've also commented on a number of permits

15 namely, refinery and chemical plant permits and have

16 helped citizens to try to go through the commenting -

17 - comment on permits. I've been a speaker at a

18 number of EPA citizen trainings, which they've held

19 all over the country, to try to help citizens learn

20 how to effectively participate in the Title V

21 process.

22 Most recently, I filed comments objecting

1 to EPA's proposed settlement on the monitoring issue
2 and we're one of the petitioners in the suit
3 challenging EPA's monitoring decision.
4 Someone earlier mentioned having a cute
5 quote. Mine's from Thomas Jefferson and he said the
6 execution of the laws is more important than the
7 making of them and I kind of think that's what Title
8 V is about. There are good laws on the books, but
9 the air wasn't getting clean enough. That was the
10 purpose of Title V. It was to help compliance and
11 enforcement with the Clean Air laws.
12 A lot of my comments go over what other
13 people have raised, so I'm kind of going to jump
14 around and hit the highlights for the sake of time so
15 I can answer some questions.
16 I think Title V's goals and the tools it
17 provides, a single permit, improved monitoring,
18 deviation reporting and compliance certifications are
19 clearly as important today as they were in 1990.
20 Without that, we'd still be left with really
21 scattered requirements and no way for the public, and
22 I think often, even for facilities and regulators to

1 know what a facility was really suppose to comply
2 with.
3 Implementation of the program, I think,
4 has been a rocky road at best. EPA oversight has
5 been too weak. States were allowed to run programs
6 for years under interim approval when those programs
7 didn't meet federal standards and EPA wasn't giving
8 enough feedback to the states about those programs.
9 Many states are just now getting to the point where
10 they're issuing some of their largest permits. I
11 know a lot of the refinery and chemical plant permits
12 are just going through the process now.
13 I think we are still in the infancy of
14 this program. We're just finishing some of the
15 hardest parts of the program, certainly, for
16 regulators and for industry getting their initial
17 permits, but for the public, too. It's been
18 difficult for us to focus on problems with state
19 programs and try to deal, on the programmatic level,
20 at the same time all these permits are coming out and
21 we're trying to comment on them. I think a lot of
22 the problems that we've talked about today should get

1 better once the initial permits come out. They
2 really should be easier than the initial issuance
3 was.
4 The most significant benefits I see in the
5 program are similar to what other people have already
6 raised. For me, the most important thing is
7 monitoring. I think it's clear from the legislative
8 history that that was a priority for Congress and,
9 without adequate monitoring, you really can't tell
10 whose complying with permit limits.
11 The second is consolidation. People have
12 said it's just impossible for citizens to determine
13 what a facility is suppose to comply with when
14 there's 30 or 40 separate permits in the filing.
15 I'll get into a little more detail on that in a
16 minute.
17 Lastly, compliance reporting. I think
18 enough has been said about that. We can't track
19 compliance unless there's deviation reporting and
20 compliance certification, otherwise, there's no way
21 for us to figure out whether or not a facility is
22 complying. And it is important because citizens sees

1 flares going off. They experience odors and they
2 want to know what's happening. What's causing that?
3 It should benefit the facility as well as the
4 community for the community to be able to tell
5 quickly whether it really is a violation or not a
6 violation.
7 Now I'll go over some of the flaws I see
8 with each of those big goals of the program. The
9 first one is monitoring. I think that the monitoring
10 rules the EPA adopted are just flatly contrary to the
11 plain language of the statute and illegal. That's
12 obviously not something this body can do much about,
13 but I do think without Title V permits being able to
14 add better monitoring, you lose one of the most
15 significant benefits of the program.
16 I do think it's inconceivable that any
17 regulator would think that, as a matter of fact,
18 monitoring more than once in five years is always
19 going to be adequate monitoring.
20 On consolidation, there's a couple of
21 things that I think have hurt the goal of Title V.
22 Having one place where you can go and look at

1 facility requirements, one of those is incorporation
2 by reference. My experience has been a little bit
3 different than what we've been talking about. The
4 problem I've had isn't so much with the regulations
5 and how they're incorporated by reference or put the
6 whole text in there, it's the underlying NSR, minor
7 NSR permits.
8 In Texas, those permits, the numbers just
9 referenced in the Title V permit. You don't get any
10 of the actual requirements in the permit. So it
11 really defeats the consolidation purpose of Title V
12 because you still have to go to the file room and try
13 to pull the many, many permits that are under the
14 Title V permit. We had a lot of problems doing that.
15 One of the facilities we went to look at was a
16 chemical facility. I'll get into this a little bit
17 more in a minute.
18 The multiple permits for one facility is a
19 problem, too. But this facility six of those permits
20 were issued at one time. Underlying those permits
21 were 20 NSR and minor NSR permits, a PSD permit and
22 42 plus some permits by rule. We went to the filing

1 six times to try and gather all of that and couldn't
2 in the end. A couple of the permits were only on
3 microfilm, which is really old and you couldn't read
4 them and you couldn't print them even with the best
5 efforts of the filing staff and they were genuinely
6 trying to help us find information, but just wasn't
7 possible.
8 Two of the NSR permits the files were
9 there, but the permits were missing and no one could
10 find them. This was a problem before Title V. Title
11 V was suppose to fix this kind of thing and I think,
12 when you incorporate by reference just permit
13 numbers, you don't solve that problem. You're still
14 left with having to go dig through your multiple
15 files and try to find permits.
16 The other issue is multiple permits for
17 one facility. This facility that I'm talking about
18 has about 27 Title V permits. So it's just for a
19 member of the public there's just no way for them to
20 figure out which permit applies to the part of the
21 facility they're concerned about and there's
22 different units that may overlap between permits.

1 So, while Texas has so many permits to
2 issue for so many big facilities, I can see that it
3 might eased the initial issuance process to divide
4 these facilities up to try get the permits out. But,
5 certainly, at renewal, I think these need to be put
6 into one permit so there's one place where people can
7 go and look and see what the facility is suppose to
8 comply with.
9 On compliance reporting, some of these
10 issues people have also talked about the shortfall
11 compliance certifications as oppose to the long form
12 where you actually have all the requirements listed.
13 For members of the public and, especially, where your
14 permit itself uses a lot of incorporation by
15 reference, like if these permits are just listed by
16 permit number and then the compliance certification
17 doesn't list other requirements either. It just
18 lists the non-compliance. You never get one place
19 where you can go and look and see what the facility
20 is suppose to comply with. So it's a real problem
21 and I think there is some real benefit to having a
22 list of all the facility requirements and having the

1 facility manager have to say that they're in
2 compliance with each one. I think it does make
3 people take the task more seriously, especially, when
4 they're the one's signing it and they're on the line
5 for whether it's true or not.
6 I also think there are some problems with
7 ongoing non-compliance and when you certify
8 non-compliance and when you don't and what a
9 compliance plan, how that interacts. I'm hoping I
10 can provide you some more specifics and written
11 comments on an example for this, but I've seen
12 facilities who have reported deviations once. This
13 particular facility reported a deviation and then
14 came in for their Title V renewal and they got a
15 compliance plan for that deviation, which was they
16 were exceeding their heat input. Once they had that
17 compliance plan, they thought they no longer had
18 violations. That they were covered. The compliance
19 plan said come in and then get a permit revision and
20 increase your heat input.
21 On subsequent certification, they didn't
22 certify that as not non-compliance, even though they

1 kept violating. I think it will help to have some
2 clarity on, one, what is non-compliance? If you
3 have, say, a set of events every week, but you don't
4 have one -- you're not having one. The second one
5 you certify your compliance certification. What are
6 you suppose to do with that? Then, also, clarifying
7 that just because you have a compliance plan, you're
8 still out of compliance if you're not complying with
9 your Title V permit. You need to report that as a
10 deviation. It doesn't give you a pass on those
11 violations.
12 The other thing I'd like to address
13 briefly is public and EPA participation in this
14 process. As I understand it, EPA has, in large part,
15 stopped reviewing Title V permits and I think that is
16 terrible unless the public comments on the permit.
17 The EPA will look at it. There used to be
18 requirements that recent review a certain percentage
19 of the permits that came in front of them. I don't
20 think that's a requirement. It's impossible for EPA
21 to know what's going on in state programs unless
22 they're looking at individual permits. That also

1 makes citizen participation that much more important.
2 There's no one else there to catch problems with
3 permits and the 30-day comment period is just for
4 some of these facilities a joke. There's no way that
5 someone can pull up some of these permits for a
6 refinery or chemical plant and in 30 days really know
7 and understand what it says and what the requirements
8 are.
9 It's bad for citizens, but it's also bad
10 for the agencies and the facilities because it means
11 that citizens are forced, sometimes, to almost
12 request a hearing as a placeholder because that gives
13 them more time to review the permit. Ideally, you
14 want to be able to make a smart decision about
15 whether you want a hearing and whether you want to
16 comment before your deadline. But, because the 30
17 days were so short, a lot of times you don't have an
18 option. On the notice and getting things up on the
19 web, I think that's fantastic and one of the best
20 things that you can do for public participation
21 because, first, it makes sure that all of the
22 documents are really there when you put them up on

1 the web. It is a lot easier access. If people don't
2 have computers at their homes, they can still go to
3 the agency and pull the documents up on the agency's
4 computers or in the files. But, for a lot of people,
5 they do have computer access and it makes it so much
6 easier to be able to pull the notice, the draft
7 permit, the underlying permits off the web.
8 I know Texas started a notice process
9 where they've got a webpage. At least all of the
10 facilities that have been authorized to go to public
11 notice, so it's actually a little bit before the 30
12 days actually starts. It's a great system because
13 you can actually go and look and see which facilities
14 are going to be coming up for notice and you can plan
15 a little bit for how you want to comment, which ones
16 you want to prioritize.
17 I think that someone -- I think Lyman
18 brought up upsets. That is an issue that needs to be
19 addressed and we'll be addressing that more in our
20 written comments, but Texas does have a great website
21 for that as well. Actually, facilities report
22 electronically their upset imaging and you get

1 information on the web about what was emitted, how
2 much and what the cause was. I think a system like
3 that, not just for upsets, but for deviation
4 reporting would be great. It would let the public
5 really know what's going on and alleviate their
6 concerns. When there's an event that they see
7 happening, they could go look and see what the cause
8 was and if it something they really need to be
9 worried about.
10 So, in conclusion, I think Title V is a
11 vitally important program. It's very beneficial to
12 the public. There's definitely room for improvement
13 and I think a lot of the issues that have been raised
14 here are valid issues. I think there are ways that
15 permits can be streamlined without preventing the
16 public from having real access.
17 There's been a lot of talk about the
18 incorporation by reference of regulations and I don't
19 have a problem with using a numerical reference for a
20 regulation because that's actually accessible to the
21 public. I think it is important that the numerical
22 reference go down to a low enough level of detail

1 that you're not just referred to a section that's 50
2 pages long and you don't which part applies to the
3 facility.
4 We will be submitting written comments and
5 try to provide more specific details about the things
6 I've talked about, but I'm happy to answer any
7 questions.
8 MR. LING: Shannon?
9 MS. BROOME: Just two points on what you
10 said. On the compliance plan thing, it would be my
11 thought that that was a misunderstanding by the
12 facility of the rules. It's very clear in the Title
13 V regs that were federally adopted and in the state
14 rules. I will read it. "Any such schedule of
15 compliance shall be supplemental to and shall not
16 sanction non-compliance with the applicable
17 requirements on which it is based. The applicable
18 requirement would be in the permit."
19 To me, I don't think the rule needs to be
20 changed.
21 MS. HARAGAN: I agree with you.
22 MS. BROOME: I didn't know if you were

1 reading it differently.

2 MS. HARAGAN: I agree with you completely

3 about that requirement. I just think, if you want

4 real experience of what's going on --

5 MS. BROOME: I appreciate that.

6 MS. HARAGAN: I agree with you.

7 MS. BROOME: I just wanted to make sure

8 that it wasn't some -- that I was reading it

9 differently than you were. Okay.

10 And then it hasn't been my experience, and

11 it may be a regional thing because I'm not doing a

12 lot of work in Texas, that EPA is no longer reviewing

13 the permits. In Regions 5 and 4 and 9, I am seeing

14 consistent review of permits in my work, so maybe you

15 mentioned that you're mostly down in Texas, so maybe

16 that's something that's going on down there or maybe

17 you're not hearing it or something. But I'll turn

18 that to EPA, but just from my experience it's been to

19 the contrary.

20 MR. HITTE: Let me quickly clarify. It's

21 it true that, officially, the regions do not have to

22 review permits. In reality, most of them still do.

1 MS. BROOME: That would maybe explain the
2 disconnect and maybe it will make you feel a little
3 better.
4 MS. HARAGAN: I'm glad some places are
5 still reviewing the permits and I think it's very
6 important and I think there should be a requirement
7 that the regions review a certain percentage of the
8 permits, otherwise, I don't know how they're keeping
9 track of what's going on in the state programs.
10 MS. BROOME: Thanks for your comments and
11 for coming.
12 MR. LING: Bob?
13 MR. MOREHOUSE: Kelly, I appreciate your
14 comments. Can you summarize on the permits you've
15 commented on the types of comments you had, the
16 concerns you've had, both on the original permit, but
17 also have you had an opportunity to comment on permit
18 revisions? Is it a different set of issues?
19 MS. HARAGAN: A lot of our comments were
20 comments that were more programmatic because when we
21 started commenting there were still a lot of what we
22 saw as programmatic flaws with the Texas program, so

1 they showed up on every single permit like not having
2 a statement of basis, things like that.
3 For some of the specific comments have
4 mostly been on monitoring where we thought monitoring
5 was inadequate. I haven't commented on a renewal.
6 Texas is issuing the permits right now for some of
7 the bigger facilities, refineries and chemical
8 plants, so we were focusing on initial instances.
9 Thank you.
10 MR. LING: Steve?
11 MR. HITTE: Thank you as well for your
12 testimony. I don't know if it's a question or
13 comment on both what you said on the IDR as well as
14 multiple Title V permits to one facility. IDRing
15 seems to be the hot topic. I just want to clarify
16 you. I heard you say twice that IDRing rates is not
17 the issue, but that your issue is the fact that Texas
18 IDRs NSR permits. I'm not aware that any other state
19 is allowed to do that. So, if I'm wrong, I'd like to
20 hear that.
21 And, two, I don't know if you're
22 experiencing more, but, with the arrangement with

1 Texas to do IDRing, there was suppose to at the same
2 time have their NSR permits readily available. That
3 was part of the deal. Are you saying that's still
4 not happening?
5 MS. HARAGAN: I can't address most
6 recently since I have been here. I'm focused on
7 Title V, maybe Steve can. But, when I left, they
8 were theoretically in the file room. But the problem
9 is they aren't always in the file room.
10 MR. HAGLE: I'll address this. First of
11 all, I'll agree with Kelly. There actually still is
12 a problem sometimes in the file room. We have just
13 recently started addressing that they're talking
14 about outsourcing the folks who do the filing. It's
15 been a problem even for us to find some permits in
16 our file room. I'll just be honest with you there.
17 And so they are suppose to be publicly available and,
18 in some cases, it has been difficult to find.
19 MR. HITTE: Good news then. I know you're
20 working on it. The other one is I've heard now I
21 think twice on the issue of multiple permits. I'm
22 still, personally, not understanding what the issue

1 is, whether it be now or in additional comments, what
2 is the specific issue with having three or four Title
3 V permits at one facility, especially, when they seem
4 to be not the big sources like refineries where I
5 think it makes sense to have them there. Couldn't
6 imagine looking at a 15,000 page permit. I think I'd
7 rather look at five 500-page permits.
8 MS. HARAGAN: I think that's actually not
9 the case for the public because they don't know how
10 to determine which permit to go look at if there's
11 multiple permits. A lot of times there are many,
12 many permits not three. So I would rather, and I
13 think most members of the public, would rather have
14 one permit to go look at, one place, even if you have
15 to go find the right chapter of the permit. It's
16 easier than trying to figure out which permit covers
17 the units you're concerned about, especially, when
18 there's some overlap. What flares are you using for
19 multiple units?
20 It's really very hard, both to tell if the
21 applicable requirements get put into permits because
22 you have to look in a bunch of permits to see if

1 they're in one of them somewhere and it's difficult
2 to know if the whole facility actually gets covered
3 if there's not something left out because these
4 permits are coming out at different times. So I have
5 4 to look at, but I don't know what the other 20 are
6 going to look like, so it's very difficult for me to
7 comment on whether all applicable requirements are
8 included because I don't know what the other permits
9 are going to say.
10 MR. HITTE: In the theory, though, at the
11 end of the day when all 20 are issued, and if they
12 all happen at the same time versus another 20, that
13 solves your problem and it's just this interim?
14 MS. HARAGAN: I don't think so. It's
15 always better to have one permit for the public.
16 It's just easier to look at one permit because they
17 don't think of facilities maybe the way regulators or
18 industry do in terms of units. It's a facility.
19 MR. HITTE: Just to clarify, you're not
20 challenging whether that it allowed under Title V.
21 You just don't like the way it's being implemented.
22 MS. HARAGAN: I'm not raising that issue.

1 I can address it in the written comments.

2 MR. HITTE: I would like to see more

3 specifics in order to react to it.

4 MS. HARAGAN: Sure.

5 MR. LING: Bernie?

6 MR. PAUL: I'm curious to know what

7 recommendations you would have for those complex

8 facilities, especially, where there are multiple

9 business organizations and not everything is the same

10 company. I've seen this a lot in Indiana with the

11 steel companies where there will be, perhaps, five or

12 six different companies on the same facility and sort

13 of the normal public's view that's one plant site

14 over there, but there are five different companies

15 that running different operations on that. What

16 would your recommendation be?

17 MS. HARAGAN: I actually haven't

18 encountered that. I haven't seen the public not

19 being able to separate by company. That's not

20 something I've had a problem with. I know there are

21 circumstances where different companies share units

22 and I think that because each company is responsible

1 for their own compliance that the requirements for
2 that unit should be in both requirements. I'm not
3 sure that exactly addresses your question, though.
4 MR. PAUL: You described a different issue
5 than what we're experiencing. I just wanted to be
6 sure that I understood that.
7 In a situation like some that I've seen
8 where you have multiple companies on the same site
9 running different parts of an integrated steel mill,
10 for example, it makes sense for them to have separate
11 permits because you will have different responsible
12 officials. You want to keep that type of compliance
13 management chain fairly tight. There are some valid
14 reasons for having separate permits. I just wanted
15 to see if that was your issue or if it was something
16 else. You've helped clarify that for me. Thank you.
17 MR. LING: John Higgins?
18 MR. HIGGINS: One quick observation. I've
19 heard a couple of folks speak to the fact that they
20 think that issuing renewal permits is getting easier.
21 That's what I was hoping. We know a lot more today
22 than we did when we issued our first 105 permits and

1 I think early on it's not obvious to me, as a
2 permitter, that it's going to be easier for us to
3 reissue because we're essentially starting all over
4 again from scratch. We tried to make the application
5 process a little easier and we know more about
6 writing the Title V permits the way we want to write
7 them, but there are different permits than the
8 permits the guys already have.
9 It's not going to be quite as easy, I
10 don't think, as we all hoped it would be the second
11 time around and I'll ask you my standard question I
12 asked everybody else. A through F, what's your
13 grade?
14 MS. HARAGAN: First, I'd like to address
15 your first point. You know, obviously, you know
16 permitting, how difficult that is, way better than I
17 do. But, at least, it seems like first round, you go
18 back and you deal with those permits from eons ago
19 that are lost. You go and find them and figure out
20 what the requirements are and you get a baseline
21 agreement between the facility and regulator about
22 what the requirements are and some of those may

1 change, but it just seems like there's some of that
2 digging back into the past and finding requirements
3 that you shouldn't have to do at renewal.
4 MR. HIGGINS: That would be nice.
5 Nothings ever 100 percent and that's always an issue.
6 Someone spoke earlier today about the search for the
7 perfect permit and it may seem hard to believe, but
8 regulators try and do that, actually and we always
9 know something more than we did last time and there's
10 always different slants on the legal pieces of this,
11 that or the other thing.
12 I was hoping it would take like 30 or 40
13 percent of the time for permit 2 than it took for
14 permit 1 and I think it's going to probably take like
15 70 or 80 percent of the time.
16 MS. HARAGAN: As far as the grade, I think
17 I'd have to go with Lyman's approach and grade the
18 concept of Title V and then how it's implemented.
19 And I think the concept gets an A. I think it's
20 really helpful to have all the requirements in one
21 place and to have compliance certification
22 requirements. On implementation, I think I'd give it

1 about a C.

2 MR. LING: Keri?

3 MS. POWELL: I have a few follow-up

4 questions to better understand the incorporation by

5 reference issue in Texas. The first one is, can you

6 clarify for me when Texas keeps old permits in a

7 permit file, where is that file?

8 MS. HARAGAN: It should be both at the

9 regional office and in the office in Austin. A lot

10 of the old permits are no longer in paper form.

11 They're on microfilm. That's a problem because the

12 microfilm degrades over time. Sometimes you just can

13 read the permits.

14 MS. POWELL: How big are the Texas

15 regions? If you're an advocate that's concerned

16 about a facility in a community, how far might you

17 have to travel to get to the agency and look through

18 the files and see those permits when you're trying to

19 review the permit.

20 MS. HARAGAN: Sixteen regions. So, you

21 know, Texas is a big place and, if you're out in west

22 Texas, you may have to travel a long way.

1 MS. POWELL: If you have a facility that
2 have 27 Title V permits, is it clear after all those
3 permits are issued that there are 27 Title V permits
4 for that facility?
5 MS. HARAGAN: Yes, that is clear. There's
6 a website you can go to. You can search by facility
7 and they can tell you all the permits that apply to
8 that facility.
9 MS. POWELL: Texas Title V permits are
10 available online?
11 MS. HARAGAN: No. I mean, there is a
12 system where permits are on the computer. The
13 problem is, and I think Steve will agree with this,
14 that the search mechanism is almost useless. It
15 pulls up a list of things without a title so you
16 can't tell what they are and often things aren't
17 dated. You may be able to pull up pieces of permits,
18 but it's very difficult to determine which are the
19 current versions and piece them together to form a
20 whole permit.
21 MS. POWELL: The last question with
22 respect to incorporating regulations by reference.

1 Some of those regulations would be federal
2 regulations available online. I'm curious about the
3 availability of the Texas SIP regulations. Are they
4 also available online?
5 MS. HARAGAN: They are available online.
6 It's a good point to clarify. I think if you are
7 going to use incorporation by reference, the things
8 you're incorporating have to be easily accessible to
9 the public and I think that means really being
10 online.
11 MS. POWELL: You said Texas is
12 incorporating regulations by reference?
13 MS. HARAGAN: Yes.
14 MS. POWELL: Have you ever had any
15 problems with the incorporation of the regulation by
16 reference not specifying how that regulation applies
17 to the facility or is that pretty clear?
18 MS. HARAGAN: I think Texas actually goes
19 to a fairly detailed level in the citations that they
20 put in the permits. I think that's pretty helpful.
21 MS. POWELL: Thanks.
22 MR. LING: Bob Morehouse.

1 MR. MOREHOUSE: I just want to actually
2 echo something Kelly said earlier. We ere talking
3 about the Texas program and minor new source review
4 permits and the incorporation of those permits by
5 reference. The difficulty for the public to go find
6 them I think it is also a difficulty for the
7 individual companies because we would just as soon
8 have those rolled into one master permit, also.
9 Texas has a unique problem, which is being
10 worked on now and that is how the language of the
11 Texas program by that incorporation. You also have
12 to certify, not only to the actual permit that's in
13 the minor new source review, but to the
14 interpretations that were made in developing that
15 minor new source permit. Those representations can
16 be anything from the calculation methodology. It
17 could be an e-mail between you and the state
18 permitting engineer. Those are all representations
19 that were made during the development of the minor
20 new source review permit. And so you get into issues
21 like we estimated the stream composition to be 50
22 percent toluene. Well, what's the deviation from an

1 estimated number? We have a lot of people spending
2 an inordinate amount of wasted effort on that.
3 That issue -- part of that could have been
4 solve, I think, if those permit limits, whatever, in
5 the minor new source review permits were put into
6 Title V and you just add the minor new source review
7 permits. That issue I know that I'm referring to is
8 being worked now in the state, but that is, again,
9 the result of some of the difficulties that we've
10 had. That wasn't a question, I guess?
11 (Laughter.)
12 MR. LING: Any more for Kelly?
13 Steve?
14 MR. HAGLE: I just want to make one other
15 comment on the minor NSR permits and their
16 availability. As Steve pointed out, part of the
17 negotiations with EPA on the lawsuit settlement and
18 the NOD was that we make those publicly available,
19 and we have a requirement that a permittee gather all
20 of those permits up and make them available in a
21 public location near the facility. So they should be
22 able to find those without having to go to the file

1 room.

2 Hopefully, that's being done and that's a

3 change after Kelly came up here to Washington, she

4 may or may not have been aware of. So there is a

5 better mechanism. However, I wouldn't presume to say

6 it's perfect for making those available.

7 MR. LING: Keri?

8 MS. POWELL: I'm going to ask Steve a

9 question if that's okay really quickly just to

10 follow-up on that?

11 One thing that makes me nervous about

12 relying on the facilities to compile that collection

13 is, obviously, what do we do if the facilities don't

14 do it because they're not directly accountable as the

15 government? How about putting that in the permit

16 that they're required to do it? So, if they don't,

17 then we can enforce that requirement against them.

18 MR. HAGLE: I'm not sure I understand what

19 your question is. The permit itself will list all of

20 the new source review permits that apply to that

21 reference or that are referenced by that facility's

22 Title V permit and our rules require them to gather

1 those up and put them in a public location and make
2 them available to the public.
3 Now, if you go to that public location and
4 cannot find that information, then you can certainly
5 contact us and we will work with the company to make
6 sure that gets out there and we would not close the
7 public comment period until we've given you some
8 time.
9 MS. POWELL: Is that a state regulation
10 that requires that at this facility?
11 MR. HAGLE: I believe that's in our Title
12 V rules. I can find that out for you.
13 MS. POWELL: So you include that
14 requirement in the Title V permits themselves?
15 MR. HAGLE: It's not in the Title V permit
16 itself because at the time you're looking at the
17 Title V permit -- I mean, you're reviewing that Title
18 V permit and the requirement is, when you take the
19 permit to public notice, you make those permits
20 publicly available.
21 MS. POWELL: But, obviously, you need to
22 have the permits available throughout the term of the

1 permits. If you're not including the requirements in
2 the permit, people have got to have a way to look at
3 them.
4 MR. HAGLE: And, at that point, you'd have
5 to rely on the file room. Obviously, seeing that
6 there's been some problems with this.
7 MR. LING: All right. Thank you very
8 much, Kelly.
9 Our last speaker of the day is Wayne
10 Penrod. While Wayne is coming up, I want to ask the
11 audio person to stop the tape and the transcript. He
12 tells me he has an announcement to make from the
13 hotel facilities people. It has nothing to do with
14 Title V.
15 (Discussion off the record.)
16 MR. LING: Hopefully, that will not appear
17 on the internet.
18 Here's Wayne Penrod.
19 MR. PENROD: Thank you for the opportunity
20 to speak to you today. My name is Wayne Penrod, the
21 Senior Manager of Environment and Production Planning
22 for Sunflower Electric Power Corporation.

1 Sunflower is a generation and transmission
2 electric cooperative. Our location is in western
3 Kansas. We're just a few miles west of Dodge. If
4 you're a cooperative, serves its members at
5 wholesale. It's a not-for-profit organization.
6 Several things unique about us, and I'll
7 try to remember to mention all of them, but if
8 there's anything else that you might want to know
9 about a coop, I can probably tell you as well. We
10 operate two facilities. One is a coal-fired
11 generator of about 360 megawatts in size. One is a
12 gas-fired facility and it has both steam generation
13 and combustion turbines. Those plants are located
14 about 10 miles from each other within the
15 southwestern part of Kansas.
16 We serve 115,000 people in our service
17 territory, the western 34 counties of the state and
18 we serve regionally interconnected electric customers
19 with other electric companies and provide them with
20 economy power and contracts from time to time as the
21 situation might permit. Most of my time in the last
22 four years has been spent in two areas of endeavor.

1 One is securing Title V permits for those
2 two facilities. The other is securing a PSD permit
3 for a new facility that is to be located or co-
4 located on the coal-fired plant site. So I have
5 unique perspective, maybe, on some of those things.
6 Probably I'll forget to mention what most of them
7 are. I may depend upon questions from you if you
8 would like to ask something specific about that.
9 Our coal-fired plant was built in 1983, so
10 it's 21 years old, more or less, the newest coal-
11 fired generation facility in the State of Kansas. We
12 have a PSD permit that was issued in 1979-1980 and
13 the most significant thing, as I work my way through
14 this process, was to identify, learn, try to make
15 sure that it stayed consistent. The PSD permit is
16 the only air permit for the facility and it is
17 identical in requirements to the Title V permits. So
18 one of those two permits, from my perspective, from
19 my unique location that situation is that one of
20 those is extra.
21 The Title V permit has only one additional
22 element in it than the PSD permit had. That is, we

1 have additional surveillance requirements on the
2 smaller control devices that would be installed for
3 coal-conveying systems, ash-handling systems and line
4 unloading facilities all of which are instrumental in
5 the process. They're rather small in comparison to
6 the major emission source, which is the stack that
7 gets the gases off the boiler.
8 We have the modern control technologies
9 that were required by subpart D(a) of the Clean Air
10 Act. That is a scrubber, a high efficiency fabric
11 filter, low NOX burners. This was pre-SCR days, so
12 the company met requirement, the 40 CFR 47(a) and
13 48(a) monitoring requirements and excess emissions
14 reporting requirements. Because we're an electric
15 utility and we have Part 75 requirements also, we
16 submit quarterly electronic data reports, which is
17 the emissions from all the gas monitors on the
18 facility. So, if it's NOX or if it's SO2, it's
19 reported.
20 We also have excess emission reporting for
21 carbon monoxide. We're the only utility facility in
22 an attainment area for CO that has a reporting

1 requirement for carbon monoxide. We also have excess
2 emissions reporting requirements for opacity.
3 The Title V experience, in addition to be
4 laborious, frankly, I'm not sure there's a good way
5 to express this because I'm not trying to cast doubts
6 or aspersion on the state agency. We filed our first
7 Title V draft permit in 1998. The application was
8 filed within a month or so of the due date or a month
9 or so before the time that it was due.
10 We turned around, and being familiar with
11 all the activities that we did, we went ahead and
12 prepared, through a consultant, a Title V draft. The
13 agency, because of the uncertainty associated with
14 what was going on, I wouldn't be blaming the agency
15 and I'm not really trying to say it was EPA's
16 difficulties. But, as a practical matter, that
17 permit was held in abeyance. There was no action
18 taken on the draft permit and just six months ago,
19 plus two days, we received our permit for the Holcomb
20 facility. That's the coal-fired facility. So there
21 was a wasted effort there. There was a waste of
22 money associated with some of the efforts we went

1 through. We think that's because of the absence of
2 clear understanding, perhaps, of the requirements
3 and, perhaps, in some ways, changing requirements
4 that might have come down the pike during that
5 intervening period.
6 In the years since the Emissions Fee
7 program was initiated, we have spent $635,000
8 without, again, trying to play games with Title V.
9 We have not reduces our emissions by as much as one
10 ton. We have always been a clean unit. We have a
11 clear stack. The local Region 7 folks, when they
12 made their first visit to the plant not long after we
13 completed our compliance testing requirements, which
14 were then six months to startup, came to the plant,
15 noticed there was nothing coming out of the stack,
16 turned around and drove 400 miles back to Kansas
17 City, called us. Ask us why the unit was offline and
18 why we hadn't notified them. It's a clear stack,
19 modern coal-fired coal plants are going to look like
20 that. In our particular situation where we have the
21 fuel types we have in the control devices we have
22 installed on them, so much of this seems to be, as I

1 say, an additional requirement.

2 We understand that the imposition of the

3 Title V program requires the expense of money,

4 requires the state permitting engineers and the other

5 folks associated with compliance, monitoring and

6 those kinds of things, to learn, frankly, as we

7 learned some things about our own permit as we were

8 working our way through this process. I've not even

9 called the $635,000 emission fees and payments,

10 $135,000 of that, by the way, is the proverbial check

11 in the mail. They're due the first of next month.

12 My concern is that we, having gone through

13 that, and the state permitting agency having learned

14 a lot about our facility and the other coal-fired

15 facilities, having learned that and having now

16 received a permit and having that permit not being

17 particularly laborious in the things we have to do in

18 order to fulfill the obligations under the permit,

19 we'll be doing the same thing the next five or six

20 years seeking a second permit and we don't stand to

21 learn much about the process nor do the state

22 permitting folks.

1 That's pretty expensive when you do the
2 math and try to divide by zero. It's hard to figure
3 out how much per ton you've saved or you've spent
4 rather in trying to assess the effect of the report.
5 I was going to answer the question you
6 haven't yet asked. We really have not had any
7 problems with the state agency. We haven't had any
8 problems with EPA at Region 7. We've had frequent
9 conversations with them about the process we've gone
10 through. We've been very upfront and forthright
11 about it. I have no complaints.
12 My complaint is, not for the previous
13 seven of years, but for the next seven is that we're
14 going to be paying again to do the same thing we've
15 already done and I don't expect that I would give you
16 an A for that. I think that the cost for the program
17 has been justified once and I'm not complaining about
18 it again. But I really think that to have to go
19 through the continued payment in search of assured
20 compliance on our unit is probably not well-spent.
21 Probably the other things I forgot to say
22 -- I do have the permit here if anybody wants to see

1 it, 45 pages of permit. The rest is supporting
2 information and application data. There are six
3 pages that cover the main sources of our plant. The
4 rest of the pages cover the minor sources, which, on
5 a worst day, couldn't do as much as could be done by
6 the major source in a few minutes of an emission
7 episode.
8 The real problem with that became apparent
9 to me as we were working through the process and to
10 the agency I will give full credit because they asked
11 for a certain number of monitoring episodes during
12 the course of the calendar year. They wanted us to
13 go out on a weekly basis and observe the small dust
14 collectors and be able to assert that over the course
15 of the 52 weeks that we were not out of compliance.
16 We did a good estimate of how much time it
17 would take to do the things that they asked us to do
18 and it would have been a half a man year per year to
19 do those things. Having had that information pointed
20 out to them, they recognized that there wasn't
21 anything significant to be gained from that exercise
22 and rather would have us spend our dollars doing the

1 things at the plant that might make the difference
2 with the big source to be sure that we don't have any
3 more events there. That might otherwise be
4 absolutely as part of the operation. I would rather
5 have spent the money paving a haul road, frankly,
6 than I would have to go through this next six years
7 of going through the paper chase, frankly, of trying
8 to assure that we're in compliance when we are, as a
9 matter of course.
10 I'll answer any questions you might have.
11 I certainly don't have any other prepared comments or
12 remarks. So, if you have any questions, I'll be glad
13 to respond.
14 MR. LING: Bob?
15 MR. MOREHOUSE: Wayne, can you give me
16 some sense on the $635,000? Obviously, a huge
17 number, how does that break out? Is that all Title V
18 or was some of that a PSD permit development?
19 MR. PENROD: No, sir. That's all Title V
20 for two facilities, the one coal-fired and the one
21 gas-fired plant. That's the emission fee payments.
22 It has nothing to do with my time or the time the

1 other people spent in either assuring compliance or
2 helping me to develop the language in the draft
3 comments on the permits themselves.
4 MR. MOREHOUSE; That's fees only, so you'd
5 have to add to that all the consulting time and
6 developing the applications?
7 MR. PENROD: Yes, sir. I don't have that
8 information with me, but we have kept track of it
9 just for the record. It's substantial dollars.
10 MR. LING: Keri?
11 MS. POWELL: I was just curious about your
12 knowledge of other power plants in your area. How do
13 you think that your plant compares to other coal-
14 fired plants in Kansas?
15 MR. PENROD: In what respect?
16 MS. POWELL: You said that your plant is
17 successful because it's very clean and nothing came
18 out of the stack. I just wanted to know what your
19 experience was with other power plants.
20 MR. PENROD: I'm sorry. Let me back up.
21 I really didn't say that nothing was coming out of
22 our stack. It's a clear stack for particulate

1 purposes. You can't see fly ash. Of course, there's
2 different vintages of facilities in the state. There
3 are five, as I recall, of the coal-fired units that
4 are equipped with scrubbers. There are four of the
5 units equipped with fabric filters for particulate
6 control. I think the oldest unit I have the least
7 knowledge of and it's also the smallest located in
8 the southeastern part of the state.
9 As a practical matter, the plants are all
10 generally clean. They don't have a clear stack. If
11 they don't have a fabric filter, they don't have a
12 clear stack. They're still relatively clean.
13 MS. POWELL: Even when they say they have
14 a clear stack, it's my understanding that you might
15 not be able to see the particulates coming out of the
16 smoke stack, but the very smallest of them are the
17 most dangerous to people. You do recognize that
18 there are still dangerous particulates coming out of
19 your smoke stack?
20 MR. PENROD: I recognize that over the
21 course of the year that our total particulate
22 emissions might total a hundred tons. Our efficiency

1 of our fabric filter is as efficient as all but two
2 of the most recently issued new source performance
3 standard and PSD permits that have been issued for
4 new plants.
5 MS. POWELL: I apologize. I wasn't
6 listening close enough at the beginning to catch the
7 lay of the land in Kansas.
8 MR. PENROD: Flat.
9 (Laughter.)
10 MS. POWELL: Approximately, what portion
11 of the state are you the managing power company?
12 MR. PENROD: We serve -- our distribution
13 cooperative is the western 34 counties, which is
14 about a third of the State of Kansas.
15 MS. POWELL: And there are other
16 cooperatives that handle the rest of the state?
17 MR. PENROD: No. There is one municipal
18 utility that operates coal-fired generation and there
19 are three investor-owned utilities that operate
20 coal-fired generation in the state.
21 MS. POWELL: I guess what I was wondering
22 was -- I mean, you were saying that part of the

1 reason that you didn't see much of a benefit to Title
2 V in helping with compliance at your facility was
3 that you felt that it was already very clean and
4 while in compliance with the requirements. Is that
5 what you're saying?
6 MR. PENROD: My chief point, I think, is
7 going through the preconstruction PSD review for the
8 plant defines the control technology that you need to
9 apply and it defines the monitoring requirements and
10 the compliance requirements in every respect. So,
11 when you've gone through that process, if that
12 process was sufficient in the first place, then you
13 should have, I think, with the exception of
14 malfunctions and those kinds of things, you have
15 achieved the best that you can achieve.
16 MS. POWELL: How about other requirements
17 that apply to your plant? Aren't there requirements
18 that apply?
19 MR. PENROD: SIP requirements are much
20 less complicated for a lack of a better way of saying
21 it than the other requirements. There's not a piece
22 of our facility equipment that doesn't have a

1 requirement placed upon it. We have coal-handling
2 requirements under subpart Y. I may get the subparts
3 confused from time to time. The cooling tower has
4 Part 63 requirements, which relate to chemicals in
5 the water. All of those things are covered in the
6 PSD process.
7 MS. POWELL: Your PSD process include all
8 the SIP requirements and all the NSPS requirements
9 and all that?
10 MR. PENROD: That review includes all of
11 the NOX requirements. All those things are covered
12 in the permit we've just gone through. One of the
13 important parts, perhaps, I didn't pay enough
14 attention to this, we've just gone through this
15 process for another unit, a companion unit at the
16 same site, so those things are pretty much indelibly
17 imprinted here. And so I'm persuaded that, if you've
18 done that, you don't have anything much in regards to
19 emissions that the public ought to have undue concern
20 about.
21 MS. POWELL: I see a lot of people have
22 their cards up.

1 MR. LING: Bernie?

2 MR. PAUL: How are the Title V permit fees

3 in the State of Kansas assessed? Is it based on a

4 dollar per ton basis or is it assessed on they looked

5 at the number of Title V sources and said we're going

6 to charge these type of facilities so many dollars

7 per year and these type of facilities so many dollars

8 per year? Can you share a thought if you know that?

9 MR. PENROD: I have some awareness of

10 that. First of all, there are four different classes

11 of Title V permits in the state. The larger sources

12 like ours are Class 1. Any Class 1 sources you're

13 going to follow the same methodology. If you emit

14 more than 100 tons of one of the pollutants that are

15 included within that, which is SO2 and NOX and carbon

16 monoxide, I think. It's a small number, so I don't

17 recall. But you're assessed a fee, so many dollars

18 per ton up to 4000 tons a year on the emissions from

19 that facility.

20 We do not touch the cap. We don't get but

21 about halfway, frankly, in both NOX and SO2. But

22 there's other structures of the fees. It has been as

1 low -- first of all, I think, if I remember
2 correctly, there are 19 Class 1 permits in the state.
3 That's a state matter. Please don't write that down
4 because I'd hate for the Director of Environment to
5 fuss at me for making a false statement. But they're
6 relatively few. Most of those are in the utility
7 sector. Some of them go beyond the 4000-ton cap in
8 their emissions, but most of them are relatively
9 small emitters.
10 New facilities is the point, I think, and
11 new is 30 years.
12 MR. LING: Shannon?
13 MS. BROOME: Thanks for coming today. You
14 said that on the issue of the observations of the
15 small bags that you were looking at half a man year
16 in terms of work hours. This is an issue that's my
17 biggest pet peeve.
18 MR. PENROD: Mine, too.
19 MS. BROOME: Having been in Indiana making
20 observations of absolutely nothing. It drives me
21 nuts. What would cost out half a man year for the
22 company when they know it's not the salary. It's the

1 salary plus something and what level of person are
2 you talking about because it can't be just anybody
3 who could make these observations and do the
4 recordkeeping and all that stuff.
5 MR. PENROD: We have two people. One of
6 which is the most directly involved and makes, by
7 far, the largest portion of the evaluations. He is a
8 supervisor-level individual. He doesn't have a lot
9 of staff, but that's the level of person they have do
10 it. In fact, he at one time was the operator who was
11 responsible for the scrubber, showing compliance with
12 the scrubber. His salary is whatever it is. It's
13 probably going to be $60,000 a year that we might
14 attribute to the actual act of going through all
15 those compliance verifications.
16 But what's more important to me is that I
17 would rather have him spending time looking in the
18 main plant baghouse.
19 MS. BROOME: You're saying it's an
20 opportunity cost.
21 MR. PENROD: It's an opportunity cost.
22 MS. BROOME: Which is something that's

1 hard to quantify and I just wanted to ask you, did
2 you know that the administrative law judge who just
3 retired from Indiana is also named Wayne Penrod?
4 MR. PENROD: Is he from Indianapolis?
5 MS. BROOME: Yes.
6 MR. PENROD: We've communicated a couple
7 of times by e-mail. We have similar roots.
8 MS. BROOME: I thought Wayne Penrod was
9 testifying. I though, oh, Wayne Penrod.
10 MR. PENROD: And I knew he was from
11 Indiana and didn't hold it against him.
12 (Laughter.)
13 MR. LING: Mike?
14 MR. WOOD: Just real quick. I'll assume
15 your permit was issued by the state agency?
16 MR. PENROD: Yes, it was.
17 MR. WOOD: You mentioned EPA had done an
18 inspection. That answered that question. Was there
19 any public participation in any of your permitting,
20 particularly, more recent permitting, either the NSR
21 or Title V process?
22 MR. PENROD: I'll tell you -- well, let me

1 answer that two ways. First of all, we don't have a
2 lot of people in our neighborhood. The largest in
3 the western third of our counties has 30,000 people.
4 We go to great efforts, frankly, to invite people to
5 come to the plant to see the plant every spring as
6 science teachers are looking for class trips to take
7 their kids to see something that might be of interest
8 to them.
9 We get a host of people who come. We give
10 tours of the plant. They see the plant. They ask
11 questions. Although, some of those are elementary
12 students and the questions may not be all that tough.
13 Some of them aren't. Some of them are seniors in
14 high school and they ask some pretty tough questions.
15 So it's giving us a little bit of practice.
16 We are in the process of going through a
17 PSD review on an existing unit for some improvements
18 we're going to make. We have gone through the Title
19 V process on two units and the PSD review on a new
20 unit. And, to an extension to the permit on the new
21 unit, we have not received, other than those that we
22 offered at public hearing, any comments by any one

1 other than the state agency. The EPA did file some
2 comments. The Region 7 office did file some comments
3 that were appropriately handled at the issuance of
4 what we call the Holcomb 2 plant. That was 18 months
5 ago.
6 Public interest, public distrust, maybe,
7 of our operation and our facility is not high.
8 MR. LING: John Higgins?
9 MR. HIGGINS: Again, I want to get your
10 grade.
11 MR. PENROD: I give the agencies and the
12 process and that we learned a lot, maybe not so much
13 myself, but a lot of people at our facility learned a
14 lot by going through and thinking about the way the
15 plant operated and the compliance requirements at the
16 plant in a different way by going through the Title V
17 process. I really think the process is at worst it's
18 a B.
19 My real bad grade is reserved for what I
20 see as the cost of that in the future because we're
21 going to pay more and we've already achieved the
22 benefits that have accrued from that expense. That's

1 my fear is that the program will be more burdensome;
2 that provisions, frankly, for small businesses in our
3 business, because we're in both of those. We're in
4 small businesses, but we're in the power business and
5 so we have those kinds of costs. That's the thing
6 I'm most concerned about.
7 I'd like to be able to control some
8 emissions and spend some of those dollars doing it
9 instead of spending them on emissions fees that
10 frankly don't go to reducing emissions.
11 MR. LING: I'm going to call on myself. I
12 just wanted to make sure I understood part of your
13 testimony. I think I understood your point that
14 going through Title V the only practical difference
15 that that made compared to the PSD permit that you
16 already had was some additional monitoring
17 requirements on some of the coal-handling equipment.
18 Is that right?
19 MR. PENROD: There are 18 bag filters half
20 the size of your office scattered throughout the
21 plant. Yes, that's correct.
22 MR. LING: So, in terms of the internal

1 checks that you do for compliance with all those PSD
2 requirements, are those now different as a result of
3 Title V or are they essentially the same as a result
4 of those internal checks?
5 MR. PENROD: As a result of Title V, we
6 have a different person who goes by and assesses the
7 functionality of those particular devices. We had
8 people who did it before. The recordkeeping,
9 frankly, was not as good as it should have been, but
10 we've made that improvement. Yes, sir.
11 MR. LING: One last related question.
12 That's the practical difference, and maybe this is a
13 question for one of our lawyers rather than you.
14 But, in terms of the legal difference of certifying
15 compliance with the permit terms -- and, also, this
16 is a practical difference, the reporting, how often
17 you report, six month reporting. Are those different
18 because of Title V or is that essentially the same as
19 it was under the PSD?
20 MR. PENROD: We didn't have -- I think
21 it's probably a two-part answer again. We had
22 current requirements, pre-Title V requirements that

1 report on the main stack, SOX, NOX, CO and opacity.
2 Those reports we filed. Those aren't going to be any
3 different. The due diligence things that we do now
4 that are sufficient for the appropriate signatures
5 associated with an electronic data report are no
6 different than it's going to be for this Title V
7 activity.
8 The other things I think we've probably
9 implemented the necessary changes in recordkeeping
10 and in records of observation I think more than
11 recordkeeping. We've incorporated those into the
12 process and so those will be a little bit different,
13 but they should be sufficient for the purpose.
14 I'm not an attorney. I'm a mechanical
15 engineer. So, if there are attorney questions, I
16 can't answer those.
17 MR. LING: Steve?
18 MR. HITTE: I thank you as well for
19 coming. I guess Michael started to get into it. I'm
20 still struggling with what your concern is. You say
21 it's the future you're concerned about and I'm not
22 understanding that. Are you saying that when your

1 Title V permit comes up for renewal you're concerned
2 it's going to be more onerous. Or are you just
3 saying that you just don't like the idea of having to
4 pay fees because the money could be served better
5 elsewhere?
6 MR. PENROD: The answer is both. I am
7 concerned about the program becoming more onerous.
8 Keeping in mind that the PSD review accomplishes the
9 task that folks who are not satisfied and, perhaps,
10 are really interested in Title V solving some of
11 those problems, it's not necessary. So it's extra.
12 Our permits are all in one place to begin with. What
13 I would hope to find would be a way to bifurcate, for
14 lack of a better way of saying it, the fee payments
15 such that those who were in compliance who continue
16 in compliance who don't have continuing problems with
17 the technologies that are installed can, in some
18 fashion, get credit for good behavior.
19 MR. HITTE: Just for the record, it's up
20 to the states how they charge fees. Have you ever
21 approached the state about renegotiating your fee?
22 MR. PENROD: No, I have not. It only

1 became apparent to me when I divided the dollars by
2 the number of tons reduced.
3 MR. HITTE: And the states can tie dollar
4 fees to one source according to Title V.
5 MR. PENROD: I imagine I'd be outnumbered
6 in that discussion.
7 (Laughter.)
8 MR. PENROD: Perhaps, important here would
9 be the recognition that there are those sources who
10 are finding themselves in that very same boat. There
11 are Class 2 sources whose emissions are lower than
12 ours whose fees are not a whole lot less than ours.
13 Yet, if you add two or three of those guys together,
14 you get us. So we're supporting the program and
15 we're not, by far, the largest choice in the state.
16 We're the smallest major source in the state. So
17 there's an equity question there that just somehow
18 keeps creeping into my thinking process.
19 MR. LING: Keri?
20 MS. POWELL: Is this our last presenter?
21 Do we have more?
22 MR. LING: Wayne's the last one signed up

1 unless there's --

2 MR. PENROD: I feel a cold coming on.

3 (Laughter.)

4 MS. POWELL: I'll go easy on you.

5 MR. PENROD: You have been thus far.

6 MS. POWELL: Whether those inspectors went

7 out without anything except looking and seeing

8 nothing coming out of your stack. Did they come

9 back?

10 MR. PENROD: No, they did not.

11 MS. POWELL: How often do the inspectors

12 come to inspect your facility?

13 MR. PENROD: The state agency by virtue of

14 their own interim directions appear on a religious

15 once-a-year basis to review the operations. Of

16 course, we file either quarterly reports or semi-

17 annual reports, depending on the process, depending

18 on the particular requirement and so we're self-

19 reporting in that regard.

20 What they developed over the course of the

21 last 20 years that the plants operate is they know

22 what the equipment is. They know what it's capable

1 of doing and my assessment is I'm not volunteering
2 this for them because I never asked them the
3 question, is it they spend their time where they
4 think they can be of more value to the constituency,
5 which includes me, by the way.
6 MS. POWELL: Have you ever been with the
7 inspectors when they did an inspection?
8 MR. PENROD: I've been with the inspectors
9 one time. The EPA Region folks, as a practical
10 matter, probably come out every three years. They'll
11 come with the state agency. Sometimes it's a
12 training exercise. Sometimes the folks are just
13 trying to get acquainted with each other to see that
14 they do the same things or they think about them in
15 much the same way. We've never had a question.
16 We've never had a problem.
17 MS. POWELL: I'm sorry. You're describing
18 your state inspectors come once a year and U.S. EPA
19 comes once every three years, so when you are on an
20 inspection was that a U.S. EPA inspection or a state
21 inspection?
22 MR. PENROD: The one particular inspection

1 I was on was just a state inspection.

2 MS. POWELL: Can you tell me what happened

3 at that inspection?

4 MR. PENROD: They asked to see our

5 records. Those are very specific as they are laid

6 out in the regulations. You take them, show them the

7 records. They ask to see the relative accuracy

8 reports and the gas monitors and the audits on the

9 opacity monitor. They look through those, even

10 though we file those on a quarterly basis. They come

11 to the site to verify more than anything else that I

12 think that they're there. They looked at them. They

13 looked at the appropriate pages, which are, frankly,

14 rather thick. We do a good job of reporting that we

15 provide a lot of information. I don't know that it's

16 easily assimilated, but we try.

17 They look at the facility. They observe

18 the stack. They observe, in the case of the dust

19 collectors, they'll drive around and they'll see

20 anything as a practical matter. Sometimes, by the

21 way, the coal-handling system is operating when

22 they're there. Sometimes it's not.

1 MS. POWELL: Do you have continuous
2 monitors on your stack?
3 MR. PENROD: Yes. That's a requirement of
4 subpart A.
5 MS. POWELL: They're SIMS or COMS?
6 MR. PENROD: SIMS. We have COMS, too, for
7 opacity.
8 MS. POWELL: Just to clarify something,
9 you said in the past your recordkeeping might not
10 have been as good as you would have wanted it. Has
11 it gotten better, your recordkeeping?
12 MR. PENROD: Our recordkeeping, as it
13 relates to the 18 discrete baghouses that are located
14 in the coal-handling system and the ash-handling
15 system and the lime-handling system, the main stack,
16 we would have been in trouble long ago if we weren't
17 doing that correctly.
18 MS. POWELL: Just a final thing. You
19 didn't have to do any kind of annual compliance
20 certification prior to Title V. Right?
21 MR. PENROD: We do a certification with
22 the filing of each electronic data report. We did

1 with the Part 60 reports prior to that as well. That
2 did not relate to the 18 coal-handling dust
3 collectors.
4 MS. POWELL: So this is the first time.
5 Have you actually had to file a 105 compliance
6 certification yet?
7 MR. PENROD: June 23rd was the end of the
8 first six months and so I have 28 days left.
9 MS. POWELL: You have to file a
10 certification every six months?
11 MR. PENROD: Yes.
12 MS. POWELL: I'm assuming you're not
13 planning on certifying non-compliance of anything.
14 MR. PENROD: No.
15 MS. POWELL: Do you have any evidence of
16 possible non-compliance?
17 MR. PENROD: I have no evidence of any
18 non-compliance. I have a due diligence process that
19 I have to go through for the second quarter which,
20 frankly, would go through the end of June for my
21 electronic data report and have computerized
22 recordkeeping for all of the maintenance activities

1 that are done on the control devices and with the
2 monitoring devices. And so it frankly becomes a
3 check, those locations, reading the reports, which I
4 don't wait six months to do, and then the
5 certification.
6 In fact, I think I misspoke. We only have
7 the annual certification, but we have the semi-annual
8 reporting. The plant manager for that facility would
9 like to see that due diligence statement by me before
10 he files the semi-annual report.
11 MS. POWELL: Just a last question. Does
12 your facility undertake any monitoring that isn't
13 specified in the Title V permit?
14 MR. PENROD: Certainly.
15 MS. POWELL: I'm sorry. This is one more
16 question. When you're certifying compliance, do you
17 take into account evidence for that monitoring as
18 well as your Title V monitoring?
19 MR. PENROD: Some of the things that you
20 speak may be individual actions that are undertaken
21 by a shift supervisor, by a maintenance mechanic, by
22 an operator who observes a wisp of coal dust out one

1 of the little dust collectors. He write that work
2 request. The work request goes through the system as
3 is appropriately prioritized and taken care of. It's
4 not an expedience of the opacity standard. So we do
5 things that are reported in the fashion I think you
6 just described. I'm aware of all of those, but only
7 if I go through every maintenance record and I do not
8 go through every maintenance record.
9 MS. POWELL: Is it okay if I ask another
10 question? I'm sorry. Nobody else has their card up.
11 So you're the responsible official that signs?
12 MR. PENROD: No, I'm not. I do the due
13 diligence for the responsible official. I'm the
14 designated representative for the EDRs, but I'm not
15 the responsible official because I have no operating
16 responsibilities for the plant.
17 MS. POWELL: Who is it that signs your
18 compliance?
19 MR. PENROD: The plant manager.
20 MS. POWELL: You're doing a due diligence
21 for him?
22 MR. PENROD: Yes.

1 MS. POWELL: So he's relying on you to
2 give him good evidence and you say you don't review
3 all the reports?
4 MR. PENROD: I don't review all the
5 maintenance records for all of the equipment as a
6 normal process.
7 MS. POWELL: But you're saying that some
8 of those maintenance reports might have an
9 observation or evidence of a problem?
10 MR. PENROD: None of those will have an
11 observation of a problem. We do things before we
12 have to. Just as an example, if I can use this one.
13 As I say, we have a clear stack, no particulate
14 matter can be observed in the stack at exit. I went
15 through the plant for another culture class, frankly,
16 on Wednesday. I observed what I imagine would be a
17 percent or two opacity at the stack exit. I asked
18 the plant manager if there was something that was
19 happening with the fabric filter. He looks up. No.
20 They investigated. We don't know whether we've
21 discovered anything or not, but we're looking for the
22 source of 1 percent. It's not a compliance matter

1 and I'm not going to report it.

2 MS. POWELL: Thank you.

3 MR. LING: Any more questions for Mr.

4 Penrod?

5 (No response.)

6 MR. LING: Thank you very much.

7 MR. PENROD: Thank you.

8 MR. LING: This concludes the list of

9 speakers today. So I appreciate all the speakers if

10 any of them are still here who came and who testified

11 and who answered all our questions patiently.

12 Before we formerly adjourned, I just

13 wanted to say a couple of things to the Taskforce and

14 also give the Taskforce a chance to say anything they

15 want to say in conclusion.

16 First of all, I would like have a call at

17 some point very soon after this meeting to, number 1,

18 discuss how the people thought the running of the

19 meeting went and what adjustments we need to make for

20 the Chicago meeting. I also want to discuss the

21 logistic of planning out the Chicago meeting and

22 subsequent meetings and how the Taskforce wants to

1 operate in between meetings and things like a lot of
2 the issues that have come up today about receiving
3 testimony, summaries and all that kind of stuff. I
4 don't want to do that today, but I think we need to
5 set a call up about that very soon.
6 What I do want to do today, though, is
7 check the date for Chicago. It's tentatively
8 scheduled for September 14th. I just want to make
9 sure. If anybody has a current conflict with that
10 date, let me know.
11 Steve?
12 MR. HITTE: Recognizing that we've already
13 signed a contract and there will be substantial
14 penalties if we change, September 14th is, I think, a
15 Tuesday.
16 MR. LING: If anyone has a conflict, just
17 let me know before you hit the exits. I do see a
18 couple of cards up.
19 Shelley?
20 MS. KADERLY: I wanted to thank all the
21 presenters today, again. I think we got a lot of
22 valuable information today. One of the things that

1 we talked about on our call just a few days ago was
2 if there were any pieces of information that the
3 Taskforce identified that maybe EPA could provide or
4 share it with the Taskforce to help us do our duties
5 here. One of the things I think would be helpful is
6 if EPA gave us an overview of what Title V requires
7 for the minimum public participation requirements.
8 Some of the difficulties that we heard
9 today, I suspect, might be more specific to
10 particular agencies rather than the underlying Title
11 V program requirement. So I'd like to get some
12 clarification on that, if we could.
13 Also, I wanted to let you know that with
14 me and I'll leave it with whoever wants to accept it,
15 I brought a recent survey that the State of New
16 Mexico did on what the Title V fees are for each of
17 the states and some other information that the State
18 of Oklahoma compiled recently as well that might be
19 of use to the committee.
20 MR. LING: Bernie?
21 MR. PAUL: When I look at the name of this
22 Taskforce, the Title V Performance Taskforce, it lead

1 me to wonder how are we going to measure the
2 performance of the Taskforce and maybe this comes
3 from being ingrained in corporate culture for 14
4 years now, you can't do anything about performance
5 unless you have some metrics about how well things
6 are.
7 Recognizing that you cannot measure
8 everything, I'd like when we have our next call, and
9 I wanted to raise this today so people would start
10 thinking about it, what are some quantifiable
11 measurements we might be able to use as we go through
12 this process. And, if it would help, as we have our
13 next round of hearing, if we could suggest particular
14 measures that people could bring to us about their
15 views of the program. That would give us some data
16 to work with. I'm one of these people that likes
17 data, but I understand that not everything can be
18 quantified, nor needs to be quantified, but I think
19 it helps sometimes to put a context around stuff.
20 MR. HIGGINS: Just for the record, did
21 everybody get the minutes of our last call? We
22 somewhat got into that. I know you weren't in on the

1 call.

2 Bernie, I'd like to say we weigh our

3 permits and the heavier they are the higher score we

4 get. Remember, Steve Martin once suggested that the

5 best way to assess the quality of art is how it

6 smelled and how much it weighed, so that would be

7 fine with me.

8 MR. LING: Steve?

9 MR. HITTE: In the spirit of your

10 question, Michael, about having a call, I agree. We

11 probably in a couple or three weeks should just have

12 a call. One thing that's running through my mind is,

13 okay, if we, the Taskforce, are suppose to digest

14 what we've heard, I'm not quite sure what each of us

15 heard in the sense of what we need to act on. So I

16 would propose that we need to talk about that and I

17 do know that somebody asked me this at the break

18 regarding the availability of all this stuff here.

19 In less than two weeks, Graham will have

20 notes, key points that he picked up from today's

21 meeting that will be made available and, in about the

22 same amount of time the recorder who did the verbatim

1 will be available. And then, regarding the digital
2 audio that we did, that, in theory, will be available
3 tonight but it's going to take us a few days to put
4 it on the website and what we will probably do is we
5 noted the timeframes that each person spoke, so we
6 will have this digital, whatever the right word is,
7 broken up into 30-minute segments.
8 You'll know the first hour Mike Ling
9 spoke. So the first two 30-minutes will be Mike.
10 The next hour will be John Paul, et cetera, et
11 cetera. That should be available, as I say,
12 imminently. So, for those of you who really want to
13 dive into rehearing what we heard and what it is we
14 think we need to act upon, at least you'll have
15 materials outside of any notes you may have taken
16 today.
17 MR. LING: Is that another one from you,
18 Bernie? Or is that left over?
19 (No response.)
20 MR. LING: One thing I would suggest is,
21 why don't we go ahead and look at candidate dates for
22 the call. Let's say two weeks from now.

1 Oh, you're right. Okay. The week
2 following the July 4th holiday, July 12th.
3 MR. PAUL: I know I will be on vacation
4 that week, but we can't let the R&R needs of one
5 lonely person interfere with the plans of everyone
6 else.
7 MR. LING: We scheduled the last one and
8 you couldn't come.
9 MR. PAUL: It's a plot.
10 MR. HITTE: I think we do have to
11 recognize we're not always going to get everyone, but
12 it's nice to know if there are major things that half
13 the people can come to the week of the 12th besides
14 vacation for Mr. Bernie.
15 (No response.)
16 MR. HITTE: The day of or the week of?
17 MS. KADERLY: I was going to suggest,
18 typically, Mondays and Fridays are hard to get people
19 together. If at all possible, Tuesdays through
20 Thursdays might be best.
21 MR. LING: Probably the 13th or 15th, so
22 try to keep relatively flexible on those days until

1 we can get something locked in, which we'll try to do
2 very soon after we get back.
3 MR. HITTE: And it will always be 1:00
4 o'clock on because of the West Coast folks.
5 MR. LING: Any parting thoughts?
6 MR. HIGGINS: One suggestion for setting
7 up calls, you might use -- pick a day and schedule
8 another couple or three months and then people can
9 adjust their schedule if they need to.
10 MR. HITTE: In that spirit, do you think
11 we should just set up a monthly call and if we need
12 it we have it? Is that the best way, starting in
13 July and another one in August, et cetera?
14 MR. LING: Okay. Thank you very much to
15 the Taskforce for participating. I know it was a
16 long day, but I thought it was a very good session.
17 Thanks to everybody in the audience who participated
18 and spoke as well.
19 With that, have a good trip back everyone.
20 (Whereupon, at 4:45 p.m., the above-
21 entitled meeting was concluded.)