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