the deadline, and we've now gone to court to ask for a response. We've yet to see what that response is.

And that highlights another problem with the program. The permits that I commented on were draft permits a year and three or four months ago. We have yet to see a final permit. And this process has ultimately resulted in us having to file suit. And that's another -- the delay inherent in the program is another part of the problem, is that we, you know, we had a draft permit over a year ago, and we understand that we're nowhere near a final permit yet.

MR. HARNETT: Thank you very much for coming, and then we're taking a break now. We'll be back at 4:00 o'clock.

(Recess.)

MR. HARNETT: The next speaker is Keith Harley of the Chicago Environmental Law Clinic.

MR. HARLEY: Hello. Just as an initial matter, I just wanted to say a special hello to Bob and to Dick, who were on a federal advisory committee with me five years ago on the industrial combustion coordinated rule-making, and I haven't

seen them since, but for some reason all of a sudden that just seems like we never left.

I'm the director of the Chicago Environmental Law Clinic, which is a partnership between the Chicago Legal Clinic, where I'm an attorney, and Chicago-Kent College of Law, where I teach environmental law. I've represented citizen organizations in Title V permit proceedings for coal plants, peaker plants, and other industrial facilities.

In some cases our involvement has been limited to submitting written comments and participating in public hearings. In other cases we've petitioned the administrator and filed citizen suits based on the administrator's failure to respond to our petitions in a timely fashion. In some cases we've developed detailed environmental justice, analyses, and requests.

In addition, my office generated the Illinois petition that helped lead to U.S. EPA establishing a schedule for Illinois EPA to issue the first round of Title V permits. We're now monitoring Illinois EPA's schedule for issuing renewals -- that was really boring.

I thought I would tell you a story actually, and it was based on something that was triggered in my mind by what Kathy said, when she was reviewing a permit, a Title V permit, and she noticed a small error, but it's a very telling thing. What she noticed was that even though it was for a facility downstate, East St. Louis perhaps, it mentioned Chicago.

I think that one of the most important things that I've realized in representing people in Title V permit proceedings and in FOIA'ing for all of the records and reviewing all the records is that the process works beautifully and smoothly and without a hitch, and you would not be here in most cases because there is a permit application and there is a permit macro.

The permit writer basically cuts and pastes from the application into the permit macro, issues it in draft form. If there are no public comments, it goes out, it's issued, and everybody is happy. The water is untouched. It's a smooth process.

But what happens, and that story is that is the permit macro story. That is how the

process as a practical matter works. The permit engineer never visits the facility. If the permit application is complete, there is oftentimes, I find in FOIA'ing for the records, very little meaningful give-and-take even between the permit applicant and the agency issuing the permit.

The role the members of the public play, I find -- and it is very disruptive and unsettling, but it's so critically important -- is that when they get involved in the process, suddenly that juggernaut, that process that is put into place -- application, draft permit, notice, final permit -- grinds to a halt to deal with those community concerns.

I want to give you an example -- and I'm going to come back to it a couple times in my remarks -- we reviewed the permit application that was put in by a large industrial facility for its Title V permit, and the rote compliance certification was signed by a responsible official. I went and I met with the group that I represented in that case, and one of the women, I think she may actually be testifying this evening, Ellen Rendulich from the Citizens Against Ruining

the Environment group who lived on a bluff overlooking the industrial facility said, "I don't know how this facility can be in compliance because it's constantly putting out black smoke."

And so we FOIA'ed for the records, and we got back the excess emission reports from this facility, and do you know that consistently on a quarterly basis, like clockwork, ten days after the quarter they would be submitting reports certified under penalties of perjury to the Illinois EPA detailing hundreds of excess emissions from their facility.

And yet somehow there was a compliance certification in the application. The permit itself identified no outstanding compliance issues. The only compliance issues that were addressed in the permit application -- in the draft permit were on a going-forward basis; no compliance schedule.

And this is -- it's that juggernaut. It's that application macro, get the thing out the door, as opposed to let's take a look to see if there are excess emission reports within this agency that we should be considering, sitting in

this agency that we should be considering in determining whether or not we can issue an adequate Title V permit that includes a compliance schedule that gets this facility on a road to actually being in compliance with permit requirements.

Over and over again in my dealings with citizen groups, I find that they are the ones, through their hard work, who are asking these kinds of questions.

Another very, very quick example, we went into one permit hearing where our client had done a Google search and found a trade journal, and in the trade journal a vendor had put forth this incredible description of the 30-year life extension project that they had done at a facility. But if you were to look at the Title V permit application, new source review NSPS standards were not triggered at any point. And if you looked at the draft permit as a result of that, NSPS was not identified as an issue. In fact, this facility was indicated as not being subject to NSPS standards.

Again, it was a member of the public who

had to do this work, who stood up and did it. But I'll tell you how these members of the public are treated. When they do their homework, when they stand up in these permit hearings, when they develop written comments, and then when they try to go forward and say to U.S. EPA and to its state permitting counterparts, "Do your job," do you know how they're treated? They are treated like dirt in my experience.

Their concerns are dismissed. The responsiveness summaries are oftentimes an effort to avoid as opposed to actually substantively respond to these concerns. They go to U.S. EPA during U.S. EPA's 45-day review period and get nothing. They petition the administrator of the U.S. EPA and get no response, nothing; no response whatsoever. They file a 60-day "notice of intent to sue" letter against U.S. EPA administrator, "Please listen to this concern." They get no response.

Yesterday we filed two citizen suits against the administrator of the U.S. EPA, and those cases that I started off with, those are the cases. Please pay attention to these situations,

where citizens who could be sitting at home watching TV had decided that they care enough about their community to get involved in a situation, to do the kind of things Kathy is talking about; to go to Springfield to copy documents -- I've done that many times.

It's no fun -- try to read through this stuff, try to master it, like Faith was talking about; come forward with a reasoned point of view that is four-square, right down the middle of the road in terms of what Title V is doing, and here is your reward; no one will pay attention to you. You will have to fight, fight in order to try and get those concerns heard.

So how do we help these members of the public? How do we help these courageous people who only want to play by the rules in the Title V process? I have some very specific recommendations. In Illinois we're very lucky that we have draft permits, notices, and project summary documents that are posted on-line. Get more information on-line. Get more information on-line.

We know that whenever we see a notice,

that our next step is we need to get the application. That's everything. We need to get the application and related materials.

To the extent that the application can be posted on-line and these related materials can be posted on-line, it should be done. It should be done. If it is not practical to do that, or even if it is practical to do it, it is always an excellent idea for state permitting agencies to create local repositories where all the documents that could be obtained by FOIA anyway could be placed in a local library or a local school where it would be accessible to members of the public.

There is nothing that infuriates members of the public more than feeling there is hide-and-seek with the information that they need in order to be meaningful participants in this process. And yet oftentimes that does occur.

So demystify the whole process of information, and information availability, and it can't just be the draft permit. It can't just be the notice. It can't just be the project summary. Everything that is in that file that is not otherwise exempt should be available to members of

the public as easily as possible.

The second thing is -- I think you've heard this before, so I'm not going to hit this one too hard -- but if information is relevant to facility performance, that should be linked through the on-line page where draft documents are available. Members of the public should be notified about the availability of this information on enviro facts. There should be links that people could click on to get this kind of information. TRI data, AIRS/AFS data, ECHO compliance data, and also very good demographic data as well, if people are interested in new J concerns.

In addition, it would also be very helpful for other kinds of permit data, construction permits, all the other stuff that has been issued that is now being integrated into the Title V permit. If that information could also be freely available to members of the public, either through a computer hookup or at a place where they can see it and understand, have access to it.

I have a question for you. One thing I do whenever we're dealing with new sources is I

take a look at the draft permit and immediately go to technology transfer network and look at the BACT/RACT/LAER clearinghouse, and I'll compare permitting choices that have been made all across the country on NSR to what is being proposed in this draft permit, and I can very quickly develop a point of view as to whether or not this is, in fact, BACT or LAER.

There is an inventory of permitting decisions from all across the country. Does such a thing exist for Title V? Is there a national inventory of Title V permits issued for facilities that are in the same SIC code, that are in the same business, where you could actually see best permitting practices that are being done in different states. So that when I have a coal-burning power plant, and I'm trying to develop meaningful comments about what best practices might be that have already been established by another agency as best practices in that state, where I could actually point to language and say, "This would be better." Is there anything like that out there that's available at this point? I think this would be

useful to everyone; be useful to permit writers, to members of the public, be useful to EPA.

Finally, I would like this committee -- in fact, I will a make a formal request, for whatever that is worth, to make a request to EPA, U.S. EPA, as to what it needs at this point in order to fulfill its legal mandate to do meaningful 45-day review when it receives a proposed permit and what it needs to do in order to respond to petitions in a timely fashion. Not according to my notion of it, but what's actually constructed into the law; the administrator shall grant or deny a petition within 60 days. It doesn't happen. There is no meaningful review within 45 days. There is no granting or denying petition within 60 days or 180 days or 240 days.

This committee could perform a very useful function for all of us out there, including regulated entities which would like to see their permits issued, to resolve these issues in a timely fashion, to go back to U.S. EPA and say, "You aren't doing this. What do you need in order to change your ways to meet the legal mandate?" Let them tell us, and let them tell Congress as

well.

I have three other points that I would like to make very quickly about what the priorities of Title V, I think, should be on a going-forward basis. I've identified three of them.

One of the issues is that the promise of Title V to actually provide a summing up of the compliance status of a facility and a schedule by which regulated facilities can come into compliance, that opportunity in Title V is largely being squandered. And the reason it's largely being squandered is because I don't believe that -- one of the comments I heard just sitting in the back of the room about permit engineers not going out and visiting facilities, it goes quite beyond that. Permit engineers not consulting with enforcement people within their own agency or within U.S. EPA, draft permits being issued, and comments from members of the public about compliance issues not being given adequate attention or leading to inspections of facilities.

I would love to see more established protocol, a recommendation of this committee that

would create best practices for how to deal with compliance issues. Now, I think it would be in our first set of permit renewals under Title V, so that that requirement has real meaning.

Second is MACT compliance. I heard someone say before that there is a permit issue that you have these MACT regulations hundreds of pages long. Do you want to have all of that incorporated into a Title V permit?

Our struggle is actually much different, and that is because the MACT requirements in Illinois and in other states are actually being rolled out. As Title V permits come up for renewal, we're finding that the opportunity to actually determine whether or not these are major sources subject to MACT standards is slipping through regulators' fingers. They're not really taking a hard look at these facilities to determine whether or not they actually should be subject to these MACT standards.

I could give you specific examples of where we've seen applications which are ambiguous and where we've seen Illinois EPA accept the easy way out, allowing facilities not to avoid MACT

regulation, but I don't have time to do that.

MR. HARNETT: You need to bring it to an end.

MR. HARLEY: Now?

MR. HARNETT: Yes.

MR. HARLEY: Okay.

MR. HARNETT: Thank you. I'm sorry. We're just pressed for time here.

MR. HARLEY: No, no. I understand. I only had one more point I wanted to make.

MR. HARNETT: You should really submit more to us in writing.

Richard Van Frank?

MR. VAN FRANK: Have you encountered situations where an application is out of date, like filed in 1992 and has never been updated? And if so, what would you do about an application of that type?

MR. HARLEY: This is a big problem.

Because of the delay in Illinois and in other states -- I don't want to single out Illinois EPA too much, mostly because I have to work with them every day, but I don't think they're any better or worse than anybody.

But this is a very, very big issue that

communities struggle with, that oftentimes they are dealing with applications that are from 1996, for example, and that because of the delay in issuing the permits, permit renewals, you can be dealing with 19- -- 2002, 2003 before you get to the public hearing. And while occasionally when we FOIA records, we will see that Illinois EPA has attempted to bridge the gap. More often than not people go into a public hearing without knowing too much about what the actual present status of the facility is. It makes it very, very difficult for members of the public to participate meaningfully in the proceeding, which is what they really want.

MR. VAN FRANK: This is not a renewal. This is the original permit.

MR. HARLEY: In the cases that we've dealt with in Illinois up to now, we're dealing almost entirely with the original permits. We've only just started with renewals.

MR. HARNETT: Verena Owen?

MS. OWEN: I'm curious, what was your last point?

MR. HARLEY: I think another issue that state

regulators wrestle with, U.S. EPA wrestles with, communities wrestle with, where it would be helpful to get some clear guidance is on the issue of NSR compliance in the Title V permitting context. This is a compliance issue, but we have seen situations -- I mentioned one of them when I started -- where people have come into Title V permit hearings with information that suggests that there may have been a major modification, that there appears to have been a significant increase in emissions facility usage, but there was never any NSR review for that facility.

We've gotten very, very different responses from state permitting agency, from U.S. EPA as to whether or not that is germane in the Title V permitting process.

From our point of view, it is. It is because you cannot establish the relevant emission standards unless you know whether or not this should be permitted as a new or existing source. We also think it's relevant as a compliance issue as well.

But that point of view is far from settled. And it would be very, very helpful to

know -- have a point of view obviously, about how U.S. EPA views evidence of NSR issues or NSR problems at facility, and they would be operating under the old standard in all the cases we've dealt with up to now, as how that fits into the Title V process. Maybe that could be something that this group could ask U.S. EPA to clarify.

MR. HARNETT: David Golden?

MR. GOLDEN: Keith, thank you for taking the time today to come and talk to us.

It sounds like you've had a lot of opportunity to review a number of Title V permits. My question is -- and this is just a gut, you know. I won't ask you for data.

But if you were to categorize the issues or problems that you see in the Title V permits that you've reviewed into one of two buckets, one is just the execution or implementation of Title V, maybe the reg is fine, but it's just the water is not getting to the end of the row, so to speak, it's just not getting done, versus something structural with Title V that needs to be fixed.

Do you have a gut of what percentage of problems do you see are execution or

implementation versus structural with Title V?

MR. HARLEY: I think implementation is where we find most of the issues that we're raising. The promise of Title V -- I have conversations with clients in the Title V context that almost always evolve into, "Yes, this is what the law says, but that's just not how it's working. That's just not how it works."

It may say that a compliance schedule should be included as part of this permit, but it's just not there. Or we should have received a response from the administrator within 60 days, but it's nowhere in sight.

So that I would say implementation is where I tend to see most of the problem.

Do you agree with that, by the way? Can I ask you a question?

MR. GOLDEN: Yeah. You mean a second question?

Yeah, that's where I see it; execution is everything.

MR. HARNETT: Shelley Kaderly?

MS. KADERLY: I wanted to answer a couple of your questions. First of all, on your question of

NSR compliance, in my state, as we were going through the Title V's, we came across so many situations where equipment went in or changes had been made without the proper construction permits, and that actually, I think, resulted in some of the delay in our ability in getting all of our permits done, because we were trying to go back and fix all of those problems before we got the Title V's issued. So I think it is a germane issue.

Also, I just wanted to echo that I agree with you on your comments about involving the compliance and enforcement staff in the Title V process. One of the things that we do is our inspectors review the permits before they do a QA review on them before they go out for public comment, and there are many times that they've been able to identify situations where the permit engineer missed something or didn't identify the equipment properly or didn't identify recordkeeping or monitoring or something properly.

And they also ensure that we've got enforceable conditions. So I do think that's a valuable part. It does extend our permitting

process, but I do think it's a value-added element to our program.

MR. HARLEY: What state are you from?

MS. KADERLY: Nebraska.

MR. HARNETT: Bob Palzer?

MR. PALZER: Thanks, Keith, for coming, and giving what I thought was a very excellent overview of somebody who obviously has spent a lot of time on this issue.

I liked all of your suggestions, but I guess the one that I find most appealing is your suggestion to try to take lessons, learn from the Title V process, and apply it to something like the BACT/LAER clearinghouse. I would be real curious what -- we can't do this now -- as to what the other committee members feel about this.

But is there any more you would like to say about how you might go about doing that that you could say in a few moments, or is that something we should just hold off till later?

MR. HARLEY: I am not sure how -- I think everyone around this table knows this, but the technology transfer network is maintained by the Office of Air Quality Planning and Standards in

Research Triangle Park. If you go to the quality transfer network, it's basically the warehouse of information that U.S. EPA uses to develop and maintain its Clean Air Act programs.

If you tab down, you come back to the BACT/RACT/LAER clearinghouse, you put in a SIC code or an industrial sector code, and it actually spits out the permitting decisions that have been made, including the emission standards that are appropriate. Gives you permit numbers so you can then obtain permits related to other facilities in that same category. It's a very strong tool for everyone. I think it's on there for permit writers, quite frankly, more than members of the public.

But if you really want to have meaningful, germane, targeted involvement by members of the public, if you've given them a tool like that, then when they see start-up, shutdown, malfunction provisions in a permit that they're concerned about, or they're wondering about compliance schedule issues, they don't have to try to generate that out of whole cloth. They could actually say, "In Nebraska they have generated

permits that have these provisions, and these are the kinds of provisions that we think are relevant for this type of facility in this state as well."

I think that has the effect of moving permits forward as well, because permit writers are actually seeing what one another are doing.

MR. HARNETT: Steve Hitte?

MR. HITTE: I just want to understand what you're saying. So to effectuate that recommendation, are you saying you would like EPA to have some ability so the public can have access to all 20,000 permits that have been issued? Is that -- is it as simple as that? Which isn't simple, by the way.

MR. HARLEY: I know. I'm not sure how the BACT/RACT/LAER clearinghouse came into existence.

MR. HITTE: There is only three or four hundred of those issued a year, so I just want to make sure I understand the volume of your questioning.

MR. HARLEY: There go back -- these go back many, many years. Are those posted -- maybe someone would know this better than I, but I believe that those might be posted by the permit

writers themselves.

MS. KADERLY: They're supposed to be. We're supposed to be doing that, yeah.

MR. HITTE: Right. Right, that's all others.

I just wanted to say, are you saying you'd like to see EPA house a Web site that would have all of the Title V permits issues?

MR. HARLEY: Yeah, I think that that would be a wonderful idea.

MR. HARNETT: Keri Powell.

MS. POWELL: Hi, Keith. Thank you for coming.

You spoke a lot about the need to utilize the compliance schedule aspect of Title V more effectively.

Have you ever seen a permit that is using the compliance schedule requirement in a way that you think is effective?

MR. HARLEY: No.

MR. HARNETT: Thank you very much for your time.

MR. HARLEY: Thank you.

MR. HARNETT: Appreciate you coming in.

The next speaker is Dale Kaline from