

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION X

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IN THE MATTER OF: )  
/ )  
PUBLIC HEARING - )  
CONSOLIDATED PERMIT PROGRAM )  
REGULATIONS )  
 )  
 )

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TRANSCRIPT OF PROCEEDINGS

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APPEARANCES:

Panel Members:	EDWIN COATE, CHAIRMAN
	FRAN PETERSON
	LLOYD REED
	SAM MOREKAS
	DAVID SCHNAPF
	FANNY KNOX

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1 SEATTLE, WASHINGTON; WEDNESDAY, AUGUST 1, 1979

2 9:00 A.M.

3 --oo0oo--

4  
5 MR. COATE: I would like to call this meeting  
6 to order.

7 Good morning, my name is Edwin Coate, Deputy  
8 Regional Administrator of Region X, and the Chairman  
9 here this morning. This session, this hearing is being  
10 held to address the consolidated permit regs and the  
11 permit application forms and the proposal which was  
12 promulgated in the Federal Register on June 14th, 1979.

13 At this time, I would like to introduce the  
14 members of the panel. On my far left is Ms. Fanny Knox,  
15 next to her is David Schnapf, Sam Morekas and Tom Belk.  
16 On my immediate right is Lloyd Reed and to his right is  
17 Ms. Fran Peterson.

18 I would like to briefly cover two ground rules  
19 for our hearings this morning. First of all, a public  
20 record will be available in Washington, D. C., the  
21 address is listed in the preamble. Transcripts will be  
22 made, and be available within three weeks. They will  
23 be available here in this regional office, and head-  
24 quarters. Our purpose this morning is to listen to you.  
25 All oral comments at the hearings and all written comments

1 received will be considered. All major comments will  
2 be discussed in the preamble of the final regulation.  
3 This is not a trial-type hearing, but will be sort of  
4 a presentation by which each of you who wish to comment  
5 will make a presentation. The panel will then ask  
6 questions, if that's agreeable to you. And we will  
7 proceed accordingly.

8 I would like to limit oral comments to around  
9 ten minutes. We will not get into a question and answer  
10 exchange. However, if there is time at the end of the  
11 hearing, we will close the hearing and take questions  
12 from the floor, if you like. All written comments in  
13 full will be placed in the record, and considered just  
14 as if you gave an oral statement. So, if you have a  
15 lengthy written presentation, we would like you to just  
16 sort of summarize and highlight it.

17 I hope that you have all filled out a form  
18 if you wish to speak. I will go over the list very  
19 quickly here. I have four people who have indicated  
20 they wish to speak. Those are Mr. Harold Solomon of  
21 Chevrolet, Mr. Don Provost, Department of Ecology, Mr.  
22 David Ortman, Friends of the Earth, and Mr. Schuyten of  
23 Chevrolet Chemical Company.

24 MR. SCHUYTEN: Chevron.

25 MR. COATE: Chevron. If there are others who

1 wish to speak, please let the people in the back of the  
2 room know, and we will act accordingly. This is the  
3 final session.

4 At this time, then, I would like to ask the  
5 first speaker to come forward, Mr. Harold Solomon.

6 MR. SOLOMON: Mr. Chairman, and members of  
7 the Committee, my name is Harold Solomon. And contrary  
8 to the speaker's list, I reside and work here in the  
9 Seattle area. I am a member of the Marketing Department  
10 of Chevron U.S.A., Incorporated, not Chevrolet. I am  
11 appearing here today on behalf of Chevron, which is the  
12 domestic operating subsidiary of Standard Oil Company  
13 of California. In my job, I am required to be familiar  
14 with environmental issues that Chevron must address,  
15 including the application for permits to operate market-  
16 ing terminal facilities. I appreciate the opportunity  
17 to present our views on the proposed regulations.

18 Chevron shares the concern expressed for  
19 uniform procedures and requirements to streamline the  
20 process of obtaining permits. The number of environ-  
21 mental permits, approvals, licenses and authorizations  
22 required to construct or operate an industrial activity  
23 has rapidly increased in recent years. Industry,  
24 frustrated by the complexity of the environment permitting  
25 process, where one facility may require multiple permits

1 for different activites, or where different agencies  
2 are regulating the same activity, has called for simpli-  
3 fied and expedited permitting procedures. Government,  
4 frustrated by the duplication of effort in various  
5 agencies, has occasionally considered streamlining permit  
6 programs by the consolidation of environmental permits  
7 into a master permit and on June 14th, 1979, EPA published  
8 proposed regulations consolidating permit programs that  
9 are the subject of today's hearing.

10 From our review of the consolidated permit  
11 regulations proposed by EPA, however, it is apparent  
12 that they do not meet the need for fundamental regulatory  
13 reform. In fact, they appear to add yet another layer  
14 of government bureaucracy and will make the permitting  
15 procedures more complex and time consuming than at pre-  
16 sent.

17 EPA attempts to justify the proposed permit  
18 program consolidation by claiming benefits to the environ-  
19 ment, the regulated community, the general public and  
20 the Agency's institutional efficiency.

21 The Agency has given the proposal a fair amount  
22 of publicity pointing out the expected benefits and the  
23 problems precluding complete uniformity. They have also  
24 issued a misleading statement of the optional nature of  
25 the proposed permit consolidation. The Bureau of

1 National Affairs Environmental Reporter, June 15th, 1979,  
2 published an article containing a paragraph in which EPA  
3 officials emphasized the new regulations would be optional  
4 in that they would not require that all aspects of a  
5 permit application be approved simultaneously, but that  
6 permit approvals could be broken out separately. However,  
7 it is important to note that the proposal provides that  
8 this option of separate or combined processing is at  
9 the choice of the permitting authority, and is not  
10 optional from the point of view of the applicant.

11 Chevron further believes that the permit program  
12 proposed by EPA would have serious negative effects on  
13 our domestic energy operations. EPA's approach intro-  
14 duces major additional uncertainties in permit issuance  
15 and renewal, and is extremely burdensome in that it  
16 applies the most stringent aspects of each permit program  
17 to the consolidated permit program.

18 Our experience with obtaining permits is that  
19 the terms and conditions of operating permits issued to  
20 our existing operations are rarely determined by precise  
21 reference to specific regulations. Instead, the terms  
22 and conditions are the result of extensive negotiations  
23 regarding the applicability of the regulations to the  
24 source in question. The severity of the final permit  
25 terms and conditions usually reflect the attitude of

1 the regulating agency toward the regulated industry and  
2 the capabilities of the respective participants in the  
3 permit negotiation process. As flawed as the existing  
4 system is, it is better than the one we are discussing  
5 today where the issuance of a master environmental per-  
6 mit must meet the approval of the agency involved and  
7 the agency, no matter how weak its statutory authority  
8 or poor its technical arguments, can compel compliance  
9 with its directives by thwarting issuance of the master  
10 permit.

11 In addition to the practical problems posed  
12 in negotiation of a master permit, the legal problems  
13 appear to be virtually insurmountable. For example,  
14 the definition of "state", "person" and "drinking water"  
15 are different under the different regulations. The  
16 penalty provisions are also different in civil and  
17 criminal penalties which must demonstrate whether intent  
18 is willful, negligent, knowingly, or willfully. Some  
19 permit programs are delegated to states for implementa-  
20 tion, while others, such as RCRA, are likely to be issued,  
21 in most cases, <sup>at</sup> ~~of~~ the Federal level for the foreseeable  
22 future.

23 It is not clear how the proposed master  
24 environmental permit procedure would be implemented in  
25 a state such as California where many agencies have

1 responsibilities for issuing permits. Would a new law  
2 be required to name a single agency that would have permit  
3 responsibility? If not, and the existing multiple agencies  
4 would have to individually approve the consolidated per-  
5 mit, there would be no savings of either time or money  
6 under the proposal.

7 Violations under a master permit program could  
8 be particularly onerous. Violation of a condition relat-  
9 ing to RCRA, which might be resulted by an operational  
10 change, could result in application of the NPDES permit  
11 effectively closing our entire facility.

12 Lastly, it appears in the mechanical process  
13 of consolidating these regulations EPA is using this as  
14 an opportunity to extend its control beyond the limita-  
15 tions which Congress has established in authorizing spe-  
16 cific programs. This is a trend which recently has  
17 become very apparent to us in other EPA permits and it  
18 must be stopped.

19 In conclusion, the EPA consolidated environ-  
20 mental permitting program proposed in the June 14th  
21 Federal Register, does not offer the hoped for stream-  
22 lining of the permitting process. The program would  
23 have serious negative effects on our operations by intro-  
24 ducing major additional uncertainties in permit issuance  
25 and renewal, the introduction of another layer of

1       bureaucracy and in applying the most stringent aspects  
2       of each permit program to the entire consolidated permit  
3       program.

4               Expedited permitting is possible within the  
5       framework of existing regulation and we question the  
6       need and justification for a master environmental permit  
7       program. Thank you.

8               MR. COATE: Thank you, Mr. Solomon.

9               Are there any questions from the panel?

10              Do you care to answer questions?

11              MR. SOLOMON: Yes.

12              MR. MOREKAS: I have a couple to make sure I  
13       understand your testimony, Mr. Solomon. Will you be  
14       submitting specific written comments on parts that you  
15       feel we could improve on, or is this going to be the  
16       extent of your commentary, sir?

17              MR. SOLOMON: This was to be our comments.  
18       However, if you gentlemen feel that we should clarify  
19       some of the statements, I am sure we can do that.

20              MR. MOREKAS: Okay. I believe -- I want to  
21       ask you a couple things about your comments relative  
22       to RCRA. I believe you stated that RCRA permits are  
23       likely to be issued in most cases at the Federal level  
24       for the foreseeable future. I wonder if you could expand  
25       on that a little bit. Do you have information, I guess,

1           that we don't have?

2                   MR. SOLOMON: This is just our legal department's  
3 feeling on this. I am an engineer with the company. It  
4 falls to me to make the application for permits and so  
5 forth. But the word we get from our legal counsel is  
6 that this is probably the way it is, at least this is  
7 what they see.

8                   MR. MOREKAS: But they see the states will  
9 not be taking the program, therefore --

10                  MR. SOLOMON: That's correct.

11                  MR. MOREKAS: That EPA will be issuing the  
12 permits?

13                  MR. SOLOMON: That is correct.

14                  MR. MOREKAS: Okay. I guess I have a little  
15 trouble deciphering the statements you are making about  
16 a master environmental permit. I don't believe in the  
17 regulations we are using the term nor are we implying  
18 there would be one overall permit. I think the approach  
19 that's in the regulation is basically these can stand  
20 on their own and be separate. Could you expand on that  
21 a little?

22                  MR. SOLOMON: Well, we are mainly addressing  
23 the aspect of a consolidated permit procedure, which  
24 is what we are referring to as a master permit. It is  
25 our concern that if several agencies are pulled together

1 under one permitting process, then we are going to be  
2 in real trouble if we have a violation, well, say, in  
3 one area of, let's say, NPDES, we may be shut down com-  
4 pletely even though we are in compliance with the others,  
5 RCRA or the UIC program and so on.

6 MR. SCHNAPF: I don't think that's actually  
7 legally possible insofar as we -- the permits are  
8 separable insofar as the requirements for the RCRA  
9 program would be contained in what would be identified  
10 as RCRA terms and conditions and violations of those  
11 RCRA terms and conditions would not -- we could not  
12 legally be able to effect the NPDES permit under these  
13 regulations. We set forth very clearly <sup>What the</sup> results of viola-  
14 tion of the NPDES would be. One of the grounds for  
15 revoking NPDES is not violation of the RCRA.

16 I would also like to stress, this is very  
17 important, we are not requiring any reorganization of  
18 any state government. The states are free to implement  
19 these in any way they see fit. What we would like to  
20 see is consolidation at the state level, because of the  
21 benefits we see happening. This would not require any-  
22 thing along those lines, nor does it require EPA to get  
23 the approval of any other agency to issue a permit. And  
24 that seems to be one of your fears.

25 You say the existing process is better than the

1 proposed process, but that doesn't fully recognize the  
2 fact with respect to the RCRA program and the UIC pro-  
3 gram there is no existing process. And what we have  
4 tried to do is take these programs in ~~in~~ a way that would  
5 be consistent with the existing programs. And I am wonder-  
6 ing if you could expand on that point a bit?

7 MR. SOLOMON: Not except to say we feel like  
8 that within the existing permitting process -- we feel  
9 that, this concerned a feeling of frustration in attempt-  
10 ing to obtain permits for all sorts of governmental  
11 requirements, programs, especially environmental. The  
12 frustration of having to submit an application, and then  
13 later on we are required to submit additional informa-  
14 tion. We feel like the process, as we know them today,  
15 could be streamlined, maybe by saying that an agency  
16 has 30 days to respond, or 30 days to approve or dis-  
17 approve. These are the kinds of things that are very  
18 frustrating to us, as the process of going a few steps  
19 further and having to back up a step before we can take  
20 another step. I don't have any specific examples I  
21 can point to right at the moment. But this is the feel-  
22 ing generally in the industry in dealing with this type  
23 of thing. This reflects our feeling on this particular  
24 matter that we are talking about today.

25 MR. SCHNAPF: Thank you.

1 MR. MOREKAS: I would like to follow up on  
2 that and make sure we are communicating problems through  
3 the regs in here. As we have written paragraph --  
4 Section 124.4 regarding the consolidation of applica-  
5 tions, we feel we are giving applicants the option to  
6 consolidate those applications and submit them at the  
7 same time to avoid the problem that I think you are  
8 referring to. And that it is up to the applicant, that  
9 he can delay up to 180 days in submitting two or three  
10 applications. And as much as up to two and a half years  
11 to do the very thing I believe you are driving at.

12 I would like you to take a look at 124.4 and  
13 see if that will meet your concerns.

14 MR. SOLOMON: Okay.

15 MR. COATE: Any more questions?

16 Thank you very much, Mr. Solomon.

17 MR. COATE: Our next presentation by Mr.  
18 Don Provost, Department of Ecology, Olympia, Washington.

19 MR. PROVOST: Good morning. My name is Don  
20 Provost, I am Assistant Director for the State of  
21 Washington Department of Ecology where I am in charge of  
22 the Office of Comprehensive Programs. Thank you for  
23 the opportunity to comment on the draft consolidated  
24 permit program. We appreciate it when EPA solicits our  
25 thoughts on subjects that mean so much to us.

1           The Department of Ecology has historically been  
2 interested in permit authority. At the height of the  
3 environmental movement in the early 70's, the Washington  
4 State Legislature enacted 14 bills involving environmental  
5 protection and natural resource regulation. Although  
6 the end results were impressive, it was not achieved  
7 without problems. Many of the laws were single-purpose  
8 laws with little thought given to the relationship with  
9 other laws. Thus, in '73, the Washington State Legis-  
10 lature created a procedure for centralized, coordinated  
11 processing of permits.

12           This Act, Environmental Coordination Proced-  
13 ures Act, or ECPA for short. ECPA is a voluntary system  
14 in which the applicants send the DOE a checklist.  
15 Within 15 days, the applicant is notified of every  
16 state, local permit he will need. We insure the appli-  
17 cant understands what is happening, that all schedules  
18 are met. We arrange for a simple public hearing and  
19 deliver all permit regs at one time. We are rather  
20 proud of the ECPA system, and we are happy to see that  
21 as a result of it that EPA has instituted a similar  
22 process.

23           Again, this process is designed for complex  
24 permits where several permits are involved. And the  
25 secret, I think, there is a person involved that kind of

1 helps you do the process.

2 In 1976, we decided to take another look at  
3 our own processing internally. And our agency set up  
4 a task force to draw up a consolidated permit and appli-  
5 cation form. We spent quite a while designing a single  
6 application permit, and system. And we see similarities  
7 in what is published in the Federal Register. While  
8 our taskforce was successful in their mission, the  
9 final product appeared to be cumbersome and unworkable.  
10 None of our permit people or clients we worked with were  
11 happy with this consolidated permit and application form.  
12 It became too complex and covered too many bases. We  
13 felt it was a little shaky on legal grounds. But the  
14 crucial thing was when we looked at it, it wasn't cost  
15 effective for us to do it.

16 We designed a system that affected only about  
17 two percent of our clients. We felt that when applica-  
18 tions came in, we did a six-month study and extended  
19 a little further on almost a year study all the applica-  
20 tions that came into the agency. And 98 percent of the  
21 applications that came in were for a single permit. And  
22 we felt that we were creating problems.

23 We recognize the system you are proposing,  
24 you can come in with the usual application. But we felt  
25 that it just wasn't cost effective. Every time you had

1 a very complex permit, you had consultation and negotia-  
2 tion involved. And you kind of removed the advantages  
3 of having that kind of permit application. So, in  
4 summary, we set up a system and decided not to use it.

5 Another thing happened right after that, the  
6 Legislature passed another bill, a business license  
7 center. And here all the licenses in the state go  
8 through a process, and are coordinated. The first thing  
9 is the clearing house that's been up and running. The  
10 second thing is setting up a consolidated permit system.  
11 They did a cost study, this was after our cost study,  
12 and seemed to confirm what we found out. Is that a  
13 consolidated permit was not cost effective unless you could  
14 go out and handle it by computer, and no negotiations or  
15 consultations involved. The only permit in our Depart-  
16 ment of Ecology that was in there is what we called a  
17 well driller's license. That's a simple renewal. He  
18 fills out a simple application form and sends it in.  
19 We don't have to call him up, don't do any checking, no  
20 numbers to check out or anything else. So, a completely  
21 independent agency in the state government felt that the  
22 cost effective way -- the only way a consolidated per-  
23 mit application form was workable was that if you had  
24 it simple enough and straight forward enough that you  
25 didn't have to have staff people out either doing site

1 investigations or negotiations. The purpose of that  
2 is to detail it, to acquaint you with our experiences,  
3 in permit processing, implementation. It is hoped EPA  
4 will benefit from our experience rather than possibly  
5 add another layer of bureaucracy all in the name of  
6 efficiency and economy. We believe there should be  
7 simplification, not another layer of requirements. We  
8 should be helping the clients as one human being helping  
9 another human being and working out the problems with  
10 somebody else. We are concerned that the end product  
11 may just be the opposite of what you intend to do.

12 We have some specific concerns and they are  
13 as follows: adding to the regulations' complexity and  
14 certain hazardous waste and underground injection pro-  
15 grams are in their infancy. Coordination of permit  
16 activities should be considered only after these programs  
17 have matured in their form and substances and are more  
18 clearly outlined. Our experience has been that whenever  
19 a program is evolving, there are a lot of unanswered  
20 questions, and they take this type of discussion and  
21 going back and forth. Even if the state has the program,  
22 we have to go to EPA and to the applicant and back and  
23 forth, and these things take quite a while to evolve.  
24 Generally, the permit programs are too complex. The  
25 application procedures, public notice requirements,

1 issuance, appeal and quantification procedures and all  
2 the other procedures that make up the sum of these are  
3 time consuming and inflexible. That the regulation will  
4 probably end up angering the public.

5 We are, again, as in almost every hearing,  
6 talking about enforcement penalty. Another issue was  
7 put in here that the system eventually gets uniformity.  
8 I think that state programs and so on, as we work, our  
9 people are concerned that it's voluntary. We can get  
10 into it, put our experiences from the past into it,  
11 we start not losing state character and interesting  
12 the state in special things states like to do. And we  
13 say it's now a voluntary program, but when one portion  
14 of the application is being reviewed, the remainder goes  
15 under review. We see this combining, and we see some  
16 dangers, even though it is voluntary. Generally, we  
17 are concerned about added paperwork of regulations and  
18 just the regulations coming out. In 1977, EPA published  
19 about 4000 pages of regulation affecting operations of  
20 the Department of Ecology. Since then the flood of  
21 rules and regs has increased. In '78, there were about  
22 4500 pages. And the trend is even more regulations in  
23 1979. And again, we are -- we would like to see rather  
24 than more regulations, I think, more going back into  
25 current programs and simplifying them and getting more

1 straight forward. Again, I hope that these comments are  
2 taken as they are intended, in a constructive vein,  
3 and if you have questions about our program and what  
4 we have done and our conclusions, we would be happy to  
5 provide any information you want. We will provide  
6 detailed written comments by the September 12th dead-  
7 line.

8 MR. COATE: Thank you. Are you available to  
9 take questions from the panel now?

10 MR. PROVOST: Yes.

11 MR. SCHNAPF: Both you and the previous speaker  
12 mentioned the fear of an added layer of bureaucracy.  
13 I think that's a quote. I am not sure exactly what you  
14 see in here as being an added layer of bureaucracy. All  
15 these programs exist, or will exist, and have existed.  
16 Someone has to process those permits. It's going to  
17 either be EPA or the states. Whether they are separate  
18 programs or single programs, it's going to be the state.  
19 I was wondering where the added layer came in?

20 MR. PROVOST: We have again looked at your  
21 consolidated permit ones and ours, that we had originally  
22 intended and we developed. We never got to finalizing  
23 or using them. And we just felt that the kind of --  
24 just more complex filling out of forms. It is more com-  
25 plex than the single application form. 98 percent of ours

1 are for single permits. They are getting more compli-  
2 cated, and we see this as another complication. It gets  
3 confusing. We recognize this is intended for probably --  
4 where EPA circled most of them. But again, we put ours  
5 in the place of the applicant. And it just gets more  
6 choices, more forms. Which form do you use, which one  
7 do you fill out? It gets more complicated.

8 This information, and some of the information  
9 we are finding on NPDES, individual ones, could be run  
10 in and simplified. We would rather see that going in  
11 and working on the current applications and getting what  
12 you needed rather than sending a lot of information for  
13 again. the trivial and insignificant. Are two percent  
14 really significant. We think that it appears to us as  
15 being set up for a computer system eventually, control  
16 background, and we haven't had the best luck in that  
17 area. I guess we are basing a lot of it on our past  
18 experience also.

19 MR. MOREKAS: I would like to follow up on  
20 that. You say the ones you tried to consolidate. I  
21 would assume at that point you were talking about NPDES  
22 and air --

23 MR. PROVOST: We had our own state programs.  
24 Solid waste, we were combining a program that we were  
25 developing and had in place at the time, that would be

1 our solid waste, of some hazardous waste regs. We  
2 were looking at the time at our state hazardous waste  
3 regulations. Before the state law was passed, we had  
4 done just about what you had done in the format. In  
5 forming it.

6 MR. MOREKAS: But your experience, of course,  
7 as you stated, is that only two percent of those could  
8 be classified as facilities that need more than one of  
9 those; is that basically it?

10 MR. PROVOST: Yes. The other one that went  
11 with it are that these are complex facilities, and the  
12 thing -- the company would be large and rather experienced  
13 in handling them, or else if it was you needed -- if  
14 they weren't in that class the ECPA process where you  
15 had state coordinated or agency coordination was the  
16 more effective route to go. And so, when you looked at  
17 the actual forms being consolidated, they were the least  
18 important part of the process, in our determination.

19 MR. MOREKAS: But, of course, I think your  
20 testimony is the need to consolidate and coordinate --  
21 rather, coordinate the various applications is certainly  
22 important.

23 MR. PROVOST: I think the need is for the  
24 basic single purpose laws to be coordinated, and timing,  
25 and all those things that roll back the acts and get

1       those all together. And be coordinated in a better way,  
2       and then start from there very slowly. I guess ours is  
3       that you start this process a step at a time, a step  
4       at a time, rather than -- you are starting at the end of  
5       the process, rather than getting everything together.  
6       We see problems. We would, in the State of Washington  
7       -- it would be voluntary, and we would be very careful  
8       if we were to get into that sort of thing. Our experi-  
9       ences would indicate we would look at it very carefully.

10           MS. KNOX: I wonder if you could clarify some-  
11       thing. You said one thing that the single permit appli-  
12       cation was only effective when you didn't need to have  
13       staff contact. Yet you are saying a consolidated permit  
14       form was only effective when you find need to have staff  
15       contact. But you also said it was only two percent and  
16       complex facilities where you needed any more than one  
17       permit. I am a little confused about your first state-  
18       ment.

19           MR. PROVOST: The one study, the business  
20       license center, said when you consolidate a permit they  
21       did a cost benefit study, looked at all the permits in  
22       the state. Their basic conclusion was that a consolidated  
23       permit only works when you can put it on data processing  
24       and send it out to the applicant. They fill in the  
25       blanks and send it in. An example I could use is a

1 grocery store getting a cigarette license. They have  
2 to renew it every year. They have a bunch of other  
3 permits in that same class, maybe eight or nine or ten.  
4 They get a consolidated permit, they fill out the blanks,  
5 it comes back in and it is keypunched in the computer,  
6 and checked out some numbers. Then, in that case, what  
7 they are doing also issuing it, that's when they say  
8 consolidated permits make sense.

9 In our case, when we were going through this  
10 process with the business license center, everyone,  
11 except the well driller's license, required some kind  
12 of negotiations. We had to check the numbers, in most  
13 cases we do a site inspection if you are working in a  
14 couple different programs. Again, the concept is where  
15 are decisions made on permits. Do you have a permit  
16 writing group and someone else calls the shots? These  
17 are all management problems you look at. In that case,  
18 it gets real complicated internally. Say you are within  
19 an agency and handle a permit within different programs.  
20 The paper going around there increases rather than  
21 decreases if you have it in a consolidated permit. I  
22 don't think you can help decrease the paper flow.

23 MS. KNOX: We also think there is some bene-  
24 fits. If you have someone who is writing an NPDES, he  
25 has looked at what they need for RCRA, and identify what-

1           ever overlaps there might be.

2           MR. PROVOST: Again, that's only true -- it  
3           is a concept you are working with. We have a concept,  
4           and is large industries in the state that we have one  
5           contact person for an industry in these major classes.  
6           And they do everything, solid waste, air and water. And  
7           I don't see this in your program. If that were your  
8           management scheme, and we are to have a single contact,  
9           and a company could have that single contact and do it,  
10          I think that is a management concept you set up before  
11          you go in this consolidated permit. That would work  
12          out. If you are going in, the water program is going to  
13          fill out one part, and another part, say, EPA doing this,  
14          and you have, for example, survey lines going out from  
15          another one, and not being controlled and calling the  
16          shots from one area they all have to have all that paper.  
17          And so, you are going to, rather than having the RCRA  
18          person calling shots he is going to have all the other  
19          stuff. I don't know how it would work out. We feel  
20          it's more important to have one person contact, again,  
21          with complex industries. And having still individual  
22          permits and trying to keep it as simple as possible.  
23          So, you have a person know contact rather than the paper  
24          contact.

25          MS. KNOX: I would like to add one more thing.

1 One thing we would try to do in defining the forms was  
2 not only make them consolidated, if you did need to  
3 apply for more than one form, and also make it easier  
4 if you only needed one. If, in your detailed comments,  
5 you could go back and say how well we managed to do that.

6 MR. SCHNAPF: I would like to thank you for  
7 your comments. I think the State of Washington has been  
8 a leader in this area, and we are aware of some of the  
9 things you have done. I think we in EPA are experiment-  
10 ing with these new management schemes you are suggest-  
11 ing, and I think in their Region X we have gone about  
12 as far as anywhere in the country.

13 I wanted to ask you one question with respect  
14 to the thing you said under the ECPA process. I believe  
15 you said that in that process you issue all the permits  
16 at once; is that correct?

17 MR. PROVOST: Yes. Sometimes we can't issue  
18 a permit. For example, it becomes a problem, for example,  
19 sometimes NPDES we may not have all the detailed draw-  
20 ings. But what we will do is say to the applicant it's  
21 our intent to issue these permits. If the drawings and  
22 detail and stuff are -- meet the certain regs, whatever  
23 it may be. This is in essence how we would do that.  
24 In some cases, when you are doing it, NPDES application  
25 doesn't have to be in until 180 days before. We would

1 say you have to have new source performance standards  
2 at the time the permit is issued, and that sort of  
3 thing. That's how we handle it. In essence, we issue  
4 that if the applicant meets a certain set of criteria.

5 MR. SCHNAPF: If I could follow up on that.  
6 We have been hearing some concern in some of these hear-  
7 ings that under this process, EPA will do exactly what  
8 you do. In other words, issue all the permits at once  
9 rather than issue them separately. Industry is saying,  
10 well, if my RCRA permit application is satisfactory, I  
11 don't want it held up while you are considering my  
12 NPDES permit. I was wondering whether you got any criticisms  
13 along those lines, and how that worked out for you?

14 MR. PROVOST: This is a basic problem in setting  
15 it up. In most of these, again, we are talking primarily  
16 new sources or expansions and so on. And there is a  
17 time frame that each permit comes in that's appropriate  
18 for a permit. That's a problem. We also in the EPA  
19 new source review group, that's what the -- do you give  
20 them all the other ways of handling a situation. Our  
21 approach is just basically that. Give a conceptual  
22 approval in a sense, and say if you will meet the new  
23 source performance standards at the time we will go  
24 through and do this. It is a problem, and it's  
25 awful hard for an industry coming in with a proposal to

1 face any more at the appropriate time. It's very com-  
2 plicated, and some of it becomes duplicative. We try  
3 to minimize that.

4 MR. SCHNAPF: One final question, and you don't  
5 have to answer this. Which of these state programs that  
6 are set forth in 123 would the Department of Ecology  
7 be interested in assuming? I know you have the NPDES  
8 program. Are you presently working towards getting any  
9 of the others?

10 MR. PROVOST: The Department of Social Health  
11 Services has the drinking water program. Hazardous  
12 areas, we have the program, and we are still evaluating  
13 that. And we probably would go in accepting that program  
14 from EPA.

15 MR. SCHNAPF: To what extent do you regulate  
16 underground injections under your NPDES program?

17 MR. PROVOST: Again, we don't have -- again,  
18 between the Drinking Water Act and NPDES, we don't have,  
19 thankfully, very many of the injections around. We  
20 only have a couple instances, and they are very minor.  
21 As a policy, some years ago, before the Department of  
22 Ecology was formed, its predecessor agency before EPA  
23 was formed, we strongly resisted underground injections,  
24 and that was one of the better decisions we have ever  
25 made. We haven't had a problem.

1 MR. SCHNAPF: You have the authority to con-  
2 trol it?

3 MR. PROVOST: Yeah. But we have resisted it.  
4 There are situations, and we have just a couple instances  
5 where it has been approved, and we watch it very closely.  
6 It's controlled by NPDES permit.

7 MR. COATE: Thank you very much.

8 Our next presentation is by Mr. David Ortman,  
9 Friends of the Earth, Seattle, Washington.

10 MR. ORTMAN: I don't have a prepared set of  
11 comments at this time. We will be submitting to EPA,  
12 before September, a more detailed listing of our in  
13 depth comments of the consolidated regs.

14 At this point, I wanted to focus mainly on  
15 the 404 Sections of the regs. I have been with the  
16 Northwest Friends of the Earth office here in Seattle  
17 for the last four years monitoring, commenting and  
18 reviewing various aspects of the 404 program from permit  
19 to regulations. And as the regs have come out, we have  
20 been very anxious to see how EPA has handled the very  
21 difficult tasks that Congress has laid on EPA, to figure  
22 out a way to turn off to the states those aspects of  
23 the 404 program under phase two and phase three wetlands.  
24 That is required under the new Clean Water Act amendments.

25 I guess I could say briefly that the consolidated

1 regs, as they are set up, do make it difficult to  
2 review the Section 404 program. Sort of an isolation  
3 since in most respects there is very little overlap  
4 between the 404 program and other permitting activities  
5 such as the Clean Air Act. Throwing these all together  
6 in one basket, that's sort of exacerbated the problem  
7 of trying to focus in on what's involved in the state  
8 programs, regs and guidelines.

9 Again, specifically, there are aspects of  
10 these regs which are very complicated, and will require  
11 some more detailed analysis both in terms of legisla-  
12 tive history of the Clean Water Act amendments, and  
13 also in terms of how the regs fit into both the Corps  
14 of Engineers regulatory scheme and the EPA's overview  
15 and approval of the state programs.

16 At this time, I would like to run through  
17 specifically some things that we would like to comment  
18 on. And among these are Sections 123.91, where it states  
19 no partial Section 404 programs will be approved by EPA.  
20 We definitely approve of this task. In too many other  
21 cases, both EPA and other Federal government agencies,  
22 the concept of partial approval comes in, you cannot  
23 convince a state or local entity to carry out the com-  
24 plete program. And, therefore, to get half the carrot,  
25 you essentially approve half the program. I think in

1 this case that the 404 program is of enough significance  
2 that unless all the requirements are met by the states  
3 that no approval should be given. And we would certainly  
4 wish that to be retained.

5 Section 123.94, the authority to prohibit the  
6 discharge of dredge or fill material into areas which  
7 is currently an area which EPA can avail themselves of.  
8 It is also passed on to the states. We think this is  
9 also a positive handle that the states can then use to  
10 indicate which areas are not available for dredge dis-  
11 posal areas. I guess the problem we have seen in the  
12 current setup with EPA, and also this transfer of what  
13 would be called a nondesignation process, is that there  
14 is no process really set up. The authority is there,  
15 but how do you initiate that. We can propose areas for  
16 nondesignation, and they can be looked at. The experi-  
17 ence of EPA not really taking this on in the past, may  
18 be even harder for states that are under far more local  
19 pressure, perhaps, for nondesignation or to not designate  
20 these areas, to never use that authority. So, perhaps,  
21 there ought to be some mechanism built into this that  
22 provides the process and not just the authority.

23 Section 123.99, on objections, is somewhat  
24 unclear. And perhaps later I can get some clarification  
25 on this aspect, as to just how permits are appealed. It

1 appears to be somewhat nebulous as to whether this has  
2 to come from the Regional Administrator or whether he  
3 simply operates as an instrument of passing along the  
4 state objections from citizen groups, for instance, and  
5 just what the mechanism is for appeal of that state  
6 ~~for~~ permit in that case. Currently, there is only a  
7 sort of quasi-nebulous appeal in the Corps project, or  
8 the current Corps 404 permits. Talking to the division  
9 engineer, the district engineer has issued a permit  
10 that appears to be in violation of the Act, which then  
11 goes up to the Corps headquarters and ultimately, of  
12 course, EPA is supposed to have the ultimate responsi-  
13 bility for the issuance of that permit. But once again,  
14 we have, maybe because of the lack of personal priori-  
15 ties, EPA appears to have a very low priority monitoring  
16 flow for permits, and considering the area EPA and its  
17 region covers, which includes Alaska, it's probably a  
18 wonder why only a very slim number of permits ever  
19 receives the type of monitoring and in depth looking  
20 into that they deserve.

21 So, another Section, 123.103, I guess, is  
22 unclear as well. It refers to agency board membership.  
23 It reports to board or bodies which approve the permits.  
24 And I am curious as to where this concept has crept  
25 into the regs as far as who then actually is responsible

1 within the program for the issuance of it. Are these  
2 bodies mandatory, or are they voluntarily set up that  
3 can be utilized by states for the issuance of the state  
4 404 programs.

5 And another area is Section 123.112, includes  
6 the reporting mechanisms. And it asks for annual report-  
7 ing of the number and nature of permits, how many have  
8 been issued, cancelled, denied, etcetera. Currently,  
9 the Corps of Engineers under the 404 regs are required  
10 to issue a monthly statement of those permits, and this  
11 has been very useful for groups in following a myriad  
12 of permits, and following what sort of track record  
13 the district engineers have had in terms of how many  
14 permits have been issued, and when they were issued, how  
15 many have been denied. And we would certainly prefer  
16 to see the states also be required to retain that section  
17 for their own state programs. That is, monthly report-  
18 ing of permits as opposed to a yearly summation. I  
19 think this helps everybody keep a better track of permits.

20 And I guess finally, the most controversial  
21 of all state programs has been, of course, what the  
22 exemptions for requiring permits are. I do have to say  
23 that by and large we have been very pleased with the  
24 setup of the regs in this respect. I am sympathetic to  
25 some of the concerns of people with more than one permit

1 trying to figure out how in the world these consolidated  
2 regulations and permits are going to work. But I think  
3 the Section 404 permits which by and large are fairly  
4 narrowly focused, with little overlap. Perhaps, some  
5 with NPDES. I think that these regs have succeeded in  
6 providing the mechanism for turning over to the states  
7 the opportunity to regulate the phase two and phase  
8 three wetlands for dredge spoils, if they so desire.

9 Again, recognizing this was Congress' wish,  
10 and not particularly one of our goals. Yet, I think,  
11 gives credit to EPA they have been able to come up  
12 with regs that do this in a fairly separable manner.  
13 Again, the controversial nature of what is to be excepted  
14 from these regs in terms of best management practices  
15 is one you will hear a considerable amount of comment  
16 on, and no doubt have already.

17 Again, I think, in terms of farm practices,  
18 the regs are fairly clear that best management practices  
19 will be carried out on normal farming operations. I am  
20 not aware of any activities that farm operations do that  
21 would not require a permit today under the current setup,  
22 not require a permit under the state programs. And in  
23 those activities which are currently exempted, would  
24 also be exempted under the state programs. Silviculture  
25 areas, I think, appear to be a little difficult, more

1 difficult matters to address. One is the sort of  
2 sporadic and random nature of these activities occurring.  
3 We have Forest Practices Act in the State of Washington,  
4 for instance, that supposedly is set up to regulate  
5 some of these activities. The activities that have  
6 also been familiar with in terms of Florida and Georgia,  
7 where we were shown just how silviculture practices  
8 affect the drainage of wetlands, marginal land down in  
9 a very low lying flat area in which it is difficult to  
10 determine with increment of inches or a foot elevation  
11 when you are standing in the wetland and when you are  
12 standing on a hill. If that hill is the highest area,  
13 being a foot up the elevation of anything in a couple  
14 of square miles, certainly there is a difficulty in  
15 determining just what the wetland criteria are. I think  
16 by and large the caution should be placed in terms of  
17 the protection of those wetlands, and certainly the  
18 requirements for obtaining permits by and large still  
19 have not stopped, or prevented people from obtaining  
20 those permits, and from proceeding with the activity in  
21 the silviculture area. So, like I said, especially in  
22 terms of drainage questions, that has been addressed by  
23 EPA, and they have taken a fairly satisfactory line in  
24 terms of dealing with that very thorny issue.

25 I guess to sum up, the Corps of Engineers one

1 day obtained jurisdiction of phase two and three wet-  
2 lands through the court order, and began to regulate  
3 those activities which affected wetlands and the rest  
4 of the waters of the United States, was a very signifi-  
5 cant and major event in terms of proceeding with environ-  
6 mental protection. No longer was the Corps of Engineers  
7 concerned only with environmental community of navigable  
8 waters with large tributaries, but now with the upstreams  
9 and the areas that feed into these.

10 Finally, for once, we were beginning to deal  
11 with these wetland concerns and basins on a more ecological  
12 systems approach, and there is some fear that has been  
13 expressed turning over the phase two, phase three wet-  
14 lands to the state may result in a digression of this  
15 protection in states which by and large in the past the  
16 Corps of Engineers had to make a determination on the  
17 basis of whether the state objected to a permit. The  
18 ~~Corps~~ ~~state~~ would not issue a permit in places where the state  
19 objected. By and large, we have found the state has  
20 very little objection to permits in the wetlands. To  
21 turn it over to the state program, which they not only  
22 make the determination but issue the permit, we think  
23 removes a major thrust of the environmental protection  
24 that has been afforded to wetlands, especially in the  
25 phase two and phase three areas. Nonetheless, EPA has

1       been mandated to draw up regulations for turning over  
2       the programs to the states.

3               In our comments, we will focus on those aspects  
4       in attempting to insure it is as strong a program as  
5       we can obtain at this time. Those are my comments at  
6       this point.

7               MR. COATE: Would you accept questions?

8               MR. ORTMAN: Sure.

9               MS. PETERSON: I have several comments. One  
10       is the Agency has, or is about to issue the 404C guide-  
11       lines which, of course, provide EPA with guidance on  
12       404C actions, and also may be used <sup>by</sup> ~~as~~ the states for  
13       guidance. Those were proposed sometime, I believe,  
14       in March, and the comment period closed sometime in May.  
15       I think they should be out soon in the Federal Register  
16       in final form. And if anyone of you are interested in  
17       them, David Davis at headquarters, 422-4700, would be  
18       the person to contact regarding the 404C regs.

19               MR. ORTMAN: Will the 404C regs and program  
20       regs essentially come together in terms of final comments,  
21       or is there going to be this overlap?

22               MS. PETERSON: The 404C regs were out in pro-  
23       posed form, and are not being promulgated in final form.  
24       They had a public comment period on it already.

25               The second point would be that we do have on

1 the back table copies of the guide to the state program  
2 requirements. I believe that we will be issuing the  
3 sections of the consolidated regs that are applicable  
4 to the 404 programs in separate form.

5 MR. SCHNAPF: We certainly are thinking about  
6 that. And I think it's fair to say we will probably  
7 reprint the portions of these regulations applicable to  
8 404 in a separate reprint. So, people that are inter-  
9 ested only in that program can just deal with the regu-  
10 lations they have to.

11 MS. PETERSON: One other thing is that we have  
12 the contract to develop a guide for states that are  
13 interested in 404 program transferring that list, state  
14 transfer arrangement, and arrangements for compliance.  
15 And that will give them some additional assistance in  
16 setting up state programs.

17 A final comment is state programs will have  
18 to be in compliance with the 404B1 guidelines.

19 MR. ORTMAN: They are also under review.

20 MS. PETERSON: Right. We should have a new  
21 set late this summer.

22 MR. COATE: Any other questions?

23 MR. SCHNAPF: I just have one question. This  
24 is something that wasn't covered in your testimony. I  
25 would like to get any comment you might have. One of

1 the issues EPA <sup>wrestled</sup> ~~rustled~~ with quite a bit in devising  
2 these 404 regulations was the requirement for a draft  
3 permit in conjunction with a 404 application. And what  
4 we have done is fashioned a system whereby for certain  
5 kinds of applications and activities, no draft permit  
6 need be prepared. The state can just issue a permit.  
7 And other certain categories of 404 activities, there  
8 wouldn't be the need for the state agency to prepare.  
9 Sending out its tentative determinations and having held  
10 that up for public comment and review. I was wondering  
11 what your feelings were with respect to these draft  
12 permits, whether they were good or bad?

13 MR. ORTMAN: This was something that was  
14 curious to me, I didn't comment on it. I guess I was  
15 sort of curious as to the rationale behind the draft  
16 permit idea. At least in terms of the review of the  
17 current permits. I conceive of little advantage in  
18 having before me a draft permit as opposed to an actual  
19 permit that this is what was submitted, and this is  
20 what we are reviewing. Perhaps you could explain to me  
21 in terms of other programs what the benefits of having  
22 a draft permit are? Since, like I said, I am mainly  
23 familiar with the 404 program.

24 MR. SCHNAPF: If I could, then, the reason  
25 I would like to explain that a little bit is so I could

1 get your comments. The idea is that in certain of these  
2 activities, particularly the major 404 activities, it  
3 was our feeling often the public would be just as inter-  
4 ested in the types of conditions that the Agency pro-  
5 poses to attach to the permit, and not only what the  
6 discharger wants to do. For a minor bulkhead fill, it's  
7 a go, no-go situation, either you go or you don't.  
8 That draft permit doesn't alter much. In some of these  
9 you may want to restrict conditions, so you don't do  
10 any activities during the spring salmon run. The public  
11 may be interested in reviewing those conditions. If that  
12 explains it, do you have any reaction to it?

13 MR. ORTMAN: Yes. Because that is something  
14 we have had difficulty with, and that is trying to figure  
15 out just what currently the Corps of Engineers is doing.  
16 And as you have pointed out, it is only after the permit  
17 is issued they have applied no conditions. And the  
18 opportunity at that point has been lost for going back  
19 and reissuing it. I guess our initial feeling had been  
20 that ~~it~~<sup>OK</sup> was some sort of an appeal process built in that  
21 one could go back and appeal that decision not to condi-  
22 tion it. That that might be one way of doing it.

23 You suggested another. That is to draft a  
24 permit including the conditions, and I think from that  
25 standpoint, I can suddenly see some very worthwhile

1 benefits to that. Because, again, the lack of condi-  
2 tions is a very gray area currently in the 404 permitting  
3 process. Without that information, it is really diffi-  
4 cult for citizens to review whether or not the permit  
5 that is to be issued is adequate or not. We do not  
6 have all the information available to us to make that  
7 basis. And I think from a standpoint of including possible  
8 conditions and listing it as a proposed permit, and  
9 allowing both the applicant and other interested parties  
10 the opportunity to comment only on the permit or condi-  
11 tion would be a valuable tool in helping to make sure  
12 permits do meet all the requirements.

13 MR. SCHNAPF: Thank you very much.

14 MR. COATE: Thank you very much, Mr. Ortman.

15 Our final scheduled speaker is Mr. Schuyten,  
16 Chevron Chemical Company.

17 MR. SCHUYTEN: Mr. Chairman, members of the  
18 panel, and of the audience. My name is Herb Schuyten.  
19 My position is Manager of Environmental Affairs for  
20 Chevron Chemical Company. It is a subsidiary of Standard  
21 Oil Company of California and a sister operating company  
22 to Chevron U.S.A. I am located in San Francisco at  
23 575 Market Street.

24 I share the concerns about the ultimate effect-  
25 iveness of the permit consolidation. I do not wish to

1 repeat the many constructive comments with which I agree.  
2 But do want to make one or two points regarding the  
3 proposed permit consolidation.

4 I believe that the significant benefits could  
5 result from a simplified, and I underline the word  
6 simplified, permit review and issuance process. I am  
7 pleased the EPA recognizes the complexities faced by  
8 applicants and by the regulatory agencies as well. The  
9 environmental permitting process can be a very frustrat-  
10 ing experience. In dealing with that frustration,  
11 however, we all too frequently miss one very important  
12 point. That point is that the regulatory function of  
13 the EPA is to implement and enforce the laws enacted  
14 by our Congress. Let us be certain our criticisms are  
15 aimed at the right target. This is actually a double-  
16 edged sword. On the one hand, EPA regulations in the  
17 past have more than once gone past the congressional  
18 intent, and the courts have agreed in many instances.  
19 On the other hand, let us not name the lengthy incon-  
20 sistencies and miles of red tape inherent in much of  
21 the environmental control legislation. This legislation  
22 is passed by your Congress and mine. Let's hope that  
23 the permit consolidation effort will help to bring to  
24 Congress' attention the need, not just for regulatory  
25 reform, but the need for legislative reform. To

1 paraphrase a rather well-known commercial, how do you  
2 spell relief, my answer is C-o-n-g-r-e-s-s. An effective  
3 one-step permit will require regulative reform to pro-  
4 vide simplification in the legal requirements. As an  
5 example, how can a consolidated permit program stream-  
6 line an APFD permit application and approval process  
7 unless the Clean Air Act itself is simplified. We need  
8 congressional recognition of the unreasonable complexity  
9 of the existing requirements, and the unrealistic  
10 legislatively dictated timetable for implementation,  
11 and technology forcing laws. We need to eliminate  
12 exceptions in the framework. By revising the source of  
13 many of these problems, the environmental control laws  
14 themselves. This is what we need, and we need the EPA  
15 to help us get this message to Congress. Please help  
16 us and yourself at the same time.

17 I want to make it clear, however, I do see a  
18 definite need for environmental control legislation to  
19 accomplish our environmental quality goals. There is a  
20 need for rules which apply uniformly to all segments of  
21 our society, including the government itself. But  
22 rather, simplify it as much as possible.

23 Back to the proposed consolidated permit regu-  
24 lations. Let's be sure this "simplification" does not,  
25 in fact, add to the requirements and to the time delays

1 involved in permit review and approval process. Do not  
2 tie the permits together and hold one up awaiting com-  
3 pletion and review of the others.

4 The economic benefits from construction and  
5 operation of new facilities and modifications or  
6 expansions of existing facilities are frequently tied  
7 to prompt implementation of the project. Sometimes,  
8 as dictated by windows of time during which construc-  
9 tion can take place, or, perhaps, as dictated by rapidly  
10 changing market product conditions. An effective permit  
11 process streamlining, which shortens the present review  
12 process, frequently means real economic savings to  
13 industry and ultimately to the consumer.

14 I would also hope that the state regulatory  
15 agencies can better consolidate their permit approval  
16 process with the Federal review process. We are finding  
17 that delays frequently result from duplicative review  
18 and inadequate communications between state and Federal  
19 agencies. I heard what Mr. Provost said about the  
20 State of Washington along that line. All in all, I do  
21 commend the EPA for taking on the task, taking on the  
22 complexities of the framework and attempting to improve  
23 it. We at Chevron Chemical will submit additional and  
24 more specific comments in writing before the September  
25 12th deadline. Thank you for the opportunity to share

1       these thoughts with you.

2               MR. COATE: Thank you very much. Will you  
3       take questions?

4               MR. SCHUYTEN: I certainly will.

5               MR. COATE: I guess not. Thank you very much.

6               That concludes the list of scheduled speakers.  
7       Is there anyone else that wants to give testimony?

8               MR. HUNT: My name is Jack Hunt. I am the  
9       Environmental Coordinator for the Portland area. Port-  
10      land area jurisdiction Indian trust lands in Oregon and  
11      Idaho. And I am representing the area director in the  
12      hearing here. I have degrees in forestry and natural  
13      resource philosophy and share many of the concerns that  
14      previous witnesses have discussed concerning the Section  
15      404 programs and best management practices.

16              However, the concern I wish to discuss is  
17      the unique position that Indian trust lands occupy.  
18      Indian lands are mentioned in sub-part A 123.11(e). It  
19      is noted that in many cases states lack authority to  
20      regulate activities on Indian lands. In that event,  
21      EPA, or in the case of Section 404 programs, Secretary  
22      of the Army will administer the program. I recommend  
23      that EPA should consider conferring with the Department  
24      of Interior and the Bureau of Indian Affairs on the  
25      possibility of enabling tribal organizations or the

1 tribal administrative and technical capabilities can  
2 comply with the regulatory requirements, to assume per-  
3 mit administration similar to the states. This would  
4 require approval of the Secretary of Interior, and would  
5 necessitate legal review to ascertain exactly what would  
6 be administered by the tribal organization on tribal  
7 ~~and letted~~ <sup>allotted</sup> trust land.

8 However, in the future, it would provide a  
9 potential for those tribes who become capable and moti-  
10 vated to assume additional responsibilities and authori-  
11 ties in line with the President's policy for Indian  
12 self determination. If insufficient time is available  
13 for this suggestion to be examined completely before  
14 the mandated time for the final regulations to be adopted,  
15 I recommend that the possibility of an amendment to the  
16 final regs be considered. That's all I have.

17 MR. COATE: Will you accept questions?

18 MR. HUNT: Yes.

19 MR. COATE: Any questions?

20 MR. SCHNAPF: I would like to get a feel for  
21 your thoughts about the capabilities of the Indian tribes  
22 to do this with respect to most of the programs are  
23 highly technical and really, there is an economy scale  
24 involved for a small area of land it might not make  
25 economic sense to make a program and set up a program.

1       What are your thoughts on that?

2               MR. HUNT: I recognize that. In fact, that's  
3       the reason I phrased the statement that -- phrased the  
4       statement that way. Looking in the future, if you look  
5       at the tribal organizations ten years ago and look at  
6       them now, you will find many of them have developed  
7       substantial skills both in technical areas and legal  
8       areas, administrative areas. I don't believe in our  
9       area that any of the organizations would be capable  
10      right at this moment to assume full responsibility.  
11      Some of them have capabilities in limited areas. But  
12      what's actually happening is that the tribal organiza-  
13      tions are continuing to grow. They are continuing to  
14      assume more responsibility. And I feel that if we have  
15      this established in the regulations, so that the opportunity  
16      is there, that as these organizations develop their  
17      capabilities some of them will desire to do it. Essen-  
18      tially, it's a matter of establishing a position at this  
19      time, instead of waiting possibly five, ten years in  
20      the future when there could be a desire to do it, and  
21      then it would have to go through probably the Congress  
22      or something like that in order to actually initiate  
23      that kind of activity. Some of the tribes have not in  
24      our areas necessarily, but throughout the United States  
25      some of them have developed substantial skills.

1 MR. SCHNAPF: Thank you. You know we will  
2 certainly look into this area. You raise the possibili-  
3 ty of a future amendment and that is always a possibility.  
4 These regulations, the experiences they tend to be  
5 amended from time to time for any number of reasons.

6 MR. COATE: Thank you very much.

7 Is there anyone else that wishes to give  
8 testimony at this time? If not, let the record show  
9 the public hearing on consolidated permit regulations  
10 held by EPA here in Seattle, Washington, is hereby  
11 closed at 10:18.

12 (Whereupon, the following state-  
13 ment was submitted for the  
record.)

14 Comments by ITT Rayonier, Inc. to Environmental  
15 Protection Agency concerning consolidated permit regu-  
16 lations, Seattle, Washington. Submitted for the record  
17 by David Berner, July 31, 1979.

18 The consolidation of the substantive portions  
19 of Section 404 regulations with the other permit program  
20 regulations makes it very difficult to review. This is  
21 the first time Section 404 substantive regulations have  
22 been proposed. They should have been proposed by them-  
23 selves and later consolidated if it is appropriate to  
24 do so. And example of confusing cross-referencing is  
25 Section 123.8. Also, the mere volume and breadth of

1 the proposed regulations are sufficient to forestall  
2 adequate comments in the time frame allowed.

3 The following address certain issues in the  
4 state program requirements under Section 404 dredge or  
5 fill program of the Clean Water Act:

6 1. The definition of minor drainage in pro-  
7 posed Part 122.3(e) would not allow certain activities  
8 in the wetlands which are innocuous. It is, therefore,  
9 too restrictive. The construction of ditches in wet-  
10 lands which do not convert waters of the United States  
11 to a new farming or forestry use, or which do not alter  
12 the flow or circulation of waters, or which do not reduce  
13 the reach of the wetland area should be allowed. Close  
14 ditches which do convert, drain, modify, alter flow  
15 or circulation, or reduce the reach of wetlands should  
16 not be classified as minor drainage. However, those  
17 ditches, even in wetlands, which are constructed for  
18 the removal of excess soil moisture incidental to plant-  
19 ing, protecting, or harvesting crops or improving the  
20 productivity of land devoted to agriculture, silviculture,  
21 or ranching and which do not object the wetlands sig-  
22 nificantly have beneficial effect which far outweigh  
23 any small adverse effects.

24 2. In order to be eligible for an exemption  
25 from the requirement for a permit when constructing or

1 maintaining farm and forest roads, certain best manage-  
2 ment practices must be followed. The BMP's are identi-  
3 fied in proposed Part 123.107(a)(5)(i-xvii). Sub-sec-  
4 tion (x), (xi), (xvi), (xvii), and the second part of  
5 (xiii) should be stricken for reasons which follow.

6 The cited sub-sections concern themselves with  
7 erosion or non-point source pollution due to upslope  
8 road construction or general forest management, not  
9 solely to the construction of farm and forest roads.  
10 Specifically, Section 404(f)(1)(E) deals with environ-  
11 mental impacts of road construction. EPA has improperly  
12 attempted to broaden the focus of that sub-section by  
13 attempting to write nationally applicable BMP's for  
14 farm and forest management, not just road construction.  
15 Even if it were a proper expansion, which it is not,  
16 such standards do not allow for the factoring in of  
17 local variables or expertise.

18 Further, the non-point source pollution problems  
19 from forestry activities are being addressed by BMP's  
20 under Section 208 of the Act. Therefore, BMP's under  
21 Section 404 are, at best, redundant. Section 208 BMP's  
22 are site specific, they are being developed and implemented  
23 by state agencies with considerable expertise in the  
24 fields of forestry and farming. At worst, the Section  
25 404 BMP's will undermine Section 208 planning and

1 implementation.

2 EPA's attempt to control non-point source  
3 pollution other than dredge and fill pollution with  
4 Section 404 BMP's is also contrary to the Act. Dredge  
5 spoils and certain fill material are defined as pollut-  
6 ants under Section 502(6). Section 404 applies only  
7 to the discharge of dredged or fill material and Section  
8 502(12) defines discharge as the "addition of a pollut-  
9 ant to the navigable waters from any point source".  
10 (Emphasis added.) The practices described in the cited  
11 sub-sections of Part 123.107(a)(5) above cannot, by  
12 definition, be derived from Section 404. They are non-  
13 point source pollution oriented. EPA has adopted and  
14 confirmed recently that there are only four silviculture  
15 activities which, for purposes of Section 402 permits,  
16 are point sources. None of them is road construction or  
17 the discharge of dredge and fill material.

18 The above comments speak to a portion of issues  
19 raised by the proposed regulations, and it is possible  
20 ITT Rayonier, Inc. will submit further comments.

21 (Whereupon, the following state-  
22 ment was submitted for the  
record.)

23 404 Testimony. August 1, 1979. Environmental  
24 Protectin Agency, Seattle.

25 My name is Stewart Blesdoe. I am the Executive

1 Director of the Washington Forest Protection Association.  
2 The WFPA is a 70-year-old organization which represents  
3 the interests of both large and small forest land owners  
4 in Washington.

5 We echo the concerns that other representatives  
6 of the forest community have expressed. We are particu-  
7 larly concerned that conflicts and overlap not develop  
8 between the 404 regulations and the 208 regulations which  
9 are being administered by the Washington State Department  
10 of Ecology.

11 The record will show that forest land owners  
12 have worked diligently with the state agencies in order  
13 to design best management practices which minimize the  
14 impact of silviculture applications and waters of this  
15 state. We don't believe that it is realistic to design  
16 best management practices on a national basis. The  
17 equal system is just too variable from one geographic  
18 location to another to establish BMP's which are reason-  
19 able and realistic. Many of the proposed BMP's address  
20 non-point sources of pollution of farm and forest road  
21 construction which are addressed under Section 208.

22 Also, the exemption with respect to minor  
23 drainage must be expanded, by definition, to eliminate  
24 potential applicability to unique situations of the  
25 Pacific Northwest. To an easterner, a side hill swamp

1 was probably not known to exist, however, in the mountains  
2 of the Pacific Northwest, we have just such situations  
3 where soil and topography combine in a unique circum-  
4 stance which creates wetlands on the face of a mountain-  
5 side. Such areas cannot be considered wetlands under  
6 the definitions of 404.

7 In closing, I want to emphasize the concern  
8 that the small private forest land owner has with respect  
9 to regulations. On one hand, the government attempts  
10 to encourage forest land owners to invest in culturing  
11 trees for a crop. On the other hand, government regu-  
12 lations are becoming so overwhelming that many land  
13 owners just can't cope with the dos and don'ts of the  
14 business, particularly when it begins involving several  
15 different agencies. We have strived hard to accommodate  
16 all the environmental concerns through adoption of forest  
17 practices regulations which are said to be some of the  
18 most comprehensive anywhere in the United States. This  
19 orange book contains 54 pages of regulations which do  
20 represent best management practices in this region. We  
21 believe it, and the 208 program, sufficiently address  
22 the potential problems associated with silviculture  
23 practices that the 404 exemptions can be refined to  
24 clearly exempt normal silviculture practices from the  
25 404 permit program.

1 We will follow up with a detailed history of  
2 our specific concerns.

3 (Whereupon, at 10:18 a.m. the  
4 proceeding was concluded.)  
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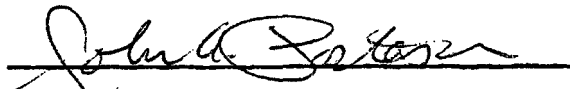
STATE OF WASHINGTON )  
COUNTY OF ) ss  
)

I, the undersigned Notary Public in and for  
the State of Washington, do hereby certify:

That the foregoing proceedings held on  
August 1, 1979 were taken stenographically before me  
and reduced to typewriting under my direction;

I further certify that the proceedings as  
transcribed are a full, true, and correct transcript,  
including questions and answers, all objections, motions,  
and exceptions of counsel made and taken.

Signed this 9th day of August,  
19 79.

  
Notary Public in and for the  
State of Washington, residing  
at Bellevue.