that monitoring to determine compliance, because that's actually -- if you could make a proper relationship on the -- on this oxygen that you're measuring, you should be able to get some indication of what the particulate matter is to help solve the problem of the difficulty doing the visual monitoring.

MR. UKEILEY: Well, and that's what we commented, that the COMs should be used as the monitoring method rather than method 9. And it -- you know, sometimes it almost gets absurd like they have the COMs, why wouldn't you -- why wouldn't you use that as a monitoring method, but for whatever reason the agency chose not to.

MR. PALZER: If it's any consolation, we have the same problem on the sources that I look at, and I agree with you. It seems to be rather strange when you've got a method that can be used continually or almost continually as compared with one that has very limited application, seems strange.

MR. VOGEL: Don't see any more questions. Thank you very much, Robert.

MR. UKEILEY: Okay. Thank you.

MR. VOGEL: Do we have any other speakers prepared to talk? Sharon Genasci? Gary Abraham.

I'm sorry, would you like to go ahead,

please. Let me remind you that we are taping this for audio transcript as well as written transcript is being reported. You have ten minutes for your presentation, ten minutes for questions and answers. Go ahead.

MR. ABRAHAM: My name is Gary Abraham. I'm a private practitioner and attorney. I represent citizens. I've been doing this for about three years limited to Title V concerns with plants.

I think the Title V program is important to ensure uniform criteria between states and federal rules where they are applicable. And then helped interaction between citizens enforcement and Title V petitioning in one case I can speak about, and I brought a citizen suit against a landfill for Clean Air Act violations. And you may appreciate the Clean Air Act is so complicated that when you get before a district or a judge and there is a pending EPA or state based Title V permit, judges are very reluctant to speak to the law until the agency has acted.

And in that case our citizen suit was held up because we did have comments pending and ultimately a petition brought to the EPA requesting our objection to the Title V permitting for that facility. And as it turns out, the region agrees with most of my issues and was able to bring that response to my

position back into federal court and the case immediately settled once the other side saw that I was going to win on those legal issues.

So in many cases I think the Title V program is relatively new and it's applicability of landfills is even worrisome. States are unsure about how it applies and what the level of detailed monitoring and so forth, some of the things that have been talked about here, what those requirements are.

Very important to have a comprehensive program like this that allows for an opportunity to lay out all those things and to provide some recourse for citizens against a state agency that is not familiar with the rules that apply so that you can go back to the EPA. And I think that the -- I suspect the interaction between the enforcement function and the Title V permitting and petitioning process, as in the case I explained and described, perhaps lightened the EPA's load. In that case they didn't have to do any enforcement. The enforcement was done by citizens and it was done successfully on account of the ability to piggyback on the Title V determination.

I have a number of points I could talk about, but I would really rather field questions, if you have any, about my particular experience.

MR. LING: Thank you very much. Ray stepped out of the room. This is Michael Ling. I also work at EPA and I will turn over the first question to Carol Holmes.

MS. HOLMES: Hi, this is Carol Holmes in the EPA enforcement office. How are you? I was calling -- so what I am trying to understand about your case, your petition asking EPA to object to the permit was based on the same violations that you were enforcing in the citizen suit; is that correct? Hello?

MR. LING: Gary, are you still on the line? Is anyone else on the line?

MR. HALL: This is Bob Hall. I'm just monitoring so the line is still open.

MR. LING: Thank you, Bob. Now we know the line is still open.

Is Gary Abraham back?

MR. ABRAHAM: Hello, this is Gary Abraham.

MR. LING: Thank you. I think we had a question from Carol Holmes. Would you repeat your questions, please?

MS. HOLMES: Sure. This is Carol Holmes at EPA.

MR. ABRAHAM: Hi.

MS. HOLMES: Hi. I was just trying to verify that your petition to EPA asking them to object to the permit, was it based on the same violations that you alleged in your citizen suit?

MR. ABRAHAM: Yes.

MS. HOLMES: So you found it very helpful to have basically EPA's opinion on the issue in order to help the district court understand the Clean Air Act and the allegations; is that correct?

MR. ABRAHAM: That's exactly right, and essentially got a legal opinion from the EPA.

MS. HOLMES: So what do you think would have -- what's your opinion on whether or not -- what do you think would have happened if EPA had not granted your petition in a timely manner, therefore, you wouldn't have had it before you had to go to trial?

MR. ABRAHAM: Well, the case certainly would have languished, but in that case there were three neighbors direct -- very close adjacent to the landfill who were chronically sick from exposure to landfill gas. And one of the questions was whether the emissions of estimation was accurate based on the proper default values and so forth. Settlement, among other things, bought them out and the landfill moved away and got rid of the health risk. So it would have

affected their lives definitely adversely.

MS. HOLMES: Did the district court actually stay your case pending EPA's responding to the petition?

MR. ABRAHAM: No, it did not.

MS. HOLMES: Okay. Thank you very much.

MR. LING: Adan Schwartz.

MR. SCHWARTZ: Hi, Gary. I was just trying to get a sense of what some of these issues were that the EPA responded to and that were the subject of your suit. So you mentioned one was proper emissions estimates. Are there any others that you think are worth mentioning?

MR. ABRAHAM: Well, the emissions estimate is interesting because landfills aren't smokestack industries and it's difficult to estimate the emissions. There are two methods for which EPA has provided a program called the LandGEM program to estimate emissions depending on whether the landfill is a co-disposal landfill or not. That is whether the landfill is co-disposed industrial or hazardous waste in the past.

The consequence of co-disposing waste in that sense increases the benzene, xylene, and toluene estimated emissions. In this case this is a old

landfill, and I think it's 1958, before RCRA prohibited hazardous waste co-disposal. And they were getting the benefit by the state agency of the nonco-disposal default value.

I made comments and have other cases regarding landfills in which this issue is really still undecided and does a landfill become a co-disposal landfill and that can potentially can become a major source and not otherwise have been -- when it disposes industrial sewage sludge or substantial quantities of sewage sludge from municipal power plant sewer plants or other kind of nonmunicipal solid waste. And whether landfills are co-disposal because they're not in subtitle C plus D or whether they are co-disposal because they are subtitle D and they dispose of lots of nonmunicipal solid waste streams that are permissible under subtitle D, that remains an open question.

But in this case it wasn't -- it was easier to determine apparently because of the clear history of co-disposing hazardous waste. I don't know if that answers your question.

Some other issues that have come up with the landfill and gas and energy plant located on site are under common control for purposes of Title V and so much as -- or complicate the emissions. That was

another landfill case I had where EPA determined that they were under common control because they were adjacent to one another. They were under a contract. The landfill gas and energy plant provided the only control device for the landfill gas. So this was -- I -- probably a fairly easy call because without so determining it would be too easy for a landfill to take its gas control operations off permit, as it were, or separately permit them and avoid major source determination.

MR. VOGEL: Marcie Keever.

MS. KEEVER: Hi, Gary. I just had a question about how long -- I don't know how many Title V petitions you've filed, but I'm wondering how long it takes you to get a decision on Title V petitions.

MR. ABRAHAM: Well, it's taken too long and in one case I did file a delay lawsuit to -- that was the case of the one where I brought the enforcement action and there was an interaction between the Title V determination and the outcome of the enforcement suit. And I did that obviously because I needed that legal opinion for the main action. But it has been taking at least six months to get an answer from the EPA.

It's been difficult also until recently -- I think this has been changed in New York

where I am -- to find out when the petition is due because the state agency will submit their proposed permit to the EPA and there won't be any notice of that.

Region 2 has recently put up on its web site a table showing when it received the Title V proposed permits and when the citizens petition is due, so that's been very helpful.

MR. VOGEL: Carol Holmes.

MS. HOLMES: Hi, I'm sorry, I had one follow-up question. Did you file your citizen suit before you filed your petition with the EPA or did you file your petition first and then file the citizen suit?

MR. ABRAHAM: No, the suit was filed before the petition. The Title V renewal came up in the middle of the lawsuit.

MR. VOGEL: Being no further questions, thank you, Gary, for your testimony.

MR. ABRAHAM: Thank you very much.

MR. VOGEL: Do we have Scott Gollwitzer on the phone? Do we have Sharon Genasci? Do we have anyone else who would like to testify before lunch? Well, let's take a break here until 11:40 and we'll try to get Scott on the line and take his presentations and

then we'll break for lunch.

(Recess taken)

MR. VOGEL: This is Ray Vogel with the EPA. We are -- Title V Task Force is here in the room and we have been waiting for Scott to show up. Also thank you for showing up, Sharon. I think we would like to go ahead and take Scott's testimony and then -- Sharon, could we ask that you call back in? Maybe we have two options here. One is to go ahead and take your testimony but that will put us short on lunch. The other option is to -- I think we have one objection on that -- I'm just talking about options here. The other option is to go ask Sharon if you could come back after this evening, say at 5:40.

MS. GENASCI: 5:40?

MR. VOGEL: Yes, central time.

MS. GENASCI: Yeah, I probably can do that. So at the very end? And that's the only other option, otherwise you miss your lunch? Is that it?

MR. VOGEL: Let me get a sense of the Task Force here. Would you rather stay and get Sharon now during lunch.

UNIDENTIFIED SPEAKER: Ray, if -- it's five minutes early now. If we start now, let's just see if we can --