

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

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

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

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

22 MR. UKEILEY: Okay. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Is Gary Abraham back?

18 MR. ABRAHAM: Hello, this is Gary
19 Abraham.

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

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

25 MR. ABRAHAM: Hi.

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

5 MR. ABRAHAM: Yes.

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

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

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

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

1 affected their lives definitely adversely.

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

5 MR. ABRAHAM: No, it did not.

6 MS. HOLMES: Okay. Thank you very much.

7 MR. LING: Adan Schwartz.

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

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

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

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

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

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

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

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

11 MR. VOGEL: Marcie Keever.

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

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

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

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

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

9 MR. VOGEL: Carol Holmes.

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

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

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

20 MR. ABRAHAM: Thank you very much.

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

1 then we'll break for lunch.

2 (Recess taken)

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

15 MS. GENASCI: 5:40?

16 MR. VOGEL: Yes, central time.

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

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

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