

ENVIRONMENTAL DATA GOVERNANCE INITIATIVE

ETM SBU 012

Transcript of an Interview

Conducted by

Chris Amoss

(With Subsequent Corrections and Additions)

INTERVIEWEE: Eric Schaeffer

INTERVIEWER: Chris Amoss

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<T: 0 min>

INTERVIEWER: All right, so what is your age?

INTERVIEWEE: Sixty-two.

INTERVIEWER: And then what is your ethnic identification?

INTERVIEWEE: White. European if you –

INTERVIEWER: What is your gender?

INTERVIEWEE: Male. Male.

INTERVIEWER: Sorry. I thought you said no. Once again, the ears. What is your formal education and your profession?

INTERVIEWEE: Law degree, lawyer, and nonprofit manager.

INTERVIEWER: And what prior jobs did you have before coming to EPA?

INTERVIEWEE: Thank you. Before coming to EPA?

INTERVIEWER: Yeah.

INTERVIEWEE: I was at a law firm and before that on Capitol Hill, starting as a legislative aide and then doing environmental and energy policy work for the Northeast-Midwest Institute, serving a bipartisan coalition of Members from Frost Belt states. serving and started as a legislative aide and then worked for

INTERVIEWER: And when you got to the EPA in 1990, if I recall correctly, what part of the agency did you first work?

INTERVIEWEE: Office of Policy Planning and Evaluation which no longer exists.

INTERVIEWER: And what other positions during your time in the agency did you have?

INTERVIEWEE: I worked in the Office of the Administrator as a special assistant, and eventually managed a small pollution prevention office reporting to the Administrator. And in 1994, was actually late '93 or early '94 was assigned to Enforcement Office which had just been reformed and consolidated and reformed, made larger. I later served as Deputy Director of the new Office of Compliance, and finished as Director of EPA's Office of Enforcement.

INTERVIEWER: And the Enforcement Office is underneath the OGC, correct?

INTERVIEWEE: No.

INTERVIEWER: Oh, it's not.

INTERVIEWEE: I mean that's a logical assumption but – thank you.

INTERVIEWER: Thank you.

INTERVIEWEE: The Enforcement Office enforces the federal environmental requirements. The Office of General Counsel advises the agency about the legal adequacy of the legal validity/adequacy of regulations and standards. If the agency is

taken to court, as often happens, OGC is part of the group that will defend the rule. Usually the Justice Department will do the argument, but the General Counsel's Office will be very involved in writing the briefs and participating in legal strategy.

INTERVIEWER: Okay, all right. So only in litigious affairs [...]. Got it.

INTERVIEWEE: Right.

INTERVIEWER: All right. All right. So I wanted to quickly and the last question is why you left EPA, but you kind of wrote a big thing on that in your resignation letter. Is there anything you'd like to add that's not already in the public document?

INTERVIEWEE: I don't think so. I think you basically have it.

INTERVIEWER: Yeah, okay. So let me, I'm just going to tell you the main structure for how this interview's going to work. You went through three different administrations.

INTERVIEWEE: I did.

INTERVIEWER: Bush I, Clinton, and Bush II. What I'm going to do is I wanted to go through those three transitions with questions for them. So we'll go first Bush the questions, then Clinton questions, then Bush II questions. And then final kind of quick questions at the end, kind of summary questions. All right, so during Bush I, what was your position and location in the agency?

INTERVIEWEE: I started out in the Office of Policy Planning Evaluation. I'll just call the Policy Office. That's what it was. They were charged with reviewing new standards and thinking up innovative ways to get regulations to be more cost effective by encouraging elimination of pollution at the source, rather than just managing wastes after they've already been generated. I might have been there 15 months, and then I was brought up to the Administrator's Office as a special assistant. Toward the end of that time, I ran a small pollution prevention staff in the Administrator's office.

INTERVIEWER: What were your tasks or responsibilities?

INTERVIEWEE: My portfolio was pollution prevention which was hot idea at the time and was focused on ways the agency could reduce pollution at the source rather than focus more on treatment and control systems which you're always going to have; but the idea was what can you do in terms of encouraging recycling, encouraging cleaner production processes that generate less waste that has to be managed, design chemicals so they're more –

INTERVIEWER: I'm sorry, design what?

INTERVIEWEE: Chemicals so they have less impact on the environment.

INTERVIEWER: Okay. So basically it was a very broad sense of pollution? There wasn't exactly a specific industry that you targeted?

INTERVIEWEE: No, I was involved on the Hill in my last days there in getting the Pollution Prevention Act, drafting that and getting it through Congress. And that set broad objectives to maximize pollution prevention, also set up a small state grant program to encourage source reduction and recycling. So that's kind of what I came in the agency to do. Those programs were basically voluntary; and they included, for example, an initiative to try to encourage companies to

reduce their releases of highly toxic chemicals. And was fairly successful, although a lot of the reductions made through that program were also required under federal law say, for example, the Clean Air Act; but we thought the combination of having baseline requirements and a program that encouraged people to stretch and target these chemicals for reductions would be a good thing.

INTERVIEWER: And kind of push that through – push that type of regulation through, did you find that your supervisors were helpful in assisting you?

INTERVIEWEE: Yeah. But I found there was a lot of turf jockeying in the agency because pollution prevention cut across programs, and was not one of the established, mainline offices within EPA that have their own power structures. I was struck how challenging it was to work across those lines and also to work with regions which have an independent management structure that is supposed to answer to headquarters. But the regional administrators were politically appointed and that created a lot of sort of internal governance issues.

INTERVIEWER: Okay. Well, that kind of goes into my next question is how specifically for you then would you say that politics affected your work during that period?

INTERVIEWEE: How did which folks?

INTERVIEWER: How did politics affect your work during that period?

INTERVIEWEE: Quite a bit. The Hill was interested in pollution prevention for mixed reasons. Honestly, there was an attempt successfully to move the Pollution Prevention Office out of what was then the Policy Office and into the Office of Toxic Substances. That then became the Office of Pollution Prevention and Toxic Substances. Why did that happen? Partly it happened because there was concern over the management of pollution prevention activities within the Policy Office and some anxiety about that within EPA and also outside the agency. Thank you. That's great.

INTERVIEWER: Thanks a lot.

INTERVIEWEE: Thanks. Yes, thanks. So you are in a position to judge being from New Orleans.

INTERVIEWER: Yeah, I know, right? That's a –

INTERVIEWEE: Right? I mean you're going to rule on a –

INTERVIEWER: I was thinking it's kind of a bad idea to order something that your city is famous for –

INTERVIEWEE: Yeah, really.

INTERVIEWER: – but it looks good, honestly.

INTERVIEWEE: It does look pretty good.

INTERVIEWER: You know, I will say though the key to a good – this is all getting recorded, but the key to a really good po'boy is actually having the bread be a little stale and just –

INTERVIEWEE: Really?

<T: 10 min>

INTERVIEWER: Yeah, you don't want fresh bread. You need like the crispiness that kind of comes apart as you eat it.

INTERVIEWEE: I'll make note of that. So when the program was moved –

INTERVIEWER: It's good though.

INTERVIEWEE: – from the Policy Office to the Office of Toxic Substances, I was planning to go with it and I was over there for a little while. But then Senator Mikulski's staff wrote in on an appropriations bill a requirement that a staff with at least five people be housed in the Administrator's Office. They didn't want the program to be what they considered to be buried within an office that had too many other responsibilities. So I went back to the Administrator's Office to try to manage that.

INTERVIEWER: During that period, did you feel like you made any enemies?

INTERVIEWEE: In that phase? You're talking about all of EPA or –

INTERVIEWER: No, I'm talking about you specifically in terms of what you wanted to regulate that people started kind of noticing you and targeting you.

INTERVIEWEE: Well, I was involved initially in programs that were new and that required some interruption in the work of program office. They had to do things a little differently. That created anxiety. An example of something we did when I moved back to the Administrator's Office, we put out a memo that said that the state – the grants that EPA gave to state agencies should be administered flexibly to give the state agencies room to move funds around to deal with the most significant problems. That was popular with the heads of state agencies, much less popular with their program offices who were used to counting on revenue and with the EPA Program Office.

And honestly in retrospect – really good, thanks – I'm not sure it was a great idea. I understood better after I'd been at EPA why you need water grants to support water work because as it is, the agencies can barely keep up with it. So it's an example of disruption that may mean one thing in Silicon Valley but in government can be creative but also comes with a price. I'm not sure I would've done the same thing.

And then I was involved in reorganizing the enforcement program because they had to decide what the structure was going to be and the structure that I basically recommended – and it was very much a committee process. I persuaded the committee to endorse it – broke up some of the traditional media-by-media lines. Pollution prevention thinking was we have too many stovepipes. We need to think more broadly. I thought that enforcement should be organized by industry sector so that you looked at multiple problems at the same time. And that's how the Enforcement Office was – partly how it was set up. So the actual enforcement arm had an air and a water division. The Office of Compliance which did the targeting and planning and the monitoring, that was organized more by industry sector.

That's since evolved. That structure was in the end sustainable. And I think partly that was internal leadership wasn't quite there to follow through on it. I was the deputy in that office, and I didn't stay very long. So I could've been

part of the problem. There wasn't the internal management to see it through. And I also think it had some conceptual problems because it was actually difficult to do. What looked good on paper, was harder to do in reality. That said, the idea of working on enforcement issues by industry sector, that took hold and that is still the primary way that Enforcement organizes and manages work. So for example, the mineral processing industry was an enforcement target because it generates huge volumes of waste that create serious environmental issues when things go bad and there are often big violations. By sticking with enforcement initiatives that target certain sectors, you get to learn a lot about the industry and that's better when it comes to negotiating settlements.

It's better for enforcement. So some of the concepts survive even if the flowchart has since been amended some. So you said enemies, I had adversaries, people who like when they saw me coming, there was a little bit of an angel of death thing because I was like a reorganization guy and I felt that tension for sure. I was then made director of the Office of Enforcement in my last five years. I didn't have any direct enforcement experience. I think the people in the headquarters, some of them, not all of them, some of them resented it. And in retrospect, there's several of them that I just needed to move and didn't quite have the confidence to do that.

I was much more popular in the regions because I felt like and I still feel like the Enforcement Office at headquarters had become this kind of – they had an oversight function, but the oversight function always came at the end of a process where the region had negotiated a settlement or was about to bring a case and headquarter staff was scrolling over documents and raising concerns late in the game and sometimes not always the most important thing. So I was actually the regional – if you want to think of internal politics at EPA, the regional counsels who are the regional lawyers, their offices generally were enthusiastic about my being put in to the job. Some people at headquarters were not, were anxious so.

INTERVIEWER: Can you describe a little bit more about that anxiety and what you think created that anxiety for them?

INTERVIEWEE: Yeah, I think part of the issue is because I came from the Office of Compliance. I had worked on what I think was a pretty successful audit policy which was designed to give people the incentive to disclose and correct violations they found on their own, by reducing or eliminating penalties if there was no harm. Kind of a no harm no foul approach. And that was done because the agency was facing the threat of possible legislation from the Newt Gingrich Congress that would've been much more sweeping and could've done some damage

I think regional counsel especially severely supported the policy. Some people at headquarters were anxious about it. When I came over to Enforcement, I think there was some people that thought well, he's just going to be about voluntary compliance. We're an enforcement shop. I think that for the most part went away because we had a pretty aggressive enforcement program and brought some pretty big cases. I was right in the middle and more supportive of those. In fact, I was pushing some of the critics, some of

the people who were most anxious about my not being an enforcement guy, I was basically saying, "Where are your cases?" I mean "Where's your output? We're shouldn't just spend our time debating theory, this is an enforcement program."

<T: 20 min>

So one of the ways it's manifest if you have that problem is there's a distortion of message. There's a kind of foot dragging that can happen on initiatives. There's a slowness to do what I thought would result in bigger cases. That was true in the water program, not true in air or divisions I managed.

INTERVIEWER: All right, so what I'm getting and I want you to correct me if this is incorrect, but the water program was reluctant for –

INTERVIEWEE: When I say the program, this is the enforcement program in my office.

INTERVIEWER: So perhaps the lawyers in the water program were reluctant to run up against or the policymakers?

INTERVIEWEE: Yeah, the lawyers were. They thought they had a system down. Honestly I think they were threatened by the notion that they might do some actual case work. They were more in a kind of oversight, take the documents that came from the regions and ride herd on those. Some of that needs to be done, but regions didn't like that very much. And I wanted national cases because we were fighting states that were trying – really going after EPA and somewhat like they're doing now. Now it's more extreme, but we face some of that twenty years ago. And I thought, look, if we're attacking – maybe attacking is the wrong word, but if we're going after pipelines or companies that have 20 facilities across the country, we get bigger bang for the buck and it's easy to argue that EPA's enforcement program is national and multi-state.

In other words, we weren't just limited to going into one state and picking one facility, but could tell. We can tell the states we're looking at this industry across the board. And we could make states understand that for the most part. Once they got that, they felt less anxious about the turf. And I couldn't get the staff in the water program to really understand that. I also frankly I couldn't understand why some regions didn't produce water cases. I was more concerned about the lack of enforcement than about the very last steps of the in reviewing consent decrees to determine whether they were adequate.

INTERVIEWER: All right. So it wasn't exactly a political reason why they didn't want to get into it?

INTERVIEWEE: No, not in the sense of maybe it was political in the sense that they started out thinking I was soft on enforcement. I had these very young people come in my office and try to lecture me on deterrence. You know, I understand what deterrence is. When I took the job, I said I'd meet with everyone in the office, 150 people. I said everybody gets one on one. My first three months I'm going to open the calendar if you want to come in. About 80 people did. It

was actually very useful. I learned a lot, and that helped. But I found people kind of rigid without quite enough thought.

INTERVIEWER: So bureaucratic or?

INTERVIEWEE: Yeah. To be honest, that's what I thought. I had come from the Hill. I'd worked in industry. I worked for nonprofit. I bounced around. I was dealing with people who'd been in EPA 20 years and hadn't known anything else. I mean I can see the initial concern that, hey, putting somebody in the office who hasn't actually been in an enforcement program, mostly been doing voluntary stuff; but it should've been pretty clear after. I think it was to most of the people in the office that no, I'm like gung-ho for enforcement. I wanted bigger cases, not just a bag of smaller stuff.

INTERVIEWER: Right. This may not be relevant to what you're actually working on; but when you were working those initial cases, did you find actual pushback on the science that you were using to back your cases up?

INTERVIEWEE: From who?

INTERVIEWER: Let's say from states from them not wanting to comply with certain regulations.

INTERVIEWEE: A lot of enforcement cases there can be fights about the monitoring data, about interpreting data. An example is we took off after coal plants that had been modified to increase their output and that as a result significantly increased emissions but had never gotten a permit for control those emissions. Those are the so-called grandfathered plants without getting into details. Those are the so-called grandfathered plants, the ones that don't have to meet the stricter rules that apply to new plants.

So they're allowed to let slide until they try to get bigger. If that happens, if they're physically expanding or modified in a way that jacks up their output and their emissions, grandfathering is over. You have to come in and pay the freight. They have to put on a scrubber, for example. One of the things we had to show – I'm sorry to back up – is was there a modification that increased emissions, and the fights we had over those questions were a mix of law and fact.

So a legal question, for example, is whether or not the modification was a "routine repair," because those are exempt, versus an actual physical modification that is not routine and pushed emissions up. Industry lawyers would argue "It's routine because everyone does it." And we had a judge, I remember I thought it was a great line, she said in one of the hearings, "A whole lot of people have heart surgery in the US. Does that make it a routine operation?"

And that's how we thought. We might also get arguments about the records we relied on. Usually the emission increases were fairly straightforward for the cases we got, but it can get very complicated. You have some plants, for example, that rarely actually test their emissions because of the way their permits are written. So then you have to basically model what the emissions are based on throughput factors. So you can fight over that. There's always fights over evidence in enforcement.

. INTERVIEWER: A quick kind of long-term career question. Did you notice during your entire time in the EPA you would have those type of cases, did the language being used or what was permissible as fact, did you notice it changing or shifting that was you would think, oh, five years ago that wouldn't be considered?

INTERVIEWEE: EPA shifts all the time. You can't enforce a rule that's no longer in effect. You also almost never enforce a brand new rule. There's usually a kind of shake out period. I can't say we never did, but the rules were enforcing like the grandfathered ones, that had been on the books forever. EPA had kind of created over time a series of exceptions and clarifications. We used to call it – some of those were in the rulebook. Some of them were interpretive decisions. At one point there was a program called shadow laws that was created outside the agency, shadow law.

And it was to take all the plant-by-plant decisions or the guidance documents and try to put them in order because people can come in to court using them saying, "Wait a minute, you said over here that I could do this. Region 4 said I could do it." So to deal with that, we put out probably 25 compliance alerts is what we call them. We would say – I'll just pick a wonky example. The rules say that if you run a combustion device, you have to meet a sulfur limit. A flare is a combustion device. Combustion device doesn't just mean a heater that's designed to actually drive heat to a process. It includes a flame that you're using to burn off waste gas. We thought that was pretty freaking obvious.

<T: 30 min>

But I remember a case, Rohm and Haas is the name of the case where there was a fair notice problem. Industry said, "I'm shocked. I didn't know you expected me to do this. And by the way, Region 7 said I didn't." So we created the compliance alerts as a way to kind of stay ahead of the game. I'm not quite sure that answers your question, but a lot of the –

INTERVIEWER: It's helpful because the –

INTERVIEWEE: I know the feeling.

INTERVIEWER: – question is originally posed for scientists. I was trying to modify it for legal aspect. So it's answered the way that –

INTERVIEWEE: EPA rules are heavily, heavily fought over in terms of the science behind them. I mean I'm talking about cubic yards of testimony, scientific data, cost benefit. So that's fought when you set rules. You have lots of technical disputes when there's an enforcement action, but those involve wrangling over the evidence in a specific case. Okay, so. But you asked then about what about rules changing. I would say it's less the changing rules than keeping up with the interpretations like making sure that the agency's been reasonably consistent because to the extent you're not, that's going to bite you and it should.

INTERVIEWER: All right, so let's move into the transition into Clinton. What position when the transition first happened were you holding I guess in early '93?

INTERVIEWEE: So in '93 I was in the Administrator's Office running the pollution prevention staff, and I'd been in the Administrator's Office about two years. I was not – at least I don't remember being on a transition team. Usually transition team would be people inside and outside the agency, and I wouldn't have expected to be. But I was tapped because they needed somebody in what turned into Carol Browner's staff to represent the administrator on the enforcement organization and basically to help coordinate. I was one of about ten people working on it.

INTERVIEWER: And did you notice kind of a cultural shift in terms of attitude, mood, tension?

INTERVIEWEE: I would say people were glad to see Browner and Clinton come in. But it was not a rough transition. Bill Reilly had been the administrator. I think the reason people felt good about the transition was not about changing EPA management, because the agency's management under the first Bush was pretty popular, I think the political managers then were pretty effective, some of the best managers that I saw. I think the concern was the White House had a hardcore of pretty conservative activists working in Dan Quayle's Competitiveness Council who were gunning for EPA and trying to get in EPA's way.

You could argue that was their function. But EPA saw I think that changeover as, ah, we'll get rid of those guys. And that happened obviously. Then of course in '94 the Gingrich Congress came in and the heat was back on. It was not a lot of tension between the political people leaving and the political people coming in that I remember.

INTERVIEWER: Okay. So most of your supervisors, especially if you were in the Office of Administration, your supervisors, what would you say the relationship, were they still kind of helping you out during that period? Were they more or less supportive during the –

INTERVIEWEE: See, I was in a weird situation. For that period, my supervisor was Hank Habicht, who was the deputy administrator, and Nancy Firestone, who was assistant deputy administrator. They were great. They were pretty much the only people I was accountable to. I didn't have a complicated web of reporting relationships. That is one of the benefits of being that kind of special assistant mode.

INTERVIEWER: All right. So I really want to get into the Newt Gingrich Congress where what type of tactics did he use and his people use to kind of go after –

INTERVIEWEE: You know, as he has done his whole political career, he likes to challenge the legitimacy of government functions that he doesn't like or his backers don't like. So they wanted to make Enforcement about – and Tom DeLay was also high in the ranks and a former pesticide formulator from Texas and was very – he was generally angry about everything as far as I could tell, kind of like the Tea Party people.

So they wanted to make EPA the jackbooted thug and so on. I had to go out to a lot of industry groups and represent EPA during the time, along with other people in the office. I told a true story which was that in the year before

the Gingrich Congress came in, Dingell's staff had called us up. John Dingell was always very strong on enforcement. Whatever positions he took on regulation of cars and trucks, he was very big on enforcing the laws Congress wrote. We were under pressure to relax enforcement and this was about the fight over whether EPA should allow companies to shield evidence of criminal violations discovered in audits. Dingell's staff basically said, "Don't you dare" and kind of read us the riot act. Don't go soft on us. Then after the election six months later, we're being taken up to the Hill and accused of being jackbooted thugs So to industry audience, I would say, look, we're the same people. It can't be that we were weenies in October and in March we're suddenly the people kicking down people's doors. Come on, let's get real. The industry guys who were savvy, some of them are pretty sensible, they would recognize that and chuckle. We knew that the Gingrich crowd were an existential threat to the Enforcement program. But we could not just do the same things we were doing, or just curl up in a ball and be defensive.

So that's why we took something like the audit policy and said let's get ahead of the game. There is an argument for treating people who voluntarily disclose violations and are willing to correct them differently than you treat somebody that you have to catch, right? That's logical. We worked our way through that issue and I think that took a lot of thunder away from our opponents. We also set up compliance assistance centers. I was in the Office of Compliance at the time. Said look, we're going to have an online place where if you're a metal finisher you can go for counsel on how to comply and we gave a grant to the metal finishers to help to run it. They did things like post 3-D simulations of how to control pollution from metal finishing during different stages in the process that people could follow. We published compliance notebooks— about 19 of them – for key industry sectors. They turned out to be very popular, getting translated into Serbian and other languages. I mean they were very popular.

INTERVIEWER: So did it work? Did the effects work?

INTERVIEWEE: Yeah, they did, I think. I'd like to think that we came out of it stronger because it was such a threat, we had to step back and say, well, first of all is there a reasonable concern that we've been too stiff and rigid and that we need to, for example, do more to encourage voluntary compliance. What are we going to do about that? What statement can we make? What support can we give? On the enforcement side, it kind of drove us toward what we wanted to do anyway, which was moving toward big targets. They could still attack us for bringing an enforcement case against large power companies, for example, and they did. But it was harder for them to get public traction for going after big coal plants with black smoke pouring out of them.

<T: 40 min>

There were lots of those opportunities. So we ended up kind of trying to make voluntary compliance easier, but on the enforcement side, going after bigger game. I think it made our program better. Also if you go online and look at the

EPA enforcement cases, the way that they're described is actually very lucid. They walk you through what was the case about, what was the environmental benefit of enforcement action, how much pollution got taken out of the environment. We started to quantify that. So instead of a press release that just said "We got a \$2 million penalty," we'd say, "We got 50,000 tons of nitrogen oxide out of the air and a \$2 million penalty." That kind of put Enforcement on the map in a different way.

INTERVIEWER: So when you said going after kind of bigger fish, not your exact words –

INTERVIEWEE: Close.

INTERVIEWER: – were you referring to petroleum refineries? The petroleum industries?

INTERVIEWEE: Refineries were one example. We had I mentioned mineral processors. Coal plants certainly. Municipal sewage systems which were always bread and butter for the EPA because they're constantly having issues. But those were all target.

INTERVIEWER: And when you started going after bigger fish, did you notice anything in terms of –

INTERVIEWER: Did you notice any pushback with that industry? I mean people must have noticed that you started going after so.

INTERVIEWEE: Well, we had an interesting sort of dynamic. Yes, a big pushback because companies didn't want to spend all that money for cleanup and compliance. For refineries, we got everyone together from the regions at several meetings and we basically said what are the chronic problems at refineries that you run into over and over that need to get fixed, that have the most impact on the environment? We came up a list of five targets. I advertised those target at industry meetings. I must have gone to at least fifteen. – I must've gone to 15 industry leaders and laid out our evidence in a PowerPoint, saying, "Look, this is what we see. We're telling you now. Look, we're showing. You can see my hands. See my hands?" I'm waving them around. Not a sneak attack. If you've got questions about it, give us a call but this is what we see." I think they appreciated that. I really do. We were kind of treating them like – not like criminals or suspects but like businesspeople. We said, "I know you've got a business to run. We have a business to run. It's called compliance. We're not seeing it in these areas. We think in some cases, cleanup will cost money. In other areas, compliance might get you cost savings. Either way it's got to get addressed." We then sent letters to companies and said, "Here are the issues." I sent certified mail to all of them so there wasn't any question about "oh, I didn't know."

And then we did some inspections and investigations. We began a series of negotiations and we said we want corporate-wide settlements. We want all your refineries, not just one. That worked pretty well. That approach was harder with power plants, which is a tough, obdurate industry. Some of them regulated by utility commissions with their own political networks. There we were more aggressive. We had lot of early conversations with corporate lawyers and trade associations and companies about Clean Air Act violations. But we also came out of the gate fast with complaints, which immediately put

the industry on the radar and means you're fighting a war in the press and on the Hill

INTERVIEWER: Right. But you didn't notice any – no dirty tactics, anything like that?

INTERVIEWEE: Oh yeah, well, it depends on what's dirty.

INTERVIEWER: Well, I suppose following you, bugging you.

INTERVIEWEE: No, I didn't see that.

INTERVIEWER: Okay, so. All right. I guess we've already gotten 45 minutes. I kind of want to get into Bush II at this moment unless you have anything that you –

INTERVIEWEE: No.

INTERVIEWER: All right. So the big transition, Bush II. Were you still in the same position that you were?

INTERVIEWEE: Well, yes, in that I took the job of director of the Office of Civil Enforcement in March or April of '97. And so in '01, like January or February, I was still in the job and didn't leave it until March of '02.

INTERVIEWER: Okay, and what were your main responsibilities in that role?

INTERVIEWEE: During transition?

INTERVIEWER: No, when you took the office in '97.

INTERVIEWEE: Oh, what I've been talking about. I mean that's the Office of Civil Enforcement is the office in headquarters drives the civil enforcement agenda for the Clean Air Act, the Clean Water Act, and Hazardous Waste.

INTERVIEWER: Apologies. I got confused on the timeline.

INTERVIEWEE: That's okay.

INTERVIEWER: Okay, so when the transition actually happened, did you notice the transition team or you weren't a part of it?

INTERVIEWEE: It was more hostile. There'd been a lot of industry complaints about us. And the line of attack was, as it is today, it was they're operating unlawfully. They're going beyond what the law requires. They don't have any authority. That had traction within the Bush administration, especially among people who came in with Cheney. So the shadows were lengthening. That was a

INTERVIEWER: Did a lot of your fellow colleagues leave during that period?

INTERVIEWEE: No, I don't think so. I don't recall that. I know some people who were close to retirement left. The heat was on Enforcement in particular. No, I didn't see an exodus from the Enforcement part of it.

INTERVIEWER: And so at the time you only have one exact supervisor in your position?

INTERVIEWEE: Well, no, usually two. I was the office director for the Civil Enforcement program. There were a number of other offices inside the Enforcement program. Above that network of offices was the assistant administrator who was a political appointee, and his principal deputy who was not a political appointee but came up from the ranks.

So I really had those two as supervisors. So a lot of day-to-day, depending on the issue, I would deal with either the deputy or the assistant administrator.

The deputy was excellent as was the AA. They gave me total support. I never had a minute of problems.

INTERVIEWER: The assistant administrator, you had a good relationship?

INTERVIEWEE: With the Clinton assistant administrator.

INTERVIEWER: Yeah, but once it transitioned –

INTERVIEWEE: For the first few months, it was mostly run by the deputy administrator. They nominated a fellow from Ohio as the Assistant Administrator – the political appointee – but he –ended up getting shot down. Trying to remember if he withdrew. I think he may have withdrawn. But the environmentalists mobilized to oppose the nomination based on some things he had done in Ohio they didn't like. I didn't have a personal problem with him. He was an amenable guy. I didn't feel like he was breathing down my neck. I did feel like the program offices were anxious about what we were doing and particularly the assistant administrator for Air was hovering and wanting to and did get in the way of some of what we were trying to do.

INTERVIEWER: Okay, interesting. So what exactly did –

INTERVIEWEE: I don't know if you want this, but there's an internal tension between Enforcement and the Program Offices that write the rules The Enforcement Office would sometimes be cracking down on people that meanwhile the Program Office was negotiating with on a rulemaking or was just trying to keep happy because they didn't want Congress calling them up for hearings and they wanted to get a regulation through the White House. So there was definitely some resentment with the Program Offices, even under Clinton, thinking that –

<T: 50 min>

– we were kind of the “bad news bears” and we were there to kind of turn things into a rainy day. And we were about finding problems that sometimes program offices didn't see or want to know about. So there was that tension to begin with. Then with the Cheney Bush crowd, they were clearly going to try to do something about our enforcement against the energy industry.

INTERVIEWER: So you mentioned the administrator of Air – wait, sorry, administrator of Air –

INTERVIEWEE: Assistant administrator.

INTERVIEWER: Assistant administrator. What type of tactics did he or she use?

INTERVIEWEE: We had cases developing against big animal fee bot operations. We thought they were the biggest of them. I'm talking about a million birds at an egg layer operation in big clusters of barns. We thought they were significant air pollution sources and –

INTERVIEWER: From methane?

INTERVIEWEE: No, actually for particulates from poultry operations or hydrogen sulfide emissions from hog barns. We had negotiated one settlement with a big hog producer and were on our way to negotiating another. We had run the traps. We had gone to the Department of Agriculture, briefed them and made them

understand our cases were about very big agribusiness operations, not grandpa's chicken house. Big hog producers warehouse hundreds of thousands of hogs in one location. People around those facilities were very unhappy with their air quality. So we were actually responding to complaints from other farmers who said it stinks, like you can't even go out of the house.

We wanted to respond to those complaints but the Assistant Administrator for Air basically said, "No, don't do that. You have to stop." And I thought, wait a minute, can you tell us to stop? And I brought a memo and some charts to a meeting where I thought we were going to get a chance to talk about the problem. We didn't get to that. It just became don't do it. So I wrote a memo to my boss in the enforcement program (who was sympathetic) saying this is wrong. It's wrong.

INTERVIEWER: To the deputy or the ...

INTERVIEWEE: The deputy. The political Assistant Administrator had gone. The air program also got in the way of the cases we brought against power plants and refineries for violating Clean Air Act New Source Review rules. Those are the standards that require grandfathered plants to get permits and put in new pollution controls when those plants are modified in a big way. EPA had published a white paper that found that those rules hadn't stopped refineries from expanding or raised prices, which is what the Cheney crew was arguing. We knew refineries were expanding at a rapid clip, because we were seeing the emissions increase. But the political appointee running the air program took that study offline I thought uh-oh. And then the Cheney White House said, "Hold up, don't go there. We're going to examine whether or not these cases against power plants and refineries are legally valid. We're going to ask the Justice Department to look at them." At that point, we had settlements in hand but the defendants started walking away from the table. They decided, okay, we don't have to do this.

INTERVIEWER: Right. Yeah, off the hook.

INTERVIEWEE: So that's when I left. That was a rough period. But just to complete the picture, within about three years, because of frankly the war in Iraq distracted Cheney and people at the White House were no longer looking at EPA, Enforcement more or less got back on track. But we lost several years.

INTERVIEWER: That type of tactic right before a settlement takes place where an executive power steps in and kind of delays it, have you ever seen that happen before?

INTERVIEWEE: No. And I felt like whatever you think of the law, we brought these cases and of course the Justice Department did ultimately find they were legally valid after completing Cheney's review. And that's to the credit of the political appointee at the Justice Department who signed off on that conclusion.

But no, I'd never seen that kind of interference before. It's awkward because you work for the executive, but once you've filed your cases, a decision to hold off for essentially political reasons to benefit the people that helped to pay for your campaign felt Banana Republic to me. And we were already closing in on settlements. In one case, a power company had signed the letter of agreement to reduce 300,000 tons of air pollution per year. These are smart people who don't agree to things unless they think they have to

under the law and they think they can make it work in a practical way. So having the company walk away really hurt.

INTERVIEWER: All right, so let's see. At this point I think we're going to move into kind of the wrap-up questions a little bit. All right, so kind of the answer to this one already, but how important would you say presidential transitions have been in shaping your own work at the agency?

INTERVIEWEE: I'd say they're important. I think what you mean is the transition from one White House to another, right? I want to make sure I answer your question.

INTERVIEWER: Yeah.

INTERVIEWEE: A lot of memos written during transition that recommend this or that, they end up fading and getting lost. But who holds power matters a lot to EPA these days in a way that it did not in the last century. Reagan did bring in a kind of wrecking crew in 1980 after he got elected, but after about a year and a half that was all undone.

INTERVIEWER: Thank you. I appreciate that.

INTERVIEWEE: Sure. It's just really important for an agency like the EPA. EPA makes big decisions that affect some very powerful interest groups and makes them spend money. They don't want to spend money on, well, things they don't want to spend money on. A lot of decisions are controversial. So they're very much on the hot seat. If you're at the Department of Transportation, not so much. I mean it can – there's some impact, but EPA is right in the middle of a lot of controversial stuff.

INTERVIEWER: Do you see what's currently going on with the Trump administration, do you see parallels – like obvious parallels to the Reagan administration?

INTERVIEWEE: Yes. In the sense that they both pushed bold deregulation agenda forward. I think Trump is much more honestly irrational because he's freaking crazy. I mean you can't – I think it's bad now, but I also think it's going to be more chaotic. The Reagan administration had shrewd White House management, because they knew Reagan himself was not going to be, let's say, a hands-on guy.

He liked to go to bed at 9:00 at night. He was just not going to get neck deep in issues. And so they had tight management, very interested in protecting Reagan and his legacy and focusing on the big issues like tax cuts. When the environmental rollback campaign became a political liability, they fired Watt. They fired Anne Burford. They put in very moderate, actually good managers at EPA, starting with Bill Ruckelshaus as Administrator. And so they made that calculation. I don't see that with Trump. I think the White House is even more reckless than some of the people that are rumored to be on the short list for EPA. So I don't think there's going to be that check.

<T: 60 min>

INTERVIEWER: Have you ever seen or heard of –

INTERVIEWEE: I should add – I'm sorry – the Republicans control the Hill. They did not in the Reagan administration.

INTERVIEWER: Have you ever seen an administrator or heard about an administrator that you would describe as similar to Scott Pruitt or somebody –

INTERVIEWEE: No, I cannot – I've never seen anybody that is as much of a zero. Really a negative.

INTERVIEWER: Do you think that there might be – I mean obviously it's a different Congress, a Republican controlled Congress, do you see a potential for a backfire?

INTERVIEWEE: Yeah, I think because Obama couldn't get his picks confirmed, the Senate eventually eliminated the filibuster for cabinet appointees. So they just need 51 votes to confirm Pruitt. I think they'll get that. I'm hoping that there will be at least 40 votes that say no. I think he'll be marked going forward as controversial. I'm hoping that that trouble develops and because visible. Obviously if he doesn't do the bad things that we think – that we're pretty sure he's going to do, then great. That will be a good thing. But if it plays out as we expect and the warnings are marked now as he's going in, it'll be easier to come back to.

INTERVIEWER: Yeah. Honestly, just something I just haven't run across but it probably has happened, it just happened faster, the freeze – the current freeze on the EPA for grants, has that happened before?

INTERVIEWEE: I'm trying to remember. So I'm trying to remember if there's been a freeze ordered at the executive level. I'm more used to freezes on let's say actual ceilings for grant expenditures or ceilings for hires than freezing the mechanism where you can't actually complete a grant. That's a little unusual. I think that's got to be temporary because a lot of state programs shrivel up if the grants don't move. So I'm assuming they plan eventually to release those and they just wanted to get – you know, send a signal and get control up front.

INTERVIEWER: Right. And yeah, finally, is there anything I haven't asked you about that you think I should know?

INTERVIEWEE: I don't think so. Thanks for good questions. You're coming at this with having done homework obviously. I think it's structured in a way that you've covered the ground. I assume I've covered your questions.

INTERVIEWER: Definitely.

INTERVIEWEE: You can always find me by email so. I sort of over-answered a little because I don't want to reduce things that are somewhat complex to something really simple when they're not so.

INTERVIEWER: Of course, yeah.

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[END OF INTERVIEW]