

ENVIRONMENTAL DATA & GOVERNANCE INITIATIVE

ETM SBU 022

Transcript of an Interview

Conducted by

Chris Amoss

(With Subsequent Corrections and Additions)

INTERVIEWEE: Jonathan Libber

INTERVIEWER: Chris Amoss

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[. . .]

<T: 5 min>

INTERVIEWEE: All right.

INTERVIEWER: Very good. So what is your age?

INTERVIEWEE: 63.

INTERVIEWER: And what is your ethnic identification?

INTERVIEWEE: Jewish.

INTERVIEWER: And what is your gender?

INTERVIEWEE: Male.

INTERVIEWER: What is your formal education and your current profession?

INTERVIEWEE: Okay. Law degree and I am a part time consultant.

INTERVIEWER: All right. And before you were part of the EPA what prior jobs did you have?

INTERVIEWEE: None, actually. Just some summer jobs. You mean like real employment?

INTERVIEWER: Mm-hmm.

INTERVIEWEE: My goal since I was in college was to work for the enforcement program with the EPA. And I went to law school with that in mind. And I can't say I had a great academic record in law school, but I had a lot of good luck finding the job. So it was the first job out of law school and that's what I stuck with the whole career. It's pretty unusual today.

INTERVIEWER: Yeah, definitely. And in what part of the agency did you first work and when?

INTERVIEWEE: I started and ended in the enforcement program.

INTERVIEWER: Okay. So did your positions change within the enforcement program?

INTERVIEWEE: Not really. I mean I was attorney advisor the entire time I was there. My job function changed. My official title was basically attorney advisor.

INTERVIEWER: Okay. And why did you leave the EPA?

INTERVIEWEE: A combination of factors, okay? Number one was I was already entitled to a pension at that point. Okay, that's an important issue. Number two is that the commute to Washington was – I live in Baltimore – was really getting much worse over time. It was taking four hours a day on a good

day to commute to work back and forth. And number three is that the job wasn't that enjoyable anymore.

INTERVIEWER: Why was it less enjoyable?

INTERVIEWEE: Okay. This gets a little tricky over here. I think I would not want to be quoted on this part of it.

INTERVIEWER: Sure.

[...]

INTERVIEWER: And this was a career appointee or a political appointee?

INTERVIEWEE: Career – actually attorney advisor is excepted service. Okay? So I don't know if it's really considered career appointment. I didn't go through the regular civil service hiring process, no attorney does, if you're in an attorney position. The idea behind it is that the government should be able to hire and fire legal counsel as they need them and that they should be constrained. For instance, if they see – you know, if they say, "I don't like the way you parted your hair this morning," you're gone. I have no recourse.

INTERVIEWER: Hmm.

INTERVIEWEE: Now, they fire me because I'm white or I'm black or I'm Jewish or not Jewish, whatever, then I have a possible issue I can bring up. But basically I'm still out the door, I've got to fight to get back in. So ~~it's not~~ considered a regular career appointment technically under the law.

INTERVIEWER: Okay, interesting. And what year was that in?

INTERVIEWEE: I was hired in 1979.

INTERVIEWER: And you left?

INTERVIEWEE: I left on December 31, 2010.

INTERVIEWER: Okay, great. Good. You'll be the first person who went through the Obama transition that I'm interviewing.

INTERVIEWEE: Oh really, wow. Okay.

INTERVIEWER: Yeah, everyone else – most people, they hit their breaking point in Bush Two. Okay, so we're going to start with the first transition, which will be Carter.

INTERVIEWEE: Right.

INTERVIEWER: And when you first arrived. So you already answered what your position and location in the agency was. But what, when you first arrived in the Carter administration, were your responsibilities and tasks?

INTERVIEWEE: Okay. So I worked in part of the enforcement program that looked at pesticides and toxic substances. And my first assignments were involved with the Toxic Substances Control Act and providing, developing, and – well, really assigned to [...]

INTERVIEWER: Mm-hmm.

INTERVIEWEE: And this section 5 of TSCA, which is pre-manufacture notice, okay?

INTERVIEWER: Mm-hmm.

INTERVIEWEE: So it's a section of the law – it's like an FDA for new chemicals. The idea behind TSCA was, in this particular section of TSCA was let's not have another PCB disaster, okay? Every new chemical ~~one~~ is going to go through a 90 to 180-day review. If anything looks funny about it we're going to pull it off or restrict it or whatever. Not make it and manufacture millions of pounds and then find out there's a problem with it. So that was the idea behind it, section five. And I was responsible for developing and enforcement strategy. I was also watching out for enforcement issues when the regulations were being developed to support it.

INTERVIEWER: Okay. And did this have any cross intersection with OSHA? Or was it mainly just EPA?

INTERVIEWEE: This one really we had no contact, that I'm aware of at this point, with other federal agencies on this particular program.

INTERVIEWER: Mm-hmm. Okay. And what ways of accomplishing that type of mission were already well established at the time?

INTERVIEWEE: Well, there were very separate workgroups that I walked into in 1979. There were workgroups that had been formed, and I kind of took the enforcement responsibilities over from someone else. The idea was that any regulation we would make with regard to section 5 of TSCA should be enforceable. Because if you write something sloppy, and someone violates the regulation, and you can't enforce it because it's written so sloppy then what have you accomplished? So there weren't that many issues but that was one of my main responsibilities. And then I had a formal workgroup to develop the enforcement strategy for TSCA, for section 5 of TSCA.

INTERVIEWER: Okay. And how would you say politics affected your work during that administration?

INTERVIEWEE: Okay, so things changed a little bit, okay. I mean I'd have that job for about 18 months, which took me sort of like through the election. So up to the election I saw no interference whatsoever at my level because I'm way down at staff level. I saw no evidence of any influence on the process from any angle. Okay?

INTERVIEWER: Mm-hmm.

INTERVIEWEE: Now keep in mind also, I don't know if the industry really was totally sensitized to how serious this could end up for them. So that could be part of the problem. I do know from other people, my other colleagues, that there was a lot of political interference from the Carter administration in certain areas, like the Clean Air Act. As the election campaign heated up, one high level enforcement person told me that the policy was being decided basically on the basis of where the president was campaigning.

INTERVIEWER: Okay, interesting.

INTERVIEWEE: But I never saw it myself. I just knew from someone else that there was stuff going on.

INTERVIEWER: Right. Okay. So the industry wasn't fully aware, I guess you didn't have a lot of pushback. But what kinds of science were used to back up that type of regulation, to back up chemical regulation at the time?

INTERVIEWEE: Okay. Well, the regulation itself, I kind of came in late in the game so I think the heavy duty lifting had been done already as far as science behind it. But the interesting science started coming in when the industry was doing their own – they're sending in the chemical for review by the EPA, okay?

<T: 10 min>

Now, I wasn't involved directly in the scientific issues even though I have a science background. That's very unusual to have a lawyer with a science background, and biology, but I think that's one of the reasons I got hired was because they liked the combination. But ~~what~~ I was not so much involved in the scientific reports indicating the chemical could have a problem. What I was dealing with was once the scientists had decided there was a problem, how to implement the changes or how to talk to the industry or the manufacturers about what was going to happen with their chemicals.

The first one in the shoot, okay, when we finally had a pre-manufacture notice submitted, and the chemical was problematic in our review, as soon as we talked to the company about it having a problem, they immediately withdrew the chemical from the market. There is a real fear having anything associated with a chemical that has any kind of taint. Now, I think later on they weren't so uptight. But this was the first one.

So we were going to restrict it. They just said don't bother restricting it, we're pulling the chemical, period.

INTERVIEWER: Okay. So it sounds as if they didn't have a way of kind of pushing back against the EPA at the time, during the Carter administration, at least the chemical industry.

INTERVIEWEE: I did not see any evidence of it. I mean there may have been at a higher level, I don't know. Again, I was way down there. The green attorney. So I'm just pretty isolated from any of that kind of stuff.

INTERVIEWER: And you don't want to say what kind of chemical it was because you think that would be too specific?

INTERVIEWEE: I don't even remember what kind it was. If I did remember I couldn't tell you because the Toxic Substances Control Act prohibits that kind of information being released.

INTERVIEWER: Okay, yeah.

INTERVIEWEE: So I just know it was some chemical. And I know we negotiated very, very well-known attorney on the other side and they were running scared.

INTERVIEWER: Yeah, okay. And did you directly interact with any political appointees in your office?

INTERVIEWEE: I think in the Carter administration I was so low down on the totem pole that I don't think I ever even had a conversation with a political appointee during the entire Carter administration.

INTERVIEWER: Okay. All right. And at the time, how would you describe the atmosphere of the office of enforcement office?

INTERVIEWEE: Very positive. Always, the entire time I was there, in the enforcement program was filled with very highly motivated people, very highly motivated, very creative people. And that continued all through my career there.

But the morale issue is very important. Morale this time was extremely high. There were people who were worried when Reagan got elected what that would mean for us. And their worries were well founded, as we'll see later on.

INTERVIEWER: Right. Okay. Well let's get into it. Let's move on to the Reagan administration. And so same position, same location. Had your responsibilities shifted? Had you moved up the totem pole at this time?

INTERVIEWEE: Okay. Now what happened was right around the time of the election I changed jobs within the agency. It was a lateral transfer, no promotion involved. But it seemed to have more potential as far as job potential down the road. There was an office that – a tiny staff office that answered directly to the Acting Assistant Administrator for Enforcement, Jeffrey Miller, okay?

INTERVIEWER: Mm-hmm.

INTERVIEWEE: And they were staffing. They had just like one or two people and they wanted it was a special office to work on special kinds of projects that the AA would want to get involved with. And I don't know how they knew

about me, someone must have mentioned it. And the fellow that was putting the staff together interviewed me and liked what I had to offer and transferred me over there. So that was right around the time of the election.

INTERVIEWER: Okay, great. And so when we're talking about the Reagan administration it's almost as if there's two transitions going on. There's Gorsuch and there's Ruckelshaus. And I want to – I kind of want to talk about the transition between them as well. But first I want to get a sense of what the Gorsuch environment was.

INTERVIEWEE: Yeah, it was really awful.

INTERVIEWER: Right.

INTERVIEWEE: Basically the intention was – they announced that they would be firing about 10 percent of the staff every year.

INTERVIEWER: When did they make that announcement?

INTERVIEWEE: Someone made the announcement. I mean it was pretty clear to us that – I thought even Gorsuch herself said that at some point in the game, maybe in her confirmation hearings. Her intention was to pare down the staff about 10 to 12 percent every year until it was about 50 percent of its current size.

INTERVIEWER: Right. And I think – I think she was successful during those two years in doing that.

INTERVIEWEE: I don't – I didn't see that many people leaving in the enforcement program. Now, I should let you know that they intentionally – they had the intention to fire me. I didn't know this when I was working there until after she had left, but someone who I knew on the inside who had access to the information said they made a hit list of all the attorneys hired in the Carter administration. They feared they couldn't be trusted.

INTERVIEWER: Wow. Do you have any idea why you were targeted?

INTERVIEWEE: Because I was hired during the Carter administration.

INTERVIEWER: Okay, got it.

INTERVIEWEE: That was it. I mean I hadn't done anything interesting politically except do my job. But that was something that – the fact that I was hired by Carter meant I couldn't be trusted. And that was going forward for a while and then they had to hold off, I think maybe because of the political disaster the Gorsuch got herself involved with.

INTERVIEWER: Mm-hmm. But you didn't notice that you had a target on your back at the time?

INTERVIEWEE: No, not at all. I had no idea. Now in the meantime I'd heard about this intention to fire a large percentage of the group. I said better to jump out on my own accord than be out on the street without a job. So I actually started actively seeking, looking for other forms of employment. I was really blown away because I thought I'd finally made it. My goal for college and law school was to work for the EPA's enforcement program and there it was. And now I was having to leave. But I couldn't find very much at that point so I stuck it out. And then things eventually straightened out. But the morale in the office was awful during Gorsuch's administration.

INTERVIEWER: Okay. I want to talk a little bit about why the morale was awful during the Gorsuch administration. Was there just a feeling that you weren't able to accomplish the things that you were under the Carter administration?

INTERVIEWEE: Yeah. Her chief of staff announced to all the regional administrators that if they referred a case forward to headquarters for prosecution through to the Department of Justice, it would be a mark of failure on their part, something to those words.

INTERVIEWER: Wow.

INTERVIEWEE: So all the judicial referrals to DOJ stopped cold. I mean there were maybe six where there used to be a couple hundred a year and it went down to I think six during her administration there. Six per year, something like that. Interestingly enough, there was a major reorganization and they sent all the attorneys out of the enforcement office except for a handful and distributed them through the program offices.

In other words, instead of the attorneys working for the pesticide division in the enforcement program, they now work for the pesticides program office instead. Okay? Basically deemphasizing enforcement. Now I was one of the few people who actually stayed in the enforcement program because that staff office I was in was one that stayed with the new assistant administrator. It was called something different. Instead of the Assistant Administrator for Enforcement, the position was called Enforcement Counsel.

INTERVIEWER: It looks so, okay. That's a good name to remember. So what exactly did you work on during those two years?

INTERVIEWEE: The same as I was working on before, actually. I mean we did real work, surprisingly enough. We laid the ground work for the generic penalty policy. I started it, it went to a second guy, went to a third guy, and came back to me.

But basically we had all these different statutes. And each statute had its own rubric for imposing civil penalties. And I did the scoping out of how we could make a generic policy for the whole agency and not have 30 different penalty policies. So I said you really could, you [w]could have to smooth some things over but it could be done. And then, so I did some of

that work.

Then one thing I did, which probably optically looked bad, was the Department of Justice had a large number of civil referrals that were sent during the Carter administration that were just sitting there stagnating. They were really stale cases that needed to be gotten rid of. So I went through all the old cases with the people assigned to them in the EPA and Justice and figured out which ones really should be gotten rid of because they just weren't – they were just taking up space on the docket.

<T: 20 min>

And they weren't doing anything, would never do anything. So we identified them and then we actually, we withdrew from those cases which was actually good, that's a good administrative thing to do. But optically it looked like here's the agency referred six cases and withdrew from forty-three this year. So it gave the impression that we were even worse than we were. It was pretty neutral. So I was doing that project. Trying to think of the other things we did. I wrote some guidance that needed to be written. Helpful guidance. I also was only staff member on something called the Civil Penalty Panel. It was sort of an EPA internal 'Star Chamber'. Do you know what the Star Chamber was?

[Interviewee Note: My work on the Penalty Panel ended shortly after Reagan was inaugurated. I just wanted to give you a sense of the timing, but the Penalty Panel was created during the Carter administration. This had nothing to do with the new administration.]

INTERVIEWER: No, I don't.

INTERVIEWEE: Okay, Star Chamber functioned during the Oliver Cromwell administration in Great Britain the 1600s. There was this, almost like witch hunt looking for people who were not loyal Protestants but sympathetic to the ousted Royal family.

And then the people they suspected were being kind of hounded. And there was almost like a secret police going on. And in Star Chamber they would get you in there and they ask you a lot of tough questions. If you answered them wrong, you end up in jail. So EPA had its own version of that. Not because of Gorsuch. We started this during Carter. And that is if you proposed a penalty, okay, for a major enforcement action, you had to justify it to the leading enforcement people, both in ~~and~~ the Agency, Justice Department and a couple of state people just for balance.

You had fly to where the committee was meeting, the Penalty Panel, and justify the number to them. And I was the clerk on this panel, you know pushing the papers and listening to the different arguments. And, so that was something we did. It was time consuming. Eventually the assistant administrator dropped it because they thought it was such a waste of resources.

But, I did that. And then when Gorsuch came in she wanted these massive changes to the agency and we basically, like overnight, we did all the delegations of authority from her to whomever needed to use the authority because they now had different titles, they were different parts of the agency. So I was involved with the cleanup of the enforcement delegations so that they could do what we needed to do in the new administrative situation. That was a major project.

INTERVIEWER: Okay. I hadn't heard about this Star Chamber before.

INTERVIEWEE: No. It's used usually in the legal terms when something is really bad. So like secret police, almost.

INTERVIEWER: Right. It seems as if no one would want to introduce new regulation if that's what they had to go through.

INTERVIEWEE: Well these are just enforcement cases. I didn't do any that –

INTERVIEWER: Oh, enforcement.

INTERVIEWEE: I think the regulation development probably came close to a standstill at this point. I don't know that for sure but I suspect it must have. And then what you also saw, which had a demoralizing influence, is that some of the supervisors, not the political ones, the way down the list who were basically trying to curry favor with the new administration and they were like, you know, carrying water for them and pushing their agenda of undermining the agency's mission. And there was real resentment at the staff level for supervisors who did that. But we couldn't do very much about it at that point.

INTERVIEWER: Right. Did you feel at the time, during these two years, that there was an outside industry influence?

INTERVIEWEE: Absolutely. Oh, it was miserable. I'll give you an example. One of the ones I was familiar with was a problem we had with one of the political appointees in the enforcement program. I mentioned this penalty guidance that we were trying to draft up to – like an overall general penalty policy. And this political appointee had access to it. It wasn't an official policy yet. We were developing it. Some of our people were negotiating a penalty in a case. And the other side had a copy of the internal draft policy.

INTERVIEWER: Wow.

INTERVIEWEE: It was a draft. I mean it wouldn't see the light of day for another two years. But that's an example. And then another one, we were negotiating – I think the name of the case was Inmont. And someone was giving them our bottom line negotiating figure.

INTERVIEWER: Wow.

INTERVIEWEE: We all assumed that it was that same appointee or someone in his office who was giving the information.

INTERVIEWER: Was he a political appointee?

INTERVIEWEE: Yeah, he was political.

INTERVIEWER: Okay. And you think those leaks mainly happened through political appointees?

INTERVIEWEE: Yes. For sure.

INTERVIEWER: Okay. So definitely not a career. All right.

INTERVIEWEE: Yeah.

INTERVIEWER: That's quite disturbing.

INTERVIEWEE: Oh yeah.

INTERVIEWER: Did you have any recourse at the time when you noticed stuff like that happening?

INTERVIEWEE: You know, it's possible you could have complained to the person's bar association if we had the goods on them. But I was only getting it second and third hand at best. So there was nothing I could have done. The people who knew maybe could have done it. I believe one of these people, political appointees involved in these kind of situations was actually called out on the Hill and they asked him a question and the guy – I heard from someone at Justice, perjured himself about one of these kinds of situations.

INTERVIEWER: Right.

INTERVIEWEE: So it was pretty miserable. So in theory that person could have been prosecuted for perjury. But it never really came to fruition.

INTERVIEWER: Right. Just simply resigned at that point.

INTERVIEWEE: Well I mean before we could really do anything about it the appointee was essentially humiliated and pushed out the door, at some point in the game. Not by Gorsuch, but he got into such disfavor with the administration that he was pushed out the door.

[...]

[Interviewee Note: I now remember what happened more clearly. The administration got so fed up with him that he was stripped of a lot of his authority and had to report his activities constantly to the General Counsel. The memo ordering this was widely circulated to staff. He left very shortly afterward.]

And then the next transition of course, is the one Gorsuch ran into a brick wall and had to walk the plank.

INTERVIEWER: Yeah. Well let's move into that. And I just have a few questions on that one. Can you describe how the culture of the – or that atmosphere in the office changed under Ruckelshaus?

INTERVIEWEE: Oh, it was just – we went from the worst administrator we ever had and some of the worst political appointees we've ever had to some of the best. Okay?

Ruckelshaus was a giant. I just have a world of respect for the guy. Just a really inspiring individual. And an interesting thing happened. I became a supervisor in 1984 right – not right after but sometime after this transition. And so Ruckelshaus just assumed when he got on board and he took over that things would get better with enforcement, but it never did.

He had the President fire every political appointee except maybe two.

And there weren't any cases coming forward, or very few cases coming forward. So he pulled all the enforcement leaders, including me at this point, I was a first line supervisor from this agency, in to a meeting and instead of like really throwing chairs and yelling at us and telling us we were traitors or whatever, he just inspired the hell out of us. So that everyone went out of that meeting so energized and they turned the enforcement program around.

INTERVIEWER: Wow.

INTERVIEWEE: I had the good fortune of actually – they had these skip level lunches where you – the big supervisor talks to several levels down. So I was lucky enough to have lunch with Ruckelshaus even though I was a first line supervisor. And just so elevating to talk to the guy. Such an insightful – had a lot of insight, had a really good head on his shoulders. Totally apolitical that I could see, just concerned about getting the job right, kind of thing. He was a real hero. I really – he's the kind of person I would have hoped to be president someday. I think he's too liberal for the Republican Party to ever get nominated.

INTERVIEWER: Hmm. That's really interesting. And compared to the Carter administration, did you notice a shift at this point, during the 80s, in the type of science that was used to support enforcement?

INTERVIEWEE: You know, I never really got into the science issues. We were super specialized in Washington. So at this point my specialty ended up being delegations of authority, playing off my cleanup of the Gorsuch mess. And then penalty policy. This is the penalty policy I started and that someone in Enforcement Counsel's staff had leaked to the other side at some point, went through a lot of iterations, eventually came back to me. I was

able to put one of my pet issues into this thing, and that is the recapture the violator's economic savings of violating the law.

INTERVIEWER: Mm-hmm.

INTERVIEWEE: And I got that approved. And then that was – a lot of my career afterwards was supporting penalty policy issues. In fact, that's probably most of what I did for the next 25 years. So I never really got into the real science issues. I was really a policy - financial analyst attorney function more than anything else.

<T: 30 min>

INTERVIEWER: Okay. Interesting. All right. So let's move on to Bush One. Okay?

INTERVIEWEE: Okay.

INTERVIEWER: So –

INTERVIEWEE: You know, there's something very important I need to tell you.

INTERVIEWER: Oh yeah, please.

INTERVIEWEE: That's very relevant to what's going on now. And that is one of my colleagues from the Carter Administration who had left and started working for one of the major oil corporations, I had a talk with him when he came back during the Reagan administration. He said initially they thought by gutting the EPA that it would help business, okay, and it certainly did help to some extent. But he said businesses actually had three major complaints.

A group of very well-heeled powerful lobbyists representing some of the biggest industries in the United States had a meeting in the White House. And they said basically there are three problems here you don't realize. Number one is if the EPA doesn't regulate in an area then the states are going to step in. So instead of having one set of consistent regulations across 50 states we will have 50 different sets of regs.

INTERVIEWER: Right.

INTERVIEWEE: That's going to be a disaster for us. Number two problem, and that is we already complied with the law. We spent X millions of dollars complying and our competitor in the next county never complied. He's got a real competitive advantage over me. And there was a third complaint I'll remember as we're going along. But yeah, oh yeah five-year planning. In other words, they have to plan way in advance.

We'd rather get it done right now than have to build our factory and then have to retrofit it when the new administration comes in. They didn't know how long Reagan would last. If it was a one term president and then we had the democrats come back in again and some of the regs are back in

effect or being placed in effect, then we have to retrofit our factories. We'd much rather have a consistent, logical approach to all this stuff.

So the White House heard that and that helped, and convinced them to leave us alone, particularly after Gorsuch hit the fan. So Ruckelshaus and – you know, they complain about regulations in the EPA. By the time I think Reagan left office we had doubled the number of regulations we had or doubled the volume of pages involved.

INTERVIEWER: Wow. Do you think, your opinion, and maybe this is a difficult question to answer, that industry still feels that way?

INTERVIEWEE: Yeah, I'm sure they do. Because they still have the same issues. I even heard on Bloomberg Radio yesterday this idea of a different set of regulations. I'm not sure it came up within the EPA but it came up in another area, maybe it was financial services, that if the federal agencies withdraw from the regulations, if you don't go forward with them then the states are going to feel compelled to do something and they'll all be different from state to state, that's just the nature of the beast.

INTERVIEWER: Right. Which is what happened with California and car emissions.

INTERVIEWEE: Right. Now California, we gave them a bye in the statute. We gave them an out, okay? Because I think the senate and the house at that time heard the complaints of California because they had much more severe problems than any one other area of the nation with air emissions from cars. So they were given the special exemption to take a tougher stand on the issues. And the manufactures went along with that. But that's only two different standards. One for California, one for not, as opposed to 50 different standards.

INTERVIEWER: Right. Well, I guess some of what worries me is currently what's going on with some of the deregulation, or proposed deregulation, really, for the dumping of toxic chemicals where it seems less about industry having to change or even become less slack, as opposed to their just now able to get away with what they're currently doing.

And that's – in certain terms they're no longer going to be penalized or that type of regulation for dumping into waters will no longer be regulated. Do you understand what I'm getting at?

INTERVIEWEE: Yeah, I see what you're getting at. I suppose in theory, and let's even take three steps back. Even back in 1981 to '83, certainly industries benefited by deregulation in environmental areas. They were certainly getting a benefit from it in certain areas. But the problem was that the bigger ones, particularly ones that go across 30, 40, 50 states were feeling more the concern about everyone doing their own thing on a regulation and having to comply with all of that. Even though certainly it was probably saving them money initially by not having to comply in certain areas, or having to meet new compliance standards, the bigger

companies realized it would be better to have only one national standard to comply with.

INTERVIEWER: Yeah. Okay. All right. Thanks for bringing that up. If there is any time you want to bring something like that up, please.

INTERVIEWEE: Yeah, that was really important because I don't think anyone really thought about that in the Reagan administration when they started gutting all the regulations.

INTERVIEWER: Right. And it doesn't seem as if people are really thinking about it right now either.

INTERVIEWEE: No, they're probably not. Some people might be, but I think – I think it was midsize to smaller businesses have a much more narrow focus on what's out there. And they are probably cheering all this stuff whereas the really big companies are more worried about it and have a more balanced approach to these things.

INTERVIEWER: Right. I mean one of the funniest things is this kind war on the term climate change that I see and separate from these interviews, for example, I'm tracking a lot of how the EPA's website has been changing.

INTERVIEWEE: Mm-hmm.

INTERVIEWER: And teams are being renamed to remove the word climate change.

INTERVIEWEE: Oh boy.

INTERVIEWER: And it's silly. They'll replace it with words like resiliency. And, you know, I can't fully figure out what the exact war on the word really comes down to.

INTERVIEWEE: Well, I'm trying to think like them. And they're saying all right, the management team is not in place yet. And we need to protect ourselves. When these folks start cutting, they will be ~~are~~ looking for things to get rid of. So we've got to camouflage things. So avoid using terms that will obviously get their attention like climate change, even though it really is climate change related.

Yeah, there's all this stuff in the government about bottling things in the right bottle to make it look nice, okay? So when things are really, really hot in the wrong direction you try to get rid of anything that identifies your project with something they don't like, like climate change. It can also work the other way. Total Quality Management (TQM) is an example of something that got real hot during Bush One, okay? And so we had an Assistant Administrator for Enforcement who really didn't believe in any of the TQM concepts at all, but he and wanted a certain change in his organization. So what he did is he bottled it look like TQM even though it was totally inimical to everything TQM stood for. TQM is basically you delegate way down to the bottom level responsibility and authority to take action. He was doing the opposite but calling it TQM to get it approved.

INTERVIEWER: Right.

INTERVIEWEE: So there's all these shenanigans that go along with naming things. And that is certainly not a surprise.

INTERVIEWER: Right. That's interesting. So you think in certain cases you think it's people who have already been there just trying to avoid attention. That's interesting.

INTERVIEWEE: I'm sure it's people who are career types and say: look, we've got to protect ourselves here. If we don't, we're going to lose this whole website or webpage or whatever it is. So I want you take all the climate change stuff out. There should be no climate change stuff whatsoever in this particular project so we protect ourselves.

INTERVIEWER: Right. And then they can basically function the exact same way.

INTERVIEWEE: Right.

INTERVIEWER: Interesting. Thanks for that perspective, that's good to hear. Because from the outside it just seems as if political administrators are just changing everything.

INTERVIEWEE: Yeah.

INTERVIEWER: All right. So what were your responsibilities during the Bush transitions?

INTERVIEWEE: So my responsibilities pretty much stayed the same all the way through my career. My main functions, again, were delegation of authority, some general policy work, but mostly penalty policy issues, particularly with economic issues that impacted enforcement. For example: what did the violators save economically when they violated the law. And I became the national expert in that area.

And number two issue was what do you do with claims that the violators cannot afford to pay for penalties or clean up or compliance? How do you handle that? Most of them are lying, okay? That's not a nice thing to say but it's true. In the beginning of the agency, we had no expertise in this area. And they'd show us their tax returns and say they weren't paying any taxes, we assumed they were broke.

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Of course, that was 100 percent wrong. But we needed to come up with ways that our non-finance professionals who were enforcement people that could quickly get a feeling of where these issues were. We developed computer models that helped us analyze these issues. I ended up training a lot of attorneys and other enforcement staff. And a lot of training of state people, even ultimately some international work. That pretty much was my career for the rest of the time I was there. It didn't really change from administration to administration.

INTERVIEWER: Yeah, okay. And did you feel that the mission of the EPA, I know this is difficult, or at least your office's mission, pretty much it was the same as before? Or that that had changed as well?

INTERVIEWEE: There were some interesting changes that came in with Clinton's people, interestingly enough. Not necessarily bad or, you know, for the environment, but just a de-emphasis of the role of headquarters and more emphasis on the role of the regions, give them more autonomy.

INTERVIEWER: Okay, so decentralization process.

INTERVIEWEE: Some decentralization. And there was more kind of like repairing the damage that Gorsuch did by repairing and recreating enforcement closer to what it looked like in the Carter administration. In the Carter administration the enforcement divisions had within them lawyers and scientists and engineers. And we focused on enforcement issues. And then Gorsuch took everyone out, virtually, except a handful of attorneys. And then when Ruckelshaus came back in they brought back basically just the attorneys. And then when the Clintons came in they brought the technical people as well. But they used them in a very different way.

Now in the Clinton administration we're developing advice offices that had nothing to do with the real enforcement program. Compliance assistance, it was called. So instead of us – with the hammer on one side and the carrot on the other, we had a major amount of the people involved with the carrot side of things.

INTERVIEWER: That's interesting. This is an interesting sidebar I kind of want to get into. Do you feel that during your time at the EPA how did you notice beyond the Clinton administration that those types of offices or regional offices of the EPA as a whole were able to attract kind of a wide range of talents and skills that included lawyers and scientists? Or do you think that's shifted drastically?

INTERVIEWEE: You know, I was involved very much with the hiring process up to about 1989. I was head of a group sort that was informally developing an approach to seeking out attorney talent. How do you evaluate what are we looking for? And then instead of having each division do totally separate hiring, we could kind of like share information and resumes and things like that. And we got a lot of resumes. People really wanted to work for us back then.

INTERVIEWER: Yeah.

INTERVIEWEE: Even – once we got out of the Gorsuch era there was always a very high interest level of attorneys trying to latch on to the EPA. So we developed some guidance, whatever, and a process that worked for a while. And then I got shifted to something else and went away from that. But it always looked like we were getting the top people, in my opinion. There was always intense competition to get in. And the people we hired I thought were very bright, committed people.

INTERVIEWER: Okay. Interesting. All right. Do you think the EPA currently still attracts that kind of top talent?

INTERVIEWEE: Can't tell. You know? I haven't been in the agency now six years.

INTERVIEWER: Right.

INTERVIEWEE: So I don't know – I know some of the people I worked with have left. But there's always a transition. So I'm not sure what that means exactly.

INTERVIEWER: Right. Of course. And how would you say during the Bush One era that politics affected your work?

INTERVIEWEE: I would say we were pretty immune. I think during Bush we were pretty insulated. I think we had a very free rein, at least in my level and what I was seeing, very free rein to do whatever we needed to do. We came out of Bush One pretty strong. Good robust enforcement program, at least from what I could see.

INTERVIEWER: Okay. And how would you describe the atmosphere of the EPA during that four years?

INTERVIEWEE: Okay, well it was the best during maybe Ruckelshaus' era there. I mean it was such a delight. I mean I liked working with the agency almost all the way to the end, don't get me wrong. It was the last two years that were pretty miserable. But I really enjoyed working the entire time. And I think Bush, we did very well under Bush. I not was very happy with our Assistant Administrator under the first president Bush. But that he had almost no impact upon what I was doing

INTERVIEWER: Okay. That's interesting. So not a lot there. So let's move into the Clinton transition. Unless there's anything else from that period you would like to mention.

INTERVIEWEE: No, nothing I can think of. We did find – okay, yeah, that's done. We're going to Clinton. Interesting little vignette or scenario over here, or aspect I guess that is a better word. We figured when finally got our first democratic administration since the disaster with Gorsuch, that we would be regarded with a great deal of respect by the Clinton people coming in because we stood there and held on to the reins while things were falling apart all around us and kept the enforcement program together.

We came out of Reagan bigger and better than we came in. And we really accomplished a lot. And of course, even more during Bush One. But that wasn't the attitude we got. Instead we were suspected of being traitors sometimes. So that was a little jarring. But we got it worked out. I mean people realized that we were all fighting for the same thing.

INTERVIEWER: They thought you were traitors for staying in the EPA?

INTERVIEWEE: Yeah, for staying. That's the impression I got. That we couldn't be trusted because we worked during the Reagan Bush administrations.

INTERVIEWER: So a little bit of the same thing that happened when Reagan took over.

INTERVIEWEE: Right. Right.

INTERVIEWER: That's interesting. And did you feel that that level of distrust affected how you worked with any of your supervisors?

INTERVIEWEE: No. The supervisors were great. They shielded us from a lot of the garbage that was going on. We occasionally had to deal with – if we had a high level briefing we would have to deal with these people, they'd be in the same room. But generally speaking I do not feel any of the political stuff going on at my level.

INTERVIEWER: Okay. And in terms of putting out enforcement, did you feel at this time that there was more of a pushback from the industry? That they were more capable of fighting against enforcement?

INTERVIEWEE: You know, I think what really changed was during Clinton was the revolution in Congress when the house went republican. Newt Gingrich and, his people sort of became prevalent in everything. I think it emboldened the industry to try to interfere with the enforcement process more than ever before. You can't interfere with individual cases so much.

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But you certainly can try to play on the policy issues. So there was a real attempt by industry to undermine my computer model, BEN, which was generating enormous penalties because the economic savings were so large. Larger penalties were not my goal with this model. My goal with my computer model on economic benefit recapture was to make the whole process more rational, predictable for everybody.

What it did was it emboldened our enforcement people to say: man, that son of a gun saved \$100,000.00 by violating the law. [A]and instead of going for \$10,000.00 just to address the seriousness of the violation, now they're going for \$110,000.00 penalty. And the result was, I didn't realize it until we did the penalty study two or three years into the computer model, our penalties were skyrocketing. We went from an average of six million a year to like 22 million the first year.

INTERVIEWER: Wow.

INTERVIEWEE: So this is getting the attention of the industry, which is of course what we wanted to do all along, pay attention to this stuff. But they didn't like it at all. So they were trying to find ways to undermine the BEN model.

<T: 50 min>

So there was a real attempt-underline our use of the model. There was one at the end of the Bush administration which didn't really get very far. But then they made another real concerted effort in 1993- during the first Carter administration. And I had to do a lot of extra work to try to deal with this. And they were taken very seriously. This very powerful group of trade industry representatives. threatened to file a lawsuit against the EPA or-some other action against us. I forget all the details. That started to happen. Again the reason for this is that they were emboldened. That wasn't because of Clinton, it was because of what was going on in the house.

INTERVIEWER: Right. And I'm just really curious. I know it's probably difficult to talk about details at this point. But on what grounds did they try to attack the model? I mean they clearly didn't see it as objective.

INTERVIEWEE: Okay, well there were two different issues. Number one is with any kind of economic analysis, there are often all these different ways to do it. Okay? Now, in something that - an issue they really had before this point, and that we did address, was that the experts we relied on to develop the theory behind the model used a really aggressive set of assumptions in a certain area which really made the penalty numbers too high.

And our own expert witnesses in our enforcement cases started saying that they were not too sure this is right. So we went through a peer review. We got some really top level experts, and they told us we were wrong. And one of them included a Nobel Prize winner. (Actually we used him before he won the Nobel Prize, that was good part on our stuff. Then we can say a Nobel Prize winner reviewed our model without ever having to pay for a Nobel Prize winner.) So in any case, we knew there was a problem. And I briefed my management and they said that we haven't lost any cases and there's no one pushing for this in the Congress.

So let's keep this under our hat for right now and keep looking for information and case precedent to see if we should make any changes over here. The Agency conducted a second peer review and got similar results. And so finally, at the very end of the first Bush administration, my management actually agreed with me and authorized the necessary changes. But I could not implement them until the election was over in 1992 to make sure it did not create an election issue. They deliberately waited until the election was over to change the assumption on the model and make it so it would be lower penalty numbers. Okay? But our penalties were still very high. The changes ultimately did decrease the economic benefit analyses a bit, but they did not have much of a real impact. But it made the model more fair, I think.

And then in 1990s, okay, in the Clinton administration they tried another attack on the computer model. Their attack was in two areas. Number

one is they insisted that any penalty guidance that we issued had to go through a federal register process. We were never put the model in register notice. We just gave penalty guidance. And there was some case law they cited which we realized really was not germane but it initially looked like it might be. But that's not going to stop people from filing a lawsuit, even if they know it's wrong.

INTERVIEWER: Right.

INTERVIEWEE: And they also attacked the assumptions again even though we now had come up with a really good set of assumptions, they still thought they were too aggressive. And they were proposing something that was really ridiculous. So that went around and took a couple of years to get worked out.

And we went through a federal register process that was not like rule making but at least let people to have the opportunity to comment on the approach that we're using. And we got a handful of useful comments. And we didn't have that much of a change in it.

And then that process was repeated during the second Bush administration. They made the same sort of attack on the model.

And now they had a much more attentive audience at the higher levels of the agency. And they also complained to OMB, so they got OMB involved. And OMB is for the Bush administration, or any administration, is a lot more politically connected than just a regular agency process.

INTERVIEWER: And so were they more successful? Did they change the model during Bush Two?

INTERVIEWEE: No. Not really. We actually used it as an opportunity to go to the science advisory board and get approval. So there are three aspects – we have to be careful about in any economic benefit analysis.

INTERVIEWER: Right.

INTERVIEWEE: So we have to disguise that. You can just talk about policies and generic or whatever. But basically there are three aspects of economic savings. Number one is benefit from delayed expenditures.

If it costs a million bucks to install some equipment and I delay for five years, I've got the use of a million bucks for five years. That's worth something, okay?

INTERVIEWER: Mm-hmm.

INTERVIEWEE: That's one type. What about all the operation and maintenance expense for five years? That's not delayed, that's avoided. I'll never spend that money, another kind of benefit. The computer model handled those very

well. The third aspect the model doesn't touch with a ten-foot pole. We used to call it loosely illegal competitive advantage. For example, in the early days of automobile pollution control devices, people were tempted to remove their catalytic converters in their cars.

The pollution control devices were initially really awful in the mid '70s. They actually got much better after that. But people still had this idea that if you cut your muffler off, you were better off, your car performed better. Okay? So there was a muffler shop that cut off your pollution control muffler system for a fee. The judge looked at the violator's economic benefit from this activity in imposing the penalty, although the penalty was relatively small overall.

So there's no benefit from delayed cost or avoided cost, the whole thing is illegal like selling cocaine on the street corner, okay? So that's a third type of benefit that the model did not address. But the economic benefit numbers that could be generated were very large. There's a case in Pennsylvania called Dean Dairy where the benefit was about two something million dollars from illegal competitive advantage and the judge then doubled it for good measure. So that really got them worried. And they made this argument that we were not allowed to even consider illegal competitive advantage as a type of benefit in any of our cases.

INTERVIEWER: Huh.

INTERVIEWEE: So they made that kind of argument. And you know, we took this stuff seriously. Because they could still file a lawsuit. You never know in front of a judge as you are always rolling the dice, you know. Some very strange decisions. So that's what they were challenging, that and also they came back with the same ridiculous arguments on methodology which were rejected soundly.

So they were always trying to find ways to undermine the benefit program. But our penalties, which I mentioned that were averaging \$6 million during the Carter administration had already the \$100 million mark at this point.

INTERVIEWER: Wow.

INTERVIEWEE: And the annual penalty figures nationwide bounced around. But they were very, very large. And the trade associations could make a big difference if they could knock out economic benefit as part of the civil penalty.

INTERVIEWER: Right. Okay. Well let me ask you – you've already talked a little bit about Bush Two, but let me ask you just a couple of questions on the Bush Two era. So how would you say – what was it like the first year of the Bush Two era? How did you notice the differences? Were there any parallels with the Reagan administration?

INTERVIEWEE: No, it wasn't nearly as bad. I'm trying to think back. And I mean the bigger problems were in the Clean Air Act. That's where the industries that had supported Bush in the election were expecting some return on their investment. And the person the White House appointed to administer the Clean Air Act program in the agency was a real zealous anti-regulation kind of guy in certain areas. He did his best to undermine Clinton era enforcement actions against some of the dirtiest coal fired power plants in the United States a little background. Okay?

<T: 60 min>

In the 1970s, the Congress passed a some Clean Air Act amendments that put some real teeth into the Act. But they exempted the old power plants from having to comply with the new regulations. They grandfathered them in because they knew it's really prohibitively expensive to comply. And these are old plants, okay? They will only be operating for a very limited time before they are retired. Well the industry knew they had a gold mine. Because they had forty some plants that did not need to comply with the new higher limits now.

If they do anything to modify the structure of the plants or expand them, right, then they would trigger new requirements and that would put them in with all the other power plants. So some of them meticulously made sure they never, ever triggered that. A limited number of them were aggressive and did actually trigger the new compliance requirements. So these forty plants, like zombies, never died.

INTERVIEWER: Wow.

INTERVIEWEE: And they're responsible for about one third of all the CO₂ being emitted in the United States. They were also responsible for a phenomenal amount of Sulfur Dioxide (SO₂) emitted in the US. And this stuff would drift across the United States, especially from the Midwest to the Northeast. And one expert said that if New Jersey shut down all their auto traffic on a bad pollution day it still wouldn't comply with standards because of all these 40 plants. So the Clinton administration wanted to do something about it. And the Bush administration basically tried to undermine it and destroy it if they possibly could. In fact, we were in the position of cheering for the opposition in Federal court hoping that the DOJ would lose defending some of these horrible decisions to gut the regulations. So that was really bad. I mean that was very demoralizing. But I didn't really deal with that directly. I was basically doing my own thing, that is penalty guidance. So I never really dealt with the nastier questions that were being worked out over there

INTERVIEWER: Right. That's interesting though. I know this isn't direct then but how exactly did the Bush administration undermine kind of the efforts of the EPA at the time?

INTERVIEWEE: You know, I'm not – was not directly involved in that. So I think they were trying to undermine the cases against the power plants that had been filed. So I think that was one of the major things they did. And also, I got the impression some of the regulation enforcement they were backing off of. But again, I didn't see it. Everyone is super specialized.

So I'm in my own little area. I had like my own little practice, basically, within the agency. Basically they gave me the money, you know, I had no staff but I was able to leverage contractor support to help me and accomplished a lot in spite of whatever was going on around, I had my own little thing I was doing.

INTERVIEWER: Hmm. That's interesting. So you felt supported, or at least independent so you didn't have to –

INTERVIEWEE: Independent and totally supported. I mean I had no problem with getting my program out and getting, improving the enforcement – the performance of the states and our own enforcement staff at the EPA.

INTERVIEWER: Right. But you used the word demoralizing. How else would you describe the atmosphere of the EPA at the time?

INTERVIEWEE: In Bush Two it wasn't that bad. At least on my end of it. I mean we certainly didn't lose significant staff or anything like that. The biggest problem was Congress, actually, to be quite honest. There are enough people in Congress who did not like the EPA, and they were really making it difficult to function by cutting back our budget.

In fact, one of the things the anti-computer model people did was they put language in our appropriation one year that had to go through some kind of peer review for the model even though it had been peer reviewed by two groups of people including a Nobel Prize winner. So now we had to go through a totally unnecessary third peer review. So they probably got a budget writer that didn't know what he was talking about because the language was really ridiculous that they put in there. You couldn't tell what it meant. But we had to assume the most nasty interpretation to protect ourselves so it would look like we were complying with Congress' direction. So Congress was the problem, not so much the President.

INTERVIEWER: Yeah. That's interesting. Generally, an intention for obfuscation to kind of just slow things down?

INTERVIEWEE: Yeah, I'm not sure. Again, I had my own area. I'm basically staff level. I lost my supervisory position in the reorganization. And I was bummed out in the beginning but I realized it was actually a blessing in disguise because as a supervisor you spend about 30 percent of your time doing administrative work. And the stuff you really like to do, some of the substance you can't get to because you're too busy reviewing other people's work. So had I been a – had I stayed as a supervisor I don't

think I would have accomplished nearly as much as I did by going back being staff level.

I was a high level –a GS 15. So I mean I was getting paid as a supervisor and doing the stuff I really like to do. So I didn't object. I was bummed out in the beginning but it really worked out quite well for myself. But the result was I was really, really isolated from a lot of the stuff that was going on.

INTERVIEWER: All right. I see that. Okay, let's – is there anything else from that period before we move in to the final, Obama transition?

INTERVIEWEE: Okay, let's think a minute now. One interesting thing that started happening, and I do not think it had anything to do with the political people there, the EPA became a leader in environmental issues, mostly because we had to. And around the world we got that respect that we were the experts in a lot of these areas. And I started getting some international travel requests for people to help out. And I ended up going to Vietnam, Australia, Canada, and China to give lectures on environmental penalty policy issues.

INTERVIEWER: And they would pay you to fly out there, I assume?

INTERVIEWEE: Yeah. In some cases, it was the State Department and in some cases the countries themselves were paying all the travel costs.

INTERVIEWER: Okay. So during the Obama transition, did you feel that the basic mission of the EPA was starting to change during that period or did it stay the same as the Bush administration?

INTERVIEWEE: The overall mission was the same. One of the biggest differences was that the Clean Air Act people now really wanted to enforce the Clean Air Act against these power plants. I mean these miserable dirty 40 plants, whatever they were that were polluting the hell out of the country.

INTERVIEWER: Right. And that's what basically the Clean Power Plan did, or intended to do?

INTERVIEWEE: You mean the Clean Coal?

INTERVIEWER: Oh no. I thought it fell under the Clean Power Plan.

INTERVIEWEE: Well, there's something called Clean Coal which is actually an industry subterfuge. There's no such things as a clean coal. You can't make it clean.

INTERVIEWER: Right.

INTERVIEWEE: And then there is a Clean Power that I probably was not privy to. So I couldn't tell you anything about it.

INTERVIEWER: Okay. I guess that was probably the second four years of the administration. And did you still kind of function more or less independently during the Obama?

INTERVIEWEE: Yeah, very much so. Nothing really changed in my job all the way through at that point. I would say though, that I had a carpool mate who was involved with the expert panel within the agency on making a determination that climate change was the result of human activity. The Supreme Court basically said unless there is a determination that climate change is human caused then you can't regulate. Okay? So there was a witch hunt going on to try to find the scientific data to support that determination we knew the President and the EPA Administrator absolutely wanted to find a human connection. Okay?

And one of my colleagues on the panel was trying to do an honest job of making sure we were proving our case properly. So he pointed out, that the evidence wasn't there to show that it was human caused. And the administration absolutely vilified him. Character assassination, the whole thing. He was a career, civil service guy, a great guy, really committed to the environment but a very honest individual. And they really murdered him.

INTERVIEWER: Wow.

INTERVIEWEE: So that was really unpleasant to watch. The political game cuts both ways. And Obama's people were definitely there. They absolutely wanted to commit to finding the human connection. They may have at the end, I don't know. But when I was there it was still not—

INTERVIEWER: I think they use language now that says there is a connection.

INTERVIEWEE: Okay. Well they had to in order to do any regulations. If they hadn't found that then they couldn't have done anything under the Clean Air Act. So they had to. We knew where they wanted to go. And the people on the panel know that if they got in the way worse things would happen to them as happened to this fellow. So—

INTERVIEWER: How exactly did they take him down?

INTERVIEWEE: They – I don't remember. It's been six years, at least, maybe seven. So you could probably Google the guy's name. I'm trying to remember his name. Carlan, okay? I think. Is it C-A-R-L-A-N or K-A-R-L-A-N, like George Karlan that's spelled the same, similar way. But just unbelievably committed guy and very, very honest. And he paid the price. But you may be able to find his name some place.

INTERVIEWER: That's interesting.

INTERVIEWEE: He's older than me. I don't know if he's still – I imagine he's probably left the agency by now between the character assassination they did on him

and his age he probably threw in the towel. But he would be an interesting guy to interview if you want to interview somebody.

[...]

INTERVIEWER: That's interesting. All right so I'm going to start asking the broad questions. But is there anything else from the Obama administration that you'd like to bring up?

INTERVIEWEE: I'm trying to think. There's really not.

INTERVIEWER: Okay. All right. Then let's do the wrap up. This will probably only take ten or fifteen minutes and then we'll be done.

INTERVIEWEE: Okay. All right. What I think I'd like to do is call you back.

[...]

INTERVIEWER: And here we are. So how important would you say presidential transitions have been in shaping your own work at the agency?

INTERVIEWEE: Shaping my own work?

INTERVIEWER: Yes.

INTERVIEWEE: Except for the Reagan transition, the first one, had very little influence at all, all of them except Reagan.

[...]

INTERVIEWER: And what changes in the agency do you feel might improve what it does or what it's supposed to do?

INTERVIEWEE: Okay. I think totally aside from politics one of the big frustrations that I see is the autonomy of the regional offices.

In a lot of federal agencies, they basically have field offices which respond directly to the orders and policy guidance of headquarters. With the regions, they kind of can blow us off if they want to ignore our guidance. They do so at their peril, okay, but nonetheless the regional enforcement people do not answer to the Assistant Administrator for Enforcement, they answer to the Regional Administrator. And the regional administrator is a political appointee who does not get fired by the EPA Administrator for disobeying orders.

So the result is – one of my jobs was to present a policy update, to go to the regional offices and discuss the new policies that had been developed and this, that, and the other. And one woman supervisor refused to send any of her people to the superfund policy update because she felt that she didn't have to follow them anyway because they're headquarters' policies.

INTERVIEWER: Hmm.

INTERVIEWEE: So, I mean, that – so that is, I think, a major problem that could be ameliorated if they restructured. They probably won't because, keep in mind, if you do that, then you get rid of ten political appointees that you could use to reward your supporters. So it's not a popular idea. But I think from a management perspective that is a serious problem. That's number one.

Number two – let me think. I probably could have come up with a much better answer when I left the agency than now, six years later.

INTERVIEWER: Of course.

INTERVIEWEE: But that one certainly remains. One of the frustrations I had with my particular job was supervisors objecting to building capacity in other parts of the EPA, DOJ or the States. Most of my former supervisors didn't mind the fact we were using our resources from my little division to essentially build that capacity. Okay?

INTERVIEWER: Mm-hmm.

INTERVIEWEE: But a few of my former supervisors felt it was going to hurt their careers to use resources to help other people and not do things to enhance their reputations. It's was one of my big problems with them. Part of the problem is there is not an adequate way of giving credit in the administrative system to that kind of function. Building capacity, everyone talks about it's a nice thing to do. Training is a nice thing to do. But no one wants to pony up their resources to do it. So that is a challenge. Now almost all of my supervisors were pretty good about that, within limits. But the other ones were a real problem. And I understand they are entitled to their resources. But nonetheless because there was no way to give proper credit to improving capacity, then you don't get credit for it and neither do they.

INTERVIEWER: Yeah.

INTERVIEWEE: So that's an administrative thing. Let's see. Let me think about other things. They need to come up with a better way to pick supervisors. I think I mentioned this before. They pick someone that has done – for the first level, for the first-time supervisor, they pick someone who has done outstanding staff work, well hopefully has done outstanding staff work. And that often is not the same skillset you need to be a good manager. And there isn't a real cultural way to do that. And this isn't a criticism of just the EPA, it's the whole country, maybe even western civilization for all we know. But you've got to come up with a better way to do it because there's some really awful supervisors out there who are great staff people. And it really saps the whole organization when you get a bad supervisor in there.

INTERVIEWER: Yeah. Okay. And based on kind of your past experiences, how do you think the current administration is going to function within the EPA? Do you see sort of a Gorsuch moment coming on or, I mean how do you see the next four years playing out for the EPA?

INTERVIEWEE: The most stark comparison I think is a pretty good one is with Gorsuch. You're going to have a highly motivated, highly functioning agency. It's going to hit a brick wall with an administrator who is opposed to the general mission of the agency. And he may try to dress it up for his interviews on the Hill to get it approved, but this looks like a real Gorsuch kind of situation we're running into.

INTERVIEWER: Mm-hmm. Interesting. And is there anything else I hadn't asked about that you would like to bring up?

INTERVIEWEE: No, not really. If I think of anything I'll try to get back to you.

INTERVIEWER: Yeah, you don't mind if – that's pretty much my last question, you don't mind if I follow up with you?

INTERVIEWEE: No, no problem at all. Yeah, just a couple little things. I'm usually home most of the time. I don't do a lot of travel. But I do travel. So if something is coming up you might want to shoot me an email that you'll need to talk to me in a couple days, what's a good time, give a little warning. And the other thing being is I'm not only Jewish, I'm an Orthodox Jew. So I keep the Sabbath. So that means I can't answer the phone on about – this time of year the sun sets around 5:30 but I'm usually that last hour or so in a heavy preparation mode. So if you need to talk to me Friday, it's best to talk to me before lunch if you possibly can.

INTERVIEWER: Good to know.

INTERVIEWEE: Although if it's a short question I can get to you after lunch. But by 5:00, you know, I'm in failsafe mode. So you won't – as the winter wears on the sunset gets later and later but I still have to deal with the preparation issues.

INTERVIEWER: All right. Great.

[...]

[END OF INTERVIEW]