

US EPA ARCHIVE DOCUMENT

SYLVIA LOWRANCE

Former EPA Director of the Office of Enforcement and Compliance Assurance



Interview Date: September 9, 2005

Location: Bethesda, MD

EPA Interviewer: For the record, this is an interview with Sylvia Lowrance, who is a former EPA official now in private practice in Washington, DC. We're conducting this interview on the 9th of September for an oral history project for the Superfund 25th anniversary. Good morning, Sylvia.

Lowrance: Good morning.

EPA Interviewer: Sylvia, tell us what you currently do, including how long you were at EPA, and tell us about how long you have been in your new position, and [your] focus on Superfund-related activities in your new position.

Lowrance: Certainly. I retired from EPA three years ago, and since that time, I have tried to be semi-retired. I am an old mom. I have two relatively young boys, aged 10 and 12, and during my career at EPA I didn't have a lot of time to spend with them, and so we're spending time getting reacquainted and building a different type of relationship as they enter their teenage years.

I'm doing private practice because it does provide me some more flexibility, at least in terms of time, if not hours. I think that my work spans the gamut. I work for both environmental interests and I work for industry. My goal is to have a practice that helps people do the right thing and protect the environment, so I am very selective in who I take for clients. It has to be someone who wants to do something different than they've done historically, and someone who wants to try to advance environmental protection. That can be anyone from an industry that hasn't historically done a lot, and they want to at least take a first step, all the way to an environmental group that's doing advocacy. I have done work on Superfund particularly, one of my areas of expertise. Having been in the Agency for so many years, I'm able to navigate the Superfund budget, and many people on the outside do not understand how Superfund is managed, do not understand the resource needs, the expenditures, and how much is needed to really deal with that program. I spend a good amount of time on issues like that where someone who has been in the Agency and is now in private practice can really help others be educated about Superfund and what it means and how it operates. That helps people be better informed for the policy debates that we're having right now and will continue to have on Superfund, I think in perpetuity as long as it is in existence.

The other thing I do is I do some work on the enforcement side. A lot is dealing with oversight, external oversight of the enforcement program. That has always been very

important to the Superfund enforcement program. Having external watchdogs, having people watching, making sure that the enforcement side is getting the requisite attention that it needs from the public and from industry. It's a very, very important issue for the program.

EPA Interviewer: I couldn't agree more having spent my career in enforcement, so it's words of music to me. Now I know you've been active in Superfund for a long time, and I'd like you to start on the date of enactment: December 11, 1980, and give us some background on Superfund-related activities that you were involved in and which office at EPA you were in at that time.

Lowrance: Well, I started work on Superfund prior to the enactment in 1979. Tom Jorling, who was then the Assistant Administrator for Water, had a concept that we needed to have a program to clean up toxic sites in the country. And [as I] recall, at that time we didn't know what a toxic site was.

EPA Interviewer: Well, I know we had RCRA [Resource Conservation and Recovery Act], but RCRA was just a baby.

Lowrance: At that point in time, RCRA had dealt largely with solid waste. It was a garbage law and had not dealt with the prevention side in any major way at that time, but there were rivers catching on fire. People knew there were industrial accidents and industrial releases. We knew there were some leaking landfills. No one had any idea of the magnitude of the issue then. I recall that one thing that was done by EPA that was probably extraordinarily powerful in getting Superfund enacted was out of the Office of Drinking Water. At that point, they did what's called the surface impoundment assessment. It was a study of pits, ponds, and lagoons around the country, because one of the issues was people knew that chemicals were getting into water bodies, and chemicals were getting into rivers and streams and elsewhere. So they did what was called the surface impoundment assessment, and it was well done, although I think with today's knowledge we'd think it was rather crude, but at that time it was the best that could be done.

What they did was they went out and inventoried everything they could, using every piece of available information around, and they came up with 200,000 potentially leaking pits, ponds, and lagoons in the country. That was very powerful in the Congressional debate, in addition to the particular incidents at Love Canal and Chemical Control¹ and elsewhere, where you had stark instances of fire, explosions, health risks. What happened as a result of that is a small task force was set up to begin working on the legislation. At the same time, most of the Agency didn't think that Superfund ever had a chance of getting enacted. They thought it was a crazy idea, that Tom Jorling was out of his mind, and who would ever pass a program that was funded by an industry tax, and how would you ever get it through Congress? But at the same time, Tom wanted to start thinking about what would happen after it was enacted. He tapped Mike Cook to head up a task force. I worked for Mike; he hired me into the Agency. He came to me one day and he said, "Is there anyone like you who you think would like to do this?" And I said, "I'll do it." And, lo and behold, Mike and I went. And the Task Force working on the legislation was over here, and that was combined with Ken

¹ Love Canal, Niagara Falls, NY; Chemical Control, Elizabeth, NJ.

Biglane's old division, which was the 311 Emergency Response Group, under the Clean Water Act, and that division got subsumed into it. Some of the folks are still there from that, the Emergency Response Team, up in Edison, New Jersey. So all those people came together, and you could imagine, as in any new organization, trying to figure out what you do. But that was no problem—there were so few people that everybody had work to do.

EPA Interviewer: Well, and on the enforcement side, there was the same sort of raiding of the water lawyers to bring them into the...

Lowrance: Exactly, and the task force tried to set up, tried hard to use RCRA 7003 authorities and other authorities to make a difference. That effort largely, in hindsight, was more to make the point that there were cases out there and how difficult, how truly difficult it was for the government to secure any relief.

EPA Interviewer: Well, I am told that the government, in fact, had a sort of like a dragnet to come up with 50 cases that they could ring under 7003, and in fact...

Lowrance: It was a real challenge.

EPA Interviewer: And many of them were filed, and then years later people were saying, "Oh, my God!" Let's amend these and add some surplus.

Lowrance: That's right. You couldn't get anywhere with them really; it was too difficult. So all these people came together and just started working as hard as they could. What I did was, I worked some on the legislation with the Task Force, largely from the Office of Legislation and General Counsel attorneys, and also began working on planning for the new Superfund program. Before the enactment, it grew and grew and grew and grew. A lot of the activities that we were undertaking, at that point, were really supporting the Hill. There was, as you can imagine, this is brand new, there was *no* technical information. Today, the burden of proof for enactment of new environmental legislation is huge; you almost have to prove what causes cancer in order to get people to enact new legislation....

EPA Interviewer: Unless it's liability relief.

Lowrance: That's right! A new environmental program. So a lot of it was really trying to gather information where there was none for the first time in those early stages. To make a long story short on the enactment of the legislation, we had all given up hope in 1980 and following 1980 of having it enacted, and lo and behold, thanks to some very committed Senators, and particularly Congressman Florio, who was a Representative from New Jersey at that point, we were able to do it in a lame duck session. And there's one gentleman on Capitol Hill who now has done an assessment and said the only time to get legislation—environmental legislation—passed is in a lame duck session now. Because there's a track in subsequent years of having reauthorizations and other bills, other environmental laws, passed only in lame duck sessions where everyone is sort of in a hurry to go home.

EPA Interviewer: And tired.

Lowrance: Exactly. And because of the controversy that surrounds any environmental policy issue. The law passed; we were ecstatic and then realized what was upon us.

EPA Interviewer: So the flavor of the atmosphere when you were brand new to Superfund must have been very interesting, very challenging.

Lowrance: It was. It was terrifically exciting. [There were] a couple of reasons for that. One of the foremost is probably we were all relatively young then. EPA was a young agency. A lot of new people coming in [were] very committed—starry-eyed in many cases—but people who worked 12, 14, 18 hours a day on these issues. The other thing is, it was a young agency, and it just simply did not have the bureaucracy that it has today. The stovepipes existed, but they were not as tall in those days, and there was more flexibility to move where you needed to move. There was more political willingness on the part of political officials to move resources around and to address priorities in a very real way.

EPA Interviewer: And the government had this pot of gold to spend, which was also unprecedented for environmental statutes.

Lowrance: That's correct, although spending that pot of gold has a pretty checkered history, and that was, of course, subsequent to the enactment and then the Administration changed, shortly thereafter. That money was not well spent in the early years of the program, because of a conscious, political decision to constrain Superfund so that it would not ever be reauthorized. The theory of some of the politician's back then was: we can never let this happen again. We won't let this tax happen again. We won't let this go forward, and the way we'll demonstrate that is by not ever having the Fund run out of money, so we won't spend money in the Fund.

EPA Interviewer: In the early days... I'm told that you are one of the primary authors of the National Contingency Plan. All fingers point to Sylvia.

Lowrance: Well, there were several people involved in the National Contingency Plan.

EPA Interviewer: Well, I would like for you to explain briefly for anybody who might be listening to this that doesn't know what it is.

Lowrance: Well, I'll give you a little history lesson on the National Contingency Plan. The National Contingency Plan existed prior to the enactment of Superfund. But it existed under Section 311 of the Clean Water Act, and it dealt primarily with oil spill response and how government agencies generally would cooperate to address oil spills as they occurred both offshore and in the inland areas, inland waters of the United States. With the enactment of Superfund, the Agency was directed to revise that plan, to expand it fairly dramatically to make it the response operations plan for Superfund. How would you assess sites? How would you clean them up, and how clean is clean? That issue remains with us today. What we decided to do early on was to provide as much guidance as we could on how sites could be cleaned up, because we recognized that no one had done this before in this magnitude, and we felt that you really needed to have some guidance, some baselines, some answers to "how clean is clean" out there, at least as a starting point for people.

I was not the sole person doing that. There were a lot of very good technical people that had come onto the task force from the Section 311 program, as well as from the Water Quality Standards Division in the Office of Water. A couple of the folks—Steve Caldwell helped work on it; Rick Stanford, out of the Water Program—were instrumental in working on it as well. Steve was trying to deal with the site assessment and National Priorities Listing area. How do you set priorities? Rick was trying to deal with “how clean is clean.” I was trying to pull everything together and deal with all the legal issues and how you pull this together; what you can do, how it related to enforcement issues, etc.

EPA Interviewer: And did you work with the people who were doing the hazard ranking, the Mitre style?

Lowrance: The Mitre Model. Yes, and again Steve Caldwell was absolutely instrumental in all of that process. What we did was, we developed a very extensive plan. And it was not just the rule, but it had a whole series of technical appendices on how to do a site assessment, how to do a remedial investigation, how to determine “how clean is clean,” and all the rules and technical decisions that had to be made along the way. But lo and behold, the Administration changed, and the decision of that Administration was that we shouldn’t make those decisions in this rule. They took the National Contingency Plan—completely stripped it down to bare bones.

Now, there’s two ways one could look at that. One is these were major policy decisions. I mean, “How clean is clean?” is a major call. You know, we’ve gone back and forth over the years from a range to a point that you can deviate from, etc., etc.² And those are legitimate policy debates to have. However, I think one of the major problems that the program had for many years was not having those guidance documents out, even if you didn’t want to answer the “how clean is clean” question. Not having guidelines and regulations out on how to do site assessments, at least a minimum baseline, or at least a point of departure for people to use or are required to use, I think led to a lot of unnecessary transactions and a lot of waste of human capital as well as dollars.

EPA Interviewer: The private sector would probably maintain that they were cleaning up sites to a level in some cases that didn’t make any sense.

Lowrance: I actually think people in the private sector were of two minds. I think there were people that would have been very happy just to have the number to clean up to. Just to have the guidelines out there.

EPA Interviewer: And to have the certainty.

Lowrance: Yeah. I think this was more Washington political decision than a decision of good technical folks making good technical judgments, because I’ve talked to many people in industry over the years about this who were begging for protocol guidance and

² “Range” refers to a protective risk range for exposure to carcinogens. “Point” refers to “point of departure”—that is, a risk level that you strive to meet but move off of for specified reasons, such as technology capacity.

everything, because remember, this was more than just how to clean—how the government was going to clean up something. And it was more than how you were just going to clean up NPL [National Priorities List] sites. From a private party's perspective, I would clean up my site if I had this benchmark prior to the government ever finding it.

EPA Interviewer: And if you would tell me when I'm finished.

Lowrance: Exactly, exactly. You can have that going on as an incentive in the private sector. That was a big failure in the early program. The other failure in the early program—again, it was a political failure that ended up blowing up in the face of the Reagan Administration—was the decision to constrain the uses of the Trust Fund, and to try not to fund things. And I still recall one of those meetings and, again, I was in my late twenties then, and I recall going up to Administrator Burford's office with Mike Cook, and I bet he does not recall this anymore, but I recall going up. He had a whole series of authorization packages to spend money on emergencies.

EPA Interviewer: So he had a list of sites.

Lowrance: He had the funding authorization. They would not delegate any signature authority to him for spending funds.

EPA Interviewer: Oh, no, he did remember this. So, go ahead.

Lowrance: I recall, as a young pup, going up with Mike to the Administrator's office. We were up there to brief her on something else. Mike took the funding packages with him. At the end of the meeting, he said, "You know these have been pending for some time. I have these funding packages." And the Administrator tried to dismiss him and say, "I don't want to talk about this."

Mike literally staged a sit in, and said, "I'm not leaving until you make a decision to either fund these or not fund these emergency response packages." By that point, the Administrator was calling in her Chief of Staff to evict Mike from her office. It's funny in hindsight.

EPA Interviewer: It's funny in hindsight.

Lowrance: But it was two things. One, it was a great lesson to me in courage, and what a senior manager really needs to do at EPA. You have to support the political officials you work for. You work for the President. But there are times and events that occur during a lifetime that do require some courage to push the system and do the right thing.

EPA Interviewer: It was Mike's Rosa Park moment.

Lowrance: It was his moment. The second thing. It was startling how naïve the political officials were in making that type of decision. They weren't trying to constrain funding at that point on long-term cleanup where the EPA was still having trouble in those days figuring out the right assessment to do to show the risk. These were emergencies with documented contamination. Things blowing up, direct human exposures, and they were refusing to fund

them. That's when you really knew this was a cycle in time. It wasn't going to last, and lo and behold it didn't. The oversight arms of Congress, the public, the media, all started dealing with the issues at that point. Then it was just a matter of time.

EPA Interviewer: I'm going to allude again to early days of Superfund, and there were charges that EPA was entering into "sweetheart deals." On the other hand, people in the private sector were saying that enforcement is basically unfair. Did you have much interaction with the sweetheart deals, basically the unfair mentality of the day?

Lowrance: Well, let's put it this way. First of all, I think when you're talking about the so-called sweetheart deals, I really think you have to differentiate between different levels in government. Again, I think this links back to the political officials at EPA, and there were inevitably political officials at EPA who were having *ex parte* discussions and contacts with private parties, with parties to litigation, without the attorneys of record, without the career staff attorneys. No doubt. And there were decisions made that went against staff attorney recommendations on some of these sites. There were Assistant Administrators—and one need only look at the Stringfellow case—and oversight that was done and reports from Congress and others on the types of contacts, and what went on there. But, underneath that, there were still career staff doing the jobs on cases and trying to get them done.

The daunting issue there was what you actually alluded to earlier, that we'd never done these types of cases before at EPA. People were struggling to figure out how to make a new kind of case. It is with any environmental law I have ever been involved with, be it a new Air Act, a new RCRA Act, a new Water Act, or a new Superfund [Act]. It takes a couple of years to carefully figure out how to use those authorities and not pick cases that would lose those authorities and get adverse decisions. It's just the process you have to go through. So you had both those going on at one time. All of it in sum made it look like the program was not running, and the early results weren't good. Some for bad reasons; some for good reasons.

So the really hard part of the early days was trying to show that. I also think that there was disbelief among a lot of the private party people we were negotiating with that they would ever be held to account. They didn't believe that EPA and [the Department of] Justice were going to seriously prosecute these cases. They did not believe that Fund monies would be used if they failed to act, and you know, that is probably the most powerful tool that Superfund brought—the ability to go back for treble damages if people refused. But no one was thinking in those terms at that point. The whole mentality was: this will never last. It's going to be contained; it will never last. We're going to get rid of it. So all that contributed to the real, real slow pace of the beginnings of the program.

EPA Interviewer: Well, even the first cases dealing with joint and several liability took time, because the private sector, I believe, didn't think it would ever fly.

Lowrance: Exactly. No one believed joint, several, and strict liability would last.

EPA Interviewer: Amazing. In the early days, we had the program and the enforcement arm [organized] separately, then together, and then separate again. Internally this was very chaotic. Do you think this had any impact on efforts to get sites cleaned up?

Lowrance: I am not one that believes that organizational structure drives the substance. I think that the thing that drives the operations of the program is the leadership, and by that I mean mid-level, senior-level career as well as political leadership. Getting the job done means making hard decisions, and if you have leaders that can do that, you get work done. If you have leaders that are unwilling to do that, it doesn't get done. By and large, I think Superfund has had some pretty good managers over the years who were willing to put their heads together and make those decisions. It's not always simple to decide whether a case should be a Fund-lead site or an enforcement-lead site, and increasingly, as the program has matured, it is not even that decision. It's, "Where do you put scarce dollars and what do you invest at a particular site?" as well as in areas of your program when you don't have sufficient dollars to manage the full panoply of activities that are necessary from the beginning of the pipeline to the end of the Superfund pipeline. And that's purely a management issue. I think if you looked at organizational structure in EPA, I think you're as likely to have conflict between sections within a branch as between AA-ships [Assistant Administrator offices]. It's very people dependent.

EPA Interviewer: Well, and as a program matures, you always have the problem of a little bit of turf handling here and there.

Lowrance: Exactly, exactly. And there's no large institution on earth that doesn't have that.

EPA Interviewer: That's right; that's right. It's not just Superfund. Looking again at the first 10 years of Superfund, what do you think was the biggest mistake that EPA made in those early years? Talk about it a little bit.

Lowrance: A couple of things. One is the political decisions that were made in those early years. Those lasted well into the first five, six years of the program, impacting them all along the way, because you didn't have the guidelines out. You didn't have the "how tos" out. You didn't have the appropriate incentives in place with a program with as daunting technical issues as Superfund.

The second piece of that is what was not known. We really didn't know a lot about groundwater in those early days and the transport of chemicals through groundwater, nor about remediation. A lot of the remediation, particularly groundwater, was trial and error, trying to figure it out. We didn't know where to put the wells, didn't know how to control plumes, which I'm sure you've heard from Tim Fields and others.

EPA Interviewer: I have. I have. I've also heard from my own experience that some people believe that you had to build slurry walls down to bedrock.

Lowrance: You bet. It was very difficult at that point. So, you know, not so much a mistake, but a recognition that those things would take some time. I don't think at the beginning of Superfund we realized quite so much how little was known about how to build these things. It's...you know what the technological solutions were. I think people were fairly confident in assessment, with some issues in groundwater. But the—how to build the things and how to make them work and how to monitor over time—I think we underestimated the level of difficulty there. The confidence in engineering and technology was there, so a lot's been learned.

EPA Interviewer: And by so the time the SARA [Superfund Amendments and Reauthorization Act] amendments came along in 1986, we then had a lot of new things tossed into the statute, like ARARs [Applicable or Relevant and Appropriate Requirement].

Lowrance: Exactly.

EPA Interviewer: And I am assuming that you were still toiling in ranks, doing Superfund stuff during that time. Do you think that helped fix any of the problems that hadn't been fixed?

Lowrance: I think it helped minimize some of the problems, because it gave you an endpoint to strive for. If you were going to apply this technology, if you were going to apply this technical standard, it narrows the band of uncertainty, and it did. But it didn't eliminate it. There were still significant issues that were yet to be uncovered in how to clean up the program. The other early decision that I think we did not make explicitly enough was the relationship between enforcement and Fund-financed cleanup.

EPA Interviewer: We were in separate AA-ships.

Lowrance: It took a number of years for policy makers to really begin thinking, as a strategic matter, how to join Fund-finance and enforcement cleanup and how to make them work in tandem—not as an either/or—and how to really integrate the cleanup and enforcement processes from site discovery all the way through to remediation. That impeded a lot of work, because again, you had a lot of unnecessary transactions going on, and I think the program as it has matured has done much better in being able to do that.

EPA Interviewer: So to look at the other side of things, what do you think the best thing is that Superfund's managed to deliver in the last 25 years?

Lowrance: I actually think the best that Superfund's delivered in the last 25 years is cleanup. I mean just basic cleanup of a lot of sites. And some of them will never be finished. Some of them will be partially cleaned up forever. The task is more daunting than anybody ever believed. When I say "cleanup," I don't mean just what the Fund has done or what the government has done. It led to a lot of other things, once people realized that the liability regime was there to stay for the most part, and that the Fund would be used as a backup, and there would be liabilities. It was a huge catalyst for other programs.

First, a lot of states began adopting programs for their sites. It dramatically expanded the cleanup and the recognition that you needed to do cleanup. It acted as a tremendous incentive for private parties to go ahead and clean up their preexisting contamination quickly, and a lot did. Not all, but a lot did it, and you need only to look to the growth of the consulting industry to support that.

The last piece is the advent of Superfund, the recognition that there were all these sites out there—not just so called NPL-caliber or NPL-listed sites, but all these other sites that led to the enactment of the RCRA amendments and that really began clamping down on how hazardous waste is managed in the country. PCB [polychlorinated biphenyl] regulations that were stronger than they had been before on PCB management and the media cleanup

had all sorts of spillover effects, so that we're much more careful today about how we manage toxics and how we manage hazardous wastes.

EPA Interviewer: Now during the early '90s, EPA, in an effort to reauthorize Superfund perhaps, but also perhaps in a political will to make it more fair, undertook a number of administrative reforms. Were you active during the administrative reform time, or were you active in efforts to reauthorize Superfund?

Lowrance: Not at that point. In the early '90s I had left the waste program and went up to work for the new Administrator, Carol Browner. She came in 1992, and I spent a good bit of time on other environmental issues in addition to Superfund, but when I returned to enforcement in the mid '90s, a lot of the administrative reforms were just beginning to be implemented.

My observations on the reforms—I think they have all actually been pretty good. Many of them are still in their infancy, though. Again, when you're dealing with law and cases and how things work with private parties, and all the interrelationships with the liability and among all the parties, you have to take some baby steps and see how things work before you can full-scale things.

I do think the reforms took the edges off some of the harsher points of joint, several, and strict liability because in the early days, back to getting this enacted, the Task Force went through a lot of agony trying to decide whether to compromise on joint, several, and strict, and whether something... [You] just keep on making the decisions not to, because of fear that it would really get watered down.

EPA Interviewer: Well, before the SARA amendments there were settlements where we recognized [unclear] contributions.

Lowrance: Hard thought had gone into that with the understanding that if government loses that leverage, you probably could not prove cases, probably would not have the incentive that you need for people to come to the table and take responsibility on their own. So I think the reforms were at an appropriate time in the history of the program. I still think we're struggling in the program to try to understand what those reforms should look like over time.

The other obvious—and I keep on coming back to this—obvious problem with the reforms was that a lot of them were not fully funded, so you are restricted in use at this point, because of the tensions and the program funding today.

EPA Interviewer: And for those reforms that didn't make it into the Brownfields amendments, you have the usual distrust of the private side of a policy...

Lowrance: That's right.

EPA Interviewer: ...which is not part of the law. Yeah, administrative reforms probably were appropriate at the time they were entered into. I am going to need to take a quick break just to check on this.

[Recording paused.]

EPA Interviewer: OK, Sylvia, we were talking about administrative reforms. I was ready to segue into something else, anyway, so now is a good time. Did you have any brush with environmental justice issues, with anything you do now or while you were at the Agency?

Lowrance: While I was in the Agency, the environmental justice program was under my purview when I was in enforcement. So I had pretty extensive involvement in environmental justice and the environmental justice community. Certainly the Superfund program is so local, I mean you are talking about individual site cleanup, and that has made it one of the prime interests of environmental justice folks and of communities. I think that the cleanup of the toxic waste sites early on led to a lot of distrust among communities, because most of the sites were located in low-income communities. I think that the slow pace of cleanup in those early years actually was quite a catalyst for communities to come together and for the environmental justice movement. It really grew around those issues. And I think the environmental justice movement has been a positive one, because as they matured, coming together around Superfund issues, those communities have become more informed about environmental issues.

EPA Interviewer: I think that is the key.

Lowrance: They are more active. Not just on Superfund, but in looking at other environmental issues—at the air quality issues in their local communities, at how wastes are managed, at the water quality issues in the communities. And those voices are being heard, and they are resulting in action being taken to respond to a lot of the pollution problems—not just past, but ongoing in those communities.

EPA Interviewer: Do you think you will have any brush with environmental justice issues as you are dealing with Hurricane Katrina?

Lowrance: Oh, I think as we move forward in trying to address the myriad of both short-and long-term environmental issues that are going to affect that region for the next decade. Certainly the communities, I think, are just going to come together more. When you are faced with the situation that they are faced with in Louisiana and Alabama and Mississippi, [in] many cases you are dealing with low-income communities along the coastal areas there. Some of the worst destruction was in low-income communities, and those communities are located in areas with high industrialization, [with] high toxic, traditional toxics loadings in their water bodies and soil that need cleaning up from historical practices, and I think those communities are going to come together even more. I think people will be more active. In many ways, I think what we will see is that this is not just a tragedy and a daunting assessment and cleanup job, but it is also an opportunity. It's an opportunity as reinvestments are being made in the infrastructure—in houses, businesses, industrial facilities, schools—to do it better.

EPA Interviewer: I'm sure that's everybody's hope. If you had to sum up your work at EPA and pick the most significant issue that you dealt with during your 24 years at EPA, what would it be, and give us a little background into it and tell us if you think this issue was resolved, still exists, just talk a little bit about this significant issue that you worked on.

Lowrance: Sure. I can't choose one. Over a span of 24 years, it's very difficult to choose just one issue, but there are a couple that I think were extremely significant. One is the whole Superfund issue. I think being involved in the development of something brand new is always exciting for people, and it was certainly exciting for me. And I think the Superfund program, as we previously discussed, has had impacts far beyond the program itself in terms of being a catalyst for environmental protection and prevention of future problems, so that was certainly one of the most rewarding things that I have ever done. Although the path was not always a smooth one, and it had rocky roads, and there are still going to be rocky roads ahead. The impact is still there.

The second thing that I was involved with in the Clinton Administration was when the Contract with America was enacted and I headed up the EPA group that dealt with regulatory reform legislation and helping the light shine on what that so-called "reform legislation" was really intended to do to environmental laws. That would have affected Superfund, air laws, water laws—everything that EPA does. It would have made the legal processes, administrative processes, permitting processes almost impossible for the Agency by shifting scientific burdens of proof to the Agency, putting them in a situation where they would have been paralyzed if it had been enacted. While I generally don't like to say that causing something not to happen is such a success, we don't always see that as a turning point potentially in EPA's history that was averted and that was very good.

The third was—is still—a work-in-progress, and that was in the enforcement program beginning to look at enforcing air quality laws. EPA, because of the way the Clean Air Act evolved until well after the 1990 amendments, did not do a lot of significant enforcement of air quality laws with industry. The Agency and the law of vision were very busy with states getting rules out, state implementation plans out, getting new permits out, etc. But once we started looking—it was very significant that we started enforcing at power plants and other major sources—working with the petroleum industry in a more cooperative way to bring them in and get them into compliance, and other industries, and that's been very controversial. It reminded me very much of the early Superfund days when people feared the government coming in and saying, "OK, now it's time that we've got to deal with getting the job done." And the jury is still out on whether the Agency will succeed there. There have been some very good efforts, some positive efforts. There have been some regulatory actions that are a bit disturbing and may undercut those efforts, but again, I don't know where that's going to come out. I certainly hope it's the right place.

EPA Interviewer: Do you have any opinion about the way Superfund was originally funded? You know we taxed a certain segment of the industry, and the question is whether that was really the right way to go to get Superfund started, and then when you think about the tax, of course, then you have to agree that the tax is now expired and the Agency is continuing to focus on polluter pays.

Lowrance: I think that the problem with the Superfund tax is that it was perceived as rough justice, that it wasn't refined enough against the parties that truly had caused a particular problem. And that because it was rough justice, I think it was always subject to attack. I don't think rough justice is bad. I mean there are times you have to make public policy decisions to deal broadly with industries and broadly with problems, and we do that in our income tax system every day, so I personally never had a problem with the tax. But the way it was set up

did lead to a good amount of controversy over how it was assessed and put together. In those early days also, it was very controversial. A woman named Maryann Froehlich worked on the tax component of the legislation and tried to justify who was taxed, how much, what the relative contributions were, who should pay what—[it] is as much an art form as a science.

With all that said, it's hard to say where the Superfund program could go in the future without the tax being enacted. I think recent experience has shown that the program is not getting adequate funding from Congressional appropriations. It does not have enough money to go at the pace it needs to go. We've seen construction completions go down and other activity measures in the program go down in recent years, and the unfortunate part about that is as those go down, the backlog grows, and that creates a problem in perpetuity that worsens, so it's in need of a solution. The other problem with direct appropriations for Superfund is that EPA is in a zero-sum game, given budget reconciliation. If you increase Superfund in the Agency, it's going to come out of some other environmental program in the Agency, which is dependent solely on direct appropriations. They don't have any cost-recovery programs in these other programs that we have for the most part in the Agency, so I think it's a tremendous problem. I don't think that there is a good solution other than the tax, because frankly, the other good solution has been proven unworkable in recent years. The appropriations dollars simply aren't there.

EPA Interviewer: I have a couple more questions on something unrelated. You know the Brownfields amendments were passed in 2002, and I'm wondering if you do any work today that has had any impact on it caused by the Brownfields amendments.

Lowrance: No, I do very little work on the brownfields areas today. It's not part of my portfolio right now.

EPA Interviewer: OK. Then I'll try a different tack entirely. Do you see a future time when Superfund is no longer, not just is not going to exist, but it is no longer going to be needed?

Lowrance: There may come a time when the Superfund program is no longer needed, but not in my lifetime. I think there's a part of the program that, even with full funding, will always be needed, and that's the emergency response work. There is always going to be spillage, and there's always going to be massive tank problems, explosions, fires, etc.

EPA Interviewer: Floods.

Lowrance: Exactly. And you need that capability, and it's a specialized capability, and I think both state and local governments agree and this has not been controversial in the past. That there's specialized expertise that you don't want to maintain everywhere that you want to be able to call on, and that's really what Superfund is all about.

The second area is we're always uncovering new things that we don't know about yet, in terms of science and technology. While a lot of site cleanup has gotten pretty routine, and people can do it, we still find out more things about the technological needs, long-term reliability, where you need the Federal Government to come in with research, with demonstration, and just with the expertise to help people deal with some of the more daunting

technical cleanup problems. So I think that will last into perpetuity, but for the foreseeable future, the Superfund program still has a lot of sites to clean up, and that will take decades and decades and query what will be added during that time.

EPA Interviewer: I'd like to get some concluding words of wisdom, but again, I want to take you back to something like Love Canal and ask you what you think things would belike today if Superfund had not been enacted. Was Superfund inevitable?

Lowrance: I think some cleanup program had to be enacted and would have been enacted with or without Superfund. The question is whether... Did you need it at the federal level? And if so, what did you need at the federal level? Of all the environmental issues that in hindsight that we have to deal with in this age, certainly site cleanup is one of the most local. We do have national meetings for the expertise and research and everything.

EPA Interviewer: And the budget.

Lowrance: And dollars, but the question is, "Who's in the best position to do it?" The presumption in 1980 was it was the feds. And maybe that's changed over time, and that much more can be done locally. I say that because I think that EPA has a lot of other issues it needs to focus on nationally today that are across state boundaries and across international boundaries that are tremendously significant to our future. But with all that said, there are some functions also that I don't yet think are where there is capability and will at the local level. I think certainly during technical site cleanups there is the will, but not all states and localities have the will to use the enforcement tool. It is very difficult politically to use the enforcement tool in a lot of cases, particularly where you are dealing with industries that are struggling and trying to do that. That often requires the so-called "gorilla in the closet," and that's always been EPA's role in Superfund enforcement or elsewhere, where you can call on the Federal Government. It's more impersonal, because it is further from the locality to help out. It's that piece that I question, other than in a handful of states, [if it] should really be sent out in the future. So I think there was a need then and a lot of functions where there's a continuing need for the federal presence in Superfund for the foreseeable future. When you look at the daunting cleanup task in this country, the federal Superfund is but one piece; states and locals have their hands full with RCRA corrective actions and their own site cleanup programs for the less daunting sites. And those are demanding more resources than they have, so it's a need well into the future.

EPA Interviewer: Sylvia, I appreciate the time you've taken. I know you are about ready to segue yourself into [Hurricane] Katrina related activities, so I appreciate [it] very much.

Lowrance: You are very welcome.

EPA Interviewer: Thank you.