

US EPA ARCHIVE DOCUMENT

# JACK CLOUGH

## Congressional Aide

**Interview Date: February 11, 2006**

**Location: McLean, VA**

EPA Interviewer: This is February 11, 2006, and we're interviewing Dr. Jack Clough in McLean, Virginia. Thank you for participating in this. To start, I was hoping that you could give us some background—your educational background, and what led you to working on the Hill.

Clough: I am a Ph.D. [Doctor of Philosophy] botanist and was doing a post-doc at Duke University at a time when academic jobs were scarce, to say the least. I had known Congressman Chuck Mosher, who had been a family friend and the Ranking Member of the House Science Committee, and he encouraged me to apply for an AAAS [American Association for the Advancement of Science] Congressional Fellowship, which I did and which I got. In the fall of 1980, about a week before election of Ronald Reagan and the flip of the Senate from Democratic to Republican, I started work as a fellow for Congressman John Dingell [from Michigan], who at the time was the Energy Subcommittee Chairman, but was slated to become the full Committee Chairman of the Committee on Energy and Commerce.

EPA Interviewer: Were you involved in the initial passage at all of CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act]?

Clough: No. I was there. I remember it going through, but I had nothing to do with it. At that point, I was still negotiating with the office manager over which desk to sit at.

EPA Interviewer: So when, then, was your first involvement with the Superfund program?

Clough: Well, I first got involved when we did the RCRA [Resource Conservation and Recovery Act] reauthorization, which I think was '83. Then in '84, the Congressman Florio subcommittee [Subcommittee Chairman Jim Florio of New Jersey] started work on Superfund. Actually, in '84 we passed a bill—and the leadership's thinking was that [Vice President Walter] Mondale could make use of the bill during his presidential campaign, but Superfund never really resonated as part of Presidential politics, because a Superfund site is a very local problem, and people who are not directly affected are concerned, but not that concerned when compared to jobs, healthcare, education, etc.

So we passed this bill that was real tough—even punitive—on companies, just to show our muscle as Democrats, and Members [of Congress] voted for it with the understanding that the bill would never be signed into law. But the next year when we came back to do a serious bill, the '84 bill created real problems. Subcommittee Chairman Florio took that bill and he added new things to make the bill even tougher on industry, which started us down a road where moderate Democrats and many Republicans on Florio's subcommittee rebelled and came to Chairman Dingell and said, basically, "Won't you help us draft a more moderate bill that we can support?" That's when I got put into it along with Dick Frandsen on Dingell's

staff, couple of staff working for Ranking Member Norm Lent [Representative from New York], and eventually staff from Congressmen Dennis Eckart [Representative from Ohio], Al Swift [Representative from Washington], and Billy Tauzin [Representative from Louisiana]. We were eventually joined by Linda Fisher, who was working for [Assistant Administrator] Lee Thomas at that time.<sup>1</sup> At that time, Lee was the head of the Hazardous Waste Division. Linda was his special assistant, and Linda always brought along Anne Shields from the Department of Justice and Nancy Firestone from EPA. This was the group that put together the core bill for the House.

EPA Interviewer: What were some of the main things you were trying to focus on in that main bill, in '85 to '86?

Clough: I think the feeling was—remember you had the Ann Gorsuch/Rita Lavelle escapade in the early '80s—and the feeling was that the program wasn't working very effectively. The mantra was, "Not enough cleanups have been completed." So we were trying to change the program to make it work more effectively. We had come to the conclusion that if we could find mechanisms to facilitate agreements between PRPs [potentially responsible parties] and to facilitate greater community involvement that maybe we could get some of the acrimony out of the overall process and speed the rate at which cleanups were conducted. We understood that joint and several liability was an important tool for the government, and yet it seemed to be applied unfairly at times and appeared to be really slowing down the ability to get parties to the table to negotiate, so we struggled a lot with that. Also, the Community Right-to-Know program was a big issue that was added to the bill. There were concerns about whether we would treat the Federal Government—primarily the military and the Department of Energy—like a private party PRP, or whether there would be some special considerations. There was a group that was very concerned about natural resource damages, others about the rights of Native Americans. And then, of course, there were lots of very specific problems—a town in New Jersey where they apparently had drums of radon-laden soil stacked in a city park and the issue was where to get the money to dispose of them properly; whether or not to allow EPA to declare Park City, Utah, a Superfund site; language to clarify that agricultural application of fertilizers and pesticides did not constitute dumping chemicals on the ground. We ended up with quite a few of these items.

EPA Interviewer: An important component of the reauthorization was the enforcement component of it. People who had thrown a pizza box in a landfill sometimes were being sued. Were those stories you were hearing about what led you to wanting to address some of those provisions?

Clough: Yes, but I was never really sure that we addressed the liability issues very effectively. You have to understand, also, that my job was a political job, not a substantive job. My job was to make sure that we moved a bill through the House and then that we got a conference report with the Senate. I left the detail work to those with expertise in various areas and then broke logjams whenever they occurred. So in a way, every issue was my issue, but I was

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<sup>1</sup> Lee Thomas served as the Office of Solid Waste and Emergency Response's Assistant Administrator from 1983 through 1985. From 1985 through 1989, he served as the Administrator of the U.S. Environmental Protection Agency.

only an inch deep on any one issue. I was juggling a lot of things. And it was stressful and it was fun.

EPA Interviewer: What was the biggest issue you remember dealing with? Was it the tax? Was it the enforcement angle of things?

Clough: Initially, it was the political issue of having a subcommittee that was so badly divided on the bill. The moderate Members did not want to vote for a bill that resembled the '84 bill. They felt the bill was just too punitive to the PRPs.

EPA Interviewer: How did you go about trying to break those logjams and get people to some sort of agreement about the politics and the need to be a little more balanced?

Clough: Well, first of all, remember who I worked for. Just the ability to bring Chairman Dingell into the fray was no small factor in terms of helping me do my job. Then, as I said, a group of Members expressed concern to Dingell about the bill Congressman Florio was circulating. So initially, we tried to draft a modified bill with Congressman Florio's staff, but that fell apart rather quickly, because I think that they miscounted votes.

EPA Interviewer: "They" being Congressman Florio's staff?

Clough: Yes. They had a steamroller approach to legislating this bill where Congressman Florio would meet with Members and say, "Well, the package is coming together, and you are one of the last to sign on. If you have a special concern, we will see if we can address it, but if you have not signed on and the train leaves the station..." (meaning: "You will never get that concern taken care of if you don't sign on.")

But there was a lobbyist for an industry association that had real concerns about the Congressman Florio bill, and this lobbyist had very good relationships with the staff of Members on the committee, and he spent time going from office to office and talking with these staff about his industry's concerns. And as the efforts to draft a bill with Congressman Florio's staff were going poorly, he came to us and told us that other than a couple of Members, nobody had signed onto the Congressman Florio bill, yet everybody was panicked that if they did not cut an agreement with Congressman Florio soon that they would have no leverage as the process moved forward.

So the lobbyist started reassuring the different offices that if they just stood firm, that Congressman Florio was a long way from having the votes to move his bill. At the same time, he encouraged the Members to speak to Dingell, and when the efforts to draft a bill with Congressman Florio's staff fell apart, we just kept quietly drafting.

It was unusual for a full Committee Chairman on the Commerce Committee to step into subcommittee business like that. That gives you a sense of the level of concern that was being expressed to Dingell, the fact that he would actually get into the middle of subcommittee business like that. Usually what happened was that the Subcommittee Chairman, with his Members, would craft the bill, send it to full committee, and then Dingell would engage.

Anyhow, we got the bill drafted, and we got to the point where Congressman Florio scheduled a subcommittee markup of Superfund. He knew there was a competing bill, and he knew he did not have the votes for his bill. But his plan was to bring up his bill as the base vehicle and force the other Members to amend their way back to the other bill. The day of the markup, he knew that Congressman Dennis Eckart was going to offer the alternative bill, so as soon as the markup started, Congressman Florio set out procedurally to block Congressman Eckart from bringing his bill up by immediately recognizing the Congressman Florio bill as the underlying vehicle. Congressman Eckart immediately appealed the ruling of the Chair, which is something that does not happen often in the House. I don't remember precisely what the vote was, but it was a decisive margin to overrule the Chair and make Congressman Eckart's bill the underlying vehicle, at which point Congressman Florio immediately adjourned the subcommittee.

EPA Interviewer: How did you get the bill out of the House and into the Senate? How were you working with the Senate at that time?

Clough: We weren't. We were having enough problems in the House. There was a period when everybody pushed and shoved behind the scenes and eventually the subcommittee reconvened. I don't remember how long that took. But the bill was marked up by the subcommittee and the full committee, and then the bill was referred on sequential referral to—again I don't remember precisely—but six or eight other committees that shared jurisdiction on some portion of the bill. Some of these committees got the bill on joint referral and some on sequential referral. The issues just seemed to touch on every committee's jurisdiction in the House.

EPA Interviewer: I imagine it was difficult to get a bill passed once you got the bill out of committee. The Senate was still Republican? Is that correct?

Clough: Yes, but we already knew that the Senate bill was "left" of our bill.

EPA Interviewer: How did you go about getting it to the Senate—getting some sort of consensus so you could get the White House to go and sign it, have President Reagan sign it?

Clough: Well, as I said, the first challenge was to get it through the House. Public Works had jurisdiction. The Judiciary Committee had jurisdiction. The Interior Committee had jurisdiction. Ways and Means had jurisdiction. Armed Services had jurisdiction. I think even Merchant Marine and Fisheries had jurisdiction. And I probably have forgotten a committee or two that had jurisdiction.

So the Commerce Committee acted, and then these other committees all acted to amend the bill that came out of the Commerce Committee, so that we had conflicting provisions that we had to reconcile so that we had a bill that could be taken to the House floor. Once we got to the floor, we had a bunch of Members who were not on any of the committees with jurisdiction but who had Superfund sites in their districts, so they wanted special amendments, etc., etc. So there was a lot of negotiation just to get this thing passed by the House. We got it through the House with a strong vote, and then standard practice is that you ship it over to the Senate and request a conference. Any detail about what was

happening on the Senate side up to that point, I don't know. And, frankly, I would need to go back and look at the Congressional Record to know whether we acted first or they acted first. I just don't remember.

And then we did the standard thing—appointed conferees and went to conference. The House side, however, was badly divided at this point between Dingell and his camp and a group of Members that had aligned with the New Jersey Member—Jim Howard, Chairman of the Public Works Committee; Bob Roe, Chairman of the Public Works Subcommittee that had jurisdiction over the bill; Peter Rodino, Chairman of the Judiciary Committee; Jim Florio, Chairman of the Commerce Subcommittee with jurisdiction—there were a couple more with lesser roles. Dingell had the other Chairmen of committees with jurisdiction and he had most of the Republican Ranking Member of all the committees (there were a couple of exceptions). Dingell nailed down the proxies—this was the type of thing I was responsible for – we nailed down the proxies with the group that supported Dingell's approach to the legislation; it was a more moderate approach. And we had the votes to control the House conferees.

EPA Interviewer: What was the more moderate approach? Can you give me some ideas about that?

Clough: The group that aligned with the New Jersey Member really wanted to strengthen the provisions in the bill to the point where the Dingell group felt the provisions were punitive for the sake of being punitive and would actually slow down the process of cleaning up sites. They wanted to expand the use of joint and several liability. They wanted to strengthen and expand the use of citizen suits. They wanted a series of things—I remember a fight over the circumstances under which bottled water (or trucked in water) would be provided. Would it be provided for drinking water only, or would it automatically be provided for bathing too? Anyhow, they wanted a series of things to happen automatically once a site was identified and before any assessment of need had been conducted. Do you automatically need bottled water if the community is already on city water? All these things just increased costs on companies that were PRPs, and remember that many of these Members have these companies in their districts. The companies were going crazy.

Now, please, I'm not trying to defend all companies. I think Superfund and the threat of joint and several liability really put the pressure on manufacturing companies to become much better citizens, and I think it is the single most significant thing that made executives sit up and take notice about what they were doing with their wastes from production processes. So we have benefited a lot, but people could get carried away where ...

Just the other day I was talking to a risk assessment expert who worked for the Illinois Department of Public Health over a decade ago, and he told me that Superfund was one of the most frustrating things he had had to deal with while there. He said, "We had kids in Chicago who are eating lead paint, and I couldn't get any money for that. It was real, it was immediate, and it needed to stop. Then we had Superfund sites where risk analysis showed very low risks to the community, yet we were dumping tens of millions of dollars into the site. It's one of the reasons I got so frustrated, I quit—let's take that money and put it into lead paint. Let's take a different, less expensive approach with the Superfund site. Let's get our priorities straight."

I am not sure I would have said it this way at the time, but I think a lot of the tension between the two factions in the House was over whether or not there was a need to prioritize. For some, when it came to potential harm to human health, everything was a top priority. For others, there was a belief that the program would actually be more protective of human health if there were a step-wise process where EPA focused on the biggest real dangers first and then worked its way through a prioritized process based on actual risk to people. But Superfund could be such an emotional issue, and it was so easy to make somebody look insensitive and politically incorrect if they did not want to make everything a top priority.

I remember a Congressman from Illinois who was aligned with the New Jersey Member who came up to me on floor while we were considering Superfund. He wanted to earmark \$2 million to take care of a Superfund site in his district—a small lake where a waste hauler had been dumping drums of chemicals. I grabbed Linda Fisher from the gallery and she tracked down EPA's estimated costs on this site—over \$50 million. The Congressman was furious—furious—because he knew he would never get an earmark of that size in a floor vote and furious at EPA for allowing costs to get so out of hand. But he never would have agreed to prioritization either.

EPA Interviewer: On the Commerce Committee, was there a focus at all about how the program should be funded? Appropriations or specifically the Superfund tax? Because that also had to be reauthorized.

Clough: The funding of Superfund? The only thing we could do—because of the jurisdictions of the Appropriations Committee and the Ways and Means Committee—was to recommend the overall amount for the program. We could recommend an appropriated amount, we could recommend a tax amount, but when it came down to how that was actually done, that was the business of those other committees, and we knew they would swat us down like a gnat if we tried to do their business, so we didn't.

EPA Interviewer: Eventually you did get through conference committee. Between the Senate and the House, do you remember what the biggest issues were? You talked already about how you had to caucus a lot on the House side.

Clough: I hate to admit this, but at this point, I'd have to have the bill—or better yet, the side-by-side—in front of me to tick off more than a few of the issues. They were basically the same issues we battled over in the House. What I do remember is that everything, it seemed to me, was being contested. As I say, it would be interesting to have the side-by-side here today, because I am sure it would bring back a flood of memories I have not thought about for a very long time.

EPA Interviewer: Do you remember the day that the reauthorization was finally signed by President Reagan?

Clough: Not really. I remember that for some reason, I was not able to go to the signing ceremony at the White House, but other than that, no, I don't really remember it. My job was done and I was on to other things. What I do remember is the final conference committee meeting, when we were there half the night and nailed the whole thing down.

EPA Interviewer: What was pushing you to get it done that night?

Clough: The immediate answer is that we were coming up on August recess. The broader answer is that it was politically unacceptable for most of the Congressmen and Senators to fail to reauthorize Superfund. We had spent months and months in conference committee going back and forth on absolutely everything, and we knew if we spilled over into September, we ran the chance of being preempted by the appropriations bills that needed to be completed. And I just think everybody was sick of working on the bill and just wanted it done with.

EPA Interviewer: What did you do after the bill was finally passed into law? Did you work on any of the oversight issues?

Clough: No, when the bill was passed into law I was off to work on other legislative issues. I was being given more management responsibilities, helping other staff deal with legislative problems on a whole variety of issues. What happened is that Dick Frandsen, who had worked—he's the guy you ought to be talking to about specific issues, because when it came down to it, Dick managed the issues. I focused on pushing things forward politically, but I relied heavily on Dick to understand how all the moving pieces of the program fit together. When Superfund was finished, he was officially moved from the oversight subcommittee to the full committee staff, and I moved into a similar type of supporting political role on other pieces of legislation that were going through the committee. Remember, the Committee on Energy and Commerce, at that point in time, had referral on, either primary or secondary referral on about 40 percent of all the bills that went through the House. I was once told by the committee clerk that during the second last two-year Congressional cycle I worked in, the committee passed 100 public laws. In my final Congressional cycle, the committee passed 75 public laws. There were plenty of political logjams to work on.

EPA Interviewer: You left the House in 1992. But you did work on—I guess it was around '94 or so—an attempt to again reauthorize Superfund?

Clough: Yes. I did it initially as a consultant to Dow Chemical, meaning Dow was one of our clients at my lobbying firm. And I worked on it again for the Superfund Action Alliance.

EPA Interviewer: What lobbying firm were you working at?

Clough: Bergner, Bockorny, Clough, and Brain.

EPA Interviewer: So you created your own?

Clough: When I left the Commerce Committee, I joined a small lobbying shop and became a principal in the firm. It was one of those shops that had 20 or 25 clients, depending on the circumstances.

EPA Interviewer: What was it like on the Superfund Action Alliance? You had a number of different stakeholders come together?



Clough: Yes. There were a bunch of companies that kicked in money, and one of DuPont's environmental lobbyists was like an Executive Director of the Alliance, and the truth of the matter was at that point that Superfund was pretty well stalled. It wasn't going anywhere, and I think everybody sort of knew that in their hearts and yet, as long as some staff and a couple of Members were working on it, you couldn't ignore it, so you kept proposing certain changes in the law, but you knew at the same time that there just wasn't any momentum.

There had been flurry of activity when Hank Greenburg of AIG [American International Group, Inc.] pulled together a group of stakeholders and hired The Keystone Center to facilitate the group, and they produced a very comprehensive set of recommendations and the outlines of a bill, which was introduced, but the bill was introduced so late in the Congressional cycle—I think it was August of the second year of the cycle—that they really did not give themselves enough time to be successful. After having been the Staff Director of the Commerce Committee where I was responsible for counting the votes and getting bills through the committee, through the House, and through conference committee with the Senate, I just looked at the situation and thought, "This is crazy. People will need to drop all the other end of session legislation and concentrate on this if it is to be successful." And predictably, people did not drop other legislation, the bill died, and after the end of that Congress, Superfund just never seemed to gel again legislatively—at least as long as I was working around Capitol Hill.

EPA Interviewer: Eventually you joined Meridian Institute, correct?

Clough: Yes. I got sick of the constant fundraising associated with lobbying—I wanted to work issues, not spend half my time trying to find people to attend breakfast and dinner fundraisers for Congressmen at \$500 or \$1,000 a pop.

EPA Interviewer: And worked on a number of different issues, including environmental justice issues, in Louisiana. What brought you to that, and what made you interested in working on some of the environmental justice issues?

Clough: What happened was that I became a partner at the Meridian Institute, which was composed of a number of people who had left The Keystone Center, where I had worked with several of them while I was working on Capitol Hill. In part because of the relationship some of my new partners had with Dow from Keystone work and in part because my relationship with Dow—they had lobbied me for 12 years as a member of the committee staff, then I had lobbied for them in one guise or another for six years—Dow came to Meridian about a problem they were afraid they might confront in Louisiana. They explained to us that one of their biggest customers, Shintech Inc., was exploring the possibility of siting a new PVC (a common plastic) plant next to Dow's plant in Plaquemine, where Dow would produce vinyl chloride (VC) and pipe it over to Shintech who would make the final product, poly-vinyl chloride (PVC). This would be similar to an arrangement Dow and Shintech have in Texas. What had happened before we were involved, however, is that Shintech had gone into Convent, Louisiana, with the intent to build an integrated chemical plant that would take raw materials and produce both the VC and PVC. They had an option on 3,000 acres of sugar cane farmland to build the chemical plant. Located next to this sugar cane farm was a small community—I do not remember the exact size, but it was less than 100 people—and the

people who were living there were predominantly black—like 90 percent black. So building this plant became a huge environmental justice issue that was international in scope.

After several years of battle, Shintech decided, rather than continuing the fight, to cut their losses, scale the plant back to a PVC only plant, and locate across the road from Dow's Plaquemine plant which could supply the VC. Dow was afraid the environmental justice issue would follow Shintech to Plaquemine, and they came to Meridian for advice. But here is the irony of the situation: once Shintech decided to move from Convent to Plaquemine, environmental justice was no longer an issue. Plaquemine at that time was a community of about 30,000 people, so it was big enough that the community pretty much reflected the racial composition of Louisiana as a whole. The argument could no longer be made that the plant would have a disproportionate impact on a minority population.

Anyhow, we helped Dow and Shintech design and execute a program that really involved the community right from the beginning. This was in contrast to the normal process where a company and the regulators would negotiate an acceptable package for themselves and then take the package to the public when it was too late for the public to make significant changes in the plan. As a result, the public was basically left with one option—oppose the whole plan. We started at the very beginning, before any discussions with the regulators, by sketching out a plan Shintech and Dow thought would be a good plan and asked the community to respond to that plan. We had a couple of iterations of going back to the community with a modified plan and eventually Shintech settled on a plan that the vast majority of the community supported. It took Shintech only 18 months from the time they submitted applications for their environmental permits to the time the plant was built.

EPA Interviewer: It doesn't seem like it happens too often that a company wants to get the community involved fairly early on. To Shintech and Dow's credit, it sounded like they wanted to do that. Do you remember what brought that about?

Clough: Well, as I said, Shintech was already one of Dow's biggest customers because of the Texas operations, and Dow wanted to establish a similar relationship in Louisiana. But Shintech had marched out there and made itself the poster child of environmental justice mistakes, and Dow certainly did not want any part of that reputation. So they brought in Meridian to try to make sure that they did this siting "the right way." And after we talked about it for several weeks, I think everybody was convinced that "the right way" to do this was to involve the community up front, not wait until the company and the regulators had cut the deal and then involve the community. What kind of involvement is that? Unfortunately, more companies don't do this, because they are afraid of losing control—I mean, what if the community really does reject the plan? Logically, I think you would like to know up front if the community will reject all variations of your plan based on some marginal costs rather than spend years fighting the community like Shintech did in Covenant, but... I really do think it is the right way to site a new facility.

EPA Interviewer: Just a couple more questions. We've been here a little while. What do you think the greatest strength of Superfund and CERCLA has been?

Clough: I think Superfund was a wake-up call to companies that they couldn't just continue to dump their production wastes into the environment, and because of the joint and several

liability, it gave them real motivation to actually track their wastes and know what happened to them. It wasn't just a matter of hiring some guy to cart the stuff off. It was that you really needed to know what happened to it. So companies that want to stay in business have taken responsibility for dealing with production wastes.

EPA Interviewer: Where do you think is an area Superfund needs to improve?

Clough: I'm so far away from it. I don't know.

EPA Interviewer: Do you have any idea where Superfund might be the next 25 years?

Clough: No.

EPA Interviewer: Was there anything you would like to add about your experience working with Superfund?

Clough: It was the big one. It was where I cut my teeth, as it were.

EPA Interviewer: Thank you for participating in the project. I've enjoyed talking with you.