

US EPA ARCHIVE DOCUMENT

GENE LUCERO

Former EPA Region 8 Deputy Administrator and
Former EPA Director of the Office of Site Remediation and Enforcement

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Location: Los Angeles, CA

EPA Interviewer: We're interviewing Gene Lucero, former head of the Office of Waste Programs Enforcement (OWPE) during the turbulent 1980s. This is the interview, October 25. Gene, whatever you'd like to talk about, you can start with perhaps your background or history.

Lucero: Sure. The first position I held with EPA started in April of 1980 when I was appointed deputy regional administrator for Region 8 in Denver. That was under the Carter Administration. After the election, which occurred in November of that year, there was a new administration, and, eventually, there was a new administrator. In roughly the end of March 1982, I took an assignment from that position to Headquarters. The first position I held in Headquarters was as the deputy director of the Office of Emergency and Remedial Response (OERR), the Superfund office. I was working with Bill Hedeman, who was the head of the office at the time. I was in that position for only about three months, and as events developed, I got the opportunity for a temporary assignment to be the director of the Office of Waste Programs Enforcement, which was the other half of the Superfund program. It also had RCRA enforcement at the time, which wasn't very active. So I took that job as a temporary assignment for about a year.

Late in March 1983, maybe it was early April, that appointment was made permanent. I stayed in that position until I left. Well, actually, I had a small special assignment before I left EPA, but I left EPA roughly in June of 1988. So from 1980 to 1988, I worked for the Agency. I remember when I first talked to Bill—I had known Bill from other events prior to that—but he and I had started having conversations, I would estimate, in January of 1982 about the possibility of my moving back to Washington. I had been in Washington for a couple different things. That was a time right before they made their move where the Superfund office was located in the sub-basement, which was truly a remarkable experience. First of all, I didn't know the place existed. I remember you go down two flights of stairs and you enter this relatively low-ceilinged place. Looked like it's the place where all the water drained in the building. It was really quite remarkable.

There was this large group of people who were sitting there. I remember interviewing Elaine Stanley, who was sort of acting as Bill's deputy at the time, and Bill. We sat around 5:30/6:00 p.m. one night as it got dark and talked about what they were trying to do with the Superfund program. It seemed like a terribly good idea. It seemed like a great idea, actually, since the administrator did not want me to stay in Denver. So I either took some other job I chose or they would choose one for me.

EPA Interviewer: The administrator you're referring to is Anne Gorsuch?

Lucero: Anne Gorsuch. Right. My recollection is she was confirmed in August or September of 1981. It'd been an interesting process, because she had called all the senior executive

folks from the regions into Headquarters in that fall period and had talked about the reorganization of the Agency, and that was sort of my first experience with her.

EPA Interviewer: I don't guess you all were the ones that gave her her nickname, though.

Lucero: *[Laughter]* Well, she had a number of nicknames. I have a few Gorsuch stories I can share. There were some interesting moments.

The one thing that attracted me to the Superfund program was that it was the only program that I could see that seemed like it was going to get some attention and support from the administration. All the other programs had been marked for cutting back, pushing back. There was a general sense there was too much, [that] they'd overstepped their mandates and had too many resources or were venturing into areas they didn't need to get into. So it was clear that there were going to be a lot of unpleasant discussions about scaling the program back.

Superfund, on the other hand, came with a very large authorization and eventually appropriation. It also was a brand new program, and it was being built up. Even though I'd been with the Agency at that point for about a year and half, I did not have a background with the Hazardous Waste Task Force. I knew of them, I knew some of the people, but I really hadn't had much experience with them. So when I got to Headquarters, there was a lot to learn about who the players were, where they had been, what had happened to them in the reorganization. The first three months I worked in the Superfund program was a fascinating period, because there were a number of things that we were really focused on. There was an overwhelming objective which never seemed entirely practical, but it became a very good organizing principle. The goal was—it sort of is evidence of the sort of lack of understanding at the time of how difficult these sites would be to actually address—but there was a general interest on the part of the administrator, Anne Gorsuch, to basically try to get through as much of the sites as possible within the five-year period that the statute had been authorized for, so at the end of that time there wouldn't be a significant need to reauthorize the statute. Now, that didn't seem practical, and looking at what needed to be done in the program, it didn't necessarily make sense, but it became a tremendous tool to sort of clear bureaucratic inertia out of the way, because you could always say, "We've got to get these things going. We've got to get this in place."

So there was a lot of activity when I showed up in the spring. The first revision to the National Contingency Plan [NCP], which existed, of course, was being developed to reflect the new hazardous substance component, and especially to reflect the new statute. So that was one of the objectives. The other types of objectives were—probably the thing we spent much of our time on—was that all the decision authority had been centralized in Headquarters. So for all the removal actions in the country, someone in Headquarters had to approve it. For a long period of time, the only person who could actually approve removals was the assistant administrator, who at the time was Rita Lavelle. And in certain cases, if certain levels were exceeded or if there was a proposal to renew beyond a six-month period the removal action, those themselves would go up to the administrator, particularly if there was a major policy question. Like, the first time we were going to spend money on a radioactive site, it was a big issue. It was a question of whether they wanted to use Superfund to address those kinds of problems or, alternatively, try to push them back to DOE

[Department of Energy] and the NRC [Nuclear Regulatory Commission]. It even transcended the period I was with Superfund, as I'll explain.

Initially Rita Lavelle herself had to be available 24 hours every day, seven days a week, to respond to requests for removal actions around the country, and, as the program picked up, that got to be kind of a significant obligation and, increasingly, she began to delegate that responsibility, at least to field the initial calls, down to Hedeman. And when Hedeman wasn't available, to me. She eventually moved to just assigning that responsibility to different office directors. So sometimes it would be Bill Hedeman, sometimes it would be me, sometimes it would be John Skinner, who was the head of the Solid Waste Office. And over time, these things became more routine, but for the first handful there was always a lot of hand-waving and discussion. We often had meetings where we'd sit around and talk about did it make sense. There was quite a bit of interest when I moved over to the Office of Waste Programs Enforcement whether anybody had actually tried to get the responsible parties to do this. So, you know, that was an increasing trend.

EPA Interviewer: Excuse me. Let me interrupt you. Is that just for removal or for the NPL [National Priorities List] sites? You know, a lot of the removal sites in those early days there, you couldn't find anybody. It wasn't easy to locate the PRPs [potentially responsible parties].

Lucero: The program was changing. Eventually, it didn't start occurring until into 1983, where we started to negotiate with PRPs, or groups of them at least, to take over the RI/FS [remedial investigation/feasibility study] work. I'll come back to that, but you're right. Initially there weren't often people. Occasionally, it was a tanker truck or something that someone could step in and there might be a responsible party. But at that very early stage, there really wasn't that much opportunity. Plus, the Agency hadn't really refined its thinking about how to use the CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act] enforcement authorities.

It was during that period that we talked about developing the public participation program. We had a lot of discussion about developing the TAG [Technical Assistance Grant] grants. It was during that period that we came up with the concept of the ROD [Record of Decision]. I remember that discussion, because I was talking to Russ Wyer, who was the head of the remedial program within the OERR. I said, "You need to document in some fashion that you actually did this. You decided on a remedy, what the remedy was going to be, and what your justification was." I remember that one particularly well. We just created the idea of a Record of Decision at that point. He went off and drafted some basic guidance about how they would do it, and built it into the program.

The other thing that we did regularly was begin to—in fact, it was the summer of that year—that we got the first 113 sites or so onto the NPL. It was the interim NPL. It wasn't the full 400-plus that the statute required. It was the initial list. They were sites mostly that the Agency had developed as part of the Hazardous Waste Task Force initiatives. And there were a bunch of other sort of building block issues.

It was about July that I took over the job of director of the Office of Waste Programs Enforcement. That was a really interesting position, because, in contrast to the Superfund Office, OERR, which had a pretty clear mission and knew what it was doing, knew where it wanted to go, and Bill Hedeman had a really strong view of what things needed to get done

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and pretty much in what order. The enforcement component of the Superfund program was, politely stated, in disarray.

As part of the Agency's reorganization that Gorsuch enacted early 1981, she had taken two steps that had really created a lot of loss of focus. One, she had taken the responsibility for the enforcement programs out of the Enforcement Office that existed—eliminated that office, effectively. Moved each of the enforcement components to the program office. So the Office of Solid Waste and Emergency Response [OSWER] now had an Enforcement Office under it, as opposed to just providing support. There were some distinct advantages to that type of organization in that you could integrate the enforcement and program piece, but one of the problems that happened is I had always... I now look backwards and think that for a long time those programs had been attorney-driven.

The second change that Gorsuch made is she split the attorneys from the technical resources, and she put the enforcement attorneys in an office, Office of Legal Enforcement Counsel, so that you had two offices, one that, depending on what day it was, reported either to the General Counsel or, for a brief period of time, to an assistant administrator for Enforcement. And you had an office like mine, which had the other piece. So for anything to happen, the two offices had to coordinate. Needless to say, until the time that Rita Lavelle was sort of booted out and Lee Thomas got appointed, and eventually Bill Ruckelshaus returned, a good part of the enforcement job involved trying to work out arrangements between the attorneys and the program office just to make the program work.

From 1982 into the first half of 1983, it would be fair to say, there was a major bureaucratic war underway between which office would control decision making. And, obviously, being the head of one of those components, I was engaged in that all the time. It was an interesting and somewhat difficult time because of the tension between the two offices and who was going to run the program ended up creating controversies and sort of antagonism between Rita Lavelle, who was the head of OSWER, and Bob Perry and Mike Brown, who, effectively, were running the legal enforcement piece. A great deal of time was spent in that first year just trying to come up with a basic enforcement program, which wasn't easy because Bob Perry wanted to run it, and, frankly, I now know in retrospect—it wasn't as obvious at the time—they were very, very uncomfortable, as was the administrator, with the fact that Rita Lavelle was running the Superfund program at all. They definitely were uncomfortable with her being in charge of the enforcement program, although they didn't tell her that. So there was this constant fight and lots of meetings where one or the other of the Presidential appointees—Lavelle on the one hand, Perry on the other—would be going to the 12th floor saying, "I've got to be able to do this," and it was just remarkable.

When I moved over to OWPE, there were some interesting opportunities. The very first, under the Superfund statute anyway, negotiation that resulted in a consent order occurred in those first couple of months. In fact, when I took over this job, the Justice Department was involved. A fellow I worked with, and who I continue to see as a good friend, Steve Ramsey, was heading up the environmental enforcement section. He was personally involved. Mike Brown was personally involved from legal counsel.

EPA Interviewer: Is that the Steve Ramsey that's with GE?

Lucero: Right.

EPA Interviewer: That teaches how to beat EPA?

Lucero: Tries to.

In any event, even before I became involved, they had concluded that they weren't making enough progress, and they were prepared to go ahead. They wanted to go ahead with an enforcement action against the PRP group. Rita, in particular, said... one of the first things she said to me, "Well, you know, if we could really negotiate a settlement, that would be far better, and it would create more momentum." And I was coming late to the process, but I thought if we could come up with a settled approach to doing the RI/FS, there would be a lot of advantages. So, for about a two-week period, under a deadline that had been set—I forget the exact date, it might have been the end of September or something like that—we basically sat around, the three different units—Justice, legal counsel, and my office—and tried to build a consent order. The Agency didn't have... I mean, they had other Administrative Order programs, but they had never dealt with CERCLA. And there are all sorts of interesting questions like, "Well, would we give releases? Would we give covenants not to sue?" We dealt with the issue that eventually got taken up in the reauthorization of Superfund in 1986, "Was there a right to contribution at that point? When would the right to contribution arise? Were there statute of limitations?"

There are a lot of gaps, and one of the big gaps in the whole effort was Congress, to get the bill enacted, had never resolved the issue of whether there was joint and several liability such that some subset of the total PRP universe could be compelled to do all the work, or whether, in fact, it was several. The Agency and the Justice Department were consistent: it was joint and several; but they didn't have any court rulings on that at that time. So we started from the position of "Here's what we prefer," and, of course, there was a lot of push back. That case where we resolved an agreement about doing the RI/FS was actually the Chemdyne site in Ohio. And got an agreement. It was reduced to a consent agreement, and then, eventually, Barry Sanders, who is no longer with us, was able to get a ruling out of the district court with respect to the liability of other PRPs at that site who didn't participate in the settlement that there was joint and several... that was the first joint and several ruling.

EPA Interviewer: Was that an NPL site or a removal?

Lucero: It was an NPL site. It was one of the first on that 113.

EPA Interviewer: So Headquarters were doing these initial consents, because I remembered in the regions, the remedial program had trouble getting together for the first two, three, or four years. They really didn't become a cohesive unit, and no one was really thinking cost recovery. I don't know if that's the perspective you got from Headquarters. It seemed like the remedial side was slow to form, because they weren't quite sure what they were supposed to do.

Lucero: There's this observation I would make. The folks in the program offices, with maybe one or two exceptions, really saw themselves as folks to promote cleanup. Most of them had been in that role before the change of administration when there was a Hazardous Waste Task Force. When the Agency got reorganized and they got those responsibilities, they still saw that as primarily the objective.

The other thing that led them to that was that Superfund was remarkably flush with money at that moment. So they had a simple choice. They could make an argument that they needed to move quickly and get money to get the work started, or they could sit here and try to figure out what they should do about PRPs and how to proceed. A major focus for the first several years of my tenure was trying to convince people that they needed to give serious attention to that. We did a lot of things to get to that point, but one of the primary drivers that eventually started to change minds was really a couple things. The primary driver within the many things that started pushing people was as we began to approach reauthorization of Superfund in 1984—started talking about it—and began the discussions in 1985, what became apparent was the cost estimates significantly underestimated the costs that would be associated with remediating the sites. I remember, even for the brief period I was in the Superfund program, our initial thinking was, “Well, a really expensive groundwater remediation might only require \$100,000.” That’s an extraordinary conclusion. You take a look at the sites now, there’s nothing we do that’s \$100,000. But that was the thinking at the time. People were having to learn the sites and understand them better.

We talked about a lot of things that didn’t work. We talked about grout curtains; we talked about containment. Eventually the Agency’s view changed. One of the consequences was the cost of all of the remediation went up, and by the time we got into 1985, what became really apparent was all the money that everybody thought they had was suddenly accounted for, and that there wasn’t going to be enough money to continue to deal with all of the additional sites that were being generated. And there may not even be enough money to deal with the sites for which money had already been allocated. Because of that, eventually, the focus started to shift to how much can you get the PRPs to do? That was a major program change that really picked up momentum in 1984 and 1985.

There’re some other things that really made a significant difference. We developed a settlement policy after Rita Lavelle was dismissed. There were a couple interim acting assistant administrators, but eventually Lee Thomas took over that position and came over from FEMA [Federal Emergency Management Agency]. He was really interested in trying to promote an enforcement/settlement policy. Mike Brown, who didn’t stay through to the conclusion, was interested in it. Bob Perry eventually got asked to leave at some point. He had an interest in it, but he didn’t see it through to conclusion. So it was essentially the Justice Department—Ramsey, myself, Brown, and a handful of other folks in the regions—who were trying to congeal a basic policy. There was an enforcement guidance that had been issued by, of all people, John Daniels, who was the chief of staff for Anne Gorsuch, which basically was an enforcement first policy. Nobody ever paid any attention to it, but it was out there from like 1982. But that settlement policy didn’t get affected, if I recall right, until like 1984. Took a long time. There was an immense amount of discussion of what it should say and how it should work, and a lot of internal debate about how to do it.

In the end, we kind of got it out there, and as soon as it was out there, everybody.... The process of getting to the policy was the mind-change that you needed to move the enforcement program forward. And once you got it developed, the policy itself, I don’t think anybody ever went back and pointed to the policy, they didn’t need it to. It had just sort of become part of the program approach by then.

1983, to back up a second, was a truly extraordinary time. I think that only a handful of people probably fully appreciate how miserable it was. Unfortunately, I’m one of ‘em. Bill
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Hedeman was another person. I think Elaine Stanley. Lee Thomas was able to come in as sort of the “guy above the fray,” so he didn’t have to defend what had happened in the past. He was prepared to move beyond it. I think Jack McGraw, who worked as Lee’s deputy, probably had a good feel for it, and a handful of other people who were sort of engaged. But I don’t think many people appreciate what a crisis developed in 1983. There had been this ongoing battle.

Rita Lavelle was combative, to say the least. And she had people working for her whose general view in life was if you can’t get what you want, you should just go beat somebody up until you get it—figuratively—in the Washington style of getting decisions made. And Rita believed, as it turned out, probably her single biggest mistake—she made several significant mistakes—but one of her most significant mistakes, she thought she had an iron-clad relationship with key people in the Reagan Administration. She considered Ed Meese to be one of her supporters, and she frequently would meet with him if she felt like she needed support. She felt like that gave her some leverage to argue with the administrator, even though the administrator was the clear highest presidential appointment in the Agency.

Several things happened during that period. The fight between Bob Perry and Rita Lavelle continued to escalate. It was incredibly unpleasant. There came a period when it got so bad that the administrator intervened. She had been engaged in many different ways—not all of which I was aware of, since I wasn’t invited to those meetings. Occasionally Bill Hedeman and I would accompany Rita to meetings in the administrator’s office, but she had many meetings where they would talk different issues over.

Sometime—if I recall correctly, it was about mid-February—it became obvious that the administrator had decided she had to remove one source of the problem. Rita’s view was she should remove Bob Perry. It turned out the administrator’s view was she should ask Rita to leave. As far as I could tell, she had done enough homework to have support within the White House for that move. I think she expected that Rita would be unhappy, but she would not be in a position to object to the request that she resign. She went to that meeting. As it turned out, Hedeman, who always had his ear to the ground and had lots of different levels of contact, had sort of known ahead of the meeting what was going to happen. He and I had sort of talked about how we would react to it. She came back. She called the three of us in: Bill Hedeman, myself, and John Skinner, who were the three office directors. And she said, “I’ve been asked to resign.” And she was upset, and she ranged from at some point being teary to being aggressive and gonna fight it. In a discussion which started with Bill saying, “You know, Rita, I really think you ought to just consider resigning.” She knew George Deukmejian well, who was then the governor. There were positions that he was prepared to offer her, if she wanted to return to California. So I remember Hedeman specifically saying, “I suggest you consider that, because this is really going to be a difficult circumstance if you choose any other approach.” Hedeman and I had talked about it, and I think we had always known that Rita was very weak on a lot of things.

In many ways, her appointment was a classic example of the presidential appointment process gone bad. Her experience was minimal. She had a PhD—I think it was a PhD, maybe it was a master’s—but it didn’t really serve her well. She had no experience using it. All her positions had been political positions, community relations, legislative relations. She had worked for a brief period of time in the Reagan Administration in California, which had given her the access, but she really didn’t have a good feel for how to work in Washington. She was much too combative and couldn’t build a really solid base. From the first [Congressional]

hearing, she developed a set of enemies that she kept adding to over time. And it was very clear that it was making it difficult to get things done, because there was such hostility. There was hostility from—at the time, the Democrats controlled the House still, they didn't control the Senate—but there was just tremendous hostility, especially from the staff. There were constant letters being sent, "Why are you doing this? Why are you doing that?" There was a lot of energy being taken out of the program to respond to that. John Skinner and I echoed what Bill had suggested, and we suggested she really think about it. I think that was like February 2, which was a Friday.

EPA Interviewer: Is this 1983 still?

Lucero: It's 1983. I think over that weekend and onto Monday, she made a decision, which she didn't discuss with me, and I don't recall, she may have called Bill at home and talked to him about it a bit. She decided she was going to make an effort to resist. So she attempted to go and enlist support from her contacts in the White House. She knew all the folks that had come with the president from California, and she went to a number of them. As far as I could tell, she had either meetings or telephone conversations. But essentially, she refused to resign. She refused to accept the invitation from Gorsuch to resign, and said she wouldn't. My recollection is early Monday morning—we would often start our staff meetings at like 8 a.m., sometimes even earlier on Mondays—at the first staff meeting, which was just the three of us again, she told us she wasn't gonna resign.

When we left that meeting I remember the discussion with Hedeman, because Hedeman—who had spent much more time in Washington than me—knew that this was a really bad position. It was bad for everybody, because he wasn't confident she had the political support to pull it off. Well, he was right. She didn't. And, in fact, when push came to shove, the White House decided they weren't gong to take Rita's side. They couldn't afford to. Gorsuch was also their person, and she was clearly the head of the Agency. The arguments and the debate....

I think there was a strong case that could be made against why Rita was a liability. Rita's position she took when we talked to her—I think it was that Monday—was that only the president could ask her to resign. The administrator couldn't. Only if the president asked, and she didn't think that would happen. Well, a day or so later, the president asked for her resignation, which she gave at that point. She didn't have any choice. And she was sort of blown away.

Then she made a series of judgments that, in retrospect, were serious miscalculations. She took up the invitation of both Elliot Levitas, who ran the Investigation Subcommittee—he was from Georgia and he ran the Investigations Subcommittee—and his counterpart was Guy Molinari, who was a Republican from Staten Island, New York. The two of them, essentially, were the leaders of the Investigations Subcommittee of the Public Works Committee in the House. He invited her to come up and testify, now that she had been asked to leave, to sort of reveal what had been done wrong. Rita decided to use that as an opportunity to embarrass all her enemies, starting with Gorsuch, who is now at the top of the list. Two days later or so, she was invited by the Investigations Subcommittee of the Energy Committee in the House, which was run by Dingell—who was also head of the Energy Committee—to testify. And it was on the basis of the testimony in front of those two committees that shortly thereafter they convened a grand jury, which went through a lot of evidence, interviewed a number of witnesses, and then *Superfund 25th Anniversary Oral History Project*

indicted Rita on five felony counts, one obstruction of justice and four perjury charges. And the perjury charges were all associated with her testimony before Congress during those two subcommittees.

Thereafter, life just... if it had been contentious and acrimonious because of the war that was being fought, it got worse. Not so much internally, but because now everybody was in the process. Once Rita Lavelle had testified, both of the chairmen of those two committees concluded there was a crime that had been committed, and referred it to the FBI [Federal Bureau of Investigation]. The FBI opened an investigation. So we had two or three FBI agents.

Not to be outdone, the Senate Environment and Public Works Committee opened its own investigation into the Superfund program. The Dingell committee, Subcommittee on Investigations, kept open its investigation and accelerated it, beginning to interview a large number of different people. Elliot Levitas, also not to be outdone, continued his investigation. At some point, I think the number—I couldn't quite tell you—there were nine subcommittees that had some form of investigation under way, beginning in the 1983 period. EPA was in turmoil at that time. What started as a focus on the alleged mismanagement of the Superfund program kind of evolved into all the things that had happened. I think it was within a year from about that period, all of the assistant administrators had been asked to leave or resign. The administrator had been asked to resign, was replaced. The deputy administrator was replaced. And all as a way of trying to say they were about the business of cleaning up what had happened. That brought Bill Ruckelshaus back to the Agency.

Lee Thomas had come in ahead of him, and working with Lee was such an improvement. Here was a guy who was essentially—even though he was a presidential appointee—he was smart, he was very quick in understanding the issues, and had a great judgment about how to proceed and frankly, he was a superior... he was a very good appointment. Essentially, he was truly committed to trying to make the program work well. He just dominated within the Agency. Eventually, it was the basis for Ruckelshaus, when Ruckelshaus decided to leave, that he just went to the president and said, "You appoint this guy. This is the guy you want." One of the things that allowed us to do is—by that time we might have been emerging from this anyway—we no longer were fighting with the other offices. They just couldn't deal with the fact that Lee Thomas was dominant. The attorney group was headed by Courtney Price, and Courtney was not a strong assistant administrator. At some point, we had had enough success running the enforcement program that people were beginning to say we sort of know who's running the program, where it's going, and how to make it work. So things were picking up, but a lot of it had to do with just changing and getting the right people at the top.

There was still a lot to do in Superfund. From 1983 through to 1984, I never actually counted these, and I think I kept my old calendars, but I don't have a really great idea where they are at the moment. My guess is I did something like 50 hearings during that period. Some of those hearings I was just a bag carrier. I went with the administrator, like a budget hearing. Some of it was I went with the assistant administrator to answer specific questions if they came up about certain program decisions.

EPA Interviewer: This is in front of Congress?

Lucero: In front of Congress. But at a lot of those hearings it was often Bill Hedeman and myself, sometimes John Skinner was with us, sitting there, and we were the only witnesses. And somebody wanted to ask us, "Well, why did you do this?" or "We understand you said this." They tapered off by the middle of 1984. But a tremendous amount of effort was spent doing that.

On the other hand, since I managed to stay on to 1988, I learned a lot. I learned a lot from Hedeman. One of the things he told me at the beginning of that hearing debacle was that one of the best ways to answer questions when you weren't absolutely certain of if your memory was correct wasn't just to tell people you didn't recall as an attempt to construct what you think happened. Good advice. Something you would tell someone if you were in litigation and they were being deposed. But there were these times when some statement would be made, and it just seemed to warrant some sort of response. Well, Hedeman, if he didn't know the answer or if he didn't think it was going off in a direction he liked, he just forgot. He would just say, "I don't recall at this time, Senator," or Congressman or whatever.

Yours truly here would often say, "Well, my recollection is we did this, this, this, and this. And we said these things," and try to explain. Well, that wasn't necessarily what they wanted to hear. There's a game going on in this whole process, and it took me a while to sort of figure out that if you play the game and you serve your part and give them the answers they want so they can make their points, you'll do fine. But if you're giving them answers they don't want, they're going to make your life miserable. It was pretty miserable for a while, because any good staffer up there has lots of different ways in which they can basically cause you acute embarrassment. They can get their chairman to say to the press, to "The New York Times" or "The Washington Post," or whatever and say, "Well, we're not sure that Mr. Lucero is entirely correct in what he said, and we're going to be looking into that." You're sitting there when you read that in "The Washington Post," you're going, "You know, this is a message. I should pay more attention to this."

And then the other thing that happened in the Agency during this period, which is really pretty sad to observe, is that it invited virtually everyone who had a story to tell to step forward. They could approach any of the investigators, the FBI agents. They didn't need a lot of information that they could document; if they had a story to tell, they could present the story. And there was a lot of, "Well, we think this happened," and "We think that happened," and "You should look here," and "You should look there." And what's really interesting is the Agency has lots of people who were these really bad people and they did really bad things.

My argument, which wasn't really well received, was they weren't necessarily good people, but they were convinced to do the right thing in many instances. We changed Rita's mind on a lot of things. We didn't get any credit for it, because it was always done one-on-one or two-on-one. So she got characterized as just a terrible manager. She didn't get there all by herself. She had lots of help from the administrator and Bob Perry and others to make the kind of judgments they made. But when it became convenient, she became the villain. She was the person who had really designed and was destroying this program, and they had gotten rid of the cancer, and she was the one to be blamed.

Well, the problem with that is they turned to the people who worked for her and they said, "You guys must have been involved." As it turns out, one of the things that really got Rita in huge trouble was something, remarkably, she never told Hedeman or myself. What she

never told us was that she was making calls back to certain companies with respect to information about, “Well, you should consider this, or you should consider that.” We both learned about this later through a variety of different sources. We learned about it in part because we had people—we were witnesses in her trial, so we could not attend the trial—but we had people who weren’t who could sit and listen to the testimony, and they did. And in the course of the testimony, you discovered some remarkable things. One of the things we discovered was—and one of the things that eventually became a basis for her perjury conviction was—when she was testifying, I think she was asked the same question by both Levitas and by Dingell, whether she had made any contacts with any companies with respect to enforcement strategy. And I think the questions may have even been more specific—whether she’d ever contacted Aerojet General.

Well, unknown to us, the Dingell subcommittee, there were two staffers that were heading up most of the investigation, and one of them was Dick Frandsen and the other one’s name eludes me at the moment—Mark Robbie. Those two guys, representing the Democratic and the Republican side, had been interviewing lots of people about different things, and they had been in California. For unrelated reasons, they had ended up in a discussion with the general counsel for Aerojet. In the course of the discussion they were trying to get some more general information out of him. They had no indication that there had ever been this alleged contact, but in the course of the discussion—and Frandsen explained this to me at some point—he said in the course of the conversation, the question of whether he had had conversations with Rita Lavelle got asked, and he said he had, and then he went on to expand, and he said that she actually had called him many times about different points. Then, eventually what sunk Rita Lavelle is he kept notes of all his conversations, and he disclosed that fact, and he turned it over to the committee. So they had the notes of the conversation, so when they asked her those questions, she lied. She said she’d never had contact. Now, with Rita, she had such a bad memory, you never knew if she actually forgot or she was lying. It was very hard to tell. She forgot a lot of important things. I didn’t know whether she had had that contact, but I do know she had forgotten other key facts, and one of the things that created a huge amount of difficulty for me was I kept insisting that as far as I knew, she had never had those conversations. Well, she had had those conversations. I was shocked in part because one of the issues that created is the impression that I was also covering for her. But I for six, seven months until the actual trial started—Rita’s trial started—my position was, as far as I knew, she had never had those contacts. As it turned out, she clearly did. And worse than that, she’d gone to them, and she tried to give them some suggestions about what they should be doing given where the government was coming from.

EPA Interviewer: I know our feeling was that she never had a really good standard of ethics. There was some confusion; that’s what came across to people like me in the region. She would just say anything. I had heard her make her talks, been at some of her talks, and she was very unguarded when she spoke.

Lucero: She didn’t understand that... well, you’re absolutely right. For the first four or five months that I worked with her, one of the problems was that she did that. She made those kinds of statements. She thought she could build a special relationship with people. She shared candidly her views and her information. And, of course in Washington that’s a risky proposition, since it also then available to be used against you. Especially if you say something hostile about one of your—in her case—one of her colleagues, one of the other presidential appointees, which she did on occasion.

The other problem is she didn't understand—if you want to talk about ethics—she didn't understand the point of recusing herself. One of the things that the committee that held her hearing before they confirmed her for her appointment was they got her to commit that she would recuse herself from any work for any of the—she had worked for Aerojet—so they got her to commit that she would not engage herself in any site in which Aerojet was a significant PRP. Stringfellow was one of them; there were other sites out here. Rancho Cordova was another one. She couldn't help herself. She felt like she owed it to these folks, even though they didn't apparently want it that badly, she owed it to them to try to tell them what she knew about what was happening.

We kept information from her. Every time she started to ask questions, we suggested she leave the room. But there were lots ways in which you could kind of find out if you really wanted to know what was happening, sort of where things were. It was a terrible problem. That was her other issue. It was an ethical violation, because she had made a commitment that she would recuse herself, and then she never effectively did. Notwithstanding all the efforts everybody took to try to force her out. That was something early on, even before this big blowup in 1983 that was something the Dingell committee was really after. They really were trying to get her staff to push her away from some of these sites. Obviously we didn't succeed, but she went right around and made her own contacts.

It took us a year just to get through all those investigations. They didn't prosecute anybody else. They embarrassed a bunch a people. There were a lot of other decisions that got investigated. John Todd Hunter's decisions and the PCB [polychlorinated biphenyl] program got examined. Decisions in the Air Office got questioned. There had been efforts on the part of the Gorsuch administration, and all the assistant administrators, to kind of cut the program back, which was the source of a lot of antagonism with the Hill in particular.

In the meantime, we continued to keep working the program. The program started to pick up momentum. By 1984, there were a handful of additional settlements. There were consent decrees. The Chemdyne agreement, by the way, ended up being a consent decree, now that I think about it. It was filed with the court.

We began to do some RI/FS consent orders. The starting place in the program was all this authority. If you look at the enforcement authority under CERCLA, you have the broadest, most aggressive enforcement tool that's available almost under any environmental statute. There's some that are close, but it's really incredibly strong. There's no minimum threshold. It's a joint and several liability. It's retroactive. You don't have to prove any causation. It's strict. And so the starting place was to try to compel parties who wanted to do RI/FSs to sign up for the whole thing, what they used to refer to as, "You want us to sign a blank check." To a person, the big companies wouldn't do it. They just said, "You know what, whatever benefits there are during that period to enter into a consent agreement, that's too big, because we don't know where it takes us, and we don't know what it means to us." So somewhere in late 1984, early 1985, we essentially internally agreed that we would start accepting settlements for just the RI/FS, and we would try to use the order authority to embody them, because it was more practical.

So it was during that period that we're working issues on how to use consent orders and what provisions needed to be in the consent orders. All those things now the Agency has well established. There are models for everything and detailed guidance about what adjustments *Superfund 25th Anniversary Oral History Project*

can be made in the models. None of that existed at the time. Zip. And we were working through that process. In that period, in late 1983, if I recall right, Hedeman finally got the full 400-plus NPL list out. In 1984 and 1985, there was another major revision to the NCP. One of the big issues was the development of the ARAR concept, applicable or relevant and appropriate requirements, which was one of his concepts. We tried to design some exceptions to applying ARARs. One in particular we were trying to deal with where we didn't think parties could complete a complete ARAR, but you could get something that protective but not necessarily permanent. The reason that issue was important is that became a centerpiece in the debate in the SARA [Superfund Amendments and Reauthorization Act of 1986] amendments. It's just what were the cleanup requirements to be. Because there was nothing in the statute in 1980. They took a lot of what had been developed in that NCP and wrote it into the law, but they went beyond what was there. They took out the ability to do that kind of adjustment where you said, "Well, it may not be permanent, but it'll be protective." They didn't like that. They wanted an obligation that it be protective.

During this period, I'm trying to remember... Bill Ruckelshaus didn't stay that long, and my recollection is that he left—and somebody else can figure out the exact date—he was there a little under two years. He came in in 1984, and I think he left in like a year and a half and that Lee Thomas moved up to be administrator. Then they brought Win Porter in eventually; there was a little gap where Jack McGraw acted.

EPA Interviewer: I remember Ruckelshaus. They brought him to bring the morale back because EPA, we were only 13 years old and already they had severe depression from all of that activity.

Lucero: Definitely. EPA was really demoralized. And in large part they were demoralized because, as you've no doubt experienced yourself, when the politics take over and the public debate dominates, there's not a lot of facts being exchanged. There's not a lot of rational analysis. It's good and bad, evil people doing bad things, good people protecting. It's the process of... you get people inside the Agency—you and I know who some of them are—who would stand up and say, "Well, I did wonderful things because I stood up to such and such," and you'd look at them and say, "You didn't do anything of the kind," but they'd get a lot of credit for it. People who didn't do bad things were being accused, and there was sort of a general accusation that the whole Agency had just failed in this job, whereas it turned out lots of people were still doing their job, and many people working extremely hard.

Within the Superfund program, notwithstanding this kind of storm above 'em, most folks were making pretty good progress on a lot of things, whether it be removals or remedial actions, enforcement, negotiation. A lot of movement. It didn't move as well as everybody expected. There was a lot of movement. I remember in that period EPA got into—especially under Lee Thomas, who started talking about, "Well, we need to have a better planning process. We need to know what we're doing. We need to know where it stands"—because there was this constant question of well how much money are you going to need, how much do we need to be seeking, how many activities do you have underway, how many sites are going to get cleaned up. Things that weren't easy to answer. So there was a lot of effort put into the Superfund Comprehensive Accomplishment Program or plan... the SCAP program.

I considered a good part of 1984, the calendar year 1984, was lost to this hearing process. You're getting ready to go to a hearing, you go to a hearing, you come back from the *Superfund 25th Anniversary Oral History Project*

hearing, you deal with the fallout. I became friends with many of them, or at least acquaintances. I don't know if you can become friends with a lot of those guys that were professional reporters, but I'd have a conversation ever day with somebody. Some days there were two or three. And if there was a new alleged revelation or the indictment of Rita Lavelle, you'd have 10, 15, 20 calls. And that would take your whole day up. Plus you'd have all these other meetings for one reason or another.

Fortunately, one of the things that existed in the Office of Waste Programs Enforcement is there was a wonderfully competent, very smart and dedicated group of people who worked all the time. A lot of people have their stereotypical view of government employees, and they can think of somebody they've seen or someone they've heard about who does a miserable job. Those people don't have the benefit of understanding there are a lot of people who don't work that way. What was true in the Superfund program is everybody—and part of this had to do with it was a new program, there was a tremendous amount to do, and there was a lot of commitment—but, folks worked all the time. When I started in the Office of Waste Programs Enforcement, it was just sort of the normal practice. We not only started at like 7:00 a.m. in the morning, I often would be there until seven or eight at night, and there would usually be two or three other people with me. And then we worked every weekend. Sometime we'd work the whole weekend sometimes we'd just work half a day on each day.

One of my improvements in my personal life was eventually, by about 1985, I decided I would only work one day on a weekend. And by 1986 and 1987, I was taking the work home, and sometimes I wouldn't work at all on a weekend. That was the improvement.

But I think it was 1984 where I had spent so much time with all these other distractions that everybody else carried sort of the main substantive load of getting things moving. Because we used to do site reviews all the time. We'd have the regional coordinator, we'd go through every site, we'd say what's the status, what are the issues, what are you negotiating, what's been done, have you developed this and that. Eventually we got the folks who were... Lloyd Guerci came over from the Justice Department. Lloyd was tremendous on the Superfund program. He came over originally to be in the RCRA [Resource Conservation and Recovery Act] program, but eventually moved over into the CERCLA program. It was so easy to just say, "Lloyd, go do this. Bring me the issues you think I need to be involved in, but you push the issues."

There were some tremendous folks during that time that carried a lot of the load. Frank Byrus, who was sort of the unofficial deputy of the office when I came, and was the head of the CERLA enforcement program for a period of time. He was a terribly hard worker. Mike Kilpatrick, who was one of the section chiefs. Mike Kozlowski. And there are a lot of other people. A lot of the regional coordinators are folks who just were willing to do tremendous amounts of work. They were traveling all the time.

In any event, these guys carried a lot of the work forward. And in 1985, maybe it was 1984, I don't remember which one it was, I think it was 1984, we just had this tremendous year. We had something like nine million in settlement amounts, which was big at the time. Obviously it pales by today's standard. That represented six or seven major settlements. There was a lot of movement; things had begun to build. The thing that I truly appreciated was it kept moving forward, notwithstanding all this residual.

I had a different issue during that period. In 1985, while Ruckelshaus was still there, the Dingell committee made it a point that they were unhappy with the overall enforcement. Superfund enforcement had picked up, there wasn't much question about that. But they were unhappy with the rest of the civil enforcement program. In one program they singled out yours truly, the RCRA enforcement program. I remember we had this major hearing in front of Dingell with lots of regional people in and weeks of preparation. But that was sort of the end of the last major hearings, the last aggressive major hearings. And we did fine in that hearing. We basically said, "Here's what we're attempting to do," and whatever. It's also during this period, and those things serve a purpose, because they give you the opportunity to command resources, clear away the obstacles, resolve issues.

[Interruption; tape stops]

I've sort of finished talking about the really early history of Superfund. It's probably a good time to take stock. I've been doing Superfund work since I left the Agency. I've worked on subsequent legislation from time to time: lender liability issues, a whole set of issues. Plus worked at a number of sites where the site work's still ongoing. I've been at them for 15 years. I would say 25 years of my career's been spent, from most of it to a very significant part, on Superfund work and on Superfund. I've had a lot of experience, and when I look back over it, there's some things, had we seen them a little more clearly at the time, I would really, really have worked to make some adjustments. Some things are uncontroversial. A lot of people wouldn't object.

One of the biggest problems that we never thought about up front was setting up a way to keep track of decisions. Things have gotten put into libraries. You now can go online and you can get copies of Records of Decisions. It's relatively easy to do. In the late 1980s, early 1990s it was extremely difficult. Jack McGraw made it a big point to come up with the OSWER directive system. That took a lot of effort to get that done.

We set up a settlement committee which was a regional/Headquarters committee with Justice Department involvement. We set it up in like 1985. It was something I remember talking to Lee Thomas about. The purpose was to have a decision body where regions in particular—because by then we had pretty much delegated much of the simpler activity, and even the really big stuff for which they had to have a concurrence—they would still need a place where they could get a policy decision made. Well, we've hit this issue in a negotiation, or we have this choice to make about cleanup, or this. And we used this committee as a vehicle to raise a lot of those questions, because we had representatives from the Superfund Office, from the legal office, general counsel, my office, and then we had regional reps for both regional counsel as well as the program office. It was a 10 to 11 person meeting. Someone would come in and say, "OK, here's our policy issue." But the thing we didn't have that I always thought EPA should have had is it should have had what I would call a private letter ruling process that the IRS [Internal Revenue Service] uses when somebody has an issue that they need a ruling on: "Can I do this? Can I do that?" Then we would have had a way in which to field those requests, make a decision, send a little back, and document it.

There's something close to it, if you're familiar with RCRA, online, you now can find all the historical correspondence—mostly, some of it's still lost—but the correspondence someone has issued over time making interpretations of the regulations. We should have had a system. It would have documented the decision process much better, because as the

program got much bigger, and there are a lot more people, the thing about Superfund that was so obvious is that there wasn't an easy way to get these kinds of decisions made. You had to work with somebody or be somebody who knew how to navigate the Agency and who could call people at various levels and try to persuade them to intervene. And I think the system would have been a lot better if we had had a system like that.

EPA Interviewer: That didn't show up in the administrative record? That part that you're talking about?

Lucero: Well, from the outside perspective, the administrative record isn't terribly helpful at most of these sites, because, first of all, EPA controls the administrative record very carefully. Not everything. There's the file, and then there's the administrative record. They put in the administrative record what they think needs to be in the administrative record. But there are things not in the administrative record. Most people don't have time to search through the administrative record and distill some of the decisions. Plus, some of these are just policy calls. Where would you go? If you go to RCRA online, by contrast, you'll see letters being written by the office director, sometimes the division director said, "You've asked us this question." Sometimes to a regional person, sometimes to a state person, sometimes to a private party, saying, "Here's our interpretation."

EPA Interviewer: Isn't that because it's more of an enforcement program? Superfund's really not enforcement; it's about cost recovery, if you look at it from most people's perspective.

Lucero: Maybe, but you get into these questions like, "Well, what are the cleanup levels?" and "Can you relate the cleanup levels?" How do they interpret these provisions? I mean....

EPA Interviewer: With RCRA, there's a fine involved. There's never a fine with CERCLA, unless it's a penalty. So maybe that's why there's a different approach to it.

Lucero: Like I said, I think the problem with CERCLA is it took years for the guidance and the documentation to catch up with the program, because for the first three to four years, action over structuring the program. I think that haunted EPA for a number of years after, as they kept trying to build the support for the legal analysis, the legal determinations, and the technical and policy analysis.

But as I said, I thought that would have been something we could have done more right at the beginning. We could have just put it in place and said, "OK, when we make a decision, it's going to get a number, and we're gonna keep track." We could have set it up. We could have set the OSWER directive system up four years sooner than we did.

EPA Interviewer: Probably there'd been a more positive approach to Superfund when it started than the fact that the administration wanted to get rid of it and make sure there wasn't a second one. Maybe that whole mentality....

Lucero: You put your finger on why a lot of that didn't get done at the beginning. The idea was it's gonna go away. You don't need to build a program. It really was something, when we went into the SARA reauthorization process, when we went into the reauthorization process in 1985, and it carried over into 1986, they kept saying, "Well, how do you make these decisions?" And

we'd describe to them. They'd say, "Well, where is it written down?" "It's not written down." And they'd say, "Well...." That's why it was such a difficult process. There were also other hard issues.

The other thing—and this is now based on—I probably came to this conclusion, 18 years of practice—not today, but maybe seven, eight years ago—and I was a huge proponent during the reauthorization process, to create the pre-enforcement bar, which means that no party can challenge a remedy selection or the issuance of an order until EPA initiates the enforcement action. So if someone says, "Our decision is to do A, B, and C at site XYZ," if EPA chooses not to start an enforcement action for cost recovery, there's no way.... You can file your comments, and if they issue you an administrative order directing you to do the work, you can do the work, but you can't raise questions about whether that was the right decision. This is more of a controversial choice, but I think what would have really helped the program in a lot of ways is if there had been some sort of serious, internal review process that had independence that could look at the remedy selection and, in some cases, some of these other policy choices, and give them an independent review. Originally the pre-enforcement bar was justified, because you didn't want people using a challenge as a basis to slow down the activity at the site.

Look, in retrospect, I'm working at sites—I'm sure you've seen the same thing, and you don't have to agree with me—where we're 15 years into the site and we still don't have the remedy in place. We're putting it in place.

EPA Interviewer: Or we've had four different remedies at a site.

Lucero: Four different remedies. And one of the things that I became convinced of after I left the Agency is we didn't gain any speed by getting rid of the challenges. The thing that I think we lost when we were in the Agency, we all thought we were doing the right thing. We would sit there; we would listen to people. If companies had serious criticism or concerns, we'd often entertain meetings where people would come in and we'd listen to them. We'd debate it internally. We thought there was a fair process for vetting the issues.

But several things happened to be true. Sometimes if they came in and they had a meeting with the assistant administrator, in some cases with me, and at times with Henry Longest when he has the head of the Superfund program, that would be sufficient. They would say, "I had my hearing. I made my point. I gave it my best shot. I'll move on." Sometimes that was sufficient.

But there were two problems. There were times when people didn't feel they could get that type of hearing. After I left the Agency and I was outside, I began to realize how tough it was to get in and make a case. And even if you got in to make a case, you felt like we were just going through the motions, because it had already been determined internally how it should come out, and you didn't really feel like there was a kind of openness. I also came to the conclusion that there were times when some sites I worked on—other sites where I just knew about what was being decided—where I think the Agency would have made a better decision if they knew they had to justify it to a third party, as opposed to knowing that once they made the decision, nobody could challenge it. I think people weren't as careful in some cases, either explaining the decision.

In retrospect, I think there's been some bad decisions made that a third party should have looked at. There are sites where third-party reviews have occurred, and there are plenty of sites where the National Academy of Sciences has been called in to do a review. There are some sites where ATSDR [Agency for Toxic Substances and Disease Registry] is brought in. In retrospect, when it's taken 15, 20 years to get some of these site remedies decided and implemented, you ask yourself, "What if we spent two years having a review of the remedy? Would it have really held us up?" It would have required some additional resources, but it might have vetted the issues better. Back in 1985, when we started talking about a pre-enforcement bar within the group of people that were working with Congress, there was not a doubt we needed it. We needed it. Didn't want to fight it. In retrospect, I think the focus on that point at that time may not have served us as well as maybe a different approach would. We'll never get to go back, but in looking backward, if I knew then what I see today, I would have pushed for something. Like you could get a review of an administrative order internally or whatever, something like that, where you have an independent group that these issues could go to. And you could make a presentation, and you could argue the issues.

EPA Interviewer: It seemed like in those days that Superfund was always in chaos. You couldn't just quite get hold or wrap your arms around it. It jumped off here. Or you could do something like you've said, it's over here, and you were focusing your energies over there instead of like what you suggested. Something that was more constructive. That's my impression.

Lucero: Yeah. And a lot of it, you can trace it back to—we had this discussion just a minute ago—you can trace it back to the way the program got going. The one tremendous advantage of it being a program they wanted to end in five years was that you could push things out, because every other program in the Agency was stuck when the administration changed and Gorsuch came in. She stopped everything. Every rule had to be reevaluated. All the grants were being looked at, cut. And the only program that was moving ahead, and it was going full throttle, was Superfund. It was a small group of people. There were only 100 people in Headquarters, and not that many more out in the regions. It wasn't a big program, but it was going full throttle. As we talked about, the basic structure never really got built at the beginning. It all got added later. By then, you had all sorts of chaos that had occurred, and hard to explain the program. In retrospect, you ask yourself, "Was that an improvement?" It was the right decision, it seemed, at the time, but looking backwards, maybe we made a mistake in that approach.

EPA Interviewer: When they were rewriting for the Son of Superfund, did you have any input into the re-writes: the SARA and the right to know, and then some of those, as I mentioned earlier to you, Senator Simpson and Domenici came up with those additives like *de minimis* settlement? Seemed like they had five or six things that really worked out well in the SARA. Do you remember any of that? Or were you involved in that?

Lucero: I was involved in pretty much all of the reauthorization of Superfund. Linda Fisher became the point person for EPA on the reauthorization. Initially, that moment was when Lee Thomas was still the assistant administrator, and when he moved up to be administrator, she moved up to be his chief of staff, but she continued that role of being the point person on that legislation. That was a very long reauthorization, and it had a lot to do with the fact that a lot of committees had claimed jurisdiction and wanted to work different pieces of it.

What Linda had set up is she had a core group of people that worked with her, responding to questions, creating data that people were requesting, drafting proposed legislation, writing committee reports. And all of our offices had at least one person that was in that core group. The Office of Waste Programs Enforcement, the person who was mostly engaged in that, was John Cross. And I also had a second guy who spent a lot of time on that who was Bob Mason, who worked on some of the contractor liability issues. Elaine Stanley from the Superfund office was part of that group, and there were people from the General Counsels Office and others. And then outside that group, on big policy questions where the group couldn't just kind of resolve something, she had a larger group. So it would include Hedeman; it would include myself, John Skinner, the assistant administrators from time to time. But from time to time, we'd all sit down on an issue. I spent a lot of time on the Hill during reauthorization. The reauthorization process was chaotic itself, because these guys had their normal things they were doing, then they'd want to sit down and have meetings. Sometimes the meetings occurred during business hours; sometimes they'd occur at 10:00 p.m. at night. We'd be up there at 10:00 p.m. at night.

EPA Interviewer: You did meet with the staffers to discuss...

Lucero: You'd meet with the Congressman. Some Congressmen would want to understand the program better, and so you would meet with them. And I can remember sitting... this guy who was the head of the House Public Works Committee, and he's a gentleman who's no longer there, had reddish hair—and I might think of his name before this interview's over, and I might not—but I can remember starting a meeting with him at like 10:30 p.m. at night, and we went for like an hour. It was just he and I, and all we did was he asked questions about the Superfund program. We never got around to some of the issues he really wanted to talk about, because he kept asking background questions.

Other times I can remember sitting in a room where we had maybe 10 staffers in it. Usually, they were small rooms and they were cramped, and we have two or three people from EPA there, usually someone from Justice, usually Nancy Firestone. And occasionally one or two other people from Justice. And we'd be dealing with issues, whatever the issue was. Usually, the staff would be trying to find a compromise position that was acceptable between the Republicans and the Democrats. But that's where we spent a lot of time trying to hammer out the approach on cleanup standards. The decision they made regarding permanence and the preferred remedy to be permanent, to utilize treatment technologies to the maximum extent practicable. Those were approaches that the staff wanted. EPA didn't want, as a policy matter, we did not want to be locked into permanent solutions, but more is that we didn't want to be locked into treatment solutions. And that's where the "to the maximum extent practicable" idea came up. The judgment of staff was that they didn't want to leave EPA with the kind of flexibility it had under the old act to devise remedy, because they were concerned, as they had watched the way the Superfund program had worked, that EPA, when driven by an administration that's essentially a political organization, would opt for less expensive remedies, would choose less than permanent remedies, which would cost less, and then you would not seek as much from the PRPs. They really didn't want EPA to have the ability to sort of work from whole cloth the way it had under the 1980 statute. That's why ARARs got written into the statute. There was a huge amount of debate about whether you had to adopt and comply with all the standards.

It took a long time to educate people to the concept of relevant and appropriate. It might be relevant and appropriate, but it may not legally apply.

EPA Interviewer: Some of us still can't get that.

Lucero: And it's not very clear. There are all sorts of issues that came up. Some of them got dealt with in the legislation, and some of them got dealt with separately. For example, the RCRA program. I ran the RCRA enforcement program, so as RCRA sort of ascended in its responsibilities in the mid-1980s, and the RCRA enforcement program became more significant, you start discovering that there are these concepts that were created back at the beginning that just didn't make any sense in the Superfund context. For example, under the RCRA program, if they decided to regulate a waste for the first time, let's say in 1988, the fact that that material might have been disposed of at some site in 1975, the regulation effectively turned that into a hazardous waste. The problem with it, once it was a hazardous waste, all the RCRA requirements for closure triggered in. And we hated the RCRA requirements for closure, because they were so, they were process oriented. They weren't really set up to work in the context of Superfund, or at least we believed. So we didn't really like having to be subject to all those requirements. Well, what you eventually saw in about the late 1980s, about 1988 or so, EPA finally came out with a guidance that said....

And the biggest issue was solvents. That's one of the biggest sources of contamination at NPL sites. One of the confusions that people had was that solvents were hazardous waste, and so if you found them in the ground, you would trigger all the RCRA requirements for cleanup of hazardous waste. Whereas, as a practical matter, most of the time EPA actually only regulated a limited class of potential solvents. They only regulated spent solvents. For a long period of time, they didn't regulate mixtures of solvents under RCRA. But people didn't really appreciate that. So if they found a solvent in the soils, they said it's a hazardous waste.

Well, when EPA came out finally in middle 1980s, is they came back and they said, "Look, if you find something out there and you can't tell if it falls within the classification that was regulated under RCRA, you don't have to assume it. If you can't find evidence that's readily available that suggests to you that it was a regulated hazardous waste, then you can just treat it as a hazardous substance and manage cleanup without having to apply, as applicable, the RCRA standards. You'll still look at them, but you can adjust them, because the problem with the RCRA program is it was set up differently. It was set up for regulated units that were supposed to be relatively small and not have significant contamination that had been released from them."

These Superfund sites, you have contamination for 10, 15, 20 miles. Applying RCRA standards that made no sense. That's finally been recognized, late 1980s, early '90s. But it took a long time to work that issue out. We had that discussion with... in the 1986 amendments, and at the time, there wasn't a lot of sympathy for that problem. The folks there said, "We think you should be applying these standards," which is why we came up with applicable or relevant and appropriate standards. The only thing that could be said is they left it to the Agency to try to figure that out. In fact, before I left the Agency, a major effort in 1987 and 1988 was to write guidance on what was an applicable or relevant and appropriate standard. And there was the first volume, which was supposed to be an overview of the analysis, and then the second was supposed to work through the first of a set of requirements as to whether they're relevant and appropriate or not. And they never got finalized, in part

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because we realized [that] the folks who were writing it were RCRA people, and their view of life was why not apply all the RCRA standards to all the Superfund cleanups? And we said, "Time out. This doesn't work. It makes it extremely difficult to design a remedy, and it makes it very expensive." So those kinds of issues were all products of what happened in 1986.

On the settlement side, Congress agreed that they would give us a clear settlement authority. There are all sorts of issues that only got partially resolved; they took up, but they didn't quite fix them. For example, there's a case that was decided here recently, and I've actually spent a lot of time studying the case and the cases since then that have been trying to understand. In December of last year, the Supreme Court issued a ruling in a case called *Cooper Industries v. Aviall Services*. In that case, they looked at a section that was added in 1986, it's 113(f), which was the contribution provision. They actually wrote a contribution provision into the law. That was something that Justice and EPA wanted because up until the amendments, the majority of courts that had taken up the issue had concluded there was an implied right of contribution. But in order to promote settlement, especially settlement where a handful of parties would agree to do all the work, they needed the right to get contribution from the other parties that weren't playing. If they didn't have that right, they weren't going to sign up. And we were getting decisions out of the courts, the majority of which said there's an implied right of contribution under section 107, which is a cost recovery section. But we had a couple cases where the court said there's no implied right of contribution.

So one of the changes in 1985 and 1986 we wanted was we wanted to have a clear right of contribution. And I remember this conversation with John Cross. He and I were sitting in his office, and we were struggling with the fact that we had this unclear provision that had been written into 113. The law wasn't final yet, and so the question.... We couldn't easily change the language of the amendment, because as the process went along, and things got locked down, it had passed through so many committees and so much stuff, you couldn't change it. All you could really do is think about trying to write legislative history and ask them to put it in. We would write testimony by sponsors that would interpret the provisions and things that we would try to do to build this up. But on this provision, it was ambiguous, and I can remember having this conversation with John, and we decided that in that particular provision, the savings clause would allow these contribution actions to proceed. The way it was written is contribution actions were limited to when EPA had brought an enforcement action or a cost recovery action. If you didn't have that, that's all the statute on its face, that section, seemed to suggest were the case in which you could bring contribution. But it had a savings clause, said nothing in this clause shall prevent the right of contribution.

For 19 years, the view was the savings clause authorized contribution actions. And the circuit courts came along, and they all said, "Because there's a contribution provision, private parties that are PRPs"—owners, operators, generators, transformers who arrange for the disposal site, chose the site—they can't proceed under 107. They no longer implied a right. They stopped doing that analysis, said you have to proceed under 113. Well, the Supreme Court came out in December and read that section finally, and agreed with the appellate in the case and said that if you're not the subject of an enforcement action or had a judgment issued in a 106 or 107 case, you can't bring a contribution action. Said it's a clear meaning. So, 20-some years of understanding, including the understanding we thought we had back in 1986, out the door.

EPA Interviewer: What was the vote? Was it in one of those five to four ones?

Lucero: No, this one was, I believe it was six to three. It may have been seven-two, but it was at least six-three, maybe seven to two. It's six to three. In any event, that's why we thought we had a way to solve the problem that we couldn't fix.

I'll give you another example of a problem we thought we had fixed. When we went into the question about what were costs that could be recovered, there were these uncertainties about which costs EPA could actually collect. We thought we made it extremely clear that oversight costs that EPA incurred for removals and remedial actions were clearly covered. The Third Circuit, like within a year and a half, did an analysis of the statute and said, "We don't see how oversight costs were meant to be a response cost," and concluded in a removal action that EPA could not recover as a response cost its oversight costs. I just read a case a couple of weeks ago, a month ago, where the Third Circuit went a step further and said, "We don't think oversight costs associated with remedial costs are included." And the remarkable thing about this was, that was one of the issues we specifically sat there in 1985 and 1986 and actually tried to solve.

And it just goes to point out that no matter how much... there are limits on what you can persuade the staff people to do, because it's legislative. They never leave it alone; they always tinker with it. I thought we had got that one fixed, and obviously there's at least one circuit that doesn't agree.

On the settlement authority, we always thought we had an implied right to settle 106 and 107 cases. We didn't need a separate settlement authority. But we decided we wanted to have a clear settlement authority for this RI/FS settlement, because that was a contentious issue. There were a lot of concerns about why you would have PRPs do it. There were some people who had a philosophical objection, because they felt that the PRPs would skew the work in their favor. Anybody who's ever done one of these things with EPA doing oversight knows you can't skew these things at all. I mean, you can tinker with them if EPA's not paying a lot of attention. You might in fact be able to change them, but generally there's so many people looking at them, and you spend so much money on it, I don't think it made any difference. But at the time there was serious concern about it, a serious concern about letting PRPs do risk assessment. And so section 122 was enacted—that's where you get some of these other things, *de minimis* settlement concept came it—but there's a specific settlement authority for RI/FSs. We never intended 122 to cover the full range of settlements, because we felt like we always had that right. We just wanted to have a clear statement that we could do the RI/FS settlements. What I noticed in some of the cases since Aviall, the case I was just discussing with you, the courts have focused in on the fact that, well, you know, they didn't get a 122 settlement here. And you don't get a 122 settlement. The reason you don't get a 122 settlement is you didn't need it. But that's now a reason for... Well, there's a separate provision that allows you to bring a contribution action if you have a settlement, but they say, "Well, you didn't have a 122 settlement."

In 1985 and 1986, the judgment was made that this was not a program they wanted to delegate to the states. This was a Gorsuch decision. Because they had this goal of trying to close it down, they didn't want to have a delegation program. They said states can bring their own provisions. Well, that's always been one of the big issues that EPA's struggled with in the Superfund program: how do you engage the states? Sometimes the relationships are fine; the

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states are happy; they work well with the region, and everything comes out the way both agencies want. Sometimes they don't see it the same way. You have the MOA [Memorandum of Agreement], but you never had a delegation mechanism. You couldn't delegate the enforcement authority; you couldn't delegate the selection of remedy authority. That was another problem with the Superfund program. It was never really ultimately meant to be a program that would get delegated to the states.

EPA Interviewer: I think they wanted to give it to the states, not delegate. Wasn't that the original intention? They would assume it.

Lucero: That's exactly right. That's a defect in the structure, because it's still basically a federal program. You've got a lot of statutes and states that track it, but they don't always track it perfectly. You've got MOAs or MOUs [Memorandums of Understanding] between the agencies, but there's always a certain amount of tension. The thing about a delegation program is ultimately the states take control and they'll make decisions they deem to be appropriate, and EPA can override them. As a long-term model, that might have been an improvement, but it just wasn't in the cards.

EPA Interviewer: I guess nowadays with the budget problems, hardly any state could take them over.

Lucero: That's exactly right.

EPA Interviewer: There's very few states that could even entertain the idea. New York, New Jersey maybe.

Lucero: We had this conversation early in this interview, and it just comes back. In 1982, when we were sitting there talking about the cost of a cleanup, and our largest site at the time is \$100,000. Today, you're looking at sites where a billion is the expected cost. The Hudson River's a billion dollars. There's several others out there. Rocky Mountain Arsenal. Huge, huge costs associated with it. We're a lot more sophisticated. If I had to pick...

This takes me on to another point. The other thing that I think EPA was slow at being able to do was really figure out what its technical alternatives were for the problems it was addressing. Most of the other programs have research and development components that support the regulatory programs. EPA had a research and development component for CERCLA, but because of the way the program was run, full throttle, straight ahead, the science has taken years to catch up. We're still dealing with problems we don't know how to solve. We don't know how to solve DNAPL [dense nonaqueous phase liquid] problems. We know how to prevent them from making the circumstances worse, but we don't know how to get DNAPLs out of the ground. Or NAPL, non-aqueous phase liquids. I've got a site where we know it's there, but you can't locate it, so you can't go in and try to extract it. Then you're sitting here and you're saying, "This thing's going to be here forever." I mean, we can put barriers around it, we can treat it, but we're going to treat it until you and I are long gone.

EPA Interviewer: That's why if you come up with that solution, you'll be rich.

Lucero: Yeah, no kidding. It took EPA a long time to understand the groundwater problem.

EPA Interviewer: They thought it was complicated, but it's even more complicated than anybody perceived, I think, especially on those large sites.

Lucero: Exactly. One of the fascinating things is I attended a meeting of the National Groundwater Association recently, and the science is still evolving. It's really pretty remarkable as people continue to look at how to deal with different kinds of problems, different environments in which the contaminants are found. I'm just fascinated, and I think back because when we were running the program, at the beginning, for the first 400 sites, I probably knew every fact there was to know about each of those sites because we reviewed them all the time. I've lost that ability and I've forgotten things, and there's been a lot of movement since that I've not kept up on, but there was a time when I could tell you what was going on at pretty much every site. What the enforcement status was, what the remediation status was, what the problems was, where we were looking. There's just so much we didn't know.

EPA Interviewer: The days of just putting in a boring... they thought that was enough. You see how far it's progressed, the equipment that's been produced, and they're still working in the gray area.

Lucero: Right. And EPA, now in the last 10 years, is now beginning to understand the whole issue with environmental receptors. That wasn't even in the picture in the early to mid 1980s. Everything was focused on health risk at that time. You know, the problem with environmental receptors is it's a different calculus. First of all, it's hard. They're still learning about how different species are affected. Then the question comes up. Whereas with humans, you're trying to protect against any individual person being affected. In the environmental context, you have to talk about species as opposed to individuals, because individuals die all the time for other reasons. And those are issues that haven't been vetted very well.

EPA Interviewer: And they're expensive to pursue, too.

Lucero: They're extremely expensive to pursue. While it seems on the one hand to be the right thing to do if your objective or your mandate is to protect the environment, you should answer those questions. At the same time, the question arises, well, if you can maintain the species even if you have impacts on individuals in this area, and there's no threat to the species, is that sufficient? That's a fair policy question. Not one that's worked itself out, as far as I could tell. But if you go for individuals within a species that have to be protected in a Superfund area, the costs can be extraordinary, because the levels are so much lower where they think they have impacts.

The other issues... there's a big issue in the Superfund program which isn't really there to be discussed anymore. I don't know that it was ever open for discussion, because the decisions got made early on, and then the values got cemented in concrete; maybe they were chiseled into granite and they just can't be changed at this point, but as a country, we've spent an immense amount of money dealing with contaminated property, contaminated waste. In the mid 1980s, and again at the latter part of the 1980s, the Agency went through a process of sort of comparing risk presented by different exposures. So you looked at what the air program was doing, what the water programs were dealing with, look at the toxics programs and whatever. And every time the Agency did this, whether they did it internally, they did it without external folks, they had a peer review. What you come away with is that the risks that are being

addressed by the Superfund program—I mean, we’re dealing with very small risks in many cases, and eliminating them permanently—are not the most serious risks in the country, in terms of threat to human health, just from environmental contamination. You could have a different argument if you focused on disease and other things that probably harm a lot more people or whatever. But just in the environmental context, when you did comparative risk analysis, you came away with the conclusion there were programs that EPA should be emphasizing, and the Superfund program and the RCRA program always ended up down the list, because even though they commanded the majority of the resources, they weren’t dealing with the most serious risks. We’re dealing with small risks. But we were dealing with problems that were politically significant that the public had decided needed to be responded to, even if they weren’t the most significant from a risk basis. The only way you could have had that discussion would have been to have had a long development process of presenting the information. That never occurred.

So the way they’re dealing with CERCLA these days is they’re just building fences around it. They didn’t reauthorize the funding mechanism. They’re not appropriating new money. They’re maintaining it, but they’re not adding significantly to the NPL. When we talked about the NPL and what it could have been, it could easily have been 2,000-plus sites. Could have been 3,000 to 4,000 sites if you wanted it to be. It’ll never probably get much beyond what it is now. A few go on, a few come off, but they’re building fences around it. The Superfund program is still vibrant in other ways, because the one thing that it has done—and here the liability provisions, and to some degree the threat ultimately of EPA enforcement and now more, maybe, state enforcement—but ultimately it was the threat of private enforcement, that is a party seeking its own response costs, that’s caused a lot of work to be done. And I can tell you from working on the private side that if there’s... this is not meant to diminish all the work that’s been done on the NPL sites and all the work that’s been done in the context of removals on non-NPL sites. Someday, someplace, somebody should step back and say: if you accept my premise that the private party work is driven by the CERCLA statute in particular, which I believe is the case, I think if you went out there and you looked at all the transactions where they’re doing due diligence, they’ve spent a lot of time trying to allocate responsibility, they set up covenants for cleaning up the site, if you believe, as I do, that much of that is driven by the liability structure of CERCLA, I think that’s a very significant accomplishment. Because what’s going on—and it’s made even more meaningful because now in the big urban areas like Los Angeles and all the other big states, more of the development has come in the brownfields area because there’s just not that much greenfield property.

Here in southern California, there isn’t anything that’s green, a true big greenfield site inside the city limits. Anybody who wants to find greenfield has to travel an hour plus, and at some point you just reach the limits of how far people can commute for work. So you end up coming back to these properties where there were industrial activities. The people have them developed. The cleanup of those properties is being driven by people trying to figure out how to address the property, so they won’t cause themselves or the developers or the subsequent owners of the property problems due to the contamination on the site. And there is a lot of that activity. That’s a good part of what I do, what a lot of people do. We don’t do it with EPA. A lot of time, if you have to have an Agency engaged, it’ll be a state agency. Sometimes you can do it with local agencies. That happens to be true. But it all kind of relates back to the CERCLA liability program.

Whether it's part of this project, as you guys collect the oral history, or it's someone else's assessment down the road, when they kind of take stock of what Superfund accomplished, you know with all the fits and starts, the kind of difficulties it had, the successes it had, I think one could make a strong case—I just posit this now based on my experience and observation—that a great deal of what Superfund accomplished is it made private parties sensitive to and concerned about environmental contamination and made them address it, or at least think about it, and hundreds of thousands of transactions that the government would never get to. And I think that's a major accomplishment, which is why when you go back to the Aviall decision, the question you ask yourself is, "Well, is that going to change the way people analyze these sites?"

I have spent a lot of time looking at that decision. I think there are ways to work around it, but I think you have to be more sensitive to it. Before it was simple. You could start a voluntary cleanup, and you would just bring a contribution action against a party you thought was liable, and you could do it under CERCLA, which was a preferable statute because state laws in most cases are harder to use for all sorts of reasons. I think you can still do it. I think you just have to be much more thoughtful about how you structure it. But ultimately, maybe not everybody will see it that way, and maybe it will diminish the amount of voluntary action. I think all the people who've thought about it, including many of the judges, acknowledged that that's an outcome of that interpretation, but they say the law's the law. These days it's not clear that there's any will in Congress to fix that problem.

EPA Interviewer: I thought I understood that someone was going to the Supreme Court to test the joint and several liability issue.

Lucero: I'd find that hard for them to take up. I'd find that really difficult because I think that, one, there's no basis in the statute to undo it. It's not an ambiguity where it was created. I'm sure there's somebody out there that would love to get that re-thought. There are plenty of people...

EPA Interviewer: Some insurance company, perhaps?

Lucero: There are plenty of people who would love to get out from under joint and several, but the fact is, even in 1986, if you go back and you look at the colloquies and the testimony that the Congress people gave when they passed. Every time they did a committee approval of the bill, they would write a book justifying what they had done. And you can find plenty of testimony that says, "Yep, joint and several's what we intended," because at that time, they wanted to make sure that it couldn't be undone.

EPA Interviewer: So when'd you leave, before William Reilly came in?

Lucero: I did. The election occurred in November of 1988, and Reilly came in after that. I had actually worked a lot with Reilly, and a lot of other people who've had a high-level role with EPA and with Superfund in particular, because I spent a lot of time working with the Clean Sites organization, which was created in late, maybe it was the end of 1983, beginning of 1984. And it was funded by a lot of companies who wanted to come up with a non-profit organization that might have the opportunity to try to work cooperatively with EPA and Justice on some of the solutions that still had to be hammered out. And so I spent a lot of time working with folks at Clean Sites, with Chuck Powers, and Reilly was on the board of Clean

Sites. I worked with him. He, of course, was also one of the people that you go to regularly for support on various issues in Superfund, RCRA, whatever.

Clean Sites did a very good job putting together a superior board of high-level people whose credentials were beyond question and tried to engage them in thinking about how to deal with some of the Superfund issues, which I thought was a pretty good process. Not everybody liked it, but I thought it helped elevate the discussion, because one of the things that was so hard after 1983 and the 1984 criticism is it's easy to tear down a program. You can do it pretty quickly. But building it back up and particularly rebuilding its credibility takes a long time. Part of that was to build credibility for a rational settlement process, whether it be RI/FS settlements or doing risk assessments or whatever could be done. I think that helped. One of the reasons I decided to leave in 1988—there were a lot of reasons, some of them were personal. One of the reasons I waited until 1988 is I didn't think that I had recovered from the sort of disaster of 1983 and 1984, personally, just in terms of credibility and the sense that people whose opinions were important to either the program or to me, or both, had come to the place where they thought it was running right until about then. Maybe a little earlier I could have left, but there was also.... I liked it, but I actually made a conscious decision in February of 1988, or thereabouts, this is February-March. It was just... I was there. Everything was working about as well as it could work at that time. People weren't questioning what we were doing. They felt we were going the right way. The enforcement program was appropriately aggressive. We were collecting lots of cost recovery monies. We had a lot of settlements for people to do work. The RCRA program was more functional, a lot more activity. A lot more enforcement.

As a rule I developed then—and I haven't had occasion to use it much, but—it's better to leave when you're on an upswing than when you hit the other side and someone starts to say, "Well, you know, I think this guy's getting long in the tooth. He's been there too long," or whatever. So I left at a time when I really felt.... Think about it. That's four and a half, five years it took to kind of climb back out of that trough that we got sent into in 1983 and 1984. By a program's measure, maybe that's not a long time. The CERCLA program's coming up on its 25th anniversary, but it took us five years to regain that momentum. I gave it five years because that's when I judged it was OK to leave. It was functional enough. Other people would have said maybe it was back on its feet earlier than that. But it took us three to five years to get it back on its feet and get it to a place where it seemed credible. And even so, when Reilly came in, a whole set of questions came up about whether the Superfund program was still working as well as it should. When Clinton got elected and he came in, they had their Superfund re-examination. The problem with Superfund is I don't think anybody ever expected that it would be as complex to figure out how to solve these sites and would take as long to do all the things that Congress wanted done. If they told you you didn't have to talk to the public, you didn't have to coordinate with the states, you didn't have to talk to the PRPs, and they gave you all the money, maybe you could clean up a site a little faster.

EPA Interviewer: Sort of the Netherlands approach?

Lucero: There you go.

EPA Interviewer: Engineering everything totally, and that's it.

Lucero: Yeah. But if they want, as they did, they wanted you to think about what the long-term remedy was, whether you could come up with a permanent remedy, whether you could eliminate the problem. They wanted you to coordinate it with the public; they wanted you to try to get the PRPs to do it. It takes longer to clean up a Superfund site than it takes to build a highway. They both take a long time, but....

EPA Interviewer: It's easier to get to the moon than it is to clean up a site.

Lucero: There you go. And I don't think anybody fully appreciated that it was that difficult.

EPA Interviewer: I think the more you got into it, the more complicated each thing built on the other. That it was not easy to get an answer to all those questions. And it gets tougher as we go along. The more technology you invent, the more questions you produce. It keeps getting harder and harder to get to an answer.

Lucero: I agree with that. I don't know that the Superfund program will ever get a political will behind it that will increase its size from what it is. But the one thing that seems obvious to me is we're in the next iteration of analysis. Detection technology is now gotten us down routinely in parts per trillion. You can measure below that in some cases for some of the contaminants. We don't know what that means. Now that we know about it, should we be worried about it? Should we try to address it?

You've got the endocrine suppressor analysis underway, where the belief is that very small levels of exposures to some of those chemicals, in fact, can be harmful, particularly to developing children. And if that's the case, do you have to go back and reevaluate some of your sites in light of that? Don't know the answer. Don't know.

But if I learned anything from CERCLA from that whole experience, there's several things that are obvious to me. Once you build it, you cannot undo it. If you built it badly, you can't easily fix it. It takes on a life of its own. If you wanted to go in and say, "You know what's wrong." If they said, "OK, you get to be philosopher-king for a month. How would you fix this program, and you can do it, and we'll implement it exactly as you describe it." That would be one approach.

It won't happen in this country, but if someone said, "Give me a proposal for how to fix the program," there will be plenty of people that disagree with my view, even though I've had lots of experience on it. They wouldn't like my suggestion we eliminate the pre-enforcement bar and go to a review process, which I actually think would make the process no longer, because I think a lot of what happens is people fuss over the unfairness of it all, and you lose a lot of time because you have no place to go for it.

You could go back and you could come up with an approach that says... I mean, if you think about the groundwater program, we, in effect, are in the same kind of program we wanted to be in back in 1984—1983, 1984, 1985—which was temporary solutions run a long time. We still don't know how to fix groundwater. At least today's judgment is you can never get all the contaminants out. You can get them down, and at some point you rely on the natural systems to resolve them. But at most of the groundwater sites you have this pretense of saying, "We'll run it for 30 years, and then we'll evaluate it." Anybody who sits there and says, "We won't be there in 30 years. We'll just be further down the track." It'd be almost as simple to say, "We're going to run this for a very long time."

The one other change—now that you actually reminded me of something—the one other change that I think would have made this a better program is if we designed it a little more like... there's a statute here—you and others may not know—it's referred to as the Price-Anderson Act, and it deals with nuclear power plants in particular. And one of the structures of that statute that always intrigued me as a model for CERCLA is in order to get nuclear power, and you don't have to agree that it's a good or a bad idea, but at the time there was a judgment that nuclear power made sense, and there should be an industry to develop it. No one was willing to provide insurance for the potential risk associated, because it didn't take a brain surgeon to figure out if there was a serious accident, it could be a huge outcome. So the way they structured this was they gave what I'd call the excess level of insurance for the truly extraordinary responsibility—they gave it to the government. The government said, "We'll be responsible for that. As long as you can get insurance for the first \$10 million to \$100 million, we'll cover it beyond that." I don't know that those are the numbers, but that's the idea. The company would be responsible for the first instance that would try to insure for the next level, and the government would be there.

The same model, not using a financial structure like that, would make a lot of sense for CERCLA, because for many of these sites, think about it, we've been doing these sites, some of them, for longer than 25 years, because they started before the Superfund program, a few of them. 25 years. Some of them, the groundwater systems are just going into place now; they're projected to run at least 30 years, maybe longer. What the government should have set up—and it didn't have to be EPA, it could have been a third party, smaller agency—they should have set up an agency that at some point would accept the responsibility for long-term management of the site, to maintain the systems, to reassess them periodically. Leave EPA in its oversight and enforcement role, but at some point, the government accepts responsibility, because it's a terribly inefficient mechanism in today's economic environment to try to create that responsibility on the private parties. They'll do it, and they're committed to do it, but look at the universe of private parties. These companies you think are going to be here forever disappear in an instant. And so it would have been better instead of trying to get... And I do this work. I mean, we set up the funding mechanisms, we try to set up the long-term organization, but it'd have been so much easier if you'd said, "OK, we'll run it for 10, 15 years, and then we turn it over to the government." Because the government can run it a longer time. And we fund it with a combination of PRP money, and maybe some contribution from a common fund.

I always thought that if you had the government out there willing to take over more of these sites, you wouldn't struggle with the difficulties you have. The sites I'm working at where I've been at it for 15 years, it's an interesting problem. I personally find it interesting, challenging, and I like the problem, but it's not necessarily a productive use of having 50, 60, 70 companies with individual representatives trying to get agreement on how you're going to run this site for 30 years, especially when you know people are going to come and go, and personalities are going to change. In retrospect, if we hadn't been in such a hurry to get rid of this program in the first five years, and if we hadn't been tainted and could have had that discussion in 1985 and 1986... The question that should have been asked at that time is, maybe you get the private parties... the people who wanted the Superfund program to be fully publicly funded. That would be one way to structure it, but there didn't seem to be a will for that.

My personal view is you fund as much as you can with private funds, but you set it up at a point that the whole thing shifts over, including the risk. The way the Price-Anderson works; everybody contributes into a fund, and it's available to deal with—like an insurance policy—it's available to deal with any extraordinary problem that occurs. You could set up the same mechanism for the Superfund sites. It just wasn't there politically. But looking backwards, maybe it would have been easier not to have to try to get all the private companies to come up with mechanisms for committing to events that are 30, 50 years from now. There were companies that were here two years ago that aren't here anymore. You see it every day.

EPA Interviewer: Usually one of the bigger company gets their liabilities; it takes them over. In light of that, do you see a reauthorization of the Superfund any time? That would be a time to put in some of your ideas, like you're talking about, if there was a reauthorization.

Lucero: I don't see it in the short term. I don't see it for a variety of reasons. They're different today than they were back in 1986. And you know, there was some discussion about this in the 1988 to 1990 time frame when they started talking about reauthorizing, but they never got anywhere with it. And there were too many people who were coming in saying, "Let's wipe out joint and several. Let's do this, let's do that." I don't see it right now, because I think it would require a major commitment of both money, which is in short supply across the board, and it would require major commitment of political chits to get something enacted that you could get a lot of support for. My take on where things are right now is that there are things more important to this administration, like social security. CERCLA reform would be of interest to me and a lot of other people, and I think would make a big difference, but I just don't think there's a will to do it. The environment has a small place in the current political agenda. There's a lot of concern about it, but there's no legislative impetus, the fever that there was years ago.

Someday when I retire, if I'm not jaded and don't want to think about this anymore, it'd be worth writing kind of a history of all this. And what you guys are doing, collecting this information, will be a valuable piece, but if you think about what this country did in the 10 years from 1970-1980, essentially creating a series of environmental laws, it was a heady, energetic, robust time. It turns out the problems are a lot more intractable than people thought. They take a lot more time to fix. But there was a period when you passed Clean Air Act, Clean Water Act, Solid Waste Disposal Act—which included RCRA—CERCLA, TSCA [Toxic Substances Control Act]. It was all done in like a 10-year period, and CERCLA was the bookend to that decade. There's been amendments. Oil Pollution Act wasn't a big issue. 1986 SARA had in Title III. But I still think the basic laws that still drive the environmental approach nationally were done in that 10-year period, 1970 to 1980. There was a lot of optimism then. There was a lot of energy. The country didn't feel like it was constrained, and we're in a different time now. There are still issues where people think we can fix some of the problems, but I don't sense that there's quite the enthusiasm or optimism.

I think there's a lot of concern whether enough's being done about the environment, and they can argue that this administration hasn't done enough, or it's doing the right thing, depending on your political philosophy. But what you don't see is that incredible impetus that you saw in Congress in the 1970s, early 1980s, where Congress is driving it. You talk to the guys who are there, many of whom are still around. They believed they were doing the right thing, and it was just something that needed to get done, and they could do it. I just don't see it now. I just don't see the political capital for it.

EPA Interviewer: Anything else you'd like to say? We're ready to wrap up here. Taken a lot of your time, and I know we appreciate you giving it.

Lucero: I think I probably covered it. I have lots of little stories, but I don't think they probably fit in as well, and they just take.... They're about some of the site issues. They're individual people that we all remember. These incredible moments. I'll tell you a little story.

When EPA was starting to emerge out of the 1983 period, people were beginning to think OK., maybe there are the right people there. We started getting citizen groups that were beginning to realize that if you wanted to make a change in what was being decided at a site, you had to go to Washington, because that's where the decisions were still being made, although eventually they would get pushed out to the regions. And I can remember these days when... I remember this one event. I was sitting in my office doing whatever I was supposed to do that day, meeting with people, talking on the phone, all those kinds of things, just to keep the process moving. I get this call from the assistant administrator's office, whose name was Lee Thomas. And Lee calls, and he says, "Gene, they got some people here, and I really need you to talk to them because it's an enforcement-lead site." And I said, "Well, where are they from?" And they're from Indiana.

And he said, "And they brought a pile of dirt in and they dropped it in my office, and I don't have time to talk to them, so can you talk to them?" [Laughter] It wasn't that he didn't have time; he didn't want to talk to them, because he didn't think he had anything that he could say to them that would make them feel any better. But we did a lot of that kind of stuff. But you could see how distraught people would get over....

The proposal—this was the Bloomington site—the proposal was to build an incinerator and to incinerate all the dirt. Unacceptable. Completely unacceptable to a good part of the community. They wanted something else done. The incinerator would have made a lot of sense. You would have built it. You would have done it. If you believe your risk assessment, the risk to the population wouldn't be that great. But they didn't believe it. So it didn't matter what the science said. They didn't believe it. But I remember that meeting. It was in a room about this big; there were like nine or 10 people. People were crying, they're asking us to do things, and you're kind of saying, "Well, you know...." They just provoked such an amazing reaction among people, and it became a big, big focus. The other thing I learned in the Superfund program... you think you're doing the right thing and you're really committed to do it, and then you discover that somebody doesn't like what you're doing. Bloomington was an example of that. I thought that was the right decision. That was a program decision, basically.

EPA Interviewer: Because they were going to fund the incinerator. Thermal desorption on-site.

Lucero: Yeah. In the Seymour, Indiana site—a different site in Indiana—was the first time we decided we would settle with a group of the PRPs, in part because the other PRPs were just being stubborn and wouldn't move. And so we worked out a deal which we thought was reasonable. And it was sort of to tell the others, you know, if you sit outside, you got to pay the price. Well, that one got caught up in that whole disaster in 1983. That was the right way to do it. That was one of the things joint and several allowed you to do. You'd basically signal to the folks, if you don't come in, you'll pay more. But you know, it's one of those sites I must have had five hearings on that site alone. And so what you learn in the process is what I learned,

and this is just what happens. We're moving ahead full throttle. Over the years you'd come to the conclusion that sometimes it's more valuable to go slow and cover your bases and to try bring people along. And that's what happens in the government. What you could do at the beginning of the program, the freedom you have, the time and energy you can bring to bear, sooner or later the system starts to capture pieces of it. Either they penalize people personally for getting too far ahead, or they just make it too painful to have been out in front. So, eventually the program turns into that which it never wanted to be, which is a slow, cautious program.

EPA Interviewer: A vanilla program.

Lucero: A developed, mature program that happens to be slow, cautious, very process-oriented, lots of time spent collecting information and making sure there's no questions that can be asked that haven't been answered in advance.

EPA Interviewer: So what'd you do with that dirt when you got up there? Take it back you to your office?

Lucero: No, it didn't get to my office. They had dropped it in Lee's office. They cleaned it up. I don't think we actually... I don't think they manifested it. I don't think anybody actually wanted to know whether it needed to be manifested. It left. Who knows where it went.

EPA Interviewer: Yeah, those were the days. I guess they still have those public meetings. We used to have those where they wanted you to drink the water. "Would you drink this water?" We used to have this guy, the public affairs guy in Region 4, he would drink the water. He was from Mississippi; he was quite the character. He'd just go ahead and drink it. Hagen Thompson. I don't know if you ever remember him.

Lucero: I don't remember him.

EPA Interviewer: He was colorful. In those early days before we got so organized in the community affairs/public relations group.

Lucero: It's pretty remarkable. I mean, I can't tell you the number of times when we would sit around, usually late at night, after God knows what had happened, and we'd sort of say, "Well, we need to do this," or "God, we've got to do that," or "We've got to change this." There was a lot more of that in the first three or four years of CERCLA. After it started to mature, it became more methodical.

EPA Interviewer: It was 10 years of turmoil from 1978 to 1988, when you left. You left when you knew it was calmed down. It wasn't exciting enough for you, so you left. [Laughter] That's the way I remember it. It started in 1978, and it was... every day was a new experience.

Lucero: It was. It was kind of like a crisis. Well, there were days where you'd have a crisis every three hours. Many of them were self-made, but there'd be a... especially when we were doing the removal program approvals out of Headquarters.

EPA Interviewer: Yeah, I was on one of those.

Lucero: Yeah. I mean, people would call up and say, “Rar, rar, rar, rar, rar... We’ve got to do something.” And you’d go, “Well, quick! You’ve got to get this,” or “We’ve got to have an action. What about the PRPs?” and “Who’s done this?” and “What are you doing?” Of course, it was crazy. I mean, it was heady. You liked being involved in it, but it was crazy running it from Headquarters.

EPA Interviewer: Plus, you guys had to... every time something happened, like you said, there was nine different committees; every time a Congressman did a knee jerk, you guys had to react in those days. Then it went down to the region and we got that reaction down there, so it was....

Lucero: Yeah, well, the regions were both better and worse about it. They were appreciative that we had all these guys breathing down our necks, but occasionally they didn’t care. They’re not happy and they’re saying, “So what? What am I supposed to do about it?” And you’re like in the middle, and you’re like going, “Well, you’re supposed to be concerned and try to help me out, because they’re going to pound on me,” which is the way the Hill liked it. They liked having people they could grab and shake, and say, “OK, we want this done.”

EPA Interviewer: You were their rag doll. Did you ever work with Ken Biglane?

Lucero: Of course.

EPA Interviewer: Ken was our mentor in the response. He was actually the father of all of this, he and... what was the admiral? Was it Admiral Brown that did the original NCP back in ’68?

Lucero: Ken hung out a couple more years before he formally retired, but when I came to the Superfund program, he was still there, and he was running the removal program, he and VanCleave. It was a wholly different experience, because he was a real removal guy. They were doing oil fires and oil spills. It’s a completely different life. The removal program, that’s initially the emergency removals, that’s what it was. But as it moved into the non-time-sensitive, and it moved into remedial programs, there wasn’t a place for a kind of removal attitude, because there were a lot of other things that had to be done at that time.

EPA Interviewer: The emergency program was the father of Superfund. We were doing cleanup in 1978, like at the Valley of the Drums and some of those other places around the country using the oil money, that hazardous substance fund. Getting it started, the Coast Guard gave us money while you were working towards getting Superfund passed. We were actually using that money in the field to do those cleanups as early as 1978. And Ken, you know, was behind all of that. He was quite the interesting fellow. I don’t know how much time you spent with them.

Lucero: I spent a fair amount of time with him. I mean, it was clear he just had such a...he was coming up toward the end of his career. He had been doing this forever. He had incredible stories. He’s from Louisiana, and, you know, you couldn’t ask Ken a question without getting a story.

EPA Interviewer: Get the Cajun story. You got all the Boudreau stories. We videotaped his last two classes. He used to come teach inland oil course, and we’d video... I made him tell a couple of those jokes.

Lucero: He's a great guy. He was a great guy, and I mean, he never got caught up—if he did, he never said anything—he never got caught up in the politics. He was just doing what he needed to do. The one thing is he caused even those folks who came in with a different attitude about what the government's role ought to be, they could never argue with Ken. He was kind of unique in that way. It's too bad... somebody should have... I don't know if anybody ever did sort of get from him his experiences all through his career.

EPA Interviewer: We have the papers. They're stored between the ERT and Steve Dravila in Region 3. His daughter allowed us to come and get those papers for his...you know, he used to keep lots of notes and things like that. Tell him to write stuff down, so we do have a history of the program, pre-EPA and post-EPA. Are you ready to conclude?

Lucero: I am. I am. [*tape stops*]