

US EPA ARCHIVE DOCUMENT

# LEE THOMAS

Former EPA Administrator

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**Location: Atlanta, GA**

EPA Interviewer: Today is November 17, 2005. We're here as part of the Superfund 25<sup>th</sup> anniversary oral history project to talk with Lee Thomas about his involvement with the Superfund program. Good afternoon.

Thomas: Good afternoon.

EPA Interviewer: Mr. Thomas, how did you become involved with the Superfund program?

Thomas: My first involvement was when I was the Executive Deputy Director of FEMA [Federal Emergency Management Agency] and there was a major flooding disaster in Missouri and there was a town of Times Beach, Missouri, which in addition to being flooded also had—that flood—resulted in contamination of docks and waste which had been a part of a dust control project in the town. So EPA was involved, FEMA was involved, the Corps of Engineers. The state basically said, "Look, we need some help; we need coordination." So the White House pulled together all the agencies. I remember being in the meeting, and the decision was made: we need one task force to work on the Times Beach issue. It's a major problem, and I was asked to be the Chair of the task force. So it was myself, Rita Lavelle from EPA, a representative from the Corps of Engineers, several others. So we went to work on this, and the end result was we ultimately relocated the town of Times Beach, bought all the property and there are a whole series of interesting stories that go along with that. In the middle of the process, Rita Lavelle lost her job. I found out about that one day as I was driving home listening to the radio. And Anne Gorsuch, who later was Anne Burford, and myself and Bill Hedeman flew to Times Beach and announced to the press and the citizens that we were going to relocate the entire town. That's the first time I ever met Anne, and that was my first introduction to Superfund and to EPA actually, and I must tell you, it was a very interesting several months' process.

EPA Interviewer: I bet it was. As a result of that, I think you ended up moving to EPA.

Thomas: Well, that task force basically did its work, and I guess it was a month or so later, I got a call from the White House again and as you've probably heard, the EPA was in the press every day. Superfund had become a very controversial program. Obviously, Rita Lavelle had lost her job as a result of all that controversy, and so I read about it every day. I got a call from the White House saying: "We've decided we are going to send four individuals to EPA as a management group to help Anne with the Agency." So I was one of the designated four. I protested that, however I—it was suggested to me that protests were not acceptable and, therefore, I went to EPA the next day on what I thought was going to be a 90-day detail, and I stayed at EPA for six years. I went over and I was named the Acting Assistant Administrator for the Office of Solid Waste and Emergency Response the first day. I

met Bill Hedeman, who was head of the Superfund program office. Gene Lucero, who was the head of the Superfund Technical Enforcement Office, and a number of other people, and I began my education quickly. I spent that first day with those guys really trying to give me a full briefing on Superfund. And I also had responsibility for RCRA [Resource Conservation and Recovery Act], so I had John Skinner giving me a full briefing on RCRA, and I had had no background in any of those subjects. I did understand government. I'd been working in government for many years, but I must say during my six years at EPA, I felt like I got a strong technical education every single day of my six-year term, and it started that first day.

EPA Interviewer: The listeners may not know what was going on at EPA when you were asked to come in. Could you provide us with a little bit of a backdrop about what you found at EPA when you arrived and what your understanding of what led to that?

Thomas: Well, EPA at least at a management level was pretty much in chaos. It was in the press every day. There were allegations of basically political interference in the decision making process. There were allegations that the Administration of EPA was unfairly targeting career individuals to move them out of the Agency. There were six Congressional investigating committees that were investigating the Superfund program. The office next to mine was the residence of two FBI [Federal Bureau of Investigation] agents that were investigating whether in fact there had been shredding of documents, contrary to the law. The first day I was at EPA, Anne Burford asked me to meet with her, which I did, and as I said, I had met her one time before. She asked me why I was there, and I told her I was there to help with the Superfund program and the hazardous waste programs, and I had been asked to come. And she really didn't feel she needed the help. I said, "Well, you know, Anne," I said, "You are going to have to take that up with the White House, because they are the ones who told me come on over here." As it turned out, she actually resigned about a week after I was there. John Hernandez, who was the deputy, was named Acting Administrator. In the meantime, I was the Acting Assistant Administrator. John, I think, was only in that job as few days before he resigned and they named me the Acting Deputy Administrator, and actually Lee Verstandig, who was named the Acting Administrator, went on vacation, so I was also the Acting Administrator. I was the Acting Administrator, Acting Deputy, Acting Assistant Administrator, and was still the Executive Deputy Director at FEMA. I said I was Reagan's answer to the budget crisis. *[Laughing]*

EPA Interviewer: And all only two weeks under your belt in the Agency.

Thomas: Yeah, it really was crazy. We obviously went through a period of time that was quite chaotic. The White House named Bill Ruckelshaus to come back to the Agency. For a period of a month or so, maybe two months, myself and the other three people who were on the detail basically were managing the Agency. There was a major resignation of a number of the political appointees. A number of the Regional Administrators resigned. And so we went through a major change. And Bill brought in a number of new people. He asked me to stay—if I would stay—as the Assistant Administrator, and I actually wanted to stay. I had—I liked the people at EPA. I thought that the programs were extremely important—very, very challenging—and I had really gotten involved with both the RCRA and the Superfund program. RCRA was in the middle of reauthorization, so I was on the Hill in the middle of that. I had gotten in the middle of the investigation of Superfund, and so I stayed and for the next 18 months I was the Assistant Administrator while Bill was the Administrator. We did a lot of

things to get the Superfund program quickly back on track. Or maybe not back on track, just on track. I'm not sure it ever had been on track, but we got it on track.

EPA Interviewer: I was going to say, after that rather inauspicious beginning for the program, I think you probably had a number of issues to address in terms of setting up an infrastructure and thought maybe you could talk a little bit about what were the most important things at that critical juncture in the program.

Thomas: Well, you know, the most important thing was really just to get the program moving, I think, the way the law had envisioned. We published a National Priorities List, which is one of the things that was to be done. We got the emergency response program moving by changing some policy direction. Basically, we took the position, look, it's all about emergency response and cleaning up and let's get on with it. What I found was there were very good career people in the program. Bill Hedeman was excellent, Gene Lucero was excellent; people who worked for them and we all came together and made some policy changes that allowed the program to get moving, and I think that's all that was needed. All that was needed was just to say, look, here's the law. We're responsible for implementing this law. Let's get on with it.

EPA Interviewer: I think it might have been a challenging time, too. This was a new arena of activity for the Federal Government, and as I recall there was a challenge in terms of setting up laboratories, in terms of finding qualified personnel and people who had experience in this. Maybe you could talk a minute, just about starting a new program from scratch.

Thomas: Well, there was an awful lot of work actually that had already begun before I got there, and things—national contracts for laboratory assistance—a variety of things like that, but, you know, all of that was a part of saying, “How do we strengthen the organization? How do we get these programs actually moving, that were envisioned under the law; and how do we do it in the middle of a whole series of investigations?”

The investigations worked themselves out, and once we got the program moving, from a “What's happening to Superfund?” point of view, I think that we began to have a good story to tell. This is what's happening; this is how we are investigating sites; this is how we're dealing with emergency response. We were able to begin to tell the story about how many sites we thought were out there; how you get on the National Priorities List; what do you do with them once you get on it. So I think the basic organization—we could do that and there were good people there to get that job done. The investigations of what had been going on—you know, those actually worked themselves out, and that was over. I would say Jack McGraw, for instance, who came over with me from FEMA and who was my deputy there, was just a stalwart as far as a solid guy. He'd been in government for years—people just trusted Jack, and off we went working together across the group. Cathy Greenwood, who was my secretary, I remember Cathy who had been there when Rita was there, just a wonderful lady, and she told me, she said, “Lee, there are going to be people who call you up and I don't want you to talk to them,” she said, “because there are people who got Rita in trouble.” And I said, “Well, Cathy, you make sure I don't talk to any of those people.” [Laughing] So, but I mean we had a great group of people and you know, we knew what we

needed to do. We needed to get this program moving. The whole purpose was to clean up hazardous waste sites and everybody was ready to move out on it.

EPA Interviewer: Well, I think that you must have been successful, because shortly after you arrived, Bill Ruckelshaus left and...

Thomas: Well, it was about...

EPA Interviewer: A year and a half?

Thomas: Year and a half, yeah, a year and a half.

EPA Interviewer: And you were appointed as his successor, I believe.

Thomas: Yeah. Administrator, yeah.

EPA Interviewer: As Administrator, and just in time for Superfund reauthorization to begin.

Thomas: And you know we had actually—there had actually been a lot of work going on on Superfund reauthorization. That whole effort was more like a three-year effort. The Congress began its hearings, began to work up through the committee process. There were numerous committees that had jurisdiction over Superfund—not just Energy and Commerce and Environment and Public Works on the Senate side, but the Public Works Committee on the House side. Actually, the committees that had responsibility over military oversight had some jurisdiction. The Budget Committee, the Authorization Committee, there were numerous committees that got involved in deciding how we were going to move forward.

We got organized inside the Administration and Linda Fisher, who had been a key assistant of mine when I was Assistant Administrator had moved up to become my Chief of Staff when I was Administrator, and Linda actually led a task force made up of people like Gene Lucero and Elaine Stanley and others. Key people inside the program that worked on behalf of the Administration to actually move the legislation forward and I—from a policy point of view—worked it through the Cabinet Council process.

In the Reagan Administration, he had a cabinet council process that we used for major policy issues. For instance, when we worked on reauthorization of the Clean Water Act, we took the major policy issues through this council. When we did it—ultimately then he made the decision about how we moved forward on certain policy issues. We did the same thing on Superfund, and there were some very controversial provisions in the Superfund law. I mean strict joint and several liability—a good example of a very controversial provision. Issues like how the funding would be provided. All of those kinds of issues. But we took it through a process that ultimately ended up with a strong Administration position endorsing reauthorization of the Superfund law, endorsing maintaining strict joint and several liability, and ultimately, those things remained as key components of the Superfund Reauthorization Act, or SARA.

Other components got added. I mean the Community Right-to-Know component was a significant new addition. At the time, I, frankly, to be honest with you, I didn't know it was a significant addition. I really thought it was going to be more just a paperwork burden than anything else. It turned out to really have major impact, I think, as far as environmental protection is concerned in this country. I certainly didn't have the foresight to understand that, but that's what it turned out to be. So there were some major additions to the law when it went through that reauthorization process, but we worked on it for absolutely three years from the time I was Assistant Administrator through probably the first year that I was Administrator.

EPA Interviewer: And I recall, I worked up in Region 1 at the time, and I recall that reauthorization towards the end of that three-year process definitely had an effect on Superfund's appropriations. As I recall there was a time when we were given 90 days of appropriation and then the Agency was given 60 days of appropriations and then we were given 30 days of appropriations, and ...

Thomas: Well, as you recall, the taxing authority under the law basically was expiring as the law expired, and we really received very little in the form of federal money at that point in time. Most of it came—the money actually came from the taxing authority of the law. Now subsequently that's all changed, but at that point in time, yeah, we were up against the wall a number of times, and it was a forcing event. I remember testifying before Congress that we're going to have to stop, we're going to have to stop work. It was a forcing event as far as Congress is concerned dealing with the Superfund Law, but I can remember the conference committees. Good gosh! We had a conference committee doing the Senate and the House, and I bet there were sixty numbers on it. I mean it was the biggest darn—we got the biggest room up there—and I remember one hearing of the conference committee. [Representative] John Dingell was chairing it actually, and I was sitting at a little table by myself, and there was this semicircle, maybe two rows deep, of Congressmen and Senators, asking me questions about the reauthorization of Superfund. And I remember asking Congressman Dingell, I said, "You mean I'm going to sit out here at this little table." And "What's the role I'm going to play out here?" I wanted to ask him and he said, "No, I need a lightning rod." [Laughing]

EPA Interviewer: Well, the reports say that while you were Administrator, you spent about one quarter of your time working on Superfund reauthorization, and you testified over a 100 times.

Thomas: In the early days—in that first year or so, it really was, you know, intense, and we had to get it—we needed to get Superfund reauthorized. While I was at EPA, we reauthorized the Clean Water, we reauthorized RCRA, we reauthorized the Safe Drinking Water Act. Actually, the Endangered Species Act was reauthorized; Superfund was reauthorized. We went through numerous improvements, I think, in some of those big federal statutes and we spent a lot of time on the Clean Air Act, which got reauthorized the year after I left, but Superfund was probably the most intense of all of those. It was: one, it was controversial; and two, it is just very complex in terms of where we were and how people wanted to change that law, both for the better and for the bad. And I think we did, frankly, I think from the Agency and the government's point of view, we ended up doing a very good job with that reauthorization, and I felt like the fact that we had a task force of very good people from EPA, Justice Department, etc., work together consistently for that three-year period of time was why we were able to do as well as we did. Because I think we had a

credible, good solid working relationship with both the Senate and House Committees that were working on it, and we certainly didn't agree with each other on a lot of issues, but we had a very good, open working relationship with the staff as well as the Members [of Congress], and I think in the final analysis, we also had a good working relationship with a lot of opponents and proponents. They understood where we stood and what we felt needed to be done.

EPA Interviewer: And the law ended up with a lot of—with many provisions that were new for the Federal Government to not only the expanded budget but remedy selection criteria that included a promotion of innovative remedies and use of treatment and permanent remedies, rather than burying wastes...

Thomas: That's right. As a matter of fact, some of the same concepts that had been incorporated into RCRA—when RCRA was reauthorized—the bias for treatment, the permanence of remedies, all of those were incorporated and all of those were very significant provisions.

EPA Interviewer: And while we are talking about Washington, they were all the sites out there being cleaned up and being on the National Priorities List and Superfund has a very strong provision for citizen involvement in decision making and you got involved...

Thomas: It actually got stronger in this law, because there were provisions in here to provide funding for technical expertise for citizen groups. I mean there were actually—I mean this law strengthened those provisions as well.

EPA Interviewer: And as Administrator, while you were struggling with all the controversies in Washington, how involved were you with actual site work that was going on and some of the controversies related to those?

Thomas: You know, not in a direct way, or in an indirect way. I mean I certainly was aware of what was going on in many of those sites. I got to the point where one time I said I felt like many of the Superfund sites were like my children. You know, I know them by name, and I said some of them are happy and some of them are mad, but you know, it's a big program. It's a big program. It was a big program then and it was a big program for EPA to manage, and it was a big centralized program. By that I mean one Agency trying to deal with all of this. And actually, to tell you the truth, it is why I really went in a different direction with the Underground Storage Tank Program and felt that it should be a much more decentralized program. If we were going to get that—if we were going to get all those sites dealt with, I felt we had to get much more activity happening at a state level whereas Superfund was being managed at that point in time much more at a federal level, although I think over time the states have picked up much more responsibility. We were doing an awful lot of that work by EPA itself in those early days.

EPA Interviewer: You mentioned EPCRA, the Community Right-to-Know portion of the Superfund bill. It had some chemical reporting requirements, and I think in retrospect a lot of people are seeing how important that was. It established local emergency planning commissions and state emergency planning commissions as well other kinds of preparedness sorts of things. How does that fit with Superfund, with the response authority?

Thomas: It actually was quite an extension of the original Superfund. I mean Superfund clearly and EPA clearly had an emergency response capability and responsibility—it kind of grew out of the oil spill responsibilities that EPA had. This broadened it quite a bit in the sense of preparedness much more into as you said the local preparedness committees, etc. My sense though is the biggest thing that came out of Community Right-to-Know was the toxic release inventory, which in fact put a whole new reporting public reporting responsibility on industry to basically to report emissions. And more than anything I think that has had a traumatic effect on companies' views of emission reduction. It really has had a major effect in this country.

EPA Interviewer: Positive?

Thomas: Positive. Absolutely positive. I mean, as I said, I would have never envisioned that.

EPA Interviewer: Yes, I think that's probably true. Superfund has some very strong enforcement provisions. Talk a little bit about how industry viewed that on top of, as you said, you had just been through the reauthorization of several of the environmental laws strengthening them, making them a little more clear, and here comes Superfund with strong enforcement...

Thomas: Superfund's got extraordinarily strong provisions, and you would probably say "unfairly" strong enforcement provisions, because the strict joint and several liability, if used unjustly, and it could be, basically would be viewed by some industries as very unfair. There was also quite a debate among industry that, wait a minute, the whole concept of Superfund was that the Fund was supposed to be available to pay what people called the orphan share. That is the share of the site that people couldn't identify whose responsibility it was and we never took that position. We didn't agree with that position. We in government, we took the position basically, look, we've been given the authority to get as much money as we can and, you know, you can get it through taxing or you can get it through this enforcement mechanism, and it may not be fair, but it's the way we're going to collect money. And the money's going to be used to clean up sites. And that's our job, and that's what we're going to go do. And I remember telling companies directly that this isn't about fairness, this is about cleaning up hazardous waste sites, and that might have been the wrong thing for me to say, but it basically was the authority we had under the law was to, in fact, use that enforcement authority and basically get companies to pay to clean up sites that, in fact, they were probably not solely responsible for, but they had the resources to clean them up.

EPA Interviewer: As you sit today here at Georgia Pacific and think about what might have been done differently during that time, what kinds of things come to mind?

Thomas: Well, the first thing, if you had it to do all over again, one of the things I would have done is I probably would have said when the Superfund law was being passed, and maybe when the Superfund act was actually being implemented in EPA, I would have tried to pull the states in as much more active partners early on. More like we managed the RCRA program, more like we managed the Underground Storage Tank program. I think we could have gotten more work done faster if we had a much more active partnership with the state environmental agencies to work with us. So I think that's one of the biggest things I would



have done differently. I think it could have been done differently. I think, though, when we went through the reauthorization process of Superfund, we probably would have needed to give more direction from a statutory point of view to actually do that. Instead, it kind of went the other way. I mean this was really EPA's authority. The authority was given to EPA and the Justice Department on the enforcement side. It was not really something you could delegate, but I do think that was one of kind of the fundamental things. If you had a blank slate, and we're going to say, "How do I deal with these sites?" I would have gone back and said, just from a government organization point of view, I would have had a much stronger state role.

EPA Interviewer: And as you sit here again, having been away from it for several years, what do you think are some of the successes of Superfund?

Thomas: You know, I think the successes of Superfund are multiple. I think one, there've been a tremendous number of sites that have been dealt with through an emergency removal process. Basically, they didn't get a lot of publicity, but they got cleaned up, just a tremendous number. I think there have been some very large sites that did get a lot of publicity that have been remediated. Good gosh, we've got 20 years, now an awful lot of work has gotten done over that period of time, and I think all the people who have worked in that program ought to be proud of that. I think the second thing is: there's... I mean some of the provisions we talked about, I mean the Community Right to Know provision, those things got implemented, and it was not just a piece of legislation that ended up languishing. It was a piece of legislation that the Agency went forward with and put into practice, and I think has had very positive effect, as far as protecting the environment, preparing for response, so you know I think there are a lot of positive parts to that program. Now, you can probably also say it with negatives. You could probably say that it unfairly punished some people in the context of the enforcement discussion we were just having, you can probably find many people who said it didn't move near aggressive enough in terms of speed; that we took too long studying things and not enough time. We used to laugh and say, "How do you clean up a Superfund site?" You get one bulldozer driver and 100 lawyers. [*Laughing*]

EPA Interviewer: It might interest you to know we recently had in Chicago a meeting of the PRPs at a Superfund site, and it was about institutional controls, and who should be responsible in perpetuity for the kinds of land use controls that are often required at these sites, and we had to rent a hall. There were over 600 lawyers in the group still, 60 of which were with the town and the state because they have such a big role in that sort of thing now.

Thomas: You know that probably suggests that if we had to do it all over again, I think the enforcement mechanism for raising the money is an incredibly inefficient mechanism for raising money. The transaction costs are very high for the benefit you get. So, if I had to do it over again, I'd say, look, I want to raise the money to do this in a very different way. I'm just going to have a tax. I'm either going to have a tax that taxes industry, or I'm going to have a tax that taxes industry and the public, but I'm just going to have a tax, and actually I remember a good long discussion I had with David Stockman, and he felt we should just fund Superfund absolutely out of the general fund.

EPA Interviewer: And David Stockman was—

Thomas: He was head of OMB [Office of Management and Budget] at the time. Felt we should fund it out of the general fund, and you know, as I look back on it, I think from an efficiency point of view that probably would have made a heck of a lot of sense. To say, one must get the states much more involved in this, let's have a source of revenue that's much more efficient in terms of getting money to the sites, and that's probably a couple of things I would do if I started all over again.

EPA Interviewer: Interesting, the Superfund tax issue still has not gone away. It has expired and we are working off of 100 percent appropriations now, but the issue itself will not...

Thomas: Still there?

EPA Interviewer: Still there. Still not going away.

Thomas: Yeah. That's one thing I should have said in the very beginning. You know, I'm not near as close to what's going on with that program these days. I just don't keep up with it, so, you now, who knows—things may have changed 100 percent since I was there.

EPA Interviewer: Well not 100 percent. That 1986 law is still substantially in place with only the Brownfields amendments that have been enacted since then.

Thomas: Now, the brownfield thing, I think was a great initiative that was undertaken I guess both by Bill Reilly and by [Former Administrator] Carol Browner. And you know, I thought it was just terrific. I mean we got a great example right here in Atlanta with Atlantic Station. And you can almost see it from my window. When I first came to Atlanta, I ran an environmental engineering company, and one of the sites we worked on was a big steel mill. Well, today it's not a big steel mill anymore. It is a wonderful downtown development—residential, retail shops, etc., and it was a brownfields site.

EPA Interviewer: Terrific! Yeah, there's been some wonderful redevelopment, not only of brownfield sites, but also of National Priorities List sites.

Thomas: Yeah.

EPA Interviewer: We have Netscape and Targets and everybody else buying up property and actually taking care of it in the way it needs to be taken care of. We've come to the end of—very quickly to the end of my list of things. I wonder if there are other things you'd like to talk about—perhaps some of the people who were involved that you haven't really had a chance to talk about or maybe paint a picture for people of what it was like when you were there.

Thomas: Well, you know—in the early days, as I said, it was so chaotic when I first got there, you really have to give tremendous credit to some of the people who were there at the time for not just holding that program together, but being ready to really move aggressively once they had leadership that wanted to move. And you know, it would be people—you'd say, Bill Hedeman was a key part of it, Gene Lucero, Sylvia Lowrance, Elaine Stanley, and then people came in like Jack McGraw, Jim Makris, you know, all of those people were just... I mean everyone of them career, and then people like myself, a political appointee, Linda

Fisher, Russ Dawson, people who came in and worked together as a team to get the program moving. I would say as far as oversight is concerned, you know you couldn't have had a better oversight committee than the one on the Senate side with Bob Stafford and John Chafee and people like that and their staff. They were always in encouraging—encouraging to me. I went before that committee for my confirmation as Assistant Administrator. I had already been before them for my confirmation as Associate Director of FEMA, and I actually went before them for confirmation as Administrator of EPA. So I knew them all well and they were very, very supportive, Pat Moynihan, people like that. They were very supportive of EPA and of this program. Then, probably a person that meant so much to me and the program was Bill Ruckelshaus. You know, when Bill Ruckelshaus came back into EPA, he was a terrific person to work with, believed deeply in the mission of EPA, quickly moved to get the Agency back on a solid footing and a good track. Brought in very, very capable people to work with him, many of whom stayed and worked with me when I was Administrator.

I came away from my time at EPA, when I left EPA after six years and it was when I got out of government, and I had been in government for a long time, I said that really was the highlight of my government career. EPA—the people there were so dedicated, the Agency had such an important responsibility, and I had never worked in the environmental field before that, and I guess I just—I came away just absolutely committed and feeling that just had to be a highlight for me. Really was.

EPA Interviewer: Well, thank you very much. Thank you for the time.

Thomas: You're welcome I'm glad to do it. As a matter of fact, one of things I'm looking forward to is going back to EPA for the anniversary celebration coming up in January. I just got an invitation.

EPA Interviewer: Oh, terrific.

Thomas: It will be the first time I've been back in a long, long time, but I've got the time and so I'm really looking forward to it.

EPA Interviewer: It will be good to see you there. Thank you.