

US EPA ARCHIVE DOCUMENT

# DAVID ULLRICH

Former EPA Region 5 Deputy Regional  
Administrator



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**Location: Chicago, IL**

EPA Interviewer: For the record, this is an interview with David Ullrich, long-time EPA employee in Region 5, Chicago, [recently retired] and currently Director of the Great Lakes and St. Lawrence Cities Initiative, a new effort of the region's Mayors that is a project of the Northeast Midwest Institute, headquartered in Chicago. We're conducting this interview on October the 14th, 2005, for an oral history project in conjunction with the 25<sup>th</sup> anniversary of Superfund. Good morning, David.

Ullrich: Good morning.

EPA Interviewer: Tell us a little bit about what you currently do as the Director of the Great Lakes and St. Lawrence Cities Initiative, including the length of time you've been there, but focus on Superfund-specific activities, if there are any.

Ullrich: I would be happy to do that. The Great Lakes and St. Lawrence Cities Initiative started operations formally on July 14, 2003—very conveniently, 10 days after my official retirement from U.S. EPA. I am the first Executive Director of that organization. It was an effort initiated by Mayor Daley of Chicago with three primary purposes: Number one is to get seats at the Great Lakes decision-making tables for Mayors; Secondly is to advance restoration and protection of the Great Lakes; and thirdly to establish a best practices network among cities all around the Great Lakes. We have about 85 cities who are engaged in our organization now. It's about an equal split between the United States and Canada. We are a bi-national organization. Those cities represent about 15 million people. We have large, medium, and small cities who are engaged in this effort.

There are three major things happening on the Great Lakes right now, and then hundreds of others. The major things are a Great Lakes Regional Collaboration that was called for by an Executive Order from the President in May of 2004. I spend probably about 80 percent of my time representing Mayors in those discussions to come up with a strategy and an action plan for the long-term protection and restoration of the Great Lakes. That's scheduled to come out December 12<sup>th</sup> of this year here in Chicago, and we're all eagerly anticipating that. Secondly, the Governors of the eight Great Lakes states and the premiers are working on an agreement and compact with Canada. The agreement and the compact would be a multi-state compact that would need Congressional approval that will regulate withdrawals of water from the Great Lakes and potential diversions outside the Great Lakes basin. The effort is to restrict those diversions a great deal. Thirdly, the negotiations on the

Great Lakes water quality agreement with Canada will begin shortly, and we want to make sure that cities are properly reflected in that. So that's basically what we are doing.

I do not, at this time, have much direct interaction with the Superfund process. However, there is a great deal of Superfund activity that has a significant effect on the Great Lakes. Probably the most significant of which is the Fox River cleanup in Wisconsin, which I was extensively involved in before I left EPA, and there was much controversy about listing that as a site. That, along with many other contaminated sediments sites on the Great Lakes, are critically important to the cleanup. Having access to the legal authority of Superfund at the Fox River, the Kalamazoo River, Ashtabula is another example; the Grand Calumet River and Indiana Harbor Ship Canal were not... EPA is not using Superfund as much there, but there was a lot of removal activity in that area that worked to the benefit of the lakes. So basically these are happening...these either removal sites or remedial actions at NPL [National Priorities List] listed sites are occurring all over the Great Lakes.

In these first two years, I haven't gotten too directly involved in it, but my familiarity with the background of these matters and understanding the Superfund process is definitely a help in this position. I can at least provide information to local Mayors about what's happening in this process. Waukegan Harbor's another major one on the Great Lakes that's been active in Superfund for a long time. So that's what we do at the Great Lakes and St. Lawrence Cities Initiative. It's a one-person organization, with 85 Mayors, and that's some of the involvement we have with Superfund now.

EPA Interviewer: And I will return a little bit later to Fox River and some of the other river sites that you've dealt with. Now I want to turn your attention to the date of enactment, December 11, 1980. I know you were in Region 5 even then, and perhaps you can tell us about some of the first Superfund-related activities that you encountered after the date of enactment of Superfund.

Ullrich: Well, first of all, I don't remember what I was doing on December 11, 1980, but it's interesting because, as typical of many things in EPA—and I had been there seven years at that time—often the regions weren't fully up to speed in terms of everything that was happening in Washington. Very honestly, I didn't even know that Superfund was in the works at the time, and when I say in the works, being considered by Congress. I was Chief of Air Enforcement at the time, and we had an extremely active air enforcement program. I think that the silos were perhaps even more strongly fortified back in those days than they are at this time. Really, EPA was predominantly an air and water agency at that time, and even RCRA [Resource Conservation and Recovery Act] activities didn't find their way into the higher-visibility work of the other things that were going on.

I think shortly after the 11<sup>th</sup> I had heard about this lame-duck passage and signing of the Superfund law, and I really didn't give it much thought. Frankly, I didn't have a real sense of what the law was all about or what it was designed to do or what activity that there might be. I was aware that there had been a number of hazardous waste sites found, particularly in the Chicago area and more broadly in the Midwest. We were trying to do a little bit with RCRA authority, but what was it? Three thousand and...

EPA Interviewer: 7003<sup>1</sup>, because there was this effort on the part of a Task Force that had been established by the Department of Justice and then at Headquarters to identify these hazardous waste sites. Then, actually there were, I think, 50 injunctive relief cases under 7003 that were started prior to Superfund.

Ullrich: Right. I remember... Again, running the air enforcement program, I wasn't directly involved in those, but those were tending to get some real visibility in the press, so I had some awareness at that point, but, again, had no appreciation for the significance that Superfund would have for the Agency and for the whole environmental cleanup program.

EPA Interviewer: I'd like for you to talk a little bit about a case I'm very familiar with called EnviroChem, which got started a couple years after Superfund was enacted, and I know you took a very active role in that case. I wonder what you learned during EnviroChem days that, maybe, informed some of your decision-making later on as you did actually get very involved in Superfund issues.

Ullrich: I do recall that fondly, and particularly meeting you at that time. I was terribly impressed immediately by the quality of the legal work coming out of Washington. Even though I'm not under oath, in the spirit of complete honesty in this...and let me give a little background to explain why and how I got involved in the EnviroChem case. There was an Envirodyne; there were all sorts of "enviro" types of things out there, I remember.

EPA Interviewer: And you remember EnviroChem also had North Side Sanitary Landfill.

Ullrich: North Side Sanitary Landfill. I'm trying to remember the owner: John Bankert. In 1981, there had been a change in Administration<sup>2</sup>, and we were in the process of going through a fairly major reorganization. Part of that reorganization was the disbandment of regional enforcement divisions, and breaking them up—the enforcement people—to go to the program offices. That was later reassembled at Headquarters years later. It was a period of fairly significant disruption in the Agency as a whole and in the region. Through the luck of the draw, I wound up going to the Office of Regional Counsel. All of the attorneys were moved to the Office of Regional Counsel. I think sometime in early to mid 1982, I believe. So I moved over to that office as Deputy Regional Counsel. All my background at that point had been in the water program, which I did from 1973 to 1976, and then the air program from 1976 to 1981. When I moved into the Deputy Regional Counsel position, I had the background in those two legal areas, but very honestly did not have the background in Superfund and RCRA. It was abundantly clear at that point that there was going to be a tremendous amount of work in that area. I felt that the only way I could learn it would be to force myself to get directly involved in at least one major case.

There wasn't anything in particular about EnviroChem that drew me to it. It was just one that happened to be ripening at the time, and so I decided to get involved in that. I guess in terms of learning the law, you know, you can read the law, and you get so much from that, but there is no substitute for actually getting directly involved in a case. What impressed me from the very beginning in working on Superfund cases was that the

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<sup>1</sup> 7003 refers to Section 7003 of RCRA concerning Imminent Hazards.

<sup>2</sup> Refers to when a new President of the United States comes into office.

dynamics of the cases—and what I'm talking about primarily are the interpersonal dynamics of the people involved—were totally different from any air and water case. I think the things that distinguished it the most were: First, they were all situations where you had multiple parties. I can't remember the number, specifically, on EnviroChem. There were hundreds, I know. I believe on another one that was very active, Seymour Recycling in southern Indiana, I think there were over 1,000 PRPs [potentially responsible parties] involved in that. In air and water cases, you dealt with one company, and you had a very specific set of regulations, often a permit involved, and it was much more straightforward.

In terms of getting into the Superfund case, first of all you've got hundreds or sometimes over 1,000 different parties involved. The question of just the logistics of organizing an effort to start a process to come up with some kind of a cleanup was very difficult. The number of people involved, the dynamics associated with it, it was a new law that many people didn't know much about, and it was viewed from the outset as being grossly unfair, because companies felt that they had disposed of waste not in violation of any laws, and that all of a sudden they were being considered jointly and severally liable for these multi-million-dollar cleanups. The wrath of the companies and their attorneys was really just directed at the frontline EPA people who didn't pass the law but really had to carry it out. It was an incredibly, incredibly difficult situation. I do remember, in connection with ChemDyne, one of the things that struck me from the outset is that we, as the government, really needed to do something to help organize the whole effort, and I remember having some disagreements—mostly with the Justice Department, but less so with Headquarters—basically advocating, “Let's call a meeting, let's invite everybody to come to it. We will start the meeting, and we'll lay out what we're looking for here.” Another problem was the whole “how clean is clean” question. There wasn't a good set of regulations that said when we can walk away from something and when it will be clean and safe. I thought that it was very important that we take the initiative to arrange a first meeting, to get people there, to exchange information that we had, because to me, the most important thing was to move toward cleanup.

I think the Justice Department was very concerned about preserving our litigation position. As a lawyer, I was very sensitive to that. To me, our mission was to get to cleanup, and I felt we had an obligation as an Agency to really... let's get the hotel room, we'll pay for the hotel room—a big room to fit all the people—bring people in, and... it was very difficult for us to lay out what we are looking for. Obviously, at that stage, we wouldn't have a remedy as yet, but at least we had a process to get to a remedy, and, basically, to be able to lay out what we wanted in terms of doing a remedial investigation and feasibility study. Of course, there were many questions at that time as to whether the company should be allowed to do that and what oversight would be provided of that. I think eventually we got to the point that we would have the companies do it, and, if I remember correctly, the real question was who does the risk assessment in connection with all of that. From that EnviroChem matter, I think we had a very positive experience. I can still remember, it was down at the Blackstone Hotel here in Chicago, which is a gorgeous old hotel.

EPA Interviewer: Now, has it been renovated?

Ullrich: It's renovated condominiums. Very high-end condominiums, by the way. I don't know if the Superfund process helped that conversion or not. I don't think there was any hazardous waste there.

In any event, it was a very, very tense setting. I can remember that. We actually had little packets of information that we handed to each of the attorneys and company representatives that came in. I think we spent maybe an hour and a half or two hours. I think Norm Neidergang was involved. I can't remember if John Dekenis was there as well.

EPA Interviewer: Very likely.

Ullrich: He was involved in a lot of those earlier ones. We talked maybe an hour, hour and a half, laid out what we were looking for in this, and then we left the room and allowed the PRP group to have their own meeting. I think that the tone that we set in that matter was absolutely critical to the success of the effort because—and I don't remember the exact amount of time—in a relatively short period of time, particularly in terms of the Superfund world, we were able to get an agreement for the PRPs to go ahead with the cleanup. I can't remember if we had some removal action in addition to the full remedial. I think we did, because I think there were open ponds, and there were still a lot of drums around. Setting that tone was absolutely critical. The primary objective was to get the cleanup and not to be pointing fingers. It was something that was going to have to be done, and we felt that it would be better if the PRPs took the lead in it. That's basically how I got involved in that first one.

It's interesting; all of the cases were different, but there were certain elements of it that were the same. It was a very different law, but the real critical thing was the dynamics of the interaction between the government and the potentially responsible parties, and then the states who were involved as well, and then often there were some very concerned citizens because of the health risks associated with it. Managing those dynamics is, I think, what was critical to the success of Superfund. Frankly, why I think it got off to such a slow start was because it was treated much more as a more traditional standoff between the government and the private sector. I think the approach that we took in a number of these really helped us get a lot of good settlements.

EPA Interviewer: And the steering committee model eventually came out of that. In other words, the PRPs ultimately learned they had to form their own committee to deal with the government committee, if you will, because you couldn't negotiate with 200 people sitting around the table.

Ullrich: Right. There were some very colorful characters in all of this. I remember Norm Bernstein from Ford Motor Company was involved in a lot of these matters, and he made all of these discussions very interesting. Other names are not coming to mind right away.

EPA Interviewer: You'll think of John Kyle from Indiana eventually, the great peacemaker.

Ullrich: Yeah. There was a certain amount of theater in all of this. There were different roles that different people played. I'm sure they looked at us in a similar fashion.

EPA Interviewer: I'm sure they did. Now, in the early days of Superfund enforcement, of course, there were also charges that EPA was entering into sweetheart deals during the same time that all of us were sort of trying to figure out, "What are we going to do with this new law?" I know you had a lot of interaction with private parties during that time. I'm wondering if you have any views on how the private parties came into this process and whether it was ever fair to accuse EPA of sweetheart deals, and whether dealing with the private parties was much more difficult because of perhaps mistakes that they made.

Ullrich: That was clearly an overtone, and a very dramatic overtone to much of the early Superfund work. I can say very comfortably that in no matter that I was involved in, either in terms of things said by the private parties or things said by anyone in Washington, was there any suggestion of cutting a sweetheart deal. Again, looking at the dynamics of this, as regional people—and we often had people such as yourself involved—we were basically out to get the best deal possible. It's not unusual that if we're taking too hard a line, the PRPs will try to find someone in Washington to say, "Loosen up," and give us a better deal or a sweetheart deal. Again, I was never directly aware of anything like that happening on any of the cases that I was involved in or, frankly, any that any of our attorneys were involved in. There was never a time when someone from Office of General Counsel or Superfund enforcement called and said, "Hey, back off on this, that, or the other thing." Now, I was very aware of the allegations, and I'm trying to remember the name of the big California case... Aerojet. That was the big one. I had no personal knowledge of that.

I think there were a lot of allegations in connection with Love Canal as well, in terms of how that was handled. Part of that came out of the dynamics of the public interaction with it, and I know Lois Gibbs was very involved with the Love Canal matter. When there's a very active and aggressive public that was dealing with something that was horrible for them to live with, I think it was very difficult for them to really accept any kind of a settlement that wasn't returning everything to pristine levels. Frankly, both the costs associated with that and the technology associated with that, and just the knowledge was not there at the time. The whole program hadn't matured. So there was a dynamic out there that I think, where there was an active public involved, they basically weren't prepared to accept anything, and if there was some kind of a settlement, it would almost be, by definition, a sweetheart deal. That was a dynamic. Although I wasn't aware of anything in any of the matters that we handled in the region, we did have one particular matter—and I think it related to both Chemdyne and Seymour, but, I know it was Chemdyne in particular—and this was after the Congressional investigations had started. There was basically a huge request for all of the documents that we had relating to Superfund. We went through....

EPA Interviewer: The focus of the Congressional investigations was?

Ullrich: Well, to find out if there had been sweetheart deals. That was my recollection of it at least. The thing I remember most specifically about that was the orders from Washington that came out that we had to go through all of our files relating to Superfund. We had to break them down into three categories: enforcement confidential, enforcement sensitive, and everything else. EPA has never been known for its good filing systems, to be very honest. We were no exception to it out in the region. If most of the documents were in one location, that was a great success. Literally, we had attorneys and technical staff spending thousands of hours gathering the documents and then trying to go through and decide what's

enforcement confidential, and what's enforcement sensitive, and what's everything else. I still remember one of our attorneys saying, "Why in the world are we going through all of this? If we really want to protect these enforcement confidential documents, just leave the files as they are now. No one can find them. If we put them all together in one location, of course somebody can find them."

Well, in the process of doing that, plus I think we were at that point doing some additional hiring of Superfund people, because there weren't enough to manage the program at that time — and it meant more attorneys — we had to make a move from one part of the regional office to another, and that's another thing that doesn't generally go terribly smoothly in government. In the process of that move, I think two boxes of Chemdyne files disappeared. It was total chaos, and they probably got hauled out with the garbage is to this day our best guess at it. That became the focus of at least part of this Congressional investigation. I think the Congressional staffers were convinced that these documents had been improperly destroyed.

Again the dynamics that were working out at that point in Washington it was getting tenser and tenser in terms of the relationship between the Administration and Congress. I still remember that Headquarters was looking for a fall guy on the disappearance of these boxes, and it was coming very close to somebody just taking the blame for this, a front-line attorney. Only through a twist of fate did this not happen, because at the same time there was going to be—and I think it was going to be a hearing before Congressman Dingell—that was going to focus generally on Superfund and specifically on some Region 5 stuff, and specifically on Chemdyne. The same day that this was supposed to happen, there was a leak and news broke about the improper interference of Dow Chemical with a study that had been done in Region 5 concerning the Tittabawassee River and the effects of dioxin in the Tittabawassee River. We had done a study and, while the study was being reviewed in Washington, some people in Washington gave Dow Chemical an opportunity to review and edit the technical study. This came out on the same day, and everybody forgot about Chemdyne, and everybody focused on Dow Chemical. That was right about at the time when many senior EPA officials were requested to resign, and some later indicted. That was the closest that I was aware that we came to something where there were allegations of impropriety. It wasn't even a sweetheart deal, that I can recall, but there were some allegations of destruction of documents, and they just disappeared in a move is all that happened.

EPA Interviewer: Chemdyne was a very important case because of its views of joint and several liability.

Ullrich: Oh, extremely important. And I don't remember the specifics of that as well. I think John McPhee was our attorney on that matter. Frankly, when it got into the more detailed legal issues, generally Headquarters and DOJ [Department of Justice] were kind of more in the lead and more involved, and the practicalities of working out and implementing the cleanup tended to be more of a regional-lead. So I didn't get as deeply involved in tracking that part of it. I do recall that is was particularly significant.

EPA Interviewer: Well, because it was sort of the culmination of deals that had been cut before the bill was passed that was Superfund, and the joint and several language didn't make it into the final bill, but everybody always understood that we would make that



argument. So, of course, those who were involved in that part of the process were very delighted. Once we got some law on the books that said what everybody thought was there all along, although the words were not in the statute.

Ullrich: Joint, several, and strict, right?

EPA Interviewer: Yes. Those were our mantra.

Ullrich: The magic words.

EPA Interviewer: The magic words. You've already alluded to this, but my experience at Headquarters during those early years was that there was a lot of organizational chaos, because people were picked up from one part of the Agency, put down in another part, and then everybody was shaken up and put back. So there was this idea that people didn't know exactly who to deal with on specific issues, and, apparently, the same thing was going on in Region 5. But do you think that this organizational chaos had much impact on getting sites cleaned up?

Ullrich: It had tremendous impact, there's no question about it. This would have been tough even without the organizational chaos. I think one of the most disruptive things that I experienced over my 30 years in government were reorganizations. That was added to a dramatically different policy approach that was being taken on environmental matters in the change from the Carter to the Reagan Administration.

The other thing is that I cannot emphasize enough how totally different Superfund was from the other environmental laws that we were implementing at the time, and were primarily dominating EPA activity. In the other laws, and particularly air and water, generally a permit process and looking to installing controls to reduce future releases. Superfund was looking back at things that had been done in the past 20, 30, 40 years, and trying to understand what had happened, and then trying to go through and figure out how you clean those up and trying to figure out what is a future state that is safe for human health and the environment. There was no science available at the time.

EPA Interviewer: You remember the early ideas about excavating down to bedrock.

Ullrich: Yeah. This had to be figured out as we went along. The fact that we were in a somewhat chaotic organizational situation made it even worse. Honestly, I am, to this day, astonished at how much progress we did make, given all of that. I still believe firmly that it was the quality and the commitment of the front line people at EPA—whether Headquarters or regional—who were working on these cases, who were committed to cleaning up the environment, that was virtually the only reason we got the progress that we did. It was much less than we had hoped for, but at least we were moving along. We got some settlements. They were of varying quality, but in the spirit of moving ahead with cleanup, I'm amazed we were able to get as much done as we did.

EPA Interviewer: If you had to think back, again, to the early days, what do you think the biggest mistake was that the government made?

Ullrich: Boy, it's hard to figure out what the biggest mistake would be. The organizational chaos was not as so much a mistake as it just happened. It was something that happened. I think for one, we underestimated the degree of difficulty and the complexity. Secondly, I think there was a bit too much of a tendency to look for the perfect cleanup, and I think that held us back. In thinking of it the most in terms of what was the biggest mistake, I think we treated it too much as good guy-bad guy business. Of course, we considered ourselves the good guys, and anybody who had ever sent anything—whether it was a little old lady in a nursing home who had sent her battery to a battery recycling place...

I think we totally underestimated how wronged the regulated community felt by all of this. I think we approached it far too much of, "You're bad guys, bad people, and you've gotta pay," as opposed to approaching it, "We've got a problem. We've got a new law, a difficult law. How are we going to work together to solve this problem?" I think we took too much of a strident bad-guy approach. This kind of conflicts with the sweetheart deal phenomenon, but I don't think that that was as widespread as people might have thought. I'm sure that there were some bad deals that were cut. I think the realities of the political atmosphere have to be recognized at the time. There were people in Congress who wanted to make EPA look bad, and this was very fertile territory, but if I had to pick any one thing it is that I think we took too much of a good guy-bad guy approach, as opposed to how are we going to solve this incredibly difficult problem.

EPA Interviewer: Do you think part of that mistake actually could be shared by the private parties in that they also took a traditional approach that "I'm outside counsel to a big corporate entity, and I'm gonna raise every defense in the book rather than come in...."

Ullrich: Absolutely, yeah. That was part of the dynamic. In terms of the mistake that we made, it was that I think in terms of the private sector approach of attorneys taking a very cautious approach to it. If any one of their clients could wind up footing the whole bill for the cleanup, that could be very serious. I think they were being cautious because of the downside risks, and also when you just don't know a new law and you don't know the dynamics of how it's going to work, you have to be more cautious. So, yes, I think that hurt it, but I also think it's understandable. And I think it's understandable what we did in terms of our good guy-bad guy approach, because here we had these tens of thousands of drums stacked up in places and draining into rivers and into the groundwater and stuff. This was horrible stuff! Somebody had to be responsible. Of course, a lot of it was the fly-by-night disposal operators who were moving around and setting up one and then filling it up and then leaving and going to another one. I think the corporate sector does have some responsibility in terms of due care of knowing where the things are going that are sent, and even if it may not have been illegal, it certainly wasn't a good practice. There's plenty of blame to go around for everyone in the early days.

EPA Interviewer: What do you think—now we can include not just the early days, but we could actually come up to today and ask—what is the best thing that the Superfund program has delivered?

Ullrich: The best thing that the Superfund program has delivered is a lot of tremendous cleanup across the country. I don't know if you're going to ask this question or not, but I'm going to give the answer. In my whole experience in Superfund, I think the most significant

thing that ever happened that changed this from a problem program to a successful program was, I think it was about 1990, and I was running the Superfund program in the region at the time, in the Waste Management Division and the RCRA program as well, and there was a Waste Management Division Directors' meeting—I think it was in Annapolis—and Don Clay, I think, was running it at the time.

EPA Interviewer: So he was the Assistant Administrator.

Ullrich: Assistant Administrator, who to this day has always run the best meetings that I've ever attended. Every one started on time, ended on time or early, and stuck to the agenda and had clear follow up actions. I need to say that. But Bill Reilly came to that meeting, the Administrator, and he said that we were focusing far too much time counting the number of RIs [remedial investigations] we'd completed, the number of FSs [feasibility studies] we completed. We've gotta completely shift our focus, and what we've got to do is focus on—and I can't remember if we used the term at that time or not, but—construction completions. He said, "This Agency has to have 650 construction completions by"—I think the year 2000 is what it was. I cannot tell you how dramatically that changed what we did in the Agency. I think had he not done that, we would still be doing RI/FSs and just trying to get the perfect RI/FS, and not getting on to remedy selection, and not moving ahead in the cleanup because of what happened.

I saw this so many times—we'd be locked in battles, back and forth, back and forth, as to whether or not the RI/FS had been done properly, and arguing over the remedy. If you could get people to agree on a remedy, boom! Things would take off. You're not quite home, because you run into problems at every one of the implementation sides of things. There were things that could be worked out, and what the dynamic of that was you got lots, particularly, of technical people who love to get out there with big equipment and get cleanups going, and they got really invested in that. So that kind of pulled us over the hump, and our focus was.... Yeah, we were getting beat up because we didn't have enough RIs or we didn't have enough FSs, and the whole focus shifted away from that to construction completions. People knew that that's what they had to really get toward. That was a thing that really moved us to a successful program.

The other element that I think has been tremendously successful all along has been the removal program. It was, I think, kind of the unsung hero of Superfund, wherein some of our really outstanding people were on-scene coordinators who were expected to make a lot of on-scene judgments that had very significant both public health and financial implications, and, I think, by and large, made excellent decisions. We had the luxury there of not having to go through the extensive process. These were predominantly non-NPL [National Priorities List] sites, although removal work was done at NPL sites as well. These were situations where we would find out about something bad, and if it wasn't huge, it was something that could be taken care of in a relatively short-term basis. It was excellent. We weren't even keeping track of how many completed removal actions that there had been. Once we started to look at those, and looked at the risk reduction we got—because, frankly, a lot of the risk reduction, the high risk stuff, was with these smaller removal sites—I think that was just hugely successful. I need to point to one other thing as I'm thinking of this. I think Lee Thomas made a huge difference in this program.

EPA Interviewer: Former Administrator.

Ullrich: Yeah. Former Assistant Administrator and then Administrator. I remember that he was hand-picked by Bill Ruckelshaus when Bill Ruckelshaus left the Agency in 1985—the second time—after coming back. Both when Lee Thomas—who I think had come over from FEMA [Federal Emergency Management Agency], which now has a little different fame—but he knew how to manage in government, and particularly manage emergency situations. He laid some groundwork at that point that really moved us forward, and I think didn't have as much success in the remedial program, had tremendous success in the removal program, because I think that was something he was more focused to. But it was really Bill Reilly, who came in in 1988—and I think it was 1990 when he laid out this 650 construction completions. But Lee Thomas had laid some very, very important groundwork for that to happen as well.

EPA Interviewer: I'm told—and you alluded to this earlier—that you were very involved in Fox River, and then Fields Brook and other river issues where Superfund actually could be the catalyst for getting something to happen there. Maybe you'd like to talk a little bit about one or both of those.

Ullrich: Yeah, I'd be happy to. I want to make sure we talk about OMC [Outboard Marine Corporation] as well. Let's do that first because there's a particularly fascinating element of OMC that I think is very, very important to...

EPA Interviewer: And that's on the Waukegan Harbor?

Ullrich: Waukegan Harbor, just north of Chicago about 45 miles. Outboard Marine Corporation [OMC] manufactured outboard motors, Johnson and Evinrude, and, as part of their process, and I think it was in the die casting process, they wound up releasing extensive amounts of PCBs [polychlorinated biphenyls] into the harbor. I always forget, there was a north slip and slip one, whatever. There were over a million pounds of PCBs in Waukegan Harbor. That had been started as a Clean Water Act enforcement case in 1977, and, if I'm remembering correctly, on St. Patrick's Day.

EPA Interviewer: The rivers would have been flowing green.

Ullrich: At least in Chicago. They were black in Waukegan. But OMC was a company that decided to fight this whole thing particularly strongly and vehemently. There was a real question under the Clean Water Act case as to the strength of the government's case there, because they basically felt that they had not violated anything in their discharge permit and that that was a complete defense to any kind of cleanup responsibility. If I'm remembering correctly, the government maintained that they had not been disclosing that they were discharging PCBs as part of it, and therefore did have liability and were not authorized to discharge any PCBs. That was kind of stalemated, and when Superfund was passed, there was extensive discussion, I know, in the region and with Headquarters, and I think the terminology we used was "Should we add a Superfund count?" It went back and forth, and I know there was extensive dialogue with both Headquarters and DOJ about it, and a lot of people who felt it was a tough case and would make bad law.

I think it was probably one of the first contaminated sediment cases, which were always a little trickier in terms of Superfund than the traditional landfill or barrels dumped and left on the land. This was in the water and associated with discharges that otherwise would be regulated under the Clean Water Act. I will credit our Regional Administrator at the time, Valdas Adamkus, who took over in October of 1981, if I'm remembering correctly; he had been deputy before that. He was very, very firmly committed to protection of the Great Lakes. Waukegan Harbor was, as he called it, "the worst of the worst," and he used that terminology for the company as well. He was so committed to getting that cleaned up, and I think was so concerned in terms of the advice being given by the attorneys about the difficulty in being successful under the Clean Water Act case. He was a moving force in saying, "Let's use Superfund." Not from the standpoint of having done all of the legal analysis, but from the policy standpoint of the importance of this for the Great Lakes and moving ahead with cleanup that he pushed quite hard on it, although again deferring to the judgment of the lawyers. He clearly spoke as a client who wanted the cleanup to move forward, adding the Superfund counts to that case, which I think we did like in 1982 or whatever. It was heavily debated, and the attorneys for OMC were particularly litigious. Dick Kistle is one of them, and Jeff Fort, another excellent attorney, very good people.

EPA Interviewer: Still out there, taking care of Waukegan Harbor.

Ullrich: Yes, indeed. We immediately ran into a very major legal issue, which again I will give much credit to the skill of the opposing counsel for this, and, if I'm remembering correctly, it was fundamentally an entry and access issue. The question was whether or not Superfund gave the authority to the government to access property, and I think it was to do our RI/FS work. The issue wound up going all the way to the Supreme Court.

EPA Interviewer: The famous decision about the hobnail boots.

Ullrich: Is that what it was? You remember more details than I do. I think we won, that in order to carry out Superfund we had to have access. But it was fundamental kind of a search and seizure type of issue, and rights to private property. Nobody was taking property, although I don't know if there was an allegation of a taking as well. So we wound up having to fight that threshold battle, because OMC was not cooperating in terms of being willing to do the RI/FS. There was a real question about whether or not the public would have confidence in an RI/FS done by them. That early legal work done under Superfund, I think... Well, first of all, it ultimately led to the successful cleanup of Waukegan Harbor. It took many more years after that to get a consent decree, I think, until 1989. Cleanup went forward in 1990 and 1991, and over a million pounds were removed. Unfortunately, we are back there again, because what we knew at that time was that the cleanup levels were just not good enough, and that the contamination levels in fish were going to continue at an unacceptable level because of the PCBs in the broader harbor. Again, huge amounts of PCBs were removed, disposed of properly.

EPA Interviewer: Well, placed in onsite receptacles of some sort.

Ullrich: Right. Although there were some questions about the integrity of the disposal at the outset, that was later fixed. Now, one of the difficult problems... All of the focus was on the harbor, and extensive contamination around the harbor was somewhat overlooked at the time

as well as PCB contamination farther out in the harbor. But I still think it was the right thing to do to get the cleanup that you can get when you can get it, and particularly if it's the largest amount that was loose in the environment in the slip. Then kind of worry about the rest later.

With these Superfund settlements, it really was not possible to get the global settlement always. There were some arguments about strategically whether or not that was the best way to go. Again, I think Val Adamkus had a lot to do with that in terms of being an active client and putting his policy take on the line there — that we've got to get these PCBs out of there. Actually, it was quite a successful cleanup, and there was a thermal destruction process that was used as part of it to destroy some of the PCBs and concentrate them into a smaller volume. Part of the irony of all of this is that, later, OMC ultimately went bankrupt, so that further complicated it. We still need to get more PCBs out of Waukegan Harbor and finish the cleanup all around the site. That's underway, and it is moving forward. I particularly wanted to highlight that, because what it really exemplified was some real creativity in terms of having a serious environmental problem, having a law that wasn't designed very well for it, in terms of the Clean Water Act, and then taking a new law that wasn't necessarily designed all that well either, but effectively applying that to get the cleanup and the protection of the environment, which is why EPA is in business and must always keep that in mind.

EPA Interviewer: And it led nicely to things that happened later, like Fox River and Fields Brook and so forth. It gave us a way to proceed, it appears.

Ullrich: Let me talk a little bit about Ashtabula and Fields Brook. I was not that intensively involved in Fields Brook. I saw it a little bit from a distance. We had so many Superfund cases going. I was in a management position; from 1982 to 1988, I was Deputy Regional Counsel. In 1988 I moved over to the Waste Management Division. I ran the RCRA program for two years, and then in 1990 I became Waste Management Director and was running Superfund and RCRA, plus the tanks program and a few others. So getting involved in individual cases at that point, and even as Deputy Regional Counsel, I didn't have the luxury of that. We had over 100 attorneys by the late 1980s. My management responsibilities were such that I couldn't get that heavily involved.

I was aware that Fields Brook was particularly contentious. What I remember more about that—and this is a very instructive situation and an example of Superfund dynamics as well—Fields Brook was especially contentious. We did eventually reach an agreement, and Fields Brook is cleaned up now. But what was particularly interesting about it is Fields Brook drained into the Ashtabula River, which drained into the Ashtabula Harbor, which drained into Lake Erie. The real dispute that I got involved with was what to do about the Ashtabula River and Harbor. Here it got into the intricacies of what is the Superfund site. The question was whether or not the river and harbor were part of the Fields Brook site, because, essentially, it was the migrated contamination from there that ended up in the river and harbor.

I'm trying to remember the name of... It was, I believe, Congressman Fingerhut, but there might have been another Congressman involved as well, who, I think, responding to a certain degree to his constituents, and I remember RMI was one of the major companies and OxyChem was another. There were eight or 10 along Fields Brook. Their experience had been so bad with Superfund, they basically kind of came forward and said, "Don't make the

river and the harbor part of the site. We will work with the Federal Government and the state government to come up with a non-Superfund type of agreement to do the cleanup.” These discussions had begun while I was Waste Director, and then when I became Deputy Regional Administrator in 1992, I stayed involved in that somewhat directly. Even though we had started to make much more progress at that point, I basically felt that it was worth a try to see if we could do this outside the realm of Superfund. Actually, the Corps of Engineers was heavily involved, because it was a navigable harbor. They had some authorities under the Water Resources Development Act to use there. So in 1994 we reached an informal agreement that we would move ahead, more—and I’ll call it on a more voluntary basis. It wasn’t truly just voluntary; it was just a non-Superfund type of cleanup to see what we could get. I think I today would make the same decision that I made back then, because I think it was important and worthwhile to do that.

Unfortunately, cleanup did not move forward on an expedited basis. The argument was we can do it a lot faster and more effectively if we don’t get Superfund involved. For a lot of reasons, and through nobody’s fault, this dragged on year after year after year after year, and to this day, mud has not been moved. Now, it’s very close, and, in fact, I thought there was going to be an announcement about it last week under the Great Lakes Legacy Act and WRDA [Water Resources Development Act] and some other authorities that this was going to go forward. So I think it’s unfortunate, but I think it is important to try some of these.

Actually there was another cleanup on Lake Erie over near Toledo. I always remember it as “the unnamed tributary to the Ottawa River,” where we actually wound up using some State of Ohio money and some Great Lakes National Program Office money as seed money. On a totally voluntary basis—and I can’t remember the name of the company; I thought it was General Dynamics, but I’m not certain of that—basically within a 16 month period from start to finish, actually completed a very major removal action that got six or seven thousand pounds of PCBs out of this unnamed tributary to the Ottawa River. So there were some that were approached on a less contentious, more voluntary basis that worked, and some that didn’t.

In retrospect, I think the nature of the Ashtabula River was such that the pressure that Superfund brings to a matter is very therapeutic. Perhaps the best example of that is the Fox River, which you had asked me about as well. That was one where probably more than looking at the legal dynamics of what might work best, it was a federal-state dynamic that was at play. Basically the State of Wisconsin said, “Leave it to us. We will solve the PCB problems in the Fox River.” After 20 years, and it hadn’t been solved, and it hadn’t been worked on intensively for that period of time, but it was a very long period of time where the PCB problem was known and at least somewhat understood, and a lot of efforts to get the paper companies to voluntarily proceed with cleanup. There were good faith efforts particularly on the part of the state; I can’t speak for the company. But it just wasn’t happening. This was really fascinating the way this played out, because before Superfund got directly involved, the Fish and Wildlife Service got involved from a natural resource damage assessment process. I think it was particularly the work of a very committed and aggressive staff person from Fish and Wildlife up in Green Bay—I want to say Dave Smith, but I’m not sure of that—he really pushed hard on his management to use the NRDA [natural resource damage assessment] process as leverage to get cleanup and restoration.

The Regional Director of Fish and Wildlife, a guy by the name of Bill Hartwig in Minneapolis, basically, after a year or two of trying to use NRDA, came to me. I had just gotten to know him through a new organization that we had formed called the Midwest Natural Resources Organization to try to integrate the federal programs working on natural resource management and environmental protection, and we got together on a three times a year basis. So I got to know Bill, and Bill came down, and Ben Fisherow was a big part of this as well, from DOJ, who came to the regional office. They basically had reached the conclusion that if we didn't get directly involved in Superfund and use Superfund here, that we were never going to get the cleanup. As much as I think we agreed with them, this was at a point in the late 1990s when all of the pressure was to get construction completions and to delist [sic], and the idea of going out and listing a new site of this magnitude after all those years and recognizing that it was probably going to take decades to clean this up, who in their right mind would go out and do it? This was also at a time when we were recognizing the diminishing funds in the Superfund Trust Fund itself. Bill Muno, who was the Director of Superfund at that point, and myself as Deputy Regional Administrator, spent a lot of time considering this.

It was interesting because this happened right at the time that our longstanding Regional Administrator, Valdas Adamkus, retired and went on to become the President of Lithuania, and I stepped in as Acting Regional Administrator, which I did for the next two years. I think we made the decision before Val left, but it didn't really play out until after he left. I can still remember, I think on June 17 of 1997, we sent a letter to the State of Wisconsin, because at that point, there had been this policy change where I can't remember if we had to get the approval of the Governor to list a new site or whatever it was. So I signed a letter to Governor Tommy Thompson in Wisconsin which basically said in so many words, "Fox River's really dirty. You've had 20 years to clean it up. It isn't clean. We gotta use Superfund. Won't you agree with us that this should go on the NPL?" Unfortunately, this happened right at the same time that we had a major problem in our tribal program in the region that emanated out of Wisconsin and wound up coloring the whole discussion. But, basically, in spite of all of that, and the very angry letter that came back from the Governor to me was: "I'm sure it's in the files someplace."

EPA Interviewer: If it hasn't been lost.

Ullrich: Yeah. It's gotta be there somewhere. I'll remember to my dying day, I guess. We were doing the right thing. And I think the Wisconsin DNR [Department of Natural Resources] people knew that it was the right thing, but it was still a federal-state relationship issue, and I think no one likes to admit, as we have had to and as states have had to, and others is that the job just wasn't getting done, and we had to try something new. That decision to use Superfund and to commit some very substantial resources on the part of the region was a difficult one. It was the right one. As we sit here today, mud is being moved in Little Lake Butte des Morts, which is up at the top end of the Fox River, not right at the source, but it's one of the contaminated areas that is most upstream, where we need to start. This was very difficult.

It's funny, because there weren't as many parties involved in it, but because the cleanup was so extensive and potentially, I think, seven million cubic yards and \$400 to \$500 million worth of cleanup, people weren't eager to just sign up right away. It was also



interesting, one of the major parties to this was Fort Howard Paper Company that later became Fort James, later was acquired by Georgia Pacific. Ironically, senior manager Lee Thomas of Georgia Pacific—although he hasn't gotten directly involved—was actually one of the Assistant Administrators from the early Reagan years. Kathleen Bennett, who was [EPA Assistant Administrator for] Air, was one of the lead people for Fort James, and then later Georgia Pacific. A lot of the personalities had some real Superfund history as well. We engaged in intensive negotiations, starting in 1997 and moving forward. It was a very interesting dynamic, because we had the state, the feds, and the tribes were involved. And it was Fish and Wildlife and U.S. EPA. So it was almost as complicated on the government as it was on the paper company side of things. We had huge paper companies, and we had small paper companies, and there was a threat that the cities would be brought into it as well.

EPA Interviewer: If not by us, third parties in?

Ullrich: Third parties in by the paper companies. That was something we didn't want to have happen, but was a difficult dynamic. We were able to move ahead with the RI/FS in cooperation in Wisconsin. There were some tense times with this. This was a particularly difficult RI/FS. We had a couple of very successful removal actions, where we found some hot spots, but working in a fluid dynamic like this over a 39-mile stretch was something we really didn't have a lot of experience in, even in terms of doing the RI/FS, let alone the cleanup. We've been able to get partial settlements, and I think there are five operable units, if I'm remembering correctly. The cleanup is moving forward, and, actually, on November 4, three of us EPA retirees, Roger Grimes and Bill Muno—Bill ran the Superfund program and Roger was the attorney on this—we're all going to go up to Little Lake Butte des Morts and see some mud being moved. Not in any official capacity. And it's just a little indication, I think, that we put a lot of our lives into that, and to actually see it happening, that's the real reward with all of this stuff.

I think a mistake that we've made at EPA is not celebrating these successes enough. Superfund is a classic example of this. It got off to a bad start, and it kind of never recovered from it completely. Part of it was not getting out at the cleanup time and really celebrating the successes. When I ran the Superfund program and when I was Deputy Regional Administrator and Acting Regional Administrator, I made a point of trying to make sure that when we got to a construction completion, we would go out there. We would never get as much press as we would...

EPA Interviewer: When the drums were still leaking.

Ullrich: Exactly. But we made the effort at least, and I also remember Tim Fields, when he was Assistant Administrator and actually when he was Deputy in OSWER [Office of Solid Waste and Emergency Response], he was a real champion of the removal program. We got a lot of good press, I think when we got to the 2,000th removal. That was very important. So I've strayed a little bit here, and you've got maybe a hundred questions left.

EPA Interviewer: Not at all. Probably 200, David.

Ullrich: Do we get a break along the way?

EPA Interviewer: Yup. You want to take a break?

Ullrich: That would be good.

EPA Interviewer: OK. *[tape stops]*

*[tape starts]* EPA Interviewer: Let's shift focus a little and talk about the early 1990s and administrative reforms. I don't have a good sense of how involved the regions were at the outset with the administrative reforms. I mean, obviously the regions were the ones who had to implement the so-called administrative reforms, and my impression of them always was that they actually grew out of efforts to reauthorize Superfund, efforts that tried and failed several different times. Nonetheless, we undertook a series of administrative reforms, and I'm wondering what impact they had on the way Region 5 did business.

Ullrich: Excellent question. Something that I had forgotten about totally, and probably won't be able to provide a whole lot of information, but I'll do what I can. I'm trying to remember when discussions about them first began.

EPA Interviewer: Early 1990s. It could be even 1992, 1993.

Ullrich: Well, I think that that was it, because that was somewhat of a transitional period for me. I was Waste Division Director, I think from February of 1990 until May of 1992, when I became Acting Deputy Regional Administrator, and then I became permanent in November, I think. But backing up a little bit. One thing that I recall that led up to this was I think somewhat of a miracle that Don Clay pulled off where Superfund was set to expire, I think, and he got an extension from 1990 to 1995.

EPA Interviewer: Now, you're talking about the tax?

Ullrich: The tax, yeah.

EPA Interviewer: That funded...

Ullrich: Superfund.

EPA Interviewer: Well, part of the Fund.

Ullrich: Right, right. That certainly was a huge boost and, again, something we didn't have any idea that was going on, and I don't think we even realized the implications of how significant that was, and just another example of how effective Don Clay was. Again, I don't recall specifically when the administrative reform discussions started. It may have been while I was still Waste Director, but there was a very short period of time while I was Waste Director, so I didn't get very heavily involved. Once I became Deputy Regional Administrator, and with a change of Administration at roughly the same time, I got involved in a whole bunch of other things. Probably the most significant one of which was the reorganization of enforcement at U.S. EPA, which I was on the national task force that did that. Bill Muno, I'm quite certain, had become our Superfund Director right around that time, and he got

extensively involved in it, as I remember. So there was extensive regional involvement. I can't remember when Tim Fields took over. If he wasn't Assistant Administrator...

EPA Interviewer: He was heavily involved in the administrative reforms.

Ullrich: Yeah. And I know Tim and Bill had a lot of respect for one another and worked very well with one another, and I think Bill was heavily involved in it. Basically, if I'm remembering correctly, and I couldn't cite any of the specifics of it, but it was basically a lot of streamlining of the process. Tim was receptive to it. Bill was excellent at it. Bill, to this day, is one of the best managers that I worked with at EPA. I think what he did with the Superfund program in Region 5, and what the Region 5 program did for the Superfund program nationally during the 1990s in terms of getting construction completions, was truly amazing. And I think two of the biggest factors were Bill's management and the administrative reforms. And the fact that Bill had been directly involved in developing them, I think put him in an excellent position to implement them in the region. Some benefited greatly from that, even though I wasn't directly involved in it. We had a group of very strong Division Directors, and, frankly, I had enough to deal with in terms of working on the national enforcement reorganization, and then we moved into a major reorganization effort in the region as part of reinventing government. That was an all-consuming process. Thank goodness for effective Division Directors like Bill Munro. So that was very significant. It was a huge help and really accelerated the cleanup process. It is one of the major reasons why we did make the 650 construction completions that Bill Reilly had asked for back in 1990 or whatever it was.

EPA Interviewer: Sort of in the same vein, because in a way what you're talking about is culture change internally, it appears to me that the Brownfields amendments, which were enacted in 2002, also show a culture change. But this culture change really started much earlier, and it has to do with the idea that rather than look at a Superfund site as something that's always gonna be a Superfund site, at some period of time we started looking at Superfund sites as something that could be different in the future. In my mind, at least, this did take a culture change, maybe not so much at the top, but at the bottom where you have the on-scene coordinators and the RPMs and the staff attorneys in the region, not just struggling to see that the harbor is dredged or the drums are picked up, but also trying to figure out, "OK, what is this site going to be in future?"

Ullrich: Well, I actually see that a little differently. I think we had the tendency in Region 5 to think that we kind of invented a lot of things here. And some we did, and we may have gone a little overboard with that. We started dealing with what we were calling "brownfields" in about 1993. Again, this was in a context of where I had just left the Superfund—managing the Waste Division, Superfund and RCRA—and was becoming Deputy Regional Administrator. Although that term, and really the concept of dealing with brownfields, hadn't been formally identified at that time, it was sometime I think in 1993, shortly after I became Deputy Regional Administrator, that I was over in Cleveland, for some reason with Val Adamkus, and I think we were meeting with some people at Cleveland State University. They had started some things in the Cleveland area. The rust belt we were part of — we're now, you know, the water belt —

EPA Interviewer: The river was no longer catching on fire over there.

Ullrich: Not catching on fire, but there was a lot of heavy industry that had been abandoned in Cleveland and, frankly, all across the Great Lakes area. It really struck me, and particularly at that time because Superfund still had a pretty bad name and bad reputation at that point, that here was an opportunity to really do some very, very positive things with cleanup concepts, if you will. What struck me as being such a tremendous thing is that here there would be vacant land, contaminated, often located in key areas close to downtown, sometimes close to neighborhoods, sometimes close to riverfronts or lakefronts that really had tremendous potential. It struck me that if using a combination of Superfund and RCRA authorities, much as we had to be creative in the late 1970s using RCRA authority, that we could go in and work with the community, and if we had a willing company to be a participant, create a situation where basically we could—and jobs are a big issue in all of these places, and tax rolls are a big issue, and this land was off the tax rolls, but—go in and people would have work in assessing the property and the degree of contamination, people would have jobs in the cleanup work. People would have jobs in the construction of whatever new might go it, and, if it were a commercial or industrial facility, people would have jobs in whatever was built there. And if you have something purchased and built there, then something goes back on the tax rolls, and the city is getting the money.

I said, this wasn't a win-win, this was a win-win-win-win-win-win-win situation. I personally felt that if we didn't go into this in as big a way as we possibly could, we were making a huge mistake. I do think that frontline people out here very quickly saw that hazardous waste cleanup was not just clean it up and let it stand and put a fence around it. But what you really want to do is move it all the way back to getting it into productive use. Now, we probably didn't put as much emphasis on that at the outset, but I think there was that realization. I know Val Adamkus and I looked at it that way, and, frankly, we felt that it was an advantage that Superfund didn't really specifically contemplate these types of situations, and we felt that there was a little more room for regional discretion in terms of how to utilize existing authorities to make this happen. Frankly, we got some of our most creative people working on this from the outset, and I still remember being at a meeting in Washington, I think it was early to mid 1993, when the whole new team came in, and they brought in all the Regional Administrators and Deputies, and the Administrator went around the room twice asking everyone what they thought the big issue...

EPA Interviewer: Who was the Administrator at that time?

Ullrich: Carol Browner. Asking everyone what they thought would be the big issue of the 1990s. So we went around, and it came to my turn, and I said, "brownfields." And she looked at me, and everybody else looked at me like, "What's he been smoking?" So I tried to explain what it was. I had just been in Cleveland, I think, and sensed the potential. Went around the room again; I can't remember what I said the second time. At the end the Administrator very graciously said, "These are all really interesting, but this brownfields stuff I'm just not sure..." Well, lo and behold, it really did take off. I don't know if it would be characterized as the biggest thing of the 1990s, but it was an extremely successful effort, and, I think, has done more to rehabilitate the Agency and the Superfund program than almost anything that we've done. This has been, and particularly in my current position working with cities, this was incredibly important to cities that were struggling economically. Again, I think EPA has done a fabulous job of using that program very creatively to restore land.

EPA Interviewer: And that segues into the Brownfields amendments of 2002 and the changes to the liability scheme, which have also had an impact on who will acquire contaminated property and what they will do with it. I'm wondering if you have any brush with any of those issues in what you're doing today.

Ullrich: Not really. Although there is a potential in the future that I will. One of the key things that we're focusing on in the Great Lakes and St. Lawrence Cities Initiative is revitalization of waterfront property. We just have completed a series of six public meetings across the Great Lakes during the month of August, reviewing the draft strategy and action plan for the Great Lakes, and one of the themes that has come out in these public meetings is that we didn't focus enough on brownfields around the Great Lakes. I'm hoping that that will be reflected in the final document. If that is the case, and if we can use Brownfield authorities and get access to some Brownfield money, that can make a huge difference. This is potentially some of the most valuable land out here, in terms of its redevelopment in some form or another.

What we're dealing with is pretty much not just a chance of a lifetime, it's a chance of a century. Most of the land use decisions were made around 1900 out here that led to a lot of that waterfront property, some directly along the lake, some on tributaries, being dedicated to heavy industry. Our economy has evolved dramatically in that time, and generally that's not the highest and best use for that property. But to get that property out of its old use, and much of it is very contaminated, and into a new use, which can be park land, it can be residential, it can be commercial property, maybe some of it will be industrial property, but to do it in a way that is really compatible with the Great Lakes ecosystem is a chance of a century. So we really have an opportunity to do this right. It's a little analogous to the unfortunate situation in the Gulf, with Katrina, where there is a chance to do it right down there. And we have that same chance here all across the Great Lakes on the U.S. and Canadian side. The Brownfields program is one of the lynchpins to all of this. We're looking at that very closely and carefully, and I think it just has tremendous potential, just the basic principles there. I think I will wind up in one way or another working with that quite extensively in the future. I hope my experience in Superfund and Brownfields will be helpful in that. People are much less wary of previously contaminated property than they were in the past. I think the legal community has gotten more comfortable and the corporate community has gotten more comfortable. The upside benefits are so dramatic that people are much more willing to take the downside risks.

EPA Interviewer: The changes to the liability scheme, where you can now become a bona fide prospective purchaser under the law. I think the ramifications are not yet fully appreciated.

Ullrich: Yeah, that helps. The comfort letters seem to have done a lot.

EPA Interviewer: All of a sudden, comfort letters actually are starting to give some comfort.

Ullrich: Yeah, yeah.

EPA Interviewer: I don't know whether you've already discussed this or not, but if you had to pick the most significant issue that you've worked on in Superfund in your long tenure at EPA, would you pick one? Would you like to talk about it?

Ullrich: That would be difficult, but that won't hold me back. One of the things that I mentioned at the outset, and I'm not sure that this is what you have in mind in terms of an issue, but to me it was at the beginning and continues to be the most significant element of it that I can think of that was either key to failure or key to success. That is what I refer to as the dynamic of the process that is created by the legal setting. It was so totally different from anything that we had worked on at EPA before, and, frankly, I don't know if there are parallels in other areas of law, policy, government where you have this intensely contaminated area. You've got several different governments, federal and state most actively involved, but local government heavily affected. You have numerous private parties, and what it's all about is making a deal.

EPA Interviewer: And this is the enforcement focus, because you don't get this enforcement focus when the Fund just goes out and says I'm cleaning up this site. But when the enforcement mechanism is chosen, it's the vehicle to move you forward.

Ullrich: Right. And when that "enforcement first" policy was established nationally, it was music to our ears. And, you know that Region 5 had a strong tradition in enforcement in the early days I can always remember it was characterized by file first, negotiate later. It was perhaps tempered a little bit, but the whole principle behind enforcement first, you know, that being to basically move forward aggressively without authority to get the responsible parties to do the work fundamentally made sense. I was convinced that we could generally get it done faster and, in many situations, get it done better if we could put the burden on the private sector to do the work. I don't think it was something that we or the Corps of Engineers or the states were terribly well suited. We had to make sure that it got done right. Frankly, the principle of using the Fund-lead and trying to go back with cost recovery, I don't know what the numbers are now, but I don't think we've ever done that well on cost recovery. Frankly, just looking at it from a psychological standpoint, there's a lot less excitement in just...like being a bill collector. It's important to get that money back, especially now, but it's much more interesting to move on to the next cleanup. I think enforcement first was exceedingly important. If I'm remembering correctly, I think we were able to have 70 to 80 percent of our NPL sites in an enforcement first context. I give Bill Muno a lot of credit for that. I think our culture in the region was particularly well suited to that, and although it sounds like, "Oh boy, these were a bunch of gunslingers out there," it wasn't quite that dramatic. But we really did push very hard on trying to get the companies to take the lead. This was a little difficult for particularly some of our front line technical staff and some of our attorneys as well, because there was always the element of not the full level of trust with the private sector. Many people said, "Oh no, we really have to do this ourselves to fully characterize the contamination and..."

EPA Interviewer: And let's just keep the lawyers out of this. Let's just let the technical people move forward.

Ullrich: Yeah. I know the removal people particularly did not like this. They liked to get out there and order bulldozers around and things. But it was an excellent policy choice, and I think we implemented it quite effectively.

EPA Interviewer: When you look back to the days that Superfund was still in its infancy, did you have any inkling early on of the ultimate impact of the program?

Ullrich: No idea at all. I had no idea that it would have such a dramatic effect on the Agency, on the environment, on the legal community, on the federal-state relationship. Everything that Superfund touched was dramatically affected. I think that U.S. EPA can look back on these 25 years with tremendous pride in what Superfund has accomplished. I still hear Superfund bashing going on, most recently by an unnamed Congressman who was talking about it. There is no question but that it generated very large transaction costs to get the cleanup. I think that that was much more the responsibility of the private sector than the public sector. But even considering the transaction costs, I think that Superfund had accomplished a huge, huge amount, and I don't know how well EPA has done in pulling together collective figures.

I know, in terms of number of sites that were brought to construction completion in this region, and I think it must be well over 200 at this time, that this has made a huge difference in people's lives. A lot of these were located close to residential areas, and I think people sleep in peace and worry less about what their children are exposed to. The ones that were in more rural places that tended to have more of an environmental than public health impact, also exceedingly important.

I've been to places, one recently—I think it was Mishawaka, Indiana—that I had gone down to with our OSC [on-scene coordinator] on the case, a guy named Ken Tyson. It was interesting. It was an old abandoned factory in downtown Mishawaka. I can't remember what kind of factory it was right now. There were all sorts of PCBs down in the sumps, and it was right on a river. I was there maybe four or five years ago at one stage of the removal work that was being done. That area—and Ken sent me some pictures just recently—it's been totally transformed to be a vital area in downtown Mishawaka, whereas it had been a total disaster before. The combination of Superfund removal authority and I think there was some Brownfields work that was done there as well. This has happened all over the place. It's really phenomenal.

The Fox River, when that's ultimately done, it'll probably be another 10 years before that's done. The big problem there is PCB levels in fish, and particularly walleyes. Walleyes are a sacred fish in this part of the country. It's sacred to the tribes and to the fisherfolk in Wisconsin and other parts. It is considered to be the best eating freshwater fish that there is. There's still contaminant levels in the walleyes in the Fox River, which is one of the best places to fish for walleyes. So there's this constant taint of what is part of the culture in this part of the country, and when that is removed, that is truly something to celebrate. This is the story that has not been told. This is happening all over the country, I'm confident of that. That's not to say that the Superfund program didn't have huge problems from day one. I still believe that one of the reasons it had as many problems was because it got off to such a rough start. It was this new, complex law that had all of the bad dynamics associated with it, and a time of turmoil in the Agency. I don't think it ever fully recovered, but it really wasn't

until I think the 1990s, and after Bill Reilly made his 650 construction completions, and after the administrative reforms came in, that it really started to roll after that. It had to make up essentially for 10 lost years. Again, if you look at all of this as you are doing in the 25-year context, I think it's a huge success. I know many people won't agree with me, but having seen it from the inside, and now, I guess, a little bit from the outside, I think it is.

EPA Interviewer: Do you foresee a future time when hazardous waste sites that we see today will all be cleaned up and the Superfund program as it exists now in 2005 will no longer be needed?

Ullrich: Yeah. I think that that's the case. And I think culturally we've come to a point...you know the overlooked program is RCRA, because RCRA very quietly for years has been preventing the Superfund sites of the future.

EPA Interviewer: By the permitting process.

Ullrich: The RCRA permitting process and—

EPA Interviewer: Corrective action?

Ullrich: Frankly, well beyond that. I think there was an economic dynamic here that was absolutely critical, that is one of these unintended positive consequences of a law. RCRA made it so expensive to dispose of hazardous waste that I think the amount of waste minimization, waste reduction, waste avoidance, waste recycling that that has generated because of cost avoidance for disposal...and some would argue, if it costs so much, then they'll just dispose of it improperly. People knew that the liability for that was so great that they just couldn't do it. So I think that what RCRA did in terms of preventing the Superfund sites of the future, what Superfund is now doing in terms of cleaning up the legacy sites, yes, I think that we will reach a point. The key secret is waste avoidance and waste minimization. I think as a society we are getting better and better at that, but, interestingly enough, in my current work one of the key elements of this new Great Lakes strategy that we're working on, one of the top eight priorities, is toxics.

One of the key strategies associated with that is dealing with household hazardous waste. Believe it or not, that's one of the areas where at least the experts believe that some of our biggest continuing problems are because of that. Industry has kind of gotten the message, but it's all of us in our households and what we do with our old batteries or thermometers or solvents or things like that. What we need is municipalities to create systems that make it easy to properly dispose of these, to the extent that these materials are still being sold. Fewer and fewer all along are, but that's one of the key elements that we're going to be looking at. The biggest source of dioxin to the Great Lakes is burn barrels, and people burning plastic in old 55-gallon drums that had their own special iconography in the Superfund program. I think there is a time where we will not need Superfund. I do think that, and, interestingly enough in connection with Katrina, it's obvious that there will be situations where we need emergency response capability. It's not going to be cleaning up old sites, but because of industrial accidents, because of terrorism, because of weather incidents, there will be times when hazardous material gets loose in the environment, and we have to be able to



get out there and stop the migration, clean up what's there. So we are going to need that kind of capability.

As we've learned from Katrina, we aren't anywhere near good enough at doing what needs to be done, not only with managing the human side of it, but the environmental side. It's going to be phenomenal to see what ultimately has to be done in the Gulf Coast area to deal with that. I think that a lot of what we learned in Superfund can be directly applied to manage that cleanup down there. It's going to be very heavily on the technical side. I certainly hope that we don't get into protracted legal battles over whose responsible and, fortunately, the policy decision has been made to make the investment that's necessary to clean up and restore that area. It's going to be important to do the environmental side right, but I think the expertise that we have from Superfund will be extremely well suited to that.

EPA Interviewer: I sort of want to get into concluding wisdom, but I want to do that by asking you sort of another question. That is, was Superfund inevitable? If Love Canal hadn't focused everybody's attention at that specific time—enacting Superfund being sort of the outgrowth of that, even though it was a lame duck Congress and President—would life be different today in the United States? Or was Superfund inevitable?

Ullrich: Superfund was absolutely inevitable. Love Canal happened, but, as we learned very quickly, this was going on all over the country. For all of the vocal critics of Superfund, to this day I have never heard a viable alternative to Superfund. There have been amendments to improve Superfund along the way—in 1986 was the SARA amendments

EPA Interviewer: And then 2002 with the Brownfields amendments, and that's it.

Ullrich: Right. The administrative reforms I think were a big boost to it. We needed a Superfund. It wasn't a perfect law. It was an extraordinarily difficult law. But EPA figured out how to make it work. I've, to this day, never heard critics come forward with a viable option to it. As I explained in my earlier discussions about Ashtabula, we tried some, if you will, "voluntary" approaches, and, very honestly, they don't work. That's what Wisconsin had tried for 20 years on the Fox River, and it didn't really work. I'm a real believer in what Superfund has done. And would be happy to state so publicly, which is what I'm doing right now.

EPA Interviewer: Exactly. David, I thank you very much for your time.

Ullrich: Well, thank you. These were excellent questions that prompted a lot of thinking. I'm just trying to think if there's anything else that I would need to say about this. I would assume I can call you if there's something major that I missed.

EPA Interviewer: Absolutely. I'll run right back out to Chicago, I promise.

Ullrich: OK.