JACK SMITH

TAPE 3, Side 1

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M.O'R.: This is Michael O'Rourke for the Washington County Historical Society continuing the oral history with Jack Smith, and today's session is taking place at the Oregon Historical Society.

I think where we left off last time was you told me a little bit about your background and brought us kind of up to the point where you leapt into the lawsuit that forced the cleanup of the Tualatin, or one of the lawsuits, anyway. So let's pick it up there, and as I was saying just before we turned the tape on, I've been able to find only a little bit of information, so let's try to talk in detail about this process as it unfolded because I don't think there's too much in the official record about it.

Can you maybe start by telling me what you think - or what was the genesis of this idea to file the lawsuit and to pick the Tualatin River as the body of water that you would focus on?

J.S.: Well, the fundamental idea was to try to change the water management policies that were then and largely still are existent in the state of Oregon, and the Tualatin, as well as being the river basin where a number of us live, typified the problems or the result of what we viewed to be misguided water management policies. The emphasis at that time, and largely still today, in water quality management is more regulation of pollutants rather than managing water quality.

In the case of the Tualatin, the sole focus was on basically the wrong pollutants, that the wastewater treatment plants were

regulated - what was regulated was the amount of organic material and the amount of suspended solids that are discharged from the plant. The water quality problems didn't have that much to do with either one of those parameters. The water quality problems in the Tualatin were excessive algae growth that resulted from the phosphorus that was in the wastewater, and phosphorus was simply not regulated.

And the policy was that - I mean, so long as that was the case, treatment plants were being built, designed and built, that would need to remove ever greater fractions of the organic and suspended solids loadings. And as the population grows, while the technology and the regulations were ignoring things like phosphorus and nitrogen, fertilizing nutrients that stimulate excessive algae and aquatic algal growth and aquatic weeds, those progressively increased simply as a function of population.

If one had early on looked - based decisions on water quality, then the whole regulatory structure would have focused, number one, on a different set of pollutants, the ones critical to the Tualatin, and they would have looked at least at more sources than just the treatment plants.

And within the Clean Water Act, there are sort of two levels of objectives in the Act. The first one is that basically every pipe that discharges to the nation's waters will have a treatment plant at the end of it that removes 85 percent of organic materials and suspended solids. That's sort of the baseline objective. However, the Act goes beyond that to specify a number of water quality objectives which are simplified into the idea that water should be swimmable, and fish should be able to live, and people should be

able to recreate in the waters. That's really the bottom line objective of the Act, and after this basic level of treatment is installed or accomplished, then the Act requires that an assessment be made as to whether that level of treatment or that level of management is adequate to achieve the basic objectives of the Act, which end up being specified in terms of standards of water quality, allowable concentrations of different materials, and minimum concentrations of others like dissolved oxygen and so forth for fish life.

And if that minimum level of treatment is not adequate, then a program, according to the Act, needs to be established. What needs to be determined and established are the - a concept called the total maximum daily loading of pollutants, or TMDL. And that's basically a determination of the carrying capacity of a body of water, the assimilative capacity. It will accept - a body of water can accept a maximum level of loadings of different kinds of pollutants or different kinds of substances, beyond which it starts to fail to be either swimmable or fishable. I mean, fish start being stressed, or there start to be degradations of quality that interfere with recreational use of the waters.

That part - and that's really done on a more watershed basis rather than a source-by-source, pollutant-by-pollutant regulation. The idea is that you will look at a watershed and make a determination as to the carrying capacity in terms of water quality of that watershed, and then you will establish regulatory programs that will not allow that carrying capacity to be exceeded. All of that was ignored by the State of Oregon, and in the case of the Tualatin the appropriate pollutant would have been phosphorus, which is

completely unregulated, and large sums of money were spent removing organic materials that really weren't the core of the problem.

So the suit was instituted - this whole TMDL process is a nondiscretionary requirement on the part of the Environmental Protection Agency, and if the states had - with the 1972 enactment of the Act the states had something like 180 days to accomplish this for the waters of their state, and if that wasn't done, EPA was required within a period of something like 90 days to enter the state and do it for them. That was simply a requirement of the law.

Also, there is within the Clean Water Act - Section 505 is the ability for citizens, people other than state or federal government, to enforce provisions of the Act. It's a so-called citizen suit provision that allows the existence of effectively citizen Attorneys General. So the reason the suit is such - although the quarrel was with the water management policies of the State of Oregon, the legal recourse under the Clean Water Act was against EPA for not requiring - failing to require the State of Oregon to better manage water quality in the Tualatin River, as well as most other waters in the state of Oregon. That's the lengthy genesis of the suit.

M.O'R.: In terms of those of you that were working on these issues already, the Oregon Shores group and later the NEDC, can you tell me a little bit about the sort of development of strategy vis-a-vis this approach, the lawsuit? Was there a point when somebody said, "We can file suit under the law, and maybe we should think about doing that," and then others maybe got behind that idea? Was

there some point that you can remember when the idea to do this first occurred?

J.S.: I don't remember a precise point, although it would have been not too long before the suit was filed. I mean, I had been, others had been, a number of people had been attempting through the normal administrative processes, you know, kind of arguing logic and appearing at - you know, testifying at hearings when there were opportunities, had been attempting to persuade the State of Oregon, the Department of Environmental Quality to change its policies, and we had been trying to do this for probably about ten years.

And at some point, somewhere along the way the recognition gets clear enough that you're not - I mean, I had written legislation to require DEQ to make these kind of changes. I inserted requirements in other people's legislation, or attempted to, as I say, legislation which wasn't - some of which was enacted, some of which wasn't. There were - oh, gee - governor's advisory committees on water policy and planning through which people would try to make the connection to water quality and water quantity and land use management, and there came a point somewhere during the year that this lawsuit was filed that it was simply quite clear that the federal court was the better forum to make these arguments.

Also, I should add, there was along the way, not too much before that, a lawsuit in - I believe it was Michigan, someplace in the Great Lakes region that made it much more legally clear - or made the legal possibilities more clear. Going back to the way the Clean Water Act reads, the states shall, within so many days of the enactment of the Act, establish TMDL's for those waters requiring

them, and then so many days after that, 30 or 60 or something, EPA shall approve or not approve - I'm citing my recollection of the language of the Act now - and if EPA does not approve, then within 30 or 60 days following that EPA shall make the establishment. It had been a longstanding argument of EPA that they were not bound to establish TMDL's for any waters until they had disapproved a submission by the State, and if the State did not submit any TMDL's they didn't have anything to disapprove, and so they had no ...

M.O'R.: No further obligation?

J.S.: They had no reason or obligation, yes, to themselves establish TMDL's.

So this lawsuit in the Great Lakes area - and I can't recall the citation now - but the sense of it was that the State of Michigan or Wisconsin, whatever state it was, had not submitted any TMDL's, and by not submitting any over a long period of time - meaning not just days, not just the 180 days, but years and years after the requirement to do so, they had made a constructive submission of no TMDL's. It wasn't that they hadn't submitted anything; they by their failure to had constructively submitted nothing, and EPA was bound to disapprove that submission of nothing.

Anyway, that was a critical lawsuit at a national level because that made it very clear that states like Oregon, which also hadn't submitted anything, had constructively submitted nothing and that EPA was bound by the requirements of the Act to disapprove that. That was a crucial legal basis for being able to bring such a suit.

M.O'R.: And now who are some of the actual people involved in this effort? I mean, I know who some of the people were on your side of the fence, but who were you dealing with primarily at the State DEQ level in terms of your efforts to get them to do something prior to filing the lawsuit?

J.S.: Oh, at least two directors that I recall, Bill Young, who is still - well, actually he's back working for DEQ these days, but he was a director either about the time that the lawsuit was filed or just before, but he was a director during, you know, long periods of attempting to, by administrative procedures and public testimony and private argument and so forth, trying to get State policy changed. And then he moved over to become director of the Water Resources Department, and his successor was Fred Hanson, who prior to DEQ - became the Director of DEQ, and prior to that he was Assistant Treasurer under Clay Myers, as I recall.

M.O'R.: And neither one of these individuals, it sounds like, really wanted to pick up that ball and run with it, then?

J.S.: Well, it just - you know, it's hard to change a bureaucracy. I mean, things - a whole regimen of rules of regulations and practices get built up around a concept of resource management, and to change very much that concept is a major administrative chore, and it hasn't changed frankly all that much at DEQ today.

In the Tualatin Basin things are done quite differently, but the regulatory practices and policies of the State are still way too much focused on pollution control as opposed to water quality management, if you can appreciate the distinction. Pollution control is sort of, you know, pollutants are bad, they have to be removed, they have to be reduced. Water quality management has to

do with which pollutants are critical, and how much do they have to be reduced, and kind of making that determination and regulating according to a water quality objective rather than a kind of ever-changing pollution reduction requirement.

M.O'R.: Make sure that you're really addressing the bottom line rather than just ...

J.S.: Yeah, and water quality management requires thinking, and it requires figuring things out, requires an understanding of how water works, and how water quantity and quality both are related to land use, and a whole lot of things that aren't nearly so straightforward as simply demanding a specific kind of a treatment plant doing a specific chore at the end of a specific pipe. It's much easier to write rules and regulations and find people up the street to apply and enforce those kinds of regulations than it is to make decisions about water management that are pretty much always going to be challenged by somebody and you're never going to have enough documentation or information to be able to totally justify decisions to everybody, just administratively it's a more ...

M.O'R.: More complicated task?

J.S.: Well, it's a more perilous task in terms of keeping your job and so forth.

M.O'R.: There was, of course, quite a bit of concern about the implication of what you were trying to do. In fact, I was reading an article where the City Managers of both Tigard and of Tualatin were concerned about - well, this was I think after your lawsuit had already been decided, and the DEQ was conducting a study to go ahead and lead to, you know - I guess lead to this TMDL approach. I'm not totally certain of all the steps in it, myself,

but there was some public testimony by the City Manager of Tualatin, a City Engineer, actually, Mike McKillup. He says, quote, "If they get too involved in trying to make the river pure and pristine, we will end up with monthly sewer bills that are astronomical." So I guess that was a concern. He also said some things about he was afraid it might really impair development. So I guess these are the kinds of arguments you had to deal with?

J.S.: Well, those are the kinds of arguments that appear whenever there's any kind of environmental regulation. It is always going to be economically harmful. It's always going to eliminate jobs and make it too expensive to live and - all in the name of some bird or bug or something that nobody ever heard of or cares about. I mean, I know of no environmental quality - or any water management or air management - just no environmental quality regulation that hasn't - for which there haven't been all of those kinds of arguments.

I argued at the time the exact opposite, that it was the direction that the Tualatin was currently going that was going to result in astronomical sewer bills and was going to result in moratoriums on development and losses of jobs and losses of economic opportunities, that the whole reason for the creation of the Unified Sewage Agency was the result of a building moratorium in Washington County and the Tualatin Basin in the 70's, I guess it was, when USA was created because water quality had degraded to the point where under existing state and federal environmental laws simply could not be ignored any longer, and the only option left at that time to the State of Oregon was a moratorium until USA fixed - or pardon me - until Washington County fixed the problem.

Now, water quality did get better, substantially better, as a result of the creation of USA, and also as a result of the construction of Henry Hagg Lake, the Scoggins Dam, which provided more summertime stream flow to dilute the pollutants that were in the river, and it was clear - it seemed clear, at least, to me that the direction of water quality in the Tualatin was straight downhill, and that would result, if nobody did anything, in another moratorium. And it is way more expensive to try to repair problems, water quality problems or pollution control problems, than it is to prevent them in the first place.

USA is a good example. The whole concept of building regional treatment facilities and building pipelines up and down the valley from every little town to get to the regional facilities was based on a concept called economies of scale, and that building one big thing was cheaper on a unit cost basis or an individual ratepayer basis than building and operating a number of smaller facilities.

Subsequent examination of these facilities has demonstrated that there are, in fact, diseconomies of scale that because everything is brought to one central location, the level, the carrying capacity of waters is less at that one location than it would be - than would be the sum of a number of smaller locations distributed up and down the river, distributed over a larger area, and that by the bringing of wastewater to a single location for a large facility, the level of treatment and the cost of treatment is substantially higher and that the additional level of treatment is quite a lot more expensive than the economies of scale of the larger facility.

However, that decision about regionalization put in place the - I mean, once all the sewers are built you've got a massive capital infrastructure investment that you don't - with a long, long life. I mean, the practical life of sewers is 50 or 100 years or something. You don't simply discard them every ten years or so. So once you have built this infrastructure, then your choices about solving the problems that it creates are more limited than they were before you started, and that maybe water is not the best place to throw treated sewage, maybe applying it to land or using it for irrigation water would be ...

[end of side one]

J.S.: And those kinds of answers would be easier at a number of smaller locations than they are for one very large - I mean, it's easier to find five small ten-acre parcels than it is to find one 50-acre parcel, for example.

M.O'R.: But of course that was all in place, as you pointed out, by the time your ...

J.S.: Sure. And the other argument is that if you look at the economic structure of the Tualatin River Basin, that - I mean, it's always had a firm agricultural base, but the technology industries were - the population in the Tualatin River Basin was growing faster than any other place in Oregon, and the technology industries were also located there, and that people - one of the reasons that they were located there had to do with this whole quality of life concept, and water quality was a significant part of that, and if people, engineers, entrepreneurs, business people were electing to live in Washington County instead of Santa Clara, and they were electing to live in Washington County at lower salaries than they would otherwise receive in Santa Clara because of the quality of life kind of impression, and that turning - allowing the Tualatin River to degenerate further into an open sewer, there were economists like Ed Whitelaw, who was at that time the state economist - he's an economics professor at the University of Oregon, among other things - was making exactly those kind of arguments, or starting to, around then, and he's gotten quite a lot more focused

on those kinds of arguments since, that there is a clear connection between economics and environmental quality, and it's not - I mean, it's in fact the opposite of the kind of public perception that environmental quality is good for economic growth, and there are way more economic benefits to environmental quality than there are economic costs, or the benefits far outweigh the costs, and so it's just a fact of life that people come out with pitchforks and burning torches and claims about property rights and economic peril and job loss and so forth at any environmental regulation, and there are plenty of environmental regulations that are bad regulations and stupid regulations, and the ones - and a good example of ones that were completely wrong-headed were the ones we were trying to change in the Tualatin Basin. We were trying to create environmental regulations or a regulatory structure that would result in environmental and economic benefits - not as they were then: economic costs and environmental costs and no benefits, other than jobs for people operating sewage treatment plants.

M.O'R.: Just listening to you talk about this, and the two arguments vis-a-vis the impact on the economy, et cetera, and also the part about the economics of scale, it's almost ironic that the basis for your lawsuit came out of the Clean Water Act, but on the other hand the Clean Water Act is also the impetus, as Gary Krahmer told me - USA by virtue of the coincidence of their creation at almost exactly the time that the Act was passed, they were at the head of the line in terms of getting federal grants to build these large centralized sewage treatment plants. So the Act gave you the basis for your lawsuit, but it also seems like in terms of the infrastructure it set up part of the problem, as well.

J.S.: Actually, in retrospect that always was the major difficulty and the major conflict in the Clean Water Act, was all of that money because there was simply more of it than the nation was able to constructively spend. And so simply to get rid of it - I mean, EPA was funding all kinds of things, and while there was a lot of eyewash about this economy of scale argument - I shouldn't say eyewash; it serendipitously also simplified the getting rid of the money problem in that if you could get large blocks of money to smaller numbers of recipients, it simplified the getting rid of the money problem.

M.O'R.: Right.

J.S.: And it was a problem. I mean, EPA was faced in the early years with going back to Congress and trying to explain why they were lagging behind the intent of Congress - why they weren't spending all this money and thereby cleaning up the environment.

Well, also in retrospect, most of that money probably went to things that made environmental quality worse rather than better, and the effort required to get rid of all - get that money spent, get treatment plants designed and constructed and built was consuming all of the available environmental regulatory and design engineering and construction firm resources of the country, and there wasn't anything left over in terms of time or people to spend thinking about whether any of this was a good idea or not, or the best idea, or even an appropriate idea.

And USA was clearly - if you looked at it you might come up with the same kind of facilities that USA currently has evolved into; then again, you might not. I mean, the analysis, I believe, has never been made, so you don't know. But nevertheless, by

building a large facility and then finding out that, oh, well, it removes a lot of one thing but in the process adds more of something else that's even more undesirable, and so we'll add another process to that, and then that will turn out to have some sort of bad side effects like way too much sludge that we can't get rid of, and so I have to add another thing to that, and we keep putting technical fix on technical fix on technical fix.

M.O'R.: Whereas if you had all that information at the beginning, you might have been able to more efficiently ...

J.S.: Yeah, if you thought further ahead and a little more broadly or more comprehensively, the early decisions might have been different or might not have been. I don't know, but I don't see any evidence of any of these kind of things being considered at the time that the commitments were made.

M.O'R.: Well, I imagine that given the history of the USA, for instance, and you mentioned the building moratorium in Washington County, and I know at that time Gary Krahmer, who later came to lead the organization was in fact heading up the Aloha Sanitation District, which was one of the ones that was wiped out by the creation of USA, and he appreciated sort of an irony of that, because Aloha had just gotten their act more together and had just built a new treatment plant, and it was barely - it wasn't even on line, I think, and then they had to go out of business and be absorbed by USA.

But anyway, people like Gary Krahmer saw all this activity occurring at that time, in the early 70's, and then of course all this federal money came to USA to help them build their three main plants. I imagine there was probably a perception among some

people that, hey, we've already fixed this problem. You know, what have we spent the last ten years doing if not addressing water quality problems on the Tualatin?

J.S.: Sure. I'm sure there were.

M.O'R.: Was that an attitude that you encountered on the part of USA?

J.S.: Oh, I don't think so.

M.O'R.: Well, what was their reaction to you suit?

J.S.: On the part of USA?

M.O'R.: Yeah.

J.S.: These are recollections of impressions rather than, you know, any great evidence of testimony. I don't recall a universal USA opinion or impression. I mean, I do know some people at USA that were upset because the appearance or inference could be drawn that, well, they weren't doing what they should be doing. I also know some other people in USA who were saying, "Maybe it's about time somebody did look at these kinds of issues."

So it's - I mean, it's not as though the shape of USA and the type or form of treatment and all that was all that much originated within USA. I mean, that was all pretty much kind of the whole general thinking of the water pollution control profession, or the water pollution control regulatory and engineering structure, including EPA and DEQ and any engineering firm that USA would hire. I mean, whoever - during the time those decisions were made, or whoever was also at the time those decisions were made creating USA, I mean the entity called USA kind of came out of that, and it was doing what it was tasked to do.

And our argument was plenty of people are doing what they are tasked to do; they are being tasked to do the wrong - in terms of environmental quality and future economic implications, they're being tasked to do the wrong things. Their permits, their NPDS federal discharge permits read that they will discharge so much organic material and so much suspended solids, and not more than this amount of organic material, not more than this amount of suspended solids, not this amount more of bacteria, which they were doing. It's just that that permit didn't say anything about the real problems which were caused by the excessive phosphorus and nitrogen, and that had just been steadily increasing since there wasn't a removal requirement and the conventional treatment that removes organics and suspended solids simply lets phosphorus and nitrogen kind of go through the process without changing it very much. Those ideas weren't - I mean, it wasn't USA's idea to write permits this way. It came from the State of Oregon and the federal EPA.

M.O'R.: Although of course I guess all of these things - there's political pressures on organizations and on people from various quarters that sort of influence their thinking, too, and I know that USA was always sensitive to the idea of increasing people's sewer assessments because, you know, anytime they would do that of course their telephone would start ringing and irate landowners would come in and harass them.

J.S.: Sure. Of course.

M.O'R.: And so, yeah, all of these things are going on.

J.S.: And also, if they didn't make the investment that caused the rates to go up to build sewers out to areas where they

weren't totally needed for existing populations but clearly were needed for the developments that were going to bring in additional populations, you know, they'd get political pressures from the homebuilders' association and industrial development committee. So I mean that just sort of goes with the territory. Lawsuit or no lawsuit, existing ratepayers and future ratepayers are always going to be in conflict, and that's just - a USA organization is not able to - as long as there's going to be economic growth, somebody has to pay for it, and the first people that pay for it are the existing ratepayers, and the people that need it are the not yet existing ratepayers but the development community. So USA has those problems, those kind of competing political pressures, lawsuit or no lawsuit.

M.O'R.: Right.

J.S.: They're probably intensified on both sides as a result of the lawsuit, but there are a lot of political pressures, some of which are reality and some of which are not. There are not any less pressures, but there's a lot of misguided politics these days.

M.O'R.: Well, that's for sure. But in terms of people inside USA that sort of took a look at what you were doing and saying, "Well, maybe this is not such a bad idea," who were these people?

J.S.: I frankly don't remember Gary Krahmer being all that offended. The people who were sort of - at least that I was in contact with most of the time were Gary Krahmer and Stan Leseur, and I don't recall any difficulties that either one of them had with somebody complaining about EPA or DEQ regulatory policies.

I think that the concerns were sort of higher than that, meaning the Washington County Board of Commissioners and lower than

that, people that were operating treatment plants and so forth. I didn't - I don't recall any great - I thought Krahmer and Leseur seemed to understand and appreciate the issues fine. I mean, so it makes life more difficult for them, I simply don't remember that being all that bothersome to them. I guess I'm saying I don't know that the outcome, or the projected outcome, the idea of water quantity and quality being related and the idea of land use and water quality being related, and that a more comprehensive approach to water quality management, changing of conditions of their permits and so forth, I don't remember that being a major crisis in their lives. It may have taken away some time from Gary's golf game, but you know - and it complicated their lives; I mean, any change complicates people's lives, but they were not virulent opponents of this lawsuit. That's not the same thing as saying they were out campaigning in the streets in favor of the lawsuit.

M.O'R.: Maybe I should ask you now about how the lawsuit actually proceeded. Which judge did you get?

J.S.: Judge Burns in court here.

M.O'R.: At the federal courthouse across the street?

J.S.: Right.

M.O'R.: How did - you know, what was the progress of the suit? How did it go?

J.S.: Well, the way such suits proceed is that you are required to file a 60-day notice of intent to sue, and so that was sent to EPA and DEQ, the administrator of DEQ, who at that time was a fellow named Lee Thomas, to DEQ, the attorney general, and - I guess that's all - advising them that if the complaint isn't

resolved within 60 days then the intent is to file suit under Section 505 of the Clean Water Act.

And so there were some conversations with DEQ, and a fair number of conversations with EPA legal and technical people. Since the suit hadn't been formally filed we were free to communicate with whomever. Once the suit is filed, once you actually file suit, then you're dealing with the Justice Department out of Washington D.C., no longer with - any communications with EPA people then are sort of circuitous through the Justice Department.

And so a lot of - well, certainly in our case a lot of negotiating flexibility - negotiations got more complicated since you had more people to persuade or to communicate through. Up until the time the suit was actually filed - and that wasn't within 60 days; it was a matter of quite a few months that there were active negotiations ongoing with EPA and with DEQ ...

M.O'R.: What was the nature of these negotiations?

J.S.: Well, a lot of it had to do with our wanting DEQ to do something different to comply with the federal law, EPA wanting DEQ to do something different, EPA wanting DEQ to comply with the federal law because if they didn't EPA would have to do it, and they didn't want to do it, and DEQ did not want EPA to come into the state of Oregon and get involved in their business. It's sort of like watching Newt Gingrich and the President negotiating the budget; you know, it's sort of a lot of people trying to get somebody else to do something. And the lawsuit was effectively beneficial EPA because they could argue that, gee, they think DEQ is going perfectly fine; however, they have these bad guys suing them,

and therefore it would be helpful if they changed their ways and did something different.

Subsequently DEQ would use the same argument to people like USA and others in the state and say, "Well, gee, we don't want to do this, but the bad federal court is making us do it," and so forth. EPA - I don't know if they coined it or simply borrowed the term "gorilla in the closet" that they would use - basically how they would use these kinds of lawsuits to provide some leverage to persuade states to do something different or perform their tasks better or more in line with the requirements of the federal law. And DEQ didn't want, of course, to do anything different. And so there was a lot of initial agreement on an initial list of waters, of rivers in the state, for which TMDL's- this process needed to be implemented, and the Tualatin was number one on the list, simply because it was the focus or the example given in the lawsuit. And then there was a list of about three dozen other - basically every single body of water in the state, for which DEQ needed to make a determination about whether they were water quality limited, and a TMDL process was necessary for them, and they had to do that within a certain time.

The principal stumbling block had - I think it was still there initially, but it clearly was through the whole process and never did get resolved to our satisfaction - was the priorities or the scheduling of these. DEQ's proposal for a schedule was - the schedule for doing it was arranged so that it couldn't possibly interfere with the issuance or renewal of any discharge permits or any of their existing regulatory process. We couldn't overcome that. There were probably a number of other things. That was an

issue that never did get satisfactorily resolved. And the other issue was the rate of compliance. We had gotten a number of things sort of conceptually agreed to by the EPA people. Then there came the time when you simply had to file suit, and then we were stuck arguing with attorneys and the negotiations amongst technical people kind of went away.

And that didn't take terribly long. The Justice Department - or the lawyers for the U.S. Justice Department were pretty cavalier about what they would do and what they wouldn't do and what they would agree to and what they wouldn't agree to, and then there came a point at which we thought the law was pretty clearly on our side, but our attorneys were pretty junior, also, and fortunately Judge Burns agreed, and the Justice Department was saying, "Well, we're simply not going to do it." Some information we needed or something they were supposed to do, they said, "Well, we just don't do that. Stick it in your ear."

[end of tape]