

JACK SMITH

TAPE 4, Side 1

January 25, 1996

M.O'R.: This is a continuation of the interview with Jack Smith at the Oregon Historical Society on January 25th, 1996.

Okay. So you were saying that - so I'm not sure I quite understood that. So Ed Meese was the stumbling block in this process somehow?

J.S.: Well, the Justice Department was a stumbling [block]. They ...

M.O'R.: They just weren't trying very hard to enforce the law, is that ...

J.S.: Well, they weren't - yeah, they didn't see a need to do a lot of things, and it was kind of their policy that they didn't do something; I don't recall what. You need to talk to one of the attorneys about what that specific issue was. It just - it got resolved when - I mean, they don't do a lot of things until they're challenged.

It's like EPA doesn't do a lot of things that they're legally required to do until somebody sues them, and then they - simply because Congress tells them to do something doesn't mean they automatically do that when they don't do that usually until a federal court tells them to do it, and then sometimes not even then. Sometimes a federal court has to tell them two or three times, but in this case the judge went a little bit beyond telling them what they were going to do. He said, "You will go communicate with your boss in jail because that's where I'm going to throw his

fat ass if you're not delivering this stuff by" - literally in a matter of hours.

So the actual settlement, I mean, we got as far as we could go. It was clear that DEQ was not going to move any further beyond the schedule that we had. They weren't going to progress any further or any faster, and EPA - if it got clear that EPA was going to have to - this negotiation was like a triangle, and there's - EPA - each person is trying to get - you're trying to form coalitions so that you're sort of two against one, and EPA's objectives and NEDC's objectives were similar so long as it was DEQ [that was] going to have to do the performance.

But if DEQ got - they got to the point - and DEQ didn't want to be relieved of that obligation, just because of the embarrassment of it all and - so they'd go so far. And we - you know, you just have to make a judgment about have you brought them - you know, have they come far enough that you can agree to rather than continue on to trial, where the trial would be about EPA, no longer about what DEQ is going to do but whether - about EPA coming into the state of Oregon and establishing the regulations for the Tualatin River.

And the EPA didn't - nobody wanted EPA to do that, just like nobody really wants the federal debt crisis that - you use that, and the one - the two stumbling blocks, like I say, that we couldn't overcome was this idea of scheduling. It really was the same idea. It was that, well, DEQ would go through some motions. They would not, by virtue of priorities in scheduling and rates of doing TMDL's and so forth, they wouldn't agree that it should influence very much their normal regulatory process, certainly

wouldn't be the center, certainly wouldn't be the basis for water quality management.

But they'd do so much, and they'd get the Tualatin River done - TMDL's for the Tualatin River in a year or two years or something like that, and the other bodies of water according to a schedule that said about 20 percent of the waters of the state per year, or in any case no less than two bodies of water per year. And we couldn't - we got persuaded we weren't going to do any better than that, and that there - you know, in all lawsuits there's a danger of losing and you lose - you know, EPA is - in the meantime, the Justice Department is arguing that, well, they don't have to do any of this stuff, you know, let alone agree that something is going to be done. They really don't have to do anything, and if we want to have a long, protracted trial to provide a - persuade a court that they're supposed to do something - you're dealing in differences of opinion on issues and differences of perceptions about opinions on issues and trying to interpret what - or trying to guess what the Justice Department will do, and based on that what EPA might do, and based on that what a - you know, what the court might rule, and - at any rate, so we settled. The suit did not go to trial.

We settled the suit on the terms that now exist, and those included that within - I think by 19 - some period in 1988 that there would be TMDL's for the Tualatin River. And sure enough, there were, and water management of the Tualatin has been ever since based primarily on phosphorus rather than organic materials or suspended - phosphorus and nitrogen, ammonia and nitrogen.

And the regulatory process has expanded way beyond simply the USA treatment plants, but to runoff from different land uses, and

the primary arguments these days - two or three years ago USA met their requirements under the TMDL - met and superseded their requirements under the TMDL's that were established for the Tualatin, and the debate since has been having - has had to do with agricultural lands and forester practices and urban development and so forth.

M.O'R.: But now the TMDL is based on a measure of the quality of the actual river water?

J.S.: Well, it's based on the carrying capacity of the river for algal growth stimulating nutrients, phosphorus and nitrogen, primarily phosphorus.

M.O'R.: But the agriculture and these other things that you're saying the emphasis has shifted to now, wouldn't they be addressed by that TMDL ...

J.S.: Well, they are.

M.O'R.: ... standard as well?

J.S.: Yeah. No, I subsequently got hired by DEQ, or contracted with DEQ to calculate the TMDL's, and so there are - the basin was divided up into about 30 different segments, main stem and tributary segments, and for each one of those we determined the loading capacity, the carrying capacity for phosphorus and ammonia, and then those load capacities were allocated out to all of the different sources. And for most of the Tualatin, those are all non-point sources. For some of the segments they include treatment plants.

But like I say, the treatment plants met their load allocations for both ammonia and phosphorus within - geez, I don't know - a couple, two or three years. I mean, they changed their way of -

the treatment process. They made a number of modifications and some additions to specifically remove phosphorus.

M.O'R.: Were these additions something that required big expenditures, or were they just fine-tuning the process?

J.S.: Oh, they - no, they clearly required expenditures. The amount of the expenditure that was related to the phosphorus removal requirements, distinct from the amount of investment that simply would have had to go into plant expansion in any case just because of the expanding population, was debated along the way.

USA would try to put the - make the entire cost appear to be - I mean, their entire capital construction budget to appear to be the result of this onerous phosphorus removal requirement, and we would argue that, gee, that sort of bigger plant and bigger pipes and stuff that you - has absolutely nothing to do with phosphorus, it's just you've kept expanding the plant because the population's growing so fast. I mean, gee, since - I think USA's been in a sort of continuing period of construction on expansion since they were first created. I don't know if there's ever been a period of time that one or more of their plants weren't under construction or weren't being expanded. Maybe there has been, but it's - I don't think I've ever visited a plant that I didn't see construction going on.

So I mean, you know, just the place is growing fast, and it has to keep expanding to grow with the growing population. On top of that, there were additionally some more stringent - for phosphorus, at least, more stringent treatment requirements, and there were process modifications. I mean, the basic process was modified so there would be more and more phosphorus uptake in their normal

process, and then to that in the normal biological treatment process, and then at the end of that was added an additional physical chemical phosphorus removal stage.

So there were clearly additional costs. How much of the additional cost had to do with this different approach to water management, compared to simply expansion and how much - you know, how much more the cost would have been if we had ignored the problem until there was a big crisis, you know, and everything crashed is an interesting debate that is not going to be resolved by anything factual that -.

M.O'R.: Well, in terms of the expenditures that were made to expand the plants, in terms of how those expenses were allocated or what was, you know, stated to be the reason for those expenditures, did that have any practical effect in terms of who paid what, or in terms of the difficulties in enforcing this?

J.S.: I don't know. You mean did ...

M.O'R.: Well, I mean ...

J.S.: ... how did people's rates, sewer rates, change or ...

M.O'R.: Well, you said that USA had a preference to present their increased costs as if they were all related to the phosphorus removal rather than the expansion of their system to accommodate new development, and I'm just wondering, well, what's the motivation there? You know, why would they want to earmark that cost as having to do with phosphorus removal as opposed to expansion that would be needed anyway?

J.S.: Oh, it's the gorilla in the closet thing. It's just that "This isn't our fault. This isn't our idea. It's the federal court telling us and DEQ making us do this." I mean, if you've got

to get mad at somebody - you know, this political pressure sort of argument: If you're going to get mad at somebody, go yell at DEQ or EPA or NEDC or Jack Smith or somebody else. "This is not our idea. We're ..."

M.O'R.: So it just - it kind of makes things a little politically easier ...

J.S.: Sure.

M.O'R.: ... easier going for them, right?

J.S.: Sure.

M.O'R.: But I guess my question was whether or not that kind of argument ever resulted in any real shifting of costs in one direction or another, but - so that was what I was wondering about.

J.S.: Oh, I think the realities - I mean, I don't know what in the nature of reality was changed in terms of - I mean, the same people - you know, if it cost a hundred million dollars, regardless of why, the same people have to pay those costs, and it's still the ratepayers.

M.O'R.: Still comes out of the ratepayer's pocket?

J.S.: Sure.

And then the other thing that was irritating to a lot of people was that there came to be this so-called rain tax that USA started - you know, they ended up and essentially volunteered to be responsible for the urban runoff, surface water management part of the TMDL program. And so in order to pay for that, they started attaching a separate additional tax onto property owners to pay for it because they were going to be building regional storm water retention facilities and to pay for those, so that was an addition-

al tax that has created a fair amount of irritation amongst a lot of property owners in Washington County, and it's -.

I argued in opposition to all of those things during the times that they were being proposed, and I argued in opposition to these regional storm water treatment facilities that USA was proposing at the time they were proposing them, but nevertheless I'm - I suspect that the argument they give to people who are complaining about this tax is that "You should blame somebody else; this wasn't our idea." Well, in point of fact, that clearly was USA's entire idea, and it was all done to avoid having to do anything now. It was all done to sort of - because we will someday get around to doing these regional facilities. But in the meantime we'll collect the tax to pay for them.

M.O'R.: I see. So they haven't actually built that system?

J.S.: Oh, there probably are some that they have built, but they nevertheless started collecting the tax early on. So that is - all of that nonsense I clearly reject any responsibility for, since I argued in opposition to all of that sort of stuff.

M.O'R.: So the gorilla in the closet is protesting?

J.S.: Right.

M.O'R.: And this is just another aside on this particular issue, this is surface runoff from land that would then carry pollutants ...

J.S.: Correct.

M.O'R.: ... picked up along the way?

J.S.: Correct.

M.O'R.: Like fertilizers and this kind of thing?



J.S.: Correct. Like the same kind of phosphorus that's coming out of the treatment plants. So what I'm saying is what the TMDL process does is to allocate the available capacity amongst all of those sources, and so some portion of the - I mean, the total phosphorus loading for the - I mean, adding up all of the allowable loadings of phosphorus to the entire - to all waters in the Tualatin Basin is - I don't know - around 50 or 60 pounds per day at low flow - it varies with flow, increases with increasing flow, but at low summer flow conditions, it's around 60 pounds per day. And so that's divvied up amongst all of the different land uses throughout the Basin and USA's treatment plants and USA quite promptly met their obligation and exceeded, did more than - removed more than - and their loadings of phosphorus are less than what they're actually allocated at this point for the treatment plants.

And then these days the - all development that - from whatever date these regulations were required, all new developments have - if you notice, they've all got some sort of storm water retention requirements, and more open space to - per housing densities, viewed a lot more acceptably than it used to be. And there's a number of changes in the way development is done in the Tualatin Basin for the purpose of minimizing phosphorus runoff. May or may not be - at least there's some demonstration, experimental areas in the agricultural community where there are changes in the way people do farming to try to reduce - minimize the amount of erosion and thereby the amount of pollutants that are associated with runoff from farmlands.

Might be some differences in logging practices, but there hasn't been all that much logging in the Tualatin Basin during this

period, so I don't know. But clearly there are some changes, and the debate and the principal efforts these days have to do - have no longer to do with treatment plants. They have entirely to do with land management practices.

M.O'R.: Now, in terms of - just again another note on this issue of the storm water retention, you say that you argued against it. What was your notion of how they should have addressed that, or how that problem should have been addressed?

J.S.: Well, the issue at the time was whether - it had to do with how are you going to achieve these allowable loadings from surface runoff, and what USA or Washington County wanted to do was to say - it was understood by everybody that there needed to be some sort of storm water retention, some sort of storm water control. The difficulty was that that requires some land area. I mean, if you're going to have a retention pond, for example, that's going to consume some area. And in already developed - I mean, it's hard to find a lot of open space in downtown Beaverton. I mean, in some - the areas that were already built up and already dense, how are we going to deal with them; that was and is an unresolved question.

The concern at the time was what to do about new development, where you did have some flexibility, you were able to do something, and I and others argued that, well, new development should come with the appropriate controls. They should make - you know, while you have the opportunity you should make space for them.

USA argued that, "Ah, we don't want to do that. We'd like to - I mean, it's fine if somebody - if a developer wants to do that. We propose, however, that the developer simply pay a fee in lieu of

doing anything, and that we will collect the storm water and pump it or pipe it or get it somehow to some regional storm water control facility, as yet to be designated or designed."

And we said, "Well, if you're going to get all the land covered up with developments, there's not going to be space left over for these regional facilities, and even if there is some space somewhere, you're going to now have to pay for piping, and you're just going to be right back in the same - in terms of storm water, the same funny situation that you got into in terms of the regional sewage treatment facilities. You're just kind of postponing having to do anything till later, instead of forcing yourself to figure out how to deal with it today."

M.O'R.: Possibly leading to bigger costs and more complicated systems later on?

J.S.: Well, the main attribute would be that it would be later on, not now, and also that - well, in the meantime we'll be collecting fees and - at any rate, all I'm saying is I have no - I am not responsible for any of that, any complaints anybody may have about that and how well it is or will work, since I argued in opposition to that -. At the beginning all of that clearly was USA's proposal and USA's idea, and I think it was - I thought then, I think today it was a bad one.

It ought to be a condition of - I mean, if it is required that something be done, you know, it ought to determine how to do that. And even more than that, you ought to have to determine whether anything ought to have to be done. In this case it seemed pretty clear that, well, okay, we need to reduce pollutant loadings in urban runoff, and so there needs to be some sort of control

strategy. Well, it's easier to develop all that before rather than have to deal with it afterward. And I believe then that was right, I believe it today it's right.

M.O'R.: You said that you were the one that DEQ hired to determine the TMDL's for the Tualatin; is that right?

J.S.: That's correct.

M.O'R.: So are you fairly happy with the way that came out in the end? I mean, do you think that the Tualatin - did you actually accomplish your objectives, I guess, in the lawsuit?

J.S.: Oh, the TMDL's are for - I mean, there is a phosphorus loading for different flow conditions in the Tualatin for every piece of land in the Tualatin River Basin, and I'm content with the calculations then. They've been - you know, they've been challenged - I don't know - every other week by somebody or other since then, and they're still there. They were submitted to EPA. They were approved by EPA, and they are the - now, whether anybody pays a whit of attention to them is another question. I mean, that - but the fact of their existence and the fact of their being the correct numbers, you know, the correct loading capacity, i.e., will given these allowable loadings will the water quality objectives that were established be achieved or not achieved. Nobody has contradicted any of that.

M.O'R.: So it's still all in place and appears to be a good standard, but you're not sure if it's being enforced, then? Is that what you're saying?

J.S.: It's not being used - or they are not - I mean, there are something like about 300 individual load allocations for phosphorus, and times four different flow conditions, so there are ...

M.O'R.: Twelve hundred or so?

J.S.: Yeah. And so if somebody actually would use those as their management objectives, they would work perfectly fine. People - the ...

M.O'R.: Don't these standards have the force of law behind them, though, or are they voluntary?

J.S.: No. They have the - they have a less clear - they have the force of law. It's a little more ambiguous, a little more circuitous than the force of law behind MPDS discharge permit. Fundamentally the problem is there is no - there are a bunch of - there are plenty of planning requirements in the Clean Water Act for non-point sources, but there is no enforcement capability. There's no regulatory capability for non-point sources in the Clean Water Act. They appear only through this TMDL process, which is why it's - one of the reasons why it's so important is because it is the vehicle for being able to get at non-point sources.

However, the way that the federal law - or the federal regulations require, you have to account for - you have to account for the non-point source loadings in the TMDL process. It's a little bit - the language, for example, says you will allocate - the TMDL includes allocations - talks in terms of allocating loadings to point sources, but accounting for loadings for non-point sources.

The meaning of it all is that since there is no enforcement authority in the federal act, they do have to account for them. The load capacity is not a matter of law; that's just physical

principles. I mean, you put so much pollutant in - you can only - I mean, to stay below a certain level, you can only put so much into a given volume in a given day, and I mean, that's pretty straightforward. The allocation of that ...

[end of side one]

JACK SMITH

TAPE 4, Side 2

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J.M.: ... of the federal enforcement ability. However, the regulations say that if - this is why it's kind of circuitous - if you want to - if the State wants to regulate non-point sources, then you don't have - then they're not obligated to simply account for them, they can actually reduce the - they can actually then allocate a load to non-point sources, thereby having more available, since it's a zero-sum game here, having more available than for point sources. But in order for that to be federally approved, the State has to produce the enforcement authority.

Now, in the Tualatin Basin it was a - we went around and around with who's supposed to regulate - who's got any authority over agricultural lands, because the agriculture people wanted that to be the Department of Agriculture, but at the time the Department of Agriculture had no enforcement authority. There appeared to be through property taxes and zoning and - the authority appeared to exist within the County, but nobody, including the County, wanted to be responsible for enforcing the loadings on farms.

And so that really was the genesis of the - what's called Senate Bill 1010 a couple of sessions ago that created - that created this enforcement authority within the Oregon Department of Agriculture for farm lands in basins where - allowed them to develop as the designated management agency to implement the agricultural lands part of the TMDL program to develop programs, get them approved by DEQ, and then enforce them with fines and

penalties and so forth, and we now have an agricultural - effectively through that Agricultural Practices Act in Oregon, where we did not heretofore have such a thing.

And then we've always had a Forest Practices Act, and then so one can debate about whether it's effective or not, but nevertheless there is enforcement authority for forested lands and now agricultural lands, and then through zoning and municipal ordinances and so forth there's always been - or county and municipal ordinance - there's always been authority for urban lands. So the State of Oregon, again as a result of this lawsuit, now has the ability to connect land use and land management practices to water quality objectives in a - not completely straightforward, but at least logical chain of management.

And so what I'm saying about the TMDL's in the Tualatin, that there are allocations, daily pounds per day of phosphorus, for example, for agricultural lands in each sub-basin, each stream segment, in the Tualatin Basin. And if somebody would pay some attention to them, they would provide the basis for developing management programs. I mean, management programs are being developed as we speak, implemented as we speak. They simply are not based on these load allocations, and some of them fail that test, and some of them go beyond what's necessary to meet that test. USA's - the way USA is establishing requirements for developments, I think they're going way beyond what the TMDL process requires - not because, in my interpretation, they're so fastidious; it's because they're too damn lazy to figure out how to do it - you know, how to comply with what the TMDL allocated loading says.



M.O'R.: But obviously, though, because it's a zero-sum situation, as you pointed out earlier, the pressure is there to resolve the problem of phosphorus in the river no matter what because even if you don't have a good structure in place or good standards for non-point source contamination of the river, if that problem isn't addressed, then you wind up with nothing left over for the point sources ...

J.S.: Sure, and ...

M.O'R.: ... and those are all large industrial concerns.

J.S.: Yeah. And the difficulty is sort of the way - the water quality to phosphorus loading relationship is not by any means a linear one, in that if you reduce phosphorus by 20 percent, you don't get a 20 percent improvement in water quality. It's very much like a threshold, just the biology of fertilizer and plants; algae are plants. Until you - right now, algae growth, and therefore algae density, is strictly a function of sunlight. I mean, there's just more than enough phosphorus, more than enough nitrogen, more than enough carbon, all the necessary nutrients, there's more than enough. The only thing that limits algal growth is light. And so until you get down to the point where phosphorus becomes limiting, you can remove tons and tons of it, and there is zero difference in water quality, until you get to the point where it is limiting, and then every 20 percent reduction below then does in fact turn into a 20 percent reduction in algae.

So the danger with a program that doesn't go quite far enough is that you have incurred all of the cost but haven't yet gotten a single benefit. And you know, that's a concern, and it's - USA and others have argued for kind of the highest possible limit, which

always seems completely short-sighted to me because - just the easiest thing to achieve in terms of a phosphorus level, but in terms of water quality, the level that people have agreed to, this .07 milligrams per liter, is real borderline. I mean, it's just at the upper end of where phosphorus is clearly starting to be limited, and we're very close to that right now - I mean, I think the mean summer average for the last several years has been like .08, which is down from .38 or something.

You know, so we've made - I don't know - 90 percent or more reduction down to here, but still you shouldn't - there shouldn't be on that basis any observable difference in water quality because you're just at the point where any further reduction should start translating into visible improvements. And that is the area where, you know, that all has to do with land use and agriculture and urban and the whole TMDL process and these loadings and so forth and how they are used is now at this point way, way more important than it was as long as 95 percent of the whole load was coming out of the treatment plants. Now that the treatment plant part is removed, then the role of the non-point sources is much, much more clear.

M.O'R.: Well, it sounds to me like you're justifiably fairly pleased with some of the changes that the lawsuit helped bring about, but it also sounds to me like you're saying that maybe we haven't really made a big impact on the quality of the water. Is that correct?

J.S.: Well, that's not precisely correct. It's just that way, way too much energy has gone into, you know, kicking and screaming and being drug to doing what's in people's best interests

to do. That's my view, that there's way too much effort devoted to trying to find reasons why it can't be done instead of developing programs and policies that would get it done. There's way too much of that that goes on. I mean, if half of the energy that went into trying to demonstrate all the reasons, or trying to find some reason why it can't be done, why someplace in the Old Testament is a listing of waters that were designed by the creator to be open sewers for humanity, and the top one is the Tualatin River, and it's somehow going against God's will to try to create a place for fish to live and people to swim - if half of that energy had gone into trying to figure out how to actually do this simple task which is to meet these loadings, we'd have - you'd see much greater improvements in water quality than you do now.

But I think it's - the point is that the water quality has clearly improved. It's not dramatic. It has improved the use - there's way, way more use. I mean, it's hard to go by the Tualatin without seeing canoes and people, you know, actually using the river that were not before this suit was filed, and that if this - it's not going to be a babbling mountain stream, and never was. I mean, it never was a mountain stream. It's a meandering valley river, but that doesn't mean it still - that doesn't mean it has to be a greenish-gray bubbling foaming valley river. I mean, valley rivers can still have clean water in them.

But it would be worse today if we hadn't done what we did, and there would be far more pressures to do something very drastic and economically harmful today if we hadn't done it. So even though the progress in actually getting something done is slower and quite a lot more expensive than it needs to be, the pressures to do some-

thing drastic that would be economically harmful don't at all exist, and they were not unreal when we filed this lawsuit. I mean, go back and look at minutes of old Environmental Quality Commission meetings during that time, and the threat of moratorium was clearly there then.

I mean, you can sort of ignore - you can ignore these sorts of problems for so long - I mean, you're basically sort of ignoring the federal law because nobody's really enforcing it, but there does come a period when things get so bad that it is enforced. I mean, it happens in all phases of life, and this isn't different. And then it is really disruptive.

M.O'R.: Just a footnote on this, and we talked about it a little bit before - I must admit, I know very little about the specifics of this, but you said in addition to your lawsuit there was a subsequent lawsuit filed against USA?

J.S.: Yes.

M.O'R.: And what was - how did that lawsuit relate to your lawsuit and ...

J.S.: Well, they were both by the same people.

M.O'R.: Okay. I see. NEDC filed that suit as well?

J.S.: Right. And Churchill, and then there were a bunch of additional people. There were a couple of homeowners' associations and some individual ratepayers. There were more plaintiffs, a larger group of plaintiffs, but they were the same basic lead plaintiffs were NEDC. And that was a suit that - to directly - also a 505 citizens' enforcement suit under the Clean Water Act, to require USA to comply with their discharge permits issued under the federal law.

It came - it stemmed out of the original suit. Initially in trying to develop the - decide on what the TMDL's should be, or what the criteria for TMDL's should be, USA and Washington County were taking a very - I thought excessively narrow view. Instead of using this new management approach as a way of being able to reconcile development with environmental constraints, they were simply arguing in opposition to the constraints, that, well, this would frustrate things.

And so the initial idea of the suit against - I mean, I was at that time president of NEDC, and I simply directed some people to go look through their discharge permits and see if there were any violations; maybe we could get their attention by filing another lawsuit against them, just looking for some leverage and trying to persuade them that they're arguing the wrong side of the case.

And it turned out that - well, God, I mean to everybody's surprise there were thousands of violations. I mean, I think we tabulated some 13,000, and then USA ended up arguing that, well, half of those were kind of technical violations and so forth, so there actually are only 6,000 or - I mean, the numbers were just astounding. I mean, granted there are five - you know, these are at five treatment plants, so it's not like - if you divide the number by five, it's a little bit less - probably quite a bit less astounding. Nevertheless, for a single entity the numbers were very large, and a lot of them were nitpicky. I mean, you know, I wanted every single - I wanted as large a number as I could get. I mean, the whole idea was to try to embarrass them into being more responsive at the negotiating table about how to implement the TMDL process.

Everybody was surprised at how large the number was, and it turned out that, well, the management at USA was not evidently so tight as it should have been. And if anything, it was a demonstration of the failure of the whole regulatory process, this whole approach to water management. I mean, the whole effort was we'd get this treatment plant, get this money spent, get the treatment plants built, put requirements on these two or three kind of conventional parameters, and then everybody goes away.

I mean, it required - each permit requires a thing called a Daily Monitoring Report, or DMR. Every single day the effluent for the plant needs to be - for each plant needs to be sampled, needs to be analyzed and reported. And so they sum these all up in a report that's submitted monthly to DEQ, and then to EPA. So USA would have all these laboratory people collecting samples and analyzing them and writing down the results, and they would send them to DEQ, where theoretically somebody might look at them, but instead they're simply photocopied and stuck into a file, and the photocopy is sent on to EPA where theoretically somebody might look at them - and instead they're copied again and put into some files and sent on to somebody else, and recopied and put into files, and eventually end up with a computer operator who types all this data into a big EPA database. No place, evidently, anywhere in the process had anybody ever looked at any of these reports, including USA management.

And everybody, everybody in the process was just astounded how there could be all these violations, and like I say, thousands of them were, you know, real by anybody's measure. These were real violations. And it was just nobody gave a damn. I mean, there

wasn't - I mean, it didn't appear that, nice a guy as he is, Gary Krahmer was really reading these reports and going out and asking his treatment plant operators what the hell was going on, because DEQ wasn't asking him what's going on, and EPA wasn't asking DEQ. I got phone calls later from the EPA people in Washington that said, "My God, we looked on our computer, and by golly, there they are." Never looked before. And they have all these kind of things for sort of generating reports. I mean, we just have all these people in the regulatory process that are all shuffling papers around, and hardly anybody ever reads them, and it just - the people who would understand what they were reading if they read them would probably find the task so boring they've long since left. It's just crazy.

M.O'R.: On the other hand, it provides a good database when someone like you comes along.

J.S.: But it's been there all along, you know, and you kind of - so anyway, out of that, I mean, geez, a lot of people left USA. They were replaced with much better people. Just in terms of management, the organization is much, much improved over what it was. I mean, it was kind of like some very large technically-sophisticated plants that were sort of still being run by the same people that used to run the Aloha Pump Station, you know. Just the level of personnel has been upgraded and management practices and so forth.

Anyway, it was a shock to everybody, and it got fixed. It didn't fix DEQ, didn't fix EPA. I mean, if a similar thing happens somewhere else, it will come as another surprise. They still don't pay any attention, the people on the - sort of that have to face

the ratepayers, and that actually have to spend the money and do have to perform, the USA-kind of people, they upgraded their operation.

M.O'R.: And that came out of the lawsuit?

J.S.: Sure. The lawsuits didn't require that, it's just ...

M.O'R.: They had to respond in some way.

J.S.: Yeah. The management people didn't recognize, because there was no pressure for anybody to pay any attention. I mean, EPA wasn't paying any attention, so DEQ wasn't devoting resources. I mean, you know, there's a limited amount of money and resources people have. So long as the EPA didn't seem to care, DEQ didn't care. As long as DEQ didn't seem to care, USA didn't care.

I mean, USA is not unique. Almost anyplace in the state you'll find the same thing. If there's no pressure, nobody at DEQ ever reads these damn things, then you find people just sort of writing down anything. You know, a lot of people sort of send them in some days and not other days. I mean, it's sort of like a speed limit that's never enforced, you know. All the signs say 55 miles an hour, but you see everybody else going 110, and nobody ever gets a ticket. Pretty soon everybody's driving 110.

M.O'R.: Right. It sounds to me almost like you're saying that that's almost part and parcel of the regulatory structure, that something like this would be the case?

J.S.: Sure.

M.O'R.: And so is there any way out of this situation that you can see? Any way to fix that part of the problem?



J.S.: Well, that's a much - that's sort of a universal question. You can find that no matter where you look. And so lots of people have their own ideas, and I have mine.

M.O'R.: What are they?

J.S.: Oh, I don't know. I trace it all to the Harvard Business School, myself, this whole idea that the future does not extend beyond the next quarterly report kind of philosophy, and that you do very well - literally this all did come out of first the Harvard Business School, and I was there watching it happen in the mid-70's or something.

Seriously, if you go back and read somebody like Peter Drecker on management, just management of organizations, John Kenneth Galbraith on economics and the public purpose, and certainly prior to 1970, the purpose of business was to provide a service or a product for which there was a need. In order to do that, you needed to make money. I mean, you couldn't do that for free. But the purpose was to provide a service or a product. Horizons were much longer. Somewhere in the 70's it got accepted - suddenly it just seemed to me that everybody had suddenly accepted that the purpose of business was to make money. Actually, in terms of the history of business that's a very, very recent concept. That is not a concept that existed before 20 years ago. I mean, 20 years ago and before it would have been a concept that even though there were people that behaved that way, they were renegades and outlaws and somehow not respectable. You know, business had a purpose ...

M.O'R.: A mission?

J.S.: Yes, precisely, and it wasn't to make money. The need to make money was a constraint - I mean, you had to make money, you

had to make a profit in order to be able to complete your mission, but it somehow just got completely reversed, and now it's to make money, and you sort of, well, whatever it takes to do that. And the only philosophically consistent - you know, end result is, well, everybody should be in the drug business, because that's where you make the most money. And almost any other business must be somehow amenable to stockholder suits because if the objective is to make money, you're not performing as well as you should be. I mean, you ought to be part of the Columbian cartel. It's just crazy.

But it extended to everywhere, and so everything is real short-term, and you just ...

M.O'R.: Well, these days I guess the ...

J.S.: Don't think ahead, and that just permeates everything. I mean, shoot, there's no organization that isn't screwed up because of this. You go to a place like DEQ, it has absolutely zero - well, I shouldn't say zero - it has an institutional memory measured in weeks. You know, I mean for - I mean, a government organization that has no institutional memory is -.

I mean, in the suit against USA, for example, we negotiated - I mean, our objective and USA's objective was to fix the primary problem that was causing these permit violations, and while part of it was kind of lackadaisical management, the principal technical problem was that they had, you know, the whole system was very leaky for a variety of reasons, so whenever it rained there got to be too much flow into the plants, and the plants would break down and couldn't remove as much stuff because the flow was much higher, and so permit conditions would be violated.

And so the primary objective in the settlement of the lawsuit with USA was to try - was to agree - work out a program for getting the real problem fixed, which we did. And also we brought in DEQ to be a party, at least a party to the settlement; they weren't a party in the suit, but a party to the settlement. And so what we agreed to would get writ into - would also be DEQ's plan.

And we spent - oh, geez, I don't know - three days and nights in Eugene with Judge Hogan negotiating, working through all this stuff, and it wasn't - I don't think it was six months later that DEQ was adamantly demanding some sort of - God, I think that might have been the Aloha Pump Station - some sort of change or reconstruction, something about this Aloha Pump Station and some line underneath Butternut Creek, but anyway, there developed a big citizen protest out in Washington County, and I went to see the person at DEQ who - I mean, it wasn't my issue, but I was curious why DEQ was doing this ...

[end of tape]