

JACK SMITH

TAPE 2, Side 1

January 16, 1996

M.O'R.: This is a continuation of the interview with Jack Smith on January 16th, 1996.

J.S.: When I went to Oregon State, there was not a discipline called environmental engineering. There was a discipline called sanitary engineering that was a part of civil engineering, and I got my Master's from Oregon State in sanitary engineering, and what I - which was an aspect of civil engineering like structural engineering or highway engineering or municipal engineering, but what you learned how to do was to design sewers and design sewage treatment plants. At no place in that curriculum was there anything about, you know, whether you needed one or not or whether that was the appropriate answer to it. I mean, the engineering response to the end of a pipe is that a sewage treatment plant gets built on it, and we learned how to do that, and I designed sewage treatment plants, and I designed pipes and so forth.

It was only later when I went to Harvard that there was a concept of environmental sciences, and there is sort of a mesh of - at least in the water area of aquatic chemistry and biology and kind of systems analysis and ecology, the way - kind of the way the natural world works - and that kind of got to be called environmental engineering.

And then along - oh, gee, when was it? It was kind of coincident with the first Earth Day, whenever that was. I think it was, what, 1970 or mid-70's, whenever the first Earth Day was. It was

about 1975. I remember it was - I always figured that it was probably the greatest public relations coup that I'd ever actually watched happen.

M.O'R.: The first Earth Day?

J.S.: No, it was that during that year, might even have been the same month, but all civil sanitary engineering firms across the face of the nation, virtually on the same day or in the same week or something, it's like they all took down their civil sanitary engineering signs and put up new ones that said environmental engineering. So the people that knew how to build things out of reinforced concrete got renamed environmental engineers, and so environmental problems just sort of fell into their province by virtue of the name change. I remember at the time thinking, "God, someplace there's a genius."

It used to be - when I was at Oregon State I worked for a year for CHMM, and my major professor at Oregon State was Fred Mayfield, who was the founder of CHMM, and I knew - I have known all the partners, the founders of that firm. And there was a way that firms worked, and there was a distinction between doing the planning and doing the design, engineering and construction that they - it was sort of accepted that the same firm wouldn't do both of those things. There was a conflict of interest in deciding what the project was going to be and then also being the one that would get the engineering fee for designing the project. It just - there was a separation, and it just always struck me as a big coup that the construction side should be able to rename themselves in a way that they would do everything, and it's been that way ever since, all stimulated by this huge influx of EPA money. Nobody had any

time to mess around doing planning and analyzing plans and critiquing them and so forth. We just needed to get stuff built, and we just short-circuited the whole thing by going directly to the people who would start off immediately designing facilities.

M.O'R.: Well, thinking about the legal angle on this, or the environmental law aspects, it sounds like maybe it was similar to environmental science, too, in terms of being recognized as a category.

J.S.: Well, you know, there weren't environmental laws. I mean, I don't know if you've read the federal Clean Water Act, but it's an inch-and-a-half thick, and it's - it isn't laid out too tidily, and every clause in it refers to 17 other clauses and sub-clauses which in themselves relate - I mean, I know because I spent just by happenstance a whole lot of years becoming an expert on the federal Clean Water Act, just by virtue of having to analyze what was being done in its name and why and what's the legal justification for doing this, and what drives this process and so forth.

But at any rate, there was the Clean Water Act, Clean Air Act, National Environmental Policy Act, all of those things happened in the 70's, and before then environmental law simply wasn't there by that name, and while there were things like the old 1899 Rivers and Harbors Act and so forth that had some - basically what was the federal implementing statute for whatever federal activities were going on in the name of water quality management was the old 1890 Rivers and Harbors Act - there wasn't a lot of regulation and decision making and so forth, compared to what started in the 70's.

So there just was sort of - along with creating a giant construction industry it also created a big legal industry, and so there was a whole new discipline.

M.O'R.: Right.

J.S.: Land use laws and so forth, that didn't - well, it got environmentally ...

M.O'R.: More conscious?

J.S.: ... more complicated.

M.O'R.: Looking back on that period in the 70's when a lot of this legislation was passed, and then looking at what's going on today in 1996 in terms of some of the activities on the Hill, trying to at least ...

J.S.: "Gut them" is the phrase you're looking for.

M.O'R.: Well, perhaps gut them, or at least not enforce them, ignore them. It just seems like such a contrast that it's kind of hard to imagine exactly how this happened during that period.

J.S.: Yeah, it just - it was a very different time. I know I've - again, representing both Oregon Shores and NEDC before the Oregon legislature and in administrative proceedings before DEQ and the Water Resources Department and other agencies here, you're sort of spending some time face-to-face with legislators, and there's an awful lot of law that people bring up or try to improve at their peril because, I mean, even statutes that have some problems that are technically relatively easy - which ought to be relatively easy to fix, but given there's a lot of law that not only could not be passed today, but if given the opportunity would be repealed today, and if you read, you know, public opinion polls the Bill of Rights unfortunately happens to be one of them. I mean, there's a lot of

law, a lot of protections, a lot of requirements that were enacted some time ago that you would not be able to do in today's environment, or the environment for the last dozen years or so.

M.O'R.: So part of what you're saying is that in terms of any perhaps well-meaning efforts to modify these laws, you don't necessarily want to open up Pandora's box?

J.S.: No. That's what I mean about the dangers of bad law is that, you know, like this - the dangers of an NEDC. You really need to have - you really desperately need to have everything be under the firm control of a very experienced lawyer because the dangers of, you know, losing a case and therefore establishing a precedent for the exact opposite of what you were trying to do is very great. You know, going to court is sometimes your only recourse, but you always do so at great risk since no matter how black and white the words that you're reading in the law may be, there surely are 15 other places where the words - where there are words equally clear that say just the opposite, for some other reason.

M.O'R.: Especially since, I guess, the courts have proven to be one of the few places where you can actually make some progress on environmental fronts with respect to public policy, anyway, these days.

J.S.: Well, it's been that way for the last decade or so that that's the place, and I guess it depends - going before a court or legislature is just - if you're trying to get something done is - in both cases are very, very scary and unpredictable propositions. If you want to stop something, that is a way, way easier - if you

want to wreck something or stop something or undermine something or corrupt something, that's a way, way easier task.

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