

**Minnesota Foundational Environmental Laws
Oral History Project**

**Narrator:
Grant Merritt (GM)**

**Interviewer:
Stephanie Hemphill (SH)**

**Recorded:
September 21, 2016**

Stephanie Hemphill (SH): The following interview was recorded with Grant Merritt on behalf of the UMD [University of Minnesota Duluth] [Kathryn A.] Martin Library Archives for the Minnesota Foundational Environmental Laws Oral History Project. It took place on September 21, 2016, at Mr. Merritt's home office in New Hope, [Minnesota.] The interviewer is Stephanie Hemphill.

SH: So, Grant, thank you for your time.

Grant Merritt (GM): You're welcome.

SH: Tell me, first of all, where you were born and where you grew up.

GM: I hail from Duluth and I went to all the schools up there, including UMD, and then I left to come down here to the Public Administration Center¹. Then I went into the Air Force in the late '50s because I was at ROTC [Reserve Officer Training Corps] up there, and the Korean War was just getting over.

SH: So, how long did you serve in the Air Force?

GM: For just under three years.

SH: Did you go overseas?

GM: No, I went to Texas and South Carolina.

¹In 1975, Grant received a Master's Degree in Public Administration from the University of Minnesota Public Administration Center, now the Humphrey School of Public Affairs.

SH: That's more or less overseas.

[Both laugh]

GM: More or less, with South Carolina.

SH: And what degree did you get at UMD?

GM: Political science, minor in Air Force ROTC, and business and economics. So, political science was really my major².

SH: Okay. And how would you say you got interested in the environment?

GM: Well, I was always interested in Lake Superior because I grew up in Duluth and also we have property up at Isle Royale National Park—due to my grandfather, 160 years ago—so we were grandfathered in on an island and cottages. So, I've grown up on Lake Superior. And I had an uncle, one of the Mattson family from East Beaver Bay, [Minnesota,] who began to tell me about what was going on at Silver Bay, [Minnesota,] because he ran the Mattson Store there and his brother worked for the contractor that was building the plant facilities there at Silver Bay. And Milton Mattson became increasingly concerned what was happening to the water quality by 1967. He came down here to New Hope, to our home, and started telling me about it in some detail. I wrote it up in my journal. So, that was November of 1967 and I decided that we've got to do something about it; there's got to be a group formed and we need to get as many citizens lined up and we had to get into politics to win this. You couldn't just win it without having political muscle. So, I got active in politics at that time.

SH: In order to get involved with the Reserve Mining [Company] problem?

GM: Yes, that's the one.

SH: Purposely.

GM: Taconite tailings are going in, by this time in '67-8, at the rate of sixty-seven thousand tons a day, right out in the lake [Lake Superior] and beyond the permit limits. We quickly checked on the permit and they were violating the permit and the state was doing nothing about it.

SH: Yes. Were you a practicing attorney at this time?

²Grant received the J.D. Degree in Law from the University of Minnesota in 1962.

GM: Yes, I was.

SH: Okay. Which firm did you work in?

GM: I was at Mackall, Crouse, Moore.

SH: How do you spell those names?

GM: M-a-c-k-a-double "L".

SH: Uh-huh.

GM: Crouse, C-r-o-u-n-s-e.

SH: Uh-huh.

GM: And—

SH: And Moore?

GM: I think, well, there were several others, Helmi and Holmes were the other names. But Mackall, Crouse and Helmi would be enough. They now call it Mackall Crouse. And I was not doing environmental law—I had nothing to do with environmental law—I was doing trucking law, motor carrier and transportation field. But I decided to get into the environmental scene.

SH: All right. Very interesting. So, we'll hear more about that. I just want to mention before we launch into the discussion of these two laws—that's the main focus of this interview—is that you're writing a book.

GM: Yes.

SH: And what's that about?

GM: Well, it's about my career, including my ancestry from the Iron Range [region in northeastern Minnesota.] So, I spent a lot of time clearing up a lot of mistakes that were made by others, by historians included, in my family's development—discovery of—the Mesabi Iron Range and then the machinations they got into with John D. Rockefeller. So, it starts out with that. The title is, Water and Iron: Legacy and Legend. And then I get into politics and my environmental work. I talk about Duluth, I talk about UMD, I talk

about how I went to Washburn grade school and went to UMD, where they had a Washburn Hall and the Washburn that's mentioned there is the lawyer that represented my grandfather when he sued John D. Rockefeller. So, I talk about that and then I get into my stint of almost five years with the state of Minnesota, as the head of the Pollution Control Agency; and then my environmental career, some of the cases that I've handled.

0:05:31.8

SH: Well, that's great. I'm looking forward to reading it.

GM: Well, thank you.

SH: When will it be out?

GM: Next year.

[Laughter]

SH: It takes a while, doesn't it?

GM: I've got the manuscript done, but yes, we're doing some editing, some final editing now and then I've got to get pictures. I've got some of the pictures here.

SH: Oh, good. Yes.

GM: And then I've got to get more footnotes. I've got maybe fifty-seven footnotes; I've got to get more.

SH: Wow.

GM: So yes, it's been a long effort. I've spent about seven years writing this book.

SH: Oh, wow.

GM: Not full-time, obviously, but— Yes.

SH: Yes, yes. So, let's get into these laws and when MERA was passed, the Minnesota Environmental Rights Act, it was several years after you were already concerned about the Reserve Mining situation.

GM: That's right, that's right.

SH: So was that a big part of how you knew that MERA was important? Or how did you get involved in all this?

GM: Yes, I think so. And somehow I got a hold—I suppose I read about it in some publication—the bill that was drafted by Professor Joe Sax from the University of Michigan, at that time, law school. And so I realized that this was a much better approach because it shifted the burden to the polluter, once you met certain criteria, and once you got through that, the polluter had to prove that there was no feasible and reasonable or prudent alternative. And I remember discussing all of that with people like John Pegors. And John Pegors is one that really is responsible for my getting active in one of the leading environmental groups at that time, Minnesota Environmental Control Citizen’s Association—MECCA. He invited me to come over to their meeting in the St. Paul [Minnesota] Area Council of Churches, on Summit and Pierce in November of 1968.

SM: On Summit [Avenue]?

GM: Summit and Pierce [Street].

SM: Summit and Pierce. Okay.

GM: Yes. It’s still there. And I came into this room—conference room, small room—and Larry Cohen was sitting at the end, chairing the meeting, he was one of the board members, and Steve Gadler was there, Steve was then on the PCA board, Pollution Control Agency board, but he was also on the board of MECCA and John Pegors was there, and Ruth McLeod, and Frank Kaszmarzek, and Bob Nelson, Paul Engstrom. There were about eight people around there and I went over and sat in the corner and listened to them talking about Pig’s Eye. And I had no idea what Pig’s Eye was—here I am over on the northwest side of Minneapolis, and they’re over there in St. Paul—all these people were connected with St. Paul. I’d never heard of “Pig’s Eye” Parrant [Pierre “Pig’s Eye” Parrant] or Pig’s Eye Island or what was going on with the plant [which was] ultimately bought by Cargill, called Northstar Steel, and they were polluting the Mississippi River. And so I then was drawn in and quickly became chairman of the Lake Superior task force. And then Milton—

SH: Of MECCA?

GM: Milton Mattson came down again to see whether we should form another organization because he was concerned that there were maybe six environmental groups at that time—he thought maybe that was too many—today, you know, we have about eighty-five! [Laughs] So we quickly decided, in a meeting here in my home, with

several others here, that there was room enough for Save Lake Superior Association. So then, when I got active with the hearings on Reserve [Mining Company] I was involved for Lake Superior Association and MECCA.

SH: Okay, let me just interrupt briefly and ask you to spell some of these names.

GM: Yes.

SH: Steve Gadler.

GM: Gadler, G-a-d-l-e-r.

SH: Ruth McLeod.

GM: McLeod. M-c-capital "L"-e-o-d.

SH: M-c-then capital "C"-l-e-o-

GM: No, no. M-small "c"-capital "L" is, I think, the way.

SH: Oh, okay.

GM: McLeod.

SH: No other "c" in there. Okay, sorry. And then, Kaszmarzek?

GM: Oh, boy! I don't know if I can get that one!

[Laughter]

0:10:05.4

GM: Frank became a very well known artist and he ended up at St. John's [University].

SH: Right. I'll look it up, then.

GM: Kaszmarzek, oh, boy. K-a-s-c-m-a-r-i-k, Kas... It's almost phonetic, but yes, you can look it up.

SH: And then there was a Nelson?

GM: Bob Nelson and Paul Engstrom. E-n-g-s-t-r-o-m. They were the co-chairs of MECCA.

SH: Okay.

GM: And we used to meet them when I got on the board; we'd meet every week over there, sometimes until midnight—I'd be driving home after midnight—and it was the most active environmental group at the time because we could go to the media right away. We didn't have to have some organizational board debate what we were saying. It was really unique in that regard. I remember, I talk about that in my book a little bit, how I learned to speak in headlines from Larry Cohen, who later became mayor of St. Paul and judge and county commissioner. He was very good at speaking very succinctly, so the headline writers would pick that up.

SH: And that was C-o-h-e-n, Cohen?

GM: Yes. He just died. We just had a funeral for him last week.

SH: Oh, really? Okay, so what year are we talking about here?

GM: Well, '68 is when I joined MECCA.

SH: Okay.

GM: So from '68 until March first, or April first, really, of '71, I was on their board. And then when I became PCA director, I resigned.

SH: Tell me a little bit about how you became PCA director. Did you know Wendy [Governor Wendell] Anderson?

GM: Yes. Well, as I mentioned, I realized we couldn't win this battle against Reserve Mining Company unless we had political muscle. It would take a lot of political work. So I guess, actually when I started, I was already elected chairman of the DFL [Democratic-Farmer-Labor Party] ward club here in New Hope. And so, then I decided I'd start with the New Hope ward club and work up to the third congressional district in the state. And then I got appointed by Warren Spannaus, who was the chairman of the DFL club—of the DFL *Party*—for Minnesota, and a classmate of mine, a law classmate of mine; he appointed me as co-chair of the pre-platform committee, getting ready for the 1968 State Convention. So we held some hearings around the state and one of them was in Duluth. We developed a plank opposing Reserve Mining dumping tailings into the lake. And I remember this, where I was first interviewed by a television reporter, Dick Gottschald, from Channel 10—do you remember him? You do! [Laughs] All right. Dick, he was a typical, I guess, well I assume he was a Republican—I think he might have been a UMD fraternity brother of mine—but I knew him. And he got me to talk about Reserve

Mining in, probably the spring of 1969–1970. I'm sorry, 1968.

SH: Well, you said that this was the '68 DFL Convention that you were preparing for. I think you said that.

GM: No, that was, that's right, it was the '68, so it had to be spring of '68 and that's before I was with MECCA, because we got to meet in the Hilton Hotel over in St. Paul, you know, on Kellogg Boulevard in June of '68. That was a terrible fracas, because it was [Hubert] Humphrey versus [Eugene] McCarthy and–

SH: That was the DFL State Convention?

GM: Yes, it was the state convention and by this time I was then the leader of the Humphrey fraction on the platform committee.

SH: Hmm.

GM: And we passed the resolution on Reserve Mining, but we also passed a resolution which was worked out with the McCarthyites on the war–on the Vietnam War–and both of those got me into some serious discussions with, first of all, John Blatnik, the congressman from Duluth. “I want that plank out of there!” [Slams fist on table for emphasis] I said, “John, we're not taking it out!” This is up on the top of the hotel and oh, he was mad. [Laughs] He would not do that.

0:15:08.8

SH: Now, which plank did he want out, the anti-war plank or the Reserve Mining?

GM: No, no, no, he wanted the Reserve one out of there.

SH: Okay.

GM: Then I had to meet with Eugenie Anderson to talk about our Vietnam plank, and there we had worked out with the McCarthy people, especially Leo Hurwicz who later won a Nobel Prize. Leo was a prominent teacher and professor of economics at the University of Minnesota.

SH: How do you spell Hurwicz?

GM: Hurwicz is H-u-r-c-w-i-c-z. [Correct spelling is Hurwicz.] And there now is the Heller Hurwicz division of the economics department at the university–in fact, I'm going to an event there coming up in the next week–and Leo and I and a couple of others from both

factions— The Humphrey group had a bit of an edge; we were twelve to ten, that's how close it was—twelve, in other words, Humphrey, and ten, McCarthy. We worked out a plank, which called for withdrawal of thirty-five thousand troops and a coalition government in Vietnam. Okay, we passed that in the committee, passed it on to the full convention and that's when I got called upstairs again and this time to meet with Eugenie Anderson—

SH: Who is she?

GM: She had been Harry Truman's ambassador to, I don't know, Denmark or some place. Prominent DFL woman from [the] southern part of the state, I forget if it's Owatonna or some place down there. Very, very nice lady, but she was adamant that the Paris peace talks were at a very critical stage, "We can't have this plank." And, of course, Humphrey was there and Johnson was, you know, looking over his shoulder. [Laughs] He couldn't stand us either!

SH: President Johnson, that is.

GM: You remember that? [Laughs]

SH: Yes.

GM: And so, I'm beginning to think, "Who the hell am I?" I've read enough about this war, so I was against it by this time. And we had held a big meeting out here in New Hope, we had about a hundred and some people, with a debate from Carl Auerbach, dean of the law school on behalf of Humphrey, in favor of the war, and John Wright, a professor at the university, against the war.

SH: How do you spell Auerbach?

GM: W-r-i-g-h-t. Auerbach was A-u-e-r-b-a-c-h. Carl Auerbach.

SH: Okay.

GM: And so, then I read a paper by—one of our New Hope members was a journalist, worked for a number of publications—and he wrote a "write paper", you might call it, on the war, and that convinced me that we gotta do something to get out of this war. So I was against the war. But then I began to think, you know, "Who am I to second guess the vice president of the United States and Eugenie Anderson?" And then, especially, she's telling me, "We can't have this because we'll disrupt the peace talks going on in Paris." So, they got me to back off on the floor. It's the only time, Stephanie, that I lost my train of thought, because they got me to support a mealy-mouthed different plank,

and I didn't want to do that, but I did it. And I had to kind of start over again. This is, you know, a big crowd. It had a radio going, statewide, and I'm up there doing something I don't want to do. [Laughs] So I learned a lesson from that. And the lesson is, if you've got your mind made up, you think you're right, stick with it! With some exceptions, but, you know, I did it.

[Both laugh]

SH: So you were getting quite a lot into politics.

GM: Yes, very much so.

SH: And how did you then move from being a political operative, really, in the party, to being appointed by Wendell Anderson?

GM: Well, by this time, Wendy Anderson must have taken notice. And by the way, I had met him at law school but I really didn't know him until '68, early '68, when he headed the Humphrey campaign here in the state. So Wendy and I got to know [each other] then and then, as we got into the 1970 convention, he came to me—I was supporting Warren Spannaus, my classmate, for governor—but then Warren dropped out and Wendy came right over to my office one night, I was writing a brief, and asked me to support him. And the reason he did that is I was third district, congressional district chair, by this time. And I got to be chair by Dick Moe, who succeeded Warren Spannaus, because Warren Spannaus was running for governor. So, Dick became the chairman of the state DFL Party—he's from Duluth—and he knew me, so, he asked me to run for the third district. So I did, and I won. We had a, quite a spirited contest and I got in sort of late, but I won. So, by the time Wendy came to see me in May, I was even more involved in DFL politics. And I was the first—I signed on with him—I said, "Okay, Wendy, I'll support you." He had helped me, by the way, get a ticket to the '68 convention. I went to the national convention in Chicago; that was memorable, to say the least.

0:20:49.9

SH: I'll say.

GM: And Wendy got me a ticket as an alternate. And then I switched with somebody and got on the floor. So I knew him pretty well and he came to me and that's how I— Then I became his environmental aide during his campaign, then, in '70. I'd advise him on, I talked to him about the Reserve Mining case and he quickly, to his credit, jumped on that. He knew there would, I'm sure, there was going to be opposition from Joe Begich up on the Range, Jack Grahek, those guys, Tom Rukavina. [Laughs] But he supported me, supported our position for on-land disposal. That's what we were

promoting. Get these tailings on. We weren't trying to shut them down, we wanted them to go on land, give them some time to go on land, like every other taconite company in the country—or in the world. And so Wendy signed on, and not only that, but he followed that up with personal appearances in the campaign. For example, he went to Duluth and testified at the Federal Enforcement Conference hearing up there in 1970, in August 1970. And, I don't think I went with him on that occasion, but I did go with him after he was governor. Within two weeks, first of all, the first act in office was a letter, which he framed—it was in his office—to the Corps of Engineers saying, "Don't renew that permit for Reserve." And then he came up and I went with him—flew up in an airplane—and he testified at the Enforcement Conference as governor. So he really helped us move this support along for on-land disposal.

SH: Hmm. So in 1971, when he took office, he named you the head of the PCA?

GM: That's right.

SH: Right away?

GM: Yes.

SH: So, you served for five years, you said?

GM: Well, four and a half.

SH: Oh, okay. '71 through '76, more or less?

GM: Yes. And I was actually appointed on March first and took over on April first.

SH: Okay.

GM: I was appointed the same day that Al Hofstede—who just died—was appointed Met Council [Metropolitan Council] chair.

SH: Oh.

GM: I remember that.

SH: Now, I came across the name during my research about your predecessor, I guess, John...

GM: Badalich.

SH: Badalich, and apparently he had some, he was aware of this proposal for the Minnesota Environmental Rights Act and had some suggested changes.

GM: Oh, I didn't know that.

SH: Okay. You didn't know that.

GM: That's interesting.

SH: Okay. So, as you were executive director of the MPCA?

GM: That's right, yes.

SH: You were aware of this Environmental Rights Act; you already knew about it at that time?

GM: Oh, yes, oh, sure. Well, because I had given the bill to Wendy two years before, remember, in '69.

SH: Okay. Tell me about that.

GM: So yes, I knew that that was a key bill and so I talked to Wendy. What happened was, the governor's office got me together with Jim Peterson, a staffer for the governor's office, and then later, maybe another one. And we drafted the environmental message that we talked about, which was April—it was easy to remember—because, April one, 1971. You've seen that, or I've got a copy of it here you can look at. So, we put in the Reserve land disposal issue and he talked about it on the, or in the message.

SH: He talked about the Rights Act?

GM: Yes, he did.

SH: And the Rights Act.

GM: Yes, and the Rights Act, too.

SH: Okay, all right.

GM: Yes, he did, in fact, in that piece, it's right here. [Reaches for a paper.] I have a quote from his environmental address, yes, "This legislation will give Minnesota citizens a direct and powerful role in saving the environment for future generations."

SH: Hmm.

0:25:14.5

GM: And when I went to the—you know, we had a policy making board, thanks to Senator Gordon Rosenmeier, at the Pollution Control Agency, so I was kind of, I was the executive director, the administrator, and also the advocate. But I had to get the board to vote on an issue like this, any of the key issues. And as I say in my book, the first couple of months, well, actually the first year, I was facing a board that was mostly Republicans, appointed by LeVander, and only one of them was a real environmentalist, that was Steve Gadler. Steve Gadler gave me this pine tree down there—see that branch up there? It's now about sixty feet high! [Laughs] He gave it to me when it was about this big— And so, they, the Republicans, introduced an amendment to the MERA bill, saying you had to prove injury. A plaintiff had to prove that they were personally injured. And, of course, I didn't like that and so I spoke out and, as I say in my book, against that. It passed five to three and the three would have been the two appointees by Wendell Anderson, because it took him a while to gain control, or at least, appointees that he wanted.

SH: Yes.

GM: They didn't necessarily vote the way I wanted to, but they were, sort of, friendly, you might say, and that was Dale Olsen and Hal Field and then Steve Gadler always voted for the environment.

SH: Hal Field? F-i-e-l-d?

GM: Yes, that's right. He was a lawyer with Leonard, Street, Deinard.

SH: And Dale Olsen? S-o-n?

GM: Yes, s-e-n.

SH: Oh, okay.

GM: Yes, he's a professor at UMD.

SH: So, why is it important—

GM: So, I had three votes, but it wasn't enough.

SH: No, no.

GM: But that change didn't affect what we passed over at the legislature.

SH: That was just the opinion of the MPCA board, but it didn't hold sway in the legislature.

GM: That's right.

SH: And why was that important to you? Why was that the wrong way to go, that you have to prove injury?

GM: Well, because it weakened the right of a citizen to bring an action. Because the way it came out and the way we wanted, you didn't have to be injured, you could speak on behalf of the environment. A little like the *The Lorax*, back in [Dr.] Suess' book. So, you didn't have to be "injured" or prove that you were damaged some way, you know, financially. That was a significant difference.

SH: That was really the heart of it, wasn't it?

GM: Yes, yes.

SH: So, what other issues do you remember being brought up and objections and concerns?

GM: On MERA, you mean?

SH: Yes.

GM: I don't remember any. There again, Dick Flint could maybe remember some.

SH: Okay.

GM: But there, we didn't have much trouble. An example, Stephanie, of what was going on over there was that, when I was up for confirmation—you know how gubernatorial appointees had to be confirmed by the senate—I went before the Civil Administration committee and Wayne Popham, Republican senator from Edina or Minneapolis, was the chair. And I knew Wayne Popham a little bit, because we happened to belong to the same Hennepin Avenue Methodist Church, but I didn't know him well. But before I was up—and they called me over there right away—it wasn't like they sometimes do now, make you wait for six months, I was over there within a month, he got me aside before the hearing opened. He said, "Well, Grant, we Methodists must stick together." And he

greased the skids and I got confirmed. [Laughs] The only one that asked me questions was George Pillsbury; and George had been fed questions about Reserve Mining, not about MERA, but about Reserve Mining. But I don't think his heart was really in it and I was able to answer the question. [Laughs]

SH: So, do you think it was a different era?

GM: Oh! It certainly was! [Laughs] Bipartisan, like we haven't had since, I mean, it disappeared some years later, not too long ago.

SH: Now, before we started recording, I think you said this MERA is the most important environmental law we have.

GM: Without question, it is.

SH: Now, why do you say that?

GM: Well, because you find out that state agencies don't always do what they are supposed to do. So, you can't rely necessarily on the government to solve environmental problems. So the citizens play a vital role. And right after this MERA was passed, a farmer down in Freeborn County, Bill Bryson, was confronted with the county wanting to put a road right through a wetland, as we call it now. And so, he used MERA and a classmate of mine, Larry Downing, and I think, Will Hartfeldt, were both on that original law suit and they won, but it was appealed to the [Minnesota] Supreme Court. Supreme Court affirmed, but they remanded, and went back for another hearing and they went back up again and it was ultimately voted in by the Supreme Court. And so, it was used by citizens and it's been used a lot since then; I don't know how many times, probably fifty or more times. Because—

0:30:55.8

SH: You mean MERA has been used?

GM: MERA, yes, because you know, a good example of how government often doesn't do the job, is the PCA, before I went over there, people on the North Shore [of Lake Superior] were beginning to see green water going from Silver Bay, even down to Duluth, and over to the Apostle Islands [Wisconsin] and Bayfield [Wisconsin]. And they would write letters to the PCA, and you know what, the PCA, under Badalich, would do with them? They'd send them to Reserve to answer! [Laughs] That's what was going on. And so the permit, which was issued back in the '40s, to Reserve and its predecessor, said you couldn't have any tailings going outside a nine square mile zone—in other words, three miles out and across, and back. Of course, it was clearly evident, with

proof—scientific proof—that they were going well beyond. And the state never did anything about it until people, citizens, began to get really concerned. And we got, and the thing that really developed public sentiment against Reserve, and the dumping of the tailings, was this Enforcement Conference in Duluth, it was set up by the government and there had been about fifty Enforcement Conference proceedings before the Lake Superior one, and the Lake Superior one went through six different sessions. And citizens could get up and testify; and the media, of course, loves controversy, so they were there. Maybe you were there?

[Both laugh]

GM: This was before your time, but—

SH: A little bit before my time, but not much.

GM: But it was covered by Ron Way, from the Minneapolis Tribune, and then Dale Fetherling, and the St. Paul paper, and the TV; the electronic media were all there. And so, it became statewide, even beyond statewide interest.

SH: And also, in regard to the state not always doing what it should be doing, there's a thing in MERA, there's a provision that says that citizens can sue an agency of the state, right?

GM: Yes, right!

SH: Tell me about that.

GM: Well, you know, that's what we used to call, in law school, a writ of mandamus, and that's been done, too, but not as often as a lawsuit against a polluter. But it has the same kind of effect as a mandatory injunction or mandamus, requiring the state or the agency, whatever agency it is, to take action if they meet the criteria.

SH: Um-hmm.

GM: I think the criteria are pretty much the same.

SH: So, do you know of any cases where it's been used for that?

GM: I don't, not off hand, no.

SH: And besides the Bryson case, are you aware of other particular cases or was that, kind of, the most influential one?

GM: I think it was the first one. Well, I've used it myself, in a case involving invasive species called the viral hemorrhagic septicemia, VHS case, in federal court. It's been used a lot.

SH: Well, tell me about that case.

GM: Well, we—

SH: How was that under MERA, but it was in federal court?

GM: That's right, it was— The bacteria was in all of the Great Lakes except Lake Superior and we knew it was going to come into Lake Superior; that was clear. So, we sued several of the state, or federal agencies, not state, sued the Corps of Engineers, the Department of Agriculture, and we pleaded that it was an imminent likelihood that it would come into Lake Superior. Well, it turns out during the course of the hearing, it actually came into Lake Superior, so we used MERA as well as federal statutes. And unfortunately, the judge, Rosenbaum, made a mistake, he didn't think we pleaded imminent injury, which if the, in this case the bacteria wasn't there yet, you have to prove that it was coming in, in all likelihood, or an imminent, next year. Well, it came in before he decided, or right after he decided the case, so we didn't win because he goofed up on it and we couldn't appeal it in the Eighth Circuit because the Eighth Circuit was full of judges that would have confirmed James Rosenbaum. So, it didn't succeed in that case, and so it came into Lake Superior.

0:35:55.8

SH: So, yes, are you saying the judge had a more conservative interpretation of the law that you think he should have?

GM: Oh sure, yes, he was a [President Ronald] Reagan appointee and he got to be judge because he was the campaign manager for Rudy Boschwitz. [Laughs] And I've talked to him about it directly, and he said, "Oh well, the Eighth Circuit corrects my mistakes." Well, they would not have done that. [Laughs] So anyway, that's where, one that I've used. Probably used it in others.

SH: Okay, and that brings up a question, which is, how have the courts interpreted MERA? So, MERA gives citizens the right to, you know, bring a case. But then it all really depends on how the judge decides to rule.

GM: Well, it did in that case with the federal judge. But the state, because of the Supreme Court decision has decided that you can use MERA as long as you prove, the

prima facie case would be the legal requirement, the criteria that I've mentioned. So, it's clearly used here in Minnesota. But you still have to prove that a protectable natural resource—as defined, there's a whole bunch of definitions—is destroyed or polluted or impaired to a material adverse degree.

SH: Or is likely to be?

GM: Yes, or is likely to be, that's right.

SH: So there, Judge Rosenbaum could have recognized that it was likely to be there.

GM: Yes. He should have, yes, yes. Good point.

SH: Now, when you say that the state Supreme Court ruled in its favor, you're talking about the Bryson case, right?

GM: Yes, that's right.

SH: Yes, okay.

GM: And that hasn't been overruled; so, that's the law.

SH: So, that's like a precedent for all the other cases.

GM: That's the law, yes, that's the precedent for the MERA.

SH: Okay, all right. So, I have a question here about strengths and weaknesses of MERA; any thoughts about that?

GM: Well, it's got lots of strengths; I don't see any weaknesses. It's the only time, that I'm aware of, when the burden has been able to be shifted to the polluter, or the defendant, and you have to meet the criteria and so, as carefully drafted by Joe Sax—by the way, I got to meet Joe Sax later on, well after I left the PCA, probably in '82 or '83, on Isle Royal. The superintendent of Isle Royal National Park [Michigan] had somehow invited Joe Sax to come up from Ann Arbor [Michigan] and so he was over at the park headquarters in Rock Harbor and he knew I had been involved with MERA, I guess, or somehow he learned that, so he brought Sax around to our dock and for some reason Sax didn't want to come up to our cabin, so we sat on the dock and talked about this law. So, I was meeting the hero of this whole thing, because I regarded him as that. And then he went on to become a very well known professor. He left Michigan and went to Berkley, to the University of California. He's dead now, but he wrote books. You mentioned a book; and I have his book on the National Parks.

SH: So was he pleased to learn that Minnesota had passed a MERA?

GM: Yes. I think he knew that, by the time I met him. I can't remember; I didn't make notes on the conversation, but we had a nice chance to meet him.

SH: Okay, well we've talked a lot about MERA. I'd like to talk a little bit about MEPA [Minnesota Environmental Policy Act,] although you say that you were not so involved in MEPA.

GM: No, I was certainly in favor of Environmental Impact Statements [EIS] and, of course, I followed the clean water legislation very closely in Washington [DC] and Dave Zwick was one of the chief spokesmen for that law.

0:40:02.4

SH: Dave Zwick. How do you spell that?

GM: David Zwick. Z-w-i-c-k. And he wrote this book. [Reaching for book.] He lives here now, by the way, in Minnesota, Minneapolis, and has been for quite a while. Here's the book he wrote.

SH: Water Wasteland. Hmm, that sounds familiar.

GM: That's what he looked like back then. He had a co-author; and I got him to endorse it, and Ralph Nader also signed it for me.

SH: [Laughs]

GM: And Zwick testified while I was there for the Muskie bill, before John Blatnik's committee. Blatnik had a heart attack and wasn't chairing it, but it was a big deal, I mean, the packed courtroom.

SH: What do you mean, "Muskie bill"?

GM: That was the Senate, referred to as the—Ed Muskie was the sponsor, Senator Ed Muskie—and that was the Clean Water Act. And the hearing I'm talking about was December 1972 and I was there, Wendy was there, testified; Nelson Rockefeller, Bella Abzug, and David Zwick testified. And he had been studying this whole thing to write this book and was the most knowledgeable witness at the, that ever appeared there. I was there and he was like a virtuoso violin player. [Laughs] Very smart guy. You might want to meet him sometime.

SH: Yes.

GM: But anyway, the Clean Water Act talked about the Environmental Impact Statements.

SH: Okay, I didn't know that.

GM: Yes.

SH: So they're linked in your mind.

GM: They are.

SH: Minnesota Environmental Policy Law.

GM: But there might be a separate law, though I don't know, but it doesn't matter, because MEPA was separate, here in Minnesota, Minnesota statute.

SH: Yes, right.

GM: But I didn't have a lot to do with it. We supported it, you know, I probably had discussions with the governor's office, and maybe I was over there, [at the Legislature] but I didn't have a direct hand in it like I did with MERA. And then Peter Gove was the liaison and worked with, well, others that you probably know. I think Chuck Dayton was involved and maybe John Herman; I don't know who else.

SH: What I was wondering—

GM: But they were in the picture in Wendy's office, so I assume they were both involved.

SH: Okay, yes. What I was wondering about was why the establishment of the Environmental Quality Council, later board, was separated out from MEPA. I think originally it was in the same bill, but then they had a separate bill.

GM: I don't know.

SH: Okay.

GM: But you should talk to Peter Gove.

SH: Okay. All right.

GM: Do you want his phone number?

SH: Yes, I do. We can do that in just a minute.

GM: I'm sure he'd be glad to talk. He's retired. He went on, you know, he went to Washington with Wendy, then he went to the National Park Service, came back here and to make a long story short, he ended up vice president of St. Jude's Medical and he retired at fifty-five and he's been involved with about half a dozen environmental groups since then, so he's very, very busy and he lives up in North Oaks. And his phone number is, and he goes by his cell, XXX-XXX-XXXX.

SH: Okay, thank you.

GM: I probably have his email address, but I don't have it written down.

SH: Well, let me just ask you then, for kind of philosophical thoughts about, you know, you've been involved in a lot of things in your life—

GM: Um-hmm.

SH: —how do you feel about what you did to promote MERA? The Rights Act?

GM: Yes, well I feel very fortunate that somehow I found out about that law and got Wendy Anderson to introduce it and then he supported it and then because I—I didn't seek that job with the Pollution Control Agency, but they [laughs] [Jonathan] Lebedoff, and Moe, and Wendy, and maybe one or two others, started pestering me to take the job. And then I realized I could do more *in* government than out of government, although I'm a big advocate for citizen participation and activity. But I feel very good about that. I had, however, a problem, because as a result of going over there, I lost the chance to go back to Mackall, Crouse and Moore.

SH: Why?

GM: Because—and I had a leave of absence, a written leave of absence—but I stepped on too many toes. [Laughs] Especially NSP [Northern States Power]; NSP was very powerful. I used to go around the state giving speeches, because I was really an advocate in that job, the PCA and NSP would have a representative at damn near every one of those meetings! [Laughs] So, I got in trouble because of that; because NSP has a habit of hiring about a hundred lawyers around the state so they're all on their side, you know, they got— You know, my old law firm was one of them. They didn't have that much business;

but they did work for NSP. And so, because of my activity in MECCA, that got me into some trouble. And then, although I had this leave of absence, I talk about it in my book, I couldn't go back and I was very upset by that. It took about three months to get over that, because I liked that firm and I liked what I was doing, partly because I would go to these ICC [Interstate Commerce Commission] hearings and trucking hearings, by the state, but primarily interstate.

0:46:08.2

SH: Interstate Commerce Commission?

GM: Interstate Commerce Commission. And I would get in lots of billable hours, and so I could come back home after four days on the road, you might say, or writing briefs back here and be active in MECCA or Save Lake Superior Association, so it was a good fit in that respect. So I never went back to that firm, but I went to some other firm. And you were up at my other firm, and I have to ask you a question, because you interviewed me. I remember you coming to my firm, Kalina Wills, up there in Brooklyn Center [Minnesota], and you interviewed me a lot about the Reserve case and then, uh, it never got aired, and I was always curious whether some editor didn't like what I said about that. Do you have any memory of that?

SH: You weren't in that documentary?

GM: No.

SH: Oh.

GM: I watched it and, was it on TV?

SH: It was on the radio.

GM: I thought it was radio, yes.

SH: Just the radio.

GM: Anyway, I was curious.

SH: I don't know.

GM: I wasn't blaming you, but I thought it was a good interview, but I thought, maybe I was too much of an advocate or too strong and some editor— You know, I know how it works, the editors can— [Laughs]

SH: Ah, I don't remember it that way. I'm sorry you didn't make it—

GM: I wonder if I could get a copy of that, though.

SH: Sure, I can make you a copy. It's on the Internet.

GM: Oh, it is?

SH: Yes, we could search for it here in a minute.

GM: Oh, I thought we had to go to MPR and dig through a—

SH: Yes, that was a great interview and you gave me the picture which I used for the graphic for that, the thing spewing out of the big pipe, great big huge pipe, into the Lake.

GM: [Laughs] That's a great picture. That was taken by an inside job and I got a hold of it through my deputy, Chuck Carson, somehow. [Laughs]

SH: Ah.

GM: Yes, I used that picture.

SH: How do you spell Kalina Wills?

GM: K-a-l-i-n-a, W-i-l-l-s.

SH: Okay.

GM: Yes.

SH: Okay.

GM: But I remember that's the last time I've seen you.

SH: Yes, that's right. I think that's the only time we've ever seen each other.

GM: And it'd be fun to see that, because that wasn't that long ago, maybe five years ago?

SH: Probably about eight or ten.

GM: Is that right?

SH: Yes.

GM: But then a transcript of this would help.

SH: Yes.

GM: And then I've got to get back to you on that.

SH: All right.

GM: I think I can ask someone to do that.

SH: Well, this has been fascinating; thank you so much for your time!

0:48:34.8

[End of interview]