

# **An Independent Review of the State-Federal Environmental Partnership Agreements for 1996**



**1996**

**AN INDEPENDENT REVIEW  
OF THE STATE-FEDERAL ENVIRONMENTAL  
PARTNERSHIP AGREEMENTS FOR 1996**

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T.P.

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## *Foreword*

State environmental agencies and EPA are now well into their second year of working together to reformulate their relationships in implementing the nation's environmental laws. In May 1995, they announced the creation of the National Environmental Performance Partnership System (NEPPS), but it remains very much an evolving and developing system. As is so typical with environmental programs, a few states moved to the front to experiment with one of the centerpieces of the NEPPS: Environmental Performance Agreements or Performance Partnership Agreements.

These agreements between a state and an EPA regional office are intended to establish the terms of the partnership between the two levels of government in implementing environmental programs in the state. The agreements are to be based on joint planning and priority setting, allowing the two agencies to establish more of a shared or partnership approach to achieving their goals, both joint and independent. Six states signed such agreements for the federal fiscal year 1996, with the stated intent by all parties that it was to be a year for experimenting with the new system and various options for implementing it. Roger Kanerva, Illinois EPA's principal negotiator, noted that although the pioneering states shared ideas during the process of developing their agreements, they deliberately avoided discussing some of the specifics of their approaches so as to assure diversity.

Even given the short lead time for development, these first six agreements demonstrate the potential of the NEPPS for increasing cooperation between state agencies and EPA, for improving the efficiency of implementation of environmental programs, and for, ultimately, accelerating the process of achieving the environmental goals of the laws. Twenty-eight states are working on agreements for fiscal year 1997, and the pioneering states have been sharing their ideas and experiences, both with the states and with EPA regional offices and headquarters, as they all seek to learn from, and improve on, the first year.

One area that obviously needs additional development is methods of determining when a state program is successful. EPA and the public can feel much more comfortable about giving states substantially more flexibility in how they implement federal environmental programs if they can be confident that the state's performance can be reliably measured and reported in ways that relate directly to environmental quality. The document setting out the principles of NEPPS states that

the "increased use of environmental goals and indicators" is one of the principal components of the system. The initial agreements use some measures of environmental performance, but there is general agreement that more and better performance measures are needed, particularly measures that have been widely used or that have a base of agreement on their validity or usefulness. At the annual ECOS meeting in September 1996, the state environmental commissioners agreed to continue working together to develop new measures of environmental performance. Similarly, EPA has continued developing environmental performance measures.

## *Chapter One*



# **Introduction**

## **I. PURPOSE OF THIS REPORT**

In May of 1995, the U.S. EPA and the states agreed to reform the process and means by which EPA oversees state implementation of the federal environmental statutes. A new system for working together, called the National Environmental Performance Partnership System (NEPPS), was created. The first phase of reform was to include a year for volunteer states and EPA to experiment with a new type of state-federal agreement on the respective roles and responsibilities of the state and federal agencies. The experimental year is concluding and there is a need to evaluate the experiments so that the results may be used in shaping permanent reforms to the oversight system and the state-federal relationships generally. A review by an independent party not involved in the process can provide an objective analysis of the agreements and the process. This report describes the findings of an independent evaluation by ELI of the first experimental Environmental Performance Agreements between five states and EPA.

## **II. METHODOLOGY**

The principal findings of this report are based on a close review and analysis of the texts of the agreements signed by EPA and five states. Only the texts of the agreements themselves were available to ELI. Therefore, no supporting documents, documents referred to in the agreements, or documents incorporated by reference were reviewed. An agreement between a sixth state and EPA was signed after ELI had completed its review and analysis of the other agreements and thus is not covered by this report. The Environmental Performance Agreements are analyzed here in terms of how they implement the National Environmental Performance Partnership System, as outlined in the May 17, 1995 agreement signed by the Administrator and Deputy Administrator of EPA and the Directors of the Colorado and Illinois environmental agencies for the states. The NEPPS was designed "to strengthen [State and EPA] protection of public health and the environment by directing scarce public resources



toward *improving environmental results, allowing states greater flexibility to achieve those results, and enhancing [State and EPA] accountability to the public and taxpayers.*" This review of the state-federal agreements, therefore, focusses on whether, and how, the agreements achieve and measure environmental results, provide flexibility, and provide accountability. Thus a key objective of the review was to identify the measures of performance and indicators of success specified in the agreements and to evaluate how those measures relate to environmental results.

As part of the implementation of the NEPPS the EPA program offices in 1995 began a process of revising their measures of success to meet the twin goals of reducing their number and increasing the use of measures of environmental results. The first set of revised EPA measures were communicated to the states in a memorandum from Michael Stahl, Deputy Assistant Administrator, OECA, dated August 25, 1995, entitled EPA Program Office Program Performance Measures. ELI reviewed this memorandum in conjunction with the agreements to determine the extent to which they use the same or similar measures of success.

EPA and the states recognized that the revised EPA measures for fiscal year 1996 were an interim step in the process of developing better measures of environmental results. Therefore, ELI also compared the EPA and state measures and indicators to those identified in the August 22, 1995 revision of *Prospective Indicators for State Use in Performance Agreements* [hereinafter *Prospective State Indicators*], prepared by Florida State University as part of The State Environmental Goals and Indicators Project (SEGIP). ELI used that report because it collected environmental indicators from all the states and evaluated their suitability for use on a national scale. *Prospective State Indicators* presents a set of specific environmental indicators that are appropriate for use in projects of national scope, and it analyzes the indicators by placing them on a continuum from activity measures through environmental measures of emissions, ambient conditions, uptake or body burden, and health or ecological effects. Thus, it appeared reasonable to compare the measures used in the EnPAs to these indicators as well as to the EPA Program measures.

In order to better understand the relationships between these different indicators, ELI prepared summary tables of examples of the indicators from the three above-mentioned sources. These tables were intended solely to assist ELI in understanding how the EPA-state agreements implement NEPPS. Nevertheless, ELI recognized that the tables would be more useful if they were reviewed by the U.S. EPA

regional offices that negotiated the agreements with the states. The regional and program offices provided extensive and very useful comments, including in several instances identifying all of the indicators contained in the agreements and comparing them to the program office indicators. ELI appreciates this effort and used the comments to assure that the analysis in this Report is valid.

Flexibility is a subjective quality and one that ideally would be evaluated in practice. Nevertheless, it is important to evaluate whether the agreements are designed to allow states flexibility in achieving the goals of the federal environmental statutes. Governmental institutions are accountable to the public and taxpayers in many ways and this report is not intended to comprehensively evaluate this aspect of the NEPPS. The analysis of the agreements did, however, include evaluation of public involvement in the system. Finally, because one of the cornerstones of the NEPPS is the reliance on the states to implement the federal environmental statutes, ELI compared the items covered in the agreements with the appropriate federal program priorities identified in the Guidances issued by EPA's National Program Managers (NPMs) for fiscal year 1996.

ELI recognizes that implementation of the federal environmental statutes is a complex task and that the associated roles and responsibilities of EPA and the states are multi-faceted and are covered in numerous documents, including delegation and authorization documents, in addition to those reviewed for this report. This report is, nevertheless, limited to a review and analysis of the principal NEPPS documents listed above.

In preparing to review the Environmental Performance Agreements and in order to understand the goals of the parties, ELI interviewed officials from states with agreements and officials from states that chose not to seek an Environmental Performance Agreement in the first experimental year. ELI also interviewed EPA officials and other persons knowledgeable about the process and about the past oversight system. Officials from the States with agreements reviewed in this report were asked to review the report for accuracy and to provide additional comments. ELI has considered all such comments and has revised this report where necessary to assure accuracy. The report is solely the product of ELI research and analysis and no approval or endorsement of its contents by EPA or any State should be inferred.

### III. BACKGROUND

EPA and the state environmental agencies have now had more than twenty years of experience in administering the federal Clean Air and Clean Water acts and the Toxic Substances Control Act, fifteen years of experience with the Resource Conservation and Recovery Act (RCRA), and comparable experience with the other federal pollution control statutes. The federal and state agencies have been maturing during that time but the federal-state relationship has not changed as much or at the same time as the agencies have changed. States and EPA regional offices have experimented with a variety of reforms to federal oversight of state implementation of federal statutes, and with other federal and state roles and responsibilities, *see Federal Oversight of Authorized State Environmental Programs: Reforming the System*, ELI 1995, but the underlying base of the EPA-state relationship has remained the same for more than two decades. Over the years many program-, grant-, function-, and region-specific overlays have been added on top of the base relationship, but, with notable exceptions, they retained for EPA the dominant role.

The federal environmental laws were passed, in part, because Congress believed that the states were not adequately protecting the environment, either due to lack of capability or will/interest. Therefore, Congress directed the EPA to tell the states how to do the job, to assist the states financially and otherwise in developing their own capabilities, and to ensure that, as they took over administration of the federal programs, the states did the job as Congress directed. The past quarter century of modern environmental federalism has seen a substantial upgrading of state environmental agencies, including those that already had substantial programs and experienced, qualified environmental agency staffs before the advent of modern federal environmental law. Despite some significant efforts, and some success, at reform, the fundamental nature of the EPA-state relationship has not changed since it was first established in the early 1970s.

EPA's oversight of state programs became characterized by a focus on the numbers of actions, such as inspections, permit approvals, and penalties assessed, taken by a state. These activity measures, or "bean counts," have the advantage of being objective and of producing numbers that can be easily reported to Congress and the public. The numbers of actions taken each year can be easily compared, and provide a relatively easy target for state agencies to show that they are improving -- all they need do is inspect a few more facilities or issue more permits. These types of

measures are particularly attractive for administering grants as they show how and where the money is being spent. Thus, the narrow focus on activities undertaken by states has to some extent been the result of EPA's obligation to account for how its grant funds are being spent by the states.

But these numbers bear only a superficial relationship, if any, to the quality or success of environmental programs. An activity measure such as the number of permits issued by a state's National Pollutant Discharge Elimination System (NPDES) program, for example, is at least one step removed from the Clean Water Act's goal of fishable/swimmable waters, and does not capture the effects of non-point sources, which are not subject to the NPDES permit requirements. Measures of the water quality in streams and lakes, or the numbers and locations of health advisories warning people to limit their consumption of fish caught in specific water bodies, or beach closings for health reasons, are more directly related to the statutory goals and therefore more appropriate indicators of successful implementation of the Clean Water Act.

Similarly, the effectiveness of an enforcement program is not necessarily related to how many administrative or judicial cases it files or to how much it collects in penalties. An enforcement program might effectively deter violations through a high frequency of inspections, or through widely publicizing a relatively small number of successful cases, carefully selected to convey a message to others in the regulated community. The message might be that noncompliance is much more costly in the end than compliance, or it might be that the agency actually catches noncompliers, or that one cannot be certain of escaping detection. Thus, one alternative measure of the success of a state's enforcement program might be the amount and type of publicity it garners for its successes, in addition to the numbers of inspections and enforcement cases it files or wins. In fact, states generally have shifted toward more comprehensive programs for achieving compliance rather than relying solely on enforcement as a negative inducement to comply. Compliance rates are now recognized as more appropriate indicators of programmatic success than activity counts because they are directly related to the goal of universal compliance.

#### IV. NATIONAL ENVIRONMENTAL PERFORMANCE PARTNERSHIP SYSTEM (NEPPS)

On May 17, 1995, U.S. EPA Administrator Carol Browner and the state environmental commissioners formally agreed to begin fundamentally reshaping the roles, responsibilities, and relationships of the federal and state environmental agencies in administering the major federal environmental statutes. The new system was "designed to strengthen our protection of public health and the environment by directing scarce public resources toward *improving environmental results, allowing states greater flexibility to achieve those results, and enhancing our accountability to the public and taxpayers.*" See Appendix, "Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System," (May 17, 1995). Key aspects targeted for change were federal oversight of approved state programs, grants to states, joint planning and priority setting, and cooperative agreements between EPA and state agencies. The difficult decisions and negotiations over the exact nature of the changes were left to be worked out in the future. Specifically, the Commissioners and the Administrator agreed that, partly due to the short time before the start of the federal fiscal year, 1996 would be a year of experimentation with new Environmental Performance Agreements. They believed it was important to get the new system started and to work out the details over the months and years. The spirit of the agreement is captured in the name given to the overall endeavor -- the National Environmental Performance Partnership System -- key terms for defining the new roles and relationships are performance and partnership.

In their agreement to establish the NEPPS, the Commissioners and the Administrator made the "increased use of environmental goals and indicators" the first of the principal components of the system. It is important to note that they did not agree to eliminate activity measures or other types of measures of success. Rather, they intended to increase the use of measures of environmental performance, while retaining other types of measures as appropriate. The new emphasis on environmental performance suggested the need to develop new methods of determining if EPA and the states are achieving the goals of the various programs that they administer. Since the ultimate goals of the federal pollution control statutes are clean water, air, land, and drinking water, the measures or indicators of success ideally would focus on the quality of these resources. EPA and the state commissioners have begun to develop such environmental indicators, as evidenced by the EPA Program Office Performance Measures memo and the *Prospective State Indicators* report. But neither of these purports

to be final, and uncertainty remains about what measures to use in evaluating environmental programs, whether at the federal or state level.

One approach to measuring environmental results would be to simply compare ambient pollutant levels over time. Congress has specified this approach for certain air pollutants through the use of National Ambient Air Quality Standards. But states do not necessarily have control over all air or water pollution within their borders, some may come from sources in other states and countries. Nor would decreasing levels of pollution necessarily reflect a successful state program, the improvements might be due to reductions in the transboundary sources or to lost production. Finally, ambient pollutant levels may be slow to respond to government programs and efforts, or they may fluctuate from year to year in response to natural events, making it difficult to determine trends and causes. These are among the reasons ambient levels of pollution are by themselves inadequate as indicators of the success of a state's program. Therefore, the NEPPS does not contemplate that environmental indicators will become the sole measures of state programs.

Partnership is the other keystone to the National Environmental Performance Partnership System. Through NEPPS, EPA and the states are building a new framework for working together to ensure that national and state environmental goals are met. EPA and the states play a variety of roles in implementing the federal environmental statutes, depending on the statute and program within a statute. The archetypal federal role is for EPA to set minimum national standards, review and approve state programs to implement the statute and meet the minimum standards, provide partial funding to states to develop and implement their programs, oversee the approved state programs to ensure that the states implement them and use the grant funding as intended, implement the statute in states that do not receive approval of a state program, and take direct action on regional issues or when states request assistance. The prototype role of states is to adopt, and submit for EPA approval, state statutes and regulations designed to implement the federal statutory programs, administer approved programs and amend the state programs when the federal programs are amended. The states and EPA also interact in many ways that do not fit within these archetypal roles, including working cooperatively on federal programs that do not provide for formal delegation to states, such as Superfund, implementing federal programs that do not call for specific state programs but which may provide federal funding, and cooperative arrangements where a state has not yet received approval of a delegable program.

As part of the new framework EPA will retain its oversight role as required by specific federal statutes, but it will change the manner in which it conducts that oversight. In a recent study of four major EPA-administered statutes, *Federal Oversight of Authorized State Environmental Programs: Reforming the System*, ELI found that the primary purposes of EPA oversight are to measure progress toward achieving the national goals of the federal statutes and to ensure that states with approved programs are meeting their statutory obligations and contributing to the attainment of the national goals. These purposes make it clear that federal oversight will continue to be necessary so long as federal environmental laws remain. ELI's reexamination of the statutes also clarifies that very few of the methods by which EPA oversees approved state programs are statutorily mandated. Thus, as EPA and the states work out a new partnership for environmental protection EPA has substantial discretion to change its methods of oversight.

Another aspect of EPA oversight is to assure fiscal accountability for federal grant funds provided to states under various federal statutes. This form of oversight is governed primarily by government-wide rules relating to federal grant programs in general. EPA is responsible to Congress, and ultimately to the citizenry, for assuring that grant funds are properly managed. Thus, EPA's discretion in overseeing its grants is somewhat more constrained than it is for overseeing implementation of the federal programs.

EPA's regions have been experimenting with oversight reforms for several years. One significant result of those experiments has been to demonstrate that it is possible to reduce the number and length of reports states are required to submit. Other experiments involved Regions and States jointly setting priorities for a program and collaboratively planning how to achieve those priorities. These experiments prove that many of these reforms can be effective, but they have been *ad hoc* efforts, with different regions trying different ideas in different programs. The NEPPS provides the opportunity to spread the successful reforms to all programs and all regions, but EPA and the states are also more ambitious in using NEPPS as a vehicle to reexamine oversight from its basic purposes, through the measures of success, reporting requirements, and allocation of responsibilities.

EPA and the states agree that another aspect of the federal government's role in the partnership will be to continue to assure that minimum national levels of protection are achieved. This role is essential to provide equal protection for all citizens,

regardless of where they are located, and to provide an equitable base from which all those subject to the environmental laws may operate.

While changes in the federal-state relationship are appropriate at this time, the changes must be made with careful judgment. Judgment is needed because the states vary, in capability, funding, staffing and authority to meet the minimum national standards set by Congress in the various federal programs. In addition, states vary internally between programs, as well as between themselves, and the federal statutes contain multiple programs that differ, even within the same statute, to some degree. Thus NEPPS is a flexible system and needs to be applied in a flexible and appropriate manner to the differing circumstances of each program in each state. This is one area where Congress was not prescriptive -- most of the pollution control statutes give EPA substantial discretion in defining and conducting oversight.





## *Chapter Two*



### **Systemic Issues**

#### **I. CHANGING THE ROLES AND RESPONSIBILITIES OF FEDERAL AND STATE AGENCIES IS A SIGNIFICANT TASK**

NEPPS is the most substantial nation-wide reform in the EPA-state relationships since those relationships were first established over twenty-five years ago. During this time a substantial number of regulations, grant programs and associated requirements, policies, understandings and assumptions have been created concerning the roles, responsibilities and capabilities of EPA and the state agencies. In addition to the direct parties, EPA and the states, the relationships also substantially affect regulated entities and the general public. Changing the EPA-state relationships involves each of these aspects, making it a significant and challenging task.

The changes currently being made in the EPA-State relationships are part of a continuing process of adjustment between states and the federal government that is inherent in the U.S. constitutional system. The framers well understood the value and need both for locally-based government close to the needs of constituents and for national-level government attentive to the interests of the whole. Thus they created a system with two layers of sovereignty, recognizing that each would serve different interests, and expecting that serving those different interests inevitably would result in a certain level of tension between the federal and state governments.

Given this background, implementation of the NEPPS, with its attendant changes in extensive rules and entrenched methods for administering the federal environmental laws, and particularly the federal funds provided by those laws, should be understood as a process that will involve substantial time and effort by EPA and the state agencies. Since the changes in the relationships will also affect regulated entities and the public, their interests should be considered during the process.

## **II. IMPROVEMENTS OVER THE PRIOR SYSTEM AND SUCCESSFUL NEW INITIATIVES**

NEPPS has refocused EPA and state attention on their relationships and resulted in a reexamination and clarification of the roles and responsibilities of the federal and state agencies. This process is allowing a reassessment of appropriate roles and stimulating creative and innovative thinking about methods of implementing federal and state environmental programs. Among the initial conclusions that may be drawn already from the first year of experimentation under the NEPPS is that it has resulted in some significant improvements over the pre-existing system.

### **A. Opening the Process to the Public**

One easily overlooked improvement is the explicit public acknowledgement by the Administrator of EPA and each of the program Assistant Administrators of the reliance on the states to implement the federal laws. Although EPA Administrators and other federal officials have in the past noted the central role of states in the implementation of the federal environmental laws, the agreement with the state commissioners and the advent of the NEPPS have clearly raised such statements to a higher level of prominence. This has helped to educate the public about the manner in which federal environmental law is implemented. The need for such education and the lack of public understanding of such a fundamental aspect of U.S. environmental law is illustrated by what happened when U.S. EPA staff were furloughed during the impasse over the Fiscal Year 1996 budget. There was such public concern that the "environmental cop was not on the beat" that one state's Secretary of the Department of Environmental Protection felt compelled to issue a press release that the State's DEP staff were the primary environmental protection force in the State and that they were still on the job. Increased public discussion of state and federal roles as a result of implementing the NEPPS could improve public understanding of the system for administering environmental laws.

One of the goals of the NEPPS is for the public to be able to look to a single document, the Environmental Performance Agreement (EnPA)(sometimes referred to as Performance Partnership Agreement), to begin to understand how a state is implementing its environmental laws, including how it implements federal environmental laws. It should be noted that these agreements need not be congruent with the federal environmental laws being implemented by the state, they may include

state programs that do not involve the U.S. EPA, or they may cover only a subset of the federal environmental programs. In fact, some of the first agreements reviewed for this report include state programs over which EPA has no authority, while another covers some, but not all of the EPA-approved programs administered by that state. One of the agreements specifically notes that no single document, including the agreement itself, fully describes that state's activities, goals and objectives for all of its environmental programs. This is unfortunate, as the public would benefit from a single source for comprehensive information about a state's environmental programs. In this instance, at least, the agreement lists specific documents that will provide the public a better understanding of the state's programs. This is in itself a positive development as it shows the interrelations between the federal and state programs. It may be asking too much of the EnPAs to expect them to provide the public a clear understanding of how federal environmental programs are implemented in a state. The NEPPS in general and the EnPAs specifically are, however, improvements in informing the public about federal and state responsibilities.

In the past, EPA-State agreements generally were highly program-specific and intended primarily to serve as grant agreements between the parties rather than as documents to be used by the public. Some regions and states did have broader, umbrella agreements as well. Although these documents may have technically been available to the public, virtually no one outside of the agencies knew of their existence or importance. The NEPPS also has begun to open to the public all of the processes involved in maintaining the EPA-State relationships. This is a significant improvement over the prior practice, which was largely invisible to, and virtually impenetrable, by the public.

#### **B. Agreements are State-Specific and Provide Substantial Flexibility**

ELI's review of the agreements between EPA, represented by its regional offices, and the five states revealed that each agreement is tailored to the individual state. In each case the agreement is written from the state's perspective, focussing on the state's priorities and programs. From the face of the agreements it appears that in each case the state wrote at least the initial draft of the agreement. Clearly each of these first five states negotiated an individualized agreement with EPA and the agreements cover the particular needs and circumstances of each state, rather than arbitrarily forcing them into a single mold. Thus, these five Environmental Performance Agreements provide each state flexibility to administer its programs to meet state-identified priorities.

Many issues remain, however, relating to state flexibility in implementing federal requirements. Perhaps the most significant of these relates to flexible use of federal grants, which Congress specifically authorized in legislation passed in the spring of 1996. This legislation was passed so late in fiscal year 1996 that only two states negotiated Performance Partnership Grants in conjunction with their Environmental Performance Agreements for 1996, but many more plan to seek this flexible grant funding for fiscal year 1997. Because a state may receive a Performance Partnership Grant without having an Environmental Performance Agreement, the relationship between the two is one of the many issues that EPA and the states will explore in the second year of the NEPPS.

### **C. Self-Assessments of State Programs are a Useful Tool**

One of the principal components of the NEPPS is a greater reliance on environmental and programmatic self-assessments by each state. In the first experimental year a number of states carried out self-assessments and some of those used the results in determining what they wanted in an Environmental Performance Agreement. For instance, one state chose to include in its EnPA six of its programs based on the results of the self-assessment. Similarly, another state's first step in implementing NEPPS was to assess the current environmental conditions and the strengths and limitations of its programs in three resource areas, air, water quality, and drinking water, for which it had decided to enter into a EnPA for 1996. The self-assessment also served as the starting point for setting environmental goals for the EnPA. The latter state also used the self-assessment to develop a hierarchy of overall goals, subgoals, milestones/ objectives and indicators to measure progress toward the milestones, for each of the chosen programs. Finally, that same state's self-assessment initiated a process by which it determined the extent to which it was ready to move toward using environmental indicators to show progress. These examples demonstrate that self-assessments of state environmental conditions and programs can be valuable tools for the states.

The initial self-assessments appear to be credible, 'hard look' assessments of states' programs, providing states, and potentially EPA and the public, with important information and insight into their programs, including what is working, what may be less effective, and reasons behind these conclusions.

#### D. The Agreements Use Environmental Performance Measures

All five agreements reviewed for this report include some measures of environmental performance among the measures used to determine success. In two agreements the States committed to significantly increase their use of environmental indicators, with one agreement specifically noting that the State and EPA would work together to identify environmental and performance indicators that are more results oriented, while still being legitimate measures of the effect of the agency's efforts. Whether stated explicitly or not, each of the five agreements demonstrates a commitment to using measures of environmental performance by including a number of such measures. In most instances the agreements adopt performance measures identified in the memorandum from Mike Stahl setting out the 1996 EPA Program Office Program Performance Measures. Given the fact that U.S. EPA's national program offices initially took the lead in identifying performance measures, it is noteworthy that as a general matter the agreements appear to rely more consistently on environmental performance measures than do the national program measures. This is not intended to suggest that these first five agreements have necessarily adopted the best or most appropriate set of performance measures, but it is an indication that the States and Regional Offices involved in negotiating these agreements made a substantial effort to implement the goal of increasing the use of environmental performance measures of success.

The goal of increasing the use of performance measures does not imply that measures of activities or other types of measures are not appropriate. Under the NEPPS such other measures will continue to be used, and the 1996 EPA Program Office Program Performance Measures and the agreements all rely on such measures to some extent. See *National Environmental Performance Partnership System* p.2 (May 17, 1995), and IV.B.3 *infra*. In some instances the agreements identify additional environmental performance measures. Certainly, the performance measures identified by EPA's program offices are not the only, or necessarily the best, measures of success appropriate for use in EnPAs. States, including many that did not seek an EnPA in 1996, have developed a variety of useful measures, and the *Prospective State Indicators* report is an excellent source of potential measures for use in EnPAs.

## II. ISSUES OF CONCERN

A review of the first year of experimentation with Environmental Performance Agreements has also identified several potential issues of concern.

### A. Lack of Public Participation

First, the development of the NEPPS and, with one notable exception, the negotiation of EnPAs with states occurred with little actual public involvement, despite the fact that public outreach and involvement was one of the principal components of NEPPS. To put this in context, the public was not actively involved in the past in the process of EPA-State grant agreements or federal oversight of approved state programs. Although this relatively low level of public inclusion in the development of the NEPPS and of the first EPA-State agreements may have been a continuation of prior practice, the NEPPS framework document indicated a different policy toward public participation. The creation of NEPPS and the experimental first year presented EPA and the states an opportunity to reach out to the public, to educate the public about this important aspect of how they implement their programs, and possibly to receive useful suggestions from the public about how to reform the system.

The May 17, 1995 agreement to create the NEPPS was reached through a process that did not include the public. EPA has sought public comment about further developments in the system, and informed some stakeholder groups about the ongoing process of developing the system, but did not actively involve the public in the development process itself. Providing the opportunity to comment on a proposal is an important method of obtaining public input into government policy making, but it is a formal technique and often results in criticism of the proposal followed by defensive reactions to the criticisms, rather than active consideration of suggestions from the public. The states and EPA apparently considered the NEPPS to be essentially a two-party program to be negotiated among themselves, followed by public notice and comment. This choice may have limited the usefulness of public and stakeholder input to the process. On the other hand, it might have been difficult to get the public or stakeholder groups interested in such intergovernmental procedural issues and they might not have participated if given the opportunity.

Public participation in the development of the five EnPAs reviewed for this report was uneven. Since the NEPPS was instituted late in the fiscal year 96 planning

process there was little time to develop and negotiate EnPAs for 1996, which unavoidably reduced the opportunity for extensive public participation in the process. Despite this time constraint at least one state placed notices in major newspapers and sent press releases concerning the development of the agreement to the media and to association newsletters. This state also prepared fact sheets concerning the process, held a public meeting on the draft agreement, held a 30-day comment period on the draft agreement, and scheduled presentations about the agreement at regular monthly meetings of its various public policy commissions and boards. Another agreement stated that the FY96 agreement would be the platform from which the state will seek public involvement and input into its strategic plan, and for public input into the FY97 agreement with EPA. A review of the other agreements reveals little indication of public involvement in reaching the FY96 agreements, although such involvement may have occurred without being mentioned in the document. In contrast, all of the agreements indicate that more substantial public participation is planned for development of the FY97 EnPAs when more time would be available for conducting a normal public process.

#### **B. Limited Scope of the Agreements**

None of the state-EPA agreements yet fulfill their potential to provide a comprehensive view of all of a state's environmental programs. Although each agreement provides a starting point for the public to understand how a state implements its delegated federal environmental programs, each leaves substantial gaps. For example, one agreement, which is limited to three resource areas, describes only the programs and media covered by the agreement. Another is more comprehensive, describing all programs administered by the agency, including those for which there is no comparable EPA program, but does not describe environmental programs administered by other state agencies that are part of an EPA program.

These types of gaps are at least partly due to the unavoidable tension between federal and state sovereigns. On the one hand, EPA officials have encouraged states to describe all of their environmental programs, including non-federal programs, on the grounds that this would help EPA, and the public, to understand the state's priorities and possibly provide the justification for EPA to allow greater flexibility in use of grants or in oversight of EPA-authorized programs. On the other hand, states are concerned that this would be an invitation for EPA to broaden the scope of its oversight of state programs and lead to greater federal intrusion into state affairs. The result is



that some of the agreements are limited to EPA approved or funded programs, continuing the arbitrary separation of programs and detracting from the goal of holistic management of environmental programs. In contrast, many of the States planning to sign agreements for FY97 intend to include all state and federal programs.

### **C. Inconsistency**

The five agreements reviewed by ELI vary widely in their structure, format, content and coverage. This variation raises the question of whether there will be any national or regional consistency among agreements. A review of the 1996 agreements with five states does not reveal an apparent baseline for content or coverage. Whether such a baseline or any level of consistency is necessary or desirable is an issue that probably should be considered as the NEPPS and EnPAs are refined.

### **D. Programs Excluded from an Agreement**

Related to the issue of consistency is the question of how programs or issues that are not explicitly covered in an agreement will be treated. For example, one agreement specifically excludes from its coverage the Public Drinking Water Program administered by that State's Department of Health, but does include the environmental agency's "interest in drinking water issues." It is difficult to understand from the document what this means, other than the obvious inference that the Department of Health was not included in the negotiations. One inference that could be drawn is that the two state agencies draw a bright line between their respective drinking water programs. This inference may be wrong, but, if it is not, this agreement may not support the NEPPS goal of eliminating arbitrary and artificial distinctions between programs and of combining resources to deal with environmental problems more holistically. This split in state programs also raises questions about how EPA will discharge its responsibility to ensure that the entire federal program is implemented, since only part of the program is covered by the agreement.

This issue is common to most of the FY 96 agreements and is likely to arise in most states seeking FY 97 agreements as well. State environmental agencies include a wide range of media and programs within their purview, frequently including programs and media not included within the jurisdiction of U.S. EPA, but the obverse situation is also common -- the state environmental agency does not administer one or more U.S. EPA programs. The latter is illustrated by the many states where all or part

of the pesticide program is administered by the state agricultural department. Because NEPPS was created by EPA and state environmental commissioners it naturally focusses on the EPA programs administered by the commissioners of the state environmental agencies. But all of these programs could benefit from holistic planning and integration, which are at the heart of the NEPPS. This raises the issue of the desirability of expanding the agreements to include all state agencies that implement EPA programs, and perhaps even to include other federal agencies with jurisdiction over programs administered by the state environmental agencies. These issues need to be considered in the broad context of environmental federalism in general, probably separate from the process of negotiating individual agreements.

#### **E. Many National Priorities are not Addressed**

A serious substantive issue of concern is raised by the fact that none of the five agreements covers all of the priorities identified by the national program managers for those programs included within the scope of the respective agreements. A comparison of the five agreements with the national program office guidances reveals that relatively few of the national program priorities are explicitly covered in the agreements. The agreements tend to be written from the state's perspective of programs and the priorities identified by the NPOs are rarely mentioned.

It is not clear from the documents themselves if the states and the EPA regional offices considered the national program priorities identified in the guidances to be appropriate issues to be covered in the agreements. Nor is it evident whether the parties agreed that the national priorities would not be priorities for that state, if they are included in some other document, or if they simply were not explicitly covered in the agreement. If the national priorities (for programs covered by an EnPA) are covered in other documents, then the EnPA is not comprehensive and cannot effectively serve one of its goals of being the sole framework document for the EPA-State implementation of the covered programs. If, on the other hand, the NPO priorities are not covered in any EPA-State document, then this raises questions about how EPA will implement its priorities under the NEPPS, including whether those priorities are effectively communicated to the regions and states and how EPA will assure that they are implemented across the nation.

Where the agreements cover issues related to the national program priorities they sometimes do so in a way that makes it difficult to understand how the state plans

to implement the national priority. For example, several agreements are structured by state programs, with each program section including at least a brief discussion of enforcement. But these explanations often are not consistent with each other and the separate discussions of enforcement often do not cover the priorities laid out by the Office of Enforcement and Compliance Assurance (OECA) or show how those priorities would be met. [See IV A below].

These inconsistencies and the lack of correlation with national program priorities makes it difficult for the public to understand how the national programs are implemented in these states. Such latent ambiguities may in the future also develop into real problems of interpretation for the states and EPA.

Why the EnPAs do not cover all the national priorities is not clear. Although the guidances had been issued by the time the agreements were being negotiated, it is possible that they were not available to the staff who drafted and negotiated the agreements. Another possibility is that the negotiators may have found it difficult to apply the national priorities in the context of state-specific framework agreements. This should not be surprising since the guidances were written primarily for an internal audience of U.S. EPA staff to inform them of the federal agency's priorities. Furthermore, the new system, new type of agreement, and short time for negotiating the agreements surely reduced the time available to the negotiators to review the many documents relevant to their task and to extract the most important items, such as specific program priorities. Because ELI did not review prior State-EPA agreements, ELI is unable to evaluate how the EnPAs compare to prior agreements in incorporating the national priorities.

#### **IV. NEED FOR EPA AND THE STATES TO CLARIFY THEIR GOALS FOR ENVIRONMENTAL PERFORMANCE AGREEMENTS**

The EnPAs reflect different understandings of what purposes they serve. At least two agreements state that they are intended to serve as workplans for those states for the next fiscal year. One of those agreements states that it is intended to replace any documents needed to satisfy requirements for workplans for grants. This state essentially incorporated into the agreement the substance of its former grant work plans. ELI did not evaluate whether these agreement documents are sufficient to satisfy grant requirements, but if, as in the latter case, the agreement states that it is

intended to serve as the work plan, then the fact that EPA has signed the document would indicate it agrees that the agreement will suffice for grant purposes. Yet the documents tend to be quite general in their descriptions of what a state plans to do and in how it will measure its progress, which seem on their face insufficient to satisfy grant accountability requirements.

Apparently, there was some confusion in this first year about the relationship of an EnPA to a state's grants and the documents needed for the grants. This confusion was heightened by uncertainty over the statutory authority for flexible grant funding and delays in obtaining specific statutory authority for performance partnership grants, despite widespread support for the concept. This highlights the need for EPA to clarify the relationship between Environmental Performance Agreements and performance partnership grants and to clarify the minimum requirements for grants. EPA has begun the process of revising its grant regulations in light of the NEPPS and the new performance partnership grant authority.

The first five EnPAs are so different in content and form that it appears that EPA had no clear criteria for what issues might be essential to these agreements. An example is the absence, in large part, of the national priorities from the agreements, from which one possible inference is that these priorities were not considered in the negotiations of the agreements. The regions and the states may well have considered and reached agreement on how the national priorities would be handled in each of these states, but if they did, that is largely not apparent in the EnPAs.

From the face of the agreements it appears that in each instance the state took the lead in determining the coverage of the agreement and then in drafting the document. This may not be a significant change from past practice, at least to the extent that EnPAs serve some of the functions served in past years by grant agreements, because states drafted the grant applications. EnPAs, however, are intended to serve purposes broader than those of grant agreements, including setting out the roles and responsibilities of the state and EPA regional office in administering EPA approved and funded programs. To accomplish that goal, and other NEPPS goals such as joint planning and priority setting, the state and EPA regional staff will need to meet to discuss these issues. Following such meetings the drafting process also will likely need to be more collaborative than it may have been in the past. Some of the five agreements reviewed for this report were quite successful in describing the different roles and responsibilities of the state and federal agencies. In some agreements, however, the

federal roles and responsibilities were given much less attention. And, as previously discussed, none of the five agreements provided a complete understanding of how national priorities would be addressed in the state. Some of this is due in part to the fact that the entire process was new and still developing at the time the agreements for FY96 were being drafted. The public and the EPA national program managers both would benefit if future EnPAs more clearly stated the respective responsibilities of EPA and the state, and how the national program priorities will, or will not, be dealt with in that state.

## *Chapter Three*



# **Results of a Review of 1996 Environmental Performance Agreements**

## **I. DESIRABILITY OF CLARIFYING NATIONAL PROGRAM PRIORITIES**

### **A. Overview**

A review of the national program guidances for FY96 for the Offices of Air and Radiation (OAR); Prevention, Pesticides and Toxic Substances (OPPTS); Water (OW); Solid Waste and Emergency Response (OSWER); and Enforcement and Compliance Assurance (OECA) reveals wide variation in detail and specificity among the different programs. The guidances also vary in their apparent intended audience, with some phrased in terms relevant to personnel within their own offices or in Regional offices, while others are written in terms that could also apply to states. The guidances from OAR and OPPTS are short, clear and focussed on a relatively few top priorities, leaving the details and complexities of complete implementation of their programs to other documents. The OPPTS guidance is also presented in different formats to aid readers in understanding and using the guidance. Although short and clear, the OW guidance is oriented toward EPA activities and thus it is more difficult for an outsider or the public to understand which priorities apply to the states. The guidances from OSW and OECA are much longer documents that cover their programs in greater detail and provide a more diffuse set of priorities. As with the OW guidance, it is somewhat difficult for an independent reviewer to relate the OECA guidance to the EnPAs.

The variations among the national program guidances make it difficult for non-EPA readers to relate them to a single agency-wide objective such as the NEPPS reform of the state-EPA relationship. Each NPM appears to have had its own approach to these guidances, including apparently having written them with different audiences in mind. For NEPPS purposes (the guidances certainly serve other purposes for which these comments are not relevant), the public, states, and EPA regions would benefit if the NPM guidances were standardized, particularly with respect to priorities shared with the states.

## B. Comparison of National Program Guidances with EnPAs

### 1. *Office of Air and Radiation*

It is difficult to find direct correlations between the EnPAs and the National Program Guidance (NPG) for the Office of Air and Radiation (OAR). The NPG contains abstract goals, often focused on future events. There are only seven goals, none of which offer quantifiable plans for execution. For example, the first goal, "Clean Air," states, "by 2010 and thereafter, the air will be safe to breathe in every city and community, and it will be clearer in many areas. Life in damaged forests and polluted waters will rebound as acid rain is reduced." The goal does not give concrete examples of how cleaner, safer air can be achieved, nor does it provide measures that would indicate the achievement of clean, safe air. Therefore, states wanting to use this guidance as a template must make broad assumptions about its intent.

Of all of the national program goals, states tended to have the most analogous goals to the "clean air" goal. This may be because the clean air goal is very broad and can be variously interpreted to encompass any number of clean air objectives. States had the fewest parallel goals to the "climate change" goal of OAR's guidance. There were fairly clear parallels between state and national goals for the categories of "stratospheric ozone layer restoration", "healthy indoor environments", and "safe waste management". Some states had corollaries to the "preventing accidental releases" goal, but many states went a step further to emphasize the prevention of all releases, accidental and otherwise. Similarly, while many states proposed objectives in line with the national goal of "restoration of contaminated sites," there were also state plans to preserve sites which had already been restored or which are currently in pristine condition.

States listed many goals which go beyond the scope of OAR's NPG. Examples of such goals include: development of assessment indicators; use of risk assessment; maintenance of reports, databases, and related documents; customer satisfaction, employee satisfaction, and assistance to businesses; compliance, enforcement, permitting (including multimedia), and inspections; public involvement, participation, education, outreach, and "partner" programs; innovative emissions trading programs; an emission statement program (inventory); pollution prevention; zero emission vehicle infusion into fleet; increased local health department capacity; lead, mercury programs; acid rain reduction programs; site-specific and regional programs; and vehicle inspection and maintenance programs.

## 2. *Office of Water*

Most of the states have in some way developed priorities along the lines of those of the Office of Water in the following areas: permitting; facility construction; technical assistance/education/outreach; "place-based" analysis, protection, and monitoring; general administration; source protection; and watershed approaches to permitting, etc. A few states also encourage public involvement and voluntary programs, and make air pollution prevention a priority in their water programs, as does the Office of Water. In only a few instances, however, have the states followed the Office of Water in making wetlands protection, Indian water safety, and indicator use priorities.

Notably, there are many examples of states going beyond the OW's NPG in setting priorities, especially in the following areas: compliance; public health (e.g., shellfish-borne disease); designating river miles/water acreage/shorelines/reservoirs to be protected; specificity about private wells and water systems; pollution prevention; pretreatment programs; health standards and pollutant levels; fishable/swimmable; water allocation; coastal protection; wildlife habitats; multi-media permits; and loan programs. Many of these examples are state-specific or not within federal jurisdiction, and would therefore not be included in a National Program Guidance. Also, because many of the priorities in OW's guidance are plans for the national office to assist states, analogous priorities may not exist at the state level. For example, the national goal to "revise Region-Office of Water Management Agreements between Assistant Administrator and Regional Administrator in 1996 for FY 1997 to provide greater flexibility but retain accountability for getting program work done," would not be carried out at the state level, and thus will not have analogous priorities in the EnPAs. This illustrates the many purposes that the FY96 NPGs served.

## 3. *Office of Prevention, Pesticides, and Toxic Substances*

The Office of Prevention, Pesticides, and Toxic Substances (OPPTS) National Program Guidance is succinct, and well detailed. Most of the EnPAs incorporated some of the national priorities, although to varying degrees. National priorities with no counterparts in the EnPAs include: worker protection; reduced use/risk; discretionary activities; 33/50 program; Design for the Environment program; and core TSCA programs. This is to be expected for voluntary federal programs such as 33/50 and Design for the Environment, and for TSCA, which states are not intended to implement. But it again highlights the different audiences for which the guidances are



written and the difficulties the public might have in understanding which EPA priorities states are expected to implement.

The highest level of correlation between the OPPTS NPG and the EnPAs was in the area of toxic substances. Lead, pollution prevention, and asbestos were all considered priorities by the majority of states. Groundwater concerns were also prevalent in the EnPAs, although the lines were blurred by the fact that the NPG is not very specific about what types of groundwater pollution are intended to be priority targets.

All of the states went one step further with their priorities, often apparently building on the NPG, and making useful "suggestions" in the process. One state, for example, aims to strengthen relationships with local health departments. One state's priority links multimedia permitting with pollution prevention, and plans to offer pollution prevention assistance to industries. Finally, two states make reducing mercury exposure in air and water a priority.

#### 4. *Office of Solid Waste and Emergency Response*

The five FY 96 EnPAs reviewed for this report have many goals analogous to those listed in the FY 1996-97 RCRA Implementation Plan from the Office of Solid Waste (one State did not include RCRA within its EnPA, and thus had no RCRA goals or objectives). Most of the states aim to reduce human and environmental exposure to solid and hazardous waste due to improper treatment, storage and disposal, although one state did not include RCRA within its EnPA and thus had no RCRA goals or objectives. As they have been at the national level, waste minimization and pollution prevention are being promoted by the states as cornerstones of solid and hazardous waste management. States have included pollution prevention assistance and encouragement of voluntary recycling/waste minimization plans in their EnPAs, which is consistent with the national goals. Other goals shared at the national and state levels include: protection of human health and environment; attention to environmental justice; timely and effective enforcement and permitting; advances in permitting; tracking of hazardous waste data; an effective closure/post-closure program; providing technical assistance; public participation; stabilization of contamination at significant sites; and influencing national policy. It is notable that these are all broad goals.

In some cases, the RCRA Implementation Plan goals did not have analogous goals in the EnPAs. Some of these were purely federal programs where no comparable state goal would be expected, such as the Community-Based Environmental Protection (CBEP) initiative, the RCRA §3011 State Hazardous Waste Grant program, and RCRA activities in Indian Countries. Among other national goals that might be expected to be covered at the state level but were not were: developing a strategy to ensure that operating Boilers and Industrial Furnaces (BIFs) meet requirements for safe operation; review of Research & Development (R & D) permits; regional/state tracking of actions taking place at RCRA facilities, including state analogous actions and voluntary actions; and some of the finer points of the Corrective Action goal (e.g., "Regions and States should seek opportunities to disinvest from and tailor the level of corrective action oversight at Medium or Low NCAPS facilities already in the pipeline").

As has been the case with other National Program Guidances, the states often had goals and objectives that either went beyond the RCRA Implementation Plan or were not related to the goals in the Plan. Some examples include: encouraging the recycling of mercury-containing waste; considering economic factors when deciding penalties; brownfields redevelopment and other voluntary site cleanups; reduction of chemical utilization and waste generation in state laboratories; capacity and needs evaluation for industrial waste management; use of institutional controls to reduce the risk of human exposure to uranium mill tailings; bio-solids control; and risk-based clean-up objectives for RCRA closure and corrective action programs.

#### 5. *Office of Enforcement and Compliance Assurance*

Most of the EnPAs do not have sections devoted specifically to enforcement and compliance. Rather, enforcement objectives are sprinkled throughout the sections for the various programs, reflecting an integrated approach to implementation of environmental laws. Some states have very few enforcement-related objectives. This may be attributable to the fact that many of the state objectives imply a certain amount of enforcement and compliance. For example, if a state wants to achieve ambient air or water quality standards by 2000, point sources and nonpoint sources alike will have to come into compliance, and a state with such a goal might be assumed to be planning to take enforcement action against noncompliers. Therefore, explicit enforcement-related objectives may appear unnecessary to states.

One EnPA pays a good deal of attention to enforcement in the context of listing the objectives in various areas under each goal. This EnPA also has its own sections on

Compliance Assistance and Compliance Assurance, and many of the performance measures in this EnPA are enforcement/compliance-related. Finally, most of the program areas in this EnPA specify compliance/enforcement goals, which combined with the performance measures and objectives, makes this the most comprehensive approach to enforcement and compliance of the five EnPAs reviewed.

## II. PROGRESS TOWARD GREATER USE OF ENVIRONMENTAL INDICATORS IS UNEVEN

The May 17, 1995 agreement between EPA and the States to establish the NEPPS includes as the first of its principal components the "increased use of environmental goals and indicators." As one of the first steps toward implementing this component, each of EPA's national program offices reviewed its existing program performance measures to determine the key measures and, where possible, to use measures of environmental performance. These were collected and reported in the EPA Program Office Program Performance Measures memorandum of August 25, 1995. At the same time, the states and EPA, with the research assistance of Florida State University's Florida Center for Public Management, identified measures of environmental performance in use by states. The state measures are listed in the *Prospective State Indicators* report of August 22, 1995. Similar efforts to identify measures of performance are being undertaken by all agencies of the federal government pursuant to the Government Performance and Results Act (GPRA) and as part of other efforts within EPA, including the Goals 2000 project.

### A. Confusion about Terminology

In its research for this report ELI has encountered substantial confusion about the meaning of terms in common use by EPA and state staff and other interested persons. Terms such as goals, measures, indicators, outputs, inputs and objectives frequently are used interchangeably or seem to change meaning in different contexts. This confusion is understandable at this nascent stage of development of NEPPS, particularly given the overlapping efforts pursuant to GPRA and Goals 2000, but it makes analysis difficult and uncertain. For example, this report generally uses the term "measures," but may include concepts that others would label indicators, and may have missed some items because they were referred to as something else. All parties would benefit if general agreement could be reached on definitions of these terms, or at least on categories of meaning.

## B. Progress Within EPA Varies By Program

EPA's national program performance measures vary substantially in their progress toward the NEPPS goal of increased use of environmental indicators. The national program offices vary in defining environmental indicators for their programs and in their movement toward simplifying and reducing the emphasis and reliance on activity measures. This report focusses on the development and use of performance measures because that is the goal of NEPPS. But this does not indicate that activity measures are not appropriate measures of the success of a program. The goal of NEPPS is not to replace all activity measures with performance measures, but rather to increase the use of performance measures. The NEPPS specifically states that national program measures may be activity or results-based. In terms of their progress toward the narrow goal of increasing their use of environmental measures the national program offices have achieved varied levels of success.

For instance, the guidance from the Office of Water includes one principal ambient environmental indicator -- the percentage of waters that meet their designated use quality standards. This is widely agreed on as an appropriate measure by most states as well, as documented in the *Prospective State Indicators* report. But the Office of Water lists no emissions measures or measures of health or ecological effects, which some states have devised (see *Prospective State Indicators*).

The Office of Air and Radiation similarly uses the obvious environmental measure of non-attainment areas reaching attainment status, but lists no measures of emissions or of health or ecological effects. The Office of Solid Waste and Emergency Response, in contrast, has no measure of ambient environmental conditions, but has identified several emissions measures and one health effects measure. Finally, the Office of Enforcement and Compliance Assurance has identified no environmental measures at all, continuing to rely on activity measures. It appears to be conceptually difficult to devise environmental measures of success for compliance and enforcement. See *Report on the Colloquium on Federal-State Relations in Environmental Enforcement* (ELI, doc. #d2.07).

Clearly, activity measures will continue to be used in evaluating the implementation of federal environmental statutes. Some aspects of implementation may be susceptible to measurement only in terms of activities. Activity measures may also be needed as part of fiscal accountability. Finally, activity measures may be useful

to provide perspective and context for measures of environmental status. Thus, the NEPPS does not call for the elimination of activity measures. Nonetheless, the public, states and EPA all would benefit from a re-evaluation of the national program measures of success after the first year's experience with revised program performance measures.

**C. Most 1996 Environmental Performance Agreements Include Some Environmental Measures, While Also Retaining Activity Measures**

The FY96 EnPAs vary substantially in the number and type of environmental measures and activity measures used, and in the purposes for which those measures are used. One state virtually eliminated all activity measures from its agreement, except with respect to enforcement, and identified ambient measures for its air and water programs, plus emissions quantity measures for the air and waste programs, and measures of body burden or uptake, and health effects for the air program. Several of the EnPAs show greater progress toward the NEPPS goal of making better use of environmental measures than was demonstrated by some of the national program offices in their FY96 measures. At the other extreme, one EnPA identifies few environmental measures (essentially only the measure of number of waters meeting water quality standards) and lists numerous state and local activities measures.

This classification of measures into ambient, emissions, body burden or uptake, and health effects measures, is modelled on the "Hierarchy of Indicators" in *Prospective State Indicators*. Thus, one environmental measure would be changes in emissions or discharge quantities, while another would be changes in ambient conditions or quantities of natural resources. Changes in uptake by organisms demonstrate the burdens imposed by particular contaminants on organisms. Similarly, changes in health or ecological effects show the effects on humans or ecological systems. While the latter appears to be a highly desirable type of measure, for purposes of this report ELI specifically did not adopt the concept of a clear hierarchy among these measures as stated in *Prospective State Indicators*. Rather, all the above environmental measures can be useful for the purposes of evaluating the effectiveness of environmental programs and increased use of any of them could serve the goals of NEPPS.

#### **D. The States Have Identified a Variety of Useful Environmental Measures**

Most of the agreements identify measures of ambient conditions for air and water quality based on NAAQS and designated water body uses (or water quality standards), respectively. Beyond this general agreement on measures of ambient air and water quality, the states vary significantly in what they have chosen as measures of emissions quantities, ambient conditions, body burden, or health and ecological effects.

For the water program, three states identified measures of health or ecological effects, but they are different in each state. These include concentrations of bioaccumulated toxins in fish tissue, number of waterborne disease outbreaks from drinking water, and incidences of shellfish-borne disease. The latter is actually expressed as a goal of no increase in the number of incidences, illustrating some of the difficulty with terms. Emissions quantity measures for the water programs are similarly varied, though some states identified no emissions quantity measures. Emissions measures include industrial and municipal point source levels of acute whole effluent toxicity (a measure that might also fit within the body burden or health effects categories), municipal point source loads of biological and chemical oxygen demand, and percentage of drinking water systems with water source protection programs.

The states identified fewer environmental measures for their waste programs than for air and water programs. One state identified measures for ambient conditions and for ecological effects. None of the other states identified any measures of ambient conditions or of health or ecological effects for waste programs (one state's agreement does not cover waste programs). Three states identified emissions measures, such as the number of facilities affecting the various media through releases of hazardous wastes and the amounts of solid waste properly disposed. The states differ substantially in their use of activity measures for waste programs. One state lists no activity measures at all for waste, whereas another agreement contains only activity measures and regulated entity response measures. The other two that cover waste programs contain a number of state activity measures, as well as measures of regulated entity responses.

Enforcement programs apparently present the greatest difficulty in identifying environmental measures. As was the case with OECA, none of the states identified any

environmental measures for their enforcement programs. States identified only activity measures (for states and regulated entities) as indicators of success in enforcement.

The substantial variation in environmental performance measures used in the five EnPAs reviewed for this report suggests that the states, EPA and the public would benefit from a review of the experience with these measures. This review should be coordinated with the review of national program performance measures, and other similar projects within EPA such as the development of performance measures pursuant to GPRA, with the goal of identifying a larger set of performance measures that are widely agreed upon by EPA, the states and the public.

#### **E. The Relationship of Measures to Goals and Priorities is Not Clear**

The EnPAs vary widely in how clearly they indicate the relationship between measures of success, including environmental measures, and the priorities of the states and EPA. One agreement begins with the general statement that the state's strategic priorities are to protect public health; protect air, land and water; manage fish and wildlife; and enhance recreational opportunities for citizens of the state. The agreement then lists environmental stressors and sources of those stressors for each of the broad categories of priorities. The stressors include ozone, bacteria (pathogenic indicators), toxics in the aquatic environment, encephalitis, rabies, nitrates, air toxics, and depletion of water supplies. The agreement does not explain how or why these particular stressors were chosen as the state's priorities out of all the possible stressors. The agreement then lists key goals for the general priority area under discussion. In some cases the goals are clearly and directly related to a particular stressor, but in others the goals are not obviously related to a stressor. Finally, the agreement lists "objectives" that are linked directly to specific goals. In some cases these objectives are similar to the measures discussed in section IV.B.4 above, but in other cases the objectives are somewhat general statements that would be difficult to measure.

A second agreement has a hierarchy of overall goals, subgoals, milestones/objectives and indicators to measure progress toward the milestones. This agreement also provides tables showing connections between these elements and sources of data. Another agreement contains only one paragraph discussing how the measures identified in it (of which there are many) are intended to be used. The

discussions of each program refer to the measures for that program in general terms, but do not discuss how or why they were chosen or how they relate to goals.

Finally, none of the agreements clearly discuss the relationship between environmental measures and other measures of success and the EPA priorities as set out in the national program guidances. Such a discussion would be very useful for the public. It could contribute substantially to educating the public about the reasons behind the agencies' priorities and how the public will be able to evaluate the effectiveness of various programs.

**F. Accountability for Achieving Goals as Shown by Measures of Success is Unclear**

The EnPAs also vary in the degree to which the state agrees to be held accountable for achieving specific environmental indicators. One agreement states that "the allocation of resources and accountability between [the state and EPA] should be directly linked to attaining environmental results." Another agreement contains a disclaimer that the state's goals are not deliverables for grant purposes, but does not provide an alternative measure of accountability. A third EnPA provides that the state will not be accountable for meeting the environmental indicators listed in the EnPA because it views the FY 96 EnPA as the first step in a process of developing and then using environmental indicators. This state believes that in the first stage it should be held accountable for identifying performance measures and for meeting a core group of measures, with accountability for larger groups of measures following in later years as the entire process matures.





## *Chapter Four*



### **Conclusions**

In May 1995 EPA and state environmental agency heads agreed to create the National Environmental Performance Partnership System as a new system for ordering the roles and relationships of the EPA and the state agencies. The initial agreement was a broad statement of shared goals for environmental protection, goals for the new system and principles that would guide its development. Although many aspects of the NEPPS are still being developed, the states and EPA have made substantial progress in developing the system, including modifying some of its basic attributes in response to changed circumstances. The initial agreement, and the aspects of the system already in use, show great promise for improving the relationships between EPA and the states and for improving the administration of the environmental statutes under the jurisdiction of these agencies.

Of the two principal mechanisms for implementing the NEPPS, Performance Partnership Grants did not receive the necessary statutory approval until only one half of the federal fiscal year remained. Therefore there was very limited experience with these flexible grants in FY 96. Most of the states plan to take advantage of the flexibility offered by EPA's new grant authority for FY 97. In contrast to the limited FY 96 experience with Performance Partnership Grants, six states signed Environmental Performance Agreements [also referred to as Performance Partnership Agreements] with EPA during FY 96. An important issue that remains to be considered is the relationship between Performance Partnership Grants and the Environmental Performance Agreements. The two are independent tools - a state may receive the flexible grant without an agreement or sign an agreement without obtaining the flexible grant. Yet they are intended to serve similar purposes and would be expected to be most effective when used in concert.

A review of the first five of these agreements revealed that they varied substantially, an indication of progress toward meeting the NEPPS goal of providing flexibility to states. The states and EPA also made progress toward the goal of increasing the use of environmental indicators or measures of environmental results, but much remains to be done in developing appropriate performance measures. One

consequence of the variation in the content of the agreements is that in some cases it was not possible to determine from the agreements themselves if other NEPPS goals, including in particular the goal of joint planning and priority setting, were met.

This review of the first EnPAs also revealed a need for EPA's national program managers to effectively communicate their national priorities to the states in addition to the EPA regions. In order for the EnPAs to meet the goal of being the vehicle for EPA and states to achieve their joint priorities, the regions and states must understand the priorities of the national programs at the time they are negotiating the EnPA. The guidances prepared by the national program managers for FY 96 vary substantially in detail, specificity, and intended audience; some may be appropriate for this new purpose while others may need some modification. The states, EPA regional offices, and the NEPPS itself all would benefit from a reexamination by EPA's national program managers of their respective guidance documents intended to make them as useful as possible for this new purpose.

Finally, increased public participation needs to become a reality, not just a goal of the NEPPS. One state demonstrated that substantial public participation in the EnPA process was possible, even in the short time available during the process for the FY 96 agreement.

In its first year in operation the National Environmental Performance Partnership System has changed the nature of the EPA-State relationship, or perhaps formalized a change that had begun previously, from one focussed on EPA's oversight responsibility to one based on a more cooperative partnership focussed on achieving joint goals. The system is still being developed and many aspects remain to be worked out. EPA and the states are progressing steadily toward achieving its goals.



## *Appendix*

**JOINT COMMITMENT TO REFORM OVERSIGHT  
AND CREATE  
A NATIONAL ENVIRONMENTAL PERFORMANCE PARTNERSHIP SYSTEM**

May 17, 1995

We are in the midst of a critical transitional period for our nation's environmental policy. We have accomplished much in 25 years to protect the health of our people and preserve natural treasures for future generations. But much remains to be done.

It is time to draw upon the lessons we have learned over the last 25 years to reinvent environmental protection for the 21st century. We have learned that the American people are deeply committed to a healthy environment for their children and communities. We have learned that businesses can improve profits by preventing pollution. We have learned that better decisions result from a collaborative process with people working together, rather than from an adversarial one that pits them against each other. We have learned that strong national standards, combined with flexibility in how we meet these standards, can provide greater protection at a lower cost.

The American people expect and deserve clean air to breathe, clean water to drink, a safe food supply and safe places to live, work, and play for themselves and for future generations. We are committed to a strong federal/state partnership to protect public health and the environment for the American people.

Two years ago today, we established the State/EPA Capacity Steering Committee to implement the ambitious agenda set out by the State Capacity Task Force. Since that time, we have made tremendous progress in improving the federal/state partnership. The attached document represents another significant step in carrying out the recommendations of the Task Force Report and fulfilling our common commitment as stewards of the nation's environmental agenda.

The Steering Committee has led a joint state/EPA dialogue to develop a proposed National Environmental Performance Partnership System. This proposed system has the following seven principal components:

- Increased Use of Environmental Goals and Indicators
- New Approach to Program Assessments by States
- Environmental Performance Agreements
- Differential Oversight
- Performance Leadership Programs
- Public Outreach and Involvement
- Joint System Evaluation

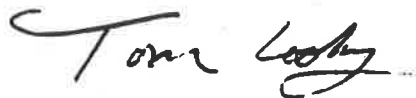
This proposed system is designed to strengthen our protection of public health and the environment by directing scarce public resources toward improving environmental results, allowing states greater flexibility to achieve those results, and enhancing our accountability to the public and taxpayers. We believe that this new environmental performance system will achieve more integrated environmental management, promote pollution prevention, and enhance environmental results. It will also enable us to move progressively beyond the current system which relies on numbers of permits issued, inspections made, or other similar measures. The results will be performance measures that more directly reflect changes in environmental quality.

In signing this document, the states and EPA jointly agree to pursue development and implementation of this new system. The transition to this new approach has already begun and we are committing today to accelerate and complete the transition. The next steps include a broader stakeholder dialogue, and joint workgroups to fully develop components of the system. The State/EPA Capacity Steering Committee will facilitate a dialogue about, and evaluation of, the new approach.

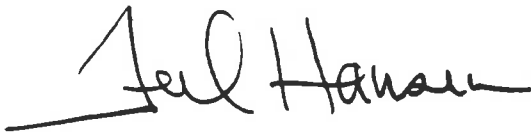
Agreed to on this 17th day of May 1995.



**Carol M. Browner**  
Administrator,  
U.S. Environmental Protection Agency



**Tom Looby**  
Director, Office of Environment  
Colorado Department of Health  
Co-Chair, State/EPA Capacity Steering Committee



**Fred Hansen**  
Deputy Administrator  
U.S. Environmental Protection Agency



**Mary Gade**  
Director, Illinois Environmental  
Protection Agency  
Co-Chair, Oversight Policy Workgroup

## NATIONAL ENVIRONMENTAL PERFORMANCE PARTNERSHIP SYSTEM

States and USEPA propose a new environmental partnership that will encourage continuous improvement and foster excellence in state and federal environmental programs. This new approach will reflect the advances made in environmental protection in the United States over the past two decades and recognize that existing policies and management approaches must be modified to ensure continued environmental progress. We must direct scarce public resources toward improving environmental results, allow states greater flexibility to achieve those results; and enhance our accountability to the public and taxpayers.

The following principles guide this process:

- Continuous environmental improvements are desirable and achievable throughout the country.
- A core level of environmental protection must be maintained for all citizens.
- National environmental progress should be reported using indicators that are reflective of environmental conditions, trends, and results.
- Joint USEPA/State planning should be based on environmental goals that are adaptable to local conditions while respecting the need for a "level playing field" across the country.
- USEPA/State activity plans and commitments should allocate federal and state resources to the highest priority problems across all media, and should seek pollution-prevention approaches before management, treatment, disposal, and cleanup.
- The new approach to the USEPA/State relationship should facilitate and encourage public understanding of environmental conditions and government activities.
- A differential approach to oversight should provide an incentive for State programs to perform well, rewarding strong state programs and freeing up federal resources to address problems where state programs need assistance.

The long-range goal is to provide strong public health and environmental protection by developing a system where the states and USEPA work together for continuous gains in environmental quality and productivity. This system builds on each party's comparative strengths and compensates for each other's relative weaknesses. The states should serve as the primary front-line delivery agent, managing their own programs, adapting to local conditions, and testing new approaches for delivering more environmental protection for less. Among its other responsibilities, such as ensuring good science and strong national health and environmental standards, the federal government should provide analysis of environmental and compliance trends, provide expertise to and facilitate learning among the states, work in a collaborative and more flexible partnership with states, address interstate issues, and serve as a backstop, ensuring that all states provide fundamental public health and environmental protection. At times, however, direct federal involvement is necessary. Environmental problems do not respect political boundaries and some important issues require a



require a regional/ national/international perspective. Even exemplary state programs could not be expected to solve these problems independently. In cases such as these, the federal government needs to exercise federal authority or offer facilitation as appropriate. This new system will not change federal authority, but serves as a guide to the judicious and more effective exercise of that authority.

This system has seven principal components:

- Increased use of environmental goals and indicators
- New approach to program assessments by states
- Environmental performance agreements
- Differential oversight
- Performance leadership programs
- Public outreach and involvement
- Joint system evaluation

A more detailed description of each component is presented in the following sections. This new approach to joint USEPA/State environmental management will be refined over time to ensure continuous improvement in USEPA/State cooperative environmental management capacity. It will rely more extensively on self-management by state environmental programs. This will be combined with increased public review and comment on environmental goals, conditions, and strategic choices. It will allow EPA to "let go" of routine permit-by-permit and case-by-case review in stronger state programs. It will encourage performance excellence by promoting integrated environmental management; analysis of environmental trends, problems and solutions; and using comparative information as a self-management tool.

### **Section I - Environmental Goals and Indicators**

An assessment of national and local environmental conditions should provide the basis for planning federal and state program activities and for evaluating long-term program effectiveness. USEPA, in conjunction with the states, will identify a common set of national environmental goals and indicators to measure the effectiveness and success of environmental programs. The National Environmental Goals Project will serve as the basis for selecting appropriate goals and indicators for measuring environmental progress and trends. Upon implementation, all states will collect data for a specific set of national environmental indicators.

Each national program media office, and the Office of Enforcement and Compliance Assurance, will work with the states to develop a limited number of program and multi-media performance measures that each state will report so that critical national program data is collected. These national program measures may be activity or results-based. Using these core national measures as a template, each state will have an opportunity to identify other goals and performance indicators that will present a more meaningful picture of the state's environmental quality. Each state and its USEPA regional office will reach agreement on such state-specific environmental performance indicators.

These indicators will be used by the States and USEPA to assess long-term program effectiveness, and to select near- and long-term program activities. These indicators would be collected regularly for all states, and made available not only to EPA but also to other States and the public. Many of the indicators and measures initially used will be changed over time, as the states and EPA learn their value through experience. The states will work with EPA in an equal partnership in selecting, testing, developing, and adopting the indicators and measures. Some measures will be used each year, while others will be used periodically. It is also recognized that greater emphasis on a strong data quality assurance program is essential to the success of this new approach.

## **Section II - New Approach to Program Assessments by States**

The new environmental performance partnership system will adopt a new approach to program assessment, including:

- greater reliance on environmental and programmatic self-assessments by each state;
- sharing with the public information about environmental conditions, goals, priorities, and prior year's achievements.

This new performance partnership system will place greater reliance on an annual environmental and programmatic self-assessment by the state. In the first year of a self-assessment, the state would provide information identifying:

- what the state sees as the key environmental problems, opportunities, and priorities facing the state;
- the recent performance of the State's programs based on available measures of program success;
- an analysis of current program weaknesses from the state's perspective;
- an assessment of basic fiscal accountability, along with an identification of any areas needing capacity-building; and
- the state's proposed action plan for maintaining and improving the state's environmental program performance, identifying specific actions and approaches the state plans to take in the coming year and suggestions for USEPA to assist the state in improving performance or achieving stated goals.

In subsequent years, the assessment would also include:

- a report on how well the state carried out the plan agreed to in its Environmental Performance Agreement.

Each program assessment will be signed by the Environmental Commissioner, Health Commissioner, or other state official responsible for running the delegated program within the state.

The self-assessment, in concert with EPA's perspective on environmental conditions and program performance, would form the basis for negotiating the Environmental Performance Agreement.

The states and USEPA also will explore the use of multi-state/regional teams to conduct periodic visits for program evaluation.

### **Section III - Environmental Performance Agreements**

A comprehensive Regional/State agreement for environmental performance will be used as the principal delivery mechanism for this new approach. This agreement will take precedence over the current program work plan process. USEPA will commit to streamlining current grant regulations to accommodate this new approach.

The environmental performance agreement will be the product of a joint planning and priority-setting dialogue between states and EPA regional offices, informed by the analysis and strategic directions being set by EPA national and regional program managers and the states. The general expectation is that mutual agreement will be reached and that participating programs will embark on self-management. Senior program management from the State and the Regional office will structure and lead this dialogue to set priorities, directions, and reach final agreement. State program self-assessments will be reviewed and considered during this dialogue. Over time, some regions and states may mutually opt for multi-year agreements. The purpose of the dialogue is to:

1. Reach an understanding regarding environmental conditions in the state along with probable causes of environmental problems and opportunity for environmental gains.
2. Agree on the appropriate national and state-specific environmental goals, program performance indicators and multi-media activities, along with state commitments for specific deliverables and types of activities that address environmental and programmatic opportunities and/or weaknesses.
3. Agree upon the allocation of federal resources to shared goals and priorities, the work to be done, and any disinvestments made necessary due to limits on available resources.
4. Agree on commitments for specific and more integrated federal technical assistance for targeted program elements that need improvement (e.g., training, IPAs, etc).
5. Agree on any joint ventures or shared enterprises to better accomplish environmental results that reflect regional, pollution prevention, or ecosystem goals.
6. Discuss other activities the state or USEPA may be considering for the coming year, for example, state plans to undertake targeted compliance assistance programs for specific industrial sectors or anticipated EPA national enforcement cases.

The outcome of this dialogue will be an environmental performance agreement that reflects state and federal interests, concerns, choices, and commitments for sound environmental performance. The agreements will be signed by the State Environmental Commissioner (or other state executives, as appropriate) and the Regional Administrator.

Increased reliance on environmental indicators is essential for ensuring a sustained focus on environmental outcomes and will be a core element of the new approach to USEPA/State environmental management. Activity measures such as the number of inspections conducted may provide valuable insight into program effectiveness, and therefore be worth collecting. In other words, environmental indicators will be complemented by other program performance activity measures for state and EPA management and evaluation purposes.

Activity-based reporting will measure both fulfillment of state and USEPA commitments under the Environmental Performance Agreement and provide data to analyze the effectiveness of different approaches to environmental protection. Basic program performance and fiscal responsibilities will be monitored as required and as spelled out in the annual agreements. At the same time, it must be noted that a basic goal of these agreements is to shift the primary focus of the EPA and state dialogue from "bean-counting" to identification of environmental priorities for each state and the appropriate actions to address those priorities. Under the traditional system, too much attention has been directed to the number of permit reviews, inspections, and enforcement actions taken by a state, rather than to the outcomes and value of those actions and to alternate actions that might be pursued to achieve the same objective.

As part of the discussion associated with the Environmental Performance Agreement, USEPA also will discuss with the state specific areas where federal actions in the state are anticipated. As noted earlier, there are instances where the federal government is the most appropriate or only level of government to take action. Some examples include: individual sources that have interstate impacts (e.g., close to state boundaries), groups of sources that collectively have interstate impacts (e.g., acid deposition), source categories that have similar serious environmental impacts and that cannot be addressed solely by states acting separately (e.g., mine drainage), pollutants that are regional or national in scope (e.g., ozone), and companies that have a national violation history not apparent from individual state performance alone.

The performance agreement process will include and rely upon an established dispute resolution procedure that promotes efficient escalation and resolution of issues to be decided jointly by each state and region.

#### **Section IV - Differential Oversight**

EPA will work with all states using the new environmental performance partnership system and reaching agreements on environmental performance based on an up-front assessment of environmental conditions in each state. After agreement is reached, EPA will focus on program-wide, limited after-the-fact reviews rather than case-by-case intervention and will work with states

to identify other ways to reduce oversight. Using differential oversight will serve as an incentive for strong state performance and enable EPA to focus resources on state programs that need more assistance to perform well. This assistance may take many forms and will be tailored to fit the needs of a state's program. This more intensive oversight will be aimed at performance improvements and program strengthening.

In those instances where case-specific intervention is necessary, the EPA will adopt the practice that senior state management will be contacted to discuss any intervention in a state except for criminal enforcement actions and other unique circumstances.

### Overview of Differential Oversight Approach

Performance Management Parameters	Traditional System	New System	
		Participating Program	Leadership Program
Performance Agreements	Federal Guidance and Activity Targets	Joint Planning and Priority-Setting Dialogue and New Measures	Increased State Discretion; Multi-Year Option; Emphasis on Environmental Outcomes
Activity Measures	Extensive Reliance	Reduced Reliance; Selection Based on Desired Outcome	Outcome Measures are Dominant
Performance Reviews	Mid-year/Annual Evaluations	Based on Joint Review of Annual State Self-Assessments	Stronger Reliance on Self-Assessments
Site-Specific Reviews	Variable Real-Time Review of Site-Specific Products	Shift to Limited After-the-Fact Reviews; Selective Use of Real-Time Reviews Based on Performance Agreement	Increased Deference to State Judgment; Rare Use of Real-Time Review

## Section V - Performance Leadership Programs

The states and USEPA would like to see sound program performance be nationally recognized and afforded minimum allowable oversight. Ultimately, the goal is for most, if not all, states to demonstrate leadership status.

Proven state programs deserve to be treated with deference whenever possible and do not need federal oversight on a routine basis. These programs would be designated as "Performance Leadership" programs. States would initially apply annually by program for this special status. Any state that wants to seek leadership recognition for a delegated program must demonstrate achievement during the prior year of specific criteria agreed to in the Environmental Performance Agreement and other criteria to be developed by the States and USEPA prior to commencing the program. To ensure a consistent and equitable approach, USEPA and the States will work expeditiously to define the criteria for reaching and maintaining leadership status.

After the second consecutive year of leadership status, a program will be placed on a two-year review cycle where possible and the state so desires. Significant adverse changes in operating conditions, such as significant drops in staffing or funding levels, or substantial changes in policies or organizational structure, could warrant review of a program's leadership status, or trigger EPA's actions to ensure a core level of protection.

## Section VI - Public Outreach and Involvement

This system offers an unprecedented opportunity for constructive public involvement in the management of environmental programs and improved understanding of national environmental performance. Informal discussion will be held with stakeholders (associations, environmental groups, and the regulated community) as the system is being developed. The proposed system and related USEPA policies will be published in the Federal Register providing a formal comment opportunity. In implementing the new system, three distinct aspects of the process can benefit by sharing information with the public: (1) environmental conditions, problem-identification, and goal- and priority-setting; (2) consideration of alternative approaches for addressing the problems; and (3) evaluation of the effectiveness of the new approach to joint USEPA/State environmental management.

The set of environmental indicators to be collected by all the states along with a state's analysis of its environmental problems are likely to constitute key components of a state's self-assessment. Reporting this information to the public will help inform local citizens about their environmental conditions and challenges. A few states, in fact, have already begun to prepare annual State of the Environment reports. In addition, each region and state will work to encourage and facilitate public comment on the priorities in the Environmental Performance Agreement, and the states and USEPA will work together to ensure public review of the new system on a regular basis. A program to allow public review and comment would be a key characteristic of a Leadership program.

## **Section VII - Evaluation of the Environmental Performance System**

As the new system is implemented, USEPA and the states will review the results and experiences to ensure continuous improvement. The ultimate success of the new approach will be judged by several factors:

1. **Effectiveness**- how readily it enables USEPA and the states to direct their energies to improved environmental outcomes instead of inter-agency negotiations;
2. **Public credibility** - how credible and reliable the public finds the measures used to report environmental outcomes. USEPA and the states must work together to ensure reliable and publicly credible environmental and program performance assessments.
3. **Fiscal soundness and program accountability** - how well it enables both the federal and state governments to manage public funds in an efficient, effective and economical manner, creating a system that is transparent, understandable and accountable to the citizen and taxpayer. Implementation must include periodic evaluation of the fiscal soundness of the new approach to grant agreements, and a clear demonstration of the environmental outcomes obtained.

To implement the changes set forth here, USEPA and representatives of the states will meet to assess progress, as well as identify adjustments and additional actions that need to be taken. This will be in addition to periodic review and agreement on the national environmental and performance indicators to be used by all states. The findings from these evaluations will be used to develop any further refinements that might be needed and to foster continued improvement in national performance.

### **Timetable for Implementation**

Federal Fiscal Year 1996 will be a transitional year allowing each state to join the process in a manner that is best suited to its programs' performance and needs. States and EPA will decide during FY95 whether programs will be brought into the self-assessment process and annual performance agreements starting in FY96 or FY97. Each state interested in beginning the self-assessment and environmental performance agreement process for FY96 will make this declaration in a letter to the Regional Administrator by no later than July 1, 1995. At the same time, states will indicate their interest in specific programs they wish to have considered for Leadership status for FY97. For each program proceeding under some form of the new approach during FY96, each state will submit a self-assessment by August 15, 1995. The first round of environmental performance agreements for specific programs in interested states will be signed by the State and Region on or about October 1, 1995. State programs that desire to be recognized as Leadership programs in FY97 must be identified and the appropriate performance expectations negotiated into the FY97 performance agreement.

The second round of agreements will be based on self-assessments for all applicable programs. States will submit these self-assessments on or before July 1, 1996. For programs that achieve Leadership status, the annual agreement will be based on this significant accomplishment. The USEPA and the states will work together to determine the initial set of goals, indicators and leadership criteria by August 15, 1995.

The State/EPA Capacity Steering Committee will guide the development of this new system using the following proposed time frame:

1. USEPA will propose revisions to the appropriate oversight policies by January 1996 to reflect these changes. This new approach is intended to affect all delegated programs, including the relevant public health and agricultural agencies. USEPA will work with these agencies, tribes and local governments regarding the applicability of this new system to the delegated programs they run.
2. During FY95 and 96, USEPA will work with states (or delegated entities) to define national environmental goals/indicators and core program performance measures that are more reflective of environmental conditions, trends, and results.
3. For FY96 grant agreements, States have the option to nominate programs for the National Environmental Performance Partnership System (either as participating or leadership programs) and to design state programs around national, and state-specific, goals, indicators and measures.
4. During FY95 and through FY96, as needed, USEPA and the states will address unresolved issues, such as the specific national environmental and program performance indicators to be used in FY96 and the criteria for qualifying to be a "Leadership" program.

### **Relationship to Performance Partnership Grants**

Concurrent with this effort to reform its approach to oversight, USEPA will be seeking authorization from Congress to allow states to combine multiple grants from EPA into combined Performance Partnership Grants. This proposal shares many of the same objectives as the new oversight system: focusing on environmental results, creating incentives for improved performance, allowing increased flexibility for achieving these objectives, and enhancing accountability to the public. We expect that the two efforts will ultimately merge in practice and that the environmental assessments and performance agreements integral to the oversight reform will ultimately be multi-media assessments and agreements.



## Summary of National Environmental Performance Partnership System

Performance Management Parameters	Traditional System	New System	
		Participating Program	Leadership Program
<b>Environmental Goals/Indicators</b>	Minimal Use	Developmental Use	Regular Use
<b>Planning and Priority-Setting</b>	Program by Program	EPA/State Planning Within and Across Programs	Based on Multi-Year, Cross-Media Strategic Plans and Environmental Goals
<b>Annual State Self-Assessments</b>	Not Routinely Done	Survey of Environmental Conditions and Issues; & Assessment of State Performance	More Use of Environmental Data, Indicators, and Measures in Assessment
<b>Performance Agreements</b>	Federal Guidance and Activity Targets	Mutual Negotiation Process and New Measures	Increased State Discretion; Multi-Year Option; Emphasis on Environmental Outcomes
<b>Activity Measures</b>	Extensive Reliance	Reduced Reliance; Selection Based on Desired Outcome	Outcome Measures are Dominant
<b>Performance Reviews</b>	Mid-year/Annual Evaluations	Based on Joint Review of Annual State Self-Assessments	Stronger Reliance on Self-Assessments
<b>Site-Specific Reviews</b>	Variable Real-Time Review of Site-Specific Products	Shift to Limited After-the-Fact Reviews; Selective Use of Real-Time Reviews Based on Performance Agreement	Increased Deference to State Judgment; Rare Use of Real-Time Review
<b>Public Involvement</b>	Specific Comment on Facilities/Sites; Limited input on Program	Sharing Information on Environmental Conditions, Program Objectives and Performance	Annual Reports on Environmental Conditions; Input on Goals, Plans, and Priorities

PROTOTYPE PROGRAMS

TIME LINE FOR SYSTEM PHASE-IN

TRADITIONAL PROGRAMS

	1995		
STATE/EPA MEETING TO DEVELOP NATIONAL ENVIRONMENTAL GOALS INDICATORS	MAY 1	↑	
EPA REGIONS IDENTIFY PROGRAM(S) FOR REDUCED OVERSIGHT UNDER CURRENT SYSTEM	JUNE 1	↑	
NEW DRAFT ENVIRONMENTAL GOALS ANNOUNCED	JUNE	↑	
PROGRAMS IDENTIFIED FOR REDUCED OVERSIGHT THROUGH SELF-NOMINATION INTO NEW ENVIRONMENTAL PERFORMANCE PARTNERSHIP SYSTEM	JULY 1	↑	
SELF-NOMINATED STATES PREPARE PROTOTYPE SELF-ASSESSMENT AND SUBMIT TO EPA	AUG. 15	↑	INDICATORS AND LEADERSHIP CRITERIA DEVELOPED
PROTOTYPE ENVIRONMENTAL PERFORMANCE AGREEMENTS SIGNED	OCT. 1	↑	
	1996		
FINAL SET OF ENVIRONMENTAL GOALS	JAN 1	↑	EPA OVERSIGHT POLICIES OUT FOR PUBLIC COMMENT
PUBLIC INVOLVEMENT PROCESS IN PROTOTYPE STATES	JAN 1	↑	STATE CAPACITY STEERING COMMITTEE SYSTEM EVALUATION
PROTOTYPE STATES SUBMIT UPDATED SELF-ASSESSMENT AND APPLY FOR LEADERSHIP STATUS IF DESIRED	MAY 15	↑	REMAINING STATES DECIDE FIRST SELF-ASSESSMENT, TO REGIONAL ADMINISTRATOR
JOINT DISCUSSION ASSESSMENT AND PRIORITIES	JUNE/JULY	↑	MUTUAL DECISION ON ASSESSMENT AND PRIORITIES
SECOND ENVIRONMENTAL PERFORMANCE AGREEMENT NEGOTIATED WITH PROTOTYPE STATES FOR FY 97	JULY	↑	ANNUAL PERFORMANCE AGREEMENTS NEGOTIATED WITH REMAINING STATES FOR FY 97
	OCT. 1	↑	NEW ENVIRONMENTAL PERFORMANCE PARTNERSHIP SYSTEM REVIEWED, INCLUDING INDICATORS USED AND EFFECTIVENESS OF THE PROGRAM
	OCTOBER	↑	



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