

US EPA ARCHIVE DOCUMENT

**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 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	
		<u>Participating Program</u>	<u>Leadership Program</u>
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	
		<u>Participating Program</u>	<u>Leadership Program</u>
Environmental Goals/Indicators	Minimal Use	Developmental Use	Regular Use
Planning and Cross-Priority-Setting	Program by Program	EPA/State Planning Within and Across Programs	Based on Multi-Year, Media Strategic Plans and Environmental Goals
Annual State Environmental Self-Assessments	Not Routinely Done	Survey of Environmental Conditions and Issues; & Assessment of State Performance	More Use of Data, Indicators, and Measures in Assessment
Performance Agreements Emphasis Outcomes	Federal Guidance and Activity Targets	Mutual Negotiation Process and New Measures	Increased State Discretion; Multi-Year Option; on Environmental
Activity Measures	Extensive Reliance Measures are	Reduced Reliance; Selection Based on Desired Outcome	Outcome 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
Public Involvement	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