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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 11 2003

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Performance Partnership Grant Steering Committee Recommendations and Decisions

TO: Assistant Administrators
General Counsel
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators

In July of 2002, I asked your office to participate on a Performance Partnership Grant (PPG) Steering Committee to determine how we could make this important tool more valuable to States. The purpose of this memorandum is to transmit the Steering Committee's recommendations and our collective decisions on several key issues. Please share these decisions with your staff to ensure a consistent, Agency-wide understanding of PPG policy and implementation, which will help States take full advantage of PPG flexibility.

PPGs are an important tool in the State-EPA partnership. Agency leadership will continue to urge States to use PPGs and Performance Partnership Agreements (PPAs). Regions should be working directly with States to ensure they have the opportunity to benefit from PPGs and PPAs, and National Program Managers should continue to minimize barriers to their use.

One of the early initiatives stemming from the Committee's work was to host the first EPA/State project officers workshop in Salt Lake City in January, 2003. As a result of this workshop, and to implement one of the Committee's recommendations, a training course is being developed for headquarters, regional and State PPG project officers and managers. The first PPG training session will be held at the end of July in Dallas, Texas, for Region 6 and its States. Additional EPA-State training courses will occur across the country during 2003. The Office of Congressional and Intergovernmental Relations (OCIR) will contact you directly to make the necessary arrangements for participation.

The Performance Partnership Steering Committee will continue to address PPG policy and implementation issues, and has expanded its scope to include Performance Partnership Agreements. The Committee will address the crucial issue of how we can make PPAs the single document defining State-EPA goals, outcomes, commitments, roles, and responsibilities for a specific period of time.

In concert with EPA's efforts, the Environmental Council of States established the Partnership Agreement and Grants Workgroup at their Spring 2003 meeting. This group will work closely with EPA's Performance Partnership Steering Committee to address the full range of PPA and PPG issues.

The Steering Committee recommended that OCIR function as the lead office for State Performance Partnership Grants. OCIR has agreed to serve in this role to ensure that the decisions in the attached memo are implemented.

If you have any questions on this memorandum or any state performance partnership issue, please contact Dona DeLeon, Deputy Associate Administrator, Office of Congressional and Intergovernmental Relations or Pamela Luttner or Bill Crews of her staff.



Linda J. Fisher
Acting Administrator

Attachment:
Steering Committee Recommendations and Decisions

cc: State Environmental Commissioners
PPG Steering Committee
PPG Workgroup

PPG Steering Committee Recommendations

Below is a synopsis of Steering Committee issues, recommendations, and decisions. The workgroup categorized the issues as either “Policy” or “Operational.”

POLICY ISSUES

1. Do provisions of NPM grant or program guidance inappropriately limit PPG flexibility?
2. Can States create “partial” PPGs?
3. Do the competition requirements for some PPG-eligible grants cause an undue limitation on joint planning and priority-setting between the EPA and States?
4. What is the process and who are the lead offices for resolving PPG policy issues?
5. Is there a clear process for the Administrator to decide whether a grant is PPG-eligible?
6. Do assistance agreements between EPA and State and local agencies provide EPA with adequate performance information to evaluate environmental and program results and satisfy agency requirements under the Government Performance and Results Act?

OPERATIONAL ISSUES

7. Has EPA completely institutionalized PPGs?
8. Does the budget structure promote PPG flexibility?

DISCUSSION - RECOMMENDATIONS-DECISIONS

1. Do provisions of NPM grant or program guidance inappropriately limit PPG flexibility?

Recommendation: Establishing grant requirements in NPM guidance can limit PPG flexibility and conflict with the Part 35 grant rule. Committee members believed that the agency should prevent rules established by guidance from limiting PPG flexibility.

Decision: Any requirements established in guidance must be clearly identified and accompanied by a waiver provision. OCIR, in consultation with other appropriate offices, will review draft guidance to ensure its consistency with the Part 35 grant rule before final guidance is issued.

Discussion: Grant guidance may establish requirements that:

- (a) are not consistent with the flexibility provided under the Environmental Program Grants Regulation (40CFR 35.107 (a)(2)); and
- (b) limit the funding flexibility in the PPG Regulation (40CFR 35.130 through 35.138).

The purpose of PPGs is to strengthen partnerships between EPA and State agencies through joint planning and priority setting and better deployment of resources to address environmental and public health priorities (see 40CFR 35.130(b)). When grant guidance establishes new binding requirements outside the normal regulatory process, they can become barriers to the flexibility originally intended under the Part 35 grant rule. To avoid these problems in the future, EPA will:

- 1) ensure grant requirements imposed by National Program Manager guidance are clearly identified; and
- 2) require guidance (containing requirements) to include a waiver provision similar to that contained in the Part 35 grant rule at 35.107 (a)(2).

2. Can States create “Partial” PPGs?

Recommendation: The intent of the Part 35 grant regulation was to allow states to develop full or partial PPGs. A partial PPG is one where only a portion of the funds available under more than one program are awarded under a PPG while the balance of the funds are awarded categorically or under other PPGs. The Committee believed partial PPGs should continue to be allowed and simplified where possible.

Decision: Partial PPGs may be awarded, *but* it is EPA’s policy to promote full PPGs. If a State is interested in a partial PPG, the Region should contact the Office of Grants and Debarment and the Office of General Counsel for specific guidance.

Discussion: The Maryland Department of the Environment (MDE) proposed to establish a partial Performance Partnership Grant (PPG) for a cross-media information technology system. This PPG was to be funded by taking 10% from each of the current, PPG-eligible, environmental program grants. MDE proposed this PPG as a means of meeting one of their top priorities—data integration for environmental programs. Given the innovative nature of the PPG, a meeting among staff from Region III, the Office of Grants and Debarment (OGD), and MDE was held on January 30, 2002 to ensure that all of the concerns had been adequately resolved.

A significant issue emerged from this discussion, which would not have emerged if the State of Maryland had requested a full PPG. Two of the programs proposed for the partial PPG include Maintenance of Effort (MOE) requirements, i.e., Air Pollution Control (105) and Water Pollution Control (106). The Office of General Counsel determined that the partial PPG, as proposed, did not comply with MOE requirements.

The State of Maryland was given two options for combining a portion of its Section 105 funds into a PPG. One option required the state to certify, after the project was complete, that resources were expended consistent with the MOE requirements. Maryland's second option was to include only Federal Section 105 funds in the PPG while satisfying the maintenance of effort requirement under the Section 105 categorical grant.

3. Do the competition requirements for some PPG-eligible grants unduly limit joint planning and priority setting between EPA and states?

Recommendation: There should be a way to accommodate regions that want to enable their States to rely on more consistent funding to support joint EPA/State planning.

Decision: Region 1 will carry out a three year pilot beginning FY 03 for Water Quality Cooperative Agreements and Wetlands Development Grants that combines joint planning and competition. This pilot may require a deviation from regulations. The affected program and region will evaluate the pilot beginning in 2004 to consider any appropriate longer term changes in regulation or guidance.

Discussion: 40 CFR 35, Subpart A currently requires State agencies to compete for four of the seventeen environmental program grants that are eligible for inclusion in PPGs: Wetland Development Program Grants, Water Quality Cooperative Agreements, Pollution Prevention State Grants, and Toxic Substance Compliance Monitoring Grants. State agencies that receive funds through the competitive process may include the funds in a PPG, provided the work plan components proposed for the competition are included in the PPG work plan. This ultimately serves as a disincentive for long-term joint planning since State agencies cannot assume funding until completion of the competition.

On the other hand, the following benefits from competition were noted:

- there are no base requirements as in other delegated programs, so competition encourages innovation;
- other potential recipients (e.g., interstate agencies and local governments) may encourage all applicants to submit stronger proposals; and
- funds will more likely be used for projects rather than program operations.

4. What is the process and who are the lead offices for resolving PPG policy issues?

Recommendation: Charter a resolution committee to mediate issues where agreement or consensus cannot be reached. This committee should include representatives from OCIR, OGD, the Office of General Counsel (OGC), and the appropriate national program and region.

Decision: OCIR will be the lead office for PPGs. In this capacity, OCIR will coordinate issue resolution among OGD, OGC, program offices Regions, as appropriate. OCIR will work with the American Indian Environmental Office to maximize PPG use by the Tribes and resolve any

issues. The Steering Committee will evaluate the lead office designation and report back to the Deputy Administrator in January 2004.

Discussion: The Performance Partnership Grant program was first implemented under the leadership of a steering committee led by Kerry Clough, ARA, Region 8 and Dana Minerva, DAA, OW. The Committee included senior EPA managers from nearly all EPA offices and representatives from several states and Tribes. The Committee was supported by a work group composed of staff from most EPA offices.

The work group developed initial PPG guidance and, subsequently, State and Tribal Environmental Program Grant regulations, which became effective in April of 2001. After the regulation was published, the Steering Committee and the work group disbanded. Since then there has been no organization or office with specific responsibility for PPG implementation. Guidance has been issued and decisions have been made over the years thorough ad hoc processes. Recently, however, there have been some issues that have been difficult to resolve.

While one of the objectives of the PPG rule is to improve the partnership and collaboration between EPA and States, it is inevitable that the joint priority-setting process between National Program Managers, Regional Offices and States will result in occasional conflicts. Until this point, however, there has not been a lead office designated to facilitate issue resolution.

5. Is there a clear process for the Administrator to decide whether a grant is PPG-eligible?

Recommendation: The lead office for PPGs (OCIR) should develop a process for program offices to follow in determining whether new STAG grants should be PPG-eligible.

Decision: The Agency should *assume* that all new STAG grant programs will be eligible for inclusion in PPGs. If any office believes a new grant should be excluded from PPGs, the office should elevate the issue to the Deputy Administrator for resolution.

Discussion: The Part 35 rule does not define a process for determining which eligible grants should be included in PPGs. The authorizing statute and rule give the Administrator the authority to make that determination. The need for a process became apparent when the Small Business Liability Relief and Brownfields Revitalization Act of 2002 passed and authorized \$50 million per year in the STAG appropriation for State and tribal grants. Since these are STAG funds, the program is eligible for inclusion in PPGs, but there was no process for OSWER to follow in determining whether they actually should be included, and for other offices to have input into the decision.

6. Do assistance agreements between EPA and state and local agencies provide EPA with adequate performance information to evaluate environmental and program results and satisfy agency requirements under the Government Performance and Results Act?

Recommendation: The Steering Committee should further evaluate this issue and analyze the

effectiveness of Part 35 implementation nationwide. This evaluation should consider both PPGs and categorical grants since both have the same workplan and evaluation requirements.

Decision: The Performance Partnership Steering Committee will further consider this issue, and may commission a subgroup to study it in more detail.

Discussion: About 15% of the Agency's budget goes to State and local governments in the form of environmental program grants. The Agency is the steward of these resources and remains accountable to Congress, the Administration, and the public. Some EPA national program managers believe there is a need for better information about the use of these funds in order to demonstrate appropriate accountability and justify budgets for OMB and Congress.

At the initial Steering Committee meeting, some members expressed concern that Performance Partnership Grant (PPG) agreements are not providing adequate performance information. The Steering Committee asked the workgroup to determine if the results information being received from PPG agreements is adequate to meet EPA's accountability obligations.

Initial discussions within the subgroup and the larger workgroup determined that:

- Assistance agreements are one of several ways the Agency receives performance data to help determine the effectiveness of EPA and state environmental efforts.
- PPGs do not create reporting requirements beyond those of categorical programs.
- PPGs and categorical grants are subject to the same requirements for work plan submission and evaluation of recipient performance.
- Some recipients may perceive that less accountability is required under a PPG than with a categorical grant.

Further discussion on adequate performance information raised an additional issue. Is the Agency's framework for performance measurement (performance measures and data), as implemented through assistance agreements, adequate to provide the necessary performance information? Additional key questions included:

- Are the performance and accountability requirements of Part 35 understood by NPMs, regions and States, and are they being implemented consistently?
- Are the Regions and States providing adequate performance information in accordance with the Part 35 regulations?
- Does the structure and content of the Agency's performance measurement framework enable the capture of meaningful performance and results data from assistance agreements (e.g., the GPRA architecture, annual performance measures, and core performance measures)?

Operational Issues:

7. Has EPA completely institutionalized PPGs?

Recommendation/Decision: The Steering Committee will continue to evaluate what steps are necessary to institutionalize PPGs further into EPA. The State/EPA workgroup, as well as the Planning Committee of ECOS, will continue to address these issues.

Discussion: These issues were addressed in the first State/EPA PPG PO training. Many staff, including PPG project officers, stated they need training on the Part 35 rule. Additionally, there could be differences (and confusion) in program office and regional implementation. For example:

- **Workplan negotiation.** Are regions negotiating PPG and categorical grant workplans consistent with the regulations (40 CFR 35.107)? The regulations require that workplans include specified items. Some regions may not be complying fully with the regulation and requiring States to provide more or less information than is necessary.
- **Performance Evaluation and Reporting Requirements.** Are regions and applicants negotiating a process for jointly evaluating and reporting progress and accomplishments as required? The regulations establish requirements for the content of such negotiated processes, and it appears some programs and regions are not fully complying with them.

8. Does the budget structure promote PPG flexibility?

Recommendation/Decision: The workgroup proposed, and the Steering Committee agreed, to defer consideration of this issue until the new GPRA architecture is in place. The Performance Partnership Steering Committee will consider this issue at the appropriate time.

Discussion: The PPG workgroup urges the Strategic Plan and GPRA Restructuring Work Group to consider reviewing the number of PRCs required for PPGs that are necessary to achieve meaningful reporting and accounting, as well as administrative savings envisioned by NEPPS.