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EPA-State Worksharing Task Force Principles and Best Practices for Worksharing



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Introduction

Since 2009, U. S. Environmental Protection Agency (EPA) and state leaders have been committed to strengthening worksharing as a tool to address reductions in state budgets caused by the economic downturn and slow recovery. The Agency's commitment was memorialized in the *FY 2011-2015 EPA Strategic Plan*, which included a cross-cutting partnership strategy that committed EPA to “work with states to seek efficient use of resources through worksharing, joint planning using data analysis and targeting to address priorities, and other approaches.” This report provides principles to inform, guide, and serve as a framework for negotiating effective worksharing arrangements between regions and states. It includes best practices for several common worksharing scenarios and contains two specific regional examples in the areas of monitoring and environmental justice. The report also offers additional suggestions to help federal and state officials make informed management choices, provide future policy direction, and facilitate the negotiation of effective worksharing agreements.

Background

The FY 2011 Action Plan for implementing the cross-cutting strategy for partnerships contained a Key Performance Indicator to establish an EPA-State Worksharing Task Force and identify the program areas where worksharing can be applied along with the areas it is prohibited by statutes or regulations. The Task Force published its first report in July 2012, entitled *Prohibitions, Areas of Caution, and Recommendations to Enhance Worksharing Opportunities*¹. The report identified two prohibitions and several areas of caution, and also recommended that regions and states consult with counsel and the National Program Managers since all possible worksharing scenarios cannot be anticipated.

To ensure that EPA continued to focus on worksharing, the FY 2012 Action Plan included an action item directing the Task Force to identify, develop and make available to the regions and states a list of worksharing best practices. This report is the result of that directive.

Core Principles

The Task Force presents the following core principles to inform, guide, and serve as a framework for negotiating effective worksharing agreements and/or arrangements. To the extent possible, these core principles should be applied when negotiating worksharing arrangements so that scarce resources can be deployed effectively and efficiently.

1. Worksharing should be included in joint planning discussions between regions and their states. Any worksharing arrangements negotiated should be documented in a

¹ See http://www.epa.gov/ocir/nepps/pdf/task_force_report_prohibitions_areas_caution.pdf.

Performance Partnership Agreement, Performance Partnership Grant, other grant workplan, or other document as appropriate.

2. Worksharing arrangements and follow-up activities must be mutually agreed upon and considered beneficial by both the EPA and the state.
3. Worksharing efforts may include sharing staff, resources, expertise, or any combination thereof. Many worksharing efforts involve the EPA assisting a state or states; however, worksharing efforts also may include a state or group of states assisting the EPA either singly or in combination.
4. States have assumed responsibility through authorization or delegation to implement the majority of primary delegable federal environmental programs. When negotiating worksharing arrangements for state-lead activities, states should retain control over them unless explicitly relinquished to the EPA.
5. Worksharing should help balance workload, enhance capabilities, reduce duplication of effort, or result in other benefit to the partners.
6. Worksharing arrangements that address core program functions such as permit writing, data collection, inspection, monitoring, and enforcement can provide considerable benefit to states and regions. Worksharing arrangements also can be negotiated when a special or unforeseen need arises.
7. The administrative requirements to enter into a worksharing arrangement should be easily accomplished so as not to create an additional burden to the state, EPA, or regulated community.
8. When determining work products to result from worksharing arrangements, applicable state and federal laws and regulations, and format and data entry requirements must be taken into account.
9. Regular communication between worksharing partners increases the likelihood of a successful effort.

Best Practices

This section provides recommended best practices for five worksharing activities commonly employed by regions and states, and includes two specific regional approaches in the areas of monitoring and environmental justice. The Task Force believes these can serve as useful references during region-state workplan commitment negotiations, or any other discussions regarding worksharing. They cover a range of topics, including inspections, permits, enforcement, monitoring, environmental justice, and technical/financial assistance. Each example is followed by a list of recommended best practices to ensure success.

Conducting Inspections

1. Following a successful state-region worksharing negotiation, an EPA region agrees to complete a defined number of inspections for a specified state program.
2. An EPA region plans to conduct a multi-media inspection of a large facility with emissions in multiple media for the first time. The region opts to include a state inspector with experience inspecting the facility as part of the team. The state inspector's prior knowledge of the facility contributes significantly to the efficiency and effectiveness of the EPA inspection.

Recommended Best Practices

- Develop a strategy with checkpoints to ensure good communication before and after an inspection.
- Establish which entity will write the inspection report, enter data in appropriate databases, and set clear expectations for the entity that will have the lead on any enforcement follow up.
- Include time frames for enforcement follow up, as appropriate.
- Define which information is to be shared, when, and with whom.

Pursuing Enforcement Actions

An EPA administrative penalty action does not settle, but goes to hearing. A state inspector who participated in the joint federal-state inspection of the violating facility provides valuable testimony at the hearing about his/her observations of violations during the inspection that led to the enforcement action.

Recommended Best Practices

- Develop a strategy with checkpoints to ensure good communication before and after the hearing.
- Establish clear expectations for the state inspector's participation in the hearing.
- Define which information is to be shared, when, and with whom.

Drafting Permits

Following a successful state-region worksharing negotiation, EPA staff or a contractor develops draft permits for the state to release for public comment.

Recommended Best Practices

- Develop a strategy with checkpoints to ensure good communication throughout the permit development process, and a schedule with milestones.
- Determine information needs and format requirements for draft permits under relevant laws and regulations.

- Ensure that draft permits submitted to the state meet state guidelines and are ready for the state to process for public notice and comment.
- Define which information resulting from the comment period is to be returned to regional staff or the contractor for analysis and writing, and what information is to remain with the state to address process issues.
- Establish at what point the permit is returned to the state for completion and/or implementation.

Conducting Environmental Monitoring

Following a successful state-region worksharing negotiation, EPA staff or a contractor conducts field work to collect environmental data. The data then would be provided to the state so that it could easily be entered into relevant state databases. Alternatively, an EPA employee or contractor could enter the information into the state and/or national databases following appropriate state and/or federal procedures, if such an arrangement is part of the worksharing agreement.

Recommended Best Practices

- Develop a strategy to guide fieldwork and sample handling.
- Determine which entity will maintain responsibility and control over the completed work.
- Establish a format for the data so that it is easily entered into the appropriate databases.
- Identify who will enter the data into the databases.

Providing Technical and Financial Assistance

The provision of technical and financial assistance to community partners frequently leverages significant outside resources that can help achieve environmental outcomes far more quickly and effectively than when agencies work alone. In some cases, such as with Brownfields site assessment assistance, unlocking significant sources of outside resources can depend on complex external schedules or issues, including those related to construction or development financing.

EPA often works closely with state partners to respond to technical assistance needs. States are often able to mobilize contractors quickly and will have more local knowledge and expertise. EPA often can provide specialized expertise and can help identify longer-term sources of funding. This collaboration increases the ability to respond to the highest priority projects, apply the appropriate expertise to meet unique technical needs, and link together different assistance tools to see projects to completion.

Recommended Best Practices

- Engage in preliminary discussions about how to respond to requests for assistance.
- Provide a timely response to requests for assistance.
- Provide regular communication about changes in the availability of resources and technical assistance capacity.

- Engage in joint planning to identify cross-agency priorities and goals, and make strategic use of flexibility and sources of funding within each organization.
- Share information about contracts and grants management to increase the effectiveness of environmental services procurement.

Region 7 Worksharing Example

Monitoring

The Regional Ambient Fish Tissue Monitoring Program (RAFTMP) was initiated in 1977 by Nebraska Department of Environmental Quality and EPA Region 7. Major program elements, responsibilities, and benefits for the partners follow.

Nebraska Department of Environmental Quality (NDEQ)

- Annually collects fish tissue samples from most of Nebraska's major streams and from recreationally important lakes and reservoirs. Currently, this sampling is conducted in approximately 50 selected rivers and lakes in accordance with Nebraska's six-year rotating basin monitoring approach. Trend monitoring of whole fish at five established water bodies has been conducted bi-annually since 1987.
- Re-samples sites every six years where previous RAFTMP sampling has revealed high levels of contaminants in fish tissue and advisories have been issued. If conditions have improved, NDEQ lifts the advisories and the site is assessed for re-sampling in the future.
- Responsible for the planning, sample collection, equipment needs, assessment, and report writing components of the program.

Region 7

- Analyzes tissue samples collected by NDEQ for selected contaminants.
- Provides results to NDEQ.
(Note: Region 7 also collects samples at trend monitoring sites on the Missouri and Mississippi Rivers, as well as many other sites, when requested by any Region 7 state or tribe.)

Benefits to EPA and NDEQ

- Screens more water bodies efficiently and effectively.
- Assures data comparability through consistent sample collection and analysis.
- Stores raw data in an accessible database (STORET) for regional and/or national use.
- Enables both to stay abreast of emerging contaminants of concern and procedures for fish tissue analysis.
- Leverages laboratory investments and analytical capacity.

Region 3 Worksharing Example

Environmental Justice (EJ)

EPA is working actively with its state, local and other federal partners to ensure that EJ is implemented nationally. Success of this effort depends on sharing resources through a strong state-EPA partnership. EPA Region 3 has been very successful advancing EJ through worksharing. The region coordinates monthly calls with the Region's and states' EJ Coordinators, the public, business interests, local governments and others. Several regions are now using Region 3's successful model.

Examples of EJ worksharing activities include: shared training and guest speakers; EJ capacity building with local governments and communities working to clean up Brownfield sites; collecting and communicating EJ success; co-sponsoring local public workshops on EJ and related environmental issues; coordinating risk-based monitoring, assessments, and pollution prevention strategies; and, delivering Alternative Dispute Resolution training. Important benefits of this approach include having the communities observe first-hand the value of this collaboration; reducing miscommunication to the public and across agencies; providing better access to the multiple agencies that have regulatory environmental oversight and responsibilities in these communities; and establishing trust and communication pathways. Communities can provide local insight and knowledge, and states and EPA can provide technical expertise and legal knowledge.

Recommended best practices:

- Provide ongoing EPA leadership and coordination nationally and regionally.
- Leverage available federal, state, and local resources to support training, workshops and public meetings.
- Leverage collaboration and communication tools and resources at all levels of government.
- Ensure availability of expertise from various levels of government.
- Maintain community involvement throughout the full life cycle of environmental planning, implementation, review, and corrective action.
- Recognize that EJ is a core component of a sustainable community by building a responsibility-sharing relationship among environmental protection agencies, communities, and the businesses within those communities.

Additional Suggestions to Foster Worksharing

The Task Force offers these suggestions to help federal and state officials make informed management choices, provide future policy direction, and facilitate the negotiation of effective worksharing arrangements.

- Develop a mechanism for rapid elevation and resolution of worksharing issues.

- Consider establishing “Centers of Excellence” among states within an EPA region.
- Develop and share templates, model documents and other guidance documents that can be shared by the partners in worksharing arrangements. Have these documents available using technology tools for collaboration.
- Establish practitioner online collaboration communities (e.g., permit writers, modelers, inspectors, and others) through which EPA and state staff can interact and share expertise.
- Continue to support and expand electronic data exchange through the National Environmental Exchange Network.
- Consider opportunities to engage the private sector, non-governmental organizations, foundations, and educational institutions to further worksharing efforts.

Next Steps

The Task Force plans to address the following two topics in more detail in a future report on training, but believes it is important to note them here in the context of worksharing best practices.

Reinvigorate Use of the Intergovernmental Personnel Act (IPA). Whenever possible, increase the deployment of EPA personnel to states to assist with defined workload needs, and strengthen support for state personnel working in EPA regional or HQ offices. Both arrangements will result in greater state-EPA understanding of workload challenges and solutions. Budget constraints can be a limiting factor for both the states and EPA in terms of exchanging personnel, but it may be possible to accomplish it as part of a mid-career development program.

Training Courses. EPA should prioritize training courses for state personnel to address specific gaps in expertise. This may include basic training for permit writers or air modelers due to high state staff turn-over, training for state managers regarding necessary levels of information for certain program elements, or training to respond to immediate needs, such as in the aftermath of an environmental disaster. Courses offered with some frequency on-site in state offices, or at a minimum in regional offices, or alternatively via online training webinars are the most helpful to state staff.

Conclusion

The Task Force is pleased to present these principles and examples of best practices to facilitate and expand the conversation between regions and states about worksharing. This information is intended to stimulate consideration of what is possible within the realm of worksharing. Readers are invited to share their successful worksharing arrangements with Denise Ney at ney.denise@epa.gov so they can be compiled and shared to further expand the universe of worksharing possibilities.