

White Paper on Meeting the Challenges of Environmental Protection Together: Building Strong EPA-State Partnerships

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Acronyms List

Association of State Drinking Water Administrators (ASDWA)
Clean Air Act (CAA)
Clean Water Act (CWA)
Conditionally Exempt Small Quantity Generators (CESQG)
Continuing Environmental Program (CEP)
Enforcement and Compliance History Online (ECHO)
Environmental Council of States (ECOS)
EPA Online Tracking Information System (OTIS)
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
Government Accountability Office (GAO)
Grants Policy Issuance (GPI)
Greenhouse Gas (GHG)
Large Quantity Generators (LQG)
National Ambient Air Quality Standards (NAAQS)
National Association of Clear Air Agencies (NACAA)
National Association of State Budget Officers (NASBO)
National Emissions Standards for Hazardous Air Pollutants (NESHAPS)
National Environmental Performance Partnership System (NEPPS)
National Governor's Association (NGA)
National Program Manager (NPM)
National Pollution Discharge Elimination System (NPDES)
New Source Performance Standards (NSPS)
Office of Congressional and Intergovernmental Relations (OCIR)
Office of Enforcement and Compliance Assurance (OECA)
Office of Grants and Debarment (OGD)
Office of the Chief Financial Officer (OCFO)
Oil Pollution Act (OPA)
Performance Partnership Agreements (PPAs)
Performance Partnership Grants (PPGs)
Resource Conservation and Recovery Act (RCRA)
Safe Drinking Water Act (SDWA)
Small Quantity Generators (SQG)
State and Tribal Assistance Grants (STAG)
State Implementation Plans (SIP)
Total Maximum Daily Loads (TMDLs)
Toxic Substances Control Act (TSCA)
Treatment, Storage and Disposal (TSD)

Meeting the Challenges of Environmental Protection Together: Building Strong EPA-State Partnerships

1 Introduction

Notwithstanding periods of difficulty, the last 40 years have seen steady improvements in the health of both our environment and our economy. Progress on both fronts has been driven by smart environmental policies that keep us healthy, strengthen our communities, and foster industry innovation. Environmental action by federal, state, local and tribal governments has resulted in cleaner air in our cities and safer water in our homes.

Currently, governments at all levels are running deficits. This presents significant challenges at a time when our scientific understanding of environmental risk continues to grow, global environmental problems and natural and man-made disasters demand action, and there is recognition that the time has come to expand the conversation on environmentalism and working for environmental justice. This context ensures that human health protection and environmental progress will require action by federal, state, local and tribal governments.

States and tribal nations bear important responsibilities for the day-to-day mission of environmental protection. As discussed above, economic circumstances are pressuring EPA, state agencies and tribal governments to do more with the same or fewer resources. Consequently, strong partnerships and accountability are more important than ever. EPA must do its part to support state and tribal capacity and, through strengthened oversight, ensure that programs are consistently delivered nationwide. Through these partnerships and efficient and effective environmental programs, EPA, states and tribal nations will continue to deliver progress in the health of our environment and economy.

EPA has developed this white paper to:

- Provide a brief overview of the roles and responsibilities that states play in promoting environmental protection;
- Highlight the growing environmental and financial pressures that states have been facing in recent years; and
- Identify some of the collaborative opportunities that states and EPA are pursuing to streamline more labor-intensive processes to make our current system of environmental protection as efficient and cost effective as possible. This includes, for example, identifying mechanisms to increase state funding; worksharing with the EPA Regional offices where regional resources and staffing capacity permit; and identifying opportunities to reduce program costs while maintaining environmental protection (e.g., Kaizen events)

EPA greatly appreciates the time and effort provided by numerous state Commissioners and other state representatives to further develop a shared understanding of the impact of EPA regulations on state budgets. Such collaboration is critical to the continued successful partnership that EPA, the states and the tribes have forged to jointly achieve this nation's environmental and human health goals.

2 EPA and the States: A Shared Mission for Protecting the Environment

2.1 State Delegation Process

Most federal environmental programs were intended to be administered by the states. The intent of this design was to use the strengths of federal, state and local governments in partnership to protect public health and the nation's air, water and land. The assumption of partial or full control over one of these programs is known as "delegation."

In order for delegation to occur, the state legislature must have passed authorizing legislation that is at least as stringent as the federal standard while demonstrating that the state has adequate resources to run the program. The state then files a petition with the EPA. Most programs are delegated in a piecemeal fashion, allowing the state to advance incrementally as greater resources are available. Over the years, a steady increase in the number of programs delegated to the states has been observed. While the states generally assume the primary implementation role, the federal government is still to provide national leadership, develop general program frameworks, establish standards, conduct research, collect information, provide assistance for states preparing to assume the responsibilities for program implementation, provide technical support, and ensure national compliance. The state and EPA roles vary considerably by state and program, however, as state delegation is designed to be flexible rather than a "one size fits all" proposition.

2.2 Key State Program Activities

States must deploy substantial resources in order to implement federal environmental regulations. Those EPA rules that include new requirements demand significantly more resources compared to those rules that simply modify existing requirements. States incur additional start-up costs due to these new rules, including costs associated with designing an implementation plan, obtaining additional delegated authority, developing additional infrastructure and capacity, and conducting more extensive outreach and training to the regulated community. The key activities that states perform in order to administer federal environmental programs generally fall into one of the four main categories presented in Table 1 (on page 4) and described in more detail below.

Compliance Assistance

The states are generally better positioned to provide compliance assistance because they have deeper knowledge and understanding of the entities in their state affected by regulations. This knowledge also allows states to make more informed decisions about what mix of resources between compliance assistance and enforcement will most effectively achieve compliance. Compliance assistance includes outreach activities to create awareness of requirements as well as education and technical support geared toward helping the regulated community achieve compliance.

One example of an important compliance assistance function performed by the states is the support they provide to small drinking water systems. These small systems (serving populations of fewer than 10,000) frequently do not have the capacity to meet the challenges of increasingly complex drinking water regulations. The state agencies, either directly or through contracted technical assistance

providers, are spending substantial resources to find the individualized solutions that are necessary for these small drinking water systems to comply with drinking water regulations (ECOS 2010b).

Permit Administration

Most federal environmental programs rely on permit systems to limit pollutant releases and therefore permit administration is a key program function performed by states administering federal rules. Permit administration is another activity where states benefit from their local knowledge. For example, National Pollution Discharge Elimination System (NPDES) permit writers often must take individual facility characteristics as well as the characteristics of local water bodies into account.

The Greenhouse Gases (GHGs) Tailoring Rule is an example of a program that requires states to issue permits. The largest stationary sources of GHGs must obtain a permit by demonstrating that they are using the best practices and technologies to reduce GHGs. According to ECOS (2010b), many of the large stationary sources of GHGs will seek permits that provide them with “minor source” status, which poses an additional challenge for states because they cannot recover the costs of administering these minor permits through fees.

Monitoring

Performing monitoring is essential for being able to assess whether environmental programs are achieving their goals. Since monitoring must be performed locally, resting the primary monitoring responsibilities with the states makes sense. EPA generally supports the monitoring activities of the states by developing and evaluating monitoring technologies and helping states purchase monitoring equipment.

For example, states will have to expand their air quality monitoring networks in order to meet the new fine particulate matter, lead, and ozone National Ambient Air Quality Standards (NAAQS). These monitoring networks are necessary to determine whether the NAAQS are being attained, and they also provide important information for developing a plan to achieve attainment if standards are not currently being met. In addition, good monitoring data can be critical for states that are close to the nonattainment thresholds, so they can take action to ensure that they maintain attainment with the standards.

Enforcement Activities

Enforcement is a vital part of ensuring that governments, companies and others meet their environmental obligations. Inspections and enforcement activities level the playing field for environmentally compliant companies by deterring those who might otherwise profit from violating the law. States have the primary responsibilities for inspections and enforcement under most federal rules.

The Resource Conservation and Recovery Act (RCRA) Core C program is an example of a program where states have the primary responsibility for inspections and enforcement. The inspections performed by state programs of Small Quantity Generators (SQG), Conditionally Exempt Small Quantity Generators (CESQG), Large Quantity Generators (LQG) and Treatment, Storage and Disposal (TSD) facilities are the primary tools for ensuring compliance with RCRA.

Table 1: Key Activities by State Delegated Programs

Activity Category	Description
Compliance Assistance	<ul style="list-style-type: none">• Develop internal guidance and procedures, and train staff to perform compliance assistance• Develop and conduct outreach, education and training programs to create awareness and help affected entities comply with regulations
Permit Administration	<ul style="list-style-type: none">• Develop permit requirements and develop any infrastructure necessary (e.g., build a database) for permit administration• Collect, review, record, store and report permit documents and data, consult with facilities, the public and the media about permitting process, issue notifications and permits
Monitoring	<ul style="list-style-type: none">• Develop a system for monitoring affected entities and develop or acquire any infrastructure necessary for monitoring (e.g., build a database, purchase monitoring equipment)• Collect, review, record, store and report monitoring data; provide notifications of monitoring requirements
Enforcement Activities	<ul style="list-style-type: none">• Establish new procedures for enforcing the new regulation and develop or acquire any infrastructure necessary (e.g., build a database, purchase new equipment needed for inspections)• Conduct and review inspections; take enforcement actions, including issuing warnings, citations, fines or taking other legal actions; provide notifications of enforcement actions; keep records of enforcement activities and report them to EPA

2.3 Current Status of State Delegated Programs

Table 2 presents information on the number of states with fully or partially delegated authority to administer federal environmental programs. For many of these programs (Clean Air Act – CAA, Clean Water Act – CWA, Resource Conservation and Recovery Act – RCRA, Federal Insecticide, Fungicide and Rodenticide Act – FIFRA, and the Safe Drinking Water Act – SDWA) it is apparent that a vast majority of states have full delegated authority for permitting and other regulatory activities. While other programs, such as the Toxic Substances Control Act – TSCA and the Oil Pollution Act – OPA, are not officially subject to state delegation, many states still run approved programs under these rules. Table 3 provides more detail on each of the federal environmental program components included in Table 2.

Table 2: Current Status of State Delegated Programs

Program	Number of States by Delegation Status	
	Fully Delegated*	Partial Delegation**
Clean Air Act (CAA)		
New Source Performance Standards (NSPS)	41	12
NESHAPS	39	14
Prevention of Significant Deterioration (PSD)	45	4
Operating Permits (Title V)	44	3
New Source Review (NSR)	43	2
Risk Management Plans (Sect. 112r)	4	0
Clean Water Act (CWA)		
National Pollution Discharge Elimination System (NPDES)	43	3
Publicly Owned Treatment Works (POTWs)	36	1
Sludge Management	7	5
State Revolving Fund (SRF)	24	0
Wetlands (Section 404)	2	0
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)		
Section 23a (State Cooperation, Aid and Training)	46	5
Section 23b (State Cooperation, Aid and Training)	40	0
Endangered Species	31	4
Worker Protection	51	0
Groundwater Protection	35	8
Resource Conservation and Recovery Act (RCRA)		
Subpart C Base program	49	0
Corrective Action	40	0
Mixed Waste	46	0
Regulation of Burning of Hazardous Wastes in Boilers and Industrial Furnaces (BIF)	33	2
Toxicity Characteristics Revisions	48	1
Land Disposal Restrictions: California Wastes	45	0
Land Disposal Restrictions: 1/3 Wastes	43	1
Land Disposal Restrictions: 2/3 Wastes	35	1
Land Disposal Restrictions: 3/3 Wastes	39	1
Subpart D (Solid Waste)	43	5
Subpart I (Underground Storage Tanks)	37	3
Safe Drinking Water Act (SDWA)		
Public Water System Supervision (§1413)	51	0
Wellhead Protection Program (§1428)	40	1
Underground Injection Control (§1422)	34	0
Optional demonstration relating to oil/natural gas (§1425)	34	0
Toxic Substances Control Act (TSCA)		
Model Accreditation Plan (training for workers)	24	8
The Asbestos Hazard Emergency Response Act (AHERA) Waiver	10	3
Indoor Radon (§306)	6	0

* Also includes programs that are authorized with an approved state program or State Implementation Plan (SIP).

** Also includes programs with partial authorization and approval and programs in the process of being delegated, authorized, or SIP approved.

Source: ECOS, 2010a

Table 3: Summary of Environmental Programs Implemented by States

Program	Descriptions
Clean Air Act (CAA)	
New Source Performance Standards (NSPS)	Technology based standards that apply to new, modified and reconstructed facilities in specific source categories such as manufacturers of glass, cement, rubber tires and wool fiberglass.
National Emissions Standards for Hazardous Air Pollutants (NESHAPS)	Stationary source standards for hazardous air pollutants (HAPs), pollutants that are known or suspected to cause cancer or other serious health effects.
Prevention of Significant Deterioration (PSD)	Required before a “major” new source is constructed, or before changes or modifications that are “major” or “significant” are made at an existing “major” source of air pollution. The limits on air pollution through PSD permits prevent significant deterioration of air quality in areas that meet the NAAQS.
Operating Permits (Title V)	Applies to major sources of air pollution as well as other designated non-major source types.
New Source Review (NSR)	Requires major sources to show that modifications will not contribute to a violation of the increments or of the NAAQS, and that it will use BACT (Best Available Control Technology).
Sect. 112r	Requires risk management plans to prevent accidental releases and reduce the severity of those releases that do occur.
Clean Water Act (CWA)	
National Pollution Discharge Elimination System (NPDES)	Required for any discharges of pollutants from a point source into navigable waters of the United States. Limits the amount of pollutants that facilities may discharge into a water body to the thresholds established according to national technology-based standards and the conditions of the waters that receive the discharge based on state water-quality standards.
Publicly Owned Treatment Works (POTWs)	Required to develop pretreatment programs and impose pretreatment standards for discharges from non-point sources. Requires Best Available Technology Economically Achievable (BAT) for existing sources and best demonstrated technology for new sources.
Sludge Management	Prohibits disposal of sewage sludge if the disposal resulting from a POTW operation results in any pollutant from the sewage sludge entering the navigable waters, unless in accordance with a NPDES permit.
State Revolving Fund (SRF)	Fiscal year reserve requirement for the following programs: the non-point source management plan under §205(j) and the continuing planning process for water-quality standards and implementation plans under §303(e).
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)	
Section 23a and 23b (State Cooperation, Aid and Training)	Cooperative agreements with states and Indian tribes that provide state and tribal authority to cooperate in the enforcement of FIFRA Environment Pesticide Control.
Endangered Species	A primarily voluntary program to ensure that the use of registered pesticides will not result in harm to the species listed as endangered and threatened by the U.S. Fish and Wildlife Service, or to habitat critical to those species’ survival.
Worker Protection	Requires warnings about the applications of pesticides, use of personal protective equipment and restrictions on entry to treated areas.
Groundwater Protection	Requires the development of State Management Plans to prevent and reduce the possibility of ground water pollution from certain pesticides.

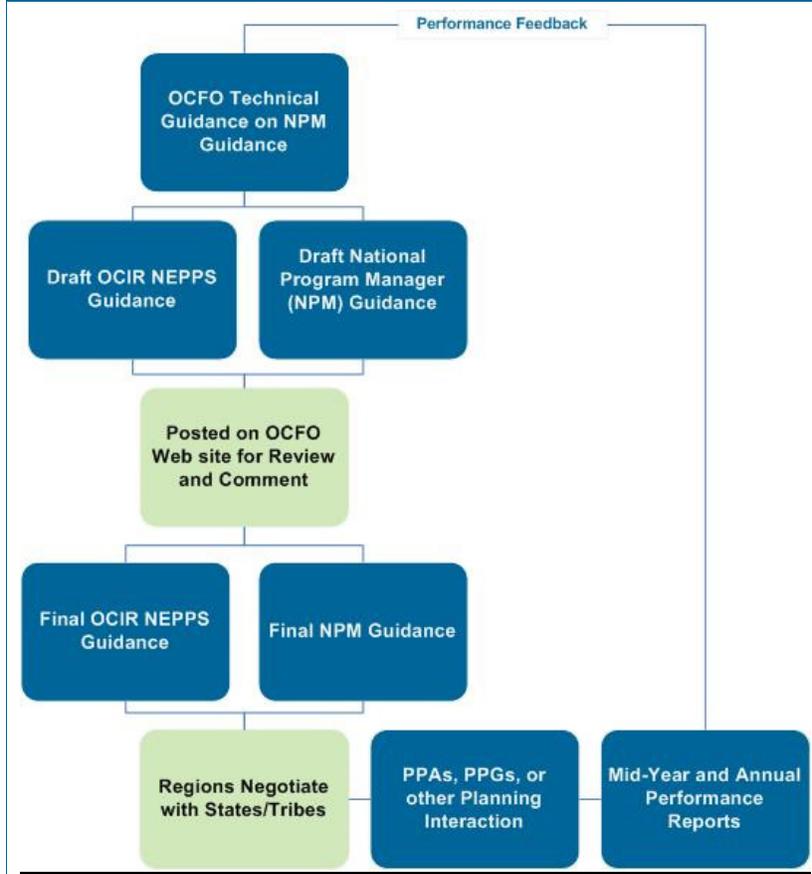
Table 3: Summary of Environmental Programs Implemented by States

Program	Descriptions
Resource Conservation and Recovery Act (RCRA)	
Subpart C Base program	Includes requirements for safe recycling, compostage, storage and disposal of wastes.
Corrective Action	Requires all facilities that have a TSD permit or are operating under an interim status to clean up current and former waste treatment, storage and disposal areas.
Mixed Waste	Regulates treatment, storage and disposal of radioactive mixed wastes.
Regulation of Burning of Hazardous Wastes in Boilers and Industrial Furnaces (BIF)	Regulates air emissions from the burning of hazardous waste in boilers and industrial furnaces.
Toxicity Characteristics Revisions	Toxicity characteristics are used to identify those wastes defined as hazardous and that are subject to regulation under Subtitle C of RCRA.
Land Disposal Restrictions: California Wastes	Land disposal restrictions for a category of wastes previously banned in California that subsequently have been incorporated into RCRA.
Land Disposal Restrictions: 1/3 Wastes	First phase of Land Disposal Restrictions implementation for wastewaters, process residuals, preservative dippage, etc.
Land Disposal Restrictions: 2/3 Wastes	Phase II of Land Disposal Restrictions, which sets treatment standards for organic toxicity characteristic wastes and newly listed wastes.
Land Disposal Restrictions: 3/3 Wastes	Land disposal restrictions for Third Scheduled Wastes. Under the rule, 2/3 scheduled wastes may be disposed of only if the landfill has a permit (or is in interim status), and complies with the requirements.
Subpart D (Solid Waste)	Requirements for recycling, composting and disposal of solid waste.
Subpart I (Underground Storage Tanks)	Provides regulations for the storage, primarily of gasoline, crude oil, and other petroleum products and covers performance standards for new tanks, leak detection, leak prevention, corrective action and financial responsibility.
Safe Drinking Water Act (SDWA)	
Public Water System Supervision (§1413)	Ensures the safety of public drinking water.
Wellhead Protection Program (§1428)	Protects wellhead areas from contaminants that may have any adverse effect on the health of persons.
Underground Injection Control (UIC) (§1422)	Regulations to ensure that underground injections do not introduce any contaminants to the public water system and cause noncompliance with any national primary drinking water regulation or may adversely affect the health of persons.
Optional demonstration relating to oil/natural gas (§1425)	States may show that the underground injections in connection with oil or natural gas operations meet the requirements of the UIC program.
Toxic Substances Control Act (TSCA)	
Model Accreditation Plan (training for workers)	Requires persons conducting asbestos-related activities in schools or public buildings to be certified by EPA.
Asbestos Hazard Emergency Response Act (AHERA) Waiver	Requires local education agencies to inspect their schools for asbestos containing material and prepare management plans to reduce the asbestos hazard.
Indoor Radon (§306)	States may apply for grant assistance for developing and implementing programs for the assessment and mitigation of radon.

2.4 Aligning EPA and State Environmental Priorities

As shown in Figure 1, EPA issues several key planning documents each fiscal year to guide the process for aligning EPA and state, local and tribal partner priorities. The National Program Manager (NPM)

Figure 1: Aligning EPA and State Priorities



Guidance provides direction on EPA’s programmatic priorities and implementation strategies.¹ The NPM guidance is shaped by technical guidance provided by EPA’s Office of the Chief Financial Officer (OCFO). EPA’s Office of Congressional and Intergovernmental Relations (OCIR), which oversees the National Environmental Performance Partnership System (NEPPS), also issues guidance to the EPA Regions to shape the joint planning process between the states/tribes and the Regions. Before these guidance documents are posted in draft on OCFO’s Web site to solicit stakeholder comments, they are distributed to the states to ensure adequate time for review and comment. EPA Regions use the framework described in the NPM and

NEPPS guidance documents to establish their own work plans, performance goals and worksharing strategies with the states. This guidance also provides a basis for negotiating fiscal year performance commitments between EPA and the states, which are often implemented through Performance Partnership Agreements (PPAs). The scope of PPAs can vary widely, from general statements about how the state and EPA will work together as partners (perhaps identifying joint priorities that will be addressed) to comprehensive, multi-program documents that detail each party’s roles and responsibilities. Most PPAs focus on priorities and strategies, joint evaluation processes, reporting requirements, output and outcome measures, dispute resolution processes, data management, and a discussion of the roles and responsibilities of each partner. PPAs also may be used to meet relevant statutory and regulatory requirements and serve as work plans for Performance Partnership Grants (PPGs) or other EPA grants. Figure 2 highlights the extent to which EPA and the states are using these performance partnership tools to guide ongoing environmental protection activities

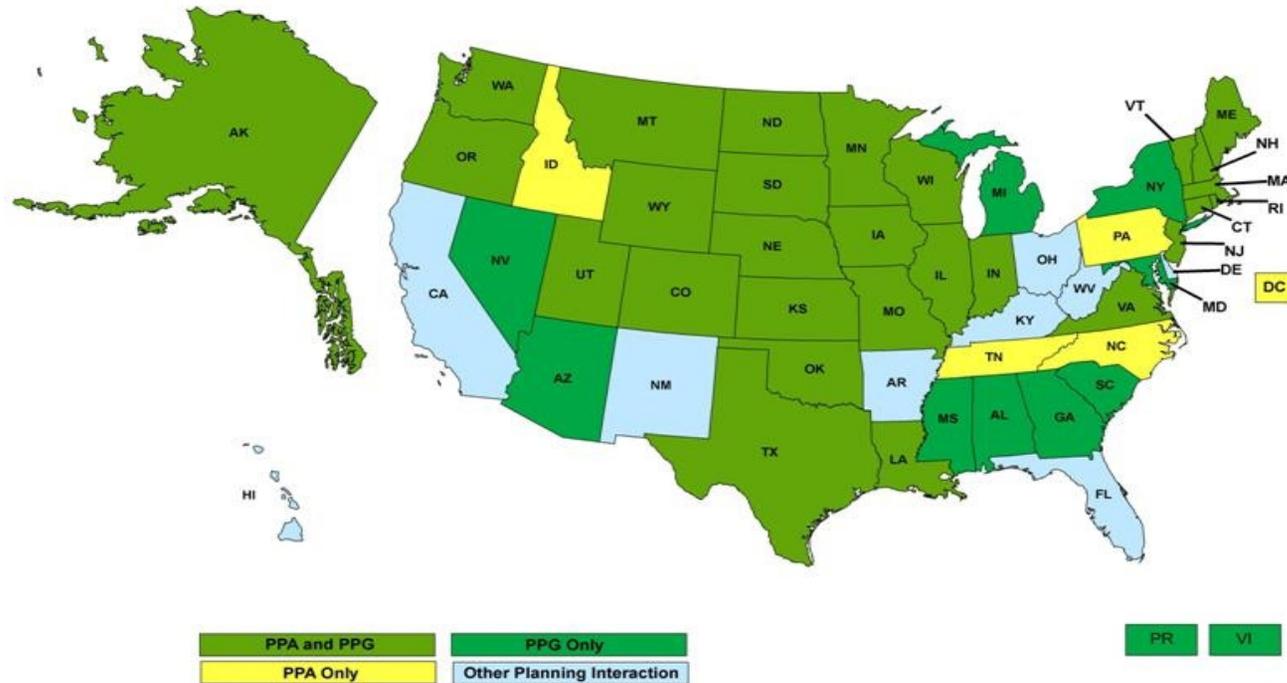
¹ The NPMs include EPA’s Office of Air and Radiation; Office of Water; Office of Solid Waste and Emergency Response; Office of Prevention, Pesticides and Toxics; and Office of Enforcement and Compliance Assurance.

Figure 2: Use of Performance Partnership Tools (2010)



Use of Performance Partnership Tools State Environmental Agencies – FY2010

Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs)



Source: U.S. EPA, Office of Congressional and Intergovernmental Relations, 2010.

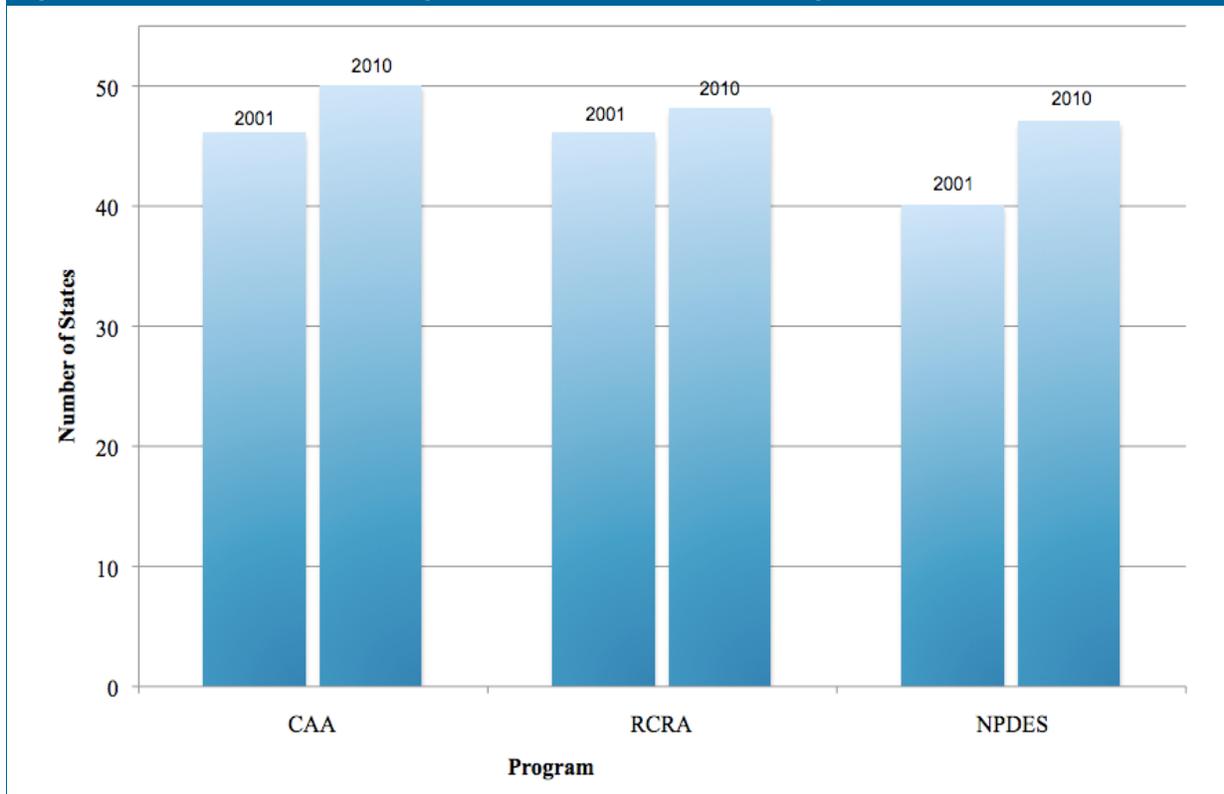
3 Trends in State Environmental Program Responsibilities and Funding

Over the past few years, states have continued to increase their acceptance of delegated authority while encountering growing costs to administer these programs—costs that have outpaced any budget increases they have received—and one of the most difficult fiscal periods since the Depression. To better portray the challenges that states are now facing, this section presents readily available information on trends in state delegation; program administration costs, including upcoming regulatory requirements; and state spending.

3.1 Increased State Delegation

In recent years, states have increased the number of programs where they have delegated authority and taken on the primary responsibility for program implementation. Between the major components of the CAA programs (NSPS and NESHAPS), the NPDES program under the CWA, and the Base Program under RCRA, there are 150 programs where state delegation is possible. Between 2001 and 2010, states increased their numbers of delegated programs from 132 to 145. Figure 3 presents the trends in delegation status in these three main programs between 2001 and 2010.

Figure 3: Trends in State Delegation of Environmental Programs, 2001 and 2010



*Includes partially delegated states for the CAA.

Source: ECOS 2010a, EPA 2010c

3.2 Increased Cost of State Program Activities

In preparing this paper, we conducted a search for some metrics that could be used to evaluate how the costs of state program activities have evolved over time, but a suitable metric could not be identified. Some of the metrics we considered included data available through the EPA Online Tracking Information System (OTIS) and the Enforcement and Compliance History Online (ECHO). For example, we considered whether to present data on the number of regulated entities or inspections performed by state. However, we found that our ability to develop metrics was confounded by changes in the completeness of the data reported and changes in the definitions of the data. Despite the lack of suitable metrics for evaluating how the costs of state program activities have evolved over time, we were able to identify studies that indicated that state program costs and responsibilities have been increasing in recent years. According to a 2007 GAO report, for example, the costs associated with state environmental program enforcement activities have increased substantially in recent years, outpacing both the rate of inflation and the growth in EPA funding to states between 1997 and 2006. The GAO report cites several examples of increasing state responsibilities, including an 186,000 increase in the number of industrial and municipal facilities regulated under the CWA, and hundreds of thousands of additional construction projects subject to state storm-water program oversight because of amendments to the CWA.

The Environmental Council of the States (ECOS) and the Association of State Drinking Water Administrators (ASDWA) cited several “risk-based” drinking water rules promulgated in recent years as an example of a set of new rules that they described as imposing substantial implementation costs on the states (ECOS 2009, ASDWA 2009). To implement these rules, states must tailor their requirements to individual drinking water facilities, requiring state drinking water programs to assess health risks posed at individual drinking water facilities. To help drinking water systems make the infrastructure investments to meet these challenges, EPA’s budget requests for the Clean Water and Drinking Water State Revolving Funds were \$3.9 billion and \$3.3 billion for FY 2010 and FY 2011, respectively, which is more than double the FY 2009 funding.

In testimony to the Senate Appropriations Committee, Subcommittee on Interior, Environment, and Related Agencies, the National Association of Clean Air Agencies (NACAA) cited new national ambient air quality standards (NAAQS) for ozone, nitrogen dioxide, sulfur dioxide, lead and fine particulates as sources of the increased burdens state environmental agencies will face over the next several years (NACAA 2009). NACAA also cited the need for states to increase their capacity in order to be able to administer the greenhouse gas (GHG) permit program, which EPA just finalized on May 13, 2010. The final Tailoring Rule establishes initial GHG permitting thresholds and phase in requirements beginning January 2 and July 1, 2011.

3.3 Trends in State Spending and EPA Grant Funding

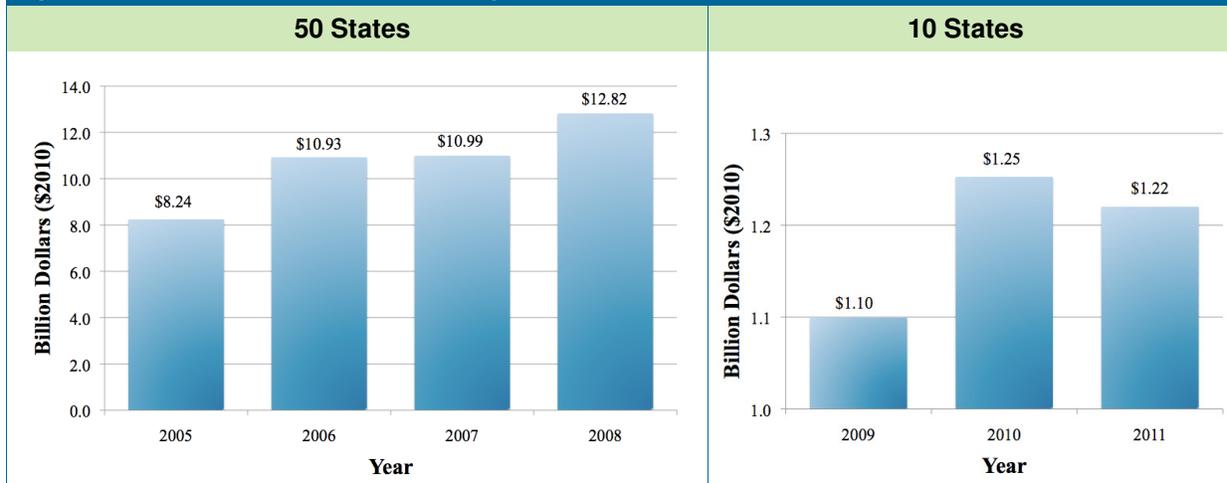
State Spending

A 2008 ECOS Green Report on state environmental expenditures presents data showing that state environmental agency spending increased in real terms at an annual rate of about 16 percent since 2005. (See Figure 4) These increases occurred despite decreases in federal funding and very modest growth in funding from state general funds, but instead were driven primarily by sharp increases in non-traditional funding sources such as permit fees, bonds and trust funds. Although data are not available on state environmental agency spending after 2008 for all 50 states, a recent ECOS (2010) document, *The State Environmental Agencies Statement of Need and Budget Proposal*, includes information on state

environmental agency spending from 10 states. (See Figure 4) For these 10 states, state environmental agency spending is estimated to increase at an average annual rate of about five percent between 2008 and 2011. It should be noted that the estimates for 2010 and 2011 are based on budget projections and state budgets are frequently cut if state revenues fall behind projections. According to ECOS (2010), several states are expecting mid-year cuts to their 2010 environmental agency budgets.

The ECOS (2010) document also indicated that the source of state environmental agency funding is shifting so that fee-based programs are becoming the primary source of funding, federal funds are a growing source of funding and state general funds are a shrinking source of funding.

Figure 4: State Environmental Budgets



Note: 2009-2011 figures are for 10 states and exclude American Recovery and Reinvestment Act (stimulus) funds and state revolving funds. The 10 states are Colorado, Idaho, Indiana, Michigan, Nevada, Ohio, Oregon, South Dakota, Wisconsin and Wyoming.

Source for years 2005-2008: Brown, 2008

Source for years 2009-2011: ECOS, 2010a

State Budget Outlook

While the nation overall has seen positive GDP growth since 2009, state fiscal conditions continue to deteriorate. While the lag of a recession’s impact on the states is not uncommon, this situation has been further exacerbated by the minimal increase in jobs that are accompanying the current recovery.

In a recent survey conducted by the National Governor’s Association (NGA) and the National Association of State Budget Officers (NASBO), states reported that they are continuing to see revenues well below what they had anticipated (NGA 2010). Given this situation, states are predicting that FY2011, which begins July 1, 2010 for most states, will be the most difficult to date, and few states expect that FY 2012 will be stronger (NGA 2010). Although the survey did not specifically address state environmental agency spending, the summary presented below does not portray a strong financial picture for states in the coming years.

February 2010 NGA and NASBO 50-State Survey Highlights

2010 Budget gaps – \$89.8 billion in closed budget gaps; \$18.9 billion in remaining gaps

2011 Budget gaps – \$55.4 billion

2012 Budget gaps – \$61.8 billion (many states have not yet done an estimate for FY 2012)

2010-2012 Combined remaining budget gaps – \$136.1 billion

2010 Revenue projections – 41 states lower than projected; six on target; three higher than projected

2010 Budget cuts – 19 states cut up to five percent and another 24 states made cuts greater than five percent

EPA Funding for States and EPA FY 2011 Budget Priorities

In testimony on behalf of ECOS before the Subcommittee on Interior, Environment and Related Agencies (ECOS 2010b), Steve Brown pointed out that EPA support for state environmental protection through State and Tribal Assistance Grants (STAG) had declined between 2005 and 2009, and he also expressed the need for reversing that trend with the FY 2010 budget and the proposed FY 2011 budget.

In EPA Administrator Lisa Jackson's testimony before the same committee, she cited strengthening state and tribal partnerships as one of the key components of the budget, and highlighted some of the new and expanded requirements that states will be expected to implement. Such new and expanded responsibilities include the implementation of updated NAAQS standards, permitting GHG emitters for the first time (the Tailoring Rule mentioned above), and addressing growing water-quality issues, such as nutrient pollution. To support these efforts, the FY 2011 budget includes \$25 million for greenhouse gas permitting activities, \$45 million for core work under air quality management grants, \$15 million for air monitors and \$274 million to support state enhancement of water-quality programs (EPA 2010d). In addition to STAG grants, EPA's FY2011 budget includes \$3.3 billion of assistance to states through the Clean Water State Revolving Fund and the Drinking Water State Revolving fund.

4 EPA Support for the States

In testimony before the appropriations committees, Administrator Lisa Jackson emphasized the continued need to provide strong funding to support state and tribal governments, who are responsible for the day-to-day mission of environmental protection. Building strong state and tribal partnerships is, in fact, one of the Administrator's top seven priorities and is highlighted as one of five cross-cutting fundamental strategies in EPA's *Fiscal Year 2011-2015 EPA Strategic Plan*, which was released on September 30, 2010. EPA also is working collaboratively with states to examine opportunities to workshare, ensure timely award of state grants, and streamline ongoing business processes. This section highlights some of the recent and ongoing efforts in these areas.

4.1 EPA and State Worksharing

Through the NEPPS process, EPA and the states have developed a strong working relationship, resulting in better communication, greater mutual understanding of issues and priorities, and clearer definition and allocation of roles and responsibilities. Building on this successful platform, EPA and the states have worked successfully to share the workload more effectively and efficiently, reducing transaction costs and duplication of effort. Some of the key areas where worksharing has been most successful include:

- **Providing Technical Assistance and Analytical Support.** The regions are using in-house expertise to support states with a variety of technical needs, including: developing Total Maximum Daily Loads (TMDLs) and criteria standards; conducting risk assessments for RCRA corrective action facilities; responding to specific environmental problems (e.g., odor and subsurface fires at landfills); conducting monitoring; and/or providing lab support.
- **Enforcement and Compliance Assurance (Permitting and Inspection).** EPA and the states have a long history of sharing in the responsibilities associated with permitting and inspections for compliance. Depending on the situation and need, EPA and the states may jointly collaborate in writing permits and conducting inspections; they also may divide up permitting and inspection responsibilities based on different criteria (e.g., geographic location, status and/or complexity of the regulated facilities).
- **Data Management.** While EPA has worked successfully over the past several years to significantly reduce state reporting burdens, EPA regions are still working with the states to provide data entry support, especially for time-sensitive information needs.
- **Training.** EPA's regional offices and Office of Enforcement and Compliance Assurance (OECA) are heavily involved in providing training to the states and to the regulated community to promote compliance assurance. The states often look to EPA to provide leadership in this area to supplement state resources.
- **Resource Support.** Where possible, EPA uses its existing resources—both staff and facilities—to provide support to the states. Examples of resource support include co-locating state and EPA staff (e.g., Washington, D.C., staff are co-located in EPA's Region 3 laboratory); making EPA labs and other equipment available to the states; and providing staff support through details.
- **Voluntary Initiatives.** EPA and the states are working jointly in several areas to reduce energy demand and greenhouse gas emissions, as well as to test new methods for implementing programs

that may prove to be more efficient. For example, a new collaborative approach to air quality planning (the Air Voluntary Pilot Program) is being tested in Tacoma, Wash., and Omaha, Neb./Council Bluff, Iowa to explore the feasibility of voluntarily initiating air planning and control activities using worksharing agreements between EPA Headquarters, the Regions, and state and local agencies. If successful, this pilot program may result in implementation of a process that is significantly less resource-intensive than the formal State Implementation Plan (SIP) process.

With growing responsibilities and potentially dramatic cuts in state environmental budgets in FY 2011, EPA and the states are in discussions for the FY 2011 PPAs and PPGs (or comparable agreements and work plans) to identify opportunities to promote worksharing. The NEPPS FY 2011 Guidance, for example, provides Regions with the following objective under Goal I: ²

Goal I: Conduct joint strategic planning that reflects Performance Partnership Principles in PPAs/PPGs or comparable EPA-state and EPA-tribal agreements and grant work plans.

1. Regions should take additional measures to work with states to identify opportunities for enhanced worksharing, resource and workload flexibility, and phased implementation of program requirements, especially where budget reductions have negatively affected state programs.

EPA also is currently developing policy direction on worksharing to inform the 2012 Annual Plan and Budget Guidance. As part of this effort, EPA Regions 1, 2, 4, 5 and 7 developed a list of current worksharing examples in which they are involved. These examples (see Table 4) highlight the different ways in which EPA and the states can work collaboratively to address many day-to-day programmatic needs.

Table 4: Examples of Worksharing in Regions 1, 2, 4, 5 and 7

Region	Program	Technical Assistance and Analytical Support
2	Water	Region 2 has provided funding, technical expertise, and vessel and personnel support for sample collection to the New Jersey Department of Environmental Protection (NJDEP) to develop biological indicators for ocean and estuarine portions of New Jersey. This effort will enable New Jersey to assess and report on the condition of their water resources and meet requirements of the Clean Water Act.
4	Water	The EPA lab supported two states by running chlorophyll and Algal Growth Potential tests for their surface water monitoring programs.
7	Waste	Region 7 assists its states with the implementation of the RCRA corrective action program by performing risk assessments, reviewing quality assurance plans and writing permits for combustor hazardous waste standards. The region also takes the lead for some sites due to state year-to-year budget constraints.
Region	Program	Enforcement and Compliance Assurance
1	Air	For several years, EPA Air enforcement staff has performed Title V and SM80 inspections for Rhode Island, Maine, New Hampshire, and this year for Vermont, as those states have lost inspectors that they are not able to replace because of fiscal constraints.
5	Water	EPA is working with the states to secure referrals for federal Safe Drinking Water Act enforcement where states lack the resources to address.

² EPA/OCIR 2010e, p. 3.

Table 4: Examples of Worksharing in Regions 1, 2, 4, 5 and 7

OECA, Regions	Comp	Compliance assistance staff in EPA regional offices are now officially partnering with their counterparts in the small business programs in their regions and with their state Small Business Environmental Assistance Programs to identify areas ripe for collaboration and to reduce duplication.
Region	Program	Data Management Support
7	Water	Regional office performs data entry for states for the bi-annual reporting system and other time-critical actions such as reporting as a result of the CAFO exemption rule.
Region	Program	Training
4	Air	Regional staff worked with the State Air and Small Business Assistance programs to provide compliance assistance to the regulated community by developing outreach material and joint training.
OECA	Enforce. Comp.	EPA's National Enforcement Training Institute (NETI) provides training to federal, state, local and tribal lawyers, inspectors, civil and criminal investigators and technical experts on topics that support the enforcement of and compliance with the nation's environmental laws. In FY 2008, more than 50 percent of the students trained by OECA, its grantees and the EPA regions were state and local enforcement personnel.
Region	Program	Resource Support
7	General	At the request of a state, Region 7 detailed a branch chief for 120 days to assist with budget, policy and strategic planning efforts.
3	Facilities	DC staff co-located in R3 laboratory.
Region	Program	Voluntary Program Support
7	Air	The Air Voluntary Pilot Program (CAPC) is a new collaborative approach to air quality planning that is being tested in Omaha, Neb./Council Bluffs, Iowa and Tacoma, Wash. The effort is intended to voluntarily initiate air planning and control activities utilizing worksharing agreements between EPA HQ, EPA Regions, and sand local agencies. Formal MOUs are developed between parties followed by an air-quality action plan. This approach is intended to test a less resource-intensive process currently being accomplished by formal State Implementation Plans.
7	Water	Develop partnerships with states to work with water utilities to help reduce energy and greenhouse gases. Pilot effort in Region 7 worked with 12 communities.

Source: U.S. EPA, Appendix A, 2012 Annual Plan and Budget Guidance, Policy Direction on Worksharing.

4.2 State Grant Management Practices

With growing responsibilities and dramatically reduced state budgets, EPA is maintaining its commitment to ensure that grants are awarded to states in a timely basis. It is also continuing to work collaboratively with ECOS to further examine opportunities to reduce state grant reporting burdens. As stated in the NEPPS FY 2011 Guidance, EPA is asking the regions to implement the following two key objectives under Goal III:³

³ EPA 2010f. p. 12.

Goal III: Foster programmatically sound and fiscally responsible PPG management practices.

Objectives:

1. Ensure the timeliness of state grants: it is a priority for the Agency to ensure the timely award of continuing environmental program (CEP) grant funds.

Delays in awarding PPGs (and other state grants) create a variety of problems that affect the states' ability to implement programs. It is a priority for the Agency to ensure the timely award of continuing environmental program (CEP) grant funds.⁴ This is particularly important during the economic downturn when many states are experiencing budget shortfalls and therefore rely heavily on CEP grant funding. The timely award of state grants continues to be a priority for the Agency. For FY 2011, EPA will issue additional guidance through an Advice of Allowance Letter or communications from the Office of Grants and Debarment (OGD), and, as appropriate, provide goals and strategies for the timely award of FY 2011 CEP grants.

2. Implement EPA's Grants Policy Issuance 08-05: Burden Reduction for State Grants (Section C.2 in particular).

This policy codifies and summarizes actions EPA has taken to address major grant-related issues identified under the Agency's State Reporting Burden Reduction Initiative. Section C.2 applies to the reporting frequency of each program included in a PPG (see: [Grants Policy Issuance \(GPI\) 08-05: Burden Reduction for State Grants](#)). In addition, the ECOS-EPA Burden Reduction Subgroup meets on an ongoing basis to address reductions in state reporting burdens. Regions are encouraged to incorporate adopted burden reduction efforts as widely as possible.

4.3 Streamlining Business Processes

EPA and an increasing number of federal agencies are applying business process improvement methods, such as Lean and Six Sigma and others highlighted in Table 5, to dramatically improve administrative process speed, effectiveness, transparency and efficiency.⁵ While originally developed for manufacturing systems, private and public sector entities have applied these techniques to other work environments with impressive results. Applying Lean to government processes creates a culture that fosters continuous improvement; it also directly engages employees in designing and implementing better, smarter and faster processes that can advance the mission of environmental agencies.

⁴ All of the CEPs listed in 40 CFR Part 35 Subpart A are subject to the timeliness policy except: Nonpoint Source Management (Section 319(h)); State Underground Storage Tanks (Section 2007(f)(2)); Pollution Prevention (Section 6605); Water Quality Cooperative Agreements (Section 104(b)(3)); State Wetlands Development (Section 104(b)(3)); and Water Quality Planning (Sections 205(g) and 205(j)(2), and the monitoring portion of Water Pollution Control (Section 106).

⁵ Lean techniques identify and eliminate unnecessary, non-value added (i.e., "waste") process steps; Six Sigma is a collection of statistical tools developed to reduce defects and other forms of process variation.

Table 5: Key Lean Tools

- **Value Stream Mapping (VSM)** – Value stream mapping refers to the activity of developing a high-level visual representation of the process flow involved in delivering a product or service (a “value stream”) to customers. VSM helps identify wasteful practices and identifies opportunities for improvement.
- **Kaizen Events** – Kaizen means “*to change for the good of all.*” Kaizen events focus on identifying opportunities for rapid process improvement by bringing together a cross-functional team for two to five days to study a specific process and immediately implement process changes.
- **Six Sigma** – Lean is often combined with Six Sigma, a process improvement methodology that uses statistical tools to improve quality, reduce defects and eliminate variation.

Source: U.S. EPA 2008a.

Currently, more than 20 state environmental agencies are using Lean techniques to improve their permitting, enforcement and other processes.⁶ Some recent examples of successful Kaizen events include the following:⁷

- EPA’s Office of Water, EPA Region 7 and 4 states (Iowa, Kansas, Missouri and Nebraska) are using Lean to significantly improve water quality standard setting and NPDES processes, achieving dramatic reductions in review steps.
- Region 7 and the states also conducted a Lean Kaizen event to improve the speed of the SIP review process in the region. Prior to the event, it took an estimated 7.4 years to complete the SIP process in Region 7; the new process developed by the Kaizen event team reduce the SIP processing time to 3.2 years (57 percent faster).

In March 2010, EPA signed a Memorandum of Understanding with ECOS to support states in their efforts to streamline programs while enhancing environmental and public health protection. The FY 2011 NEPPS guidance further encourages the Regions to identify collaborations that will improve state-EPA business operations.

4.4 Strengthening State Partnerships: EPA’s Cross-Cutting Strategy for FY 2011 – 2015

EPA recognizes the challenges that are facing the states, from growing environmental responsibilities to reduced funding following one of the most difficult economic situations this country has faced in recent times. The issues facing each state vary and can be further exacerbated by events well outside of a state’s control, as evidenced by the impact of Hurricane Katrina in 2005 and the most recent environmental disaster resulting from the Deepwater Horizon BP oil spill. During these difficult times, EPA is continuing to strengthen its partnership with the states—through the activities highlighted in this

⁶ See EPA’s Lean Home page for more information (<http://www.epa.gov/lean/>).

⁷ EPA 2010f, p. 9.

paper and by featuring state, tribal and international partnerships as one of the key cross-cutting strategies in its new five-year strategic plan.

EPA's *Fiscal Year 2011 – 2015 EPA Strategic Plan* (released on September 30, 2010) provides the blueprint for accomplishing EPA's mission goals to protect human health and the environment, and emphasizes the need to focus on fundamental changes in how EPA achieves its results. To be successful, EPA will establish partnerships with state, tribal and international governments that build on four working principles: consultation, collaboration, cooperation and accountability. As stated in the strategic plan:⁸

- By *consulting*, we will engage our partners in a timely fashion as we consider approaches to our environmental work so that each partner can make an early and meaningful contribution toward the final result.
- By *collaborating*, we will not only share information, but we will actively work together with our partners to use all available resources to reach our environmental and human health goals.
- As our work progresses, we will *cooperate*, viewing each other with respect as allies who must work successfully together if our goals are to be achieved.
- Through shared *accountability*, we will ensure that environmental benefits are consistently delivered nationwide.

EPA's strategic plan further identifies the following six key objectives that will guide its partnership with the states:⁹

- Improve implementation and consistent delivery of national environmental progress through closer consultation and transparency.
- Work with states to seek efficient used of resources through work-sharing, joint planning using data analysis and targeting to address priorities, and other approaches.
- Play a stronger management role to facilitate the exchange of data with states to improve program effectiveness and efficiency.
- Consult with state and local governments on a routine basis to ensure that the development and implementation of rules is consistent with *EPA's Action Development Process: Guidance on Executive Order 13132 (Federalism)*¹⁰, which recognizes the division of government responsibilities between the federal government and the states.
- Strengthen state-EPA shared accountability by focusing oversight on the most significant and pressing state program performance challenges, using data and analysis to speed program improvements.
- Ensure a level playing field across states to improve compliance and address the most serious violations.

⁸ EPA 2010h, p. 38.

⁹ EPA 2010h, p. 38.

¹⁰ EPA 2010i

In its 40-year history of protecting human health and the environment, EPA recognizes that its accomplishments are the result of strong and meaningful partnerships with state and tribal governments. To this end, EPA remains committed to working jointly with the states to support their needs and collaborating with its partners on innovative new ways of delivering environmental protection to communities across our nation that is more effective and efficient.

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