



Testimony

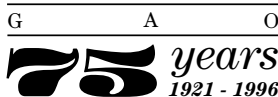
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ENVIRONMENTAL PROTECTION:

Status of EPA's Initiatives to Create a New Partnership With States

Statement for the Record by
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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss several initiatives of the Environmental Protection Agency (EPA) as the Subcommittee reviews the agency's implementation of the National Academy of Public Administration's (NAPA) April 1995 recommendations to change the nation's approach to environmental protection. As you know, we testified last May before this Subcommittee on two major issues that NAPA discussed in its report to the Congress: EPA's ability to target its resources to the nation's highest environmental priorities and its working relationship with the states.¹

Today, I would like to discuss EPA's actions to improve the EPA-state relationship. In addition, I would like to highlight the findings of a report² that we issued last month on three states' efforts to achieve efficiencies in environmental programs by integrating their regulatory activities across programs.

In summary:

- EPA has improved its relations with the states and continues to take actions to address this problem. These actions include plans to create a National Environmental Performance Partnership System that allows states more input into program decisions and reduces EPA's oversight of states that perform well. In addition, EPA has proposed legislative authority to establish "Performance Partnership" grants that would permit the states to consolidate multiple grants from EPA into one, potentially giving them more flexibility in using the funds. Both of these efforts will help address recommendations we made in our 1995 report³ for improving the use of available program funds and EPA's oversight of state environmental programs. However, it is too soon to determine the effectiveness of these efforts because the consolidated grants have not yet been authorized, and states have been slow to accept the National Environmental Performance Partnership System until they know more about how it will work.

¹Environmental Protection: Current Environmental Challenges Require New Approaches (GAO/T-RCED-95-190, May 17, 1995).

²Environmental Management: An Integrated Approach Could Reduce Pollution and Increase Regulatory Efficiency (GAO/RCED-96-41, Jan. 31, 1996).

³EPA and the States: Environmental Challenges Require a Better Working Relationship (GAO/RCED-95-64, Apr. 3, 1995).

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- Our report on the efforts of Massachusetts, New Jersey, and New York to integrate their regulatory activities across programs (integrated environmental management) shows potential for reducing pollution and increasing regulatory efficiency. Officials of each of the states and representatives of industries located in these states generally reported positive results from their use of integrated management approaches.

However, the integrated approaches also brought into focus certain problems with the current federal-state relationship, including the lack of flexibility in both the way federal funds are allocated to programs and EPA's requirements for reporting on program activities. The states have been required to engage in extensive discussions and negotiations to obtain funds for these activities, and duplicative reports have been required on the results achieved in order to satisfy the requirements of individual environmental statutes. EPA officials believe that the agency's proposed consolidated grants would provide states with easier access to funding for these types of activities and promote the integrated reporting of their activities.

Background

Over the years, the Congress has enacted over a dozen environmental statutes to protect human health and the nation's air, land, and water from pollutants. EPA is charged with implementing these statutes and their associated regulations. EPA, in turn, has delegated a growing number of its responsibilities to the states. Since the 1970s, states have expressed concerns about the burden of EPA's oversight and reporting requirements and the lack of flexibility in federal requirements to deal with local problems. These concerns have been exacerbated as the states have been given greater responsibility without a commensurate increase in federal assistance.

The statutes, regulations, and requirements that EPA places on the states are generally medium-specific. That is, a different set of statutory, regulatory, and EPA requirements is generally established to protect the air, water, and land, often without adequate consideration of the impact of one set of requirements on another. The integrated environmental management concept allows the states the flexibility to manage their activities across programs or media to establish priorities and achieve efficiencies.

Our 1995 report called for EPA to address the states' need for flexibility by working with individual states to, among other things, establish (1) how

limited resources can be used most effectively and efficiently and (2) the level of oversight that takes into account the states' ability to fulfill their environmental obligations. In addition, we recommended that EPA's offices consult the states as early as possible before important policy decisions are made and share information on issues of interest and concern.

NAPA's principal recommendations for enhancing the EPA-state partnership also focused on increased flexibility for states.⁴ Specifically, NAPA recommended that EPA, among other things, revise its approach to oversight, rewarding high-performing states with grant flexibility, reduced oversight, and greater autonomy. NAPA also recommended that the Congress authorize EPA to consolidate program grants into an integrated environmental grant for those states whose performance warrants it. The grant's purpose would be to make the greatest possible reductions in risks to human health and the environment.

On May 17, 1995, EPA announced plans to create a National Environmental Performance Partnership System. This system is to fundamentally change the EPA-state relationship by setting new goals for environmental protection and giving the states broad flexibility to meet them. More specifically, the new system places greater emphasis on the use of environmental goals and indicators, calls for environmental performance agreements between EPA and individual states, provides opportunities for less oversight of state programs that exhibit high performance in certain areas, and establishes a greater reliance on environmental and programmatic self-assessments by the states. The plans were developed by a joint EPA-state task force.

Epa Has Improved Its Relations With the States but Barriers Remain

As we noted in our April 1995 report, EPA requires a good working relationship with the states because it relies upon them to manage most federal environmental programs. We believe that the historically poor EPA-state relationship has improved, but it continues to be strained, and program implementation suffers as a result. While state and federal program managers agree overwhelmingly that meeting the costs of environmental programs is their most important challenge, an improved EPA-state relationship could help by making program management more efficient and cost-effective. In addition, the states have criticized EPA's oversight as micromanagement of state programs. EPA has taken positive,

⁴Setting Priorities, Getting Results: A New Direction for EPA (National Academy of Public Administration, Apr. 1995).

though tentative, steps toward improving its relationship with the states, in particular trying to provide the states with the flexibility to achieve cost efficiencies and to address the states' priorities. However, one of the root causes of the agency's past problems—a prescriptive, media-based legislative framework—remains firmly in place.

Meeting the Increasing Costs of Environmental Programs

The costs of implementing federal environmental requirements are significantly impacting the budgets of many state governments. For example, EPA estimated a nationwide \$154 million shortfall in the National Pollutant Discharge Elimination System (NPDES) for fiscal year 1995.⁵ The financial gap between environmental programs' needs and available resources has become the central issue in the states' ability to meet the programs' requirements and in the states' relationship with EPA. This has become the central issue because prescriptive statutory, regulatory, and internal EPA requirements often exacerbate the resource problem by limiting the states' flexibility to pursue cost-effective environmental strategies. To help the states make the best use of available program funds, in our 1995 report we recommended that EPA's program offices work with the states—within the limitations of existing environmental law—to identify how each state's resources can be most efficiently and effectively allocated within each program to address the state's highest-priority environmental problems. Such an approach could be enhanced by integrating the statutory framework within which the states and EPA operate to allow the flexibility to set priorities across individual programs.

In response to this problem, a major component of EPA's National Environmental Performance Partnership System is a joint planning and priority-setting dialogue with the states that is intended to replace the current annual work plan process. This dialogue, known as Environmental Performance Partnership Agreements, is to be based on the analysis and strategic direction set by EPA's national and regional program managers, as well as by the states. Among other things, it includes joint EPA-state planning and priority setting, which should increase the states' input, and increased use of environmental goals and indicators, which could help provide some flexibility to program management. EPA plans for all states to have these agreements by fiscal year 1997. In theory, the use of these agreements to increase state input and flexibility could improve EPA's relations with its state partners and reduce the costs of implementing federal environmental programs.

⁵Under the Clean Water Act, the NPDES program limits the discharge of pollutants into U.S. waters.

It is difficult to assess the effectiveness of the Performance Agreements thus far because implementation began only recently. As of February 1996, 5 agreements have been completed; 12 others are under discussion. One problem that EPA and the states likely face with the agreements is that current law imposes requirements on EPA that, at times, are inconsistent with the states' priorities. In our May 1995 testimony, we stated that providing EPA with greater flexibility to integrate environmental requirements represents a key approach to reconciling state and federal environmental concerns.

Improving Epa's Oversight of of State Programs

As we pointed out in our April 1995 report, many state officials believe that EPA dominates the federal-state relationship, frequently imposing federal mandates over the states' priorities, routinely second-guessing the states' decisions, dictating the programs' activities, and failing to involve the states in major policy decisions. As the states' resources have grown ever tighter, disagreements over the various programs' priorities have become more and more frequent. State program managers maintain that EPA's inflexible approach is a major impediment to managing environmental programs efficiently. EPA officials maintain that legislative mandates and timetables frequently leave them with little or no latitude to explore what might be more cost-effective alternatives with the states. To improve EPA's oversight of state programs, our report recommends that EPA's regional offices negotiate with each state a level of oversight that takes into account the ability of the state to fulfill its environmental program obligations (e.g., its track record in meeting key requirements or its staffing and funding). As we recommended in our April 1995 report, as a general rule, EPA should focus on achieving improvements in environmental quality—as measured by reliable environmental indicators—without prescribing in detail how the states are to achieve these results.

EPA's National Environmental Performance Partnership System initiative embodies these recommendations by instituting differential levels of oversight based on the states' conditions and performance. EPA's oversight under the new system is supposed to focus on programwide, limited, after-the-fact reviews, rather than on case-by-case intervention. EPA plans for all states to participate in the new system by having Performance Agreements in place by fiscal year 1997. Although 17 states have indicated that they intend to negotiate these agreements with EPA this year, several states have opted not to participate because they are skeptical about EPA's ability to implement such a plan as intended.

While the Performance Agreements and other aspects of the National Environmental Performance Partnership System have the potential to create a more effective EPA and state working relationship, EPA has been trying for years, with only limited success, to make these types of improvements. And much work remains to reach agreement with the states on environmental goals and measures and how the states' programs will be assessed and problems corrected. A larger concern is that during implementation of the new system or over time—especially in negotiating performance agreements with individual states—EPA program and regional officials will add back the types of controls and other requirements that the system is designed to eliminate.

States' Lack of Flexibility Limits Efforts to Integrate Regulatory Activities

One of NAPA's principal observations is that progress in protecting the environment depends on devolving responsibility to the states for administering environmental programs. NAPA concluded that EPA, in consultation with the Congress, should accomplish this goal by moving toward integrating its responsibilities under various statutes to provide the maximum flexibility needed by the states to meet their environmental priorities. As mentioned earlier, the states have long asserted that EPA places inflexible, overly prescriptive environmental requirements on them to control the amount of pollution released to the air, water, and land.

EPA and the states have recently experimented, within the limits of environmental laws, with integrated environmental management, a concept under which a state focuses on a whole facility and all of its sources of pollution, rather than on a medium-specific source of pollution. For example, rather than performing multiple inspections for various environmental media, a state can incorporate inspections for all media into a single, facilitywide inspection that focuses on the production processes. The proponents of integrated management believe that the approach saves money by consolidating activities and reduces pollution by focusing on prevention rather than on various control methods, such as installing devices to treat waste after it has been produced.

To determine the results being achieved under integrated management approaches, we recently completed a review of initiatives taken by Massachusetts, New York, and New Jersey to integrate their environmental inspection, permit, and enforcement regulatory activities. In summary, we found that these efforts, while generally successful, were hampered by EPA funding and reporting requirements linked to individual federal environmental statutes.

In 1993, Massachusetts implemented a facilitywide inspection and enforcement approach; in 1992, New York adopted a facility management strategy under which a team directed by a state-employed manager is assigned to targeted plants to coordinate all environmental programs; and in 1991, New Jersey initiated a pilot study of using a single, integrated permit for releases of pollutants from industrial facilities, rather than separate permits for each medium. Massachusetts and New York believe that their integrated approaches have proven to be successful and are implementing them statewide. Because permits have only recently been issued as part of New Jersey's integrated approach, officials in that state believe that it is too early to evaluate the results of the pilot study. Industry officials in the three states told us that they generally believe that integrated approaches are beneficial to the environment, achieve regulatory efficiencies, and reduce costs. For example, a New Jersey pharmaceutical manufacturer told us that its 5-year permit combines 70 air and water permits into a single permit, eliminating the need for the company to frequently renew each of the many permits.

Although the states have had generally favorable experiences in their multimedia approaches, one sticking point has been coordinating the funding and reporting of these activities with EPA. Although there is some flexibility in EPA's grant system to fund multimedia activities from EPA's media-specific grant program, doing so has been difficult and has required the states to engage in extensive discussions and negotiations to obtain funds for these activities. For example, obtaining grant funds for a Massachusetts demonstration project required not only EPA's approval but congressional authorization as well to shift funds from other activities.

Furthermore, states can experience difficulty in reporting multimedia activities to EPA, as required under various environmental statutes. For example, while Massachusetts conducts facilitywide inspections and prepares comprehensive reports detailing the results, EPA requires the state to report the results to multiple medium-specific reporting systems, each of which has different formats, definitions, and reporting cycles. According to a Massachusetts environmental official, preparing these duplicative reports wastes resources and demoralizes staff.

The new Performance Partnership grant program proposed in EPA's fiscal year 1996 budget request could resolve the funding and reporting issues. Such grants are a step in the direction of NAPA's recommendation that the Congress should authorize EPA to consolidate categorical grants into an integrated environmental grant for any state whose performance warrants

it. EPA believes that its consolidated grants would provide the states with easier access to multimedia funding and promote the reporting of their activities to integrate the management of facilities. For example, the grants would allow the states to allocate funds to reflect local priorities, while continuing to pursue national policy objectives and fulfilling federal statutory requirements. They would also include new performance measures to simplify reporting requirements, while ensuring continued environmental protection.

Observations

As long as environmental laws are media-specific and prescriptive and EPA personnel are held accountable for meeting the requirements of the laws, it will be difficult for the agency to fundamentally change its relationships with the states to reduce day-to-day control over program activities. This situation was manifested in the funding and reporting problems that resulted from the recent efforts of Massachusetts, New York, and New Jersey to integrate their environmental management activities. However, within the flexibility provided by existing environmental statutes, initiatives such as EPA's National Environmental Performance Partnership System and its proposed Performance Partnership grants have the potential to ameliorate problems for those states interested in obtaining greater flexibility in carrying out their environmental responsibilities.

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