

July 1997

# ENVIRONMENTAL PROTECTION

## Challenges Facing EPA's Efforts to Reinvent Environmental Regulation



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United States  
General Accounting Office  
Washington, D.C. 20548

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**Resources, Community, and  
Economic Development Division**

B-276854

July 2, 1997

Congressional Requesters

In response to your request, this report examines (1) what EPA's reinvention initiatives are and how the agency is structured to carry them out and (2) what key issues need to be addressed for these initiatives to have their intended effect.

As arranged with your offices, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the appropriate congressional committees; the Administrator, EPA; and the Director, Office of Management and Budget. We will also make copies available to others upon request.

Please call me at (202) 512-4907 if you or your staff have any questions. Major contributors to this report are listed in appendix II.

A handwritten signature in black ink, appearing to read 'Peter F. Guerrero'. The signature is stylized and cursive, with a large initial 'P' and 'G'.

Peter F. Guerrero  
Director, Environmental Protection  
Issues

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B-276854

List of Requesters

The Honorable John Chafee  
Chairman, Committee on Environment  
and Public Works  
United States Senate

The Honorable Christopher Bond  
Chairman, Subcommittee on VA, HUD,  
and Independent Agencies  
Committee on Appropriations  
United States Senate

The Honorable Tom Bliley  
Chairman, Committee on Commerce  
House of Representatives

The Honorable Michael Oxley  
Chairman, Subcommittee on Finance  
and Hazardous Materials  
Committee on Commerce  
House of Representatives

The Honorable Bud Shuster  
Chairman, Committee on Transportation  
and Infrastructure  
House of Representatives

The Honorable Sherwood Boehlert  
Chairman, Subcommittee on Water  
Resources and Environment  
Committee on Transportation  
and Infrastructure  
House of Representatives

The Honorable Jerry Lewis  
Chairman, Subcommittee on VA, HUD,  
and Independent Agencies  
Committee on Appropriations  
House of Representatives

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B-276854

The Honorable David McIntosh  
Chairman, Subcommittee on National  
Economic Growth, Natural Resources,  
and Regulatory Affairs  
Committee on Government Reform  
and Oversight  
House of Representatives

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# Executive Summary

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## Purpose

By most accounts, the United States has substantially improved its environment since the Environmental Protection Agency (EPA) was founded in 1970, but at a growing cost. For example, the costs of abating and controlling pollution rose from about \$64 billion in 1973 to over \$121 billion in 1994 (1995 dollars). EPA's leadership notes that future environmental challenges will be more complicated than those of the past, requiring fundamentally different regulatory approaches. EPA has sought to meet these challenges by comprehensively reexamining and reshaping its efforts to protect the environment. As noted in a March 1996 report on its progress in "reinventing" environmental regulation, the agency is undertaking a number of initiatives to "... apply common sense, flexibility, and creativity in an effort to move beyond the one-size-fits-all system of the past and achieve the very best protection of public health and the environment at the least cost."

To better understand EPA's initiatives and progress in implementing them, several congressional committees asked that GAO provide a broad overview of EPA's reinvention efforts. GAO was asked to focus on (1) what the initiatives are and how the agency is structured to carry them out and (2) what key issues need to be addressed for these initiatives to have their intended effect.

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## Background

Since the early 1970s, EPA's organization and approach toward environmental regulation have mirrored the statutes that authorize the agency's programs. These statutes generally assign pollution control responsibilities according to the regulated environmental medium (such as water or air) or category of pollutant (such as pesticides or other chemical substances). As a result, the statutes have led to the creation of individual EPA program offices that focus on reducing pollution within the particular environmental medium for which each office has responsibility—rather than on reducing overall pollutant discharges. This structure has, among other problems, made it difficult for the agency to base its priorities on an assessment of risk across all environmental problems and to take into account the cost and feasibility of various approaches. The agency's traditional approach toward environmental regulation has also been criticized as precluding innovative and more cost-effective ways to reduce pollution and as being inflexible in dealing with other "stakeholders" in the regulatory process, such as states, regulated entities, and environmental organizations.

EPA's efforts to address these issues go back at least as far as the mid-1980s, when then-Administrator Lee Thomas called on the agency to manage its resources and activities so that they (1) account for the relative risks posed by environmental problems, (2) recognize that pollution control efforts in one medium can cause pollution problems in another, and (3) lead to achieving measurable environmental results. Other efforts have sought to involve stakeholders more collaboratively in the process, calling, for example, for more negotiated rulemakings. Since that time, however, GAO and other organizations have stressed the need to make significantly greater progress in this direction.

The passage of the Government Performance and Results Act of 1993 strengthened EPA's efforts to protect the environment more efficiently and effectively. The Results Act requires agencies to consult with the Congress and other stakeholders to clearly define their missions, establish long-term strategic goals (and annual goals linked to them), and measure their performance against the goals they have set. Rather than focusing on the performance of prescribed tasks and processes, the statute emphasizes the need for agencies to focus on and achieve measurable program results.

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## Results in Brief

EPA maintains that its reinvention initiatives generally seek to reduce paperwork and eliminate obsolete rules; make it easier for businesses to comply with environmental laws; use innovation and flexibility to achieve better environmental results; and/or engage states, tribes, communities, and citizens in partnerships to protect public health and the environment. The agency launched a comprehensive reinvention effort in March 1995 with 25 "high-priority actions" and 14 "other significant actions" to expand the Administrator's ongoing efforts to improve the current regulatory system and lay the groundwork for a new system of environmental protection. In February 1997, the Administrator announced her decision to create an Office of Reinvention, which will provide overall direction and support for the agency's reinvention initiatives and play a direct role in leading certain key initiatives. In addition, (1) EPA's program offices participate in agencywide initiatives and have generated some of their own, more medium-specific initiatives and (2) each of EPA's regional offices has established varied structures and strategies to implement both the EPA-wide and program-specific initiatives.

While many of EPA's reinvention efforts are consistent with both the Results Act's goal of focusing on achieving results and with past recommendations by GAO and other organizations to achieve a more

integrated, cost-effective approach toward environmental protection, the agency faces significant challenges that must be addressed effectively if reinvention is to succeed:

- Key stakeholders in the reinvention process have expressed concern over the large number of complex and demanding initiatives now being undertaken, as well as confusion over the underlying purpose of some of the agency’s major initiatives.
- EPA has had difficulty achieving “buy-in” among the agency’s rank and file, who have grown accustomed to prescriptive, medium-by-medium regulation during the agency’s 27-year history.
- The agency has had difficulty achieving agreement among external stakeholders, including federal and state regulators and industry and environmental organization representatives—particularly when stakeholders perceive that unanimous agreement is required before progress can be made.
- The agency’s process for resolving miscommunication and other problems involving EPA headquarters staff, regional staff, and other stakeholders does not distinguish between problems that require the attention of senior management and those that should be resolved at lower levels within the agency.
- EPA has an uneven record in evaluating the success of many of its initiatives. Evaluation is needed both to show EPA management what does and does not work and to provide convincing evidence to external stakeholders that an alternative regulatory strategy is worth pursuing.

In addition, the current prescriptive, medium-specific environmental laws impose requirements that have led to, and tend to reinforce, many of the existing regulatory and behavioral practices that EPA is seeking to change. As a consequence, the agency will be limited in its ability to “reinvent” environmental regulation within this existing legislative framework.

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## Principal Findings

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### How Initiatives Are Being Implemented

The precise number of initiatives under way at EPA is difficult to establish because, in addition to the 25 “high-priority actions” and 14 “other significant actions” listed,<sup>1</sup> the agency is implementing other projects with reinvention-related components through its program offices and regional

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<sup>1</sup>See app. I for a list of these initiatives, including those that EPA has identified as its “larger, more cross-cutting efforts.”



offices. Moreover, EPA reinvention officials stressed that a major thrust of the reinvention effort is to change the agency's culture so that staff are supportive of innovative approaches to environmental regulation.

While EPA has not formally set priorities among its initiatives, the agency has clearly identified several of them as central to its efforts to reinvent environmental regulation. Among them are (1) Project XL, which allows individual facilities to test innovative ways of achieving environmental protection if they can demonstrate that the proposed changes will yield superior environmental performance, and (2) the Common Sense Initiative, which seeks to identify innovative environmental regulatory practices for different industrial sectors (e.g., the printing and metal-finishing industries). In addition, the agency is seeking to improve its working relationship with the states through its National Environmental Performance Partnership System. This effort is viewed as particularly significant in light of the states' central role in directly implementing many of EPA's most significant regulatory programs.

EPA is implementing its key reinvention activities through both its headquarters and its regional offices. In February 1997, the Administrator announced her decision to create the Office of Reinvention to coordinate the agency's reinvention efforts and to help implement Project XL, the Common Sense Initiative, and several other key agencywide initiatives. As of June 1997, the exact date of this office's establishment had not been determined. In addition, EPA's program offices are implementing their own, more medium-specific initiatives. The Office of Water, for example, is promoting "effluent trading" in watersheds, while the Office of Prevention, Pesticides, and Toxic Substances is encouraging chemical industries to develop more environmentally friendly practices through the Green Chemistry Challenge. Similarly, the Office of Air and Radiation is attempting to consolidate federal air rules for individual industries.

EPA's regional offices work directly with regulated entities and other parties in implementing the initiatives and are using various organizational structures in doing so. For example, EPA's Atlanta regional office, which has maintained its medium-by-medium office structure, forms ad hoc teams from these offices to implement initiatives as needed. The agency's Chicago office has also generally retained its medium-by-medium offices but has drawn from these offices to form a number of more permanent "cross-media teams" to implement initiatives. The Boston office, however, has more fundamentally restructured its organization along the lines of its multimedia initiatives. Thus, for example, it has replaced its

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medium-specific divisions with an Office of Environmental Stewardship and an Office of Ecosystem Management to facilitate a more cross-cutting approach to environmental management.

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Issues to Address If  
Reinvention Efforts Are to  
Succeed

GAO found that while EPA has made some progress in implementing its reinvention initiatives, the agency still has a long way to go in resolving several key issues if environmental regulation is to be truly “reinvented.”

Greater Focus on Key Initiatives Could Improve Prospects of Success. Successful reinvention efforts require a clear understanding of an organization’s mission and of how individual efforts work toward achieving that mission. However, GAO’s discussions with key participants in EPA’s reinvention process suggest that the large number of initiatives under way may be diverting attention from high-priority efforts most in line with the agency’s reinvention objectives. Specifically, officials from two of the three EPA regional offices GAO visited cited the large number of initiatives as a problem and indicated that setting priorities among the initiatives would make the most efficient use of the agency’s resources. Under the current situation, they noted, the regional offices are expected to carry out reinvention activities with few resources beyond those the regions receive to carry out traditional program responsibilities. Officials from each of the states GAO contacted cited similar problems. The problem is further compounded by confusion both within EPA and among other stakeholders over the primary purpose of some of the agency’s most important initiatives. An EPA-contracted analysis of the Common Sense Initiative, for example, pointed to the absence of specific objectives and expectations, noting that “instead of encouraging out-of-the-box thinking as hoped, this has led to delays . . . as [stakeholders] tried to figure out what EPA wanted or would accept instead of inventing their own priorities and processes.”

Extent of Commitment to Reinvention Is Questioned. EPA staff and state officials contacted by GAO generally agreed that EPA’s top management has articulated a clear commitment to the agency’s reinvention effort. However, significant disagreements have surfaced in recent months, leading some key stakeholders to question EPA management’s direction in reinventing environmental regulation. Notably, a recent resolution by the Environmental Council of the States (which represents state environmental agency leaders) expressed frustration over its recent efforts to “establish a consensus framework for true environmental regulatory innovation” that would identify appropriate roles and responsibilities for

the states. At the staff level, GAO found that program and regional offices do encourage staff, to varying degrees, to participate in reinvention activities and that these efforts have engendered wider staff participation. Nonetheless, all participants GAO interviewed—both inside and outside EPA—agreed that achieving a full commitment to reinvention by the agency’s rank and file will be difficult and will take time. One senior program official, for example, noted that it will take time for culture change to filter down to EPA line staff and to see if the change takes hold.

Agreement Among All Stakeholders Is Difficult to Achieve. Under EPA’s reinvention strategy, the agency’s goal is to share information and decision-making with all stakeholders, including those “external” to the agency, such as state regulators and representatives of industry and environmental organizations. Among other things, the agency hopes the strategy will help to avert litigation by getting up-front agreement among the affected parties and a commitment by industry representatives to meet requirements they acknowledge to be achievable. GAO found that the agency has, indeed, made strenuous efforts to involve stakeholders with different interests and perspectives but that achieving and maintaining consensus has been an enormous challenge. EPA’s greatest difficulties have come when the agency has sought to achieve—or was perceived as seeking to achieve—100 percent agreement. Officials from the three states GAO contacted noted that efforts to achieve unanimous agreement have been problematic, particularly in Common Sense Initiative negotiations. Industry representatives agreed, some of whom have cited the problem as a reason why they have considered terminating their participation in the initiative.

Sustainable Process Is Needed to Resolve Problems. Some of EPA’s earlier reinvention projects were affected by miscommunication and other problems among the agency’s headquarters and regional offices and other participants. For example, an XL project submitted by the 3M Company foundered when Minnesota and 3M officials withdrew their participation because they believed EPA headquarters and regional offices were raising new issues late in their negotiations. To help address these kinds of problems, the agency designated certain senior managers in September 1996 as “reinvention ombudsmen” to respond to stakeholders’ questions and resolve problems in a timely fashion. This new process has helped in the negotiation of recently approved XL projects, but many stakeholders have noted that in the longer term, senior management will not be able to intervene each time a problem arises. They cite the need for a more sustainable process that distinguishes between problems that can

be resolved at lower levels within the agency and those that require senior management's attention.

EPA Is Not Systematically Evaluating Initiatives' Effectiveness. Measuring performance allows organizations to track their progress toward achieving their goals and gives managers crucial information needed to make organizational and management decisions. EPA has, in fact, made some progress in measuring the effectiveness of its reinvention initiatives. For example, the agency hired a contractor to formally evaluate the success of its stakeholder process. EPA also asked an advisory group to identify criteria the agency can use to measure the progress and success of other reinvention projects and of its overall reinvention efforts. At the same time, officials with the agency's Regulatory Reinvention Team acknowledged that the agency has neither sufficient performance data nor an evaluation component for many of its initiatives.

Stakeholders Disagree on the Need for Statutory Change. GAO found wide disagreement over whether the current environmental statutes must be revised for reinvention to succeed. Many state and industry officials have cited the need for statutory revisions, both in the near term to encourage experiments in alternative methods of achieving environmental compliance and in the longer term to achieve a more fundamental change in the conduct of environmental regulation. For example, after identifying problems experienced by industry participants in some of EPA's initiatives, a September 1996 industry report concluded that "there is no short-cut, no way around the difficult task of trying to legislate a better system." Meanwhile, EPA, supported by some in the environmental community, maintains that the current statutory framework contains sufficient flexibility to allow for real progress on most reinvention initiatives.

GAO has concluded—on the basis of its past evaluations, the results to date of EPA's key reinvention efforts, and its contacts with a variety of stakeholders—that constructive modifications can be made under the current environmental statutory framework. However, the framework does establish standards that lead to many of the existing regulatory and behavioral practices the agency is seeking to change. Consequently, as GAO and other organizations have noted in the past, EPA will be limited in its ability to achieve major changes in environmental regulation within the existing legislative framework. According to the Deputy Administrator, the agency will reexamine this issue when it receives the recommendations of a key advisory group (the Enterprise for the Environment) later this year.

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## Recommendations

GAO recommends that the Administrator, EPA,

- direct the Associate Administrator, Office of Reinvention, to review the agency's reinvention initiatives to (1) determine whether there are any that no longer support the agency's overall reinvention goals and should therefore be discontinued, (2) set priorities among those that will be continued, and (3) issue clarifying guidance, as needed, to help ensure that the specific objectives and expectations of continuing initiatives are clear among stakeholders within and outside the agency;
- improve the prospects for achieving consensus among concerned parties in the agency's reinvention efforts by clarifying the circumstances under which unanimous agreement is required;
- develop a systematic process to help resolve problems in a timely fashion by identifying which kinds of problems can be resolved at lower levels within the agency and which should be elevated for senior management's attention; and
- direct that each of the agency's initiatives include an evaluation component that measures the extent to which that initiative has accomplished its intended effect.

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## Agency Comments

GAO provided copies of a draft of this report to EPA for its review and comment and discussed the agency's response with the Director of EPA's Regulatory Reinvention Team and his staff. The EPA officials said that the report was balanced and addressed the most important issues facing the agency's reinvention efforts. They also expressed general agreement with the report's recommendations. The officials suggested that GAO modify its recommendation to develop evaluation components for EPA's initiatives to reflect the difficulty in developing "outcome-based" measures in all cases. GAO modified the wording of this recommendation to reflect this suggestion.

The Director of the Regulatory Reinvention Team was concerned that some readers might infer support on GAO's part for changes in the media-based structure of the nation's environmental statutes, even though the report did not specifically recommend such changes to facilitate reinvention. He further noted that GAO's study did not assess how changes in environmental law could improve environmental protection. GAO acknowledges that such an assessment was outside the scope of its review, although the draft report did reflect the views of EPA officials, industry and environmental groups, and other participants in the environmental regulatory process on this issue. GAO also acknowledges

that EPA, in consultation with its advisers and key stakeholders, is ultimately responsible for assessing whether changes to environmental statutes should be recommended to the Congress. At the same time, GAO believes that any discussion of the issues affecting the success of reinvention would be incomplete without mention of the inherent limitations to fundamental change posed by the statutes' present medium-by-medium focus. Such limitations have been acknowledged by EPA in past years, documented consistently by GAO and other organizations, and cited as a key issue by the large majority of officials interviewed for this report.

Finally, the officials suggested that the report focuses on the most visible of EPA's initiatives, such as Project XL and the Common Sense Initiative, and does not sufficiently acknowledge (1) the agency's smaller, less visible initiatives and (2) the extent to which reinvention principles are being applied throughout EPA's day-to-day activities. Although GAO did not analyze all of EPA's reinvention initiatives in detail, focusing instead on the efforts emphasized by the EPA and state officials contacted during GAO's review, the draft report acknowledged that EPA has undertaken numerous other initiatives and listed many of them in appendix I. The draft report cautioned against measuring the success of reinvention by the large number of initiatives under way, noting that EPA may need to reduce the number of initiatives to improve the prospects of success for its highest-priority efforts. In regard to the extent that reinvention principles are being applied throughout EPA's day-to-day activities, chapter 3 of the draft report had, in fact, discussed many of the agency's efforts to instill reinvention principles into the staffs' day-to-day activities, emphasizing that EPA management considers cultural change to be a major goal of its reinvention efforts. Here, too, however, the draft report discussed the agency's difficulties in achieving this goal, noting in chapter 3, for example, "widespread agreement among EPA officials, state officials, and others that the agency has a long way to go before reinvention becomes an integral part of its staff's everyday activities."

The officials' specific comments on GAO's conclusions and recommendations, along with GAO's responses, are included at the end of chapter 3. In addition, the officials offered other corrections and clarifications throughout the report, which were incorporated as appropriate.

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**Abbreviations**

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CSI	Common Sense Initiative
ECOS	Environmental Council of the States
EPA	Environmental Protection Agency
GAO	General Accounting Office
GPRA	Government Performance and Results Act
NAPA	National Academy of Public Administration
NEPPS	National Environmental Performance Partnership System
NRDC	Natural Resources Defense Council
PPG	Performance Partnership Grant
RCRA	Resources Conservation and Recovery Act
XL	Project XL

# Introduction

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Substantial progress has been made in addressing the nation's environmental problems since the Environmental Protection Agency (EPA) was created in 1970. Among other improvements, some of our most serious air and water quality problems have been alleviated, dangerous pesticides have been banned, and health threats posed by lead in gasoline and paint have been reduced. However, these strides in environmental protection have come to the nation at a growing cost. For example, the costs of pollution abatement and control have risen significantly—from \$64 billion in 1973 to over \$121 billion in 1994 (constant 1995 dollars).

EPA's top leadership acknowledges that such resource constraints, combined with (1) the increasing complexity of environmental problems and (2) the limited effectiveness of EPA's traditional medium-by-medium structure to address the full spectrum of pollution problems in an integrated manner, have forced the agency to fundamentally rethink its approach to environmental protection. Toward this end, EPA is currently experimenting with ways to improve its existing program activities and to lay the groundwork for a new, more flexible, integrated system of environmental protection—one that will allow the agency to deliver the highest quality protection possible in the most cost-effective manner. The passage of the Government Performance and Results Act of 1993 (GPRA) has provided further impetus for the agency to improve its management practices, in part through the requirement that it develop measurable program results.

To better understand EPA's initiatives and strategy to implement them, several congressional committees asked that we provide a broad overview of EPA's reinvention efforts, focusing on (1) what the initiatives are and how the agency is structured to carry them out and (2) what key issues need to be addressed for these initiatives to have their intended effect.

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## Current Structure Limits EPA's Flexibility

EPA was created in 1970 under an executive reorganization plan that combined various environmental components of other federal agencies. This left EPA without a formal overarching mission and statutory framework to guide its activities. Initially, the agency was charged with the general task of cleaning up environmental pollution—giving early attention to air and surface water. As further environmental needs were identified, the Congress enacted laws to address specific pollution problems. As a result, a dozen or so statutes govern the agency's activities, and several congressional committees are responsible for environmental issues. However, these statutes are not coordinated or integrated, and in

some cases they contain differing approaches and reflect different philosophies. Hence, the agency has no overall system for setting priorities across all environmental problems and for identifying and addressing the most critical environmental needs first.

In response to these legislative mandates, EPA has organized its activities around environmental media (such as air, water, or land) and the substances it regulates (such as hazardous waste, pesticides, and toxic substances)—resulting in a structure that closely parallels the statutes that authorize its activities. Each of these program offices focuses primarily on implementing medium-specific or substance-specific responsibilities detailed in these statutes, rather than addressing the full range of pollution sources in a cross-cutting manner. The agency’s medium-specific focus can result in both the intended and unintended transfer of pollution from one medium to another. For example, removing contaminants from public sewage systems or industrial smokestacks can create sludge and waste that can themselves be toxic and lead to further air, water, or land pollution. As a result, EPA and others have acknowledged a need for increased attention to such intermedia transfers to ensure that the agency’s pollution reduction strategies have the best overall impact on the environment.

While organizing EPA’s activities in this manner has facilitated the implementation of individual environmental statutes and has reduced or prevented many threats to human health and the environment, it has also created problems for the agency. Most significantly, it has limited EPA’s ability (1) to set risk-based priorities across the full spectrum of environmental problems and target its limited resources to the most pressing of these problems and (2) to take into account the cost and feasibility of various approaches to reduce pollution. It has also impaired the agency’s ability to experiment with innovative and more cost-effective ways to address pollution problems, such as pollution prevention (eliminating or minimizing pollution at its source versus containing it at the end-of-the-pipe) or market-based incentives (such as taxes on pollution or trading emission pollution “rights”). Such approaches give polluters financial reasons to reduce pollution without prescribing the methods for doing so. The current structure has also restricted EPA’s

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ability to exercise flexibility with regulated entities, states, environmental groups, and other stakeholders in the regulatory process.<sup>1</sup>

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## Agency Has Tried to Address Limits of Existing Structure

Since at least the mid-1980s, EPA has taken steps to address the problems associated with its medium-specific structure. For example, then-Administrator Lee Thomas—recognizing that environmental problems are complex and interrelated—directed the agency to manage its programs and activities so that they (1) account for the relative risks posed by environmental problems to help ensure that limited resources are directed to the most pressing environmental needs; (2) recognize that pollution control efforts in one medium can result in a transfer of pollution to another (and, when feasible, that pollution should be eliminated or minimized at its source); and (3) lead to the achievement of measurable environmental results.

While our 1988 general management review<sup>2</sup> of EPA credited the agency with taking steps to address these concerns, it urged the agency, among other things, to (1) fill important gaps in its efforts to manage for environmental results (including setting priorities in measurable terms and ranking them to ensure that the most pressing needs are addressed first) and (2) establish more effective partnerships with the states, since they serve as the agency’s key partners in implementing environmental programs. Since that time, GAO, EPA’s Science Advisory Board, the National Academy of Public Administration, and other organizations have all pointed to the need to make significantly greater progress in this direction.

In our 1991 report, Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97), for example, we noted that for EPA to achieve environmental goals with limited resources, it needs to (1) link budget priorities to relative risks to the environment and public health rather than rely on public perceptions of risk; (2) measure changes in environmental conditions rather than measure activities (such as the number of permits issued) to obtain meaningful information on the effectiveness of its investments in environmental protection; and (3) combine traditional and innovative approaches (such as pollution

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<sup>1</sup>For example, until recently, EPA was limited in its ability to grant states the flexibility to combine grant funds authorized under separate environmental statutes (such as those set aside for cleaning up air and water pollution) into one or more “consolidated” grants to address the states’ most important environmental needs. These grants (authorized by the Congress in April 1996) are now a key tool for the agency in providing the states with flexibility in spending federal environmental grant resources.

<sup>2</sup>Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988).

prevention and the use of market incentives) to ensure that the most cost-effective methods for controlling pollution are used. The report observed, however, that EPA was hampered in setting priorities across all environmental problems by the lack of integration among environmental statutes.

The National Academy of Public Administration (NAPA) came to similar conclusions in its 1995 report, *Setting Priorities, Getting Results*. In particular, the report noted that EPA lacks a clear statutory mission because it derives its authority from many different statutes. It also noted, among other things, that the agency needs to encourage innovation among its regulated community (localities, states, and industries) to find the most appropriate methods for achieving environmental protection.

EPA has responded to these and similar concerns by taking a number of steps to “reinvent” its approach to environmental protection. For example, the agency launched its Common Sense Initiative (CSI) in 1994 to allow industrial sectors (such as printing and metal finishing) and their key stakeholders to work collaboratively to, among other things, (1) identify opportunities to get better environmental results at less cost; (2) streamline permitting, recordkeeping, and reporting requirements; and (3) provide industry with incentives to develop innovative, cost-effective technologies to meet or exceed environmental standards. EPA has also increased the involvement of stakeholders in its decision-making processes.<sup>3</sup>

More recently, in March 1995, EPA launched a more comprehensive effort to fundamentally reexamine and reshape its efforts to protect the environment. As noted in a March 1996 progress report on its efforts to reinvent environmental regulation, the agency is presently undertaking a number of initiatives to apply “. . . common sense, flexibility, and creativity in an effort to move beyond the one-size-fits-all system of the past and achieve the very best protection of public health and the environment at the least cost.”

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<sup>3</sup>This effort is in keeping with Executive Order 12866 (Sept. 1993), which directed federal regulatory agencies to consider the use of consensual mechanisms (such as negotiated rulemaking) when developing regulations.

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## Government Performance and Results Act Requires a Focus on Measurable Results

The provisions of GPRA, also known as “the Results Act,” are consistent with the principles of reinvention and reinforce many of EPA’s reinvention efforts. One key provision requires EPA and other agencies to (1) consult with the Congress and other stakeholders to clearly define their missions, (2) establish long-term strategic goals and annual goals that are linked to them, and (3) evaluate their performance on the basis of the goals they have set and report on their success. Rather than focusing on the performance of prescribed tasks and processes, the statute emphasizes the need for agencies to focus on and achieve measurable program results.

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## Objectives, Scope, and Methodology

To address questions about EPA’s current efforts to reinvent environmental regulation, a number of committees asked that we provide information on (1) what the agency’s reinvention initiatives are and how the agency is structured to carry them out and (2) what key issues need to be addressed for these initiatives to have their intended effect.

In addressing the first objective, we interviewed EPA officials responsible for the agency’s reinvention efforts, including the Deputy Administrator, the designated Associate Administrator of the future Office of Reinvention, and members of EPA’s Regulatory Reinvention Team. We also interviewed officials in selected EPA program offices (such as the Office of Water; the Office of Prevention, Pesticides, and Toxic Substances; and the Office of Air and Radiation) to better understand how these offices were structured to implement both agencywide and program-specific reinvention initiatives. Following our initial contacts with headquarters officials, we visited three EPA regional offices—in Atlanta, Boston, and Chicago—to obtain insights into how the agency’s regional offices are structured to carry out the agency’s reinvention efforts. These offices were suggested to us by headquarters officials because they had experience in implementing some of the agency’s key initiatives. The issues discussed with the headquarters and regional officials included (1) EPA’s reinvention philosophy and goals, (2) details on key agencywide and program-specific initiatives, and (3) the agency’s structure for carrying out these initiatives (both at headquarters and among the regional offices).

In addressing the second objective, we asked the same EPA officials questions about the challenges facing the agency in achieving its reinvention goals. Our questions focused largely on efforts by the agency to communicate its goals for change to its staff and to external stakeholders, its efforts to systematically evaluate the success of its activities, and other issues that are widely viewed among management

experts as essential ingredients in successfully achieving desired organizational change. We also posed these questions to other key stakeholders, including state environmental officials in Georgia, Massachusetts, and Minnesota (because of their association with the three regions we visited and their involvement with key reinvention efforts), key national environmental and industry organizations (such as the Sierra Club, the Natural Resources Defense Council, the Environmental Law Institute, and the American Petroleum Institute, among others), and other organizations familiar with EPA's reinvention efforts, such as Resources for the Future and NAPA.

Through these contacts, we identified specific projects to examine in more detail in order to gain a fuller understanding of the issues and challenges involved in applying reinvention principles and programs. In these instances, we contacted industry participants, as well as other stakeholders in these projects (e.g., representatives of environmental groups and state regulatory officials).

We conducted our work from October 1996 through May 1997 in accordance with generally accepted government auditing standards.

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## Agency Comments

We provided copies of a draft of this report to EPA for its review. GAO staff discussed EPA's reaction with officials from the Office of the Deputy Administrator's Regulatory Reinvention Team. Their comments, and GAO's response, are discussed at the end of chapter 3.

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# EPA's Reinvention Initiatives and Structure for Implementing Them

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EPA maintains that it is seeking, through reinvention efforts, to fundamentally reexamine and reshape its approach to protecting the environment. According to the agency, these efforts will (1) achieve better environmental results through the use of innovative and flexible approaches to environmental protection; (2) encourage states, tribes, communities, and citizens to share in environmental decision-making; (3) make it easier for businesses to comply with environmental laws by offering them compliance assistance and incentives to prevent pollution at its source; and (4) eliminate unnecessary paperwork.

To achieve changes of this magnitude, EPA is implementing a range of specific initiatives addressing one or more of these overall objectives. The Administrator recently announced her decision to create the Office of Reinvention to provide overall direction and support for the agency's reinvention efforts and to lead certain key initiatives. In addition, (1) EPA's program offices participate in agencywide initiatives and have generated some of their own medium-specific initiatives and (2) each of EPA's regional offices has established varied structures and strategies to implement both the EPA-wide and program-specific initiatives. Reinvention "ombudsmen" have also been identified in the agency's program and regional offices to focus senior management's attention on reinvention-related issues.

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## EPA Reinvention Initiatives Cover a Broad Range of Activities

In March 1995, EPA announced 25 "high-priority actions" and 14 "other significant actions" aimed at improving the current regulatory system and laying the groundwork for a new system of environmental protection.<sup>1</sup> However, the precise number of initiatives is difficult to establish because, in addition to these 39 efforts, the agency is implementing less centralized projects through its program offices and regional offices. These projects have either a reinvention focus or reinvention-related components. For example, EPA's Boston regional office has initiated its own reinvention-specific activities (including a database to track the progress of its reinvention activities) and other efforts that have reinvention-related elements (such as integrating environmental considerations into transportation planning). Similarly, EPA's program offices have initiated their own medium-specific reinvention efforts, such as the Office of Water's efforts to improve the nation's water quality monitoring information through strategies and recommendations developed by an intergovernmental task force. In addition, a senior regional official told us

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<sup>1</sup>See app. I for a list of these initiatives, including those that EPA has identified as its "larger, more cross-cutting efforts."



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that it is difficult to determine the universe of reinvention initiatives because many of the innovative practices being undertaken in different parts of the agency have been under way for years but are not necessarily tied directly to the 39 initiatives formally identified as "reinvention" initiatives.

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## EPA's Key Reinvention Initiatives

While EPA has not formally set priorities among its initiatives, the agency has clearly identified several initiatives as central to its efforts to reinvent environmental regulation. According to EPA, Project XL and the Common Sense Initiative (CSI) are the cornerstones of EPA's central objective of working with industry to ". . . achieve the very best protection of public health and the environment at the least cost." In addition, the agency is seeking to significantly improve its working relationship with the states through its National Environmental Performance Partnership System (NEPPS). This effort is viewed as particularly important in light of the states' central role in directly implementing many of EPA's most significant regulatory programs.

### Project XL

The President announced Project XL in March 1995, noting that "this program will give a limited number of responsible companies the opportunity to demonstrate excellence and leadership. They will be given the flexibility to develop alternative strategies that will replace current regulatory requirements, while producing even greater environmental benefits".<sup>2</sup> According to EPA, the project was created in response to the concerns expressed by numerous companies, facility managers, and communities that current applications of environmental rules do not necessarily provide the best possible environmental protection at the least cost. Further impetus was given by the experiences of some in the regulated community, who found that they could achieve substantial cost savings and improve environmental protection through more flexible, site-specific solutions to environmental protection.

Under Project XL, EPA allows companies to test innovative ways of achieving environmental protection at both the facility and the community levels if they can demonstrate that the proposed changes will yield superior environmental performance. This requires applicants to achieve results superior to the level of environmental performance that would have occurred without XL. To test such innovative approaches, project

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<sup>2</sup>Project XL (which stands for Excellence and Leadership) conducts projects in four areas: (1) corporate facilities, (2) industrial sectors, (3) federal facilities, and (4) communities. Recognizing that community-based projects differ substantially from other types of XL projects, EPA issued separate guidelines for communities in November 1995.

sponsors collaborate with key stakeholders (including communities located near a project, state and local governments, and environmental and other public interest groups, among others) to develop project proposals. These proposals culminate in Final Project agreements that must be approved by EPA, the state environmental agency, and the project sponsor in order to be implemented.<sup>3</sup>

For example, a Final Project Agreement signed last year with Intel Corporation for its manufacturing site in Chandler, Arizona, includes a number of innovative features through which the company agreed to comply with all statutory and regulatory requirements (but to achieve them more effectively) and to go beyond current requirements to improve its overall environmental performance. In return, the agreement gives Intel the flexibility to (1) implement a sitewide environmental master plan that integrates both mandatory and voluntary environmental undertakings across all media—air, water, solid waste, and hazardous waste—rather than operating strictly under separate medium-specific permits; (2) develop new procedures that will reduce paperwork and other procedural burdens; and (3) operate under a streamlined air permitting strategy that gives the company “preapproval” to add new semiconductor-related facilities as long as the facilities do not exceed emission limits or fail to comply with other specified requirements (such as those for reporting). In addition, Intel agreed to report its progress (using nonproprietary information) to the public in a consolidated, user-friendly format to allow the public to track the company’s progress in meeting the goals established for each medium.

Working with corporations and key stakeholders (including states, localities, and environmental groups), EPA has also approved Project XL agreements with Berry Corporation in LaBelle, Florida, to consolidate its citrus juice manufacturing operations under a comprehensive single multimedia permit, and with Weyerhaeuser Corporation, to reduce the overall impact on the environment of its mill operations in Flint River, Georgia.

## Common Sense Initiative

The EPA Administrator launched CSI in July 1994, as a way to bring government officials at all levels, environmentalists, and industry leaders together to create industry-by-industry strategies that will work toward

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<sup>3</sup>While a Final Project Agreement is, at a minimum, signed by EPA, the state environmental agency, and the project sponsor, it does not (1) contain legal rights or obligations; (2) serve as a contract or a regulatory action, such as a permit or rule; or (3) represent a legally binding commitment on any party. However, according to a notice issued by EPA in April 1997, future XL projects will have an enforceable component, described in the Final Project Agreement, but also contained in a legally binding document (such as a permit, rulemaking or administrative order).

“cleaner, cheaper, and smarter” ways to achieve environmental protection through consensus-based decision-making. CSI is similar to Project XL in that both initiatives attempt to reduce pollution in the most cost-effective manner. However, their approaches are somewhat different—Project XL is currently focused on protecting the environment at individual facilities and involves stakeholders in a relatively informal process to approve facility-specific proposals for operating flexibility, while CSI centers on particular industrial sectors and involves stakeholders in a formal negotiation process.<sup>4</sup>

EPA has convened representatives from both its program and its regional offices, six pilot industries (automobile manufacturing, computers and electronics, iron and steel, metal finishing, petroleum refining, and printing), and key stakeholders (including governmental entities, industry, labor, environmental groups, and environmental justice and community organizations) to review environmental requirements for each of these pilot industries. According to the operating principles developed by EPA for the CSI Council and its related subcommittees, “the purpose of the [CSI] Council and industry-focused Subcommittees is to hold meetings, analyze issues, conduct reviews, perform studies and projects to develop recommendations for administrative, regulatory, and statutory changes and carry out other related activities.” Subcommittees gather information in support of a given recommendation primarily through pilot projects to determine whether a proposal is worthy of being elevated to the full Council for approval and subsequent submission to EPA in the form of a recommendation.

## Performance Partnerships

As noted in our 1995 report entitled EPA and the States: Environmental Challenges Require a Better Working Relationship (GAO/RCED-95-64, Apr. 3, 1995), EPA has had long-standing difficulties in establishing effective partnerships with the states. Among the key issues affecting EPA-state relationships are concerns that EPA (1) is inconsistent in its oversight across regions, (2) sometimes micromanages state programs, (3) does not provide sufficient technical support for state programs' increasingly complex requirements, and (4) often does not adequately consult the states before making key decisions affecting them.

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<sup>4</sup>The Common Sense Initiative Council (established within EPA in October 1994 as the agency's national advisory committee for formulating recommendations and advice on the nation's pollution control and prevention programs relating to industrial sectors) was directed by EPA to operate by consensus decision-making. In contrast, recognizing that XL projects and the circumstances that affect them differ, EPA has not prescribed a single model for involving stakeholders in developing projects.

In establishing the National Environmental Performance Partnership System (NEPPS) in May 1995, the Administrator and leaders of state environmental programs indicated they were seeking to

“ . . . strengthen our protection of public health and the environment by directing scarce public resources toward improving environmental results, allowing states greater flexibility to achieve those results, and enhancing our accountability to the public and taxpayers. [We] believe that this new environmental performance system will achieve more integrated environmental management, promote pollution prevention, and enhance environmental results.”

A key element of the partnership system is the agency's commitment to give states with strong environmental performance greater flexibility and autonomy in running their environmental programs.

While NEPPS provides the overarching framework for developing partnership agreements, the Performance Partnership Grants (PPG) program, authorized by the Congress in April 1996, serves as a major tool for implementing them. This program allows eligible states and tribes to request that funds from two or more categorical grants (such as those authorized under the Clean Water Act or those used to implement the Clean Air Act Amendments) be combined into one or more grants to give governmental entities greater flexibility in targeting limited resources to their most pressing environmental needs. These grants are also intended to be used to better coordinate existing activities across environmental media and to develop multimedia programs.

As of April 1997, EPA had signed performance partnership agreements with 27 states and environmental performance partnership grants with 21 states.<sup>5</sup>

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## Achieving Cultural Change

While EPA has cited Project XL, CSI, NEPPS, and other initiatives as tangible efforts to reinvent environmental regulation, agency officials stress that reinvention is more than a collection of individual projects. They emphasize that reinvention reflects a new philosophy that will require a significant cultural change across the agency—shifting its orientation from the traditional command-and-control, medium-by-medium focus toward a new, more integrated system that targets the most serious environmental problems and then seeks to address them in the most efficient manner.

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<sup>5</sup>There are three categories of performance partnership grants—environmental, health, and agricultural. In addition to the 21 environmental grants, as of April 1997, EPA had signed 2 health and 13 agricultural grants.

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They stress that this new philosophy will need to filter down to the program level until it is ingrained in the day-to-day activities of the agency's line staff, and they caution that such a fundamental change will take time.

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## Headquarters and Regional Offices Will Carry Out Reinvention Initiatives

EPA is implementing its reinvention initiatives through both its headquarters program offices and regional offices. At headquarters, some of the initiatives are coordinated agencywide, while other, more medium-specific activities are being led by the Office of Water, Office of Air and Radiation, and other program offices. The recently announced Office of Reinvention, to be located in the Office of the Administrator, will provide overall direction and support for reinvention activities and play a direct role in leading some of the agency's key initiatives.

EPA's regional offices also participate in agencywide and program-specific initiatives and, in some cases, have initiated their own reinvention-related efforts. Our visits to 3 of EPA's 10 regions identified somewhat different structures and approaches for carrying out the agency's reinvention efforts.

To further support reinvention activities, EPA has also created a position for an ombudsman (at the senior management level) in each program and regional office. These officials are charged, among other things, with ensuring the quick resolution of reinvention-related issues that arise both inside and outside the agency.

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## EPA Headquarters Structure for Implementing Reinvention

In February 1997, the Administrator announced EPA's plans to establish an Office of Reinvention, to be located in the Office of the Administrator. This office will provide direction and leadership for the agency's reinvention activities and take the lead responsibility for implementing some of EPA's core initiatives, such as CSI and Project XL.<sup>6</sup> The Administrator decided that a formal structure was needed to provide effective coordination of reinvention activities across the agency, including improved communication among staff working on separate key reinvention efforts. The agency is currently drafting a proposal that will, among other things, outline the functions and responsibilities of this office and determine how its work will be coordinated with that of other EPA offices and reinvention efforts that fall outside its immediate purview.

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<sup>6</sup>As of June 1997, the exact date for establishing the Office of Reinvention had not been determined.

EPA's program offices participate in both agencywide reinvention efforts, as needed, and their own, more medium-specific efforts. For example, a program office may be called upon to review the program-specific elements of a Project XL proposal for which it has responsibility and/or work with a regulated entity to determine whether its request for flexibility can be accommodated. This type of review is especially important when a project proposal has the potential to set a national precedent. For example, such reviews were required by EPA's Office of General Counsel and Office of Air and Radiation when a Project XL proposal by the 3M Company requested major deviations from the Clean Air Act's requirements.<sup>7</sup>

Program offices also have the lead responsibility for high-priority, medium-specific reinvention efforts. For example, the Office of Water is in charge of one of the agency's 25 "high-priority actions" to promote effluent trading in watersheds on a national level to encourage cost-effective reductions in water pollution. Similarly, the Office of Air and Radiation is participating in another high-priority effort to consolidate all federal air rules for a given industry into a single rule and, in turn, to streamline the requirements for emission limits, monitoring, recordkeeping, and reporting. Other medium-specific activities include the Design for the Environment—Green Chemistry Challenge Program. Through this program, the Office of Prevention, Pesticides, and Toxic Substances recognizes outstanding accomplishments by industries—large and small—and academic institutions in designing "environmentally friendly" chemicals and processes (such as replacing traditional solvents used in a manufacturing process with alternatives that pollute less).

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## Regional Offices' Structures and Strategies for Implementing Initiatives

EPA's regional offices participate in the agencywide and program offices' reinvention initiatives (as well as their own reinvention-related efforts), working as needed with regulated entities, other external stakeholders, and EPA headquarters staff. Over the past 2 years, EPA has given its regional offices broad latitude to restructure their operations in order to experiment with integrating activities across environmental media. Among the three regional offices we visited, we found considerable variation in the choice of structure—a decision that has a direct impact on each office's implementation of reinvention activities.

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<sup>7</sup>Ultimately, this proposal was withdrawn by the 3M Company and Minnesota, in part because of unresolved differences over the flexibilities that 3M had requested.

Atlanta Office (Region 4): EPA's Atlanta office has maintained a traditional medium-by-medium program structure and carries out its reinvention initiatives through ad hoc, multimedia teams with part-time, voluntary membership. According to the Deputy Regional Administrator, the office has only one full-time staff dedicated to reinvention efforts—specifically, Project XL—in part because it has found that spreading the workload for reinvention efforts out among its staff has allowed it to participate in reinvention while also allowing it to fulfill its traditional program responsibilities. While the Atlanta office has not formally revised its appraisal system to encourage staff to become involved in reinvention activities, staff are informally encouraged to participate through the region's awards program.

Chicago (Region 5): The agency's Chicago office has also largely retained its traditional, medium-specific organizational structure but has established (1) a new Office of Strategic Environmental Analysis to, among other things, oversee regulatory reinvention for the region and (2) more permanent cross-cutting teams to carry out reinvention activities. The cross-cutting teams draw upon the expertise of the region's program office staff, as needed, to implement reinvention activities. In addition, the region has 10 geographical place-based teams that have some involvement in reinvention efforts. These teams were created to address the most critical needs of 10 principal places (such as the Great Lakes, the upper Mississippi River, and northwest Indiana) where the environmental stresses are so great that concentrated efforts are needed to restore resources and improve the quality of life. Regional officials said that reinvention has not been formally integrated into the region's performance appraisal system but that some managers do include this type of information in staff performance appraisals.

Boston (Region 1): EPA's Boston office undertook the most fundamental reorganization of its activities by adopting a structure that integrates all media activities into a cross-cutting framework. For example, it replaced traditional program offices (e.g., air and water) with five new major divisions: (1) an Office of Environmental Stewardship to carry out enforcement, compliance assistance, and pollution prevention activities; (2) an Office of Ecosystem Management, which has established cross-cutting teams for each state in the region to facilitate a holistic approach to environmental protection, to develop environmental standards and goals and to build the capacity of states and localities to implement them; (3) an Office of Site Restoration and Revitalization to meet requirements under the Resource Conservation and Recovery Act

(RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and to implement related reinvention activities; (4) an Office of Environmental Measurement and Evaluation to provide the infrastructure to measure environmental results; and (5) an Office of Management and Budget to provide workforce support. This new organization was designed to give the region more flexibility in solving complex environmental problems and in integrating its activities across environmental media.

In conjunction with this restructuring, responsibility for implementing reinvention activities has been integrated into these new offices and, as appropriate, incorporated into the routine responsibilities of regional staff. In turn, regional staff are held accountable for their contributions to reinvention efforts through the region's performance appraisal system. According to the Boston office's Reinvention Ombudsman, the office currently has over 40 full-time-equivalent staff dedicated to reinvention-related activities and has developed a computer tracking system to monitor the office's progress in implementing them.

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## Reinvention Ombudsmen Designated to Assist With Implementation

EPA recently designated certain high-level managers as "reinvention ombudsmen" in its national program offices and regional offices. These individuals serve as senior management points of contact for reinvention-related matters both inside and outside the agency—especially those involving significant policy or legal matters. This action was prompted by lessons learned during early reinvention efforts—specifically, that the active involvement of senior EPA management enhances the likelihood that these efforts will be successful. In a September 1996 memorandum to EPA senior managers, the Deputy Administrator directed each regional office and national program office to designate a reinvention ombudsman to ensure that (1) significant legal and policy issues are brought to the appropriate management level for timely resolution; (2) all stakeholders have easy access to the information and issues being reviewed and stakeholders' involvement is structured to ensure meaningful input; and (3) entities seeking to participate in EPA's reinvention efforts receive timely answers to their applications, questions, and requests. The Deputy Administrator asked that these reinvention ombudsmen give "special emphasis" to facilitating Project XL agreements.

In addition, the memorandum set out separate but related responsibilities for reinvention ombudsmen in the regional and national program offices. For example, regional reinvention ombudsmen were given the lead



responsibility for facilitating site-specific projects; ensuring timely and authoritative responses to inquiries from external stakeholders (such as states, businesses, and environmental groups); and coordinating efforts, as necessary, with senior program officials in headquarters. Reinvention ombudsmen in the agency's national program offices were directed to take responsibility for reinvention activities that involve national precedents and/or multimedia issues and, when necessary, work with their regional counterparts to resolve medium-specific issues. He stressed that this new structure was intended to improve coordination, not to replace the agency's existing decision-making framework.

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## Conclusions

EPA's effort to achieve a more flexible, integrated, and cost-effective approach toward environmental management represents a major transition for an agency that has focused, since its inception in 1970, primarily on a medium-specific, command-and-control approach. In recent months, EPA has responded organizationally in a manner that seeks to provide greater visibility for, and improved coordination of, its reinvention initiatives. Among the most notable of these measures was the agency's decision to create an Office of Reinvention, both to coordinate agencywide initiatives and to provide direct leadership for some of EPA's key initiatives.

Given the fundamental changes being sought by the agency, further organizational changes, both at headquarters and among the regional offices, seem probable as EPA gains more experience with reinvention. Achieving the most appropriate organizational structure, however, is but one challenge facing EPA. Other key challenges are discussed in chapter 3.

# Issues to Address If Reinvention Efforts Are to Succeed

Many of EPA's reinvention efforts are consistent with GPRA's goal of focusing on achieving results, as well as with the recommendations of GAO and other organizations to achieve a more integrated, cost-effective approach toward environmental protection. Two of the agency's initiatives in particular, Project XL and the Common Sense Initiative, seek to provide industries with substantially greater regulatory flexibility in order to find the cheapest, most efficient way to comply with environmental regulations. However, our contacts with EPA headquarters and regional staff; state, industry and environmental organization officials; and other stakeholders in the environmental regulatory process—together with the experiences of other organizations that have attempted to achieve fundamental change—suggest that the agency faces significant hurdles that must be addressed effectively if reinvention is to succeed:

- Key stakeholders in the reinvention process have expressed concern over the large number of complex and demanding initiatives currently being undertaken, as well as confusion over the underlying purpose of some of the agency's major initiatives.
- EPA has had difficulty achieving "buy-in" among the agency's rank and file, which have grown accustomed to prescriptive, medium-by-medium regulation during the agency's 27-year history.
- The agency has had difficulty achieving agreement among external stakeholders, including federal and state regulators and industry and environmental organization representatives—particularly when stakeholders perceive that unanimous agreement is required before progress can be made.
- The agency's process for resolving miscommunication and other problems involving EPA headquarters staff, regional staff, and other stakeholders does not distinguish between problems that require the attention of senior management and those that should be resolved at lower levels within the agency.
- EPA has an uneven record in evaluating the success of many of its initiatives. Evaluation is needed both to show EPA management what does and does not work and to provide convincing evidence to external stakeholders that an alternative regulatory strategy is worth pursuing.

In addition, the current prescriptive, medium-specific environmental laws impose requirements that have led to and tend to reinforce many of the existing regulatory and behavioral practices that EPA is seeking to change. As a consequence, the agency will be limited in its ability to truly "reinvent" environmental regulation within this existing legislative framework.

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## Greater Focus on Key Initiatives Could Improve Prospects for Success

Most of the headquarters and regional officials we interviewed cited the large number of individual initiatives under way, coupled with limitations on the agency's resources, as a key issue to be resolved as EPA moves forward with reinvention. We also found that progress on some of EPA's high-priority initiatives has been impeded by unclear objectives and/or guidance.

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## Large Number of Initiatives May Be Diverting Attention From High-Priority Efforts

Literature on organizational reinvention and reengineering stress that an organization needs to have a strong focus and a clear vision of what it is trying to achieve. A June 1996 GAO report examining federal management reforms under the Results Act notes that an organization brings its efforts into focus through a clear understanding of how individual efforts will support the organization's overall mission.<sup>1</sup> A 1994 report by the Brookings Institution states, in particular, that government reform efforts should "focus . . . on results and avoid having the reform spin off into scores of different, unconnected directions."<sup>2</sup> Our interviews suggest that while many of EPA's initiatives are, in fact, in line with the agency's goal of "achieving the very best protection of public health and the environment at the least cost," it may be appropriate at this time for EPA to reexamine whether all the initiatives now under way are directly linked with this basic mission.

Officials from two of the three EPA regional offices we visited cited the large number of initiatives as a problem and indicated that setting priorities among the initiatives would make the most efficient use of the agency's resources. Currently, they noted, the regional offices are expected to carry out reinvention activities with few resources beyond those the regions receive to carry out traditional program responsibilities. For example, according to the Director of the Office of Strategic Environmental Analysis in EPA's Chicago office, the office has 17 teams dealing with various reinvention-related efforts, including sustainable development, enforcement and compliance, emissions testing, brownfields,<sup>3</sup> and data management. Regional officials said that although

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<sup>1</sup>Executive Guide: Effectively Implementing the Government Performance and Results Act (GAO/GGD-96-118, June 1996).

<sup>2</sup>Donald F. Kettl, *Reinventing Government? Appraising the National Performance Review*, Brookings Institution, Center for Public Management (Aug. 19, 1994), p. viii.

<sup>3</sup>Brownfields are abandoned, idled, or unused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Under the Brownfields Initiative, EPA is working with states, cities, community representatives, and other stakeholders to overcome barriers to assessing, cleaning up, and redeveloping brownfields.

all of these are worthwhile, the office must face the reality that resources are limited and are already stretched too thin.

Similarly, one of the two Deputy Regional Administrators in EPA's Boston office said that staff in that office are already being pushed beyond their limits because they are doing both traditional and reinvention activities. This official observed that some of the agency's initiatives are extensions of efforts that are about 15 years old and suggested that the agency review all of its reinvention-related initiatives and eliminate those that are no longer a priority. The Deputy Regional Administrator in EPA's Atlanta office agreed that it is difficult for staff to perform all traditional and reinvention activities with the limited resources available but said that he was responsible as a senior manager for making trade-off decisions under such circumstances.

Other stakeholders interviewed by GAO echoed the concerns of the Boston and Chicago officials about the number of reinvention initiatives under way. Among them were the Commissioner of the Minnesota Pollution Control Agency, who told us that addressing the problem could help EPA better track and implement the initiatives that it considers the most important. He suggested that the head of EPA's future Office of Reinvention take on this responsibility. In a similar vein, a representative of the National Governors' Association said that state officials have complained that they are having difficulty managing the large number of initiatives. A representative of Resources for the Future, a research group that has examined EPA's reinvention efforts, also questioned the value of supporting the current number of initiatives.<sup>4</sup>

EPA officials, including the agency's Deputy Administrator, noted that the agency has no specific plans to systematically review and prioritize its reinvention initiatives. The Deputy Administrator said he agreed that decisions should be made periodically over which initiatives should be undertaken and continued. However, rather than being performed as a single event, he maintained, these decisions should be part of an iterative process that takes into account the results of evaluations of the initiatives' success. He echoed the Minnesota commissioner's view that such a

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<sup>4</sup>The Keystone Center—a nonprofit public policy and educational organization—issued a report in May 1997 entitled *Regulatory Reinvention Assessment: Summary of Stakeholder Comments*, which reported similar findings. The report, prepared for EPA's Regulatory Reinvention Team, summarized comments by 20 external stakeholders or organizations and more than a dozen EPA staff on various regulatory reinvention topics. Stakeholders representing both EPA and industry suggested that EPA select a few key reinvention efforts and focus the agency's attention and resources on these.

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function would most appropriately be carried out by the Associate Administrator of the Office of Reinvention.

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### Key Initiatives Have Required Greater Resource Commitment

To further complicate concerns about too many reinvention initiatives and not enough resources to implement them, two of EPA's major reinvention efforts—Project XL and CSI—have proved to be more difficult and time-consuming than originally anticipated. In particular, the Deputy Assistant Administrator of Project XL said that one year after that initiative began, it became apparent that the effort had grown so large that it needed to be managed more like a program than a series of pilot projects. As a result, a full-time manager was appointed to coordinate XL activities at EPA headquarters. Before this, XL coordinators were appointed in each regional office.<sup>5</sup>

The growth of this program is also evident in the agency's annual budget requests. For fiscal year 1997, EPA requested \$2.5 million for the XL program. In its fiscal year 1998 budget request, the agency asked for approximately \$4 million for Project XL, which includes the redirection of 20 workyears to the regions for Project XL support. This request represents an increase of approximately 68 percent over the preceding fiscal year's budget request.

Progress with CSI has also been slower and more difficult than originally expected. According to a February 1997 contractor study, CSI participants representing all industrial sectors and stakeholder groups expressed concern over the pace of the CSI process, noting that it has taken longer than expected to develop working relationships among the participants and to reach consensus on issues.<sup>6</sup> These increased demands are reflected in CSI's budget, which has grown by over 50 percent during the program's first 3 years of operation.

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### Unclear Objectives and Guidance Pose Barriers for Two Key Reinvention Programs

The challenges posed by the large number of reinvention initiatives have been further compounded by confusion over the fundamental objectives of some of the agency's key initiatives, particularly Project XL and CSI. When EPA announced the creation of Project XL in March 1995, the agency described XL projects as real world tests of innovative strategies that

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<sup>5</sup>In this connection, Atlanta regional officials pointed out that their office dedicated the equivalent of five full-time staff to its Project XL activities. Chicago officials said they dedicated five full-time staff specifically to negotiate the 3M Company's Project XL proposal.

<sup>6</sup>Review of the Common Sense Initiative, The Scientific Consulting Group, Inc. (Feb. 19, 1997).

achieve cleaner and cheaper results than conventional regulatory approaches. Officials from two of the three regional offices we visited, as well as from all three states, said that this statement (together with others made when Project XL was initially announced) promoted Project XL as an initiative that would allow companies great flexibility to experiment with new ways of achieving environmental compliance.

According to officials from the Minnesota Pollution Control Agency, it was with this understanding that officials from the state and the Minnesota Mining and Manufacturing (3M) Company proposed the first XL project in March 1996. The 3M project proposed taking a “one-stop” approach to permitting by developing a single comprehensive permit for air, water, and waste at one of its facilities in Minnesota. Minnesota officials said that they felt they had been given the go-ahead by EPA for the project and were surprised when EPA headquarters and regional officials subsequently raised major issues, questioning whether the proposal was sufficiently protective of the environment.<sup>7</sup> These officials said that EPA’s suggested changes were prescriptive and were not in keeping with the initial concept of Project XL.

Miscommunication between EPA officials and officials from Minnesota and 3M over the meaning of “superior environmental performance” also caused difficulties for the 3M project. According to EPA, Project XL is intended to allow companies that are environmental leaders to test creative, common sense ways of achieving superior environmental protection at their facilities and in their communities. In the case of the 3M project, which involved a facility that was already performing above current federal standards, both Minnesota and 3M officials thought that EPA would give the company credit for this “superior” performance. EPA agreed that the company should receive credit for past superior performance but disagreed with the company over the way in which the credit should be provided. Officials from Minnesota and 3M observed that EPA’s definition of superior environmental performance did not make it worthwhile for companies that are already exceeding standards to participate in Project XL. As a result of these disagreements, Minnesota and 3M withdrew the proposal from consideration in September 1996.

The Deputy Assistant Administrator for Project XL has acknowledged that in the program’s early stages, the agency was vague in communicating its vision. This caused a number of problems—particularly a widespread view

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<sup>7</sup>Specifically, EPA staff from the agency’s Office of Air and Radiation and Office of General Counsel expressed concern that the project would require significant deviations from requirements imposed under the Clean Air Act.

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that the agency was not “speaking with one voice” when companies and states raised issues about project proposals. To help address these problems, EPA has sponsored quarterly meetings with interested parties to further explain the agency’s expectations for project proposals. The agency has recently clarified its Project XL guidance, including what it means by “superior environmental performance.”

According to the February 1997 contractor study evaluating CSI’s progress, the EPA Administrator said in introducing the program that everything was on the table. She challenged CSI participants, the study said, to look comprehensively at industrial sectors in an effort to imagine the best possible environmental performance for each sector, identify the barriers to this level of performance, and develop solutions based on consensus among stakeholders to overcome these barriers. However, the study found that while the overall goals of CSI were articulated clearly by the Administrator in initiating the program, specific objectives and expectations for the program were not. The study reported that as a consequence, instead of encouraging out-of-the-box thinking as hoped, the CSI effort was delayed while confused participants tried to figure out what EPA was willing to accept. The study concluded that EPA should provide more guidance on the types of recommendations and projects that the agency would find most useful for CSI.<sup>8</sup>

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## Stakeholders Have Questioned EPA’s Commitment to Reinvention

For EPA, as for other large and complex organizations, the success of its reinvention efforts will depend greatly on the strength of the commitment expressed by its management and achieved by its rank and file. The EPA staff and state officials whom we interviewed generally agreed that top EPA management has articulated a clear commitment to the agency’s reinvention efforts. However, disagreements have surfaced in recent months that have led some key stakeholders to question EPA management’s direction of the reinvention efforts. At the staff level, we found that program and regional offices do encourage staff, to varying degrees, to participate in reinvention activities and that these efforts have engendered wider staff participation. Some staff, however, have resisted participation for a variety of reasons.

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<sup>8</sup>GAO came to similar conclusions in its ongoing review of CSI. Specifically, GAO’s preliminary findings indicate that EPA should better define CSI’s goal and expected results, including specific guidance on how the results will be accomplished.

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## Top EPA Management Has Articulated a Commitment to Reinvention

Reengineering literature supports the view that an organization's culture must be receptive to the goals and principles of reengineering. During a 1994 GAO symposium on reengineering best practices,<sup>9</sup> for example, panelists from leading organizations emphasized that without a compelling and well-communicated vision by top management of where reengineering will take the organization, suspicion and mistrust among staff can prevail.

EPA management has clearly taken steps to communicate its commitment to reinvention, both to the agency's staff and to external audiences. For example, in testimony before the Senate Committee on Appropriations on February 29, 1996, the Deputy Administrator said that EPA "is working to change the way the Agency accomplishes its mission" and "remains committed to setting priorities that allow the Agency to apply limited resources where they will gain the most public health and environmental benefits." Later, in September 1996, he stated in a memorandum to all EPA regional administrators that the Administrator and he "remain committed to reinventing the way public health and environmental protections are delivered in this country" and asked for the commitment of senior management to ensure that the agency "can take full advantage of reinvention opportunities."

As a more tangible expression of this commitment, the Administrator announced her decision to create an Office of Reinvention in February 1997. As noted in chapter 2, this office will be charged with providing overall direction and support for reinvention activities, as well as direct leadership for some of the agency's key initiatives (such as CSI and Project XL). Currently, the agency is further defining this office's responsibilities. According to its newly appointed Associate Administrator, the decision to create this office reflects an understanding that to make reinvention happen, an overarching structure is needed to provide ongoing guidance to the rest of the agency. He added that another purpose of the office will be to help ensure that reinvention efforts and ideas are shared across the agency.

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<sup>9</sup>Reengineering Organizations: Results of a GAO Symposium (GAO/NSIAD-95-34, Dec. 13, 1994).



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## Stakeholders Have Questioned the Extent of EPA's Commitment to Reinvention

Most of the EPA, state, industry, and environmental organization officials we contacted acknowledged the agency's expressions of commitment to reinvention, but some have questioned the extent of the agency's commitment to fundamental change. For example, a recent report prepared for an industry group<sup>10</sup> notes that the agency is inherently organized and structured to implement statutes and that "nonstatutory" programs (such as EPA's reinvention initiatives) tend to be treated in an "ad hoc" fashion.

The state officials we interviewed all acknowledged EPA management's expressed commitment to reinvention, but some cited differences over the roles of EPA and the states in developing and implementing new projects and processes. These differences centered around issues such as how much flexibility the states have to negotiate and approve reinvention projects and how to include stakeholders in negotiations. These differences came to a head in February 1997 when EPA temporarily withdrew from negotiations on a proposal jointly prepared by leaders of the Environmental Council of the States (ECOS) and EPA staff outlining an overarching framework for how EPA and the states will promote and implement regulatory reinvention efforts. Among other things, the proposal was intended to "establish guiding principles for reinvention and an efficient process that is receptive to innovative proposals" and "improve decision-making between states and EPA on innovation proposals, emphasizing clear lines of communication, decision authority, accountability, and timeliness." However, EPA's Deputy Administrator temporarily withdrew EPA's agreement with the proposal, noting, among other things, that specific conditions must be met before regulatory flexibility can be granted.<sup>11</sup>

In response, ECOS initially asserted that EPA's withdrawal "damaged trust and [raised] questions about [EPA's] commitment to working in partnership with the states to create a better environmental system. . . ." EPA and ECOS subsequently renewed negotiations and plan to meet regularly to maintain an ongoing dialogue on reinvention issues. However, according to the Commissioner of the Minnesota Pollution Control Agency, who has led this effort on behalf of ECOS, the experience points to some fundamental

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<sup>10</sup>Industry Incentives for Environmental Improvement: Evaluation of U.S. Federal Initiatives, Resources for the Future (Sept. 1996). This report is addressed to the Global Environmental Management Initiative, a nonprofit organization of 21 leading corporations dedicated to helping businesses achieve environmental, health, and safety excellence.

<sup>11</sup>Specifically, the Deputy Administrator's letter stated, among other things, that proposals seeking regulatory flexibility must achieve "superior environmental performance" and that "the degree of superior performance must be proportional to the degree of flexibility sought."

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differences between at least some of the states and EPA management over the future roles of EPA and the states in managing the reinvention process. He maintained that it is unclear at this point whether these differences can be resolved. As of June 1997, EPA—in consultation with ECOS—expects to publish a new draft proposal in the Federal Register for public comment later this year.

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### Achieving Commitment by Rank and File Will Take Time

Despite some differences between various stakeholders and EPA management over the future direction of reinvention, all participants in the process we interviewed—both within and outside EPA—agreed that achieving full commitment to reinvention by the agency’s rank and file will be difficult and will take time. The Special Assistant for Reinvention Efforts in EPA’s Office of Prevention, Pesticides, and Toxic Substances reflected many of these views when he told us that it will take time for culture change to filter down to EPA line staff and to see if the change takes hold.

The three EPA regions we visited are taking different approaches to achieving commitment by line staff to reinvention. For example, the Atlanta office encourages staff to participate voluntarily in ad hoc media teams that are working on reinvention initiatives. While this region has not formally revised its reward system to emphasize reinvention activities, the Regional Administrator has made it clear to the staff that he views reinvention as a top priority and values participation. Even so, the Office’s Deputy Regional Administrator acknowledged that the reaction of the regional staff to reinvention has been mixed, noting that the staff that participate in these initiatives are generally those that accept change more readily. He noted that some staff have raised various issues about reinvention, including concerns that (1) some reinvention projects may not provide adequate protection for the environment and public health and (2) some projects may not be legal under current statutes. He acknowledged that although some of these concerns may be well founded, others stem from a desire to maintain traditional ways of regulating.

The Chicago office also encourages staff to voluntarily participate in reinvention efforts through cross-media teams. According to regional office management, as teams are formed to focus on various reinvention efforts, participation is “spreading like roots” through the regional office. Like the Atlanta office, the Chicago office has not formally revised its reward system to include a reinvention component, but staff participation in reinvention efforts can be reflected in performance ratings. Chicago

officials further noted that wider participation can be expected as the region gains more experience—and achieves more success—with reinvention efforts.

As noted in chapter 2, the Boston office recently reorganized so that reinvention activities are an integral part of its program activities. According to one of the office’s Deputy Regional Administrators, the practical effect of this reorganization, which is reinforced by regional office management, is that reinvention is expected to be a routine part of all staff activities. She added that internal incentives “to reinvent” are built into staff job descriptions.

Yet in spite of the efforts both at headquarters and among the regions, we found widespread agreement among EPA officials, state officials, and others that the agency has a long way to go before reinvention becomes an integral part of its staff’s everyday activities. For example, the Director of EPA’s Regulatory Reinvention Team acknowledged that reinvention goals have been slow to trickle down to line staff. This official pointed out that many staff are comfortable with traditional ways of doing business and consider their program-specific job responsibilities as their first priority and reinvention projects as secondary.

Many state and other officials shared this perception. Overall, these officials said that the existing incentive system leads staff to focus on traditional ways of regulating and discourages them from being open to new approaches to environmental regulation. Similarly, the report prepared for the Global Environmental Management Initiative maintains that EPA personnel “give the non-statutory programs low priority because most of their effort is devoted to meeting requirements set by Congress and the Courts.”

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## Consensus Among All Stakeholders Is Difficult to Achieve

EPA’s reinvention strategy includes the goal of sharing information and making decisions with all stakeholders, including those that are external to the agency, such as state regulators, industry officials, and environmental organization officials. We found that EPA has made great efforts to include external stakeholders in the reinvention process but that achieving consensus—especially full consensus—on reinvention-related issues among parties with varying, and often conflicting, interests has proved to be very difficult. As noted in chapter 2, to help deal with issues raised during negotiations among stakeholders, the agency has designated reinvention ombudsmen to elevate difficult issues for EPA management’s

attention in a timely manner. However, most of the EPA regional and state officials we interviewed saw this process as a useful but temporary solution. These officials maintained that, in the long term, EPA needs to develop a process for resolving less controversial issues at lower levels within the agency.

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### Reinvention Stresses Collaboration Over Confrontation

Since the early 1970s, EPA's regulations and actions have been the subject of constant litigation, frequently delaying the implementation of environmental controls while at the same time adding considerably to the cost of compliance by industry and to the costs of regulation by state and local governments. In recent years, the agency has increasingly tried to address this problem by seeking consensus among the key stakeholders on broader regulatory approaches, as well as specific actions. This strategy is intended to help avert litigation by getting agreement up front among affected parties and by getting a commitment by industry to meet requirements it acknowledges are achievable. It is consistent with Executive Order 12866 (issued on Sept. 30, 1993), which directed each federal regulatory agency to consider the use of consensual mechanisms, including negotiated rulemaking, when developing regulations. It was further reinforced by the President's March 1995 Report on Reinventing Environmental Regulation, which stated that

“the adversarial approach that has often characterized our environmental system precludes opportunities for creative solutions that a more collaborative system might encourage. When decision-making is shared, people can bridge differences, find common ground, and identify new solutions. To reinvent environmental protection, we must first build trust among traditional adversaries.”

To help build trust among interested parties, the report states that (1) environmental standards must be set with full public participation; (2) an inclusive decision-making process must be employed that will provide states, tribes, communities, businesses, and individual citizens with an opportunity to participate; (3) state, tribal, and local governments will serve as full partners in developing and implementing policies to achieve national goals; and (4) EPA will become a partner providing information and research to empower local decisionmakers.

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### Definition of Consensus Varies Among EPA Initiatives

EPA reinvention officials acknowledge that the agency is searching for a workable definition of what it means to achieve consensus among stakeholders. To date, the agency has defined consensus in various ways.

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For example, the Deputy Assistant Administrator for Project XL told us that the goal of negotiating with stakeholders under this program is to get all participants' concerns on the table and to show that the agency respects and is receptive to varying views on issues. However, this official stressed that EPA may not agree with the positions raised by the stakeholders and that the agency reserves the right to make the final decision on whether to approve a project.<sup>12</sup> In the case of CSI, however, stakeholder groups have generally been seeking to achieve 100 percent agreement among participants.

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### Achieving Full Consensus Has Been Challenging

Most stakeholders we interviewed agreed that achieving consensus among stakeholders is one of the most difficult challenges EPA faces in attempting to reinvent environmental regulation. They noted that the challenge has been particularly difficult when the agency has sought to achieve—or was perceived as seeking to achieve—100 percent agreement. Officials from two of the three states that we contacted, for example, agreed that EPA goes to great lengths to include external stakeholders in these negotiations but noted that efforts to achieve unanimous agreement have been problematic, particularly in CSI negotiations. According to an official from Georgia, EPA is “bending over backwards” to include stakeholders, but when unanimous consent is required, any stakeholder has the power to veto a project. In this state official’s opinion, this approach is an invitation for gridlock and should give way to a less stringent definition of consensus.

Industry representatives have also voiced concerns about the feasibility of achieving 100 percent agreement among stakeholders. This concern contributed to the ambivalence some industry groups expressed about continuing to participate in CSI. A representative of the American Petroleum Institute said, for example, that trying to achieve 100 percent agreement among stakeholders essentially paralyzes negotiations and is one of the key reasons why participating in CSI has been very costly and labor intensive for the petroleum industry. He told us that giving every participant the power to veto a project “creates a huge road block,” especially when participants assume polarized positions. According to this official, without more tangible results, the Institute cannot justify its continued participation in CSI.

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<sup>12</sup>For example, although EPA worked with environmental groups to address a number of their concerns, the agency ultimately approved the Weyerhaeuser project even though one major environmental group was concerned that the regulatory flexibility was not merited.

The 1997 contractor study of CSI, discussed above, supported many of these factors. The study concluded that CSI participants perceive that consensus has been defined as unanimity, thus providing each individual with veto power. It cited the belief by many participants that consensus should be redefined to require less than complete agreement so that an idea can move forward even if some participants do not favor it but can “live with it.”

In response to these concerns, officials from EPA’s Regulatory Reinvention Team said that the agency is currently working with CSI participants to explore the use of a less restrictive definition of consensus. The officials caution, however, that some CSI groups may prefer to continue to define consensus as 100 percent agreement among stakeholders.

In contrast, under Project XL, where EPA does not seek unanimous consensus among stakeholders, the agency has experienced increasing success in finalizing project proposals through negotiations with stakeholders.<sup>13</sup> As discussed previously in this chapter, EPA was unable to resolve stakeholders’ concerns about the first XL project proposal, submitted by the 3M Company. However, since this time, EPA has successfully completed negotiations on three XL projects. According to EPA’s Deputy Assistant Administrator for Project XL, this success is due, in part, to the agency’s insistence that it has the right to make the final decision on whether to approve or disapprove a project. For example, during negotiations for two recently approved XL projects proposed by Intel Corporation and Weyerhaeuser, EPA decided to approve these projects even though all stakeholders’ concerns were not resolved.<sup>14</sup> Summarizing EPA’s approach under Project XL, the Deputy Assistant Administrator stressed that while EPA always wants to get all stakeholders’ issues on the table and have them thoroughly discussed, the agency does not expect unanimous support from stakeholders for all XL projects.

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<sup>13</sup>According to an April 1997 Federal Register notice outlining updated guidelines for Project XL, the agency allows a project’s sponsor and stakeholders to determine the ground rules for a project, such as what type of decision-making process will be used. However, EPA reserves the right to decide whether to approve a project for implementation.

<sup>14</sup>According to EPA, in the case of the Intel project, an environmental group was concerned about the way in which the permit was structured. Also, a local citizens’ group said, among other things, that the Final Project Agreement should have a much stronger focus on pollution prevention. In the case of the Weyerhaeuser project, the Natural Resources Defense Council objected to a provision of the project proposal that would allow EPA to waive certain permitting requirements under the Clean Air Act and the Clean Water Act.

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Some Environmental and  
Local Interest Groups Lack  
Resources to Participate  
Fully in Project  
Negotiations

Another issue affecting the ability of key stakeholders to achieve consensus stems from the difficulties many environmental and local groups face in trying to participate fully in project negotiations. A representative of the Natural Resources Defense Council (NRDC) noted, in particular, that these groups do not have enough staff and/or technical expertise to evaluate project proposals and to fully gauge the impact of these proposals. She noted, for example, that although NRDC's resources are already stretched to the limit, the group had to dedicate two attorneys and one staff researcher just to evaluate the Weyerhaeuser XL project proposal and to participate in negotiations on that project. To address this problem, the NRDC representative said that EPA needs to take steps to ensure that groups representing environmental and local concerns have the resources to participate meaningfully in project negotiations.

EPA responded to this problem in January 1997 by announcing that it is prepared to offer technical assistance to all Project XL stakeholder groups to help them evaluate project proposals. The agency plans to offer up to \$25,000 in technical assistance for each project.

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EPA Initiates a Process to  
Help Address  
Stakeholders' Issues

An official from EPA's Regulatory Reinvention Team acknowledged the need to improve the agency's process for including external stakeholders in project negotiations. As one step in this direction, EPA has established a process for reinvention ombudsmen to assist in resolving disputes during project negotiations. In a September 1996 memorandum, EPA's Deputy Administrator instructed each regional office and headquarters program office to designate a senior official to serve as a reinvention ombudsman. According to this memorandum,

"The primary role of the reinvention ombudsmen is to facilitate quick resolution of issues arising in reinvention projects by raising them to the appropriate management levels throughout the Agency for attention and appropriate action. The reinvention ombudsmen are not meant to replace existing decision-making frameworks, but serve as a single point of contact to ensure that necessary decisions are coordinated and made in a timely manner."

The process has met with some success. According to a Georgia state official involved with the Weyerhaeuser project, the intervention in negotiations by the Atlanta office's Deputy Regional Administrator—the designated reinvention ombudsman—was instrumental in resolving outstanding concerns. The Commissioner of Minnesota's Pollution Control Agency told us that having a reinvention ombudsman could have helped to

resolve some of the problems that ultimately caused the 3M project to unravel.

While acknowledging the benefits of using a reinvention ombudsman to facilitate the Weyerhaeuser negotiations, the Georgia official pointed out that the negotiations appeared to consume a great deal of the Deputy Regional Administrator's time and questioned whether such senior officials can commit so much time whenever a reinvention initiative encounters a problem. The other state officials we interviewed echoed this sentiment, pointing out that the reinvention ombudsman process should be viewed as a short-term solution to the types of problems that have occurred during project negotiations. In the opinion of these officials, a longer-term solution should employ a process that distinguishes between problems that can be resolved at lower levels within the agency and those that need to be elevated for senior management's attention.

In this connection, ECOS and EPA are working to develop an alternative plan to facilitate the approval of reinvention project proposals. A February 1997 draft of the plan acknowledged that the process for developing, evaluating, and acting upon proposals for innovation must be improved. The draft outlined a process for classifying projects into one of four categories and identified, for each category, which parties are responsible for reviewing and approving the proposals.<sup>15</sup> While the Deputy Administrator withdrew the proposal the following month for a variety of reasons, he told us that EPA is still committed to working with the states to establish a system that effectively resolves stakeholders' issues and provides for distinguishing between problems that are best addressed at lower levels in EPA and those that must be resolved at higher levels.

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<sup>15</sup>For example, project proposals viewed as potentially inconsistent with a federal statute or regulation would have been placed in categories 1 and 2. EPA headquarters, the EPA regional office, and the state would then have jointly reviewed the proposal. Project proposals viewed as potentially inconsistent with federal guidance, policies, and past practices or interpretations of the rule would have been placed in category 3. The state and EPA regional office would have had the primary responsibility for reviewing the proposals. Project proposals requiring no changes in federal guidance, past practices, regulations, or statutes would have been placed in category 4. Under these circumstances, the states would have been free to proceed without EPA's review.



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## EPA Is Not Systematically Evaluating Reinvention Initiatives' Effectiveness

GAO found that EPA has yet to develop a systematic process for evaluating the effectiveness of its initiatives, although it has made some progress in certain instances. The agency is currently taking initial steps toward developing criteria that can be used to evaluate the success both of individual projects and of its overall reinvention efforts.

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## Measurement of Progress Is Important but Difficult

GAO and other organizations have maintained that a system for measuring progress is of paramount importance in helping to ensure successful organizational change. In a June 1996 report on implementing GPRA, GAO observed that “measuring performance allows organizations to track the progress they are making toward their goals and gives managers crucial information on which to base their organizational and management decisions.”<sup>16</sup>

In March 1996, GAO testified on the contribution that the Results Act can make to congressional and executive branch decision-making and noted that striving to measure outcomes is one of the most challenging and time-consuming aspects of reinvention. According to the report “many [federal] agencies are having difficulty in making the transition to a focus on outcomes.” Such findings were substantiated by a recent report by the National Academy of Sciences, which focused on industry-initiated efforts to achieve environmental compliance through alternative means. While emphasizing the value of developing such measures, the report cautioned that “it is not easy and often not possible to quantify the effectiveness of most industry-initiated programs. . . .”<sup>17</sup>

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## EPA's Efforts to Measure Progress Have Thus Far Been Limited

EPA has had some experience in systematically measuring the effectiveness of new programs. For example, an independent research firm under contract with EPA issued a report in 1995 on the effectiveness of its “33/50” program, which seeks voluntary cooperation from industrial firms to

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<sup>16</sup>Executive Guide: Effectively Implementing the Government Performance and Results Act (GAO/GGD-96-118, June 1996).

<sup>17</sup>Fostering Industry-Initiated Environmental Protection Efforts, National Academy of Sciences (Washington, D.C.: 1997), p. 2.

reduce toxic chemicals through source reduction.<sup>18</sup> At the end of 1996, the agency hired a contractor to evaluate the effectiveness of its processes for involving stakeholders. In May 1997, the contractor issued a report summarizing comments made by various internal and external stakeholder groups that were interviewed regarding their expectations for reinvention, opinions on possible performance measures and criteria for measuring the success of reinvention, and general advice on regulatory reinvention. Among other things, the stakeholders agreed that measures of environmental health should be the primary performance criteria for measuring reinvention success. EPA is currently evaluating the report's findings.

Nonetheless, EPA reinvention officials acknowledged that a large number of reinvention projects do not currently have evaluation components. They added that among the projects that do have such components, the quality varies widely. These officials explained that, in part, it is too early to evaluate some of the reinvention efforts. For example, the February 1997 contractor review of CSI's first 2 years found that it is too early to observe the effects of CSI on statutes and regulations as well as on environmental compliance; environmental indicators; quality of life; public health; productivity; and burden on industry, government, and society.

Even though it may be too early to observe the effects of reinvention initiatives, we believe it is not too early to build evaluation components into reinvention projects so that observable effects down the road can be evaluated. The agency has recently taken initial steps toward this end. Specifically, the Administrator has asked the National Advisory Council for Environmental Policy and Technology's Reinvention Criteria Committee to identify criteria the agency can use to measure the progress and success of specific reinvention projects and its overall reinvention efforts. In October 1996, the committee completed a 6-month review of seven separate EPA reinvention initiatives to determine how they might be evaluated. These initiatives include CSI, Self-Policing/Audit policies, Self-Certification efforts, the Environmental Leadership Program (ELP), Project XL, NEPPS and the Sustainable Development Challenge Grants Program. This review found that two of the seven reinvention initiatives—ELP and NEPPS—had begun to define evaluation criteria. Since this review, the committee held a 2-day public meeting in April 1997 to solicit perspectives on defining evaluation criteria from representatives of

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<sup>18</sup>The nonprofit environmental research firm INFORM found that 31 percent of the reductions in toxic releases claimed by EPA had been initiated before the announcement of the 33/50 program. The firm also found that most companies relied on "end-of-pipe" treatment technologies or on-site recycling and energy recovery, rather than source reduction, to reduce their toxic releases.

state and local government, academia, industry, environmental organizations, and nongovernmental organizations. The Committee plans to hold another meeting in July 1997 to continue discussions on defining evaluation criteria.

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## Environmental Statutory Framework Limits Potential to Reinvent Environmental Regulation

GAO found considerable disagreement among stakeholders on whether changes to the current statutory framework are needed to facilitate the regulatory reform process. Most of the state and industry officials we interviewed cited the need for (1) statutory authority to waive certain legal requirements that they believe impede experiments designed to test alternative methods of achieving environmental compliance and/or (2) more fundamental changes to the environmental statutory framework to encourage changes in the way environmental regulation is conducted nationwide, or both. In contrast, EPA maintains—and some in the environmental community agree—that the current statutory framework is sufficiently flexible to allow for real progress in most of the agency’s reinvention efforts and that substantial changes in the statutes could compromise protection of the environment and public health. The agency further notes that it will need to consider the results of an analysis by an advisory group that is currently assessing this issue.

On the basis of past evaluations by GAO and others, the experiences to date of EPA’s key reinvention efforts, and our contacts with a variety of stakeholders for this review, we believe that some constructive modifications can be made under the current environmental statutory framework. Nonetheless, the framework does impose requirements that have led to and reinforce many of the existing practices the agency is most seeking to change. Consequently, as GAO and other organizations have noted in the past, EPA will be limited in its ability to achieve fundamental changes in environmental regulation within the legislative framework as currently constructed.

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## Current Statutory Framework Discourages Cross-Cutting Approaches

As noted in chapter 1, EPA has no formal, overarching legislative mission because it was created under an executive reorganization plan. Instead, its statutory responsibilities are set forth in a dozen or so separate pieces of legislation that generally assign pollution control responsibilities according to environmental medium (e.g., air and water) or category of pollutant (e.g., pesticides). These numerous legislative mandates have led to the creation of individual EPA program offices that focus primarily on reducing pollution within the particular environmental medium for which

they have responsibility, rather than on reducing overall pollutant discharges.

The complications arising from this framework have been documented by GAO and other organizations for many years. In our 1988 general management review of EPA,<sup>19</sup> we cited several problems, including difficulties in setting risk-based priorities across environmental media because each statute prescribes certain activities to deal with its own medium-specific problems. In addition, different statutes require the use of different approaches in developing and evaluating regulatory options—often resulting in “fragmentation of effort, conflict in resource allocation, bias against new chemical/pesticide products, and multiple risk assessment documents for the same substance.” In 1991, we touched on these issues again, noting, for example, that “numerous legislative mandates have led to the creation of individual EPA program offices that have tended to focus solely on reducing pollution within the particular environmental medium for which they have responsibility, rather than on reducing overall emissions.”<sup>20</sup> More recently, in testifying on efforts by EPA to improve its working relationship with the states and to provide them with additional flexibility,<sup>21</sup> we concluded that “as long as environmental laws are medium-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.”

As an alternative to modifying the statutory framework, a bill introduced at the end of the 104th Congress would have authorized a demonstration program under which the EPA Administrator could modify or waive an agency rule if, among other things, a regulated facility could demonstrate that an alternative compliance strategy would achieve better overall environmental results than would be achieved under current regulatory requirements. Under the bill, the Administrator could not approve an alternative compliance strategy that would result in a violation of a national environmental or health standard.

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<sup>19</sup>Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988).

<sup>20</sup>Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

<sup>21</sup>Environmental Protection: Status of EPA’s Initiatives to Create a New Partnership With States (GAO/T-RCED-96-87), p. 8.

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## EPA Believes Statutory Framework Allows for Innovation

According to the Deputy Administrator, EPA has taken the position that it needs to review the results of the Enterprise for the Environment Initiative (E4E) before it considers the need for legislative changes. This initiative is examining, among other things, whether policy reforms are needed to shift the current regulatory system toward one that is more performance-based and flexible and that uses market mechanisms and alternative enforcement and compliance approaches to achieve environmental protection.<sup>22</sup> Participants in this effort plan to deliver a package of recommendations to the Congress and the administration in 1997. The Deputy Administrator added, however, that the agency's experience to date with reinvention confirms that much can be accomplished within the existing statutory framework. EPA reinvention officials supported this view, maintaining that as they have evaluated proposed projects on a case-by-case basis, they have found that proposed changes have been achievable within the constraints posed by existing statutes.

In addition, according to these officials, the agency can deal effectively with potential regulatory barriers through "site-specific rulemakings" that allow it to offer additional flexibility to participating companies. Under these rulemakings, EPA can promulgate a rule that will permit the agency to approve the terms of a project employing an alternative regulatory approach. According to EPA, the authority for such a rule would be based on an alternative interpretation of a statute applicable only to the specific site. The facility would then comply with this site-specific rule.

Many in the environmental community also believe that statutory change is not needed and that much flexibility already exists in environmental statutes. An attorney with the Natural Resources Defense Council cited the Clean Water Act as an example, noting that the law allows site-specific variances from water quality-based effluent limitations. Using this flexibility, facilities can have up to 5 years to comply with water quality effluent limitations.

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<sup>22</sup>The Center for Strategic and International Studies—an independent, nonprofit, nonpartisan institution founded in 1962 to advance the understanding of emerging global and domestic issues—launched the E4E initiative in Nov. 1995. The objective of this initiative is to engage key stakeholders (environmentalists, business, labor), experts, and Democratic and Republican political leaders in a policy dialogue aimed at rebuilding a consensus on the strategic direction of U.S. environmental policy.

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## Many in the Regulated Community Doubt That Much Progress Can Be Made Without Statutory Changes

EPA's view that reinvention can produce substantial results without statutory changes is at odds with the view held by many in industry—whose participation, as key members of the regulated community, is crucial for reinvention to succeed. Both individual companies and other industrial organizations, including some discussed earlier that have participated in reinvention experiments, have expressed strong reservations about the potential for reinvention within the present statutory framework. For example, the report to the Global Environmental Management Initiative, discussed earlier in this chapter, noted that the agreements under Project XL do not provide firms with any protection from lawsuits by citizens or environmental groups that may object to the terms of these agreements. As a result, according to the report, "industry participants in reinvention programs generally steer the programs to peripheral matters because their general counsels caution them against taking any action that might result in litigation."<sup>23</sup>

Similarly, reflecting on its experience as the petroleum industry's representative on the Common Sense Initiative Council, a representative of the American Petroleum Institute told us that the Institute favors statutory change to explicitly authorize reinvention-type activities. Echoing the Global Environmental Management Initiative's concern over the consequences to companies of being perceived as violating the law, he noted that even frivolous lawsuits pose a real threat. He added that companies "going out on a limb" need to be afforded statutory protection.

Some industry representatives have specifically questioned whether EPA's strategy of using site-specific rulemakings will provide industry with the assurance it desires that actions taken under a reinvention project will not extend the approval process for reinvention projects for months or years, because it may take years to implement a rule and additional years to litigate it. In fact, these concerns may be well founded because some environmental organizations have raised concerns that site-specific rulemakings may allow EPA regions to essentially rewrite federal policies, may raise questions about whether EPA's rules are applied consistently across the nation, and may preclude national environmental groups and other parties from participating adequately in the process. Among the

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<sup>23</sup>Industry Incentives for Environmental Improvement: Evaluation of U.S. Federal Initiatives, Resources for the Future (Sept. 1996). This report was published before EPA introduced the use of site-specific rulemaking, which is intended to help protect companies from third-party lawsuits. However, as discussed later in this section, even with the use of site-specific rulemakings, some industry representatives remain concerned that litigation against EPA may still delay reinvention projects.

other reservations voiced by industry representatives are concerns that EPA may not have the statutory authority to modify a rule in some cases.<sup>24</sup>

The state officials interviewed expressed some disagreement over the need for statutory change. Georgia environmental officials acknowledged that current law poses constraints on innovation but said that legislative changes may be premature until EPA and the states have gained more experience with reinvention. In contrast, officials from Massachusetts and Minnesota both agreed that environmental statutes need to be changed before real progress can be made in implementing reinvention.

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### Existing Statutory Framework Imposes Some Limits on Reinvention

Our own work substantiates the claims of many state officials and industry representatives that ambiguities about the legality of at least some proposed reinvention proposals may be enough to discourage their use. For example, in June 1992, we concluded that the use of water pollutant trading had been limited, in part, by the absence of a clear and unambiguous authorization of this practice in the Clean Water Act.<sup>25</sup> We cited an EPA analysis of participating states that found states' concerns over the absence of such authorization inhibited trading because of perceived legal risks that programs would be overturned or disallowed by regulators or the courts. We concluded that there would be benefits in amending the act to more clearly signal that trading is permissible. A recent study by Argonne National Laboratory reached similar conclusions, noting that "to some extent, companies that elect to trade do so at their own risk. . . . Conservative corporate and municipal government managers would be more willing to undertake trades if they felt their risk of future litigation and liability were reduced."

Similarly, we testified in February 1996 that concerns over existing statutory requirements have hampered states' efforts to experiment 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.<sup>26</sup> We noted, for example, that

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<sup>24</sup>A proposal for a site-specific rulemaking was published on March 31, 1997, for an XL project proposal made by Merck and Company, Inc. This is the first XL project to use site-specific rulemaking. As of May 1997, the rulemaking proposal was going through final negotiations.

<sup>25</sup>Water Pollution: Pollutant Trading Could Reduce Compliance Costs If Uncertainties Are Resolved (GAO/RCED-92-153, June 15, 1992).

<sup>26</sup>Environmental Protection: Status of EPA's Initiatives to Create a New Partnership With States (GAO/T-RCED-96-87, Feb. 29, 1996), p.6. For example, rather than performing multiple inspections for various environmental media, a state could use an integrated approach that incorporates inspections for all media into a single, facilitywide inspection that focuses on production processes.

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while these efforts had indeed met with some success, they were hampered by EPA funding and reporting requirements linked to individual federal environmental statutes. Referring to states' efforts to pursue innovative regulatory programs, such as integrated environmental management, we concluded that "as long as environmental laws are medium-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."

These examples do not suggest that all meaningful improvements necessarily require legislative authorization. In fact, EPA can point to specific instances when constructive, cost-effective changes have been made under current law. They do, however, substantiate the claims of many state and industry officials that EPA will be limited in its ability to truly "reinvent" environmental regulation under the legislative framework as presently constructed.

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## Conclusions

In many respects, EPA's experience with reinvention is similar to that of other public and private organizations that have attempted to change their operations and cultures. To date, the agency has taken some important steps toward devising a system that will protect the nation's environment more efficiently and cost-effectively. For example, the agency has learned that it needs a system for elevating problems requiring senior management's attention. It also has begun to develop criteria for systematically evaluating its reinvention efforts. Nonetheless, EPA faces significant hurdles that must be addressed effectively if reinvention is to succeed.

First, we found that managing a large number of often-complex and demanding initiatives has caused difficulties for EPA staff as well as other stakeholders. The problem has been compounded by (1) the fact that some of the agency's key initiatives have proved to be more demanding than originally conceived and (2) key stakeholders are confused about the primary objectives of these initiatives. EPA officials, including the Deputy Administrator, have pointed out that the agency should respond to this issue over time as evaluations of these initiatives provide management with the information it needs to determine which programs should be continued and what can be done to improve them. However, a systematic and comprehensive review may be useful at this time—particularly in light of (1) the problems, identified by EPA and other participants in reinvention



activities, with the number and clarity of the initiatives; (2) the fact that the agency has had several years of experience with many of the initiatives; and (3) the fact that the agency has a long way to go in developing evaluation components for many of the initiatives. Such a review could lead EPA to discontinue initiatives that no longer support the agency's overall reinvention goals; set priorities among the initiatives that will continue; and ensure that the specific objectives and expectations for these initiatives are clear to stakeholders inside and outside the agency.

Second, while EPA has made enormous—perhaps unprecedented—efforts to involve stakeholders with different interests and perspectives in the reinvention process, achieving and maintaining consensus has proved to be an enormous challenge. That challenge has been most difficult when EPA has sought to achieve—or was perceived as seeking to achieve—100 percent agreement. As the agency proceeds to evaluate its involvement of stakeholders in the reinvention process, we believe that it could usefully clarify its definition of consensus and the circumstances under which unanimous agreement must be achieved.

Third, a long-term, institutional process for quickly resolving reinvention problems could help EPA avert the kind of miscommunication, disagreements, and other issues that undermined some of its earlier reinvention projects. While EPA's use of "reinvention ombudsmen" has helped in specific cases, participants within and outside EPA have maintained that senior managers will not be able to intervene each time a problem arises. They maintain that a more sustainable process is needed—one that distinguishes between problems that can be resolved at lower levels within the agency and those that need to be elevated for senior management's attention. EPA management expressed its agreement to us with the concept of such a process, and is currently negotiating arrangements for this type of process with the states.

Fourth, EPA has made progress toward measuring the effectiveness of some of its reinvention initiatives, developing strategies for evaluation and establishing criteria to assess its reinvention efforts as a whole. At the same time, EPA reinvention officials acknowledged that many initiatives do not have an evaluation component and that such a component is not formally required. We believe the agency should build on its initial steps toward evaluating the success of reinvention by setting the expectation that each of its reinvention initiatives should include some kind of evaluation component. Such an evaluation component is all the more important in light of the acknowledgement by EPA management that it

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needs such information to make informed decisions about which initiatives to continue and how to improve them.

Finally, much discussion has focused on the potential need for statutory changes as a precondition for reinventing environmental regulation. We believe that constructive modifications can indeed be made under the current environmental statutory framework. However, EPA will be limited in its ability to truly “reinvent” environmental regulation without legislative changes. EPA says it will need to consider the results of a key advisory group, expected this summer, before concluding whether and what kind of statutory changes it believes are needed.

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## Recommendations

GAO recommends that the Administrator, EPA,

- direct the Associate Administrator, Office of Reinvention, to review the agency’s reinvention initiatives to (1) determine whether there are any that no longer support the agency’s overall reinvention goals and should therefore be discontinued, (2) set priorities among those that will be continued, and (3) issue clarifying guidance, as needed, to help ensure that the specific objectives and expectations of continuing initiatives are clear among stakeholders inside and outside the agency;
- improve the prospects for achieving consensus among concerned parties in EPA’s reinvention efforts by clarifying the circumstances under which unanimous agreement is required;
- develop a systematic process that would help to address problems in a timely fashion by identifying which kinds of problems can be resolved at lower levels within the agency and which should be elevated for senior management’s attention; and
- direct that each of the agency’s initiatives include an evaluation component that measures the extent to which the initiative has had its intended effect.

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## Agency Comments

Officials with EPA’s Regulatory Reinvention Team expressed general agreement with the report’s recommendations, offering observations or suggesting modifications in some cases. The Team’s Director noted, however, that the timely resolution of complex problems involving numerous regional and program office staff may not always be possible. We acknowledge the difficulty of resolving such problems expeditiously. However, we believe that the type of “triage” suggested in our recommendation, which would elevate complex problems for senior

management's attention when disagreements could not (or should not) be resolved at lower levels, would help to address this difficulty.

The Regulatory Reinvention Team's Director also indicated that our recommendation to include outcome-based evaluation components for each initiative may be impractical because measuring environmental outcomes may not be possible in all cases. We agree and modified this recommendation to avoid calling for outcome-based measures in all cases. However, we continue to believe that, when possible, outcome-based performance measures should be used, as the Results Act directs.

The Director of the Regulatory Reinvention Team expressed some concern that although the report did not specifically recommend statutory changes to facilitate reinvention, some readers may infer that GAO is advocating change in the medium-specific structure of the federal environmental statutes. He added that the report did not assess how changes in environmental law can improve environmental protection. We acknowledge that assessing how specific changes could improve the environmental statutory framework was outside the scope of this review, although our draft report did reflect the views of EPA officials, industrial and environmental groups, and other participants in the environmental regulatory process on this issue. We also acknowledge that EPA, in consultation with key advisers and stakeholders, is ultimately responsible for assessing whether changes to environmental statutes should be recommended to the Congress. At the same time, we believe that any discussion of the issues affecting reinvention's success would be incomplete without citing the inherent limitations to fundamental change posed by the statutes' current medium-by-medium focus. Such limitations have been acknowledged by EPA in past years; documented consistently in analyses by GAO and other organizations; and cited as a key issue by the large majority of officials interviewed for this report.

Finally, the officials suggested that the report focuses on the most visible of EPA's initiatives, such as Project XL and the Common Sense Initiative, and does not sufficiently acknowledge (1) the agency's smaller, less visible initiatives and (2) the extent to which reinvention principles are being applied throughout EPA's day-to-day activities. Although we did not analyze all of EPA's reinvention initiatives in detail, focusing instead on the efforts emphasized by the EPA and state officials contacted during our review, the draft report acknowledged that EPA has undertaken numerous other initiatives and listed many of them in appendix I. The draft report cautioned against measuring the success of reinvention by the large

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**Chapter 3**  
**Issues to Address If Reinvention Efforts Are**  
**to Succeed**

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number of initiatives under way, noting that EPA may need to reduce the number of initiatives to improve the prospects of success for its highest-priority efforts. In regard to the extent that reinvention principles are being applied throughout EPA's day-to-day activities, chapter 3 of the draft report had, in fact, discussed many of the agency's efforts to instill reinvention principles into the staffs' day-to-day activities, emphasizing that EPA management considers cultural change to be a major goal of its reinvention efforts. Here, too, however, the draft report discussed the agency's difficulties in achieving this goal, noting in chapter 3, for example, "widespread agreement among EPA officials, state officials, and others that the agency has a long way to go before reinvention becomes an integral part of its staff's everyday activities."

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# EPA's Major Regulatory Reinvention Initiatives

In March 1995, the administration announced a comprehensive effort to reinvent environmental regulation<sup>1</sup> and identified 25 “high-priority actions” and 14 “other significant actions” that the agency would use to launch this effort. More recently, EPA identified 10 efforts for us as its larger and more cross-cutting initiatives. These initiatives are denoted below in bold type. Four of the 10 initiatives, which were not included in the original announcement, are listed below under “Other Larger Cross-Cutting Efforts.”

## 25 High-Priority Actions

### Improvements to the Current System

- Issue a rule allowing open-market air emissions trading
- Promote effluent trading in watersheds
- Refocus hazardous waste regulation on high-risk wastes
- Refocus drinking water treatment requirements on the highest risks
- Expand the use of risk assessment in local communities
- Provide flexible funding for states and tribes
- Provide sustainable development challenge grants
- Encourage regulatory negotiation and consensus-based rulemaking
- **Reduce existing reporting and recordkeeping requirements by 25 percent**
- **Create one-stop emission reports**
- Consolidate federal air rules
- Move to risk-based enforcement
- Establish compliance incentives for small businesses and communities
- **Establish small business compliance assistance centers**
- Create incentives for auditing, disclosure, and correction
- Develop a self-certification (compliance) program for environmental requirements not associated with emissions or risk data
- **Expand the public's electronic access to information on all EPA programs**
- Establish an EPA center for environmental information and statistics

### Building Blocks for a New System:

- **Project XL** (Excellence and Leadership) for facilities
- **Alternative strategies for sectors (Common Sense Initiative)**

<sup>1</sup>President Bill Clinton and Vice President Al Gore, Reinventing Environmental Regulation, National Performance Review (Mar. 16, 1995).

- Alternative strategies for communities
  - Alternative strategies for agencies
  - Pilot third-party audits for industry compliance
  - Multimedia permitting
  - Design for the Environment—"Green Chemistry Challenge"
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## Other Significant Actions

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### Performance and Market Based Regulations

- Conduct several demonstrations of facilitywide limits for air emissions
  - Propose targeted Clean Water Act revisions to provide flexibility in meeting effluent discharge deadlines
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### Setting Priorities Based on Sound Science

- Eliminate millions of storm water permit applications
  - Exempt low-risk pesticides and toxic chemicals from regulation
  - Establish a program to forecast future environmental problems
- 

### Building Partnerships

- Encourage states and tribes to implement a flexible, performance-based approach for permitting municipal landfills
- 

### Cutting Red Tape

- Save billions on the costs of disposing of polychlorinated bi-phenyls (PCB)
  - Simplify air permit revision requirements
  - Simplify the review of new air pollution sources
  - Simplify water permit paperwork
  - Streamline corrective action procedures under the Resource, Conservation, and Recovery Act
- 

### Better Accountability, Compliance, and Enforcement

- Develop flexible compliance agreements for specific industries
- 

### The Power of Information

- Commission an independent study on collecting and using information more effectively
  - Establish a data transfer system that will allow facilities to report monitoring results electronically
-

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- Other Larger Cross-Cutting Initiatives
- **Brownfields Initiative**
  - **Environmental Leadership Program**
  - **National Environmental Performance Partnership System**
  - **Voluntary Partnerships (applies to a broad range of activities)**



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