

**GAO**

Report to the Subcommittee on VA,  
HUD, and Independent Agencies,  
Committee on Appropriations, House of  
Representatives

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June 1999

# ENVIRONMENTAL PROTECTION

## Collaborative EPA-State Effort Needed to Improve New Performance Partnership System



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

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

B-282588

June 21, 1999

The Honorable James T. Walsh  
Chairman, Subcommittee on VA, HUD,  
and Independent Agencies  
Committee on Appropriations  
House of Representatives

Dear Mr. Chairman:

As requested, we are reporting on the Environmental Protection Agency's (EPA) and the States' progress in implementing the National Environmental Performance Partnership System.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of this letter. At that time, we will send copies to the appropriate congressional committees; the Honorable Carol Browner, Administrator, EPA, and the Honorable Jacob Lew, Director, Office of Management and Budget. We will also make copies available to others upon request.

Please call me at (202) 512-6111 if you or your staff have any questions. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'P. F. Guerrero', with a long horizontal flourish extending to the right.

Peter F. Guerrero  
Director, Environmental  
Protection Issues

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# Executive Summary

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## Purpose

The Environmental Protection Agency (EPA) has had long-standing difficulties in establishing effective partnerships with the states, which generally have the lead responsibility in implementing many environmental programs. Among the key issues affecting EPA-state relationships have been 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. To address these problems and improve the effectiveness of environmental program implementation, EPA's Administrator and leaders of state environmental programs established the National Environmental Performance Partnership System (NEPPS) in May 1995. In signing the agreement that established NEPPS, EPA and state leaders said that the system is designed to strengthen 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 accountability to the public and taxpayers. A key element of NEPPS was EPA's commitment to give states with strong environmental performance greater flexibility and autonomy in running their environmental programs.

Given the expectation among participants that NEPPS could deal with many of the issues that have long impeded EPA-state relationships, the Chairman, Subcommittee on VA, HUD, and Independent Agencies, House Committee on Appropriations, asked GAO to examine the progress made by EPA and the states since the 1995 agreement. Specifically, as agreed with the Chairman's office, this report (1) identifies the status of grants and agreements made under NEPPS between EPA and participating states, (2) examines the progress that EPA and the states have made in developing results-oriented performance measures to be incorporated into NEPPS agreements and grants to the states, (3) examines how EPA oversight may or may not be changing in states that are participating in NEPPS, and (4) discusses the extent to which the use of these Performance Partnership Agreements and Grants has achieved the benefits envisioned for the states and the public.

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## Background

Under NEPPS, states may voluntarily enter into "Performance Partnership Agreements" with their EPA regional offices. While there is considerable flexibility in how the agreements may be designed, they typically provide a means for EPA and the states to negotiate such matters as (1) which problems will receive priority attention within the state programs,

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(2) what EPA's and the states' respective roles will be, and (3) how the states' progress in achieving clearly defined program objectives will be assessed. An important component of the Partnership Agreements is the use of a common set of national environmental indicators (called "Core Performance Measures") to measure the effectiveness and success of states' environmental programs. In their efforts to develop these performance measures, EPA and state officials have sought to move beyond counting the number of actions (such as the number of inspections conducted or environmental enforcement actions taken) and increasingly toward evaluating the impact of programs on the environment.

While NEPPS provides the overarching framework for developing Partnership Agreements, the Performance Partnership Grants Program, authorized by the Congress in April 1996, is used by many states as a major tool to implement them. This program allows states to request that funds from 2 or more of the 15 eligible categorical grants be combined 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. While the Partnership Agreements are designed to complement the Partnership Grants, states are free to negotiate agreements and/or grants or to decline participation in NEPPS altogether.

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## Results in Brief

State participation in the National Environmental Performance Partnership System grew from 6 pilot states in its initial year in fiscal year 1996 to 45 states by the end of fiscal year 1998. Of that number, 31 states had both Performance Partnership Agreements and Performance Partnership Grants with EPA in 1998; 12 states had grants only; 2 states had agreements only; and 5 states did not participate at all. Nationwide, for that year, \$217 million of \$745 million in state environmental program grants was consolidated into Performance Partnership Grants—an increase of 28 percent from the previous year.

EPA and the states agree on the importance of measuring the outcomes of environmental activities rather than just the activities themselves. However, the development of these measures has been impeded by a number of technical challenges, including (1) an absence of baseline data against which environmental improvements could be measured, (2) the inherent difficulty in quantifying certain results, (3) the difficulty of linking program activities to environmental results, and (4) the considerable

resources needed for high-quality performance measurement. In addition, EPA and the states have had to resolve fundamental disagreements over a number of issues, including (1) the degree to which states should be permitted to vary from the national core measures and (2) the composition of the measures—particularly regarding the degree to which preexisting output measures are to be retained as newer outcome measures are added. Despite these barriers, EPA and state leaders have managed to agree on a set of core measures for fiscal year 2000 that are widely regarded by EPA and state officials as significantly improved from those negotiated in previous years.

The initial expectation that participation in NEPPS would be accompanied by reduced federal oversight of states has thus far been realized to a limited degree. A number of instances were identified among the six participating states GAO visited where oversight reduction did accompany participation in the system.<sup>1</sup> However, in other cases cited by both state and EPA regional officials, (1) decreased oversight could either not be linked directly to NEPPS participation or (2) oversight had either remained the same or increased. Among the factors cited by these officials as complicating reduced EPA oversight were (1) statutory and/or regulatory requirements that in some cases prescribe the kind of oversight required of states by EPA; (2) reluctance by EPA regulators to reduce oversight without the measures in place to ensure that environmental quality would not be compromised; (3) the inherent difficulty in “letting go” on the part of some regulators that have implemented the existing EPA-state oversight arrangement for several decades; and (4) EPA’s multi-level organizational structure, which complicates efforts to identify whether all key agency decisionmakers among the agency’s headquarters and regional offices are in agreement on key oversight-related questions.

EPA and state participants nonetheless cited a number of benefits associated with NEPPS, noting in particular that participation (1) provided a means of getting buy-in for innovative and/or unique projects, (2) allowed states the option to shift resources and funds under the Performance Partnership Grants Program, (3) served as a tool to divide an often-burdensome workload more efficiently between federal and state regulators, and (4) improved communication and increased understanding among EPA and state program participants about program priorities and other key matters. Yet while participants from each state indicated that their participation in the voluntary program would probably continue, they also consistently expressed the view that the benefits of the program

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<sup>1</sup>The six states were Connecticut, Florida, Georgia, Maine, Minnesota, and Oregon.

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should be greater; that the program has yet to achieve its potential; and that improvements are needed. The 1995 agreement anticipated the appropriateness of such reflection in calling for “a joint evaluation system for EPA and the states to review the results of their efforts to ensure continuous improvement.” GAO recommends in this report that such a joint evaluation process be initiated and suggests a number of issues to be considered for attention during such a process.

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## Principal Findings

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### Growth of State Participation in NEPPS

NEPPS was initially tested on a pilot basis in fiscal year 1996 with six participating states. This first year was viewed by EPA and the states as a time to experiment with the new system and various ways to implement it. The number of participating states has increased since that time to 45 states in fiscal year 1998, although the extent of their participation has varied widely. For example, half the states have negotiated both Partnership Agreements and Partnership Grants through their lead environmental agencies that cover most EPA programs; other states have thus far limited their participation to a Partnership Grant, such as one administered by their agriculture agency that, for example, addresses only pesticide programs. States have also varied considerably in the detail and content of their agreements. Senior officials in EPA’s Office of State and Local Relations explained that the agency has not attempted to impose uniformity on the development of Partnership Agreements at this early stage of the NEPPS process and has, therefore, refrained from issuing guidance on how the agreements should be structured. Hence, the agreements vary widely in content and emphasis, reflecting individual states’ conditions and priorities and reflecting the results of negotiations with their respective EPA regional offices.

While Performance Partnership Grants allow eligible states 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) be combined to allow for greater flexibility in targeting limited resources to states’ most pressing environmental needs, the percentage of eligible grant funds consolidated under these Grants is less than one-third. For fiscal year 1998, \$217 million (29 percent) of eligible grants was consolidated among the participating states, while \$528 million (71 percent) remained as categorical grants. This level of consolidation

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represents an increase of 28 percent over the \$169 million that was consolidated the previous year.

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## Progress in Developing Results-Oriented Measures

Both EPA and individual states have a number of efforts under way to develop effective performance measures to better understand whether their programs are achieving their intended results. Their collective effort to develop such measures for NEPPS has centered on the “Core Performance Measures” that have been negotiated between EPA and the Environmental Council of the States during the past several years.<sup>2</sup> The effort has faced a number of technical challenges inherent in developing defensible results-oriented measures. The results of activities designed to improve water quality, for example, can take years to appear, and the capability of many states to monitor a significant share of their waters is limited. Moreover, even if environmental conditions could be reliably and consistently measured, it may be particularly difficult to demonstrate the extent to which a government program affected that condition. Officials from Florida (a state that has made a significant commitment to measuring compliance rates and environmental indicators), for example, explained that factors outside their control, such as economic activity and weather conditions, make it particularly difficult to link program activities with changes in environmental conditions.

In addition to these technical challenges in developing results-oriented measures, the effort has also been challenged by disagreements between EPA and the states on a number of issues, including (1) the degree to which states should be permitted to vary from the national core measures and (2) the composition of the measures, particularly regarding the degree to which preexisting output measures are to be retained as newer outcome measures are added. Overall, however, the states and EPA have made progress in meeting these challenges. For example, officials in four of the six states whose programs GAO examined have developed and implemented their own measures to address their own priorities. At the same time, program officials in each of the six states have also agreed to report information required for the national core measures agreed upon between the Environmental Council of the States and EPA. In addition, while they maintain that further refinement will still be needed, EPA and state officials have agreed on a set of fiscal year 2000 measures for use in negotiating EPA-state partnership agreements that, by most accounts, are a substantial improvement over those negotiated from previous years in that

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<sup>2</sup>The Environmental Council of the States is a national nonpartisan, nonprofit association of state and territorial environmental commissioners.



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they are fewer in number (i.e., better targeted to address key goals) and generally more outcome-oriented.

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## Reductions in Oversight Attributable to NEPPS Have Thus Far Been Modest

Instances of greater state flexibility and reduced EPA oversight tended to focus on reducing the frequency of reporting and, in some cases, the frequency of on-site reviews. Maine environmental officials, for example, noted that more frequent, and less formal, dialogue between the program staff and regional staff had replaced written reports, saving time and improving the level of cooperation between EPA and state staff. While Maine program officials attributed the reductions in part to the assignment by EPA's Boston Regional Office of a liaison for each state's delegated programs, they credited NEPPS with formalizing or legitimizing the changes. Florida program officials identified sizable reporting reductions in its waste program as a result of a joint state-EPA effort included in the Partnership Agreement. Other instances were cited by officials in Georgia and Minnesota.

Yet aside from such individual instances of streamlining reporting requirements and similar tracking efforts, the large majority of the state officials GAO contacted generally maintained that participation in NEPPS has not yet brought about significant reductions in reporting and other oversight activities by EPA staff, nor has it resulted in significant opportunities for them to focus on other priorities or to shift resources to weaker program areas. EPA officials generally acknowledged this point, but provided specific reasons why oversight of state programs has not significantly decreased as a result of NEPPS—and in some cases has actually increased. Some headquarters and regional officials, for example, noted that environmental statutes or regulations sometimes prescribe the level of oversight required of EPA, leaving little room for EPA to scale it back. The officials also pointed to (1) audits that identified problems in some state enforcement programs (such as the underreporting by states of significant violations and precipitous decreases in the number of state enforcement actions taken) that they believed called for greater oversight and (2) the difficulty in scaling back oversight without measurable assurances indicating that state programs experimenting with alternative compliance strategies are achieving their desired results.

At the same time, EPA officials cited a number of barriers preventing greater state flexibility that could be more readily addressed. For example, senior EPA officials in three of the four regional offices that GAO visited acknowledged that support for NEPPS within EPA varies. One senior

regional official explained that many regional managers and staff are often more comfortable with preexisting ways of doing business and are unsure as to how they can accomplish their work in the context of the partnership approach under NEPPS. The official also said that there may be a need for training EPA regional staff in NEPPS implementation. Another senior regional official said that some agency staff will only take NEPPS seriously when their reward system is more closely tied to their performance in implementing the program. Headquarters officials also acknowledged another problem cited by many of the state officials GAO contacted—that headquarters' guidance, initiatives, and special requests sometimes arrive at the regions too late to be used effectively in regional-state Partnership Agreement negotiations and that they have taken steps to address the problem.

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## Benefits of NEPPS Participation Cited, but Full Potential Has Yet to Be Realized

Despite their disappointment at the rate of progress in achieving greater autonomy and greater emphasis on state priorities, senior officials and program managers from each of the six states in GAO's review agreed that NEPPS has provided their programs with worthwhile benefits, and that its potential for achieving a more effective partnership between EPA and the states is still worth pursuing. Among the examples cited were instances in which Partnership Agreements were used to more efficiently divide a heavy workload between regional and state staff, and in which states were able to take at least limited advantage of the flexibility in their Performance Partnership Grant agreements to shift resources among their media programs. Overall, however, the most frequently cited benefit among both state and EPA regional participants was that the two-way negotiation process inherent in the program has fostered more frequent and effective communication between regional and state participants and improved their overall working relationship.

At the same time, state officials almost unanimously expressed the view that the benefits from their investment of time and resources into NEPPS should be greater; that the program has yet to achieve its potential; and that improvements are needed. Of particular note, almost all of the state officials GAO interviewed cited progress in achieving reduced oversight and greater autonomy as critical to the future success of the program. Also cited was the need to continue improving performance measures; addressing the barriers impeding greater acceptance of NEPPS among staff within both EPA and state agencies; determining how to make greater use of the flexibility under Performance Partnership Grants to shift resources and funding to address higher priorities; and improving the manner in

which headquarters offices provide their input into regional-state NEPPS negotiations.

These concerns pose challenges for the future of NEPPS—challenges that were anticipated by the 1995 agreement that launched the program, which called for a joint evaluation system for EPA and the states to review the results of their efforts to ensure continuous improvement. On the basis of the considerable information that can be learned from the experiences to date of participating states and regional offices, GAO believes that it is now appropriate to undertake such a joint evaluation process, with the goals of (1) identifying best practices among participating states for dealing with the most challenging problems facing the program and (2) eventually obtaining agreement on actions that will improve and expand the program. EPA officials and representatives of the Environmental Council of the States have, in fact, recently agreed upon the basic outline of such a joint evaluation process. Further progress (including decisions on the specific issues to address and a timetable for addressing them) would be important steps in expanding both the participation in, and effectiveness of, this important program.

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## Recommendations

GAO recommends that the Administrator, EPA, work with senior-level state officials to initiate a joint evaluation process that (1) seeks agreement on the key issues impeding progress in developing a more effective National Environmental Performance Partnership System and (2) develops mutually agreeable remedies for these issues. Among the issues such a process could focus on are these:

- Developing a set of flexible guidelines, to be used as a tool by state and EPA regional NEPPS negotiators, that could help to clarify the appropriate performance expectations and other conditions that states must meet to achieve reduced oversight in carrying out their environmental programs and the type of reduced oversight (e.g., reduced frequency of reporting, greater autonomy in setting program priorities) that could be achieved.
- Identifying what additional work is needed to improve the Core Performance Measures recently negotiated by EPA and state representatives for fiscal year 2000.
- Alleviating the resistance among some staff (both within EPA offices and among participating state agencies) toward implementing NEPPS, through training efforts and other strategies.
- Determining what appropriate steps should be taken by EPA and the states to allow for greater use by states of the flexibility envisioned under the

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Performance Partnership Grant system to shift resources and funding among their media programs.

- Determining how effective public participation in the NEPPS process can best be ensured.
- Developing ways to improve communication among EPA’s headquarters and regional offices and participating states to ensure that states are given clear and timely information on whether key elements of their NEPPS-related agreements have the full buy-in of key EPA offices.

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## Agency Comments

GAO provided a draft of this report for review and comment to EPA and the Environmental Council of the States. EPA said that “the Report describes, in a fair and balanced manner, the progress EPA and the States have made through performance partnerships.” EPA also agreed with the report’s recommendation that agency and state efforts to improve NEPPS should include training and other efforts to achieve the cultural change necessary for greater success.

EPA also commented on GAO’s recommendation that EPA and state environmental leaders should agree on guidelines that would help to clarify, for EPA and state negotiators, the appropriate performance expectations that states must meet to achieve reduced oversight in carrying out their environmental programs and the type of reduced oversight that could be achieved. EPA noted that while it agreed with this recommendation in principle, EPA and the states believe that each state’s Performance Partnership Agreement should specify the degree of oversight necessary to accommodate the unique environmental problems and varied program capabilities of that state. GAO agrees that oversight arrangements should be negotiated between each state and its corresponding regional office in a manner that accounts for that state’s unique circumstances, and that these arrangements should be specified in the Performance Partnership Agreement. GAO continues to believe, however, that nonbinding national guidance—to be agreed upon in advance by EPA and state environmental leaders—would be useful in introducing objective parameters to be considered by regional and state negotiators as they seek agreement over this sensitive issue.

In addition to these comments, EPA provided updated information and comments on several other issues (discussed at the end of chs. 3, 4, and 5). EPA’s comments, together with GAO’s detailed responses, are included in appendix I.

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Representatives of the Council provided a number of suggested clarifications. They cautioned that since their comments had not been reviewed by the Council's membership, they should be viewed as informal suggestions to enhance the accuracy and completeness of the report. GAO made revisions as appropriate to incorporate these comments.

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**Abbreviations**

EPA	Environmental Protection Agency
GAO	General Accounting Office
NEPPS	National Environmental Performance Partnership System

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# Introduction

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The Environmental Protection Agency (EPA) has had long-standing difficulties in establishing effective partnerships with the states. Among the key issues affecting EPA-state relationships have been 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.

In an effort to address these problems and improve the effectiveness of environmental program implementation, EPA and state environmental agencies established the National Environmental Performance Partnership System (NEPPS). Under this system, strong state programs were to be given more leeway to set environmental priorities, design new strategies for addressing these priorities, and manage their own programs—allowing EPA to concentrate more effort, oversight, and technical assistance on weaker programs. A major component of the system is the development of Performance Partnership Agreements. These agreements are to provide a means for EPA and the states to negotiate such matters as (1) which problems will receive priority attention within state programs, (2) what EPA's and the states' respective roles will be, and (3) how the states' progress in achieving clearly defined program objectives will be assessed. States may also establish Performance Partnership Grants, which allow them to consolidate grants as a way of providing more flexibility in managing their environmental grant funds, and to cut paperwork and simplify financial management. For example, a state that would otherwise have separate water, air, and pesticide grants can now combine the funds from some or all of these grants into one or more performance partnership grants.

Given the expectation among participants that NEPPS could deal with many of the issues that have long impeded the EPA-state relationship, the Chairman, Subcommittee on VA, HUD, and Independent Agencies, House Committee on Appropriations, asked us to examine the progress made by EPA and the states since the 1995 agreement. Specifically, as agreed with the Chairman's office, this report (1) identifies the status of grants and agreements made under NEPPS between EPA and participating states, (2) examines the progress that EPA and the states have made in developing results-oriented performance measures to be incorporated into NEPPS agreements and grants to the states, (3) examines how EPA oversight may or may not be changing in states that are participating in NEPPS, and (4) discusses the extent to which the use of these performance partnership



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agreements and grants has achieved the benefits envisioned for the states and the public.

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## NEPPS Was Designed to Improve the Effectiveness of the EPA-State Working Relationship

Most of the nation's environmental statutes envision a strong role for the states in implementing and managing environmental programs. Toward this end, in 1993, a joint State/EPA task force recommended that EPA and the states adopt a more systematic approach to manage environmental programs in a way that allows each level of government to contribute according to its respective strengths. In May 1993, the EPA Administrator established a State/EPA Steering Committee to oversee the implementation of the task force's recommendations. Subcommittees were established to pursue work on oversight reform, with the goal of increasing state participation in EPA decision-making, developing national environmental goals and measures, allowing flexible funding across programs, and improving communications between EPA and states.

As a result of these efforts, on May 17, 1995, the EPA Administrator and the leaders of state environmental programs formally agreed to implement a new environmental partnership entitled the National Environmental Performance Partnership System. This agreement, entitled the Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System, stated that the long-range goal of NEPPS was "to provide strong public health and environmental protection by developing a system where EPA and the states work together for continuous gains in environmental quality and productivity." In establishing NEPPS, EPA and the leaders of state environmental programs indicated the system is designed to strengthen protection of public health and the environment by directing scarce resources toward improving environmental results, allowing states greater flexibility to achieve those results, and enhancing accountability to the public and taxpayers. The seven principle components of NEPPS are

- increased use of environmental goals and indicators in order to measure the effectiveness and success of environmental programs;
- a new approach for conducting assessments of environmental programs, which will include a greater reliance on annual environmental and programmatic self-assessments conducted by each state and sharing with the public information about environmental conditions, goals, priorities, and achievements;
- the development of environmental performance agreements that outline environmental priorities and goals agreed to jointly by EPA and the states;

- a reduction in oversight for those states with strong environmental programs, which will enable EPA to focus resources on states that need more assistance;
- the designation of strong state environmental programs as “leadership programs” that are afforded minimal oversight;
- increased opportunity for constructive public involvement in the management of environmental programs through a program that encourages regulated entities and the general public to review and comment on environmental issues; and
- the development of a joint system evaluation for EPA and the states to review the results of their efforts to ensure continuous improvement.

As we reported in May 1998, NEPPS is intended to strengthen the effectiveness of the nation’s environmental programs by redefining the federal and state roles to ensure that public resources are used efficiently to address the most important environmental problems.<sup>1</sup> According to EPA, NEPPS is based on a shared recognition that continued environmental progress can be achieved most effectively by working together as partners. Accordingly, the effort is designed to promote joint planning and joint priority-setting, which takes into account each state’s environmental conditions and objectives.

A key element of this program is EPA’s commitment to give states with strong environmental performance greater flexibility and autonomy in running their environmental programs. To help document this capability, a primary objective of the program is the measuring and reporting of EPA’s and states’ progress toward achieving their environmental and programmatic goals.

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## Negotiation of Performance Partnership Agreements and Performance Partnership Grants

Under NEPPS, states and their corresponding EPA regional offices are expected to reach an understanding of the state’s environmental conditions and to agree on appropriate environmental goals and priorities and on program performance indicators to measure progress. The results of these negotiations are documented in Performance Partnership Agreements and/or Performance Partnership Grants. Partnership Agreements are comprehensive agreements that are expected to be used as the principal mechanism for implementing NEPPS. According to EPA, the agreements are derived from joint discussions by EPA and the state on their

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<sup>1</sup>Environmental Protection: EPA’s and States’ Efforts to Focus State Enforcement Programs on Results (GAO/RCED-98-113, May 27, 1998).

interests, concerns, choices, and commitments for sound environmental performance.

While NEPPS provides the overarching framework for developing partnership agreements, the Performance Partnership Grants Program serves as a major tool to implement them. Performance Partnership Grants are intended to allow states greater flexibility in deciding how federal grant funds can best be spent to achieve their environmental goals. Under these grants, which were authorized by the Congress in April 1996, eligible states and tribes may 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) be combined into one or more grants to give governmental agencies 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.

Importantly, state participation in NEPPS is voluntary. In particular, while Partnership Agreements are designed to complement Partnership Grants, states are free to negotiate both agreements and grants or to decline participation in NEPPS altogether.

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## **Development of Performance Measures Is a Key Component of NEPPS**

A key component of the 1995 NEPPS agreement was the commitment by EPA and the Environmental Council of the States to identify a common set of national environmental indicators to measure the effectiveness and success of states' environmental programs.<sup>2</sup> In an effort to fulfill this commitment, on August 20, 1997, EPA and the Council agreed on a set of "Core Performance Measures" for EPA and states to use in measuring progress toward the achievement of environmental and program goals. This first set was used to measure progress in fiscal year 1998 and, with some minor revisions, was used again in fiscal year 1999.

In their efforts to develop these performance measures, EPA and state officials have sought to move beyond counting the number of actions and increasingly toward evaluating the impact of programs on the environment. Traditionally, performance measures have focused on tracking "outputs," such as the number of inspections conducted and enforcement actions taken. Such actions are easiest to count, and they provide a useful measure of the level of agency activity. On the other hand,

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<sup>2</sup>The Environmental Council of the States is a national nonpartisan, nonprofit association of state and territorial environmental commissioners.

measuring the actual results a program is intended to achieve, such as the degree to which progress is made in achieving air or water quality standards, is more difficult but provides information on whether the goals of the regulatory program are being achieved.<sup>3</sup>

In order to strike a better balance between output measures and measures of program results, EPA and the Council developed a tiered approach, shown in table 1.1, to better account for program results. As the table indicates, an output measure considers numbers of actions taken, demonstrating the level of a particular activity or how resources are used. An outcome, on the other hand, can measure the results associated with a particular policy, such as the percent of facilities in environmental compliance. Finally, environmental indicators demonstrate whether overall, long-term agency objectives are being achieved, such as the trend in the number of bodies of water meeting clean water standards.

**Table 1.1: Categories of Environmental Performance Measurement**

<b>Measure</b>	<b>Characteristic</b>	<b>Examples</b>	<b>Purpose</b>
Output	Numbers of actions	Number of penalty dollars collected; number of violations discovered	Demonstrates level of activity; demonstrates how resources are used
Outcome	Environmental or programmatic results associated with a particular program or policy	Tons of pollution reduced or percent of facilities in environmental compliance	Demonstrates results of specific initiatives or policies
Environmental indicator	Indicators associated with overall environmental or program objectives	Trend in number of bodies of water meeting clean water standards	Demonstrates whether overall, long-term agency objectives are being achieved

Note: In its efforts to develop overall performance measures for the Government Performance and Results Act of 1993, EPA uses slightly different terms: "outputs," "intermediate outcomes," and "long-term outcomes." In its guide to implementing the act, the Office of Management and Budget distinguishes between "output goals" and "outcome goals" and calls on federal agencies to measure progress toward both. Other experts in the field of government performance measurement labeled the three tiers "outputs," "policy or behavioral outcomes," and "program outcomes." See for example, Sparrow, Malcolm, "Regulatory Agencies, Searching for Performance Measures That Count," and Greiner, John M., "Positioning Performance Measurement for the Twenty-first Century," *Organization Performance and Measurement in the Public Sector*, Quorum Books, (1996).

Source: Environmental Protection: EPA's and States' Efforts to Focus State Enforcement Programs on Results (GAO/RCED-98-113, May 27, 1998).

<sup>3</sup>Thus, for example, one outcome-oriented core measure in the air program tracks overall emission reductions for key pollutants over time.

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NEPPS' emphasis on performance measurement also provides a critical link to the Congress' intent in passing the Government Performance and Results Act of 1993. The Results Act requires agencies to clearly define their missions, establish long-term strategic goals (and annual goals linked to them), measure their performance against the goals they have set, and report this information to the Congress. Importantly, 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

Our objectives in this review were to (1) identify the status of grants and agreements made pursuant to NEPPS between EPA and participating states, (2) examine the progress that EPA and the states have made in developing results-oriented performance measures to be incorporated into NEPPS agreements and grants to the states, (3) examine how EPA oversight may or may not be changing in states that are participating in NEPPS, and (4) discuss the extent to which the use of performance partnership agreements and grants has achieved the benefits envisioned for the states and the public.

For the first objective, we reviewed EPA documents describing the overall status of performance partnership grants and agreements made between EPA and states. We also interviewed officials from EPA's Office of State and Local Relations to obtain the latest data and related information on the status of Partnership Agreements and Partnership Grants signed by the states and EPA.

For the remaining objectives, we first contacted EPA (headquarters and regional) officials to identify appropriate state environmental programs for detailed study. In selecting states, we were primarily concerned with the degree of state participation in this voluntary program, the length of time they have been participating, and the desirability of examining states with different experiences and geographical locations.

On the basis of these criteria, we visited six states that have experience with NEPPS for detailed study—Connecticut, Florida, Georgia, Maine, Minnesota, and Oregon. In each case, we interviewed officials in the states' lead environmental agency. For each state, we first discussed the program with officials that have overall responsibility for NEPPS. To get insights into the status of NEPPS at the program level, we interviewed program managers from each of three environmental programs: the Resource Conservation

and Recovery Act, the Clean Water Act, and the Clean Air Act. We also interviewed program officials in the EPA regional office with jurisdiction for each state we visited. After these visits, we conducted telephone interviews with environmental officials from two states that have limited their participation in NEPPS—Michigan and Pennsylvania—to determine their views of NEPPS and the reasons why they chose not to participate more fully.

At EPA headquarters, we contacted officials from the various offices with NEPPS responsibilities, including the Offices of Air and Radiation; Water; Solid Waste and Emergency Response; Enforcement and Compliance Assurance; Reinvention; and State and Local Relations, to discuss our objectives as well as the results of our specific work at the states and EPA regional offices.

We also gathered information on our objectives through interviews with officials from other organizations with an interest in NEPPS, including the Association of State and Interstate Water Pollution Control Administrators, Association of State and Territorial Solid Waste Management Officials, Environmental Council of the States, National Academy of Public Administration, National Governors Association, and State and Territorial Air Pollution Program Administrators. Regarding the second objective, we interviewed officials from the Green Mountain Institute for Environmental Democracy, which participated in studies of issues related to the development and/or use of core performance measures.

We conducted our work from June 1998 through April 1999 in accordance with generally accepted government auditing standards. We provided copies of this report to EPA and the Environmental Council of the States for their review and comment. EPA's comments and our responses are included in appendix I. The Council indicated that since its response had been prepared without the benefit of review by Council membership, its comments should be viewed not as reflecting the Council's positions, but rather as informal suggestions to enhance the accuracy and completeness of the report. We made revisions as appropriate to incorporate these comments. We also provided relevant sections of the draft to representatives of the eight states included in our review to verify statements attributed to them, and to verify other information they provided, and have made revisions as appropriate to incorporate their comments.

# Growth of State Participation in NEPPS

State participation in the National Environmental Performance Partnership System has grown significantly in the 4 years since the system was created, increasing from 6 pilot states in fiscal year 1996 to 45 states by the end of fiscal year 1998.<sup>1</sup> However, the extent of participation among these 45 states varied considerably: 31 states had both performance partnership agreements and grants; 12 states had grants only; 2 states had agreements only; and 5 states did not participate at all. Moreover, while some states included a full range of environmental programs under their agreements, others included only one or two programs (such as pesticide or drinking water programs).

## Initial Implementation Was Devoted to Experimentation

NEPPS was initially tested on a pilot basis in fiscal year 1996 with 6 participating states. This first year was viewed as a time to experiment with the new system and various ways to implement it. According to a 1996 study of five of the six pilot efforts conducted by the Environmental Law Institute with funding from EPA,<sup>2</sup> although the pilot states shared ideas during the process of developing their agreements, the states deliberately avoided discussing some of the specifics of their approaches so as to ensure diversity.

The Environmental Law Institute's study focused on whether, and how, the pilot performance partnership agreements achieved and measured environmental results, how flexibility was exercised under the program, and how accountability was ensured. Based on the experiences of the pilot states, the Institute's study concluded that NEPPS showed great promise for improving the relationship between EPA and the states and for improving the administration of the environmental statutes. However, the study cited a number of issues that would need to be addressed as the program evolved. It stated, for example, that while states and EPA had made progress toward the goal of increasing the use of environmental indicators (measures of overall progress in achieving environmental objectives), much remained to be done to develop appropriate measures. The study also concluded improvements were needed to (1) clarify the relationship between Performance Partnership Agreements and Grants, (2) more

<sup>1</sup>For this report, NEPPS participation is defined as participation in Performance Partnership Agreements, Performance Partnership Grants, or both.

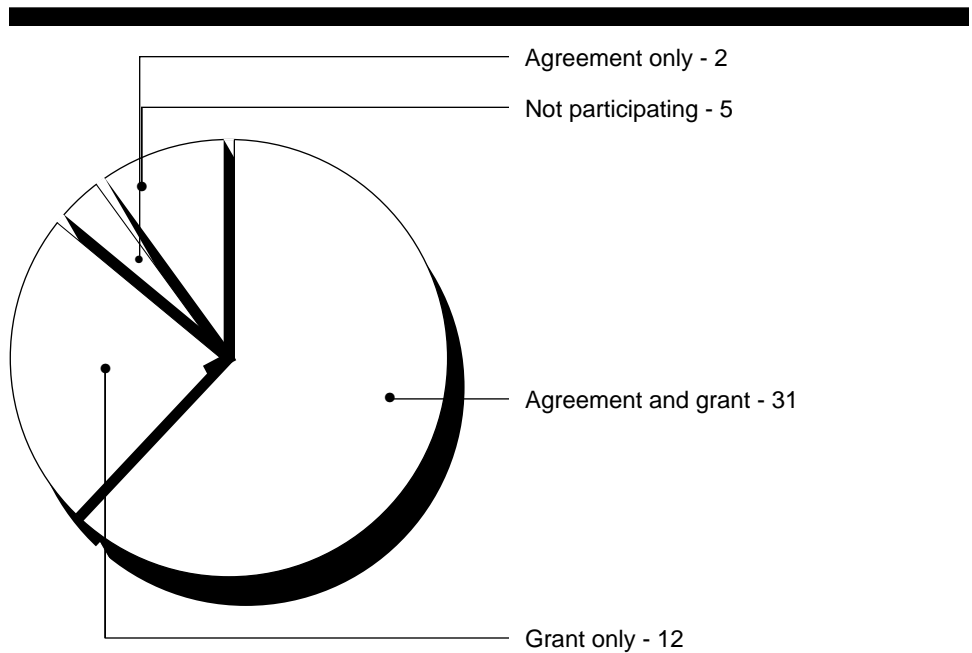
<sup>2</sup>An Independent Review of the State-Federal Environmental Partnership Agreements for 1996, Environmental Law Institute, (1996). The Performance Partnership Agreement between EPA and the sixth state was signed after the Institute completed its review and analysis of the other five agreements and thus was not covered by this study. The Institute's study did not include a review of Performance Partnership Grants since the authority for these grants was not provided by the Congress until the middle of fiscal year 1996.

effectively communicate EPA's national priorities to EPA regions and states in time to impact state and EPA regional office negotiations on Performance Partnership Agreements, and (3) increase public participation in the program.

## State Participation Expanded Rapidly Since Initial Implementation

State participation in Performance Partnership Agreements and Grants expanded rapidly after the first year. In fiscal year 1997, states and regional offices were expected by EPA headquarters to build on the prior year's experiences and work on areas that needed additional clarification or where barriers needed to be removed. Participation grew that year to 44 states and to 45 states in fiscal year 1998.

Figure 2.1: State Participation in Performance Partnership Agreements and Grants, Fiscal Year 1998



Source: Prepared by GAO from EPA's data.

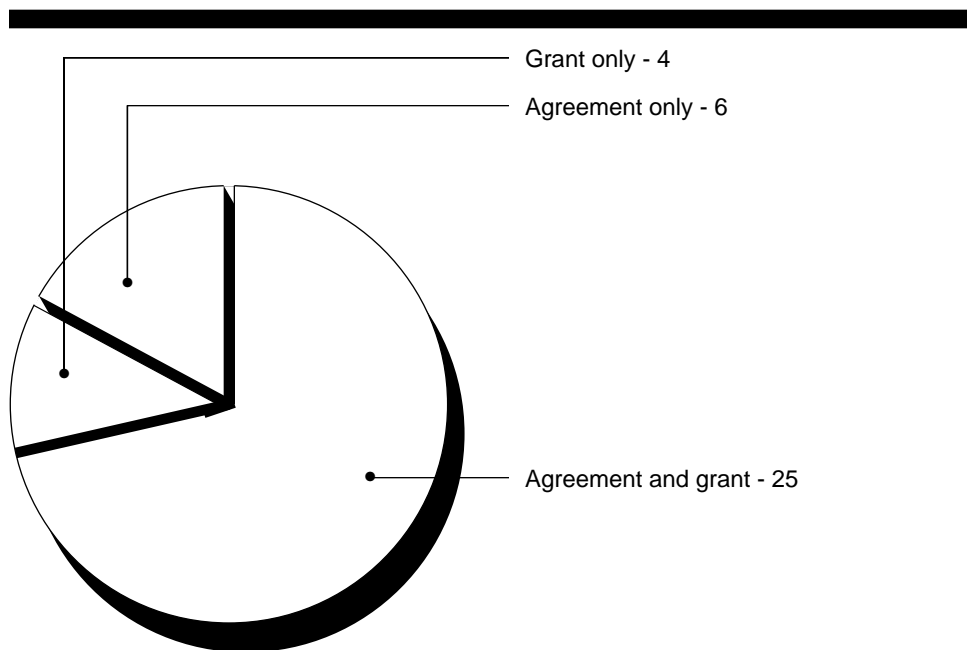
Of the 45 states participating in fiscal year 1998, 31 had both Performance Partnership Agreements and Grants, 12 states had grants only, 2 states had agreements only, and 5 states did not participate at all. (See fig. 2.1.) Since states can have multiple Performance Partnership Agreements and Grants,



depending on which state agencies handle the different environmental programs, the 45 states accounted for a total of 38 agreements and 52 grants.

According to EPA, states vary in the extent of their participation, with half the states participating broadly by negotiating both Performance Partnership Agreements and Performance Partnership Grants that cover most EPA programs through their state environmental agencies, while other states limit their participation by negotiating, for example, a partnership grant through their agricultural agency that covers pesticide programs. As shown in figure 2.2, of those states that participated in NEPPS through their lead environmental agencies in fiscal year 1998, 25 had both Performance Partnership Agreements and Grants, 4 had grants only, and 6 had agreements only.

Figure 2.2: State Environmental Agencies Participating in Performance Partnership Agreements and Grants, Fiscal Year 1998



Source: Prepared by GAO from EPA's data.

States also vary considerably in terms of the detail and content of their partnership agreements. Senior officials in EPA's Office of State and Local

Relations explained that the agency has not attempted to impose uniformity on the development of partnership agreements at this early stage of the NEPPS process and has, therefore, refrained from issuing guidance on how partnership agreements should be structured. Hence, the agreements vary widely in content and emphasis, reflecting individual state's conditions and priorities, and their negotiations with their respective EPA regional offices.

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**Most States Have  
Performance Partnership  
Grants, but Few Take Full  
Advantage of the  
Flexibility Offered**

As discussed in chapter 1, Performance Partnership Grants allow eligible states 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) be combined into one or more grants to give greater flexibility in targeting limited resources to their most pressing environmental needs. Thus far, however, the states have consolidated less than one-third of the eligible categorical grant funds under partnership grants. Of the eligible grants, 29 percent, or \$217 million, was consolidated in fiscal year 1998, while 71 percent, or \$528 million, remained as categorical grants. This represents an increase of 28 percent over the \$169 million that was consolidated the previous year.

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# EPA and States Have Made Progress in Developing Results-Oriented Performance Measures

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Both EPA and individual states have a number of efforts underway to develop effective performance measures to better understand whether their programs are achieving their intended results. Their collective effort to develop such measures for NEPPS has centered on the “Core Performance Measures” that have been negotiated between EPA and the Environmental Council of the States during the past several years. These measures are intended to be used in tracking states’ progress towards achieving the most important goals of the nation’s environmental programs.

In developing the performance measures, EPA and the states have retained a number of the traditional output measures they have used in the past but have attempted to focus increasingly on measuring desired environmental outcomes. However, overcoming a number of technical challenges, and reaching agreement on the most important environmental outcomes and on the methodologies to measure progress toward those outcomes, has been difficult. Nevertheless, considerable progress has been made in developing and improving the performance measures—as evidenced by agreement on a set of measures for fiscal year 2000 that are widely regarded as improved measures from previous years.

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## Developing and Agreeing on Core Performance Measures Has Been Difficult

EPA and state officials agree on the importance of measuring the outcomes of environmental activities rather than just the activities themselves. However, developing such measures has faced a number of challenges. Outputs, by their nature, are inherently easier to measure, report, and understand than outcomes and environmental results. Compared to output measures, developing defensible results-oriented measures has proven to be substantially more difficult. In addition to these technical challenges, EPA and the states have differed on what the measures should look like (particularly regarding the relative emphasis of output versus outcome measures) and on the degree of flexibility with which they should be implemented.

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## Technical Challenges

EPA and state officials identified several key technical challenges that they have had to address in their efforts to focus performance measurement on desired results. These include (1) an absence of baseline data against which environmental improvements could be measured, (2) the inherent difficulty in quantifying certain results, (3) the difficulty of linking program activities to environmental results, and (4) the considerable resources needed for high-quality performance measurement.

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**Need for Baseline Data to  
Measure Progress**

As noted in our May 1998 report on EPA's enforcement program,<sup>1</sup> the absence of adequate baseline data for comparison is a common problem among many organizations engaged in performance measurement, including federal and state agencies. Measuring environmental improvements requires a starting point against which to measure changes. Without such a baseline, any environmental measurement system can only provide a snapshot in time; it cannot tell whether conditions are getting better or worse.

Federal and state agencies have therefore frequently had to build entirely new data systems and ways of collecting data because the old systems are of limited use in analyzing programs' performance. Our 1998 report noted that compliance data are especially scarce for small businesses that historically received few inspections. Consequently, state programs that are just now attempting to measure results have limited data with which to compare them. Florida officials, for example, told us that their recent environmental reports showing industry-wide compliance rates generally have a baseline of 1997 or 1998, because past information is unavailable or unreliable. An EPA official responsible for NEPPS implementation also noted that the scarcity of baseline information by which to measure program improvements attributable to NEPPS is a particular challenge and a major concern to the agency.

**Inherent Difficulty in  
Quantifying Data**

Generating relevant and accurate data is a challenge under the best of circumstances. Not only do appropriate measures need to be defined, methodologies need to be established to develop the necessary data. In enforcement programs, for example, it is difficult to determine the impact on the overall environment from individual inspections conducted or enforcement actions taken. In addition, as officials told us during our review of enforcement programs, quantifying industry-wide compliance rates and other outcomes has been complicated by the difficulty of deciding both how to define a compliance rate and how to calculate it. As another example, the results of activities designed to improve water quality can take years to appear, and the capability of many states to monitor a significant share of their waters is limited.

These challenges have led some state officials to note that it may be exceedingly difficult to achieve comparability from state to state, both in what is being measured and the methodology used in gathering data. In particular, a state with more complete data may appear to have greater

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<sup>1</sup>Environmental Protection: EPA's and States' Efforts to Focus State Enforcement Programs on Results (GAO/RCED-98-113, May 27, 1998).

environmental problems than a state with poor data. Minnesota officials, for example, told us that their data base for “impaired waters” (waters that do not meet state water quality standards) includes waters that have undergone far more rigorous analysis than that performed by other states. Consequently, according to these officials, Minnesota’s impaired waters may appear to be far more severe than those of another state that does not subject its waters to such rigorous analysis.

Similar findings were reached in a 1998 study evaluating an effort where six New England state environmental management agencies and EPA’s Boston office collaborated on a menu of environmental indicators intended to measure (1) the status and trends of the quality of the New England environment and (2) program accomplishments toward reaching state and regional environmental goals.<sup>2</sup> The findings of the study were based on an evaluation of data availability and quality for 12 example indicators, which included 6 specific performance measures. A key finding of this effort was that the level of consistency required for regional indicators is difficult to achieve given (1) a lack of clarity in terms of what the indicators intend to measure and for what purpose and (2) a lack of consistency across states in both the type of data collected and methodology used.

### Challenges in Linking Program Activities to Environmental Outcomes

Assuming environmental conditions could be reliably and consistently measured, it may still be difficult to demonstrate the extent to which a government program affected that condition. As we noted in a 1997 report on the complexities associated with performance measures, “Separating the impact of [a] program from the impact of other factors external to the program was cited by government agency officials as the most difficult challenge in analyzing and reporting government performance.”<sup>3</sup>

Even in the case of the Florida Department of Environmental Protection’s significant commitment to measuring compliance rates and environmental indicators, regulators made a conscious decision not to link their enforcement programs with trends in environmental indicators or outcomes like compliance rates. The regulators explained that the causes of these trends are subject to other influences outside their control, such as the state of the economy, the weather, and other departmental actions

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<sup>2</sup>Green Mountain Institute for Environmental Democracy, “Indicator Data Catalog, An Evaluation of Data Issues Related to the Development of Core Performance Measures and Regional Environmental Indicators,” (Nov. 1998).

<sup>3</sup>Managing for Results: Analytic Challenges in Measuring Performance (GAO/HEHS/GGD-97-138, May 30, 1997).

besides enforcement. The Department's consultant agreed, noting, for example, that "If and when the scallop population in Tampa Bay is restored to healthy levels, Florida's Department of Environmental Protection . . . would be hard pressed to prove beyond doubt that their interventions actually produced this result, no matter how compelling their scientific analyses and explanations."<sup>4</sup>

Determining causality has proven to be particularly difficult among pollution prevention programs. According to EPA headquarters officials, EPA and the states have not yet been able to determine how to establish a cause and effect relationship to measure the impacts on the environment from many activities that prevent pollution from occurring.

#### Resource Limitations

Another barrier, which essentially flows from the others, relates to the significant resources and expertise required for identifying and testing potential results-oriented performance measures. Once measures are in place, gathering and analyzing the data can also be resource-intensive and can take years to show environmental improvements. In addition, several program officials of the states we visited told us that some federal and state data bases will require significant improvement in order to track the new information to support results measures. A member of the Environmental Council of the States' Information Management Workgroup agreed, noting that this is an issue EPA and the states still need to address.

Two states that have developed systems to measure the results of selected enforcement efforts found that considerable resources are needed to do quality performance measurement. The Florida Department of Environmental Protection hired a consultant to assist them in developing their new performance measurement system and dedicated several of its own staff to this effort. A Massachusetts environmental official found that monitoring the results of even a single program can require considerable resources. The former Deputy Commissioner said that in a pilot test of its new Environmental Results Program, the agency had to invest a great deal of time and energy to work with the facilities and measure the ultimate results, even though the test involved only 18 participating companies. Officials from these and other states noted that it is difficult to commit resources to the development and implementation of new results-oriented performance measures while still meeting other program requirements.

#### Results-Oriented Measures Easier to Develop for Some Programs Than Others

As challenging as the exercise may be for all programs, we found that developing results-oriented performance measures has been easier in the

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<sup>4</sup>Malcolm Sparrow, "Regulatory Agencies, Searching for Performance Measures That Count," (June 9, 1997).

case of some programs than others. Air programs, for example, have long had a monitoring network in place to measure ambient air quality throughout the country. Accordingly, as officials of EPA's Office of Air and Radiation told us, the air program has had considerable background with results-oriented performance measures, and that this experience has limited both the burden of developing specific performance measures and the burden on the states of implementing these measures. Officials of the states we visited generally confirmed this assessment. A senior official in Georgia's environmental protection division, for example, told us that developing results-oriented measures is easiest for the air program, more difficult for the water program, and most difficult for the waste program. The Georgia official attributed the differences to the extensive historical experience of the air program with results-oriented measures, the length of time it takes to see measurable results in the water program, and the difficulty in identifying suitable measures for the waste program. Similar comments were made by a Florida air program official that noted that states and EPA have been monitoring air quality for some time, have good data, and can show results.

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### **Challenges in Obtaining Agreement Between EPA and the States on the Measures**

In addition to these technical challenges, EPA and states have had to resolve fundamental disagreement over (1) the degree to which states should be permitted to vary from the national core measures and (2) the composition of the measures, particularly regarding the degree to which pre-existing output measures are to be retained as newer outcome measures are added.

### **Extent to Which States Can Vary From the Core Measures**

EPA's goal to use the performance measures to provide a national picture of environmental progress necessitates a degree of consistency among the states in what is being measured. To achieve consistency, the May 1995 NEPPS Agreement provides that EPA and the states will "...develop a limited number of program and multi-media performance measures that each state will report so that critical national program data is collected." However, recognizing that a set of national measures may not necessarily address individual states' priorities (or represent what individual states consider to be the best measures for their state-specific situations), the agreement further provides that states may develop other goals and performance indicators that will present a more meaningful picture of their state's environmental quality. This apparent need was further recognized in the August 1997 joint statement by EPA and the Environmental Council of the States, which accompanied the release of the measures for fiscal year 1998. The statement indicated that where a

particular performance measure does not fit a state's situation, that measure may be modified, substituted, or eliminated if mutually agreed to by both the state and EPA. Deviations could be warranted, for example, where (1) there may not be adequate data to report on the measure, (2) alternative measures may work better, or (3) there may be higher priorities in a state.

According to Council officials, in the first year of the performance measures, EPA regions were inconsistent in implementing the performance measures across the country: some EPA staff in regional offices allowed states flexibility in implementing performance measures (as intended by the 1997 joint statement) while staff in other regions tried to portray the national performance measures as mandatory and inflexible. In June 1998, the president of the Council wrote to the Deputy Administrator of EPA, asking that the agency reaffirm its support for the flexibility provisions of the joint statement. Noting that one of the most challenging aspects of implementing the performance measures is balancing the need for uniform national measures with the need to accommodate the circumstances of individual states, the Deputy Administrator's September 1998 response reaffirmed that under certain circumstances, EPA regions can adjust a measure that is inappropriate for a particular state. Updated EPA-Council joint guidance on the use of performance measures, issued in April 1999 as an addendum to the 1997 Joint Statement along with the release of the fiscal year 2000 measures, reiterates EPA's commitment to allow flexible implementation of the measures in specific situations and with approval of both the state and EPA.<sup>5</sup>

### **States Have Implemented Both Core Performance Measures and Their Own Measures**

As permitted by the 1995 NEPPS agreement, four of the six states that we visited have developed some performance measures on their own, separately from the national core measures. These states use their own measures to track priority issues in their respective states and to report environmental progress to their state legislatures and the public. Florida environmental officials developed their separate measures in conjunction with the NEPPS program, and they continue to use them because they

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<sup>5</sup>Specifically, the addendum states that a state and EPA may jointly agree to deviate from particular performance measures where (1) the measure does not apply to a state's or region's physical setting or environmental condition; (2) the state does not have authority for the program to which the measure applies; (3) data for the measure are not available or alternative data are more relevant in painting a picture of environmental progress; (4) the state and EPA agree that the measure or the work associated with it are not a high priority in the state.



believe they are better measures of results than the Core Performance Measures. Georgia and Minnesota officials developed measures that focus on specific state priorities, and Oregon officials developed measures that were specifically tailored to the state's strategic plan. While environmental program officials in Connecticut and Maine have not developed performance measures apart from the core measures, they told us that they believed state-specific rather than national measures would be more useful to them and more appropriate to measure the results of environmental programs in their states.

Regardless of whether a state developed its own performance measures, each of the states we visited also agreed to report on the national core measures. Normally, the states did not adopt the core performance measures verbatim; they made minor changes where appropriate to meet state-specific situations. In each case, however, the states' changes to the national Core Performance Measures were reviewed and approved by the appropriate EPA regional office to ensure that they were compatible with the national measures. EPA officials told us that they were aware of only one state (New Jersey) that had deviated significantly from the national Core Performance Measures, and in that instance, the deviation was reviewed and approved by the appropriate EPA headquarters program office.

### **Concerns About Applying Core Performance Measures to Nonparticipating States**

NEPPS is a voluntary program and not all states have chosen to participate. Because core performance measures are a component of NEPPS, environmental officials in many states initially presumed that they did not apply to nonparticipating states. EPA's intent to use performance measure data to present a national environmental picture, however, led the agency to request this type of data from all states—not just NEPPS participants. Accordingly, in an October 1998 internal memorandum on EPA implementation of core performance measures, the Acting Deputy Administrator stated that: "The Regions are responsible for obtaining data on the Core Performance Measures from all States (whether or not they have a Performance Partnership Agreement with EPA) because these measures are intended to paint a picture of environmental and program progress across the nation."

At the Environmental Council of the States' October 1998 annual conference, states expressed concern that EPA's policy of seeking to make

performance measures applicable to all states is inappropriate and in conflict with the voluntary concept of the NEPPS program. Subsequently, joint EPA-Council guidance was issued with the fiscal year 2000 performance measures which stated that “[Core Performance Measures] as such only apply to states participating in NEPPS,” but added that “States not participating in NEPPS will continue to provide key information needed by EPA through State/EPA Agreements, grant work plans, or other operating agreements.”

### Relative Emphasis on Outputs Vs. Outcomes

Among federal and state officials, there is a broad agreement in principle on the importance of measuring outcomes rather than just outputs. A major concern among state officials, however, has been a continued emphasis on output measures by EPA. Ironically, many state officials maintain that much of EPA’s continued emphasis on outputs stems from the agency’s implementation of the Results Act.

The Results Act requires agencies to clearly define their missions, establish long-term strategic goals, measure their performance against the goals they have set, and report this information to the Congress. The statute emphasizes the need for agencies to focus on and achieve measurable program results, rather than focusing on the performance of prescribed tasks and processes. Thus, EPA’s goals under NEPPS and the Results Act would appear to share the same focus on environmental results. However, as we noted in a 1998 report on the first set of performance measures EPA prepared pursuant to the Results Act, the overwhelming share of measures were heavily weighted toward numerical targets and other outputs.<sup>6</sup>

Broad concern was expressed among the states that we interviewed about the impact that EPA’s implementation of the Results Act has had on core performance measures. To varying degrees, senior level and program management officials in five states we visited, and EPA program officials in two regions, expressed concern about the apparent conflict between the results-oriented performance measures being developed under NEPPS and the generally output-oriented performance measures EPA has thus far used to report on the Results Act. The officials were concerned that EPA’s implementation of the Results Act is (1) maintaining an emphasis on output rather than outcome measures and (2) adding new measures on top of existing measures, leading to an overall increase in the amount of data states must gather and report.

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<sup>6</sup>Observations on EPA’s Annual Performance Plan for Fiscal Year 1999 (GAO/RCED-98-166R, Apr. 28, 1998).

EPA's enforcement program was illustrative of states' concerns about the difficulty in moving toward outcome-oriented performance measures. Performance measures from an enforcement standpoint have tended to focus heavily on outputs, such as the number of inspections conducted, the number of significant violations detected, and how violations are handled. Senior and program management level officials in half the states and EPA regional offices we visited specifically cited the relatively heavy focus of EPA's enforcement program on such outputs as a barrier to achieving greater progress in developing outcome-oriented performance measures. This view echoed those expressed by state officials in our May 1998 report on EPA enforcement efforts, which relayed concerns among most of the state officials interviewed that EPA's Office of Enforcement and Compliance Assurance overemphasizes output measures. We recommended at that time that EPA ensure that the enforcement-related provisions of EPA's Performance Plan, prepared pursuant to the Results Act, focus on outcomes in a manner consistent with that of the Core Performance Measures developed under NEPPS.

In a November 1998 response to our enforcement report, EPA emphasized a number of initiatives underway, most notably its National Performance Measures Strategy, to build in more outcome measures in its own enforcement program and to assist states in doing so for their programs.<sup>7</sup> The Office also acknowledged the need to reorient its performance plan increasingly towards outcomes and signaled its intent to integrate some outcome measures into the fiscal year 2000 core performance measures. The Office's fiscal year 2000 measures list seven measures, four of which are identified as providing outcome measures. The implementation approach for three of the four measures is to work with volunteer states to test the measures. In this connection, the Office has recently announced the availability of funds for states for projects that will improve the design and use of performance measures for enforcement and compliance/assistance activities. In evaluating project proposals, the Office plans to give priority to projects designed to develop outcome measures.

Progress has also been made in other EPA programs in reorienting the agency's Results Act measures toward outcomes. Specifically, we found

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<sup>7</sup>Among the outcome measures the Office has already implemented under this strategy are measures of improvements resulting from EPA enforcement actions. Outcome measures currently being implemented include (1) the average number of days for significant violators to return to compliance or enter enforceable plans or agreements and (2) the percentage of significant violators with new or recurrent significant violations within 2 years of receiving previous enforcement action. Outcome measures targeted for implementation in October 1999 include assessments of the levels of compliance among selected regulated populations.

that EPA's fiscal year 2000 annual Performance Plan, which contains the measures to be used to track progress toward achieving its programs' goals, demonstrated some progress since the performance plan of the previous year.<sup>8</sup> Further progress in coming years would help to reduce the disparity between the generally output-oriented focus of EPA measures prepared pursuant to the Results Act and the efforts by EPA regions and states to focus their negotiations under NEPPS increasingly on achieving results.

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## Status of Core Performance Measures

Notwithstanding concerns among state and some regional officials about the potential impact of EPA's implementation of the Results Act on their efforts to orient their NEPPS-related activities toward outcomes, EPA and the Environmental Council of the States have managed to agree on a third set of Core Performance Measures for use in fiscal year 2000 and beyond which, by most accounts, are a significant improvement over the 1998 and 1999 measures. As both EPA and Council officials have noted, one of the most apparent differences between the new measures and those of past years is that the fiscal year 2000 measures are significantly fewer in number. Specifically, as shown in table 3.1, data provided by EPA show that the number of Core Performance Measures has been reduced from an initial set of 104 measures for fiscal year 1998 to 37 measures for fiscal year 2000.<sup>9</sup>

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<sup>8</sup>Observations on the Environmental Protection Agency's Annual Performance Plan For Fiscal Year 2000 (draft). Specifically, we noted that among the improvements in the fiscal year 2000 plan are goals and measures of generally better quality, and we note some additional efforts to implement outcome measures. Overall, however, we found that the plan still focuses heavily on output measures.

<sup>9</sup>Such a sizable reduction reflects the efforts by EPA and the Council to focus Core Performance Measures on what they agreed are the most important measures. The magnitude of the reduction, however, should be interpreted with caution for several reasons. First, the figures reflect the temporary deletion of all 25 measures for the Pollution Prevention and Toxic Substances Program. Work is currently underway to develop new measures for pollution prevention and toxic substances, which are expected to be ready for use in fiscal year 2001. Second, the dropping of a measure as a Core Performance Measure does not necessarily mean that data will not be gathered in response to that measure. Rather, the inclusion or exclusion of the measure as a core measure is an expression of its relative importance to the national environmental picture. Third, some core measures have multiple parts, such as "trends in air quality for each of the six criteria air pollutants" (actually six measures) or "trends in emissions of toxic air pollutants" (189 hazardous air pollutants the Clean Air Act identifies). The discrete data that are necessary to report under such measures may be aggregated or disaggregated depending on the amount of detail used to measure performance. Disaggregating the data increases the number of perceived performance measures.

**Chapter 3  
EPA and States Have Made Progress in  
Developing Results-Oriented Performance  
Measures**

**Table 3.1: Number of Core Performance Measures, Fiscal Years 1998 Through 2000**

<b>Program</b>	<b>Fiscal year 1998</b>	<b>Fiscal year 1999</b>	<b>Fiscal year 2000</b>
Air and radiation	23	16	10
Water	31	31	13
Hazardous waste	17	17	7
Pollution prevention and toxic substances	25	25	0
Enforcement and compliance	8	8	7
<b>Totals</b>	<b>104</b>	<b>97</b>	<b>37</b>

Source: EPA's Office of State and Local Relations.

In addition to reducing the number of measures to provide greater focus on what are perceived as the most important measures, progress was also made in shifting the proportion of fiscal year 2000 measures increasingly toward outcomes and environmental indicators. Specifically, according to EPA, while about 40 percent of the measures focused on outcomes or environmental indicators in fiscal year 1998, about 60 percent of the measures focus on outcomes and environmental indicators in fiscal year 2000. Moreover, while EPA and Council officials are not expected to formally vote on a comprehensive set of new measures each year, the fiscal year 2000 measures are to be periodically updated as deemed appropriate by EPA and the Council. In this connection, EPA program officials, told us that they have a number of projects currently under way (in addition to those in the enforcement program discussed earlier) that are specifically designed to develop additional results-oriented performance measures.

Finally, EPA and the states have also made progress addressing the states' concern that EPA had required additional reporting by the states to help the agency meet its data requirements under the Results Act. Under the April 1999 Addendum to the Joint Statement, co-signed by EPA and the Environmental Council of the States, Core Performance Measures and other current reporting requirements will be relied upon to satisfy EPA's Results Act-related data needs.

## Conclusions

There is broad agreement among federal and state officials on the importance of measuring the outcomes of environmental activities. While considerable progress has been made in developing and implementing results-oriented Core Performance Measures, a number of challenges

involving technical and policy issues have complicated the process. Progress has nonetheless been made in developing fiscal year 2000 measures which, by most accounts, are a significant improvement over measures used in previous years. Continued progress in developing the measures—and the data systems needed to support the measures—will be critical to states' and EPA's efforts to demonstrate the efficacy of their programs under NEPPS. In the past, it has been difficult for states to achieve the flexibility they desire without the performance measures in place to demonstrate that their environmental goals are being achieved, and it will likely continue to be so in the future.

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## Agency Comments

Citing our observations that (1) EPA has focused on outputs to meet its obligations under the Results Act while supporting a transition to outcome-based management under NEPPS and (2) these conflicting priorities have led to confusion that hinders performance partnerships, EPA said that, to the contrary, both the Results Act and NEPPS encourage the development of outcome measures and outcome-based management. We acknowledge the shared objective of NEPPS and the act in focusing on results. The key word, however, is implementation: as we have documented in other recent work, the measures EPA has used in its implementation of the Results Act have thus far been heavily output-oriented and, therefore, convey priorities that are often in conflict with the more outcome-oriented measures being employed under NEPPS.

We acknowledge EPA's ongoing efforts to orient its Results Act-related measures increasingly toward outcomes and believe that further progress toward this end will help to alleviate this problem. In addition, we modified our discussion of this issue to reflect the progress made by EPA and the states in addressing the states' complaint that EPA had required additional reporting by the states to help the agency meet its data requirements under the Results Act. The chapter notes that pursuant to the April 1999 Addendum to the Joint Statement, co-signed by EPA and the Environmental Council of the States, Core Performance Measures and other current reporting requirements will be relied upon to satisfy EPA's Results Act-related data needs.

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# Reductions in EPA's Oversight Attributable to NEPPS Have Thus Far Been Modest

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As originally envisioned, the principle of differential oversight was a key element of NEPPS. Under this principle, states with stronger environmental programs would be accorded reduced oversight and greater autonomy over delegated programs, thereby allowing these states greater flexibility to manage their programs, and providing EPA the opportunity to shift greater attention of its own resources toward weaker programs. An important component of the concept of differential oversight was that programs eligible for reduced oversight would meet certain criteria and that the EPA and states would work together to choose a group of measures to use in assessing state performance.

In the years immediately following the 1995 agreement, EPA and many states agreed that a formal system implementing differential oversight, whereby the merits of a state program would be evaluated based on certain standards or criteria to determine whether it qualifies for reduced oversight, would be both controversial and difficult to implement. Nonetheless, the original concept of reduced EPA oversight in exchange for acceptable state environmental performance remains an important goal for both EPA and participating states.

Among the six states we visited, we found instances in which some oversight reduction was successfully negotiated between states and their corresponding EPA regions. Such instances, however, have thus far been limited in both scope and frequency. A number of interrelated factors were cited as limiting the reduction of EPA oversight, including (1) statutory and/or regulatory requirements that specify state reporting requirements and other methods of ensuring state accountability to EPA; (2) EPA's reluctance to reduce oversight without measurable assurances that environmental goals are still being achieved; (3) the inherent difficulty in "letting go" on the part of some regulators that have implemented the existing EPA-state oversight arrangement for several decades; and (4) the challenge faced by EPA of communicating to states through a complex, multilevel organization involving both headquarters and regional offices.

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## Initial Expectations Concerning EPA Oversight of Participating States' Programs

The May 1995 joint agreement between EPA and the Environmental Council of the States stated that "a differential approach to oversight should provide an incentive for state programs to perform well, rewarding strong state programs and freeing up federal resources to address problems where state programs need assistance." It added that "after agreement is reached, EPA will focus on program-wide, limited after-the-fact reviews

rather than case-by-case intervention and will work with states to identify other ways to reduce oversight.”

Accompanying differential oversight was the concept of “performance leadership,” whereby qualifying programs having a record of strong performance would be nationally recognized with “leadership” status. In such instances, the leadership programs would be afforded minimum allowable oversight based on the belief that they “deserve to be treated with deference whenever possible and do not need federal oversight on a routine basis.”

In subsequent years, however, both EPA and the states found it difficult to implement both a formal differential oversight process and to formally designate certain state programs as performance leadership programs. One key problem was the inability of EPA and the states to agree on criteria to use in making such determinations. EPA officials responsible for NEPPS noted that because the capacity of a state program can change depending upon circumstances, the proper level of oversight should be determined on a state-by-state basis by EPA regional managers—not on the basis of specific criteria that would be universally applied to all states. In addition, as noted by the Environmental Council of the State’s Executive Director, many state environmental leaders expressed concern that formal designations of such programs as performance leaders could be interpreted by EPA, state legislatures, and the public as a “report card” of good and bad performers. Such designations would probably be challenged, particularly given the difficulty of developing and applying specific criteria to use in making these determinations.

Nonetheless, the concept of differential oversight, albeit in a less structured and visible form, remained an important component of state and EPA regional NEPPS negotiations. Officials in the six states told us that their early expectations for NEPPS were that the program would help them to reduce their oversight workload in some well-run program areas and to allow them a stronger focus on state priorities and problem areas. Officials in three states noted in particular that they believed the NEPPS framework would better allow them to identify and address opportunities for multimedia projects, rather than continuing to expend time and resources only on the traditional, single media air, water, and waste programs.



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## States and Regional Offices Report Limited Oversight Reduction Thus Far Directly Attributable to NEPPS

State officials cited a number of instances in which they negotiated some reduction in regional oversight of their programs. These efforts tended to focus on reducing the frequency of reporting, and in some cases the frequency of conducting on-site reviews, in situations where both sides agreed such activities were duplicative or otherwise of limited value. However, most state program officials indicated that the extent of reporting required has either remained the same or actually increased in spite of NEPPS, and that few instances were identified where states obtained more significant independence in operating their programs (e.g., focusing their resources on state priorities). Most regional staff we interviewed generally agreed that, to date, oversight reduction attributable to NEPPS has been limited.

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## Instances of Reduced Oversight Cited by States and Regions

Officials in Maine, Florida, Georgia, and Minnesota cited specific instances in which reporting requirements were scaled back, at least in part as a result of their participation in NEPPS. Maine environmental officials, for example, noted that more frequent dialogue and less formal reporting between the program staff and regional staff had replaced written reports, saving time and improving the level of cooperation between EPA and state staff. While Maine program officials attributed the reductions in large part to the assignment by EPA's Boston Regional Office of a liaison for each state's delegated programs, they credited NEPPS with formalizing or legitimizing the changes. Florida program officials identified sizable reporting reductions in its Resources Conservation and Recovery Act program as a result of a joint state/EPA effort included in the Performance Partnership Agreement. The Chief of Florida's Bureau of Water Facilities also noted that under the agreement, the state was able to streamline oversight of its pretreatment program through reduced reporting and by negotiating with the EPA Atlanta office a shifting of resources from the conduct of routine annual inspections and audits to other priority areas in the program.<sup>1</sup>

In some cases, regional and state officials indicated that oversight had been scaled back, but that such efforts could not be tied directly to a state's participation in NEPPS. Connecticut officials reported that quarterly reporting had been eliminated in recent years for some of their air, water and waste programs, but attributed the change solely to EPA regional efforts that preceded NEPPS. Similarly, program officials in EPA's Boston, Chicago, and Seattle offices each cited instances in which quarterly

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<sup>1</sup>Under EPA's Pretreatment Program, wastewater treatment plants are charged with monitoring and regulating contaminant discharges by industrial users into their sewer systems.

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reviews and file reviews were eliminated, but indicated that such efforts often preceded independently of the signing of a NEPPS agreement.

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### **Few Instances of Significant Oversight Reduction Under NEPPS**

Notwithstanding the streamlining of reporting requirements and similar tracking efforts, the large majority of the state officials we interviewed generally maintained that participation in NEPPS has not yet brought about significant reductions in reporting and other oversight activities by regional program and audit level staff, nor has it resulted in significant opportunities to focus on other priorities or shift resources to weaker program areas. Oregon officials, for example, explained that their initiatives to focus on the state's highest priorities are having difficulty competing with their obligations to track and report on the national core performance measures and to comply with other EPA reporting requirements. Program managers in Connecticut, Florida, Georgia, Maine, and Minnesota conveyed similar experiences, indicating that the addition of new core measures to preexisting reporting requirements had increased their reporting workload, or that they are likely to do so in the future. Program managers in three of these states indicated they will need to develop the data and systems to report on the new measures.

Oregon officials also pointed to a significant increase in EPA oversight by the regional enforcement officials of its air, water, and waste programs. EPA Seattle officials told us that the enforcement reviews in Oregon were the outcome of nationwide enforcement reviews by both the Office of Enforcement and Compliance Assurance and of EPA's Office of the Inspector General, which raised concerns about whether and how states were bringing enforcement actions against violators. Georgia officials also said that oversight of their hazardous waste program has increased, noting that regional enforcement officials were making regular monthly visits to review program records.

EPA regional program and enforcement officials generally acknowledged that oversight of state programs has not significantly decreased as a result of NEPPS, and that in some cases, has increased. Officials in the Atlanta and Chicago Regional Offices noted in particular that it may have been unrealistic to assume, as many states had at the outset of NEPPS, that states' participation in the program would necessarily lead quickly to reduced EPA oversight. Moreover, regional officials point to specific reasons why it has been difficult to scale back EPA oversight—and why oversight has actually increased in certain instances.

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## Factors Affecting Potential to Reduce Oversight Under NEPPS

We asked both state and regional officials to identify what they believed to be the most important considerations affecting the extent to which NEPPS has provided states with reduced oversight, greater program autonomy, and the flexibility to emphasize their highest priorities. There was considerable consistency on the factors identified by both state and EPA officials, although there was some variation on the degree to which various factors were emphasized. The key factors include (1) statutory and/or regulatory requirements that in some cases prescribe the kind of oversight required of states by EPA; (2) reluctance by EPA regulators to reduce oversight without measurable assurances that environmental protection will not be compromised; (3) the inherent difficulty in letting go on the part of some regulators that have implemented the existing EPA-state oversight arrangement for several decades; and (4) EPA's multilevel organizational structure, which complicates efforts to identify whether all key decision-makers among the agency's headquarters and regional offices are in agreement on key oversight-related questions.

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## Statutory or Regulatory Requirements May Limit Options to Reduce Oversight

In some cases, statutory and/or regulatory requirements may prescribe certain types of EPA oversight, limiting the extent to which further streamlining can be negotiated. EPA headquarters officials in the Office of Air and Radiation noted that some of the core performance measures for the air program are driven by statutes and thus are non-negotiable. The officials noted, for example, that dates by which areas in "non-attainment" with air quality standards must come into compliance are driven by the Clean Air Act and that EPA accordingly has no flexibility to alter them. Similarly, a regional official cited the Clean Water Act's requirement under section 305(b) that a Water Quality Inventory Report be issued every 2 years. One state requested an alternative schedule in which the state would submit its information for the report every 5 years for each watershed area. EPA denied the request as contradicting the 2-year frequency required by the act.

In addition, EPA Atlanta and Boston regional staff pointed out that they have a responsibility to ensure that new regulations, which sometimes pose particular challenges for both federal and state regulators, are properly implemented. EPA headquarters officials cited as an example their new regulations concerning fine particulate matter, which required significant EPA action during the middle of the fiscal year. Regional staff said that such actions may inevitably require greater EPA oversight and more detailed reporting. Officials in EPA's Atlanta Regional Office cited another example where, in the middle of the year, headquarters

implemented a new initiative that required the region to ask the states to do additional inspections of metal finishing plants that went beyond the commitment made by states in their Performance Partnership Agreements.

State program managers acknowledged that statutory and regulatory requirements do in fact sometimes limit the potential to reduce EPA oversight. In addition, while welcoming the administrative relief and flexibility allowed under the Performance Partnership Grant Program, several noted that the implementation of these grants is still governed by certain statutory and regulatory requirements. For example, the grants are still subject to certain grant administrative requirements and cost accounting standards applicable to federal grants generally. Specifically, while the Partnership Grants do not require the detailed accounting required of categorical grants, states must still report to EPA on how funds have been spent under the broader categories. Furthermore, like other federal grants, the EPA grant agreements are supposed to include adequate oversight procedures to provide EPA assurance that federal funds are used efficiently and effectively.

Perhaps more significantly, both state and regional officials added that the state programs are still held accountable for accomplishing program commitments outlined in their work plans and that base program requirements under the various statutes must still be met. Such competition for limited resources to meet the requirements of individual statutes has, in fact, been a long-standing issue that has complicated efforts to shift attention and resources to what are perceived as the highest environmental priorities. We noted in our 1988 general management review of EPA, for example, that the objective of setting risk-based priorities across environmental media has been complicated by the fact that each statute prescribes certain activities to deal with its own medium-specific problems.<sup>2</sup> In 1991, we touched on the issue again noting, for example, that numerous legislative mandates have led to the creation of individual EPA program offices that tended to focus solely on reducing pollution within the particular environmental medium for which they have responsibility, rather than on reducing overall emissions.<sup>3</sup> More recently, in testifying on efforts by EPA to improve its working relationship with the

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

<sup>3</sup>Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

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states and to provide them with additional flexibility,<sup>4</sup> we concluded that as long as environmental laws are media-specific and prescriptive and EPA personnel are held accountable for meeting the requirements of the laws, it will be difficult for the agency to fundamentally change its relationships with the states to reduce day-to-day control over program activities.

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**EPA Reluctance to Reduce Oversight Without Measurable Assurances That Environmental Protection Will Not Be Compromised**

Program managers and staff in all four of the EPA regional offices we visited questioned the extent to which the agency can reduce oversight without measurable assurances that program requirements, and environmental objectives, will be achieved. The issue has become particularly pronounced in the enforcement program, where some states have taken issue with what they perceive to be heavy-handed oversight by EPA. Among state officials' complaints are that EPA enforcement officials inappropriately hold states accountable for the number of enforcement actions (outputs) taken rather than achieving better environmental compliance (outcomes). Some states have also cited the prospect of EPA taking direct enforcement action in states where the lead state environmental agency has primary enforcement authority, or of "overfiling" with an EPA action in instances where a state enforcement action was determined by EPA to be insufficient. State officials have also maintained that such a posture is inconsistent with the philosophy under NEPPS that EPA should focus its oversight on results and should provide states with greater flexibility as to how to achieve those results.

EPA Seattle regional officials, however, have cited the Office of Enforcement and Compliance Assurance's recent reviews and those of the Office of Inspector General, which have concluded that (1) many states have underreported violations by dischargers of pollutant limitations and other environmental requirements and (2) the numbers of enforcement actions taken by state enforcement officials has declined. These reports, the officials contend, raised questions about the ability of states to achieve compliance by the regulated community without vigilant federal oversight. Moreover, according to the officials, states presently do not have the data to support their contentions that environmental compliance is still being achieved in cases where their enforcement activity has been curtailed.

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<sup>4</sup>Environmental Protection: Status of EPA's Initiatives to Create a New Partnership With States (GAO/T-RCED-96-87).

State officials told us, both during this review as well as during our 1998 review of state enforcement programs,<sup>5</sup> that the absence of measurable results complicates efforts to use more flexible approaches—not just because it is harder to get EPA approval, but also because it is harder to obtain the confidence of the media and the general public. Florida officials, for example, told us that the number of penalties assessed, and dollar value of penalties collected, under its federally delegated programs decreased from 1994 to 1996, and that questions were raised as to whether these decreases resulted, at least in part, from a greater emphasis on the use of assistance to achieve compliance. In fact, newspapers in the state subsequently published articles questioning whether the state was letting violators continue to pollute without fear of punishment. Florida officials told us that their major investment in measuring the results of their enforcement and compliance assistance efforts was undertaken, in part, to determine whether these concerns were well-founded.

The Office of Enforcement and Compliance Assurance points out that it is addressing the problem through its National Performance Measures Strategy and by collaborating on the development of enhanced outcome-oriented performance measures with a number of states. In addition to helping states develop outcome measures, enforcement officials also pointed to recently-issued guidance that encourages EPA regional offices to be more flexible in considering states' preferences when negotiating regulatory priorities.<sup>6</sup> Specifically, the guidance calls on regions to “develop their priorities in partnership with their states . . .” and notes, “States are not required to adopt EPA's national priorities . . . This guidance provides flexibility for both regions and states to identify and implement their own priorities.” The guidance further states that EPA is “addressing states' concerns about joint planning and priority-setting, work sharing, and oversight responsibilities by identifying this as a management focus area to be addressed by each region in the fiscal year 2000/2001 [memorandum of agreement] process.”

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<sup>5</sup>Environmental Protection: EPA's and States' Efforts to Focus State Enforcement Programs on Results (GAO/RCED-98-113, May 27, 1998).

<sup>6</sup>EPA Office of Enforcement and Compliance Assurance, Final FY 2000/2001 OECA Memorandum of Agreement (MOA) Guidance (Apr. 1999).

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**Resistance to Change at  
Lower Levels Within Both  
EPA and Among State  
Agencies**

Our 1997 report on EPA's efforts to "reinvent" environmental regulation observed the widely held view, both within and outside EPA, that achieving a full commitment to reinvention by EPA staff will be difficult and will take time.<sup>7</sup> The report further identified 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, and cites a senior EPA reinvention official as noting 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 of the state officials we interviewed contended that comfort level among some EPA staff with the preexisting oversight arrangement—which has generally been in place for many years—helps to explain the reluctance by many of them to provide states with greater flexibility and reduced oversight. Program officials in five of the six states provided examples where they believed that regional program staff (tasked with the day-to-day implementation of specific programs) asked for information that was not included in the Partnership Agreement or that they had previously agreed with the region to drop. Minnesota officials said that EPA regional waste officials were asking for predictive or target numbers (such as the number of inspections the state intends to pursue during the coming year)—information, they said, that was not required nor included in their Partnership Agreement. Similarly, Georgia program officials said that EPA enforcement officials requested additional information after their Partnership Agreement had been negotiated and was ready to be signed. Georgia's Assistant Director and the Atlanta Deputy Regional Administrator, recognizing that the difficulty was due in part to different targets and schedules for enforcement and the media programs, set up an enforcement planning work group consisting of state and regional representatives from enforcement and the media programs to study and resolve the problem so that they could avoid last minute changes in the future. Other state officials told us that EPA has recently requested information related to the Results Act which, they believed, was outside the scope of their agreements. Several state officials commented that an openness toward seeking ways to reduce such information requests appears to be greater among senior EPA regional managers than among lower-level staff.

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<sup>7</sup>Environmental Protection: Challenges Facing EPA's Efforts to Reinvent Environmental Regulation (GAO/RCED-97-155, July 2, 1997).

It is possible that what state officials may view as an “resistance to change” could be regarded by EPA staff as a well-founded concern that program requirements be implemented properly and in accordance with laws and regulations. However, officials in three of the four EPA regions we visited nonetheless acknowledged that support for NEPPS within EPA varies. One senior regional official said that managers and staff are often more comfortable with the preexisting way of doing business and are unsure as to how they can accomplish their work in the context of the partnership approach under NEPPS. He voiced the opinion that there may be a need for training in NEPPS implementation among regional staff. Another senior regional official said that some staff will only take NEPPS seriously when their salaries are tied to their performance in implementing the program.

By the same token, our interviews with senior state officials suggest that cultural change is also needed at the state level if NEPPS is to achieve its full potential. Specifically, several state officials said that state program managers may not always be well-versed in recognizing opportunities that would allow them to exercise their responsibilities with greater flexibility. Some of them indicated that there is resistance to NEPPS at the state program manager and staff level because of the perceived threat to their programs. In one state, in order to get the program directors’ support for participating in NEPPS, senior management made a commitment not to make any large-scale shift of funds among or between programs. Some regional staff and managers also commented that states have not taken advantage of opportunities to seek more flexibility under NEPPS, noting in particular that none of the states in their regions attempted to move significant amounts of funds among programs or across media lines.

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## **Challenges in Communicating Requirements Through a Multi-Level EPA Organizational Structure**

EPA’s organizational structure poses additional challenges in negotiating agreements that have the full buy-in of all key EPA decision-makers. Headquarters interaction with the states is generally conducted indirectly through the regional offices. National Program Managers set national strategic direction, and core program requirements and priorities, for each of their environmental programs. The managers establish overall national goals for their respective programs based on a variety of factors, including the underlying statutory mandates, congressional directives, administration/administrator priorities, and their own view of programs and policies that their programs should focus upon. The managers also must develop an accountability system to ensure program delivery by EPA’s regions. The regional offices consult with managers in determining national priorities and communicate these priorities to the states. As such,



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the regional offices serve as the key EPA focal point in negotiating with states on program priorities and oversight arrangements to be reflected in NEPPS agreements. Importantly, the states generally have little direct communication with the managers. Thus, for example, if states wish to deviate from a national core performance measure or priority, it is the regions that consult with the managers.

**Buy-in by Key Decision Makers and Mixed Messages Confuse States**

As a consequence of this structure, according to the majority of state program managers we interviewed, it is not always clear that a Partnership Agreement between the state and the region has the full buy-in of EPA's key headquarters managers. A senior official with Florida's Department of Environmental Protection cited the example of the state's "Joint Compliance and Enforcement Plan," negotiated under the state's 1998-1999 Performance Partnership Agreement. Under the plan, state and regional officials enter into a process that seeks agreement, on the basis of industry compliance data, on what the state's most important compliance problems are and which methods (e.g., enforcement action, technical assistance) are most appropriate to address them. The official said that while the state has already invested significant time and effort into the plan, and has had expressions of strong support from EPA's Atlanta Regional Office, it does not know the extent to which EPA's headquarters Office of Enforcement and Compliance Assurance supports the effort or whether that office will ultimately give its approval.

Similar observations were made by other states' officials, who indicated that provisions were sometimes added at the request of EPA headquarters to Partnership Agreements after they were negotiated. The timing of headquarters guidance and special requests for input into Partnership Agreements was cited by some state and regional officials as a key factor: final headquarters guidance, or specific requests in some cases, often come too late to be included in regional and state negotiations, causing the need for some agreements to be renegotiated.<sup>8</sup>

State officials also indicated that some headquarters requirements are negotiated separately from the overall Partnership Agreement negotiations. Officials with the Minnesota Pollution Control Agency told us that after successfully negotiating its agreement with regional program officials, the Office of Enforcement and Compliance Assurance requested separate measures and a separate section apart from the media programs

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<sup>8</sup>In response to a 1997 survey by the Environmental Council of the States, participating states commented that headquarters guidance should be finalized by February of each year so that states and regions can meet in March to set joint priorities and begin the Performance Partnership Agreement process for the following fiscal year.

**EPA Officials Acknowledge  
Need for Clearer and More  
Consistent Communication**

in the Partnership Agreement. In the opinion of the state officials, this process illustrated the difficulty in getting all headquarters interests incorporated into the agreement in a timely fashion. Officials in several other states cited similar circumstances where enforcement provisions had to be negotiated outside the scope of the Performance Partnership Agreement, making it difficult to develop the kind of integrated environmental program NEPPS is intended to encourage.

Officials in the four regional offices we visited told us that sometimes there are inconsistencies between headquarters and regional offices, which complicates the message the agency sends to the states. Boston regional officials cited one instance in which Maine and Connecticut had proposed to consolidate funds for their wetlands programs (1 of the 15 eligible programs) under a performance partnership grant and were initially told by the regional office that the arrangement would be acceptable. However, EPA's headquarters Water Office subsequently objected to allowing all funds to be shifted from a categorical grant to a Performance Partnership Grant on the basis that a portion of the funds were supposed to be used in a competitive bid process for nonprofit organizations (and other eligible parties) to propose special projects. According to state and EPA Boston regional program managers, EPA's Boston Regional Office resolved the resulting confusion by brokering an agreement to allow for some funding from each of the New England states' wetlands grant programs to be set aside for special regional wetlands pilots.

Many EPA regional officials said that headquarters officials sometimes view NEPPS negotiations as a regional-state matter, and that headquarters offices do not view themselves as "signatories" to the process. The officials noted that it is only when there is a significant deviation on the part of the state from a national priority that headquarters may become involved with decisions related to NEPPS agreements.

Most of the headquarters managers that we interviewed acknowledged that EPA headquarters input into the NEPPS negotiation and agreements process is primarily left for the regions, to convey to the states, with headquarters primarily engaged in setting the national priorities and issuing national program guidance. These headquarters managers acknowledged that headquarters input into the NEPPS process can be improved, noting in particular that headquarters guidance, initiatives, and special requests sometimes arrive at the regions too late to be useful. In April 1999, headquarters managers issued 2-year program guidance to help

address some of the problems related to untimely requests. EPA intends that this guidance will allow the regions and states to include national program priorities earlier in the negotiating process for Performance Partnership Agreements. At the same time, however, the managers said certain circumstances that could affect a signed agreement, such as those dealing with new regulations, are sometimes out of their control.

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## Agency Comments

EPA provided updated information about the concern that headquarters program guidance often arrived too late to be of use in Performance Partnership Agreement negotiations between states and their EPA regional offices. Specifically, the agency noted that in April 1999, its headquarters National Program Managers issued 2-year program guidance to the regional offices simultaneously and on schedule, so that the information would be available prior to Performance Partnership Agreement negotiations. EPA said that the new procedure has been well received by the regional offices, and that the introduction of 2-year guidance will allow regional offices and states to extend their planning horizon without fear that the priorities of the National Program Managers will change dramatically on an annual basis. We have amended this chapter to reflect this progress. At the same time, the chapter still conveys agency officials' views that the guidance will not necessarily prevent other circumstances, which are out of EPA's control, from necessitating the reopening of an agreement.

EPA also cautioned that the report should more clearly distinguish between the terms burden reduction and differential oversight. Burden reduction, according to EPA, applies to activities, particularly information exchanges, that both EPA and a state agree are unnecessary, duplicative, or inefficient. In such cases, EPA believes that all state programs should benefit from burden reduction. The term differential oversight, according to EPA, means that oversight may vary depending on how effectively a state program meets performance expectations. The EPA comment draws a clear distinction between issues associated with reporting burdens and other issues that are more appropriately viewed as related to EPA's oversight of state environmental programs. We acknowledge that there are circumstances, separate and apart from EPA oversight, in which EPA and a state collaboratively pursue strategies to reduce reporting requirements that they both agree are unnecessary, duplicative, or inefficient. However, the distinction between this activity and oversight is not always so clear. Specifically, in cases where states and EPA have disagreed on the need for data not required by statute and viewed by states as extraneous, and EPA

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**Chapter 4**  
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**to NEPPS Have Thus Far Been Modest**

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has continued to require reporting of such data, states have often characterized the issue as, in their view, a questionable exercise of EPA oversight.

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# Benefits of NEPPS Participation Cited, but Full Potential Has Yet to Be Realized

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State participants' expectations for reduced EPA oversight and greater program flexibility—major anticipated benefits at the outset of NEPPS in 1995—have thus far met with some disappointment. Yet while these participants expressed disappointment at the rate of progress in achieving greater autonomy and greater emphasis on state priorities, senior officials and program managers from each of the six states that we reviewed agreed that NEPPS has provided their programs with worthwhile benefits. Among the benefits most frequently cited were that NEPPS (1) provided a means of getting buy-in for innovative and/or unique projects, (2) allowed states the option to shift resources and funds under the Performance Partnership Grants Program, (3) served as a tool to divide a burdensome workload more efficiently between federal and state regulators, and (4) improved communication and increased understanding among EPA and state program participants about each other's program priorities and other key matters. Officials in each of the four regions visited substantially agreed with many of the benefits of NEPPS participation cited by state officials.

Yet while participants from each state indicated that their participation in the voluntary program would probably continue, they also shared a consistent opinion that the benefits of the program should be greater, that the program has yet to achieve its potential, and that improvements are needed. To some extent, such an outcome should not be surprising, given that the program (1) has been in place for just a few years and (2) began as an experiment in which participants were encouraged to try different tools and techniques. Yet these early years of the program have also provided a wealth of experiences as to what has worked well, what has not worked, and how the program can be improved. The 1995 agreement anticipated the appropriateness of such reflection in calling for a joint evaluation system for EPA and the states to review the results of their efforts to ensure continuous improvement. On the basis of our work, we believe that it is now appropriate to begin such a joint evaluation process.

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## Program Improvements Attributed to NEPPS

State officials in each of the six states we visited identified a number of benefits to their air, water, and waste programs, but frequently spoke of some benefits, such as the ability to move funds toward the state's highest priorities, as potential future benefits rather than as benefits already realized. EPA regional staff acknowledged many of the benefits identified by state participants, but were often cautious in stating that additional flexibility could be exercised only so long as states continue to meet the statutory and regulatory requirements associated with their base

programs. Benefits identified related to the flexibility to work on innovative and special projects; to use resources and gain administrative efficiencies through the consolidated environmental grant; to more efficiently divide the workload among EPA and state regulators; and as a means of improving public outreach and involvement in environmental policies and programs.

The additional benefit most frequently cited by state officials is perhaps the most intangible one—that it helped to encourage a more systematic and effective communication between EPA and state officials on key issues and priorities, leading to increased mutual understanding and improved relations. Although many of these officials acknowledged that this progress has not yet resulted in the more equal partnership with EPA to the extent hoped for, the collaboration and negotiation fostered by the process was viewed as a definite step in the right direction.

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### **NEPPS Provides a Means of Getting Buy-in for Innovative And/or Unique Projects**

The majority of EPA regional and state officials we contacted cited the ability to work on, and get buy-in for, innovative and/or unique projects (such as those dealing with cross-cutting issues or multimedia projects) as a tangible benefit under NEPPS. Among the examples cited was a Quality Assessment Management Plan included in Florida's fiscal year 1999 Performance Partnership Agreement, signed between the state's Department of Environmental Protection and EPA's Atlanta Regional Office. Once fully developed and implemented, the plan is expected to provide the state with the ability to identify and improve the quality of data provided by private laboratories. The Florida project director spearheading the effort on behalf of the state said that elevating the project as a priority in the Partnership Agreement legitimized the concept and gained the support of key EPA and state decision makers. The prototype or model of the plan has been completed and submitted to state and regional officials with the expectation that the project staff will next move on to issues related to implementation. According to the project director, the Partnership Agreement—as a document signed by the senior officials at both the state and federal level—was crucial in conveying top management buy-in. The project director observed that the Agreement, in effect, provided the “impetus to innovate” whereby state and regional leadership formally endorsed a new way of doing business.

Environmental officials in Minnesota recently reorganized the state's pollution control agency to eliminate its media-specific structure. The new organization has three geographic divisions to handle most environmental

issues and two divisions to handle environmental planning and outcomes. The reorganization was undertaken because they believed that an integrated approach to environmental management was needed and because many problems transcend media boundaries. Agency officials noted that the Performance Partnership Agreement between the state and EPA's Chicago Regional Office was key to establishing a new working relationship with EPA and to Minnesota's efforts to find a better way to plan and carry out their work. They added that the Partnership Agreement provides the state the flexibility to go beyond reporting on media-based program outputs towards linking, tracking, and measuring agency activities with actual environmental results. Among other examples cited, a program manager in EPA's Atlanta Regional Office pointed to North Carolina's effort to use its Performance Partnership Agreement to pursue a multimedia inspection project for metal finishing plants. The inspections are conducted jointly from an air, water, and waste perspective so that each media program does not have to do its own separate inspection. The Partnership Agreement provided program managers in the state environmental agency with a recognized vehicle to propose and implement the inspection initiative to share resources across media lines by getting a formal buy-in from state and EPA officials through a signed agreement.

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### **Flexibility to Shift Resources and Funds Under NEPPS Grant Agreements**

As noted earlier in this report, Performance Partnership Grants allow states the opportunity to combine individual categorical grant funds into a consolidated grant. Once included in the consolidated grant, the funds essentially lose their category-specific identity and can be used with considerably greater flexibility.

Environmental agencies within four of the six states included in our review (Maine, Connecticut, Georgia, and Minnesota) have Partnership Grants with their corresponding EPA regional offices. Importantly, officials in these states told us that they have not been able to take greater advantage of the ability to shift funds, primarily because the programs covered by the Partnership Grant each have their own base program requirements that must be funded.<sup>1</sup> However, several of the officials told us that the flexibility allowed under a Partnership Grant to move funds where they are most needed remains an important potential benefit of the program. For example, a Georgia official said that they hoped to shift

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<sup>1</sup>At a workshop sponsored in July 1997 by the Environmental Council of the States, two states reported plans to shift between 5 and 15 percent of the funds under their Performance Partnership Grants to address priorities such as pollution prevention. Also, one state in a 1997 Council survey of the Performance Partnership Agreement process reported setting aside 5 percent of its funds from water grants to address wetlands lakes and a new Performance Partnership Grant coordinator position.

funds sometime in the future to address nonpoint sources of water pollution and air quality in metropolitan Atlanta. This official added that if an emergency were to arise, the Partnership Grant would allow the state to move funds and staff quickly from various programs to address the problem. A grant official with EPA's Boston office noted that prior to the Partnership Grant program, states in the region often complained about their inability to shift funds from programs that had excess funds to other programs that were short of funds. He noted that such complaints have declined with the inception of the program.

Program officials in all four of the case study states having Partnership Grants also cited administrative efficiencies from the ability to consolidate their categorical grants. The officials noted that the grants have allowed states to condense individual work plans into a single consolidated work plan, and states have gained additional flexibility in the way they account for staff time. State environmental agency officials noted that they were able to reduce the number of grant applications, budget documents, and work plans required. Some added that they gained administrative relief from not having to track staff time and charges on a detailed, grant-by-grant basis. A Maine official, for example, noted that under the traditional categorical grant process, staff positions funded by multiple categorical grants required controls to be in place to ensure that employees charge their time to specific grants and budget categories. The Partnership Grants provide the flexibility to accomplish necessary work without worrying about which tasks are funded by which categorical grants.

EPA regions' responses to this increased flexibility have been mixed. Regional program managers in the four regions visited expressed concern about the flexibility of the NEPPS agreement and grants process and said that there is a need to retain or develop new state reporting requirements if EPA is to retain proper program oversight. These program managers commented that eliminating reporting requirements results in EPA losing its ability to hold states accountable and argued for states to provide predictive annual targets as to what they plan to accomplish and to develop short-term or interim measures for reporting states' progress towards measuring environmental results. Several managers said that it is important for the states to prove that work is actually being done and cited the consolidation of grant funds under a Partnership Grant as an example where EPA loses a level of control. Other regional program managers, however, were more optimistic and comfortable with the fact that states provide year-end reports on what they have done.



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**A Tool to Divide a  
Burdensome Workload  
Efficiently Between  
Federal and State  
Regulators**

In 1997, we reported on EPA's and states' efforts to improve their management of Superfund site cleanups,<sup>2</sup> and cited innovative efforts in Minnesota and Washington where state and regional officials experienced substantial efficiencies through work-sharing agreements. In Washington, state and EPA officials reported that under a formal written agreement signed by officials in EPA's Seattle office and the state's Department of Ecology, responsibility was formally divided for cleaning up the state's National Priority List sites between the two agencies. Both EPA and state officials reported that the formal, clearly articulated division of responsibility between the two parties helped to reduce both the acrimony and the duplication of effort that characterized their past relationship. The state official reported a strong consensus among the staff that the changes contributed to a significant reduction in the number of staff resources needed to oversee cleanups at NPL sites. Minnesota officials and Superfund officials with EPA's Chicago office reported similar success with such a work-sharing agreement.

State and EPA regional officials cited similar benefits of Partnership Agreements, as formal documents that clearly articulate the obligations of both parties to the agreement. State officials noted that in some instances in the past, communication seemed to be one of EPA conveying its expectations of the state, rather than the two-way communication embodied in many Partnership Agreements. Even where the concept of dividing responsibilities and identifying work-sharing opportunities has been used, state officials indicated that a formal Partnership Agreement brings a commitment and focus to the need to share scarce resources and to formalize stated commitments.

Program managers in several of the regions and states we visited cited a number of examples that illustrated the benefits associated with the formal division of labor memorialized in a Partnership Agreement. Connecticut's NEPPS coordinator, for example, said that the Connecticut Department of Environmental Protection negotiated with EPA's Boston Regional Office to pick up some of the state's training work load, because EPA could provide joint training for all the New England States at a lower cost than would be the case if each state provided training individually. The Connecticut Partnership Agreement specifically states that EPA agrees to assist with training in several areas, such as measuring and documenting the success of the state's compliance assistance and enforcement activities. The state's fiscal year 1999 agreement also

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<sup>2</sup>Superfund: Stronger EPA-State Relationship Can Improve Cleanups and Reduce Costs (GAO/RCED-97-77, Apr. 24, 1997).

documents coordination with the Boston office, indicating that the region agrees to work with the state on helping to reduce the state's reporting burden. According to the agreement, the region was to assume some of the state's inspection workload or streamline inspection requirements in order to free up state staff resources for compliance assistance activities.

Georgia's Partnership Agreement includes provisions for EPA's Atlanta office to assist the state in training, enforcement, and inspection activities generally on an "as requested" basis. For example, the region provided some expertise to the state and committed to dedicating EPA resources to the training of compliance officers within the state. Oregon's Partnership Agreement was similarly used to address unmet needs in the state's water program. Officials with EPA's Seattle Regional Office and the state's Department of Environmental Quality agreed that the state's program to identify and remediate heavily polluted waters was understaffed and underfunded. Under the agreement, the regional office agreed to provide the state with two staff to assist in the program.

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## **Opportunity to Improve Public Outreach and Involvement**

A key intended benefit and one of the seven principal components of NEPPS in its May 1995 joint agreement is the opportunity to share information with the public on state environmental conditions, objectives, and performance. Officials with the Environmental Council of the States commented that public participation is a strong point of the NEPPS program—something that rarely occurred under the formal traditional system where public comment was generally sought on specific facilities or sites only. At the time of the 1995 agreement, some states had begun to share such information through their annual state of the environment reports. The NEPPS process, however, offered greater opportunities for constructive public involvement.

EPA and state officials told us that increased public participation and involvement remains a principle benefit of the EPA-state NEPPS process, but its full potential is largely unmet. State officials have found that public interest and input into the NEPPS process has varied but that, overall, it has thus far tended to be limited. Minnesota officials, for example, said that they sent out a press release and copies of their Partnership Agreement to about 400 entities comprised of industry, environmental, community, and tribal groups and received only a handful of comments. Georgia sought comments on its Partnership Agreement at a public meeting and received limited comments, and Connecticut held an evening meeting with an advisory board consisting of representatives for the different media and

similarly obtained little feedback. In general, regional and state officials said that it will take time to increase the public's understanding and interest in focusing on the states' and EPA's long-term environmental goals and performance, rather than only on specific activities or conditions of more immediate concern.

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### **Improved Communication Among Participants About Program Priorities and Other Key Matters**

Nearly all EPA regional and state officials that we interviewed said that a key benefit of NEPPS has been improved communications among program participants and the fostering of a better federal-state working relationship. Members of the EPA Chicago Regional Office's NEPPS coordinating committee (which represents all media and enforcement programs), said that NEPPS has provided the region with a better understanding of states' strategic plans, which has assisted the states when negotiating a change with the region. In addition, NEPPS has encouraged regional and state staff of all media programs to discuss their programs jointly, a practice that has helped program officials at both the state and regional level gain a better understanding of each other's needs. According to state and regional officials, this higher level of understanding has been a major factor that has helped them to improve the way they set priorities across programs.

Headquarters enforcement officials also point to regional efforts to try to use NEPPS as a vehicle to more actively engage the states in joint enforcement planning and priority-setting. EPA's Boston Regional Office, for example, systematically arrayed a number of multimedia enforcement and compliance assistance programs for discussion and possible incorporation in states' fiscal year 2000 Performance Partnership Agreements. In each case, the priority the agency attaches to the program is indicated as well as the type of collaboration EPA anticipates having with the states.<sup>3</sup> Similarly, the officials cited as another example a Chicago Regional Office's analysis of its Performance Partnership Agreement with Minnesota which describes, on a media-specific basis, the state's and EPA's commitments to participate in mutually agreed-upon enforcement and compliance assurance activities to realize jointly determined environmental objectives.

Senior officials and program managers in all six states we visited also agreed that the NEPPS process has improved EPA-state communication and overall relations. Many also noted that NEPPS highlights and enhances

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<sup>3</sup>EPA's Boston Regional Office, "Assistance and Pollution Prevention Programs & Priorities For Fiscal Year 2000 State/EPA Performance Partnership Agreement (PPA) & Compliance Strategy Discussions"

communication among their own state media programs, as well as among EPA regional media programs. Noting that improved communications can solve 95 percent of their state-regional problems, Minnesota officials have instituted routine monthly conference calls with EPA's Chicago Regional Office to address waste issues and are considering implementing the same process for their other media programs. EPA Chicago Regional Office officials told us that they are also relying increasingly on oral communications with their states in an effort to encourage a more collegial and efficient approach to resolving problems.

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## **Future Prospects for Success Depend on Further Progress**

Officials in each of the case study states that we interviewed agree that the concept behind NEPPS, and its potential for achieving a more effective partnership between EPA and the states, is worth pursuing. Yet while acknowledging some benefit from their participation, they also consistently expressed the view that the benefits should be greater; that the program has yet to achieve its potential; and that improvements are needed. Of particular note, providing states with the incentives envisioned initially under NEPPS, including the differential oversight as discussed in chapter 4, was seen by almost all of the state officials we interviewed as critical to the future success of the program.

This view is reinforced by the resource commitment that some states feel has been required to take part in the program. Oregon officials, for example, said that they invested a significant amount of their resources in conducting a state environmental self assessment and other activities to participate in the NEPPS-Performance Partnership Agreement process. To date, however, these officials noted that they have not gained the advantages of reduced oversight leading to increased self management of their delegated programs and greater autonomy to focus on state priorities. Similarly, in explaining a major reason for their decision not to participate in the program, the Deputy Director of Michigan's Department of Environmental Quality noted that the heavy investment cited by participating states and the modest benefits achieved by those states has led to the Department's decision to wait and see how NEPPS evolves. The Deputy Secretary of Pennsylvania's Department of Environmental Protection had similar reasons for that Department's nonparticipation, noting that the department had several state initiatives underway that were important and, therefore, they would be reluctant to shift resources to NEPPS. The Deputy Secretary said that Pennsylvania is reserving judgment as to its future participation in NEPPS, noting that if greater

progress and benefits under NEPPS accrue over time, it may become advantageous for the state to participate.

For their part, EPA officials acknowledge the states' desire for greater program flexibility and autonomy, but believe they are not in a position to grant it unconditionally. Specifically, the officials maintain that additional program flexibility will have to be accompanied by demonstrated, measurable assurances that statutory and regulatory requirements and program objectives will still be met.

As we noted in chapter 4, both EPA and state officials have pointed to the difficulty of developing specific, nationwide criteria to be used in determining the appropriate level of regional oversight of state programs under NEPPS. However, given the importance to the program's future of making progress on this issue, it may be helpful for EPA and state officials to collaborate in developing some type of non-binding guidance that could be used in guiding the negotiations of individual regions and states on this sensitive issue.

In addition to this overriding concern about oversight, NEPPS participants believe that the benefits that have accrued from their participation in NEPPS have not reached their full potential. For example, many participants have noted improvements in communication under NEPPS, but said that further improvements are needed to ensure that all key EPA offices provide timely input into Partnership Agreement and Partnership Grant negotiations to help state agencies understand whether their agreements have full buy-in of all EPA offices. Similarly, while Partnership Grants allow for greater flexibility in shifting funds among media programs, states have thus far taken advantage of this opportunity to only a limited degree. To some extent, the base program requirements under individual programs combined with financial constraints have limited states' flexibility in shifting funds as freely as they would like. However, other factors may explain the problem as well, including specific grant regulations, resistance by EPA headquarters and/or regional staff, or similar resistance among state agencies themselves.

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**Joint EPA-State Evaluation**  
**Process Needed to**  
**Improve NEPPS**

These concerns pose challenges for the future of the program. However, we believe such challenges are to be expected in the context of a new program that strives to chart a new direction in the EPA-state relationship. Importantly, the need to address such challenges was anticipated by the 1995 Agreement that launched the program, which called for a joint

evaluation system for EPA and the states to review the results of their efforts to ensure continuous improvement.

To some extent, such a joint evaluation process was undertaken to produce the core performance measures. The intergovernmental committees that developed these measures, composed of representatives of EPA and state agencies, produced an initial set of measures for fiscal year 1998 that was modified and improved in subsequent years. As noted in chapter 3, the measures approved for fiscal year 2000 are widely viewed as substantially improved by both EPA and state officials.

EPA's and states' recent efforts to improve their working relationship in cleaning up priority Superfund sites may offer another useful precedent for such an effort. Reflecting a growing consensus among many in the administration, state government, and the Congress that states should take on more responsibilities for leading priority site cleanups, EPA and representatives from different states formed a number of intergovernmental workgroups to recommend ways to overcome the key barriers toward this goal.<sup>4</sup> For example, a "State Readiness Workgroup," composed of representatives of EPA headquarters and regional offices and state agencies, was charged with clarifying the requirements and circumstances under which states could be granted additional responsibilities to clean up these priority sites. Similarly, an intergovernmental "Assistance Workgroup" was also established to identify the technical financial, administrative, and legal assistance needs of the states in their efforts to take a lead role in successfully cleaning up Superfund sites. According to the Director of the State, Tribal, and Site Identification Center (within the Office of Solid Waste and Emergency Response), the workgroups were particularly useful in fostering collaboration among representatives of EPA's headquarters and regional offices involved in the cleanups in a manner that helped to identify where the key problems were and what practices worked well to address them. The Director said that the results of the workgroups have since been incorporated into pilot projects in seven states (and their corresponding regional offices) designed to increase states' responsibilities in leading cleanups of these sites.

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## Conclusions

On the basis of information that can be learned from experiences to date of a number of states and their corresponding EPA regional offices, we

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<sup>4</sup>State and EPA efforts to augment states' roles in leading Superfund cleanups are discussed in our 1997 report, *Superfund: Stronger EPA-State Relationship Can Improve Cleanups and Reduce Costs* (GAO/RCED-97-77, Apr. 1997).

believe the systematic joint evaluation process called for by the 1995 Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System should be initiated. The goals of this effort should be to (1) identify best practices among participating states for dealing with the most challenging problems facing the program and (2) eventually obtain agreement on actions that will improve and expand the program.

Such a process has already been used to develop and improve the Core Performance Measures used in the NEPPS program, and has served as a successful model elsewhere in EPA where new ideas have been developed and tested, and agreement among diverse parties on their implementation has been reached. We believe a similar effort, which targets key issues affecting NEPPS progress and which involves representation from EPA headquarters offices, EPA regional offices, and participating state agencies, could similarly help to expand both the participation in, and effectiveness of, this important program. The precise format to be used for this process (e.g., whether individual working groups should be established or whether a single committee composed of senior state and EPA officials should be used) should be determined by EPA and state environmental leaders.

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## Recommendations

We recommend that the Administrator of EPA work with senior-level state officials to initiate a joint evaluation process that (1) seeks agreement on the key issues impeding progress in developing a more effective National Environmental Performance Partnership System and (2) develops mutually agreeable remedies for these issues. Among the issues such a process could focus on are

- developing a set of flexible guidelines, to be used as a tool by state and EPA regional NEPPS negotiators, that could help to clarify the appropriate performance expectations and other conditions that states must meet to achieve reduced oversight in carrying out their environmental programs and the type of reduced oversight (e.g., reduced frequency of reporting, greater autonomy in setting program priorities) that could be achieved;
- identifying what additional work is needed to address the challenges in implementing the Core Performance Measures recently negotiated by EPA and the Environmental Council of the States for fiscal year 2000, including how these measures can best be reconciled with the measures adopted by EPA under the Results Act;
- alleviating the resistance among some staff (both within EPA offices and among participating state agencies) toward implementing the National

Environmental Performance Partnership System, through training and other strategies;

- determining what appropriate steps should be taken by EPA and the states to allow for greater use by states of the flexibility envisioned under the Performance Partnership Grant system to shift resources and funding among their media programs;
- determining how effective public participation in the NEPPS process can best be ensured;
- and developing ways to improve communication among EPA's headquarters and regional offices and participating states to ensure that states are given a clear and timely indication on whether key elements of their agreements pursuant to the system have the full buy-in of major EPA offices.

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## Agency Comments

EPA agreed with the report's recommendation that EPA and state efforts to improve NEPPS should include training and other efforts to achieve the "cultural change" necessary for greater success. The agency also pointed out that it recently agreed with representatives of the Environmental Council of the States on a basic outline of a joint evaluation process. We acknowledge this milestone and note that further progress on the details of such a process, including the specific issues to be addressed and a timetable for addressing them, will be important steps toward improving NEPPS.

EPA also commented on our recommendation that EPA and state environmental leaders should develop guidelines that would help to clarify, for EPA and state negotiators, the appropriate performance expectations that states must meet to achieve reduced oversight in carrying out their environmental programs and the type of reduced oversight (e.g., reduced frequency of reporting, greater autonomy in setting program priorities) that could be achieved. EPA noted that while it agreed with this recommendation in principle, the agency and the states believe that each state's Performance Partnership Agreement should specify the degree of oversight necessary to accommodate the unique environmental problems and varied program capabilities of that state. We agree that oversight arrangements should be negotiated between each state and its corresponding regional office in a manner that accounts for that state's unique circumstances, and that these arrangements should be specified in the Performance Partnership Agreement. We continue to believe, however, that nonbinding national guidance—to be agreed upon in advance by EPA and state environmental leaders—would be useful in



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**Chapter 5**  
**Benefits of NEPPS Participation Cited, but**  
**Full Potential Has Yet to Be Realized**

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introducing objective parameters to be considered by regional and state negotiators as they seek agreement over this sensitive issue.

# Comments From the Environmental Protection Agency and Our Evaluation



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

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

MAY 0 1999

Mr. Peter Guerrero  
Director  
Environmental Protection Issues  
Resources, Community and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Guerrero:

Thank you for the opportunity to comment on the General Accounting Office's Draft Report (the Report) entitled "Collaborative EPA-State Effort Needed to Improve New Performance Partnership System." Although we have a few concerns, we believe the Report describes, in a fair and balanced manner, the progress EPA and the States have made through performance partnerships. Also, we agree with the Report's recommendation for further outreach and training on implementing the National Environmental Performance Partnership System (NEPPS). Both EPA and the States agree that more investment in outreach and training activities will help us achieve the "culture change" necessary for greater success.

See comment 1.

In addition, we would like to take this opportunity to inform you of progress on two items identified in your Report: the need for a joint EPA-State evaluation of NEPPS, and the need for timely guidance from National Program Managers (NPMs). First, in March 1999, EPA and the Environmental Council of the States (ECOS) formally agreed to a process for conducting a joint evaluation of NEPPS. This process will unfold over the coming year under the leadership of a State-EPA steering group.

See comment 2.

Second, in April 1999, the NPMs issued two-year program guidance to the Regions simultaneously and on schedule so that the information would be available prior to Performance Partnership Agreement (PPA) negotiations. The timing of the guidance allows the Regions and the States to avoid renegotiating PPAs to include NPM priorities. This accomplishment has been well received by the Regional Offices, and remedies some of the problems mentioned in your report. It is also important to note that *two*-year guidance brings stability to the NEPPS process, because Regions and States can extend their planning horizon without fear that NPM priorities will change dramatically on an annual basis.

**Appendix I  
Comments From the Environmental  
Protection Agency and Our Evaluation**

We have the following concerns with the Report:

See comment 3.

1) *Characterization of the relationship between GPRA and NEPPS.* The Report states that EPA simultaneously focuses on outputs to meet GPRA requirements and supports transition to outcome-based management under NEPPS. The Report concludes that these conflicting priorities lead to confusion that hinders performance partnerships. In fact, *both* the GPRA and NEPPS encourage the development of outcome measures and outcome-based management. EPA has been working hard to develop outcome measures for purposes of the GPRA *and* NEPPS, and has made steady improvements in the quality of its performance measures. EPA also has worked with the Regions and the States to demonstrate how GPRA and NEPPS are compatible.

See comment 4.

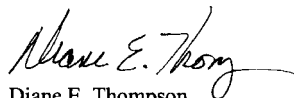
2) *Recommendation for Differential Oversight Guidelines.* The Report recommends that EPA and State officials develop guidelines that clarify what performance expectations State programs must meet to achieve reduced oversight. We agree with this recommendation in principle. EPA and the States have agreed, however, that PPAs should specify the degree of oversight necessary to accommodate the unique environmental problems and varied program capabilities of individual States.

See comment 5.

3) *Characterization of Differential Oversight as it relates to Burden Reduction.* The Report uses the terms "differential oversight" and "burden reduction" loosely. It is important to maintain a clear distinction between these related terms. "Burden reduction" applies to activities, particularly information exchanges, that both EPA and the State agree are unnecessary, duplicative, or inefficient. In such cases, EPA believes that *all* State programs should benefit from burden reduction. The term "*differential* oversight" means that EPA oversight may vary depending on how effectively a State program meets performance expectations.

Should you have any questions about our comments, we would be happy to meet with you to explain them in greater detail. Please contact Linda Rimer (260-4719) should you wish to schedule a meeting. Thank you again for the opportunity to comment, and we look forward to our continued work together.

Sincerely,



Diane E. Thompson,  
Associate Administrator

The following are GAO's comments on the Environmental Protection Agency's (EPA) letter dated May 20, 1999.

1. We have clarified, in the executive summary and chapter 5, that EPA officials and representatives of the Environmental Council of the States have recently agreed to certain characteristics of a joint evaluation process, and that further progress (including decisions on the specific issues to address and a timetable for addressing them) would be important steps in improving NEPPS.
2. We have amended the report to reflect the agency's expectation that its April 1999 2-year guidance should allow the regions and states to consider national program priorities earlier in their partnership agreement negotiations, and thus limit the need to renegotiate priorities that had been previously established. At the same time, the report still conveys agency officials' views that the guidance will not necessarily prevent other circumstances, which are out of EPA's control, from necessitating the reopening of an agreement.
3. Citing the observation in chapter 3 that (1) EPA has focused on outputs to meet its obligations under the Results Act while supporting a transition to outcome-based management under NEPPS and (2) these conflicting priorities have led to confusion that hinders performance partnerships, EPA stated that, to the contrary, both the Results Act and NEPPS encourage the development of outcome measures and outcome-based management. We acknowledge the shared objective of NEPPS and the act in focusing on results. The key word, however, is implementation: as we have documented in other recent work, the measures EPA has used in its implementation of the Results Act have thus far been heavily output-oriented and therefore convey priorities that are often in conflict with the more outcome-oriented measures being employed under NEPPS. We acknowledge the agency's ongoing efforts to orient its Results Act-related measures increasingly toward outcomes, and believe that further progress toward this end will help to alleviate this problem. In addition, we modified our discussion of this issue in Chapter 3 to note that the April 1999 Addendum to the Joint Statement, co-signed by EPA and the Environmental Council of the States, states that core performance measures and other current reporting requirements will be relied upon to satisfy EPA's Results Act-related data needs.
4. We agree that oversight arrangements should be negotiated between each state and its corresponding regional office in a manner that accounts

for that state's unique circumstances, and that these arrangements should be specified in the state's Performance Partnership Agreement. We continue to believe, however, that nonbinding national guidance—to be agreed upon by EPA and state environmental leaders—would be useful in introducing objective parameters to be considered by regional and state negotiators as they seek agreement over this sensitive issue.

5. EPA's comment draws a clear distinction between issues associated with reporting burdens and other issues related to EPA's oversight of state environmental programs. We acknowledge circumstances in which EPA and a state collaboratively pursue strategies to reduce reporting requirements that both agree are unnecessary, duplicative, or inefficient; and that such circumstances could be viewed as outside the two parties' oversight arrangement. However, the distinction between this activity and oversight is not always so clear. Specifically, where states and EPA have disagreed on the need for data not required by statute and viewed by states as extraneous, and EPA has continued to require reporting of such data, states have often characterized the issue as, in their view, a questionable exercise of EPA oversight.

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# GAO Contacts and Staff Acknowledgments

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## GAO Contacts

Steven Elstein, (202) 512-6515

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## Acknowledgments

In addition to those named above, Maureen Driscoll, Gerald Laudermilk, Susan McCartin and Lisa Pittelkau made key contributions to this report.

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