United States
Environmental Protection
Agency

Office Of
The Administrator
(H-1503)

EPA-270-R-93-00
July 1993

EPA

Report Of The Task Force To Enhance State Capacity

Strengthening Environmental Management In The United States

CONTENTS

EXECUTIVE SUMMARY 2
CONSOLIDATED REPORT . . . 4
Introduction 4
Task Force On Enhancing State Capacity 7
General Findings And Recommendations 8
Framework And Policy 9
Strategic Planning And Integration Of Priorities 11
Mechanisms To Institutionalize State Capacity 14
Building State Capability And Management Infrastructure 16
Environmental Finance 20
Grants Administration 22
Legislative Action 24

Note To Reader

This report presents the findings and recommendations of the State Capacity Task Force, a group of EPA and state officials who worked together for more than a year to generate ideas for improving the partnership between EPA and states.

The Executive Summary outlines the purpose, background, and major findings of the Task Force, along with next steps for implementing the Task Force's recommendations. The Consolidated Report provides an overview of the current state-EPA relationship and the capacity of state governments for carrying out environmental programs. It summarizes the findings and recommendations developed by the four teams that were formed to carry out the work of the Task Force: "Building State/EPA Relations," "Alternative Financing Mechanisms," "Building State Capability," and "Streamlining the Grants Process."

Additional information and copies of the more detailed individual team reports are available from: Office of Regional Operations and State/Local Relations, H-1501, U.S. Environmental Protection Agency, Washington, D.C. 20460; Phone (202) 260-4719.

While the Task Force focused on state capacity, many of its recommendations relate directly to the issues of local government and tribal capacity. These issues are being addressed in parallel efforts.

Acknowledgements

The State Capacity Task Force wishes to acknowledge the valuable assistance provided by a large number of organizations and individuals. Many groups and people contributed to our research during the development of our findings and recommendations, and provided insightful suggestions in reviewing our draft reports. We thank all who made this effort productive, and look forward to continuing to work with them as the recommendations of this report are debated and implemented. Because this effort was so broad ranging and developed over a lengthy period of time, we may have inadvertantly left someone off this list. We apologize for this oversight.

Susan Absher
George Ames
Tom Allen
Bruce S. Anderson
Dev Barnes
Herbert Barrack
Dick Bauer
Janice Berry-Chen
Jim Bower
George Britton
Gerald Bryan
Beth Cavalier
Mike Cook
Howard Corcoran
Robert Currie
Jeffrey Denit
Paul Didier
John Dubuliewicz
Jan Eastman
Kathleen Ehrensberger
Gerry Emison
Jane Ephremides
Bruce Feldman
Bettina Fletcher
Donna Fletcher
Michael Flynn
Gary Foley
Ed Fox
Joseph Franzmathes
Laurie Goodman
Brenda Greene
Paul Guthrie
F. Henry Habicht
Anna Hackenbracht
Ed Hanley
Vera Hannigan
Bob Heiss
Nora Hoskins
Pat Hull
John Irwin
Alice Jenik
John Johnson
Steve Johnson
Charles Jones
Tim Jones
Kevin Keaney
Tom Kiernan
Janet Keller
Charles Kent
Judy Kertcher
Kate Kramer
Ron Kreizenbeck
Betsy LaRoe
Reginald LaRosa
Angie Leith
Thomas P. Looby
Jole Luehrs
Teri Lunde
Deb Martin
Lawrence Martin
Vince Martin
Jack McGraw
Mike Menge
Phil Miller
Mary Mitchell
Dana Minerva
Nancy New
Murray Newton
Don Niehus
Tina Parker
William Parrish
Rebecca Parkin
Harvey Pippen
Abby Pirnie
Jim Powell
Tom Powers
Kathy Prosser
Mike Reed
Robert Perciasepe
Robert Roberts
Maureen Ross
John Sandy
Pat Saylor
Hannah Schoenbach
Mike Schulz
Daryl Serio
Constantine Sidamon Eristoff
Ken Smith
Maggie Thielen
Marylouise Uhlig
Jim Wieber
Scott Wiener
Nathan Wilkes
Arty Williams
John Wise

"The Task Force on State Capacity, under the leadership of John Wise, has presented me with a report that recommends a major new emphasis on the working relationship between EPA and the states. The report recognizes the interdependence between state and federal environmental programs and offers a number of specific recommendations on how to succeed in carrying out our shared mission. The timing of this report is most fortunate, because I view strengthened state/EPA relations as one of my top priorities.

I commend the Task Force for its excellent work, especially for bringing representatives from the regions, programs, and states into the process. I strongly endorse the principles promoted in this report, and agree with the statement that "we have reached the beginning of our journey" on this issue. Much good work is underway across the Agency to build stronger working relationships with the states. Building on that work, it is now time for EPA and the states to establish a new and bolder framework for implementing our ever-growing, shared agenda.

There are several important themes in this report I want to pursue as we develop the implementation plan: increased state participation in Agency policy and priority-setting processes; measuring progress in environmental terms more than just program activities; improving our processes, infrastructure, and delivery systems to support the state/EPA partnership; and making it clear that enhancing state capacity is part of EPA's job. Ultimately, we need to link this work to the parallel efforts on local and tribal capacity."

Administrator Carol M. Browner
May 17, 1993

EXECUTIVE SUMMARY

The concept that states should hold primary responsibility for the operation of regulatory and enforcement programs is inherent in most federal environmental statutes. As a result, EPA has a long-standing responsibility to enhance state capacity and to strengthen environmental management in the United States. Much progress has been made. Today most states stand as competent environmental managers. Yet the onslaught of statutory and program demands, plus the limitation of funds, is slowly driving states into perennial shortfalls and is compromising state capacity to manage environmental programs. The bottom-line lesson is that if the states fail, then EPA fails.

The State Capacity Task Force was created to invigorate EPA and state efforts to enhance capacity. Building on past efforts (both successes and shortfalls), the Task Force engaged a wide range of stakeholders in a participatory process of continuous improvement such that total quality would come to characterize the state/EPA relationship.

The Task Force focused on four areas, supported by four teams comprised of EPA and state officials:

- Improving state/EPA relations;
- Encouraging alternative financing mechanisms;
- Investing in state management infrastructure; and
- Streamlining the grants assistance process.

The recommendations of the Task Force envision a long-term change process, motivated by continuous improvement and building upon past successes. The recommendations set forth a policy framework to enhance state capacity; specific implementation actions will subsequently give tangible expression to each recommendation. There is no magic solution to building state capacity; rather the Task Force envisions a long hard journey employing a collaborative process involving EPA, the states, and other interested parties that will firmly establish the states as primary environmental managers.

Following is a summary of the recommendations of the states and EPA.

Framework and Policy

- Establish a new framework and policy for state/EPA relations emphasizing flexibility, a mutually supportive working relationship, and a shared responsibility for success.
- Initiate a review of the current policy statements that set out the governing principles for state/EPA relations with the intent of issuing a new concise statement to reflect the new framework.
- Restructure program oversight practices to:

  - Ensure that program performance is reviewed in terms of environmental as well as fiduciary outcomes;
  - Recognize both shared and unique EPA and state environmental priorities; and
  - Provide for peer review and self-assessment of environmental accomplishment.

- Issue a new policy statement on grant oversight to clearly define EPA's and the grantee's fiduciary responsibilities for managing and accounting for public funds.

Strategic Planning and Integration of Priorities

- Establish a joint process with each state to identify and define clear environmental goals and to systematically integrate federal and state priorities.
- Regional Administrators should meet with states within their jurisdictions to discuss regional priorities and state priorities, and agree on integrated federal and state priorities.
- States should be active participants in EPA's long-term planning process and be included in setting its agenda.
- EPA should devise mechanisms to include states in setting goals and developing planning guidance.
- EPA and states should issue periodic public reports detailing state and federal environmental goals, objectives, and priorities, and discussing progress in meeting them.
- Implement collaborative projects to promote state/EPA co-management of geographic projects and to build joint experience, technical exchange, and mutual trust.
- Vigorously promote operational efficiency in all state/EPA programs.

Mechanisms to Institutionalize State Capacity

- Establish a central contact in the Office of the Administrator to guide and monitor state capacity efforts.
- Form an EPA steering committee on state capacity, comprised of state and EPA representatives, to advise and consult on EPA matters that affect states. The steering committee will focus on developing and carrying out an implementation plan based on the recommendations of this report. The steering committee will work closely with the State/EPA Operations Committee to ensure full collaboration.
- Convene a conference of states with the new Administrator to review this report, and initiate a continuing dialogue on state/EPA relations.
- Strengthen the State/EPA Operations Committee to serve as the primary forum for a continuing dialogue on state/EPA policies and relationships, including state capacity.
- Consult other advisory groups, such as the Environmental Financial Advisory Board (EFAB) and the National Advisory Council for Environmental Policy and Technology (NACEPT), as sources of outside advice and counsel on major issues facing states and EPA.

• Initiate, in cooperation with program-specific state associations and state and local officials' organizations, a dialogue on managing the environment, researching critical issues, and improving management of environmental programs.

• Significantly expand the exchange of EPA and state employees, through both individual assignments and team efforts.

Building State Capability and Management Infrastructure

• Use EPA's planning and budget processes to incorporate state capability support as a key investment priority.

• Ensure state representation and consideration of state needs and priorities throughout the planning and budget processes.

• Seek to obtain maximum delegation of national programs in order to efficiently manage an integrated collection of state and federal programs.

• Exercise maximum flexibility in negotiating grant-assisted work plans while respecting statutory and regulatory authority, mutually agreed upon strategies and sound management practices. Expect mutual accountability for the negotiated terms of the grant-assisted work plan.

• Encourage the use of innovative approaches to improve the efficiency and effectiveness of state environmental programs. For example, promote the use of general permits, administrative penalty authority, professional certification, and tickets for minor violations.

• Energize EPA's environmental training function to provide learning experiences for federal, state, and local employees, including enhancing knowledge of program delivery; building scientific and technical skills; and assisting state and local governments in developing local, on-site training.

• Invest in a state/EPA integrated data and information portfolio designed to enhance information exchange.

• Continue to provide consultation and assistance on environmental management needs, risk assessment, information system management, management advice and assistance, and Total Quality Management.

• Implement programs to improve the scientific and technical capability of state and local personnel, including technology transfer, research assistance, and scientific information.

Environmental Finance

• State and local governments with environmental management responsibilities should critically assess and challenge the funding mechanisms used for each component of their capital and operating budgets, using the opportunities for alternative financing presented in the Compendium of Alternative Financing Mechanisms.

• Expand the existing multi-media environmental finance program within EPA, and at university-based Environmental Finance Centers, to develop strategies and approaches to assist state and local governments in financing and carrying out their environmental mandates. The thrust would be to enhance the ability of state and local governments to finance rising costs.

Grants Administration

• Establish a State/EPA Grants Steering Committee to ensure continuous improvements in grants management processes.

• Continue research on alternative grant mechanisms and advocate new authorities for multi-media grants.

• Seek more efficient grant award and management processes by improving the integration of state and federal planning cycles.

Legislative Action

• Offer language for legislative inititiatives that would make state-capacity building a primary mission of the Agency.

• Articulate the current limits and opportunities under the Administrative Procedure Act (APA) for including states in the rule-making process, and propose specific legislative changes to the APA that would address EPA and state needs.

• Offer guidelines on how EPA can currently work with the states under the Federal Advisory Committee Act (FACA). Propose specific changes to FACA that would recognize the right of states, as delegated managers of EPA programs, to be consulted on matters of policy and management of national environmental programs without the need to charter formal advisory committees.

• When EPA's basic statutes are reauthorized, seek amendments that clarify the roles and responsibilities of the states and EPA, and recognize the collaborative relationship between them. The statutes should facilitate multi-media funding and cross-jurisdictional geographic activities, and recognize state and local responsibility and accountability.

The Task Force proposes that initial implementation efforts be managed by a central contact in the Office of the Administrator. The Administrator should appoint a State Capacity Steering Committee to guide and monitor the state capacity effort.

With these recommendations, the Task Force has reached the beginning of its efforts; we are at a critical juncture where implementation must now proceed. We must move forward with the same joint commitment and close collaboration between EPA and the states that has distinguished this effort to date.

CONSOLIDATED REPORT

> Federal environmental programs were designed by Congress to be administered at the state and local level wherever possible. The clear intent of this design is to use the strengths of federal, state, and local governments in a partnership to protect public health and the nation's air, water, and land. State and local governments are expected to assume primary responsibility for the implementation of national programs, while EPA is to provide national environmental leadership, develop general program frameworks, establish standards as required by legislation, ... assist states in preparing to assume responsibility for program operations, and ensure national compliance with environmental quality standards.
>
> EPA's policy has been to transfer the administration of national programs to state and local governments to the fullest extent possible, consistent with statutory intent and good management practice....
>
> William D. Ruckelshaus, 1984

INTRODUCTION

Environmental management in the United States is a complex and dynamic system. States, cities, villages, towns, townships, boroughs, counties, parishes, special districts, multi-state commissions, international commissions, and recognized indigenous organizations all share with the federal government responsibilities for environmental management. This structure is the result of our nation's commitment to federalism and a testimony to our belief in the dispersal of authority and responsibility and in public involvement in the exercise of governmental functions.

For many years states have provided the lion's share of environmental management controls--permits, discharge standards, and public health and natural resource regulations. Since 1970, with the creation of the Environmental Protection Agency (EPA), the federal government has joined states and localities in regulating particular environmental activities.

In states, several different governmental agencies manage, regulate, and promote environmental protection policies and practices; commonly, these are health departments, agricultural agencies, and environmental and natural resource agencies. At the local government level, environmentally-related activities traditionally have been confined to the provision of public services (such as wastewater treatment, drinking water, and trash removal) and the regulation of land use and personal safety (such as zoning and building codes). Local governments are also involved in the regulation and management of activities that affect the environment, such as district-wide air pollution regulation, industrial pretreatment for wastewater discharges, stormwater controls, public health protection, and sanitation regulation.

For EPA, responsible stewardship of the nation's environmental agenda requires constant, open communication and interaction with states and local governments. Likewise, in their effort to manage the environment, in their attempt to use resources most efficiently, and in their need to coordinate with others, states must communicate effectively with EPA and local governments. In their role, local governments must communicate and coordinate with states and the federal government, but they must also integrate legislated requirements with the ongoing service needs of their individual communities.

The challenge for all levels of government is to develop appropriate techniques and institutions to protect the health of citizens adequately and to nurture and sustain the environment appropriately, thus providing for future with itself.

In 1984, Administrator William D. Ruckelshaus articulated a national policy for federal-state-local management of national environmental programs. This statement, a synthesis of history, law, and practice, has been identified for a decade as the guiding principle of management within EPA.[1]

Time, circumstance, and human behavior have altered the policy so carefully enunciated. Over the last decade, a host of dynamic and often independent factors has brought pressure to recognize change in federal, state and local environmental programs. In light of these evolving circumstances it has become evident that EPA, states, tribes, and localities need to re-examine their working relationships and to jointly develop proposals, recommendations, and new systems for the future. The following summary of these forces for change will underline some of the issues addressed in this report.

ELEMENTS OF CHANGE AND CHALLENGE

Environmental management burdens on states and municipalities have increased dramatically and will continue to escalate. State and local capacity for managing the environment is affected by an increase in environmental laws, changes in regulatory jurisdiction, scientific developments, and today's fiscal realities. First, environmental responsibility is increasingly being borne by the states. New federal statutes have been passed, mandating an increased regulatory presence and delegating primary responsibility to the states. Early national environmental laws were enacted with a strong federal focus driven by high public concern, increasing demands from the regulated community for consistency in standards, and lack of broad-ranging and integrated state environmental programs. In actuality, some states have instituted environmental programs that go beyond federal requirements. Simply relying on traditional command and control methods has become less effective in meeting our environmental protection needs, especially as resources become increasingly constrained. New environmental concerns, such as the need for location-specific responses and the need to address more and more small, dispersed polluters have changed management requirements.[2]

State Budgetary Health

At the state level, the overall availability of general revenues has declined. Furthermore, even though this varies from state to state, the federal government's relative contribution to state environmental budgets has slowed. Finally, direct federal support to local governments for environmental improvements has also declined. The gap between the cost of environmental protection and resources available to meet those costs is widening at an alarming rate. Competition for revenue dollars is intense and the prolonged economic downturn has threatened general revenue levels and forced states and localities to cut current budgets and adopt alternative funding sources. As environmental statutory and program demands increase and available resources decrease or remain level, state and local capacity to provide environmental protection is compromised.

State Funding for Environmental Programs

Environmental management has grown exponentially over the past two decades. Fueled by legislative action at the national, state, and local levels, this expansion led to growth in operating budgets of states and localities for environmental management. For most of the period, the nation's economic vitality provided increasing resources for this growth. Recently, however, two converging national developments have brought into question the ability of states and localities to continue, unabated, the expansion of environmental management activities.

• **Increased Demand on Expenditures** First, scientific inquiry, identification of environmental concerns, and specificity of environmental law have accelerated at a great pace over the past decade, increasing the need for more sophisticated regulatory action and highly complex environmental controls, as well as requiring greater commitment of both capital and operating funds.[3]

• **Decreased Revenues** Second, national economic growth has slackened. Government revenues are suffering, while many costs have risen. Consequently, states and localities are experiencing severe budget stress. More than ever before, environmental demands must actively compete with human service needs (such as medical assistance, corrections, general assistance, and education) for scarce resources.[4]

As the economy grows slowly and budget deficits swell, environmental programs are facing increasing competition for limited resources from other programs. In the long term, this fiscal stress increases the risk that state and local governments will be unable to maintain their administrative responsibility, resulting in non-compliance and diminished enforcement, delays in program implementation, and postponement or cancellation of crucial environmental investments.

• **States' Response** Governments at all levels are trying to cope, looking at new incentive mechanisms, public-private partnerships, interagency cooperative efforts, and other innovative strategies to address complex environmental problems that do not respond to traditional approaches. Individually, these trends are new in the field of environmental protection; collectively, they entail a larger policy-setting and fiscal role for states and localities than ever before.

Relationship Between EPA and States

Relations between states and federal agencies have always been characterized by compromises born of necessity. On one hand, Congress and the public expect a federal agency to maintain adequate stewardship of its responsibilities; on the other hand, they expect states to share substantially in managing many activities. While public policy options create the most visible conflicts between individual states and federal agencies, these disputes are frequently settled in the political arena. Issues of day-to-day program management, however, often strain the relationships between states and federal agencies. This Task Force's work has been focused on the crucial issues of day-to-day management and cooperation.

• Oversight

Existing national oversight practices were born at a time when states had limited technical and managerial capacity and EPA was the acknowledged leader. Now, state officials have experience in administering environmental programs that often equals or surpasses that of the EPA managers and staff who "oversee" them. In fact, since EPA has less responsibility than in the past for day-to-day field level operations, its staff capability in these areas is eroding. The obsolescence of the existing accountability system is especially apparent in states that have adopted innovative policies, laws, or organizational structures that do not mirror EPA's guidance. Ironically, innovative states often make changes that EPA itself has been unable to accomplish.

• Delegation

There are dozens of program components that can be and are delegated to states. Currently, the extent of delegation is uneven and performance of these delegated programs is also uneven. The national picture is, in fact, a mosaic of situations, even within a single state. Thus, the "state/EPA relationship" is really a complicated series of relationships that can only be described accurately on a program-by-program and state-by-state basis.[5]

Adding to the federal government's management challenge are two facts: (1) states are not monolithic, in their organizations, approaches, or traditional environmental responsibilities (as established by common law, treaty, constitution or statute); and (2) federal agencies cannot force states to adopt particular organizational or management systems. Thus, in dealing with states, federal agencies must forge compromises of style and direction in order to fulfill congressional mandates.

For EPA, therefore, responsible stewardship of the nation's environmental agenda requires constant, open communication and interaction with states. Similarly, in their efforts at environmental management, in their quest for efficient use of resources, and in their need to coordinate with others, states must effectively work with EPA and other states.

THE CHALLENGE

Failure to fully address this complex web of changing circumstances, advancing science, evolving accountability, growing responsibility, and increasing financial difficulty will have serious consequences. Inattention to the issues of state capacity and the state/EPA relationship will exacerbate problems of national environmental management, lead to a deterioration in environmental protection, and compromise the environmental standards envisioned by the Congress and the American people. The challenge for states, localities, and EPA is to acknowledge the difficulty and the necessity of collaborating in common efforts and find new approaches and methods for managing national environmental programs.

TASK FORCE ON ENHANCING STATE CAPACITY

In response to these serious, evolving challenges to the established national environmental management system, and based on recommendations from the State/EPA Operations Committee that capacity development was an important issue for states, EPA established the State Capacity Task Force in October 1991.

The Task Force was charged with focusing on three major areas of concern:

• **Explore the viability of creative financing mechanisms** such as fee-based revenues, public-private partnerships, and alternative financial planning as a means of bolstering state environmental programs.

• **Examine federal investment in state infrastructure** in areas such as training, information networks, laboratories, monitoring, and technical assistance.

• **Investigate how improved working relationships can help** states get the most out of federal financial assistance and capital investments.

Several key premises were fundamental to the Task Force's efforts:

• **States and localities should be actively involved** in all aspects of the Task Force's deliberations.

• **Efforts should focus on three basic areas**--innovative financing assistance, federal investment in state and local management infrastructure, and efficiency enhancements through improved intergovernmental relations and quality management coordination.

• **The Task Force should not "reinvent the wheel,"** but make use of the many excellent, but underutilized, reviews of federal/state/local relations completed over the last decade.

• **The Task Force should seek to overcome past implementation inertia** by constantly examining each recommendation to ensure that it incorporated techniques for integrating the proposed changes into the environmental management system.

• **Throughout the effort, the concept of continuous improvement would be paramount.**

Structure and Participation

As the Task Force began to examine preliminary information on intergovernmental fiscal conditions, capabilities for program management, and program infrastructure investment opportunities, it became clear that the challenge of enhancing state and local capacity was much more complex than initially perceived, and that the range of options upon which the Task Force should focus and for which it was to develop recommendations was far broader than originally envisioned. Further, the Task Force soon recognized that participation of stakeholders outside EPA was essential to effectively gathering information and formulating implementable recommendations. In order to better manage the flow of information, increase the breadth of participation, exploit the expertise of each Task Force member, ensure the quality of recommendations, and facilitate the ultimate production of this report, the Task Force established an operating structure consisting of a steering committee and four teams (State/EPA Relations, State Capability, Grants Management, and Alternative Financial Mechanisms).

Parallel and Spin-Off Activities

Early in its deliberations the Task Force struggled with the issue of how to adequately address local government and tribal issues without so enlarging the scope of the study as to risk failure to reach closure. From the outset, the Task Force was expected to examine all aspects of the environmental management capacity issue, including Indian tribal government capacity and the ability of local governments to maintain strong environmental management functions. Since it became apparent that each of these topics was a major undertaking in itself, separate efforts have been launched to address them individually. Recommendations from these parallel studies will be merged into the overall Agency-wide effort to enhance the capacity of its collaborating organizations and institutions.

This report is a synthesis of the deliberations of the four teams based on input from a wide assortment of internal and external participants. A more detailed discussion of the individual team conclusions is contained in the team reports.[6]

Conclusion

The Task Force believes that this report is only a beginning. There is no magic solution to building state capacity; rather, the Task Force envisions a long, hard journey employing a collaborative process involving EPA, states, and other interested parties that will firmly establish states as primary environmental managers.