Mixed Results

Whether it wants to or not, the Bush administration will have to deal with the well-known problems in environmental federalism. The National Environmental Performance Partnership System is the best effort to date at comprehensive reform, but its results after six years are as muddled as the federal-state relationship itself

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Six years after then EPA Administrator Carol Browner and a group of state environmental commissioners launched what became the National Environmental Performance Partnership System, the jury is still out on this concerted effort at fundamental reform of environmental federalism. The system was proposed in recognition of the fact that the federal-state relationship in environmental protection had reached a point of maturity where it needed to be recast, acknowledging the now central role of the states in delivering most federal environmental programs and greater state capacity and sophistication in general. Another driving factor was recognition of the fact that next-generation problems like non-point source water pollution, biodiversity loss, and sprawl would require an even greater role on the part of the states, which in many cases, such as land use, have powers needed to complement those of the federal government.

To meet these needs, NEPPS was intended to reform the very basics of environmental federalism — in the manner in which annual state program commitments are developed; in the way in which delegated programs are funded; and in the nature and conduct of federal oversight. The new relationship would emphasize “performance” instead of “process” — moving away from the fabled bean-counting exercises to measuring, and holding states accountable for, overall programmatic results. Together, EPA and the states pledged to “strengthen our protection of public health and the environment by directing scarce public resources toward improving environmental results, allowing states greater flexibility to achieve those results, and enhancing our accountability to the public and taxpayers.”

At the core of NEPPS is a set of performance-based oversight and evaluation instruments. Performance Partnership Agreements, or PPAs, were designed to form the contract between the two sovereigns, specifying performance-based deliverables and replacing categorical workplans, the commitments made by each state in return for federal funding. Performance Partnership Grants, or PPGs, would become the new vehicle to deliver federal funds, in theory granting financial resource flexibility across programs — essential to meeting the performance contract and to allowing states to take more integrated approaches that combine compliance assistance and incentives with traditional enforcement. Uniform national Core Performance Measures, or CPMs, would provide new performance-based metrics for EPA oversight of the states, while providing a tight link to EPA’s overall strategic goals.

In sum, the system would lower the transaction costs of administering the national environmental statutes, it would allow resources to be more easily targeted to address priorities, and, by having a common set of identified environmental priorities, the two levels of government would be more willing and better able to engage in harmonized approaches to problem-solving. EPA and the states promised to “work together for continuous gains in environmental quality and productivity” in a system with enhanced accountability and an increased role for public input.

Since its initiation, at least 45 states and territories have participated in NEPPS. In 1998, the National Academy of Public Administration asked the Tellus Institute to conduct a nationwide study of NEPPS, “The National Environmental Performance Partnership System: Making Good on Its Promise?” which was published as part of its congressionally commissioned report
Our interviews with more than 100 state and federal environmental officials on the state-federal interface make clear that the current “churn” is debilitating and unsustainable.

Our assessment of NEPPS against its reform agenda reveals very mixed results. The mixed story is in many ways an assessment not only of NEPPS, but of the ongoing problems with the federal-state relationship. The lessons from the study provide a clear roadmap for leadership on an unglamorous but essential element of the national environmental protection apparatus. And leadership — at the heads of EPA and state agencies alike — is needed. At the national level, NEPPS, and the serious and necessary reforms it embodies, appears to be languishing — essentially from a lack of not only clarity but commitment.

There have certainly been successes on key issues, though these are not uniform across all states, and only a few very states are benefiting from all of the program’s central components. Consistent successes include reductions in activity counts and reporting requirements in most participating states. CPMs covering all the NEPPS states have been negotiated, though these do not capture all state reporting to EPA. And there have been small exercises of resource flexibility and integration of strategic and budget planning in some states. We also found that, as a result of NEPPS, there is more high-level communication between EPA regions and state environmental agencies.

But a few elements of the original NEPPS agenda have been effectively dropped altogether — the “performance track for states” proved too problematic to implement in a formal way. (In practice, EPA has always awarded significantly more latitude to states it perceives as having sound programs.) Distinct state self-assessment efforts conducted specifically for NEPPS occur in a minority of cases — though many state agencies are now publishing “state of the environment” reports. And finally, public input into the NEPPS system did not occur in any meaningful way universally.

These mixed — and often marginal — results arise from and are indicative of a set of institutional obstacles to the NEPPS reform agenda that become apparent on close inspection. Stated most simply, we concluded that NEPPS coexists uneasily with the pre-existing system of delegation and oversight. This system is the set of practices and procedures that evolved over nearly three decades between EPA and the states for the administration of national programs.

The persistence of the old system is manifested in a number of ways. Overall, PPAs still serve as one of many “agreements” between states and EPA documenting state commitments. And PPGs are still effectively managed by many states and EPA regional offices as individual program grants, not as the block grants they were intended to be. While priorities are jointly discussed, they are rarely jointly set by EPA and states. Most importantly, however, no common understanding exists regarding the role of federal oversight — and there is consequently uncertain scope for flexibility and the bounds of acceptable oversight.

The last point is perhaps the most serious, and is in many ways the root cause of the first three. EPA intentionally implemented NEPPS without detailed, prescriptive program structure or guidance. This decision on EPA’s part was intended to allow states and regional offices the opportunity to tailor their NEPPS efforts to their needs. There is a clear downside, however: we observed tremendous uncertainty in EPA regional offices and in state agencies over the nature and degree of flexibility that EPA can grant to states under NEPPS and over what level and type of accountability EPA must impose on states and programs.
Specifically, EPA regional program staff and managers are not comfortable with the level of accountability in states’ PPAs. This is critical, as the PPA is intended to not only constitute the contract between EPA and the state agency, but also may be used to govern the administration of funding under the PPG. But EPA’s regional offices still face pressure on the one hand from national program offices to produce detailed activity-based accounting of grant funds disbursed to the states. On the other hand, the regions are supposed to distribute block grants to the states and approve PPAs significantly less detailed than the categorical grant workplans under the old system.

In principle, the 1993 Government Performance and Results Act, which requires strategic planning by federal agencies, might be expected to provide statutory clout helpful in overcoming the inertia of the old system of delegation and oversight. At least in its early stages of implementation, however, GPRA appears to be increasing pressures on both EPA and the states for traditional, activity-level accountability. GPRA requires EPA programs to account for all spending, including grants to the states, according to strategic objectives and sub-objectives. Performing this accounting for states with PPGs is difficult if not impossible — PPGs are, after all, intended to be unified, consolidated block grants grounded in environmental outcomes, not program activities. This difficulty is compounded by the fact that the GPRA objectives do not match states’ activities and goals well. In response, EPA regional staff either seek information not normally available to them in NEPPS states or simply estimate state expenditures for each GPRA category. States are concerned both that they will be evaluated or assessed based on estimates of dubious quality, and that they will lose flexibility if PPGs essentially revert back to categorical grants.

Beyond inertia in the system, NEPPS is handicapped by poor data systems. Sound environmental data is a critical prerequisite for a performance-based system. But performance needs to be measured — in fact, performance needs to be defined. To some extent, states and EPA have taken performance-based management to mean program management solely by environmental outcomes. (Indeed, such a regime is presupposed by some states’ extreme interpretation of flexibility as “freedom” under NEPPS.)

However, a number of barriers exist to management by environmental outcomes. To start, it is inherently difficult to attribute changes in ambient conditions to environmental management activities, owing to the complexity of forces, both natural and anthropogenic, that affect the environment. Further, many of these influences have their origins outside the state in question. Thus, even if perfect data on environmental conditions were available, it would be difficult to determine whether changes from year to year resulted from a state’s environmental programs or from other factors. Clearly, outcome-based management under NEPPS must operate within the bounds of the theoretically practical.

Within the bounds of the possible, however, a number of technical, cultural, and legal barriers to management by environmental outcomes exist. While EPA is making information systems a priority, the national program databases do not at present provide the quantity or quality of environmental data needed to manage based on outcomes. Nor do they readily permit the manipulation of this data necessary to link environmental outcomes to program activities. In addition, there are technical incompatibilities between EPA’s and states’ data systems that make electronic sharing of data difficult if not impossible. (Facilitating data interchange is a current joint priority between EPA and the states.) Further, absent some sort of congressional action, federal statutes and regulations for some programs still require prescriptive, activity-based reporting and management.

All these barriers interact most perilously and loom highest in the most contentious issue in NEPPS: enforcement. The disputes are often ones of means versus ends. States generally adopt the position that enforcement is not a stand-alone goal but, rather, a tool for achieving compliance and ultimately environmental improvement. EPA agrees that enforcement should be an inte-
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Our interviews and research clearly indicated a set of conditions under which the mechanisms and enabling components NEPPS established do contribute substantially to the outcomes its founders envisioned. These conclusions are of interest in large part because they illustrate the burdens that the "old system" of managing the state-federal relationship under the national statutes imposes on all parties.

These benefits were most notable when PPAs and PPGs function as "ruling documents." As noted, PPAs and PPGs are the principal mechanisms whereby oversight changes are negotiated and effected. Significant change from the status quo is thus unlikely when the PPA and PPG are not ruling documents — that is, when they do not supplant categorical grant workplans or establish the annual program commitments and deliverables that form the basis of oversight.

PPAs as ruling documents take a variety of forms and approaches. They may incorporate program commitments directly, or program commitments may be incorporated by reference to other documents. (Oklahoma’s PPA, for example, stipulates that the state agency’s integrated objective-based resource planning document shall substitute for categorical work plans.) In Massachusetts, the PPA is a high-level strategic document, and specific program commitments are included in the PPG workplan.

When PPAs are not ruling documents, they tend to be either philosophical in nature (outlining agency missions and respective roles), simple statements of agency priorities, or documents focused on outlining areas of federal-state cooperation outside the functioning of core programs. In these cases, the real influence the PPA can have is marginal — hard connections between the PPA, program deliverables, and the basis of and metrics for program oversight are lacking.

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When this key tool is disabled through the existence of other conflicting prescriptive documents, NEPPS programs will almost necessarily achieve marginal results.

However, when the PPA and PPG, taken together, integrate the development and documentation of program commitments with an agency’s resource and strategic planning efforts, they can be a powerful tool both for eliminating redundant planning effort and for enabling unified, agency-wide, priority-based management. Thus beyond its desired function as a ruling document in the oversight process, the combined PPA/PPG can and should also be an “integrating document” for previously disparate internal planning functions.

In principle, NEPPS permits the state agency to substitute its resource and strategic planning documents for (or transparently modify them to become) grant workplans. Constructing and negotiating categorical grant workplans has historically been a staff- and time-intensive activity for state agencies. Annual agency resource planning exercises (conducted either centrally or at the division level) are likewise resource-intensive. And while agency resource planning must reflect categorical workplan commitments, the two have usually been distinct exercises. PPAs or PPGs can significantly reduce this redundancy, producing administrative savings and reducing the transaction costs of administering delegated programs.

The ability of PPAs to link program commitments transparently to agency strategic objectives attains particular importance when state agencies must respond to strategic planning and performance-based budgeting mandates. Under traditional categorical grant workplans, specifying this linkage is difficult, necessitating an arduous exercise to map program commitments to strategic objectives. Such mandates are now widespread at the state level.

Thus, a PPA/PPG functioning as an integrating document is a tool for both eliminating redundancy and thereby delivering administrative savings and enabling unified, priority-based management. Such use, of course, also increases the importance and relevance of the PPA/PPG, which is forced to either reflect or become the instrument of central agency planning. As such, the program commitments and strategic directions the document contains will command the attention of top management.

When the state does not use the PPA/PPG as an integrating document, NEPPS’ potential for delivering administrative savings and promoting priority-based management is substantially diminished. Indeed, the effort devoted to PPA or PPG preparation is likely to be particularly burdensome, because it is additional to existing efforts and not balanced by efficiencies or other savings.

Grant consolidation under PPGs is another principal source of potential state administrative savings. This is the case because administrative costs tend to scale by the number of grants received, and because detailed grant activity reporting tends to be diminished for PPGs. States that do not pursue PPGs deprive themselves of this potential economy. Deriving such savings almost necessarily requires a centralized approach to grants management; savings are difficult to realize if grant management activities are duplicated across a large number of program offices.

PPGs were also, as mentioned, intended to be a key mechanism for delivering flexibility under NEPPS. Most directly, PPGs were to permit reallocation of grant funding to meet priorities. While some of our case study states did use the PPG to undertake very limited fund-shifting, no state was engaged in significant fund-shifting under its PPG, because of both internal resistance from programs and external resistance from stakeholders and EPA.

NEPPS was established without detailed guidance — to provide room for experimentation. But if it is to continue, the system is in need of systematization. Ironically, as the federal and state governments have turned to performance-based management as the new governing principle for environmental federalism, the magnitude of the institutional changes required to implement such a new management system have resulted in a consuming
But the disappearance of NEPPS would be problematic. The issues that drove the creation of the new system have not gone away, and the imperatives for addressing them are stronger than ever. EPA is likely to encounter substantial resistance from states if efforts are made to roll back even NEPPS’ current levels of flexibility and less-detailed oversight. Returning to single-program management and categorical workplans would be difficult at best. And in any case, resolution and forward movement on these issues are critical to effective and efficient delivery of environmental protection — particularly if environmental agencies are to address next generation environmental problems.

It is not that only one solution is possible or correct. Rather, a workable framework must be found that takes advantage of the relative strengths of EPA and the state agencies while managing the inherent tensions in the state-federal relationship — and, meanwhile, facilitating innovation without sacrificing baseline environmental standards. Broadly stated, these relative strengths are clear enough. The federal establishment has greater enforcement resources, is better insulated from local politics, and often has the ability to pursue larger penalties. EPA has the technical resources (and the statutory obligation) to develop health-based and technology standards. And clear economies of scale exist when environmental tools and resource materials are developed nationally. At the same time, state agencies are closer to the regulated community and to the public. This is critical for effective front-line delivery of compliance assistance and pollution prevention, as well as for effectively identifying and targeting environmental priorities.

The Environmental Law Institute also conducted a study of NEPPS for the National Academy of Public Administration Report. In “Mixing Management Metaphors: The Complexities of Introducing a Performance-Based State/EPA Partnership System into an Activity-based Management Culture,” based on 50 interviews in eight states and two regional offices, ELI found that “the basic goals and elements of NEPPS are sound, but its full promise has not yet been realized because of implementation problems.” ELI too concluded that multimedia, performance-based management is essential to an effective partnership between both levels of government, and it also saw further congressional action as essential to moving from a bean-counting system to one focused on environmental results.

The Tellus Institute issued five recommendations for the National Academy of Public Administration to consider in drafting its environment.gov report. First, develop clear guidance on the scope of federal oversight. Second, resolve the conflicts between NEPPS and the Government Performance and Results Act. Third, better integrate federal and state enforcement within NEPPS. Fourth, improve the institutional infrastructure for performance-based management, including better environmental information. And fifth, establish minimum standards and best practices for NEPPS implementation.

Is NEPPS the only possible framework for progress? Not necessarily. But it is the most substantive reform effort to emerge to date, and there are no obvious alternatives. Leadership in this area is needed, though the issue is admittedly unglamorous — arcane, conducted in the highly specialized language of environmental bureaucracies, and apparently removed from the environmental outcomes and priorities where the public interest rightly focuses. Our interviews with more than 100 state and federal environmental officials on the state-federal interface make clear that the current “churn” is debilitating and unsustainable. Failure for the new administration — or Congress — to provide this leadership bodes ill for the nation’s ability to effectively address an increasingly serious “next generation” of environmental problems.