

National Environmental Performance Partnership System FY05 National Guidance

“EPA’s partnership strategy is based upon the belief that States and EPA are equal partners in the national effort to protect human health and the environment.” (2003-2008 EPA Strategic Plan, p. 131)

I. Introduction

In 1995, EPA and State leaders agreed to a framework for developing stronger partnerships between EPA and States – the National Environmental Performance Partnership System (NEPPS). Through NEPPS, EPA and States are working to build an environmental performance system in which goals, priorities, and strategies are based on information about environmental conditions, and progress is evaluated based on results actually achieved in the environment. Performance partnerships are designed to help achieve better environmental results by taking full advantage of the unique capacities of EPA and States and leveraging our collective resources most efficiently and effectively to address the most pressing environmental problems.

Purpose and Objectives

The Office of Congressional and Intergovernmental Relations (OCIR) is the lead office for performance partnerships (see discussion below). To fulfill its commitment to EPA Regions and States, OCIR is issuing national guidance on performance partnerships for the first time in FY05. Since performance partnerships are integral to planning and implementing national environmental programs, the guidance is being issued in conjunction with the Agency-wide process for production and review of national program guidance through the Office of the Chief Financial Officer (OCFO).

This is three-year guidance, covering FY 2005-2007. The guidance does not create any new requirements, but rather, is a compilation and update of existing policies and initiatives. It is intended to serve as a reference for EPA and State practitioners and managers who are involved in or are considering the negotiation of Performance Partnership Agreements (PPAs)¹ or Performance Partnership Grants (PPGs). The guidance also explains improvements designed to better align EPA and State planning processes that should increase State involvement and result in more effective partnership agreements. Developed by a joint work group of EPA and State leaders, the improvements address implementation issues identified through previous evaluations of the performance partnership system.

¹This document, in part, provides guidance to EPA staff on the development and use of Performance Partnership Agreements (PPAs) with State governments. The guidance is intended to serve as a resource to assist EPA staff negotiate a PPA with any State, but does not impose any legally binding requirements.

The guidance covers the following topics:

- Framework and Infrastructure of Performance Partnerships: Overall goals of performance partnerships, PPAs and PPGs as implementation tools, roles of the Performance Partnership Steering Committee and OCIR.
- Advancing Performance Partnerships: Aligning EPA and State planning processes, improving PPAs as planning and management tools, and implementation goals for alignment and PPA improvements.
- Performance Partnership Grants: Purpose and benefits of PPGs, relationship to the 40 CFR 35 grant rule, update of grants eligible for inclusion in PPGs.
- Joint Evaluation: Joint evaluation of grant agreements, as well as of individual State-EPA partnerships, and the NEPPS system in general.

Important Note about Tribes: This guidance addresses performance partnerships between EPA and States. EPA Regions and Tribes may also find this guidance useful in negotiating partnership agreements. While Tribes can combine grants in PPGs, Tribal grants are subject to different administrative and match requirements (see 40 CFR Part 35.500-36.735).

II. Framework and Infrastructure for Performance Partnerships

Goals of 1995 NEPPS Agreement

The following goals have remained constant since they were first expressed in the 1995 *Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System*, an agreement between EPA's Administrator and Deputy Administrator and officers of the Environmental Council of States (ECOS):

- Promote joint planning and priority-setting based on information about environmental conditions and program needs;
- Give States greater flexibility to direct resources to the most pressing environmental problems;
- Foster use of innovative strategies for solving water, air, and waste problems;
- Increased use of indicators and outcomes to measure environmental and program results;
- Improve public understanding of and engagement in environmental protection efforts.

Tools to Build Performance Partnerships

Now entering its ninth year, NEPPS has become the predominant way for States and EPA to coordinate the delivery of environmental programs. Environmental, health, and agricultural agencies in nearly every State are using one or both of the primary tools for implementing NEPPS – Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs).

- Performance Partnership Agreements (PPAs) are agreements between individual States and EPA Regional offices. Each PPA is different, but PPAs typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of each partner; and the measures to be used in assessing progress. There are no specific requirements for PPAs, and the scope and content of individual PPAs can vary. Some contain a summary of basic goals and priorities. Others cover just one or two program areas, programs for which PPG-eligible grants will be combined in a PPG, or special initiatives that the State and EPA plan to work on together. The most comprehensive PPAs are strategic, performance-based agreements that serve as the work plan for the grants and programs within their scope.
- Performance Partnership Grants (PPGs) allow States and interstate agencies to combine multiple, PPG-eligible environmental program grants into a single grant. PPGs streamline administrative requirements and provide States with flexibility to direct resources where they are needed to address their most pressing environmental problems. PPGs also make it easier to fund efforts that involve multiple programs, such as geographic initiatives or data management projects.

At the end of 2003, PPAs were in effect between EPA and 32 State agencies, and over 50 State environmental, public health, and agricultural agencies had elected to receive some or all of their environmental program grant funds in PPGs.

EPA is committed to advancing performance partnerships by building on the successful foundation that is already in place and by promoting greater understanding and use of performance partnership principles and tools. In FY2005-2007, a major focus will be working to implement and evaluate improvements that were developed in a collaborative effort by an Alignment and Performance Partnership Agreement Work Group comprised of EPA and State leaders (hereinafter, Alignment/PPA Work Group). The improvements are designed to better align EPA and State planning processes and enhance the value of PPAs as effective instruments for coordinating the delivery of environmental programs.

Role of the Performance Partnership Steering Committee

Recognizing the need for an ongoing mechanism for engaging the Agency's senior leadership in promoting performance partnerships, the Deputy Administrator established the Performance Partnership Steering Committee in July 2002. Comprised of Deputy Assistant Administrators and Deputy Regional Administrators, the Steering Committee was initially asked to recommend ways to ensure timely and efficient implementation of the Part 35 grant regulations, including PPGs; identify barriers to full implementation; and review EPA's process for preparing and concurring with program grant guidance to ensure it does not inadvertently conflict with or create barriers to implementing PPGs. A year later, the Steering Committee's charge was expanded to include all performance partnership matters. A staff-level work group supports the Steering Committee.

Role of the Office of Congressional and Intergovernmental Relations

OCIR was named lead office for performance partnerships in 2003.² As lead office, OCIR is responsible for advancing the Administration's goal to strengthen State-EPA partnerships and to facilitate the resolution of policy and implementation issues associated with performance partnerships. In doing so, OCIR will involve all interested program offices -- including the Office of General Counsel (OGC), Office of Grants and Debarment (OGD), and the Office of the Chief Financial Officer (OCFO) -- in developing issues for the Steering Committee, or when necessary, the Deputy Administrator to decide.

For example, there is a presumption that any new State and Tribal Assistance Grant (STAG) program will be approved by the Administrator for inclusion in PPGs,³ unless there is specific legislative or policy history indicating that Congress or the Administration meant for that particular grant not to be included. OCIR will coordinate with the appropriate offices to develop a decision package for the Administrator's signature approving new programs for PPG eligibility. If an EPA office believes a new STAG grant should be excluded from PPGs, the office must notify OCIR. OCIR will convene meetings with interested offices, develop the issue for Steering Committee deliberation, and raise the issue to the Deputy Administrator or Administrator as necessary. OCIR will take similar steps to help resolve internal performance partnership issues involving several offices, such as when a Regional Administrator and an Assistant Administrator disagree over a State request for flexibility.

² Linda Fisher, Deputy Administrator, "Performance Partnership Grant Steering Committee Recommendations and Decisions," memorandum, July 11, 2003.

³Ibid.

OCIR's responsibilities as lead office for performance partnerships also include coordinating the Agency's PPA and PPG development process; assuring that EPA program and grant guidance materials do not inappropriately limit the flexibility available in PPGs; maintaining a clearinghouse of information on performance partnerships; coordinating the work of the Performance Partnership Steering Committee; and developing guidance to advance performance partnerships.

OCIR's roles and responsibilities as the lead office are discussed in more detail in Appendix A.

Goal for FY2005-2007

- OCIR will regularly engage State leaders and the Agency's Performance Partnership Steering Committee to identify key policy and implementation issues and pursue opportunities to strengthen and advance performance partnerships.
- EPA managers and staff will inform OCIR of disagreements between offices on partnership-related matters so they can be resolved by the Performance Partnership Steering Committee, or if necessary, elevated to the Deputy Administrator.

III. Advancing Performance Partnerships

Several evaluations of performance partnerships and the Agency's Managing for Improved Results initiative found opportunities for new approaches that could further advance performance-based State-EPA partnerships. To that end, the Alignment/PPA Work Group collaborated for almost a year on improvements designed to better align EPA and State planning and priority setting processes and have the results of this planning memorialized in PPAs.

The central improvement is a process for more fully engaging States in EPA's planning and budgeting processes. "Alignment" includes both *process alignment*, meaning that processes are timed in an optimal way to foster collaboration and mutual influence; and *directional alignment*, meaning that there is agreement on joint priorities, roles, and accountability for results.

Aligning EPA and State Planning Processes

Implementation will involve working to align several complex planning processes that take place on different schedules and that cover different time periods. Key components and how they fit together are summarized below.

1. The **EPA Strategic Plan** (2003-2008), with its five goal structure and cross-goal strategy for partnerships, provides an overarching framework for EPA's other major planning, budgeting, and priority setting systems.

2. The **EPA Annual Plan and Budget** establishes annual performance targets and funding levels for the fiscal year to support accomplishment of the Strategic Plan. It includes Annual Performance Goals and Performance Measures for each Goal in the Strategic Plan, as well as grant and budget information.
3. **EPA Regional Plans** explain how Regions will make progress toward relevant Agency objectives and sub-objectives over the next three to five years. In the Regional Plans, each Region has an opportunity to highlight its unique environmental conditions and problems and discuss the strategies and tools the Region will use to address each relevant sub-objectives in the Agency's *Strategic Plan*. The Regional Plans provide the strategic basis for developing annual performance commitments between Regions and national program offices, which will replace the former Memorandum of Agreement process. The strategic thinking underlying the Regional Plans should reflect consideration of State priorities and strategies, thus helping to reduce the transaction costs of negotiating PPAs and increasing their value as a unifying agreement that explains how EPA and the State plan to work together on environmental matters.
4. **EPA National Guidances** will present three-year strategies and reflect consideration of information in the Regional Plans regarding State and Tribal priorities. National program guidance for all five major national programs will be issued together so that Regions, States, and Tribes have an opportunity to consider proposed priorities, strategies, and performance measures for all programs at the same time.
5. Ideally, **Performance Partnership Agreements** and Performance Partnership Grant work plans should reflect the results of previous joint planning and priority setting efforts (e.g., around the EPA Regional Plans, National Program guidance, EPA Annual Plan and Budget, and State initiatives). The intent is for States and EPA to regularly engage in joint planning so that both parties' priorities are known and considered when making decisions of mutual importance. States and EPA are strongly encouraged to reflect joint planning in grant work plans and other agreements even in States that do not negotiate PPAs or choose to receive their funds in a PPG.

The new joint planning approach will require investments by both EPA Regions and States to achieve the level of communication and create the shared culture of true partnerships. Once fully implemented, the new approach should lower the transaction costs of negotiating PPAs (or comparable agreements) significantly because conflicts will be identified and issues resolved earlier. Further explanation of the alignment improvements can be found in the OCFO's guidance for the FY05 national program guidance: *Implementing Improvements to Our Planning Processes: Developing National Program Guidance for FY 2005*.⁴

⁴Available at: <www.epa.gov/ocfo/regionplans/fy2005guidancecovermemo.pdf>

Annual Commitment System. A key component of EPA's planning reforms is the replacement of the traditional process in which EPA Regions negotiate Memoranda of Agreement (MOA) with the National Program Managers (NPMs) with a single annual commitment process. Annual Regional performance commitments for the national program priorities and goals that support the five Strategic Goals will focus on the minimum key number of agreed-upon targets and indicators necessary to ensure national and Regional accountability for results, serve as a feedback loop for national program management, and tell the Agency performance story.

The new process for negotiating Regional annual performance commitments will be in place in the summer of 2004. After actively engaging the States, Regions will develop their annual performance targets and enter them into a database by July 1. Throughout the summer, Regions and NPMs will resolve any issues and make final commitments by September 1. Draft Regional targets and final Regional commitments will be posted on the OCFO website for review by EPA stakeholders.

Improving the Value of the Performance Partnership Agreement as a Joint Management Tool

The Alignment/PPA Work Group also developed a framework for improving PPAs so that the agreements incorporate the results of the new joint planning approach and translate them into plans at the operational level. The objective is to strengthen the PPAs so they can serve as the defining document for the State-EPA partnership. The new model for PPAs includes a description of the elements needed to foster alignment with other planning processes and provides a clearer definition of what a PPA should include. The model also provides for stronger accountability and results-oriented evaluation.

The most important way to improve performance partnerships is for States and EPA to engage in joint planning and priority setting – early and often. Effective partnership agreements will reflect the results of the joint planning and priority setting that takes place throughout the year, around such processes as the development of EPA Regional Plans, NPM guidance, and the EPA Annual Plan and Budget.

A fundamental concept underlying performance partnerships is that each State is different, and that each EPA-State partnership negotiation must take into account the particular capacities, needs, and interests of that State. No single approach is appropriate for every State. Each State and EPA Region must decide together what mechanisms and approaches are most appropriate for building their own partnership.

This purposely flexible approach has led to many variations in the scope, content, and format of PPAs. Individual PPAs can range from general statements about how the State and EPA will work together as partners (perhaps identifying joint priorities that will be addressed) to comprehensive, multi-program documents that detail each party's roles and responsibilities. Some PPAs meet relevant statutory and regulatory requirements and also serve as the work plans for PPGs and/or other grants. And while some States have not negotiated formal PPAs, many have nonetheless participated in joint planning and priority setting and other performance partnership-related activities with their respective EPA Regional offices, and the results are articulated in grant or other agreements.

Key Elements of Performance Partnership Agreements

The Alignment/PPA Work Group embraced the flexible approach to building performance partnerships that are suited to the needs and interests of individual States. EPA Regions and States are encouraged to continue making progress from their own current starting points. However, the longer-term goal is to improve the quality and value of PPAs over time so they become the most effective mechanism through which EPA and States can explain jointly-developed goals and priorities and how they will work together to achieve environmental results.

The Alignment/PPA Work Group recommended the elements that PPAs can include to make them most valuable in defining the EPA-State relationship and the work the partners agree to accomplish. These recommended “essential elements” are:

- A description of environmental conditions, priorities, and strategies;
- Performance measures for evaluating environmental progress;
- A process for joint evaluation on the how well the PPA is working and an agreement to implement any needed improvements that are identified;
- A description of the structure/process for mutual accountability, including a clear definition of roles of each party in carrying out the PPA and an overview of how resources will be deployed to accomplish the work; and
- A description of how the priorities in the PPA align with those in the EPA Regional Plan, EPA Strategic Plan, and/or the State’s own strategic (or other related) plan.

Incorporating each of these elements still allows for a wide range of PPAs. The topics may be covered at different levels of detail depending on what is appropriate for a particular State. There is also room for variation in content (e.g., PPAs that cover all programs or just one program), as well as in organizational structure and format.

A State does not need its own strategic plan as a prerequisite for successful participation in joint planning and priority setting with EPA. However, joint planning will be more productive, and ultimately more successful, if both parties have done some degree of strategic thinking in advance and come to the table prepared with their well-developed strategic ideas. Entering into joint planning armed with the results of strategic thinking will help make sound arguments for resources; support requests for flexibility, such as requests to focus on some priorities but not others; and determine appropriate roles and responsibilities of each partner.

A PPA that addresses the recommended “essential elements” will reflect the results of joint planning between EPA and the State and explain the strategic thinking behind the work it

encompasses. In keeping with the flexibility inherent in the NEPPS process, how these elements are addressed in individual agreements may vary. The PPA should also define the roles and responsibilities of each partner and assure accountability by explaining how progress will be measured. With these elements, the PPA can become the unifying agreement that sets out the relationship between EPA and the State and how they expect to work together to implement the strategies for achieving the goals and objectives in the agreement and progress toward environmental results.

Other Considerations in Developing Performance Partnership Agreements

Performance Measures

Ever since NEPPS was created, EPA and States have been working continuously on multiple fronts to improve how we measure the success of environmental protection efforts as well as to improve the data management systems used to report and analyze environmental and program information. Despite significant progress, there are still many opportunities for improvement. Consequently, perhaps the most challenging of the tasks in negotiating PPAs is developing an appropriate, balanced set of outcome and output measures that will allow for flexibility while ensuring accountability. Care should also be taken to minimize the burden of reporting.

Each EPA national program office is working with Regions and States to develop the measures and information they need to manage programs nationally and to be able to report on progress. The NPM guidance for each program should guide the Regions in negotiating appropriate measures for the PPA and grant agreements. Generally, though, PPAs that are broad, strategic documents are likely to focus more on intermediate and long-term outcomes linked to environmental goals and objectives. Implementing these PPAs would typically be supported by more detailed PPG and/or other grant work plans that include shorter-term output measures for activities or work efforts, linked to environmental goals and objectives, that would be undertaken with grant funds. PPAs that also serve as grant work plans would contain similar detail.

PPA Changes and Renewals

The Regional Administrators and State Commissioners are the decision-makers for PPAs; disagreements among staffs should be raised and resolved at that level. Both EPA and States should consider the PPA as voluntarily binding. However, the PPA can be re-opened and changed if both EPA and the State agree to do so; a formal re-opener clause can be included in the PPA if both parties think one is needed. Whenever possible, changes should be reserved for mid-course reviews or when the PPA is being renewed.

Multi-Year PPAs

Some Regions and States elect to negotiate multi-year PPAs that discuss priorities and strategies for two or more years. Although the intent is for such multi-year agreements to remain intact for the duration, they should be reviewed annually to ensure they reflect current needs, and amended if necessary. Although it is possible to negotiate multi-year grant work plans – either as an integral part of, or in support of, the PPA – PPGs and other grants are subject to the annual reporting and evaluation requirements that apply to all Federal grants. While a multi-year work plan can reduce transaction costs by setting out the framework and plans for the goals, objectives, and work to be accomplished over time, specific commitments should be negotiated annually to reflect the amount of funding that is available.

PPAs and Legal Requirements

PPAs are voluntary agreements and cannot “trump” legal requirements such as delegation agreements. However, PPAs can articulate how each partner will fulfill the requirements under delegation agreements or similar legal documents. Should a State and Region wish to review existing legally binding agreements, the PPA can be an appropriate vehicle for setting out how the review will be conducted, taking care to ensure compliance with any legal requirements for changing the legally binding agreement.

Implementing Aligned Planning Processes and PPA Improvements

Implementing the alignment and PPA improvements will not be easy. The changes will not occur overnight, and some will take longer than others. The ultimate success of these improvements rests upon the shoulders of those who are “in the trenches” every day. In some cases, implementing the proposed changes will require a concerted commitment to changing attitudes, perceptions, and business processes – things not always easy to accomplish. Over the next months (and years), the alignment effort and improvements to performance partnerships will be evaluated. As necessary, they will be modified so that joint planning and performance partnerships result in the strongest system for environmental management possible. Everyone involved in implementing these changes is encouraged to share their insights about what works and does not, the lessons they have learned, and their recommendations for improvements.

To help stimulate State strategic planning and implement the alignment and PPA improvements, EPA awarded a grant to ECOS. Eight pilot projects, involving at least 12 States and six Regions, are currently underway with these grant funds in FY2004. While all States can take advantage of the opportunities offered by the alignment and PPA improvement effort, States participating in the pilots are expected to engage with their Regions and to share formally their experiences with other States and EPA through the Alignment/PPA Work Group.

Since the alignment and PPA improvements were recently adopted and it will take time for everyone involved to become familiar with the new approaches, States participating in these 2004 pilots will provide useful lessons that can inform future adjustments to help improve the process as more States participate. Continuous improvements should help reduce the transaction costs of joint planning and, most importantly, help EPA and States work more effectively and efficiently together to achieve environmental results.

Goals for FY2005-2007

EPA staff and managers in Headquarters and the Regions will strive to:

- Provide regular outreach to encourage State environmental, public health, and agriculture leaders to take advantage of all opportunities to engage with EPA in joint planning and priority setting.
- Provide both bottom-up and top-down leadership to ensure the NPMs and Regions are consistently engaging with States in a meaningful way and that States' priorities are fully considered in the Agency's planning and budgeting processes and in the negotiation of PPAs as well as PPGs and other grant work plans.
- Promote PPAs that use the aligned joint State-EPA planning as the starting point for negotiations and address the recommended "essential elements" of effective PPAs.

IV. Performance Partnership Grants

Purpose and Benefits of Performance Partnership Grants

In 1996, EPA asked Congress for new authority that would give States, interstate agencies, and Tribes greater flexibility in how they use and manage Federal grant funds. Congress responded by authorizing EPA to award Performance Partnership Grants (PPGs) in the Omnibus Consolidated Rescissions and Appropriations Act of 1996⁵ and again in EPA's 1998 Appropriations Act.⁶

The Performance Partnership Grant program is designed to:

- Strengthen partnerships between EPA and State and interstate agencies through joint planning and priority setting and better deployment of resources;
- Provide State and interstate agencies with flexibility to direct resources where they are most needed to address environmental and public health priorities;
- Link program activities more effectively with environmental and public health goals and program outcomes;
- Foster development and implementation of innovative approaches such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and
- Provide savings by streamlining administrative requirements.

⁵Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996)

⁶Pub. L. 105-65, 111 Stat. 1344, 1373 (1997)

The Administrator has authorized States and interstate agencies to combine funds from up to 16 environmental program grants into a single grant. States receiving funds in a PPG can realize administrative savings because a PPG requires only a single application, work plan, and budget, regardless of how many environmental programs provide the funds for the PPG. Once funds are awarded in a PPG, the State can direct the funds as needed to achieve work plan commitments and does not need to account for funds in accordance with their original funding program sources.

The minimum cost share required for a PPG is the sum of the cost share amounts required for each of the environmental program grants combined in the PPG.⁷ This composite match provides valuable flexibility to States that may have difficulty meeting the State match requirement for one program grant but enough funds in another program in the PPG to cover the difference.

PPGs also give States an opportunity to direct Federal resources to address their priority environmental problems or program needs. The simplified accounting for PPGs also makes it easier for States to try multi-media approaches and initiatives that were difficult to fund under traditional categorical grants. PPGs also give States greater flexibility to negotiate work plans with EPA that direct resources to their priority environmental problems or program needs.

Role of the Part 35 Grant Rule

State PPGs are governed by the regulations in 40 CFR Part 35, Subpart A: “Environmental Program Grants – State, Interstate, and Local Agencies.”⁸ These revised grant rules, which govern categorical program grants and PPGs – became effective in 2001. Sections 35.100-118 detail the administrative requirements for all grants, and Sections 35.130-138 pertain to PPGs specifically. This guidance does not introduce any administrative requirements not included in these sections.

The Part 35 rule was designed to incorporate the principles of NEPPS – fostering joint planning and priority setting, promoting results-oriented environmental programs, and requiring joint evaluations – even for States that choose to continue receiving their funds in categorical grants. However, States have the greatest administrative and programmatic flexibility under PPGs. At a minimum, a State can save on administrative costs because of the reduced paperwork involved in applying for and managing a PPG. In the most flexible form of PPG, a State can negotiate a work plan with EPA to increase efforts in some program areas where the State's environmental protection needs are greater, and decrease them in others where the State's needs are less.

⁷If a program has both a match and a maintenance of effort requirement, the greater of the two amounts is used to calculate the minimum cost share for that program.

⁸See Part 35 rule at: www.epa.gov/fedrgstr/EPA-TOX/2001/January/Day-09/t218.pdf

States are not required to negotiate PPAs with EPA in order to request funds in a PPG, but a PPA (or comparable agreement) often serves as the strategic underpinning for a PPG and other grants. The PPA itself also can serve as the grant work plan *if* it meets the requirements in 40 CFR Part 35.107. Many States and Regions now have PPAs that also serve as grant work plans. A comprehensive PPA that serves as the PPG work plan can be the most strategic, flexible, and outcome-oriented option for States and Regions.

Under PPGs, States have the same accountability for achieving the commitments in their grant work plans as they do for any other grant. Developing and managing a PPG involves coordinating the work of many offices, and the process varies among the Regions. In all cases, however, EPA Regional program managers are responsible for ensuring that the PPG work plan contains appropriate commitments for their respective program areas; they also participate in reviews and evaluation to monitor progress and identify and address problems. In addition to funding traditional program activities, PPGs can help programs achieve environmental goals that require work across multiple programs, such as sector or geographic initiatives, and they can fund data management and similar projects that will benefit all programs.

Some of the grants eligible for inclusion in PPGs are competitive, that is, States must successfully compete with other States and sometimes other entities to be awarded these funds. PPG considerations are not a factor in decisions about competitive award recipients. The schedule for grant competitions varies, but award decisions are typically not made until later in the year than for the categorical program grants. This means that EPA and the State are not likely to know whether or not the State will be receiving that grant until after the PPG has been negotiated. If the State does receive a competitive grant, the grant can be folded into the PPG if the State wishes to do so. However, the PPG work plan must be amended to include the specific work plan commitments that were the basis for the award. This requirement assures fairness in the competition as well as accountability.

Related Grant Policies

Environmental Results Policy

Approximately one-half of EPA's budget is awarded to States and Tribes and to educational, nonprofit, and other organizations. To meet its obligations under the Government Performance and Results Act (GPRA), EPA must be able to link the work performed with grant funds to the achievement of the goals and objectives in the EPA Strategic Plan. To do this, a new EPA Order⁹ will require project officers to link proposed assistance agreements to the Agency's Strategic Plan; ensure that outputs and outcomes are appropriately addressed in work plans, solicitations, and performance reports; and consider how the results from completed assistance agreement projects contributed to the Agency's goals and objectives.

⁹The draft EPA Order on "Environmental Results under EPA Assistance Agreements" is in Agency-wide review as of the time of this guidance. It is expected to apply to all grants and cooperative agreements awarded after September 30, 2004. The draft Order and implementation guidance for grants officials are available from the Office of Grants and Debarment.

This order recognizes that PPGs and categorical State and Tribal grants are among the primary mechanisms through which the nation's environmental programs are implemented. Because 40 CFR Part 35 already requires workplans that include performance measures (outcomes and outputs) and a joint evaluation of grant agreements, the only additional requirement is that project officers must list on the funding documents the EPA Strategic Plan goals, objectives, and subobjectives that the grant supports.

Grants Competition Policy

EPA's grant competition policy ensures that when grants are competed, they are done so according to accepted government-wide principles of grant competition. Although these requirements do not apply to State program grants, there are competitive grants (e.g., wetlands, pollution prevention) that States are eligible to receive and that may be combined into a PPG. These competitive grants must adhere to the Agency's competition requirements.¹⁰

Grants Eligible for Inclusion in PPGs

Congress determined which individual environmental program grants would be eligible for the PPG program when it first authorized the program in 1996. Under 40 CFR Part 35.133(b), the Administrator has the authority to add, delete, or change the programs eligible for PPGs.

It is Agency policy¹¹ to presume that any new STAG grant program will be approved for inclusion in a PPG unless there is specific legislative language or an Administration policy determination to the contrary. For each new PPG-eligible grant program in the STAG appropriation, the Administrator will make the final decision whether that grant is approved for inclusion in a PPG. The grant programs that are eligible and authorized for inclusion in PPGs in FY 2005 are shown in Table 1 on page 15.

Goal for 2005-2007

EPA managers and staff will promote the advantages of strategic planning and the flexibility available through PPGs to encourage more States to receive their environmental program grant funds in the form of PPGs and/or to expand the scope of their existing PPGs to include more eligible grant programs.

¹⁰For more information, see <<http://intranet.epa.gov.ogd.compet/>>

¹¹ Linda Fisher, Deputy Administrator, "Performance Partnership Grant Steering Committee Recommendations and Decisions," memorandum, July 11, 2003.

Table 1. Grant Programs Eligible for Performance Partnership Grants*

Grant Program	FY04 Budget	FY05 Budget	Required Match
Air Pollution Control – CAA 105	\$166,050,000	\$166,050,000	40% **
Radon Assessment and Mitigation –TSCA 306	\$8,150,000	\$8,150,000	50%
Water Pollution Control – CWA 106	\$200,400,000	\$222,400,000	0% **
Water Nonpoint Source Implementation -- – CWA 319	\$238,500,000	\$209,100,000	40% **
Wetlands Development Grants Program – CWA 104(b)3 (<i>competitive</i>)	\$20,000,000	\$20,000,000	25%
Water Quality Cooperative Agreements – CWA 104(b)3	\$19,000,000	\$20,500,000	0%
Public Water System Supervision --SDWA 1443(a)	\$105,100,000	\$105,100,000	25%
Underground Injection Control – SDWA 1443(b)	\$11,000,000	\$11,000,000	25%
Hazardous Waste Management – SWDA 3011(a)	\$106,400,000	\$106,400,000	25%
Brownfields Response – CERCLA 128(a)*	\$60,000,000	\$60,000,000	0%
Underground Storage Tanks – SWDA 2007(f)2	\$11,950,000	\$37,950,000	25%
Pesticides Program Implementation – FIFRA 23(a)1	\$11,100,000	\$11,100,000	0%
Pesticides Applicator Certification & Training 23(a)(2))	\$2,000,000	\$2,000,000	50%
Lead-Based Paint Activities – TSCA 404(g)	\$13,700,000	\$13,700,000	0%
Toxic Substances Compliance Monitoring – TSCA	\$5,150,000	\$5,150,000	25%
Pesticides Cooperative Enforcement – FIFRA 23(a)1	\$19,900,000	\$19,900,000	0%
Environmental Information Exchange Network* -- Authority in EPA Appropriations Acts	\$25,000,000	\$25,000,000	0%
Pollution Prevention Initiatives – PPA 6605 (<i>competitive</i>)	\$6,000,000	\$6,000,000	50%
Sector Program (compliance/enforcement)* (<i>competitive</i>)	\$2,250,000	\$2,250,000	0%
State/Tribal Performance Fund* (<i>competitive</i>) Authority in EPA Appropriation Act	\$0	\$23,000,000	TBD
TOTAL funds eligible for inclusion in PPGs	\$1,094,150,000	\$1,137,250,000	

Budget data source: 2005 President's Budget

* Program added to list of grants eligible for PPGs after publication of the Part 35 rule. These programs are anticipated to be PPG eligible and authorized (pursuant to the Deputy Administrator's July 11, 2003 memorandum) pending a notice in the Federal Register.

**State must also meet Maintenance of Effort requirements.

V. Joint Evaluation of Performance Partnerships

EPA and States share responsibility for building successful partnerships, working to make the best use of our collective resources to achieve environmental and program results. Defining the roles and responsibilities of each partner is integral to developing performance partnership and grant agreements, and successful implementation of these strategies and plans is dependent upon the partners carrying out their respective parts. Joint evaluation – in which EPA and State officials assess progress and remaining challenges together – facilitates mutual understanding of each other’s strengths and opportunities for improvement, and sets the stage for continuous improvements in how they work together.

A well-managed system for conducting joint evaluations is essential to resolving the tension between providing more flexibility to States through PPAs and PPGs and ensuring accountability for results. Joint evaluation also provides EPA with the information needed to demonstrate the results of the significant Federal investment in State and Tribal assistance grants¹² and comply with GPRA. Joint evaluation also provides an opportunity for reviewing EPA’s progress in meeting its own commitments to the State, such as for providing technical assistance, staff training, and analytic or legal support.

Joint evaluation of performance partnerships takes place at several levels and in many ways.

Joint Evaluation of Performance Partnership Grants and Categorical Grants

Joint evaluations of State grants serve several key purposes. Evaluations assure compliance with State grant rules (40 CFR Parts 31 and 35). They also produce valuable performance information to support State and EPA program planning and decision making and provide assurance to officials and the public that EPA and the States are carrying out their environmental program responsibilities. These evaluations are also of interest to NPMs, as they may help in gauging the results being achieved with State program grants.

EPA’s Office of the Inspector General (OIG), in a March 21, 2003 report entitled *EPA Must Emphasize Importance of Pre-Award Reviews for Assistance Agreements*, highlighted EPA’s responsibility for ensuring that Regions and States conduct joint evaluations of grant agreements. Of the 53 grant agreements reviewed, OIG found that only 14 contained information on how EPA and the State will evaluate performance.

Though the requirement for joint evaluations extends only to grant agreements, the principles can serve as the foundation for a broader evaluation of PPAs and the performance partnership system as a whole.

¹²In FY 2003, Congress appropriated nearly \$1.2 billion, or 15 percent of EPA’s budget, for State and Tribal assistance grants to implement environmental programs.

Part 35 Grant Evaluation Requirements

EPA's Part 35 grant rule recognizes the importance of the State partnership in evaluating results, and establishes a joint evaluation requirement at 40 CFR Part 35.115. 40 CFR Part 31.40 provides additional detail on the requirements for a satisfactory evaluation of State grant agreements.

The Part 35 rule sets out the elements for the joint evaluation process for State grants, including PPGs. The elements are:

- (1) A discussion of accomplishments as measured against work plan commitments;
- (2) A discussion of the cumulative effectiveness of the work performed under all work plan components;
- (3) A discussion of existing and potential problem areas; and
- (4) Suggestions for improvement, including, where feasible, schedules for making improvements.

EPA and the State must produce a documented joint evaluation within 90 days of the end of the grant period. All parties understand that this evaluation will be based on available program data and reports.

EPA and State officials recognize that the concept of joint evaluation applies throughout the entire year in a variety of contexts. Over the course of the year, such as during State-EPA mid-year meetings, much more substantial joint reviews can take place that can provide a deep understanding of environmental and program conditions. Regions and States are strongly encouraged to engage in these more in-depth interactions, as they provide the feedstock for successful joint planning and priority setting. While it is important to satisfy regulatory requirements for grants, it is more important to do so in a way that maximizes use of information and draws upon the knowledge of State and EPA program staff to produce evaluations that feed a meaningful PPA planning process.

Over the course of FY 2004 and FY 2005, OCIR hopes to work with OGD and EPA Regions to establish a repository so that all program offices and other parties will have access to performance information relevant to areas of interest.

Appendix B contains an example of a process developed by a State and Region for conducting joint evaluations as well as sample language taken from a PPA that describes a joint evaluation process. In the example provided, the PPA also serves as the grant work plan, so the evaluation process for the PPG and the PPA is the same. Other Regions and States use other approaches that can work equally well, and may have other examples to share.

Goals for FY2005-2007

- EPA staff and managers in the Regions will implement a system of joint evaluations of State grants, including PPGs, to ensure accountability for results, assess the overall effectiveness of grants and performance partnership agreements, and identify and correct problems in implementing commitments made between EPA and States.

Joint Evaluation of Performance Partnerships at the National Level

The NEPPS framework includes a commitment to joint evaluation of the performance partnership system. At the national level, EPA and State officials have used a variety of mechanisms to review how well the performance partnership system is working and to identify needed policy or procedural improvements.

The work now underway to better align EPA and State planning processes and improve the value of PPAs grew from a joint EPA-State examination of performance partnerships and related issues. During the coming planning cycles, the planning alignment and PPA reforms will be evaluated to see whether additional refinements are needed. The PPG issues raised by State and EPA participants in a series of recent workshops are now on the agenda for resolution by EPA's Performance Partnership Steering Committee.

From the outset, EPA and State officials recognized that developing better performance measures and better information about environmental conditions were essential to fully implementing the results-oriented environmental management system envisioned in NEPPS. A major NEPPS goal – to provide States with greater flexibility to develop and implement strategies to address their environmental priorities while holding them accountable for the results they achieve – is predicated on having appropriate performance measures. Consequently, EPA and States will continue to work together – both at the national level and in individual States – to refine performance measures and associated information so that progress and needs in achieving environmental results can be assessed.

Joint Evaluation of Individual EPA-State Performance Partnerships

By design, there are no specific requirements for the performance partnership negotiation process or for the scope, contents, and structure of PPAs. This allows each EPA Region and State to work out agreements that are appropriate to the needs and conditions of the State. Similarly, the process and contents for joint evaluation of individual EPA-State performance partnerships are not specified and can be designed to fit individual circumstances. At a minimum, EPA and the State are urged to reach agreement on how they will jointly evaluate their partnership, and ideally, outline their evaluation plans in the PPA. Taking stock periodically of the State-EPA partnership can be valuable for all States, however, even if they do not negotiate PPAs.

The original NEPPS goals (see page 2) can provide a good starting point for State-EPA discussion about what is working and where improvements are needed in the partnership. A discussion centered around the recommended elements of a PPA (see page 8) can help the EPA Region and the State delve more deeply into their strategic planning efforts and how well they are working. Central to any evaluation is assessment of progress toward the goals and objectives set out in the PPA.

While there are no specific requirements for joint evaluation of PPAs that do not serve as grant work plans, the joint evaluation requirements for grant agreements – described above – can also be useful in guiding broader reviews of performance partnerships.

The results of these joint evaluations – along with an assessment of environmental conditions and program needs – should inform the next round of partnership negotiations.

VI. Conclusion

The unique relationship between EPA and States is the cornerstone of the nation's environmental protection system. Working together, EPA and States have made enormous progress in protecting our air, water, and land resources.

With performance partnerships, EPA and States are working to build a performance-based system for environmental protection. As the effort has grown and matured, performance partnerships have strengthened EPA-State relationships, promoted joint planning and priority setting based on an understanding of environmental conditions and program needs, focused resources on the most pressing environmental problems and needs, and fostered the development and use of environmental indicators to assess progress.

The experience EPA and States have gained has also pointed to improvements that would make performance partnerships still more effective. The Alignment/PPA Work Group recognized that the key to making the system work better is strengthening joint planning and priority setting – and the steps now underway to align EPA and State planning set the stage for that to happen. PPAs, PPGs, and other grant agreements that stem from a better aligned planning process will reflect consideration of EPA national, regional, and State priorities. PPAs that address the essential elements can be viewed as the definitive agreement setting out the relationship between the parties.

The alignment and PPA improvement effort, which began in 2003 and builds on progress achieved over many years, may take several years before the changes are fully in place. The Alignment/PPA Work Group plans to monitor implementation and recommend mid-course corrections as they are needed.

Implementing the initiatives outlined in this guidance will go a long way to advance stronger, more effective State-EPA partnerships that provide States with the flexibility they need to target State-specific priorities, balanced with a results-based system of accountability that will support achieving national goals. EPA staff and managers are encouraged to work with *every* State to take advantage of these opportunities and begin implementing these strategies – starting from whatever point is appropriate and working toward whatever level or type of partnership agreement makes sense for each State.

**Office of Congressional and Intergovernmental Relations:
Lead Office for Performance Partnerships
Roles and Responsibilities and Issue Resolution Process**

The Office of Congressional and Intergovernmental Relations (OCIR) was named lead office for performance partnerships by the Deputy Administrator in a July 13, 2003 memorandum.¹³ As lead office, OCIR is responsible for advancing the Administration's goal to strengthen the State-EPA partnership and for facilitating the resolution of policy and implementation issues associated with performance partnerships. OCIR's responsibilities include:

--Securing Administrator's approval for new grants to be eligible for PPGs. There is a presumption that any new State and Tribal Assistance Grant (STAG) program will be approved by the Administrator for inclusion in PPGs,¹⁴ unless there is specific legislative or policy history indicating that Congress or the Administration meant for that particular grant not to be included. OCIR will coordinate with the appropriate offices to develop a decision package for the Administrator's signature approving new programs for PPG eligibility.

- If an EPA office believes a new STAG grant should be excluded from PPGs, the office must notify OCIR.
- OCIR will convene meetings with all interested offices, including the Office of General Counsel (OGC), Office of Grants and Debarment (OGD), and the Office of the Chief Financial Officer (OCFO); develop the issue for Steering Committee deliberation; and raise the issue to the Deputy Administrator or Administrator as necessary.
- When the Administrator determines a program is eligible for inclusion in a PPG, OCIR will prepare an announcement for the Administrator's signature in accordance with 40 CFR Part 35, Subparts A and B.

--Promoting PPG flexibility in EPA program guidance. OCIR may review -- in conjunction with OGC, OGD, and the American Indian Environmental Office (AIEO) -- guidance issued by the National Program Managers (NPMs) to ensure the guidance is consistent with the PPG regulation (40 CFR Part 35, Subpart A and B) and does not inappropriately restrict PPG flexibility. All NPMs will share their drafts for mutual and timely review under the OCFO-led process.

¹³ Linda Fisher, Deputy Administrator, "Performance Partnership Grant Steering Committee Recommendations and Decisions," memorandum, July 11, 2003.

¹⁴Ibid.

--Coordinating the Agency's PPA and PPG development process. OCIR will work with OGD (including the grants competition advocate), program offices, and Regions, as appropriate, to ensure that grant guidance, planning cycles of competitive grants, and other grant-related implementation policies and procedures serve to enhance State and EPA joint planning and priority setting.

--Maintaining a NEPPS information clearinghouse. OCIR will track, analyze, and disseminate information about performance partnerships, such as information on which States are participating in NEPPS with a PPG and/or a PPA and the dollars and grant programs included in PPGs. OCIR will maintain a resource center on the web that will make available all performance partnership policy documents, PPAs, and relevant evaluations. OCIR will also be responsible for responding to Congressional or other third party inquiries about performance partnerships.

--Managing the Performance Partnership Steering Committee. As staff lead for the Steering Committee and staff work groups, OCIR will, as needed, organize sub-workgroups or other forums to address PPG implementation issues. OCIR will coordinate regular PPG work group reports to the Steering Committee on issues and activities. Under the guidance of the Steering Committee guidance, OCIR will consider other longer term initiatives.

--Resolving internal EPA Performance Partnership Grant issues. When internal PPG issues arise (for example, where an NPM disagrees with a Regional Administrator's decision, after appropriate NPM consultation, to accede to a State request for flexibility¹⁵) involved program offices or regions should notify OCIR. OCIR will then:

- Bring the interested parties, including the program and regional offices, OGD, and OGC together to discuss issues and possible resolutions. OCIR will help facilitate an informal resolution if possible.
- If informal resolution is not possible within a reasonable time frame, OCIR will, after consultation with the involved offices, place the issue on the agenda for the Performance Partnership Steering Committee to discuss. The Steering Committee may either resolve the issue by consensus or elevate it to the Deputy Administrator.
- If the issue is elevated to the Deputy Administrator, OCIR, will work with involved offices to coordinate briefing materials, including any Steering Committee advice or position(s), for the Deputy Administrator.
- Decisions of the Deputy Administrator will be final.
- OCIR will work with the Deputy Administrator's office and other involved offices to prepare and communicate any necessary documentation of the decision.

¹⁵ 40 CFR Part 35.107(a)(2) states that "if an applicant proposes a workplan that differs significantly from the goals and objectives, priorities, or core performance measures in the national program guidance . . . the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the workplan."

--Resolving performance partnership disputes involving EPA and external parties. External PPG disputes, such as those between States or other parties and EPA, will be resolved through the EPA Disputes Resolution Process described at 40 CFR Part 31, Subpart F. However, States and Regions should make every opportunity to resolve issues through direct communication and negotiation, with headquarters involvement where appropriate. The dispute resolution process should be regarded as a last resort option. When a State appeals the decision of the Regional Administrator, the Deputy Administrator will be the discretionary review official.¹⁶

--Developing guidance for performance partnerships. As NPM, OCIR will develop and communicate guidance on performance partnerships. Guidance will be updated as necessary, no more frequently than annually. OCIR will follow the Agency-wide process prescribed by the OCFO.

¹⁶Designating the Deputy Administrator as the discretionary review official for external disputes may require a deviation from 40 CFR Part 31, Subpart F.

EXAMPLE – For Illustration Only

I. Joint Evaluation Process for State Agency and an EPA Region¹⁷

40 CFR Part 35 Subpart A, requires an annual, formal evaluation of State and EPA performance in grant work plans for programs covered by Subpart A and receiving Federal assistance grants. Although the primary purpose of the evaluation is to identify progress toward accomplishing the commitments in the State/EPA Performance Partnership Agreement (PPA), the evaluation is also essential in planning, setting priorities, making adjustments to attain improvements, and defining roles in undertaking joint activities.

The PPA contains a binding set of commitments in the form of program-specific work plans, certain priority descriptions, and carryover projects. The work plans are negotiated between each media program and the EPA Region. Each approved work plan reflects consideration of EPA national and regional guidance, State and EPA goals, objectives, and priorities, other jointly identified needs, as well as funding allocations. The basis for the joint evaluation will be the commitments made in the PPA.

The State agency and EPA will undertake a joint evaluation of commitments and accomplishments from the PPA as part of the preparation of the End-of-Year report for the grant period of October 1, 2002 to September 30, 2003.

During the evaluation, the following will be discussed:

- accomplishments as measured against PPA/grant agreement commitments,
- cumulative effectiveness of the work performed under the PPA/grant agreement,
- existing and potential problem areas,
- suggestions for improvement, and
- resolution of issues.

¹⁷In this example, the PPA serves as the work plan for the PPG, so the evaluation process is the same for both the PPA and PPG. Therefore, the “commitments” in the PPA are grant commitments.

Joint Evaluation Process

- Step 1 At the conclusion of the Federal fiscal year and grant period, the State agency and EPA programs will each prepare a draft summary of their commitments and accomplishments as contained in the PPA. Concurrent program-to-program discussions may begin on the accomplishments of the goals, objectives, and commitments. The State agency and EPA will exchange the draft accomplishment summaries by mid-December.¹⁸
- Step 2 State agency and EPA program and enforcement managers will conduct meetings to review their respective findings. They will discuss how to align the drafts, and will report results to their respective senior managers.
- Step3 By December 31, 2003, State agency will produce an End-of-Year report based on the reports and discussions that take place in Steps 1 and 2.
- Step 4 In January 2004. State agency and EPA program directors, with the appropriate senior managers of the two agencies, will meet to discuss results. Senior managers will resolve any outstanding issues by the end of January 2003.

Evaluation Follow-Up

During January and February 2004, the final End-of-Year Assessment report, with other reports - including the Unified Enforcement Oversight Survey- will be distributed to all EPA and State managers to be used to prioritize future efforts and track resolution of issues. Either party may propose changes to the PPA to address new issues or priorities.

During February and March 2004, Programs conduct individual midyear reviews to check in on progress, review and set priorities and plan for future work. The findings and recommendations contribute to subsequent planning discussions, starting with the annual Spring Environmental Directors meeting.

During April or May 2004, State agency and EPA senior environmental directors meet to discuss significant program issues, set joint priorities, and develop plans and strategies to accomplish common program goals.

¹⁸This schedule was prepared for previous years, and would need to be adjusted to meet the Office of Management and Budget's new requirement for all Federal agencies to prepare and distribute their FY 2004 Annual Performance Reports by mid-November.

II. Sample Joint Evaluation language from a Performance Partnership Agreement

Chapter XX Evaluation of the Performance Partnership

The State and EPA will jointly evaluate the success of the performance partnership using the four measures outlined in the PPG guidance as follows.

Does the work undertaken in the PPA:

- Address the stated strategic priorities and goals;
- Achieve administrative cost savings;
- Where appropriate, improve environmental results;
- Improve EPA/State working relationships.

The State and EPA will use the End-of-Year Assessment report to jointly evaluate the partnership's success in achieving the environmental program goals, measures, and commitments contained in this agreement and to jointly plan for next year's PPA.