



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

SEP 22 1993

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: William C. Parler
General Counsel

SUBJECT: FACA IMPLICATIONS OF INTERACTIONS BETWEEN
NRC STAFF AND OUTSIDE PARTIES

Not infrequently, questions arise regarding the applicability of the Federal Advisory Committee Act (FACA) to interactions between the Commission and outside parties. This was central to the complaint in Critical Mass Energy Project v. NRC, No. 84-1943 (D.D.C. 1985), which concerned NRC interactions with the Institute of Nuclear Power Operations (INPO). In the settlement agreement, which is still operative, the NRC agreed that "if it does utilize INPO as an advisory committee for advice and recommendations on policy or regulatory issues it will fully comply with the provisions of the FACA."¹ In addition, from time to time the staff requests guidance on the application of the Act to specific situations involving interaction with outside groups. Although the legal advice in any given situation depends on the specific facts and circumstances, certain general guidance may be helpful to the staff.

NRC advisory committees most often consist of a group of outside individuals who have been appointed as special Government employees for the purpose of holding group deliberations on a subject on which the NRC seeks advice. However, an NRC advisory committee can also consist of a mix of full-time NRC employees and individuals who are not full-time NRC employees working together to develop a mutually acceptable position on an issue that will result in NRC action (or inaction).

A meeting of NRC employees with representatives of outside parties is not subject to FACA requirements if the meeting--

1. is an open public forum in which any attendee is free to render an individual opinion, provided that the

¹Also see NRC policy statement at 50 Federal Register 41480 (October 11, 1985), which was issued in implementation of the settlement agreement.

meeting is not used by the NRC as a source of consensus advice or recommendations;

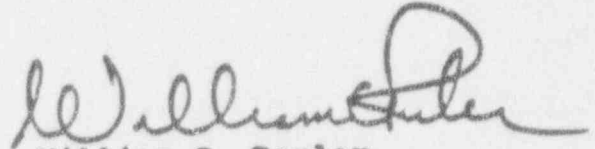
2. involves an exchange of information (as distinguished from recommendations or advice on actions to be taken by the NRC) between the outside parties and NRC employees;
3. involves provision of advice to the outside parties by NRC employees;
4. is initiated by an outside party for the purpose of expressing that party's views to the NRC; or
5. is initiated by a group of outside parties for the purpose of expressing the group's view to the NRC, provided that the agency does not use the group recurrently as a preferred source of advice.

However, a meeting of NRC employees with representatives of outside parties for the purpose of working out an agreed position on an issue that falls within the responsibilities of the NRC may have FACA implications. The more of the following criteria that are present, the more likely that the FACA applies to such a meeting:

1. Solicitation by the NRC of opinions of particular individuals or outside representatives, as opposed to having a public forum in which anyone is free to render an individual opinion.
2. Formal group structure (e.g., chairman designated).
3. Meeting with the same group more than once.
4. Group deliberations.
5. Likelihood that a de facto consensus will develop.

Note that application of the FACA is not dependent on such factors as the substantive content under discussion, the amount of time available for decisionmaking, or the difficulty of finding experts in a particular field. There is also no provision for granting an exemption from application of the FACA. However, careful planning may permit a meeting between outside parties and NRC employees to be structured in such a way as to avoid the application of the Act. The listing (beginning on the previous page) of meetings not subject to the FACA should be useful in that regard.

Jim Fitzgerald is the Assistant General Counsel with supervisory responsibility over FACA questions. However, telephone inquiries on any FACA questions may be made to Susan Fonner (504-1634) or John Szabo (504-1610).

A handwritten signature in cursive script, appearing to read "William C. Parler".

William C. Parler
General Counsel



MAY 17 1993

MEMORANDUM

THE ADMINISTRATOR

SUBJECT: Enhancing State Capacity for Environmental Protection

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrators
Regional Administrators

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 with the parallel efforts on local and tribal capacity.

Since the Task Force completed its work, John and Ron Kreizenbeck from Region X have headed up an Implementation Team which has worked with representatives from the Task Force and several states to draft an outline for an implementation plan on state capacity. This outline categorizes the recommendations of the Task Force and offers a first cut at priorities and timing for each recommendation. I discussed these ideas with the State/EPA Operations Committee on May 12-13. The

states offered a strong endorsement of the report, and the meeting provided a good forum for a state/EPA dialogue on where we are and how we should proceed.

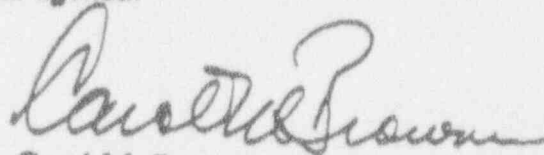
As an important next step, I need your input and participation in the development of this draft implementation plan. I have attached a copy of the draft that emerged from the April 7 meeting with Task Force members and state representatives. I need your assistance with the following:

First, please review the recommendations and proposed actions in this draft outline. We need your thoughts on these recommendations, and tangible proposals from you on how we can advance the plan's objectives in a meaningful way. I expect that these proposals will build on the solid work that is already underway in the program offices and the regions, and will outline new work you intend to start to further strengthen state capacity. Your proposals need not spring directly from the Task Force Report. Please feel free to go beyond the current framework, as long as there is a clear relationship between your proposed actions and the principles and desired outcomes contained in the draft plan. Please note where your office is prepared to take a lead role, and suggest a time frame for each activity. (Please respond by June 4th to Ron Kreizenbeck, State Capacity Implementation Team, H1502, phone 260-2294.)

Second, I ask that you consider how your office can support the ideas in this report as we conduct the base review and prepare our FY '95 budget request. The budget development process will provide a separate mechanism for conveying the resource implications of your state capacity proposals -- both within the base and in terms of new requests.

Under separate cover, I am establishing a steering committee to oversee the completion and execution of this plan. This group will include high level representation from the states and from program and regional offices. The State Capacity Implementation Team will staff the committee.

I look forward to your proposals in response to this draft plan. Our next steps will be critical to our success in improving EPA/state relations and to our success in implementing our nation's environmental agenda.



Carol M. Browner

Attachment

cc: Robert Sussman
Jonathan Cannon
Kathy Aterno
Deputy Assistant Administrators
Deputy Regional Administrators

Report of the
Task Force to Enhance State Capacity
"Strengthening Environmental Management
in the United States"

EXECUTIVE SUMMARY

The concept that states should hold primary responsibility for the operation of regulatory and enforcement program 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.
- 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 for the states and EPA:

1. 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.

2. 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, 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.

3. 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 (EPAB) 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.

(over)

- 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.
- #### 4. 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 an 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.

5. 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.

6. 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.

7. Legislative Action

- Offer language for legislative initiatives 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.



April 21, 1993

NOTE TO THE READER

SUBJECT: Draft Implementation Plan Outline for State Capacity

The attached outline is a developing and dynamic structure for the State Capacity Implementation Plan. It is intended as a draft workplan for specific actions the Agency and the states could take to create a new, collaborative state/EPA relationship.

This outline groups the recommendations from the Consolidated Task Force Report and the four Team Reports under 11 general categories. It will be used initially to capture input from the programs, regions, and states on current and proposed activities which promote the Agencies state capacity building agenda. The outline will then serve as a structure for our discussions on which actions should be taken, by whom, and when. Both the format and the content of this outline are expected to change as discussions proceed with representatives from headquarters, regions, and the states.

The original outline was modified (as flagged) based on an April 7 meeting between state representatives and the four team leaders from the Task Force. This group suggested relative priorities and timeframes for each of the recommendations. These priorities, or the presence or absence of specific recommendations should not be interpreted as Agency policy or the final implementation plan. The intent of the outline is merely to help structure the dialogue on how best to support state capacity.

A handwritten signature in black ink, appearing to read "Ron Kreizenbeck".

Ron Kreizenbeck, Director
State Capacity Implementation Team

Priority	Category/Outcome	Recommendation	Implementation Actions (Examples)	Timing (completion)	Lead Office	Key Actors
	I. EPA POLICY ON STATE-FEDERAL RELATIONS					
	DESIRED OUTCOME: An EPA/State relationship that recognizes states as full partners in environmental management and is expressed in common practice between EPA and the states.					
Essential	A	Establish a new framework and policy for EPA/State relations emphasizing flexibility, a mutually supportive working relationship, and a shared responsibility for successful performance.	<ol style="list-style-type: none"> Through the appropriate mechanisms, EPA and states develop a draft policy statement that articulates a new framework for EPA/state relations. Administrator Brown signs the policy statement and officially transmits it to EPA personnel and state commissioners. Convene a conference with states to meet the new Administrator, review this report, and initiate a continuing dialogue on state/EPA relations. The Administrator incorporates the terms of the policy into the regulatory development and reauthorization processes. 	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> Timelines: Immediate = ASAP Short Term = by September '93 Mid Term = by Spring '94 Long Term = by Spring '95 Ongoing = starts now and continues Shaded # = new item suggested April 7 </div> Immediate Immed Short Fall '93 Short Mid Term		
Essential	B	Review the current policy statements (i.e., Oversight, Delegation, Performance-Based Assistance, Approval of State Programs, State/EPA Enforcement Agreements) that set out the governing principles for EPA/state relations with the intent of issuing a new concise statement capturing the principles espoused in this report.	<ol style="list-style-type: none"> Identify an EPA lead office responsible for the policy review. Establish an inclusive mechanism to review problems associated with the current policies. Draft initial proposal for EPA/State review by Fall '93. Incorporate the policy guidelines into existing State-EPA Agreement, grant, and enforcement negotiation processes. Schedule a review of the effectiveness of the policies 24 months after implementation. 	Immediate Short Short Mid-Long Long Term		
Essential	C	When EPA's basic statutes are reauthorized (e.g., CWA, SDWA, CERCLA, RCRA) seek amendments to outline clearly the roles and responsibilities of the states and EPA, and the nature of the collaborative relationship between them.	<ol style="list-style-type: none"> Forge a state-EPA strategy to secure congressional support for the new state/EPA relationship. Assure that state capacity issues are represented in the reauthorization process. Notify EPA lead on each legislative reauthorization, and encourage lead to seek involvement from the states through the SEOC. 	Ongoing Immediate Short Short		
	II. REVIEW AND OVERSIGHT					
	DESIRED OUTCOME: EPA oversight practices that are built on trust, and which emphasize both mutual accountability and measurable environmental progress.					
Essential	A	Structure program oversight practices to achieve the appropriate balance between program performance in environmental results and accountability for the Federal investment.	<ol style="list-style-type: none"> Review state programs with greater emphasis on environmental accomplishments than program activities. Issue a new policy statement (or guidelines) on grant oversight to clearly define EPA's and the grantee's mutual responsibilities for managing and accounting for public funds. Provide for peer review and self assessment of environmental programs. 	Mid Term		

Priority	Category	Implementation Actions (Description)	Timing (Completion)	Lead Office	Key Actors
Essential	Governmental	<p>Significantly reduce EPA's site specific oversight activities where programs are delegated to states (based on track record), and rechannel these resources into comprehensive program review and state capacity enhancing functions.</p> <p>1. Each State/EPA Agreement will describe the level and nature of the qualitative and quantitative oversight to be exercised by EPA</p> <p>2. Establish one or more Regional Offices to demonstrate the new oversight approach</p> <p>See recommendations on page 13 of Team One report. (Focus on environmental goals and objectives)</p>	<p>Mid Term</p> <p>Long Mid Term</p>		
		<p>III. EPA AND STATE PLANNING</p> <p>DESIRED OUTCOME: EPA recognizes critical state priorities, and states are active players in setting national and regional environmental priorities.</p>			
Essential	Governmental	<p>A. Establish a joint process with all states by FY97 (FY98 for states with mature priority-setting processes) to identify and define clear environmental goals and to systematically integrate federal and state priorities.</p> <p>1. The states and EPA agree that environmental progress can be best assessed by means of measurable improvements toward agreed-upon environmental goals.</p> <p>Goals for Regional, National, or International Concerns:</p> <p>2. In consultation with states, Congress and relevant stakeholders, EPA will identify specific environmental goals for global, national, regional, or geographically defined issues.</p> <p>3. For each goal, EPA will develop interim milestones, directly related to the goal. Each milestone must be supported by specific actions.</p> <p>Goals for State-Specific Concerns:</p> <p>4. In accordance with their respective schedules, states will announce their own environmental priorities.</p> <p>5. EPA will assist states in the goal setting process including the development of a public outreach program.</p> <p>6. States will document unique state priorities which differ from regional or national priorities.</p> <p>Goals for Integrated State and National Concerns:</p> <p>7. Regional Administrators meet with their states to discuss Regional priorities, jointly identify the environmental priorities of each state, and establish integrated regional and state priorities.</p> <p>8. Joint environmental goals are documented in an annual state/EPA agreement. Agreements will specify State and Federal environmental goals that drive program efforts.</p> <p>Program milestones that support environmental goals.</p> <p>Action plans and resource commitments.</p> <p>Measurements of success, and</p> <p>Methods for accomplishing oversight</p> <p>9. Ensure the most effective implementation of a state's program in order to meet national environmental objectives</p> <p>10. Determine how EPA can best support state specific priorities</p> <p>11. To the extent possible assure that Regional initiatives address joint Regional/state environmental goals</p> <p>12. States participate in setting goals and developing planning guidance for the programs and reports</p> <p>13. EPA requires states develop milestones to track the achievement of national and Regional goals. The milestones are built into the annual state/EPA agreements</p> <p>14. Coordinate data collection</p>	<p>Mid-Long</p>		

Priority	Category	Recommendations	Implementation Actions (Examples)	Timing (completion)	Lead Office	Key Actors
Essential			<p>B. Develop core capacity in each state to effectively implement integrated environmental planning and prioritizing functions.</p> <ol style="list-style-type: none"> 1. Build state capacity to understand and manage risk, and to set cross-media environmental priorities. 2. Establish multi-media grants for states to address strategic planning and to support multi-media coordination initiatives. 3. Increase state pollution prevention grants to strengthen core state capacity in pollution prevention. 4. EPA should assist the states in facilitating local comparative risk projects and building other capacity for integrated planning and priority setting. 	Mid-Long		
Essential			<p>C. Standing in FY85 issue periodic public reports by EPA and each state detailing state and federal environmental goals, objectives and priorities, and discussing progress in meeting them.</p> <p>In the SEA process, EPA and states agree on measures of environmental progress to be used in the reports and the measurement period.</p> <ol style="list-style-type: none"> 1. States draft individual progress reports. EPA issues periodic consolidated national reports. 2. Results of the reports become the basis for SEA negotiations. (see B.A.7 #12) 	Ongoing Mid-Long Ongoing		
Necessary				Ongoing		
Essential			<p>D. Establish a mechanism to anticipate and manage compliance problems resulting from joint state/EPA priority setting choices.</p>	Mid		
IV. STATE PARTICIPATION						
DESIRED OUTCOME: Ensure that states are fully represented in the primary decision making processes of the agency.						
Essential			<p>A. Strengthen the role of the state/EPA Operations Committee (SEOC) so that it serves as a primary forum for a continuing and substantive dialogue on state/EPA policies and relationships.</p> <ol style="list-style-type: none"> 1. Convene the All States/EPA Operations Committee to discuss the separation of their role. 2. State/EPA Operations Committee representatives will help determine and plan the state role in shaping the national environmental agenda. 3. Seek ways to increase the involvement of state directors as well as AAs and RAs. 4. State/EPA Operations Committee is represented in the Agency's annual planning process. 5. Ensure that the SEOC has reliable mechanisms in place to communicate with and represent all 50 states. 6. Designate a permanent source of funding to support the work of the SEOC and its subcommittees. 	Immediate-Mid		
Essential			<p>B. Articulate the current limits and opportunities under both the Administrative Procedures Act (APA), the Federal Advisory Committee Act (FACA), and the Paperwork Reduction Act for including states in the policy-making processes of the Agency.</p> <ol style="list-style-type: none"> 1. Convene a working group to identify the problems and hurdles posed. 2. Determine if guidelines need to be written or if new legislative language would be appropriate. 3. EPA issues guidelines to EPA staff and State environmental departments or takes up the issue of statutory reform with other federal departments. <p>States develop a strategy for taking these issues before the Congress.</p>	Short - Mid		

Priority	Category	Recommendations (5 samples)	Lead Office	Key Action	Timing (completion)	
		<p>V. ACTIVITIES TO PROMOTE JOINT ENVIRONMENTAL MANAGEMENT</p> <p>DESIRED OUTCOME: The operative norm in environmental management is that states and EPA work collaboratively to get the job done.</p>				
Necessary		<p>A. Implement collaborative projects to promote state/EPA co-management of geographic projects and to build joint experience, technical exchange, and mutual trust.</p> <ol style="list-style-type: none"> Whenever possible, develop those environmental goals that have been identified as joint region/state goals into collaborative ventures (regional initiatives). Whenever possible, support those joint ventures with specially designated budget allocations. Highlight the collaborative projects in the periodic state-EPA public reports. 			Ongoing	
Necessary		<p>B. For targeted geographic areas, establish a multi-party process with all relevant federal and state agencies to identify and define clear environmental goals and to systematically integrate federal and state priorities.</p> <ol style="list-style-type: none"> Agreements will be updated annually. The grants process will support these agreements through the establishment of multi-agency and multi-year grants. 			Ongoing	
Necessary		<p>C. Expand the deployment and exchange of EPA and state employees (through both individual assignments and team efforts) to encourage the concept of joint management i.e. foster a collaborative EPA/state relationship.</p> <ol style="list-style-type: none"> In addition to using EPA IPAs to fill staffing gaps at the state level, actively encourage EPAs on regionalize collaborative ventures (regional initiatives). Provide support for state to state personnel exchanges. Assign EPA/state "twin" teams to provide peer consulting on areas of concern for states. 			Ongoing	
Desirable		<p>D. Show successes in joint environmental management.</p> <ol style="list-style-type: none"> Develop a support network to disseminate information on specific innovations or areas of innovation. Recognize state and EPA personnel, as individuals or teams for instituting successful innovative programs. Establish a "best practices group" on specific issues, or across the board. Publish a joint annual accomplishments report to which EPA and the states contribute. 			Ongoing	
		<p>VI. MAKING STATE CAPACITY PART OF EPA'S JOB</p> <p>DESIRED OUTCOME: Supporting state capacity enhancement is a fundamental component of every program at the EPA. Ensure linkage with tribal and local capacity efforts.</p>				
Essential		<p>A. Establish a central contact in the Office of the Administrator to act as a catalyst for state capacity enhancement efforts.</p>			Immediate	
Essential		<p>B. Form an EPA steering committee on state capacity, comprised of senior EPA and state managers, to advise and consult on EPA matters that affect states and to oversee the implementation of the new framework.</p>			Short	

Priority	Category	Recommendation	Implementation Actions (Examples)	Timing (estimate)	Lead Office	Key Agent
Essential	C.	Review EPA's planning and budget processes (beginning with the FY85 cycle) to incorporate state capability support as a key investment priority and to include state representation and consideration of state needs and priorities at every juncture.	<ol style="list-style-type: none"> 1. Assume that the state capacity contact or OROSLR is actively involved in the FY85 budget discussions. 2. Understand the extent to which the agency will perform a review of the base budget, acquire a clear understanding of how such program intends to pursue its review. 3. Actively seek opportunities for state capacity building in each program's annual reauthorization of the base. 	Mid Term		
Essential	D.	Other language for legislative initiatives that would make state capacity building a primary mission of the agency.		Ongoing		
Necessary	E.	Ensure that state capacity issues are incorporated into EPA's human resource development programs.	<ol style="list-style-type: none"> 1. Assess the importance of familiarity with state-EPA issues for particular SES positions. When such knowledge is essential to the job, EPA will determine when the incumbents need additional experience or training. 2. Add requirements for building state capabilities to EPA staff performance standards. 	Mid Long		
Desirable	F.	Establish EPA operations offices in states when both parties agree that such a facility would help them work more effectively. (Optional)		Long Term		
Essential	G.	By the FY 85 planning cycle, amend program office strategic plans and STARS to incorporate performance measures and accountability for building state capacity.		Mid Term		
VII. TRAINING AND TECHNICAL ASSISTANCE						
DESIRED OUTCOME: Provide effective, useful and easily accessible training to states based on their articulated needs. States expand their own training opportunities and share training expertise and knowledge among themselves and with EPA.						
Essential	A.	Encourage EPA's environmental training function to provide learning experiences for federal, state, and local employees, including enhanced knowledge of program delivery, building technical skills, and involving state and local governments to develop on-site training	<ol style="list-style-type: none"> 1. Collect all EPA training offerings in a centralized repository and make the information accessible to states. 2. Expand and coordinate Regional training programs to determine and respond to state training needs. 3. EPA should assist states by developing training opportunities for local staff and enhancing the capability of local inspectors. 4. States should expand their own training opportunities and share their expertise and knowledge with EPA. 	Ongoing		
Necessary	B.	Continue to provide consultation and assistance on environmental management needs, risk assessment, information system management, management advice and assistance, and Total Quality Management.		Ongoing		
Necessary	C.	Implement programs to improve the scientific capability of state and local personnel, including technology transfer, research assistance, and scientific information.		Ongoing		
IMPLEMENTATION ACTIONS (Applicable to B and C)						
<ol style="list-style-type: none"> 1. Establish a feedback mechanism to ensure continuous improvement of training 2. Make states integral to the development and delivery of training 3. Provide more fellowships to state personnel at nearby universities 4. Develop "centers of excellence" and training academies 						

Priority	Category	Rescom-mandates	Implementation Actions (Examples)	Finding (Completion)	Lead Office	Key Actors
Necessary			<p>5 Use innovative training methods such as videotapes, self-paced instruction and electronic bulletin boards</p> <p>6 The EPA Grants Administration Division will develop a task force to address grants training needs by states</p> <p>7 The EPA Grants Administration Division, in conjunction with the EPA library, will develop an electronic grants information repository</p> <p>D. Providing documentation (regulations), training materials, and support services.</p> <p>1 EPA will develop guidelines for the activities and services that programs should offer to support state and local implementation</p> <p>2 EPA will give priority in its budget for state support activities - such as training, and technical assistance</p> <p>3 EPA will sponsor periodic evaluation of the quality, availability, and delivery of its support services, to be conducted by user communities</p> <p>4 Senior level EPA professionals will evaluate all training and technical material to ensure quality</p> <p>5 EPA will recruit more professionals in training, communications, and information delivery to work with state program offices in designing and implementing their programs</p> <p>6 EPA will conduct a series of public hearings and through educational materials, technical standards promulgated by EPA.</p>	Ongoing		
			<p>VIII. IMPROVING PROGRAM DELIVERY SYSTEMS</p> <p>DESIRED OUTCOME: Mainstream environmental management approaches that are more cost-efficient and effective in meeting modern environmental protection needs.</p> <p>A. 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 abate for minor violations</p> <p>1 Select Regions and states who are willing to initiate pilot projects using innovative mechanisms</p> <p>2 Highlight and disseminate information on states that have successfully used innovative approaches</p> <p>3 Encourage and sponsor innovative approaches at the local level</p> <p>B. Initiate a dialogue, in cooperation with the relevant state and program-specific associations, on the recommendations of the State Capacity Task Force</p> <p>1 Initiate roundtables on EPA state capacity efforts</p> <p>2 Attempt to present the state capacity effort at as many association meetings as possible</p> <p>C. Recognize state efforts to build capability</p> <p>1 Identify state programs that are highly effective</p> <p>2 Share "what works" with other state programs, and share success stories with the public</p> <p>D. Seek to obtain maximum delegation of national programs with adequate resources in order to efficiently manage an integrated collection of state and federal programs</p> <p>E. Continue to use other advisory groups, such as EFAB and NACEPT, as sources of outside advice and counsel, especially in discovering and promoting innovative approaches to environmental management</p>	Ongoing		
Necessary				Ongoing		
Necessary				Ongoing		
Necessary				Ongoing		
Necessary				Long Term		
Necessary				Ongoing		

Priority	Category Outcome	Recommendations/Implementations Actions (Examples)	Timing (completion)	Lead Office	Key Actors
Essential	F.	<p>Given the competition for scarce public funds, work to build public support by:</p> <ol style="list-style-type: none"> 1. Demonstrating the gains from environmental protection and encouraging support from the business community for pollution prevention. 2. Publicizing the benefits of investment in state environmental program infrastructure. 3. Assisting states to develop more effective ways to communicate with the public about environmental problems and legislative and budgetary measures that could solve them. 4. Strengthening local elected officials' understanding of the benefits of environmental protection. 5. Promoting use of alternative financing mechanisms. 	Long Term		
Essential	G.	Encourage state environmental programs to make pollution prevention the centerpiece of their environmental programs.			
IX. DATA MANAGEMENT AND COMMUNICATIONS					
DESIRED OUTCOME: Wholly compatible EPA and state data management systems that provide for the timely and smooth flow of information.					
Essential	A.	Coordinate among EPA and states the development and implementation of data collection efforts necessary to monitor progress toward meeting environmental priorities.	Long Term		
Essential	B.	For FY 85 cycle, invest in an EPA/state integrated data and information portfolio designed to enhance information exchange and communication, promote access, and ensure compatibility throughout the entire information management system. <ol style="list-style-type: none"> 1. Hardware: Improve the basic information processing capacity of the non-federal government community so they are better positioned to perform spatial analysis, effectively manage integrated environmental information, and take advantage of new technologies and supercomputers. 2. Software: Improve the development, use, and exchange of software applications at all levels of government. 3. Expand EPA's telecommunications network with the states. 4. Improve coordinated collection, quality, integration, management, and exchange of regulatory and monitoring data at all levels of government. 5. Improve the RIM expertise and knowledge base in the non-federal community. 6. Incorporate state needs in systems development. 7. Continue to provide consultation, technical assistance, and clearinghouse services. 8. Sponsor state data management pilot projects and technology demonstrations. 9. Require that EPA permits include the provision of technical/operational data to facilitate the development of state GIS's. 	Mid Term		

Priority	Category Outcome, m/ndation, implementation Actions (Examples)	Timing (completion)	Lead Office	Key Actors
X. IMPROVEMENTS TO GRANTS ADMINISTRATION				
DESIRED OUTCOME: Make the grants award process responsive to the needs of its customers - the states.				
Necessary	<p>A. Seek maximum feasibility in negotiating grant-aided work plans while respecting statutory authority, mutually agreed upon strategies and sound management practices. Expect mutual accountability for negotiated terms of the grant-aided work plan.</p> <ol style="list-style-type: none"> 1. Program specific guidance from EPA headquarters to the Regions is issued in a timely manner and offers guidance on exercising maximum flexibility. 2. EPA program offices at headquarters and in the Region work together before the grant negotiation session to clarify the parameters in which flexibility may be exercised. 3. EPA headquarters consult regularly with the Regions and states on the level of flexibility that is being sought, and on success and failure. <p>B. Establish an EPA/States Grants Steering Committee to ensure continuous improvements in grant management processes.</p> <ol style="list-style-type: none"> 1. The EPA Grants Administration Division Customer Relations Council will establish the parameters of the steering committee. 	Mid-Term	GAD	
Essential	<p>C. Develop alternative grant mechanisms and allocate new authorities for multi-media core grants, consolidated grants, capitalization grants and revolving funds, and multi-media appropriations.</p> <ol style="list-style-type: none"> 1. Complete a research project identifying alternative grant mechanisms. 2. Seek multi-media grant authority in statutory reauthorization language. 3. Develop a multi-media grant proposal in time for the FY 95 grant cycle. 	Spring of 1994 Short Term	GAD	
Essential	<p>D. Continue streamlining and enhancing the EPA grant award process. For example, work is currently underway to streamline the small grant award process, the Section 319 grant process (water), and the Section 106 process (water).</p> <ol style="list-style-type: none"> 1. Evaluate the success of the comparative risk demonstration projects in Vermont and Colorado. 2. Seek permanent legislation for multi-media grants to Indian Tribes. 3. TCM of Sec. 319 grant processes. 4. Develop an automated sewerage pilot project. 5. TCM review of Section 106. 6. Complete the ongoing review of administrative management arrangements. 7. Develop an allocation formula for distribution of state personnel costs. 8. Demonstrate information networks on suspension and debarment. 	Ongoing		
Desirable	<p>E. Seek greater efficiencies by improving the integration of state and federal planning cycles.</p>	Long Term		

Priority	Category	Response	Implementation Actions (Examples)	Timing (completion)	Lead Office	Key Actors
	XI. ENVIRONMENTAL FINANCE					
	DESIRED OUTCOME: States and localities are fully aware of, have access to information on, and utilize innovative financing mechanisms in environmental management. EPA develops a coordinated, customer-oriented service to provide technical support and consultation on environmental finance.					
Necessary		A	State (and local government) entities with environmental management responsibilities should critically assess the funding mechanisms used for each component of their capital and operating budgets, and identify barriers to obtaining sufficient financial support, using the Compendium of Alternative Financing Mechanisms. <ol style="list-style-type: none"> 1 Identify present and future costs. 2 Examine current financing mechanisms. 3 Use the Compendium to identify suitable AFMs. 	Ongoing		
Necessary		B	Expand the existing environmental finance program within EPA, and an university-based Environmental Finance Consortium, to develop strategies and approaches to assist state and local governments in financing and carrying out their environmental mandates. <ol style="list-style-type: none"> 1 Sponsor national workshops and seminars. 2 EFC's develop environmental finance curricula. 3 EFC's provide technical assistance on a case by case basis. 4 EFC's provide in-depth investigation and research on issues of environmental finance. 5 EFC's expand from the two currently operating in Maryland and New Mexico, to one in each region. 6 Seek additional ways to publicize the Compendium. 	Ongoing		
Essential		C	Work with Congress to ensure that federal mandates on state and local governments are funded, either directly with federal funds and program provisions, or indirectly with federal tax systems if state systems are not in place (e.g., CAA credits).	Ongoing		

Note: This outline is intended as a proposed structure for the State Capacity Implementation Plan. It groups the recommendations from the Consolidated Task Force Report and the four Task Force Reports under 11 general categories. The structure will be used to organize final plans for programs, reports, and states on current and proposed activities which promote the state capacity building agenda. Both the format and the content of the outline are expected to change as discussions proceed with all the parties involved. The recommendations and implementation actions listed in the outline were taken primarily from the work of the Task Force that emerged in response to state and EPA comments. The presence or absence of specific action items should not be interpreted as Agency policy or as a decision on the final implementation Plan.



May 11, 1993

Ms. Carol Browner
Administrator
U.S. Environmental Protection Agency
401 "M" Street, S.W., A-101
Washington, D.C. 20460

RE: State Capacity Development

Dear Ms. Browner:

On behalf of state members of the State-EPA Operations Committee, we are pleased to offer the committee's endorsement of EPA's recently completed State Capacity Task Force Report. It is our belief that this document marks a fundamental shift in historic state/federal relations and we are looking forward to working with you to implement the many excellent recommendations developed by the task force. The committee is encouraged to learn that you also support this effort, which reflects the work of many dedicated federal and state officials. We hope that you can provide a clear indication of support within the agency so that momentum grows to implement this new direction of environmental management under your leadership.

As you know, the task force focused on four complex and difficult issues: improving state-EPA relations; identifying alternative financing mechanisms; building state capability; and streamlining the grants process. Many specific recommendations in these four areas were developed and are worthy of prompt implementation. Generally speaking, both EPA and the states need to commit to building and maintaining the institutional mechanisms and management infrastructure that ultimately will be needed if we are to be successful in the long run.

The accomplishments of the task force are testimony to what can be achieved when states and EPA work in partnership to address tough issues. Throughout, this effort has been characterized by mutual respect and dynamic exchange of views between state and EPA officials. In the next decade, this spirit of collaboration may be our most valuable asset as we work to promote enhanced environmental protection.

Improving environmental protection also will require our long-term commitment in three key areas:

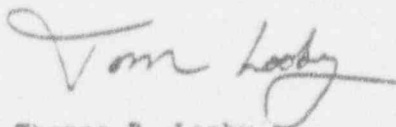
Ms. Carol Browner
Page Two
May 11, 1993

- establishing a clear vision and measurable environmental goals so that we can better articulate where we are heading and more accurately record our progress in protecting human health and ecological systems.
- ensuring that states can determine which initiatives are most effective in achieving environmental results and that they have sufficient flexibility to adopt innovative solutions to address unique, local priorities; and
- ensuring that states are actively engaged, as early as possible, in working with EPA in the development of national environmental plans and policy initiatives.

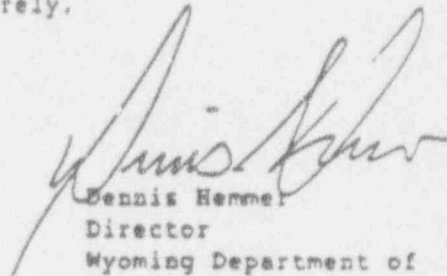
Over the past couple of months, we have worked closely with EPA's State Capacity Implementation Team to develop a preliminary strategy for implementing task force recommendations. The implementation team has done an outstanding job of working with states in developing the draft plan. As part of that effort, the draft implementation plan identifies several priority initiatives that we believe require prompt attention if we are to move forward with implementation of the task force's recommendations. These initiatives include new and updated policies regarding the state-EPA relationship and oversight practices; enhanced strategic planning processes; more proactive participation by states in regulation, budget and policy development; more grant flexibility and use of multi-media grants; financing environmental mandates; and overall, making state capacity development a fundamental component of EPA's business. We are eager to discuss the priority action items and final review process with you at the committee meeting.

Once we receive your input on the draft implementation plan it will be ready for distribution to all 50 states for their review. We look forward to continuing our work with EPA on this important issue.

Sincerely,



Thomas P. Looby
Director
Office of Environment
Colorado Department of Health



Dennis Hemmer
Director
Wyoming Department of
Environmental Quality

cc: State-EPA Operations Committee Members
EPA-State Capacity Implementation Team