



Vision Statement

Performance-based Environmental Programs: 2005 to 2010

Austin, Texas, March 2, 2008

The Multi-State Working Group on Environmental Performance applauds the Environmental Protection Agency, Environmental Council of States and those in the business, government and non-government sectors who support performance-based environmental approaches. EPA has asked MSWG for comments on performance-based programs in the next five years.

MSWG calls for a new way of thinking that looks beyond facilities, pollution permits and media issues toward sustainable environmental and economic performance. Currently, we use law to achieve accepted minimal levels of performance through regulation and prosecution of environmental violators. A complementary new system must use relationships to produce better and broader performance through environmental entrepreneurship. This new system must be supported in law.

The MSWG Board of Directors, which has representation from business, government and non-government interests, strongly endorses the ECOS report¹, especially the road map outlined in it. We are eager to cooperate in its implementation.

Environmental entrepreneurs exist in many organizations, including EPA. These persons and their ideas must be given visibility and respect. The best ideas should be put into the mainstream of environmental law, policy and practice. The best people should be free to excel and be rewarded. To begin the transition, discussions should occur about three interconnected approaches with the goal of producing policies and laws that support America's innate ability to innovate and traditional drive for excellence that we see in other areas but not in environmental regulation. We propose three conceptual approaches as a basis to inform enactment of new policies and law:

1. The Stewardship Approach that recognizes management and environmental performance beyond the command and control driven minimal compliance levels. Achievement of Environmental Stewardship would allow access to a regulatory process with significant efficiency and simplicity enhancements that correspond to the effective management and high performance of the organization. The intent of these enhancements is to increase environmental performance and reduce both use of resources and costs.

2. The Eco-System Approach allows multiple parties and agencies to partner, within law, to address complex multi-media, cross-boundary, ecological, energy, place-based or human health problems that are not suited to traditional tools or require combined efforts.

3. The Transparency Approach allows regulated entities and sectors freedom and safety to demonstrate their innovative capacity to break performance records, to solve the un-solvable and to achieve the impossible through a shared sense of purpose and mutual respect with the people.

¹ Survey of State Support for Performance-Based Environmental Programs and Recommendations for Improved Effectiveness, Final Report, January 13, 2005; Environmental Commissioners of the States response to EPA Administrator Leavitt.

"A small group of thoughtful people could change the world. Indeed, it's the only thing that ever has" -- Margaret Mead

Examples of ideas and successes exist in each of the three approaches, but they are largely unknown to policy makers and remain outside the mainstream of regulatory thinking. EPA offered one Stewardship approach through the Performance Track program in 2000. The Eco-System Approach finds examples in the Catskill watershed in New York, Edwards aquifer in Texas, children's health air initiative in Cleveland and habitat conservation projects in many states. The Transparency Approach is evidenced in state innovation projects and initiatives like the American Chemistry Council's Responsible Care®. MSWG has found people and stories in the US and internationally that employ one or more of these three approaches.²

MSWG also has found that performance-based approaches face barriers and opportunities. Barriers: funding is tied to traditional programs; lack of grounding in law; bureaucratic inertia; organizational culture and poor marketing. Opportunities: they are a positive response to reduced budgets; experiments prove they can work; holistic approaches reflect thinking that's evolved since the first Earth Day, and the fact that some businesses and business sectors are doing it.

Determined legislative and executive leadership are required to achieve performance approaches. Dedicated funding, however, must follow. In addition, officials and citizens must genuinely collaborate and cooperate for performance approaches to reach their full potential

The assumptions underpinning the three approaches are different than today's practices and cultures in the business, government and non-government sectors. We want to see the distrust that has defined two generations of environmental law and practice disappear. We want to move away from the assumption that government is the lead, if not the sole, provider of environmental goods, an assumption that distances the citizen from environmental responsibility.

These three new approaches assume that a credible enforcement system remains to keep the floor in place and to prevent free-riding. But they also assume that citizens and their institutions, including businesses, can and will do better if expectations increase, the rules change and new tools gain standing. MSWG recommends coast-to-coast dialogues with the aim of producing new expectations that invite new political, legal, professional and civic thinking. Dialogues should be inclusive, focused outside the Beltway, and driven by the need to produce results. They should relate to place-based needs in the US – rural, suburban or urban. They also could consider global needs and how new ways of thinking can help meet those needs. MSWG would be pleased to help ECOS and EPA in such an effort.

To summarize: By 2010 performance-based environmental programs, systems and relationships will be in the mainstream. Minimum standards are enforced. We agree with ECOS that statutory changes should be examined. But we submit that America will be beyond the compliance-centric mindset that confuses the floor with the ceiling. By 2010 business, government and NGOs will excel in their environmental performance because environmental laws will expect more of us and we will expect more of ourselves.

² *Origins of these thoughts: Since 1996, MSWG has fostered an exchange of ideas on achieving greater environmental performance. Informing our thinking: Roundtables at 6 universities; summits with Brookings and Harvard; a Penn-VA law forum linking farming, conservation and environment; workshops, policy academy events and retreats in CA, FL, IL, MO, NC, NY, PA, TX, WI and WV; regional meetings in 21 states; input from Australia, Belgium, Canada, China, France, Germany, Mexico, New Zealand, the Netherlands, Sweden and United Kingdom.