
Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

**NAPAP
Biennial
Report to
Congress:
An Integrated
Assessment**





UNITED STATES ENVIR
WASHINGTON, D.C. 20460

JUL 14 1994

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Announcement of Actions for Strengthening EPA's Tribal Operations

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrators
Regional Administrators
Staff Office Directors

Over the last five months a team of Senior EPA managers and a workgroup of EPA staff have been working to identify ways to strengthen Tribal operations throughout the Agency. I would like to thank those who worked on the team for your time and valuable contributions. Thanks also to all of you for your support for improving EPA's Indian program and increasing the Agency's ability to assist Tribes in the development and implementation of their environmental protection programs.

Attached is a document outlining steps we should implement promptly throughout the Agency. Although many of you are already working to improve specific areas of Tribal operations, additional steps are needed to address critical gaps in Tribal environmental protection and to improve our government-to-government partnership with Tribes. We can make significant progress within the next year, while continuing to search for additional opportunities to strengthen EPA's Indian program. When our new Office of Indian Affairs begins operation this fall, it will assist in carrying out this action agenda, as well as developing, coordinating and promoting broad, longer-term activities for Tribal environmental protection.

I ask each of you to continue to make this effort a high priority.

Carol M. Browner

Attachments



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 50% recycled fiber

TRIBAL OPERATIONS ACTION MEMORANDUM

July 12, 1994

To help improve communications and understanding between EPA and Tribes, Administrator Browner has established a new EPA/Tribal Operations Committee (TOC), which includes 18 Tribal representatives. At the Committee's first meeting, on February 17, 1994, the Administrator, in order to respond to Tribal recommendations, authorized a group of senior managers from EPA Headquarters and Regions to develop recommendations, in consultation with the Tribal members of the TOC, on ways to strengthen EPA's Tribal environmental programs and daily operations, pursuant to the implementation of the 1984 Indian Policy. This team of EPA managers has worked on a variety of issues over the last five months.

On May 26, 1994, at the Second National Tribal Conference on Environmental Management in Cherokee, North Carolina, Administrator Browner announced her intent to create a new Office of Indian Affairs and set October 1994, as the target date for it to begin operations. Although this Office will have the lead for coordinating certain activities, most of the responsibility for developing and implementing Tribal environmental protection programs will remain with the Regions and Headquarters Program Offices. Therefore, we need not wait until the establishment of the Office to promptly begin the implementation of the following actions.

The following action items are intended to strengthen EPA's Indian program by supplementing current activities. Although a Federal Register notice will invite public review and comment on the functions of the new Office of Indian Affairs (some of which are similar to the actions described below), EPA need not delay its efforts to strengthen Tribal operations. The public may have additional ideas about actions we should take and there may be refinements in our thinking. However, consultation with the Tribal Operations Committee members and responses received to a mailing to Tribal Leaders in June suggest we are generally on the right track.

Recognizing that many of these actions are new or were not previously identified as priorities, each Assistant and Regional Administrator will need to make some difficult resource allocation decisions to provide the necessary people and resources to begin to meet the challenge of strengthening EPA's Tribal operations. Each Assistant and Regional Administrator, in proceeding in the implementation of the following actions, would benefit greatly from the experience and working knowledge of the Headquarters Program and Regional Indian Coordinators (the National Indian Work Group) and from consultation with the Tribal representatives to the Tribal Operations Committee. These individuals have a great deal of information on Tribal needs and priorities.

In order to document and measure the Agency's progress and successes on strengthening the implementation of Tribal environmental protection and to facilitate early feedback on that progress, each Assistant and Regional Administrator will be asked to report, within 6 months from the issuance of this memorandum, to the Administrator on the status of his/her implementation efforts.

- 1) **Tribal Environmental Workplans:** In order for EPA and Tribes to plan for and respond effectively to Tribal environmental problems, the Agency and Tribes need to establish a base description of the types of environmental problems and priorities Tribes face and then formulate specific workplans for responding to the problems. To facilitate and support such a cooperative EPA/Tribal effort, each Regional Administrator should promptly begin to work with Tribes to develop environmental workplans, to include the Tribes' plans to manage authorized environmental programs and/or their need for federal technical assistance, education and implementation and management of environmental protection. Each Regional Administrator has the flexibility to determine, in consultation with Tribes, the most appropriate way to develop these workplans.
- 2) **EPA Regional and Program Indian Workplans:** To focus and facilitate Program and Regional efforts for effective Tribal environmental protection, each Assistant and Regional Administrator should begin to establish strategies for achieving the goals outlined in the Tribal environmental workplans. These Workplans should include the specific program implementation and management activities, technical assistance and education that will be undertaken by each Region and National Program Office. While these plans should address the problems identified in the Tribal workplans, they may be developed at the same time, in close consultation with the Tribal plans, so as to ensure the completion of Regional and National Program plans prior to the FY 1997 budget development process. The plans may be flexible and allow for future revisions as more is learned about the Tribes' environmental problems and priorities.
- 3) **EPA Implementation, Management and Compliance Activities:** In response to concerns that numerous gaps may exist in Tribal environmental protection, each Assistant and Regional Administrator, in close consultation with Tribes, should take immediate steps to increase implementation and management of and ensure compliance with environmental programs. Although the Agency should encourage Tribal implementation and management, where such Tribal environmental programs do not exist, the Agency, in carrying out its statutory and trust responsibilities, must work, in partnership with Tribes, on a government to government basis, to ensure the protection of Tribal human health, natural resources and environments. Although EPA retains final authority over and responsibility for its actions, the EPA Indian Policy recognizes Tribal governments as the most appropriate authority for managing Tribal environments and the Agency should accord great deference to Tribal priorities and environmental goals when carrying out these activities.
- 4) **Program and Regional Organization:** To strengthen the Indian program within the Regions and Headquarters Program Offices and to ensure greater consistency in the work performed by those offices, each Assistant and Regional Administrator should begin to review and, where necessary, modify the organization and/or management of the Indian program within his/her office. Each Region and Program Office has different responsibilities and/or workloads for Tribal operations and, therefore, some may require more resources than others. However, at a minimum, each Assistant and Regional

Administrator with responsibilities for Tribal activities should consider assigning a professional, full-time, to serve as Indian Coordinator, and report back to the new Office on status of this position. The Indian Coordinators must have the necessary procedures and support to assure full and effective communication with program staff throughout the organization. In addition, each Assistant and Regional Administrator should begin to address any need for additional staff to carry out critical activities related to the Agency's Indian program.

- 5) **Field Assistance for Tribes:** In order to supply the necessary assistance to Tribes for program development, authorization, operation and/or management, and to work with the Tribes to determine EPA implementation and management responsibilities, each Regional Administrator should ensure that there is an effective EPA/Tribal liaison capacity (ie. Indian Environmental Liaisons or other appropriate EPA field presence), to provide direct field assistance to the Tribes. As much as possible, this capacity should be carried out by staff from Indian Country and who have experience in the environmental field working with Tribal governments, communities, organizations and/or environmental staff.
- 6) **Training of EPA Staff:** It is important that EPA employees have the necessary sensitivity, knowledge and understanding of Indian affairs to facilitate communication between EPA and Tribal representatives. The Office of Indian Affairs, once established, will promote and coordinate training on Indian issues for Agency managers and staff. In the interim, Assistant and Regional Administrators are encouraged to provide training that moves the Agency in the direction of better understanding of Indian issues. This training could cover the EPA Indian Policy, EPA's Indian program activities, Tribal sovereignty and jurisdiction, Tribal environmental needs and activities, the role of Tribal individuals and organizations and cultural differences that may affect EPA's working relationship with Tribes.
- 7) **Communication with Tribes:** To promote and facilitate communication between EPA and Tribal governments, pursuant to the 1984 Indian Policy and Executive Order 12875, and between EPA and Tribal members and/or organizations, in keeping with the spirit of Environmental Justice, Assistant and Regional Administrators should include Tribes in decision-making and program management activities that affect them. Communication and requests for Tribal input should occur early in any Agency process that may affect Tribes and full consideration should be given to the policies, priorities and concerns of the affected Tribe(s) and/or, where appropriate, affected Tribal members.
- 8) **Grant Flexibility and Streamlining:** Given that most Tribes have a small environmental staff (if any) to manage various program-specific grants, in order to increase the efficient use of limited resources, each Assistant and Regional Administrator should, to the extent

allowed by law, use available discretion to consolidate issuance and administration of grants to Tribes and allow for both program operation and program development.

- 9) **Resource Investment in Tribal Operations:** Some encouraging first steps have already been taken to increase resources for Tribal operations in the FY 1996 budget. High priority was established for increasing support for Tribal operations at the Annual Planning meeting in April. However, to begin immediately strengthening the Indian program and to implement the new activities outlined in this memorandum, resources must be invested in FY 1994 and FY 1995 for: 1) staff assistance in the development of Tribal environmental workplans (FTE and travel); 2) Tribal capacity building, environmental program development, authorization and management (primarily grant funding); 3) EPA implementation and management activities (FTE, travel and AC&C support); and 4) technical assistance and related support, as needed by the Tribes (FTE, travel and AC&C support). These additional investments, will require a shift in Headquarters Program and Regional priorities to place greater emphasis on Tribal operations. Recognizing that we cannot immediately resolve all problems or address all Tribal environmental needs, each Assistant and Regional Administrator should allocate resources within their discretion and authority to constitute a significant commitment to strengthening Tribal environmental protection.

While recognizing that the primary objective of the General Assistance Program (GAP) is to develop Tribal environmental capacity, the new Office of Indian Affairs will be asked to consider using, to the extent allowed by law, any flexibility in the current GAP for program implementation, where funding such implementation would be impractical on a program by program basis. In consultation with Assistant and Regional Administrators, the Office will consider whether EPA should support statutory changes in granting authorities to create more opportunities for Tribal block grants and to explicitly allow for the use of GAP, where practical, for program implementation. However, even if the use of GAP is expanded, program-specific funding and responsibility for technical assistance, implementation, management or other related activities would still need to continue and also expand.

AMERICAN INDIAN ENVIRONMENTAL OFFICE
ACTIVITIES UPDATE
September 1997

EPA'S FIVE-YEAR STRATEGIC PLAN

The strategic plan describes EPA's mission, guiding principles, and ten broad goals that will serve as the framework for the Agency's planning and resource allocation decisions. AIEO has been working cooperatively with the Tribal Caucus, the National Program Offices, the National Indian Work Group (NIWG), the Senior Indian Program Managers, and the Office of the Chief Financial Officer to develop provisions in EPA's five-year strategic plan that reflect tribal environmental conditions, needs, and priorities. EPA will send the plan to Congress by September 30, 1997, as required by the Government Performance and Results Act.

INCREASED BUDGET ALLOCATIONS FOR TRIBAL OPERATIONS

Consistent with the directions of Executive Orders 12875 and 12866, EPA has recognized the unique needs of Tribes to build capacity and for technical assistance to administer environmental programs. AIEO and the Regional Indian programs administer the Indian Environmental General Assistance Program (GAP) Act, which the Agency was able to get amended in the last Congress to allow for more than \$15 million in the GAP appropriations. AIEO has also been working with the Regions and Headquarters Program Offices to develop funding projections and budget proposals for other grant programs which fund Tribes to establish, implement and enforce environmental codes and regulations. Grant funding to Tribes for these purposes has increased from \$19 million in 1995 to \$45 million in 1997, with \$79 million requested in the President's budget for 1998 (the FY 1998 President's Budget included approximately \$137.5 million for the Agency's Indian Program including grants and other resources). With this assistance and their own resources, 112 Tribes have now developed the capability to implement 186 environmental programs under Federal law, including 38 Tribes which exercise regulatory authority to set standards governing water quality or enforce pesticide use codes.

PERFORMANCE PARTNERSHIP GRANTS

AIEO participates on the Performance Partnership Grants (PPG) Task Force and has been working with the Tribal work group to develop new regulations for the administration of environmental program grants, including PPGs. The PPG program is a burden-reducing initiative that allows Tribes (and States) to consolidate grant applications, budgets, work plans and reports. Coupled with Tribal/EPA Environmental Agreements (TEAs), PPGs also help Tribes flexibly address their highest environmental priorities and allocate resources accordingly.

NATIONAL ENVIRONMENTAL POLICY ACT: ENVIRONMENTAL JUSTICE GUIDANCE

AIEO worked with the Office of Federal Activities (OFA) to review and comment on the Council on Environmental Quality's draft guidance for Federal agencies on how to consider environmental justice issues (including those affecting Native Americans) under NEPA and the President's February 11, 1994, Executive Memorandum and Executive Order 12898, "Federal

Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." Also, AIEO is working with OFA to develop two internal guidance documents, one on consideration of environmental justice issues for EPA review of other agencies' documents, and one to guide EPA's evaluation of its own activities that require NEPA review.

TRIBAL/EPA ENVIRONMENTAL AGREEMENTS

In 1994, Administrator Browner issued the Tribal Operations Action Memorandum which placed a high level of importance on EPA compilation of Tribal/EPA Environmental Agreements ("TEAs"), which were to address baseline assessment, priorities and work planning. Today, the continued emphasis on TEAs' completion has become especially significant in terms of strategic planning, budget determinations and institutional accountability. Very few TEAs have been accomplished, and few Tribes have baseline assessments completed. As of August 1997, 27 TEAs have been completed (all within region 5) that are based on an assessment of environmental conditions and include priorities for addressing environmental concerns. EPA Regions 6, 9, and 10 have signed an additional 21 TEAs with Tribes that formally acknowledge a government-to-government working relationship but do not, at this time, set priorities for environmental work based on an assessment of environmental conditions.

In April of 1997, the EPA Senior Indian Program Managers Group concluded that a parallel process must be created which enables completion of Tribal environmental baseline assessments and TEA's, while providing for current resource development and funding needs. It was also determined that flexibility was needed with regard to TEA process and creation. A guidance will be developed to communicate a more flexible approach to accomplishing TEAs.

BASELINE ASSESSMENT OF INDIAN COUNTRY ENVIRONMENTAL CONDITIONS

In order for EPA and Tribes to plan for and respond effectively to tribal environmental problems, the Agency and tribes need to establish a base description of the types of environmental problems tribes face. Therefore, in addition to TEAs, EPA Regions and Tribes are pursuing a number of approaches to gather information on environmental conditions in Indian Country. A standard set of issues need to be defined. For example: compilation of information on how many homes contain lead paint; how many water bodies have been assessed and what is known about their condition; how many underground storage tanks are in Indian Country; how many of these have been checked for leaks, and how many leaking tanks are being remediated. There is a need also to establish a standard format for collating/summarizing key information so it is useful for as many purposes as is feasible. AIEO is now beginning to work with Tribes and Headquarters and Regional Offices to design and implement a comprehensive assessment of environmental conditions in Indian Country. This vital information can be used for education, budgeting, and accountability purposes while EPA and Tribes work through a process for strategic planning as documented in the individual TEAs or other planning tools.

TRAINING, EDUCATION, AND OUTREACH

AIEO developed a training program on working with Tribal governments and is working with the Regions and the National Program Offices to ensure that employee training is implemented throughout EPA. The following Regions and Offices have submitted information on

their training plans: Region 1, Region 4, Region 5, Region 6, Region 7, Region 9, Region 10 Office of Air and Radiation, Office of Enforcement and Compliance Assurance, Office of General Counsel, Office of Policy, Planning, and Evaluation, Office of Solid Waste and Emergency Response, and Office of Water. AIEO will continue to work with all Regions and Offices to fully develop and implement training programs on working with tribal governments throughout EPA.

AIEO has develop an Internet home page located at www.epa.gov/indian. Internet users can retrieve information on EPA contacts for tribal issues, AIEO, the TOC, and can download documents such as the 1984 Indian Policy, the 1994 Administrator's memorandum on strengthening tribal operations, the AIEO guidance for developing Tribal/EPA Environmental Agreements, the Region 8 Indian Policy and the AIEO interim draft of the training manual on working effectively with Tribal governments.

AIEO COOPERATIVE AGREEMENTS WITH NTEC AND ITCA

Working cooperatively with the Offices of Water, Solid Waste and Emergency Response, Pollution Prevention, Pesticides and Toxic Substances, and the Office of Enforcement & Compliance Assurance, AIEO will be entering into cooperative agreements with the National Tribal Environmental Council (NTEC) and the Inter-Tribal Council of Arizona (ITCA) to help achieve the goals of protecting and improving the environmental integrity of tribal homelands with respect to air, land, water, and other important resources and of protecting the human health of tribal communities. In order to meet these goals the agreements have three objectives:

- 1) Identify tribal environmental priorities;
- 2) Provide scientific, legal, program analysis, and other support to enhance the ability of tribes to develop problem solving approaches; and
- 3) Build expansive communication networks throughout Indian Country to ensure broad participation in priorities development and access to analytical work products.

IMPROVING EPA/STATE/TRIBAL RELATIONS

In December 1996, AIEO sponsored a Transboundary Environmental Management Issues Forum in Denver, Colorado involving a number of participants including the National Water Program Manager, 4 Regional Administrators and 12 highly ranked governmental officials from State and Tribal governments. The forum purposes were to encourage a better understanding of transboundary environmental issues, foster intergovernmental cooperation and identify potential opportunities and approaches for resolving disputes that may arise as States and Tribes implement their environmental management programs. A series of potential solutions to several transboundary issues were identified and "next step" strategies were identified:

1. Regional forums among high-ranking EPA, State, and Tribal government decision-makers.
2. Increased information-sharing taking place between EPA, States, and Tribes, in regard to successful and unsuccessful cooperative efforts between State and Tribal governments.
3. Creation of a compilation of cooperative effort examples--a compilation of such efforts would assist States and Tribes in identifying transboundary management techniques for future application; and

4. Studies of the characteristics of successful and unsuccessful cooperative efforts, for use in determining future cooperative options between governments.

The American Indian Environmental Office and the EPA Senior Indian Program Managers have had discussions resulting in a general agreement that efforts to facilitate improved EPA, State and Tribal relations should continue. AIEO has begun the compilation project and the characteristics study. Further discussion with Senior Indian Program Managers will occur at their next meeting.

WHITE HOUSE DOMESTIC POLICY COUNCIL: INTERAGENCY COOPERATION

EPA has been an active participant in the White House Domestic Policy Council's Working Group on American Indian/Alaska Natives. EPA has helped to develop the President's Executive Order on Tribal Colleges and is participating in an inter-agency initiative for Indian children and adolescents. EPA co-chairs the subgroup on Environmental and Natural Resources, where we have led the effort to develop an environmental assistance handbook for Tribes, and to develop consistent guidance addressing Federal actions that may affect Tribal health, environment or natural resources.

The Subgroup has proposed an initiative to help achieve greater protection through the development of a federal (interagency) policy on environmental and natural resource protection in Indian Country. Assuming clearance through the interagency process, this policy or an alternate strategy would be submitted for Presidential approval and adoption in an appropriate form. A one-day working conference between tribal representatives and federal officials will be held to better identify tribal interest in the development of the policy and to scope out the issues that should be addressed. Principle Administration officials from the Departments of Interior, Energy, Justice, and Defense and the Environmental Protection Agency (EPA) have been invited to "kick-off" this dialogue with the tribal representatives.

TRIBAL LANDS ENVIRONMENTAL EDUCATION SCHOLARSHIP PROGRAM

EPA created a scholarship program to increase the number of American Indians who are educated in the environmental sciences and available to work at EPA and on Indian Reservations to improve the environmental protection of Tribal lands. Since inception in 1991, funds for the scholarships have been collected annually from offices throughout EPA. The various offices have recognized the value of the program by their continued support and increased funding but special efforts are underway to secure funding specifically for this program, rather than continue to seek contributions from all EPA office on an annual basis. This year EPA offices supported this program to the extent of \$450,000.

FY 1991 - \$120,000 for 27 scholarships
FY 1992 - \$158,800 for 33 scholarships
FY 1993 - \$182,000 for 46 scholarships
FY 1994 - \$256,000 for 55 scholarships
FY 1995 - \$286,000 for 68 scholarships
FY 1996 - \$350,000 for 80 scholarships

EPA HEADQUARTERS OFFICES

American Indian Environmental Office Director
Chief Financial Officer
Regional Administrator of Lead Region on Indian Programs
Regional Administrator of Backup Region on Indian Programs
Regional Administrators
Assistant Administrator for Administration and Resource Management
Assistant Administrator, Office of Water
Assistant Administrator, Office of Air and Radiation
Assistant Administrator, Office of Prevention, Pesticide & Toxic Substances
Assistant Administrator, Office of Solid Waste & Emergency Response
Assistant Administrator, Office of Enforcement & Compliance Assurance
Assistant Administrator, Office of Research & Development
Assistant Administrator, Office of Policy, Planning & Evaluation
Assistant Administrator, Office of International Activities
General Counsel
Inspector General
Associate Administrator, Office of Regional Operations & State/Local Relations
Associate Administrator, Office of Congressional & Legislative Affairs
Associate Administrator, Office of Communication Education & Public Affairs

Other Offices Not Included in the TOC Charter

Associate Administrator, Office of Children's Health Protection
Associate Administrator, Office of Reinvention



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

0002
7
OFFICE OF
WATER

MEMORANDUM

SUBJECT: Progress on Implementing the President's Executive Memorandum Concerning Government-to-Government Relations with Native American Tribal Governments

FROM: Robert Perciasepe
Assistant Administrator

TO: Erskine Bowles
Chief of Staff to the President

Bruce Reed
Assistant to the President for Domestic Policy

I am very pleased to report on the Environmental Protection Agency's (EPA) implementation of the President's April 29, 1994, Executive Memorandum concerning the relationship of Federal agencies with Native American Tribal governments. I welcome the opportunity to describe what I believe is an impressive array of accomplishments toward improving EPA's Government-to-Government relations with Native American Tribes. As requested in your May 23, 1997, memorandum, I have attached the EPA American Indian Policy and a list of the primary Tribal government liaison officers for EPA.

EPA formally established an American Indian Policy and Program in 1984. The Program has grown substantially following a series of actions by EPA Administrator Carol M. Browner in 1994 to implement the President's Executive Memorandum including: reaffirmation of the 1984 Policy; establishment of the EPA Tribal Operations Committee and the American Indian Environmental Office; implementation of a "Nine Point Plan" to strengthen the EPA's Tribal operations; and significant increases in Agency resources for environmental protection in Indian country (from \$36 million and 81 work-years in 1994 to \$137 million and 182 work-years in the President's budget for 1998). These actions reflect a strong commitment to recognize and support Tribal sovereignty that has produced a record unequalled among Federal regulatory agencies: as of June 1997, 112 Tribes have authority to implement 186 environmental programs under Federal law, including 38 Tribes which exercise regulatory authority to set standards governing water quality or enforce pesticide use codes.

ASSURANCE OF GOVERNMENT-TO-GOVERNMENT RELATIONS: EPA's Indian Policy explicitly acknowledges that Tribal governments are sovereign entities with primary authority for environmental management in Indian country. Thus, EPA works directly with Tribal governments as independent authorities, not as political subdivisions of other governments.

EPA's five-year strategic plan commits EPA to protect public health and the environment in Indian country consistent with a government-to-government relationship and with the Federal trust responsibility. Previous to the Executive Memorandum, amendments to the Clean Water, Safe Drinking Water and Clean Air Acts sought by EPA specifically authorized Tribes to assume primary implementing roles like those that States take on State lands. EPA also is developing Tribal/EPA Environmental Agreements ("TEAs") with all interested Tribes. They specify individual and joint actions for identifying environmental conditions and resource commitments, and addressing Tribal priorities. TEAs are developed with the Tribes, respect Tribal self-governance, and are signed by the Regional Administrator and Tribal Chairperson.

PREDECISIONAL CONSULTATION WITH TRIBES: EPA's consultation with Tribes includes quarterly meetings with a Tribal Operations Committee (TOC) composed of 19 Tribal representatives and EPA's Senior Leadership Team. The TOC discusses implementation of environmental programs for which EPA and the Tribes may share responsibility as co-regulators. EPA also includes Tribal representatives in EPA workgroups such as the Grand Canyon Visibility Transport Commission and various Federal Advisory Committee Act-chartered committees.

General consultation is valuable, but government-to-government consultation with individual Tribes is also essential. Thus, EPA policy encourages Assistant and Regional Administrators to invite Tribal comment and to solicit information from Tribes early in any EPA activity that may affect Tribes and to give full consideration to Tribal policies, priorities and concerns. EPA policy on the TEA process (above) is to provide each Tribe with early notice of Agency activities that may affect Tribal interests and to commit to ongoing, timely and open communications. Regional policies may provide more specific guidance. For example, EPA Region VIII's Tribal implementation policy seeks Tribal agreement before making decisions on matters (other than certain enforcement actions) that affect a Tribe, and offers both parties a formal dispute resolution process if needed.

ASSESSING IMPACTS: EPA has authority to review and comment on the environmental impacts of many Federal activities, including those requiring environmental impact statements under the National Environmental Policy Act (NEPA). EPA frequently uses this authority to urge other Federal agencies undertaking NEPA reviews to more thoroughly analyze potential impacts on Tribal environments or to select less harmful alternatives. EPA worked with the Council on Environmental Quality to develop draft guidance to advise Federal agencies on how to consider environmental justice issues (including those affecting Native Americans) under NEPA and the President's February 11, 1994, Executive Memorandum and Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." EPA is also completing two internal guidance documents, one on consideration of environmental justice issues for EPA review of other agencies' documents, and one to guide EPA's evaluation of its own activities that require NEPA review.

REMOVING IMPEDIMENTS: To help more Tribal governments build the capacity to assume responsibility for environmental programs expeditiously, EPA sought the amendment to the Indian Environmental General Assistance Program Act in the last Congress which removed the \$15 million annual limit on appropriations for grants to develop multi-media Tribal

environmental programs. Under the Toxic Substances Control Act, in the absence of specific statutory instructions, EPA has established a regulation allowing for EPA approval of Tribal programs for certifying personnel who inspect and remediate lead paint. EPA is pursuing creative administrative alternatives to address other barriers. For example, lacking statutory authority to authorize Tribal solid waste programs under Federal law, EPA recently issued draft guidance for operators of municipal solid waste landfills in Indian country on requesting site-specific flexibility from federal regulations. (This will allow municipal solid waste landfills in Indian country to have the same, flexible design and operating requirements available in approved State programs.)

COOPERATION WITH OTHER FEDERAL AGENCIES: EPA has been an active participant in the White House Domestic Policy Council's Working Group on American Indian/Alaska Natives. EPA has helped to develop the President's Executive Order on Tribal Colleges and is participating in an inter-agency initiative for Indian children and adolescents. EPA co-chairs the subgroup on Environmental and Natural Resources, where we have led the effort to develop an environmental assistance handbook for Tribes, and to develop consistent guidance addressing Federal actions that may affect Tribal health or environments.

EPA's long-standing Memorandum of Understanding with the Bureau of Indian Affairs, the Department of Housing and Urban Development and the Indian Health Service encourages coordination to address pollution control on Indian lands.

TAILORED SOLUTIONS FOR UNIQUE TRIBAL NEEDS: Consistent with the directions of Executive Orders 12875 and 12866, EPA has recognized the unique needs of Tribes to build capacity and for technical assistance to administer environmental programs. To meet this need, EPA administers the Indian Environmental General Assistance Program (GAP) Act and other grant programs which fund Tribes to establish, implement and enforce environmental codes and regulations. Grant funding to Tribes for these purposes has increased from \$19 million in 1995 to \$45 million in 1997, with \$79 million requested in the President's budget for 1998. With this assistance and their own resources, 112 Tribes have now developed the capability to implement 186 environmental programs under Federal law, including 38 Tribes which exercise regulatory authority to set standards governing water quality or enforce pesticide use codes. EPA has strongly defended the exercise of these authorities against challenge in legislation and litigation, while seeking repeatedly to engage in dialogue to resolve disputes, wherever possible, over environmental management among Tribes, States and other parties interested in reconciliation.

The EPA has also sought to reduce administrative burdens. First, in 1994, EPA enacted a "Treatment in the Same Manner as States" simplification rule eliminating the need for Tribes to repetitively establish certain technical eligibilities for the assumption of environmental programs while acknowledging that Tribes are not States, but have a unique relationship with the Federal Government. The Performance Partnership Grant (PPG) program is another burden-reducing initiative that allows Tribes (and States) to consolidate grant applications, budgets, work plans and reports. Coupled with Tribal/EPA Environmental Agreements (TEAs), PPGs also help Tribes flexibly address their highest environmental priorities and allocate resources accordingly.

EPA continues to develop electronic reporting mechanisms and other tools to disseminate information and to serve Tribes and other customers more efficiently and effectively.

AWARENESS OF THE PRESIDENT'S MEMORANDUM ON GOVERNMENT-TO-GOVERNMENT RELATIONS: To institutionalize the approaches of the Executive Memorandum and the EPA Indian Policy with EPA leadership and employees, we have developed a training program on working with Tribal governments and are implementing employee training throughout EPA.

In conclusion, I believe our extensive record clearly demonstrates EPA's commitment to institutionalize the principles of the President's 1994 Executive Memorandum. EPA works with Indian Tribes on a government-to-government basis as the most appropriate parties to manage Tribal environments. EPA supports Tribal self-governance consistent with our trust responsibility to Tribes and statutory obligations under the Nation's environmental laws. Until Tribal governments are willing and able to assume full responsibility for delegable programs, EPA will retain responsibility for these programs, in a manner consistent with Federal Indian and other applicable laws. Where EPA retains these program responsibilities in Indian country, we encourage and support Tribal participation in their management. In this manner, we are building a strong partnership with Tribal governments to protect health and the environment that will benefit the people living in Indian country and across the United States.

If you have further questions about EPA's Government-to-Government relations with Native American Tribal governments, please contact me at (202) 260-5700.

Attachments

cc: Kris Balderston

OFFICE OF WATER(OW) : TRIBAL ACCOMPLISHMENTS DURING FY 1997

During FY 1997 OW was responsible for many accomplishments, including:

Office of Assistant Administrator

▪ In recognition of OW's commitment to improving public health and environmental protection in Indian Country, a workgroup has been constituted to develop an OW Strategy for Indian Country. The objective of the strategy is to ensure OW's approach is well directed to:

- provide the correct tools to Tribes and to the Regional Water Divisions to implement water programs in Indian Country
- Obtain continued senior OW management involvement
- provide for continued budget planning for Indian programs

Office of Groundwater and Drinking Water(OGWDW)

- Four Tribes currently have Treatment as a State (TAS) status for the Public Water System Supervision(PWSS) program.
- \$2.7 million was dedicated in FY 97 for the PWSS program to implement the program on Tribal water systems.
- Dedicated \$525,000 in FY 97 for the UIC program to implement the program on Tribal lands. Three tribes have obtained TAS for the UIC Program.

Office of Science and Technology (OST)

- In FY 97, initiated a study of contaminants in fish and wildlife tissue for four Native American villages in Alaska. This study was initiated due to concerns with oil and gas activities in Cook Inlet. A risk analysis is scheduled to be completed in FY 98. Additionally, public meetings will be conducted in FY 98 to discuss the findings.
- In FY 97, sponsored a multi-regional workshop (audience includes States as well as Tribes, and others) which provided an exchange of scientific, technical, and policy information on water quality standards, water quality criteria, and water quality-based permitting.
- In FY 97, provided grants to support bioassessment monitoring and biocriteria development for four Tribes.

Office of Wastewater Management (OWM)

- In FY 97, provided \$6.7 million to Indian Tribes and Alaska Native villages to help pay

for the planning, design, and construction of 29 wastewater treatment systems. Since the inception of the Indian Set-Aside program in 1987, approximately \$72 million have been appropriated and 149 tribal projects constructed.

- In an effort to help Alaska Native villages build their capacity to operate and manage wastewater systems, the OW in conjunction with Region 10 initiated an Alaska village/Community Operations and Maintenance (O&M) Demonstration Support Program. The program is intended to support a variety of O&M demonstration projects and approaches, and should provide essential data to determine long-term solutions to achieve adequate O&M in Alaska.
- Through FY 97 128 Tribes have obtained TAS for the Section 106 Water Quality Program.
- Developed a framework for providing tribes with guidance on developing and implementing water quality programs on tribal lands. This guidance will assist tribes in developing management plans and programs required to receive funds under Section 106.
- Continued to provide technical assistance and support to finalizing the Navajo Nation NPDES program application

Office of Wetlands, Oceans and Watersheds (OWOW)

- Provided tribes with guidance on developing and implementing tribal wetland and watershed conservation plans. These plans help tribes identify environmental problems and establish a framework and work plan for addressing these issues.
- Provided technical assistance to tribes regarding nonpoint source protection and techniques for developing strong nonpoint programs. This technical assistance will ultimately assist tribes in developing management programs required to receive funds under Section 319(h) of the Clean Water Act. Through FY 97 eleven tribes have qualified for and have received Section 319(h) grants.
- Installed a link to information on Tribal NPS programs on the OWOW NPS Homepage. OWOW will post the Tribal NPS planning handbook, examples of Tribal NPS assessment and management programs, innovative funding sources, and outreach materials.
- Developed several products and procedures to assist tribes in assessing watershed management issues including to provide tribes with technical information regarding methodologies necessary to assess watershed conditions and more effectively develop management plans.
- Organized a workgroup to explore Tribal capacity to identify impaired waters and develop TMDL's.

Office of Air & Radiation FY 1997 Progress Report

Tribal Authority Rule: OMB review of the rule continues. It should be released shortly. We expect to promulgate the rule before the end of the calendar year. We will be meeting with tribes and working with them to begin implementation.

Implementing the Clean Air Act in Indian Country: OAR's draft *Strategy for Implementing the Clean Air Act in Indian Country*, developed through joint EPA and tribal collaboration, lays out a three-pronged approach to protecting air quality in Indian country: (1) building tribal capacity to manage their own air programs; (2) building regional capacity to support tribal implementation; and (3) filling any Federal regulatory gaps to ensure EPA has the means to protect air quality in Indian country should tribes opt not to do it. Progress to date in addressing these elements:

(1) Building Tribal Capacity

- ▶ **Training & Professional Development:** OAR has been working with Northern Arizona University under a cooperative agreement to provide training and professional development in air quality management for tribal environmental professionals. In addition to a core curriculum of basic air quality workshops, this year NAU has developed specialized training in response to a needs assessment conducted last summer. NAU has provided courses on developing Title V operating permits programs and in emission data collection and quality assurance. By the end of this year, NAU will have provided training to nearly 100 tribal environmental professionals, representing 59 tribes. In the coming year, in addition to its core curriculum, NAU will be offering courses in ambient air monitoring and emission inventories.
- ▶ **Assessing the Problem:** Over the last 18 months, OAR has provided funding to forty-six tribes to begin assessing air quality on their reservations. Grants have been provided to, among other things, compile emission inventories, develop air monitoring plans, and to set up ambient air monitoring networks.
- ▶ **Building Capacity:** In addition to the training and air grants mentioned above, OAR and the regions have been working with tribes to ensure their involvement in air quality initiatives. Tribes are working with the Western Governors Association in the Western Regional Air Partnership (WRAP) to follow up on the recommendations of the Grand Canyon Visibility Transport Commission. Following up on its National Air & Radiation Indicators Project (in which tribes had some participation), the Florida Center for Public Management, under a cooperative agreement with OAR, will be bringing state, local, and tribal environmental officials together in a series of regional workshops to talk about

strategies and tools for environmental program planning. A half-day session to address the unique concerns of tribes will precede each of the regional workshops. OAR will provide scholarships for more than 50 tribal representatives to attend these workshops.

(2) Building Regional Capacity

- ▶ **Federal Operating Permits in Indian Country:** Under the provisions of the Federal Title V Operating Permit Program (Part 71) rule promulgated in 1996, EPA must begin implementing the federal operating permits program in Indian country on November 15, 1997. EPA regions have begun moving toward implementation and will be notifying title V sources in Indian country that they must submit permit applications to EPA by November 15, 1998.

(3) Filling Federal Regulatory Gaps

- ▶ **Federal Regulatory Actions:** In developing the strategy for implementing the CAA, OAR reviewed its regulatory authorities to do direct implementation, and, in consultation with tribes, developed a list of actions to ensure it had all the tools necessary to protect tribal air quality. At the top of the list of rules to be developed is a Minor New Source Review (NSR) regulation, which is currently being drafted and will address the tribes' concerns about the cumulative effect of minor sources on air quality in Indian country. Other actions to be taken include a major NSR rule for non-attainment areas and an interim guidance that clarifies that we will not be treating certain low-emitting (emitting less than 50% of the major source threshold) sources as major title V sources in Indian country pending the promulgation of the minor NSR rule.

Advance Notice of Proposed Rulemaking on the Prevention of Significant Deterioration of Air Quality (PSD) Program Permit Review Procedures: In response to concerns that EPA's permit review procedures for major sources locating near non-Federal Class I areas were not clear, OAR invited public participation through this ANPR in framing the issues for potential rulemaking. The ANPR was published in May 1997 and OAR held public workshops in Chicago and Phoenix in July. The comment period on the notice closed on August 14, 1997. Between sixty and seventy people participated in the public workshops, including representatives from 9 tribes. We received more than 40 written comments, including letters from 9 tribes. EPA is reviewing the comments and transcripts from the public workshops and will be making a decision on next steps.

MAJOR INITIATIVES FROM THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

UPDATE ON THE OSWER TRIBAL WASTE ASSOCIATION

The steering committee to form the OSWER tribal waste association met in Albuquerque on April 29 to draft the By-Laws for the tribal waste association, now called the "Tribal Association on Solid Waste and Emergency Response." The steering committee drafted the proposed By-Laws and elected an interim Board (which we will ensure will include one current Tribal Caucus member and the Chair of the Tribal Operations Committee).

The steering committee decided that the association should be housed in Washington, and they continued to discuss which "tribal association" should assist them in setting up the association. The interim Board directed Americans for Indian Opportunity to act as staff to the TASWER until permanent staff can be hired. The Board requested that AIO research and draft proposals for funding for the Association and facilitate official incorporation and IRS nonprofit status. AIO was also asked to secure temporary pro bono office space and to notify the tribes of the establishment of the TASWER.

AIO's role in the development of the tribal association was strictly that of a facilitator and catalyst. As expected, from the three regional meetings and the final national meeting, leadership, in the form of a steering committee and then an interim Board, emerged to carry on the detailed work of establishing, staffing and funding the association. In July, the Association was officially chartered.

The TASWER Board of Directors consists of Calvin Murphy of the Eastern Band of Cherokee Indians, Chad Williams of the Walker River Paiute Tribe and Dore Bietz of the Tuolumne Band of Me-Wuk Indians. The Board of Directors has asked that AIO provide support until a permanent Board is appointed, and staff is hired. The first meeting of the interim Board will be held on October 10 in Washington. This meeting is open to the public.

OSWER INTEGRATED WASTE MANAGEMENT INITIATIVE

In 1995 OSWER competed for an administrative set-aside for funding for this initiative. This month our regional offices will award a total of 2.1 million to four tribal governments to build an integrated waste management program on their lands. The Jicarilla Apache, the Oglala Sioux, the Gila River Indian Community and the Metlakatla Indian Community will each receive a two year grant of \$550,000. These cooperative agreements will provide financial and technical assistance to the tribes to enable them to develop regulatory infrastructure to ensure proper management of wastes on tribal lands. The integrated program will include management of solid waste, hazardous waste, underground storage tanks and emergency response planning. These cooperative agreements are the largest grants ever awarded to tribal governments for environmental projects, and were chosen by a cross agency/regional panel based upon the proposals submitted by a range of tribal governments.

BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

One of the major initiatives of this Administration has been the redevelopment of "Brownfields" properties. Brownfields are abandoned, idled or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Frequently, these properties, once the source of jobs and economic benefits to the entire community, lie abandoned for fear of the contamination and the possible ensuing liability.

In 1995 OSWER awarded a cooperative agreement for outreach and technical assistance to federally recognized tribes in the Brownfields redevelopment initiative. Since 1995, two pilot grants have been awarded to Federally recognized tribes; Navajo and Puyallup. OSWER in cooperation with Americans for Indian Opportunity, held an all day meeting for tribal representatives to discuss the Brownfields program on September 6 in Kansas City, Missouri. Travel was paid for all tribes who were interested in participating. At the meeting, representatives identified ways in which the program could be amended to assist tribal governments better.

SUPERFUND PROGRAM:

Risk Assessment and the HRS: This year, we plan to gather experts on Tribal risk assessment, EPA personnel, and other Tribal environmental personnel together to discuss the various aspects of risk assessment in Indian country. The participants in the workshop are intended to become an EPA workgroup. There are several Tribal efforts going on in this area, EPA would like to assist in any way that we can. We hope that by sponsoring a workshop, and developing some policy changes as a result of the workshop, we can improve EPA risk assessment in Indian country.

The Hazard Ranking System is used to rank potential Superfund sites for inclusion on the National Priorities List. Currently, we are exploring options for making the HRS more compatible with Tribal cultural values. We have proposed this to various Tribal conferences and groups. While generally there is agreement that this should be done, currently EPA has no Tribal involvement in this project. We seek the TOC's endorsement and support for this proposal.

Training: The Enhancing Tribal Role Initiative will recommend developing a Tribal Basic Superfund curriculum using various Tribal personnel and organizations. This training will be, to the extent practicable, tailored as much to the regional differences in Indian country as possible. EPA plans to develop this training and test it this fiscal year. The training will include: train the trainer programs, a library of Superfund information, and some Tribal specific technical training

OFFICE OF SOLID WASTE PROGRAM:

The OSW Indian Program goal is to encourage comprehensive integrated hazardous and solid waste management practices in Indian Country that are protective of human health and the environment by: (1) building Tribal capacity for developing and implementing waste management activities, (2) supporting Tribal governments as they develop sustainable

Office Policy Planning and Evaluation Activities for FY 1998

In addition to continuing involvement in several activities started in FY 1997, OPPE will be undertaking a number of new activities in FY98 designed to increase the effective delivery of planning services to Indian Country:

Ongoing Projects

- In FY 1997, The Regional and State Planning Division (RSPD) provided \$50K for a cooperative agreement with the Swinomish Tribe. The purpose of the cooperative agreement was to enable the tribal staff to explain to the community the critical issues and decisions facing tribal environmental protection regulations and programs through a series of community meetings, providing an opportunity for tribal community members to become more directly involved in choosing the issues and the manner in which tribal programs operate. The focus in the first year of the effort has been on building stronger communication links to the community. The anticipated long term benefit are tribal environmental statutes that accurately reflect traditional tribal values, culture and priorities.

- RSPD has provided staffing (1 FTE for 6 months) to a joint effort to develop a natural resources assessment methodology for use by indigenous peoples. Referred to as Cultural Resource Assessments, the methodology was the result of joint efforts by the Tulalip Tribe, the Shushwap Fisheries Commission (British Columbia) and EPA. It is designed to assist an indigenous community in collecting and recording traditional links to the environment. This information can then be used in deciding how to manage a tribes current stewardship activities. The draft methodology is being piloted by the Tulalip tribe as well as two BC bands. It is also being considered for publication for use in biodiversity preservation activities.

New Projects

- OPPE will be providing \$100K over two years for a cooperative agreement with the Coeur D'Alene Tribe. The funding will assist the tribe in completing a comparative risk project. The project will help the Tribe assess environmental threats to the tribal lands and develop management strategies to reduce those threats. The results of the survey will inform different components of the Coeur d'Alene's Environmental Action Plan.

- Over the next year, OPPE staff will explore more effective ways by which OPPE can assist tribal environmental planning activities. OPPE will engage in direct dialogue with tribes engaged in long term planning efforts. OPPE will also provide at least 10 training opportunities for staff to increase awareness, understanding and respect for Native American history, culture, and sovereignty. The training will be targeted at making linkages between the mission of specific part of the OPPE and the tribal programs and needs.

Office Policy Planning and Evaluation Activities for FY 1998

In addition to continuing involvement in several activities started in FY 1997, OPPE will be undertaking a number of new activities in FY98 designed to increase the effective delivery of planning services to Indian Country:

• Ongoing Projects

- In FY 1997, The Regional and State Planning Division (RSPD) provided \$50K for a cooperative agreement with the Swinomish Tribe. The purpose of the cooperative agreement was to enable the tribal staff to explain to the community the critical issues and decisions facing tribal environmental protection regulations and programs through a series of community meetings, providing an opportunity for tribal community members to become more directly involved in choosing the issues and the manner in which tribal programs operate. The focus in the first year of the effort has been on building stronger communication links to the community. The anticipated long term benefit are tribal environmental statutes that accurately reflect traditional tribal values, culture and priorities:

- RSPD has provided staffing (1 FTE for 6 months) to a joint effort to develop a natural resources assessment methodology for use by indigenous peoples. Referred to as Cultural Resource Assessments, the methodology was the result of joint efforts by the Tulalip Tribe, the Shushwap Fisheries Commission (British Columbia) and EPA. It is designed to assist an indigenous community in collecting and recording traditional links to the environment. This information can then be used in deciding how to manage a tribes current stewardship activities. The draft methodology is being piloted by the Tulalip tribe as well as two BC bands. It is also being considered for publication for use in biodiversity preservation activities.

New Projects

- OPPE will be providing \$100K over two years for a cooperative agreement with the Coeur D'Alene Tribe. The funding will assist the tribe in completing a comparative risk project. The project will help the Tribe assess environmental threats to the tribal lands and develop management strategies to reduce those threats. The results of the survey will inform different components of the Coeur d'Alene's Environmental Action Plan.

- Over the next year, OPPE staff will explore more effective ways by which OPPE can assist tribal environmental planning activities. OPPE will engage in direct dialogue with tribes engaged in long term planning efforts. OPPE will also provide at least 10 training opportunities for staff to increase awareness, understanding and respect for Native American history, culture, and sovereignty. The training will be targeted at making linkages between the mission of specific part of the OPPE and the tribal programs and needs.

organizational infrastructures, and (3) building partnerships among Tribes, Federal Agencies, States and local communities. This is a broad goal, which OSW plans to accomplish by using a variety of tools to provide technical assistance and, where possible, additional funding to Tribes.

In response to the recent *Backcountry Against Dumps V. EPA* (October 29, 1996), U.S. Court of Appeals', D.C. Circuit, decision denying EPA the ability to delegate RCRA programs to Indian Tribes, OSW is strengthening Regional capabilities to implement RCRA in Indian Country.

In FY 97 OSW has done the following:

- ← OSW solicited proposals from all federally-recognized Tribes in July 1997 to host the Fourth National Tribal Conference on Environmental Management. The deadline for proposals was September 15, 1997. The tentative date for the conference is May 1998. The Confederated Salish and Kootenai Tribes of the Flathead Reservation hosted the Third National Tribal Conference in May 1996.
- ← OSW initiated the development of a National Hazardous Waste Strategy for Indian Country. The Strategy will include all appropriate RCRA Hazardous Waste program areas that Tribes are interested in, e.g. Mining, Munitions, and Environmental Justice. Identification of all appropriate RCRA Hazardous Waste program areas-continues.
- ← OSW distributed \$270,000 of FY 97 extramural funds to the Regions for Regional RCRA priority projects and to continue the Tribal Solid Waste Circuit Rider program. An example of a Regional project is the Alaska Solid Waste Management Demonstration Grant. The Alaska Native Health Board awarded a number of small grants to Alaska Villages to allow for local implementation of site-specific solutions.
- ← OSW initiated the Municipal Solid Waste Grant Program for Indian Country. OSW solicited proposals from all federally recognized Tribes and Tribal organizations for integrated solid waste management demonstration projects. Eight Tribes were selected for this program. The award amounts will range from \$50,000 to \$100,000 per year for up to three years. The awards will be formally announced this month.
- ← OSW developed the Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country: Draft Guidance document for municipal solid waste landfill owners/operators in Indian Country. The document describes the process by which owners/operators in Indian Country, including Tribal owners/operators, can seek flexibility in the same areas available in States with approved permit programs. Two Tribes are well into the process and many others have indicated that they intend to submit requests.

- ◀◀ OSW facilitated two Indian Program workshops during the 1997 National RCRA Meeting in Washington, D.C. The Association for State and Territorial Solid Waste Management Officials (ASTSWMO) provided travel reimbursement for up to ten Tribal representatives. Six Tribal officials participated in the meeting.
- ◀◀ OSW funded the Institute for Tribal Environmental Professionals (ITEP) at Northern Arizona University, to identify solid waste training for Tribal environmental and solid waste personnel. ITEP is currently: 1) developing a course syllabus, 2) developing a directory of solid waste training courses, and 3) investigating the adaptability of existing training materials and course delivery mechanisms for Tribal audiences.
- ◀◀ OSW initiated outreach to various Federal agencies, e.g., Bureau of Indian Affairs (BIA) - Central Office, Area Offices, and Agency Offices, to discuss RCRA issues. OSW met with BIA Central Office personnel, BIA Phoenix and Navajo Area Office staff and IHS-Albuquerque Office staff this year. OSW supported the efforts of the Regions to establish Regional Inter-Agency Workgroups.
- ◀◀ OSW funded the National Tribal Environmental Council (NTEC) to facilitate meetings with Tribes around the country to discuss municipal solid waste issues. Six meetings were held in FY 97. Two more are scheduled in October 1997. The information gathered during the meetings is instrumental to the operation of the MSW Indian Program, and the development of a National Municipal Solid Waste Strategy for Indian Country.
- ◀◀ OSW developed six documents to directly support Tribes in RCRA waste management. Much of the information was directed toward Tribal municipal solid waste issues. They are available upon request.
- ◀◀ OSW will publish a September 1997 issue the Native American Network, a national Indian Program newsletter.

UNDERGROUND STORAGE TANK PROGRAM:

During the past year, the Environmental Protection Agency has continued to work on a variety of activities related to underground storage tanks (UST) in Indian Country. In both FY 1996 and FY 1997, EPA is providing Section 8001 program demonstration and training grants to more than 10 tribes and tribal consortia. This funding is used to obtain training on UST issues and to complete activities ranging from abandoned tank surveys to developing tribal UST codes.

EPA has also continued to conduct extensive outreach activities to tribes and to UST owners and operators in Indian Country. Special attention is being given providing information about the December 1998 requirement that USTs be corrosion-resistant and equipped to prevent spills and overfills. Outreach efforts dealing with this regulatory requirement will be increased over the next year as the deadline approaches.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 6, 2000

EXECUTIVE ORDER

CONSULTATION AND COORDINATION
WITH INDIAN TRIBAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

POLICIES

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

- (1) encourage Indian tribes to develop their own policies to achieve program objectives;
- (2) where possible, defer to Indian tribes to establish standards; and
- (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

REGULATORY

POLICIES

① DESIGNATE OFFICIAL

② DESCRIPTION OF CONSULTATION PROCESS

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

Reg. Trigger 1

Direct Implications
Substantial direct compliance costs

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

not required by statute

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

Reg. Trigger 2

Tribal implications
Preempts tribal law

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

Specific issues of Tribal Self-Govt
Trust Resumes
Treaties
Other rights

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

WAINC25

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency, with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with

Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
November 6, 2000.

#

***PROTECTING AMERICA'S WETLANDS:
A FAIR, FLEXIBLE,
AND EFFECTIVE APPROACH***

**WHITE HOUSE OFFICE
ON ENVIRONMENTAL POLICY**

August 24th, 1993

TABLE OF CONTENTS

I.	Introduction	2
II.	A Divisive Debate	2
III.	The Interagency Working Group on Federal Wetlands Policy	3
IV.	Five Principles for Federal Wetlands Policy	4
V.	A Comprehensive Package of Reforms	4
	A. Addressing Landowner Concerns	6
	B. Advance Planning and Watershed Management	7
	C. Agriculture	10
	D. Categorization	12
	E. Geographic Jurisdiction	14
	F. Mitigation and Mitigation Banking	16
	G. Restoration	18
	H. Roles of Federal Agencies	19
	I. Roles of State, Tribal, and Local Government	20
	J. Scope of Regulated Activities	22
	K. State of Alaska	22
	L. Takings	24
VI.	Conclusion	25
VII.	Postscript: Lessons From the Flood	26

I. INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous. The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, efforts to protect wetlands have caused considerable controversy. It is estimated that 75 percent of the Nation's wetlands in the lower 48 States are located on private property. It is, therefore, imperative to recognize and consider fully the impacts of wetlands protection policies on individuals who own wetland property. Statutory, regulatory, and policy objectives should be accomplished in a manner that avoids unnecessary impacts upon such landowners.

Given the environmental and economic significance of wetlands, the alarming rate of wetlands loss, and concerns for private landowners, the Interagency Working Group on Federal Wetlands Policy began developing a comprehensive package of initiatives in June. The policy positions contained in this paper strongly support the effective protection and restoration of the Nation's wetlands, while advocating much-needed reforms to increase the fairness and flexibility of Federal regulatory programs.

II. A DIVISIVE DEBATE

Federal programs to protect the Nation's wetlands have been the focus of considerable controversy in recent years. Much of the attention focused upon the 1989 Interagency Wetlands Delineation Manual (1989 Manual). The 1989 Manual was prepared jointly by the U.S. Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS) of the Department of the Interior, and the Department of Agriculture's Soil Conservation Service (SCS). It was developed in response to criticism that Federal agencies

were not using a single set of common procedures to "delineate" — or identify — wetlands under the jurisdiction of programs administered by these agencies.

But rather than alleviating concerns about inconsistency, the 1989 Manual only further fueled the controversy. Critics claimed that the 1989 Manual represented a major expansion of regulatory jurisdiction without opportunity for public participation. In response, the Bush Administration embarked upon a closed-door effort to revise the 1989 Manual. This process resulted in the technically flawed 1991 Manual that would have dramatically and indefensibly reduced the amount of wetlands subject to protection. The proposed 1991 Manual generated even further controversy and resulted in even greater polarization of the debate on Federal wetlands policy.

In addition to assailing the 1989 Manual, critics of Federal wetlands regulatory programs effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection responded — with equal effectiveness — by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides voiced their strongly held opinions, the debate over Federal wetlands policy became increasingly divisive. The opposition that developed to both the 1989 and 1991 Manuals demonstrated the policy deadlock that had developed. Wetlands policy has become one of the most controversial environmental issues facing the Federal government, just as Congress embarks upon the reauthorization of the Clean Water Act.

III. THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to break the deadlock over Federal wetlands policy. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the EPA, the Army (the Corps of Engineers), the Office of Management and Budget, and the Departments of Agriculture, Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the working group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists and others.

After listening to this broad range of interests, the working group began its policy deliberations by establishing the following five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

IV. FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

V. A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy. In addition, the Administration will establish an ongoing interagency working group, to be chaired by the Office on Environmental Policy, to monitor the implementation of the initiatives contained in the reform package.

The reform package includes the following initiatives:

- To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;

- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek recourse short of going to court;
- To increase fairness and efficiency in the wetlands permitting process, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland — areas which no longer exhibit wetlands characteristics — will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;
- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and

- To attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

The complete package of reform initiatives follows. (Some initiatives are listed under more than one heading for the sake of clarity.) By proposing an approach based upon effective protection and restoration of the Nation's wetlands, while adopting much-needed reforms to increase the fairness and flexibility of regulatory programs, the Administration's reform package offers a tremendous opportunity to move beyond the divisiveness that has characterized the wetlands policy debate in recent years.

A. ADDRESSING LANDOWNER CONCERNS

Issue Definition: The program that regulates wetlands under Section 404 of the Clean Water Act has been criticized as being slow, unpredictable and unfair. For example, it has been claimed that permits take too long to obtain; that wetlands delineations are sometimes slow, inaccurate, and inconsistent; and that it is unfair that the Corps does not provide a process by which landowners can appeal a jurisdictional determination or the denial of a wetlands permit short of suffering the expense of going to court.

Administration Position: The Clinton Administration believes that the Federal government has a responsibility to the public to conduct such regulatory programs in a manner that is efficient, responsive and fair. Therefore, the Administration supports the following reforms that will reduce the impact of regulation on the public, while meeting our objectives to protect wetlands:

- **Deadlines for Permit Action** Within one year the Corps will modify its regulations, through a public rulemaking process, to establish regulatory deadlines for reaching decisions regarding permit applications. The regulations will generally require the Corps to reach permit decisions within 90 days from the date of issuance of the public notice, unless precluded by other laws, such as the National Environmental Policy Act. The Administration will strongly support the additional personnel and funding necessary to meet these deadlines for permit action.

- **The Adoption of an Appeals Process** Within one year, the Corps will develop an administrative appeals process under the Section 404 regulatory program. The process, which will be implemented after a public rulemaking, will be designed to allow for administrative appeals of the Corps' determination that it has regulatory jurisdiction over a particular parcel of property, permit denials, and administrative penalties. The process will allow third parties to participate in applicant appeals of permit denials and will require that applicants exercise their right to appeal before initiating judicial action. The Administration will strongly support the additional personnel and funding necessary to implement successfully the appeals process.

The USDA already has an appeals process in place and landowners will be able to appeal SCS wetlands delineations through that administrative process.

● *Delineation Training and Certification* All employees of Federal agencies who conduct wetlands delineations will be required to complete the interagency wetlands delineation training program to improve accuracy and consistency in delineation in Federal wetlands programs or have comparable training and experience. As appropriate, State and Tribal agencies will also be encouraged to participate in the Federal training program. In addition, by the end of 1993, the Corps will propose regulations for implementing a certification program for private sector delineators.

By requiring training of Federal delineators, jurisdictional determinations can be done more accurately and consistently across the country. By encouraging the growth of a pool of certified private sector wetlands consultants, jurisdictional determinations can be performed far more quickly than if the job is solely the responsibility of Federal agency personnel. In addition, the Corps will streamline the process by which it considers and accepts delineations performed by certified wetlands consultants.

● *Promote Voluntary, Cooperative Programs.* With 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning (see next issue) offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance and information programs.

B. ADVANCE PLANNING AND WATERSHED MANAGEMENT

Issue Definition: Typically, decisions affecting wetlands are made on a project-by-project, permit-by-permit basis. This often precludes the effective consideration of the cumulative effects of piecemeal wetlands loss and degradation. It also hampers the ability of State, Tribal, regional, and local governments to integrate wetlands conservation objectives into the planning, management, and regulatory tools they use to make decisions regarding development and other natural resource issues. This can often result in inconsistent and inefficient efforts among agencies at all levels of government, and frustration and confusion among the public.

In contrast, advance planning, particularly comprehensive planning conducted on a watershed basis, offers the opportunity to have strong participation by State, Tribal, and local governments and private citizens in designing and implementing specific solutions to the most pressing environmental problems of that watershed. Advance planning generally involves at least the

identification, mapping, and preliminary assessment of relative wetland functions within the planning area. More comprehensive advance planning may identify wetlands that merit a high level of protection and others that may be considered for development, and may also incorporate wetlands conservation into overall land use planning at the local level. Advance planning can provide greater predictability and certainty to property owners, developers, project planners, and local governments.

Administration Position: To encourage greater use of comprehensive advance planning, particularly with State, Tribal, regional, and local involvement, and to identify wetlands protection and restoration needs, opportunities, and concerns, the Administration supports the following actions:

● ***Provide Incentives for States/Locals to Integrate Watershed and Wetlands Planning.***

The Clean Water Act should authorize the development of State watershed protection programs, which should include local and regional involvement and Federal approval of the State programs. Wetlands should be incorporated into the overall watershed approach, with minimum standards for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and watershed-based categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.

● ***Endorse State/Tribal Wetlands Conservation Plans.*** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.

● ***Provide for Greater Integration of Advance Planning Into the Section 404 Regulatory Program.*** The Administration will support efforts to better integrate advance planning into the Section 404 regulatory program, including appropriate local or watershed-based categorization frameworks and regionalized improvements to implementation of the existing Nationwide Permit 26 in headwaters and isolated waters. Such opportunities are expected to grow as States, Tribes, and regional and local governments progress on watershed plans, State Wetlands Conservation Plans, and other wetlands-related planning processes. Where State, Tribal, regional, or local governments have approved watershed plans that address wetlands, EPA and the Corps will give high priority to assisting with the development of categorization of wetland resources for the purpose of Section 404. Categorization approaches should be local or regional in nature, and reflect the full range of impacts and functions that affect wetlands within the watershed or planning area.

● *Programmatic General Permits (PGPs) Under Section 404.* The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing regulatory programs may assume a more active role in wetlands protection while reducing duplication with Federal programs. PGPs are extremely useful in reducing unnecessary duplication between Federal and non-Federal regulatory programs and in generally enhancing the role of State and local governments and of advance planning, in decisions regarding wetlands and other aquatic resources. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs, with appropriate environmental safeguards, for approved State, Tribal, regional, and local regulatory programs.

● *Improve Nationwide Permit 26 Through Regionalization.* In order to improve the implementation of existing Nationwide Permit 26 (NWP 26) in isolated waters and in headwater areas, the Corps, in coordination with appropriate Federal, State, and Tribal agencies, and with the opportunity for public notice and comment, will undertake a field level review of NWP 26 to develop regional descriptions of the types of waters, and the nature of activities in those waters that will not be subject to authorization under NWP 26. Advance planning efforts that have assessed the functions and values of local isolated wetlands and headwaters, and have considered factors such as cumulative losses and scarcity of particular classes of waters, will be used to facilitate this effort.

● *Mitigation Banking.* Wetland mitigation banking refers to the restoration, creation, enhancement, and, in certain defined circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands authorized under the Section 404 regulatory program. Advance planning can be used to identify appropriate locations for, and uses of, mitigation banks. EPA and the Corps have issued guidance to their field staff that clarifies the manner in which wetlands mitigation banking fits in the Section 404 regulatory program. Congress should endorse the appropriate use of banking, with environmental safeguards, as a compensatory mitigation option under the Section 404 regulatory program, and explicitly allow use of the State Revolving Fund to capitalize mitigation banks.

● *Promote Voluntary, Cooperative Programs.* With approximately 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance, and education and information programs.

● *Revise the Executive Order on Wetlands.* The existing Executive Order on wetlands (E.O.11990) will be revised to direct the Federal agencies to take a watershed/ecosystem approach to wetlands protection and restoration. In addition, it will require Federal agencies that conduct or assist with multi-objective natural resource planning to incorporate wetlands protection into their programs to the extent practicable.

● *Provide Better and Coordinated Information and Technical Assistance on Wetland Issues.* The Federal agencies will coordinate efforts to provide States, Tribes, regional and local governments, and the public with timely, consistent information concerning wetlands programs. The agencies will develop a strategic plan for delivering information on regulatory programs, and encourage the development of innovative education and outreach materials and initiatives to assist the public in understanding wetlands issues.

The Administration will also direct the Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory activities. In addition, the Administration will coordinate wetlands restoration, research, inventory, monitoring, cooperative programs, and information and education activities.

C. AGRICULTURE

Issue Definition: Two Federal statutes regulate certain activities in wetlands on agricultural lands. The Food Security Act Wetlands Conservation provision, which is known as the Swampbuster program, is administered by the Soil Conservation Service (SCS) of the U.S. Department of Agriculture, in consultation with the Fish and Wildlife Service of the Department of the Interior. The Clean Water Act Section 404 program is administered jointly by the Department of the Army and the Environmental Protection Agency. American farmers have at times been subjected to needless duplication and frustrating inconsistency in the implementation of these two statutes.

Administration Position: The Administration recognizes the valuable contribution of agricultural producers to the Nation's economy and more generally to the American way of life. We also appreciate the challenges faced by farmers as they try to comply with wetlands regulations, as well as other environmental requirements affecting farm operations. As a result, the Administration is committed to ensuring that Federal wetlands programs do not place unnecessary restrictions or burdens on farmers and other landowners, while providing necessary environmental safeguards.

The Administration has identified a number of actions that can be taken to reduce the impact of these two wetlands protection programs on American agriculture. At the heart of this effort is a commitment on the part of all Federal agencies involved to work closely and cooperatively to coordinate their work under these two statutes so as to increase efficiency, minimize duplication, and reduce inconsistencies between the programs.

The following initiatives demonstrate our commitment to protect and restore the Nation's wetlands and eliminate unnecessary impacts on the farm community:

- ***Prior Converted Cropland Rulemaking.*** EPA and the Corps have just completed a rulemaking which assures American farmers that an estimated 53 million acres of prior converted cropland will not be subject to regulation under Section 404 of the Clean Water Act. These lands were converted from wetlands to croplands prior to the passage of the Food Security Act of 1985, which established the Swampbuster program, and no longer exhibit wetlands characteristics. The Administration is also recommending that Congress include in the Clean Water Act a definition of "waters of the United States" that explicitly excludes from Clean Water Act jurisdiction areas determined to be prior converted cropland.

- ***A Package to Eliminate Duplication and Inconsistency***

The SCS, EPA, the Corps, and FWS signed an interagency agreement on August 23, 1993 that will reduce existing overlap and inconsistencies in the implementation of Federal wetlands programs affecting agricultural lands by undertaking, within 120 days, the following initiatives:

- ***Make the SCS the Lead Agency on Agricultural Lands.*** The SCS, the Corps, EPA, and FWS will develop procedures to provide that SCS wetland delineations will represent the final government position on the extent of Swampbuster and Clean Water Act jurisdiction on agricultural lands. Interagency training programs will be developed to ensure that agency field staff are properly trained, that standard, agreed-upon methods are utilized in making delineation and mitigation determinations, and that EPA and the Corps, consistent with their statutory authorities, have the ability to monitor SCS determinations on a programmatic basis. SCS, EPA and the Corps will also coordinate enforcement responsibilities on agricultural lands to ensure that the Federal government's activities are equitable, and consistent.

- ***Guarantee Consistency in Delineations on Agricultural Lands.*** In order to ensure consistency in identifying wetlands on agricultural lands, the Corps, EPA, SCS, and FWS will all use the same procedures to delineate wetlands. The agencies will develop field guidance for implementing the 1987 Wetlands Delineation Manual to establish procedures for identifying wetlands in areas managed for agriculture. The agencies will also expedite current efforts to revise the SCS Food Security Act Manual to eliminate inconsistencies between wetlands delineation procedures in the FSA Manual and the 1987 Manual.

- ***Greatly Increase Farmers' Certainty in Agency Decisions.*** The Corps, in coordination with EPA, SCS, and FWS, will propose a Nationwide General Permit for discharges associated with "minimal effects" and "frequently cropped with mitigation" conversions determined by SCS and FWS to qualify for exemption

from Swampbuster provisions. This will provide greater certainty to the Nation's farmers that they can rely on SCS/FWS mitigation determinations. While the Nationwide permit will include appropriate conditions to protect valuable wetlands, an individual review by the Corps and EPA will generally not be required.

● *Clarify that Certain Man-Made Wetlands Are Not Jurisdictional.* The Corps and EPA will incorporate examples of certain man-made wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, and irrigated lands that would revert to upland if irrigation ceased, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

● *Wetlands Reserve Program.* The Wetlands Reserve Program (WRP) offers a significant opportunity to assist farmers who are interested in restoring wetlands on their property. Response by farmers to the nine State pilot program was overwhelming, with proposals for 250,000 acres of restoration by over 2300 farmers. The 1994 Appropriations conference report provides for 75,000 new acres to be enrolled in the WRP. When passed this will more than double -- to 20 -- the number of states where producers can participate in the program. The recent Midwest flood has created a particularly pressing need to assist farmers in the voluntary restoration of wetlands that have historically provided valuable flood protection. Congress should fully fund the Administration's budget requests for the WRP in 1995, and should expand the program in the 1995 Farm Bill.

D. CATEGORIZATION

Issue Definition: A persistent criticism of the Section 404 regulatory program is that the permit process is inflexible to the extent that "all wetlands are treated the same" from a regulatory perspective. Such criticisms have led to calls for a nationwide categorization system to rank wetlands based upon their relative function and importance to society.

One proposed approach would require that all of the Nation's wetlands be mapped and categorized "up front" as either "high-", "medium-", or "low-value." The ranking based upon this *a priori* categorization would, in turn, govern the regulatory response at the time of a specific permit application.

Administration Position: While conceptually *a priori* categorization and ranking may seem attractive, its technical, fiscal and environmental implications make it unworkable. For example, simply mapping the lower 48 States at a scale suitable for detailed regulatory use would involve a mammoth undertaking yielding nearly 14 million maps and costing in excess of \$500 million. Assessing the functions of every wetland in the country would be a far larger and more complicated task and would require staffing and funding many times that necessary to complete mapping alone.

There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult and require many years to develop. The suggestion contained in one legislative proposal that the Federal government buy all "high-value" wetlands would be infeasible from a budgetary standpoint. The Congressional Budget Office estimates the acquisition costs alone for the lower 48 States to range between \$10 billion and \$45 billion.

Finally, an *a priori* categorization and ranking approach would not provide for consideration of the individual impacts associated with specific projects. This makes little sense from the standpoint of either development or wetlands protection. For example, small projects with minor impacts would be arbitrarily prevented from proceeding in a "high-value" wetland area. At the same time, large and environmentally damaging projects would be automatically approved if they were located in "low-value" wetland areas. A nationwide *a priori* categorization scheme would further complicate the Section 404 program and would conflict with the Administration's goals of administering a scientifically sound regulatory program that is efficient, predictable and understandable.

In contrast to nationwide *a priori* categorization, opportunities exist to provide greater predictability and certainty in the regulatory process while increasing participation at the State and local levels. Local or regionally developed advance planning at the watershed level can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program. Appropriate functional assessment techniques can be applied to all wetlands within the boundaries of a particular watershed or planning area, and reasonably foreseeable development needs can be superimposed upon this inventory and assessment to identify appropriate regulatory responses in advance of specific permit applications. Highly functional and ecologically significant wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance, or activities that would cause minimal environmental harm, can be identified as appropriate for general permits or other regulatory streamlining methods.

In the context of individual permit reviews, the Section 404(b)(1) Guidelines currently provide the Corps and EPA with the flexibility to appropriately scale the regulatory response to reflect the relative function of the affected wetland, the character of the proposed discharge, and the probable environmental impact.

The Administration recognizes that "all wetlands are not the same" and that permit applicants deserve a timely and predictable regulatory response that is appropriate for the project being proposed. To this end, the Administration proposes the following actions:

- **Issue Section 404(b)(1) Guidelines Flexibility Guidance.** EPA and the Corps have issued guidance to their field staff to clarify and standardize implementation of the flexibility afforded by the 404(b)(1) Guidelines to make regulatory decisions regarding the analysis of project alternatives based on the relative severity of the environmental

impact of proposed discharges. This guidance clarifies that small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts.

- *Develop Improved Analytical Tools for Wetlands Functional Assessment.* The agencies will expedite development of a new approach for wetland functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an improved analytical tool to make timely and accurate assessments of wetland functions. This tool will assist the agencies in assessing the relative severity of environmental impact of proposed discharges to determine an appropriate regulatory response consistent with the 404(b)(1) Guidelines flexibility guidance referenced above.

- *Encourage Advance Planning Efforts.* The agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate.

- *Regionalize General Permits for Activities in Defined Categories of Waters.* The Section 404 program already embodies a form of wetlands categorization through use of Nationwide Permit 26 (NWP 26), a "category of waters" general permit that authorizes discharges into isolated waters and headwaters. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field level review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Congress should amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits.

E. GEOGRAPHIC JURISDICTION

The term "geographic jurisdiction" encompasses a set of wetlands issues that concern the determination of which waters fall within the jurisdiction of the Section 404 program of the Clean Water Act. These issues include the delineation manual that specifies the methodology by which wetlands are identified; the definitions of "wetlands" and "waters of the United States;" "artificial" wetlands; and isolated waters. (For "Delineation Training and Certification" see ADDRESSING LANDOWNER CONCERNS.)

Issue Definition: Delineation Manual

As previously indicated, there has been a great deal of controversy surrounding the manuals that Federal agencies use in the field to delineate wetlands. The 1989 Manual was strongly criticized by some who claimed that it was an attempt by the bureaucracy to greatly *expand* the geographic

jurisdiction of wetlands regulation without opportunity for public involvement. The proposed 1991 Manual that followed was roundly criticized by those who claimed that it would greatly *reduce* the scope of geographic jurisdiction applied to wetlands. In an attempt to resolve this controversy, in the fall of 1992 the Congress directed EPA to fund a National Academy of Science (NAS) study of wetlands delineation. That study is expected to be completed in the Fall of 1994. Since January 1993, both the Corps and EPA have adopted the 1987 Manual, which was in use in some parts of the country prior to the issuance of the 1989 Manual.

Administration Position: The Clinton Administration supports the use of the 1987 Wetlands Delineation Manual by the Corps, EPA, SCS, and FWS pending the evaluation of the NAS study. (See "Guarantee Consistency in Delineations on Agricultural Lands" under AGRICULTURE.) The use of the 1987 Manual by the Corps and EPA has increased confidence and consistency in identifying wetlands and has diminished the controversy associated with the 1989 and 1991 manuals. If the Federal agencies jointly conclude that the 1987 Manual should be revised to respond to recommendations of the NAS, any proposed changes will be the subject of a process that will provide full opportunity for public comment. In addition, any proposed changes will be field tested by the agencies prior to final adoption to determine their impact in the real world.

To increase public confidence in the Section 404 regulatory program, the Administration recommends that the Congress endorse the continued use of the 1987 Manual in the reauthorization of the Clean Water Act, pending recommendations that may result from the NAS study.

Issue Definition: Defining "Waters of the U.S." and "Wetlands"

The Clean Water Act regulates discharges to "navigable waters," which are defined in the statute as "waters of the United States." However, the Act does not contain a definition of "waters of the United States." Similarly, while the Act refers to "wetlands," the statute does not define the term. Explicit definitions of these terms in the statute, consistent with longstanding regulatory definitions, would clarify Congressional intent with regard to the scope of geographic jurisdiction under the Act.

Administration Position: The Administration recommends that Congress incorporate the definition of "waters of the United States" contained in existing EPA and Corps implementing regulations. To provide additional consistency among Clean Water Act and Food Security Act programs, Congress should also incorporate the definition of "wetlands" contained in the Clean Water Act regulatory definitions, which is essentially identical to the wetlands definition in the 1990 Farm Bill. (The Clean Water Act regulatory definition of wetlands is preferable because some States have used the definition in State wetlands statutes. To adopt a different definition at Federal and State levels of government would only create further confusion in the regulatory program.)

The EPA/Corps definition of "waters of the United States" explicitly includes recently promulgated language clarifying that "prior converted croplands" are not waters of the

United States for purposes of the Clean Water Act. Congress should include this clarifying language in statute as well.

The Administration also recommends that Congress add examples of "isolated waters" (e.g., prairie potholes, vernal pools, and playa lakes) to the statutory definition of wetlands. From a scientific standpoint, isolated wetlands perform many of the same vital functions performed by other aquatic areas widely accepted as wetlands, such as flood control and groundwater recharge, as well as providing critical habitat for migratory waterfowl and other wildlife, and contribute to achieving the objectives of the Clean Water Act both individually and as a class.

Issue Definition: "Artificial" Wetlands

Neither the Clean Water Act nor its implementing regulations distinguishes between natural and created wetlands. However, certain "artificial" wetlands do not normally exhibit the values and functions typically attributed to natural wetlands. These artificial wetlands are created inadvertently from upland by human activity and would revert to upland if such activity ceased. The fact that these areas are not specifically excluded from the jurisdiction of the Clean Water Act in either statute or regulation has caused confusion.

Administration Position: The EPA and the Corps will incorporate examples of artificial wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

F. MITIGATION AND MITIGATION BANKING

Issue Definition: Mitigating the harmful effects of necessary development actions on the Nation's waters is a central premise of Federal wetland regulatory programs. The Section 404 regulatory program relies upon a sequential approach to mitigating these harmful effects by first avoiding unnecessary impacts, then minimizing environmental harm, and, finally, compensating for remaining unavoidable damage to wetlands and other waters through, for example, the restoration or creation of wetlands.

Mitigation banking refers to a wetland restoration, creation, or enhancement effort undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when compensatory mitigation is not appropriate, practicable, or as environmentally beneficial at the development site. Units of restored or created wetland are expressed as "credits", and accumulated credits are subsequently withdrawn to offset "debits" incurred at the development site.

Administration Position: The sequential approach to mitigation provides a logical, predictable, and reasonable framework for mitigating impacts associated with proposed

development actions. The Administration supports the use of mitigation banking in appropriate circumstances as a means of compensating for authorized wetland impacts.

The Administration is proposing the following actions to ensure that mitigation of environmental impacts within the Section 404 program is effective, predictable, and consistent with a watershed management perspective:

● *Issue Mitigation Planning Guidance.* The Corps, in coordination with EPA, FWS, SCS, and the National Marine Fisheries Service (NMFS), will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits. This guidance is intended to increase the success of mitigation projects in offsetting impacts to wetlands and other waters resulting from permitted activities. This guidance will assist permit applicants by providing greater consistency and certainty with regard to how Section 404 mitigation requirements are applied.

● *Endorse the Use of Mitigation Banking Under the Section 404 Regulatory Program.* While a number of technical and procedural questions regarding the establishment and long term management of mitigation banks remain, conceptually mitigation banking, with appropriate environment safeguards, offers numerous advantages. Banking provides for greater certainty of successful compensatory mitigation in the permit process by requiring mitigation to be established before permits are issued. Banks are often ecologically advantageous because they consolidate fragmented wetland mitigation projects into one large contiguous parcel that can more effectively replace the lost wetland functions within the watershed. Mitigation banks also provide a framework for financial resources, planning and technical expertise to be brought together in a fashion often not possible with smaller mitigation projects.

Recognizing the advantages offered by mitigation banking to compensate for wetlands losses, Congress should endorse the appropriate use of banking as a compensatory mitigation option under the Section 404 regulatory program, within environmentally sound limits. Congress should also explicitly allow use of the State Revolving Fund by States to capitalize mitigation banks.

● *Issue Mitigation Banking Guidance.* EPA and the Corps, in coordination with FWS, NMFS, and SCS have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 regulatory program. This guidance provides interim direction pending the results of additional studies, but will encourage, within environmentally sound limits, the use of mitigation banks for compensatory mitigation under Section 404.

● *Develop Improved Analytical Tools.* The agencies will expedite current efforts being coordinated by the Corps Waterways Experiment Station to develop an improved wetland functional assessment tool, the Hydrogeomorphic Classification System, to assist in conducting impact analysis and determining appropriate and effective mitigation measures.

G. RESTORATION

Issue Definition: This Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. Much of this loss was due to Federal policies from an earlier era that encouraged the drainage of wetlands. The effect of this wetland loss is reflected in declining populations of fish, waterfowl, and other living things dependent upon the aquatic environment; in degraded water quality; and, most recently, in the extent of flooding in the Midwest.

The Section 404 regulatory program under the Clean Water Act and the Swampbuster provisions under the Food Security Act are attempts to stem this loss of wetlands. At best, the regulatory approach can ensure no further overall net loss. But to achieve a positive increase in the Nation's wetlands will require the restoration of some damaged wetlands.

Our ability to restore wetlands, particularly inland wetlands in agricultural areas, has been well-established over the last decade. A number of private and governmental entities have successfully restored degraded or lost wetlands to productive status. For example, the Fish and Wildlife Service, in cooperation with private landowners across the Nation, has implemented 9,500 restoration projects affecting 200,000 acres. Last year, a 50,000 acre pilot of the USDA Wetlands Reserve Program received proposals from 2,300 farmers to restore 500,000 acres.

Administration Position: Restoring some former wetlands that have been drained previously or otherwise destroyed to functioning wetlands is key to achieving the Administration's interim goal of no overall net loss of the Nation's remaining wetlands, and its long term goal to increase the quality and quantity of the Nation's wetlands base.

In support of a broad-based effort to restore a portion of the Nation's historic wetlands base that has been destroyed or degraded in the past, the Administration proposes to take the following actions:

- **Wetlands Reserve Program.** The fiscal year 1994 Agriculture Appropriations conference report provides for 75,000 new acres to be enrolled in the Wetlands Reserve Program. When passed this will also more than double - to 20 - the number of States eligible for participation in the program. The Administration will also use this program in the Midwest to restore wetlands in the course of providing financial assistance to farmers and improved flood protection for all those affected by the recent flooding. The Administration will also pursue full funding of the President's budget request for the Wetlands Reserve Program in FY 1995, and will seek to have this program expanded in the 1995 Farm Bill.

- **Promote Wetlands Restoration through Voluntary, Cooperative Programs and Outreach Activities.** Wetlands conservation efforts have historically focused largely on wetlands regulation and acquisition. These programs continue to be essential to a

comprehensive strategy for achieving the Administration's wetlands goals. However, stemming the net loss of the Nation's wetlands base and achieving a long-term increase in wetlands acreage is dependent upon restoring wetlands that have been drained, diked, or otherwise destroyed in the past.

The universe of restorable former wetlands is predominantly on private lands, and the Administration presently has in place a number of Federal programs that focus on or incorporate voluntary, cooperative efforts to restore wetlands on private lands (e.g., FWS's Partners for Wildlife program, Bay and Estuary program, and North American Waterfowl Management Plan Joint Ventures; USDA's Wetlands Reserve, Water Bank, Water Quality Incentives, Forestry Incentives, and Stewardship Incentives programs.) The Administration will review existing Federal programs that seek to restore wetlands through cooperative, voluntary agreements and outreach efforts with private and other non-Federal landowners, and will examine opportunities to expand such programs, including education and outreach activities.

- *Revise the Executive Order on Wetlands.* The existing executive order on wetlands will be revised to incorporate the Administration's interim and long term wetland goals and to establish wetlands restoration as an essential vehicle for Federal and quasi-Federal agencies to achieve those goals through a voluntary approach.

H. ROLES OF FEDERAL AGENCIES

Issue Definition: Public support for Federal wetlands protection programs, such as the Clean Water Act Section 404 regulatory program and the Food Security Act Swampbuster program, has suffered during recent years from a perception that multiple agency roles in the Administration of these programs has contributed to confusion, delays, overlap, and a general sense that no single agency is "in charge".

Administration Position: The Administration is initiating steps to streamline the implementation of Federal wetlands protection programs by reducing duplication, overlap, and delay. For example, a memorandum of agreement has recently been signed to give the Soil Conservation Service, in consultation with the Fish and Wildlife Service, the lead agency for making wetlands delineations and mitigation decisions on agricultural land (see AGRICULTURE).

The Administration is committed to providing for effective and timely participation by the agencies with roles in Federal programs affecting wetlands while emphasizing the ultimate role of a single Federal agency decisionmaker. This increased coordination among the relevant agencies will be accomplished through the following mechanism:

- *Continue Implementation of the 1992 Interagency Section 404(q) MOAs.* EPA, the Corps, FWS, and NMFS have issued guidance to their field staff to improve interagency

coordination procedures established in the 1992 Memoranda of Agreement under Section 404(q). These MOAs define a process for expedited review and resolution of agency concerns regarding individual permit decisions. The MOAs also establish procedures for resolving concerns involving the implementation of Section 404 program policy that can be accomplished without delaying individual permit decisions.

The agencies will continue to use the 1992 MOAs and, based on this experience, determine whether additional guidance or revisions to the MOAs are necessary. It is critical to the ultimate effectiveness of the Section 404 program to preserve the responsibilities of Federal resource agencies such as the EPA, FWS and NMFS to reflect their relative expertise and authorities while reducing duplication, overlap, and delay. It is equally critical to recognize and understand the Corps' leadership and final decision-making role as "project manager" for the evaluation of permit applications under the Section 404 regulatory program.

I. ROLE OF STATE, TRIBAL, AND LOCAL GOVERNMENT

Issue Definition: Decisions on where and how to protect or restore wetlands can be often most appropriately made at State, Tribal, or local levels. However, the current Section 404 regulatory program is run at the Federal level, except for certain waters in one State (Michigan). Many States, Tribes, and local governments have their own wetlands programs, which often overlap, are inconsistent with, or are simply distinct from Federal programs. This has resulted in inefficiency, frustration by the regulated public, and significant confusion.

Administration Position: The Administration is committed to increasing State, Tribal, and local government roles in Federal wetlands protection and restoration efforts. To increase consistency and clarity and reduce the confusion generated by the current relationship between the Federal government and State, Tribal, and local governments in wetlands protection and restoration, and to bring decision making to more appropriate levels, the Administration is taking the following actions:

● **Assist States, Tribes, and Local Governments in Taking a Stronger Role in Wetlands Protection.** The Administration will provide technical and financial assistance and guidance to States, Tribes, and local governments to assist them in taking more of a leadership role in wetlands protection, e.g., through State/Tribal assumption of Section 404, development of comprehensive State/Tribal Wetland Conservation Plans, application of State/Tribal Section 401 Certification authority to wetlands, development of Programmatic General Permits under Section 404, and better coordination between State, Tribal, and local permit programs and the Section 404 program.

● **Provide Incentives for States, Tribes, and Regional and Local Governments to Integrate Watershed and Wetlands Planning.** The Clean Water Act should authorize the development of State/Tribal watershed protection programs, requiring local and regional

involvement and Federal approval of the State/Tribal programs. Wetlands should be incorporated into the overall watershed approach, with minimum requirements for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.

● ***Increase Deference to State, Tribal, Regional, and Local Wetlands Decisionmaking.*** The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local programs can effectively regulate Section 404 activities, through issuance of Programmatic General Permits (PGPs). The guidance will also clarify the safeguards required to ensure that these programs adequately protect wetlands and other waters.

The use of PGPs is designed to increase the roles of State, Tribal, regional, and local governments in wetlands protection, provide an incentive for watershed planning efforts, and reduce redundancy and overlap between these programs and the Federal Section 404 program. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs with appropriate environmental safeguards for approved State, Tribal, regional, and local regulatory programs.

● ***Endorse State/Tribal Wetlands Conservation Plans.*** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.

● ***Encourage State/Tribal Assumption of Section 404.*** Congress should provide EPA the authority to use its Wetlands Grants program to fund both development and implementation of State assumption of the Section 404 program. In addition, Congress should authorize partial assumption of the Section 404 program by States and Tribes as an interim step toward full assumption. By authorizing partial assumption of discrete areas within State or Tribal jurisdiction, the State/Tribe can get experience with the program as it develops full statutory equivalency, and the Federal government can defer to the State/Tribe as early as possible.

● ***Provide States/Tribes with Access to Wetlands Delineation Training.*** State and Tribal agencies will be encouraged to participate in the Federal interagency wetlands delineation training and certification programs to strengthen their abilities to conduct wetlands delineations, and to improve consistency in wetlands identification among State and Federal wetlands programs.

J. SCOPE OF REGULATED ACTIVITIES

Issue Definition: The Clean Water Act Section 404 program regulates "discharges" of dredged and fill material to wetlands and other waters of the United States. In the past, these terms have been interpreted in a way that created regulatory "loopholes" under which certain projects could be designed, using expensive and sophisticated methods, so that they did not require Section 404 authorization.

The environmental effects of these projects on wetlands are no different than less sophisticated projects involving discharges of dredged or fill material, which have been regulated under Section 404. Also, these loopholes have led to inconsistencies in how the Section 404 program has been implemented around the country.

Administration Position: The Administration has issued a final regulation, and is asking Congress to take corresponding legislative action, to close these regulatory loopholes by clarifying the types of activities that involve discharges of dredged or fill material subject to Section 404 review.

The following actions will result in better protection of wetlands, and improve the fairness, predictability, and consistency of the Section 404 program.

● **Clarify Definition of "Discharge of Dredged Material."** Under the final rule, this term is defined to ensure that discharges into wetlands and other waters of the United States will be consistently regulated when they are associated with excavation activities, such as ditching, channelization, or mechanized landclearing, that have environmental effects of concern. The rule explicitly excludes from Section 404 regulation discharges associated with activities that have only *de minimis*, or inconsequential, environmental effects. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits authorizing such minor activities. The revised definition does *not* affect the existing exemptions in Section 404(f) for ongoing farming, ranching, and silvicultural activities.

● **Clarify Definition of "Discharge of Fill Material."** The agencies also are clarifying the definition of "discharge of fill material" to ensure that activities in waters of the United States that involve the non-traditional use of pilings (e.g., shopping malls, parking garages) will require Clean Water Act authorization. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits that authorize such activities.

- *Legislative Clarification of Scope of Activities Regulated Under Section 404.* Congress should amend the Clean Water Act to make it consistent with the agencies' rulemaking.

K. STATE OF ALASKA

Issue Definition: The extent and nature of Alaska wetlands reflect, in part, climatological and physiographic conditions found in no other State. More than 99 percent of Alaska's wetlands remain, and much of the State's developable lands are wetlands. This abundance of wetlands in combination with Alaska's short building season, leads some to claim that the Section 404 program places a heavier burden on Alaskans than on the rest of the country.

The previous Administration attempted to address some of these concerns by proposing the "Alaska 1% rule" which would have exempted wetlands in Alaska from mitigation requirements until one percent of Alaska's wetland resources had been developed. The "Alaska 1% rule" was published for public comment in November 1992, and 83 percent of the over 6,500 comments received objected to the rule, raising concerns about its potential impact on the environment.

Objections to the proposed rule focused on several key considerations:

- An additional 1.5 million acres of Alaska's wetlands would be destroyed before the one percent threshold would be met, including potentially all of Alaska's 345,000 acres of extremely valuable coastal wetlands. Wetlands losses in Alaska have historically been greatest in coastal areas where the State's population is concentrated. For example, losses of high value coastal wetlands near the cities of Anchorage and Juneau are estimated to exceed 50 percent of their historic base.
- The proposed rule would hinder management efforts for several Federally listed or proposed threatened and endangered species that utilize Alaska's coastal wetlands, as well as hastening the listing of additional candidate species.
- Although full in-kind compensation is often not possible or practicable, opportunities do exist for restoration or rehabilitation of disturbed areas in proximity to a proposed development that have the potential to benefit affected fish and wildlife populations.
- There is enough flexibility in the existing Section 404 regulatory program to respond to Alaska's unique concerns administratively. During the last 20 years, of the approximately 4,000 permit applications received by the Corps' Alaska District, only 108 (2.7 percent) were denied; the remaining applications were either issued as individual or general permits, or withdrawn. Of the more than 3,000 individual permits issued, only 15 (0.5 percent) required compensatory mitigation.

Administration Position: Because of the significant adverse environmental consequences that it would allow, the "Alaska 1% rule" will be withdrawn. The best way to address Alaska-specific concerns regarding the Section 404 program is through targeting the specific areas where questions about program policies or implementation have been raised. Finalizing the proposed "Alaska 1% rule" would have far broader and avoidable adverse environmental consequences.

The EPA and the Corps will, within the next 90 days, initiate meetings with the Federal resource agencies, State and local government agencies, representatives of native villages, industry groups including oil and fishing interests, and environmental groups, to consider other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska.

In addition, the Administration is proposing a number of actions to improve implementation of the Section 404 regulatory program nationwide (e.g., issuing guidance on flexibility in the Section 404(b)(1) Guidelines, mitigation banking, mitigation planning, advance planning, programmatic general permits; establishing an administrative appeals process; providing for more explicit consideration of wetland functions; and regionalizing Nationwide Permit number 26. See earlier discussion for details). These actions, in combination with any Alaska-specific proposals developed as a result of the process outlined above, should contribute significantly to addressing Alaska's concerns with implementation of the Section 404 regulatory program.

L. TAKINGS

Issue Definition: Some critics of the Section 404 regulatory program have asserted that Federal efforts to protect wetlands constitute a "taking" of private property and require compensation under the Fifth Amendment of the Constitution. Critics of the program have proposed legislation that would characterize permit denial decisions, and other Section 404 regulatory actions, as "takings" requiring compensation.

Administration Position: The Administration strongly supports private property rights. The equitable administration of any Federal regulatory program involves more than strict technical considerations and must include sensitivity to the rights and expectations of citizens. Implementation of the Section 404 program often requires a balancing of environmental protection, public interests, and individual interests.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits. In situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while protecting the property rights of the applicant.

However, in rare instances the public interest in conserving wetlands may substantially interfere with the rights of landowners. In such instances, Federal action will be based

on the proposition that restrictions on the actions of the property owners in question are called for in order to protect the property rights, safety, environmental or economic interests of other individuals or the community at large.

In those situations where the necessary restrictions on use amount to a taking of the property, the owner will, of course, be entitled to compensation. Moreover, where a property owner believes that government action amounts to a taking, the courts are available to review such claims and to determine whether compensation is due. Due to the unique nature of each situation, these issues must be considered on a case-by-case basis. Therefore, the Administration does not support a legislative approach to this issue.

The Administration is strongly committed to reducing the impact of the 404 program on landowners. Many of the Administration positions that have been described in this paper are designed to make the program as efficient, predictable, consistent, and equitable as possible (see ADDRESSING LANDOWNER CONCERNS, AGRICULTURE and CATEGORIZATION).

VI. CONCLUSION

This comprehensive reform package represents a tremendous opportunity to move beyond the unnecessary polarization that has characterized the wetlands policy debate in recent years. While divisive, that debate has not been without value.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much-needed reforms contained in this package — such as permit deadlines, an appeals process, the use of mitigation banks, and increasing the role of State and local government in wetlands regulation — have been proposed by critics of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a vital natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package.

There will, no doubt, be individuals on each side of this divisive debate who will not be entirely pleased with every element of this reform package. But our approach provides effective protection of an important natural resource in a manner that is both fair and flexible, thus recognizing both the value of wetland resources and the need to minimize regulatory burdens.

VII. POSTSCRIPT: LESSONS FROM THE FLOOD

The entire Nation shares the pain of those Americans experiencing the physical destruction and economic loss caused by the disastrous floods that have devastated the Nation's heartland. Many lives have been lost, and billions of dollars in damage have been caused to property and crops. In the short term, we must use the tools available to us to assist those struggling to deal with severe economic hardship due to the floods. We must concentrate our attention on helping people rebuild their lives by protecting our riverfront communities and providing assistance to businesses and the agricultural community adversely affected by the floods.

We must also look to the future, and learn from these floods how to more effectively protect human health and safety, property, and the environment. Many scientists have concluded that past manipulation of the rivers in the Midwest has contributed to the current level of devastation by separating the river channels from their natural floodplains, eliminating millions of acres of additional flood storage capacity. Wetlands within the floodplain and higher in the watershed reduce floods by absorbing rain, snow melt, and floodwaters and releasing it slowly, thereby reducing the severity of downstream flooding.

We must be cautious not to repeat policies and practices which may have added to the destruction caused by these floods. One way to assist landowners while alleviating some flood risks is through funding wetlands restoration and acquisition programs targeted to help those in flood-ravaged areas. Programs such as the USDA Wetlands Reserve Program provide farmers with much needed support and increase the quantity of flood-absorbing wetlands in this region.

Of course, we recognize that wetlands and river system restoration and protection alone will not suffice. It will be critically important that we quickly rebuild many of the flood control structures. However, we have learned the importance of also looking at alternative non-structural measures that may provide as much or better flood damage reduction at the same or lower cost. Such measures would include using more natural river corridor systems and wetlands. In the longer term, it is important that *all* potential flood control measures, both structural and non-structural, be considered and evaluated from a pragmatic and cost-benefit standpoint.

It is not a question of whether to protect cities and farms; it is a question of how best to protect them. In the case of riverfront communities, protective levees may be the only reasonable answer, but in other circumstances, non-structural measures may make more sense. We can identify ways to protect and restore our river and wetlands systems so that they work *for* us, integrated with structural flood control measures. Of course, wetlands that provide flood control generally will also provide other important functions, such as fish and wildlife habitat, water quality improvement, and recreational opportunities. In our response to this flood-borne tragedy, the Administration will pursue measures that are the most effective means to prevent this catastrophe from happening again. Doubtless this will involve a combination of repair and construction of flood control structures together with restoration of natural flood attenuating river and wetlands systems.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 7 1994

OFFICE OF
WATER

MEMORANDUM

SUBJECT: . The Watershed Approach: Our Framework for Ecosystem Protection

FROM: Robert Perciasepe
Assistant Administrator

TO: Office of Water Office Directors
Water Management Division Directors
Environmental Services Division Directors
Chesapeake Bay Program Director
Great Lakes National Program Director
Gulf of Mexico Program Director

Ecosystem protection is at the core of Administrator Browner's goals for reorienting EPA towards a more holistic approach to environmental protection. The Administrator has called on us to forge partnerships with States and other public and private parties to achieve place-based environmental protection. We also must build the programmatic framework and the tools that are essential to make place-based protection work. In response, senior EPA managers created a consensus calling for ecosystem protection that is driven by the key environmental problems that occur in particular geographic places. As envisioned, such environmental management would be based on sound scientific information and techniques, and integrate goals for long-term ecosystem health with those for economic stability and involve stakeholders from the places to help define the problems, set priorities, and implement solutions.

Place-based environmental protection is not new to the National Water Program. We are supporting over 130 place-based initiatives. These include nationally known and treasured watersheds like the Chesapeake Bay, the San Francisco Bay Delta, the Everglades, and the Great Lakes. Locally treasured watersheds are included too, like Clear Creek, Colorado; Beaver Lake, Arkansas; and the Chehalis River in Washington. Our experience has taught us that we need to improve our programs to make them work better for States and other partners who are pursuing a place-based approach.

In May, I established the Watershed Management Policy Committee because I believe that, through the watershed approach, we have the opportunity to establish



Recycled/Recyclable
Printed on paper that contains
at least 75% recycled fiber

national leadership in realizing the vision for ecosystem protection supported by Administrator Browner. I know that many of you share my belief. The Watershed Management Policy Committee will serve as a leadership forum for coordinating the water program to support the watershed approach and thus implement ecosystem protection. This memo defines my vision for ecosystem protection through the watershed approach. I am excited about and committed to moving this effort forward.

VISION FOR EPA'S WATERSHED APPROACH

*Clean water and healthy, sustainable ecosystems
as a result of comprehensive yet tailored
water resource management everywhere.*

We will know we have achieved our vision when our work is driven by environmental objectives rather than programmatic requirements. This means coordinating and tailoring the services we provide to meet the needs of ecosystems. Consistent with the Agency's mission, we view ecosystems as the interactions of complex, dynamic communities that include people with their physical surroundings; thus, healthy ecosystems provide for the health and welfare of humans as well as other living things.

We can achieve our vision over time by working together--increasingly integrating assessments, aligning priorities, and coordinating actions, while maintaining the important environmental improvements we have already made. Programs individually working on a watershed basis will not be sufficient to attain our vision, rather a concerted effort to integrate our programs into a unified, national water program is required.

GUIDING PRINCIPLES FOR EPA'S WATERSHED APPROACH

A few key principles guide EPA's watershed approach.

- **Geographic Focus**--Management activities are directed within specific geographical areas, typically the areas that drain to surface water bodies or that recharge or overlay ground waters or a combination of both.
- **Action Driven by Environmental Objectives and by Strong Science and Data**--Collectively, managers employ sound scientific data, tools, and techniques in an iterative process that includes: characterization of the natural resources and the communities that depend upon them; identification of environmental objectives based on the condition of ecological resources and the needs of people within the community; use of scientifically valid methods to characterize priority problems and solutions; development and implementation of action plans; and evaluation of effectiveness.

- **Partnerships**--Those parties most affected by management decisions are involved throughout and shape key decisions. Management teams include representatives from local, State,* and Federal agencies, and appropriate public interest groups, industries, academic institutions, private landowners, and concerned citizens. This involvement ensures that environmental objectives are well integrated with those for economic stability, and that the people who depend upon the water resources within the watersheds are kept well informed of management concerns and actions and are invited to participate in planning and implementation activities.
- **Coordinated Priority Setting and Integrated Solutions**--The ultimate goal of EPA's water program is to facilitate attainment of environmental objectives everywhere in the United States. Because needs vary from place to place, and because there are limited resources, and because there are numerous water-related programs at all levels of government, a comprehensive, multiorganizational approach is required. Through coordinated efforts, appropriate parties can establish priorities and take integrated actions based on consideration of all environmental issues, including threats to public health (including drinking water supply) and surface and ground water, as well as the need to protect critical habitat and biological integrity.

WHAT DOES THIS MEAN FOR WATER PROGRAMS?

EPA will promote and support the watershed approach at local, State, and Federal levels and implement our programs in a manner tailored to meet the specific needs within watersheds. We recognize that successful management of specific watersheds is critically dependent upon State and local governments and citizens who, in many cases, will develop and implement action plans and who have the keenest sense of the problems and opportunities presented within their communities. Because our programs are generally implemented by the States, however, we will look to States to create the frameworks through which we support local efforts.

- **Invest in State Reorientations** --States are pivotal in providing coordination and direction for the watershed approach. EPA will encourage States to merge their planning for all water resources into one truly comprehensive effort. To that end, EPA will promote and support comprehensive State programs through which States:
 - Map the watersheds (this includes making decisions about scale and "nesting" of watersheds as well as providing for addressing surface and ground water issues);
 - Set and/or adopt goals (e.g., water quality standards, drinking water MCLs, overall no net loss of wetlands);

* Throughout this document, the word "States" is meant to include the States, Territories and eligible Tribes.

- Establish priorities (ultimately combining the priorities of specific programs into a comprehensive set of priorities);
- Convene and oversee management teams (commissioning existing teams as appropriate); and
- Implement integrated and effective solutions.

In some cases, for example, in those watersheds that cross State or national boundaries, EPA and other Federal agencies may provide leadership for management efforts.

- **Realign Federal Services to Meet Local Needs as Defined through State Programs**—EPA and other Federal agencies will provide financial and technical support for comprehensive State watershed programs and, through the States, local watershed teams.

In particular, EPA will continue to provide guidance for establishing criteria and standards on a watershed basis and expand its focus to include: 1) issues facing Native Americans and economically disadvantaged minorities; and 2) physical and biological endpoints, such as habitat and wildlife. To enhance good decision-making, we will continue to support comprehensive ecological risk assessment and to improve modeling tools. We also will improve monitoring capabilities and coordinate monitoring programs to provide sound information; and we will provide guidance to identify appropriate environmental measures of success.

In addition, as appropriate we will implement programs on a watershed basis (e.g., permit decisions and targeted nonpoint source grants to accelerate watershed-based runoff control) and streamline program requirements, providing for multipurpose planning, funding, and reporting.

EPA will continue to develop partnerships with other Federal agencies, as well as with States and local governments and nongovernmental organizations, to achieve our vision.

KEY QUESTIONS ABOUT THE WATERSHED APPROACH

How can the watershed approach achieve EPA's vision for ecosystem protection?

The watershed approach is entirely consistent with and can serve as a foundation for place-based ecosystem protection; thus, it can help achieve EPA's vision for ecosystem protection. Indeed, the momentum and success of the watershed approach and its "predecessors," the National Estuary Program, Great Water Bodies programs, and the Clean Lakes Program, strongly influenced the development of EPA's ecosystem protection approach.

How can the watershed approach address both ground water and surface water protection?

To be comprehensive, the approach requires consideration of all environmental concerns, including needs to protect public health (including drinking water), critical habitat such as wetlands, biological integrity, and surface and ground waters. It is critical that all relevant programs coordinate priorities so that all water resources are more effectively and efficiently protected. This requires improved coordination among Federal, State, and local agencies so that all appropriate concerns are represented. Such involvement is especially important to integrate our emerging programs—ground water, wetlands, and drinking water source protection—with older program frameworks. So, for example, the priorities set by Comprehensive State Ground Water Protection Programs (CSGWPP), Wellhead Protection Programs, National Estuary Programs, or State Management Plans for Pesticides would be considered along with those for wetlands protection and our more traditional programs for point and nonpoint source pollution prevention and control.

When delineating geographical areas as management units, boundaries should be constructed to accommodate hydrologic connections and processes and address the problems at hand. So, particular management areas may vary depending on the problems to be addressed. For example, when ground water contributes significantly to surface water flow, the management unit should include the ground water recharge area. When the vulnerability of drinking water to contamination is of primary concern, then the drinking water source (e.g., reservoir or wellhead protection area) should be the area upon which attention is focused. When the protection of an aquifer is of primary concern, the management area should include the overlaying or recharging area and recognize impacts upon surface water.

How do we invest in the watershed approach while maintaining our baseline levels of protection?

We have made great strides in improving water quality through the application of standard, national measures, particularly for point sources (e.g., technology-based controls) and for drinking water at the tap. We have an obligation to continue the statutory mandates and our base programs (i.e., traditional grants and regulatory programs). Our challenge is to reframe our implementation activities through the watershed approach in a manner that will allow us to better fulfill those obligations.

To be most effective, the watershed approach depends upon improved coordination of all programs, so, it will require incremental adjustments to the application of national programs. The NPDES watershed strategy provides a good model. Regional staff are assessing to what extent the States are applying watershed approaches and how the NPDES program may need to change to support each State in its effort. It is likely, for example, that the NPDES program will become more customized, State by State, gradually providing for cooperative monitoring and synchronized permits, and promoting mechanisms to deal with cumulative impacts of

point and nonpoint sources. The realignment will be realized over time as the Regions and States build their capacity and break down barriers to using the watershed approach. Similarly, as our place-based programs, such as National Estuary Program Comprehensive Conservation and Management Plans or State CSGWPPs, are endorsed, the Agency will work to support their goals and objectives. Although this requires an initial investment in coordination and program reorientation, we anticipate that both EPA and the States will ultimately save resources as we reduce duplicative efforts and better target controls in watersheds.

Because there are limited resources and a multitude of programs with specific goals and objectives, priorities will need to be cross checked and sorted out among programs. We are not suggesting that States stop all current activities in order to adopt coordinated watershed-based planning and priority setting; rather, we support a phased-in approach whereby those implementation activities that have already been identified as high priority continue to be implemented as States, with EPA support, build comprehensive planning mechanisms. Over the long term, however, we envision that all water resource planning should be carried out in a coordinated fashion and that implementation activities in particular places will correspond to the goals and objectives established jointly by watershed communities, the States, EPA, and other stakeholders. We will work with the States to set the framework necessary to carry out joint planning and priority setting. Fortunately, computer technologies, such as GIS, are available to help us sort out overlaps and conflicts in goals, objectives, and priorities.

We will continue to build on the successes of our place-based programs and increasingly integrate assessments, sort out and establish joint priorities, and coordinate actions among programs in order to realize the transition to the watershed approach. Whether a State starts with its NPDES watershed strategy, its CSGWPP, its Wetlands Conservation Plan, its National Estuary Program, its Great Water Bodies Program, or other water resource, place-based strategy, we will support the State in moving to an even more comprehensive approach to protecting water resources. Ultimately, we hope to see comprehensive State watershed programs that involve all appropriate State agency staff in setting goals, establishing priorities, convening and overseeing watershed teams, and implementing integrated and effective solutions.

How will criteria and standards accommodate the watershed approach?

The existing criteria and standards program provides the statutory basis for delivering the data, information, and tools needed to support and enhance water resources management decisions. To meet watershed needs, the program is moving beyond its traditional focus on toxic chemicals. In addition, the ecological risk assessment framework provides a structured scientific method for identifying and assessing the problems impairing the waters and for assisting local decision makers in determining the ecological potential of watersheds and uses to be included in the applicable water quality standards. Similar work provides the basis for drinking water standards that drive efforts to protect source waters or decisions to treat the water prior to public use. An expanded suite of criteria and implementation guidance will cover

factors affecting the chemical, physical, and biological integrity of waters within watersheds and result in the adoption of new water quality standards. In turn, those new standards will serve as environmental objectives and provide the statutory basis for implementing the pollution prevention and source control measures identified for particular watersheds.

NEXT STEPS

Over the next few months, under the direction of the Watershed Policy Committee, EPA's water program managers will reevaluate and make a commitment to carry out the specific work needed to support the watershed approach. The resultant action plan will include and specifically address these broad directions:

- **Enhance Interagency Coordination**
 - Obtain Commitment--Take action to reaffirm commitment to and provide direction for coordinating Federal activities.
 - Provide Support--Provide assistance to the States as they assemble State-focused interagency teams and support local watershed ecosystem protection efforts.
- **Build State Watershed Programs--**Continue to integrate existing program-specific efforts, such as the NPDES watershed strategy, CSGWPP, the emerging drinking water source water protection initiative, State Wetland Conservation Plans, and State Nonpoint Source programs, into comprehensive State watershed programs.
- **Expand the Toolbox--**Develop tools (methods, models, criteria, indicators, monitoring, etc.) that are necessary for efficient and effective watershed management and facilitate their application. A particular effort is needed to ascertain how to establish joint priorities across different environmental protection objectives and programs.
- **Improve IntraEPA Coordination**
 - Streamline Program Requirements--For example, provide for multipurpose planning, funding, and reporting for State and local watershed efforts.
 - Network--Building on CSGWPP's success in networking, establish relationships with other EPA offices to garner support for the watershed approach.
- **Reach Out to Watershed Stakeholders**
 - WATERSHED '95--A national conference to promote the watershed approach among all stakeholders.
 - Publicize Our Effort--Publish a united report on watershed accomplishments.

Most importantly, working with our colleagues in the public and private sector and especially our counterparts in the States, we will continue to build the necessary framework and clarify the work to be done to achieve our vision.

CONCLUSION

Today more than ever there is a critical need for comprehensive environmental protection. The world is not compartmentalized; connections are the rule. We cannot make decisions about ground water without considering surface water and vice versa. We cannot make decisions about environmental impacts without considering economic and social impacts. As John Muir put it, "When we try to pick out anything by itself, we find it hitched to everything else in the universe." To be fiscally responsible, we must work closely together to eliminate duplicative efforts and, even more troubling, conflicting efforts. But most importantly, to be ecologically responsible we must connect our own work in order to reflect, respect, and effectively protect the vital ecosystem connections that are characteristic of our environment. I'm looking forward to working with you to accomplish our vision.