

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
PERFORMANCE TRACK PROGRAM
PUBLIC MEETINGS
Washington, DC
March 15 and 21, 2000**

Draft Meetings Summary

Introduction

On Wednesday, March 15 and Tuesday, March 21 the United States Environmental Protection Agency (EPA) held half-day public meetings to present and get input on its preliminary proposal for a Performance Track Program. The two meetings had the same agenda, with EPA presenting its current thinking regarding the Program and participants discussing the various design features — asking questions and making suggestions for the Agency to consider as it proceeds with designing the Program.

Approximately seventy members of the public participated in each meeting. Large companies were well represented. Small businesses and states also had a number of representatives present. The environmental and environmental justice communities, and local government (publicly-owned treatment works) were represented by few participants. Most of the participants were knowledgeable about EPA's and states' various past and current innovation initiatives.

Key issues participants raised at one or both meetings include:

1. What should be the key objectives of the Program and is it currently optimally designed to achieve them?
2. Can the Program recognize the environmental achievements of multi-facility companies and other entities that are not typically considered facilities?
3. EPA will need to work closely with the States to assure the Program is designed and implemented in a manner that is workable and worthwhile for all, and consistent with (even enhances) existing EPA and State programs.
4. The Program will need to offer a menu of incentives, one that includes significant regulatory incentives.
5. The Program's public reporting requirements need to strike a careful balance between encouraging facilities to collect and use environmental performance and compliance information, and requiring them to share it with their communities and regulators.
6. EPA needs to be explicit about the enforcement ramifications Program participants can expect stemming from their public reporting of compliance audits.

The Proposed Program's History, Rationale, and Overall Design

Each meeting began with introductions and a review of the agenda. Following this, Richard (Rick) Farrell, Associate Administrator for Reinvention and Policy, welcomed everyone and briefly described the genesis and rationale for EPA's developing the Performance Track Program. In EPA's 1999 *Aiming for Excellence Report*, Administrator Carol Browner committed to developing such a program as the next step in encouraging regulated entities to go beyond baseline compliance and strive for continuous improvement in environmental performance.

Mr. Farrell described how the development of the Program draws from experience with a number of recent EPA and State innovation efforts. These include EPA's StarTrack, Environmental Leadership Program, Project XL, and Common Sense Initiative; and State initiatives such as New Jersey's Flexible Track Program, Oregon's Green Permits, and Wisconsin's Environmental Cooperation Program. It also draws on a number of recent national policy reports — including reports from the President's Council on Sustainable Development and the Aspen Institute's Program on Energy and the Environment — which have recommended the development of an "alternative" or "performance" track for top environmental performers.

Mr. Farrell went on to emphasize that the Agency recognizes the importance of public input in the design of the program. He stated that the Agency appreciates and will utilize the input it receives during these and other public meetings. He also highlighted the key role of the States in both designing and implementing the program, and indicated his and Administrator Browner's strong desire to work closely with them in this effort.

Jay Benforado, Deputy Associate Administrator for Reinvention and Policy, then discussed the Program's overall design. EPA is envisioning a two-level program. The entry level is being referred to as the "Environmental Achievement" level. The second, upper level is being called the "Environmental Stewardship" level. (EPA also is developing a related Environmental Reward program to recognize the "best-of-the-best". It will be the topic of separate public meetings later this year).

EPA currently envisions that the Program — particularly the Environmental Achievement level — will focus primarily on facilities rather than multi-facility companies (meeting participants' reaction to this is presented below). Each level will be open to facilities that demonstrate they meet that level's entry requirements. In return, incentives will be available to these facilities.

The Environmental Achievement level will have entry requirements that call for participating facilities to utilize management procedures which will facilitate environmental performance that goes beyond baseline environmental regulatory requirements. The incentives will be "proportional" and will not entail significant transaction costs for the facility or regulatory agencies. EPA plans to begin soliciting applications for this level in June of this year.

The design of the Environmental Stewardship level is on a longer timeline; EPA plans to begin soliciting applications in May, 2001. This level will be open to facilities, and perhaps multi-facility companies, that document substantial environmental improvement beyond what is

currently required by law. In return, EPA is envisioning offering more substantial incentives, some of which may be tailored to specific categories of facilities or sectors.

Following Mr. Benforado's remarks, meeting participants discussed the rationales for, and overall design of, the proposed Program. Their questions and suggestions focused for the most part on three key issue areas: (1) the objectives of the Program; (2) the focus on facilities; and (3) the role of the States and how the Program will affect existing programs. The discussion of each of these is summarized below.

1. *The Objectives of the Proposed Program* Participants recommended that EPA carefully assess its objectives for the Performance Track Program and the extent to which the proposed Program is designed optimally to achieve them. Three key possible objectives were identified during the discussions:

- a. Providing firms with reasons to improve their environmental performance beyond baseline compliance levels
- b. Identifying top-performing firms and shifting some public resources away from compliance assurance activities relating to these firms to more pressing environmental matters
- c. Redesigning regulatory requirements for top-performing firms to minimize existing tensions between these requirements and optimal business practices (including optimal environmental management practices)

Meeting participants had differing views as to which of these objectives should be paramount. EPA indicated that its primary objective is (a) and that it sees the Program as a step towards being better able to evaluate and address (b) and (c).

Some of the meeting participants who stressed objectives (b) or (c) stated that the costs of implementing the Environmental Achievement level would outweigh its benefits. They suggested that this entry level will not help much to achieve the later two objectives and that EPA consider dropping this level.

2. *The Focus on Facilities rather than Companies* Some meeting participants questioned whether the Program, even at the Environmental Achievement level, should be oriented towards facilities rather than multi-facility companies. They pointed to the increased value of official recognition from EPA to multi-facility companies if the recognition applies to the whole company and its end-products (which may have been manufactured at a series of facilities).

Others stated that facilities are the appropriate entities around which to orient the Program. They pointed out that the facility is the primary interface between regulated entities, regulators, and the public. Most meeting participants agreed that EPA probably could address these two perspectives by providing a means for a multi-facility company to be recognized as a Program participant if all of its facilities meet the entry requirements.

Some meeting participants also asked whether the Program could be open to entities not typically thought of as facilities, for example electric transmission substations, construction

crews, and non-point sources, as well as to international entities. They stressed that broadening the applicability of the Program in these ways could increase the overall environmental gain to be derived.

3. *The Role of the States and How the Program Will Affect Existing Programs* A number of meeting participants stressed the importance of EPA working with the States to assure the Program is designed and implemented in a manner that is workable and worthwhile for all, and consistent with (even enhances) existing EPA and State programs. They echoed Mr. Farrell's opening remarks regarding the essential role of the States. They also asked numerous questions about how the Program will affect existing EPA and State innovation programs, and emphasized that coordination and consistency — and perhaps consolidation — are crucial to whether potential participants and others are receptive to the Program.

The Proposed Design for the Environmental Achievement Level

Alex Cristafaro (March 15) and Dan Fiorini (March 21), both of EPA's Office of Reinvention and Policy, presented EPA's current thinking regarding the design of the Environmental Achievement level. They described the incentives under consideration, the proposed entry criteria, and some operational issues.

EPA is proposing that at the Environmental Achievement level, participating facilities will receive the following incentives: recognition (at events and through EPA publications, its web site, and the use of a program logo); enhanced access to EPA officials (a single point of contact and participation in annual workshops with senior EPA management); and technical assistance (best practices documents, peer exchange opportunities, and partnership program materials). Additional incentives are under consideration, though they may be offered at the Environmental Stewardship level: increased flexibility (relating to permitting, reporting and monitoring, and inspections) and Federal procurement preferences.

Proposed entry criteria include: an operating environmental management system (EMS); demonstration of continuous improvement; demonstrated public outreach and reporting; and sustained compliance. The elements of an acceptable EMS are spelled out (see EPA's presentation overheads), though the EMS could be scaled to the size and complexity of the facility. The facility must have completed one EMS cycle. Demonstration of continuous improvement will involve selecting from a set of environmental performance categories (currently: energy use, water use, emissions of key pollutants, chemical releases, waste generated, discharges to water, product performance, and restoration/preservation) and reporting on past improvement efforts and future commitments in those categories selected. EPA has yet to establish a minimum number of categories.

Demonstrated public outreach and reporting will entail a facility describing its plans to: identify and respond to community concerns; inform the public of important information on facility operations; and report on the facility's performance commitments. A facility will also have to develop an annual report that summarizes: its EMS performance, including summary compliance audit findings; its progress on facility performance; and its public outreach efforts. Whether a facility meets the sustained compliance requirement will be determined based on a screening

consistent with EPA's "Compliance Screening Guidance for Partnership Programs."

A few operational issues were briefly mentioned. Program participants will be accepted into the Program for a period of three years, at which point they can reapply. EPA will receive and review applications once or twice a year. It plans to develop criteria for removing participating facilities that are no longer meeting the Program's eligibility requirements.

Meeting participants discussed a broad range of issues relating to the Environmental Achievement level. Three that received particular attention were: (4) the incentives under consideration; (5) the public reporting requirements; and (6) how EPA's enforcement responsibilities may impact on Program participants.

4. *The Incentives under Consideration* Much discussion focused on the Program's incentives and what is needed in the way of incentives to make participation in the Program worthwhile to facilities. Meeting participants recognized that a menu of incentives will be necessary as different facilities often place very different values on any one incentive. Most agreed that the current slate of proposed incentives is not sufficient to make the Program attractive in its own right to many potential participants.

Meeting participants stated that recognition for environmental achievements is not a significant incentive for many types of facilities, though it is valued by some. At the facility level, recognition from local government and representatives of local community interests tends to be most valuable. Likewise with enhanced access; facility managers interact primarily with local and state regulators, and would most value enhanced access to them.

Technical assistance was seen by many participants as more appropriately offered to facilities that have not elevated their environmental performance to a beyond-compliance level and to those that are working to meet the Program's entry requirements. They suggested that it should not be characterized as an incentive (i.e. "reward") for achieving the Environmental Achievement level.

A number of participants strongly urged EPA to work with the states to develop meaningful regulatory incentives. They pointed out that the EMS and public reporting entry requirements will be seen as significant steps by many facilities and that the incentives will need to be proportional. Some participants stated that, for many facilities, the only sufficient incentives will be changes in regulatory procedures that reduce a facility's costs — both compliance costs and the often more significant lost-opportunity costs that occur when business processes must comport with ill-fitting regulatory procedures. These participants identified permitting, reporting, monitoring, and inspections (in this order) as the most promising areas in which to develop such incentives.

Other incentives that meeting participants suggested include a mechanism for reducing insurance costs, tax incentives, use of EMS-generated performance data in lieu of some existing reporting requirements, and assistance with site remediation.

5. *The Public Reporting Requirements* Some meeting participants stated that the proposed

public reporting requirements reflect core community values and will contribute to improved environmental performance. Others indicated some uneasiness about aspects of the proposed requirements and suggested they be limited to EMS (other than numerical goals) and performance information, and publically-available compliance history information. They suggested that the public reporting of internal compliance audits would be seen as a significant disincentive to participating in the Program by many facilities.

6. *How EPA's Enforcement Responsibilities May Impact on Program Participants* Meeting participants raised questions and concerns about EPA's enforcement policy for facilities participating in the Program. They suggested that EPA's audit policy will not be sufficient to address the concerns of many potential Program participants in light of the requirement for public reporting of compliance audit results. They added that the policy is seen as overly cumbersome for lesser potential violations.

Conclusion

Rick Farrell concluded each meeting by thanking everyone for participating and remarking on the quality of the discussions. He stated that EPA would be revising its proposal over the next number of weeks based on these and other public meetings, and discussions with the states. It will hold a second round of public meetings in May to present a refined version of the Performance Track Program.